

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

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**Supreme Court Case No. 80508**

Electronically Filed  
Mar 05 2020 07:33 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**HELIX ELECTRIC OF NEVADA, LLC,**

Appellant,

v.

**APCO CONSTRUCTION, INC., A NEVADA CORPORATION,**

Respondent.

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**APPENDIX TO DOCKETING STATEMENT  
Volume VII**

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<u><b>Exhibit</b></u>	<u><b>Description</b></u>	<u><b>Bates Range</b></u>	<u><b>Volume</b></u>
A	Court Docket for Case No. 09A587168	Helix000001 – Helix000044	I
B	Notice of Entry of Order to Consolidate	Helix000045 – Helix000053	I
C	Consolidated Case List	Helix000054 – Helix000062	I
D			
<b>D-1</b>	<b>Pleadings Related to Accuracy</b>	<b>Helix000063 - Helix000066</b>	<b>I</b>
	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
<b>D-2</b>	<b>Pleadings Related to Helix Electric of Nevada, LLC d/b/a Helix Electric</b>	<b>Helix000161 – Helix000163</b>	<b>II</b>
	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
<b>D-3</b>	<b>Pleadings Related to WRG Design, Inc.</b>	<b>Helix000324 – Helix000326</b>	<b>III</b>
	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
<b>D-4</b>	<b>Pleadings Related to Heinaman Contract Glazing</b>	<b>Helix000394 – Helix000396</b>	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
<b>D-5</b>	<b>Pleadings Related to Bruin Painting Corporation</b>	<b>Helix000468 – Helix000469</b>	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

<b>D-6</b>	<b>Pleadings Related to HD Supply Waterworks, LP</b>	<b>Helix000506 – Helix000508</b>	<b>V</b>
	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
<b>E</b>	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
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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
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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 5<sup>th</sup> day of March, 2020.

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## **CERTIFICATE OF SERVICE**

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

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

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

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**Settlement Judge:**

Stephen E. Haberfeld  
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An employee of **PEEL BRIMLEY, LLP**

1           14.     Answering Paragraphs 49, 50, 51, 52, 53, 54, 55, 56, and 57 of the Complaint,  
2     APCO denies all the allegations as they pertain to, or as they are or may be alleged against,  
3     APCO. With respect to any allegations that have been asserted against the remaining  
4     Defendants, APCO does not have sufficient knowledge or information upon which to base a  
5     belief as to the truth of the allegations contained therein, and upon said grounds, denies each  
6     and every allegation contained therein.

7                               **SEVENTH CAUSE OF ACTION**

8                               **(Foreclosure of Mechanic's Lien – E&E Lien)**

9           15.     Answering Paragraph 58 of the Complaint, APCO repeats and realleges each  
10    and every allegation contained in paragraphs 1 through 14 of this Answer to the Complaint as  
11    though fully set forth herein.

12           16.     Answering Paragraphs 59, 60, 61, 62, 63, 64, and 65 of the Complaint, APCO  
13    denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect  
14    to any allegations that have been asserted against the remaining Defendants, APCO does not  
15    have sufficient knowledge or information upon which to base a belief as to the truth of the  
16    allegations contained therein, and upon said grounds, denies each and every allegation  
17    contained therein.

18                               **EIGHTH CAUSE OF ACTION**

19                               **(Claim of Priority)**

20           17.     Answering Paragraph 66 of the Complaint, APCO repeats and realleges each  
21    and every allegation contained in paragraphs 1 through 16 of this Answer to the Complaint as  
22    though fully set forth herein.

23           18.     Answering Paragraph 67 of the Complaint, APCO admits the allegations  
24    contained therein.

25           19.     Answering Paragraph 68 of the Complaint, APCO does not have sufficient  
26    knowledge or information upon which to base a belief as to the truth of the allegations  
27    contained therein, and upon said grounds, denies each and every allegation contained therein.  
28

1           20.     Answering Paragraphs 69 and 70 of the Complaint, APCO denies all the  
2     allegations as they pertain to, or as they are alleged against, APCO. With respect to any  
3     allegations that have been asserted against the remaining Defendants, APCO does not have  
4     sufficient knowledge or information upon which to base a belief as to the truth of the  
5     allegations contained therein, and upon said grounds, denies each and every allegation  
6     contained therein.

7                                   **NINTH CAUSE OF ACTION**  
8                                   **(Claim Against Bond – CPCC Surety)**

9           21.     Answering Paragraph 71 of the Complaint, APCO repeats and realleges each  
10    and every allegation contained in paragraphs 1 through 20 of this Answer to the Complaint as  
11    though fully set forth herein.

12           22.     Answering Paragraphs 72, 73, 74, 75, 76, 77, 78 and 79 of the Complaint,  
13    APCO does not have sufficient knowledge or information upon which to base a belief as to the  
14    truth of the allegations contained therein, and upon said grounds, denies each and every  
15    allegation contained therein.

16                                   **TENTH CAUSE OF ACTION**  
17                                   **(Claim Against Bond – JHPC Surety)**

18           23.     Answering Paragraph 80 of the Complaint, APCO repeats and realleges each  
19    and every allegation contained in paragraphs 1 through 22 of this Answer to the Complaint as  
20    though fully set forth herein.

21           24.     Answering Paragraphs 81, 82, 83, 84, 85, 86, 87, and 88 of the Complaint,  
22    APCO does not have sufficient knowledge or information upon which to base a belief as to the  
23    truth of the allegations contained therein, and upon said grounds, denies each and every  
24    allegation contained therein.

25    ...

26    ...

27    ...

**ELEVENTH CAUSE OF ACTION**

**(Claim Against Bond – E&E Surety)**

25. Answering Paragraph 89 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 24 of this Answer to the Complaint as though fully set forth herein.

26. Answering Paragraphs 90, 91, 92, 93, 94, 95, 96, and 97 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**TWELFTH CAUSE OF ACTION**

**(Declaratory Judgment)**

27. Answering Paragraph 98 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 26 of this Answer to the Complaint as though fully set forth herein.

28. Answering Paragraphs 99, 100, 101, 102, 103, 104, and 105 of the Complaint, APCO, upon information and belief, admits the allegations contained therein.

29. Answering Paragraph 106 of the Complaint, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**FIRST AFFIRMATIVE DEFENSE**

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

**SECOND AFFIRMATIVE DEFENSE**

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

...

1 **THIRD AFFIRMATIVE DEFENSE**

2 No monies are due HD Supply from APCO and APCO has not been unjustly enriched  
3 as APCO has not received payment for HD Supply's work or supply of materials from  
4 Gemstone, the developer of the Manhattan West Project and/or to the extent APCO received  
5 such payment, APCO paid HD Supply.

6 **FOURTH AFFIRMATIVE DEFENSE**

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

10 **FIFTH AFFIRMATIVE DEFENSE**

11 At the time and place under the circumstances alleged by the HD Supply, HD Supply  
12 had full and complete knowledge and information with regard to the conditions and  
13 circumstances then and there existing, and through HD Supply's own knowledge, conduct, acts  
14 and omissions, assumed the risk attendant to any condition there or then present.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 Whatever damages, if any, were sustained by HD Supply, were caused in whole or in  
17 part or were contributed to by reason of HD Supply's own actions.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 The liability, if any, of APCO must be reduced by the percentage of fault of others,  
20 including HD Supply.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 The damages alleged by HD Supply were caused by and arose out of the risk which HD  
23 Supply had knowledge and which HD Supply assumed.

24 **NINTH AFFIRMATIVE DEFENSE**

25 The alleged damages complained of by HD Supply were caused in whole or in part by a  
26 new, independent and intervening cause over which APCO had no control. Said independent,  
27 intervening cause was the result of any alleged damages resulting to HD Supply.

1                                   **TENTH AFFIRMATIVE DEFENSE**

2                   APCO had no contractual or other obligations to HD Supply.

3                                   **ELEVENTH AFFIRMATIVE DEFENSE**

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

6                                   **TWELFTH AFFIRMATIVE DEFENSE**

7                   HD Supply has failed to comply with the requirements of NRS 624.

8                                   **THIRTEENTH AFFIRMATIVE DEFENSE**

9                   HD Supply may have failed to comply with all requirements of NRS 108 to perfect its  
10 lien.

11                                  **FOURTEENTH AFFIRMATIVE DEFENSE**

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

17                  WHEREFORE, APCO prays for judgment as follows:

- 18                  1.       That HD Supply take nothing by way of its Complaint on file herein and that the  
19 same be dismissed with prejudice against APCO;  
20                  2.       For an award of attorneys' fees and costs incurred herein by APCO; and

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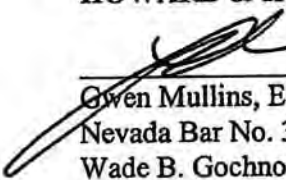


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1 3. For such other and further relief as this Court may deem just and proper.

2 DATED this 5 day of August, 2009.

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CERTIFICATE OF MAILING

On the 8th day of August, 2009, the undersigned served a true and correct copy of the foregoing APCO CONSTRUCTION'S ANSWER TO HD SUPPLY WATERWORKS' AMENDED STATEMENT OF FACTS CONSTITUTING LIEN, by U.S. Mail, postage prepaid, upon the following:

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3993 Howard Hughes Pkwy., Ste. 530  
Las Vegas, NV 89169-5994  
*Attorney for the Masonry Group Nevada, Inc.*

*Kellie Piet*

An employee of Howard and Howard Attorneys PLLC

**Amended Answer and  
CAMCO's Counterclaim**



CLERK OF THE COURT

1 ANS  
2 Steven L. Morris, Esq.  
3 Nevada Bar No. 7454  
4 Zachariah B. Parry, Esq.  
5 Nevada Bar No. 11677  
6 **WOODBURY, MORRIS & BROWN**  
7 701 N. Green Valley Parkway, Suite 110  
8 Henderson, Nevada 89074  
9 slmorris@wmb-law.net  
10 zparry@wmb-law.net  
11 (702) 933-0777  
12 *Attorneys for*  
13 *Camco Pacific Construction Company, Inc. and*  
14 *Fidelity and Deposit Company of Maryland*

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

11 In re:  
12 Manhattan West Mechanics' Lien Litigation

Case No: A571228  
Dept. No: XXV  
And All Consolidated Cases

**AMENDED ANSWER TO HD SUPPLY & WATERWORKS, LP'S STATEMENT OF  
FACTS CONSTITUTING LIEN AND THIRD-PARTY COMPLAINT**

15 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
16 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
17 (hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as  
18 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of  
19 Woodbury, Morris & Brown, hereby answer the Third-Party Complaint of HD SUPPLY &  
20 WATERWORKS, LP (hereinafter "Plaintiff" or "HD Supply"), on file herein, and admit, deny,  
21 and allege as follows:

22 1. Camco and Fidelity are without information or knowledge sufficient to ascertain  
23 the truth of the allegations contained in Paragraphs 4, 6, 7, 9, 10, 12, 14, 15, 16, 17, 18, 19, 22,  
24 23, 24, 25, 26, 27, 31, 32, 33, 35, 36, 37, 52, 53, 54, 55, 56, 62, 63, 64, 68, 81, 82, 83, 84, 85,  
25 86, 87, 90, 91, 92, 93, 94, 95, and 96 of Plaintiff's Complaint, and therefore deny each and  
26 every allegation contained therein.

27 2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 5, 8,  
28

**WOODBURY, MORRIS & BROWN**  
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Henderson, Nevada 89074  
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1 11, 30, 67, 99, 100, 103, 104, of Plaintiff's Complaint.

2 3. Camco and Fidelity deny each and every allegation contained in Paragraphs 20,  
3 28, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 57, 59, 60, 61, 65, 70, 72, 73, 74, 75, 76, 77,  
4 78, 79, 88, 97, and 106 of Plaintiff's Complaint.

5 4. As to Paragraph 69, Camco and Fidelity admit that HD Supply's claim against  
6 the Property is superior to the claim(s) of SFC, but deny the remaining allegations contained  
7 therein.

8 5. As to Paragraphs 101 and 102, Camco and Fidelity admit that the Mezzanine  
9 Deeds of Trust Subordination Agreement speaks for itself, but deny the remaining allegations  
10 contained therein.

11 6. As to paragraph 105, Camco and Fidelity admit that a dispute has arisen, and an  
12 actual controversy now exists, but deny the remaining allegations contained therein.

13 7. As to Paragraphs 13, 21, 29, 34, 39, 48, 58, 66, 71, 80, 89, 98, of Plaintiff's  
14 Complaint, Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 88 as  
15 though fully set forth herein.

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

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

23 **AFFIRMATIVE DEFENSES**

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

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

28



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

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

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

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

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

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

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

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

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

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

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

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

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

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

27          17.    To the extent that Plaintiff's work was substandard, not workmanlike, defective,  
28

1 incomplete, or untimely, Plaintiff is not entitled to recover for said work.

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

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

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

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

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

13 23. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

27 30. The damages sustained by Plaintiff, if any, were caused by the acts of third  
28



1 persons who were not agents, servants, or employees of Fidelity, or its principal, and who were  
2 not acting on behalf of Fidelity or its principal in any manner or form, and as such, Fidelity or  
3 its principal are not liable in any manner to the Plaintiff.

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

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

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

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

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

18 1. That Plaintiff take nothing by way of its Complaint;  
19 2. For an award of reasonable attorneys' fees and costs for having to defend this  
20 action; and

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

22 DATED this 26th day of April 2010.

23 WOODBURY, MORRIS & BROWN

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

**WOODBURY, MORRIS & BROWN**

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**CERTIFICATE OF MAILING**

I hereby certify that on the 28th day of April 2010, I served a copy of the **AMENDED ANSWER TO HD SUPPLY & WATERWORKS, LP'S STATEMENT OF FACTS CONSTITUTING LIEN AND THIRD-PARTY COMPLAINT** by e-serving a copy on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

/s/ Zachariah B. Parry

An Employee of Woodbury, Morris & Brown

**Jeff Heit Plumbing and Old Republic's  
Answer to HD Supply's Amended Statement  
of Facts Constituting Notice of Lien and  
Third-Party Complaint**

FILED

AUG 7 4 12 PM '09

*E. J. Smith*  
CLERK OF THE COURT

1 ANS  
2 Keith E. Gregory, Esq.  
3 Nevada Bar No. 00232  
4 KEITH E. GREGORY & ASSOCIATES  
5 2300 West Sahara Avenue, Suite 680 Box 23  
6 Las Vegas, Nevada 89102  
7 Telephone: (702) 382-3636  
8 Facsimile: (702) 382-5400  
9 Attorneys for Defendants, Jeff Heit Plumbing Co, LLC  
10 and Old Republic Surety

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

9 ACCURACY GLASS & MIRROR )  
10 COMPANY, INC., a Nevada corporation, )  
11 Plaintiff, )

Case No.: A571228

12 vs. )

Dept. No.: XIII

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

Consolidated with:

A571792

A574391

A577623

A583289

A584730

A587168

A587168

DEFENDANTS ANSWER TO HD  
SUPPLY WATERWORKS' AMENDED  
STATEMENT OF FACTS AND  
THIRD-PARTY COMPLAINT

09A587168  
311553



21 HD SUPPLY WATERWORKS, LP, a )  
22 Florida limited partnership, )  
23 Plaintiff in Intervention, )

24 vs. )

25 APCO CONSTRUCTION, a Nevada )  
26 corporation; CAMCO PACIFIC )  
27 CONSTRUCTION COMPANY, INC., a )  
28 California corporation; GEMSTONE )  
29 DEVELOPMENT WEST, INC., Nevada )  
30 corporation; JEFF HEIT PLUMBING CO, )  
31 LLC, )

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(702) 382-3636 • Fax (702) 382-5400

CLERK OF THE COURT

AUG 07 2009

RECEIVED

1 a Nevada limited liability company E&M )  
2 FIRE PROTECTION, LLC, a Nevada )  
3 limited liability company; FIDELITY AND )  
4 DEPOSIT COMPANY OF MARYLAND; )  
5 OLD REPUBLIC SURETY; PLATTE )  
6 RIVER INSURANCE COMPANY; SCOTT )  
7 FINANCIAL CORPORATION, a North )  
8 Dakota corporation; DOES I through X; )  
9 ROE CORPORATIONS I through X; BOE )  
10 BONDING COMPANIES I through X; LOE )  
11 LENDERS I through X, inclusive, )  
12 )  
13 Defendants. )  
14 )

15 COMES NOW Defendants, JEFF HEIT PLUMBING CO., LLC., a Nevada limited liability  
16 company (hereinafter jointly referred to as "Heit") and OLD REPUBLIC SURETY (hereinafter  
17 jointly referred to as "ORS"), by and through their counsel, Keith E. Gregory, Esq., of the law firm  
18 of Keith E. Gregory & Associates, and hereby answer the Amended Statement of Facts Constituting  
19 A Notice of Lien and Third-Party Complaint by Plaintiff in Intervention, HD SUPPLY  
20 WATERWORKS, LP, and admit, deny and allege as follows:

21 **THE PARTIES**

22 1. Answering paragraphs 1, 2, 3, 4, 5, 7, 8, 10, 11 and 12 of the Amended Complaint  
23 these answering Defendants are without sufficient knowledge or information upon which to form  
24 a belief as to the truth or falsity of the allegations contained therein and based upon such lack of  
25 knowledge and information, deny each and every allegation contained therein.

26 2. Answering paragraphs 6 and 9 of the Amended Complaint these answering  
27 Defendants admits each and every allegation contained therein..

28 ///

**FIRST CAUSE OF ACTION**  
**(Breach of Contract-IHPC Credit Agreement)**

3. Answering paragraph 13 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 12 of the Amended Complaint and incorporate the same herein.

4. Answering paragraphs 14, 15, 16, 17, 18, 19 and 20 of the Amended Complaint \ these answering Defendants deny each and every allegation contained herein.

**SECOND CAUSE OF ACTION**  
**(Breach of Contract-E&E Credit Agreement)**

5. Answering paragraph 21 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 20 of the Amended Complaint and incorporate the same herein.

6. Answering paragraphs 22, 23, 24, 25, 26, 27, and 28 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

**THIRD CAUSE OF ACTION**  
**(Breach of Implied Covenant of Good Faith & Fair Dealing Against IHPC)**

7. Answering paragraph 29 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 28 of the Amended Complaint and incorporate the same herein.

8. Answering paragraphs 30, 31, 32, and 33 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

**FOURTH CAUSE OF ACTION**  
**(Breach of Implied Covenant of Good Faith & Fair Dealing Against E&E)**

9. Answering paragraph 34 of the Amended Complaint these answering Defendants

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1 repeat and reallege and incorporate by express reference their responses to paragraphs 1 through  
 2 33 of the Amended Complaint and incorporate the same herein.

3 10. Answering paragraphs 35, 36, 37, and 38 of the Amended Complaint these  
 4 answering Defendants deny each and every allegation contained herein.  
 5

6 **FIFTH CAUSE OF ACTION**  
 7 **(Unjust Enrichment or in the Alternative Quantum Meruit- Against All Defendants)**

8 11. Answering paragraph 39 of the Amended Complaint these answering Defendants  
 9 repeat and reallege and incorporate by express reference their responses to paragraphs 1 through  
 10 38 of the Amended Complaint and incorporate the same herein.

11 12. Answering paragraphs 40, 41, 42, 43, 44, 45, 46, and 47 of the Amended Complaint  
 12 these answering Defendants deny each and every allegation contained herein.  
 13

14 **SIXTH CAUSE OF ACTION**  
 15 **(Foreclosure of Mechanic's Lien-JHPC Lien)**

16 13. Answering paragraph 48 of the Amended Complaint these answering Defendants  
 17 repeat and reallege and incorporate by express reference their responses to paragraphs 1 through  
 18 47 of the Amended Complaint and incorporate the same herein.

19 14. Answering paragraphs 49, 50, 51, 52, 53, 54, 55, 56, and 57 of the Amended  
 20 Complaint these answering Defendants deny each and every allegation contained herein.  
 21

22 **SEVENTH CAUSE OF ACTION**  
 23 **(Foreclosure of Mechanic's Lien-E&D Lien)**

24 15. Answering paragraph 58 of the Amended Complaint these answering Defendants  
 25 repeat and realleges and incorporate by express reference their responses to paragraphs 1 through  
 26 57 of the Amended Complaint and incorporate the same herein.

27 16. Answering paragraphs 59, 60, 61, 62, 63, 64 and 65 of the Amended Complaint  
 28

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these answering Defendants deny each and every allegation contained herein.

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

17. Answering paragraph 66 of the Amended Complaint this answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 65 of the Amended Complaint and incorporate the same herein.

18. Answering paragraphs 67, 68, 69 and 70 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

**NINTH CAUSE OF ACTION**  
**(Claim Against Bond-CPCC Surety)**

19. Answering paragraph 71 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 70 of the Amended Complaint and incorporate the same herein.

20. Answering paragraphs 72, 73, 74, 75, 76, 77, 78 and 79 of the Amended Complaint this answering Defendants deny each and every allegation contained herein.

**TENTH CAUSE OF ACTION**  
**(Claim Against Bond-IHPC Surety)**

21. Answering paragraph 80 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 79 of the Amended Complaint and incorporate the same herein.

22. Answering paragraphs 81, 82, 83, 84, 85, 86, 87 and 88 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

///



ELEVENTH CAUSE OF ACTION  
(Claim Against Bond- E&E Surety)

23. Answering paragraphs 89 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 88 of the Amended Complaint and incorporate the same herein.

24. Answering paragraphs 90, 91, 92, 93, 94, 95, 96 and 97 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

TWELFTH CAUSE OF ACTION  
(Declaratory Judgment)

25. Answering paragraph 98 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 97 of the Amended Complaint and incorporate the same herein.

26. Answering paragraphs 99, 100, 101, 102, 103, 104, 105, and 106 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim against these answering Defendants upon which relief can be granted.

2. Any and all damages sustained by Plaintiff are the result of negligence, breach of contract and breach of warranty, express and/or implied of third-parties over whom these answering Defendants have no control.

3. At all times herein, the product or products supplied or installed by these answering Defendants were fit and proper for the use for which they were designed and intended.

1           4.     At the time and place, and under the circumstances alleged the damages of the  
2 plaintiff, if any, were caused solely by the breach of contract, and the breach of warranty, expressed  
3 or implied and the acts or omissions, of some third-party or parties over whom these answering  
4 defendants had no control, and for whose acts said defendants are not responsible nor liable to  
5 plaintiff.  
6

7           5.     At the time and place under the circumstances alleged by the Plaintiff, Plaintiff had  
8 full and complete knowledge and information in regard to the conditions and circumstances then  
9 and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions, assumed  
10 the risk attendant to any condition there or then present.  
11

12           6.     These answering Defendants are without knowledge of the acts giving rise to and  
13 could not have averted the damages alleged by the Plaintiff.  
14

15           7.     The claims, and each of them, are barred as a result of the failure of the Plaintiff to  
16 timely make those claims as against these answering Defendant and allow these answering  
17 Defendants to collect evidence sufficient to establish their nonliability. These answering Defendants  
18 relied upon the failure to allege claims by the Plaintiff and as a result the plaintiff's claims are barred  
19 by the doctrine of laches.  
20

21           8.     The claims of the Plaintiff are barred as a result of an accord and satisfaction.  
22

23           9.     The claims of the Plaintiff have been waived as a result of the acts and the conduct  
24 of the Plaintiff.  
25

26           10.    The claim for breach of contract or warranty is barred as a result of the failure to  
27 satisfy conditions precedent.  
28

          11.    The claims, and each of them, for breach of contract and breach of warranty are  
barred by the failure to satisfy conditions subsequent.

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12. Plaintiff has failed to mitigate its damages.

13. Pursuant to NRCP 11 as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer, and therefore these answering Defendants reserve the right to amend its Answer to allege additional affirmative defenses.

14. Plaintiff has failed to comply with the requirements of NRS Chapter 108 for perfection of its Mechanic's Lien.

15. If these answering Defendants failed to perform any contractual obligation owed to plaintiff, which they expressly deny, there existed a valid excuse for such non-performance.

16. Defendants have been required to retain the services of counsel to assist in defense of the claims which have been asserted in the Amended Complaint and therefore, Defendants are entitled to recover reasonable attorneys fees and costs incurred.

17. Defendants incorporate by reference each and every affirmative defense set forth in N.R.C.P. 8 (c) as fully set forth herein.

18. Some of the Affirmative Defenses as pled herein are for purposes of non-waiver. Defendants have not conducted discovery in this matter and specifically reserve the right to amend its answer to include additional Affirmative Defenses if discovery of facts so warrant.

WHEREFORE, Defendants, Jeff Heit Plumbing Co, LLC and Old Republic Surety pray for judgment as follows:

1. That Plaintiff take nothing by virtue of the Amended Statement of Facts and Third-Party Complaint on file herein and the same be dismissed with prejudice; and
2. That this Court make an award in favor in defendants for their reasonable attorneys' fees and costs of suit incurred herein; and

3. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 7th day of August, 2009.

KEITH E. GREGORY & ASSOCIATES

  
Keith E. Gregory, Esq.

Nevada Bar No. 0232

2300 W. Sahara Avenue, Suite 680, Box 23

Las Vegas, Nevada 89102-4368

Counsel for Defendants, Jeff Heit Plumbing Co,  
LLC and Old Republic Surety

CERTIFICATE OF SERVICE

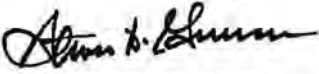
I hereby certify that a true copy of the DEFENDANTS ANSWER TO HD SUPPLY WATERWORKS' AMENDED STATEMENT OF FACTS AND THIRD-PARTY COMPLAINT was deposited in the United States mail in Las Vegas, Nevada, this 7th day of August, 2009, addressed as follows:

Michael T. Gebhart, Esq.  
Travis N. Barrick, Esq.  
3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074  
Counsel for Plaintiff,  
HD Waterworks, LP

  
An Employee of KEITH E. GREGORY & ASSOCIATES

Law Offices of  
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2300 West Sahara Avenue, Suite 680 Box 23  
Las Vegas, Nevada 89102  
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**Stipulation and Order to Dismiss  
E&E Fire Protection**

  
CLERK OF THE COURT

1 **SAO**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 MICHAEL T. GEBHART, ESQ.  
5 Nevada Bar No. 7718  
6 **PEEL BRIMLEY LLP**  
7 3333 E. Serene Avenue, Suite 200  
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9 Telephone: (702) 990-7272  
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12 [mgebhardt@peelbrimley.com](mailto:mgebhardt@peelbrimley.com)  
13 Attorneys for HD Supply Waterworks, LP

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

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

16 Plaintiff,

17 vs.

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

Defendants.

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

*Consolidated with:*

A574792  
A574391  
A577623  
A580889  
A583289  
A584730  
A587168  
A589195  
A589677  
A590319  
A592826  
A596924  
A597089  
A606730  
A608717  
A608718

**STIPULATION AND ORDER TO  
DISMISS E & E FIRE PROTECTION,  
LLC ONLY PURSUANT TO THE  
TERMS STATED BELOW**

29 **HD SUPPLY WATERWORKS, LP,** a Florida  
30 limited partnership,

31 Plaintiff in Intervention,

32 vs.

33 **APCO CONSTRUCTION,** a Nevada  
34 corporation; **CAMCO PACIFIC**  
35 **CONSTRUCTION COMPANY, INC.,** a

PEEL BRIMLEY LLP  
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California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; JEFF HEIT PLUMBING CO, LLC, a Nevada limited-liability company; E & E FIRE PROTECTION, LLC, a Nevada limited liability company; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; OLD REPUBLIC SURETY; PLATTE RIVER INSURANCE COMPANY; SCOTT FINANCIAL CORPORATION, a North Dakota corporation ; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

The Undersigned Parties (the "Parties") by and through their respective attorneys of record as identified below hereby stipulate and agree as follows:

1. The Parties represent and warrant that they have the necessary authority and capacity to enter into the instant Stipulation and agree to be bound by the terms and conditions contained herein.

2. The Parties hereby stipulate and agree to dismiss the following claims pursuant to Nevada's Rules of Civil Procedure, Rule 41(a)(1) and 41(c) with prejudice, as follows:

a. Any and all claims, counterclaims and third-party claims that HD Supply Waterworks, LP ("HD Supply") brought against E&E Fire Protection, LLC ("E&E") or any other named Party in its Amended Statement of Facts Constituting A Notice of Lien and Third-Party Complaint ("Statement of Facts"), with respect to the materials that HD Supply provided to E&E for the Project ("Materials"); and

b. Any and all claims, counterclaims and third-party claims that E&E brought against HD Supply in this action with respect to the Materials that HD Supply provided to E&E for the Project.

///

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3. Within ten (10) business days of the entry of this Order, HD Supply will cause its Notice of Lien which it caused to be recorded with the Office of the County Recorder, Clark County, Nevada as Instrument #200902130004359 to be discharged.

4. Nothing herein shall be deemed to be a waiver or release of the rights, claims or causes of action other than those specifically set forth above.

5. Each party shall bear their own attorney's fees and costs.

Dated this 25<sup>th</sup> day of March 2013.

Dated this \_\_\_\_ day of March 2013.

PEEL BRIMLEY LLP

T. JAMES TRUMAN & ASSOCIATES

 (12725) For

RICHARD L. PEEL, ESQ.  
Nevada Bar No. 4359  
MICHAEL T. GEBHART, ESQ.  
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[tjamestruman@gmail.com](mailto:tjamestruman@gmail.com)  
*Attorneys for E & E Fire Protection, LLC*

Dated this \_\_\_\_ day of March, 2013.

Dated this \_\_\_\_ day of March, 2013.

KEMP, JONES & COULTHARD, LLP

HOWARD & HOWARD

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5. Each party shall bear their own attorney's fees and costs.

Dated this \_\_\_\_ day of March 2013.

Dated this 29 day of March 2013.

PEEL BRIMLEY LLP

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RICHARD L. PEEL, ESQ.  
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Dated this \_\_\_\_ day of March, 2013.

Dated this \_\_\_\_ day of March, 2013.

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Dated this \_\_\_\_ day of March 2013.

Dated this \_\_\_\_ day of March 2013.

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Dated this 25 day of March, 2013.

Dated this \_\_\_\_ day of March, 2013.

KEMP, JONES & COULTHARD, LLP

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Dated this \_\_\_\_ day of March 2013.

Dated this \_\_\_\_ day of March 2013.

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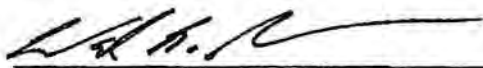
Dated this \_\_\_\_ day of March, 2013.

Dated this 25 day of March, 2013.

KEMP, JONES & COULTHARD, LLP

HOWARD & HOWARD

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1 Dated this 25<sup>th</sup> day of March, 2013.

2 GRANT MORRIS & DODD

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10 Fax: (702) 938-2246  
11 *Attorneys for Camco Pacific Construction*  
12 *Company & Fidelity & Deposit Company*  
13 *Of Maryland*

14 Dated this \_\_\_\_\_ day of March, 2013.

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22 Fax: (702) 382-5400  
23 *Attorneys for Old Republic Surety & Jeff Height Plumbing Co., LLC*

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Dated this \_\_\_\_\_ day of March, 2013.

GREENBERG TRAURIG, LLP

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1 Dated this \_\_\_\_\_ day of March, 2013.

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*Company & Fidelity & Deposit Company*  
9 *Of Maryland*

10 Dated this \_\_\_\_\_ day of March, 2013.

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12 **GREGORY & ASSOCIATES**

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18 *Attorneys for Old Republic Surety & Jeff Height Plumbing Co., LLC*

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- HD Supply Waterworks\037 - E & F Fire  
Protection [Manhattan West] \PX\Originals\130325

Dated this 1<sup>st</sup> April day of March, 2013.

**GREENBERG TRAURIG, LLP**

  
\_\_\_\_\_  
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10 Dated this 25 day of March, 2013.

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21 Attorneys for Old Republic Surety & Jeff Height Plumbing Co., LLC

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Dated this \_\_\_\_\_ day of March, 2013.

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Ce# # A571228 SWS  
ORDER Dismissing E & E Fire Protection  
Only

IT IS SO ORDERED as stipulated.

Dated this 3rd day of April, 2013.

[Signature]  
DISTRICT COURT JUDGE

Respectfully Submitted by:

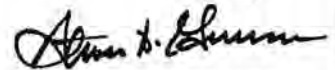
PEEL BRIMLEY LLP

[Signature] (#12723)  
FOR

RICHARD L. PEEL, ESQ.  
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Attorneys for HD Supply Waterworks, LP



# **Voluntary Dismissal of Platte River Insurance**



CLERK OF THE COURT

VDSM  
RICHARD L. PEEL, ESQ.  
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MICHAEL T. GEBHART, ESQ.  
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[mgebhardt@peelbrimley.com](mailto:mgebhardt@peelbrimley.com)  
*Attorneys for HD Supply Waterworks, LP*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

HD SUPPLY WATERWORKS, LP, a Florida  
limited partnership,

Plaintiff in Intervention,

vs.

APCO CONSTRUCTION, a Nevada  
corporation; CAMCO PACIFIC  
CONSTRUCTION COMPANY, INC., a  
California corporation; GEMSTONE  
DEVELOPMENT WEST, INC., Nevada  
corporation; JEFF HEIT PLUMBING CO, LLC,  
a Nevada limited-liability company; E & E  
FIRE PROTECTION, LLC, a Nevada limited  
liability company; FIDELITY AND DEPOSIT

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

*Consolidated with:*

A571792  
A574391  
A577623  
A583289  
A584730  
A587168

**HD SUPPLY WATERWORKS, LP'S  
VOLUNTARY DISMISSAL OF  
PLATTE RIVER INSURANCE  
COMPANY ONLY WITHOUT  
PREJUDICE**

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COMPANY OF MARYLAND; OLD  
REPUBLIC SURETY; PLATTE RIVER  
INSURANCE COMPANY; SCOTT  
FINANCIAL CORPORATION, a North Dakota  
corporation; DOES I through X; ROE  
CORPORATIONS I through X; BOE  
BONDING COMPANIES I through X; LOE  
LENDERS I through X, inclusive,

Defendants.

Pursuant to NRCP 41(a)(1), Plaintiff-in-Intervention, HD SUPPLY WATERWORKS, L.P.  
voluntarily dismisses the above referenced matter as to PLATTE RIVER INSURANCE  
COMPANY only. No answer or motion for summary judgment has been served and the Court  
has set no trial date in this action.

Therefore, Plaintiff-in-Intervention authorizes and directs the Clerk of this Court to enter a  
Dismissal of PLATTE RIVER INSURANCE COMPANY from this action without prejudice.

Dated this 5 day of April 2010.

PEEL BRIMLEY LLP

  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am employed in the Law Offices of PEEL BRIMLEY LLP, and that on this 5<sup>th</sup> day of April 2010, I served the above and foregoing **HD SUPPLY WATRWORKS, LLP'S VOLUNTARY DISMISSL OF PLATTE RIVER INSURANCE COMPANY ONLY WITHOUT PREJUDICE**, in accordance with EDCR 7.25(A)(3), by placing a true and correct copy by electronic means via the courts website (Wiznet):

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17 [sdixon@trumanlegal.com](mailto:sdixon@trumanlegal.com)  
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An Employee of PEEL BRIMLEY LLP

**Scott Financial's Answer to HD Supply's  
Amended Statement of Facts Constituting  
Notice of Lien and Third-Party Complaint**

FILED  
NOV 18 2009  
Clerk of Court

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SCOTT FINANCIAL CORPORATION

DISTRICT COURT  
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, INC., a Nevada  
corporation,

Plaintiff,

vs.

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

Defendants.

Case No. A571228  
Dept. No. XIII

Consolidated With

~~A596924~~

~~A590319~~

~~A592826~~

A574391

A574792

A577623

A583289

~~A584960~~

~~A589677~~

A584730

A587168

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A589195

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SCOTT FINANCIAL  
CORPORATION'S ANSWER  
TO HD SUPPLY WATERWORKS'  
AMENDED STATEMENT OF  
FACTS CONSTITUTING A  
NOTICE OF LIEN AND THIRD  
PARTY COMPLAINT

AND ALL RELATED CASES.

SCOTT FINANCIAL CORPORATION'S ANSWER TO HD SUPPLY  
WATERWORKS' AMENDED STATEMENT OF FACTS CONSTITUTING A  
NOTICE OF LIEN AND THIRD PARTY COMPLAINT

COMES NOW Defendant, SCOTT FINANCIAL CORPORATION, by and through its  
attorneys of record, MEIER & FINE, LLC, and hereby files its ANSWER TO HD SUPPLY  
WATERWORKS' AMENDED STATEMENT OF FACTS CONSTITUTING A NOTICE OF  
LIEN AND THIRD-PARTY COMPLAINT as follows:

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CLERK OF THE COURT

NOV 18 2009

RECEIVED

**THE PARTIES**

1  
2 1. Answering paragraph 1 of HD Supply Waterworks' Amended Statement of Facts  
3 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
4 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
5 allegations contained in said paragraph in their entirety.

6 2. Answering paragraph 2 of HD Supply Waterworks' Amended Statement of Facts  
7 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
8 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
9 allegations contained in said paragraph in their entirety.

10 3. Answering paragraph 3 of HD Supply Waterworks' Amended Statement of Facts  
11 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
12 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
13 allegations contained in said paragraph in their entirety.

14 4. Answering paragraph 4 of HD Supply Waterworks' Amended Statement of Facts  
15 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
16 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
17 allegations contained in said paragraph in their entirety.

18 5. Answering paragraph 5 of HD Supply Waterworks' Amended Statement of Facts  
19 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
20 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
21 allegations contained in said paragraph in their entirety.

22 6. Answering paragraph 6 of HD Supply Waterworks' Amended Statement of Facts  
23 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
24 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
25 allegations contained in said paragraph in their entirety.

26 7. Answering paragraph 7 of HD Supply Waterworks' Amended Statement of Facts  
27 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without

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1 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
2 allegations contained in said paragraph in their entirety.

3 8. Answering paragraph 8 of HD Supply Waterworks' Amended Statement of Facts  
4 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
5 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
6 allegations contained in said paragraph in their entirety.

7 9. Answering paragraph 9 of HD Supply Waterworks' Amended Statement of Facts  
8 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
9 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
10 allegations contained in said paragraph in their entirety.

11 10. Answering paragraph 10 of HD Supply Waterworks' Amended Statement of  
12 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
13 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
14 the allegations contained in said paragraph in their entirety.

15 11. Answering paragraph 11 of HD Supply Waterworks' Amended Statement of  
16 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
17 admits the allegations contained in said paragraph in their entirety.

18 12. Answering paragraph 12 of HD Supply Waterworks' Amended Statement of  
19 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
20 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
21 the allegations contained in said paragraph in their entirety.

22 **FIRST CAUSE OF ACTION**

23 **(Breach of Contract – JHPC Credit Agreement)**

24 13. Answering paragraph 13 of HD Supply Waterworks' Amended Statement of  
25 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
26 repeats and realleges each and every allegation contained in Paragraphs 1 through 13, as  
27 though fully set forth herein.

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1           14.     Answering paragraph 14 of HD Supply Waterworks' Amended Statement of  
2     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3     without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4     the allegations contained in said paragraph in their entirety.

5           15.     Answering paragraph 15 of HD Supply Waterworks' Amended Statement of  
6     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
7     without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
8     the allegations contained in said paragraph in their entirety.

9           16.     Answering paragraph 16 of HD Supply Waterworks' Amended Statement of  
10    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
11    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
12    the allegations contained in said paragraph in their entirety.

13          17.     Answering paragraph 17 of HD Supply Waterworks' Amended Statement of  
14    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
15    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
16    the allegations contained in said paragraph in their entirety.

17          18.     Answering paragraph 18 of HD Supply Waterworks' Amended Statement of  
18    Facts Constituting a Notice of Lien and Third-Party Complaint, including subparts "a." through  
19    "d." thereto, this answering Defendant is without knowledge as to the truth of the matters  
20    alleged therein, and upon said grounds, denies the allegations contained in said paragraph in  
21    their entirety.

22          19.     Answering paragraph 19 of HD Supply Waterworks' Amended Statement of  
23    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
24    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
25    the allegations contained in said paragraph in their entirety.

26          20.     Answering paragraph 20 of HD Supply Waterworks' Amended Statement of  
27    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is

28    ///

1 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
2 the allegations contained in said paragraph in their entirety.

3 **SECOND CAUSE OF ACTION**

4 **(Breach of Contract – E&E Credit Agreement)**

5 21. Answering paragraph 21 of HD Supply Waterworks' Amended Statement of  
6 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
7 repeats and realleges each and every allegation contained in Paragraphs 1 through 21, as  
8 though fully set forth herein.

9 22. Answering paragraph 22 of HD Supply Waterworks' Amended Statement of  
10 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
11 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
12 the allegations contained in said paragraph in their entirety.

13 23. Answering paragraph 23 of HD Supply Waterworks' Amended Statement of  
14 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
15 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
16 the allegations contained in said paragraph in their entirety.

17 24. Answering paragraph 24 of HD Supply Waterworks' Amended Statement of  
18 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
19 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
20 the allegations contained in said paragraph in their entirety.

21 25. Answering paragraph 25 of HD Supply Waterworks' Amended Statement of  
22 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
23 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
24 the allegations contained in said paragraph in their entirety.

25 26. Answering paragraph 26 of HD Supply Waterworks' Amended Statement of  
26 Facts Constituting a Notice of Lien and Third-Party Complaint, including subparts "a." through  
27 "d." thereto, this answering Defendant is without knowledge as to the truth of the matters

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1 alleged therein, and upon said grounds, denies the allegations contained in said paragraph in  
2 their entirety.

3 27. Answering paragraph 27 of HD Supply Waterworks' Amended Statement of  
4 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
5 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
6 the allegations contained in said paragraph in their entirety.

7 28. Answering paragraph 28 of HD Supply Waterworks' Amended Statement of  
8 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
9 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
10 the allegations contained in said paragraph in their entirety.

11 **THIRD CAUSE OF ACTION**

12 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against JHPC)**

13 29. Answering paragraph 29 of HD Supply Waterworks' Amended Statement of  
14 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
15 repeats and realleges each and every allegation contained in Paragraphs 1 through 29, as  
16 though fully set forth herein.

17 30. Answering paragraph 30 of HD Supply Waterworks' Amended Statement of  
18 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
19 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
20 the allegations contained in said paragraph in their entirety.

21 31. Answering paragraph 31 of HD Supply Waterworks' Amended Statement of  
22 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
23 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
24 the allegations contained in said paragraph in their entirety.

25 32. Answering paragraph 32 of HD Supply Waterworks' Amended Statement of  
26 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
27 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
28 the allegations contained in said paragraph in their entirety.

1           33.     Answering paragraph 33 of HD Supply Waterworks' Amended Statement of  
2     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3     without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4     the allegations contained in said paragraph in their entirety.

5                                 **FOURTH CAUSE OF ACTION**

6                     **(Breach of Implied Covenant of Good Faith & Fair Dealing Against E&E)**

7           34.     Answering paragraph 34 of HD Supply Waterworks' Amended Statement of  
8     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
9     repeats and realleges each and every allegation contained in Paragraphs 1 through 34, as  
10    though fully set forth herein.

11          35.     Answering paragraph 35 of HD Supply Waterworks' Amended Statement of  
12    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
13    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
14    the allegations contained in said paragraph in their entirety.

15          36.     Answering paragraph 36 of HD Supply Waterworks' Amended Statement of  
16    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
17    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
18    the allegations contained in said paragraph in their entirety.

19          37.     Answering paragraph 37 of HD Supply Waterworks' Amended Statement of  
20    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
21    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
22    the allegations contained in said paragraph in their entirety.

23          38.     Answering paragraph 38 of HD Supply Waterworks' Amended Statement of  
24    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
25    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
26    the allegations contained in said paragraph in their entirety.

27    ///

28    ///

**FIFTH CAUSE OF ACTION**

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

39. Answering paragraph 39 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant repeats and realleges each and every allegation contained in Paragraphs 1 through 39, as though fully set forth herein.

40. Answering paragraph 40 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained in said paragraph in their entirety.

41. Answering paragraph 41 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained in said paragraph in their entirety.

42. Answering paragraph 42 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant denies the allegations contained in said paragraph in their entirety.

43. Answering paragraph 43 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained in said paragraph in their entirety.

44. Answering paragraph 44 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant denies the allegations contained in said paragraph in their entirety.

45. Answering paragraph 45 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant denies the allegations contained in said paragraph in their entirety.

///

1           46.     Answering paragraph 46 of HD Supply Waterworks' Amended Statement of  
2     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
3     denies the allegations contained in said paragraph in their entirety.

4           47.     Answering paragraph 47 of HD Supply Waterworks' Amended Statement of  
5     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
6     denies the allegations contained in said paragraph in their entirety.

7                               **SIXTH CAUSE OF ACTION**

8                               **(Foreclosure of Mechanic's Lien – JHPC Lien)**

9           48.     Answering paragraph 48 of HD Supply Waterworks' Amended Statement of  
10    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
11    repeats and realleges each and every allegation contained in Paragraphs 1 through 48, as  
12    though fully set forth herein.

13          49.     Answering paragraph 49 of HD Supply Waterworks' Amended Statement of  
14    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
15    denies the allegations contained in said paragraph in their entirety.

16          50.     Answering paragraph 50 of HD Supply Waterworks' Amended Statement of  
17    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
18    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
19    the allegations contained in said paragraph in their entirety.

20          51.     Answering paragraph 51 of HD Supply Waterworks' Amended Statement of  
21    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
22    denies the allegations contained in said paragraph in their entirety.

23          52.     Answering paragraph 52 of HD Supply Waterworks' Amended Statement of  
24    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
25    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
26    the allegations contained in said paragraph in their entirety.

27          53.     Answering paragraph 53 of HD Supply Waterworks' Amended Statement of  
28    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is



1 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
2 the allegations contained in said paragraph in their entirety.

3 54. Answering paragraph 54 of HD Supply Waterworks' Amended Statement of  
4 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
5 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
6 the allegations contained in said paragraph in their entirety.

7 55. Answering paragraph 55 of HD Supply Waterworks' Amended Statement of  
8 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
9 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
10 the allegations contained in said paragraph in their entirety.

11 56. Answering paragraph 56 of HD Supply Waterworks' Amended Statement of  
12 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
13 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
14 the allegations contained in said paragraph in their entirety.

15 57. Answering paragraph 57 of HD Supply Waterworks' Amended Statement of  
16 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
17 denies the allegations contained in said paragraph in their entirety.

18 **SEVENTH CAUSE OF ACTION**

19 **(Foreclosure of Mechanic's Lien – E&E Lien)**

20 58. Answering paragraph 58 of HD Supply Waterworks' Amended Statement of  
21 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
22 repeats and realleges each and every allegation contained in Paragraphs 1 through 58, as  
23 though fully set forth herein.

24 59. Answering paragraph 59 of HD Supply Waterworks' Amended Statement of  
25 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
26 denies the allegations contained in said paragraph in their entirety.

27 60. Answering paragraph 60 of HD Supply Waterworks' Amended Statement of  
28 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is

1 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
2 the allegations contained in said paragraph in their entirety.

3 61. Answering paragraph 61 of HD Supply Waterworks' Amended Statement of  
4 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
5 denies the allegations contained in said paragraph in their entirety.

6 62. Answering paragraph 62 of HD Supply Waterworks' Amended Statement of  
7 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
8 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
9 the allegations contained in said paragraph in their entirety.

10 63. Answering paragraph 63 of HD Supply Waterworks' Amended Statement of  
11 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
12 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
13 the allegations contained in said paragraph in their entirety.

14 64. Answering paragraph 64 of HD Supply Waterworks' Amended Statement of  
15 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
16 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
17 the allegations contained in said paragraph in their entirety.

18 65. Answering paragraph 65 of HD Supply Waterworks' Amended Statement of  
19 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
20 denies the allegations contained in said paragraph in their entirety.

21 **EIGHTH CAUSE OF ACTION**

22 **(Claim of Priority)**

23 66. Answering paragraph 66 of HD Supply Waterworks' Amended Statement of  
24 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
25 repeats and realleges each and every allegation contained in Paragraphs 1 through 66, as  
26 though fully set forth herein.

27 67. Answering paragraph 67 of HD Supply Waterworks' Amended Statement of  
28 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant

1 denies the allegations contained in said paragraph in their entirety.

2 68. Answering paragraph 68 of HD Supply Waterworks' Amended Statement of  
3 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
4 denies the allegations contained in said paragraph in their entirety.

5 69. Answering paragraph 69 of HD Supply Waterworks' Amended Statement of  
6 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
7 denies the allegations contained in said paragraph in their entirety.

8 70. Answering paragraph 70 of HD Supply Waterworks' Amended Statement of  
9 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
10 denies the allegations contained in said paragraph in their entirety.

11 **NINTH CAUSE OF ACTION**

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

13 71. Answering paragraph 71 of HD Supply Waterworks' Amended Statement of  
14 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
15 repeats and realleges each and every allegation contained in Paragraphs 1 through 71, as  
16 though fully set forth herein.

17 72. Answering paragraph 72 of HD Supply Waterworks' Amended Statement of  
18 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
19 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
20 the allegations contained in said paragraph in their entirety.

21 73. Answering paragraph 73 of HD Supply Waterworks' Amended Statement of  
22 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
23 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
24 the allegations contained in said paragraph in their entirety.

25 74. Answering paragraph 74 of HD Supply Waterworks' Amended Statement of  
26 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
27 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
28 the allegations contained in said paragraph in their entirety.



1           75.    Answering paragraph 75 of HD Supply Waterworks' Amended Statement of  
2   Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3   without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4   the allegations contained in said paragraph in their entirety.

5           76.    Answering paragraph 76 of HD Supply Waterworks' Amended Statement of  
6   Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
7   without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
8   the allegations contained in said paragraph in their entirety.

9           77.    Answering paragraph 77 of HD Supply Waterworks' Amended Statement of  
10   Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
11   without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
12   the allegations contained in said paragraph in their entirety.

13          78.    Answering paragraph 78 of HD Supply Waterworks' Amended Statement of  
14   Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
15   without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
16   the allegations contained in said paragraph in their entirety.

17          79.    Answering paragraph 79 of HD Supply Waterworks' Amended Statement of  
18   Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
19   without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
20   the allegations contained in said paragraph in their entirety.

21                               **TENTH CAUSE OF ACTION**

22                               **(Claim Against Bond – JHPC Surety)**

23          80.    Answering paragraph 80 of HD Supply Waterworks' Amended Statement of  
24   Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
25   repeats and realleges each and every allegation contained in Paragraphs 1 through 80, as  
26   though fully set forth herein.

27    ///

28    ///

1           81.     Answering paragraph 81 of HD Supply Waterworks' Amended Statement of  
2     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3     without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4     the allegations contained in said paragraph in their entirety.

5           82.     Answering paragraph 82 of HD Supply Waterworks' Amended Statement of  
6     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
7     without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
8     the allegations contained in said paragraph in their entirety.

9           83.     Answering paragraph 83 of HD Supply Waterworks' Amended Statement of  
10    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
11    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
12    the allegations contained in said paragraph in their entirety.

13          84.     Answering paragraph 84 of HD Supply Waterworks' Amended Statement of  
14    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
15    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
16    the allegations contained in said paragraph in their entirety.

17          85.     Answering paragraph 85 of HD Supply Waterworks' Amended Statement of  
18    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
19    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
20    the allegations contained in said paragraph in their entirety.

21          86.     Answering paragraph 86 of HD Supply Waterworks' Amended Statement of  
22    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
23    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
24    the allegations contained in said paragraph in their entirety.

25          87.     Answering paragraph 87 of HD Supply Waterworks' Amended Statement of  
26    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
27    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
28    the allegations contained in said paragraph in their entirety.

1           88.     Answering paragraph 88 of HD Supply Waterworks' Amended Statement of  
2 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4 the allegations contained in said paragraph in their entirety.

5                           **ELEVENTH CAUSE OF ACTION**

6                           **(Claim Against Bond – E&E Surety)**

7           89.     Answering paragraph 89 of HD Supply Waterworks' Amended Statement of  
8 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
9 repeats and realleges each and every allegation contained in Paragraphs 1 through 89, as  
10 though fully set forth herein.

11           90.     Answering paragraph 90 of HD Supply Waterworks' Amended Statement of  
12 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
13 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
14 the allegations contained in said paragraph in their entirety.

15           91.     Answering paragraph 91 of HD Supply Waterworks' Amended Statement of  
16 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
17 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
18 the allegations contained in said paragraph in their entirety.

19           92.     Answering paragraph 92 of HD Supply Waterworks' Amended Statement of  
20 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
21 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
22 the allegations contained in said paragraph in their entirety.

23           93.     Answering paragraph 93 of HD Supply Waterworks' Amended Statement of  
24 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
25 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
26 the allegations contained in said paragraph in their entirety.

27           94.     Answering paragraph 94 of HD Supply Waterworks' Amended Statement of  
28 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is

1 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
2 the allegations contained in said paragraph in their entirety.

3 95. Answering paragraph 95 of HD Supply Waterworks' Amended Statement of  
4 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
5 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
6 the allegations contained in said paragraph in their entirety.

7 96. Answering paragraph 96 of HD Supply Waterworks' Amended Statement of  
8 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
9 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
10 the allegations contained in said paragraph in their entirety.

11 97. Answering paragraph 97 of HD Supply Waterworks' Amended Statement of  
12 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
13 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
14 the allegations contained in said paragraph in their entirety.

15 **TWELFTH CAUSE OF ACTION**

16 **(Declaratory Judgment)**

17 98. Answering paragraph 98 of HD Supply Waterworks' Amended Statement of  
18 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
19 repeats and realleges each and every allegation contained in Paragraphs 1 through 98, as  
20 though fully set forth herein.

21 99. Answering paragraph 99 of HD Supply Waterworks' Amended Statement of  
22 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant this  
23 answering Defendant admits the allegations contained in said paragraph in their entirety.

24 100. Answering paragraph 100 of HD Supply Waterworks' Amended Statement of  
25 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
26 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
27 the allegations contained in said paragraph in their entirety.

28 ///



1 101. Answering paragraph 101 of HD Supply Waterworks' Amended Statement of  
2 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4 the allegations contained in said paragraph in their entirety.

5 102. Answering paragraph 102 of HD Supply Waterworks' Amended Statement of  
6 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
7 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
8 the allegations contained in said paragraph in their entirety.

9 103. Answering paragraph 103 of HD Supply Waterworks' Amended Statement of  
10 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
11 denies the allegations contained in said paragraph in their entirety.

12 104. Answering paragraph 104 of HD Supply Waterworks' Amended Statement of  
13 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
14 denies the allegations contained in said paragraph in their entirety.

15 105. Answering paragraph 105 of HD Supply Waterworks' Amended Statement of  
16 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
17 admits the allegations contained in said paragraph in their entirety.

18 106. Answering paragraph 106 of HD Supply Waterworks' Amended Statement of  
19 Facts Constituting a Notice of Lien and Third-Party Complaint denies the allegations contained  
20 in said paragraph in their entirety.

21 **AFFIRMATIVE DEFENSES**

22 1. HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of  
23 Lien and Third-Party Complaint, on file herein, fails to state a claim against this Defendant  
24 upon which relief can be granted.

25 2. HD Supply Waterworks has failed to properly perfect its Mechanic's Lien.

26 3. HD Supply Waterworks' claims are barred by the Doctrine of Laches.

27 4. HD Supply Waterworks' equitable claims are barred by unclean hands.

28 ///

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1           5. Defendant's interest in the property has priority over HD Supply Waterworks'  
2     lien.

3           6. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have  
4     been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon  
5     the filing of Defendant's Answer, and therefore, this answering Defendant reserves the right to  
6     amend this Answer to allege additional affirmative defenses, if subsequent investigation so  
7     warrants.

8           WHEREFORE, Defendant SCOTT FINANCIAL CORPORATION prays that HD  
9     SUPPLY WATERWORKS, take nothing by way of its Amended Statement of Facts  
10    Constituting a Notice of Lien and Third-Party Complaint, on file herein; that Defendant be  
11    awarded reasonable attorney's fees and costs herein and for such other relief as the Court may  
12    deem just and proper.

13           DATED this 17<sup>th</sup> day of November, 2009.

MEIER & FINE, LLC

By 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of SCOTT FINANCIAL CORPORATION'S ANSWER TO HD SUPPLY WATERWORKS' AMENDED STATEMENT OF FACTS CONSTITUTING A NOTICE OF LIEN AND THIRD PARTY COMPLAINT was deposited in the United States mail in Las Vegas, Nevada, this 12<sup>th</sup> day of November, 2009, addressed to the following:

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An employee of MEIER & FINE, LLC

# **EXHIBIT I**

**(Heinaman)**



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

*Edmund A. Hines*  
CLERK OF THE COURT

1 STMT  
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16 Attorneys for Heinaman Contract Glazing

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff,

13 vs.

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

Defendants.

21 HEINAMAN CONTRACT GLAZING, a  
22 California corporation,

Plaintiff in Intervention,

23 vs.

24 CAMCO PACIFIC CONSTRUCTION  
25 COMPANY, INC., a California corporation;  
26 GEMSTONE DEVELOPMENT WEST, INC.,  
27 Nevada corporation; FIDELITY AND  
28 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

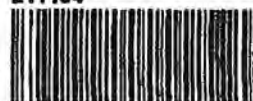
Consolidated with:

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

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

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

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

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

23  
24  
25  
26  
27  
28  
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///

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**FIRST CAUSE OF ACTION**  
**(Breach of Contract against CPCC)**

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

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

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

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

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

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

- a. Failing and/or refusing to pay the monies owed to Heinaman for the Work;
- b. Failing to adjust the CPCC Agreement price to account for extra and/or changed work, as well as suspensions and delays of Work caused or ordered by the Defendants and/or their representatives;
- c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the CPCC Agreement and permit related adjustments in scheduled performance;
- d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law;

and



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

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

5 15. Heinaman has been required to engage the services of an attorney to collect the  
6 Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and  
7 interest therefore.  
8

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

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

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

16 18. CPCC breached its duty to act in good faith by performing the CPCC Agreement  
17 in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying  
18 Heinaman's justified expectations.  
19

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

22 20. Heinaman has been required to engage the services of an attorney to collect the  
23 Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and  
24 interest therefore.  
25

26 ///

27 ///

28 ///

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

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

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

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

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

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

26. Heinaman has demanded payment of the Outstanding Balance.

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

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

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

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

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

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

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

4           33. Heinaman demanded payment of an amount in excess of Ten Thousand and  
5 no/100 Dollars (\$10,000.00), which amount remains past due and owing.  
6

7           34. On or about February 3, 2009, Heinaman timely recorded a Notice of Lien in Book  
8 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0000318 (the  
9 "Original Lien").

10          35. On or about April 9, 2009, Heinaman timely recorded an Amended Notice of Lien  
11 in Book 20090409 of the Official Records of Clark County, Nevada, as Instrument No. 0001355  
12 (the "Amended Lien").  
13

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

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

18          38. The Liens were served upon the Owner and/or its authorized agents, as required by  
19 law.  
20

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

23                               **FIFTH CAUSE OF ACTION**  
24                               **(Claim of Priority)**

25          40. Heinaman repeats and realleges each and every allegation contained in the  
26 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
27 alleges as follows:  
28

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

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

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

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

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

11                               **SEVENTH CAUSE OF ACTION**  
12                               **(Violation of NRS 624)**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

13           Dated this 22 day of June 2009.

PEEL BRIMLEY LLP

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