

IN THE SUPREME COURT OF THE STATE OF NEVADA

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.

**APPENDIX TO DOCKETING STATEMENT
Volume VIII**

ERIC B. ZIMBELMAN, ESQ.

Nevada Bar No. 9407

PEEL BRIMLEY LLP

3333 E. Serene Avenue, Suite 200

Henderson, NV 89074-6571

Telephone: (702) 990-7272

Facsimile: (702) 990-7273

ezimbelman@peelbrimley.com

Attorneys for Appellant

Helix Electric of Nevada, LLC

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

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

	WRG's Answer to CAMCO's Counterclaim	Helix000389 – Helix000393	IV
D-4	Pleadings Related to Heinaman Contract Glazing	Helix000394 – Helix000396	IV
	Heinaman's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	Helix000397 – Helix000409	IV
	CAMCO and FDCM's Answer to Heinaman's Statement of Facts and CAMCO's Counterclaim	Helix000410 – Helix000430	IV
	Notice of Entry of Order	Helix000431 – Helix000439	IV
	Notice of Entry of Judgment	Helix000440 – Helix000462	IV
	Heinaman's Answer to CAMCO's Counterclaim	Helix000463 – Helix000467	IV
D-5	Pleadings Related to Bruin Painting Corporation	Helix000468 – Helix000469	IV
	Bruin Painting's Amended Statement of Facts Constituting Amended Notice of Lien and Third-Party Complaint	Helix000470 – Helix000482	IV
	CAMCO's Answer and Counterclaim	Helix000483 – Helix000503	IV & V
	Voluntary Dismissal	Helix000503 – Helix000505	V

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

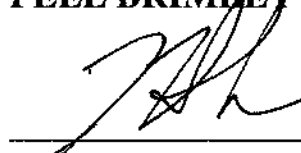
F	Accuracy Glass & Mirror Company's First Amended Complaint Re: Foreclosure	Helix000639 – Helix 000654	VI
G	Bruin Painting	Helix000655- Helix691	VI
H	HD Supply	Helix000692 – Helix000785	VI & VII
I	Heinaman	Helix000786 – Helix000857	VII & VIII
J	WRG	Helix000858 – Helix000925	VIII & IX
K	131 Nev Advance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

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

Dated this 5th day of March, 2020.

PEEL BRIMLEY LLP

Bar # 14377



ERIC B. ZIMBELMAN, ESQ.

Nevada Bar No. 9407

3333 E. Serene Avenue, Suite 200

Henderson, NV 89074-6571

Telephone: (702) 990-7272

Facsimile: (702) 990-7273

ezimbelman@peelbrimley.com

Attorneys for Appellant

Helix Electric of Nevada, LLC

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFCR 9(f), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 31st day of March, 2020, I caused the above and foregoing document, **APPENDIX TO DOCKETING STATEMENT**, to be served as follows:

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

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

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

- and -

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

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

Settlement Judge:

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


An employee of **PEEL BRIMLEY, LLP**

ORIGINAL

37

pd.

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

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

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

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

16 Plaintiff,

17 vs.

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

Defendants.

FILED

SEP 11 4 39 PM '09

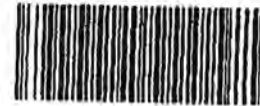
E. J. Smith
CLERK OF THE COURT

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

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

09A587168
390054



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

CLERK OF THE COURT
SEP 11 2009

RECEIVED

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

1 HEINAMAN CONTRACT GLAZING, a
2 California corporation,

3 Plaintiff in Intervention,

4 vs.

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

15 Defendants.

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

20 Counterclaimant,

21 vs.

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

25 Counterdefendants,

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

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

1 13, 14, 15, 18, 19, 20, 22, 23, 24, 26, 27, 28, 29, 31, 33, 39, 44, 46, 47, 48, 49, 50, 51, 52, 53,
2 56, 57, 58, 59, and 68 of Plaintiff's Complaint.

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

6 3. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6,
7 41, 61, 62, 65, and 66 of Plaintiff's Complaint.

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

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

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

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

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

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

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

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

27 12. As to Paragraph 63 Camco admits that the Mezzanine Deeds of Trust
28

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

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

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

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

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

13 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

26 6. The liability, if any, of Camco must be reduced by the percentage of fault of
27 others, including the Plaintiff.
28

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

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

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

7 10. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **COUNTERCLAIM**

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

27 **JURISDICTIONAL ALLEGATIONS**

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

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

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

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

12 **FIRST CAUSE OF ACTION**

13 **(Breach of Contract)**

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

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

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

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

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

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

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

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

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

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

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

20 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

6 WHEREFORE, Counterclaimant Camco prays as follows:

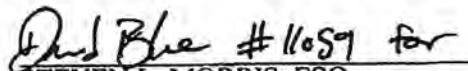
7 1. This Court enter judgment against Counterdefendants, and each of them, in an
8 amount in excess of \$10,000.00, plus interest at the contract rate;

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

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

12 DATED this 11th day of September 2009.

13 WOODBURY, MORRIS & BROWN

14 
15 STEVEN L. MORRIS, ESQ.
16 Nevada Bar No. 7454
17 701 N. Green Valley Pkwy., Suite 110
18 Henderson, NV 89074-6178
19 Attorneys for Camco and Fidelity
20
21
22
23
24
25
26
27
28

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

CERTIFICATE OF MAILING

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

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

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

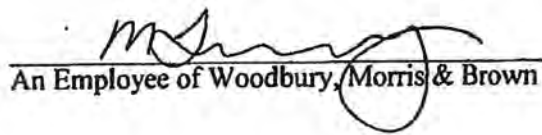

An Employee of Woodbury, Morris & Brown

EXHIBIT A



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

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

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

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

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

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

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

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

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

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

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7289

A licensed and bonded corporate finance company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



Exhibit A

November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

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

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

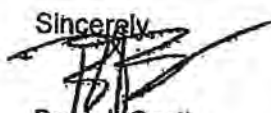
Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and ~~are anticipated to be processed and funded~~ (voucher control) by November 13, 2008.

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

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

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

Sincerely,


Brad J. Scott
President

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

A licensed and bonded corporate finance company.

Helix000816



Exhibit "A"

December 1, 2008

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

~~Although we cannot guarantee that approval at SFC and the draw request to be processed and updated in the system for the October draw.~~

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

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

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

Sincerely,


Brad J. Scott
President

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

A licensed and bonded corporate finance company.

Helix000817

Exhibit B

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

Exhibit "B"

Jennifer Olivares

From: Brad Scott [mailto:brad@scottfinancialcorp.com]

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

To: Jennifer Olivares

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

Subject: ManhattanWest Status

Importance: High

Jen:

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

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

I anticipate this final decision will however likely lead to ~~foreclosure being approved~~

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

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

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

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

Thanks.

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

	
Brad J. Scott, CRE President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
A licensed and bonded corporate finance company.	

4/1/2009

Helix000819

Exhibit B

Jennifer Olivares

~~From: Brad J. Scott [brad@scottfinancialcorp.com]~~

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

~~To: Jennifer Olivares; Anne Dwyer; Peter Smith; Alex Edelstein; Jim Horning; dparry@camcopacific.com~~

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

Subject: FW: ManhattanWest

Importance: High

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

Jennifer & Anne:

~~We are hereby instructed by SFC to wire the payments to the account you have set up with the NSB. The amount of the payment is \$1,556,721.00. The SFC is not to be held responsible for any errors or omissions.~~

~~The amount includes the principal amount of the loan plus interest for 12 months. The SFC is not to be held responsible for any errors or omissions.~~

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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



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

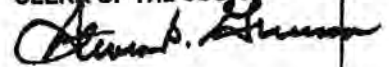
A licensed and bonded corporate finance company.

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

4/1/2009

Helix000820

Notice of Entry of Order



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

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 vs

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

23 Defendants.

24 AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

A571792, A574391, A577623, A580889,
A583289, A584730, and A587168

NOTICE OF ENTRY OF ORDER

25 ///

26 ///

27 ///


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

NOTICE OF ENTRY OF ORDER

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

DATED this 2 day of July, 2018.

PEEL BRIMLEY LLP


ERIC B. ZIMBELMAN,
Nevada Bar No. 9407
RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
3333 E. Serene Avenue, Suite 200
Henderson, NV 89074-6571
Attorneys for Heinaman Contract Glazing

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 2 day of July 2018, I caused the above and foregoing document entitled **NOTICE OF ENTR OF ORDER** to be served as follows:

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

Apco Construction:

Rosie Wesp (rwesp@maclaw.com)

Camco Pacific Construction Co Inc:

Steven Morris (steve@gmdlegal.com)

Camco Pacific Construction Co Inc:

Steven Morris (steve@gmdlegal.com)

Fidelity & Deposit Company Of Maryland:

Steven Morris (steve@gmdlegal.com)

E & E Fire Protection LLC:

Tracy Truman (district@trumanlegal.com)

Interstate Plumbing & Air Conditioning Inc:

Jonathan Dabbieri (dabbieri@sullivanhill.com)

National Wood Products, Inc.'s:

Richard Tobler (rltldck@hotmail.com)

Tammy Cortez (tcortez@caddenfuller.com)

S. Judy Hirahara (jhirahara@caddenfuller.com)

Dana Kim (dkim@caddenfuller.com)

Richard Reincke (reincke@caddenfuller.com)

Chaper 7 Trustee:

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

United Subcontractors Inc:

Bradley Slighing (bslighing@fabianvancott.com)

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

Caleb Langsdale, Esq. (caleb@langsdalelaw.com)
Cody Mounteer, Esq. (cmounteer@marquisaurbach.com)
Cori Mandy, Legal Secretary (cori.mandy@procopio.com)
Donald H. Williams, Esq. (dwilliams@dhwlawlv.com)
Marisa L. Maskas, Esq. (mmaskas@pezzillolloyd.com)
Martin A. Little, Esq. (mal@juww.com)
Martin A. Little, Esq. (mal@juww.com)
Aaron D. Lancaster (alancaster@gerrard-cox.com)
Agnes Wong (aw@juww.com)
Andrew J. Kessler (andrew.kessler@procopio.com)
Becky Pintar (bpintar@gglt.com)
Benjamin D. Johnson (ben.johnson@btjd.com)
Beverly Roberts (broberts@trumanlegal.com)
Caleb Langsdale (Caleb@Langsdalelaw.com)
Calendar (calendar@litigationservices.com)
Cheri Vandermeulen (cvandermeulen@dickinsonwright.com)
Christine Spencer (cspencer@dickinsonwright.com)
Christine Taradash (CTaradash@maazlaw.com)
Courtney Peterson (cpeterson@maclaw.com)
Dana Y. Kim (dkim@caddenfuller.com)
David J. Merrill (david@djmerrillpc.com)
David R. Johnson (djohnson@watttieder.com)
Debbie Holloman (dholloman@jamsadr.com)
Debbie Rosewall (dr@juww.com)
Debra Hitchens (dhitchens@maazlaw.com)
Depository (Depository@litigationservices.com)
District filings (district@trumanlegal.com)
Donna Wolfbrandt (dwolfbrandt@dickinsonwright.com)
Douglas D. Gerrard (dgerrard@gerrard-cox.com)
E-File Desk (EfileLasVegas@wilsonelser.com)
Eric Dobberstein (edobberstein@dickinsonwright.com)
Erica Bennett (e.bennett@kempjones.com)
Floyd Hale (fhale@floydhale.com)
George Robinson (grobenson@pezzillolloyd.com)
Gwen Rutar Mullins (grm@h2law.com)
Hrustyk Nicole (Nicole.Hrustyk@wilsonelser.com)
I-Che Lai (I-Che.Lai@wilsonelser.com)
Jack Juan (jjuan@marquisaurbach.com)
Jennifer Case (jcase@maclaw.com)

Jennifer MacDonald (jmacdonald@watttieder.com)
Jennifer R. Lloyd (jlloyd@pezzillojlooyd.com)
Jineen DeAngelis (jideangelis@foxrothschild.com)
Jorge Ramirez (Jorge.Ramirez@wilsonelser.com)
Kathleen Morris (kmorris@mcdonaldcarano.com)
Kaytlyn Bassett (kbassett@gerrard-cox.com)
Kelly McGee (kom@juww.com)
Kenzie Dunn (kdunn@btjd.com)
Lani Maile (Lani.Maile@wilsonelser.com)
Legal Assistant (rrlegalassistant@rookerlaw.com)
Linda Compton (lcompton@gglts.com)
Marie Ogella (mogella@gordonrees.com)
Michael R. Ernst (mre@juww.com)
Michael Rawlins (mrawlins@rookerlaw.com)
Pamela Montgomery (pym@kempjones.com)
Phillip Aurbach (paurbach@maclaw.com)
Rebecca Chapman (rebecca.chapman@procopio.com)
Receptionist (Reception@nvbusinesslawyers.com)
Richard I. Dreitzer (rdreitzer@foxrothschild.com)
Richard Tobler (rltldck@hotmail.com)
Ryan Bellows (rbellows@mcdonaldcarano.com)
S. Judy Hirahara (jhirahara@caddenfuller.com)
Sarah A. Mead (sam@juww.com)
Steven Morris (steve@gmdlegal.com)
Tammy Cortez (tcortez@caddenfuller.com)
Taylor Fong (tfong@marquisaurbach.com)
Timothy E. Salter (tim.salter@procopio.com)
Wade B. Gochmour (wbg@h2law.com)
Elizabeth Martin (em@juwlaw.com)
Mary Bacon (mbacon@spencerfane.com)
John Jefferies (rjefferies@spencerfane.com)
Adam Miller (amiller@spencerfane.com)
John Mowbray (jmowbray@spencerfane.com)
Vivian Bowron (vbowron@spencerfane.com)

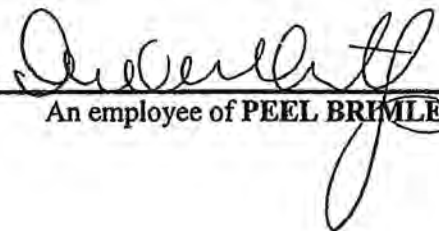

An employee of PEEL BRIMLEY, LLP

Exhibit A

Steven D. Grierson

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

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 APCO CONSTRUCTION, a Nevada
17 corporation,

18 Plaintiff,

19 vs.

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

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A571228
DEPT. NO.: XIII

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

**ORDER GRANTING HEINAMAN
CONTRACT GLAZING'S MOTION FOR
ATTORNEY'S FEES, INTEREST AND
COSTS**

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

27 ///

28 ///

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

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

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

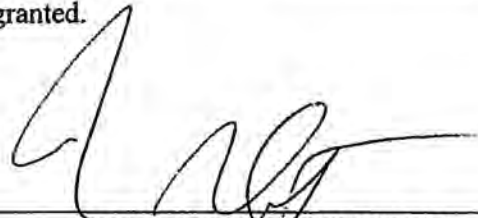
5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorneys' fees in
6 the amount of \$10,113.47 is granted.

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

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

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

14 Dated this 2^d day of June, 2018.



DISTRICT COURT JUDGE

18 Submitted by:

19 **PEEL BRIMLEY LLP**

20 
21 **ERIC B. ZIMBELMAN, ESQ**

Nevada Bar No. 9407

22 **RICHARD L. PEEL, ESQ.**

Nevada Bar No. 4359

23 3333 E. Serene Avenue, Suite 200

24 Henderson, NV 89074-6571

Attorneys for Heinaman Contract Glazing

Notice of Entry of Judgment

Steven D. Grierson

1 NJUD
2 ERIC B. ZIMBELMAN, ESQ.
3 Nevada Bar No. 9407
4 RICHARD L. PEEL, ESQ.
5 Nevada Bar No. 4359
6 PEEL BRIMLEY LLP
7 3333 E. Serene Avenue, Suite 200
8 Henderson, NV 89 A571228074-6571
9 Telephone: (702) 990-7272
10 Facsimile: (702) 990-7273
11 ezimbelman@peelbrimley.com
12 rpeel@peelbrimley.com
13 Attorneys for Heinaman Contract Glazing

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 APCO CONSTRUCTION, a Nevada
17 corporation,

18 Plaintiff,

19 vs.

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

Defendants.

AND ALL RELATED MATTERS

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

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

NOTICE OF ENTRY OF JUDGMENT

///

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED this 31st day of May, 2018.

/S/ Eric B Zimbelman
ERIC B. ZIMBELMAN, ESQ
Nevada Bar No. 9407
RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
3333 E. Serene Avenue, Suite 200
Henderson, NV 89074-6571
Attorneys for Heinaman Contract Glazing

Helix000832

CERTIFICATE OF SERVICE

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

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

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

Apco Construction:

Rosie Wesp (rwesp@maclaw.com)

Camco Pacific Construction Co Inc:

Steven Morris (steve@gmdlegal.com)

Camco Pacific Construction Co Inc:

Steven Morris (steve@gmdlegal.com)

Fidelity & Deposit Company Of Maryland:

Steven Morris (steve@gmdlegal.com)

E & E Fire Protection LLC:

Tracy Truman (district@trumanlegal.com)

Interstate Plumbing & Air Conditioning Inc:

Jonathan Dabbieri (dabbieri@sullivanhill.com)

National Wood Products, Inc.'s:

Richard Tobler (rltldck@hotmail.com)

Tammy Cortez (tcortez@caddenfuller.com)

S. Judy Hirahara (jhirahara@caddenfuller.com)

Dana Kim (dkim@caddenfuller.com)

Richard Reincke (rreincke@caddenfuller.com)

Chaper 7 Trustee:

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

United Subcontractors Inc:

Bradley Slighing (bslighting@fabianvancott.com)

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

Caleb Langsdale, Esq. (caleb@langsdalelaw.com)
Cody Mounteer, Esq. (cmounteer@marquisaurbach.com)
Cori Mandy, Legal Secretary (cori.mandy@procopio.com)
Donald H. Williams, Esq. (dwilliams@dhwlawlv.com)
Marisa L. Maskas, Esq. (mmaskas@pezzillolloyd.com)
Martin A. Little, Esq. (mal@juww.com)
Martin A. Little, Esq. (mal@juww.com)
Aaron D. Lancaster (alancaster@gerrard-cox.com)
Agnes Wong (aw@juww.com)
Andrew J. Kessler (andrew.kessler@procopio.com)
Becky Pintar (bpintar@gglt.com)
Benjamin D. Johnson (ben.johnson@btjd.com)
Beverly Roberts (broberts@trumanlegal.com)
Caleb Langsdale (Caleb@Langsdalelaw.com)
Calendar (calendar@litigationservices.com)
Cheri Vandermeulen (cvandermeulen@dickinsonwright.com)
Christine Spencer (cspencer@dickinsonwright.com)
Christine Taradash (CTaradash@maazlaw.com)
Courtney Peterson (cpeterson@maclaw.com)
Dana Y. Kim (dkim@caddenfuller.com)
David J. Merrill (david@djmerillpc.com)
David R. Johnson (djohnson@watttieder.com)
Debbie Holloman (dholloman@jamsadr.com)
Debbie Rosewall (dr@juww.com)
Debra Hitchens (dhitchens@maazlaw.com)
Depository (Depository@litigationservices.com)
District filings (district@trumanlegal.com)
Donna Wolfbrandt (dwolfbrandt@dickinsonwright.com)
Douglas D. Gerrard (dgerrard@gerrard-cox.com)
E-File Desk (EfileLasVegas@wilsonelser.com)
Eric Dobberstein (edobberstein@dickinsonwright.com)
Erica Bennett (e.bennett@kempjones.com)
Floyd Hale (fhale@floydhale.com)
George Robinson (grobinson@pezzillolloyd.com)
Gwen Rutar Mullins (grm@h2law.com)
Hrustyk Nicole (Nicole.Hrustyk@wilsonelser.com)
I-Che Lai (I-Che.Lai@wilsonelser.com)
Jack Juan (jjuan@marquisaurbach.com)
Jennifer Case (jcase@maclaw.com)

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

1 Jennifer MacDonald (jmacdonald@watttieder.com)
2 Jennifer R. Lloyd (jlloyd@pezzilloloyd.com)
3 Jineen DeAngelis (jideangelis@foxrothschild.com)
4 Jorge Ramirez (Jorge.Ramirez@wilsonelser.com)
5 Kathleen Morris (kmorris@mcdonaldcarano.com)
6 Kaytlyn Bassett (kbassett@gerrard-cox.com)
7 Kelly McGee (kom@juww.com)
8 Kenzie Dunn (kdunn@btjd.com)
9 Lani Maile (Lani.Maile@wilsonelser.com)
10 Legal Assistant (rrlegalassistant@rookerlaw.com)
11 Linda Compton (lcompton@gglts.com)
12 Marie Ogella (mogella@gordonrees.com)
13 Michael R. Ernst (mre@juww.com)
14 Michael Rawlins (mrawlins@rookerlaw.com)
15 Pamela Montgomery (pym@kempjones.com)
16 Phillip Aurbach (paurbach@maclaw.com)
17 Rebecca Chapman (rebecca.chapman@procopio.com)
18 Receptionist (Reception@nvbusinesslawyers.com)
19 Richard I. Dreitzer (rdreitzer@foxrothschild.com)
20 Richard Tobler (rtltldck@hotmail.com)
21 Ryan Bellows (rbellows@mcdonaldcarano.com)
22 S. Judy Hirahara (jhirahara@caddenfuller.com)
23 Sarah A. Mead (sam@juww.com)
24 Steven Morris (steve@gmdlegal.com)
25 Tammy Cortez (tcortez@caddenfuller.com)
26 Taylor Fong (tfong@marquisaurbach.com)
27 Timotheer E. Salter (tim.salter@procopio.com)
28 Wade B. Gochnour (wbg@h2law.com)
Elizabeth Martin (em@juwlaw.com)
Mary Bacon (mbacon@spencerfane.com)
John Jefferies (rjefferies@spencerfane.com)
Adam Miller (amiller@spencerfane.com)
John Mowbray (jmowbray@spencerfane.com)
Vivian Bowron (vbowron@spencerfane.com)

/s/ Amanda Armstrong
An employee of PEEL BRIMLEY, LLP

Exhibit A

Steven D. Grierson

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

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
corporation,

11 Plaintiff,

12 vs

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

18 Defendants.

19 AND ALL RELATED MATTERS.
20

CASE NO.: A571228
DEPT. NO.: XIII

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

JUDGMENT

[AS TO THE CLAIMS OF HEINAMAN
CONTRACT GLAZING AGAINST
CAMCO CONSTRUCTION CO., INC.]

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

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

RECEIVED

MAY 22 2018

DISTRICT COURT ORDER # 13

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

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

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

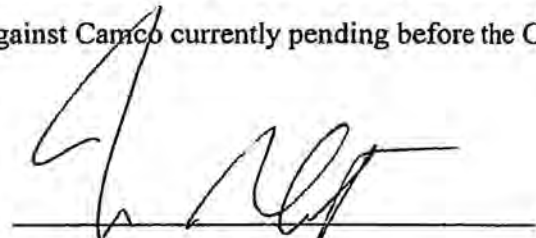
7 The Court having entered its April 26, 2018 Findings of Fact and Conclusions of Law
8 as to the Claims of Heinaman against Camco, incorporated herein by this reference and
9 attached hereto as Exhibit 1 ("the Heinaman FFCL");

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

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

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

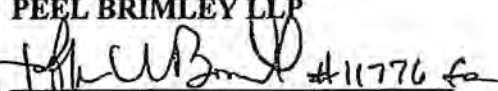
17 Dated this 29th day of May 2018.



DISTRICT COURT JUDGE

21 Respectfully submitted by:

22 PEEL BRIMLEY LLP

23  #11776 fa
ERIC B. ZIMBELMAN,

24 Nevada Bar No. 9407

RICHARD L. PEEL, ESQ.

25 Nevada Bar No. 4359

3333 E. Serene Avenue, Suite 200

26 Henderson, NV 89074-6571

27 Attorneys for Heinaman Contract Glazing

EXHIBIT 1

Steven D. Grierson

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs

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

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

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

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AS TO THE
CLAIMS OF HEINAMAN CONTRACT
GLAZING**

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

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

CLERK OF THE COURT

APR 26 2018

RECEIVED

40

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

Case Number: 00A574000

Helix000840

12

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

A. Procedural History.

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

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

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

.....

1

2

3

4

5

6

7

8

9

0

L

2

6

4

5

7

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

	3
	4
	5
	6
	7
	8
	9
	0
	L
	2
	b
	4
	5
	5
	r
	.
	b

15
16
17
18
19
20
21
22
23
24
25
26
27
28

16
17
18
19
20
21
22
23
24
25
26
27
28

28

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

6 C. Findings of Fact.

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

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

12 2. Among other things, and in exchange for a guaranteed maximum price
13 ("GMP") of \$153,472,300.00 as forth in the APCO-Gemstone Agreement (Ex. 2, ¶
14 5.02(a)), APCO agreed to:

- 15 • "Complete the work" required by the APCO-Gemstone Agreement,
16 "furnish efficient business administration and superintendence" and "use its
17 best efforts to complete the Project;" [Ex 2., ¶ 2.01(a)];
- 18 • "...engage contractors, subcontractors, sub-subcontractors, service
19 providers, [and others, collectively referred to as "Third-Party Service
20 Providers"] to perform the work..."; [Ex 2., ¶ 2.02(a)];
- 21 • Monthly submit to Gemstone "applications for payment for the previous
22 month on forms similar to AIA G702 and G703 and a corresponding
23 approved Certificate for Payment;" [Ex 2., ¶ 5.05(a)]. Each payment
24 application was to be "based on a Schedule of Values [that] shall allocate
25 the entire GMP among the various portions of the Work" with APCO's fee
26 to be shown as a separate line item." [Ex 2., ¶ 5.05(b)]; The payment
27 applications were to "show the Percentage of Completion of each portion of
28

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

- 3 • Upon receipt of a monthly progress payment, "promptly pay each Third-
4 Party Service Provider the amount represented by the portion of the
5 Percentage of the Work Completed that was completed by such Third-Party
6 Service Provider² during the period covered by the corresponding Progress
7 Payment." [Ex 2., ¶ 5.05(g)];

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

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

19 5. On cross examination, Camco's Dave Parry could not point to any portion
20 of the Camco-Gemstone Agreement that required Camco to supervise the work of the
21 subcontractors. [TR5-50:17-51:9]. Nothing in Article II ("General Contractor
22 Responsibilities") obligates Camco to supervise the work or the subcontractors. [See Ex.
23 162, ¶Article II]. Parry did not deny that Camco was "essentially ... there to lend [its]
24 license" to Gemstone. [TR5-50:15-17].

25 6. Mr. Parry described Camco as "more of a construction manager at this point
26

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

1 than a general contractor" [TR5-31:10-11³]. Nonetheless, the Camco-Gemstone
2 Agreement is plainly called a "General Construction Agreement." The Camco-Gemstone
3 Agreement also requires Camco, in the same way that APCO did, to aggregate payment
4 applications from subcontractors and prepare and submit to Gemstone payment
5 applications for the amounts represented by the subcontractor payment applications and
6 Camco's fee. [See Ex. 162-008-010; ¶7.01].

7 7. Camco continued the same payment application format and numbering and
8 same schedule of values that APCO had been following. [See Exhibit 218; TR5-30:21-
9 31:4⁴]. Like APCO before it, Camco compiled and included in its payment applications to
10 Gemstone the amounts billed by its subcontractors, including Heinaman. [See e.g., Exhibit
11 522-001-011]. Also like the APCO-Gemstone Agreement, the Camco-Gemstone
12 Agreement required Camco, upon receipt of a progress payment from Gemstone, to
13 "promptly pay each [subcontractor] the amount represented by the portion of the
14 Percentage of the Work Completed that was completed by such [subcontractor]." [Ex. 162-
15 010, ¶7.03(e)].⁵ It is only after Gemstone announced that the Project would be suspended
16 that Camco asserted otherwise.

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

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

25 Please submit to Camco all amounts you believe are due and owing on your
subcontract. We will review and advise you of any issues regarding any

26 ³ Testimony of Dave Parry.

27 ⁴ Testimony of Dave Parry.

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

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

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

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

- 9 • Deleted its statement that it had terminated the Camco-Gemstone
10 Agreement (while continuing to terminate the subcontractors);
- 11 • Asserts that the subcontractors agreed to Pay-if-Paid and accepted the risk
12 of non-payment from the owner (which is also Pay-if-Paid); and,
- 13 • Stated, inaccurately, that "Camco's contract with Gemstone is a cost-plus
14 agreement wherein the subcontractors and suppliers were paid directly by
15 Gemstone and/or its agent Nevada Construction Services." [See e.g., Ex.
16 804-007].

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

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

26 11. Camco presented some subcontractors with a standard form subcontract
27 Agreement ("the Camco Subcontract"), a representative example of which is Camco's
28

1 subcontract with Fast Glass. [See Exhibit 801-007-040; TR5-57:8-16⁶].

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

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

20 [Ex. 701].

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

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

27 _____
28 ⁶ Testimony of Dave Parry.

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

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

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

11 15. Consistent with the Heinaman Agreement (i.e., time and materials plus 15%
12 overhead and 10% profit), Heinaman submitted multiple invoices to Camco, some of
13 which were paid [see Exhibit 702-001-003] and some of which were unpaid [see Ex. 702-
14 004-007]. Heinaman's unpaid invoices total \$187,525.26. The Court finds that Camco
15 agreed to pay all of Heinaman's invoices, breached the Heinaman Agreement by failing to
16 pay the unpaid invoices and owes Heinaman the principal sum (i.e., exclusive of interest,
17 costs and attorney's fees) of \$187,525.26.

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

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

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

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

4 **B. Conclusions of Law.**

5 1. "Basic contract principles require, for an enforceable contract, an offer and
6 acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668,
7 672, 119 P.3d 1254, 1257 (2005). A meeting of the minds exists when the parties have
8 agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d
9 1262, 1265 (1996). Which terms are essential "depends on the agreement and its context
10 and also on the subsequent conduct of the parties, including the dispute which arises, and
11 the remedy sought." Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a
12 contract exists is a question of fact and the District Court's findings will be upheld unless
13 they are clearly erroneous or not based on substantial evidence. *May*, 121 Nev. at 672-73,
14 119 P.3d at 1257.

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

19 3. Alternatively, the Court concludes that there is an implied contract between
20 Heinaman and Camco and that Heinaman is entitled *quantum meruit* damages for recovery
21 of the full and reasonable value of the work it has performed. See *Certified Fire Prot. Inc.*
22 *v. Precision Constr.*, 128 Nev. 371, 379, 283 P.3d 250, 257 (2012) ("*quantum meruit's*
23 first application is in actions based upon contracts implied-in-fact."). A contract implied-
24 in-fact must be "manifested by conduct." *Id.* at 380 citing *Smith v. Recrion Corp.*, 91 Nev.
25 666, 668, 541 P.2d 663, 664 (1975); *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674
26 (1984). It "is a true contract that arises from the tacit agreement of the parties." *Id.* To find
27 a contract implied-in-fact, the fact-finder must conclude that the parties intended to
28

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

5 4. Where an implied-in-fact contract exists "*quantum meruit* ensures the
6 laborer receives the reasonable value, usually market price, for his services." *Precision*
7 *Constr.*, 128 Nev. at 380 citing Restatement (Third) of Restitution and Unjust Enrichment
8 § 31 cmt. e (2011), *Sack v. Tomlin*, 110 Nev. 204, 208, 871 P.2d 298, 302 (1994) ("The
9 doctrine of *quantum meruit* generally applies to an action ... involving work and labor
10 performed which is founded on a[n] oral promise [or other circumstances] on the part of
11 the defendant to pay the plaintiff as much as the plaintiff reasonably deserves for his labor
12 in the absence of an agreed upon amount."). Here, the only and undisputed testimony was
13 that the monies Heinaman billed for its work were a reasonable value for the work
14 performed. Moreover, Camco's submission of at least some of those amounts to Gemstone
15 as part of its own pay application estopps Camco from disputing the reasonable value of
16 Heinaman's work. Heinaman is therefore entitled *quantum meruit* damages in the amount
17 of \$187,525.26 for recovery of the full and reasonable value of the work it performed. *See*
18 *Certified Fire Prot.*, 128 Nev. at 380.

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

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

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

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

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

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

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

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

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


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

7 ORDER

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

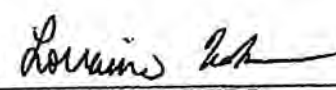
10 IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and
11 Conclusions of Law, and those made regarding the other parties and claims involved in the
12 consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the
13 same at the appropriate time subject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

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

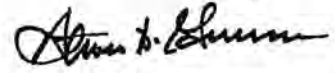
15
16 
DISTRICT COURT JUDGE

17
18 CERTIFICATE

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

22 
23 LORRAINE TASHIRO
24 Judicial Executive Assistant
25 Dept. No. XIII
26
27
28

Heinaman's Answer to CAMCO's Counterclaim


CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

14 APCO CONSTRUCTION, a Nevada
15 corporation,

16 Plaintiff,

17 vs

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

27 Defendants.

28 AND ALL RELATED MATTERS.

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

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

Case No.: A587168

**HEINAMAN CONTRACT GLAZING'S
ANSWER TO CAMCO PACIFIC
CONSTRUCTION COMPANY'S
COUNTERCLAIM**

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

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

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

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

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

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

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

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

12 1. The Counterclaim on file herein fails to state a claim against Heinaman upon
13 which relief can be granted.

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

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

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

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

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

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

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

26 9. Counterclaimant has failed to mitigate its damages.

27 10. Pursuant to NRCP 8, all possible affirmative defenses may not have been alleged
28 herein, inasmuch as sufficient facts were not available after reasonable inquiry and investigation

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

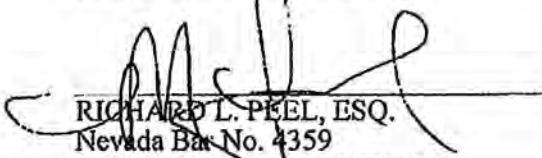
1 upon the filing of Plaintiff/Counterdefendant's Answer and, therefore, Plaintiff/Counterdefendant
2 reserves the right to amend its answer to allege additional affirmative defenses if subsequent
3 investigation and discovery of facts so warrants.

4 WHEREFORE, Plaintiff/Counterdefendant Heinaman prays as follows:

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

9
10 DATED this 15 day of April, 2010.

11 **PEEL BRIMLEY LLP**

12 
13 RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359

14 MICHAEL T. GEBHART, ESQ.

15 Nevada Bar No. 7718

16 3333 E. Serene Avenue, Suite 200

17 Henderson, NV 89074-6571

18 Telephone: (702) 990-7272

19 Fax: (702) 990-7273

20 rpeel@peelbrimley.com

21 mgebhart@peelbrimley.com

22 *Attorneys for Heinaman Contract Glazing*
23
24
25
26
27
28

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

CERTIFICATE OF SERVICE

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

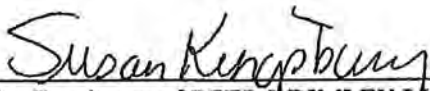

An Employee of PEEL BRIMLEY LLP

EXHIBIT J

(WRG)

Helix000858

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

Edmund H. Smith
CLERK OF THE COURT

1 STMT
2 RICHARD L. PEEL, ESQ.
3 Nevada Bar No. 4359
4 MICHAEL T. GEBHART, ESQ.
5 Nevada Bar No. 7718
6 DALLIN T. WAYMENT, ESQ.
7 Nevada Bar No. 10270
8 PEEL BRIMLEY LLP
9 3333 E. Serene Avenue, Suite 200
10 Henderson, NV 89074-6571
11 Telephone: (702) 990-7272
12 Fax: (702) 990-7273
13 rpeel@peelbrimley.com
14 mgebhart@peelbrimley.com
15 dwayment@peelbrimley.com
16 Attorneys for WRG Design, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

13 Plaintiff,

14 vs.

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

28 Defendants.

23 WRG DESIGN, INC., a Delaware corporation,

24 Plaintiff in Intervention,

25 vs.

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

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

Consolidated with:

A571792

A574391

A577623

A583289

A584730

A587168

09A587168
203739



WRG DESIGN, INC.'S AMENDED
STATEMENT OF FACTS
CONSTITUTING NOTICE OF LIEN
AND THIRD-PARTY COMPLAINT

EXEMPTION FROM ARBITRATION:
Title to Real Estate

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

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

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

9 Defendants.

10 WRG DESIGN, INC. ("WRG") by and through its attorneys PEEL BRIMLEY LLP, as
11 for its Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint
12 ("Amended Complaint") against the above-named defendants complains, avers and alleges as
13 follows:

14 THE PARTIES

15 1. WRG is and was at all times relevant to this action a Delaware corporation, duly
16 authorized, licensed and qualified to do business in Clark County, Nevada.

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

22 Manhattan West Condominiums (Project)
23 Spring Valley

24 County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
25 PT N2 NW4 SEC 32 21 60
26 SEC 32 TWP 21 RNG 60

27 and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and
28 163-32-101-022 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

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

1 occupation thereof, upon which Owners caused or allowed to be constructed certain
2 improvements (the "Property").

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

5
6 4. WRG is informed and believes and therefore alleges that Defendant APCO
7 CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this
8 action doing business as a licensed contractor authorized to conduct business in Clark County,
9 Nevada. APCO may also be known as Asphalt Products Company.

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

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

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

24 8. WRG does not know the true names of the individuals, corporations, partnerships
25 and entities sued and identified in fictitious names as DOES I through X, ROE
26 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE
27 LENDERS I through X. WRG alleges that such Defendants claim an interest in or to the
28

1 Properties, and/or are responsible for damages suffered by WRG as more fully discussed under
2 the claims for relief set forth below. WRG will request leave of this Honorable Court to amend
3 this Amended Complaint to show the true names and capacities of each such fictitious Defendant
4 when WRG discovers such information.

5
6 **FIRST CAUSE OF ACTION**
(Breach of Contract against Owner)

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

11 10. On or about July 31, 2006 WRG entered into an Agreement with Owner (the
12 "Owner Agreement") to provide certain surveying and mapping related work, materials and
13 equipment to the Property located in Clark County, Nevada (the "Owner Services")

14 11. WRG furnished the Services for the benefit of and at the specific instance and
15 request of the Owner.

16 12. Pursuant to the Owner Agreement, WRG was to be paid an amount in excess of
17 Ten Thousand Dollars (\$10,000.00) (hereinafter "Owner Outstanding Balance") for the Owner
18 Services.
19

20 13. WRG furnished the Owner Services and has otherwise performed its duties and
21 obligations as required by the Owner Agreement.

22 14. The Owner has breached the Owner Agreement by, among other things:

23 a. Failing and/or refusing to pay the monies owed to WRG for the Owner
24 Services;
25

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

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

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

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

7 e. Negligently or intentionally preventing, obstructing, hindering or interfering
8 with WRG's performance of the Owner Services.

9 15. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the
10 Owner Services.

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

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

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

20 18. On or about April 17, 2007 WRG entered into an Agreement with APCO (the
21 "APCO Agreement") to provide certain surveying and mapping related work, materials and
22 equipment to the Property located in Clark County, Nevada (the "APCO Services")

23 19. WRG furnished the APCO Services for the benefit of and at the specific instance
24 and request of APCO and/or Owner.
25

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

11:PB&S\CLIENT FILES\8000 - 8999 (U -
WY)\8874 - WRG Design Inc\033 - Camco Pacific
[Manhattan West]\P\X\Originals\090622 WRO Amd

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

1 21. WRG furnished the APCO Services and has otherwise performed its duties and
2 obligations as required by the APCO Agreement.

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

4 a. Failing and/or refusing to pay the monies owed to WRG for the APCO
5 Services;

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

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

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

14 e. Negligently or intentionally preventing, obstructing, hindering or interfering
15 with WRG's performance of the APCO Services.

16 23. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the
17 APCO Services.

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

21 **THIRD CAUSE OF ACTION**
22 **(Breach of Contract against CPCC)**

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

26 H:\PD&S\CLIENT FILES\8000 - 8999 (U -
27 W)\8874 - WRO Design Inc\033 - Canco Pacific
28 [Manhattan West]\PX\Originals\090622 WRG Amd

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

1 26. On or about August 26, 2008, WRG entered into the Ratification and Amendment
2 of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO as the general
3 contractor on the Project, to continue the services for the Property ("CPCC Services").

4 27. WRG furnished the CPCC Services for the benefit of and at the specific instance
5 and request of CPCC and/or Owner.
6

7 28. Pursuant to the CPCC Agreement, WRG was to be paid an amount in excess of
8 Ten Thousand Dollars (\$10,000.00) (hereinafter "CPCC Outstanding Balance") for the CPCC
9 Services.

10 29. WRG furnished the CPCC Services and has otherwise performed its duties and
11 obligations as required by the CPCC Agreement.

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

13 a. Failing and/or refusing to pay the monies owed to WRG for the CPCC
14 Services;
15

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

19 c. Failing to promptly recognize and grant time extensions to reflect additional
20 time allowable under the CPCC Agreement and permit related adjustments in scheduled
21 performance;
22

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

25 e. Negligently or intentionally preventing, obstructing, hindering or interfering
26 with WRG's performance of the CPCC Services.
27
28

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

1 31. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the
2 CPCC Services.

3 32. WRG has been required to engage the services of an attorney to collect the CPCC
4 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and
5 interest therefore.
6

7 **FOURTH CAUSE OF ACTION**

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

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

12 34. There is a covenant of good faith and fair dealing implied in every agreement,
13 including the Owner Agreement.

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

17 36. Due to the actions of Owner, WRG suffered damages in an amount to be
18 determined at trial for which WRG is entitled to judgment plus interest.
19

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

23 **FIFTH CAUSE OF ACTION**

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

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

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

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

3 40. APCO breached its duty to act in good faith by performing the APCO Agreement
4 in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying WRG's
5 justified expectations.
6

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

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

12 **SIXTH CAUSE OF ACTION**

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

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

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

19 45. CPCC breached its duty to act in good faith by performing the CPCC Agreement
20 in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying WRG's
21 justified expectations.
22

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

25 47. WRG has been required to engage the services of an attorney to collect the CPCC
26 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and
27 interest therefore.
28

H:\PB&S\CLIENT FILES\8000 - 8999 (U -
W)\8874 - WRG Design Inc\033 - Camco Pacific
(Manhattan West)\PX\Originals\090622 WRG And

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

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

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

49. WRG furnished the Owner Services, APCO Services and CPCC Services for the benefit of and at the specific instance and request of the Defendants.

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

51. The Defendants accepted, used and enjoyed the benefit of the Owner Services, APCO Services and CPCC Services.

52. The Defendants knew or should have known that WRG expected to be paid for the Owner Services, APCO Services and CPCC Services.

53. WRG has demanded payment of the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance.

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

55. The Defendants have been unjustly enriched, to the detriment of WRG.

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

///

///

///

///

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

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

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

58. The provision of the Owner Services, APCO Services and CPCC Services was at the special instance and request of the Defendants for the Property.

59. As provided at NRS 108.245 and common law, the Defendants had knowledge of WRG's delivery of the Owner Services, APCO Services and CPCC Services Services to the Property or WRG provided a Notice of Right to Lien.

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

61. On or about February 13, 2009, WRG timely recorded a Notice of Lien in Book 20090213 of the Official Records of Clark County, Nevada, as Instrument No. 0004321 (the "Original Lien").

62. One or about April 27, 2009, WRG timely recorded an Amended Notice of Lien in Book 20090427 of the Official Records of Clark County, Nevada, as Instrument No. 0000107 (the "Amended Lien").

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

64. The Liens were in writing and were recorded against the Property for the outstanding balance due to WRG in the amount of Two Hundred Seventy-Five Thousand One Hundred Fifteen and 66/100 Dollars (\$275,115.66).

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

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

1 66. WRG is entitled to an award of reasonable attorney's fees, costs and interest on the
2 APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the
3 Nevada Revised Statutes.

4 **NINTH CAUSE OF ACTION**
5 **(Claim of Priority)**

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

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

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

17 70. WRG's claim against the Property is superior to the claim(s) of SFC, any other
18 defendant, and/or any Loe Lender.

19 71. WRG has been required to engage the services of an attorney to collect the Owner
20 Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance due and
21 owing for the Owner Services, APCO Services and CPCC Services, and WRG is entitled to
22 recover its reasonable costs, attorney's fees and interest therefore.

23 ///

24 ///

25 ///

26 H:\PB&S\CLIENT FILES\8000 - 8999 (U -
27 W)\8874 - WRG Design Inc\033 - Centco Pacific
28 [Manhattan West]\PX\Originals\090622 WRG Amd

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

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

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

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

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

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

76. WRG furnished the CPCC Services as stated herein and has not been paid for the same. WRG therefore claims payment on said Bond.

77. The CPCC Surety is obligated to pay WRG the sums due.

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

79. CPCC and the CPCC Surety owe WRG the penal sum of the Bond.

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

ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

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

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

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

- 3 a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
4 20060705, Instrument No. 0004264;
5 b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
6 20060705, Instrument No. 0004265;
7 c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
8 20060705, Instrument No. 0004266; and,
9 d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book
10 20080207, Instrument No. 01482.

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

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

19 85. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to
20 cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they
21 were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books
22 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the
23 Senior Debt Deed of Trust.
24

25 86. WRG is informed and believes and therefore alleges that construction on the
26 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by
27
28

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

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

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

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

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

12 **WHEREFORE**, WRG prays that this Honorable Court:

13 1. Enters judgment against the Defendants, and each of them, jointly and severally, in
14 the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance
15 amounts;

16 2. Enters a judgment against Defendants, and each of them, jointly and severally, for
17 WRG's reasonable costs and attorney's fees incurred in the collection of the Owner Outstanding
18 Balance, APCO Outstanding Balance and CPCC Outstanding Balance, as well as an award of
19 interest thereon;

20 3. Enter a judgment declaring that WRG has valid and enforceable mechanic's liens
21 against the Property, with priority over all Defendants, in an amount of the Owner Outstanding
22 Balance, APCO Outstanding Balance and CPCC Outstanding Balance;

23 4. Adjudge a lien upon the Property for the Owner Outstanding Balance, APCO
24 Outstanding Balance and CPCC Outstanding Balance, plus reasonable attorneys fees, costs and
25

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


1 interest thereon, and that this Honorable Court enter an Order that the Property, and
2 improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and
3 that the proceeds of said sale be applied to the payment of sums due WRG herein;

4
5 5. Enter a judgment declaring that WRG's mechanics' lien enjoys a position of
6 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
7 entity; and

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

10 Dated this 22 day of June 2009.

PEEL BRIMLEY LLP

11
12 
13 RICHARD L. PEEL, ESQ.
14 Nevada Bar No. 4359
15 MICHAEL T. GEBHART, ESQ.
16 Nevada Bar No. 7718
17 DALLIN T. WAYMENT, ESQ.
18 Nevada Bar No. 10270
19 3333 E. Serene Avenue, Suite 200
20 Henderson, Nevada 89074-6571
21 Telephone: (702) 990-7272
22 Fax: (702) 990-7273
23 rpeel@peelbrimley.com
24 mgebhart@peelbrimley.com
25 dwayment@peelbrimley.com
26 Attorneys for WRG Design, Inc.

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

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Suite 1400
Las Vegas, NV 89169
(702) 257-1483

1 ANSW
2 Gwen Mullins, Esq.
3 Nevada Bar No. 3146
4 Wade B. Gochmour, Esq.
5 Nevada Bar No. 6314
6 **Howard & Howard Attorneys PLLC**
7 3800 Howard Hughes Parkway
8 Suite 1400
9 Las Vegas, NV 89169
10 Telephone (702) 257-1483
11 Facsimile (702) 567-1568
12 E-mails: grm@h2law.com
13 wbg@h2law.com
14 Attorneys for APCO Construction

DISTRICT COURT
CLARK COUNTY, NEVADA

12 APCO CONSTRUCTION, a Nevada
13 corporation,

14 Plaintiff,

15 vs.

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

22 Defendants.

23 WRG DESIGN, INC., a Delaware
24 corporation,

25 Lien Claimant/Intervenor,

26 vs.
27

28 ASPHALT PRODUCTS CORP., A Nevada

Electronically Filed
08/06/2009 08:00:28 AM

Emil Stenlund
CLERK OF THE COURT

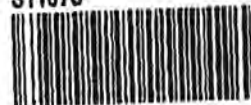
A587168

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

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

APCO CONSTRUCTION'S ANSWER TO
WRG DESIGN INC.'S AMENDED
STATEMENT OF FACTS
CONSTITUTING NOTICE OF LIEN
AND THIRD-PARTY COMPLAINT

09A587168
311673



HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Suite 1400
Las Vegas, NV 89169
(702) 257-1483

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

Defendants.

AND ALL RELATED CASES AND
MATTERS.

13 **APCO CONSTRUCTION'S ANSWER TO**
14 **WRG DESIGN INC.'S AMENDED STATEMENT OF FACTS CONSTITUTING**
15 **NOTICE OF LIEN AND THIRD-PARTY COMPLAINT**

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

21 **THE PARTIES**

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

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

28 ...

FIRST CAUSE OF ACTION

(Breach of Contract Against Owner)

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

4. Answering Paragraphs 10, 11, 12, 13, 14, 15, and 16 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

SECOND CAUSE OF ACTION

(Breach of Contract Against APCO)

5. Answering Paragraph 17 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 4 of this Answer to the Complaint as though fully set forth herein.

6. Answering Paragraph 18 of the Complaint, APCO admits that APCO entered into subcontract with WRG Design, Inc. ("WRG") to provide certain surveying and mapping related work and materials on the Manhattan West Condominium Project. As to the remaining allegations of Paragraph 18 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

7. Answering Paragraph 19 of the Complaint, APCO admits that WRG's services benefited Owner. APCO denies the remaining allegations of Paragraph 19 of the Complaint.

8. Answering Paragraph 20 of the Complaint, APCO admits that the terms of the subcontract with WRG speak for themselves. APCO denies the remaining allegations of Paragraph 20 of the Complaint.

...

...

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Suite 1400
Las Vegas, NV 89169
(702) 257-1483

1 9. Answering Paragraph 21 of the Complaint, APCO admits that WRG furnished
2 services under subcontract, which subcontract was subsequently ratified and assumed by CPCC
3 and/or Gemstone. APCO denies the remaining allegations of Paragraph 21 of the Complaint.

4 10. Answering Paragraphs 22, 23 and 24 of the Complaint, APCO denies each and
5 every allegation contained therein.

6 **THIRD CAUSE OF ACTION**

7 **(Breach of Contract Against CPCC)**

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

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

13 13. Answering Paragraphs 27, 28, 29, 30, 31, and 32 of the Complaint, APCO does
14 not have sufficient knowledge or information upon which to base a belief as to the truth of the
15 allegations contained therein, and upon said grounds, denies each and every allegation
16 contained therein on those basis.

17 **FOURTH CAUSE OF ACTION**

18 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against Owner)**

19 14. Answering Paragraph 33 of the Complaint, APCO repeats and realleges each
20 and every allegation contained in paragraphs 1 through 13 of this Answer to the Complaint as
21 though fully set forth herein.

22 15. Answering Paragraph 34 of the Complaint, APCO, upon information and belief,
23 admits the allegations contained therein.

24 16. Answering Paragraphs 35, 36 and 37 of the Complaint, APCO does not have
25 sufficient knowledge or information upon which to base a belief as to the truth of the
26 allegations contained therein, and upon said grounds, denies each and every allegation
27 contained therein on those basis.
28

FIFTH CAUSE OF ACTION

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

17. Answering Paragraph 38 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 16 of this Answer to the Complaint as though fully set forth herein.

18. Answering Paragraph 39 of the Complaint, APCO, upon information and belief, admits the allegations contained therein.

19. Answering Paragraphs 40, 41 and 42 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

SIXTH CAUSE OF ACTION

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

20. Answering Paragraph 43 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 19 of this Answer to the Complaint as though fully set forth herein.

21. Answering Paragraph 44 of the Complaint, APCO, upon information and belief, admits the allegations contained therein.

22. Answering Paragraphs 45, 46 and 47 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

SEVENTH CAUSE OF ACTION

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

23. Answering Paragraph 48 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 22 of this Answer to the Complaint as though fully set forth herein.

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

EIGHTH CAUSE OF ACTION

(Foreclosure of Mechanic's Lien)

25. Answering Paragraph 57 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 58, 59, 60, 61, 62, 63, 64, 65, and 66 of the Complaint, APCO denies all the allegations as they pertain to, or as they are or may be 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.

NINTH CAUSE OF ACTION

(Claim of Priority)

27. Answering Paragraph 67 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 Paragraph 68 of the Complaint, APCO admits the allegations contained therein.

29. Answering Paragraph 69 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Suite 1400
Las Vegas, NV 89169
(702) 257-1483

30. Answering Paragraphs 70 and 71 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.

TENTH CAUSE OF ACTION

(Claim Against Bond – CPCC Surety)

31. Answering Paragraph 72 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 30 of this Answer to the Complaint as though fully set forth herein.

32. Answering Paragraphs 73, 74, 75, 76, 77, 78, 79, and 80 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

ELEVENTH CAUSE OF ACTION

(Declaratory Judgment)

33. Answering Paragraph 81 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 32 of this Answer to the Complaint as though fully set forth herein.

34. Answering Paragraphs 82, 83, 84, 85, 86, 87, and 88 of the Complaint, APCO, upon information and belief, admits the allegations contained therein.

35. Answering Paragraph 89 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

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

...

...

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

APCO's obligations to WRG have been satisfied or excused.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

The claims, and each of them, are premature.

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETIETH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

WHEREFORE, APCO prays for judgment as follows:

1. That WRG take nothing by way of its Complaint on file herein and that the same be dismissed with prejudice against APCO;

2. For an award of attorneys' fees and costs incurred herein by APCO; and

...

...

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Suite 1400
Las Vegas, NV 89169
(702) 257-1483

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

2 DATED this 5 day of August, 2009.

3 HOWARD & HOWARD ATTORNEYS PLLC

4
5 
Gwen Mullins, Esq.

Nevada Bar No. 3146

6 Wade B. Gochnour, Esq.

Nevada Bar No. 6314

7 3800 Howard Hughes Parkway

8 Suite 1400

9 Las Vegas, NV 89169

Attorneys for APCO Construction

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Suite 1400
Las Vegas, NV 89169
(702) 257-1483

CERTIFICATE OF MAILING

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

Gregory S. Gilbert, Esq.
Sean D. Thueson, Esq.
HOLLAND & HART
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, Nevada 89169
Attorneys for Gemstone Development West, Inc.

Marilyn Fine, Esq.
MEIER & FINE
2300 West Sahara Ave., Suite 430
Las Vegas, Nevada 89102
Attorneys for Scott Financial Corporation

Donald H. Williams, Esq.
WILLIAMS & WIESE
612 S. 10th Street
Las Vegas, Nevada 89101
Attorneys for Harsco Corporation and EZA, P.C. dba OZ Architecture of Nevada, Inc.

Jeffrey R. Albregts, Esq.
SANTORO DRIGGS WALCH KEARNEY
HOLLEY AND THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Arch Aluminum And Glass Co.

Nik Skrinjaric, Esq.
2500 N. Buffalo, Suite 250
Las Vegas, Nevada 89128
Attorney for Nevada Construction Services

Martin A. Little, Esq.
Christopher D. Craft, Esq.
JOLLEY, URGAS, WIRTH, WOODBURY
& STANDISH
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, NV 89169
Attorneys for Steel Structures, Inc. and Nevada Prefab Engineers, Inc.

D. Shane Clifford, Esq.
Robin E. Perkins, Esq.
DIXON TRUMAN FISHER & CLIFFORD
221 North Buffalo Drive, Suite A
Las Vegas, Nevada 89145
Attorneys for Ahern Rentals, Inc.

Christopher R. McCullough, Esq.
McCULLOUGH, PEREZ & ASSOCIATES
601 South Rancho Drive, #A-10
Las Vegas, Nevada 89106
Attorneys for Cell-Crete Fireproofing of Nevada, Inc.

1 Tracy Truman, Esq.
 2 T. James Truman & Associates
 3 3654 N. Rancho Drive
 4 Las Vegas, NV 89130
 5 *Attorneys for Noorda Sheetmetal, Dave
 Peterson Framing, Inc., E&E Fire Protection,
 LLC, Professional Door and Millworks, LLC*

6 Kurt C. Faux, Esq.
 7 Willi H. Siepmann, Esq.
 8 THE FAUX LAW GROUP
 9 1540 W. Warm Springs Road, Ste. 100
 10 Henderson, Nevada 89014
 11 *Attorneys for Platte River Insurance Company*

12 Justin L. Watkins, Esq.
 13 WATT, TIEDER, HOFFAR &
 14 FITZGERALD, LLP
 15 3993 Howard Hughes Pkwy., Ste. 400
 16 Las Vegas, Nevada 89169
 17 *Attorneys for Cabinetec, Inc.*

18 J. Randall Jones, Esq.
 19 Mark M. Jones, Esq.
 20 Matthew S. Carter, Esq.
 21 KEMP, JONES & COULTHARD, LLP
 22 3800 Howard Hughes Pkwy. 17th Floor
 23 Las Vegas, Nevada 89169
 24 *Attorneys for Scott Financial Corporation and
 Bradley J. Scott*

25 Joseph G. Went, Esq.
 26 Georlen K. Spangler, Esq.
 27 KOLESAR & LEATHAM, WRGD.
 28 3320 W. Sahara Avenue, Ste. 380
 Las Vegas, Nevada 89102
*Attorneys for Uintah Investments, LLC, d/b/a
 Sierra Reinforcing*

Brian K. Berman, Esq.
 721 Gass Avenue
 Las Vegas, Nevada 89101
Attorney for Ready Mix, Inc.

Craig S. Newman, Esq.
 David W. Dachelet, Esq.
 FENNEMORE CRAIG
 300 S. Fourth Street, Suite 1400
 Las Vegas, Nevada 89101
Atlas Construction Supply, Inc.

Alexander Edelstein
 10170 W. Tropicana Avenue
 Suite 156-169
 Las Vegas, Nevada 89147-8465
*Executive of Gemstone Development West,
 Inc.*

Jennifer R. Lloyd-Robinson, Esq.
 PEZZILLO ROBINSON
 6750 Via Austi Parkway, Ste. 170
 Las Vegas, Nevada 89119
Attorneys for Tri_City Drywall, Inc.

Gwen Rutar Mullins
 Wade B. Gochnour, Esq.
 HOWARD & HOWARD
 3800 Howard Hughes Pkwy., Ste. 1400
 Las Vegas, Nevada 89169
Attorneys for Hydropressure

Ronald S. Sofen, Esq.
 Becky A. Pintar, Esq.
 GIBBS, GIDEN, LOCHER, TURNER &
 SENET LLP
 3993 Howard Hughes Pkwy, Ste. 530
 Las Vegas, Nevada 89169-5994
Attorneys for The Masonry Group

Eric Dobberstein, Esq.
 G. Lance Welch, Esq.
 DOBBERSTEIN & ASSOCIATES
 1399 Galleria Drive, Suite 201
 Henderson, Nevada 89014
Attorneys for Insulpro Projects, Inc.

Phillip S. Aurbach, Esq.
MARQUIS & AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
Co-Counsel for Nevada Construction Services

Richard A. Koch, Esq.
KOCH & BRIM, L.L.P.
4520 S. Pecos Road, Ste. 4
Las Vegas, Nevada 89121
Attorneys for Republic Crane Services, LLC

Matthew Q. Callister, Esq.
CALLISTER & REYNOLDS
823 S. Las Vegas Blvd., South; 5th Floor
Las Vegas, NV 89101
Attorneys for Executive Plastering, Inc.

Michael M. Edwards, Esq.
Reuben H. Cawley, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
400 South Fourth Street, Ste. 500
Las Vegas, Nevada 89101
Attorneys for Zitting Brothers Construction, Inc.

Mark J. Connot, Esq.
John H. Gutke, Esq.
HUTCHISON & STEFFEN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Buchele, Inc.

Mark Risman, Esq.
10120 S. Eastern Avenue, Ste. 200
Henderson, Nevada 89052
Attorney for Creative Home Theatre, LLC

Andrew F. Dixon, Esq.
Jonathan W. Barlow, Esq.
Bowler Dixon & Twitchell, LLP
400 N. Stephanie Street, Suite 235
Henderson, Nevada 89014
Attorneys for The Pressure Grout Company

Philip T. Varricchio, Esq.
MUJE & VARRICCHIO
1320 S. Casino Center Blvd.
Las Vegas, NV 89104
Attorneys for John Deere Landscaping, Inc.

Steven L. Morris, Esq.
WOODBURY MORRIS & BROWN
701 N. Green Valley Parkway, #110
Henderson, NV 89074
Attorneys for CAMCO Pacific

James E. Shapiro, Esq.
GERRARD, COX & LARSEN
2450 St. Rose Parkway, Ste. 200
Henderson, Nevada 89074
Attorneys for Las Vegas Pipeline, LLC

Nicholas M. Wieczorek, Esq.
Brian K. Walters, Esq.
MORRIS POLICH & PURDY
3930 Howard Hughes Pkwy., Ste. 360
Las Vegas, Nevada 89169
Attorneys for SelectBuild Nevada, Inc.

Richard L. Peel, Esq.
Michael J. Davidson, Esq.
Dallin T. Wayment, Esq.
PEEL BRIMLEY
3333 E. Serene Avenue, Ste. 200
Henderson, Nevada 89074-6571
Attorneys for HD Supply Waterworks, LP; Accuracy Glass & Mirror Company, Inc.; Bruin Painting Corporation; Helix Electric of Nevada, LLC; and WRG Design, Inc.