

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 80508

Electronically Filed
Mar 05 2020 07:39 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 IV**

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
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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**



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

6380 South Valley View, Suite 110

Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

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

Brad J. Scott
President

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

A licensed and bonded corporate finance company.



Exhibit "A"

December 1, 2008

Leo Duckstein

~~Cabine Tec Inc.~~

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,


Brad J. Scott
President

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

A licensed and bonded corporate finance company.

Helix000377

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 ~~no further draws being approved~~

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


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

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

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

Thanks.

Brad J. Scott
Scott Financial Corporation
15010 Sundown Drive
Bismarck, ND 58503
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

Helix000379

Exhibit B

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

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

To: Anne Dwyer; Jennifer Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Homing'; 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:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

Brad J. Scott
Scott Financial Corporation
15010 Sundown Drive
Bismarck, ND 58503
W: 701.255.2215
M: 701.220.3999
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.

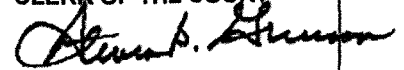
Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party.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

4/1/2009

Helix000380

**Notice of Entry of Stipulation
and Order of Dismissal**

Helix000381



1 NESO
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 Various Lien Claimants*

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 APCO CONSTRUCTION, a Nevada
12 corporation,

13 Plaintiff,

14 vs

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

24 Defendants.

25 AND ALL RELATED MATTERS.

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

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

**NOTICE OF ENTRY OF STIPULATION
AND ORDER OF DISMISSAL**

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

27 ///

28 ///

///

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

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

3 Dated this 21st day of September 2017.
4

5 **PEEL BRIMLEY, LLP**

6
7 /s/ Eric Zimbelman
8 ERIC B. ZIMBELMAN, ESQ.
9 Nevada Bar No. 9407
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Attorneys for Cardno WRG, Inc.
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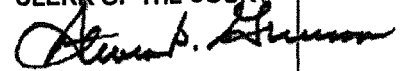
CERTIFICATE OF SERVICE

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

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

/s/Amanda Armstrong
An Employee of Peel Brimley LLP

Exhibit A



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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 APCO CONSTRUCTION, a Nevada
10 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 TITLE
16 INSURANCE COMPANY; FIRST
AMERICAN TITLE INSURANCE
17 COMPANY and DOES I through X,

18 Defendants.

19 **AND ALL RELATED MATTERS.**

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

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

**STIPULATION AND ORDER OF
DISMISSAL OF ALL CLAIMS
RELATING TO CARDO WRG, INC.**

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

- 23
1. All claims between and APCO and Cardno are mutually dismissed with prejudice and
without an award of costs or fees to any party;
 2. All claims between Camco and Cardno are mutually dismissed with prejudice and
without an award of costs or fees to any party.

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

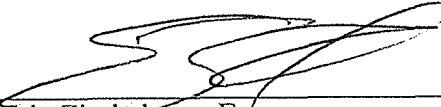
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SEP 14 2017

DISTRICT CLERK DEPT# 12

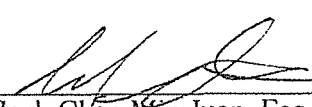
1 Dated: 9/14/2017

2 **PEEL BRIMLEY LLP**

3
4 By: 
5 Eric Zimbelman, Esq.
6 Nevada Bar No. 9407
7 3333 E. Serene Avenue, Suite 200
8 Henderson, Nevada 89074
9 Attorneys for Cardno WRG, Inc.

Dated: 9/12/17

MARQUIS AURBACH COFFING

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

8 Dated: _____

9 **GRANT MORRIS DODDS PLLC**

10
11 By: _____
12 Steven L. Morris, Esq.
13 Nevada Bar No. 7454
14 2520 St. Rose Parkway, Suite 319
15 Henderson Nevada 89074
16 Attorneys for Canco Pacific Construction
17 Company, Inc.

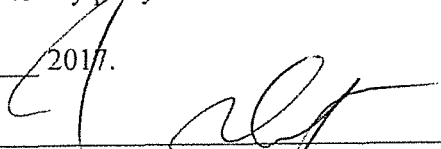

15 **ORDER**

16 Upon the Stipulation of APCO CONSTRUCTION ("APCO"), CAMCO PACIFIC
17 CONSTRUCTION COMPANY, INC. ("Camco"), and CARDNO WRG, INC. fka WRG Design,
18 Inc. ("Cardno"),
19

20 IT IS HEREBY ORDERED as follows:

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

25 DATED: Sept 19 2017.

26
27 
DISTRICT COURT JUDGE 

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

1 Dated: _____

2 **PEEL BRIMLEY LLP**

Dated: _____


MARQUIS AURBACH COFFING

3
4 By: _____
Eric Zimbelman, Esq.
5 Nevada Bar No. 9407
3333 E. Serene Avenue, Suite 200
6 Henderson, Nevada 89074
7 *Attorneys for Cardno WRG, Inc.*

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

8 Dated: _____

9 **GRANT MORRIS DODDS PLLC**

10
11 By: 
Steven L. Morris, Esq.
12 Nevada Bar No. 7454
2520 St. Rose Parkway, Suite 319
13 Henderson Nevada 89074
14 *Attorneys for Camco Pacific Construction*
Company, Inc.

15 **ORDER**

16 Upon the Stipulation of APCO CONSTRUCTION ("APCO"), CAMCO PACIFIC
17 CONSTRUCTION COMPANY, INC. ("Camco"), and CARDNO WRG, INC. fka WRG Design,
18 Inc. ("Cardno"),
19

20 IT IS HEREBY ORDERED as follows:

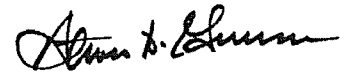
- 21 1. All claims between and APCO and Cardno are mutually dismissed with prejudice and
22 without an award of costs or fees to any party.;
- 23 2. All claims between Camco and Cardno are mutually dismissed with prejudice and
24 without an award of costs or fees to any party.

25 DATED: _____ 2017.

26
27 _____
DISTRICT COURT JUDGE
28

WRG's Answer to CAMCO's Counterclaim

Helix000389



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
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9 Telephone: (702) 990-7272
10 Fax: (702) 990-7273
11 rpeel@peelbrimley.com
12 mgebhart@peelbrimley.com
13 *Attorneys for WRG Design, Inc.*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 In re:
11 MANHATTAN WEST MECHANICS' LIEN
12 LITIGATION

LEAD CASE NO.: A571228
DEPT. NO.: 25

**WRG DESIGN, INC.'S ANSWER TO
CAMCO PACIFIC CONSTRUCTION
COMPANY, INC.'S COUNTERCLAIM**

14 AND ALL CONSOLIDATED MATTERS.
15

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

- 20 1. WRG denies each and every factual allegation and legal conclusion contained in
21 Paragraphs 9, 10, 11, 12, 13, 16, 17 and 18.
- 22 2. WRG is without information or knowledge sufficient to ascertain the truth of the
23 allegations contained in Paragraphs 3 and 8.
- 24 3. WRG admits the allegations contained in Paragraphs 1, 2, 5 and 6.
- 25 4. Answering Paragraphs 4 and 14 of Camco's Counterclaim, WRG repeats and
26 realleges the answers to Paragraphs 1 through 18 as though fully set forth herein.
27
28

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

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

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

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

10 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

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

25 9. Counterclaimant has failed to mitigate its damages.

26 10. Pursuant to NRCP 8, all possible affirmative defenses may not have been alleged
27 herein, inasmuch as sufficient facts were not available after reasonable inquiry and investigation
28 upon the filing of Plaintiff/Counterdefendant's Answer and, therefore, WRG reserves the right to

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

3 WHEREFORE, Plaintiff/Counterdefendant WRG prays as follows:

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

8
9 DATED this 15 day of April, 2010.

10 **PEEL BRIMLEY LLP**

11 
12 RICHARD J. PEEL, ESQ.
13 Nevada Bar No. 4359
14 MICHAEL T. GEBHART, ESQ.
15 Nevada Bar No. 7718
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20 rpeel@peelbrimley.com
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22 *Attorneys for WRG Design, Inc.*

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CERTIFICATE OF SERVICE

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

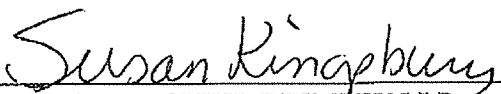

An Employee of PEEL BRIMLEY LLP

EXHIBIT D-4
(Pleadings Related to
Heinaman Contract Glazing)

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

Plaintiff-in-Intervention	Heinaman Contract Glazing
Original Defendant	CAMCO Pacific Construction Company, Inc. ("CAMCO")
Original Defendant	Gemstone Development West, Inc. ("Gemstone")
Original Defendant	Fidelity and Deposit Company of Maryland ("FDCM")
Original Defendant	Scott Financial Corporation

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

Pursued claims only against CAMCO at trial

COUNTERCLAIM OF CAMCO AGAINST HEINAMAN CONTRACT GLAZING

First Cause of Action	Breach of Contract	Heinaman Contract Glazing	Cross-Claims not pursued at Trial Answer filed April 15, 2010
Second Cause of Action	Breach of Covenant and Good Faith and Fair Dealing	Heinaman Contract Glazing	Cross-Claims not pursued at Trial Answer filed April 15, 2010

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

Edmund A. Hines
CLERK OF THE COURT

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3 Nevada Bar No. 4359
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5 Nevada Bar No. 7718
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Attorneys for Heinaman Contract Glazing

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

13 vs.

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

Defendants.

21 HEINAMAN CONTRACT GLAZING, a
22 California corporation,

Plaintiff in Intervention,

23 vs.

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

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

Consolidated with:

A571792

A574391

A577623

A583289

A584730

A587168

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

**EXEMPTION FROM ARBITRATION:
Title to Real Estate**

09A587168
211104



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

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

THE PARTIES

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

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

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

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

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

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

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

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

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

23 ///

24 ///

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FIRST CAUSE OF ACTION
(Breach of Contract against CPCC)

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

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

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

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

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

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

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

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

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

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

9 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

25 ///

26 ///

27 ///

28
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- Heinaman Contract Glazing\007 - Camco Pacific
[Manhattan West]\Pleadings\Originals\090622

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THIRD CAUSE OF ACTION

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

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

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

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

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

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

26. Heinaman has demanded payment of the Outstanding Balance.

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

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

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

FOURTH CAUSE OF ACTION

(Foreclosure of Mechanic's Lien)

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

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

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

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

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

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

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

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

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

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

20 **FIFTH CAUSE OF ACTION**
21 **(Claim of Priority)**

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

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

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

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

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

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

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

19 46. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued
20 License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars
21 (\$50,000.00).

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

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

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

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

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

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

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

10
11 **SEVENTH CAUSE OF ACTION**
12 **(Violation of NRS 624)**

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

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

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

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

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

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

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EIGHTH CAUSE OF ACTION
(Declaratory Judgment)

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

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

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

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

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

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

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

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

7
8 66. Because the Mezzanine Deeds of Trust Subordination Agreement renders the
9 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,
10 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
11 subordinate to all mechanics' liens, including Heinaman's.

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

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

17
18 **WHEREFORE**, Heinaman prays that this Honorable Court:

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

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

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

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

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

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

13 Dated this 22 day of June 2009.

PEEL BRIMLEY LLP


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Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

DALLIN T. WAYMENT, ESQ.

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Attorneys for Heinaman Contract Glazing

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

ORIGINAL

37

FILED

SEP 11 4 39 PM '09

E. J. Smith
CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

14 Plaintiff,

15 vs.

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

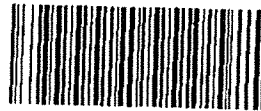
Defendants.

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

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

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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.

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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

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:

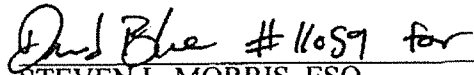
7 1. This Court enter judgment against Counterdefendants, and each of them, in an
8 amount in excess of \$10,000.00, plus interest at the contract rate;

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  #11059 for
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
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26
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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.

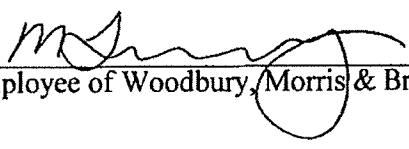

An Employee of Woodbury, Morris & Brown

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

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

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

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

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

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

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

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

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

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

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

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

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

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

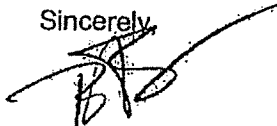
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

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

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

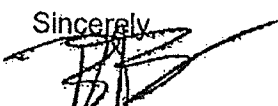
Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and ~~are anticipated to be processed and funded to NES~~ (voucher control) by November 13, 2008.

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

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

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

Sincerely,


Brad J. Scott
President

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Office: 701.255.2215 • Fax: 701.223.7299

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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.

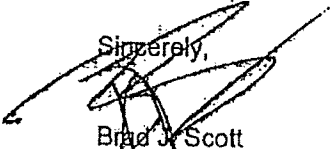
~~Although we cannot guarantee the approval of SFC and the draw request to be processed, and funded to NCS, we will continue to work on it.~~

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

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

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

Sincerely,


Brad J. Scott
President

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Exhibit B

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

Exhibit "B"

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

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

To: Jennifer Olivares

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

Subject: ManhattanWest Status

Importance: High

Jen:

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

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

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

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

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

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

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

Thanks.

Brad J. Scott
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4/1/2009

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Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

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

To: Anne Dwyer; Jennifer Olivares

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

Subject: FW: ManhattanWest

Importance: High

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

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previous advanced future dispersed funds held on account at NCS in the amount of \$993,866.72 back to SFC as per the attached wiring instructions.


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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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

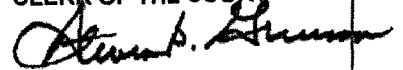
	
Brad J. Scott, CRE President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
A licensed and bonded corporate finance company.	

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

Notice of Entry of Order

Helix000431



1 **NEOJ**
ERIC B. ZIMBELMAN,
2 Nevada Bar No. 9407
RICHARD L. PEEL, ESQ.
3 Nevada Bar No. 4359
PEEL BRIMLEY LLP
4 3333 E. Serene Avenue, Suite 200
Henderson, NV 89074-6571
5 Telephone: (702) 990-7272
Fax: (702) 990-7273
6 ezimbelman@peelbrimley.com
rpeel@peelbrimley.com
7 *Attorneys for 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.,
Nevada corporation; NEVADA
15 CONSTRUCTION SERVICES, a Nevada
corporation; SCOTT FINANCIAL
16 CORPORATION, a North Dakota
corporation; COMMONWEALTH LAND
17 TITLE INSURANCE COMPANY; FIRST
AMERICAN TITLE INSURANCE
18 COMPANY and DOES I through X,

19 Defendants.

20 AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

NOTICE OF ENTRY OF ORDER

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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

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.
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Attorneys for Heinaman Contract Glazing

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HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 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:

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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)

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Chaper 7 Trustee:

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Elizabeth Stephens (stephens@sullivanhill.com)

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Bradley Slighting (bslighting@fabianvancott.com)

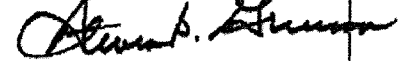
Other Service Contacts not associated with a party on the case:

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John Mowbray (jmowbray@spencerfane.com)
Vivian Bowron (vbowron@spencerfane.com)


An employee of PEEL BRIMLEY, LLP

Exhibit A



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*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 vs.

14 GEMSTONE DEVELOPMENT WEST,
15 INC., 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

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

25 This matter came on for hearing July 2, 2018, before the Honorable Mark Denton in
26 Dept. 13 on Heinaman Contract Glazing's ("Heinaman") Motion for Attorney's Fees, Interest
27 and Costs. No Oppositions having been filed, a Notice of Non-Opposition was filed June 21,
28 2018. Jefferson W. Boswell, Esq. of PEEL BRIMLEY LLP appeared on behalf of Heinaman.
No other appearances having been made.

///

///

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

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

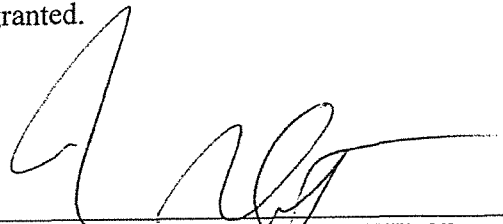
5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorneys' fees in
6 the amount of \$10,113.47 is granted.

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

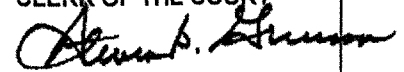
23 3333 E. Serene Avenue, Suite 200

24 Henderson, NV 89074-6571

Attorneys for Heinaman Contract Glazing

Notice of Entry of Judgment

Helix000440



1 **NJUD**
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7 *Attorneys for Heinaman Contract Glazing*

8
9 **DISTRICT COURT**
CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 vs.

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

20 Defendants.

21 AND ALL RELATED MATTERS
22

23 ///

24 ///

25 ///

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

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

NOTICE OF ENTRY OF JUDGMENT

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NOTICE OF ENTRY OF JUDGMENT

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

DATED this 31st day of May, 2018.

PEEL BRIMLEY LLP

/s/ Eric B Zimbelman
ERIC B. ZIMBELMAN, ESQ
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CERTIFICATE OF SERVICE

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

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

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

Apco Construction:

Rosie Wesp (rwesp@maclaw.com)

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Fidelity & Deposit Company Of Maryland:

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United Subcontractors Inc:

Bradley Slighting (bslighting@fabianvancott.com)

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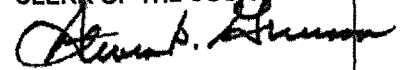
Caleb Langsdale, Esq. (caleb@langsdaletlaw.com)
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Adam Miller (amiller@spencerfane.com)
John Mowbray (jmowbray@spencerfane.com)
Vivian Bowron (vbowron@spencerfane.com)

/s/ Amanda Armstrong

An employee of PEEL BRIMLEY, LLP

Exhibit A



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Attorneys for Heinaman Contract Glazing
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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

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MAY 22 2018

DISTRICT COURT DEPT. #124

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

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

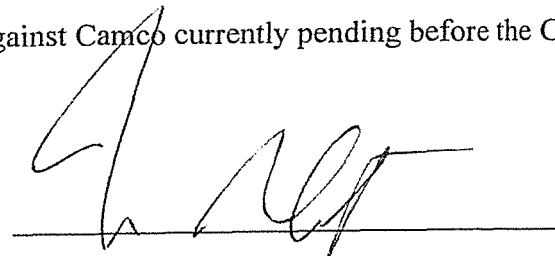
7 The Court having entered its April 26, 2018 Findings of Fact and Conclusions of Law
8 as to the Claims of Heinaman against Camco, incorporated herein by this reference and
9 attached hereto as Exhibit 1 ("the Heinaman FFCL");

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

24 ERIC B. ZIMBELMAN,

25 Nevada Bar No. 9407

26 RICHARD L. PEEL, ESQ.

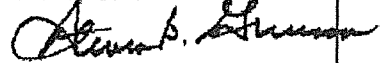
27 Nevada Bar No. 4359

28 3333 E. Serene Avenue, Suite 200

Henderson, NV 89074-6571

Attorneys for Heinaman Contract Glazing

EXHIBIT 1



DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs

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

Defendants.

CASE NO.: A571228

DEPT. NO.: XIII

Consolidated with:

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

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

AND ALL RELATED MATTERS.

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

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

Helix000450

Case Number: A574391

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.

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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 ManhattanWest 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 ManhattanWest 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

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

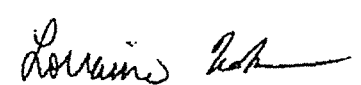
10 IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and
11 Conclusions of Law, and those made regarding the other parties and claims involved in the
12 consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the
13 same at the appropriate time subject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

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

15
16 
DISTRICT COURT JUDGE

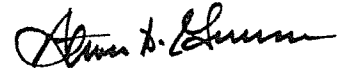
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18 CERTIFICATE

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
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28

Heinaman's Answer to CAMCO's Counterclaim

Helix000463



CLERK OF THE COURT

1 ANS
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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**

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

25 1. Heinaman denies each and every allegation contained in Paragraphs 5, 6, 9, 10, 11,
26 12, 15, 16 and 17.

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

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

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

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

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

11 **AFFIRMATIVE DEFENSES**

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

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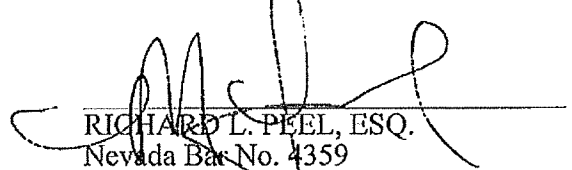
1 upon the filing of Plaintiff/Counterdefendant's Answer and, therefore, Plaintiff/Counterdefendant
2 reserves the right to amend its answer to allege additional affirmative defenses if subsequent
3 investigation and discovery of facts so warrants.

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.

Nevada Bar No. 7718

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19 *Attorneys for Heinaman Contract Glazing*

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CERTIFICATE OF SERVICE

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


An Employee of PEEL BRIMLEY LLP

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EXHIBIT D-5
(Pleadings Related to
Bruin Painting Corporation)

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

Plaintiff-in-Intervention	Bruin Painting Corp. ("Bruin")
Original Defendant	CAMCO Pacific Construction Company, Inc. ("CAMCO")
Original Defendant	Gemstone Development West, Inc. ("Gemstone")
Original Defendant	Fidelity and Deposit Company of Maryland ("FDCM")
Original Defendant	Scott Financial Corporation

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

COUNTERCLAIM OF CAMCO AGAINST BRUIN PANTING CORPORATION

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

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

Helix000470

Emil H. H. H.
CLERK OF THE COURT

1 **STMT**
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16 *Attorneys for Bruin Painting Corporation*

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.

BRUIN PAINTING CORPORATION, a
California corporation,

Plaintiff in Intervention,

vs.

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

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

Consolidated with:

A571792
A574391
A577623
A583289
A584730
A587168

09A587168
257968



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

**EXEMPTION FROM ARBITRATION:
Title to Real Estate**

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

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

THE PARTIES

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

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

Manhattan West Condominiums (Project)
Spring Valley

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

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

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- Bruin Painting Corp\011 - Camco Pacific
(Manhattan West)\PX\Originals\090622 Bruin Amd

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

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

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

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

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

23 ///

24 ///

25 H:\PB&S\CLIENT FILES\0001 - 0999 (A - C)\0547
26 - Bruin Painting Corp\011 - Camco Pacific
27 (Manhattan West)\PX\Originals\090622 Bruin Amd

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FIRST CAUSE OF ACTION
(Breach of Contract against CPCC)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 21. Bruin 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

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

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

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

5 25. The Defendants knew or should have known that Bruin expected to be paid for the
6 Work.
7

8 26. Bruin has demanded payment of the Outstanding Balance.

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

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

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

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

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

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

23 32. As provided at NRS 108.245 and common law, the Defendants had knowledge of
24 Bruin's delivery of the Work to the Property or Bruin provided a Notice of Right to Lien.
25

26 33. Bruin demanded payment of an amount in excess of Ten Thousand and no/100
27 Dollars (\$10,000.00), which amount remains past due and owing.
28

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

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

5 44. Bruin has been required to engage the services of an attorney to collect the
6 Outstanding Balance due and owing for the Work, and Bruin is entitled to recover its reasonable
7 costs, attorney's fees and interest therefore.
8

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

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

14 46. Prior to the events giving rise to this Complaint, the CPCC Surety issued License
15 Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars (\$50,000.00).
16

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

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

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

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

23 51. Demand for the payment of the sums due to Bruin has been made, but CPCC and
24 the CPCC Surety have failed, neglected and refused to pay the same to Bruin.
25

26 52. CPCC and the CPCC Surety owe Bruin the penal sum of the Bond.
27
28

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

4
5 **SEVENTH CAUSE OF ACTION**
6 **(Violation of NRS 624)**

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

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

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

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

18
19 59. Bruin has been required to engage the services of an attorney to collect the
20 Outstanding Balance and Bruin is entitled to recover its reasonable costs, attorney's fees and
21 interests therefore.

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

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

1 61. 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 62. 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 63. 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 Bruin's mechanics' lien.

19 64. 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 65. Bruin is informed and believes and therefore alleges that construction on the
25 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by
26
27
28

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

3 66. 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 Bruin's.
7

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

10 Bruin is entitled to a court order declaring that its mechanics' lien has a superior lien position on
11 the Property over any other lien or encumbrance created by or for the benefit of SFC or any other
12 entity.
13

14 **WHEREFORE**, Bruin prays that this Honorable Court:

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

17 2. Enters a judgment against Defendants, and each of them, jointly and severally, for
18 Bruin's reasonable costs and attorney's fees incurred in the collection of the Outstanding Balance,
19 as well as an award of interest thereon;
20

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

23 4. Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable
24 attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the
25 Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State
26 of Nevada, and that the proceeds of said sale be applied to the payment of sums due Bruin herein;
27
28


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

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

7 Dated this 22 day of June 2009.

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Attorneys for Bruin Painting Corporation

CAMCO's Answer and Counterclaim

Helix000483

FILED

SEP 11 5 22 PM '09

E. J. [Signature]
CLERK OF THE COURT

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9 Attorneys for
10 Camco Pacific Construction Company, 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
24 Dakota Corporation; DOES I through X;
25 ROE CORPORATIONS I through X; BOE
26 BONDING COMPANIES I through X; LOE
27 LENDERS I through X, inclusive,

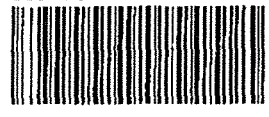
28 Defendants.

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

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

09A587168
389434



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1 BRUIN PAINTING CORPORATION, a
2 California corporation,

3
4 Plaintiff in Intervention,

5 vs.

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

16 Defendants.

17
18 CAMCO PACIFIC CONSTRUCTION
19 COMPANY, INC., a California corporation,

20 Counterclaimant,

21 vs.

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

25 Counterdefendants,

26
27 Third Party Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
28 (hereinafter "Camco"), by and through its counsel, Steven L. Morris, Esq. of the law firm of
Woodbury, Morris & Brown, hereby answer the Third Party Complaint of BRUIN PAINTING
CORPORATION, (hereinafter "Plaintiff" or "Bruin"), on file herein, and admits, denies, and
alleges as follows:

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

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

and therefore denies each and every allegation contained therein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 21. Plaintiff has failed to mitigate its damages.

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

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

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

2 WHEREFORE, Third Party Defendant Camco prays as follows:

- 3 1. That Plaintiff take nothing by way of its Complaint;
- 4 2. For an award of reasonable attorneys' fees and costs for having to defend this
- 5 action; and
- 6 3. For such other and further relief as the Court deems just and proper.

7 **COUNTERCLAIM**

8 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter

9 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,

10 Morris & Brown complains as follows:

11 **JURISDICTIONAL ALLEGATIONS**

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

13 doing business in Clark County, Nevada as a contractor duly licensed by the Nevada State

14 Contractors Board.

15 2. Counterdefendant BRUIN PAINTING CORPORATION, a California

16 corporation (hereinafter referred to as "Bruin") is and was at all times relevant to this action, a

17 corporation conducting business in Clark County, Nevada.

18 3. The true names and capacities, whether individual, corporate, associate or

19 otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant.

20 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,

21 Counterclaimant sues Defendants by such fictitious names. Counterclaimant will ask leave to

22 amend this Counterclaim to show the true names and capacities of each such DOE Defendants

23 at such time as the same have been ascertained.

24 **FIRST CAUSE OF ACTION**

25 **(Breach of Contract)**

26 4. Camco repeats and realleges each and every allegation contained in the

27 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by

28 reference and further alleges:

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

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

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

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

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

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

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

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

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

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

reasonable attorneys' fees and costs therefor.

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

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

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

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

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

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

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 11th day of September 2009.

WOODBURY, MORRIS & BROWN

David Blue #11059 for

STEVEN L. MORRIS, ESQ.

Nevada Bar No. 7454

701 N. Green Valley Pkwy., Suite 110

Henderson, NV 89074-6178

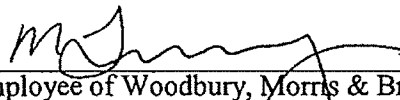
Attorneys for Camco

CERTIFICATE OF MAILING

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

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

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


An Employee of Woodbury, Morris & Brown

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

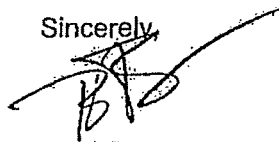
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



Exhibit A

November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection, LLC~~

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

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'BJ Scott', is written over the word 'Sincerely' and the name 'Brad J. Scott'.

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.

Helix000498



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 the approval, SFC anticipates the draw request to be processed and funded to NCS (voucher control) in December.~~

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

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

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

Sincerely,


Brad J. Scott
President

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

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Exhibit B

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