

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Supreme Court Case No. 77320  
*Consolidated with 80508*

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**HELIX ELECTRIC OF NEVADA, LLC,**

Appellant,

v.

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

Respondent.

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**JOINT APPENDIX  
VOLUME 21**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

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08-05-09	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
04-26-10	<b>CAMCO and Fidelity's Answer and CAMCO's Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
07-02-10	<b>Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default</b>	<b>JA000042- JA000043</b>	<b>1</b>
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	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
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<b>11-06-17</b>	<b>Helix Electric of Nevada’s Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
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<sup>1</sup> Filed January 31, 2018

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	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A

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	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	<b>Zitting Brothers Related Exhibits:</b>		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	<b>Helix Related Exhibits:</b>		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	<b>Helix Trial Exhibits:</b>		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65 /66/67/ 68/69/70/ 71/72 /73/74/75 /76/77
<b>01-19-18</b>	<b>Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA005282- JA005283</b>	<b>78</b>
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>2</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>3</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>4</sup></b>	<b>JA005820- JA005952</b>	81
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC’s (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.’s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>APCO Construction Inc.’s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC’s Responses to APCO Construction’s Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>

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<sup>4</sup> Filed January 31, 201883

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
05-08-18	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412- JA006442	87/88

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
<b>06-15-18</b>	<b>APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
<b>06-15-18</b>	<b>Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA006917 – JA006942</b>	<b>96</b>
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943- JA006948	96

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964- JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC’s Response to Special Master Questionnaire	JA006977- JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.’s Response to Special Master Questionnaire	JA006981- JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in Limine (against APCO Construction)	JA007070- JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions’ Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079- JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary	JA007085- JA007087	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
06-15-18	<b>Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007095- JA007120</b>	<b>97/98</b>
06-15-18	<b>Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
06-18-18	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007190- JA007192</b>	<b>99</b>
06-21-18	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
06-29-18	<b>APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>06-29-18</b>	<b>Helix Electric of Nevada, LLC's Reply Re: Motion to Retax</b>	<b>JA007225- JA007237</b>	<b>100</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>Notice of Entry of (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
08-06-19	<b>Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. Motion for Attorneys Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada LLC's Motion to Retax in Part and Denying in Part and all related matters (4) Granting Plaintiff in Intervention National Wood Products LLC's Motion to Retax in Part and Denying in Part -and-(5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401- JA007517	102/103

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520- JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105 /106/107 /108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff’s Motion to Dismiss	JA008171- JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts	JA008323- JA008338	110

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim		
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110
	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379- JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451- JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008484- JA008504	111

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602- JA008621	112



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Complaint and Camco Pacific Construction, Inc.'s Counterclaim		
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665- JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759- JA008780	113
	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation’s Motion to Enforce Settlement Agreement and Enter Judgment	JA008762- JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
<b>08-16-19</b>	<b>APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA008811- JA008821</b>	<b>114</b>
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.’s Counterclaim	JA008925- JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose’s Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966- JA008986	117/118

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119
<b>08-29-19</b>	<b>Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)</b>	<b>JA009117- JA009123</b>	<b>119</b>

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	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	Exhibit A – 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.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada’s Motion for Rule 54(b) Certification	JA009183- JA00991	120

## **ALPHABETICAL APPENDIX OF EXHIBITS**

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<b>08-05-09</b>	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
<b>05-08-18</b>	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412-	87/88

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		JA006442	
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
<b>06-06-13</b>	<b>APCO’s Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO’s Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time</b>	<b>JA000044- JA000054</b>	<b>1</b>
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO’s Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO’s Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6
<b>02-11-20</b>	<b>APCO’s Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	<b>120</b>
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.’s Motion for Attorney’s Fees and Costs; (2) Granting APCO Construction, Inc.’s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC’s	JA009168- JA009182	114



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply		
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183- JA00991	120
<b>11-06-17</b>	<b>APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

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	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>08-16-19</b>	<b>APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA008811- JA008821</b>	<b>114</b>
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008925- JA008947	116/117

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Pacific Construction Company, Inc.'s Counterclaim		
	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction's Counterclaim	JA008966- JA008986	117/118
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987- JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119

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06-15-18	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639- JA006916	91/92/93 94/95/96
11-14-17	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in <i>Limine</i> Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
08-21-17	<b>APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000393- JA000409</b>	<b>6/7</b>
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
03-08-18	<b>APCO Construction Inc.'s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
11-15-17	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus <i>Motion in Limine</i></b>	<b>JA001133 JA001148</b>	<b>21</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
<b>06-29-18</b>	<b>APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99
<b>04-26-10</b>	<b>CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	<b>120</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
04-25-18	Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO	JA006194- JA006264	84/85
11-06-17	Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4	JA000534- JA000542	8
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
06-01-18	Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006551- JA006563	90
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
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	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
<b>08-06-19</b>	<b>Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA007316- JA007331</b>	<b>101</b>
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. Motion for Attorneys Fees and Costs (2) Granting APCO Construction, Inc.’s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada LLC’s Motion to Retax in Part and Denying in Part and all related matters (4) Granting Plaintiff in Intervention National Wood Products LLC’s Motion to Retax in Part and Denying in Part -and-(5) Granting National Wood Products, Inc.’s Motion to File a Surreply	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of	JA007401- JA007517	102/103

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Nevada, LLC, SWPPP Compliance Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
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	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105/ 106/107/108 109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109
	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109



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	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008323- JA008338	110
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC’s Motion for Attorney’s Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110

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	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenotec Against APCO	JA008379- JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451- JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484- JA008504	111
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111

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	Exhibit 10CC – Heinaman Contract Glazing’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008602- JA008621	112
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112

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	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112
	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
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	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
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	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
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	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
<b>08-29-19</b>	<b>Helix Electric of Nevada LLC’s Reply to APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-</b>	<b>JA009117- JA009123</b>	<b>119</b>

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<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
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<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
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	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
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	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28



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	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
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	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA001667	28/9/29
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>01-04-18</b>	<b>Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time</b>	<b>JA001199- JA001217</b>	<b>22</b>
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	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
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	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
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<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>

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12-29-17	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion <i>in Limine</i> 1-6	JA001161- JA001169	22
01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
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11-06-17	Peel Brimley Lien Claimants' Motion <b>in Limine</b> Nos. 1-6	JA000419- JA000428	7
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	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
<b>09-28-17</b>	<b>Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000413- JA00418</b>	<b>7</b>
<b>01-09-18</b>	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001552- JA001560</b>	<b>27</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition</b>	<b>JA007190- JA007192</b>	<b>99</b>

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07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
01-18-18	Stipulation and Order Regarding Trial Exhibit Admitted into Evidence	JA002199- JA002201	36
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	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38

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	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
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	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
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	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
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	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42



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	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	<b>Zitting Brothers Related Exhibits:</b>		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	<b>Helix Related Exhibits:</b>		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	<b>Helix Trial Exhibits:</b>		

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>5</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement (Admitted)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (Admitted)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (Admitted)	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone (Admitted)	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) (Admitted)	JA001981- JA001987	32

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<sup>5</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record <i>(Admitted)</i>	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks <i>(Admitted)</i>	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment <i>(Admitted)</i>	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP <i>(Admitted)</i>	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner <i>(Admitted)</i>	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement <i>(Admitted)</i>	JA002121- JA002146	35

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>6</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>7</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix’s Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80

<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>8</sup></b>	<b>JA005820- JA005952</b>	81
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>

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<sup>8</sup> Filed January 31, 2018

with the Work and (ii) shall have no duty to repair any of the Work in connection with or pursuant to the Express Warranty or any such express or implied warranty.

**5.02 Completed Work Release.** Set forth on Exhibit E hereto is an update of the status of the Work as of the Effective Date (the "Previously Completed Work"). It is expressly understood that General Contractor did not perform and shall bear no responsibility for the Previously Completed Work.

**5.03 Indemnification.**

(a) To the fullest extent permitted by law, Developer agrees to defend (with counsel reasonably acceptable to General Contractor), indemnify and hold harmless General Contractor and General Contractor's agents and employees from any claims, demands, losses and liabilities to or by any and all persons or entities (including without limitation, Developer, the architect, engineers, governmental agencies, and any Third-Party Service Provider and their respective employees, agents, licenses, or representatives) arising out of or from the (i) any breach of this Agreement by Developer; (ii) the negligence or willful misconduct of Developer or any Third-Party Service Provider or any of their agents or employees; and (iii) the Work, including, without limitation, any claims for design, product or construction defects arising from or related to the Work or the Project (collectively, the "Covered Claim").

(b) In the event that General Contractor receives written notice of a Covered Claim, General Contractor shall immediately provide written notice of such Covered Claim to Developer.

(c) Upon receipt of any notice of a Covered Claim from General Contractor, Developer shall, at its cost and expense, assume and control the defense of such Covered Claim for General Contractor. General Contractor may only engage its own legal counsel to defend a Covered Claim at General Contractor's own expense; provided however, that in the event that Developer fails to provide a legal defense pursuant to this Section 5.03 and General Contractor must engage its own legal counsel to provide such legal defense, Developer shall be responsible for the cost of such legal counsel. General Contractor may not settle any Covered Claim without the express written consent of Developer.

(d) In connection with the defense of any Covered Claim by Developer, General Contractor shall do both of the following:

(i) Cooperate with Developer's efforts to defend any Covered Claim, including, without limitation, providing documents and uncompensated access to General Contractor's employees and agents for purposes of gathering evidence and providing testimony related to the Covered Claim; provided however, that Developer will compensate General Contractor

for time spent by General Contractor's senior management in coordination meetings related to such defense; and

(ii) Accept any settlement of a Covered Claim that (A) is presented to General Contractor by Developer; (B) does not require the payment of any damages or fees by General Contractor; and (C) does not admit liability of, allow a judgment to be entered against, or result in imposition of governmental penalties or sanctions against, General Contractor or its contractor's license.

(e) Notwithstanding this Section 5.03, each Third-Party Agreement shall provide that (i) the corresponding Third-Party Service Provider will indemnify General Contractor and Developer for the Work being performed by such Third-Party Service Provider pursuant to such agreement and (ii)

④ Developer is a third-party beneficiary of such indemnity.

(f) The provisions of this Section 5.03 shall survive the expiration or termination of this Agreement.

#### ARTICLE VI COMPENSATION FOR THE SERVICES

6.01 **Fees.** In exchange for the Services, Developer shall pay to General Contractor an amount equal to \$100,000.00 per month (the "General Contractor Fee"); provided however, that, upon the issuance of the Certificate of Occupancy or Certificate of Completion for four of the five Buildings, the General Contractor Fee shall be reduced to \$30,000.00 per month until Final Completion. For the month in which such adjustment to the General Contractor Fee takes place, such adjustment shall be calculated pro rata based on the number of days in such month that each of the two levels of General Contractor Fee applied.

6.02 **Expenses.** In addition to the General Contractor Fee, General Contractor may charge additional fees for the following (the "General Contractor Expenses"):

(a) All costs and expenses associated with the employment of onsite personnel pursuant to Section 2.03.

(b) All costs and expenses associated with the inspections to be conducted pursuant to Section 2.06.

6.03 **Discounts, Rebates, and Refunds.** Discounts obtained on payments made by General Contractor shall accrue 100% to Developer. In addition, trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue 100% to Developer. Developer shall be entitled to all savings derived from value engineering.

6.04 **Taxes.** General Contractor shall be solely responsible for the taxes to be paid on the General Contractor Fee. Developer shall pay all sales, consumer, use and similar taxes levied in connection with the Work.

## ARTICLE VII PAYMENT FOR THE WORK

### 7.01 Progress Payments.

(a) Pursuant to the Third-Party Agreements, Third-Party Service Providers shall deliver their individual payment applications to General Contractor. Developer may, for any reason, refuse to approve all or a portion of any application for payment received from a Third-Party Service Provider.

(b) On approximately the first business day of each month, General Contractor shall prepare applications for payment for the previous month on forms similar to AIA G702 and G703 including separate SOV and AIA G703 pages for each Building as well as the corresponding common areas (the "Application for Payment").

(i) Each Application for Payment shall be based on the most recent Schedule of Values. The Schedule of Values shall allocate the Cost of the Work among the various portions of the Work, and will be periodically updated by General Contractor (subject to approval by Developer) to reflect buy-out and changed conditions. The General Contractor's Fee and General Contractor Expenses shall be shown as separate items.

(ii) Applications for Payment shall show the Percentage of Completion of each portion of the Work as of the end of the period covered by the Application for Payment. The "Percentage of Completion" shall be the percentage of that portion of the Work which has actually been completed.

(c) Upon delivery of an executed Application for Payment, Developer may refuse to approve all or a portion of such Application for Payment; provided however, that any such refusal must be reasonable, in good faith, and accompanied by a written explanation of such refusal. Upon receipt of a refusal or partial refusal, General Contractor will revise the Application for Payment accordingly and resubmit it to Developer for approval and continue this revision process until such Application for Payment is approved by Developer. Upon approving such Application for Payment, Developer shall submit, to Developer's lender or such lender's authorized designee, the corresponding draw application for the undisputed amount to be paid pursuant to such Application for Payment (the "Draw Application"). Thereafter, the amount requested in a Draw Application shall be paid within 40 days of the submission of such Draw Application (the "Progress Payment").

*Handwritten signature/initials*

(d) The amount of each Progress Payment shall be computed as follows:

(i) take that portion of the Cost of the Work properly allocable to completed Work as determined by multiplying the Percentage of Completion of each portion of the Work by the share of the Cost of the Work allocated to that portion of the Work in the most recent Schedule of Values;

(ii) add that portion of the Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation into the Work, or if approved in advance by Developer, suitably stored off of the Project Site at a location agreed upon in writing;

(iii) subtract the aggregate of previous Progress Payments made by Developer;

(iv) subtract the applicable Standard Retainage;

(v) add the General Contractor Fee and payment for any General Contractor Expenses;

(vi) subtract the shortfall, if any, resulting from errors in previous Progress Payments subsequently discovered by Developer's accountant; and

(vii) subtract amounts, if any, that are disputed by Developer.

(e) Upon receipt of the Progress Payment, General Contractor shall promptly pay each Third-Party Service Provider the amount represented by the portion of the Percentage of the Work Completed that was completed by such Third-Party Service Provider during the period covered by the corresponding Progress Payment. General Contractor shall, by appropriate agreement with each New Third-Party Service Provider, require each New Third-Party Service Provider to make payment to sub-contractors in a similar manner.

#### 7.02 Final Payment.

(a) A final payment, constituting the entire unpaid balance of the Cost of the Work (the "Final Payment"), shall be made by Developer to General Contractor when the following conditions have been met:

(i) Final Completion is obtained;

(ii) the General Contractor has fully performed the Services; and

(iii) a written statement that General Contractor knows or has no reason to suspect that any additional costs or indebtedness exists in connection with the Work.

(b) Notwithstanding and without limiting any other provision in the Contract Documents, the Final Payment is conditioned upon satisfaction of all conditions applicable to such payment imposed by any funding construction draws as well as Developer's reasonable approval.

(c) Payment and acceptance of Final Payment by Developer and General Contractor, respectively, shall constitute a waiver of all claims by Developer and General Contractor except such claims as are previously made in writing and identified as unsettled at the time of the final Application for Payment.

#### 7.03 Retainage.

(a) No retention shall be withheld from the General Contractor Fee or the General Contractor Expenses. General Contractor shall withhold the maximum legal retainage amount set forth in each APCO Third-Party Agreement. Each New Third-Party Agreement will provide for the withholding of retainage from the corresponding New Third-Party Service Provider in the amount of 10% of each Progress Payment.

(b) Any remaining retention for Third-Party Service Providers shall be released for payment to the Third-Party Service Providers (i) on the date that (A) Final Completion is attained and (B) all outstanding disputes between Developer and General Contractor and Developer and any Third-Party Service Providers have been resolved, and any liens against the Project related to such disputes have been removed or (ii) upon the express written approval of such release, or a partial release to certain Third-Party Service Providers, executed by Developer and General Contractor.

### ARTICLE VIII OWNERSHIP AND USE OF DOCUMENTS

8.01 **Ownership.** <sup>(5)</sup> All documents related to the Work and the Project including documents that are furnished or obtained by General Contractor, including, without limitation, any drawings, specifications, or designs (the "Project Documents") are the sole property of Developer and may be used by Developer for any purpose.

8.02 **Subsequent Use.** To the extent that any Project Documents are used by Developer for a subsequent project that does not involve General Contractor, General Contractor shall not be professionally liable for the use of such Project Documents on such subsequent project.

**8.03 Non-Publication.** Submission or distribution of any Project Documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of common law copyrights or other reserved rights.

#### **ARTICLE IX INSURANCE, BONDS, AND LIQUIDATED DAMAGES**

**9.01 Insurance.** Developer shall obtain and maintain, at its sole cost, the types and amounts of insurance coverage set forth in the insurance binder attached hereto as Exhibit F. General Contractor shall not be (a) responsible for any insurance deductibles, self-insured retention, or related insurance expenses related to such policies or (b) required to obtain any additional insurance pursuant to such policies. Notwithstanding this Section 9.01, each Third-Party Agreement shall provide insurance provisions as are delivered to General Contractor by Developer prior to the execution of the corresponding Third-Party Agreement.

**9.02 Bonds.** General Contractor will not be required to furnish any performance bonds or payment bonds for the Project.

**9.03 Liquidated Damages.** General Contractor shall not be responsible for any liquidated damages in connection with the Project. Notwithstanding this Section 9.03, each Third-Party Agreement shall provide such liquidated damage provisions as are delivered to General Contractor by Developer prior to the execution of the corresponding Third-Party Agreement.

#### **ARTICLE X CHANGES IN THE WORK**

##### **10.01 Change Orders.**

(a) A "Change Order" is a written order signed by Developer and General Contractor, authorizing a change in the Work.

(b) Developer, without invalidating this Agreement, may initiate changes in the Work by executing and delivering to General Contractor a Change Order setting forth the work to be performed, the Third-Party Service Provider to perform such work, and any other terms of such engagement. Upon receiving a Change Order, General Contractor will execute such Change Order and execute or amend any Third-Party Agreements as are necessary to perform the Work set forth in such Change Order; provided that the Third-Party Service Provider has agreed to the terms of the Change Order. General Contractor shall receive no additional compensation in connection with any Change Order.

(c) Notwithstanding any provision of this Agreement, Developer may unilaterally terminate any Change Order prior to the completion of the Work set forth in such Change Order; provided that the Third-Party Service Provider consents thereto. Upon such termination, a deductive change order for the amount of the uncompleted Work set forth in the terminated Change Order shall be issued by General Contractor.

#### ARTICLE XI TERMINATION OF AGREEMENT

11.01 **Term.** The term of the Agreement commences on the Effective Date. Provided that this Agreement is not terminated pursuant to Section 11.02, the term of the Agreement ends on the date of Final Completion.

**11.02 Termination by Developer With Cause.**

(a) if General Contractor breaches any provision of this Agreement and fails to cure such breach within 48 hours of receiving written notice of such breach from Developer (or, if the breach cannot reasonably be cured within 48 hours, General Contractor does not initiate to cure within 48 hours and thereafter diligently pursue the cure to completion), Developer may terminate the Agreement without prejudice to any other rights or remedies available to Developer and after giving General Contractor three days' written notice (in addition to the 48 hours notice pursuant to the above cure period) and do the following:

(i) Take possession of the Project Site, and all materials, equipment, tools, and construction equipment and machinery thereon owned by General Contractor to the extent that such items are incorporated into the Buildings or the Project Site;

(ii) Accept assignment of any Third-Party Agreements pursuant to Section 11.04; and

(iii) Obtain the Services by whatever reasonable method that Developer deems expedient.

(b) In the event of a termination pursuant to Section 11.02(a), (i) General Contractor shall not be entitled to receive any further payment until the Work is finished and (ii) upon completion of the Work, General Contractor shall pay any costs and expenses incurred by Developer to perform or have a third-party perform the Services in excess of the unpaid portion of the General Contractor's Fee and General Contractor Expenses.

11.03 **Assignment.** Each Third-Party Agreement for a portion of the Work is hereby assigned by General Contractor to Developer provided that such assignment is effective only after termination of the Agreement by Developer for



cause pursuant to Section 11.02 and only for those Third-Party Agreements which Developer accepts by notifying General Contractor and the applicable Third-Party Service Provider in writing. General Contractor shall execute and deliver all such documents and take all such steps as Developer may require for the purpose of fully vesting in Developer the rights and benefits of General Contractor under such documents. Upon the acceptance by Developer of any Third-Party Agreement, subject to the other terms of this Article XI, Developer shall pay to the corresponding Third-Party Service Provider any undisputed amounts owed for any Work completed by such Third-Party Service Provider, prior to the underlying termination for which Developer had not yet paid General Contractor prior to such underlying termination.

## ARTICLE XII CLAIM AND DISPUTE RESOLUTION

**12.01 Definition.** The term "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of any Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between Developer and General Contractor arising out of or relating to the Agreement. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**12.02 Time Limits on Claims.** A Claim may be brought by either party at anytime prior to Final Completion. For any Claim that may be brought by either party after Final Completion, such Claim must be initiated within a reasonable number of days after the claimant first recognizes the condition giving rise to the Claim; provided however, that the parties may mutually agree to postpone the resolution of any Claim. Claims must be initiated by written notice to the other party.

### 12.03 Mediation.

(a) Any Claim shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party; provided, however, that a party may initiate a lawsuit to prevent the statute of limitations from expiring so long as that party seeks to have the lawsuit stayed pending mediation and arbitration as provided in this Agreement.

(b) The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the date that such Claim arises. Request for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or initiation of a lawsuit but, in such event, mediation shall proceed in

advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

(c) The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Las Vegas, Nevada. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**12.04 Arbitration.**

(a) Any Claim shall be subject to arbitration, except those claims that are required by statute to be litigated (e.g., foreclosure of a mechanic's lien). Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 12.03.

(b) Claims not resolved by mediation shall be decided by arbitration which shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the date that such Claim arises. The demand for arbitration shall be filed in writing with the other party to the Agreement and the American Arbitration Association.

(c) A demand for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

(d) The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

(e) The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**12.05 Continued Performance.** Notwithstanding any provision of this Agreement, in the event of any unresolved Claim, dispute, or controversy between Developer and General Contractor related to the Services or this Agreement, General Contractor shall diligently continue to perform the Services to the full extent practicable pending resolution of the unresolved Claim, dispute, or controversy and Developer shall continue to make payment required under this Agreement for all Work that is not directly implicated in the Claim, dispute, or controversy.

**ARTICLE XIII  
MISCELLANEOUS PROVISIONS**

**13.01 Access to the Project Site.** Developer shall have access to the Project Site, subject to any restrictions required by insurance policies and reasonable rules or regulations promulgated by General Contractor. Developer may expel any ~~Third-Party Service Providers and any other third party~~ from the Project Site with reasonable cause.

**13.02 Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by electronic mail or facsimile, upon transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth on the attached signature page or such other address as either party may specify in writing.

**13.03 Merger Clause.** This Agreement represents the entire and integrated agreement between Developer and General Contractor related to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

**13.04 Amendment and Termination.** Subject to Article XI, this Agreement may be amended or terminated only by written instrument executed by both Developer and General Contractor.

**13.05 Assignment of this Agreement.** Developer may freely assign this Agreement but shall provide written notice of any assignment to General Contractor. Except as set forth in this Agreement, General Contractor may not subcontract, assign, or otherwise delegate its obligations under this Agreement without Developer's prior written consent. Subject to the foregoing, this Agreement will be for the benefit of General Contractor's and Developer's successors and assigns, and will be binding on any assignees.

**13.06 Governing Law; Venue.** This Agreement shall be governed in all respects by the laws of the State of Nevada, as such laws are applied to agreements entered into and to be performed entirely within Nevada between Nevada residents and without regard to any conflict of law provisions. Subject to Article XI, any action or proceeding arising from or relating to this Agreement may only be brought in the applicable court in Las Vegas, Nevada, and each party hereby irrevocably submits to the jurisdiction and venue of such courts.

**13.07 Attorney's Fees:** In the event that any negotiation, suit, action, arbitration, or mediation is instituted to enforce or interpret any provision in this Agreement or to resolve any dispute arising from or related to the Work, the

prevailing party in such negotiation, suit, action, arbitration, or mediation shall be entitled to recover, in addition to any other relief to which it is entitled, from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

**13.08 Unenforceability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

**13.09 Waivers and Non-Waiver of Remedies.** No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of that party's consent to or approval of any subsequent act by the other party. A party's failure to declare a breach of this Agreement for a particular default by the other party shall not be a waiver of any preceding or subsequent breach by the other party. Unless expressly stated otherwise in this Agreement, nothing in this Agreement shall limit the rights and remedies available to any party for any breach of this Agreement by the other party.

**13.10 Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute one and the same agreement. Signatures to this Agreement may be transmitted via facsimile or PDF, and such signatures shall be deemed to be originals.

[Signature Page Attached]

This Agreement is entered into as of the Effective Date.

**DEVELOPER:**

Gemstone Development West, Inc.

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Alexander Edelstein

9121 W. Russell Rd., Suite 117  
Las Vegas, NV 89148  
Attention: Peter Smith  
Phone: (702) 614-3193  
Email: [pete@gemstonedev.com](mailto:pete@gemstonedev.com)

**GENERAL CONTRACTOR:**

CAMCO Pacific Construction Company, Inc.

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David E. Parry  
Senior Vice President

2925 E. Patrick Lane, Suite G  
Las Vegas, NV 89120  
Attention: David E. Parry  
Phone: (702) 798-6611  
Email: [dparry@camcopacific.com](mailto:dparry@camcopacific.com)

[CAMCO Agreement Signature Page]

**Exhibit A**  
**Glossary of Defined Terms**

**Defined Terms:**

1. "Building" means any building within the Project.
2. "Certificate of Occupancy" means the permission from Clark County and any other applicable regulatory agency necessary for Developer to conduct the close of escrow for the sale of the individual units in the Project.
3. "Cost of the Work" means the aggregate cost to perform the Work pursuant to the Schedule of Values.
4. "APCO Third-Party Service Agreement" means the contracts, purchases orders, and other agreements between Asphalt Products Corporation, (dba APCO Construction) and any Third-Party Service Providers in effect as of the Effective Date.
5. "Schedule of Values" means a list delivered by General Contractor to Developer that sets forth (a) each component of the Work and (b) the corresponding budgeted cost for each component of the Work.
6. "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment and services. The Work may constitute the whole or a part of the Project.

**Additional Terms.** Each of the following terms is defined in the section or reference set forth opposite such term below.

Term	Section
Agreement	Preamble
Application for Payment	Section 7.01(b)
Final Completion	Section 4.01
Change Order	Section 10.01(a)
Claim	Section 12.01
Contract Documents	Section 1.01
Cover Claim	Section 5.03
Developer	Preamble
Draw Application	Section 7.01(c)
Effective Date	Preamble
Exclusions	Article III
Express Warranty	Section 5.01
Final Payment	Section 7.02(a)
General Contractor	Preamble

General Contractor Fee	Section 6.01
General Contractor Expenses	Section 6.02
Percentage Completion	Section 7.01
Previously Completed Work	Section 5.02
Progress Payment	Section 7.01 (c)
Project	Preamble
Project Documents	Section 8.01
Project Site	Preamble
Services	Article II Preamble
Standard Retainage	Section 7.03(a)
Third-Party Agreements	Section 2.02
Third-Party Service Providers	Section 2.01

Exhibit B  
Schedule of Values



Exhibit C  
Existing Third-Party Service Providers

Accuracy Glass & Mirror, Inc.  
CabineTec  
Carpets N More  
Cell Crete Corporation  
Concrete Visions  
Creative Home Theaters, Inc.  
Dependable Glass & Mirror  
Distinctive Marble  
Executive Plastering  
Gilbert & Associates  
Granite Construction  
Granite Plus  
Helix Electric  
Hi Tech Fabrication  
Isulpro Projects  
Interstate Plumbing & Air  
Jeff Heiti Plumbing & Fire, LLC  
Larry Methvin Installation  
Las Vegas Pipeline  
The Masonry Group Nevada, Inc.  
Nevada Gypsum  
Nevada Pre Fab Engineers  
OTIS Technologies  
PDM Glass & Mirror  
Pools by Grube  
PR Construction  
Sierra Reinforcing  
Sierra Waterproofing  
Storm Water Programs  
Sunset Steel Erectors  
H.A. Fabrications  
California Drafting  
Silver State Fireplaces  
Sliding Door Company  
The Painting Company  
ThyssenKrupp Elevator  
Tri-City Drywall  
WRG Design, Inc.  
Whirlpool Corporation  
Zitting Construction  
Wholesale Door & Window  
Steel Engineers Incorporated

**Purchase Orders**

Calico Construction Supply

H.D. Supply Waterworks  
Ready Mix, Inc.

**Vendors**

Advance Office Supply  
Alternative Office Systems  
Design Space Modular Buildings  
Holman's of Nevada, Inc.  
JSS Jackpot Sanitation Services  
Las Vegas Reprographics  
Mercury LDO Reprographics  
National Construction Rentals  
National Construction Rentals  
Republic Services  
Sunstate Equipment  
Temp Power Systems  
Wireless Telecorp, Inc.

**Exhibit D**  
**Onsite Personnel Employed by General Contractor**

**General Contractor staffing  
to be paid at Developer's  
Expense:**

<i>Position</i>	<i>Monthly Rate</i>	<i>% Allocated to Project</i>	<i>Monthly Rate to be Paid on Project</i>
Project Executive	Included	As reasonably required	
General Superintendent	\$15,600.00	100%	\$15,600.00
Project Superintendents	Base Salary Plus 35% Burden, plus Benefits	100%	Varies
Project Administrator/Accountant	\$8,493.00	60%	\$5,095.80
Safety Officer: 2.15 inspections per month		-	
	2.15 inspections x \$ 947.00 per month	-	\$2,036.00

1. All Benefits and the entire Burden are included in Monthly Rate for the General Superintendent and Project Administrator/Account.

2. For each Project Superintendent, the Benefits will include all benefits given to such Project Superintendent pursuant to such Project Superintendent's offer letter which may include, without limitation, vacation, holidays, vehicle allowance, cell phones, personal days, vehicle fuel, and insurance. Furthermore, such benefits shall be limited by the terms of such offer letter.

Exhibit E  
Previously Completed Work\*

Building 2

Concrete podium structure is complete  
Rough electric is complete  
Rough plumbing is complete  
Rough HVAC is complete  
Roof is 100% complete  
Fire Sprinkler is 100%  
Windows are 100%  
Drywall is 70%  
Lath is 95% complete  
Stucco is 50% complete  
Elevator is 10% complete  
Stairs are 45% complete  
Insulation is complete  
Interior doors and jambs are 10% complete  
Ramp to garage is complete  
Pony walls in court yard are 90%  
Switchgear is in place

Building 3

Concrete podium structure is complete  
Roof is 75%  
Fire sprinkles are 70% complete  
Windows are 95%  
Dens glass is 95% complete  
Elevator is 5% complete  
Stairs are 45% complete  
Interior doors and jambs have not started  
Switchgear is in place  
Ramp to garage is not complete  
Garage for 2 & 3 is complete but concrete is unacceptable

Building 7

Concrete podium structure is complete  
Garage is 95% complete but concrete is unacceptable  
Generator is in place but not installed  
1st through 7th framing complete  
1st through 6th fire sprinklers rough are complete  
1st through 5th HVAC rough is complete  
1st through 5th plumbing rough is complete  
1st through 3rd electrical rough is complete  
Roof decking is not complete  
9th floor deck is not complete  
9th floor pools are not complete  
Curtain wall clips are not complete

1<sup>st</sup> through 3<sup>rd</sup> rough HVAC is complete  
1<sup>st</sup> through 3<sup>rd</sup> rough low volt is complete  
4<sup>th</sup> floor soffits have not been installed  
Elevators have not started  
Corridors drywall has not started  
1st floor Corridor lid framing is 70% complete  
HVAC compressors are in place on the roof  
Curb wall on podium has been poured water proofing is not complete  
Post for balcony rails have been installed  
Flashing for patio deck pour has been installed  
Switchgear is in place

Other

Podium fix in buildings 8 & 9 is 60% complete  
Civil infrastructure is 95% complete

\*This Exhibit E is subject to modification within 24 hours of General Contractor's inspection of the Project Site which must take place within 72 hours of the Effective Date.

Exhibit F  
Insurance Policies Provided by Developer

The Laborers Joint Trust Fund

DATE: 09/26/17

CHECK # 28744

REFERENCE: Cosmo Bamboo & Pools Projects  
Diversified Demolition Co

AMOUNT: 5600.16

SF4001HG-1

TO REORDER, CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 702-371-4444

C7GJ280010000

V10SF008409

Safeguard

#55611

SENDER COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p><input checked="" type="checkbox"/> Complete items 1, 2, and 3.</p> <p><input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you.</p> <p><input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span></p> <p>X</p>	
<p>1. Article Addressed to:</p> <p>Urban Law Firm c/o Nathan Ring 4270 S. Decatur Blvd Ste A9 Las Vegas NV 89103</p>		<p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7017 0190 0000 4214 2509</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>9590 9402 2612 6336 7734 28</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <span style="float: right;"><input type="checkbox"/> Priority Mail Express®</span></p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <span style="float: right;"><input type="checkbox"/> Registered Mail™</span></p> <p><input checked="" type="checkbox"/> Certified Mail® <span style="float: right;"><input type="checkbox"/> Registered Mail Restricted Delivery</span></p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <span style="float: right;"><input checked="" type="checkbox"/> Return Receipt for Merchandise</span></p> <p><input type="checkbox"/> Collect on Delivery <span style="float: right;"><input type="checkbox"/> Signature Confirmation™</span></p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <span style="float: right;"><input type="checkbox"/> Signature Confirmation Restricted Delivery</span></p> <p>Mail Restricted Delivery (00)</p>	

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

**Certified Mail**

- A receipt (this form)
- A unique identifier
- Electronic verification
- A record of delivery signature that is recorded for a specified period

**Important Remind**

- You may purchase First-Class Mail®, Priority Mail®, or Certified Mail® service
- Certified Mail service is available for international mail
- Insurance coverage with Certified Mail or Certified Mail so insurance coverage certain Priority Mail
- For an additional fee, an endorsement on the following service
- Return receipt or delivery (indicate)
- You can request electronic verification complete PS Form 3811, attach

PS Form 3811, April

**Amended and Restated  
ManhattanWest  
General Construction Agreement**

This Amended and Restated General Construction Agreement (the "Agreement") is made as of August 25, 2008 (the "Effective Date") between Gemstone Development West, Inc. ("Developer") and Camco Pacific Construction Company, Inc. ("General Contractor") with the following Nevada General Contractor License Number: 37507 Unlimited.

**Recitals**

Developer and General Contractor entered into the ManhattanWest General Construction Agreement, dated August 15, 2008 (the "Original Agreement") for the completion of Buildings 2, 3, 7, 8, and 9 of the ManhattanWest mixed-use development project described in the Contract Documents (the "Project") and located at the following Assessors Parcel Numbers: 163-32-101-003, 163-32-101-004, 163-32-101-005, 163-32-101-010, and 163-32-101-014 (the "Project Site").

Developer and General Contractor wish to amend and restate the Original Agreement as set forth in this Agreement.

**Agreement**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and General Contractor hereby agree that the Original Agreement is hereby amended and restated as set forth below.

**ARTICLE I  
GENERAL PROVISIONS**

**1.01 Contract Documents.** General Contractor has received the drawings and specifications for the Project set forth on the Planwell PDS site located at [https://order.e-arc.com/arcEOC/PWELL\\_Project\\_main.asp?pvt=70-1-11863](https://order.e-arc.com/arcEOC/PWELL_Project_main.asp?pvt=70-1-11863) as of the Effective Date (the "Contract Documents"). The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by General Contractor. Upon delivery to, and consent by, General Contractor of any updates to the Contract Documents, such updates shall be automatically incorporated into this Agreement.

**1.02 Defined Terms.** Unless otherwise defined in this Agreement, all capitalized terms contained in this Agreement are defined in the Glossary of Defined Terms attached to this Agreement as Exhibit A.

**1.03 Schedule of Values.** Attached to this Agreement as Exhibit B is the Schedule of Values.

**ARTICLE II**





## GENERAL CONTRACTOR RESPONSIBILITIES

In exchange for the consideration to be provided to General Contractor pursuant to Article VI, General Contractor shall provide the services set forth below (the "Services");

**2.01 Third-Party Service Providers.** General Contractor shall engage licensed and insured contractors, subcontractors, sub-subcontractors, vendors and suppliers (the "Third-Party Service Providers") to perform the Work; provided however, that General Contractor shall not be required to source or negotiate with the Third-Party Service Providers. General Contractor may not replace any Third-Party Service Provider without the prior written consent of Developer. Developer may require the replacement of any Third-Party Service Provider at anytime with or without cause; provided, however, that if Developer is terminating a Third-Party Service Provider without cause, Developer must first obtain General Contractor's consent, which will not be unreasonably withheld. General Contractor shall engage the Third-Party Service Providers listed on Exhibit C (the "Existing Third-Party Service Providers"). All other Third-Party Service Providers engaged by General Contractor are referred to as "New Third-Party Service Providers".

**2.02 Third-Party Agreements.** General Contractor shall incorporate the relevant terms and obligations of this Agreement into its contracts, purchase orders, and other agreements with any New Third-Party Service Providers (the "Third-Party Agreements"); Developer intends to assign the contracts for the Existing Third-Party Service Providers to General Contractor; provided however, that Developer may elect to terminate the existing contracts with some Existing Third-Party Service Providers, and in such event, new Third-Party Agreements will be executed. Within 10 days of the execution of any Third-Party Agreement, General Contractor shall furnish to Developer copies of such Third-Party Agreement. The terms of each Third-Party Agreement shall expressly set forth that Developer is a third-party beneficiary of such Third-Party Agreement, including, without limitation, any indemnity, warranty, insurance, or liquidated damage provisions obtained by General Contractor from any Third-Party Service Provider.

**2.03 General Contractor Staffing.** Except as set forth in the next sentence, General Contractor shall employ at its own expense any staff that is not primarily located on the Project Site. General Contractor shall employ at Developer's expense the personnel identified on Exhibit D at the rates stated therein. Upon receipt of written notice from Developer, General Contractor shall (a) employ additional personnel at Developer's expense and (b) remove from the Project any employee; provided however, that, in such notice, Developer must provide reasonable grounds for such removal request.

**2.04 Payment Processing.** General Contractor shall review and approve the Payment Applications pursuant to the terms of Article VII. Upon receipt of

each Progress Payment, General Contractor shall distribute such funds to the Third-Party Service Providers pursuant to Article VII.

**2.05 Lien Releases.** General Contractor shall be responsible for obtaining partial conditional and unconditional lien waivers from all Third-Party Service Providers in connection with each Progress Payment; conditional lien waivers will be provided for the current payment application and unconditional lien waivers will be provided for the prior progress payment. After Final Completion, General Contractor shall be responsible for obtaining final conditional and unconditional lien waivers from all Third-Party Service Providers and from all other persons or entities that could possibly have any right to make a lien against the Project or the Project Site; final conditional lien waivers will be provided with the final payment application and final unconditional lien waivers will be provided after Final Payment.

**2.06 Risk Management Inspections.** General Contractor shall conduct periodic safety inspections of the Project Site at Developer's expense.

**2.07 Permits.** General Contractor shall accept and retain all permits necessary for the performance of the Work; provided however, that General Contractor shall assign all permits to Developer or its designee upon receipt of written notice from Developer.

**2.08 Meetings.** Notwithstanding any provision of this Agreement, upon receipt of a written request from Developer to meet with any Third-Party Service Provider, General Contractor will immediately schedule, hold, and attend such meeting or meetings with Developer and such Third-Party Service Provider. Notwithstanding any provision of this Agreement, Developer may meet independently with any Third-Party Service Provider at anytime, and each Third-Party Agreement shall require the corresponding Third-Party Service Provider to attend such meetings.

**2.09 Correspondence.** General Contractor shall, within 24 hours, provide Developer a copy of any correspondence or agreements with any Third-Party Service Provider or government or regulatory agency.

### **ARTICLE III EXPRESS EXCLUSIONS FROM THE SERVICES**

Any items not set forth in Article II are not considered part of the Services, including, without limitation, the items set forth below (the "Exclusions");

**3.01 Developer Responsibilities.** The following items shall be the sole responsibility of Developer, and Developer is required to perform these responsibilities in accordance with all applicable federal, state, and local laws, statutes, codes, ordinances, building codes, rules and regulations, and are not, therefore, part of the Services:

(a) Developer shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures necessary for or related to the Work.

(b) Developer shall provide, or cause to be provided, and shall pay for engineering, labor, materials, equipment, tools, cartage, construction services and Work, construction equipment and machinery, water, heat, utilities, transportation, safety precautions and programs, and other facilities and services necessary for proper construction, execution and completion of the Work.

(c) Developer shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. General Contractor and General Contractor's accountants shall be afforded access to, and shall be permitted to audit and copy, Developer's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work. General Contractor shall treat as confidential all records obtained from Developer pursuant to this Section 3.01(c), subject to any legal requirements to disclose such information (e.g., subpoenas, audits, etc.).

(d) Developer shall be responsible for all shop drawings, product data, samples and similar submittals required by the Project.

(e) Developer shall provide an onsite trailer which shall be shared by General Contractor and Developer.

(f) Developer shall provide any required security to the Project Site, all field measurements, assessments of field conditions, and as-built drawings.

(g) Developer shall be solely responsible for (i) insuring that the Contract Drawings are consistent with each other and adequately describe the Work; (ii) distributing current and coordinated Contract Documents to all of the Third-Party Service Providers; and (iii) maintaining at the Project Site any required copies of the Contract Drawings.

(h) Developer shall be solely responsible for obtaining any and all approvals, permits, fees, bonds, licenses, and inspections of the various government agencies, utility providers, or any other third-parties including, without limitation, the Certificate of Occupancy or Certificate of Completion for each Building.

(i) Developer shall be solely responsible for performing and coordinating all of the services required to obtain any utility services required by the Project.

(j) Developer shall be solely responsible for maintaining safety precautions and programs in connection with the Work.

(k) Developer shall be liable for damage or loss to the property at the Project Site.

(l) Developer shall be responsible for all costs relating to or arising out of the termination of any Third-Party Service Provider.

**3.02 Express Exclusions.** The following items are expressly excluded from the Services, but this list is not intended to be exhaustive or complete, and the fact that an item is not listed below shall not imply that such item is included in the Services; only those items expressly identified in this Agreement as General Contractor's responsibility are included in the Services.

(a) General Contractor shall not be responsible for any of the costs, fees, or expenses related to the Work.

(b) General Contractor shall not be required to deliver any daily reports.

(c) General Contractor shall not be responsible to Developer for acts, errors and omissions of Developer or any Third-Party Service Provider.

(d) General Contractor shall not be responsible for the design of the Project.

(e) General Contractor shall not be responsible for the performance of the Third-Party Service Providers.

(f) General Contractor shall not be responsible for any cost overruns by Third-Party Service Providers.

(g) General Contractor shall not be responsible for delays by any Third-Party Service Provider.

#### ARTICLE IV SCHEDULE AND COMPLETION

**4.01 Completion.** The Work within or related to each Building shall be deemed completed upon the (a) completion of the Work in such Building and the corresponding common area around such Building to the satisfaction of Developer and (b) issuance of the Certificate of Occupancy or Certificate of Completion for such Building (collectively, a "Building Completion"). The Work for the entire Project shall be completed upon Building Completion for Buildings 2, 3, 7, 8, and 9 (the "Final Completion").

**4.02 Project Schedule.** The Work will be performed pursuant to the ManhattanWest Camco Pacific Construction Schedule, dated August 22, 2008, previously compiled by Developer and delivered to General Contractor. Preparation and amendment of the construction schedule shall be Developer's responsibility. Except for the Building Liquidated Damages that may be assessed and payable strictly pursuant to Section 9.03, General Contractor shall not be held responsible or be required to pay any form of damages or compensation if any Building Completion or the Final Completion is not attained pursuant to any schedule or timeframe; provided however, that General Contractor shall perform the Services pursuant to any reasonable timeframe established by Developer.

## **ARTICLE V WARRANTY AND INDEMNITY**

**5.01 Warranty.** The Third-Party Agreements shall (a) require each Third-Party Service Provider to issue a two year warranty pursuant to the terms to be provided by Developer (the "Express Warranty") and (b) Developer is a third-party beneficiary of the Express Warranty. General Contractor (i) hereby expressly disclaims any express or implied warranty of any kind in connection with the Work and (ii) shall have no duty to repair any of the Work in connection with or pursuant to the Express Warranty or any such express or implied warranty.

**5.02 Completed Work Release.** Set forth on Exhibit E hereto is an update of the status of the Work as of the Effective Date (the "Previously Completed Work"). It is expressly understood that General Contractor did not perform and shall bear no responsibility for the Previously Completed Work.

**5.03 Indemnification.**

(a) To the fullest extent permitted by law, Developer agrees to defend (with counsel reasonably acceptable to General Contractor), indemnify and hold harmless General Contractor and General Contractor's agents and employees from any claims, demands, losses and liabilities to or by any and all persons or entities (including without limitation, Developer, the architect, engineers, governmental agencies, and any Third-Party Service Provider and their respective employees, agents, licenses, or representatives) arising out of or from the (i) any breach of this Agreement by Developer; (ii) the negligence or willful misconduct of Developer or any Third-Party Service Provider or any of their agents or employees; and (iii) the Work, including, without limitation, any claims for design, product or construction defects arising from or related to the Work or the Project (collectively, the "Covered Claim").

(b) In the event that General Contractor receives written notice of a Covered Claim, General Contractor shall immediately provide written notice of such Covered Claim to Developer.

(c) Upon receipt of any notice of a Covered Claim from General Contractor, Developer shall, at its cost and expense, assume and control the defense of such Covered Claim for General Contractor. General Contractor may only engage its own legal counsel to defend a Covered Claim at General Contractor's own expense; provided however, that in the event that Developer fails to provide a legal defense pursuant to this Section 5.03 and General Contractor must engage its own legal counsel to provide such legal defense, Developer shall be responsible for the cost of such legal counsel. General Contractor may not settle any Covered Claim without the express written consent of Developer.

(d) In connection with the defense of any Covered Claim by Developer, General Contractor shall do both of the following:

(i) Cooperate with Developer's efforts to defend any Covered Claim, including, without limitation, providing documents and uncompensated access to General Contractor's employees and agents for purposes of gathering evidence and providing testimony related to the Covered Claim; provided however, that Developer will compensate General Contractor for time spent by General Contractor's senior management in coordination meetings related to such defense; and

(ii) Accept any settlement of a Covered Claim that (A) is presented to General Contractor by Developer; (B) does not require the payment of any damages or fees by General Contractor; and (C) does not admit liability of, allow a judgment to be entered against, or result in imposition of governmental penalties or sanctions against, General Contractor or its contractor's license.

(e) Notwithstanding this Section 5.03, each Third-Party Agreement shall provide that (i) the corresponding Third-Party Service Provider will indemnify General Contractor and Developer for the Work being performed by such Third-Party Service Provider pursuant to such agreement and (ii) Developer is a third-party beneficiary of such indemnity.

(f) The provisions of this Section 5.03 shall survive the expiration or termination of this Agreement.

## ARTICLE VI COMPENSATION FOR THE SERVICES

6.01 **Fees.** In exchange for the Services, Developer shall pay to General Contractor an amount equal to \$100,000.00 per month (the "General Contractor Fee"); provided however, that, upon the issuance of the Certificate of Occupancy or Certificate of Completion for four of the five Buildings, the General Contractor Fee shall be reduced to \$30,000.00 per month until Final Completion. For the month in which such adjustment to the General Contractor

Fee takes place, such adjustment shall be calculated pro rata based on the number of days in such month that each of the two levels of General Contractor Fee applied.

**6.02 Expenses.** In addition to the General Contractor Fee, General Contractor may charge additional fees for the following (the "General Contractor Expenses"):

(a) All costs and expenses associated with the employment of onsite personal pursuant to Section 2.03.

(b) All costs and expenses associated with the inspections to be conducted pursuant to Section 2.06.

**6.03 Discounts, Rebates, and Refunds.** Discounts obtained on payments made by General Contractor shall accrue 100% to Developer. In addition, trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue 100% to Developer. Developer shall be entitled to all savings derived from value engineering.

**6.04 Taxes.** General Contractor shall be solely responsible for the taxes to be paid on the General Contractor Fee. Developer shall pay all sales, consumer, use and similar taxes levied in connection with the Work.

## **ARTICLE VII PAYMENT FOR THE WORK**

### **7.01 Progress Payments.**

(a) Pursuant to the Third-Party Agreements, Third-Party Service Providers shall deliver their individual payment applications to General Contractor. Developer may, for any reason, refuse to approve all or a portion of any application for payment received from a Third-Party Service Provider.

(b) On approximately the first business day of each month, General Contractor shall prepare applications for payment for the previous month on forms similar to AIA G702 and G703 including separate SOV and AIA G703 pages for each Building as well as the corresponding common areas (the "Application for Payment").

(i) Each Application for Payment shall be based on the most recent Schedule of Values. The Schedule of Values shall allocate the Cost of the Work among the various portions of the Work, and will be periodically updated by General Contractor (subject to approval by Developer) to reflect buy-out and changed conditions. The General Contractor's Fee and General Contractor Expenses shall be shown as separate items.

(ii) Applications for Payment shall show the Percentage of Completion of each portion of the Work as of the end of the period covered by the Application for Payment. The "Percentage of Completion" shall be the percentage of that portion of the Work which has actually been completed.

(c) Upon delivery of an executed Application for Payment, Developer may refuse to approve all or a portion of such Application for Payment; provided however, that any such refusal must be reasonable, in good faith, and accompanied by a written explanation of such refusal. Upon receipt of a refusal or partial refusal, General Contractor will revise the Application for Payment accordingly and resubmit it to Developer for approval and continue this revision process until such Application for Payment is approved by Developer. Upon approving such Application for Payment, Developer shall submit, to Developer's lender or such lender's authorized designee, the corresponding draw application for the undisputed amount to be paid pursuant to such Application for Payment (the "Draw Application"). Thereafter, the amount requested in a Draw Application shall be paid within 40 days of the submission of such Draw Application (the "Progress Payment").

(d) The amount of each Progress Payment shall be computed as follows:

(i) take that portion of the Cost of the Work properly allocable to completed Work as determined by multiplying the Percentage of Completion of each portion of the Work by the share of the Cost of the Work allocated to that portion of the Work in the most recent Schedule of Values;

(ii) add that portion of the Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation into the Work, or if approved in advance by Developer, suitably stored off of the Project Site at a location agreed upon in writing;

(iii) subtract the aggregate of previous Progress Payments made by Developer;

(iv) subtract the applicable Standard Retainage;

(v) add the General Contractor Fee and payment for any General Contractor Expenses;

(vi) subtract the shortfall, if any, resulting from errors in previous Progress Payments subsequently discovered by Developer's accountant; and

(vii) subtract amounts, if any, that are disputed by Developer.



(e) Upon receipt of the Progress Payment, General Contractor shall promptly pay each Third-Party Service Provider the amount represented by the portion of the Percentage of the Work Completed that was completed by such Third-Party Service Provider during the period covered by the corresponding Progress Payment. General Contractor shall, by appropriate agreement with each New Third-Party Service Provider, require each New Third-Party Service Provider to make payment to sub-contractors in a similar manner.

#### 7.02 Final Payment.

(a) A final payment, constituting the entire unpaid balance of the Cost of the Work (the "Final Payment"), shall be made by Developer to General Contractor when the following conditions have been met:

- (i) Final Completion is obtained;
- (ii) the General Contractor has fully performed the Services; and
- (iii) a written statement that General Contractor knows or has no reason to suspect that any additional costs or indebtedness exists in connection with the Work.

(b) Notwithstanding and without limiting any other provision in the Contract Documents, the Final Payment is conditioned upon satisfaction of all conditions applicable to such payment imposed by any funding construction draws as well as Developer's reasonable approval.

(c) Payment and acceptance of Final Payment by Developer and General Contractor, respectively, shall constitute a waiver of all claims by Developer and General Contractor except such claims as are previously made in writing and identified as unsettled at the time of the final Application for Payment.

#### 7.03 Retainage.

(a) No retention shall be withheld from the General Contractor Fee or the General Contractor Expenses. General Contractor shall withhold the maximum legal retainage amount set forth in each APCO Third-Party Agreement. Each New Third-Party Agreement will provide for the withholding of retainage from the corresponding New Third-Party Service Provider in the amount of 10% of each Progress Payment.

(b) Any remaining retention for Third-Party Service Providers shall be released for payment to the Third-Party Service Providers (i) on the date that (A) Final Completion is attained and (B) all outstanding disputes between

Developer and General Contractor and Developer and any Third-Party Service Providers have been resolved, and any liens against the Project related to such disputes have been removed or (ii) upon the express written approval of such release, or a partial release to certain Third-Party Service Providers, executed by Developer and General Contractor.

#### **ARTICLE VIII OWNERSHIP AND USE OF DOCUMENTS**

**8.01 Ownership.** All documents related to the Work and the Project including documents that are furnished or obtained by General Contractor, including, without limitation, any drawings, specifications, or designs (the "Project Documents") are the sole property of Developer and may be used by Developer for any purpose.

**8.02 Subsequent Use.** To the extent that any Project Documents are used by Developer for a subsequent project that does not involve General Contractor, General Contractor shall not be professionally liable for the use of such Project Documents on such subsequent project.

**8.03 Non-Publication.** Submission or distribution of any Project Documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of common law copyrights or other reserved rights.

#### **ARTICLE IX INSURANCE, BONDS, AND LIQUIDATED DAMAGES**

**9.01 Insurance.** Developer shall obtain and maintain, at its sole cost, the types and amounts of insurance coverage set forth in the insurance binder attached hereto as Exhibit F. General Contractor shall not be (a) responsible for any insurance deductibles, self-insured retention, or related insurance expenses related to such policies or (b) required to obtain any additional insurance pursuant to such policies. Notwithstanding this Section 9.01, each Third-Party Agreement shall provide insurance provisions as are delivered to General Contractor by Developer prior to the execution of the corresponding Third-Party Agreement.

**9.02 Bonds.** General Contractor will not be required to furnish any performance bonds or payment bonds for the Project.

**9.03 Liquidated Damages.**

(a) The "Required Completion Date" is the date that a given Building Completion must be attained. The corresponding Required Completion Dates for the Buildings are set forth below:

Building	Required Completion Date
Building 2	October 31, 2008
Building 3	October 31, 2008
Building 7	December 31, 2008
Building 8	November 30, 2008
Building 9	November 30, 2008

(b) Building Completion must be attained on or prior to the applicable Required Completion Date (as adjusted only by Change Orders approved by Developer). If the Building Completion for any Building is not attained on or prior to the corresponding Required Completion Date, Developer may retain and keep as liquidated damages (and not as a penalty) an amount equal to \$15,000 for each and every calendar day after the Required Completion Date that Building Completion is delayed for such Building (the "Building Liquidated Damages").

(c) Developer and General Contractor acknowledge and agree that any liquidated damages assessed under Section 9.03(b) are (i) due to the difficulty or impossibility of calculating actual costs and damages of delays, (ii) a reasonable approximation of the costs and damages that would be incurred by Developer for delays, and (iii) not a penalty. Developer's planning and costs for completing its entire construction process and marketing its condominiums include hiring of employees, purchase and lease of equipment, advertising, accepting deposits and reservations for the sales of units, and addressing closing costs all of which are adversely impacted by delays in any Building Completion. In addition, delays in any Building Completion may cause additional expenses for contract and construction administration, accounting, and cost of capital. Nothing in Section 9.03(b) shall limit in any manner the remedies and/or damages that may be obtainable by Developer upon any other breach of this Agreement by General Contractor.

(d) Each Third-Party Agreement shall provide a liquidated damages provision that is similar to this Section 9.03 and places the Third-Party Service Providers on notice that they are responsible to the Developer and General Contractor for liquidated damages. The Building Liquidated Damages shall be strictly assessed by Developer against General Contractor pursuant to the terms of this Section 9.03. General Contractor shall similarly strictly assess Building Liquidated Damages against its Third-Party Service Providers pursuant to this Section 9.03 and the corresponding Third-Party Agreement. Notwithstanding the previous sentence of this Section 9.03(d) and any other provision of this Agreement, General Contractor's obligation to pay Developer any assessed Building Liquidated Damages will not be triggered until such time and will be limited to the extent that General Contractor actually collects from the corresponding Third-Party Service Providers such amounts owed for liquidated damages by such Third-Party Service Providers (i.e., General Contractor will not be required to pay any Building Liquidated Damages out of its own funds, but will

only pay the amount that General Contractor actually collects from Third-Party Service Providers). General Contractor shall use its best efforts to recover all such liquidated damage amounts from the applicable Third-Party Service Providers as quickly as possible, including any costs, fees, or expenses incurred by General Contractor in the collection of the Building Liquidated Damages from the Third Party Service Provider. Developer shall reimburse General Contractor, within 15 days of receipt of an invoice, for the reasonable expert and legal fees and costs, if any, incurred by General Contractor in connection with collecting such liquidated damage amounts from such Third-Party Service Providers provided that such expert and legal fees and costs are not first recovered from the applicable Third-Party Service Providers.

## ARTICLE X CHANGES IN THE WORK

### 10.01 Change Orders.

(a) A "Change Order" is a written order signed by Developer and General Contractor, authorizing a change in the Work.

(b) Developer, without invalidating this Agreement, may initiate changes in the Work by executing and delivering to General Contractor a Change Order setting forth the work to be performed, the Third-Party Service Provider to perform such work, and any other terms of such engagement. Upon receiving a Change Order, General Contractor will execute such Change Order and execute or amend any Third-Party Agreements as are necessary to perform the Work set forth in such Change Order; provided that the Third-Party Service Provider has agreed to the terms of the Change Order. General Contractor shall receive no additional compensation in connection with any Change Order.

(c) Notwithstanding any provision of this Agreement, Developer may unilaterally terminate any Change Order prior to the completion of the Work set forth in such Change Order; provided that the Third-Party Service Provider consents thereto. Upon such termination, a deductive change order for the amount of the uncompleted Work set forth in the terminated Change Order shall be issued by General Contractor.

## ARTICLE XI TERMINATION OF AGREEMENT

**11.01 Term.** The term of the Agreement commences on the Effective Date. Provided that this Agreement is not terminated pursuant to Section 11.02, the term of the Agreement ends on the date of Final Completion.

### **11.02 Termination by Developer With Cause.**

(a) if General Contractor breaches any provision of this Agreement and fails to cure such breach within 48 hours of receiving written notice of such breach from Developer (or, if the breach cannot reasonably be cured within 48 hours, General Contractor does not initiate to cure within 48 hours and thereafter diligently pursue the cure to completion). Developer may terminate the Agreement without prejudice to any other rights or remedies available to Developer and after giving General Contractor three days' written notice (in addition to the 48 hours notice pursuant to the above cure period) and do the following:

(i) Take possession of the Project Site, and all materials, equipment, tools, and construction equipment and machinery thereon owned by General Contractor to the extent that such items are incorporated into the Buildings or the Project Site;

(ii) Accept assignment of any Third-Party Agreements pursuant to Section 11.03; and

(iii) Obtain the Services by whatever reasonable method that Developer deems expedient.

(b) In the event of a termination pursuant to Section 11.02(a), (i) General Contractor shall not be entitled to receive any further payment until the Work is finished and (ii) upon completion of the Work, General Contractor shall pay any costs and expenses incurred by Developer to perform or have a third-party perform the Services in excess of the unpaid portion of the General Contractor's Fee and General Contractor Expenses.

**11.03 Assignment.** Each Third-Party Agreement for a portion of the Work is hereby assigned by General Contractor to Developer provided that such assignment is effective only after termination of the Agreement by Developer for cause pursuant to Section 11.02 and only for those Third-Party Agreements which Developer accepts by notifying General Contractor and the applicable Third-Party Service Provider in writing. General Contractor shall execute and deliver all such documents and take all such steps as Developer may require for the purpose of fully vesting in Developer the rights and benefits of General Contractor under such documents. Upon the acceptance by Developer of any Third-Party Agreement, subject to the other terms of this Article XI, Developer shall pay to the corresponding Third-Party Service Provider any undisputed amounts owed for any Work completed by such Third-Party Service Provider, prior to the underlying termination for which Developer had not yet paid General Contractor prior to such underlying termination.

## **ARTICLE XII CLAIM AND DISPUTE RESOLUTION**

**12.01 Definition.** The term "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of any Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between Developer and General Contractor arising out of or relating to the Agreement. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**12.02 Time Limits on Claims.** A Claim may be brought by either party at anytime prior to Final Completion. For any Claim that may be brought by either party after Final Completion, such Claim must be initiated within a reasonable number of days after the claimant first recognizes the condition giving rise to the Claim; provided however, that the parties may mutually agree to postpone the resolution of any Claim. Claims must be initiated by written notice to the other party.

**12.03 Mediation.**

(a) Any Claim shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party; provided, however, that a party may initiate a lawsuit to prevent the statute of limitations from expiring so long as that party seeks to have the lawsuit stayed pending mediation and arbitration as provided in this Agreement.

(b) The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the date that such Claim arises. Request for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or initiation of a lawsuit but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

(c) The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Las Vegas, Nevada. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**12.04 Arbitration.**

(a) Any Claim shall be subject to arbitration, except those claims that are required by statute to be litigated (e.g., foreclosure of a mechanic's lien). Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 12.03.

(b) Claims not resolved by mediation shall be decided by arbitration which shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the date that such Claim arises. The demand for arbitration shall be filed in writing with the other party to the Agreement and the American Arbitration Association.

(c) A demand for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

(d) The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

(e) The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**12.05 Continued Performance.** Notwithstanding any provision of this Agreement, in the event of any unresolved Claim, dispute, or controversy between Developer and General Contractor related to the Services or this Agreement, General Contractor shall diligently continue to perform the Services to the full extent practicable pending resolution of the unresolved Claim, dispute, or controversy and Developer shall continue to make payment required under this Agreement for all Work that is not directly implicated in the Claim, dispute, or controversy.

**ARTICLE XIII  
MISCELLANEOUS PROVISIONS**

**13.01 Access to the Project Site.** Developer shall have access to the Project Site, subject to any restrictions required by insurance policies and reasonable rules or regulations promulgated by General Contractor. Developer may expel any Third-Party Service Providers and any other third-party from the Project Site with reasonable cause.

**13.02 Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by electronic mail or facsimile, upon transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth on the attached signature page or such other address as either party may specify in writing.

**13.03 Merger Clause.** This Agreement represents the entire and integrated agreement between Developer and General Contractor related to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

**13.04 Amendment and Termination.** Subject to Article XI, this Agreement may be amended or terminated only by written instrument executed by both Developer and General Contractor.

**13.05 Assignment of this Agreement.** Developer may freely assign this Agreement but shall provide written notice of any assignment to General Contractor. Except as set forth in this Agreement, General Contractor may not subcontract, assign, or otherwise delegate its obligations under this Agreement without Developer's prior written consent. Subject to the foregoing, this Agreement will be for the benefit of General Contractor's and Developer's successors and assigns, and will be binding on any assignees.

**13.06 Governing Law; Venue.** This Agreement shall be governed in all respects by the laws of the State of Nevada, as such laws are applied to agreements entered into and to be performed entirely within Nevada between Nevada residents and without regard to any conflict of law provisions. Subject to Article XI, any action or proceeding arising from or relating to this Agreement may only be brought in the applicable court in Las Vegas, Nevada, and each party hereby irrevocably submits to the jurisdiction and venue of such courts.

**13.07 Attorney's Fees:** In the event that any negotiation, suit, action, arbitration, or mediation is instituted to enforce or interpret any provision in this Agreement or to resolve any dispute arising from or related to the Work, the



prevailing party in such negotiation, suit, action, arbitration, or mediation shall be entitled to recover, in addition to any other relief to which it is entitled, from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

**13.08 Unenforceability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

**13.09 Waivers and Non-Waiver of Remedies.** No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of that party's consent to or approval of any subsequent act by the other party. A party's failure to declare a breach of this Agreement for a particular default by the other party shall not be a waiver of any preceding or subsequent breach by the other party. Unless expressly stated otherwise in this Agreement, nothing in this Agreement shall limit the rights and remedies available to any party for any breach of this Agreement by the other party.

**13.10 Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute one and the same agreement. Signatures to this Agreement may be transmitted via facsimile or PDF, and such signatures shall be deemed to be originals.

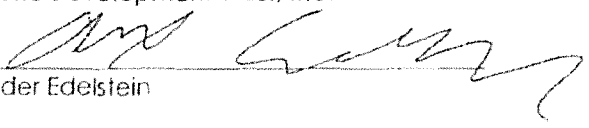
(Signature Page Attached)



This Agreement is entered into as of the Effective Date.

**DEVELOPER:**

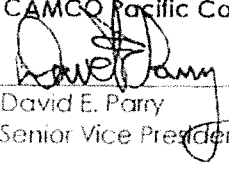
Gemstone Development West, Inc.

  
Alexander Edelstein

9121 W. Russell Rd., Suite 117  
Las Vegas, NV 89148  
Attention: Peter Smith  
Phone: (702) 614-3193  
Email: [pete@gemstonedev.com](mailto:pete@gemstonedev.com)

**GENERAL CONTRACTOR:**

CAMCO Pacific Construction Company, Inc.

  
David E. Parry  
Senior Vice President

2925 E. Patrick Lane, Suite G  
Las Vegas, NV 89120  
Attention: David E. Parry  
Phone: (702) 798-6611  
Email: [dparry@camcopacific.com](mailto:dparry@camcopacific.com)

[CAMCO Agreement Signature Page]

**Exhibit A**  
**Glossary of Defined Terms**

**Defined Terms:**

1. "Building" means any building within the Project.
2. "Certificate of Occupancy" means the permission from Clark County and any other applicable regulatory agency necessary for Developer to conduct the close of escrow for the sale of the individual units in the Project.
3. "Cost of the Work" means the aggregate cost to perform the Work pursuant to the Schedule of Values.
4. "APCO Third-Party Service Agreement" means the contracts, purchases orders, and other agreements between Asphalt Products Corporation, (dba APCO Construction) and any Third-Party Service Providers in effect as of the Effective Date.
5. "Schedule of Values" means a list delivered by General Contractor to Developer that sets forth (a) each component of the Work and (b) the corresponding budgeted cost for each component of the Work.
6. "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment and services. The Work may constitute the whole or a part of the Project.

**Additional Terms.** Each of the following terms is defined in the section or reference set forth opposite such term below.

Term	Section
Agreement	Preamble
Application for Payment	Section 7.01 (b)
Building Liquidated Damages	9.03(b)
Final Completion	Section 4.01
Change Order	Section 10.01 (a)
Claim	Section 12.01
Contract Documents	Section 1.01
Cover Claim	Section 5.03
Developer	Preamble
Draw Application	Section 7.01 (c)
Effective Date	Preamble
Exclusions	Article III
Express Warranty	Section 5.01
Final Payment	Section 7.02(a)

General Contractor	Preamble
General Contractor Fee	Section 6.01
General Contractor Expenses	Section 6.02
Original Agreement	Recitals
Percentage Completion	Section 7.01
Previously Completed Work	Section 5.02
Progress Payment	Section 7.01(c)
Project	Recitals
Project Documents	Section 8.01
Project Schedule	4.02
Project Site	Recitals
Required Completion Date	9.03(a)
Services	Article II Preamble
Standard Retainage	Section 7.03(a)
Third-Party Agreements	Section 2.02
Third-Party Service Providers	Section 2.01

Exhibit B  
Schedule of Values



**Exhibit C**  
**Existing Third-Party Service Providers**

Accuracy Glass & Mirror, Inc  
CabineTec  
Carpets N More  
Cell Crete Corporation  
Concrete Visions  
Creative Home Theaters, Inc.  
Dependable Glass & Mirror  
Distinctive Marble  
Executive Plastering  
Gilbert & Associates  
Granite Construction  
Granite Plus  
Helix Electric  
Hi Tech Fabrication  
Isulpro Projects  
Interstate Plumbing & Air  
Jeff Heitl Plumbing & Fire, LLC  
Larry Methvin Installation  
Las Vegas Pipeline  
The Masonry Group Nevada, Inc  
Nevada Gypsum  
Nevada Pre Fab Engineers  
OTIS Technologies  
PDM Glass & Mirror  
Pools by Grube  
PR Construction  
Sierra Reinforcing  
Sierra Waterproofing  
Storm Water Programs  
Sunset Steel Erectors  
H.A. Fabrications  
California Drafting  
Silver State Fireplaces  
Sliding Door Company  
The Painting Company  
ThyssenKrupp Elevator  
Tri-City Drywall  
WRG Design, Inc.  
Whirlpool Corporation  
Zitting Construction  
Wholesale Door & Window  
Steel Engineers Incorporated

**Purchase Orders**

Calico Construction Supply



H.D. Supply Waterworks  
Ready Mix, Inc.

**Vendors**

Advance Office Supply  
Alternative Office Systems  
Design Space Modular Buildings  
Holman's of Nevada, Inc.  
JSS Jackpot Sanitation Services  
Las Vegas Reprographics  
Mercury LDO Reprographics  
National Construction Rentals  
National Construction Rentals  
Republic Services  
Sunstate Equipment  
Temp Power Systems  
Wireless Telecorp, Inc.



**Exhibit D**  
**Onsite Personnel Employed by General Contractor**

**General Contractor staffing  
to be paid at Developer's  
Expense:**

<i>Position</i>	<i>Monthly Rate</i>	<i>% Allocated to Project</i>	<i>Monthly Rate to be Paid on Project</i>
Project Executive General Superintendent	Included \$15,600.00	As reasonably required 100%	\$15,600.00
Project Superintendents	Base Salary Plus 35% Burden, plus Benefits	100%	Varies
Project Administrator/Accountant Safety Officer: 2.15 inspections per month	\$8,493.00	60%	\$5,095.80
2.15 inspections x \$ 947.00 per month			\$2,036.00

1. All Benefits and the entire Burden are included in Monthly Rate for the General Superintendent and Project Administrator/Account.

2. For each Project Superintendent, the Benefits will include all benefits given to such Project Superintendent pursuant to such Project Superintendent's offer letter which may include, without limitation, vacation, holidays, vehicle allowance, cell phones, personal days, vehicle fuel, and insurance. Furthermore, such benefits shall be limited by the terms of such offer letter.



**Exhibit E**  
**Previously Completed Work\***

**Building 2**

Concrete podium structure is complete  
Rough electric is complete  
Rough plumbing is complete  
Rough HVAC is complete  
Roof is 100% complete  
Fire Sprinkler is 100%  
Windows are 100%  
Drywall is 70%  
Lath is 95% complete  
Stucco is 50% complete  
Elevator is 10% complete  
Stairs are 45% complete  
Insulation is complete  
Interior doors and jambs are 10% complete  
Ramp to garage is complete  
Pony walls in court yard are 90%  
Switchgear is in place

**Building 3**

Concrete podium structure is complete  
Roof is 75%  
Fire sprinkles are 70% complete  
Windows are 95%  
Dens glass is 95% complete  
Elevator is 5% complete  
Stairs are 45% complete  
Interior doors and jambs have not started  
Switchgear is in place  
Ramp to garage is not complete  
Garage for 2 & 3 is complete but concrete is unacceptable

**Building 7**

Concrete podium structure is complete  
Garage is 95% complete but concrete is unacceptable  
Generator is in place but not installed  
1st through 7th framing complete  
1st through 6th fire sprinklers rough are complete  
1st through 5th HVAC rough is complete  
1st through 5th plumbing rough is complete  
1st through 3rd electrical rough is complete  
Roof decking is not complete  
9th floor deck is not complete  
9th floor pools are not complete  
Curtain wall clips are not complete



Curtain wall installation has not started  
Drywall ribs are 15% complete  
Shafts are 45% complete  
Elevator is not installed and I have not seen it onsite  
Stairs are 55%  
None of the patio pour backs have been poured

#### **Building 8**

Concrete podium structure is complete  
Framing is complete  
Windows are complete  
Hollow metal door frames are installed  
Lath is 60% complete  
Brown coat is 50 % complete  
Stairs are 95% complete  
Tubs have been installed  
Shower pans are at 50%  
1st through 3rd drywall is complete on walls and lids but not the soffits  
4th drywall (walls only) are 55% complete  
1st floor drywall taping is 70% complete  
1st through 3rd rough electric is complete  
1st through 3rd rough plumbing is complete  
1st through 3rd rough HVAC is complete  
1st through 3rd rough low volt is complete  
4th floor soffits have not been installed  
Elevators have not started  
Corridors drywall has not started  
Shafts are 75% complete  
HVAC compressors are in place on the roof  
Curb wall on podium has been poured water proofing is not complete  
Post for balcony rails have been installed  
Flashing for patio deck pour has been installed  
Switchgear is in place

#### **Building 9**

Framing is complete  
Windows are complete  
Hollow metal door frames are installed  
Lath is 90% complete  
Stucco is 60 % complete  
Stairs are 95% complete  
Tubs have been installed  
Shower pans are at 50%  
1st through 3rd drywall is complete on walls and lids but not the soffits  
4th drywall (walls only) are 55% complete  
1st floor drywall taping is 65% complete  
1st through 3rd rough electric is complete  
1st through 3rd rough plumbing is complete



1<sup>st</sup> through 3<sup>rd</sup> rough HVAC is complete  
1<sup>st</sup> through 3<sup>rd</sup> rough low volt is complete  
4<sup>th</sup> floor soffits have not been installed  
Elevators have not started  
Corridors drywall has not started  
1st floor Corridor lid framing is 70% complete  
HVAC compressors are in place on the roof  
Curb wall on podium has been poured water proofing is not complete  
Post for balcony rails have been installed  
Flashing for patio deck pour has been installed  
Switchgear is in place

Other

Podium fix in buildings 8 & 9 is 60% complete  
Civil infrastructure is 95% complete

\*This Exhibit E is subject to modification within 24 hours of General Contractor's inspection of the Project Site which must take place within 72 hours of the Effective Date.

Exhibit F  
Insurance Policies Provided by Developer



1 performing work.

2 Q. And did you enter into subcontracts with  
3 the various subcontractors?

4 A. Yes.

5 Q. Did you also enter into ratification  
6 agreements with some of those subcontractors?

7 A. I don't recall.

8 Q. Do you recall adopting the previous  
9 agreement between Camco and Gemstone?

10 A. I believe we did something like that,  
11 yes.

12 Q. By way of a ratification agreement?

13 A. Okay.

14 Q. Do you remember which subcontractors  
15 entered into ratification agreements and which did  
16 not?

17 A. I don't. I believe Helix was one. I  
18 couldn't list them all.

19 Q. Do you believe that there is a fully  
20 executed ratification agreement between Helix and  
21 Camco?

22 A. I believe so.

23 Q. Would it be in the documents you  
24 produced, if so?

25 A. Yes, I believe it should be.

1 Q. And if it's not, what would you say to  
2 that?

3 A. That either it didn't happen or the  
4 document was misplaced.

5 Q. Can you describe the condition of the  
6 property when Camco stepped onto the site as general  
7 contractor?

8 A. The construction work itself or the  
9 property itself?

10 Q. Well, the construction. What was the  
11 state of construction?

12 A. It was partially constructed,  
13 different -- various stages of completion per  
14 building. There were many structural issues that  
15 were of concern, and quite a few quality issues that  
16 had to be remedied and repaired before the project  
17 was going to be completed.

18 Q. What quality issues do you recall  
19 specifically?

20 A. Specifically I remember holes in  
21 concrete walls where rebar was exposed and large  
22 enough you could put your hand through the wall.  
23 Honeycomb concrete. Those were the things I  
24 remember the most.

25 Q. Do you remember any issues with the



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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 APCO CONSTRUCTION, a Nevada  
17 corporation,

18 Plaintiff,

19 v.

20 GEMSTONE DEVELOPMENT WEST, INC., A  
21 Nevada corporation,

22 Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

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

**APCO CONSTRUCTION, INC.'S REPLY IN  
SUPPORT OF ITS OMNIBUS MOTION IN  
LIMINE**

Hearing Date: November 16, 2017

Hearing Time: 9AM

26 AND ALL RELATED MATTERS

1 APCO Construction, Inc. ("APCO"), by and through its attorneys, Spencer Fane LLP and  
2 Marquis Aurbach Coffing, hereby submits its Reply in Support of its Omnibus Motion in Limine.  
3 The oppositions to APCO's motions confirm the struggle APCO has had in this case trying to get  
4 a straight answer on exactly what claims the Subcontractor Parties are making against APCO.

5 **1. Motion in limine no. 1 to exclude evidence of the topics that Zitting's PMK could not**  
6 **address.**

7 Only Zitting opposed Motion in Limine No. 1. First, Zitting's assertion of any abuse of  
8 discovery by APCO is disingenuous and nothing more than a red herring to distract the Court from  
9 the real issue at hand. The fact is, Zitting's PMK could not address the topics in the NRCP  
10 30(b)(6) deposition notice to Zitting.

11 The Court reopened deposition discovery for various parties.<sup>1</sup> Zitting provided its NRCP  
12 30(b)(6) witnesses for deposition on October 27, 2014, only a few days before the last day the  
13 Court ordered the depositions to occur. Zitting's argument that it only had a month to prepare for  
14 its PMK deposition is disingenuous. APCO sent out significantly the same notice months before  
15 on March 29, 2017, so Zitting has had notice of the deposition topics since that time.<sup>2</sup> As such,  
16 Zitting had ample time to prepare its witness on the identified topics. Further, Zitting had a duty to  
17 educate its witness, so the lapse of time since Zitting left the Project is not relevant.

18 Zitting alleges APCO did not explain how Zitting's PMK was unprepared in its Motion.  
19 APCO listed the topics it sent Zitting in its PMK notice, explained how those topics relate to each  
20 of the questions, and then demonstrated that Zitting was unable to give any answer to APCO's  
21 questions. Zitting also tries to confirm that APCO waived its rights to assert other defenses  
22 besides its pay-if-paid defense in its Motion. First, the knowledge APCO's PMK had regarding its  
23 defenses is not the subject of this Motion. More substantively, APCO made it abundantly clear  
24  
25  
26

27  
28 <sup>1</sup> See October 5, 2017 Order, on file herein.

<sup>2</sup> Exhibit 1, APCO's March 29, 2017 Notice of Deposition to Zitting.



1 that it was not limiting its defenses to only the pay-if-paid provision of the contract. Specifically,  
2 APCO's 30(b)(6) witness testified on numerous occasions with regard to other defenses asserted  
3 by APCO.<sup>3</sup> To support its position, Zitting continues to cite to the deposition of Brian Benson,  
4 who was not designated as APCO's PMK on contracts and payment, Mary Jo Allen was  
5 designated as APCO's PMK on financial issues. Not surprisingly, Zitting completely fails to cite  
6 to Ms. Allen's testimony where she specifically details a number of other contractual defenses,  
7 amongst others.

8  
9 Zitting also asserts that APCO did not attempt to refresh the recollection of Zitting's PMK.  
10 Zitting is wrong. APCO's counsel asked Zitting PMK on multiple occasions if he was aware of  
11 any documents related to the specific line of questioning, and the deponent could not recall any  
12 existed.<sup>4</sup> It is clear that Zitting is now trying to cover up the fact its witness testified in complete  
13 contradiction of his affidavit/sworn declaration provided a mere three months prior.

14  
15 The record confirms that Zitting's designated witness was not prepared to respond to the  
16 noticed topics. Zitting should not be allowed to assert it has no knowledge on the primary noticed  
17 topics related to damages Zitting is seeking from ACPO, and then be allowed to fabricate answers  
18 at trial. APCO should not be prejudiced in defending its claim because Zitting chose to be  
19 uninformed and unprepared for its only deposition in its alleged \$500,000 plus case against  
20 APCO.

21  
22 Accordingly, the Court should exclude the topics that Zitting could not address. *See Paul*  
23 *Revere Life Ins. Co. v. Jafari*,<sup>5</sup> (Sanctions were granted to defendant doctor because plaintiff  
24 insurance company's designee did not have personal knowledge of matters that court had ordered  
25 and the insurance company was obligated to prepare designee to give knowledgeable and binding  
26

27  
28 <sup>3</sup> See deposition testimony identified in APCO's opposition to Zitting's MIL.

<sup>4</sup> See Zitting's Deposition, attached as Exhibit 3 to APCO's Omnibus MIL.

1 answers under Fed. R. Civ. P. 30(b)(6)); *T&W Funding Co. XII, L.L.C. v. Pennant Rent-A-Car*  
2 *Midwest, Inc.* (where plaintiffs failed to prepare properly their Fed. R. Civ. P. 30(b)(6) deponent  
3 and deponent did not have authority to speak for three plaintiffs, which was tantamount to those  
4 plaintiffs not attending deposition, plaintiffs' objection to magistrate judge's order imposing  
5 sanctions under Fed. R. Civ. P. 37 was denied and/or overruled); *Maledo v. D.C. Jail Facility*,<sup>6</sup>  
6 (when witness at Fed. R. Civ. P. 30(b)(6) deposition was unable to answer questions on all but one  
7 of topics included in plaintiff's notice and even stated that he could not speak on defendant's  
8 behalf, witness lacked sufficient knowledge required from such deponents; *Cherrington Asia Ltd.*  
9 *v. A & L Underground, Inc.*<sup>7</sup> (because defendant did not properly prepare its Fed. R. Civ. P.  
10 30(b)(6) witnesses to testify about topics designated in deposition notices, that constituted  
11 sanctionable conduct under Fed. R. Civ. P. 37(d)(1)(A)).  
12

13  
14 **2. Motion in limine No. 2 to strike pleadings of parties that do not appear at pre-trial**  
15 **conference.**

16 Motion in Limine No. 2 was only opposed by Zitting as allegedly premature. There are  
17 multiple subcontractors who originally brought claims in the consolidated action, but who are not,  
18 or may not, be participating in the action, e.g., Buchele's counsel current motion to withdraw as  
19 counsel. Zitting has appeared and is participating in the action. Likewise, Motion in Limine No. 2  
20 is moot as applied to Zitting. Thus, the Court should disregard Zitting opposition and grant  
21 APCO's Motion in Limine No. 2 to ensure all claims by parties who have chosen not to participate  
22 in trial have been properly extinguished.

23 **3. Motion in limine No. 3 to exclude evidence of unjust enrichment damages since there**  
24 **was a contract.**  
25  
26

27 <sup>5</sup> 206 FRD 126 (D. Md. Mar. 27, 2002)

28 <sup>6</sup> 252 FRD 63. (D.D.C. Sept. 22, 2008)

<sup>7</sup> 263 FRD 653.D. (Kan. Jan. 8, 2010),

1 An action based upon a theory of unjust enrichment is not available when there is an  
2 express, written contract because no agreement can be implied when there is an express  
3 agreement.<sup>8</sup> None of the parties disputed that it has a signed subcontract with APCO.  
4 Accordingly, this motion in limine should be granted.

5 **4. Motion in limine No. 4 to exclude evidence of purported changes that were not in**  
6 **writing and signed by both parties as required by Zittings's specific change to the**  
7 **subcontract.**

8 Zitting is essentially arguing that it should be entitled to damages outside of the contract, *i.e.*,  
9 unjust enrichment. Thus, the arguments with regard to Motion in Limine No. 3 are applicable and  
10 incorporated herein. Specifically, Zitting is arguing that it is entitled to damages against APCO  
11 for Zitting's failure to comply with the conditions precedent to payment as detailed in the  
12 subcontract between Zitting and APCO. Thus, for the following reasons the Court should  
13 disregard Zitting's arguments presented in its Opposition to APCO's Motion in Limine No. 4:

14 While APCO drafted the initial version of the subcontract, Zitting, on its own accord,  
15 added many provisions, including the provisions with regard to payment on change orders.<sup>9</sup>  
16 Specifically, Zitting added the following qualification language in bold below to section 3.9 of the  
17 Subcontract:

18  
19 Subcontractor agrees that Contractor shall have no obligation to pay  
20 Subcontractor for any changed or extra work performed by  
21 Subcontractor until or unless Contractor has actually been paid for  
22 such work by the Owner **unless Contractor has executed and**  
23 **approved change order directing subcontractor to perform**  
24 **certain changes in writing and certain changes have been**  
25 **completed by subcontractor.**<sup>10</sup>

26  
27 <sup>8</sup> *Leasepartner's Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 942 P.2d 182 (1997).

28 <sup>9</sup> See APCO's Motion in Limine no. 4.

<sup>10</sup> *Id.*

1 Zitting's change is consistent with Section 5.1 of its Subcontract wherein Zitting and APCO  
2 agreed that "No changes, additions, deletions, or other revisions to the Subcontract shall be valid  
3 unless made in writing."<sup>11</sup>

4 During its deposition, Zitting expressly agreed that it was only entitled to change order  
5 payments if APCO received payment for same from the owner or there was an "executed and  
6 approved change order directing subcontractor to perform certain changes in writing."<sup>12</sup>

8 As such, the Court should grant APCO's Motion in Limine No. 4 precluding Zitting from  
9 introducing evidence of purported changes that are not reflected in an executed and approved  
10 change order the Owner did not approve or pay to APCO like Zitting specifically added and  
11 agreed to in the Subcontract.

12 **5. Motion in limine No. 5 to exclude evidence of claims that were not delineated on lien**  
13 **releases.**

14 Motion in Limine No. 5 was opposed by Helix, Buchele and Zitting. Helix and Buchele argue  
15 the MIL is "contrary to decades of Nevada lien jurisprudence and codified public policy favoring  
16 lien claimants and rejecting contract provisions that deprive contractors of their statutory rights."<sup>13</sup>  
17 The subcontractors are intentionally confusing the issue. The issue is not whether there was a  
18 contract provision purporting to waive a materialman's rights. The issue is that APCO is permitted  
19 to request lien waivers, in the form permitted and proscribed by NRS 108. NRS 108.2457  
20 confirms that a contract provision that attempts to waive or impair lien rights is void. The agreed  
21 upon language in the subcontract does not waive lien rights. Through the undisputed contract  
22 language, the subcontractors agreed to list the reserved or undisputed claims. That is a matter of  
23 claim notice not lien rights. APCO used the statutory form and through the subcontract the  
24 subcontractors agreed to provide detailed claim notice.  
25  
26  
27

28 <sup>11</sup> See Exhibit 5 to APCO's Omnibus MIL at Zitting's Subcontract.

<sup>12</sup> *Id.*



1 So as a matter of contract, the subcontractors are prohibited from presenting evidence or  
2 argument relating to alleged changes that were not reflected in an executed change order per MIL  
3 No. 4, or those that were not itemized or noted on the lien releases as required by the subcontract.

4 **6. Motion in limine No. 6 to strike evidence of damages of parties that were not made**  
5 **available for a deposition.**

6 This motion was only opposed by Buchele. Buchele's counsel remains unable to produce a  
7 client for his client's deposition, or at trial. As such, this motion should be granted as it applies to  
8 Buchele.<sup>14</sup>

9 **7. Motion in limine No. 7 to strike evidence or argument of damages greater than what**  
10 **the parties listed in their special master questionnaires or official damage disclosures.**

11 This motion in limine seeks to limit National Wood's and Helix's damages based upon their  
12 PMK testimony and because they did not update or amend their damage disclosures pursuant to  
13 NRCP 16 regarding disclosing damages, NRCP 26 regarding supplementing damages, and  
14 requesting sanctions under NRCP 37. Further, it is unclear why Helix or National Wood discuss  
15 novation arguments in this section when novation was not briefed or even mentioned in APCO's  
16 motion in limine. The fact is, neither party addresses the prejudice to APCO, or how their alleged  
17 failures to adequately disclose their damages was in fact harmless. NRCP 37 places the burden on  
18 National Wood and Helix to satisfy this analysis. No analysis was done to give the Court any  
19 reason to find in either Helix's or National Wood's favor.

20 **A. The Court should preclude evidence or argument of National Wood's damages over**  
21 **\$30,110.95.**

22 National Wood filed its initial disclosures on September 30, 2016.<sup>15</sup> It disclosed \$30,110.95  
23 against APCO.<sup>16</sup> On March 3, 2017, National Wood filed a supplement to its disclosures, and kept  
24

---

25  
26 <sup>13</sup> See Buchele and Helix Oppositions to APCO's Omnibus Motion in Limine.

27 <sup>14</sup> Zitting also opposed this motion, but misunderstood it to mean that no new witnesses could be  
28 added to a party's pre-trial disclosures, as opposed to APCO's intent, which was to strike the  
evidence of any party if the party was not made available for a deposition.

<sup>15</sup> Exhibit 11, National Wood's Initial Disclosures.

1 the same damage figure against APCO: \$30,110.95.<sup>17</sup> On September 23, 2016, National Wood  
2 filed its special master questionnaire, confirming \$30,110.95 in damages against APCO and  
3 \$1,125,374.94 against Camco. Discovery closed on June 30, 2017.<sup>18</sup> Now it appears National  
4 Wood is trying to completely disregard all of its prior representations and is seeking the full \$1.1  
5 million against APCO.

6  
7 National Wood claims that it made APCO's counsel aware of National Wood's new  
8 damages through an October 3, 2017 privileged settlement communication once discovery had  
9 long closed. Settlement discussions the month before trial is not the time nor procedure to disclose  
10 a party's damages. Additionally, the email provided from National Wood is not even close to  
11 disclosing the damages National Wood is now apparently seeking. National Wood has competent  
12 counsel who is aware of the rules. National Wood also argues that its second supplemental  
13 disclosures reflect its true damages, in excess of \$1.1 million, and claims the disclosure is  
14 "harmless"<sup>19</sup> and not disclosing its damages was "inadvertent."<sup>20</sup>

15  
16 National Wood's Second Supplemental Disclosure containing amended damages was filed  
17 on November 13, 2017, two weeks before a November 28 trial date. This supplement includes 36  
18 times the damages it previously disclosed. APCO has suffered huge prejudice as a result of this  
19 late disclosure, and National Wood's error in not disclosing its damages pursuant to these rules  
20 was certainly not harmless. APCO would have formulated its case strategy, settlement discussions,  
21 etc. differently if it had been on notice of a \$1.1 million claim. Tellingly, the District Court for the  
22 District of Nevada has confirmed, "[c]ourts are more likely to exclude damages evidence when  
23 a party first discloses its computation of damages shortly before trial or substantially after  
24  
25

---

26 <sup>16</sup> Id.

27 <sup>17</sup> See Exhibit 12 to APCO's Omnibus MIL, and APCO's MIL No. 7.

28 <sup>18</sup> **Exhibit 2**, Special Master Order Showing Discovery Closed.

<sup>19</sup> National Wood's Opposition to APCO's Omnibus MIL at 5: 7, on file herein.

<sup>20</sup> National Wood's Opposition to APCO's Omnibus MIL at 5:25, on file herein.

1 **discovery has closed.**"<sup>21</sup> "Lesser sanctions and other measures are generally more appropriate  
2 than evidence preclusion when the disclosure is provided during the discovery period and the  
3 delay can be remedied during the existing discovery period or with a limited and brief extension of  
4 discovery."<sup>22</sup>

5  
6 *See Hudgins v. Vermeer Mfg. Co.*,<sup>23</sup> (the defendant was prejudiced by the increased amount of  
7 damages claimed by the Plaintiffs and by the additional categories of damages, where the damages  
8 went from \$748,000 to \$1.67 million, and the court found the prejudice could not be cured);  
9 *Barlow v. GMC*,<sup>24</sup> (the court excluded the plaintiffs' late disclosed damages claims because they  
10 violated the court's order requiring such disclosures, **there was no plausible excuse provided for**  
11 **the late disclosures** and the late disclosures prejudiced both General Motors and the court. In  
12 addition, the court sanctioned the plaintiffs and their attorneys by requiring them to pay for  
13 General Motors' fees and costs incurred in its motion to exclude the late disclosures); *E360*  
14 *Insight, Inc. v. Spamhaus Project*<sup>25</sup> (district court properly struck most of plaintiff's damages  
15 evidence either as appropriate discovery sanctions or for proper procedural reasons); *Nicholas v.*  
16 *Pennsylvania State Univ.*<sup>26</sup>, (district court did not abuse its discretion in imposing discovery  
17 sanction of excluding any evidence of tenured university professor's future lost earnings at  
18 damages phase of trial for wrongful termination where he waited until one month before trial of  
19 damages phase to inform defendants that his part-time position as emergency room physician was  
20 being eliminated, **although he knew of this** 7 months earlier, and court found that permitting  
21 evidence would substantially prejudice defendants and would likely require lengthy stay and  
22  
23  
24

---

25  
26 <sup>21</sup> *Silvagni v. Wal-Mart Stores, Inc.*, No. 2:16-cv-00039-JCM-NJK, 2017 U.S. Dist. LEXIS  
179234, at \*7 (D. Nev. Oct. 30, 2017) citing *Jackson*, 278 F.R.D. at 594.

27 <sup>22</sup> *Id.*

28 <sup>23</sup> 240 F.R.D. 682, 684 (E.D. Okla. 2007)

<sup>24</sup> 595 F. Supp. 2d 929, 936 (S.D. Ind. 2009)

<sup>25</sup> 658 F3d 637. (7th Cir. Ill. Sept. 2, 2011)

1 disrupt orderly conclusion of trial already in progress).; *United States v Peterson*,<sup>27</sup> (In case  
2 alleging that landlord unlawfully subjected actual and prospective tenants to sexual harassment in  
3 violation of federal law, where one landlord did not submit witness list until two weeks before trial  
4 date, government was entitled to exclusion of all of this landlord's witnesses as sanction).

5  
6 National Wood goes through a case terminating sanctions analysis. But APCO is not  
7 requesting that the Court terminate its case, just hold it to its pretrial disclosures. Further, if  
8 National Wood is claiming that APCO should have been on notice of its joint and several liability,  
9 then this damage calculation is not new information that National Wood just became aware of. If  
10 National Wood is claiming APCO had this information since 2009, then it did too, and it is  
11 National Wood's burden to put APCO on notice of its damages.

12  
13 As a result, APCO requests that National Wood be limited to the damages it disclosed in its  
14 formal damage disclosures made during discovery.

15 **B. This Court should exclude evidence or argument regarding Helix's damages above**  
16 **\$505,021.00.**

17 As APCO's Omnibus motion in limine confirmed, Helix testified that its damages against  
18 APCO were exclusively related to retention **more than 5 times in its deposition**. APCO has taken  
19 **nothing** out of context or asserted any misrepresentation to the Court as Helix suggests. APCO  
20 asked Helix's damages and Helix responded the same way each time:

21 Q: Are you aware of the specific allegations that Helix has made  
22 against APCO in this matter?

23 A: General, Yes.

24 Q: What is your understanding of that?

25 A: Outstanding monies owed to Helix.

26 Q: When you say outstanding monies owed to Helix, how much  
27 would that value be?

---

28 <sup>26</sup> 227 F3d 133, 55 Fed R Evid Serv (CBC) 1028(3d Cir. Pa. Sept. 13, 2000)

<sup>27</sup> (2010, ED Mich) 83 Fed Rules Evid Serv 330, injunction gr, sanctions allowed (ED Mich 2011), 2011 US Dist LEXIS 21540.



1 A: Half a million dollars.<sup>28</sup>

2 ...

3 Q: The 500,000 dollars that you spoke of earlier, just in general,  
4 are you speaking of retainage or is there other outstanding money  
5 that you believe is owed to Helix? When we are saying five  
6 hundred, I think we are talking about a general number, not a  
7 specific number.

8 A: Correct, plus or minus 5,000. It would be money for work  
9 performed.

10 Q: Money owed for work performed in what way?

11 A: Based on our progress billing.

12 Q: Base on your progress billing. So are you saying there is half  
13 a million dollars that was not paid to Helix outside of retainage, or  
14 are we specifically talking about retainage?

15 A: It's retainage.<sup>29</sup>

16 ...

17 Q: --or reserved. So basically we are saying that while APCO had  
18 control of the project, Helix had billed approximately half -- or 5  
19 million dollars?

20 A: Correct.

21 Q: And there's 500,000 of that, that was held in retention that Helix  
22 never got paid?

23 A: Correct.<sup>30</sup>

24 ...

25 Q: So then it is Helix's position that Helix was paid 100 percent in  
26 full for everything -- when I say everything, I mean for work  
27 completed and stored to date that APCO was responsible for on the  
28 project, except for the \$513,120.71.

29 A: Correct.<sup>31</sup>

30 ...

31 Q: But as you testified earlier, any money due Helix at the end of  
32 August, except for retention, was paid and done?

33 A: Correct.<sup>32</sup>

34 Further questioning from Helix's own counsel confirmed that the unpaid retention amount was  
35 only \$505,021:

36 MR. MOUNTEER: Wait. I want to make sure I understand your  
37 response to that question while we are doing the math here. So what  
38 you're saying is the 784 number needs to be subtracted from the -- or  
39 the 279 needs to be subtracted from the 784 and that's your balance  
40 due?

41 <sup>28</sup> See Exhibit 14 to APCO's Omnibus MIL at 13:5-12.

42 <sup>29</sup> *Id.* at 32:12-33:2.

43 <sup>30</sup> *Id.* at 33:8-15.

44 <sup>31</sup> *Id.* at 54: 3-8.

45 <sup>32</sup> *Id.* at 60:13-16.

1 THE WITNESS: That's correct. And the number is 505,021.

2 BY MR. ZIMBELMAN:

3 Q. And that's the retention that was unpaid as billed to APCO,  
4 correct?

5 A. Correct.

6 MR. MOUNTEER: Thank you for clarifying.

7 MR. ZIMBELMAN: Certainly.<sup>33</sup>

8 Since Helix has identified retention as its only damage component, and while APCO disputes  
9 that even that amount is due, Helix should not be allowed to present evidence of other damages  
10 beyond its claimed \$505,021 in retention since its PMK was not aware of any other amounts or  
11 categories of damages. *See Hudgins v. Vermeer Mfg. Co.*,<sup>34</sup> (the Defendant was prejudiced by the  
12 increased amount of damages claimed by the Plaintiffs and by the additional categories of  
13 damages, where the damages went from \$748,000 to \$1.67 million, and the court found the  
14 prejudice could not be cured). This severely prejudiced APCO because APCO was not on notice,  
15 or allowed to explore any other damages.

16 Based on the foregoing, the Court should exclude all evidence and any future computation of  
17 National Wood's damages above what it previously represented to APCO pursuant to NRCP  
18 37(c)(1) since these requirements are mandatory. The Court also should exclude evidence of  
19 Helix's damages above the \$505,021 it testified to since a party's NRCP 30(b)(6) designee's  
20 answers are binding. *See also Great Am. Ins. Co.*,<sup>35</sup> (providing that a Rule 30(b)(6) designee's  
21 answers are "binding" on the corporation).

22 DATED: November 15, 2017.

23 **SPENCER FANE LLP**

24 By: 

25 John H. Mowbray, Esq. (Bar No. 1140)

26 John Randall Jefferies, Esq. (Bar No. 3512)

27 Mary E. Bacon, Esq. (Bar No. 12686)

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Attorneys for Apco Construction, Inc.

33 See Helix's Deposition at Exhibit 14 to APCO's Omnibus MIL at 66:7-20.

34 240 F.R.D. 682, 684 (E.D. Okla. 2007)

35 251 F.R.D. at 538

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Spencer Fane LLP and that a copy of the foregoing **APCO CONSTRUCTION, INC.'S REPLY IN SUPPORT OF ITS OMNIBUS MOTION IN LIMINE** was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage prepaid for non-registered users, on this 15 day of November, 2017, as follows:

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

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**Intervenor Plaintiff: Cactus Rose Construction Inc**

Eric B. Zimbelman (ezimbelman@peelbrimley.com)

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

Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

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

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Richard L Tobler (rltldck@hotmail.com)

Richard Reincke (rreincke@caddenfuller.com)

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**Other: Chapter 7 Trustee**

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Gianna Garcia (ggarcia@sullivanhill.com)

Jennifer Saurer (Saurer@sullivanhill.com)

Jonathan Dabbieri (dabbieri@sullivanhill.com)

**Plaintiff: Apco Construction**

Rosie Wesp (rwesp@maclaw.com)

**Third Party Plaintiff: E & E Fire Protection LLC**

TRACY JAMES TRUMAN (DISTRICT@TRUMANLEGAL.COM)

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an employee of Spencer Fane LLP

# **EXHIBIT 1**

  
CLERK OF THE COURT

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Ph: (702) 457-5267  
Fax: (702) 437-5267  
Special Master

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,	)	CASE NO. A571228
	)	DEPT NO. XIII
	)	
Plaintiff,	)	
	)	Consolidated with:
v.	)	
	)	A574391; A574792; A577623; A583289;
GEMSTONE DEVELOPMENT WEST, INC.,	)	A587168; A580889; A584730; A589195;
a Nevada corporation,	)	A595552; A597089; A592826; A589677;
	)	A596924; A584960; A608717; A608718;
Defendant.	)	and A590319
	)	
AND ALL RELATED MATTERS,	)	
	)	

SPECIAL MASTER REPORT REGARDING DISCOVERY STATUS

This litigation was initiated by APCO Construction seeking damages for construction services performed for the construction of the Manhattan West mixed use development project located at 9205 West Russell Road, Clark County, Nevada. The APCO Complaint also sought a declaration ranking the priority of all lien claimants and secured claims. The Special Master and counsel drafted a Questionnaire for all parties to document what parties remain in the litigation, with a completed Questionnaire being required to continue in the lawsuit. On October 7, 2016, a Special Master Recommendation and District Court Order was entered confirming the only remaining 20 lien claimants.



1       **This matter is set for trial on September 12, 2017.** A Special Master Hearing was conducted  
2 on May 4, 2017, to confirm that discovery will be completed prior to the trial. Counsel for the parties  
3 agreed that the majority of discovery will be completed by the end of May, 2017. A Special Master  
4 Order will be entered allowing the remaining depositions and discovery to be completed by June 30,  
5 2017. There will be no additional Special Master Hearings scheduled unless requested by the parties.  
6

7       RESPECTFULLY SUBMITTED this 8th day of May, 2017.

8                               By: /s/ Floyd A. Hale  
9                               FLOYD A. HALE, Esq.  
10                              Nevada Bar No. 1873  
11                              3800 Howard Hughes Pkwy, 11<sup>th</sup> Fl.  
12                              Las Vegas, NV 89169  
13                              Special Master  
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# **EXHIBIT 2**

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

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4 Cody S. Mounteer, Esq.  
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10 jjuan@maclaw.com  
11 cmounteer@maclaw.com  
12 Attorneys for APCO CONSTRUCTION

DISTRICT COURT

CLARK COUNTY, NEVADA

13 APCO CONSTRUCTION, a Nevada  
14 corporation,

15 Plaintiff,

16 vs.

17 GEMSTONE DEVELOPMENT WEST, INC., A  
18 Nevada corporation,

19 Defendant.

Case No.: A571228

Dept. No.: 13

Consolidated with:

A574391; A574792; A577623; A583289;

A587168; A580889; A584730; A589195;

A595552; A597089; A592826; A589677;

A596924; A584960; A608717; A608718 and

A590319

20 AND ALL RELATED MATTERS

**NOTICE OF TAKING NRCP RULE 30(B)(6) DEPOSITION OF PERSON MOST**

**KNOWLEDGEABLE FOR ZITTING BROTHERS CONSTRUCTION, INC.**

21 PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Nevada Rules of Civil  
22 Procedure, Plaintiff, APCO Construction, by and through its attorneys, Marquis Aurbach  
23 Coffing, will take the deposition of Zitting Brothers Construction, Inc. upon oral examination on  
24 the TBD (please contact counsel for APCO for availability) day of April, 2017 at the hour  
25 of TBD a.m., before a Notary Public, or before some other officer authorized by law to  
26 administer oaths. The deposition will take place at Marquis Aurbach Coffing located at 10001  
27 Park Run Drive, Las Vegas, Nevada 89145.

28 //

//

1 Pursuant to NRCP 30(b)(6), Plaintiffs are to required to designate one or more officers,  
2 directors, managing agents or other consenting persons most knowledgeable to testify on its  
3 behalf with respect to the topics set forth in the attached **Exhibit A**.

4 The deposition will be recorded by stenographic means, and oral examination will  
5 continue from day to day until completed. You are invited to attend and cross-examine.

6 Dated this 29th day of March, 2017.

7  
8 MARQUIS AURBACH COFFING

9  
10 By /s/Cody Munteer, Esq.  
11 Jack Chen Min Juan, Esq.  
12 Nevada Bar No. 6367  
13 Cody S. Munteer, Esq.  
14 Nevada Bar No. 11220  
15 10001 Park Run Drive  
16 Las Vegas, Nevada 89145  
17 Attorney(s) for APCO  
18 CONSTRUCTIONAPCO CONSTRUCTION  
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**EXHIBIT A****RULE 30. DEPOSITIONS BY ORAL EXAMINATION****(B) NOTICE OF EXAMINATION; GENERAL REQUIREMENTS; SPECIAL NOTICE; METHOD OF PRODUCTION OF DOCUMENTS AND THINGS; DEPOSITION OF ORGANIZATION; DEPOSITION BY TELEPHONE.**

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

[As amended; effective January 1, 2005.]

**TOPICS**

1. Your claims and facts as alleged against APCO;
2. Documents that you have disclosed in support of your claims against APCO;
3. Your assertion that APCO is liable for any portions of your general and/or lien claims;
4. The percentage/allocation of your general and/or lien claims against APCO versus CAMCO;
5. The payment process, payment details, scope of payments, parties involved, and standard practices of payment, including, but not limited to, all payment applications, approvals, amounts, checks, and releases;
6. Each fact related to your contract agreement with APCO in regard to the Manhattan West Project ("Project") at issue in this matter, including, but not limited to original contact(s), change orders, and ratification agreement(s);
7. Each fact related to your scope of work at the Project;
8. The structure of your business; and
9. Your viability and business status from the time you entered into the subject contract until the date of your deposition, including, but not limited to, whether your company has been sold, transferred control, wound down, and/or claimed bankruptcy.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF TAKING NRCP RULE 30(b)(6) DEPOSITION OF PERSON MOST KNOWLEDGEABLE FOR ZITTING BROTHERS CONSTRUCTION, INC.** was submitted electronically for service with the Eighth Judicial District Court on the 29th day of March, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Wilson, Elser, Moskowitz, Edelman & Dicker LLP

300 S. 4th St., 11th Floor

Las Vegas, NV 89101

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<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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

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**Supreme Court Case No. 77320**  
***Consolidated with 80508***

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**HELIX ELECTRIC OF NEVADA, LLC,**

Appellant,

v.

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

Respondent.

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**JOINT APPENDIX**  
**VOLUME 22**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
06-24-09	<b>Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint</b>	<b>JA000001- JA000015</b>	<b>1</b>
08-05-09	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
04-26-10	<b>CAMCO and Fidelity's Answer and CAMCO's Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
07-02-10	<b>Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default</b>	<b>JA000042- JA000043</b>	<b>1</b>
<b>06-06-13</b>	<b>APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time</b>	<b>JA000044- JA000054</b>	<b>1</b>
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (1) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	<b>JA000055- JA000316</b>	<b>1/2/4/5/6</b>
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	<b>JA000317- JA000326</b>	<b>6</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
09-28-17	Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 1 – Notice of Entry of Order	JA000429 JA000435	7
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
<b>11-06-17</b>	<b>Helix Electric of Nevada’s Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC’s Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen’s Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
<b>11-06-17</b>	<b>APCO Construction, Inc.’s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	Exhibit 1 – Second Amended Notice of taking NRCB Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.’s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting’s Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
11-14-17	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
11-14-17	<b>Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine</b>	<b>JA000994- JA001008</b>	<b>20</b>
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009- JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
11-15-17	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine</b>	<b>JA001133 JA001148</b>	<b>21</b>

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
<b>12-29-17</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion in <i>Limine</i> 1-6</b>	<b>JA001161- JA001169</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in <i>Limine</i> 1-4</b>	<b>JA001170- JA001177</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion in <i>Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>01-03-18</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001187- JA001198</b>	<b>22</b>
<b>01-04-18</b>	<b>Motion for Reconsideration of Court’s Order Granting Peel Brimley Lien Claimants’ Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time</b>	<b>JA001199- JA001217</b>	<b>22</b>
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264- JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282- JA001297	25
	Exhibit 5 - Amended NOL	JA001298- JA001309	25
	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
01-09-18	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order</b>	<b>JA001552- JA001560</b>	<b>27</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	<b>Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>		
<b>01-10-18</b>	<b>Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time</b>	<b>JA001561- JA001573</b>	<b>27</b>
<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
	Exhibit 1 – Exhibit List APCO	JA001595- JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638- JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642- JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA00167	28/9/29
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>1</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement ( <i>Admitted</i> )	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ( <i>Admitted</i> )	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ( <i>Admitted</i> )	JA001869- JA001884	30

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<sup>1</sup> Filed January 31, 2018

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone <i>(Admitted)</i>	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) <i>(Admitted)</i>	JA001981- JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ( <i>Admitted</i> )	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ( <i>Admitted</i> )	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ( <i>Admitted</i> )	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ( <i>Admitted</i> )	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ( <i>Admitted</i> )	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ( <i>Admitted</i> )	JA002121- JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-18-18	<b>Stipulation and Order Regarding Trial Exhibit Admitted into Evidence</b>	<b>JA002199- JA002201</b>	<b>36</b>
	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	<b>HELIX Related Exhibits:</b>		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	<b>Zitting Brothers Related Exhibits:</b>		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	<b>Helix Related Exhibits:</b>		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	<b>Helix Trial Exhibits:</b>		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65 /66/67/ 68/69/70/ 71/72 /73/74/75 /76/77
<b>01-19-18</b>	<b>Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA005282- JA005283</b>	<b>78</b>
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>2</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>3</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>4</sup></b>	<b>JA005820- JA005952</b>	81
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC’s (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.’s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>APCO Construction Inc.’s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC’s Responses to APCO Construction’s Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>

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<sup>4</sup> Filed January 31, 201883

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
05-08-18	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412- JA006442	87/88

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
<b>06-15-18</b>	<b>APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
<b>06-15-18</b>	<b>Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA006917 – JA006942</b>	<b>96</b>
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943- JA006948	96

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964- JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC’s Response to Special Master Questionnaire	JA006977- JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.’s Response to Special Master Questionnaire	JA006981- JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in Limine (against APCO Construction)	JA007070- JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions’ Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079- JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary	JA007085- JA007087	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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06-15-18	<b>Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
06-18-18	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007190- JA007192</b>	<b>99</b>
06-21-18	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
06-29-18	<b>APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
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<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>Notice of Entry of (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>

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08-06-19	<b>Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. Motion for Attorneys Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada LLC's Motion to Retax in Part and Denying in Part and all related matters (4) Granting Plaintiff in Intervention National Wood Products LLC's Motion to Retax in Part and Denying in Part -and-(5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401- JA007517	102/103

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
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	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
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	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105 /106/107 /108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
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	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts	JA008323- JA008338	110

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	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110
	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379- JA008450	110/111
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	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008484- JA008504	111

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	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
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	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112
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	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
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	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation’s Motion to Enforce Settlement Agreement and Enter Judgment	JA008762- JA008788	113
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<b>08-16-19</b>	<b>APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA008811- JA008821</b>	<b>114</b>
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.’s Counterclaim	JA008925- JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose’s Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966- JA008986	117/118

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Pacific Construction's Counterclaim		
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	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
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<b>08-29-19</b>	<b>Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)</b>	<b>JA009117- JA009123</b>	<b>119</b>

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	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
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<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	Exhibit A – 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.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada’s Motion for Rule 54(b) Certification	JA009183- JA00991	120

## **ALPHABETICAL APPENDIX OF EXHIBITS**

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<b>08-05-09</b>	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
<b>05-08-18</b>	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412-	87/88

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	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
<b>06-06-13</b>	<b>APCO’s Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO’s Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time</b>	<b>JA000044- JA000054</b>	<b>1</b>
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO’s Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO’s Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6
<b>02-11-20</b>	<b>APCO’s Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	<b>120</b>
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.’s Motion for Attorney’s Fees and Costs; (2) Granting APCO Construction, Inc.’s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC’s	JA009168- JA009182	114

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply		
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183- JA00991	120
<b>11-06-17</b>	<b>APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
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<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>01-04-18</b>	<b>Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time</b>	<b>JA001199- JA001217</b>	<b>22</b>
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264- JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282- JA001297	25
	Exhibit 5 - Amended NOL	JA001298- JA001309	25
	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention	JA009137- JA009166	120



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	National Wood Products, Inc.'s Against APCO Construction, Inc.]		
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-03-18	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001187- JA001198	22
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion <i>in Limine</i> 1-4	JA001170- JA001177	22
12-29-17	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion <i>in Limine</i> 1-6	JA001161- JA001169	22
01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007332- JA007334	101
07-02-10	Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default	JA000042- JA000043	1
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
11-06-17	Peel Brimley Lien Claimants' Motion <i>in Limine</i> Nos. 1-6	JA000419- JA000428	7
	Exhibit 1 – Notice of Entry of Order	JA000429	7

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
		JA000435	
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
<b>09-28-17</b>	<b>Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000413- JA00418</b>	<b>7</b>
<b>01-09-18</b>	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001552- JA001560</b>	<b>27</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition</b>	<b>JA007190- JA007192</b>	<b>99</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	to APCO Construction's Motion for Attorneys' Fees and Costs		
06-15-18	Plaintiff in Intervention National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Attorneys' Fees and Costs	JA007095- JA007120	97/98
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
01-18-18	Stipulation and Order Regarding Trial Exhibit Admitted into Evidence	JA002199- JA002201	36
	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	<b>HELIX Related Exhibits:</b>		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	<b>Zitting Brothers Related Exhibits:</b>		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	<b>Helix Related Exhibits:</b>		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	<b>Helix Trial Exhibits:</b>		

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>5</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement (Admitted)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (Admitted)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (Admitted)	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone (Admitted)	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) (Admitted)	JA001981- JA001987	32

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<sup>5</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record <i>(Admitted)</i>	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks <i>(Admitted)</i>	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment <i>(Admitted)</i>	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP <i>(Admitted)</i>	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner <i>(Admitted)</i>	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement <i>(Admitted)</i>	JA002121- JA002146	35

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>6</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>7</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix’s Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80

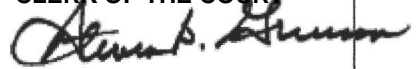
<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>8</sup></b>	<b>JA005820- JA005952</b>	81
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>

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<sup>8</sup> Filed January 31, 2018



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7 *Attorneys for Various Lien Claimants*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
corporation,

11 Plaintiff,

12 vs.

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

18 Defendants.

CASE NO.: A571228

DEPT. NO.: XIII

*Consolidated with:*

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

**NOTICE OF ENTRY OF ORDER**

19  
20 AND ALL RELATED MATTERS.  
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22 ///

23 ///

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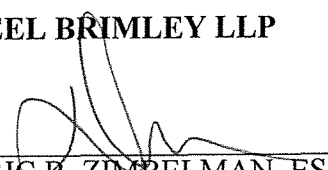
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**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Granting Peel Brimley Lien Claimants' Motions *in Limine* Nos. 1-6 (against Camco Pacific Construction, Inc. was filed on December 28, 2017, a copy of which is attached as Exhibit A.

Dated this 29 day of December, 2017.

**PEEL BRIMLEY LLP**

  
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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 29th day of December, 2017, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served as follows:

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

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# EXHIBIT A

JA001166

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13 *Attorneys for Various Lien Claimants*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 APCO CONSTRUCTION, a Nevada  
17 corporation,

18 Plaintiff,

19 vs.

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

Defendants.

CASE NO.: A571228

DEPT. NO.: XIII

*Consolidated with:*

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

**ORDER GRANTING PEEL BRIMLEY  
LIEN CLAIMANTS' MOTIONS IN  
LIMINE LIMINE NOS. 1-6 (against  
Camco Pacific Construction, Inc.)**

AND ALL RELATED MATTERS.

This matter came on for hearing November 16, 2017, before the Honorable Mark Denton in Dept. 13 on the Peel Brimley Lien Claimants' ("PB Lien Claimants")<sup>1</sup> Motions in Limine Nos. 1-6 ("the Motions") against Camco Pacific Construction, Inc. ("Camco") Camco opposed the Motion. Having taken the matters under advisement, the Court finds that the Motions relate to evidence and disclosures while the Opposition relates to legal contentions. As

<sup>1</sup> The Peel Brimley Lien Claimants are: Cactus Rose Construction, Fast Glass Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance Solutions, LLC, and Buchele, Inc. The Peel Brimley law firm has since withdrawn from representation of Buchele, Inc.

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DEC 27 2017

DISTRICT COURT DEPT#13

1 such, the Court concludes that the Motions should be granted as follows:

- 2 1. Camco may not assert or offer evidence at trial that any of the Peel Brimley Lien  
3 Claimants' work on the Manhattan West Project that is the subject of this action  
4 ("the Project") was defective;
- 5 2. Camco may not assert or offer evidence at trial that any of the Peel Brimley Lien  
6 Claimants' work on the Project was not done in a workmanlike manner; and
- 7 3. Camco may not assert or offer evidence at trial that any of the Peel Brimley Lien  
8 Claimants' work on the Project was not done in compliance with the terms of the  
9 parties' agreement.
- 10 4. Camco may not assert or offer evidence at trial that the Peel Brimley Lien  
11 Claimants have breached their agreements with Camco other than with respect to  
12 pay-if-paid agreements ("Pay-if-Paid").<sup>2</sup>
- 13 5. Camco may not assert or offer evidence at trial to dispute the amounts invoiced,  
14 paid and that remain to be owed as asserted by the Peel Brimley Lien Claimants  
15 in their respective Requests for Admission.
- 16 6. Camco may not assert or offer evidence at trial that any liens recorded by the  
17 Peel Brimley Lien Claimants were in any way defective or unperfected and are  
18 otherwise valid and enforceable.

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27 <sup>2</sup> By separate Order the Court has granted the PB Lien Claimants' Motion for Partial Summary  
28 Judgment that precludes Camco from asserting a defense based upon Pay-if-Paid. Accordingly,  
nothing in the present Order shall be deemed to contradict the Court's summary judgment or  
otherwise permit Camco to assert Pay-if-Paid.

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1 IT IS THEREFORE ORDERED that the Peel Brimley Lien Claimants' Motions in  
2 Limine Nos. 1-6 are GRANTED.

3 IT IS SO ORDERED this 27<sup>th</sup> day of December, 2017.

4   
5 \_\_\_\_\_  
6 DISTRICT COURT JUDGE

7 Submitted by:

8 **PEEL BRIMLEY LLP**

9   
10 \_\_\_\_\_  
11 ERIC B. ZIMBELMAN, ESQ.

12 Nevada Bar No. 9407

13 RICHARD L. PEEL, ESQ.

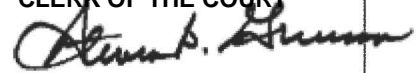
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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
11 corporation,

12 Plaintiff,

13 vs.

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

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24 AND ALL RELATED MATTERS.

25 ///

26 ///

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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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**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motions *in Limine* (Against APCO Construction) was filed on December 28, 2017, a copy of which is attached as Exhibit A.

Dated this 29 day of December, 2017.

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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 29<sup>th</sup> day of December, 2017, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served as follows:

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

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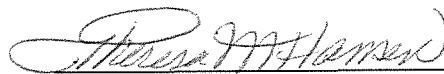
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# **EXHIBIT A**

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13 *Attorneys for Helix Electric of Nevada, LLC*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 APCO CONSTRUCTION, a Nevada  
17 corporation,

18 Plaintiff,

19 vs.

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

29 Defendants.

30 AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

*Consolidated with:*

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

**ORDER GRANTING IN PART AND  
DENYING IN PART HELIX  
ELECTRIC OF NEVADA, LLC's  
MOTIONS IN LIMINE (against APCO  
Construction)**

31 This matter came on for hearing November 16, 2017, before the Honorable Mark  
32 Denton in Dept. 13 on Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4 ("the  
33 MILs") against Apco Construction ("APCO"). APCO opposed the Motion. Having taken the  
34 matters under advisement, the Court grants MIL Nos. 1-3 and denies MIL No. 4 without  
35 prejudice subject to objections at trial as follows:

36 ///

37 ///

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DISTRICT COURT DEPT 13

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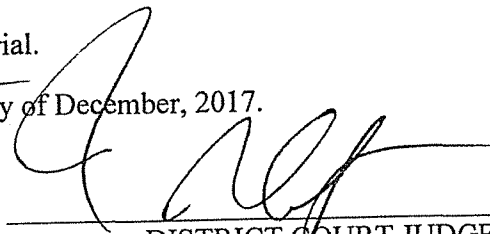
1. MIL No. 1 is **GRANTED**. APCO may not assert or offer any evidence that any of Helix's work on the Manhattan West Project that is the subject of this action ("the Project") was defective.

2. MIL No. 2 is **GRANTED**. APCO may not assert or offer any evidence that any of Helix's work on the Project was not done in a workmanlike manner.

3. MIL No. 3 is **GRANTED**. APCO may not assert or offer any evidence that any of Helix's work on the Project was not done in compliance with the terms of the parties' agreement.


4. MIL No. 4 (seeking to preclude APCO from asserting or offering any evidence that any of the pay applications submitted by Helix – and the amounts claimed to be earned on the same - were in any way incorrect, overstated or otherwise subject to dispute) is **DENIED** without prejudice to Helix's objections at trial.

IT IS SO ORDERED this 27<sup>th</sup> day of December, 2017.

  
DISTRICT COURT JUDGE

Submitted by:

PEEL BRIMLEY LLP

  
ERIC B. ZIMBELMAN, ESQ.

Nevada Bar No. 9407

RICHARD L. PEEL, ESQ.

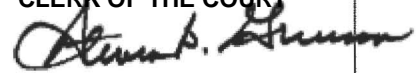
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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
corporation,

11 Plaintiff,

12 vs.

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

18 Defendants.

CASE NO.: A571228

DEPT. NO.: XIII

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

**NOTICE OF ENTRY OF ORDER**

19  
20 AND ALL RELATED MATTERS.  
21

22 ///

23 ///

24 ///

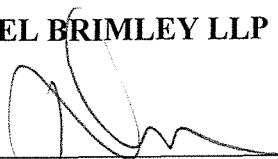
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**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine* was filed on December 28, 2017, a copy of which is attached as Exhibit A.

Dated this 29 day of December, 2017.

**PEEL BRIMLEY LLP**



---

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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 29th day of December, 2017, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served as follows:

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

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# **EXHIBIT A**

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13 *Attorneys for Helix Electric of Nevada, LLC*

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15 **CLARK COUNTY, NEVADA**

16 APCO CONSTRUCTION, a Nevada  
17 corporation,

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20 GEMSTONE DEVELOPMENT WEST, INC.,  
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CASE NO.: A571228

DEPT. NO.: XIII

*Consolidated with:*

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

**ORDER GRANTING IN PART AND  
DENYING IN PART APCO  
CONSTRUCTION'S OMNIBUS  
MOTION IN LIMINE**

30 **AND ALL RELATED MATTERS.**

31 This matter came on for hearing November 16, 2017, before the Honorable Mark  
32 Denton in Dept. 13 on Apco Construction's ("APCO") Omnibus Motion in Limine ("the  
33 Motion"). Various parties Opposed and joined in oppositions to various portions of the Motion.  
34 Having taken the matters under advisement, the Court grants the Motion in part and denies the  
35 Motion in part as follows:

36 ///

37 ///

38 ///

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DISTRICT COURT DEPT. 13

1           1.       MIL No. 1 (seeking to exclude evidence of the topics that the PMK witness for  
2       Zitting Bros. ("Zitting") could not address) is **DENIED WITHOUT PREJUDICE** to objections  
3       made to evidentiary proffers at trial that the Court can consider in context.

4           2.       MIL No. 2 (seeking to strike pleadings of parties that do not appear at the pre-  
5       trial conference is **GRANTED IN PART** to the extent that it addresses parties which, as APCO  
6       puts it, have "chosen not to participate in trial..." (Reply, p. 4, ll. 21-22), but it is **DENIED IN**  
7       **PART** as to parties which have participated.

8           3.       MIL No. 3 (seeking to exclude evidence of unjust enrichment damages) is  
9       **DENIED** as it essentially seeks a summary adjudication without reference to any specific  
10      evidence. Furthermore, unjust enrichment is commonly pleaded in the alternative and its  
11      viability relates to development of the evidence.

12          4.       MIL No. 4 (seeking to exclude evidence of purported changes that were not in  
13      writing and signed by Zitting and APCO) is **DENIED WITHOUT PREJUDICE** to objections  
14      to specific evidence proffered.

15          5.       MIL No. 5 (seeking to exclude evidence of claims that were not delineated on  
16      lien releases) is **DENIED WITHOUT PREJUDICE** to objections to specific evidence  
17      proffered.

18          6.       MIL No. 6 (seeking to strike evidence of damages of parties that were not made  
19      available for a deposition) is **GRANTED** to the extent that it seeks to preclude witnesses who  
20      should have been, but were not, properly disclosed. Of course, making any such determination  
21      requires a witness-by-witness inquiry.

22      ///

23      ///

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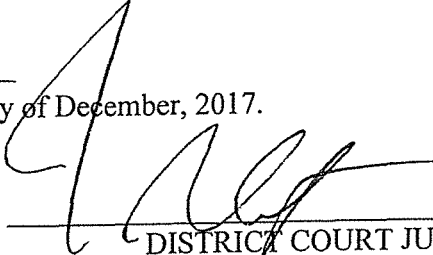
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1           7.       MIL No. 7 (seeking to strike evidence or argument of damages greater than what  
2 the parties listed in their special master questionnaires or official damage disclosures) is  
3 **GRANTED** to the extent that it seeks to preclude evidence in excess of damages in a party's  
4 official damage disclosures that should have been, but was not, properly disclosed. Of course,  
5 making any such determination will require an examination of the disclosure history of any  
6 specific evidence proffered.

7           **IT IS SO ORDERED** this 27<sup>th</sup> day of December, 2017.

8  
9   
DISTRICT COURT JUDGE

10  
11 Submitted by:

12 **PEEL BRIMLEY LLP**

13   
14 ERIC B. ZIMBELMAN, ESQ.

Nevada Bar No. 9407

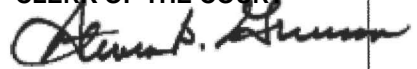
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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
corporation,

11 Plaintiff,

12 vs.

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

18 Defendants.

19  
20 AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

*Consolidated with:*

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

**NOTICE OF ENTRY OF ORDER**

21  
22 ///

23 ///

24 ///


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**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements was filed on January 2, 2018, a copy of which is attached as Exhibit A.

Dated this 3<sup>rd</sup> day of January, 2018.

**PEEL BRIMLEY LLP**

  
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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 3<sup>rd</sup> day of January, 2018, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served as follows:

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

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An Employee of Peel Brimley LLP

# **EXHIBIT A**

**JA001192**

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*Steven D. Grierson*

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7 *Attorneys for Various Lien Claimants*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
corporation,

11 Plaintiff,

12 vs.

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

18 Defendants.

19  
20 AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

*Consolidated with:*

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

**ORDER GRANTING PEEL BRIMLEY  
LIEN CLAIMANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
PRECLUDING DEFENSES BASED  
ON PAY-IF-PAID AGREEMENTS**

21 This matter came on for hearing November 16, 2017, before the Honorable Mark  
22 Denton in Dept. 13 on the Peel Brimley Lien Claimants' ("PB Lien Claimants")<sup>1</sup> Motion for  
23 Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements ("the  
24 Motion"). Joinders were filed by Zitting Brothers, Construction, Inc., William A.  
25 Leonard/Interstate Plumbing and Air Conditioning LLC, National Wood Products, Inc., E&E  
26 Fire Protection LLC, and United Subcontractors, Inc. (collectively, "the Joining

27 <sup>1</sup> The Peel Brimley Lien Claimants are: Cactus Rose Construction, Fast Glass Inc., Heinaman Contract Glazing,  
28 Helix Electric of Nevada, LLC, SWPPP Compliance Solutions, LLC, and Buchele, Inc. The Peel Brimley law firm  
has since withdrawn from representation of Buchele, Inc.

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DEC 27 2017

DISTRICT COURT DEPT#13



Subcontractors”) APCO Construction (“APCO”) and Camco Pacific Construction, Inc. (“Camco”) opposed the Motion. The issues having been well-briefed and argued and the Court being fully advised in the premises, the Court is persuaded that the Motion has merit and should be granted.

A. Findings of Fact.

Specifically, but without limitation, there are no genuine issues of material fact as follows:

1. 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. The Owner hired APCO and, subsequently, Camco as its general contractors, who in turn entered into subcontract agreements with various subcontractors including the PB Lien Claimants and the Joining Subcontractors. In December 2008 the Owner suspended the Project and advised the various contractors that the Owner’s lender did not expect to disburse further funds for construction. Numerous contractors, including the PB Lien Claimants, the Joining Subcontractors, APCO and Camco 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 lender. Thereafter, the stay was lifted and the PB Lien Claimants, Joining Subcontractors and others continued to pursue claims for non-payment from APCO and Camco.

///

///

1           4.     APCO and Camco assert defenses to the various subcontractor claims based on  
2 so-called "pay-if-paid agreements" (hereinafter referred to generally as "Pay-if-Paid").  
3 Specifically but without limitation, APCO and Camco rely on language in the APCO  
4 Subcontract Agreement that was adopted by way of a Ratification Agreement between Camco  
5 and some of the subcontractors, that APCO and Camco have no obligation to pay the  
6 subcontractors for the work materials and equipment they furnished to the Project ("the Work")  
7 unless and until the Owner pays APCO and Camco for the Work. APCO and Camco claim that  
8 they have not been paid, in whole or in part, for the Work and/or that the Owner by-passed them  
9 by making or intending to make payments to subcontractors through a voucher control  
10 company, Nevada Construction Services ("NCS"). Among other provisions, APCO and Camco  
11 rely upon the following:

12               *3.4 Any payments to Subcontractor shall be conditioned upon receipt of the*  
13               *actual payments by Contractor from Owner. Subcontractor herein agrees to*  
14               *assume the same risk that the Owner may become insolvent that Contractor*  
15               *has assumed by entering into the Prime Contract with the Owner.*

16               *3.5 Progress payments will be made by Contractor to Subcontractor within 15*  
17               *days after Contractor actually receives payment for Subcontractor's work from*  
18               *Owner. Any payments to Subcontractor shall be conditioned upon receipt of*  
19               *the actual payments by Contractor from Owner. Subcontractor herein agrees*  
20               *to assume the same risk that the Owner may become insolvent that Contractor*  
21               *has assumed by entering into the Prime Contract with the Owner.*

22               *3.8 The 10 percent withheld retention shall be payable to Subcontractor upon,*  
23               *and only upon the occurrence of all the following events, each of which is a*  
24               *condition precedent to Subcontractor's right to receive final payment*  
25               *hereunder and payment of such retention: ... (c) Receipt of final payment by*  
26               *Contractor from Owner.*

27               *3.9 Subcontractor agrees that Contractor shall have no obligation to pay*  
28               *Subcontractor for any changed or extra work performed by Subcontractor*  
              *until or unless Contractor has actually been paid for such Work by the owner.*

*4.2 The Owner's payment to Contractor of extra compensation for any such*  
              *suspension, delay, or acceleration shall be a condition precedent to*  
              *Subcontractor's right, if any, to receive such extra compensation from*  
              *Contractor.*

///

1           5.       Each of these provisions represents or contains Pay-if-Paid such that, if enforced,  
2       may allow APCO and Camco to deny payment to their subcontractors for work performed on  
3       the grounds that APCO and Camco have not been paid.

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

6           **B.       Conclusions of Law.**

7           As discussed below, Pay-if-Paid is void and unenforceable in Nevada and, as a result,  
8       the Motion to Preclude Defenses based on Pay-if-Paid Agreements in GRANTED.

9           1.       In 2008 the Nevada Supreme Court declared Pay-if-Paid void and unenforceable  
10      as against Nevada's public policy because "Nevada's public policy favors securing payment for  
11      labor and material contractors." *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124  
12      Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev. 2008). The *Bullock* Court noted that "because  
13      a pay-if-paid provision limits a subcontractor's ability to be paid for work already performed,  
14      such a provision impairs the subcontractor's statutory right to place a mechanic's lien on the  
15      construction project." 124 Nev. at 1117 n. 51 (citing *Wm. R. Clarke Corp. v. Safeco Ins. Co.*, 15  
16      Cal. 4th 882, 64 Cal. Rptr. 2d 578, 938 P.2d 372, 376 (Cal. 1997))

17          2.       Nevada's statutory schemes designed to secure payment to contractors and  
18      subcontractors in the construction industry as a whole are remedial. *See Hardy Companies, Inc.*  
19      *v. W.E. O'Neil Const. Co.*, 245 P.3d 1149, 1155 (Nev. 2010) (citing *Las Vegas Plywood v. D &*  
20      *D Enterprises*, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982)). As stated in *Bullock*:

21                   Underlying the policy in favor of preserving laws that provide contractors secured  
22                   payment for their work and materials is the notion that contractors are generally in a  
23                   vulnerable position because they extend large blocks of credit; invest significant time,  
24                   labor, and materials into a project; and have any number of workers vitally depend  
25                   upon them for eventual payment. *We determine that this reasoning is persuasive as it*  
26                   *accords with Nevada's policy favoring contractors' rights to secured payment for*  
27                   *labor, materials, and equipment furnished.*

28                   *Bullock*, 124 Nev. at 1116 (emphasis added).

///

///

///

1           3.     Despite the fact that the *Bullock* decision involved mechanic's liens, the Court  
2 rejects as without merit the argument that the public policy rationale of *Bullock* is limited to the  
3 concept of security or does not apply when there is no security such as in the present case, where the  
4 Property has been sold and the proceeds have been released to senior lienors. Among other things,  
5 the term "secured payment" utilized by *Bullock*, at 1116, uses "secured" as an adjective and  
6 "payment" as a noun.

7           4.     By way of a footnote, the *Bullock* Court noted that the Nevada Legislature  
8 "amended NRS Chapter 624 to include the prompt payment provisions contained in NRS 624.624  
9 through 624.626. Pay-if-paid provisions entered into subsequent to the Legislature's amendments  
10 are enforceable only in limited circumstances and are subject to the restrictions laid out in these  
11 sections." 124 Nev. at 1117 n. 50. No such "limited circumstances" exist in this case.

12           5.     NRS 624.624(1) provides for the obligation of prompt payment by a higher-tiered  
13 contractor (such as APCO and Camco) to a lower-tiered subcontractor (such as the PB Lien  
14 Claimants), as follows:

15                 Except as otherwise provided in this section, if a higher-tiered contractor enters into:

16                 (a) A written agreement with a lower-tiered subcontractor that includes a schedule for  
17 payments, the higher-tiered contractor shall pay the lower-tiered subcontractor:

18                     (1) On or before the date payment is due; or

19                     (2) Within 10 days after the date the higher-tiered contractor receives payment  
20 for all or a portion of the work, materials or equipment described in a request  
21 for payment submitted by the lower-tiered subcontractor,

22                     ↪ whichever is earlier.

23                 (b) A written agreement with a lower-tiered subcontractor that does not contain a  
24 schedule for payments, or an agreement that is oral, the higher-tiered contractor shall  
25 pay the lower-tiered subcontractor:

26                     (1) Within 30 days after the date the lower-tiered subcontractor submits a  
27 request for payment; or

28                     (2) Within 10 days after the date the higher-tiered contractor receives payment  
for all or a portion of the work, labor, materials, equipment or services  
described in a request for payment submitted by the lower-tiered subcontractor,

↪ whichever is earlier.

NRS 624.624(1) (emphasis added).

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///

6. Stated simply, if there is a “schedule of payments” in an otherwise enforceable written agreement, the higher-tiered contractor must pay the lower-tiered subcontractor – at the latest – on the date payment is due. If there is no enforceable written agreement containing a schedule of payments, the payment is due to the lower-tiered subcontractor – at the latest - within 30 days of its request for payment. Under either circumstance it has been approximately nine years since payments on the Project ceased to be made.

7           6.       The Court also rejects the argument that the “schedule of payments” delays the  
8 obligation of payment until “within 15 days after Contractor actually receives payment for  
9 Subcontractor's work from Owner.” Because the expiration of 15 days is itself dependent upon  
10 payment being received from the Owner, this is not a “schedule of payments” but rather simply  
11 another form of Pay-if-Paid.

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

14 **IT IS THEREFORE ORDERED** as follows:

- 15 1. The Peel Brimley Lien Claimants' Motion for Partial Summary Judgment  
16 Precluding Defenses Based on Pay-if-Paid Agreements GRANTED; and  
17 2. APCO and Camco may not assert or rely upon any defense to their payment  
18 obligations, if any, to the PB Lien Claimants and the Joining Subcontractors that  
19 is based on a pay-if-paid agreement.

20 IT IS SO ORDERED this 29<sup>th</sup> day of December, 2017.

21  
22

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

24 Submitted by:  
**PEEL BRIMLEY LLP**

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RICHARD L. PEEL, ESQ. (4359)  
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28 *Attorneys for Various Lien Claimants.*

1 **MOT**

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13 -and-

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21 *Attorneys for Apco Construction, Inc.*

22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 APCO CONSTRUCTION, a Nevada  
25 corporation,

26 Plaintiff,

27 v.

28 GEMSTONE DEVELOPMENT WEST, INC., A  
Nevada corporation,

Defendant.

DEPARTMENT XIII  
NOTICE OF HEARING  
DATE 1/11/18 TIME 9:00 AM  
APPROVED BY RA

Case No.: A571228

Dept. No.: XIII

Consolidated with:

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

**MOTION FOR RECONSIDERATION OF**  
**COURT'S ORDER GRANTING PEEL**  
**BRIMLEY LIEN CLAIMANTS' PARTIAL**  
**MOTION FOR SUMMARY JUDGMENT**  
**TO PRECLUDE DEFENSES BASED ON**  
**PAY IF PAID PROVISIONS ON AN ORDER**  
**SHORTENING TIME**

AND ALL RELATED MATTERS


APCO Construction, Inc. ("APCO"), by and through its undersigned counsel of record, the



1 law firms of SPENCER FANE LLP and MARQUIS AURBACH COFFING, submits the  
2 following Motion for Reconsideration of the Court's Order Granting the Peel Brimley Lien  
3 Claimants Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid  
4 Provisions. This Motion for Reconsideration should be granted because Helix, the joining  
5 subcontractors,<sup>1</sup> and the Court erred in relying on *Lehrer*<sup>2</sup> to conclude that pay-if-paid provisions  
6 are unenforceable as a matter of law and against public policy. The *Lehrer* decision was  
7 predicated on a pay-if-paid provision that involved a waiver of mechanic's lien rights. When the  
8 Nevada Supreme Court has analyzed pay-if-paid provisions without a mechanic's lien waiver, it  
9 has found such provisions to be valid conditions precedent to a general contractor's obligation to  
10 pay a subcontractor. There have been no waiver of lien rights in this instance and all parties  
11 agreed to valid preconditions to payment.

12 DATED: January 30, 2018.

13 SPENCER FANE LLP

14 By:   
15 John H. Mowbray, Esq. (Bar No. 1140)  
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22 Attorneys for Apco Construction, Inc.


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26  
27 <sup>1</sup> National Wood Products, LLC and Zitting Brothers Construction, Inc. joined the Peel Brimley  
28 Lien Claimants' motion. Other subcontractors did as well, but those other subcontractors have  
either settled out of the case, or do not have affirmative claims against APCO.

<sup>2</sup> *Lehrer McGovern Bovis v. Bullock Insulation*, 197 P.3d 1032, 124 Nev. 1102 (Nev., 2008).

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It is HEREBY ORDERED that the time may be shortened and the Motion shall be set for hearing on the 11<sup>th</sup> day of January, 2018, at 9<sup>00</sup> a.m., in Department XIII.

, at 9:00 a.m., in Department XIII.



District Court Judge

**SPENCER FANE LLP**

  
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1 **I. INTRODUCTION**

2 APCO entered into a contract with the project owner, Gemstone Development West, Inc.  
3 (“Gemstone”). APCO then entered into a subcontract with Helix Electric of Nevada, LLC, Zitting  
4 Brothers Construction, Inc. and National Wood Products, LLC (the “Subcontractors” or the  
5 “Subcontracts”). Among other provisions, the Subcontracts contained several provisions  
6 confirming that a condition precedent to the Subcontractors’ right to receive payment from APCO  
7 was that APCO actually receive payment from Gemstone for the Subcontractors’ work.

8 The Subcontracts did not waive the Subcontractors’ right to place a mechanic’s lien on the  
9 property. It simply protected APCO from becoming Gemstone’s guarantor and confirmed that  
10 APCO would pay the Subcontractors *after* APCO received the Subcontractors’ payment from  
11 Gemstone. The parties had a right to allocate that payment risk pursuant to their legally recognized  
12 freedom to contract. The owner payment precondition was narrowly drawn and it only protected  
13 APCO from Gemstone’s non-payment. Simply stated, the Court should not allow the  
14 Subcontractors to repudiate the terms of their negotiated agreements. The Subcontractors are  
15 sophisticated parties and made a business decision to accept Gemstone’s payment as a  
16 precondition. Their statutory right to place a mechanic’s lien on the property were not impaired.  
17 This is undisputed since all three Subcontractors actually filed mechanic’s liens on the property,  
18 and attempted to foreclose upon the property. The Motion for Reconsideration should be granted  
19 because the Nevada Supreme Court has found conditions precedent involving owner payment to  
20 the general contractor to be valid and enforceable when the subcontract at issue does not force a  
21 subcontractor to waive its right to place a mechanic’s lien on the property.<sup>3</sup>

22 **II. PROCEDURAL HISTORY/ STATEMENT OF FACTS**

23 As this Court knows, this case involves the incomplete construction of Manhattan West  
24 Condominium Property (“Property”), which was owned and developed by Gemstone. Gemstone  
25 hired APCO as the prime contractor and later replaced APCO with Camco Pacific Construction  
26

27  
28 <sup>3</sup> See *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386 P.3d 982 (Nev.  
2016) (unpublished).

1 Co. Inc. ("CAMCO"). While APCO was the general contractor, it signed Subcontracts with the  
2 Subcontractors.<sup>4</sup>

3 As part of that Subcontract, APCO and the Subcontractors agreed that APCO would not  
4 have an obligation to pay the Subcontractors unless and until it received funds for the  
5 Subcontractors' work from Gemstone.<sup>5</sup> The Subcontract did not waive the Subcontractors' right  
6 to place a mechanic's lien on the property.  
7

8 In 2008, Gemstone stopped payment to everyone on the Project including APCO.  
9 Gemstone ultimately filed bankruptcy. This caused APCO, and the Subcontractors to record NRS  
10 Ch. 108 mechanic's liens against the Property and assert NRS Ch. 108 claims for foreclosure of  
11 mechanic's liens.<sup>6</sup> All subcontractor actions against Gemstone, APCO and Camco were  
12 consolidated, and APCO took the lead in pursuing its and the subcontractor's lien claims against  
13 Gemstone.<sup>7</sup>  
14

15 The Project lender filed a motion for summary judgment as to lien priority, and the Court  
16 granted the bank's motion. This Court ordered that the "Property shall be sold free and clear of all  
17 liens including but not limited to all liens as shown on Preliminary Title Report..."<sup>8</sup> All the sale  
18 proceeds then went to the lenders.<sup>9</sup> APCO spearheaded *and* financed the related appeal, which the  
19 Subcontractors joined. The appeal was denied in September 2015, wiping away all lien rights  
20 against the property.<sup>10</sup>  
21

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22  
23 <sup>4</sup> See **Exhibit 1**, Helix Subcontract; **Exhibit 2**, Zitting Subcontract, and **Exhibit 3**, CabineTec  
24 Subcontract.

25 <sup>5</sup> See Subcontracts (Exhibits 1-3) at Sections 3 and 4.

26 <sup>6</sup> See **Exhibit 4**, Helix's Mechanic's Lien; **Exhibit 5**, Zitting's Mechanic's Lien, and **Exhibit 6**,  
CabineTec's Mechanic's Lien.

27 <sup>7</sup> Please see the Court's docket.

28 <sup>8</sup> **Exhibit 7**, Order Approving Sale of Property), para. 6; and **Exhibit 8** (Notice of Entry of Order  
Releasing Sale Proceeds From Court-Controlled Escrow Account).

<sup>9</sup> *Id.*

<sup>10</sup> See **Exhibit 9**, Order denying appeal.

1 On July 31, 2017, the Peel Brimley Lien Claimants ("Peel Brimley") filed a motion for  
2 summary judgment to preclude defenses based on pay-if-paid provisions. APCO opposed the  
3 motion. On January 2, 2018, the Court granted Peel Brimley's motion, finding that pay-if-paid  
4 provisions were against public policy, citing *Lehrer McGovern Bovis, Inc. v. Bullock Insulation,*  
5 *Inc.*<sup>11</sup> in its order.<sup>12</sup> APCO respectfully submits that that reliance is misplaced.

### 7 III. LEGAL STANDARD

8 The Nevada Supreme Court has held that "[u]nless and until an order is appealed,  
9 the district court retains jurisdiction to reconsider the matter."<sup>13</sup> In Clark County, a motion for  
10 rehearing must be filed within 10 days after service of written notice of entry of the order  
11 following the original hearing.<sup>14</sup> Rehearings are appropriate only when "substantially different  
12 evidence is subsequently introduced or the decision is clearly erroneous."<sup>15</sup> This Court has  
13 discretion on the question of rehearing. See *Harvey's Wagon Wheel, Inc. v. MacSween*,<sup>16</sup>  
14 (reconsideration of previously denied motion for summary judgment approved as the "judge  
15 was more familiar with the case by the time the second motion was heard, and he was persuaded  
16 by the rationale of the newly cited authority").

17 In addition, a motion for reconsideration of summary judgment may be brought under  
18 both *NRCP 59(e)* and *NRCP 60(b)*. Rehearings are justified when a party seeks to reargue a point  
19 of law and provides a convincing legal basis for doing so. See *Gibbs v. Giles*,<sup>17</sup> (holding trial court  
20 did not err in granting motion for rehearing in order to permit a party to reargue the law).

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23  
24 <sup>11</sup> 124 Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev. 2008).

25 <sup>12</sup> **Exhibit 10**, Order Granting Peel Brimley Lien Claimants' Motion for Summary Judgment.

26 <sup>13</sup> *Gibbs v. Giles*, 96 Nev. 243, 245, 607 P.2d 118, 119 (1980); accord *Barry v. Lindner*, 119  
27 Nev. 661, 670, 81 P.3d 537, 543 (2003).

28 <sup>14</sup> See *EDCR 2.24(b)*.

<sup>15</sup> *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737,  
741, 941 P.2d 486, 489 (1997)

<sup>16</sup> 96 Nev. 215, 217-18, 606 P.2d 1095, 1097 (1980)

<sup>17</sup> 96 Nev. 243, 244-45, 607 P.2d 118, 119 (1980)



1       APCO requests that this Court grant its Motion for Reconsideration because the Court  
2       erred in relying upon *Lehrer* to conclude that pay-if-paid provisions are against public policy in  
3       the instant case.

4       **IV. ANALYSIS**

5       **A. The *Lehrer* case is not dispositive.**

6       The Court's order relies on the *Lehrer* case in holding that pay-if-paid agreements are  
7       illegal and unenforceable as against public policy.<sup>18</sup> This reliance is misplaced. In *Lehrer*, the  
8       governing contract contained a waiver of a subcontractor's right to place a mechanic's lien on the  
9       property *and* pay-if-paid language:  
10

11               The subcontract incorporated the general conditions of the  
12               agreement, which contained a lien waiver clause, whereby Bullock  
13               Insulation promised "not [to] suffer or permit any lien or other  
14               encumbrance to be filed" against the project. The lien waiver clause  
15               is located in the agreement after other provisions discussing final  
16               payment terms and the conditions precedent for final payment. The  
17               lien waiver is not dependent upon Bullock Insulation's receipt of any  
18               payment for labor or materials. Also preceding the lien waiver  
19               provision of the agreement is a pay-if-paid provision, under which,  
20               by way of incorporation into the subcontract, Bullock Insulation's  
21               right to payment for its work was contingent upon Venetian Resort's  
22               payments to Bovis.<sup>19</sup>

23       The Nevada Supreme Court addressed the legality of forcing a subcontractor to waive its right to  
24       place a mechanic's lien and the enforceability of pay-if-paid language *in conjunction with* a waiver  
25       of a mechanic's lien.<sup>20</sup> The Nevada Supreme Court did not address pay-if-paid provisions in  
26       subcontracts that did not waive, impair, or have the practical effect of waiving or impairing a  
27       subcontractor's right to place a mechanic's lien on the property. In this case, there was no waiver  
28       of lien rights.

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27       <sup>18</sup> **Exhibit 10.**

28       <sup>19</sup> *Lehrer McGovern Bovis v. Bullock Insulation*, 197 P.3d 1032, 124 Nev. 1102 (Nev., 2008)

28       <sup>20</sup> *Lehrer*, 197 P.3d at 1040-1044.

1 In *Lehrer*, the Nevada Supreme Court held that trial courts must review each mechanics  
2 lien waiver on a case-by-case basis to determine whether the waiver violates public policy. The  
3 court reasoned that:

4 A contractor has a statutory right to a mechanics lien for the unpaid  
5 balance of the price agreed upon for labor, materials and equipment  
6 furnished. 'The object of the lien statutes is to secure payment to  
7 those who perform labor or furnish material to improve the property  
8 of the owner.' This court has held on numerous occasions 'that the  
mechanics lien statutes are remedial in character and should be  
liberally construed....'

9 ...

Underlying the policy of preserving laws that provide contractors  
secured payment for their work and materials is the notion that  
contractors are generally in a vulnerable position because they  
extend large blocks of credit; invest significant time, labor, and  
materials into a project; and have any number of workers vitally  
depend upon them for eventual payment....

[W]e now ... conclude that it is appropriate for the district court to  
**engage in a public policy analysis particular to each lien waiver  
provision that the court is asked to enforce.** In doing so, we  
emphasize that not every lien waiver provision violates public  
policy. The enforceability of each lien waiver clause must be  
resolved on a case-by-case basis by considering whether the form of  
the lien waiver clause violates Nevada's public policy to secure  
payment for contractors. In this case, the lien waiver provision  
applies regardless of whether [the subcontractor] received any  
payment. We conclude that such a provision violates public policy,  
as it fails to secure payment for [the subcontractor].<sup>21</sup>

19 Accordingly, the Court should engage in a public policy analysis for each lien waiver it is asked to  
20 enforce. But in the instant case, the Subcontract did not contain a waiver of the Subcontractors'  
21 right to place a mechanic's lien on the property.

23 When considering the pay-if-paid provision *in conjunction with the preemptive waiver of*  
24 *mechanic's lien rights*, the *Lehrer* court stated in dicta that pay-if-paid provisions are against

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28 <sup>21</sup> *Lehrer*, 197 P.3d at 1042.

1 public policy when they impair a subcontractor's right to place a mechanic's lien on the property,  
2 and have the same practical effect of waiving a right to a mechanic's lien:

3           At the time the parties entered into the agreement and subcontract,  
4 the Legislature had not yet proclaimed pay-if-paid provisions  
5 unenforceable, and this court had not previously addressed the  
6 enforceability of such provisions. Because a pay-if-paid provision  
7 limits a subcontractor's ability to be paid for work already  
8 performed, such a provision impairs the subcontractor's statutory  
9 right to place a mechanic's lien on the construction project. As noted  
10 above, Nevada's public policy favors securing payment for labor and  
11 material contractors. Therefore, we conclude that pay-if-paid  
12 provisions are unenforceable because they violate public policy.  
13 Accordingly, we affirm the portion of the district court's judgment  
14 concluding that the pay-if-paid provision of the subcontract was  
15 unenforceable.<sup>22</sup>

16           The rationale in *Lehrer* is inapplicable in this case because the subcontract did not contain  
17 a waiver or impairment of the Subcontractors' mechanic's lien rights. The Subcontractors  
18 maintained such rights and lienied the property to get paid for their labor and materials.<sup>23</sup> APCO  
19 spearheaded and financed the charge to get it and its subcontractors paid through those liens. In  
20 fact, the Nevada Legislature has recognized that parties can agree to conditions precedent to  
21 payment (including a condition precedent that only requires a general contractor to pay a  
22 subcontractor after the general contractor has received payment for the subcontractor's work from  
23 the owner) in its prompt payment statutes:

24           **NRS 624.626 Grounds and procedure for stopping work or**  
25 **terminating agreement; change orders; damages and other**  
26 **remedies; rights of lower-tiered subcontractors after work**  
27 **stoppage or termination of agreement; limitations on liability.**

28           1. If:

29           ..  
30           (b) A higher-tiered contractor fails to pay the lower-tiered  
31 subcontractor within 45 days after the 25th day of the month in  
32 which the lower-tiered subcontractor submits a request for payment,  
33 **even if the higher-tiered contractor has not been paid and the**  
34 **agreement contains a provision which requires the higher-tiered**

35           <sup>22</sup> *Lehrer McGovern Bovis v. Bullock Insulation*, 197 P.3d 1032, 124 Nev. 1102 (Nev., 2008)  
36 (internal citations omitted).

37           <sup>23</sup> See Exhibits 4-6.

1 contractor to pay the lower-tiered subcontractor only if or when  
2 the higher-tiered contractor is paid;

3 → the lower-tiered subcontractor may stop work under the  
4 agreement until payment is received if the lower-tiered  
5 subcontractor gives written notice to the higher-tiered contractor at  
6 least 10 days before stopping work.<sup>24</sup>

7 If the Legislature wanted to prohibit contracts that require the owner's payment to the  
8 general before the general was required to pay a subcontractor, it would not have specifically  
9 legislated to account for these conditions precedent.<sup>25</sup> The Legislature also recognized that parties  
10 can agree to a schedule of payments,<sup>26</sup> and the Nevada Supreme Court has interpreted that a  
11 schedule in which payment to the subcontractor does not become due until the owner has made the  
12 corresponding payment to the general contractor is valid.<sup>27</sup>

13 In *Padilla Construction Company of Nevada v. Big-D Construction Corp.*,<sup>28</sup> the Nevada  
14 Supreme Court and this Court analyzed pay-if-paid language without a waiver of a mechanic's  
15 lien, and enforced a similar condition precedent to payment requiring the owner's payment to the  
16 general contractor before the general contractor is required to pay a subcontractor. This decision  
17 confirmed that NRS 624.624 was meant to ensure payment to subcontractors **after** the owner paid  
18 the general for the subcontractor's work.<sup>29</sup>

19 In *Padilla Construction*, Big-D was hired as the general contractor for a construction  
20 project and subcontracted with Padilla to install a stucco system on the building. While the stucco

21 <sup>24</sup> NRS 624.626 (1)(b) (emphasis added).

22 <sup>25</sup> The *Lehrer* decision is confusing because the Nevada Legislature expressly recognizes that  
23 subcontractor agreements can contain a condition precedent to payment in which the lower tier  
24 contractor is not paid until the higher tier contractor receives payment from the owner. NRS  
25 624.626(1)(b) expressly recognizes that a subcontractor may stop work "even if the higher-tiered  
26 contractor has not been paid and the agreement contains a provision which requires the higher-  
27 tiered contractor to pay the lower-tiered subcontractor only if or when the higher-tiered  
28 contractor is paid."

26 <sup>26</sup> NRS 624.624(1)(a).

27 <sup>27</sup> *Padilla Construction Company of Nevada v. Big-D Construction Corp.*, 386 P.3d 982 (Nev.  
28 2016)(unpublished).

28 <sup>28</sup> 386 P.3d 982 (Nev. 2016)(unpublished).

<sup>29</sup> *Padilla Construction Company of Nevada v. Big-D Construction Corp.*, 386 P.3d 982 (Nev.  
2016) (unpublished).



1 was being installed, separation issues developed and the owner rejected Padilla's work. Padilla  
2 filed a complaint against Big-D for non-payment. After trial, this Court found that: (1) Padilla's  
3 signed subcontract bound it to the owner's decisions,<sup>30</sup> (2) NRS 624.624 was designed to ensure  
4 that general contractors pay subcontractors **after** the owner pays the general,<sup>31</sup> (3) NRS 624.624  
5 yields to a schedule of payments,<sup>32</sup> (4) the subcontract confirmed that Padilla would get paid after  
6 the owner accepted and paid the prime contractor for the work,<sup>33</sup> and (5) the owner never  
7 accepted the work so Big-D's payment to Padilla never became due.<sup>34</sup> Then this Court awarded  
8 Big-D damages and attorneys fees.<sup>35</sup> In the subsequent appeal, Padilla's opening brief, Big-D's  
9 responding brief, and Padilla's reply brief each made arguments regarding the legality of pay-if-  
10 paid provisions. As explained below, the Nevada Supreme Court analyzed the pay-if-paid  
11 provision in the contract under a condition precedent analysis, not whether the language was void  
12 as against public policy.

13 In its opening brief, Padilla argued that the Court erred because it found that Padilla was to  
14 be paid after the owner paid the general contractor, and cited *Lehrer* for the proposition that pay-  
15 if-paid provisions are illegal under Nevada law.<sup>36</sup> So it is clear that the Nevada Supreme Court had  
16 the opportunity to consider the condition precedent to payment as a pay-if-paid provision.

17 Big-D addressed pay-if-paid provisions in its responding brief and argued that NRS 624.624  
18

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19 <sup>30</sup> See **Exhibit 11**, Findings of Fact and Conclusions of Law and Judgment at 19:15-18 ("9A. In  
20 the Subcontract Agreement, Padilla agreed to be subject to the Owner's decisions and actions and  
21 that Big-D 'shall have the rights, remedies, powers and privileges as to, or against You which the  
Owner has against us.'").

22 <sup>31</sup> See *Id.* at 21:14-16 (emphasis added). ("NRS 624.624 is designed to ensure that general  
23 subcontractors promptly pay subcontractor after the general contractor receives payment from the  
Owner associated with work performed by the subcontract.").

24 <sup>32</sup> *Id.* at 21: 17-19. ("By its own terms, NRS 624.624 yields to (a) payment schedules contained in  
25 subcontract agreements and (b) contractual rights to withhold payments from a subcontractor after  
arising from deficient work."); *Id.* at 22:6-9. ("Here, it is undisputed that the Subcontract  
26 Agreement is a written agreement between Big-D and Padilla. Accordingly, pursuant to NRS  
624.624(1)(a) payment is due to Padilla on the date specified in the Subcontract Agreement.").

27 <sup>33</sup> *Id.* at 22:9-11. ("The Subcontract provided that Padilla was to be paid within ten (10) days after  
IGT paid Big-D and after IGT accepted the Padilla work.").

28 <sup>34</sup> See *Id.* at 23:2-3 ("Here, it is undisputed that IGT never accepted the Padilla work. Accordingly,  
payment to Padilla never became due.").

<sup>35</sup> **Exhibit 12**, Order Granting Attorney's Fees.

1 does not change when payment is due, and that payment was not due until: (1) the owner accepted  
2 Padilla's work, and (2) the owner paid Big-D for Padilla's work under the subcontract:

3 The Subcontract provided that Padilla was to be paid within ten  
4 (10) days after IGT paid Big-D *and* after IGT accepted the Padilla  
5 Work. Specifically, Big-D "must have first received from the Owner  
6 the corresponding periodic payment, *including the approved*  
7 *portion of your monthly billing*, unless the Owner's failure to make  
8 payment was caused exclusively by us." *Id.* at Section 4.2.

9 NRS 624.624 does not change the timing of when payment is due  
10 under a subcontract. The statute is designed to ensure that general  
11 subcontractors promptly pay subcontractors after the general  
12 contractor receives payment from the Owner associated with work  
13 performed by the subcontractor. NRS 624.624 is clear that its  
14 provisions yields to (a) payment schedules contained in subcontract  
15 agreements...<sup>37</sup>

16 Big-D also addressed *Lehrer* in its responding brief and argued that *Lehrer* was not at issue  
17 in *Padilla v. Big-D*, the issue was the payment schedule in the subcontract:

18 First, NRS 624 was not in effect or being interpreted in *Lehrer*  
19 *McGovern Bovis, Inc. v. Bullock Insulation, Inc.* 124 Nev. 1102,  
20 1117 (2008). Second, the issue here is not whether the payment  
21 schedule in the Big-D subcontract is a pay-if-paid clause that  
22 would excuse Big-D's obligation to pay Padilla if the owner  
23 failed to pay Big-D for Padilla's work. Rather, the issue is, for  
24 the purposes of NRS 624.624 notice of withholding, when was  
25 the payment from Big-D to Padilla due. The Subcontract  
26 Agreement contained a schedule for payments-payment to  
27 Padilla was due after IGT approved Padilla's work *and* after  
28 Big-D received payment attributable to Padilla's work.<sup>38</sup>

19 Padilla's reply brief reargued that *Lehrer* prohibits pay if paid provisions, and that there was not a  
20 schedule of payments in the subcontract.<sup>39</sup> This Court and the Nevada Supreme Court disagreed  
21 and applied the subcontract provision as written and enforced the same as a condition precedent to  
22 payment.

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24  
25 <sup>36</sup> Exhibit 13, Padilla's Opening Brief at 26 (internal citations to the record omitted).

26 <sup>37</sup> Exhibit 14, Big D's responding brief at 28-29.

27 <sup>38</sup> See Exhibit 14, Big-D's responding brief at 32 (citations to the record omitted).

28 <sup>39</sup> See Exhibit 15, Padilla's Reply Brief at 13 ("According to *Lehrer McGovern Bovis v. Bullock Insulation*, 124 Nev. 1102, 1117-1118, 197 P.3d 1032 (2008), 'pay-if-paid provisions are unenforceable because they violate public policy.' Big-D's reliance on the NRS 624.624(1)(a) provision for agreements "that includes a schedule for payments" is inconsistent with the plain language of the Big-D – Padilla Subcontract; which does not contain a schedule of payments.

1 So it is clear the Nevada Supreme Court had the opportunity to consider pay-if-paid  
2 clauses and *Lehrer* in its decision and still enforced agreed upon payment schedules as  
3 follows:

4 Because the parties' subcontract contained a payment schedule  
5 that required that Padilla be paid within ten days after IGT  
6 accepted Padilla's work and paid Big-D for that work and it is  
7 undisputed that **IGT never accepted Padilla's work and never  
paid Big-D for Padilla's work**, the district court correctly found  
that payment never became due to Padilla under the subcontract  
or NRS 624.624(1)(a).<sup>40</sup>

8 So payment schedules that are triggered after owner payment are not unenforceable pay-if-paid  
9 provisions; they are valid conditions precedent to payment.

10 In the present action, the Subcontract: (1) confirmed that the Subcontractors would be bound  
11 to Gemstone to the same extent APCO was,<sup>41</sup> and (2) contained a schedule of payments for both  
12 retention and change orders with preconditions requiring APCO to be paid from the owner for the  
13 the Subcontractors' work before it had an obligation to pay the Subcontractors.<sup>42</sup> And in this case,  
14 it is undisputed that APCO did not receive the amounts the Subcontractors currently seek from  
15 APCO. Accordingly, given the Nevada Supreme Court's analysis of pay-if-paid provisions in  
16 *Padilla v. Big-D*, APCO's payment obligation to the Subcontractors never became due. Neither  
17 the Subcontracts nor NRS 624.624 were intended to make the general contractor the owner's  
18 guarantor. From a policy standpoint, such a ruling would drive prime contractors out of business.

19 **b. The Court's strong policy on deciding cases on the merits.**

20 "This court has held that good public policy dictates that cases be adjudicated on their  
21 merits."<sup>43</sup> In fact, Nevada has a "judicial policy favoring the disposition of cases on their  
22 merits."<sup>44</sup> "[A]s a proper guide to the exercise of discretion, the basic underlying policy to have  
23 each case decided upon its merits. In the normal course of events, justice is best served by such a  
24

25  
26 Instead of a Schedule of Payments, the Subcontract provides for monthly payments.").

<sup>40</sup> 386 P.3d 982, 2016 Nev. Unpub. LEXIS 958 (emphasis added).

<sup>41</sup> Exhibits 1-3, Subcontracts at 3.4.

<sup>42</sup> *Id.* at Sections 3 and 4.

<sup>43</sup> *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992)

<sup>44</sup> *Havas v. Bank of Nev.*, 96 Nev. 567, 613 P.2d 706 (1980).

1 policy.”<sup>45</sup> *Cf. Mansur v. Mansur*,<sup>46</sup> (“In regard to appellant's argument that the district court should  
2 not have considered respondent's untimely opposition to his motion, we conclude that that  
3 argument lacks merit” citing Nevada has a basic underlying policy in favor of deciding cases on  
4 their merits).

5 Thus, DESPITE arguments the Subcontractors may have to the contrary, this case should be  
6 decided at a trial on the merits.

7 In light of the foregoing, and for the reasons set forth in APCO's original opposition  
8 (incorporated herein by this reference), APCO respectfully requests that this Court grant the  
9 instant Motion for Reconsideration.

10 DATED: January 30, 2018.

11 **SPENCER FANE LLP**

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28 <sup>45</sup> *Hotel Last Frontier Corp. v. Frontier Props.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

<sup>46</sup> No. 63868, 2014 Nev. Unpub. LEXIS 790, at \*4 n.1 (May 14, 2014)



**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SPENCER FANE LLP and that a copy of the foregoing **MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING PEEL BRIMLEY LIEN CLAIMANTS' PARTIAL MOTION FOR SUMMARY JUDGMENT TO PRECLUDE DEFENSES BASED ON PAY IF PAID PROVISIONS ON AN ORDER SHORTENING TIME** was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage prepaid for non-registered users, on this 4<sup>th</sup> day of January, 2018, as follows:

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

Steven L. Morris (steve@gmdlegal.com)

**Intervenor Plaintiff: Cactus Rose Construction Inc**

Eric B. Zimbelman (ezimbelman@peelbrimley.com)

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

Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

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

Dana Y Kim (dkim@caddenfuller.com)

Richard L Tobler (rltldck@hotmail.com)

Richard Reincke (rreincke@caddenfuller.com)

S. Judy Hirahara (jhirahara@caddenfuller.com)

Tammy Cortez (tcortez@caddenfuller.com)

**Other: Chapter 7 Trustee**

Elizabeth Stephens (stephens@sullivanhill.com)

Gianna Garcia (ggarcia@sullivanhill.com)

Jennifer Saurer (Saurer@sullivanhill.com)

Jonathan Dabbieri (dabbieri@sullivanhill.com)

**Plaintiff: Apco Construction**

Rosie Wesp (rwesp@maclaw.com)

**Third Party Plaintiff: E & E Fire Protection LLC**

TRACY JAMES TRUMAN (DISTRICT@TRUMANLEGAL.COM)

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An employee of Spencer Fane LLP



# **EXHIBIT 1**

## SUBCONTRACT AGREEMENT

PROJECT: The West Manhattan Condominiums Contract NO. 168-7 APCO Construction Project No. 168  
PROJECT LOCATION: West Russell Road and Rocky Hill Street, Las Vegas, NV, 89148

OWNER: Gemstone Development West, Inc., 9121 West Russell Rd, Unit 117, Las Vegas Nevada 89148

ARCHITECT/ENGINEER: OZ Architecture, 303.861.5704 Haron Street, Denver, CO . 80202 . Redwine Engineering (303) 676-9510 700 17th Street, Denver, CO 80202 . Jordan & Skala Engineers, (702) 362-5111, 2900 S. Rancho Dr, Suite 102, Las Vegas Nevada 89102. WRG Engineering (702) 990-9300 3011 West Horizon Ridge Parkway, Suite 100, Henderson Nevada 89052.

THIS AGREEMENT (hereinafter "the Subcontract") is entered into in consideration of the mutual promises made this 17th day of April, 2007, between:

ASPHALT PRODUCTS CORPORATION also known as APCO Construction, (hereinafter called the "Contractor")  
3432 N. Fifth Street, North Las Vegas, Nevada 89032. Office: (702) 734-0188, Fax: (702) 734-0398, Nevada  
Contractors License No. 14563.

And Helix Electric  
3078 E. Sunsel Road  
Suite 0  
Las Vegas, NV 89120 P 702-732-1188 F 702-732-4386

(hereinafter called the "Subcontractor").

Subcontractor's NV Contractor's License No. 53810

Limit: Unlimited

Contractor and Subcontractor agree as follows:

### 1. Contract Documents

1.1 The Contract Documents for this Subcontract Agreement, shall include all exhibits and other documents attached hereto or made a part thereof by reference, all drawings designed by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering and approved by Gemstone Development West, Inc. and the Primary Contract between the Owner and Contractor (hereinafter "the Prime Contract"), including all exhibits, and other documents attached thereto or made part hereof by reference, the Project Specifications and Contract Documents, the Project Plans, and all addendum and subsequent modifications issued thereto. (All Contract Documents identified herein shall be hereinafter collectively referred to as the "Contract Documents").

1.2 The attached Helix Electric Exhibit is also part of this Subcontract Agreement. The Contract Documents are available in Contractor's office. Subcontractor acknowledges that it has carefully examined the Contract Documents and fully understands them. Copies of the Plans and Specifications will be provided to Subcontractor, upon request, at Subcontractor's Cost. Subcontractor shall, prior to the commencement of the Work, review and compare all of the Subcontract Documents relating to the performance of the Subcontractor and any and all errors, ambiguities and inconsistencies shall immediately be reported to the Contractor in writing and resolved to Subcontractor's satisfaction.

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INITIAL  
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- 1.3 Subcontractor is bound to the Contractor to the same extent and duration that Contractor is bound to Owner. Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor, by the Contract Documents, has assumed toward the Owner in the Prime Contract. Contractor shall further have the benefit of all rights, remedies, redress and limitations in respect to Subcontractor and all things done and used by Subcontractor in performance of its Work, which the Owner and its agents have against Contractor in the Contract Documents or by law. Any and all decisions by the Owner or its agents relative to interpretation of the Contract Documents or any ambiguity or discrepancy therein shall be binding on the Subcontractor to the same extent such are binding on Contractor. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with all Contract Documents, including all performance obligations and responsibilities which subcontractor assumes toward Contractor.

2. Scope of Work

- 2.1 Subcontractor agrees to furnish all supervision and labor, furnish and install all materials, equipment and supplies required, and do all things necessary to fully complete all of the items of work (the Subcontract Work), referred to in Exhibit "A": Subcontractor Scope of Work
- 2.2 Subcontractor warrants to Contractor and Owner that all Work shall be performed in a neat, skillful, good and workmanlike manner and will be fit for its intended use both as to workmanship and materials. Subcontractor agrees that all materials and equipment furnished by Subcontractor shall be new and of the best description and quality of their respective kinds, unless otherwise specified and ordered by Contractor in writing. Subcontractor warrants that the materials and equipment furnished and the Work performed will strictly comply with the Contract Documents and this Subcontract, and shall be satisfactory to Owner and Contractor.

2.3 Equal Opportunity Clause

During the performance of any contract, Subcontractor, unless exempt, agrees as follows:

- 2.3.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subcontractor will take affirmative action to ensure that color, religion, sex or national origin. Such action shall include, but not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places, available to employee and applicants for employment, notices to be provided by the government contracting officer setting forth the provisions of this nondiscrimination clause.
- 2.3.2 Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3. Contract Price and Payments

- 3.1 In consideration of the strict and complete and timely performance of all Subcontract Work, Contractor agrees to pay Subcontractor or in the payment quantities and schedules as is more fully described in Exhibit "A": Subcontractor's Scope of Work.
- 3.2 In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the Work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and

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furnishing all materials and equipment contemplated and embraced in this Subcontract, and for all loss or damage arising out of the nature of said Work, or from all actions of the elements or from any unforeseen difficulties or obstacles which may arise or be encountered in the performance of the Work, and for all risks of every description connected with the Work, and for all expense incurred by or in consequence of the suspension, interruption or discontinuance of the Work, and for well and faithfully completing the Work and the whole thereof in the manner and according to the requirements and instructions of Contractor and Owner or Owner's agents in charge of the Work, if any, payment in the amount of the Subcontract Price.

- 3.3 Subcontractor, upon request of Contractor, and on such date as Contractor shall designate, shall submit to Contractor, in form and content acceptable to Contractor, a monthly billing, no later than the 25<sup>th</sup> of each month, showing quantities of Subcontract work that has been satisfactorily completed in the preceding month, as well as backup material for same for submittal to the Owner. Failure to submit by the 25<sup>th</sup> of each month may result in that monthly payment application being rolled over to the following month. Subcontractor shall also submit an original executed Conditional Release, in the form required by Contractor, verifying payment of all laborers, subcontractors, equipment and material suppliers. Subcontractor shall also furnish required releases from any sub-subcontractors and/or materials suppliers that have notified Contractor of their presence on the Project. Subcontractor further agrees to provide all required employment security department, fringe benefit trust funds, certified payroll, and/or other reports as may be required by the Contractor or the Contract Documents.
- 3.4 The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (Forms attached) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.
- 3.5 Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (Forms attached) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to

assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.

- 3.6 Contractor shall have the right at all times to contact lower tier subcontractors and suppliers to verify that they are being paid by Subcontractor for labor or materials furnished for use in the Subcontract Work. If it appears that labor, material or other costs incurred in the performance of the Subcontract Work are not being paid when due, Contractor may take whatever steps it deems necessary to insure that the progress payments will be utilized to pay such costs, including, but not limited to, the issuance of joint checks payable to the claimant after written notice to Subcontractor, or additionally, making payment directly to claimant after written notice to Subcontractor. If such payment by Contractor exceeds the balance of payments due or to become due to Subcontractor from Contractor, then Subcontractor shall be liable to Contractor for the difference.
- 3.7 Contractor is hereby expressly granted the right to off set any sums due the Subcontractor under the provisions of this Subcontract against any obligation that may be due from Subcontractor to Contractor regardless of the source of said obligation. When requested by Contractor, Subcontractor shall furnish to Contractor a verified and itemized statement showing the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Subcontract Work together with the amount due or to become due for such work.
- 3.8 The 10 percent withheld retention shall be payable to Subcontractor upon, and only upon the occurrence of all the following events, each of which is a condition precedent to Subcontractor's right to receive final payment hereunder and payment of such retention: (a) Completion of the entire project described in the Contract Documents; (b) The approval and final acceptance of the project Work by Owner; (c) Receipt of final payment by Contractor from Owner; (d) Delivery to Contractor from Subcontractor all as-built drawings for its scope of work and other close out documents; (e) Delivery to Contractor from Subcontractor a Release and Waiver of Claims from all of Subcontractor's laborers, material and equipment suppliers, and subcontractors providing labor, materials or services to the Project, (Forms attached). If any sub-subcontractor, supplier or other person refuses to furnish a release or waiver required by the Owner or Contractor, the Subcontractor shall, upon the request of Contractor, furnish a bond satisfactory to the owner and Contractor to indemnify them against any such claim or lien. Should the existence of any unsatisfied or undischarged claim, obligation or lien arising in conjunction with Subcontractor's Work become known after final payment is received from Contractor, Subcontractor shall promptly pay on demand all actual amounts Contractor and/or Owner pay in bonding around, satisfying, discharging or defending any such claim, obligation or lien, including all costs and attorney's fees incurred in connection therewith. Final payment shall not relieve Subcontractor from liability, or for warranty or guaranty, or for indemnity obligations for faulty or defective Work.
- 3.9 Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such work by the Owner.
- 3.10 Progress payments and Final Payment shall not be considered or construed as evidence of acceptance of any part of Subcontractor's work until final acceptance of the Project by Owner.
4. Prosecution of Work
- 4.1 TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.
- (a) Seven (7) copies of all Subcontractor submittals shall be received by Contractor to suit the requirements of the approved CPM target schedule unless otherwise agreed to in writing by Contractor. Subcontractor agrees to provide plan-sized sheets for all submittals of required size

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Subcontractor OR

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24"x36" including one (1) sepia & six (6) blue line prints. Product specifications shall be provided in standard 8-1/2" by 11" paper, three hole punched and inserted into three ring binders labeled "The Manhattanwest Condominiums". Any required re-submittals shall be submitted within five working days of receipt of request from the Owner.

- (b) Final acceptance and approval of this Subcontract Agreement is contingent upon approval of Subcontractor's Submittals by the Owner/Architect/Engineer.
- (c) Any delays in the submittal process caused in whole or part by Subcontractor may be grounds for immediate termination of this Subcontract Agreement and subject Subcontractor to damages as provided in Sections 8 and 9 below.

Subcontractor agrees to commence the Subcontract Work within five (5) calendar days after receiving notification from Contractor to proceed, or within such other time as may be specified by Contractor, and to proceed at such points as Contractor may designate, and to continue diligently in its performance in accordance with the Contractor's project schedule and at a pace that will cause no delay in the progress of the Contractor's or other subcontractor's work.

- 4.2 Upon request, Subcontractor shall promptly provide Contractor with scheduling information, in the format required in the Contract Documents, or any other information relating to the order or nature of the Subcontract Work. Subcontractor agrees that the project schedule may be revised by Contractor as work progresses. Contractor may require Subcontractor to prosecute segments of the Subcontract Work in phases as Contractor may specify. Subcontractor shall comply with instructions given by Contractor, including any instructions to suspend, delay or accelerate the Subcontract Work. Subcontractor shall not be entitled to any extra compensation from Contractor for any such suspension, delay or acceleration unless specifically agreed to in writing by the Contractor and Owner and paid for by Owner. The Owner's payment to Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from Contractor.
- 4.3 Subcontractor shall keep the work area reasonably clean of debris, daily, resulting from the performance of its work and shall remove from the work area all debris generated by the execution of the Subcontract work. Non-compliance with verbal direction from Prime Contractor's Project Superintendent for cleanup shall result in one (1) written notice for clean-up. Upon failure to properly police the debris from their own activity, 24 hours after written notification this subcontractor will be fined \$500.00 plus the cost for clean-up.
- 4.4 Subcontractor, in undertaking to complete the Subcontract Work within the time specified, avows that it has considered ordinary delays incident to such work; including, but not limited to delays in securing materials, equipment or workmen, and minor changes, omissions or additions, unavoidable casualties, normal weather conditions, strikes or lockouts. If Subcontractor shall be delayed in the performance of the Work by any act or neglect of the Owner or Architect, or by agents or representatives of either, or by changes ordered in the Work, or by fire, unavoidable casualties, national emergency, or by any cause other than the intentional interference of Contractor, Subcontractor shall be entitled, as Subcontractor's exclusive remedy, to an extension of time reasonably necessary to compensate for the time lost due to the delay, but only if Subcontractor shall notify Contractor in writing within twenty four (24) hours after such occurrence, and only if Contractor shall be granted such time extension by Owner. No time extension will be allowed for delays or suspensions of work caused or contributed to by Subcontractor, and no time extension will be granted Subcontractor that will render Contractor liable for liquidated damages or other loss under the Contract Documents. The Subcontractor understands that this is an aggressive schedule and that should the Subcontractor fail to staff the Project with the proper workforce, to stay on schedule, then it is understood that the Subcontractor will have its workforce work overtime and/or weekends to maintain the pace of the schedule solely at the subcontractors expense.

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Subcontractor UR

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APCO 103635

JA001223



- 4.5 In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against the Contractor by the Owner, as provided in the Contract Documents, for any project delays caused by Subcontractor. Such damages shall be paid for each working day the Subcontract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by the Contractor, and granted by Owner.
- 4.6 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic event, or by reason of any other event or cause beyond Contractor's control, or contributed to by Subcontractor.
- 4.7 All Subcontract work done and all Subcontract materials delivered to the project site shall become Contractor's property, and said material shall not be removed by Subcontractor or any other party from the project site without Contractor's written consent. After completion and final acceptance of the Subcontract work and final payment, Subcontractor shall promptly remove all remaining material, equipment and debris of Subcontractor.
5. Changes and Claims
- 5.1 Contractor may order or direct changes, additions, deletions or other revisions in the Subcontract work without invalidating the Subcontract. No changes, additions, deletions, or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor mark up shall be limited to 10% overhead and profit in addition to the direct cost of the work. No markup shall be allowed on over time for original scope of work acceleration.
- 5.2 Subcontractor, prior to the commencement of such changed or revised work, shall submit, (within 24 hours of request) to Contractor, written copies of the cost or credit proposal, including work schedule revisions, for changes, additions, deletions or other revisions in a manner consistent with the Contract Documents. Contractor shall not be liable to Subcontractor for a greater sum, or additional time extensions, than Contractor obtains from Owner for such additional work, less reasonable overhead and profit due to Contractor, and also less professional and attorney's fees, costs, and other expenses incurred by Contractor in the collection of any such sum or time extension. Payment to Subcontractor for such work shall be conditioned upon Contractor's actual receipt of payment from the Owner and such payment by Owner to Contractor with whatever documentation or support, as Contractor may deem necessary to negotiate with Owner.
- 5.3 In any dispute between Contractor and Owner as to amount, classification, price, time or value of Subcontract Work, or any Subcontract material or supplies, or any delay in the prosecution of the Subcontract work caused by Owner, or any other matter whatsoever pertaining to the Subcontract work, Subcontractor agrees to promptly and adequately provide Contractor with whatever documentation or support as Contractor may deem necessary to negotiate with Owner.
- 5.4 Contractor may dispute, appeal, resist, litigate or arbitrate any decision of Owner, without being deemed to have admitted any obligation or liability to Subcontractor, and if the decision shall be against Contractor, then Subcontractor shall be bound thereby. Subcontractor may, at its own expense, participate with Contractor in arbitration or legal proceedings. Subcontractor shall bear part or all costs, including attorneys' fees and legal expenses, incurred by Contractor in any such proceeding involving a claim, which, if allowed, would result in one or more payments to Subcontractor. Subcontractor's costs shall bear to the total amount sought in the proceeding. Prosecution of any such claim or proceeding shall be at the sole risk of Subcontractor, and Contractor shall have no liability for or in relation to the outcome.

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

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**Supreme Court Case No. 77320**  
***Consolidated with 80508***

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**HELIX ELECTRIC OF NEVADA, LLC,**

Appellant,

v.

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

Respondent.

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**JOINT APPENDIX**  
**VOLUME 23**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
06-24-09	<b>Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint</b>	<b>JA000001- JA000015</b>	<b>1</b>
08-05-09	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
04-26-10	<b>CAMCO and Fidelity's Answer and CAMCO's Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
07-02-10	<b>Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default</b>	<b>JA000042- JA000043</b>	<b>1</b>
<b>06-06-13</b>	<b>APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time</b>	<b>JA000044- JA000054</b>	<b>1</b>
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (1) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	<b>JA000055- JA000316</b>	<b>1/2/4/5/6</b>
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	<b>JA000317- JA000326</b>	<b>6</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
09-28-17	Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 1 – Notice of Entry of Order	JA000429 JA000435	7
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
<b>11-06-17</b>	<b>Helix Electric of Nevada’s Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC’s Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen’s Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
<b>11-06-17</b>	<b>APCO Construction, Inc.’s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	Exhibit 1 – Second Amended Notice of taking NRCPP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.’s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting’s Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
11-14-17	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
11-14-17	<b>Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine</b>	<b>JA000994- JA001008</b>	<b>20</b>
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009- JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
11-15-17	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine</b>	<b>JA001133 JA001148</b>	<b>21</b>

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
<b>12-29-17</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion in <i>Limine</i> 1-6</b>	<b>JA001161- JA001169</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in <i>Limine</i> 1-4</b>	<b>JA001170- JA001177</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion in <i>Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>01-03-18</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001187- JA001198</b>	<b>22</b>
<b>01-04-18</b>	<b>Motion for Reconsideration of Court’s Order Granting Peel Brimley Lien Claimants’ Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time</b>	<b>JA001199- JA001217</b>	<b>22</b>
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264- JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282- JA001297	25
	Exhibit 5 - Amended NOL	JA001298- JA001309	25
	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
01-09-18	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order</b>	<b>JA001552- JA001560</b>	<b>27</b>



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	<b>Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>		
<b>01-10-18</b>	<b>Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time</b>	<b>JA001561- JA001573</b>	<b>27</b>
<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
	Exhibit 1 – Exhibit List APCO	JA001595- JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638- JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642- JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA00167	28/9/29
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>1</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement ( <i>Admitted</i> )	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ( <i>Admitted</i> )	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ( <i>Admitted</i> )	JA001869- JA001884	30

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<sup>1</sup> Filed January 31, 2018

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone <i>(Admitted)</i>	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) <i>(Admitted)</i>	JA001981- JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ( <i>Admitted</i> )	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ( <i>Admitted</i> )	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ( <i>Admitted</i> )	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ( <i>Admitted</i> )	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ( <i>Admitted</i> )	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ( <i>Admitted</i> )	JA002121- JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-18-18	<b>Stipulation and Order Regarding Trial Exhibit Admitted into Evidence</b>	<b>JA002199- JA002201</b>	<b>36</b>
	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	<b>HELIX Related Exhibits:</b>		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	<b>Zitting Brothers Related Exhibits:</b>		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	<b>Helix Related Exhibits:</b>		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	<b>Helix Trial Exhibits:</b>		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65 /66/67/ 68/69/70/ 71/72 /73/74/75 /76/77
<b>01-19-18</b>	<b>Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA005282- JA005283</b>	<b>78</b>
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>2</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>3</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>4</sup></b>	<b>JA005820- JA005952</b>	81
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC’s (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.’s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>APCO Construction Inc.’s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC’s Responses to APCO Construction’s Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>

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<sup>4</sup> Filed January 31, 201883

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
05-08-18	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412- JA006442	87/88



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
<b>06-15-18</b>	<b>APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
<b>06-15-18</b>	<b>Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA006917 – JA006942</b>	<b>96</b>
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943- JA006948	96

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964- JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC’s Response to Special Master Questionnaire	JA006977- JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.’s Response to Special Master Questionnaire	JA006981- JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in Limine (against APCO Construction)	JA007070- JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions’ Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079- JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary	JA007085- JA007087	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
06-15-18	<b>Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007095- JA007120</b>	<b>97/98</b>
06-15-18	<b>Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
06-18-18	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007190- JA007192</b>	<b>99</b>
06-21-18	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
06-29-18	<b>APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>06-29-18</b>	<b>Helix Electric of Nevada, LLC's Reply Re: Motion to Retax</b>	<b>JA007225- JA007237</b>	<b>100</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>Notice of Entry of (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
08-06-19	<b>Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. Motion for Attorneys Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada LLC's Motion to Retax in Part and Denying in Part and all related matters (4) Granting Plaintiff in Intervention National Wood Products LLC's Motion to Retax in Part and Denying in Part -and-(5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401- JA007517	102/103

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520- JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105 /106/107 /108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff’s Motion to Dismiss	JA008171- JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts	JA008323- JA008338	110

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim		
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110
	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379- JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451- JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008484- JA008504	111

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602- JA008621	112

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Complaint and Camco Pacific Construction, Inc.'s Counterclaim		
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665- JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 10MM – Scott Financial Corporation’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759- JA008780	113
	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation’s Motion to Enforce Settlement Agreement and Enter Judgment	JA008762- JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
<b>08-16-19</b>	<b>APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA008811- JA008821</b>	<b>114</b>
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.’s Counterclaim	JA008925- JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose’s Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966- JA008986	117/118

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Pacific Construction's Counterclaim		
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987- JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119
<b>08-29-19</b>	<b>Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)</b>	<b>JA009117- JA009123</b>	<b>119</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	Exhibit A – 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.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada’s Motion for Rule 54(b) Certification	JA009183- JA00991	120

## **ALPHABETICAL APPENDIX OF EXHIBITS**

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
<b>08-05-09</b>	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
<b>05-08-18</b>	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412-	87/88

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
		JA006442	
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
<b>06-06-13</b>	<b>APCO’s Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO’s Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time</b>	<b>JA000044- JA000054</b>	<b>1</b>
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO’s Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO’s Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6
<b>02-11-20</b>	<b>APCO’s Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	<b>120</b>
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.’s Motion for Attorney’s Fees and Costs; (2) Granting APCO Construction, Inc.’s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC’s	JA009168- JA009182	114

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply		
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183- JA00991	120
<b>11-06-17</b>	<b>APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>08-16-19</b>	<b>APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA008811- JA008821</b>	<b>114</b>
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008925- JA008947	116/117

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Pacific Construction Company, Inc.'s Counterclaim		
	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction's Counterclaim	JA008966- JA008986	117/118
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987- JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-15-18	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639- JA006916	91/92/93 94/95/96
11-14-17	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
08-21-17	<b>APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000393- JA000409</b>	<b>6/7</b>
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
03-08-18	<b>APCO Construction Inc.'s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
11-15-17	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine</b>	<b>JA001133 JA001148</b>	<b>21</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
<b>06-29-18</b>	<b>APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99
<b>04-26-10</b>	<b>CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	<b>120</b>



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>06-15-18</b>	<b>Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
<b>06-13-13</b>	<b>Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone</b>	<b>JA000327</b>	<b>6</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>
<b>11-06-17</b>	<b>Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
<b>08-06-19</b>	<b>Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA007316- JA007331</b>	<b>101</b>
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. Motion for Attorneys Fees and Costs (2) Granting APCO Construction, Inc.’s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada LLC’s Motion to Retax in Part and Denying in Part and all related matters (4) Granting Plaintiff in Intervention National Wood Products LLC’s Motion to Retax in Part and Denying in Part -and-(5) Granting National Wood Products, Inc.’s Motion to File a Surreply	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of	JA007401- JA007517	102/103

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	Nevada, LLC, SWPPP Compliance Solutions, Inc., E&E Fire Protection		
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	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105/ 106/107/108 109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
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	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
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	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008323- JA008338	110
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	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110

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	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484- JA008504	111
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505- JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111

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	Exhibit 10CC – Heinaman Contract Glazing’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008602- JA008621	112
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622- JA008624	112
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	Exhibit 10HH – APCO Construction’s Answer to HD Supply Waterworks’ Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
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	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112
	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694- JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
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	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
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	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
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	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
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	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
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	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
<b>08-29-19</b>	<b>Helix Electric of Nevada LLC’s Reply to APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-</b>	<b>JA009117- JA009123</b>	<b>119</b>

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<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
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<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
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	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
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	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA001667	28/9/29
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>01-04-18</b>	<b>Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time</b>	<b>JA001199- JA001217</b>	<b>22</b>
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	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
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	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
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	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
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<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>

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12-29-17	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion <i>in Limine</i> 1-6	JA001161- JA001169	22
01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007332- JA007334	101
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11-06-17	Peel Brimley Lien Claimants' Motion <i>in Limine</i> Nos. 1-6	JA000419- JA000428	7
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	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
<b>09-28-17</b>	<b>Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000413- JA00418</b>	<b>7</b>
<b>01-09-18</b>	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001552- JA001560</b>	<b>27</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition</b>	<b>JA007190- JA007192</b>	<b>99</b>



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07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
01-18-18	Stipulation and Order Regarding Trial Exhibit Admitted into Evidence	JA002199- JA002201	36
	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38

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	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	<b>HELIX Related Exhibits:</b>		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	<b>Zitting Brothers Related Exhibits:</b>		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	<b>Helix Related Exhibits:</b>		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	<b>Helix Trial Exhibits:</b>		



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>5</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement (Admitted)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (Admitted)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (Admitted)	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone (Admitted)	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) (Admitted)	JA001981- JA001987	32

<sup>5</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record <i>(Admitted)</i>	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks <i>(Admitted)</i>	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment <i>(Admitted)</i>	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP <i>(Admitted)</i>	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner <i>(Admitted)</i>	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement <i>(Admitted)</i>	JA002121- JA002146	35

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>6</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>7</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix’s Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80

<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>8</sup></b>	<b>JA005820- JA005952</b>	81
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>

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<sup>8</sup> Filed January 31, 2018

6. Assignments

- 6.1 Subcontractor shall not assign or sublet the Subcontract or any part of the Subcontract Work or any payments due hereunder, without prior written consent of Contractor. Any such assignment made by Subcontractor without Contractor's prior written consent is void, and shall be grounds for termination of this Subcontract by Contractor, terminates the Subcontractor's right to any further payment and authorizes Contractor to withhold all monies due or to become due to Subcontractor.

7. Taxes

- 7.1 All applicable taxes, contributions, interest and/or penalties due under any federal, state, or municipal statute or regulation arising from Subcontractor's Work are included in the price to be paid to Subcontractor under the Subcontract. Subcontractor shall indemnify, defend, and save Contractor and Owner harmless from all liability, loss, and expense resulting from Subcontractor's failure to satisfy such obligations. Subcontractor shall, on demand, provide proof that all taxes and other charges have been, and are being properly paid.
- 7.2 If Contractor is assessed or charged for any Subcontractor taxes, contributions, interest or penalties, Contractor shall have the right to withhold such amount from funds due or to become due under the Subcontract, and to pay directly to taxing authorities any sums otherwise due Subcontractor, but not otherwise subject to offset in accordance with Section 3 above, upon receipt of a tax levy from such taxing authority.

8. Default and Termination

- 8.1 If, in the opinion of Contractor or Owner, Subcontractor fails, at any time, to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality; or fails to adequately or timely perform the Subcontract work to the satisfaction of Contractor or Owner; or becomes insolvent or makes any filing under the Acts of Congress relating to the bankruptcy; or fails, neglects and/or refuses to comply with the project plans and specification; or fails to perform the Subcontract work in a good and workmanlike manner; or causes any stoppage of the work of the other trades upon the project; or fails to correct defective work; or fails to comply in any other respect with the terms and conditions of this Subcontract, Contractor may declare a default by Subcontractor as herein provided.
- 8.2 Contractor shall provide prompt written notice of default to Subcontractor, by regular mail or as may otherwise be considered to reasonably provide notice to Subcontractor at Subcontractor's place of business described above. Such notice shall be complete upon deposit at a regular receptacle of the U.S. mail, Fax Transmission or upon actual hand delivery as provided herein.

In the event of default by Subcontractor as provided above, Contractor may, at his option, demand Subcontractor to cure or otherwise correct the default and breach within three calendar days after written notice by Contractor. If, after three days, Subcontractor has failed to cure and correct the default, Contractor may, at his sole option, provide any such labor, materials or equipment as may be necessary to complete the Work covered by this Subcontract Agreement and thereafter deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under this Agreement. Alternatively, Contractor may terminate Subcontractor's right to proceed with the Work and thereafter enter upon the premises and take control of all materials, tools, equipment, and/or appliances of Subcontractor, and may employ any other person, persons, or organizations to finish the Work and provide the labor, materials and equipment to accomplish that purpose. Following completion of the Work by the Contractor or other persons or organizations, all unused materials, tools, equipment and/or appliances shall be returned to

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Subcontractor. Subcontractor shall not be entitled to rent or payment of any kind for the use of Subcontractor owned equipment or materials, nor shall Contractor be liable for any damages arising from said use unless resulting from gross negligence, or willful destruction by Contractor.

In the event Subcontractor has provided a payment or performance bond to Contractor, in accordance with Section 10 of this Agreement; and following expiration of the three days cure period, Contractor will make notice and demand by registered mail upon Subcontractor's surety to complete the Work covered by this Subcontract Agreement. In the event Subcontractor's surety fails to notify Contractor within 10 days after receipt of notice and demand by Contractor of surety's election to complete the work on behalf of Subcontractor, such failure shall be deemed a waiver by surety to exercise its rights to complete the Work. Thereafter, Contractor may at his sole option, complete the Work as otherwise provided by this Section.

- 8.3 In case of any such termination of Subcontractor's right to proceed with the Work, Subcontractor shall not be entitled to receive any further payment under this Subcontract Agreement until the Work undertaken by Contractor in his prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's Work, such excess shall be paid by Contractor to Subcontractor; but, if such expense shall exceed the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds the unpaid balance.

"Expense" as referred to in this Section shall include all direct and indirect costs incurred by Contractor for furnishing labor, materials, and equipment; to complete the Work covered by this Subcontract Agreement. "Expense" shall further include, but shall not be limited to, replacement of Subcontractor costs, liquidated damages incurred by Contractor, extended field office overhead; and home office overhead, Contractor's attorneys fees and costs, and any and all other damages sustained by Contractor by reason of Subcontractor's default.

- 8.4 In the event Contractor elects to use its own labor forces to complete Subcontractor's Work, Subcontractor and Subcontractor's surety agree to pay Contractor for such Work at the following rates: (a) Labor - At Contractor's then prevailing labor rates, plus labor burden, including, but not limited to, employment taxes, liability insurance, workmen compensation insurance, and all other benefits; (b) Contractor Owned Equipment-At the then prevailing Equipment Rental Rates as established by the Blue Book for Construction Equipment as published by Data Quest; all rental costs shall be determined by dividing the monthly rental rate by twenty-two days per month to determine a daily rental rate. Hourly rental rates shall be determined by dividing the daily rate by eight; (c) Materials, Rental Equipment-Direct Invoice Costs, including transportation, if any; (d) Replacement Subcontractor-Direct Invoice Costs paid Replacement Subcontractor; (e) Field and home office overhead; (f) Ten percent profit on all expenses indicated in a-e above.

In lieu of computing overhead, as provided for above, Contractor may, at his sole option, elect to assess a charge, on items a, b, and c above, of 15% for General Overhead expenses. In addition, Contractor may assess a charge on items a, b, and c above 10% for Profit. Contractor shall be entitled to an additional markup on any and all of such expenses. Contractor shall also be entitled to an additional markup of 5% for General Overhead and 10% for Profit on all expenses and cost incurred pursuant to item d and e above.

- 8.5 If the cost to complete the Subcontract work is more than the unpaid balance of the Subcontract, then Subcontractor shall be liable to Contractor for the deficiency, and Contractor may hold, sell or otherwise realize upon any Subcontractor materials or equipment, or take other steps to collect the deficiency, including making a claim against Subcontractor's surety.
- 8.6 Whether Contractor exercises one or more of the above options or rights, nothing contained herein shall release Subcontractor within the specified time. Subcontractor agrees in the event of default that it will immediately assign and turn over to Contractor all sub-contracts, material contracts, or orders, bills of lading

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for material en route, and any other necessary data or information that would minimize the cost of completion of the Subcontract work.

9. Termination for Convenience

9.1 Right to Terminate for Convenience. The Contractor shall have the right to terminate for convenience, at any time, and with or without cause, Subcontractor's performance of all or part of the Subcontract or Subcontract Work, as defined in paragraph 2.1.

9.2 Notice to Subcontractor. The Contractor shall provide Subcontractor with written notice of the termination two calendar days in advance of the effective date of the termination. The two-day period shall begin to run upon receipt of the termination for convenience notice by the Subcontractor.

9.3 Subcontractor's Obligations. Upon receipt of the written notice of termination, the Subcontractor shall:

- A. Stop all work or its performance of all the Subcontractor or Subcontract Work that has been terminated, or stop work on the part of the Subcontract Work that has been terminated if its performance of only part of the Subcontract Work has been terminated.
- B. Enter into no further sub-subcontracts or place any orders for supplies, materials, or facilities, except as necessary to complete any portion of the Subcontract Work not terminated for convenience.
- C. Terminate all sub-subcontracts or orders to the extent related to the terminated Subcontract Work.
- D. As directed by the Contractor, transfer title and deliver to the Contractor any fabricated or unfabricated parts, work in progress, completed work, supplies, and other materials produced or acquired for the Subcontractor or Subcontract Work terminated and the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, the Subcontractor would be required to furnish to the Contractor.
- E. Complete non-terminated portions of the Subcontractor Work if the Subcontractor's performance of only a part of the Subcontract Work has been terminated.
- F. Use its best efforts to sell, as directed by the Contractor, any materials of the types referred to in paragraph (D) above; provided, however, that the Subcontractor is not required to extend credit to any purchaser of this material and may acquire the material under the conditions prescribed by, and at prices approved by, the Contractor. The proceeds from the sale of such material shall be applied to reduce any payment due from the Contractor under this Subcontract, and credited to the price or cost of the Subcontract Work, or paid in any other manner directed by the Contractor.
- G. Submit with 60 days of the effective date of termination, to the Contractor, a written termination claim, along with all documentation required to support the claim.
- H. Take any other action toward termination as directed by the General Contractor.

9.4 Effect of Owner's Termination of Contractor. If there has been a termination of the Contractor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner to the Contractor for the Subcontractor's completed work, as provided in the Contract Documents, after payment by the Owner to the Contractor.

9.5 Compensation. If the Contractor's contract has not been terminated, the Contractor shall pay the Subcontractor as follows:

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- A. The direct cost of the work performed by Subcontractor prior to termination.
  - B. Overhead, general, and administrative expenses (including those for any sub-subcontracts) in an amount equal to 5% percent of direct costs.
  - C. 5% percent profit of the total of the amounts allowed in paragraphs (A) and (B) above. If, however, it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, no profit shall be compensated by the Contractor, and the amounts paid for the termination shall not be compensated for.
- 9.6 Items Not Compensated. The Subcontractor shall not be compensated for.
- A. Any accounting, legal, clerical, or other expenses incurred by the Subcontractor in the preparation of the Subcontractor's termination claim.
  - B. Unabsorbed overhead and anticipated lost profits.
- 9.7 Permitted Deductions. The Contractor shall be entitled to deduct from any payment due the Subcontractor (A) any advance payment it has made to the Subcontractor for work not yet performed under the terms of the Subcontract and (B) the amount of any claim that the Contractor has against the Subcontractor.
- 9.8 Consideration. If no work has been performed by the Subcontractor at the time of termination, Subcontractor shall be paid the sum of \$100.00 for its undertaking an obligation to perform.
- 9.9 Settlement and Release of Any and All Claims. The settlement of termination costs pursuant to Paragraph 9.5 of this Clause shall constitute a settlement and release of any and all claims, known and unknown by the Subcontractor, arising prior to termination.
10. Bonds
- 10.1 Should the Contractor require it, the Subcontractor shall execute a Labor and Material Bond and Faithful Performance Bond in an amount equal to 100% of the Subcontract Price in Section 3. Said bonds shall be executed by a corporate surety acceptable to Contractor, shall name Asphalt Products Corporation as an Obligor, and shall further name and protect all persons and entities to the same extent as may be required of Contractor pursuant to the Prime Contract. The cost of the bonds shall be added to the Subcontract amount. The terms of this Subcontract Agreement are incorporated by reference into the bonds required by this section, and the terms, conditions, and remedies of Contractor, shall prevail over any similar terms contained in said bond. By issuing a bond to Subcontractor pursuant to this Agreement, the Subcontractor's surety specifically agrees to be bound to Contractor to the same extent and in the same amount as Subcontractor.
11. Indemnity and Insurance
- 11.1 INSURANCE REQUIREMENTS -- Unless the Contract Documents require otherwise, Subcontractor agrees to procure and maintain, at his sole cost and expense, the following insurance coverage,
- 1. Worker's Compensation: Coverage A. Statutory policy form; Coverage B. Employer's liability; Bodily injury by accident - \$1,000,000 each accident; Bodily injury by disease- \$1,000,000 each employee. Coverage shall be maintained in accordance with NRS 616 and 617.

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2. Commercial Auto Coverage: Auto liability limits of not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance including, but not limited to, owned autos, hired or non-owned autos.
3. Comprehensive General Liability or Commercial General Liability, "Occurrence Form" only. "Claims Made" is not acceptable. The limits of liability shall not be less than:
  - a) Comprehensive General Liability: \$1,000,000 combined single limit bodily/property damage per occurrence of;
  - b) Commercial General Liability: The limits of liability shall not be less than: Each Occurrence limit - \$1,000,000; Personal injury limit - \$1,000,000; Products Completed Operations Aggregate Limit - \$5,000,000; General Aggregate Limit (other than products-completed operations).
4. Excess Liability: Umbrella Form or Follow Form Excess where necessary to meet required minimum amounts of coverage.
5. The Project is covered by an OCIP. Subcontractor shall enroll into this OCIP. Subcontractor shall be responsible for a deductible/SIR equal to that of the subcontractors' non-OCIP GL policy; not to be less than \$20,000 for light hazard trade contractors, \$25,000 for medium hazard trade contractors and \$75,000 for high hazard trade contractors.
6. Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.
7. Liability Policy forms must include: a) Premises and operation with no X, C or U exclusions; b) Products and completed operations coverage (Subcontractor agrees to maintain this coverage for a minimum of 1 year following completion of his work); c) Full blanket contractual coverage; d) Broad form property damage including completed operations or its equivalent; e) An endorsement naming Asphalt Products Corporation, Gemstone LVS, LLC, and any other required interest as additional insured(s); f) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) shall be noncontributing with the coverage provided under this policy."
8. Other Requirements: (a) All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation or reduction in coverage; (b) All policies must be written by insurance companies whose rating in the most recent Best's rating guide, is not less than A:VII Rating must be shown on Certificate under "Companies Affording Coverage"; (c) Certificates of Insurance with the required endorsement evidencing the coverage must be delivered to APCO Construction prior to commencement of any work under this Contract; (see attached samples) (d) If the Subcontractor fails to secure and maintain the required insurance, Asphalt Products Corporation shall have the right (without obligation to do so, however) to secure same in the name and for the account of the Subcontractor in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. (e) Liability insurance policies containing warranties must be reviewed for prior approval and acceptance by Contractor. (f) The Subcontractor's insurance shall be primary with respects to Asphalt Products Corporation, its officers, employees and volunteers.

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## 11.2 INDEMNIFICATION

- a) **General Indemnity:** All work covered by this agreement that is performed at the project site, or performed in preparing or delivering materials or equipment to the project site, or in providing services for the Project, shall be at the sole risk of the Subcontractor. Subcontractor, to the fullest extent permitted by law, with respect to all such work which is covered by or incidental to this agreement, shall defend all claims through legal counsel acceptable to Contractor, and indemnify and hold Contractor, its insurance carriers and bonding companies, Owner and any other interested party designated by Contractor, or their agents, employees or representatives (collectively referred to as "Indemnitees") harmless from and against any claim, liability, loss, damage, cost, expense, including attorney's fees, awards, fines or judgments arising by reason of the death or bodily injury to persons, injury or damage to tangible property, including the loss of use therefrom, whether or not it is caused in part by an Indemnitee; provided, however, that the Subcontractor shall not be obligated under this agreement to indemnify the Indemnitees with respect to damages which are ultimately determined to be due the sole negligence or willful misconduct of the Indemnitees.
- b) **Indemnity Not Limited:** In any and all claims against the Indemnitees by any employee of the Subcontractor, or lower-tier subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any Workers' or Workmen Compensation Acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of this Agreement and shall survive the expiration or termination of the Agreement until such time as action on account of any matter covered by such indemnity is barred by the applicable Statute of Limitations.

## 12. Warranty and Guarantee

- 12.1 Subcontractor agrees to promptly repair, rebuild, replace or make good, without cost to Contractor or Owner, any defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the Contract Documents. If no such period is stipulated in the contract Documents, then Subcontractor's guarantee shall be for a period of two year from the date Certificate of Occupancy is obtained for the project. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors (Refer to General Contractor's/Owner's Contract).

## 13. Patents

- 13.1 Subcontractor agrees to pay all applicable patent royalties and license fees and to defend all suits or claims made for infringement of any patent rights involved in the Subcontract work.

## 14. Compliance with Regulations, Applicable Law and Safety

- 14.1 All Work, labor, services and materials to be furnished by Subcontractor shall strictly comply with all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, building codes, and directives now in force or hereafter in effect as may be required by the Prime Contract. Subcontractor shall satisfy and comply with the foregoing as a part of the Subcontract without any additional compensation.
- 14.2 Subcontractor agrees that the prevention of accidents to workmen engaged in the work under the Subcontract is solely its responsibility. If requested, Subcontractor shall submit a safety plan for review by Contractor. Contractor's review of any safety plan shall not be deemed to release Subcontractor, or in any

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way diminish its indemnity or other liability as assumed under the Subcontract, nor shall it constitute an assumption of liability by Contractor.

- 14.3 When so ordered, Subcontractor shall stop any part of the Work that the Contractor or Owner deems unsafe until corrective safety measures, satisfactory to Contractor and or Owner, have been taken. Should Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from payments due or to become due to Subcontractor. Upon request, Subcontractor shall timely submit copies of all accident or injury reports to Contractor.
- 14.4 Subcontractor agrees to cooperate with the Contractor in efforts to prevent injuries to workmen employed by either party in carrying out operations covered by this agreement, and to adopt and place in effect OSHA requirements and such practical suggestions as may be offered by the Contractor and/or the Owner to promote safety and safe working conditions. Should the Subcontractor fail to fulfil its obligations in relation to safety matters on the job site, at the option of the Contractor, this Agreement, upon ten (10) days written notice to Subcontractor, may be cancelled, and the Subcontractor required to immediately remove his equipment and employees from the project.
15. Damage to Work
- 15.1 All loss or damage to Subcontractors' work resulting from any cause whatsoever shall be borne and sustained by Subcontractor and shall be solely at its risk until final acceptance by Contractor, Owner, or Owner's Representative. Subcontractor shall at all times and at its sole expense fully secure and protect against any damage, injury, destruction, theft or loss, all work and all labor, materials, supplies, tools and equipment furnished by Subcontractor or its sub-subcontractors, laborers and material men. Subcontractor shall at its sole expense promptly repair or replace damage to the work of others, or to any part of the project, resulting from Subcontractor's activities.
16. Inspection and Approvals
- 16.1 Contractor and Owner at all times shall have the right to inspect Subcontractor's materials, workmanship and equipment. Subcontractor shall provide facilities necessary to effect such inspection, whether at the place of manufacture, the project site, or any intermediate point. This point of inspection may be exercised at any time during performance of the Subcontract Work.
- 16.2 Any Subcontract work or material furnished that fails to meet the requirements or specifications of the Contract Documents, or the Subcontract, shall be promptly removed and replaced by Subcontractor at its own cost and expense. If, in the opinion of Contractor or Owner, it would not be economical or expedient to correct or remedy all or any part of the rejected Subcontract work or materials, then Contractor, at its option may deduct from payments due or to become due to Subcontractor either: (a) such amount as in Contractor's sole judgment represents the difference between the fair value of the Subcontract work and materials rejected and the value if same had been performed in full compliance with the Contract documents; or (b) such reductions in price that are provided for or determined for this purpose under the Contract Documents.
- 16.3 The Subcontractor shall keep, maintain and require its subcontractors and suppliers to keep and maintain all books, papers, records, files, accounts, reports, bid documents with backup data, and all other materials relating to the Contract Documents and Project.
- 16.4 All of the material set forth in paragraph 16.3 shall be made available to the Owner and to Contractor for auditing, inspection and copying and shall be produced, upon request, at either the Owner's offices or such other place as Contractor may specify. Said request for information shall be limited to instances when

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specifically required to comply with at request for information by the Owner, and should not be construed as a general right by Contractor to request proprietary or privileged information of Subcontractor.

**17. Arbitration**

- 17.1 Contractor shall have the option to, and Subcontractor shall be required to resolve all claims, disputes and matters in question arising out of, or relating to the Subcontract, or breach thereof, except for claims which have been waived by the making or acceptance of final payment, by submission to arbitration in the time period and in accordance with the Contract Documents.
- 17.2 In accordance with Paragraph 17.1, Subcontractor hereby waive its right to otherwise litigate any and all such disputes, claims and matters in question in any court or governmental tribunal in any jurisdiction. If Subcontractor submits any matter to arbitration hereunder, at its sole option, Contractor may refuse to arbitrate any such disputes, claims, and matters in question. In that event, and in only that event, Subcontractor may litigate the matters subject to its demand for arbitration.
- 17.3 All arbitration and other legal proceedings instituted pursuant to this Section shall be conducted in Las Vegas, Nevada, or at such other venue as Contractor and Subcontractor shall agree to in writing.
- 17.4 The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- 17.5 Unless otherwise agreed in writing, the Subcontractor shall carry on the Subcontract work and maintain the schedule of work pending arbitration or litigation, and the Contractor shall continue to make payments in accordance with the Subcontract.
- 17.6 To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other Subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding.
- 17.7 This Agreement to arbitrate shall not apply to any claim of contribution or indemnity asserted by one party to the Subcontract against the other party and arising out of any action brought in a state or federal court, or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto; or does not consent to such arbitration.
- 17.8 In any dispute arising over the application of paragraph 17.7, all questions regarding the arbitration requirements of this section shall be decided by the appropriate court and not by arbitration.

**18. Miscellaneous**

- 18.1 Contractor's waiver of any of the provisions of the Subcontract, or Contractor's failure to exercise any options or legal remedies provided therein, shall not be construed as a general waiver of its right thereafter to require such compliance or to exercise such option or remedy.
- 18.2 The Subcontract, including all Contract Documents as provided in Section One, comprises the entire Agreement between the parties relating to the Subcontract Work and no other agreements, representations, terms, provisions or understandings concerning the Subcontract Work have been made. All modifications or amendments to the Subcontract must be in writing.
- 18.3 To the best knowledge and belief of the parties, the Subcontract contains no provision that is contrary to Federal or State law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect to the extent permissible. The

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Illegality of any provisions, or parts thereof, shall not affect the enforceability of any other provisions of this Subcontract.

- 18.4 The Subcontract shall be construed and interpreted according to the laws of the State of Nevada.
- 18.5 In the event either party employs an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party shall be entitled to all costs, attorney's fees and any other reasonable expenses incurred therein.
- 18.6 All sections and headings are descriptive only and are not controlling.
- 18.7 Contractor's rights and remedies under the Subcontract are not exclusive and Contractor shall have all other remedies available at law or in equity to enforce the Subcontract.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first above written.

Helix Electric

Victor Fuchs, President

TITLE

NOV 28 2007

APCO CONSTRUCTION

Randy Michel

4-800

Project Manager

TITLE

APCO Construction  
Subcontractor (2R)

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**HELIX ELECTRIC EXHIBIT  
TO THE STANDARD SUBCONTRACT AGREEMENT  
BETWEEN ASPHALT PRODUCTS CORPORATION (APCO)  
AND HELIX ELECTRIC OF NEVADA, LLC.  
FOR THE MANHATTAN WEST CONDOMINIUMS, LAS VEGAS, NV  
(APCO JOB #168/HE JOB #16713)**

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1. *OK* Section 1, Paragraph 1.3: Revise as follows: add the phrase "... except to the extent a particular obligation of the Subcontractor is set forth in this Subcontract" to the end of the first sentence; add the phrase "... with respect to the Work of this Subcontract" to the end of the second sentence; and delete the third sentence.
2. *NO* Section 3, Paragraph 3.2: Revise to read as follows: "In Consideration of the promises, covenants and agreements of Subcontractor ~~herein contained~~, and the full, faithful and prompt performance of the work ~~in accordance with the Contract Documents~~, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and furnishing all materials and equipment contemplated and embraced in this Subcontract."
3. *NO* Section 3, Paragraph 3.4: Delete in its entirety.
4. *NO* Section 3, Paragraph 3.5: 1<sup>st</sup> Sentence change 10 days to 10 days. 2<sup>nd</sup> Sentence change ~~less 10% retention to 5%~~. Delete the last sentence ("Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering in to the Prime Contract with the Owner.")
5. *OK* Section 3, Paragraph 3.7: Revise as follows: Third line delete "...regardless of the source of said obligation." And replace with "...under the provisions of this Subcontract."
6. *OK* Section 3, Paragraph 3.7: Add the following: "Contractor agrees that before it may apply funds due Subcontractor to any alleged indebtedness of Subcontractor, Contractor shall first give Subcontractor written notice not later than ten days after the alleged indebtedness of Subcontractor was incurred."
7. *NO* Section 3, Paragraph 3.8: Change ~~10% to 5%~~ and Add the following: "If retention is reduced on the project, same will be passed on to the Subcontractor."
8. *OK* Section 4: Add the following: "In the event the schedule as set forth above is changed by Contractor for whatever reason so that Subcontractor either is precluded from performing the work in accordance with said schedule and thereby suffers delay, or, is not allowed the number of calendar days to perform the work under such modified schedule and must accelerate its performance, then Subcontractor shall be entitled to receive from Contractor payment representing the costs and damages sustained by Subcontractor for such delay or acceleration, providing said costs and damages are first paid to Contractor."

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9. Section 4, Paragraph 4.1: Add the following new paragraph: "Contractor shall make available to Subcontractor in a prompt fashion, all information in its possession that affects Subcontractor's ability to meet its obligations under this Subcontract. Information that affects this Subcontract shall include, but not be limited to, information relating to such matters as delays, modifications to the Contractor's agreement with the Owner or other subcontracts that affect the work of the Subcontractor, impending strikes or work stoppages by any trade and deterioration of the Owner's ability to pay for the Work on the Project."
10. Section 4, Paragraph 4.3 Delete in its entirety and replace with following: "4.3 Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract, and shall regularly haul such waste materials and rubbish to trash receptacles provided by Contractor in convenient locations on the Project's premises. Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors and shall not be subject to any charge by Contractor for trash removal or cleanup determined on a pro rata or similar basis."
11. Section 4, Paragraph 4.4: Delete the last sentence.
12. Section 4, Paragraph 4.5: Revise as follows: add the words "negligent or wrongful acts of the ..." after the words "delays caused by" in the third line of Paragraph 4.5; then add the following to the end of Paragraph 4.5: "Further, in the event Contractor seeks to assess liquidated or other delay damages against Subcontractor, such an award of liquidated damages shall be assessed against Subcontractor only to the extent caused by Subcontractor, Subcontractor's employees and agents, sub-subcontractors or their agents or employees or other persons performing portions of the work under contract with Subcontractor, or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract. Contractor shall not assess liquidated damages against Subcontractor unless and until the Contractor gives written notification of intent and basis of determination of amounts and degree of responsibility Subcontractor and all other subcontractors. Such written notification must be given within a reasonable period of time after the occurrence for which the Contractor seeks to assess liquidated damages, not to exceed ten (10) days after the alleged event causing the damage. Nevertheless, liquidated damages, taken in the aggregate, shall not exceed 10% of Subcontractor's total Subcontract Price."
13. Section 5, Paragraph 6.1: Revise as follows: Third line delete "10%" and replace with "15%".
14. Section 5, Paragraph 6.2: Revise as follows: First line delete "24 hours" and replace

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with "5 days", add the words "Contractor's written" after the word "of" at the beginning of the second line in Paragraph 5.2; and delete the text of Paragraph 5.2, starting with the words "Contractor shall not be liable . . ." in the fourth line, through the end of the paragraph.

15. Section 5, Paragraph 5.4: Delete in its entirety.

16. Section 5, Add the following new paragraph: "Notwithstanding any other provision of this Subcontract, the parties agree that at no time shall the value of additional labor and materials put in place by Subcontractor at the written direction of Contractor exceed \$15,000.00 without a fully executed, agreed upon change order modifying the Subcontract Price."

17. Section 8, Paragraph 8.4: Delete the second paragraph in its entirety.

18. Section 8, Add the following new paragraph: "Subcontractor may terminate this Subcontract or its obligations under the Contract Documents, for the same reasons and under the same circumstances and procedures with respect to the Contractor as Contractor may terminate its agreement with respect to the Owner, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, its subcontractors or their agents or employees or other persons performing portions of the Work under contract with Subcontractor, Subcontractor shall be entitled to recover from Contractor payment for work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages, providing Contractor first received payment from Owner."

19. Section 11, Subparagraph 11.1 (3) and (4), Delete in their entirety and replace with the following: "General Liability Insurance shall be provided by others via a Wrap Insurance Policy for all subcontractors on the project."

20. Section 11, Subparagraph 11.2(a): Revise as follows: delete the phrase "whether or not it is caused in part by an indemnitee; provided, however, that the . . ." from the 11th line of subparagraph 11.2(a), and replace it with the following phrase: "but only to the extent such claims, etc. arise from the negligence or wrongful acts of Subcontractor, and . . ." delete the word "sole" after the words "due the . . ." in the last line of subparagraph 11.2(a), and add the words "or any third party" at the end of the last sentence in this subparagraph.

21. Section 11, Add the following new paragraph: "Notwithstanding the foregoing, the indemnification obligations of the Subcontractor under this Subcontract shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of

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them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, authorization for extra work, designs or specifications, or (2) the giving of or failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is a proximate cause of the injury or damage."

22. Section 12, Change to "One Year"

23. Section 15, Paragraph 15.1: Revise as follows: delete the first sentence of the paragraph (in lines 1-3); delete the words "at all times and at its sole expense" from the third line; delete the words "all work, and ..." from the fourth line and add the following to the end of Paragraph 15.1: "Notwithstanding anything contained in this Subcontract to the contrary, once Subcontractor has received payment for its Work In place, till to same shall pass to Owner and Subcontractor shall no longer be responsible for any damage or loss thereto so long as said damage is not caused by Subcontractor or anyone for whom Subcontractor is contractually responsible, and the Owner shall rely on the project's "all-risk" insurance policy to pay for any loss or damage to Subcontractor's work."

24. Section 17, Delete Paragraph 17.1, 17.2, 17.4, 17.6, 17.7, and 17.8 and add the following new paragraph 17.1: "The parties agree that active, good faith participation in mediation is a condition precedent to the institution of any formal dispute resolution procedures. The parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. The initiating party shall then undertake to schedule the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may contact the Las Vegas, Nevada office of the American Arbitration Association to schedule the conference. The costs of the mediation and fees of the mediator, if any, shall be shared equally by the parties. If a party fails or refuses to participate in the mediation, or if on completion of such mediation the parties are unable to agree and settle the dispute, then the dispute shall be referred to resolution in accordance with the procedures set forth herein. Thus, with the exception of procedures to preserve or enforce mechanic's lien or bond rights, any party that refuses or fails to participate in the mediation, or pay its proportional share of the cost of the mediation, shall be deemed to have waived its right to recover its attorney's fees hereunder, even if said party is later determined by the court or arbitrator to be a prevailing party." Parties will be bound by the Prime Contract.

25. Section 17, Paragraph 17.3: Delete the phrase "arbitration and other" from the first line and add the following paragraph: "This Subcontract and any dispute resolution proceeding brought to enforce or interpret its provisions, shall be governed by the laws of the place where the Project is located."

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26. Section 18, Paragraph 18.1: Revise as follows: Change the word "Contractor's" in the first line, to the words "either party's" in both places where it appears.
27. Section 18, Paragraph 18.7: Revise as following: add the words "and Subcontractor's. . ." after the word "Contractor's . . ." at the beginning of the paragraph, and add the words "and Subcontractor . . ." after the word "Contractor" at the end of the first line.
28. Exhibit A: Subcontractor Scope of Work, Revise the third line as follows:  
"...Addenda/Delta Number(s) N/A through N/A Subcontractor acknowledges that he has performed his own take-off, site visit and..." (No addenda were received)
29. Exhibit A: Site and Building Electric and Low Voltage Complete, 5<sup>th</sup> Line, Revise the following: "...Redwine Engineering, Jordan & Skala Engineers, WRG Engineering, dated May 25, 2007..." *Red lined*
30. Exhibit A: Site and Building Electric and Low Voltage Complete, 5<sup>th</sup> and 6<sup>th</sup> Line, Delete the follow: "(See attached Project Drawing List)"
31. ~~Exhibit A: Site and Building Electric and Low Voltage Complete, 6<sup>th</sup> and 7th Line, Change the Contract Amount to read as follows: "Thirteen Million Two Hundred Thirty Thousand and no/100 (\$13,230,000.00) for building 1 through building 42."~~ *\$236,000 has been added via E.O.*
32. Exhibit A: Site and Building Electric and Low Voltage Complete, Add the following new section:  
Qualifications: *as noted below*
- Proposal is based on utility metering for 4 story buildings, with building 7 using a tenant sub metering system. Meters shall be located in garage, with access provided similar to the Manhattan East project. All utility company conduits are provided stubbed to 5' outside of the building lines. Additional work is pending utility company drawing review.
  - 4-story buildings to be type V construction with R-2 and S-2 occupancies. 9-story tower to be type II-B construction with R-2, S-2, and A-3 occupancies.
  - Fire alarm to minimum code, with separate systems for each building.
  - This proposal is based on wiring methods typical for this type of construction including the use of Romex cable, MC cable, SER cable, aluminum feeders, die cast set screw fittings, PVC underslab conduits, PVC embedded conduits, PVC through-slab transitions, etc.
  - Light fixture counts are per 5-25-07 drawings. *Red lined drawings* All light fixtures are as selected by Helix.
  - HVAC connections are based on individual split systems for each living unit with roof or

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- balcony mounted condensing units and fancoils in the closet ceilings. *per plans* <sup>Ⓢ</sup>
- Emergency lighting is via battery packs or bugeyes for buildings 2, 3, 8, and 9 with building 7 on emergency power system.
- All units include 40 amp electric oven, 120 volt dryer connection, and 120V power receptacle for gas water heater.
- No owner allowances are included at this time. <sup>Ⓢ</sup>
- *U.S. report included in this proposal* <sup>Ⓢ</sup> Since no Life Safety Report was available at the time of this proposal, we are including a fire alarm system based on minimum code requirements. The design is based on the notion that Helix and/or its subcontractor will have an opportunity to review and revise the report draft prior to it being issued to the AHJ.
- Decorative and specialty lighting for condominium units are not defined and not shown in the bid documents, and nothing is included for these. We have made no allowances for soffit lighting, neon, etc in all building areas.
- This proposal is based on type V construction with an R occupancy. Branch wiring is via Romex cable as allowed by code. Our budget is based on the framer providing for us a direct wire path through any steel or iron wall studs. *per plans* <sup>Ⓢ</sup>
- This proposal is based on the use of Romex cable as allowed by code. We assume the corridor ceiling assembly will allow for the use of Romex for branch wiring in the corridor. *per drawings* <sup>Ⓢ</sup>
- A 2-hour rated enclosure must be provided for all emergency power feeders. All emergency power equipment including generators, panels, switchboards, transformers, etc must be enclosed in 2-hour rated rooms or enclosures.
- This proposal is based on all rooms as "non-ADA" rooms. No special or additional conduits, boxes, devices, etc are included to allow for provision to convert the condos to ADA compliance. It is assumed that it will be the responsibility of the individual owners to make their condos "compliant" via remodel after construction completion. *per plans* <sup>Ⓢ</sup>
- This proposal is based on an OCIP or CCIP "wrap" scenario where general liability insurance is provided by others for all subcontractors on site. ~~insurance policy~~ <sup>Ⓢ</sup> is subject to approval by Helix Electric.
- Chases of sufficient size must be provided for conduit and cable feeds up the tower (building type 3). This proposal assumes electrical and telecom rooms stack from the ground floor to the roof.
- This proposal is based on drop ceilings provided in the tenant rooms across the kitchens, baths, laundry rooms, and hallways on the corridor side of each unit. Corridors and common areas to have drop ceilings also. *per plans* <sup>Ⓢ</sup>
- No allowances are included for connection to such specialty items as steam generators, wine coolers, specialty appliances such as subzero refrigerators, etc. <sup>Ⓢ</sup>
- Proposal includes fire pump connection in 8-story building only. <sup>Ⓢ</sup>
- Pool connections are limited to power to pool panel only. All equipment to be provided

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JA001240



**Helix Electric**  
CONSTRUCTORS • ENGINEERS

**HELIX ELECTRIC EXHIBIT  
TO THE STANDARD SUBCONTRACT AGREEMENT  
BETWEEN ASPHALT PRODUCTS CORPORATION (APCO)  
AND HELIX ELECTRIC OF NEVADA, LLC.  
FOR THE MANHATTAN WEST CONDOMINIUMS, LAS VEGAS, NV  
(APCO JOB #168/HE JOB #16713)**

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- and installed by pool subcontractor.
- Building type breakdowns are for budgeting purposes only, and are contingent upon award of all buildings in (1) contract, with all work performed under (4) continuous schedule. *By phase*
- Budget is based upon Helix Electric having input in the selection and placement of electrical equipment and systems in order to maintain the project budget. This proposal is based on a design build scenario. Design fees are part of a separate proposal.
- Any price breakouts are provided for accounting purposes only. This proposal is based on all parts performed under one continuous schedule.
- Wages are based on non-prevailing rates.
- This proposal is based on a 20-month schedule.
- This proposal is based on work performed during normal business hours, *split shifts*
- This proposal is valid for 15 days. Price may be subject to cost escalation. *No*

**33. Exhibit A: Site and Building Electric and Low Voltage Complete, Add the following new section:  
Exclusions:**

- Utility Company fees.
- Formed concrete (pipe barriers or bollards, pole bases, housekeeping pads, etc.).
- Sacking of pole bases.
- Temporary power and lighting.
- Cutting, patching, and painting of any kind.
- Offsite hauling of trenching spoils.
- Import of water for backfill operation.
- *included* ~~Hard dig and trenching in caliche, rock or blasting and any de-watering that may be required.~~
- Fixture safety and support wires.
- Fixture enclosures of any kind.
- ~~Conduit and control wiring for HVAC, etc.~~
- Offsite improvements not mentioned in this proposal.
- Landscape lighting, *per plan is included*
- Dumpsters for trash.
- Access panels.
- Bond costs.
- Surveying and staking.
- Systems not mentioned in this proposal including CATV, intercom/entry, audio/visual system, WIF system, CO monitoring, etc. *Helix has allowance for this work*
- Emergency power for 4-story buildings.

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**Helix Electric**

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**HELIX ELECTRIC EXHIBIT  
TO THE STANDARD SUBCONTRACT AGREEMENT  
BETWEEN ASPHALT PRODUCTS CORPORATION (APCO)  
AND HELIX ELECTRIC OF NEVADA, LLC.  
FOR THE MANHATTAN WEST CONDOMINIUMS, LAS VEGAS, NV  
(APCO JOB #168/HE JOB #16713)**

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- Duct detectors: furnish, install, and control wiring, 110V power included if required.
  - Traffic control, trench plates, traffic and pedestrian barriers.
  - Fire rated enclosures for emergency power feeders and equipment.
  - Connection to ~~electro water heaters and jacuzzi tubs~~. No allowance is made for these appliances in our service and feeder load calculations (assumed to be recalculated once condo owners make option selections)
  - Lightning Protection system. *Per Plans*
  - ~~Fire-stopping, putty pads, fire sealing. This is included~~
  - Work associated with guardhouses (none shown)
  - Electrical engineering and design fees.
  - Linear LED lighting and cove lighting in building seven- not enough information to get pricing. *Per plans*
  - ~~All additional lighting and devices from design meetings on June 1, 2007 are excluded at this time. *Prices are included*~~
  - Door locking hardware for card access system (furnished and installed by others. *Power to system is included.*)
34. Special Conditions (a): Revise to read: "The Subcontractor shall be responsible for clean up of employees break & lunch trash on the job site."
35. Special Conditions (d): ~~Delete the last sentence ("APCO shall be the sole judge to determine the cleanliness").~~
36. Special Conditions Item (g): ~~Delete in its entirety.~~

*[Signature]*  
Victor Euchs  
President  
NOV 28 2007

*As noted*  
By: *[Signature]*  
Title: *Director Mgr.*  
Date: *4-8-08*

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**EXHIBIT 'A'**

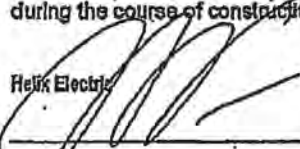
**Subcontractor Scope of Work**  
APCO Contract No. 0420163

This Agreement includes the supply of all labor, materials, tools, equipment, supervision, management, permits and taxes necessary to complete the BELOW SCOPE OF WORK for the referenced Project in accordance with the Contract Documents including Addenda/Delta Number(s) \_\_\_\_\_ through \_\_\_\_\_. Subcontractor acknowledges that he has performed his own take-off, site visit and therefore, any items necessary to complete the work depicted in accordance with the Contract Documents, shall be included in this Agreement. The Subcontractor also acknowledges that all of the costs related to the successful completion of the work including any unforeseen or unseen items, or as described herein, are included in the amount reflected in the schedule below.

The Scope of Work shall specifically include but not be limited to the following list of bid items:


ITEM #	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
	<b>Site and Building Electric and Low Voltage Complete:</b> Complete work per governing codes, furnish and install all necessary Design, Labor, Material, Equipment, Cartage, Freight, Supervision, Taxes and Necessary Insurance to install and complete all Electric, and all Low Voltage excluding Temperature per plans by <u>OZ Architecture, Redwine Engineering, Jordan &amp; Skala Engineers, WRG Engineering</u> , (See attached Project Drawing List), in the amount of Twelve Million Nine Hundred and Ninety Four Thousand Dollars and no/100, (\$12,994,000.00) for building 1 through building 12.				

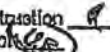
Our understanding of the clarifications / qualifications associated with your bid is as follows: Your proposal is hereby amended to reflect the terms and conditions of this subcontract. APCO Construction may at its option exercise its right to choose any or all alternate/option items of work as shown on your proposal at the stated alternate price during the course of construction.

  
Victor Fuchs, President  
TITLE

NOV 28 2007

APCO CONSTRUCTION

  
Project Manager  
TITLE

APCO Construction  
Subcontractor 

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### SPECIAL CONDITIONS

In addition to the conditions outlined in the Subcontract Agreement, the following Special Conditions shall form a part of the Subcontract Agreement.

- (a) The Subcontractor shall be responsible for clean up of employees break & lunch trash on the job site. Subcontractor employees are not to wander around the \_\_\_\_\_ Area while on duty. No parking of private vehicles will be allowed in the Owners Operations Area. NO EXCEPTIONS.
- (b) The Contractor will provide an adequate temporary construction area for staging.
- (c) The Contractor will provide reasonable access to all working areas.
- (d) The Subcontractor shall be responsible for the cleaning of his work area and removing his debris and all work shall be left in a clean condition following his activities. The APCO shall be the sole judge to determine the cleanliness.
- (e) The Contractor will provide one (1) set of full size conformed construction documents for the Subcontractor's use. Additional sets may be purchased by the Subcontractor from a source designated by the Contractor. Plan change drawings will be supplied in the same quantities.
- (f) Subcontractor must submit a "Daily Work Report" (see attached Appendix 'C') prior to 10:00 a.m. the following day for all work performed on the job site the previous day. Subcontractor monthly pay requests will not be accepted for processing unless all "Daily Work Reports" for the pay period have been submitted to the Contractor.
- (g) Subcontractor is required to submit a Payroll Certificate representing all work performed on the job site on a monthly basis. The Payroll Certificate must be submitted no later than the 1st of the month for all work performed during the previous month. Subcontractor shall use a format similar to AIA G702 & G703.
- (h) The Subcontractor is required to attend weekly site progress meetings and to participate in the preparation of Monthly updates of the Project schedule.
- (i) The Contractor cannot guarantee continuity of progress of work; Subcontractor shall employ as many mobilizations as required to complete the work as required by the project schedule.
- (j) The Subcontractor shall provide drinking water for its own employees.
- (k) Subcontractor shall at all times protect stored equipment, materials from: damage from weather, sun. Materials shall be stored off the ground and not in contact the ground.
- (l) APCO Construction cannot guarantee price stability and therefore cannot grant any additional monies to subcontractor due to escalation of price between bid/quote time and when materials/labor/shipping is actually purchased and/or incorporated into the project.

APCO Construction  
Subcontractor CR

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**NOTICE TO ALL SUBCONTRACTORS**

We have been requested by the Internal Revenue Service to comply with Regulation 1.604-1(d), which requires that we issue a 1099 Form on the compensation paid to you by APCO Construction.

Please indicate whether you are a Corporation or not and furnish your Social Security Number if you are not a Corporation or your Federal Tax ID Number, if you are a Corporation.

Corporation: Yes ☒ or No ☐

Social Security No. \_\_\_\_\_

Federal Tax ID No.: 18-485672


By: \_\_\_\_\_  
Signature

Victor Fuchs

NOV 28 2007

Date

President  
Title

APCO Construction   
Subcontractor 

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# **EXHIBIT 2**

## SUBCONTRACT AGREEMENT

PROJECT: The West Manhattan Condominiums Contract NO. 168-3 APCO Construction Project No. 168  
PROJECT LOCATION: West Russell Road and Rocky Hill Street, Las Vegas, NV, 89148

OWNER: Gemstone Development West, Inc., 9121 West Russell Rd, Unit 117, Las Vegas Nevada 89148

ARCHITECT/ENGINEER: OZ Architecture, 303.861.5704 Huron Street, Denver, CO . 80202 . Redwine Engineering (303) 575-9510 700 17th Street, Denver, CO 80202 . Jordan & Skala Engineers, (702) 362-5111, 2900 S. Rancho Dr, Suite 102, Las Vegas Nevada 89102. WRG Engineering (702) 990-9300 3011 West Horizon Ridge Parkway, Suite 100, Henderson Nevada 89052.

THIS AGREEMENT (hereinafter "the Subcontract") is entered into in consideration of the mutual promises made this 17th day of April, 2007, between:

ASPHALT PRODUCTS CORPORATION also known as APCO Construction, (hereinafter called the "Contractor")  
3432 N. Fifth Street, North Las Vegas, Nevada 89032. Office: (702) 734-0198, Fax: (702) 734-0396. Nevada  
Contractors License No. 14563.

And

Zitting Brothers Construction, Inc. (hereinafter called the "Subcontractor").  
P.O. Box 178  
Hurricane, UT 84737  
P 435-635-4068 F 435-635-4137


Subcontractor's NV Contractor's License No. 58955

Limit: Unlimited

Contractor and Subcontractor agree as follows:

### 1. Contract Documents

- 1.1 The Contract Documents for this Subcontract Agreement, shall include all exhibits and other documents attached hereto or made a part thereof by reference, all drawings designed by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering and approved by Gemstone Development West, Inc. and the Primary Contract between the Owner and Contractor (hereinafter "the Prime Contract"), including all exhibits, and other documents attached thereto or made part hereof by reference, the Project Specifications and Contract Documents, the Project Plans, and all addendum and subsequent modifications issued thereto. (All Contract Documents identified herein shall be hereinafter collectively referred to as the "Contract Documents").
- 1.2 The Contract Documents are available in Contractor's office. Subcontractor acknowledges that it has carefully examined the Contract Documents and fully understands them. Copies of the Plans and Specifications will be provided to Subcontractor, upon request, at Subcontractor's Cost. Subcontractor shall, prior to the commencement of the Work, review and compare all of the Subcontract Documents relating to the performance of the Subcontractor and any and all errors, ambiguities and inconsistencies shall immediately be reported to the Contractor in writing and resolved to Subcontractor's satisfaction.

APCO Construction   
Subcontractor 

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- 1.3 Subcontractor is bound to the Contractor to the same extent and duration that Contractor is bound to Owner. Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor, by the Contract Documents, has assumed toward the Owner in the Prime Contract. Contractor shall further have the benefit of all rights, remedies, redress and limitations in respect to Subcontractor and all things done and used by Subcontractor in performance of its Work, which the Owner and its agents have against Contractor in the Contract Documents or by law. Any and all decisions by the Owner or its agents relative to interpretation of the Contract Documents or any ambiguity or discrepancy therein shall be binding on the Subcontractor to the same extent such are binding on Contractor. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with all Contract Documents, including all performance obligations and responsibilities which subcontractor assumes toward Contractor.

## 2. Scope of Work

- 2.1 Subcontractor agrees to furnish all supervision and labor, furnish and install all materials, equipment and supplies required, and do all things necessary to fully complete all of the items of work ("the Subcontract Work"), referred to in Exhibit "A": Subcontractor Scope of Work And Exhibit "B": 2.B.C. S 2  
Bid proposal # REV 5574 Dated 10-05-07
- 2.2 Subcontractor warrants to Contractor and Owner that all Work shall be performed in a neat, skillful, good and workmanlike manner and will be fit for its intended use both as to workmanship and materials. Subcontractor agrees that all materials and equipment furnished by Subcontractor shall be new and of the best description and quality of their respective kinds, unless otherwise specified and ordered by Contractor in writing. Subcontractor warrants that the materials and equipment furnished and the Work performed will strictly comply with the Contract Documents and this Subcontract, and shall be satisfactory to Owner and Contractor.


## 2.3 Equal Opportunity Clause

During the performance of any contract, Subcontractor, unless exempt, agrees as follows:

- 2.3.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subcontractor will take affirmative action to ensure that color, religion, sex or national origin. Such action shall include, but not limited to the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places, available to employee and applicants for employment, notices to be provided by the government contracting officer setting forth the provisions of this nondiscrimination clause.
- 2.3.2 Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

## 3. Contract Price and Payments

- 3.1 In consideration of the strict and complete and timely performance of all Subcontract Work, Contractor agrees to pay Subcontractor or in the payment quantities and schedules as is more fully described in Exhibit "A": Subcontractor's Scope of Work. And exhibit "B": 2.B.C. (Subcontractor) S 2  
bid proposal # REV 5574 Dated 10-05-07
- 3.2 In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the Work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and

APCO Construction   
Subcontractor S 2

furnishing all materials and equipment contemplated and embraced in this Subcontract, and for all loss or damage arising out of the nature of said Work, or from all actions of the elements or from any unforeseen difficulties or obstacles which may arise or be encountered in the performance of the Work, and for all risks of every description connected with the Work, and for all expense incurred by or in consequence of the suspension, interruption or discontinuance of the Work, and for well and faithfully completing the Work and the whole thereof in the manner and according to the requirements and instructions of Contractor and Owner or Owner's agents in charge of the Work, if any, payment in the amount of the Subcontract Price.

- 3.3 Subcontractor, upon request of Contractor, and on such date as Contractor shall designate, shall submit to Contractor, in form and content acceptable to Contractor, a monthly billing, no later than the 25<sup>th</sup> of each month, showing quantities of Subcontract work that has been satisfactorily completed in the preceding month, as well as backup material for same for submittal to the Owner. Failure to submit by the 25<sup>th</sup> of each month may result in that monthly payment application being rolled over to the following month. Subcontractor shall also submit an original executed Conditional Release, in the form required by Contractor, verifying payment of all laborers, subcontractors, equipment and material suppliers. Subcontractor shall also furnish required releases from any sub-subcontractors and/or materials suppliers that have notified Contractor of their presence on the Project. Subcontractor further agrees to provide all required employment security department, fringe benefit trust funds, certified payroll, and/or other reports as may be required by the Contractor or the Contract Documents.
- 3.4 The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (**Forms attached**) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.
- 3.5 Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (**Forms attached**) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to



assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.

3.6 Contractor shall have the right at all times to contact lower tier subcontractors and suppliers to verify that they are being paid by Subcontractor for labor or materials furnished for use in the Subcontract Work. If it appears that labor, material or other costs incurred in the performance of the Subcontract Work are not being paid when due, Contractor may take whatever steps it deems necessary to insure that the progress payments will be utilized to pay such costs, including, but not limited to, the issuance of joint checks payable to the claimant after written notice to Subcontractor, or additionally, making payment directly to claimant after written notice to Subcontractor. If such payment by Contractor exceeds the balance of payments due or to become due to Subcontractor from Contractor, then Subcontractor shall be liable to Contractor for the difference.

3.7 Contractor is hereby expressly granted the right to off set any sums due the Subcontractor under the provisions of this Subcontract against any obligation that may be due from Subcontractor to Contractor regardless of the source of said obligation. When requested by Contractor, Subcontractor shall furnish to Contractor a verified and itemized statement showing the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Subcontract Work together with the amount due or to become due for such work.

3.8 The 10 percent withheld retention shall be payable to Subcontractor upon, and only upon the occurrence of all the following events, each of which is a condition precedent to Subcontractor's right to receive final payment hereunder and payment of such retention: (a) Completion of the entire project described in the Contract Documents; (b) The approval and final acceptance of the project Work by Owner; (c) Receipt of final payment by Contractor from Owner; (d) Delivery to Contractor from Subcontractor all as-built drawings for its scope of work and other close out documents; (e) Delivery to Contractor from Subcontractor a Release and Waiver of Claims from all of Subcontractor's laborers, material and equipment suppliers, and subcontractors providing labor, materials or services to the Project, (Forms attached). If any sub-subcontractor, supplier or other person refuses to furnish a release or waiver required by the Owner or Contractor, the Subcontractor shall, upon the request of Contractor, furnish a bond satisfactory to the owner and Contractor to indemnify them against any such claim or lien. Should the existence of any unsatisfied or undischarged claim, obligation or lien arising in conjunction with Subcontractor's Work become known after final payment is received from Contractor, Subcontractor shall promptly pay on demand all actual amounts Contractor and/or Owner pay in bonding around, satisfying, discharging or defending any such claim, obligation or lien, including all costs and attorney's fees incurred in connection therewith. Final payment shall not relieve Subcontractor from liability, or for warranty or guaranty, or for indemnity obligations for faulty or defective Work. *(F) Building is considered complete as soon as drywall is completed.* *SZ*

3.9 Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such work by the Owner. *Unless contractor has executed & approved change order directing subcontractor to perform certain changes in writing and certain changes have been completed by subcontractor.* *SZ*

3.10 Progress payments and Final Payment shall not be considered or construed as evidence of acceptance of any part of Subcontractor's work until final acceptance of the Project by Owner.

#### 4. Prosecution of Work

4.1 TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.

(a) Seven (7) copies of all Subcontractor submittals shall be received by Contractor to suit the requirements of the approved CPM target schedule unless otherwise agreed to in writing by Contractor. Subcontractor agrees to provide plan-sized sheets for all submittals of required size

APCO Construction *[Signature]*  
Subcontractor *SZ*

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24"x36" including one (1) sepia & five (6) blue line prints. Product specifications shall be provided in standard 8-1/2" by 11" paper, three hole punched and inserted into three ring binders labeled "The Manhattanwest Condominiums". Any required re-submittals shall be submitted within five working days of receipt of request from the Owner.

- (b) Final acceptance and approval of this Subcontract Agreement is contingent upon approval of Subcontractor's Submittals by the Owner/Architect/Engineer.
- (c) Any delays in the submittal process caused in whole or part by Subcontractor may be grounds for immediate termination of this Subcontract Agreement and subject Subcontractor to damages as provided in Sections 8 and 9 below.



Subcontractor agrees to commence the Subcontract Work within five (5) calendar days after receiving notification from Contractor to proceed, or within such other time as may be specified by Contractor, and to proceed at such points as Contractor may designate, and to continue diligently in its performance in accordance with the Contractor's project schedule and at a pace that will cause no delay in the progress of the Contractor's or other subcontractor's work.

- 4.2 Upon request, Subcontractor shall promptly provide Contractor with scheduling information, in the format required in the Contract Documents, or any other information relating to the order or nature of the Subcontract Work. Subcontractor agrees that the project schedule may be revised by Contractor as work progresses. Contractor may require Subcontractor to prosecute segments of the Subcontract Work in phases as Contractor may specify. Subcontractor shall comply with instructions given by Contractor, including any instructions to suspend, delay or accelerate the Subcontract Work. Subcontractor shall not be entitled to any extra compensation from Contractor for any such suspension, delay or acceleration unless specifically agreed to in writing by the Contractor and Owner and paid for by Owner. The Owner's payment to Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from Contractor.
- 4.3 Subcontractor shall keep the work area reasonably clean of debris, daily, resulting from the performance of its work and shall remove from the work area all debris generated by the execution of the Subcontract work. Non-compliance with verbal direction from Prime Contractor's Project Superintendent for cleanup shall result in one (1) written notice for clean-up. Upon failure to properly police the debris from their own activity, 24 hours after written notification this subcontractor will be fined \$500.00 plus the cost for clean-up.
- 4.4 Subcontractor, in undertaking to complete the Subcontract Work within the time specified, avows that it has considered ordinary delays incident to such work; including, but not limited to delays in securing materials, equipment or workmen, and minor changes, omissions or additions, unavoidable casualties, normal weather conditions, strikes or lockouts. If Subcontractor shall be delayed in the performance of the Work by any act or neglect of the Owner or Architect, or by agents or representatives of either, or by changes ordered in the Work, or by fire, unavoidable casualties, national emergency, or by any cause other than the intentional interference of Contractor, Subcontractor shall be entitled, as Subcontractor's exclusive remedy, to an extension of time reasonably necessary to compensate for the time lost due to the delay, but only if Subcontractor shall notify Contractor in writing within twenty four (24) hours after such occurrence, and only if Contractor shall be granted such time extension by Owner. No time extension will be allowed for delays or suspensions of work caused or contributed to by Subcontractor, and no time extension will be granted Subcontractor that will render Contractor liable for liquidated damages or other loss under the Contract Documents. The Subcontractor understands that this is an aggressive schedule and that should the Subcontractor fail to staff the Project with the proper workforce, to stay on schedule, then it is understood that the Subcontractor will have its workforce work overtime and/or weekends to maintain the pace of the schedule solely at the subcontractors expense.

- 4.5 In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against the Contractor by the Owner, as provided in the Contract Documents, for any project delays caused by Subcontractor. Such damages shall be paid for each working day the Subcontract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by the Contractor, and granted by Owner.
- 4.6 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic event, or by reason of any other event or cause beyond Contractor's control, or contributed to by Subcontractor.
- 4.7 All Subcontract work done and all Subcontract materials delivered to the project site shall become Contractor's property, and said material shall not be removed by Subcontractor or any other party from the project site without Contractor's written consent. After completion and final acceptance of the Subcontract work and final payment, Subcontractor shall promptly remove all remaining material, equipment and debris of Subcontractor.

**5. Changes and Claims**

- 5.1 Contractor may order or direct changes, additions, deletions or other revisions in the Subcontract work without invalidating the Subcontract. No changes, additions, deletions, or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor mark up shall be limited to 10% overhead and profit in addition to the direct cost of the work. No markup shall be allowed on over time for original scope of work acceleration.
- 5.2 Subcontractor, prior to the commencement of such changed or revised work, shall submit, (within 24 hours of request) to Contractor, written copies of the cost or credit proposal, including work schedule revisions, for changes, additions, deletions or other revisions in a manner consistent with the Contract Documents. Contractor shall not be liable to Subcontractor for a greater sum, or additional time extensions, than Contractor obtains from Owner for such additional work, less reasonable overhead and profit due to Contractor, and also less professional and attorney's fees, costs, and other expenses incurred by Contractor in the collection of any such sum or time extension. Payment to Subcontractor for such work shall be conditioned upon Contractor's actual receipt of payment from the Owner and such payment by Owner to Contractor with whatever documentation or support, as Contractor may deem necessary to negotiate with Owner.
- 5.3 In any dispute between Contractor and Owner as to amount, classification, price, time or value of Subcontract Work, or any Subcontract material or supplies, or any delay in the prosecution of the Subcontract work caused by Owner, or any other matter whatsoever pertaining to the Subcontract work, Subcontractor agrees to promptly and adequately provide Contractor with whatever documentation or support as Contractor may deem necessary to negotiate with Owner.
- 5.4 Contractor may dispute, appeal resist, litigate or arbitrate any decision of Owner, without being deemed to have admitted any obligation or liability to Subcontractor, and if the decision shall be against Contractor, then Subcontractor shall be bound thereby. Subcontractor may, at its own expense, participate with Contractor in arbitration or legal proceedings. Subcontractor shall bear part or all costs, including attorneys' fees and legal expenses, incurred by Contractor in any such proceeding involving a claim, which, if allowed, would result in one or more payments to Subcontractor. Subcontractor's costs shall bear to the total amount sought in the proceeding. Prosecution of any such claim or proceeding shall be at the sole risk of Subcontractor, and Contractor shall have no liability for or in relation to the outcome.

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6. Assignments

- 6.1 Subcontractor shall not assign or sublet the Subcontract or any part of the Subcontract Work or any payments due hereunder, without prior written consent of Contractor. Any such assignment made by Subcontractor without Contractor's prior written consent is void, and shall be grounds for termination of this Subcontract by Contractor, terminates the Subcontractor's right to any further payment and authorizes Contractor to withhold all monies due or to become due to Subcontractor.


7. Taxes

- 7.1 All applicable taxes, contributions, interest and/or penalties due under any federal, state, or municipal statute or regulation arising from Subcontractor's Work are included in the price to be paid to Subcontractor under the Subcontract. Subcontractor shall indemnify, defend, and save Contractor and Owner harmless from all liability, loss, and expense resulting from Subcontractor's failure to satisfy such obligations. Subcontractor shall, on demand, provide proof that all taxes and other charges have been, and are being properly paid.
- 7.2 If Contractor is assessed or charged for any Subcontractor taxes, contributions, interest or penalties, Contractor shall have the right to withhold such amount from funds due or to become due under the Subcontract, and to pay directly to taxing authorities any sums otherwise due Subcontractor, but not otherwise subject to offset in accordance with Section 3 above, upon receipt of a tax levy from such taxing authority.

8. Default and Termination

- 8.1 If, in the opinion of Contractor or Owner, Subcontractor fails, at any time, to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality; or fails to adequately or timely perform the Subcontract work to the satisfaction of Contractor or Owner; or becomes insolvent or makes any filing under the Acts of Congress relating the bankruptcy; or fails, neglects and/or refuses to comply with the project plans and specification; or fails to perform the Subcontract work in a good and workmanlike manner; or causes any stoppage of the work of the other trades upon the project; or fails to correct defective work; or fails to comply in any other respect with the terms and conditions of this Subcontract, Contractor may declare a default by Subcontractor as herein provided.
- 8.2 Contractor shall provide prompt written notice of default to Subcontractor, by regular mail or as may otherwise be considered to reasonably provide notice to Subcontractor at Subcontractor's place of business described above. Such notice shall be complete upon deposit at a regular receptacle of the U.S. mail, Fax Transmission or upon actual hand delivery as provided herein.

In the event of default by Subcontractor as provided above, Contractor may, at his option, demand Subcontractor to cure or otherwise correct the default and breach within three calendar days after written notice by Contractor. If, after three days, Subcontractor has failed to cure and correct the default, Contractor may, at his sole option, provide any such labor, materials or equipment as may be necessary to complete the Work covered by this Subcontract Agreement and thereafter deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under this Agreement. Alternatively, Contractor may terminate Subcontractor's right to proceed with the Work and thereafter enter upon the premises and take control of all materials, tools, equipment, and/or appliances of Subcontractor, and may employ any other person, persons, or organizations to finish the Work and provide the labor, materials and equipment to accomplish that purpose. Following completion of the Work by the Contractor or other persons or organizations, all unused materials, tools, equipment and/ or appliances shall be returned to

APCO Construction   
Subcontractor SZ

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Subcontractor. Subcontractor shall not be entitled to rent or payment of any kind for the use of Subcontractor owned equipment or materials, nor shall Contractor be liable for any damages arising from said use unless resulting from gross negligence, or willful destruction by Contractor.

In the event Subcontractor has provided a payment or performance bond to Contractor, in accordance with Section 10 of this Agreement, and following expiration of the three days cure period, Contractor will make notice and demand by registered mail upon Subcontractor's surety to complete the Work covered by this Subcontract Agreement. In the event Subcontractor's surety fails to notify Contractor within 10 days after receipt of notice and demand by Contractor of surety's election to complete the work on behalf of Subcontractor, such failure shall be deemed a waiver by surety to exercise its rights to complete the Work. Thereafter, Contractor may at his sole option, complete the Work as otherwise provided by this Section.

- 8.3 In case of any such termination of Subcontractor's right to proceed with the Work, Subcontractor shall not be entitled to receive any further payment under this Subcontract Agreement until the Work undertaken by Contractor in his prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's Work, such excess shall be paid by Contractor to Subcontractor; but, if such expense shall exceed the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds the unpaid balance.

"Expense" as referred to in this Section shall include all direct and indirect costs incurred by Contractor for furnishing labor, materials, and equipment; to complete the Work covered by this Subcontract Agreement. "Expense" shall further include, but shall not be limited to, replacement of Subcontractor costs, liquidated damages incurred by Contractor, extended field office overhead, and home office overhead, Contractor's attorneys fees and costs, and any and all other damages sustained by Contractor by reason of Subcontractor's default.

- 8.4 In the event Contractor elects to use its own labor forces to complete Subcontractor's Work, Subcontractor and Subcontractor's surety agree to pay Contractor for such Work at the following rates: (a) Labor – At Contractor's then prevailing labor rates, plus labor burden, including, but not limited to, employment taxes, liability insurance, workmen compensation insurance, and all other benefits; (b) Contractor Owned Equipment-At the then prevailing Equipment Rental Rates as established by the Blue Book for Contraction Equipment as published by Data Quest; all rental costs shall be determined by dividing the monthly rental rate by twenty-two days per month to determine a daily rental rate. Hourly rental rates shall be determined by dividing the daily rate by eight; (c) Materials, Rental Equipment-Direct Invoice Costs, including transportation, if any; (d) Replacement Subcontractor-Direct Invoice Costs paid Replacement Subcontractor; (e) Field and home office overhead; (f) Ten percent profit on all expenses indicated in a-e above.

In lieu of computing overhead, as provided for above, Contractor may, at his sole option, elect to assess a charge, on items a, b, and c above, of 15% for General Overhead expenses. In addition, Contractor may assess a charge on items a, b, and c above 10% for Profit. Contractor shall be entitled to an additional markup on any and all of such expenses. Contractor shall also be entitled to an additional markup of 5% for General Overhead and 10% for Profit on all expenses and cost incurred pursuant to item d and e above.

- 8.5 If the cost to complete the Subcontract work is more than the unpaid balance of the Subcontract, then Subcontractor shall be liable to Contractor for the deficiency, and Contractor may hold, sell or otherwise realize upon any Subcontractor materials or equipment, or take other steps to collect the deficiency, including making a claim against Subcontractor's surety.

- 8.6 Whether Contractor exercises one or more of the above options or rights, nothing contained herein shall release Subcontractor within the specified time. Subcontractor agrees in the event of default that it will immediately assign and turn over to Contractor all sub-contracts, material contracts, or orders, bills of lading for material en route, and any other necessary data or information that would minimize the cost of completion of the Subcontract work.

9. Termination for ~~Convenience~~ Nonperformance

- 9.1 Right to Terminate for ~~Convenience~~ Nonperformance. The Contractor shall have the right to terminate for ~~convenience~~ Nonperformance, at any time, and with ~~or without~~ cause, Subcontractor's performance of all or part of the Subcontract or Subcontract Work, as defined in paragraph 2.1.

- 9.2 Notice to Subcontractor. The Contractor shall provide Subcontractor with written notice of the termination two calendar days in advance of the effective date of the termination. The two-day period shall begin to run upon receipt of the termination for ~~convenience~~ Nonperformance notice by the Subcontractor.

- 9.3 Subcontractor's Obligations. Upon receipt of the written notice of termination, the Subcontractor shall:

- A. Stop all work or its performance of all the Subcontractor or Subcontract Work that has been terminated, or stop work on the part of the Subcontract Work that has been terminated if its performance of only part of the Subcontract Work has been terminated.
- B. Enter into no further sub-subcontracts or place any orders for supplies, materials, or facilities, except as necessary to complete any portion of the Subcontract Work not terminated for convenience.
- C. Terminate all sub-subcontracts or orders to the extent related to the terminated Subcontract Work.
- D. As directed by the Contractor, transfer title and deliver to the Contractor any fabricated or unfabricated parts, work in progress, completed work, supplies, and other materials produced or acquired for the Subcontractor or Subcontract Work terminated and the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, the Subcontractor would be required to furnish to the Contractor.
- E. Complete non-terminated portions of the Subcontractor Work if the Subcontractor's performance of only a part of the Subcontract Work has been terminated.
- F. Use its best efforts to sell, as directed by the Contractor, any materials of the types referred to in paragraph (D) above; provided, however, that the Subcontractor is not required to extend credit to any purchaser of this material and may acquire the material under the conditions prescribed by, and at prices approved by, the Contractor. The proceeds from the sale of such material shall be applied to reduce any payment due from the Contractor under this Subcontract, and credited to the price or cost of the Subcontract Work, or paid in any other manner directed by the Contractor.
- G. Submit with 60 days of the effective date of termination, to the Contractor, a written termination claim, along with all documentation required to support the claim.
- H. Take any other action toward termination as directed by the General Contractor.

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- 9.4 Effect of Owner's Termination of Contractor. If there has been a termination of the Contractor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner to the Contractor for the Subcontractor's completed work, as provided in the Contract Documents, after payment by the Owner to the Contractor.
- 9.5 Compensation. If the Contractor's contract has not been terminated, the Contractor shall pay the Subcontractor as follows:
- A. The direct cost of the work performed by Subcontractor prior to termination.
  - B. Overhead, general, and administrative expenses (including those for any sub-subcontracts) in an amount equal to 5% percent of direct costs.
  - C. 5% percent profit of the total of the amounts allowed in paragraphs (A) and (B) above. If, however, it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, no profit shall be compensated by the Contractor, and the amounts paid for the termination shall not be compensated for.
- 9.6 Items Not Compensated. The Subcontractor shall not be compensated for.
- A. Any accounting, legal, clerical, or other expenses incurred by the Subcontractor in the preparation of the Subcontractor's termination claim.
  - B. Unabsorbed overhead and anticipated lost profits.
- 9.7 Permitted Deductions. The Contractor shall be entitled to deduct from any payment due the Subcontractor (A) any advance payment it has made to the Subcontractor for work not yet performed under the terms of the Subcontract and (B) the amount of any claim that the Contractor has against the Subcontractor.
- 9.8 Consideration. If no work has been performed by the Subcontractor at the time of termination, Subcontractor shall be paid the sum of \$100.00 for its undertaking an obligation to perform.
- 9.9 Settlement and Release of Any and All Claims. The settlement of termination costs pursuant to Paragraph 9.5 of this Clause shall constitute a settlement and release of any and all claims, known and unknown by the Subcontractor, arising prior to termination.

10. Bonds

- 10.1 Should the Contractor require it, the Subcontractor shall execute a Labor and Material Bond and Faithful Performance Bond in an amount equal to 100% of the Subcontract Price in Section 3. Said bonds shall be executed by a corporate surety acceptable to Contractor, shall name Asphalt Products Corporation as an Obligatee, and shall further name and protect all persons and entities to the same extent as may be required of Contractor pursuant to the Prime Contract. The cost of the bonds shall be added to the Subcontract amount. The terms of this Subcontract Agreement are incorporated by reference into the bonds required by this section, and the terms, conditions, and remedies of Contractor, shall prevail over any similar terms contained in said bond. By issuing a bond to Subcontractor pursuant to this Agreement, the Subcontractor's surety specifically agrees to be bound to Contractor to the same extent and in the same amount as Subcontractor.

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11. Indemnity and Insurance -

11.1 INSURANCE REQUIREMENTS – Unless the Contract Documents require otherwise, Subcontractor agrees to procure and maintain, at his sole cost and expense, the following insurance coverage,

1. **Worker's Compensation:** Coverage A. Statutory policy form; Coverage B. Employer's liability; Bodily injury by accident - \$1,000,000 each accident; Bodily injury by disease- \$1,000,000 each employee. Coverage shall be maintained in accordance with NRS 616 and 617.
2. **Commercial Auto Coverage:** Auto liability limits of not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance including, but not limited to, owned autos, hired or non-owned autos.
3. **Comprehensive General Liability or Commercial General Liability, "Occurrence Form" only.** "Claims Made" is not acceptable. The limits of liability shall not be less than:  
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  - a) Comprehensive General Liability: \$1,000,000 combined single limit bodily/property damage per occurrence or,
  - b) Commercial General Liability: The limits of liability shall not be less than: Each Occurrence limit - \$1,000,000; Personal injury limit - \$1,000,000; Products Completed Operations Aggregate Limit - \$5,000,000; General Aggregate Limit (other than products-completed operations).
4. **Excess Liability:** Umbrella Form or Follow Form Excess where necessary to meet required minimum amounts of coverage.
5. **The Project is covered by an OCIP.** Subcontractor shall enroll into this OCIP. Subcontractor shall be responsible for a deductible/SIR equal to that of the subcontractors' non-OCIP GL policy; not to be less than \$20,000 for light hazard trade contractors, \$25,000 for medium hazard trade contractors and \$75,000 for high hazard trade contractors.
6. Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.
7. Liability Policy forms must include: a) Premises and operation with no X, C or U exclusions; b) Products and completed operations coverage (Subcontractor agrees to maintain this coverage for a minimum of 1 year following completion of his work); c) Full blanket contractual coverage; d) Broad form property damage including completed operations or its equivalent; e) An endorsement naming Asphalt Products Corporation, Gemstone LVS, LLC. and any other required interest as additional insured(s); f) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) shall be noncontributing with the coverage provided under this policy."

APCO Construction SZ  
Subcontractor

8. **Other Requirements:** (a) All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation or reduction in coverage; (b) All policies must be written by insurance companies whose rating in the most recent Best's rating guide, is not less than A:VII Rating must be shown on Certificate under "Companies Affording Coverage"; (c) Certificates of insurance with the required endorsement evidencing the coverage must be delivered to APCO Construction prior to commencement of any work under this Contract; **(see attached samples)** (d) If the Subcontractor fails to secure and maintain the required insurance, Asphalt Products Corporation shall have the right (without obligation to do so, however) to secure same in the name and for the account of the Subcontractor in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. (e) Liability insurance policies containing warranties must be reviewed for prior approval and acceptance by Contractor. (f) The Subcontractor's insurance shall be primary with respects to Asphalt Products Corporation, its officers, employees and volunteers.

## 11.2 INDEMNIFICATION

- a) **General Indemnity:** All work covered by this agreement that is performed at the project site, or performed in preparing or delivering materials or equipment to the project site, or in providing services for the Project, shall be at the sole risk of the Subcontractor. Subcontractor, to the fullest extent permitted by law, with respect to all such work which is covered by or incidental to this agreement, shall defend all claims through legal counsel acceptable to Contractor, and indemnify and hold Contractor, its insurance carriers and bonding companies, Owner and any other interested party designated by Contractor, or their agents, employees or representatives (collectively referred to as "Indemnities") harmless from and against any claim, liability, loss, damage, cost, expense, including attorney's fees, awards, fines or judgments arising by reason of the death or bodily injury to persons, injury or damage to tangible property, including the loss of use therefrom, whether or not it is caused in part by an Indemnitee; provided, however, that the Subcontractor shall not be obligated under this agreement to indemnify the Indemnities with respect to damages which are ultimately determined to be due the sole negligence or willful misconduct of the Indemnities.
- b) **Indemnity Not Limited:** In any and all claims against the Indemnities by any employee of the Subcontractor, or lower tier subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any Workers' or Workmen Compensation Acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of this Agreement and shall survive the expiration or termination of the Agreement until such time as action on account of any matter covered by such indemnity is barred by the applicable Statute of Limitations.

## 12. Warranty and Guarantee

- 12.1 Subcontractor agrees to promptly repair, rebuild, replace or make good, without cost to Contractor or Owner, any defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the Contract Documents. If no such period is stipulated in the contract Documents, then Subcontractor's guarantee shall be for a period of two year from the date Certificate of Occupancy is obtained for the project. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

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Subcontractor SZ

13. Patents

- 13.1 Subcontractor agrees to pay all applicable patent royalties and license fees and to defend all suits or claims made for infringement of any patent rights involved in the Subcontract work.

14. Compliance with Regulations, Applicable Law and Safety

- 14.1 All Work, labor, services and materials to be furnished by Subcontractor shall strictly comply with all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, building codes, and directives now in force or hereafter in effect as may be required by the Prime Contract. Subcontractor shall satisfy and comply with the foregoing as a part of the Subcontract without any additional compensation.
- 14.2 Subcontractor agrees that the prevention of accidents to workmen engaged in the work under the Subcontract is solely its responsibility. If requested, Subcontractor shall submit a safety plan for review by Contractor. Contractor's review of any safety plan shall not be deemed to release Subcontractor, or in any way diminish its indemnity or other liability as assumed under the Subcontract, nor shall it constitute an assumption of liability by Contractor.
- 14.3 When so ordered, Subcontractor shall stop any part of the Work that the Contractor or Owner deems unsafe until corrective safety measures, satisfactory to Contractor and or Owner, have been taken. Should Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from payments due or to become due to Subcontractor. Upon request, Subcontractor shall timely submit copies of all accident or injury reports to Contractor.
- 14.4 Subcontractor agrees to cooperate with the Contractor in efforts to prevent injuries to workmen employed by either party in carrying out operations covered by this agreement, and to adopt and place in effect OSHA requirements and such practical suggestions as may be offered by the Contractor and/or the Owner to promote safety and safe working conditions. Should the Subcontractor fail to fulfill its obligations in relation to safety matters on the job site, at the option of the Contractor, this Agreement, upon ten (10) days written notice to Subcontractor, may be cancelled, and the Subcontractor required to immediately remove his equipment and employees from the project.

15. Damage to Work

- 15.1 All loss or damage to Subcontractors' work resulting from any cause whatsoever shall be borne and sustained by Subcontractor and shall be solely at its risk until final acceptance by Contractor, Owner, or Owner's Representative. Subcontractor shall at all times and at its sole expense fully secure and protect against any damage, injury, destruction, theft or loss, all work and all labor, materials, supplies, tools and equipment furnished by Subcontractor or its sub-subcontractors, laborers and material men. Subcontractor shall at its sole expense promptly repair or replace damage to the work of others, or to any part of the project, resulting from Subcontractor's activities.

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16. Inspection and Approvals

- 16.1 Contractor and Owner at all times shall have the right to inspect Subcontractor's materials, workmanship and equipment. Subcontractor shall provide facilities necessary to effect such inspection, whether at the place of manufacture, the project site, or any intermediate point. This point of inspection may be exercised at any time during performance of the Subcontract Work.
- 16.2 Any Subcontract work or material furnished that fails to meet the requirements or specifications of the Contract Documents, or the Subcontract, shall be promptly removed and replaced by Subcontractor at its own cost and expense. If, in the opinion of Contractor or Owner, it would not be economical or expedient to

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Subcontractor *SZ*

correct or remedy all or any part of the rejected Subcontract work or materials, then Contractor, at its option may deduct from payments due or to become due to Subcontractor either: (a) such amount as in Contractor's sole judgment represents the difference between the fair value of the Subcontract work and materials rejected and the value if same had been performed in full compliance with the Contract documents; or (b) such reductions in price that are provided for or determined for this purpose under the Contract Documents.

- 16.3 The Subcontractor shall keep, maintain and require its subcontractors and suppliers to keep and maintain all books, papers, records, files, accounts, reports, bid documents with backup data, and all other materials relating to the Contract Documents and Project.
- 16.4 All of the material set forth in paragraph 16.3 shall be made available to the Owner and to Contractor for auditing, inspection and copying and shall be produced, upon request, at either the Owner's offices or such other place as Contractor may specify. Said request for information shall be limited to instances when specifically required to comply with a request for information by the Owner, and should not be construed as a general right by Contractor to request proprietary or privileged information of Subcontractor.

17. Arbitration

- 17.1 Contractor shall have the option to, and Subcontractor shall be required to resolve all claims, disputes and matters in question arising out of, or relating to the Subcontract, or breach thereof, except for claims which have been waived by the making or acceptance of final payment, by submission to arbitration in the time period and in accordance with the Contract Documents.
- 17.2 In accordance with Paragraph 17.1, Subcontractor hereby waive its right to otherwise litigate any and all such disputes, claims and matters in question in any court or governmental tribunal in any jurisdiction. If Subcontractor submits any matter to arbitration hereunder, at its sole option, Contractor may refuse to arbitrate any such disputes, claims, and matters in question. In that event, and in only that event, Subcontractor may litigate the matters subject to its demand for arbitration.
- 17.3 All arbitration and other legal proceedings instituted pursuant to this Section shall be conducted in Las Vegas, Nevada, or at such other venue as Contractor and Subcontractor shall agree to in writing.
- 17.4 The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- 17.5 Unless otherwise agreed in writing, the Subcontractor shall carry on the Subcontract work and maintain the schedule of work pending arbitration or litigation, and the Contractor shall continue to make payments in accordance with the Subcontract.
- 17.6 To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other Subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding.
- 17.7 This Agreement to arbitrate shall not apply to any claim of contrition or indemnity asserted by one party to the Subcontract against the other party and arising out of any action brought in a state or federal court, or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto; or does not consent to such arbitration.
- 17.8 In any dispute arising over the application of paragraph 17.7, all questions regarding the arbitration requirements of this section shall be decided by the appropriate court and not by arbitration.

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Subcontractor SZ




18. Miscellaneous

- 18.1 Contractor's waiver of any of the provisions of the Subcontract, or Contractor's failure to exercise any options or legal remedies provided therein, shall not be construed as a general waiver of its right thereafter to require such compliance or to exercise such option or remedy.
- 18.2 The Subcontract, including all Contract Documents as provided in Section One, comprises the entire Agreement between the parties relating to the Subcontract Work and no other agreements, representations, terms, provisions or understandings concerning the Subcontract Work have been made. All modifications or amendments to the Subcontract must be in writing.
- 18.3 To the best knowledge and belief of the parties, the Subcontract contains no provision that is contrary to Federal or State law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect to the extent permissible. The illegality of any provisions, or parts thereof, shall not affect the enforceability of any other provisions of this Subcontract.
- 18.4 The Subcontract shall be construed and interpreted according to the laws of the State of Nevada.
- 18.5 In the event either party employs an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party shall be entitled to all costs, attorney's fees and any other reasonable expenses incurred therein.
- 18.6 All sections and headings are descriptive only and are not controlling.
- 18.7 Contractor's rights and remedies under the Subcontract are not exclusive and Contractor shall have all other remedies available at law or in equity to enforce the Subcontract.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first above written.

Zitting Brothers Construction, Inc.

  
pres  
TITLE

APCO CONSTRUCTION

  
Project Manager  
TITLE

APCO Construction   
Subcontractor 

**EXHIBIT 'A'**  
**Subcontractor Scope of Work**  
APCO Contract No. 0168

This Agreement includes the supply of all labor, materials, tools, equipment, supervision, management, permits and taxes necessary to complete the BELOW SCOPE OF WORK for the referenced Project in accordance with the Contract Documents including Addenda/Delta Number(s) \_\_\_ through \_\_\_ Subcontractor acknowledges that he has performed his own take-off, site visit and therefore, any items necessary to complete the work depicted in accordance with the Contract Documents, shall be included in this Agreement. The Subcontractor also acknowledges that all of the costs related to the successful completion of the work including any unforeseen or unseen items, or as described herein, are included in the amount reflected in the schedule below.


The Scope of Work shall specifically include but not be limited to the following list of bid items:

**Wood Framing, Sheathing, and Shimming Complete:** Complete work per governing codes, furnish and install all necessary Design, Labor, Material, Equipment, Cartage, Freight, Supervision, Taxes and Necessary Insurance to install and complete all ~~Class~~ <sup>Labor</sup> and ~~Glazing~~ <sup>Materials</sup>, including ~~Spandrel Glass~~ <sup>Submittals</sup> per plans by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering (see attached Project Drawing List) for the amount of **Fourteen Million Four Hundred and Sixty One Thousand and no/100, (\$14,461,000.00)** for the project. The breakdown for these costs are as follows:

Building Type 1 Podium:	\$ 1,805,000.00 X 6 Building's = 10,830,000.00
Building Type 4 Podium:	\$ 1,400,000.00 X 1 Building = 1,400,000.00
Building Type 5 Podium:	\$ 1,115,500.00 X 2 Building's = 2,231,000.00
	<b>Total = 14,461,000.00</b>

Our understanding of the clarifications / qualifications associated with your bid is as follows: Your proposal is hereby amended to reflect the terms and conditions of this subcontract. APCO Construction may at its option exercise its right to choose any or all alternate/option items of work as shown on your proposal at the stated alternate price during the course of construction

Zitting Brothers Construction, Inc.

  
pres.  
TITLE

APCO CONSTRUCTION

  
Project Manager  
TITLE

APCO Construction  
Subcontractor SZ

## SPECIAL CONDITIONS

In addition to the conditions outlined in the Subcontract Agreement, the following Special Conditions shall form a part of the Subcontract Agreement.

- (a) The Subcontractor shall be responsible for clean up of employees break & lunch trash on the job site. Subcontractor employees are not to wander around the Owner/General Contractor jobsite office area while on duty. No parking of private vehicles will be allowed in the Owners Operations Area. NO EXCEPTIONS.
- (b) The Contractor will provide an adequate temporary construction area for staging.  
*Enclosed with security fence. S2*
- (c) The Contractor will provide reasonable access to all working areas.
- (d) The Subcontractor shall be responsible for the cleaning of his work area and removing its debris and all work shall be left in a clean condition following his activities. The APCO shall be the sole judge to determine the cleanliness.
- (e) The Contractor will provide one (1) set of full size conformed construction documents for the Subcontractor's use. Additional sets may be purchased by the Subcontractor from a source designated by the Contractor. Plan change drawings will be supplied in the same quantities.
- (f) Subcontractor must submit a "Daily Work Report" (see attached Appendix 'C') prior to 10:00 a.m. the following day for all work performed on the job site the previous day. Subcontractor monthly pay requests will not be accepted for processing unless all "Daily Work Reports" for the pay period have been submitted to the Contractor.
- (g) Subcontractor is required to submit a Payroll Certificate representing all work performed on the job site on a monthly basis. The Payroll Certificate must be submitted no later than the 1st of the month for all work performed during the previous month. Subcontractor shall use a format similar to AIA G702 & G703.
- (h) The Subcontractor is required to attend weekly site progress meetings and to participate in the preparation of Monthly updates of the Project schedule.
- (i) The Contractor cannot guarantee continuity of progress of work; Subcontractor shall employ as many mobilizations as required to complete the work as required by the project schedule.
- (j) The Subcontractor shall provide drinking water for its own employee's.
- (k) Subcontractor shall at all times protect stored equipment, materials from: damage from weather, sun. Materials shall be stored off the ground and not in contact the ground.
- (l) APCO Construction cannot guarantee price stability and therefore cannot grant any additional monies to subcontractor due to escalation of price between bid/quote time and when materials/labor/shipping is actually purchased and/or incorporated into the project. *See exhibit "B" for exception on material pricing. S2*

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# **EXHIBIT 3**

## SUBCONTRACT AGREEMENT

PROJECT: **The West Manhattan Condominiums** Contract NO. **168-18** APCO Construction Project No. **168**  
PROJECT LOCATION: West Russell Road and Rocky Hill Street, Las Vegas, NV, 89148

OWNER: **Gemstone Development West, Inc., 9121 West Russell Rd, Unit 117, Las Vegas Nevada 89148**

ARCHITECT/ENGINEER: **OZ Architecture, 303.861.5704 Huron Street, Denver, CO, 80202, Redwine Engineering (303) 575-9510 700 17th Street, Denver, CO 80202, Jordan & Skala Engineers, (702) 362-5111, 2900 S. Rancho Dr, Suite 102, Las Vegas Nevada 89102. WRG Engineering (702) 990-9300 3011 West Horizon Ridge Parkway, Suite 100, Henderson Nevada 89052.**

THIS AGREEMENT (hereinafter "the Subcontract") is entered into in consideration of the mutual promises made this 17th day of April, 2007, between:

**ASPHALT PRODUCTS CORPORATION** also known as **APCO Construction**, (hereinafter called the "Contractor")  
3432 N. Fifth Street, North Las Vegas, Nevada 89032. Office: (702) 734-0198, Fax: (702) 734-0396. Nevada  
Contractors License No. **14563**.

And **CabineTec**  
2711 E. Craig Road  
Suite A  
North Las Vegas, NV 89030 P 702-649-1010 F 702-649-7918

(hereinafter called the "Subcontractor").


Subcontractor's NV Contractor's License No. 27189

Limit: \$ 550,000.00

Contractor and Subcontractor agree as follows:

1. **Contract Documents**

- 1.1 The Contract Documents for this Subcontract Agreement, shall include all exhibits and other documents attached hereto or made a part thereof by reference, all drawings designed by **OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering** and approved by **Gemstone Development West, Inc.** and the Primary Contract between the Owner and Contractor (hereinafter "the Prime Contract"), including all exhibits, and other documents attached thereto or made part hereof by reference, the Project Specifications and Contract Documents, the Project Plans, and all addendum and subsequent modifications issued thereto. (All Contract Documents identified herein shall be hereinafter collectively referred to as the "Contract Documents").
- 1.2 The Contract Documents are available in Contractor's office. Subcontractor acknowledges that it has carefully examined the Contract Documents and fully understands them. Copies of the Plans and Specifications will be provided to Subcontractor, upon request, at Subcontractor's Cost. Subcontractor shall, prior to the commencement of the Work, review and compare all of the Subcontract Documents relating to the performance of the Subcontractor and any and all errors, ambiguities and inconsistencies shall immediately be reported to the Contractor in writing and resolved to Subcontractor's satisfaction.
- 1.3 Subcontractor is bound to the Contractor to the same extent and duration that Contractor is bound to Owner. Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor, by the Contract Documents, has assumed toward the Owner in the Prime Contract. Contractor

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shall further have the benefit of all rights, remedies, redress and limitations in respect to Subcontractor and all things done and used by Subcontractor in performance of its Work, which the Owner and its agents have against Contractor in the Contract Documents or by law. Any and all decisions by the Owner or its agents relative to interpretation of the Contract Documents or any ambiguity or discrepancy therein shall be binding on the Subcontractor to the same extent such are binding on Contractor. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with all Contract Documents, including all performance obligations and responsibilities which subcontractor assumes toward Contractor.

**2. Scope of Work**

2.1 Subcontractor agrees to furnish all supervision and labor, furnish and install all materials, equipment and supplies required, and do all things necessary to fully complete all of the items of work ("the Subcontract Work"), referred to in **Exhibit "A": Subcontractor Scope of Work**

2.2 Subcontractor warrants to Contractor and Owner that all Work shall be performed in a neat, skillful, good and workmanlike manner and will be fit for its intended use both as to workmanship and materials. Subcontractor agrees that all materials and equipment furnished by Subcontractor shall be new and of the best description and quality of their respective kinds, unless otherwise specified and ordered by Contractor in writing. Subcontractor warrants that the materials and equipment furnished and the Work performed will strictly comply with the Contract Documents and this Subcontract, and shall be satisfactory to Owner and Contractor.

**2.3 Equal Opportunity Clause**

During the performance of any contract, Subcontractor, unless exempt, agrees as follows:

2.3.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subcontractor will take affirmative action to ensure that color, religion, sex or national origin. Such action shall include, but not limited to the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places, available to employee and applicants for employment, notices to be provided by the government contracting officer setting forth the provisions of this nondiscrimination clause.

2.3.2 Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

**3. Contract Price and Payments**

3.1 In consideration of the strict and complete and timely performance of all Subcontract Work, Contractor agrees to pay Subcontractor or in the payment quantities and schedules as is more fully described in **Exhibit "A": Subcontractor's Scope of Work**.

3.2 In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the Work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and furnishing all materials and equipment contemplated and embraced in this Subcontract, and for all loss or damage arising out of the nature of said Work, or from all actions of the elements or from any unforeseen difficulties or obstacles which may arise or be encountered in the performance of the Work, and for all risks of every description connected with the Work, and for all expense incurred by or in consequence of the

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suspension, interruption or discontinuance of the Work, and for well and faithfully completing the Work and the whole thereof in the manner and according to the requirements and instructions of Contractor and Owner or Owner's agents in charge of the Work, if any, payment in the amount of the Subcontract Price.

- 3.3 Subcontractor, upon request of Contractor, and on such date as Contractor shall designate, shall submit to Contractor, in form and content acceptable to Contractor, a monthly billing, no later than the 25<sup>th</sup> of each month, showing quantities of Subcontract work that has been satisfactorily completed in the preceding month, as well as backup material for same for submittal to the Owner. Failure to submit by the 25<sup>th</sup> of each month may result in that monthly payment application being rolled over to the following month. Subcontractor shall also submit an original executed Conditional Release, in the form required by Contractor, verifying payment of all laborers, subcontractors, equipment and material suppliers. Subcontractor shall also furnish required releases from any sub-subcontractors and/or materials suppliers that have notified Contractor of their presence on the Project. Subcontractor further agrees to provide all required employment security department, fringe benefit trust funds, certified payroll, and/or other reports as may be required by the Contractor or the Contract Documents.
- 3.4 The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (**Forms attached**) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.
- 3.5 Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (**Forms attached**) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.
- 3.6 Contractor shall have the right at all times to contact lower tier subcontractors and suppliers to verify that they are being paid by Subcontractor for labor or materials furnished for use in the Subcontract Work. If it

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appears that labor, material or other costs incurred in the performance of the Subcontract Work are not being paid when due, Contractor may take whatever steps it deems necessary to insure that the progress payments will be utilized to pay such costs, including, but not limited to, the issuance of joint checks payable to the claimant after written notice to Subcontractor, or additionally, making payment directly to claimant after written notice to Subcontractor. If such payment by Contractor exceeds the balance of payments due or to become due to Subcontractor from Contractor, then Subcontractor shall be liable to Contractor for the difference.

- 3.7 Contractor is hereby expressly granted the right to off set any sums due the Subcontractor under the provisions of this Subcontract against any obligation that may be due from Subcontractor to Contractor regardless of the source of said obligation. When requested by Contractor, Subcontractor shall furnish to Contractor a verified and itemized statement showing the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Subcontract Work together with the amount due or to become due for such work.
- 3.8 The 10 percent withheld retention shall be payable to Subcontractor upon, and only upon the occurrence of all the following events, each of which is a condition precedent to Subcontractor's right to receive final payment hereunder and payment of such retention: (a) Completion of the entire project described in the Contract Documents; (b) The approval and final acceptance of the project Work by Owner; (c) Receipt of final payment by Contractor from Owner; (d) Delivery to Contractor from Subcontractor all as-built drawings for it's scope of work and other close out documents; (e) Delivery to Contractor from Subcontractor a Release and Waiver of Claims from all of Subcontractor's laborers, material and equipment suppliers, and subcontractors providing labor, materials or services to the Project, **(Forms attached)**. If any sub-subcontractor, supplier or other person refuses to furnish a release or waiver required by the Owner or Contractor, the Subcontractor shall, upon the request of Contractor, furnish a bond satisfactory to the owner and Contractor to indemnify them against any such claim or lien. Should the existence of any unsatisfied or undischarged claim, obligation or lien arising in conjunction with Subcontractor's Work become known after final payment is received from Contractor, Subcontractor shall promptly pay on demand all actual amounts Contractor and/or Owner pay in bonding around, satisfying, discharging or defending any such claim, obligation or lien, including all costs and attorney's fees incurred in connection therewith. Final payment shall not relieve Subcontractor from liability, or for warranty or guaranty, or for indemnity obligations for faulty or defective Work.
- 3.9 Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such work by the Owner.
- 3.10 Progress payments and Final Payment shall not be considered or construed as evidence of acceptance of any part of Subcontractor's work until final acceptance of the Project by Owner.

4. **Prosecution of Work**

4.1 **TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.**

- (a) Seven (7) copies of all Subcontractor submittals shall be received by Contractor to suit the requirements of the approved CPM target schedule unless otherwise agreed to in writing by Contractor. Subcontractor agrees to provide plan-sized sheets for all submittals of required size 24"x36" including one (1) sepia & five (6) blue line prints. Product specifications shall be provided in standard 8-1/2" by 11" paper, three hole punched and inserted into three ring binders labeled **"The Manhattanwest Condominiums"**. Any required re-submittals shall be submitted within five working days of receipt of request from the Owner.

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- (b) Final acceptance and approval of this Subcontract Agreement is contingent upon approval of Subcontractor's Submittals by the Owner/Architect/Engineer.
- (c) Any delays in the submittal process caused in whole or part by Subcontractor may be grounds for immediate termination of this Subcontract Agreement and subject Subcontractor to damages as provided in Sections 8 and 9 below.

Subcontractor agrees to commence the Subcontract Work within five (5) calendar days after receiving notification from Contractor to proceed, or within such other time as may be specified by Contractor, and to proceed at such points as Contractor may designate, and to continue diligently in its performance in accordance with the Contractor's project schedule and at a pace that will cause no delay in the progress of the Contractor's or other subcontractor's work.

- 4.2 Upon request, Subcontractor shall promptly provide Contractor with scheduling information, in the format required in the Contract Documents, or any other information relating to the order or nature of the Subcontract Work. Subcontractor agrees that the project schedule may be revised by Contractor as work progresses. Contractor may require Subcontractor to prosecute segments of the Subcontract Work in phases as Contractor may specify. Subcontractor shall comply with instructions given by Contractor, including any instructions to suspend, delay or accelerate the Subcontract Work. Subcontractor shall not be entitled to any extra compensation from Contractor for any such suspension, delay or acceleration unless specifically agreed to in writing by the Contractor and Owner and paid for by Owner. The Owner's payment to Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from Contractor.
- 4.3 Subcontractor shall keep the work area reasonably clean of debris, daily, resulting from the performance of its work and shall remove from the work area all debris generated by the execution of the Subcontract work. Non-compliance with verbal direction from Prime Contractor's Project Superintendent for cleanup shall result in one (1) written notice for clean-up. Upon failure to properly police the debris from their own activity, 24 hours after written notification this subcontractor will be fined \$500.00 plus the cost for clean-up.
- 4.4 Subcontractor, in undertaking to complete the Subcontract Work within the time specified, avows that it has considered ordinary delays incident to such work; including, but not limited to delays in securing materials, equipment or workmen, and minor changes, omissions or additions, unavoidable casualties, normal weather conditions, strikes or lockouts. If Subcontractor shall be delayed in the performance of the Work by any act or neglect of the Owner or Architect, or by agents or representatives of either, or by changes ordered in the Work, or by fire, unavoidable casualties, national emergency, or by any cause other than the intentional interference of Contractor, Subcontractor shall be entitled, as Subcontractor's exclusive remedy, to an extension of time reasonably necessary to compensate for the time lost due to the delay, but only if Subcontractor shall notify Contractor in writing within twenty four (24) hours after such occurrence, and only if Contractor shall be granted such time extension by Owner. No time extension will be allowed for delays or suspensions of work caused or contributed to by Subcontractor, and no time extension will be granted Subcontractor that will render Contractor liable for liquidated damages or other loss under the Contract Documents. The Subcontractor understands that this is an aggressive schedule and that should the Subcontractor fail to staff the Project with the proper workforce, to stay on schedule, then it is understood that the Subcontractor will have its workforce work overtime and/or weekends to maintain the pace of the schedule solely at the subcontractors expense.
- 4.5 In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against the Contractor by the Owner, as provided in the Contract Documents, for any project delays caused by Subcontractor. Such damages shall be paid for each working day the Subcontract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by the Contractor, and granted by Owner.

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4.6 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic event, or by reason of any other event or cause beyond Contractor's control, or contributed to by Subcontractor.

4.7 All Subcontract work done and all Subcontract materials delivered to the project site shall become Contractor's property, and said material shall not be removed by Subcontractor or any other party from the project site without Contractor's written consent. After completion and final acceptance of the Subcontract work and final payment, Subcontractor shall promptly remove all remaining material, equipment and debris of Subcontractor.

5. Changes and Claims

5.1 Contractor may order or direct changes, additions, deletions or other revisions in the Subcontract work without invalidating the Subcontract. No changes, additions, deletions, or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor mark up shall be limited to 10% overhead and profit in addition to the direct cost of the work. No markup shall be allowed on over time for original scope of work acceleration.

5.2 Subcontractor, prior to the commencement of such changed or revised work, shall submit, (within 24 hours of request) to Contractor, written copies of the cost or credit proposal, including work schedule revisions, for changes, additions, deletions or other revisions in a manner consistent with the Contract Documents. Contractor shall not be liable to Subcontractor for a greater sum, or additional time extensions, than Contractor obtains from Owner for such additional work, less reasonable overhead and profit due to Contractor, and also less professional and attorney's fees, costs, and other expenses incurred by Contractor in the collection of any such sum or time extension. Payment to Subcontractor for such work shall be conditioned upon Contractor's actual receipt of payment from the Owner and such payment by Owner to Contractor with whatever documentation or support, as Contractor may deem necessary to negotiate with Owner.

5.3 In any dispute between Contractor and Owner as to amount, classification, price, time or value of Subcontract Work, or any Subcontract material or supplies, or any delay in the prosecution of the Subcontract work caused by Owner, or any other matter whatsoever pertaining to the Subcontract work, Subcontractor agrees to promptly and adequately provide Contractor with whatever documentation or support as Contractor may deem necessary to negotiate with Owner.

5.4 Contractor may dispute, appeal resist, litigate or arbitrate any decision of Owner, without being deemed to have admitted any obligation or liability to Subcontractor, and if the decision shall be against Contractor, then Subcontractor shall be bound thereby. Subcontractor may, at its own expense, participate with Contractor in arbitration or legal proceedings. Subcontractor shall bear part or all costs, including attorneys' fees and legal expenses, incurred by Contractor in any such proceeding involving a claim, which, if allowed, would result in one or more payments to Subcontractor. Subcontractor's costs shall bear to the total amount sought in the proceeding. Prosecution of any such claim or proceeding shall be at the sole risk of Subcontractor, and Contractor shall have no liability for or in relation to the outcome.

6. Assignments

6.1 Subcontractor shall not assign or sublet the Subcontract or any part of the Subcontract Work or any payments due hereunder, without prior written consent of Contractor. Any such assignment made by Subcontractor without Contractor's prior written consent is void, and shall be grounds for termination of this Subcontract by Contractor, terminates the Subcontractor's right to any further payment and authorizes Contractor to withhold all monies due or to become due to Subcontractor.

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7. Taxes

- 7.1 All applicable taxes, contributions, interest and/or penalties due under any federal, state, or municipal statute or regulation arising from Subcontractor's Work are included in the price to be paid to Subcontractor under the Subcontract. Subcontractor shall indemnify, defend, and save Contractor and Owner harmless from all liability, loss, and expense resulting from Subcontractor's failure to satisfy such obligations. Subcontractor shall, on demand, provide proof that all taxes and other charges have been, and are being properly paid.
- 7.2 If Contractor is assessed or charged for any Subcontractor taxes, contributions, interest or penalties, Contractor shall have the right to withhold such amount from funds due or to become due under the Subcontract, and to pay directly to taxing authorities any sums otherwise due Subcontractor, but not otherwise subject to offset in accordance with Section 3 above, upon receipt of a tax levy from such taxing authority.

8. Default and Termination

- 8.1 If, in the opinion of Contractor or Owner, Subcontractor fails, at any time, to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality; or fails to adequately or timely perform the Subcontract work to the satisfaction of Contractor or Owner; or becomes insolvent or makes any filing under the Acts of Congress relating the bankruptcy; or fails, neglects and/or refuses to comply with the project plans and specification; or fails to perform the Subcontract work in a good and workmanlike manner; or causes any stoppage of the work of the other trades upon the project; or fails to correct defective work; or fails to comply in any other respect with the terms and conditions of this Subcontract, Contractor may declare a default by Subcontractor as herein provided.
- 8.2 Contractor shall provide prompt written notice of default to Subcontractor, by regular mail or as may otherwise be considered to reasonably provide notice to Subcontractor at Subcontractor's place of business described above. Such notice shall be complete upon deposit at a regular receptacle of the U.S. mail, Fax Transmission or upon actual hand delivery as provided herein.

In the event of default by Subcontractor as provided above, Contractor may, at his option, demand Subcontractor to cure or otherwise correct the default and breach within three calendar days after written notice by Contractor. If, after three days, Subcontractor has failed to cure and correct the default, Contractor may, at his sole option, provide any such labor, materials or equipment as may be necessary to complete the Work covered by this Subcontract Agreement and thereafter deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under this Agreement. Alternatively, Contractor may terminate Subcontractor's right to proceed with the Work and thereafter enter upon the premises and take control of all materials, tools, equipment, and/or appliances of Subcontractor, and may employ any other person, persons, or organizations to finish the Work and provide the labor, materials and equipment to accomplish that purpose. Following completion of the Work by the Contractor or other persons or organizations, all unused materials, tools, equipment and/or appliances shall be returned to Subcontractor. Subcontractor shall not be entitled to rent or payment of any kind for the use of Subcontractor owned equipment or materials, nor shall Contractor be liable for any damages arising from said use unless resulting from gross negligence, or willful destruction by Contractor.

In the event Subcontractor has provided a payment or performance bond to Contractor, in accordance with Section 10 of this Agreement, and following expiration of the three days cure period, Contractor will make notice and demand by registered mail upon Subcontractor's surety to complete the Work covered by this Subcontract Agreement. In the event Subcontractor's surety fails to notify Contractor within 10 days after receipt of notice and demand by Contractor of surety's election to complete the work on behalf of

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Subcontractor, such failure shall be deemed a waiver by surety to exercise its rights to complete the Work. Thereafter, Contractor may at his sole option, complete the Work as otherwise provided by this Section.

- 8.3 In case of any such termination of Subcontractor's right to proceed with the Work, Subcontractor shall not be entitled to receive any further payment under this Subcontract Agreement until the Work undertaken by Contractor in his prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's Work, such excess shall be paid by Contractor to Subcontractor; but, if such expense shall exceed the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds the unpaid balance.

"Expense" as referred to in this Section shall include all direct and indirect costs incurred by Contractor for furnishing labor, materials, and equipment; to complete the Work covered by this Subcontract Agreement. "Expense" shall further include, but shall not be limited to, replacement of Subcontractor costs, liquidated damages incurred by Contractor, extended field office overhead, and home office overhead, Contractor's attorneys fees and costs, and any and all other damages sustained by Contractor by reason of Subcontractor's default.


- 8.4 In the event Contractor elects to use its own labor forces to complete Subcontractor's Work, Subcontractor and Subcontractor's surety agree to pay Contractor for such Work at the following rates: (a) Labor - At Contractor's then prevailing labor rates, plus labor burden, including, but not limited to, employment taxes, liability insurance, workmen compensation insurance, and all other benefits; (b) Contractor Owned Equipment-At the then prevailing Equipment Rental Rates as established by the Blue Book for Construction Equipment as published by Data Quest; all rental costs shall be determined by dividing the monthly rental rate by twenty-two days per month to determine a daily rental rate. Hourly rental rates shall be determined by dividing the daily rate by eight; (c) Materials, Rental Equipment-Direct Invoice Costs, including transportation, if any; (d) Replacement Subcontractor-Direct Invoice Costs paid Replacement Subcontractor; (e) Field and home office overhead; (f) Ten percent profit on all expenses indicated in a-e above.

In lieu of computing overhead, as provided for above, Contractor may, at his sole option, elect to assess a charge, on items a, b, and c above, of 15% for General Overhead expenses. In addition, Contractor may assess a charge on items a, b, and c above 10% for Profit. Contractor shall be entitled to an additional markup on any and all of such expenses. Contractor shall also be entitled to an additional markup of 5% for General Overhead and 10% for Profit on all expenses and cost incurred pursuant to item d and e above.

- 8.5 If the cost to complete the Subcontract work is more than the unpaid balance of the Subcontract, then Subcontractor shall be liable to Contractor for the deficiency, and Contractor may hold, sell or otherwise realize upon any Subcontractor materials or equipment, or take other steps to collect the deficiency, including making a claim against Subcontractor's surety.
- 8.6 Whether Contractor exercises one or more of the above options or rights, nothing contained herein shall release Subcontractor within the specified time. Subcontractor agrees in the event of default that it will immediately assign and turn over to Contractor all sub-contracts, material contracts, or orders, bills of lading for material en route, and any other necessary data or information that would minimize the cost of completion of the Subcontract work.

9. Termination for Convenience

- 9.1 Right to Terminate for Convenience. The Contractor shall have the right to terminate for convenience, at any time, and with or without cause, Subcontractor's performance of all or part of the Subcontract or Subcontract Work, as defined in paragraph 2.1.

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- 9.2 Notice to Subcontractor. The Contractor shall provide Subcontractor with written notice of the termination two calendar days in advance of the effective date of the termination. The two-day period shall begin to run upon receipt of the termination for convenience notice by the Subcontractor.
- 9.3 Subcontractor's Obligations. Upon receipt of the written notice of termination, the Subcontractor shall:
- A. Stop all work or its performance of all the Subcontractor or Subcontract Work that has been terminated, or stop work on the part of the Subcontract Work that has been terminated if its performance of only part of the Subcontract Work has been terminated.
  - B. Enter into no further sub-subcontracts or place any orders for supplies, materials, or facilities, except as necessary to complete any portion of the Subcontract Work not terminated for convenience.
  - C. Terminate all sub-subcontracts or orders to the extent related to the terminated Subcontract Work.
  - D. As directed by the Contractor, transfer title and deliver to the Contractor any fabricated or unfabricated parts, work in progress, completed work, supplies, and other materials produced or acquired for the Subcontractor or Subcontract Work terminated and the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, the Subcontractor would be required to furnish to the Contractor.
  - E. Complete non-terminated portions of the Subcontractor Work if the Subcontractor's performance of only a part of the Subcontract Work has been terminated.
  - F. Use its best efforts to sell, as directed by the Contractor, any materials of the types referred to in paragraph (D) above; provided, however, that the Subcontractor is not required to extend credit to any purchaser of this material and may acquire the material under the conditions prescribed by, and at prices approved by, the Contractor. The proceeds from the sale of such material shall be applied to reduce any payment due from the Contractor under this Subcontract, and credited to the price or cost of the Subcontract Work, or paid in any other manner directed by the Contractor.
  - G. Submit with 60 days of the effective date of termination, to the Contractor, a written termination claim, along with all documentation required to support the claim.
  - H. Take any other action toward termination as directed by the General Contractor.
- 9.4 Effect of Owner's Termination of Contractor. If there has been a termination of the Contractor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner to the Contractor for the Subcontractor's completed work, as provided in the Contract Documents, after payment by the Owner to the Contractor.
- 9.5 Compensation. If the Contractor's contract has not been terminated, the Contractor shall pay the Subcontractor as follows:
- A. The direct cost of the work performed by Subcontractor prior to termination.
  - B. Overhead, general, and administrative expenses (including those for any sub-subcontracts) in an amount equal to 5% percent of direct costs.
  - C. 5% percent profit of the total of the amounts allowed in paragraphs (A) and (B) above. If, however, it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been

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completed, no profit shall be compensated by the Contractor, and the amounts paid for the termination shall not be compensated for.

- 9.6 **Items Not Compensated.** The Subcontractor shall not be compensated for.
- A. Any accounting, legal, clerical, or other expenses incurred by the Subcontractor in the preparation of the Subcontractor's termination claim.
  - B. Unabsorbed overhead and anticipated lost profits.
- 9.7 **Permitted Deductions.** The Contractor shall be entitled to deduct from any payment due the Subcontractor (A) any advance payment it has made to the Subcontractor for work not yet performed under the terms of the Subcontract and (B) the amount of any claim that the Contractor has against the Subcontractor.
- 9.8 **Consideration.** If no work has been performed by the Subcontractor at the time of termination, Subcontractor shall be paid the sum of \$100.00 for its undertaking an obligation to perform.
- 9.9 **Settlement and Release of Any and All Claims.** The settlement of termination costs pursuant to Paragraph 9.5 of this Clause shall constitute a settlement and release of any and all claims, known and unknown by the Subcontractor, arising prior to termination.

10. **Bonds**

- 10.1 Should the Contractor require it, the Subcontractor shall execute a Labor and Material Bond and Faithful Performance Bond in an amount equal to 100% of the Subcontract Price in Section 3. Said bonds shall be executed by a corporate surety acceptable to Contractor, shall name Asphalt Products Corporation as an Obligee, and shall further name and protect all persons and entities to the same extent as may be required of Contractor pursuant to the Prime Contract. The cost of the bonds shall be added to the Subcontract amount. The terms of this Subcontract Agreement are incorporated by reference into the bonds required by this section, and the terms, conditions, and remedies of Contractor, shall prevail over any similar terms contained in said bond. By issuing a bond to Subcontractor pursuant to this Agreement, the Subcontractor's surety specifically agrees to be bound to Contractor to the same extent and in the same amount as Subcontractor.

11. **Indemnity and Insurance -**

- 11.1 **INSURANCE REQUIREMENTS** – Unless the Contract Documents require otherwise, Subcontractor agrees to procure and maintain, at his sole cost and expense, the following insurance coverage,
- 1. **Worker's Compensation:** Coverage A. Statutory policy form; Coverage B. Employer's liability; Bodily injury by accident - \$1,000,000 each accident; Bodily injury by disease- \$1,000,000 each employee. Coverage shall be maintained in accordance with NRS 616 and 617.
  - 2. **Commercial Auto Coverage:** Auto liability limits of not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance including, but not limited to, owned autos, hired or non-owned autos.
  - 3. **Comprehensive General Liability or Commercial General Liability, "Occurrence Form" only. "Claims Made" is not acceptable.** The limits of liability shall not be less than:
    - a) Comprehensive General Liability: \$1,000,000 combined single limit bodily/property damage per occurrence or,

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- b) Commercial General Liability: The limits of liability shall not be less than: Each Occurrence limit - \$1,000,000; Personal injury limit - \$1,000,000; Products Completed Operations Aggregate Limit - \$5,000,000; General Aggregate Limit (other than products-completed operations).
- 4. Excess Liability: Umbrella Form or Follow Form Excess where necessary to meet required minimum amounts of coverage.
- 5. **The Project is covered by an OCIP.** Subcontractor shall enroll into this OCIP. Subcontractor shall be responsible for a deductible/SIR equal to that of the subcontractors' non-OCIP GL policy; not to be less than \$20,000 for light hazard trade contractors, \$25,000 for medium hazard trade contractors and \$75,000 for high hazard trade contractors.
- 6. Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.
- 7. Liability Policy forms must include: a) Premises and operation with no X, C or U exclusions; b) Products and completed operations coverage (Subcontractor agrees to maintain this coverage for a minimum of 1 year following completion of his work); c) Full blanket contractual coverage; d) Broad form property damage including completed operations or its equivalent; e) An endorsement naming Asphalt Products Corporation, Gemstone LVS, LLC. and any other required interest as additional insured(s); f) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) shall be noncontributing with the coverage provided under this policy."
- 8. **Other Requirements:** (a) All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation or reduction in coverage; (b) All policies must be written by insurance companies whose rating in the most
- 9. recent Best's rating guide, is not less than A:VII Rating must be shown on Certificate under "Companies Affording Coverage"; (c) Certificates of insurance with the required endorsement evidencing the coverage must be delivered to APCO Construction prior to commencement of any work under this Contract; **(see attached samples)** (d) If the Subcontractor fails to secure and maintain the required insurance, Asphalt Products Corporation shall have the right (without obligation to do so, however) to secure same in the name and for the account of the Subcontractor in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. (e) Liability insurance policies containing warranties must be reviewed for prior approval and acceptance by Contractor. (f) The Subcontractor's insurance shall be primary with respects to Asphalt Products Corporation, its officers, employees and volunteers.

#### 11.2 INDEMNIFICATION

- a) **General Indemnity:** All work covered by this agreement that is performed at the project site, or performed in preparing or delivering materials or equipment to the project site, or in providing services for the Project, shall be at the sole risk of the Subcontractor. Subcontractor, to the fullest extent permitted by law, with respect to all such work which is covered by or incidental to this agreement, shall defend all claims through legal counsel acceptable to Contractor, and indemnify and hold Contractor, its insurance carriers and bonding companies, Owner and any other interested party designated by Contractor, or their agents, employees or representatives (collectively referred to as "Indemnities") harmless from and against any claim, liability, loss,

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damage, cost, expense, including attorney's fees, awards, fines or judgments arising by reason of the death or bodily injury to persons, injury or damage to tangible property, including the loss of use therefrom, whether or not it is caused in part by an Indemnitee; provided, however, that the Subcontractor shall not be obligated under this agreement to indemnify the Indemnities with respect to damages which are ultimately determined to be due the sole negligence or willful misconduct of the Indemnities.

- b) **Indemnity Not Limited:** In any and all claims against the Indemnities by any employee of the Subcontractor, or lower tier subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any Workers' or Workmen Compensation Acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of this Agreement and shall survive the expiration or termination of the Agreement until such time as action on account of any matter covered by such indemnity is barred by the applicable Statute of Limitations.

**12. Warranty and Guarantee**

- 12.1 Subcontractor agrees to promptly repair, rebuild, replace or make good, without cost to Contractor or Owner, any defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the Contract Documents. If no such period is stipulated in the contract Documents, then Subcontractor's guarantee shall be for a period of two year from the date Certificate of Occupancy is obtained for the project. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

**13. Patents**

- 13.1 Subcontractor agrees to pay all applicable patent royalties and license fees and to defend all suits or claims made for infringement of any patent rights involved in the Subcontract work.

**14. Compliance with Regulations, Applicable Law and Safety**

- 14.1 All Work, labor, services and materials to be furnished by Subcontractor shall strictly comply with all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, building codes, and directives now in force or hereafter in effect as may be required by the Prime Contract. Subcontractor shall satisfy and comply with the foregoing as a part of the Subcontract without any additional compensation.
- 14.2 Subcontractor agrees that the prevention of accidents to workmen engaged in the work under the Subcontract is solely its responsibility. If requested, Subcontractor shall submit a safety plan for review by Contractor. Contractor's review of any safety plan shall not be deemed to release Subcontractor, or in any way diminish its indemnity or other liability as assumed under the Subcontract, nor shall it constitute an assumption of liability by Contractor.
- 14.3 When so ordered, Subcontractor shall stop any part of the Work that the Contractor or Owner deems unsafe until corrective safety measures, satisfactory to Contractor and or Owner, have been taken. Should Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from payments due or to become due to Subcontractor. Upon request, Subcontractor shall timely submit copies of all accident or injury reports to Contractor.
- 14.4 Subcontractor agrees to cooperate with the Contractor in efforts to prevent injuries to workmen employed by either party in carrying out operations covered by this agreement, and to adopt and place in effect OSHA

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requirements and such practical suggestions as may be offered by the Contractor and/or the Owner to promote safety and safe working conditions. Should the Subcontractor fail to fulfill its obligations in relation to safety matters on the job site, at the option of the Contractor, this Agreement, upon ten (10) days written notice to Subcontractor, may be cancelled, and the Subcontractor required to immediately remove his equipment and employees from the project.

**15. Damage to Work**

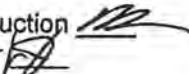
- 15.1 All loss or damage to Subcontractors' work resulting from any cause whatsoever shall be borne and sustained by Subcontractor and shall be solely at its risk until final acceptance by Contractor, Owner, or Owner's Representative. Subcontractor shall at all times and at its sole expense fully secure and protect against any damage, injury, destruction, theft or loss, all work and all labor, materials, supplies, tools and equipment furnished by Subcontractor or its sub-subcontractors, laborers and material men. Subcontractor shall at its sole expense promptly repair or replace damage to the work of others, or to any part of the project, resulting from Subcontractor's activities.

**16. Inspection and Approvals**

- 16.1 Contractor and Owner at all times shall have the right to inspect Subcontractor's materials, workmanship and equipment. Subcontractor shall provide facilities necessary to effect such inspection, whether at the place of manufacture, the project site, or any intermediate point. This point of inspection may be exercised at any time during performance of the Subcontract Work.
- 16.2 Any Subcontract work or material furnished that fails to meet the requirements or specifications of the Contract Documents, or the Subcontract, shall be promptly removed and replaced by Subcontractor at its own cost and expense. If, in the opinion of Contractor or Owner, it would not be economical or expedient to correct or remedy all or any part of the rejected Subcontract work or materials, then Contractor, at its option may deduct from payments due or to become due to Subcontractor either: (a) such amount as in Contractor's sole judgment represents the difference between the fair value of the Subcontract work and materials rejected and the value if same had been performed in full compliance with the Contract documents; or (b) such reductions in price that are provided for or determined for this purpose under the Contract Documents.
- 16.3 The Subcontractor shall keep, maintain and require its subcontractors and suppliers to keep and maintain all books, papers, records, files, accounts, reports, bid documents with backup data, and all other materials relating to the Contract Documents and Project.
- 16.4 All of the material set forth in paragraph 16.3 shall be made available to the Owner and to Contractor for auditing, inspection and copying and shall be produced, upon request, at either the Owner's offices or such other place as Contractor may specify. Said request for information shall be limited to instances when specifically required to comply with at request for information by the Owner, and should not be construed as a general right by Contractor to request proprietary or privileged information of Subcontractor.

**17. Arbitration**

- 17.1 Contractor shall have the option to, and Subcontractor shall be required to resolve all claims, disputes and matters in question arising out of, or relating to the Subcontract, or breach thereof, except for claims which have been waived by the making or acceptance of final payment, by submission to arbitration in the time period and in accordance with the Contract Documents.
- 17.2 In accordance with Paragraph 17.1, Subcontractor hereby waive its right to otherwise litigate any and all such disputes, claims and matters in question in any court or governmental tribunal in any jurisdiction. If

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Subcontractor submits any matter to arbitration hereunder, at its sole option, Contractor may refuse to arbitrate any such disputes, claims, and matters in question. In that event, and in only that event, Subcontractor may litigate the matters subject to its demand for arbitration.

- 17.3 All arbitration and other legal proceedings instituted pursuant to this Section shall be conducted in Las Vegas, Nevada, or at such other venue as Contractor and Subcontractor shall agree to in writing.
- 17.4 The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- 17.5 Unless otherwise agreed in writing, the Subcontractor shall carry on the Subcontract work and maintain the schedule of work pending arbitration or litigation, and the Contractor shall continue to make payments in accordance with the Subcontract.
- 17.6 To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other Subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding.
- 17.7 This Agreement to arbitrate shall not apply to any claim of contrition or indemnity asserted by one party to the Subcontract against the other party and arising out of any action brought in a state or federal court, or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto; or does not consent to such arbitration.
- 17.8 In any dispute arising over the application of paragraph 17.7, all questions regarding the arbitration requirements of this section shall be decided by the appropriate court and not by arbitration.
- 18. **Miscellaneous**
- 18.1 Contractor's waiver of any of the provisions of the Subcontract, or Contractor's failure to exercise any options or legal remedies provided therein, shall not be construed as a general waiver of its right thereafter to require such compliance or to exercise such option or remedy.
- 18.2 The Subcontract, including all Contract Documents as provided in Section One, comprises the entire Agreement between the parties relating to the Subcontract Work and no other agreements, representations, terms, provisions or understandings concerning the Subcontract Work have been made. All modifications or amendments to the Subcontract must be in writing.
- 18.3 To the best knowledge and belief of the parties, the Subcontract contains no provision that is contrary to Federal or State law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect to the extent permissible. The illegality of any provisions, or parts thereof, shall not affect the enforceability of any other provisions of this Subcontract.
- 18.4 The Subcontract shall be construed and interpreted according to the laws of the State of Nevada.
- 18.5 In the event either party employs an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party shall be entitled to all costs, attorney's fees and any other reasonable expenses incurred therein.
- 18.6 All sections and headings are descriptive only and are not controlling.

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

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**Supreme Court Case No. 77320**  
***Consolidated with 80508***

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**HELIX ELECTRIC OF NEVADA, LLC,**

Appellant,

v.

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

Respondent.

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**JOINT APPENDIX**  
**VOLUME 24**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
06-24-09	<b>Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint</b>	<b>JA000001- JA000015</b>	<b>1</b>
08-05-09	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
04-26-10	<b>CAMCO and Fidelity's Answer and CAMCO's Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
07-02-10	<b>Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default</b>	<b>JA000042- JA000043</b>	<b>1</b>
<b>06-06-13</b>	<b>APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time</b>	<b>JA000044- JA000054</b>	<b>1</b>
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (1) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	<b>JA000055- JA000316</b>	<b>1/2/4/5/6</b>
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	<b>JA000317- JA000326</b>	<b>6</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-13-13	Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone	JA000327	6
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
08-21-17	APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000393- JA000409	6/7
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
09-28-17	Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA000413- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 1 – Notice of Entry of Order	JA000429 JA000435	7
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
<b>11-06-17</b>	<b>Helix Electric of Nevada’s Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	Exhibit 1 – Notice of Entry of Order	JA000543- JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC’s Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen’s Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
<b>11-06-17</b>	<b>APCO Construction, Inc.’s Omnibus Motion in Limine</b>	<b>JA000590 JA000614</b>	<b>9</b>
	Exhibit 1 – Second Amended Notice of taking NRCF Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.’s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting’s Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.’s Initial Disclosures Pursuant to NRCP 16.1	JA000849- JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.’s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857- JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865- JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC’s 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874- JA000897	12
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
	Exhibit B – Scott Financial Corporation’s April 28, 2009 letter to the Nevada State Contractor’s Board	JA000908- JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916- JA000917	13
	Exhibit D – Camco Pacific’s letter dated December 22, 2008	JA000918- JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921- JA000928	13



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
11-14-17	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941- JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967- JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970- JA000993	17/18/19
11-14-17	<b>Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine</b>	<b>JA000994- JA001008</b>	<b>20</b>
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009- JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043- JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060- JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
11-15-17	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine</b>	<b>JA001133 JA001148</b>	<b>21</b>

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149- JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
<b>12-29-17</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion in <i>Limine</i> 1-6</b>	<b>JA001161- JA001169</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in <i>Limine</i> 1-4</b>	<b>JA001170- JA001177</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion in <i>Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>01-03-18</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001187- JA001198</b>	<b>22</b>
<b>01-04-18</b>	<b>Motion for Reconsideration of Court’s Order Granting Peel Brimley Lien Claimants’ Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time</b>	<b>JA001199- JA001217</b>	<b>22</b>
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264- JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282- JA001297	25
	Exhibit 5 - Amended NOL	JA001298- JA001309	25
	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
01-09-18	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order</b>	<b>JA001552- JA001560</b>	<b>27</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	<b>Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>		
<b>01-10-18</b>	<b>Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time</b>	<b>JA001561- JA001573</b>	<b>27</b>
<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
	Exhibit 1 – Exhibit List APCO	JA001595- JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615- JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638- JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642- JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA00167	28/9/29
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>1</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement ( <i>Admitted</i> )	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ( <i>Admitted</i> )	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ( <i>Admitted</i> )	JA001869- JA001884	30

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<sup>1</sup> Filed January 31, 2018

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone <i>(Admitted)</i>	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) <i>(Admitted)</i>	JA001981- JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ( <i>Admitted</i> )	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ( <i>Admitted</i> )	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ( <i>Admitted</i> )	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ( <i>Admitted</i> )	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ( <i>Admitted</i> )	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ( <i>Admitted</i> )	JA002121- JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-18-18	<b>Stipulation and Order Regarding Trial Exhibit Admitted into Evidence</b>	<b>JA002199- JA002201</b>	<b>36</b>
	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	<b>HELIX Related Exhibits:</b>		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	<b>Zitting Brothers Related Exhibits:</b>		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	<b>Helix Related Exhibits:</b>		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	<b>Helix Trial Exhibits:</b>		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65 /66/67/ 68/69/70/ 71/72 /73/74/75 /76/77
<b>01-19-18</b>	<b>Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA005282- JA005283</b>	<b>78</b>
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>2</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>3</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>4</sup></b>	<b>JA005820- JA005952</b>	81
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC’s (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.’s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>APCO Construction Inc.’s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC’s Responses to APCO Construction’s Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>

<sup>4</sup> Filed January 31, 201883

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
05-08-18	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412- JA006442	87/88

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564- JA006574	90

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575- JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs	JA006583- JA006588	90
	Exhibit 5 – Summary of Fees	JA006589- JA006614	90
<b>06-15-18</b>	<b>APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
<b>06-15-18</b>	<b>Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA006917 – JA006942</b>	<b>96</b>
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943- JA006948	96

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 2 – Notice of Entry of Denying APCO Construction’s Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949- JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955- JA006958	96
	Exhibit 4 – Order Denying <i>En Banc</i> Reconsideration	JA006959- JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964- JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC’s Response to Special Master Questionnaire	JA006977- JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.’s Response to Special Master Questionnaire	JA006981- JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal’s Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037- JA007060	97

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042- JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff’s Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057- JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i>	JA007060- JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in Limine (against APCO Construction)	JA007070- JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions’ Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079- JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary	JA007085- JA007087	97

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	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
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06-15-18	<b>Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
06-18-18	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007190- JA007192</b>	<b>99</b>
06-21-18	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
06-29-18	<b>APCO Construction, Inc.’s Reply in Support of its Motion for Attorney’s Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221- JA007222	99
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<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>Notice of Entry of (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>

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08-06-19	<b>Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	JA007316- JA007331	101
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332- JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. Motion for Attorneys Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada LLC's Motion to Retax in Part and Denying in Part and all related matters (4) Granting Plaintiff in Intervention National Wood Products LLC's Motion to Retax in Part and Denying in Part -and-(5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA007336- JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345- JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395- JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401- JA007517	102/103

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
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	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524- JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528- JA007541	103
	Exhibit 10 (Part One)	JA007537- JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543- JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586- JA008129	103/104/105 /106/107 /108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130- JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants’ Motions for Partial Summary Judgment Against Gemstone Development West	JA008139- JA008141	109
	Exhibit 10 (Part Two)	JA008142- JA008149	109

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	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150- JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168- JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff’s Motion to Dismiss	JA008171- JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215- JA008230	109
	Exhibit 10J – APCO Construction’s Answer to Accuracy Glass & Mirror Company’s First Amended Complaint re Foreclosure	JA008231- JA008265	109/110
	Exhibit 10K – Answer to Accuracy Glass & Mirror Company, Inc.’s Complaint and Camco Pacific Construction, Inc.’s Counterclaim	JA008266- JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.’s Answer to Camco Pacific Construction Company’s Counterclaim	JA008286- JA008290	110
	Exhibit 10M – Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291- JA008306	110
	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
	Exhibit 10O – Answer to Helix Electric’s Statement of Facts	JA008323- JA008338	110

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348- JA008367	110
	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368- JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379- JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451- JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008484- JA008504	111

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518- JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531- JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552- JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561- JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589- JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602- JA008621	112

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	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625- JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643- JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658- JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665- JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682- JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724- JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730- JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737- JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747- JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875- JA008758	113
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	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation’s Motion to Enforce Settlement Agreement and Enter Judgment	JA008762- JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789- JA008798	113



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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<b>08-16-19</b>	<b>APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO</b>	<b>JA008811- JA008821</b>	<b>114</b>
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822- JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825- JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent’s Response to Order to Show Cause	JA008829- JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893- JA008896	116
	Exhibit 5 – Chart of Claims	JA008897- JA008924	116
	Exhibit 6 – Answer to Helix Electric’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.’s Counterclaim	JA008925- JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose’s Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.’s Counterclaim	JA008948- JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing’s Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966- JA008986	117/118

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Pacific Construction's Counterclaim		
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	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998- JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011- JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025- JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039- JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111- JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114- JA009116	119
<b>08-29-19</b>	<b>Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)</b>	<b>JA009117- JA009123</b>	<b>119</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	Exhibit A – 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.]	JA009137- JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168- JA009182	120

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada’s Motion for Rule 54(b) Certification	JA009183- JA00991	120

## **ALPHABETICAL APPENDIX OF EXHIBITS**

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<b>08-05-09</b>	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
<b>05-08-18</b>	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285- JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357- JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370- JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386- JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399- JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403- JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407- JA006411	87
	Exhibit 7A – Billing Entries	JA006412-	87/88

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		JA006442	
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, Esq. in Support of Motion for Attorney’s Fees and Costs	JA006475- JA006478	88
	Exhibit 9 – APCO Construction, Inc.’s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479- JA006487	88
	Exhibit 10 – Depository Index	JA006488- JA006508	88/89
<b>06-06-13</b>	<b>APCO’s Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO’s Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time</b>	<b>JA000044- JA000054</b>	<b>1</b>
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO’s Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO’s Motion for Judgment Against Gemstone Only	JA000055- JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317- JA000326	6
<b>02-11-20</b>	<b>APCO’s Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	<b>120</b>
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.’s Motion for Attorney’s Fees and Costs; (2) Granting APCO Construction, Inc.’s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC’s	JA009168- JA009182	114

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply		
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183- JA00991	120
<b>11-06-17</b>	<b>APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
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<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654- JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661- JA001667	28/9/29
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>01-04-18</b>	<b>Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time</b>	<b>JA001199- JA001217</b>	<b>22</b>
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264- JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282- JA001297	25
	Exhibit 5 - Amended NOL	JA001298- JA001309	25
	Exhibit 6 – Notice of Lien	JA001310- JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314- JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377- JA001380	26
	Exhibit 9 – Order Denying <i>En Banc</i> Reconsideration	JA001381- JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386- JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393- JA001430	26
	Exhibit 12 – Order Big D Construction Corp.’s Motion for Attorney’s Fees, Costs and Interest Pursuant to Judgment	JA001431- JA001435	26
	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
	Exhibit 14 – Respondent’s Answering Brief	JA001470- JA001516	26/27
	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention	JA009137- JA009166	120



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	National Wood Products, Inc.'s Against APCO Construction, Inc.]		
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148- JA009156	120
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part (4) Granting Plaintiff in Intervention National Wood Products, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
01-03-18	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001187- JA001198	22
12-29-17	Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion <i>in Limine</i> 1-4	JA001170- JA001177	22
12-29-17	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion <i>in Limine</i> 1-6	JA001161- JA001169	22
01-19-18	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA005282- JA005283	78
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007332- JA007334	101
07-02-10	Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default	JA000042- JA000043	1
08-02-17	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343- JA000379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380- JA000392	6
11-06-17	Peel Brimley Lien Claimants' Motion <i>in Limine</i> Nos. 1-6	JA000419- JA000428	7
	Exhibit 1 – Notice of Entry of Order	JA000429	7

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
		JA000435	
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.’s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC’s	JA000436- JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry’s Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000501- JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.’s First Set of Request for Admissions to Camco Pacific Construction	JA000512- JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC’s First Set of Request for Admissions to Camco Pacific Construction	JA000523- JA000533	8
<b>09-28-17</b>	<b>Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000413- JA00418</b>	<b>7</b>
<b>01-09-18</b>	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001552- JA001560</b>	<b>27</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition</b>	<b>JA007190- JA007192</b>	<b>99</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	to APCO Construction's Motion for Attorneys' Fees and Costs		
06-15-18	Plaintiff in Intervention National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Attorneys' Fees and Costs	JA007095- JA007120	97/98
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246- JA007261	100
01-10-18	Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time	JA001561- JA001573	27
01-18-18	Stipulation and Order Regarding Trial Exhibit Admitted into Evidence	JA002199- JA002201	36
	Exhibit 1 – Exhibit List APCO	JA002208- JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244- JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283- JA002284	38

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286- JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307- JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309- JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311- JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313- JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315- JA002316	40

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317- JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319- JA002320	41
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321- JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	<b>HELIX Related Exhibits:</b>		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327- JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346- JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357- JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359- JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365- JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367- JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369- JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371- JA002372	42

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373- JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375- JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377- JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379- JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382- JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392- JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406- JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413- JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416- JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418- JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420- JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422- JA002423	43
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424- JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435- JA002436	43

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437- JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439- JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441- JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443- JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445- JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447- JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448- JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450- JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457- JA002494	43
	<b>Zitting Brothers Related Exhibits:</b>		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting (\$27,973.80); Progress Payment No. 7	JA002495- JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498- JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501- JA002503	44



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour	JA002504- JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to \$30 per hour with copies of change orders	JA002506- JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527- JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting (\$27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530- JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532- JA002533	44
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534- JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536- JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538- JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550- JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542- JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544- JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546- JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551- JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564- JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO (\$33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568- JA002571	44

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572- JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576- JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578- JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580- JA002581	46
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582- JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592- JA002598	46
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613- JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652- JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	<b>Helix Related Exhibits:</b>		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677- JA002713	48

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Trial Exhibit 171 - Work Order No. 100	JA002714- JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719- JA002730	48
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731- JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746- JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748- JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752- JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772- JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826- JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029- JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334- JA003338	55
	<b>Helix Trial Exhibits:</b>		

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>5</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement (Admitted)	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement (Admitted)	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement (Admitted)	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone (Admitted)	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work (Admitted)	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) (Admitted)	JA001981- JA001987	32

<sup>5</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract <i>(Admitted)</i>	JA002015- JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record <i>(Admitted)</i>	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks <i>(Admitted)</i>	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment <i>(Admitted)</i>	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP <i>(Admitted)</i>	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner <i>(Admitted)</i>	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement <i>(Admitted)</i>	JA002121- JA002146	35

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>6</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>7</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix’s Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80

<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>8</sup></b>	<b>JA005820- JA005952</b>	81
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>

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<sup>8</sup> Filed January 31, 2018

18.7 Contractor's rights and remedies under the Subcontract are not exclusive and Contractor shall have all other remedies available at law or in equity to enforce the Subcontract.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first above written.

CabineTec, Inc.

  
**Leo Duckstein**  
V.P. Sales & Marketing  
Cabinetec Inc.

APCO CONSTRUCTION

  
Project Manager  
TITLE

**EXHIBIT 'A'**

**Subcontractor Scope of Work**  
APCO Contract No. 0168

This Agreement includes the supply of all labor, materials, tools, equipment, supervision, management, permits and taxes necessary to complete the BELOW SCOPE OF WORK for the referenced Project in accordance with the Contract Documents including Addenda/Delta Number(s) \_\_\_ through \_\_\_ Subcontractor acknowledges that he has performed his own take-off, site visit and therefore, any items necessary to complete the work depicted in accordance with the Contract Documents, shall be included in this Agreement. The Subcontractor also acknowledges that all of the costs related to the successful completion of the work including any unforeseen or unseen items, or as described herein, are included in the amount reflected in the schedule below.

The Scope of Work shall specifically include but not be limited to the following list of bid items:


ITEM #	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
--------	-------------	------	-----	-------	-------

**Kitchen and Bath Cabinets Complete:** For buildings 8 & 9 Complete work per governing codes, furnish and install all necessary Design, Labor, Material, Equipment, Cartage, Freight, Supervision, Ancillary Items Taxes and Necessary Insurance to install and complete all kitchen and bath cabinets per plans by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering. See attached Project Drawing List, in the amount of **Five Hundred Twenty Eight Thousand Seven Hundred and Ninety Dollars and no/100, (\$528,790.00)** for the project. Building No. 7 (Type III) will be added as a Change Order for the Agreed upon amount of **Two Hundred Sixty One Thousand Nine Hundred Eighty Five dollars and no/100 (\$261,985.00)**

CabineTec, Inc.

  
**Leo Duckstein**  
V.P. Sales & Marketing  
Cabinetec Inc.

APCO CONSTRUCTION

  
Project Manager  
TITLE


APCO Construction  
Subcontractor 



### SPECIAL CONDITIONS

In addition to the conditions outlined in the Subcontract Agreement, the following Special Conditions shall form a part of the Subcontract Agreement.

- (a) The Subcontractor shall be responsible for clean up of employees break & lunch trash on the job site. Subcontractor employees are not to wander around the \_\_\_\_\_ Area while on duty. No parking of private vehicles will be allowed in the Owners Operations Area. NO EXCEPTIONS.
- (b) The Contractor will provide an adequate temporary construction area for staging.
- (c) The Contractor will provide reasonable access to all working areas.
- (d) The Subcontractor shall be responsible for the cleaning of his work area and removing its debris and all work shall be left in a clean condition following his activities. The APCO shall be the sole judge to determine the cleanliness.
- (e) The Contractor will provide one (1) set of full size conformed construction documents for the Subcontractor's use. Additional sets may be purchased by the Subcontractor from a source designated by the Contractor. Plan change drawings will be supplied in the same quantities.
- (f) Subcontractor must submit a "Daily Work Report" (see attached Appendix 'C') prior to 10:00 a.m. the following day for all work performed on the job site the previous day. Subcontractor monthly pay requests will not be accepted for processing unless all "Daily Work Reports" for the pay period have been submitted to the Contractor.
- (g) Subcontractor is required to submit a Payroll Certificate representing all work performed on the job site on a monthly basis. The Payroll Certificate must be submitted no later than the 1st of the month for all work performed during the previous month. Subcontractor shall use a format similar to AIA G702 & G703.
- (h) The Subcontractor is required to attend weekly site progress meetings and to participate in the preparation of Monthly updates of the Project schedule.
- (i) The Contractor cannot guarantee continuity of progress of work; Subcontractor shall employ as many mobilizations as required to complete the work as required by the project schedule.
- (j) The Subcontractor shall provide drinking water for its own employee's.
- (k) Subcontractor shall at all times protect stored equipment, materials from: damage from weather, sun. Materials shall be stored off the ground and not in contact the ground.

APCO Construction  
Subcontractor 

Page 16 of 17

JA001280

APCO00036991

- (l) APCO Construction cannot guarantee price stability and therefore cannot grant any additional monies to subcontractor due to escalation of price between bid/quote time and when materials/labor/shipping is actually purchased and/or incorporated into the project.

### NOTICE TO ALL SUBCONTRACTORS

We have been requested by the Internal Revenue Service to comply with Regulation 1.604-1(d), which requires that we issue a 1099 Form on the compensation paid to you by APCO Construction.

Please indicate whether you are a Corporation or not and furnish your Social Security Number if you are not a Corporation or your Federal Tax ID Number, if you are a Corporation.

Corporation: Yes ☒ or No ☐

Social Security No.: \_\_\_\_\_

Federal Tax ID No.: 88-0230488

By:   
Signature

Date

4/28/08

Title

**Leo Duckstein**  
**V.P. Sales & Marketing**  
**Cabinetec Inc.**

APCO Construction   
Subcontractor \_\_\_\_\_

Page 17 of 17

# **EXHIBIT 4**

**Receipt/Conformed Copy**

Requestor:

LEGAL WINGS

01/29/2009 08:00:52 T20090030945

Book/Instr: 20090129-0000237

Lien Page Count: 28

Fees: \$41.00 N/C Fee: \$0.00

**ASSESSORS PARCEL NO:**

163-32-112-001 thru 163-32-112-246,  
163-32-101-020, 163-32-101-022 & 163-32-101-023  
(formerly known as 163-32-101-019)

Debbie Conway  
Clark County Recorder

**AMENDED NOTICE OF LIEN**

This document amends and restates that certain Notice of Lien recorded in the official records of the County Recorder's Office for Clark County, Nevada, on January 12, 2009, in Book 20090112, as Instrument No. 0002864 (the "Original Lien").

The undersigned lien claimant claims an amended lien upon the Property or Improvements described in this Amended Notice of Lien ("Amended Lien") for work, materials or equipment furnished for the Property or an Improvement thereon:

1. The amount of the original contract is: See Attached Exhibit A
2. The amount of additional or changed work, materials and equipment, if any, is: See Attached Exhibit A
3. The total amount of all payments received to date is: See Attached Exhibit A
4. The amount of the amended lien, after deducting all just credits and offsets, is: \$3,186,102.67
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: See Attached Exhibit A
7. \_\_\_\_\_
8. A brief statement of the terms of payment of the lien claimant's contract is: Payment due within thirty (30) days from date of Payment Application or as otherwise required by statute.

9. A description of the property to be charged with the lien is:

County Assessor Description: Manhattan West Condominiums (Project)  
Spring Valley  
See Attached Exhibit B  
SEC 32 TWP 21 RNG 60  
County Assessor Parcel No. 163-32-112-001 thru 163-32-112-246,  
163-32-101-020, 163-32-101-022 &  
163-32-101-023  
(formerly known as 163-32-101-019)

HELIX ELECTRIC OF NEVADA,  
LLC d/b/a HELIX ELECTRIC

By *Robert D. Johnson*  
Print Name: Robert D. Johnson  
Title: Vice President

STATE OF NEVADA )  
 ) ss:  
COUNTY OF CLARK )

Robert D. Johnson, being first duly sworn on oath according to law, deposes and says:

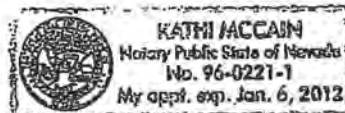
I have read the foregoing Amended Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

HELIX ELECTRIC OF NEVADA,  
LLC d/b/a HELIX ELECTRIC

By *Robert D. Johnson*  
Print Name: Robert D. Johnson  
Title: Vice President

SUBSCRIBED AND SWORN To Before me  
this 27 day of January 2009.

*Kathi McCain*  
NOTARY PUBLIC In and For Said  
County & State



RECORDED AT THE REQUEST OF AND  
WHEN RECORDED RETURN TO:  
  
Richard L. Peel, Esq.  
PEEL BRIMELY LLP  
3333 E. Serene Avenue Suite 200  
Henderson, NV 89074-6571

**EXHIBIT A**  
**CALCULATION OF LIENABLE AMOUNT**

Contract Description	Name of Higher-tiered Customer  (See #6 of Notice of Lien Form)	Original Contract Price  (See #1 of Notice of Lien Form)	Amount of Additional of Changed Work, Materials or Equipment  (See #2 of Notice of Lien Form)	Total Amount of All Payments Received  (See #3 of Notice of Lien Form)	Lienable Amount  (See #4 of Notice of Lien Form)
Phases 1 and 2	APCO Construction	\$13,230,000.00	\$738,257.26	\$4,347,019.46	\$2,145,116.73
Completion of Phases 1 and 2	Gemstone Development West, Inc. and/or Camco Pacific Construction Company, Inc.	\$8,603,661.90	\$305,227.75	\$175,778.80	\$910,944.26
Design Engineering	Gemstone Development West, Inc.	\$71,650.00	\$37,821.00	\$0.00	\$109,471.00
Service-Temp Power	Gemstone Development West, Inc.	\$20,570.68	\$0.00	\$0.00	\$20,570.68
TOTAL LIENABLE AMOUNT					\$3,186,102.67

APCO 103564

JA001285

County Assessor Parcel Nos.: 163-32-112-001 thru 163-32-112-246,  
163-32-101-020, 163-32-101-022 & 163-32-101-023  
(formerly known as 163-32-101-019)

\*Lion Cleiman has provided the best estimate of the amount owed to Lion Cleiman with respect to materials or equipment furnished by Lion Cleiman for the improvement of this property. Lion Cleiman reserves the right to amend or modify the amount owed at Lion Cleiman's discretion.

Lisa Chalmers has provided the full estimate of the annual cost to Lisa Chalmers with respect to materials or equipment furnished by Lisa Chalmers for the improvement of the property. Lisa Chalmers reserves the right to amend or modify the annual cost at Lisa Chalmers's discretion.

\*Lien Clément has provided the best estimate of the amount owed to Lien Clément with respect to materials or equipment furnished by Lien Clément for the improvement of the property. Lien Clément reserves the right to assess or modify the amount owed at Lien Clément's discretion.

<sup>10</sup>Lien Claimant has provided the best estimate of the amount owed to Lien Claimant with respect to materials or equipment furnished by Lien Claimant for the improvement of the property. Lien Claimant reserves the right to amend or modify the amount owed to Lien Claimant's discretion.















Parcel Number/ Location Address/ Township	Property Description	Owner Name & Address
163-32-112-239 Spring Valley	Manhattan West-Phase 1 Flat Book 141 Page 28 Unit 413 Block 9 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-240 Spring Valley	Manhattan West-Phase 1 Flat Book 141 Page 28 Unit 414 Block 9 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-241 Spring Valley	Manhattan West-Phase 1 Flat Book 141 Page 28 Unit 415 Block 9 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-242 Spring Valley	Manhattan West-Phase 1 Flat Book 141 Page 28 Unit 416 Block 9 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-243 Spring Valley	Manhattan West-Phase 1 Flat Book 141 Page 28 Unit 417 Block 9 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-244 Spring Valley	Manhattan West-Phase 1 Flat Book 141 Page 28 Unit 418 Block 9 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-245 Spring Valley	Manhattan West-Phase 1 Flat Book 141 Page 28 Unit 419 Block 9 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-246 Spring Valley	Manhattan West-Phase 1 Flat Book 141 Page 28 Unit 420 Block 9 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-101-028 Spring Valley	FT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-101-029 Spring Valley	FT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-101-030 Spring Valley	FT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RMO 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

\*Lisa Chalmers has provided the best estimate of the amount owed to Lisa Chalmers with respect to materials or equipment furnished by Lisa Chalmers for the improvement of the property. Lisa Chalmers reserves the right to amend or modify this amount owed at Lisa Chalmers's discretion.

ASSESSORS PARCEL NO: 163-32-101-019

**Receipt/Conformed Copy**

Requestor:

HELIX ELECTRIC OF NEVADA

01/12/2009 10:40:43 T20090009700

Book/Instr: 20090112-0002864

Lien Page Count: 3

Fees: \$16.00 N/C Fee: \$0.00

Debbie Conway  
Clark County Recorder

**NOTICE OF LIEN**

The undersigned claims a lien upon the property described in this Notice of Lien for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: See Attached Exhibit A
2. The amount of additional or changed work, materials and equipment, if any, is: See Attached Exhibit A
3. The total amount of all payments received to date is: See Attached Exhibit A
4. The amount of the lien, after deducting all just credits and offsets, is: \$3,186,102.67
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: See Attached Exhibit A
7. A brief statement of the terms of payment of the lien claimant's contract is: Payment due within thirty (30) days from date of Payment Application or as otherwise required by statute.





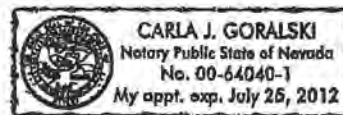
County Assessor Description: PT NE4 NW4 SEC 32 21 60  
SEC 32 TWP 21 RNG 60  
County Assessor Parcel No. 163-32-101-019

By Robert D. Johnson  
Print Name: Robert D. Johnson  
Title: Vice President

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

By: Robert D. Johnson  
Print Name: Robert D. Johnson  
Title: Vice President

*Carolyn A. Grasse*  
NOTARY PUBLIC In and For Said  
County & State



C

**JA001294**

APCO 103573

**EXHIBIT A**  
**CALCULATION OF LIENABLE AMOUNT**

Contract Description	Name of Higher-tiered Customer  (See #6 of Notice of Lien Form)	Original Contract Price  (See #1 of Notice of Lien Form)	Amount of Additional of Changed Work, Materials or Equipment  (See #2 of Notice of Lien Form)	Total Amount of All Payments Received  (See #3 of Notice of Lien Form)	Lienable Amount  (See #4 of Notice of Lien Form)
Phases 1 and 2	APCO Construction	\$13,230,000.00	\$738,257.26	\$4,347,019.46	\$2,145,116.73
Completion of Phases 1 and 2	Gemstone Development West, Inc. and/or Camco Pacific Construction Company, Inc.	\$8,603,661.90	\$305,227.75	\$175,778.80	\$910,944.26
Design Engineering	Gemstone Development West, Inc.	\$71,650.00	\$37,821.00	\$0.00	\$109,471.00
Service-Temp Power	Gemstone Development West, Inc.	\$20,570.68	\$0.00	\$0.00	\$20,570.68
TOTAL LIENABLE AMOUNT					\$3,186,102.67

APCO 103574

JA001295



### ***FIFTEEN-DAY NOTICE OF INTENT TO LIEN***

Pursuant to NRS 108.226.6, be advised that if the undersigned is not paid for the work, materials and/or equipment that it has furnished or may furnish for the property or any improvements thereon described in this Notice, the undersigned intends to record a notice of lien against the property and any improvements thereon:

1. The amount of the original contract is: See Attached Exhibit A
2. The amount of additional or changed work, materials and equipment, if any, is: See Attached Exhibit A
3. The total amount of all payments received to date is: See Attached Exhibit A
4. The amount of the lien, after deducting all just credits and offsets, is: \$3,186,102.67
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: See Attached Exhibit A
7. A brief statement of the terms of payment of the lien claimant's contract is: Payment due within thirty (30) days from date of Payment Application or as otherwise required by statute.
8. A description of the property and/or improvements to be charged with the lien is:

	Manhattan West Condominiums (Project)
	9205 W. Russell Rd
	Spring Valley
County Assessor Description:	PT NE4 NW4 SEC 32 21 60
	SEC 32 TWP 21 RNG 60
County Assessor Parcel No.	163-32-101-019

Dated this 23<sup>rd</sup> day of December 2008.

**HELIX ELECTRIC OF NEVADA,  
LLC d/b/a HELIX ELECTRIC**

By Robert D. Johnson  
Print Name: Robert D. Johnson  
Title: Vice President

**EXHIBIT A**  
**CALCULATION OF LIENABLE AMOUNT**

<b>Contract Description</b>	<b>Name of Higher-tiered Customer</b>  (See #6 of Notice of Lien Form)	<b>Original Contract Price</b>  (See #1 of Notice of Lien Form)	<b>Amount of Additional of Changed Work, Materials or Equipment</b>  (See #2 of Notice of Lien Form)	<b>Total Amount of All Payments Received</b>  (See #3 of Notice of Lien Form)	<b>Lienable Amount</b>  (See #4 of Notice of Lien Form)
Phases 1 and 2	APCO Construction	\$13,230,000.00	\$738,257.26	\$4,347,019.46	\$2,145,116.73
Completion of Phases 1 and 2	Gemstone Development West, Inc. and/or Camco Pacific Construction Company, Inc.	\$8,603,661.90	\$305,227.75	\$175,778.80	\$910,944.26
Design Engineering	Gemstone Development West, Inc.	\$71,650.00	\$37,821.00	\$0.00	\$109,471.00
Service-Temp Power	Gemstone Development West, Inc.	\$20,570.68	\$0.00	\$0.00	\$20,570.68
<b>TOTAL LIENABLE AMOUNT</b>					<b>\$3,186,102.67</b>

APCO 103576

JA001297

# **EXHIBIT 5**

Inst #: 201004070002126  
Fees: \$18.00  
N/C Fee: \$25.00  
04/07/2010 11:25:00 AM  
Receipt #: 301766  
Requestor:  
AMERICAN LEGAL  
INVESTIGATION  
Recorded By: SUO Pgs: 5  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN# 113-32-101-019

11-digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>

Amended Notice of Lien (CS)

**Type of Document**

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

**Recording Requested By:**

Michael M. Edwards, Esq.  
Reuben H. Cawley, Esq.

**Return Documents To:**

Name Michael M. Edwards Esq. & Reuben H. Cawley

Address 415 South 10th Street Suite 300

City/State/Zip Las Vegas NV 89101

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

CCOR\_Coversheet.pdf ~ 08/06/07

APN: 163-32-101-019  
Recorded at the Request of and Return  
Recorded Document to:


Michael M. Edwards, Esq.  
Reuben H. Cawley, Esq.  
Wislon Elser Moskowitz Edelman & Dicker  
415 South 6<sup>th</sup> Street, Suite 300  
Las Vegas, NV 89101-6947

#### AMENDED NOTICE OF LIEN

The undersigned claims a lien upon the property described in this Amended Notice for work, materials, or equipment furnished or to be furnished for the improvement of property:

1. The amount of the original contract is \$14,461,000.00.
2. The total amount of all additional or changed work, materials, and equipment, if any, is \$423,654.85.
3. The total amount of all payments received to date is: \$3,282,849.00.
4. The amount of the lien, after deducting all just credits and offsets, is:  
\$750,807.16.
5. The name of the owner, if know, of the property is: Gemstone Development West, Inc., a Nevada corporation, of 9121 West Russell Road #117, Las Vegas, Nevada 89148.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials, or equipment is: APCO Construction of 3432 North Fifth Street, Las Vegas, Nevada 89032.
7. A brief statement of the terms of payment of the lien claimant's contract is: progress payment with a retention.
8. A description of the property to be charged with the lien is: See Exhibit "A."

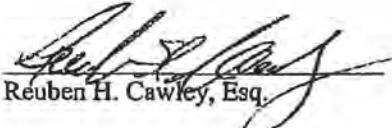
Dated this 7<sup>th</sup> day of April, 2010.

  
Michael M. Edwards, Esq.  
Reuben H. Cawley, Esq.  
Attorneys for Zitting Brothers  
Construction, Inc.


STATE OF NEVADA       )  
                                  ) ss  
COUNTY OF CLARK       )

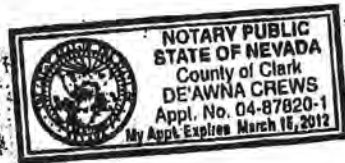
Reuben H. Cawley, Esq., being first duly sworn on oath according to law deposes and says: I have read the foregoing Amended Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon the information and belief, and, as to those matters, I believe them to be true.

Dated this 2<sup>nd</sup> day of April, 2010.

  
Reuben H. Cawley, Esq.

Subscribed and Sworn to Before Me  
This 7 day of April, 2010.

  
\_\_\_\_\_  
Notary Public, In and For Said  
County and State



**EXHIBIT A  
LEGAL DESCRIPTION**

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

**PARCEL 1:**

The West Half (W1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224982 of the Official Records.

AND EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004782 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**PARCEL 2:**

The East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM the Southerly 396 feet thereof.

AND EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224981 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**PARCEL 3:**

The Southerly 396 feet of the East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

**PARCEL 4:**

The West Half (W1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224994 of Official Records.

FURTHER EXCEPTING THEREFROM that property shown in the Final Order of Condemnation recorded November 20, 1998 in Book 981120 as Document No. 00763 of Official Records.

**PARCEL 5:**

The East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004783 of Official Records.

PARCEL NO. FOR ALL OF THE ABOVE IS 163-32-101-019



Wilson, Elser, Moskowitz, Edelman & Dicker, LLP  
415 South Sixth Street, Suite 300  
Las Vegas, NV 89101-6937



7008 1830 0003 5537 7681

Gemstone Development West, Inc.  
Alexander Edelstein  
10170 W. Tropicana Ave., Ste. 156-169  
Las Vegas, NV 89147-8465

ZBCI001981

JA001304

SENDER: COMPLETE THIS RECEIPT		POSTAGE PAID BY ADDRESSEE	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <b>X</b></p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p><b>Gemstone Dev. West</b> <b>Alexander Edelstein</b> <b>10170 W. Tropicana Ave</b> <b>Ste 156-169</b> <b>Las Vegas, NV 89147-8465</b></p>		<p>B. Received by (Printed Name)</p>	<p>C. Date of Delivery</p>
<p>2. Article Number (Transfer from service label)</p> <p><b>7008 1830 0003 5537 7681</b></p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt</p>	

ZBC1001982

JA001305

Wilson, Elser Moskowitz, Edelman & Dicker, LLP  
1500 South Street, Suite 300  
Las Vegas, NV 89101-6937



7008 1830 0003 5537 2389

Gemstone Development West, Inc.  
9121 West Russell Road, Ste. 117  
Las Vegas, NV 89148

ZBCI001983

JA001306

PLEASE STICK HERE AT TOP OF ENVELOPE TO THE RIGHT

<b>SENDER</b> <small>FOR YOUR USE ONLY</small> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		<b>ADDRESSEE</b> <small>FOR YOUR USE ONLY</small> A. Signature <b>X</b> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
1. Article Addressed to: Gemstone Dev. West, Inc 9121 W. Russell Road #117 Las Vegas, NV 89148		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number <small>(Transfer from service label)</small>		7008 1830 0003 5537 2389	
PS Form 3811, February 2004		Domestic Return Receipt <b>RHC 11647</b> 02555-02-M-1540	

ZBC1001984

JA001307

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP  
415 South Sixth Street, Suite 300  
Las Vegas, NV 89101-6937



7008 1830 0003 5537 7810

Gwen Rutar Mullins, Esq.  
Wade B. Gochmour, Esq.  
Howard & Howard, P.C.  
3800 Howard Hughes Pkwy., Ste. 1400  
Las Vegas, NV 89169

ZBCI001985

JA001308

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Gwen Rutar Mullins  
Wade B Gochmour  
3800 Howard Hughes  
Pkwy. Ste. 1400  
Las Vegas, NV 89169

**2. Article Number**  
(Transfer from service label)

7008 1830 0003 5537 7810

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**ADDRESSEE: COMPLETE THIS SECTION**

**A. Signature**

X

☐ Agent

☐ Addressee

**B. Received by (Printed Name)**

**C. Date of Delivery**

**D. Is delivery address different from item 1?** ☐ Yes  
If YES, enter delivery address below: ☐ No

**3. Service Type**

☒ Certified Mail

☐ Express Mail

☒ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

**4. Restricted Delivery? (Extra Fee)**

☐ Yes

ZBC1001986

JA001309

# **EXHIBIT 6**

**Receipt/Conformed Copy**

APN: 163-31-101-019

**RECORDED BY & RETURN TO:**

WATT, TIEDER, HOFFAR & FITZGERALD, LLP  
3993 Howard Hughes Parkway, Suite 400  
Las Vegas, NV 89169

Requestor:  
WATT TIEDER ET AL  
02/02/2009 11:00:28 T20090035100  
Book/Instr: 20090202-0001657  
Lien Page Count: 1  
Fees: \$14.00 N/C Fee: \$0.00

Debbie Conway  
Clark County Recorder

**NOTICE OF LIEN**

The undersigned claims a lien upon the property described in this notice for work, or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract: \$ 528,790.00
2. The total amount of all changes and additions: \$ 382,574.00
3. The total amount of all payments received to date: \$ 161,262.00
4. The amount of the lien, after deducting all just credits and offsets: \$ 750,102.00
5. The name of the owner, if known, of the property: Gemstone Development West, Inc.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment: Apco Construction and Camco Pacific Construction.
7. A brief statement of the terms of payment of the lien claimant's contract is: Net 15.
8. A description of the property to be charged with the lien is: residential project known as "Manhattan West", located at 9205 W. Russell Rd, PT NE4 NW4 SBC 32 21 60 Sec 32 Twp 21 Rng 60.

CABINETEC, INC.

By: [Signature]  
Justin L. Watkins, Esq., its authorized agent  
3993 Howard Hughes Parkway, Suite 400  
Las Vegas, NV 89169

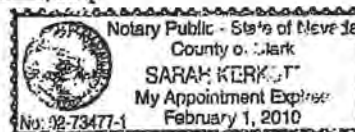
State of Nevada )  
County of Clark ) ss.

Justin Watkins (print name), being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

[Signature]  
Justin L. Watkins, Esq.

Subscribed and sworn to before me this  
30<sup>th</sup> day of the month of January of the year 2009.  
Sarah Kerkut  
(Notary Public in and for the County and State)



APCO 103366

JA001311



- ☐ 2. Amount Owing: As of the date below, the amount of the lien, after deducting all just credits and offsets, is: \$153,765.25. itemized:

Total amount of the original contract ..... \$ 123,240.00

Total amount of all additional or changed work, materials and equipment... \$ 49,485.25

Total amount of all payments received to date ..... \$ 18,960.00

Amount of the lien after deducting all just credits and offsets ..... \$ 153,765.25

In addition, the costs for filing/recording this lien and attorneys fees and court costs according to proof. Further, and assuming allowed by State law, the following is requested: the contract finance charges at 1.5% per month from the due date, or other maximum permissible under Nevada law.

3. The name and address of the company to whom the lien claimant furnished materials is:

GEMSTONE DEVELOPMENT WEST INC.  
9121 West Russell Road, #117  
Las Vegas, Nevada 89148-1238

and

APCO Construction  
3432 North 5<sup>th</sup> Street  
North Las Vegas, Nevada 89032

and

CAMCO Construction  
2925 East Patrick Lane, Suite G  
Las Vegas, Nevada 89120

4. BRIEF STATEMENT OF THE TERMS OF THE CLAIMANT'S CONTRACT:

- a) When payments were due: \$18,660 was paid about August 14<sup>th</sup>, 2008; balance was due on November 17<sup>th</sup>, 2008 on delivery
- b) When final payment was due: November 17<sup>th</sup>, 2008
- c) Special Conditions for payment: On delivery.

Demand for payment has been made, but payment has not been forthcoming. The whole of the subject property is reasonably necessary for the convenient use and occupation of the property. Said labor and materials have actually been used or consumed upon the project.

☐ Dated: February 6<sup>th</sup>, 2009

NOTICE OF INTENT TO LIEN

To: Gemstone Development West, Inc.  
9121 W. Russell Rd #117  
Las Vegas, NV 89138-1238

Apco Construction  
3432 N. 5<sup>th</sup> St.  
N. Las Vegas, NV 89032

Camco Pacific Construction  
17891 Cartwright Rd., Suite 100  
Irvine, CA 92614

PLEASE TAKE NOTICE that the undersigned has provided work, materials and/or equipment described as the installation of cabinets, with materials, parts and pieces to the residential project known as "Manhattan West", located at 9205 W. Russell Rd, PT NE4 NW4 SBC 32 21 60 Sec 32 Twp 21 Rng 60, for the improvement thereof. The undersigned has not been paid by Apco Construction or Camco Pacific Construction for such work, materials and/or equipment pursuant to the contract.

1. The Amount of the Original Contract: \$ 528,790.00
2. The total amount of all changes and additions: \$ 382,574.00
3. The total amount of all payments received to date: \$ 161,262.00
4. The amount due and owing to the undersigned: \$ 750,102.00

BE ADVISED THAT SHOULD THE AMOUNT DUE AND OWING TO THE UNDERSIGNED NOT BE PAID WITHIN 15 DAYS OF THE DATE OF THIS NOTICE OF INTENT TO LIEN, THE UNDERSIGNED SHALL CAUSE A CLAIM OF LIEN TO BE RECORDED AGAINST THE RESIDENTIAL PROJECT IN THE AMOUNT OF \$ 750,102.00

Dated: January 12, 2009

By: Cabinetec, Inc.  
2711 E. Craig Rd, Suite A  
North Las Vegas, NV 89030

  
ATTORNEY

LASVEGAS 6978.1 102734.003

# **EXHIBIT 7**

ORIGINAL

CLERK OF THE COURT

**ORDER**

Mark E. Ferrario (NV Bar No. 1625)  
Tami D. Cowden (NV Bar No. 8994)  
GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, Nevada 89109  
E-Mail: ferrario@gtlaw.com; cowdent@gtlaw.com  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002  
*Attorneys for Defendants Club Vista Financial Services, LLC  
and Tharaldson Motels II, Inc.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiffs,

v.

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

Defendants.

Case No.: A571228  
Dept. No.: XXIX

**CONSOLIDATED CASES:**  
A571792, A574397, A574792,  
A577623, A579963, A580889,  
A583289, A584730, A587168,  
A589195, A589677, A590319,  
A592826, A596924, A597089,  
A606730, A608717, and A608718

**ORDER APPROVING SALE OF  
PROPERTY**

**AND ALL RELATED CASES AND  
MATTERS**

Evidentiary hearings were held in the above-entitled matter on July 9 and 11, 2012 before the Honorable Susan Scann, Department 29, District Court, Clark County, on Scott Financial Corporation's Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending Further Court Order, and for Posting of Bond on Order Shortening Time ("Motion"). At that time, the Seller, Gemstone Development West, Inc. ("Gemstone"), the Purchaser, WGH Acquisitions, Inc. ("WGH"), and lender Scott Financial Corporation ("Scott") sought Court approval of a Purchase and Sale Agreement ("the PSA") dated May 12, 2012. On July 31, 2012, this Court issued an

GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89109  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002

1 Order Granting In Part And Denying In Part Scott Financial Corporation's Motion To Lift Stay,  
2 Allow Sale To Proceed With Deposit Of Funds Pending Further Court Order And For Posting Of  
3 Bond On Order Shortening Time. Among other things, the Court:

- 4 • Denied Scott's request to approve the sale of the Property to WGH for \$18,050,000.00;
- 5 • Deemed the PSA to be "unenforceable and of no further effect;" and
- 6 • Decided to hold additional hearings to "determine the best and most appropriate way to  
7 proceed to the expeditious sale of the property in the event the parties cannot agree on a  
8 stipulated method of sale."

9 On July 11, 2012, this Court issued an Order to Show Cause Re: Summary  
10 Determination of Lien Amounts; and the Possible Sale of the Property, and a hearing on the  
11 same was held on July 18, 2012. At the July 18, 2012 hearing, the Court granted the Motion in  
12 Part, ordering the sale of the property, and scheduled a hearing for July 26, 2012, which was  
13 continued to August 16, 2012, to determine the bidding and sale procedures. At the August 16,  
14 2012 hearing, the Court scheduled an auction for the sale of the Manhattan West Property  
15 ("Property") for October 9, 2012.

16 At a September 26, 2012 telephonic conference with the Court, the parties informed the  
17 Court of the possibility the parties would consent to the sale of the Property to a specific buyer,  
18 without need for an auction, provided the price was acceptable to all parties. On September  
19 28, 2012, the Court issued an Order Vacating the Auction Set for October 9, 2012 and set an  
20 Order to Show Cause Re: Sale of the Property. The September 28, 2012 Order to Show Cause  
21 Re: Sale of the Property decreed that all interested parties to the action appear on October 9,  
22 2012 to show cause why an Order allowing the sale of the Property free of liens and  
23 establishment of a fund as replacement security for the liens should not be entered by the  
24 Court.

25 On October 9, 2012, the Court held a hearing on the Order to Show Cause Re: Sale of  
26 the Property. The Court subsequently continued the hearing to allow the parties the opportunity  
27 to review and clarify the terms of the proposed sale and to propose a written Order approving  
28

1 the sale of the Property to WGH for \$20,000,000, preserving the net proceeds of the sale and  
2 otherwise setting forth terms and conditions under which the Court would approve the sale.

3 In or about October 2012, Gemstone, WGH, and Scott executed a First Amendment to  
4 the PSA ("First Amendment") as a convenient method to memorialize Gemstone's agreement  
5 to sell the Property to WGH, with Scott's consent, for \$20,000,000. The First Amendment  
6 purports to ratify the terms of the PSA, except as modified by the First Amendment. In or  
7 about November 2012, Gemstone, WGH, and Scott executed a Second Amendment to the PSA  
8 ("Second Amendment"), which by its terms supersedes and replaces the First Amendment to  
9 the PSA, but which also purports to ratify the terms of the PSA, except as modified by the  
10 Second Amendment.

11 By way of a Motion to Set Hearing, certain lien claimants raised concerns they had  
12 with the PSA and Amendments and requested a hearing to discuss the same. The Court held a  
13 hearing regarding such issues on January 3, 2013, which hearing was continued for further  
14 consideration on January 16, 2013.

15 ACCORDINGLY, IT IS HEREBY ORDERED that:

16 A reasonable opportunity to object or be heard regarding the requested relief has been  
17 afforded to all interested persons and there being no objection, the Court finds:

18 1. Compelling circumstances exist requiring the Property to be sold on the terms  
19 outlined herein. The sale of the Property is in the best interest of all parties holding liens on the  
20 Property.

21 2. The Purchase and Sale Agreement dated as of May 10, 2012 and the Second  
22 Amendment to Purchase and Sale Agreement and Escrow Instructions dated as of November 7,  
23 2012, which supersedes and replaces the First Amendment (collectively, the "Purchase and  
24 Sale Agreement") between Gemstone Development West, Inc. and WGH Acquisitions, LLC  
25 constitutes the best offer for the Property. The Court hereby approves the Purchase and Sale  
26 Agreement, except as modified or amended by the terms of this Order, as follows:

27 3. Paragraph 2 of the Second Amendment is amended, modified and superseded as  
28



1 follows: All contingencies shall be satisfied or waived by, the Property shall close escrow by,  
2 and the Closing Date shall be, no later than June 17, 2013 unless extended by further Order of  
3 this Court upon application prior to the Closing Date for good cause shown and with notice to  
4 all parties.

5 4. Paragraph 4 of the Second Amendment is amended, modified and superseded as  
6 follows: the sale of the Property is subject to approval of this Court as set forth in this Order.

7 5. Paragraph 9 of the Second Amendment is amended, modified and superseded as  
8 follows: the amount of the broker commissions payable from the proceeds of the sale shall be  
9 \$200,000.00 (Two Hundred Thousand U.S. Dollars).

10 6. The Property shall be sold free and clear of all liens including but not limited to  
11 all liens as shown on the Preliminary Title Report No. 12-02-1358-KR prepared by Nevada  
12 Title Company on March 12, 2013 and amended on April 3, 2013 attached hereto as Exhibit A.  
13 Those existing liens on the Property, identified in the attached Exhibit "B," will be transferred  
14 to the net proceeds from the sale and will retain the same force, effect, validity and priority that  
15 previously existed against the Property subject to the determination of priority by the Supreme  
16 Court of Nevada in the Writ Petition procedure discussed below. For purposes of this Order  
17 "net proceeds from the sale" shall mean the sale proceeds available after the payment of sales  
18 commissions (as determined by the Court), and other ordinary closing costs and any unpaid  
19 property taxes.

20 7. The net proceeds from the sale (including any deposit under the Purchase and  
21 Sale Agreement) are to be held in an interest-bearing account ("Account") pending final  
22 resolution of the mechanic lien claimants' Joint Petition for Writ of Mandamus or, in the  
23 Alternative, Prohibition filed in the Supreme Court of Nevada on June 22, 2012, or upon  
24 resolution of any appeal brought with respect to the net proceeds from the sale. The contents  
25 of the Account are to remain subject to Court control until the Court orders the distribution of  
26 the contents to the party or parties the Nevada Supreme Court determines has a first priority  
27 lien on the proceeds or as may otherwise be agreed upon by the parties. Nothing in the  
28

GREENBERG TRAUBING, LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9902


1 Purchase and Sale Agreement or this Order shall be deemed to be a waiver of any party's legal  
2 arguments or positions regarding priority.

3 **IT IS SO ORDERED.**


4 DATED this 23rd day of April, 2013.


5  
6   
DISTRICT COURT JUDGE

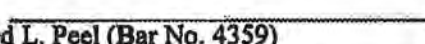
7 Respectfully submitted,

8 By:   
9 Mark E. Ferrario (Bar No. 1625)  
10 Tami D. Cowden (Bar No. 8994)  
11 3773 Howard Hughes Parkway  
12 Suite 400 North  
13 Las Vegas, Nevada 89169  
14 Attorneys for Defendants Club Vista Financial Services, LLC  
15 and Tharaldson Motels II, Inc.

13 Approved as to form and content.

14 By:   
15 J. Randall Jones (Bar No. 1927)  
16 Matthew S. Carter (Bar No. 9524)  
17 3800 Howard Hughes Parkway  
18 Seventeenth Floor  
19 Las Vegas, Nevada 89169  
20 Attorneys for Scott Financial Corporation  
21 and Bradley J. Scott

19 By:   
20 Gwen Rutar Mullins (Bar No. 3146)  
21 Wade B. Gochmour (Bar No. 6314)  
22 3800 Howard Hughes Parkway  
23 Suite 1400  
24 Las Vegas, Nevada 89169  
25 Attorneys for APCO Construction

24 By:   
25 Richard L. Peel (Bar No. 4359)  
26 Eric B. Zimbelman (Bar No. 9407)  
27 Michael T. Gebhart (Bar No. 7718)  
28 3333 E. Serene Avenue  
Suite 200  
Henderson, Nevada 89074  
Attorneys for Various Lien Claimants



GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: (702) 793-3773  
Facsimile: (702) 793-0001

1 Purchase and Sale Agreement or this Order shall be deemed to be a waiver of any party's legal  
2 arguments or positions regarding priority.

3 **IT IS SO ORDERED.**

4 DATED this \_\_\_\_ day of April, 2013.

6 DISTRICT COURT JUDGE

7 Respectfully submitted,

8 By: \_\_\_\_\_

9 Mark E. Ferrario (Bar No. 1625)  
10 Tami D. Cowden (Bar No. 8994)  
11 3773 Howard Hughes Parkway  
12 Suite 400 North  
Las Vegas, Nevada 89169  
Attorneys for Defendants Club Vista Financial Services, LLC  
and Tharaldson Motels II, Inc.

13 Approved as to form and content,

14 By: \_\_\_\_\_

15 J. Randall Jones (Bar No. 1927)  
16 Matthew S. Carter (Bar No. 9524)  
17 3800 Howard Hughes Parkway  
18 Seventeenth Floor  
Las Vegas, Nevada 89169  
Attorneys for Scott Financial Corporation  
and Bradley J. Scott

19 By: \_\_\_\_\_

20 Gwen Rufar Mullins (Bar No. 3146)  
21 Wade B. Gochmour (Bar No. 6314)  
22 3800 Howard Hughes Parkway  
Suite 1400  
Las Vegas, Nevada 89169  
Attorneys for APCO Construction

23 By: \_\_\_\_\_

24 Richard L. Peel (Bar No. 4359)  
25 Eric B. Zimbelman (Bar No. 9407)  
26 Michael T. Gebhart (Bar No. 7718)  
27 3333 E. Serene Avenue  
Suite 200  
Henderson, Nevada 89074  
Attorneys for Various Lien Claimants

GREENBERG TRAUGOT, LLP  
3773 Brentwood Highway, Suite 400 West  
Las Vegas, Nevada 89119  
Telephone: (702) 796-3775  
Facsimile: (702) 796-3962

1 Purchase and Sale Agreement or this Order shall be deemed to be a waiver of any party's legal  
2 arguments or positions regarding priority.

3 **IT IS SO ORDERED.**

4 DATED this \_\_\_\_ day of April, 2013.

5  
6 DISTRICT COURT JUDGE

7 Respectfully submitted,

8 By: \_\_\_\_\_

9 Mark E. Ferrario (Bar No. 1625)  
10 Tami D. Cowden (Bar No. 8994)  
11 3773 Howard Hughes Parkway  
12 Suite 400 North  
Las Vegas, Nevada 89169  
Attorneys for Defendants Club Vista Financial Services, LLC  
and Tharaldson Motels II, Inc.

13 Approved as to form and content,

14 By: \_\_\_\_\_

15 J. Randall Jones (Bar No. 1927)  
16 Matthew S. Carter (Bar No. 9524)  
17 3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
Attorneys for Scott Financial Corporation  
and Bradley J. Scott

19 By: \_\_\_\_\_

20 Gwon Rutar Mullins (Bar No. 3146)  
21 Wade B. Gochmour (Bar No. 6314)  
22 3800 Howard Hughes Parkway  
Suite 1400  
Las Vegas, Nevada 89169  
Attorneys for APCO Construction

23 By:  \_\_\_\_\_

24 Richard L. Peel (Bar No. 4359)  
25 Erlo B. Zimbelman (Bar No. 9407)  
26 Michael T. Gebhart (Bar No. 7718)  
27 3333 E. Serene Avenue  
Suite 200  
Henderson, Nevada 89074  
Attorneys for Various Lien Claimants

# Exhibit A

# Exhibit A

LV 418707687v1

NEVADA TITLE COMPANY  
2500 North Buffalo, Suite # 150  
Las Vegas, Nevada 89128  
(702) 251-5000

ATTENTION: Kristin Ravelo

Amended April 3, 2013

Your Number

Order Number: 12-02-1358-KR / Kristin Ravelo

---

Dated as of March 12, 2013 at 7:30 a.m.

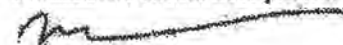
In response to the above referenced application for a policy of title insurance, Nevada Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referenced to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in the exclusions and exceptions from coverage document attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in the exclusions and exceptions from coverage. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referenced to below and the exceptions and exclusions set forth in the exclusions from coverage of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance, and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.



Title Officer: Martin Bressler

#### **SCHEDULE A**

The form of Policy of Title Insurance contemplated by this report is:

- ☐ California Land Title/American Land Title Association Homeowners Policy
- ☐ American Land Title Association Lender's Policy 2006 PROPOSED INSURED in the amount of \$ , Premium Amount \$
- ☐ American Land Title Association Owners Policy 2006
- ☐ California Land Title Association Standard Owner's/Lenders

THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS SCHEDULE COVERED BY THIS REPORT IS:

**A Fee**

Title to said estate or interest at the date hereof is vested in:

**Gemstone Development West, Inc., a Nevada corporation**

The land referred to in this report is situated in the State of Nevada, County of Clark, and is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF FOR LEGAL DESCRIPTION:

Address: Vacant Land Las Vegas, NV

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL I:**

THE WEST HALF (W ½) OF THE NORTHEAST QUARTER (NE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M.

EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO CLARK COUNTY BY GRANT DEED RECORDED SEPTEMBER 22, 1972 IN BOOK 265 AS DOCUMENT NO. 224982 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO THE COUNTY OF CLARK BY GRANT, BARGAIN, SALE AND DEDICATION DEED RECORDED AUGUST 23, 2007 IN BOOK 20070823 AS DOCUMENT NO. 04782 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THE EXTERIOR BOUNDARIES OF REVERSIONARY FINAL MAP OF PLATS AS SHOWN BY MAP THEREOF IN BOOK 141 OF PLATS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL II:**

THE WEST HALF (W ½) OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M.

EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO CLARK COUNTY BY GRANT DEED RECORDED SEPTEMBER 22, 1972 IN BOOK 265 AS DOCUMENT NO. 224994 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PROPERTY SHOWN IN FINAL ORDER OF CONDEMNATION RECORDED NOVEMBER 20, 1998 IN BOOK 981120 AS DOCUMENT NO. 00763 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO THE COUNTY OF CLARK BY GRANT, BARGAIN, SALE AND DEDICATION DEED RECORDED AUGUST 23, 2007 IN BOOK 20070823 AS DOCUMENT NO. 04782 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THE EXTERIOR BOUNDARIES OF REVERSIONARY FINAL MAP OF

PLATS AS SHOWN BY MAP THEREOF IN BOOK 141 OF PLATS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL III:**

THE EAST HALF (E ½) OF THE SOUTHEAST QUARTER (SE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M.

EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO THE COUNTY OF CLARK BY GRANT, BARGAIN, SALE AND DEDICATION DEED RECORDED AUGUST 23, 2007 IN BOOK 20070823 AS DOCUMENT NO. 04782 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THE EXTERIOR BOUNDARIES OF REVERSIONARY FINAL MAP OF PLATS AS SHOWN BY MAP THEREOF IN BOOK 141 OF PLATS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL IV:**

A TRACT OF LAND BEING A PORTION OF THE NORTH HALF (N ½) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SAID SECTION 32, SAID POINT BEING ON THE CENTERLINE OF "RUSSELL ROAD"; THENCE ALONG THE EAST LINE THEREOF, SOUTH 00°45'29" WEST, 45.01 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID "RUSSELL ROAD" AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES:

- (1) SOUTH 00°45'29" WEST, 5.00 FEET;
- (2) NORTH 89°28'01" EAST, 100.71 FEET;
- (3) SOUTH 80°02'11" EAST, 1.52 FEET TO THE BEGINNING OF A 20.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS NORTH 11°15'11" WEST;

THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE, SOUTHWESTERLY ALONG SAID 20.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 79°15'57" (THE LONG CHORD OF WHICH BEARS SOUTH 39°06'50" WEST, 25.51 FEET) FOR AN ARC LENGTH OF 27.67 FEET; THENCE SOUTH 03°30'45" WEST, 68.29 FEET; THENCE



SOUTH 02°09'32" WEST, 81.12 FEET; THENCE SOUTH 17°40'33" WEST, 32.81 FEET; THENCE SOUTH 27°55'25" WEST, 41.45 FEET; THENCE SOUTH 00°35'59" EAST, 308.38 FEET; THENCE SOUTH 45°19'56" EAST, 20.47 FEET; THENCE NORTH 89°24'01" EAST, 109.32 FEET; THENCE SOUTH 26°03'44" EAST, 21.96 FEET; THENCE SOUTH 35°52'59" WEST, 41.00 FEET; THENCE SOUTH 57°56'46" WEST, 29.28 FEET; THENCE SOUTH 89°25'29" WEST, 145.72 FEET; THENCE SOUTH 00°45'29" WEST, 349.42 FEET; THENCE NORTH 90°00'00" WEST, 74.74 FEET; THENCE NORTH 00°00'07" WEST, 304.72 FEET; THENCE SOUTH 89°18'50" WEST, 258.60 FEET; THENCE NORTH 00°46'11" EAST, 44.21 FEET; THENCE SOUTH 89°23'43" WEST, 312.37 FEET; THENCE NORTH 00°46'53" EAST, 370.04 FEET; THENCE SOUTH 89°13'07" EAST, 5.00 FEET TO THE BEGINNING OF A 10.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS NORTH 89°13'07" WEST; THENCE SOUTHEASTERLY ALONG SAID 10.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 91°22'53" (THE LONG CHORD OF WHICH BEARS SOUTH 44°54'33" EAST, 14.31 FEET) FOR AN ARC LENGTH OF 15.95 FEET; THENCE NORTH 89°24'01" EAST, 22.46 FEET; THENCE SOUTH 54°17'04" EAST, 42.60 FEET; THENCE NORTH 35°42'56" EAST, 18.50 FEET; THENCE SOUTH 54°17'04" EAST, 14.50 FEET TO THE BEGINNING OF A 26.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTH; THENCE EASTERLY ALONG SAID 26.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 36°18'55" (THE LONG CHORD OF WHICH BEARS SOUTH 72°26'32" EAST, 16.20 FEET) FOR AN ARC LENGTH OF 16.48 FEET; THENCE NORTH 89°24'01" EAST, 48.35 FEET; THENCE SOUTH 00°35'59" EAST, 19.00 FEET; THENCE NORTH 89°24'12" EAST, 37.56 FEET TO THE BEGINNING OF A 23.50 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG SAID 23.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 47°53'29" (THE LONG CHORD OF WHICH BEARS NORTH 65°27'27" EAST, 19.08 FEET) FOR AN ARC LENGTH OF 19.64 FEET; THENCE NORTH 41°30'43" EAST, 30.28 FEET TO THE BEGINNING OF A 20.00 FOOT RADIUS CURVE, CONCAVE TO THE WEST; THENCE NORTHERLY ALONG SAID 20.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 72°57'04" (THE LONG CHORD OF WHICH BEARS NORTH 05°02'11" EAST, 23.78 FEET) FOR AN ARC LENGTH OF 25.46 FEET; THENCE NORTH 31°26'22" WEST, 45.62 FEET; THENCE SOUTH 59°33'15" WEST, 18.50 FEET TO THE BEGINNING OF A 297.01 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE EAST, TO WHICH A RADIAL LINE BEARS SOUTH 59°04'19" WEST; THENCE NORTHERLY ALONG SAID 297.01 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 19°39'01" (THE LONG CHORD OF WHICH BEARS NORTH 21°06'11" WEST, 101.37 FEET) FOR AN ARC LENGTH OF 101.86 FEET; THENCE NORTH 78°14'25" EAST, 15.18 FEET TO THE BEGINNING OF A 2.50 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG SAID 2.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF



105°11'40" (THE LONG CHORD OF WHICH BEARS NORTH 25°38'35" EAST, 3.97 FEET) FOR AN ARC LENGTH OF 4.59 FEET TO THE BEGINNING OF A 102.50 FOOT RADIUS REVERSE CURVE, CONCAVE TO THE EAST, TO WHICH A RADIAL LINE BEARS SOUTH 63°02'45" WEST; THENCE NORTHERLY ALONG SAID 102.50 FOOT RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 26°21'16" (THE LONG CHORD OF WHICH BEARS NORTH 13°46'37" WEST, 46.73 FEET) FOR AN ARC LENGTH OF 47.15 FEET; THENCE NORTH 00°35'59" WEST, 55.31 FEET; THENCE SOUTH 89°24'01" WEST, 3.00 FEET TO THE BEGINNING OF A 25.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, TO WHICH A RADIAL LINE BEARS NORTH 89°24'01" EAST; THENCE NORTHWESTERLY ALONG SAID 25.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 90°00'00" (THE LONG CHORD OF WHICH BEARS NORTH 45°35'59" WEST, 35.36 FEET) FOR AN ARC LENGTH OF 39.27 FEET; THENCE NORTH 00°35'59" WEST, 5.00 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID "RUSSELL ROAD"; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE NORTH 89°24'01" EAST, 516.96 FEET TO THE POINT OF BEGINNING.

## SCHEDULE B

At the date hereof Exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy form would be as follows:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

6. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$3,247.99, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$813.31 unpaid delinquent third Monday in August

Second installment of \$811.56 unpaid delinquent first Monday in October

Third installment of \$811.56 unpaid delinquent first Monday in January

Fourth installment of \$811.56 unpaid delinquent first Monday in March

Affects: Parcel I

Parcel No. 163-32-101-020

7. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$12,782.80, plus costs and penalties.

Affects: Parcel I

8. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$8,882.68, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,214.27 unpaid delinquent third Monday in August

Second installment of \$2,219.47 unpaid delinquent first Monday in October

Third installment of \$2,219.47 unpaid delinquent first Monday in January

Fourth installment of \$2,219.47 unpaid delinquent first Monday in March

Affects: Parcel II

Parcel No. 163-32-101-022

9. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$35,994.29, plus costs and penalties.

Affects: Parcel II

10. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$7,317.63, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,832.37 unpaid delinquent third Monday in August

Second installment of \$1,828.42 unpaid delinquent first Monday in October

Third installment of \$1,828.42 unpaid delinquent first Monday in January

Fourth installment of \$1,828.42 unpaid delinquent first Monday in March

Affects: Parcel III

Parcel No. 163-32-101-023

11. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$26,814.71, plus costs and penalties.

Affects: Parcel III

12. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$307,660.62, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$77,039.94 unpaid delinquent third Monday in August

Second installment of \$76,873.56 unpaid delinquent first Monday in October

Third installment of \$76,873.56 unpaid delinquent first Monday in January

Fourth installment of \$76,873.56 unpaid delinquent first Monday in March

Affects: Parcel IV

Parcel No. 163-32-101-024

13. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$912,192.21, plus costs and penalties.

Affects: Parcel IV

14. Any supplemental or recapture taxes under NRS Chapter 361, as amended, which may become a lien on the subject property by reason of increased valuations due to land use, improvements or otherwise.

15. The herein described property lies within the boundaries of CLARK COUNTY WATER RECLAMATION DISTRICT and may be subject to all assessments and obligation thereof.

16. Reservations and Easements in the patent from the United States of America, recorded September 9, 1957, in Book 139 as Document No. 114353, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

17. Reservations and Easements in the patent from the United States of America, recorded June 7, 1962, in Book 365 as Document No. 295090, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

18. Reservations and Easements in the patent from the United States of America, recorded October 16, 1979, in Book 1133 as Document No. 1092838, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

19. Reservations and Easements in the patent from the United States of America, recorded December 19, 1979, in Book 1163 as Document No. 1122179, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

20. Terms, covenants, conditions and provisions in an instrument entitled, "GRANT, BARGAIN AND SALE DEED", recorded October 5, 2004, in Book 20041005 as Document No. 05012, of Official Records.
21. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of RUSSELL 215, LLC, PANTEA, LLC AND LAS VEGAS LAND DEV CO, LLC, for private drainage easement, recorded December 30, 2004, in Book 20041230 as Document No. 01346 of Official Records.
22. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of RUSSELL 215, LLC AND PANTEA, LLC, for private drainage easement, recorded December 30, 2004, in Book 20041230 as Document No. 01347 of Official Records.
23. Deed of Trust to secure an indebtedness of \$15,000,000.00 and any other amounts payable under the terms thereof:  
Recorded: July 5, 2006 in Book 20060705 Document No. 04264 of Official Records.  
Dated: June 26, 2006  
Trustor: GEMSTONE APACHE, LLC, A NEVADA LIMITED LIABILITY COMPANY  
Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY  
Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

NOTE: The Deed of Trust set forth above is purported to be a "CREDIT LINE" Deed of Trust. It is a requirement that the trustor of said Deed of Trust give written authorization to close said credit line account with beneficiary when the Deed of Trust is being paid through Nevada Title Company.

Terms, covenants, conditions and provisions in an instrument entitled, "ASSUMPTION AGREEMENT", recorded February 7, 2008, in Book 20080207 as Document No. 01483, of Official Records.

First Amendment to the above Senior Deed of Trust for an additional \$13,000,000.00 recorded February 7, 2008 in Book 20080207 as Document No. 01484



An Agreement which states that this document was subordinated to Deed of Trust recorded February 7, 2008 in Book 20080207 of Official Records as Document No. 01482; By agreement executed by SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 01486.

24. Deed of Trust to secure an indebtedness of \$10,000,000.00 and any other amounts payable under the terms thereof:

Recorded: July 5, 2006 in Book 20060705 Document No. 04265 of Official Records.

Dated: June 26, 2006

Trustor: GEMSTONE APACHE, LLC, A NEVADA LIMITED LIABILITY COMPANY

Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY

Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

NOTE: The Deed of Trust set forth above is purported to be a "CREDIT LINE" Deed of Trust. It is a requirement that the trustor of said Deed of Trust give written authorization to close said credit line account with beneficiary when the Deed of Trust is being paid through Nevada Title Company.

First Amendment to the above Junior Deed of Trust for an additional \$8,000,000.00 recorded May 22, 2007 in Book 20070522 as Document No. 04011, of Official Records.

Terms, covenants, conditions and provisions in an instrument entitled, "ASSUMPTION AGREEMENT", recorded February 7, 2008, in Book 20080207 as Document No. 01483, of Official Records.

An instrument purports to modify the terms of the hereinabove stated Deed of Trust as therein provided, executed by GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION and SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION, and recorded February 7, 2008, in Book 20080207 as Document No. 01485 of Official Records.

An Agreement which states that this document was subordinated to Deed of Trust recorded February 7, 2008 in Book 20080207 of Official Records as Document No. 01482; By agreement executed by SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 01486.



25. Deed of Trust to secure an indebtedness of \$13,000,000.00 and any other amounts payable under the terms thereof:  
Recorded: July 5, 2006 in Book 20060705 Document No. 04266 of Official Records.  
Dated: June 26, 2006  
Trantor: GEMSTONE APACHE, LLC, A NEVADA LIMITED LIABILITY COMPANY  
Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY  
Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

NOTE: The Deed of Trust set forth above is purported to be a "CREDIT LINE" Deed of Trust. It is a requirement that the trustor of said Deed of Trust give written authorization to close said credit line account with beneficiary when the Deed of Trust is being paid through Nevada Title Company.

First Amendment to the above Third Deed of Trust for an additional \$10,000,000.00 recorded October 24, 2007 in Book 20071024 as Document No. 04182, of Official Records.

Terms, covenants, conditions and provisions in an instrument entitled, "ASSUMPTION AGREEMENT", recorded February 7, 2008, in Book 20080207 as Document No. 01483, of Official Records.

An Agreement which states that this document was subordinated to Deed of Trust recorded February 7, 2008 in Book 20080207 of Official Records as Document No. 01482; By agreement executed by SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 01486.

Second Amendment to the above Third Deed of Trust for an additional \$9,000,000.00 recorded September 9, 2008 in Book 20080909 as Document No. 03943, of Official Records.

26. Terms, covenants, conditions and provisions in an instrument entitled, "IMPROVEMENT PHASING AGREEMENT", recorded February 7, 2007, in Book 20070207 as Document No. 04555, of Official Records.
27. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of COUNTY OF CLARK, for pedestrian access and utility, recorded August 23, 2007, in Book 20070823 as Document No. 04784 of Official Records.

28. Order of Vacation: Any easements not vacated by that certain Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 04781 of Official Records.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

29. Terms, covenants, conditions and provisions in an instrument entitled, "DEVELOPMENT AGREEMENT", recorded November 28, 2007, in Book 20071128 as Document No. 04645, of Official Records.

Ordinance to Adopt the Development recorded November 28, 2007 in Book 20071128 as Document No. 04646, of Official Records.

30. Terms, covenants, conditions and provisions in an instrument entitled, "OFF-SITE IMPROVEMENT AGREEMENT", recorded December 3, 2007, in Book 20071203 as Document No. 00472, of Official Records.

31. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of LAS VEGAS VALLEY WATER DISTRICT, for water lines, recorded January 3, 2008, in Book 20080103 as Document No. 03130 of Official Records.

32. Deed of Trust to secure an indebtedness of \$110,000,000.00 and any other amounts payable under the terms thereof:  
Recorded: February 7, 2008 in Book 20080207 Document No. 01482 of Official Records.  
Dated: January 22, 2008  
Trustor: GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION  
Trustee: COMMONWEALTH LAND TITLE INSURANCE COMPANY  
Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

33. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of LAS VEGAS VALLEY WATER DISTRICT, a Quasi Municipal Corporation, for pipelines, recorded July 3, 2008, in Book 20080703 as Document No. 00633 of Official Records.

34. Intentionally omitted (expunged in Case 08-A571391-B/08-A571228-B)

35. A claim of Mechanic's Lien by LAS VEGAS PIPELINE, LLC, recorded July 29, 2008 in Book 20080729 of Official Records as document number 01902.  
Amount: \$217,911.29

36. A claim of Mechanic's Lien by PATENT CONSTRUCTION SYSTEMS, recorded September 2, 2008 in Book 20080902 of Official Records as document number 03602.  
Amount: \$374,262.70

The above lien was amended by Amended Notice of Lien recorded November 12, 2008 in Book 20081112 as Document No. 05538 of Official Records.

An action commenced in the District Court, dated June 4, 2009, Case No. A571228, entitled, "PATENT CONSTRUCTION SYSTEMS, A DIVISION OF HARSCO CORPORATION'S NOTICE OF LIS PENDENS", PATENT CONSTRUCTION SYSTEMS, A DIVISION OF HARSCO CORPORATION, A FOREIGN CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NORTHSTAR CONCRETE, INC., A NEVADA CORPORATION; PLATTE RIVER INSURANCE COMPANY, A SURETY; RICHARD THORNTON, AN INDIVIDUAL; SCOTT FINANCIAL CORPORATION; AN DOES I THROUGH X

Notice of Pendency of said Action was recorded June 10, 2009 in Book 20090610 as Document No. 04082 of Official Records.

37. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of LAS VEGAS VALLEY WATER DISTRICT, a Quasi Municipal Corporation, for pipelines, recorded September 9, 2008, in Book 20080909 as Document No. 01209 of Official Records.

38. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded September 24, 2008 in Book 20080924 of Official Records as document number 04254.  
Amount: \$69,260.04

39. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded September 30, 2008 in Book 20080930 of Official Records as document number 00441.  
Amount: \$79,420.00

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00986 of Official Records.  
New Amount: \$79,420.61

40. A claim of Mechanic's Lien by READY MIX, INC., recorded October 6, 2008 in Book 20081006 of Official Records as document number 05090.  
Amount: \$754,618.89

An action commenced in the District Court, dated April 9, 2009, Case No. A577623, entitled, "NOTICE OF LIS PENDENS", READY MIX, INC., A NEVADA CORPORATION -vs- CONCRETE VISIONS, INC., A NEVADA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; ALEXANDER EDELSTEIN; SELINA MARIE CISNEROS; JUAN S. PULIDO; PLATTE RIVER INSURANCE COMPANY, A FOREIGN CORPORATION; APCO CONSTRUCTION, INC., A NEVADA CORPORATION; AND DOES I THROUGH X, INCLUSIVELY

Notice of Pendency of said Action was recorded April 12, 2010 in Book 20100412 as Document No. 01733 of Official Records.

41. A claim of Mechanic's Lien by SIERRA REINFORCING, recorded October 14, 2008 in Book 20081014 of Official Records as document number 01768.  
Amount: \$420,157.90

An action commenced in the District Court, dated February 27, 2009, Case No. A583289, entitled, "NOTICE OF LIS PENDENS", UINIAH INVESTMENTS, LLC, A NEVADA LIMITED LIABILITY COMPANY D/B/A SIERRA REINFORCING -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded March 2, 2009 in Book 20090302 as Document No. 00930 of Official Records.

42. A claim of Mechanic's Lien by APCO CONSTRUCTION, recorded November 6, 2008 in Book 20081106 of Official Records as document number 03327.  
Amount: \$20,782,659.95

An action commenced in the District Court, dated December 9, 2008, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", APCO CONSTRUCTION, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NEVADA CONSTRUCTION SERVICES, A NEVADA CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded December 10, 2008 in Book 20081210 as Document No. 02470 of Official Records.

The above lien was amended by Amended and Restated Notice of Lien recorded February 11, 2009 in Book 20090211 as Document No. 04094 of Official Records.

43. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded November 14, 2008 in Book 20081114 of Official Records as document number 01275.  
Amount: \$161,000.00
44. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of NEVADA POWER COMPANY, D/B/A NV ENERGY, for electrical lines, recorded November 14, 2008, in Book 20081114 as Document No. 04014 of Official Records.
45. A claim of Mechanic's Lien by NEVADA PREFAB ENGINEERS, INC., recorded November 21, 2008 in Book 20081121 of Official Records as document number 05199.  
Amount: \$1,001,790.15
46. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04799.  
Amount: \$461,795.78
47. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04802.  
Amount: \$586,642.07
48. A claim of Mechanic's Lien by ARCH ALUMINUM AND GLASS CO., INC. - AZ, recorded December 1, 2008 in Book 20081201 of Official Records as document number 02051.  
Amount: \$30,383.68
49. Intentionally omitted (Expunged Case 08-A571228-B)
50. A claim of Mechanic's Lien by HYDROPRESSURE CLEANING, INC., recorded December 2, 2008 in Book 20081202 of Official Records as document number 04781.  
Amount: \$400,000.00
51. Dedications and Easements as shown on the recorded Map referred to herein, on file in Book 141 of Plats, Page 28, of Official Records.

52. A claim of Mechanic's Lien by ACCURACY GLASS & MIRROR COMPANY, INC., recorded December 5, 2008 in Book 20081205 of Official Records as document number 01947.  
Amount: \$1,956,902.53

The above lien was amended by Amended Notice of Lien recorded February 2, 2009 in Book 20090202 as Document No. 00834 of Official Records.

An action commenced in the District Court, dated April 7, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", ACCURACY GLASS & MIRROR COMPANY, INC., A NEVADA CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOB BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 9, 2009 in Book 20090409 as Document No. 01356 of Official Records.

An action commenced in the District Court, dated June 23, 2009, Lead Case No. A587168, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "ACCURACY GLASS & MIRROR COMPANY, INC.'S AMENDED NOTICE OF LIS PENDENS", ACCURACY GLASS & MIRROR COMPANY, INC., A NEVADA CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00234 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01819 of Official Records.

53. Intentionally omitted (Expunged Case 08-A571228-B)



54. A claim of Mechanic's Lien by LAS VEGAS PIPELINE LLC, recorded December 16, 2008 in Book 20081216 of Official Records as document number 0004218.

Amount: \$373,892.42

The effect of an instrument entitled, PARTIAL RELEASE OF LIEN, Recorded February 10, 2009 in Book 20090210 as Document No. 02380 of Official Records.

New Amount: \$358,892.42

The above lien was amended by Amended and Restated Notice of Lien recorded April 1, 2009 in Book 20090401 as Document No. 04564 of Official Records.

New Amount: \$202,592.07

An action commenced in the District Court, dated June 13, 2009, Case No. A571228, entitled, "LIS PENDENS", LAS VEGAS PIPELINE, LLC -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC.; CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; DOES 1-40, DOE CORPORATIONS 1-40, DOE BONDING COMPANIES 1-40; DOE SURITIES 1-10; DOE LENDERS 1-10; AND DOE TENANTS 1-10, INCLUSIVE

Notice of Pendency of said Action was recorded June 15, 2009 in Book 20090615 as Document No. 04814 of Official Records.

55. A claim of Mechanic's Lien by ROBERT D. FORD D.B.A. BRUIN PAINTING, CORPORATION, recorded December 17, 2008 in Book 20081217 of Official Records as document number 0001837.

Amount: \$641,748.33

The above lien was amended by Amended/Restated Notice of Lien recorded February 3, 2009 in Book 20090203 as Document No. 00315 of Official Records.  
New Amount: \$771,401.32

An action commenced in the District Court, dated April 24, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", BRUIN PAINTING CORPORATION, A CALIFORNIA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 29, 2009 in Book 20090429 as Document No. 00143 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A587168, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "BRUIN PAINTING CORPORATION'S AMENDED NOTICE OF LIS PENDENS", BRUIN PAINTING CORPORATION, A CALIFORNIA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00235 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01817 of Official Records.

56. Intentionally omitted (Expunged A571228)

57. Intentionally omitted (Expunged A571228)

58. A claim of Mechanic's Lien by FAST GLASS, recorded December 18, 2008 in Book 20081218 of Official Records as document number 01589.

Amount: \$199,000.00

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01815 of Official Records.

59. Intentionally omitted (Expunged A571228)

60. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00972.

Amount: \$57,611.11

61. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.

Amount: \$57,611.11

62. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00974.

Amount: \$85,260.82



63. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00975.

Amount: \$63,362.02

64. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00976.

Amount: \$3,685.15

65. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00977.

Amount: \$3,257.73

66. A claim of Mechanic's Lien by ZITTING BROTHERS CONSTRUCTION, recorded December 23, 2008 in Book 20081223 of Official Records as document number 03690.

Amount: \$788,405.41

An action commenced in the District Court, dated April 30, 2009, Case No. A-09-589195-C, entitled, "NOTICE OF LIS PENDENS", ZITTING BROTHERS CONSTRUCTION, INC., A UTAH CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; AND DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X AND LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded May 1, 2009 in Book 20090501 as Document No. 04227 of Official Records.

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02126 of Official Records.

New Amount: \$750,807.16

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02127 of Official Records.

New Amount: \$750,807.16

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02128 of Official Records.

New Amount: \$750,807.16

67. A claim of Mechanic's Lien by HD SUPPLY WATERWORKS, LP, recorded December 29, 2008 in Book 20081229 of Official Records as document number 00767.

Amount: \$25,441.40

The above lien was amended by Amended Notice of Lien recorded February 4, 2009 in Book 20090204 as Document No. 04357 of Official Records.

An action commenced in the District Court, dated April 24, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", HD SUPPLY WATERWORKS, LP, A FLORIDA LIMITED PARTNERSHIP -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; JEFF HEIT PLUMBING CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; B & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; OLD REPUBLIC SURETY; PLATTE RIVER INSURANCE COMPANY; DOES 1 THROUGH X; ROE CORPORATIONS 1 THROUGH X; BOE BONDING COMPANIES 1 THROUGH X; LOE LENDERS 1 THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 29, 2009 in Book 20090429 as Document No. 00144 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A587168, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "HD SUPPLY WATERWORKS, LP'S AMENDED NOTICE OF LIS PENDENS", HD SUPPLY WATERWORKS, LP, A FLORIDA LIMITED PARTNERSHIP -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; JEFF HEIT PLUMBING CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; B & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; OLD REPUBLIC SURETY; PLATTE RIVER INSURANCE COMPANY; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES 1 THROUGH X; ROE CORPORATIONS 1 THROUGH X; BOE BONDING COMPANIES 1 THROUGH X; LOE LENDERS 1 THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00236 of Official Records.

68. A claim of Mechanic's Lien by DAVE PETERSON FRAMING, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 001396.

Amount: \$50,000.00

An action commenced in the District Court, dated March 26, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", DAVE PETERSON FRAMING, INC., A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded April 1, 2009 in Book 20090401 as Document No. 00431 of Official Records.

An action commenced in the District Court, dated April 15, 2009, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "DAVE PETERSON FRAMING, INC.'S AMENDED NOTICE OF PENDENCY OF ACTION", DAVE PETERSON FRAMING, INC., A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00983 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00984 of Official Records.

69. A claim of Mechanic's Lien by SACRAMENTO INSULATION CONTRACTORS, INC., DBA GALE BUILDING PRODUCTS FKA INSULPRO PROJECTS INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 01766.  
Amount: \$95,659.36

An action commenced in the District Court, dated March 24, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", INSULPRO PROJECTS, INC. -vs- GEMSTONE DEVELOPMENT, INC., A NEVADA CORPORATION; AND DOES I THROUGH X; AND ROES CORPORATIONS I THROUGH V, INCLUSIVE; APCO CONSTRUCTION, A NEVADA CORPORATION; AND DOES XI THROUGH XX; AND ROES CORPORATIONS VI THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; AND DOES XXI THROUGH XXV; AND ROES CORPORATIONS XI THROUGH SV, INCLUSIVE

Notice of Pendency of said Action was recorded March 30, 2009 in Book 20090330 as Document No. 0001552 of Official Records.

70. A claim of Mechanic's Lien by BUCHELE, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 03196.  
Amount: \$77,220.70

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01818 of Official Records.

71. Intentionally omitted (Expunged Case 08-A571228-B)

72. Intentionally Omitted (Expunged A571228)

73. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. - CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04470.  
Amount: \$5,868.00

74. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. - CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04471.  
Amount: \$62,250.50

75. Intentionally omitted (refiled see Ex. 155)

76. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded January 7, 2009 in Book 20090107 of Official Records as document number 0001649.  
Amount: \$4,300.00

77. An action commenced in the District Court, dated January 5, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", APCO CONSTRUCTION, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NEVADA CONSTRUCTION SERVICES, A NEVADA CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X; AND HARSCO CORPORATION, A FOREIGN CORPORATION, --vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; CONCRETE VISIONS, INC., A NEVADA CORPORATION; PLATTE RIVER INSURANCE COMPANY, A SURETY; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded January 7, 2009 in Book 20090107 as Document No. 04231 of Official Records.

78. Intentionally omitted (Expunged Case 08-A571228-B)

79. Intentionally omitted (Expunged Case 08-A571228-B)

80. Intentionally omitted (Expunged Case 08-A571228-B)

81. Intentionally omitted (Expunged Case 08-A571228-B)

82. Intentionally omitted (Expunged Case 08-A571228-B)

83. A claim of Mechanic's Lien by NOORDA SHEET METAL COMPANY, recorded January 8, 2009 in Book 20090108 of Official Records as document number 00267.  
Amount: \$945,351.40

An action commenced in the District Court, dated February 25, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", NOORDA SHEET METAL COMPANY, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded March 2, 2009 in Book 20090302 as Document No. 00250 of Official Records.

An action commenced in the District Court, dated April 18, 2009, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "NOORDA SHEET METAL COMPANY'S SECOND AMENDED NOTICE OF PENDENCY OF ACTION", NOORDA SHEET METAL COMPANY, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROB CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00987 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00988 of Official Records.

- 84. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded January 8, 2009 in Book 20090108 of Official Records as document number 02970.  
Amount: \$109,032.00
- 85. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04475.  
Amount: \$8,625.00
- 86. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04476.  
Amount: \$242,608.00
- 87. Intentionally omitted (Expunged A571228)
- 88. Intentionally omitted (Expunged A571228)
- 89. A claim of Mechanic's Lien by SUPPLY NETWORK, INC. DBA VIKING SUPPLYNET, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02594.  
Amount: \$20,596.03
- 90. A claim of Mechanic's Lien by HELIX ELECTRIC OF NEVADA, LLC D/B/A HELIX ELECTRIC, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02864.  
Amount: \$3,186,102.67



The above lien was amended by Amended Notice of Lien recorded January 29, 2009 in Book 20090129 as Document No. 00237 of Official Records.

An action commenced in the District Court, dated April 14, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", HELIX ELECTRIC OF NEVADA, LLC, A NEVADA LIMITED-LIABILITY COMPANY, D/B/A HELIX ELECTRIC -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 16, 2009 in Book 20090416 as Document No. 00180 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "HELIX ELECTRIC'S AMENDED NOTICE OF LIS PENDENS", HELIX ELECTRIC OF NEVADA, LLC, A NEVADA LIMITED-LIABILITY COMPANY, D/B/A HELIX ELECTRIC -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00237 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01812 of Official Records.

91. Intentionally omitted (Expunged A571228)

92. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded January 12, 2009 in Book 20090112 of Official Records as document number 04585.

Amount: \$79,420.00

93. Intentionally omitted (Released)
94. Intentionally omitted (Expunged Case 08-A571228-B)
95. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR  
CONDITIONING, LLC, recorded January 14, 2009 in Book 20090114 of Official  
Records as document number 00391.  
Amount: \$3,376,600.45
96. Intentionally omitted (Released 3/5/13).
97. A claim of Mechanic's Lien by CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., recorded January 15, 2009 in Book 20090115 of Official  
Records as document number 00331.  
Amount: \$20,311,853.16
98. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR  
CONDITIONING, LLC, recorded January 16, 2009 in Book 20090116 of Official  
Records as document number 01512.  
Amount: \$783,161.63
99. Intentionally omitted (Expunged Case 08-A571228-B)
100. Intentionally omitted (Expunged Case 080A571228-B)
101. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded  
January 20, 2009 in Book 20090120 of Official Records as document number  
04864.  
Amount: \$9,494.23 (THERE IS A PROMISED PAYMENT OF \$2,333.62  
WHICH CLAIMANT DOES NOT WANT TO INCLUDE IN THE LIEN)

An action commenced in the District Court, dated July 9, 2009, Case No.  
A571228, entitled, "LIS PENDENS", NORTHSTAR CONCRETE, INC., A  
NEVADA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., A CALIFORNIA CORPORATION; FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND, A SURETY; CONCRETE VISIONS,  
INC., A NEVADA CORPORATION; PLATTE RIVER INSURANCE  
COMPANY, A SURETY; GEMSTONE DEVELOPMENT WEST, INC., A  
NEVADA CORPORATION; MOES 1 - 10, INCLUSIVE; AND ZOE  
CORPORATIONS 1 - 10, INCLUSIVE

Notice of Pendency of said Action was recorded July 20, 2009 in Book 20090720  
as Document No. 00028 of Official Records.

102. Intentionally omitted (Refiled see Exc. 154)



103. Intentionally omitted (Released 20130207-267)

104. A claim of Mechanic's Lien by PAPE MATERIAL HANDLING DBA PAPE RENTS, recorded January 20, 2009 in Book 20090120 of Official Records as document number 05051.  
Amount: \$22,176.01

105. A claim of Mechanic's Lien by SUNSTATE COMPANIES INC., recorded January 21, 2009 in Book 20090121 of Official Records as document number 01736.  
Amount: \$20,156.25

106. Intentionally omitted (Expunged Case 08-A571228-B)

107. A claim of Mechanic's Lien by PROFESSIONAL DOORS & MILLWORKS, recorded January 23, 2009 in Book 20090123 of Official Records as document number 04055.  
Amount: \$582,966.86

An action commenced in the District Court, dated March 27, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", PROFESSIONAL DOORS AND MILLWORKS, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES 1 THROUGH X, INCLUSIVE; AND ROE CORPORATIONS 1 THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded April 1, 2009 in Book 20090401 as Document No. 00432 of Official Records.

An action commenced in the District Court, dated April 15, 2009, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "PROFESSIONAL DOORS AND MILLWORK'S AMENDED NOTICE OF PENDENCY OF ACTION", PROFESSIONAL DOORS AND MILLWORKS, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES 1 THROUGH X, INCLUSIVE; AND ROE CORPORATIONS 1 THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00989 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010

in Book 20100504 as Document No. 00990 of Official Records.

108. Intentionally omitted (Expunged Case 08-A571228-B)

109. Intentionally omitted (Expunged Case 08-A571228-B)

110. Intentionally omitted (Expunged Case 08-A571228-B)

111. A claim of Mechanic's Lien by RENAISSANCE POOLS & SPAS, INC., recorded January 30, 2009 in Book 20090130 of Official Records as document number 0002909.  
Amount: \$89,474.70

112. A claim of Mechanic's Lien by CELL-CRETE FIREPROOFING OF NEVADA, INC., recorded February 2, 2009 in Book 20090202 of Official Records as document number 03407.  
Amount: \$111,629.00

113. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded February 3, 2009 in Book 20090203 of Official Records as document number 00318.  
Amount: \$185,319.09

The above lien was amended by Amended Notice of Lien recorded April 9, 2009 in Book 20090409 as Document No. 01355 of Official Records.  
New Amount: \$187,525.26

An action commenced in the District Court, dated April 27, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", HEINAMAN CONTRACT GLAZING, A CALIFORNIA CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES 1 THROUGH X; ROE CORPORATIONS 1 THROUGH X; BOE BONDING COMPANIES 1 THROUGH X; LOE LENDERS 1 THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 29, 2009 in Book 20090429 as Document No. 00142 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "NOTICE OF LIS PENDENS", HEINAMAN CONTRACT GLAZING, A CALIFORNIA CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00238 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01813 of Official Records.

114. A claim of Mechanic's Lien by GRANITE CONSTRUCTION COMPANY, recorded February 3, 2009 in Book 20090203 of Official Records as document number 02712.

Amount: \$127,822.00

115. A claim of Mechanic's Lien by E&E FIRE PROTECTION, LLC, recorded February 4, 2009 in Book 20090204 of Official Records as document number 00167.

Amount: \$3,795,218.91

An action commenced in the District Court, dated March 27, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded April 1, 2009 in Book 20090401 as Document No. 00430 of Official Records.

An action commenced in the District Court, dated April 15, 2009, Case No. A571228, entitled, "E & E FIRE PROTECTION, LLC'S AMENDED NOTICE OF PENDENCY OF ACTION", E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO

PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION;  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504  
as Document No. 00981 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010  
in Book 20100504 as Document No. 00982 of Official Records.

116. A claim of Mechanic's Lien by THE MASONRY GROUP NEVADA INC.,  
recorded February 4, 2009 in Book 20090204 of Official Records as document  
number 02241.

Amount: \$756,647.12

The above lien was amended by Amended Notice of Lien recorded February 26,  
2009 in Book 20090226 as Document No. 05925 of Official Records.

An action commenced in the District Court, dated March 9, 2009, Case No.  
A584730, entitled, "LIS PENDENS", THE MASONRY GROUP NEVADA,  
INC., A NEVADA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC.; GEMSTONE DEVELOPMENT WEST, INC.; FIDELITY  
AND DEPOSIT COMPANY OF MARYLAND AND DOES 1 THROUGH 500,  
INCLUSIVE

Notice of Pendency of said Action was recorded March 11, 2009 in Book  
20090311 as Document No. 03973 of Official Records.

117. Intentionally omitted (Expunged A571228)

118. A claim of Mechanic's Lien by FERGUSON FIRE & FABRICATION, INC.,  
recorded February 10, 2009 in Book 20090210 of Official Records as document  
number 02713.

Amount: \$90,932.76

119. Intentionally omitted (Expunged A571228)

120. Intentionally omitted (Expunged Case 08-A571228-B)

121. A claim of Mechanic's Lien by WRG DESIGN, INC., recorded February 13,  
2009 in Book 20090213 of Official Records as document number 04321.

Amount: \$314,085.66

The above lien was amended by Amended Notice of Lien recorded April 27, 2009  
in Book 20090427 as Document No. 00107 of Official Records.

New Amount: \$275,115.66

An action commenced in the District Court, dated April 22, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", WRG DESIGN, INC., A DELAWARE CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 30, 2009 in Book 20090430 as Document No. 01007 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND 587168, entitled, "WRG DESIGN, INC.'S AMENDED NOTICE OF LIS PENDENS", WRG DESIGN, INC., A DELAWARE CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00239 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01809 of Official Records.

122. A claim of Mechanic's Lien by E & E FIRE PROTECTION, LLC AND/OR CAMCO PACIFIC CONSTRUCTION COMPANY, INC., recorded February 13, 2009 in Book 20090213 of Official Records as document number 04359.  
Amount: \$159,478.55

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01814 of Official Records.

123. Intentionally omitted (Expunged A571228)

124. Intentionally omitted (Expunged Case 08-A571228-B)