IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No.
District Case Court No. A-12-661825

Electronically Filed
Jan 10 2017 08:43 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

JMA ARCHITECTS, INC.

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JOANNA S. KISHNER, in her capacity as District Judge,

Respondent,

PERINI BUILDING COMPANY, an Arizona Corporation,

Real Parties in Interest

APPENDIX TO PETITIONER JMA ARCHITECTS, INC.'S PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS UNDER NRAP 27(e), VOLUMES XIX THROUGH XX

Michael Edwards, Esq. (SBN 6281)
Bruno Wolfenzon, Esq. (SBN 6177)
WOLFENZON ROLLE EDWARDS
6725 Via Austi Pkwy, Suite 260
Las Vegas, Nevada 89119
Telephone: (702) 836-3138
medwards@wolfenzon.com
bruno@wolfenzon.com

Docket 72085 Document 2017-00711

Tab	Document Description	Date	Volume	Bates Numbers
1	Complaint	5/15/2012	I	JMA-WRIT 1 - 12
2	Defendant Keenan, Hopkins, Suder & Stowell Contractors, Inc.'s Answer to Complaint	6/11/2012	I	JMA-WRIT 13 - 23
3	Answer of Defendant Tutor Perini Building Corp.	7/13/2012	I	JMA-WRIT 24 - 29
4	Case Management Order	10/23/2012	I	JMA-WRIT 30 - 54
5	First Amended Complaint	11/12/2013	I	JMA-WRIT 55 - 65
6	Defendant Keenan, Hopkins, Suder & Stowell Contractors, Inc.'s Answer to First Amended Complaint	11/18/2013	I	JMA-WRIT 66 - 77
7	Defendant Executive Homes, Inc.'s Answer to Plaintiff's First Amended Complaint	5/8/2014	I	JMA-WRIT 78 - 91
8	Keenan, Hopkins, Suder & Stowell Contractors, Inc.'s Third Party Complaint	10/30/2014	I	JMA-WRIT 92 - 107
9	Order Rescheduling Trial and Pre-Trial Dates and Rescheduling Special Master Hearing	12/2/2014	I	JMA-WRIT 108 - 109
10	Special Master Recommendation and District Court Order Amending Case Agenda	12/08/2014	I	JMA-WRIT 110 - 118
11	Special Master Recommendation and District Court Order Extending Deadline for Amending Pleadings Without Further Leave of the District Court to April 6, 2015	3/2/2015	I	JMA-WRIT 119 - 120
12	Defendant/Third-Party Plaintiff Executive Homes,	4/6/2015	I	JMA-WRIT 121 - 134

	Inc.'s Third Party Complaint			
13	Second Amended Complaint	4/6/2015	I	JMA-WRIT 135 - 147
14	Perini Building Company's Cross Claim Against Executive Homes, Inc.	4/6/2015	I	JMA-WRIT 148 - 158
15	Perini Building Company's Third Party Complaint	4/6/2015	I II	JMA-WRIT 159 - 249 250 - 317
16	Defendant/Third-Party Plaintiff/Cross-Defendant Executive Homes, Inc.'s Answer to Plaintiff's Second Amended Complaint	4/21/2015	II	JMA-WRIT 318 - 332
17	Executive Homes, Inc.'s Answer to Perini Building Company's Cross-Claim and Counterclaim	4/29/2015	II	JMA-WRIT 333 - 358
18	Third Party Defendant Harris Consulting Engineers, LLC's Answer to Complaint	5/5/2015	II	JMA-WRIT 359 - 382
19	Perini Building Company's Second Amended Third-Party Complaint	9/21/2015	II	JMA-WRIT 383 - 414
20	Third Party Defendant Harris Consulting Engineers, LLC's Answer to Second Amended Third-Party Complaint	10/5/2015	II	JMA-WRIT 415 - 443
21	Defendant/Cross-Defendant/Third-Party Plaintiff Executive Homes, Inc.'s First Amended Third-Party Complaint	11/10/2015	II	JMA-WRIT 444 - 460
22	Defendant/Third-Party Plaintiff Queensridge Towers, LLC's Answer to Plaintiff's Second Amended Complaint and Third Party Complaint	12/4/2015	II	JMA-WRIT 461 - 494
23	Summons – JMA Architects, Inc. aka JMA Architecture	1/19/2016	II	JMA-WRIT 495 - 500

	Studios			
24	Summons – M.A. Engineering, Inc.	1/19/2016	III	JMA-WRIT 501 - 506
25	Third Party Defendant JMA Architects, Inc.'s Answer to Perini Building Company's Second Amended Third Party Complaint	1/26/2016	III	JMA-WRIT 000507 - 000534
26	Third Party Defendant M.A. Engineering, Inc.'s Answer to Perini Building Company's Second Amended Third Party Complaint	1/26/2016	III	JMA-WRIT 000535 - 000566
27	JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Joint Motion (1) To Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) For a Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals	3/11/2016	III	JMA-WRIT 000567 - 000605
28	JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Appendix in Support of Joint Motion (1) To Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third Party	3/11/2016	III IV	JMA-WRIT 000606 - 000750 000751 - 000951

	Complaint Against the Project Design Professionals; and (3) For a Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals			
29	Joinder of Defendant and Third Party Plaintiff Queensridge Towers LLC in JMA Architects Inc. M.A. Engineering Inc. and Harris Consulting Engineers LLC's Joint Motion (1) To Bar any Further Claims Against the Project Design Professionals Base on the Statute of Repose (2) for Judgment on the Pleadings as to Perini 's Second Amended Third Party Complaint Against the Project Design Professionals and (3) for a Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals	3/16/2016	IV	JMA-WRIT 000952 - 000960
30	Third Party Defendant Harris Consulting Engineers, LLC's Joinder To JMA Architect's Inc., M.A. Engineering Inc. And Harris Consulting Engineers, LLC's Joint Motion (1) To Bar Any Further Claims Against The Project Design Professionals Based On The Statute Of Repose; (2) For Judgment On The Pleadings As To Perini's Second Amended Third-Party Complaint Against The Project Design Professionals;	3/25/2016	IV	JMA-WRIT 000961 - 000970

	And (3) For A Good Faith Settlement Determination Baring Existing Claims Against The Project Design Professionals			
31	Special Master Order Regarding Production of Insurance Information for JMA Architects and M.A. Engineering, Inc.	3/31/2016	IV	JMA-WRIT 000971 - 000975
32	Special Master Order Continuing April 13, 2016 Motions of JMA Architects, Inc, M.A. Engineering, Inc. and Harris Consulting Engineers, LLC to May 4, 2016 at 9:00 a.m.	3/31/2016	IV	JMA-WRIT 000976 - 000981
33	Perini Building Company's Opposition to JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals; and Alternative Request for Dismissal of Design Claims as Against Perini	4/1/2016	IV V	JMA-WRIT 000982 - 001000 001001 - 001195
34	Special Master Order Regarding Expert Disclosures	4/1/2016	V	JMA-WRIT 001196 - 001200

	of JMA Architects, Harris Consulting Engineers and M.A. Engineering, Inc.			
35	Third-Party Defendant Azteca Steel, Inc.'s Joinder to Defendant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any further Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini	4/4/2016	V	JMA-WRIT 001201 - 001208
36	Third-Party Defendant Beauty With Pavers, LLC's Joinder to Defendant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any further Claims Against the Project Design Professionals	4/4/2016	V	JMA-WRIT 001209 - 001216

	Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini			
37	Third-Party Defendant Berg Electric's Joinder to Joinder to Perini Building Company's Opposition to MJA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar Any Further Claims Against the Project Design Professions Based on the Statute of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Settlement Determination Barring Existing Claims Against t6he Project Design Professionals	4/4/2016	V	JMA-WRIT 001217 - 001224
38	Third-Party Defendant Cima Construction, Inc.'s Joinder to Defendant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A.	4/4/2016	V	JMA-WRIT 001225 - 001232

	Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any further Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini			
39	Third-Party Defendant Desert Fire Protection, Inc.'s Joinder to Defendant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any further Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional;	4/4/2016	V	JMA-WRIT 001233 - 001240

	and Alternative Request for Dismissal of Design Claims as Against Perini			
40	Third-Party Defendant Diversified Concrete Cutting, Inc.'s Joinder to Defendant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any further Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini	4/4/2016	V	JMA-WRIT 001241 - 001248
41	Third-Party Defendant Giroux Glass, Inc.'s Joinder to Defendant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any further Claims Against the	4/4/2016	VI	JMA-WRIT 001249 - 001256

	Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini			
42	Third-Party Defendant Harris & Ruth Painting Contracting erroneously sued as Harris & Ruth Painting Contractors, Inc. aka Harris & Ruth Painting Contracting, Inc.'s Joinder to Defendant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any further Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional;	4/4/2016	VI	JMA-WRIT 001257 - 001265

	and Alternative Request for Dismissal of Design Claims as Against Perini			
43	Third-Party Defendant Insul-Flow, Inc's Joinder to Perini Building Company's Opposition to MJA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar Any Further Claims Against the Project Design Professions Based on the Statute of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Settlement Determination Barring Existing Claims Against t6he Project Design Professionals	4/4/2016	VI	JMA-WRIT 001266 - 001273
44	Third-Party Defendant Lightning Protection Systems, LLC dba VFC's Joinder to Defendant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any further Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party	4/4/2016	VI	JMA-WRIT 001274 - 001282

	Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini			
45	Third-Party Defendant Las Vegas Concrete Pumping, Inc. dba Pools by Grube's Joinder to Defnedant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any futher Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini	4/4/2016	VI	JMA-WRIT 001283 - 001290
46	Third-Party Defendant Prestige Roofing, Inc.'s Joinder to Defnedant/Third-Party Plaintiff Perini Building Company's Opposition to	4/4/2016	VI	JMA-WRIT 001291 - 001298

	Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any futher Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini			
47	Third-Party Defendant RSAnalysis, Inc.'s Joinder to Defnedant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any futher Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring	4/4/2016	VI	JMA-WRIT 001299 - 001306

	Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini			
48	Third-Party Defendant S3H, Inc.'s Joinder to Defnedant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any futher Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini	4/4/2016	VI	JMA-WRIT 001307 - 001314
49	Third-Party Defendant Silver State Specialties Commercial, LLC's Joinder to Defnedant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's	4/4/2016	VI	JMA-WRIT 001315 - 001322

	joint Motion (1) to Bar Any futher Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as Against Perini			
50	Third-Party Defendant T. Brothers Tile, LLC's Joinder to Defendant/Third-Party Plaintiff Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's joint Motion (1) to Bar Any further Claims Against the Project Design Professionals Based on the Statue of Repose; (2) For Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professional; and Alternative Request for Dismissal of Design Claims as	4/4/2016	VI	JMA-WRIT 001323 - 001330

	Against Perini			
51	Third-Party Defendant Component West, LLC's Joinder to Perini Building Company's Opposition to JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar Any Further Claims Against Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third-Party Company against the Project Design Professionals and (3) for a Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals	4/5/2016	VI	JMA-WRIT 001331 - 001338
52	Third-Party Defendant Hammond Caulking, Inc.'s Joinder to Perini Building Company's Opposition to JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar Any Further Claims Against Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third-Party Company against the Project Design Professionals and (3) for a Good Faith Settlement Determination Barring Existing Claims Against the	4/6/2016	VI	JMA-WRIT 001339 - 001346

	Project Design Professionals			
53	Third-Party Defendant, Insulpro Projects, Inc.'s Joinder to Perini Building Company's Opposition to JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals; and Alternative Request for Dismissal of Design Claims as Against Perini	4/11/2016	VI	JMA-WRIT 001347 - 001353
54	Third-Party Defendant, Southern Nevada Paving, Inc.'s Joinder to Perini Building Company's Opposition to JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design	4/11/2016	VI	JMA-WRIT 001354 - 001360

	Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals; and Alternative Request for Dismissal of Design Claims as Against Perini			
55	Third-Party Defendant, Technicoat Management, Inc.'s Joinder to Perini Building Company's Opposition to JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals; and Alternative Request for Dismissal of Design Claims as Against Perini	4/11/2016	VI	JMA-WRIT 001361 - 001367
56	Special Master Recommendation and District Court Order Requiring Plaintiff to Provide Access to Residential Units for Defense Inspections	4/12/2016	VI	JMA-WRIT 001368 - 001373
57	Atlas Construction Cleanup, Inc., Bomel Construction Co.,	4/13/2016	VI	JMA-WRIT 001374 - 001380

	Inc., Ferguson Enterprises, Inc., Hardstone Construction, LLC, HI-CON, Inc., Lynco Associates, Stewart & Sundell Concrete, Inc., and Stone Designs' Joinder To Perini Building Company's Opposition to Third-Party Defendants JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC'S Joint Motion (1) to Bar any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals; and Alternative Request for Dismissal of Design Claims as Against Perini			
58	Plaintiff's Opposition to JMA Architects, Inc.'s and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the Statute Of' Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3)	4/15/2016	VI	JMA-WRIT 001381 - 001428

	for a Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals			
59	Plaintiff's Evidentiary Objections to Affidavit of Michael Edwards	4/15/2016	VI	JMA-WRIT 001429 - 001438
60	Plaintiff's Request for Judicial Notice in Support of its Opposition to JMA Architects, Inc.'s and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the Statute Of' Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals	4/22/2016	VI	JMA-WRIT 001439 - 001449
61	Perini Building Company's Joinder To Plaintiff's Evidentiary Objections To Affidavit Of Michael Edwards	4/22/2016	VI	JMA-WRIT 001450 - 001497
62	Perini Building Company's Limited Joinder to Plaintiff's Opposition to the Design Professionals' Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the Statute of REpose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint	4/22/2016	VII	JMA-WRIT 001498 - 001534

	Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals			
63	Declaration of Prescott T. Jones, Esq., in Support of Perini Building Company's Limited Joinder to Plaintiff's Opposition to the Design Professionals' Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the Statute of REpose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals	4/22/2016	VII VIII	JMA-WRIT 001535 - 001749 001750 - 001764
64	Perini Building Company's Confidential Supplement To Its Limited Joinder To Plaintiff's Opposition To The Design Professionals' Motion (1) To Bar Any Further Claims Against the Project Design Professionals Based On the Statute of Repose; (2) For Judgment on the Pleadings As to Pereni's Second Amended Third Pary Complaint Against the Project Design Professionals; and (3) For a Good Faith	4/22/2016	VIII	JMA-WRIT 001765 - 001769

	Determination Barring Existing Claims Against the Project Design Professionals			
65	JMA Architects, Inc.'s and M.A. Engineering Inc.'s Evidentiary Objections to Evidence Submitted by Plaintiff's with Their Opposition Dated April 15, 2016	4/27/2016	VIII	JMA-WRIT 001770 - 001773
66	JMA Architects, Inc.'s and M.A. Engineering Inc.'s Evidentiary Objections to Evidence Submitted by Perini Building Company with Their Opposition Dated April 1, 2016	4/27/2016	VIII	JMA-WRIT 001774 - 001780
67	JMA Architects, Inc.'s Motion to Strike Perini Building Company's Untimely Limited Joinder to Plaintiff's Opposition to the Design Professionals Motion (1) to Bar any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Compliant Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals	4/27/2016	VIII	JMA-WRIT 001781 - 001788
68	Reply Memorandum of Queensridge Towers, LLC to One Queensridge Place Homeowners Association,	4/27/2016	VIII	JMA-WRIT 001789 - 001841

	Inc.'s Opposition to JMA Architects, Inc.'s and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the Statute Of' Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals			
69	JMA Architects, Inc.'s and M.A. Engineering, Inc.'s Reply In Support of Their Joint Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the Statute Of' Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals; Countermotion to Strike Fugitive Joinders	4/27/2016	VIII	JMA-WRIT 001842 - 001875
70	JMA Architects, Inc. and M.A. Engineering, Inc. Appendix in Support of Their Reply in Support of Their Response to Plaintiff's Evidentiary Objections to	4/27/2016	VIII IX	JMA-WRIT 001876 - 002000 002001 - 002019

	Declaration of Michael Edwards and to Perini's Joinder Thereto			
71	JMA Architects, Inc. and M.A. Engineering, Inc. Appendix in Support of Their Reply in Support of Their Joint Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the Statute Of' Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals; Counter-Motion to Strike Fugitive Joinders	4/27/2016	IX	JMA-WRIT 002020 - 002156
72	Defendants/Third-Party Plaintiffs Queensridge Towers, LLC's and QT Management, LLC's Evidentiary Objections to Declarations of Sidney Friedman, Michael Wintheiser, and John A. Martin, Jr.	4/28/2016	IX	JMA-WRIT 002157 - 002174
73	Reply Memorandum of Queensridge Towers, LLC to Perini Building Company's Opposition to JMA Architects, Inc.'s and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the	4/28/2016	IX X	JMA-WRIT 002175 – 002250 002251 - 002282

	Statute Of' Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals			
74	Queensridge Towers, LLC's Joinder to JMA Architects, Inc.'s Motion to Strike Perini Building Company's Untimely Limited Joinder to Plaintiff's Opposition to the Design Professionals Motion (1) to Bar any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals	4/29/2016	X	JMA-WRIT 002283 - 002289
75	Perini Building Company's Opposition to JMA Architects, Inc.'s Motion to Strike Perini Building Company's Untimely Joinder to Plaintiff's Opposition to JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Joint Motion (1) to Bar Any Further Claims	4/29/2016	X	JMA-WRIT 002290 - 002340

	Against the Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals			
76	Perini Building Company's Opposition to Queensridge Towers, LLC and QT Management, LLC's Evidentiary Objections of Sidney Friedman, Michael Wintheiser, and John A. Martin, Jr.	4/29/2016	X	JMA-WRIT 002341 - 002376
77	JMA Architects, Inc.'s and M.A. Engineering, Inc.'s Response to Plaintiff's Evidentiary Objections to Declaration of Michael Edwards and to Perini's Joinder Thereto	4/29/2016	X	JMA-WRIT 002377 - 002383
78	Special Master Order Regarding Motion to Compel Production of Redacted Sections of Settlement Agreements	5/2/2016	X	JMA-WRIT 002384 - 002426
79	Perini Building Company's Opposition To JMA Architects, Inc.'s And M.A. Engineering, Inc.'s Evidentiary Objections To Evidence Submitted By Perini Building Company With Their Opposition Dated April 1,	5/2/2016	X	JMA-WRIT 002427 - 002448

	2016			
80	Appendix In Support Of Support Of Perini Building Company's Opposition To JMA Architects, Inc., M.A. Engineering, Inc., And Harris Consulting Engineers, LLC's Joint Motion (1) To Bar Any Further Claims Against The Project Design Professionals Based On The Statute Of Repose; (2) For Judgment On The Pleadings As To Perini's Second Amended Third Party Complaint Against The Project Design Professionals; And (3) For A Good Faith Determination Barring Existing Claims Against The Project Design Professionals; And Alternative Request For Dismissal Of Design Claims As Against Perini	5/2/2016	X XI	JMA-WRIT 002449 – 002500 002501 - 002633
81	Appendix to Perini Building Company's Limited Joinder to Plaintiff's Opposition to the Design Professionals' Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals	5/2/2016	XI XII	JMA-WRIT 002634 – 002750 002751 - 002862

82	Declaration Of Prescott T. Jones, Esq. In Support Of Perini Building Company's Opposition To JMA Architects, Inc., M.A. Engineering, Inc., And Harris Consulting Engineers, LLC's Joint Motion (1) To Bar Any Further Claims Against The Project Design Professionals Based On The Statute Of Repose; (2) For Judgment On The Pleadings As To Perini's Second Amended Third Party Complaint Against The Project Design Professionals; And (3) For A Good Faith Determination Barring Existing Claims Against The Project Design Professionals; And Alternative Request For Dismissal Of Design Claims As Against Perini	5/2/2016	XII	JMA-WRIT 002863 - 002872
83	Amended Declaration of Prescott T. Jones, Esq. in Support of Perini Building Company's Limited Joinder to Plaintiff's Opposition to the Design Professionals' Motion (1) to Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose; (2) for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals; and (3) for a Good Faith Determination Barring Existing Claims	5/2/2016	XII	JMA-WRIT 002873 - 002887

	Against the Project Design Professionals			
84	Corrected Special Master Order Regarding Motion to Compel Production of Redacted Sections of Settlement Agreements	5/3/2016	XII	JMA-WRIT 002888 - 002899
85	Perini Building Company's Objection to the May 3, 2016 Special Master Order Regarding the Motion to Compel Redacted Sections of Settlement Agreements on Order Shortening Time	5/13/2016	XII	JMA-WRIT 002900 - 002996
86	Plaintiff's Joinder to Perini's Objection to the May 3, 2016 Special Master Order Regarding the Motion to Compel Redacted Sections of Settlement Agreements, on an Order Shortening Time	5/19/2016	XII	JMA-WRIT 002997 - 003002
87	JMA Architects, Inc.'s and M.A. Engineering, Inc.'s Opposition to Perini Building Company's Objection to the May 3, 2016 Special Master Order Regarding the Motion to Compel Redacted Sections of Settlement Agreement on Order Shortening Time	5/24/2016	XIII	JMA-WRIT 003003 - 003096
88	Response Memorandum of Queensridge Towers, LLC to Perini Building Company's Objections to Special Master's May 3, 2016 Order re Production of Settlement Agreements	5/24/2016	XIII	JMA-WRIT 003097 - 003113
89	Perini Building Company's Reply Brief in Support of its Objection to the May 3, 2016	5/27/2016	XIII	JMA-WRIT 003114 - 003133

	Special Master Order Regarding the Motion to Compel Redacted Sections of Settlement Agreements on Order Shortening Time			
90	Transcript of Proceedings from June 1, 2016	6/1/2016	XIII	JMA-WRIT 003134 - 003193
91	Transcript of Proceedings from June 10, 2016	6/10/2016	XIII XIV	JMA-WRIT 003194 – 003253 003254 - 003330
92	Perini Building Company's Supplemental Brief In Opposition To The Design Professionals' Joint Motion For A Good Faith Determination	6/14/2016	XIV	JMA-WRIT 003331 - 003343
93	Response of Defendant/Third-Party Plaintiff Queensridge Towers, LLC to Perini Building Company's Supplemental Opposition to JMA Architects, Inc., M.A. Engineering, Inc. and Harris Consulting Engineers, LLC's Joint Motion for Good Faith Settlement Determination Barring Existing Claims Against the Project Design Professionals	6/16/2016	XIV	JMA-WRIT 003344 - 003361
94	JMA Architects, Inc.'s and M.A. Engineering, Inc.'s Reply to Perini Building Company's Supplemental Brief in Opposition to the Design Professionals' Joint Motion for Good Faith Determination	6/17/2016	XIV	JMA-WRIT 003362 - 003414
95	Transcript of Proceedings from June 20, 2016	6/20/2016	XIV XV	JMA-WRIT 003415 - 003500 003501 - 003521

96	Order Denying JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Motion for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals	8/9/2016	XV	JMA-WRIT 003522-003529
97	Order Denying JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Motion to Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose	8/9/2016	XV	JMA-WRIT 003530-003536
98	Order Denying JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Motion for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals	8/9/2016	XV	JMA-WRIT 003537-003543
99	Notice of Entry of Order Denying JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Motion for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals	8/10/2016	XV	JMA-WRIT 003544-003559
100	Notice of Entry of Order Denying JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Motion to Bar Any Further Claims Against the Project Design Professionals	8/10/2016	XV	JMA-WRIT 003560-003574

	Based on the Statute of Repose			
101	Notice of Entry of Order Denying JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Motion for Judgment on the Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals	8/10/2016	XV	JMA-WRIT 003575-003589
102	JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion for Reconsideration of Order Denying Motion for a Good Faith Determination Barring Claims Against the Design Professionals on Order Shortening Time	8/26/2016	XV	JMA-WRIT 003590-003608
103	JMA Architects, Inc. and M.A. Engineering, Inc.'s, Appendix in Support of Their Motion for Reconsideration of Order Denying Motion for a Good Faith Determination Barring Claims Against the Design Professionals on Order Shortening Time	8/26/2016	XV XVI	JMA-WRIT 003609-003750 003751 - 003984
104	JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion to Reconsider the Order to Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose; or in the Alternative, Motion for Judgment on the Pleadings as to Plaintiffs' Second Amended Complaint Against Doe Defendant Design	8/26/2016	XVII	JMA-WRIT 003985-004006

	Professionals on Order Shortening Time			
105	JMA Architects, Inc. and M.A. Engineering, Inc.'s Appendix in Support of Their Motion to Reconsider the Order to Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose; or in the Alternative, Motion for Judgment on the Pleadings as to Plaintiffs' Second Amended Complaint Against Doe Defendant Design Professionals on Order Shortening Time	8/26/2016	XVII XVIII	JMA-WRIT 004007-004235 004236 - 004297
106	JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings or in the Alternative Motion for Judgment on the Pleadings	8/29/2016	XVIII	JMA-WRIT 004298-004337
107	Association's Omnibus Opposition to the Design Professional's Motions for Rehearing	9/9/2016	XVIII	JMA-WRIT 004338-004352
108	Queensridge Towers, LLC's Joinder to JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings or in the Alternative Motion for Judgment on the Pleadings	9/9/2016	XVIII	JMA-WRIT 004353-004356
109	Queensridge Towers, LLC's Joinder to JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion to Reconsider	9/9/2016	XVIII	JMA-WRIT 004357-004361

	the Order to Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose; or in the Alternative, Motion for Judgment on the Pleadings as to Plaintiffs' Second Amended Complaint Against Doe Defendant Design Professionals on Order Shortening Time			
110	Queensridge Towers, LLC's Joinder to JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings or in the Alternative Motion for Judgment on the Pleadings	9/9/2016	XVIII	JMA-WRIT 004362-004365
111	Perini Building Company's Limited Opposition to JMA Architects, Inc. and MA Engineering, Inc.'s Motion to Reconsider the Order to Bar any Further Claims Against the Project Design Professionals Based on The Statute of Repose; or in the Alternative, Motion for Judgment on the Pleadings as to Plaintiff's Second Amended Complaint Against DOE Defendant Design Professionals on Order Shortening Time	9/9/2016	XVIII	JMA-WRIT 004366-004383
112	Perini Building Company's Opposition to JMA Architects, Inc. and MA Engineering, Inc.'s Motion for Reconsideration of Order	9/9/2016	XVIII	JMA-WRIT 004384-004474

	Denying Motion for a Good Faith Determination Barring Claims Against the Design Professionals on Order Shortening Time			
113	Defendant Keenan, Hopkins, Suder & Stowell Contractors, Inc.'s Joinder to Perini Building Company's Opposition to JMA Architects, Inc. and MA. Inc.'s Motion for Consideration of Order Denying Motion for a Goof Faith Determination Barring Claims against the Design Professionals on Order Shortening Time	9/12/2016	XVIII	JMA-WRIT 004475-004480
114	Defendant Quality Mechanical Contractors LLC's Joinder to Perini Building Company's Opposition to JMA Architects, Inc. and MA. Inc.'s Motion for Consideration of Order Denying Motion for a Good Faith Determination Barring Claims Against The Design Professionals on Order Shortening time	9/12/2016	XVIII	JMA-WRIT 004481-004486
115	Third-Party Defendant Slater Design Studios Inc.'s Joinder to Perini Building Company's Opposition to JMA Architect Inc. and MA. Inc.'s Motion for Consideration of Order Denying Motion for a Good Faith Determination Barring Claims Against the Design Professionals on Order Shortening Time	9/12/2016	XIX	JMA-WRIT 004487-004492
116	Defendant Performance	9/12/2016		JMA-WRIT

	Contracting Inc.'s Joinder to Perini Building Company's Opposition to JMA Architects Inc. and MA, Inc.'s Motion for Consideration of Order Denying Motion for a Good Faith Determination Barring Claims Against the Design Professionals on Order Shortening Time		XIX	004493-004498
117	Third-Party Defendant Harris Consulting Engineers, LLC's Joinder to JMA Architects, Inc., and M.A. Engineering, Inc.'s Motion for Reconsideration of Order Denying Motion for Good Faith Determination Barring Claims against the Design Professionals on Order Shortening Time	9/15/2016	XIX	JMA-WRIT 004499-004504
118	Third-Party Defendant Harris Consulting Engineers, LLC's Joinder to JMA Architects, Inc., and M.A. Engineering, Inc.'s Motion to Reconsider the Order to Bar any Further Claims Against the Project Design Professionals Based on the Statute of Repose; or in the Alternative, Motion for Judgment on the Pleadings as to Plaintiffs' Second Amended Complaint against DOE Defendant Design Professionals on Order Shortening Time	9/15/2016	XIX	JMA-WRIT 004505-004510
119	Third-Party Defendant Harris Consulting Engineers, LLC's Joinder to JMA Architects,	9/15/2016	XIX	JMA-WRIT 004511-004516

	Inc., and M.A. Engineering, Inc.'s Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings or in the Alternative Motion for Judgment on the Pleadings			
120	Association Opposition to the Design Professionals Motion for Reconsideration of the Court's Denial of Their Motion on the Pleadings or Alternatively, Motion on the Pleadings	9/16/2016	XIX	JMA-WRIT 004517-004524
121	JMA Architects, Inc. and M.A. Engineering, Inc.'s Reply in Support of Their Motion for Reconsideration of Order Denying Motion for a Good Faith Determination Barring Claims Against the Design Professionals on Order Shortening Time	9/16/2016	XIX	JMA-WRIT 004525-004532
122	JMA Architects, Inc. and M.A. Engineering, Inc.'s Reply in Support of Their Motion to Reconsider the Order to Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose; or in the Alternative, Motion for Judgment on the Pleadings as to Plaintiffs' Second Amended Complaint Against Doe Defendant Design Professionals on Order Shortening Time	9/16/2016	XIX	JMA-WRIT 004533-004560
123	Association's Limited Joinder To Defendant Perini Building Company's Opposition To Jma	9/16/2016	XIX	JMA-WRIT 004561-004566

	Architects, Inc., And M.A. Engineering, Inc.'S Motion To Reconsider The Order Denying The Motion For Judgment On The Pleadings Or, In The Alternative, For Judgment On The Pleadings			
124	Perini Building Company's Opposition to JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings or in the Alternative Motion for Judgment on the Pleadings	9/16/2016	XIX	JMA-WRIT 004567-004605
125	Perini Building Company's Motion to Strike Harris Consulting Engineers, LLC's Untimely Joinders to JMA Architects, Inc. and M.A. Engineering, Inc.'s Motions for Reconsideration on Order Shortening Time	9/20/2016	XIX	JMA-WRIT 004606-004618
126	Third-Party Defendant Harris Consulting Engineers, LLC's Limited Opposition to Perini Building Company's Motion to Strike Untimely Joinders to JMA Architect's Inc. and M.A. Engineering Inc.'s Motions for Reconsideration	9/23/2016	XIX	JMA-WRIT 004619-004625
127	Perini Building Company's Reply Brief in Support of its Motion to Strike Harris Consulting Engineers, LLC's Untimely Joinders to JMA Architects, Inc. and M.A. Engineering, Inc.'s Motions for Reconsideration on Order Shortening Time	9/26/2016	XIX	JMA-WRIT 004626-004636

128	JMA Architects, Inc. and M.A. Engineering, Inc.'s Reply in Support of Their Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings or in the Alternative Motion for Judgment on the Pleadings	9/28/2016	XIX XX	JMA-WRIT 004637-004736 004737 - 004754
129	Transcript of Proceedings from September 28, 2016 Hearing	9/28/2016	XX	JMA-WRIT 004755-004920
130	Transcript of Proceedings from October 5, 2016 Hearing	10/5/2016	XX	JMA-WRIT 004921-004986

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of January, 2017, I submitted for electronic filing and electronic service the foregoing APPENDIX TO PETITIONER JMA ARCHITECTS, INC.'S PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS UNDER NRAP 27(e), VOLUMES I THROUGH XX to the following:

Peter C. Brown, Esq.
Bremer Whyte Brown & O'Meara LLP
1160 N. Town Center Drive, Suite 250
Las Vegas, NV 89144
702-258-6665
pbrown@bremerwhyte.com

Attorneys for Real Party in Interest
PERINI BUILDING COMPANY

Leah Davis

Employee of WOLFENZON ROLLE EDWARDS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of January 2017, a copy of APPENDIX TO PETITIONER JMA ARCHITECTS, INC.'S PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS UNDER NRAP 27(e), VOLUMES I THROUGH XX was hand delivered to the following:

Honorable Joanna S. Kishner, Judge
EIGHTH JUDICIAL DISTRICT COURT, DEPT. XXXI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Leah Dawson
Employee of WOLFENZON ROLLE EDWARDS

TAB – 115

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CLERK OF THE COURT

JOIN
ROBERT E. SCHUMACHER, ESQ.
State Bar No. 7504
BRADLEY G. TAYLOR, ESQ.
State Bar No. 13778
JAMES E. CAVANAUGH, ESQ.
State Bar No. 6929
GORDON & REES LLP
300 South 4th Street, Suite 1550
Las Vegas, Nevada 89101
Telephone: (702) 577-9300
Facsimile: (702) 255-2858
Email: rschumacher@gordonrees.com
btaylor@gordonrees.com
jecavanaugh@gordonrees.com

Attorneys for Third-Party Defendant SLATER DESIGN STUDIOS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada Non-Profit Corporation,

Plaintiff,

vs.

PERINI BUILDING COMPANY, an Arizona Corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation; EXECUTIVE HOMES, INC., A Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada limited liability company; and DOES 1 through 100,

Defendant.

KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation,

Third Party Plaintiff,

vs.

HAMMOND CAULKING, INC., A Nevada Corporation, ZOES 1 through 100;

Third-Party Defendants.

CASE NO. A-12-661825-D
DEPT NO. XXXI

(Electronic Filing Case)

THIRD-PARTY DEFENDANT SLATER DESIGN STUDIOS INC.'S JOINDER TO PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC. AND MA. INC.'S MOTION FOR CONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON ORDER SHORTENING TIME

EXECUTIVE HOMES, INC., A Nevada Corporation,

Third-Party Plaintiff,

vs.

PERINI BUILDING COMPANY, an Arizona corporation; A-1 MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation; BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC., dba BTI TILE & STONE, a California corporation; CHAMPION UTILITY SUB-METERING SOLUTIONS, LLC, A Nevada limited liability company, CLP RESOURCES, INC., a Delaware corporation; CONTRACTORS AND BUILDERS PERSONEL nka EASTRIDGE WORKFORCE SOLUTIONS and EASTRIDGE WORKFORCE TECHNOLOGY, INC., a California corporation; EXPANSION SPECIALTIES, INC., a Nevada corporation; FERGUSON ENTERPRISES, INC., dba FERGUSON BATH & KITCHEN GALLERY, A Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, A Nevada corporation; HARDSTONE CONTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; MARVISTA LANDSCAPE, INC., aka MARVISTA LANDSCAPE CONTRUCTION, INC., a Nevada corporation; LAS VEGAS CONCRETE PUMPING, INC., dba POOLS BY GRUBE, A Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC., aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INSUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada corporation; STO STUDIO DESIGN GROUP, INC. a California corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BRITHERS TILE, LLC, a Nevada limited liability company; XL STEEL, INC., a Nevada corporation; and ROE Individuals 1-100 and ROE Business Entities 2-100,

Third-Party Defendants,

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

JMA-WRIT004488

PERINI BUILDING COMPANY, an Arizona corporation;

Third-Party Plaintiffs,

vs.

A-1 MECHANICAL, a Nevada Corporation; ABDA, INC., A Nevada Corporation; ALLIED WEST CONSTRUCTION, a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP , INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, A Nevada Limited Liability Company; BERGELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BTI STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, A Nevada Corporation; EHB MANAGEMENT CORP., LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., A Nevada Corporation; EXPANSION SEPCIALTIES, A Nevada Corporation; GIROUX GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC., a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC., a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTNING PROTECTION SYSTEMS, LLC dba VFC, INC., a Utah Limited Liability Company; LYNCO ASSOCIATES, a Nevada Corporation; M.A. ENGINEERING, INC., a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC. a Nevada Corporation; QUEENSRIDGE TOWERS, LLC. A Nevada Limited Liability Company; QT MANAGEMENT, LLC., a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC. a Nevada Corporation; RS ANALYSIS, INC. , a California Corporation; S3h, INC., a Nevada Corporation; SIEMENS CORPORATION, a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC.. a Nevada Corporation; TIMBERLINE

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS CENTRAL, A Nevada Corporation, DOE INDIVIDUALS 1100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 310-400.,

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation;

Cross-Claimant,

vs.

EXECUTIVE HOMES, INC., a Nevada corporation,

Cross-Defendant,

EXECUTIVE HOMES, INC., a Nevada corporation,

Counter-Claimant,

vs.

PERINI BUILDING COMPANY, an Arizona corporation,

Counter-Defendant.

THIRD-PARTY DEFENDANT SLATER DESIGN STUDIOS INC.'S JOINDER TO PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC. AND MA. INC.'S MOTION FOR CONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON ORDER SHORTENING TIME

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Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

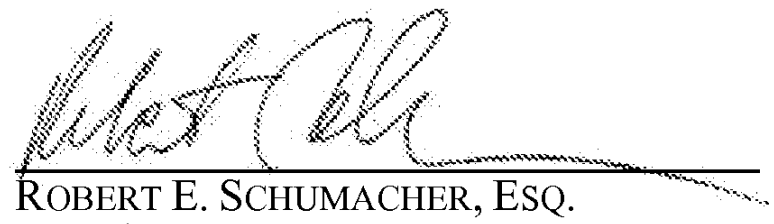
JMA-WRIT004490

Third-Party Defendant SLATER DESIGN STUDIOS, INC. ("SLATER DESIGN"), by and through its attorneys of record, Robert E. Schumacher, Esq. and Bradley G. Taylor, Esq. of the law offices of GORDON & REES LLP, hereby joins in **PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC. AND MA. INC.'S MOTION FOR CONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON ORDER SHORTENING TIME** in the above-entitled matter.

By way of this Joinder, SLATER DESIGN adopts the points and authorities set forth in PERINI's Opposition. If the Opposition becomes moot or is withdrawn by PERINI, the Joinder becomes its own stand-alone opposition and the Court shall consider its points and authorities in conjunction with those in the motion. EDCT.220(d).

DATED this 12th day of September, 2016.

GORDON & REES LLP

By: 

ROBERT E. SCHUMACHER, ESQ.
Nevada State Bar No. 7504
BRADLEY G. TAYLOR, ESQ.
State Bar No. 13778
JAMES E. CAVANAUGH, ESQ.
State Bar No. 6929
300 South 4th Street, Suite 1550
Las Vegas, Nevada 89101

Attorneys for Third-Party Defendant SLATER DESIGN STUDIOS, INC.

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2016, I served a true and correct copy of the foregoing **THIRD-PARTY DEFENDANT SLATER DESIGN STUDIOS INC.'S JOINDER TO PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC. AND MA. INC.'S MOTION FOR CONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON ORDER SHORTENING TIME** on all parties listed in the master service list in accordance with the electronic filing order entered in this matter.

/s/ Andrea Montero
An Employee of Gordon & Rees LLP

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

TAB – 116

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CLERK OF THE COURT

OBJ
ROBERT E. SCHUMACHER, ESQ.
State Bar No. 7504
BRADLEY G. TAYLOR, ESQ.
State Bar No. 13778
JAMES E. CAVANAUGH, ESQ.
State Bar No. 6929
GORDON & REES LLP
300 South 4th Street, Suite 1550
Las Vegas, Nevada 89101
Telephone: (702) 577-9300
Facsimile: (702) 255-2858
Email: rschumacher@gordonrees.com
btaylor@gordonrees.com
jecavanaugh@gordonrees.com

Attorneys for Defendant
PERFORMANCE CONTRACTING, INC.

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

DISTRICT COURT

CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada Non-Profit Corporation,

Plaintiff,

vs.

PERINI BUILDING COMPANY, an Arizona Corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation; EXECUTIVE HOMES, INC., A Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada limited liability company; and DOES 1 through 100,

Defendant.

KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation,

Third Party Plaintiff,

vs.

HAMMOND CAULKING, INC., A Nevada Corporation, ZOES 1 through 100;

Third-Party Defendants.

CASE NO. A-12-661825-D
DEPT NO. XXXI

(Electronic Filing Case)

DEFENDANT PERFORMANCE CONTRACTING INC.'S JOINDER TO PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC. AND MA. INC.'S MOTION FOR CONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON ORDER SHORTENING TIME

JMA-WRIT004493

EXECUTIVE HOMES, INC., A Nevada Corporation,

Third-Party Plaintiff,

vs.

PERINI BUILDING COMPANY, an Arizona corporation; A-1 MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation; BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC., dba BTI TILE & STONE, a California corporation; CHAMPION UTILITY SUB-METERING SOLUTIONS, LLC, A Nevada limited liability company, CLP RESOURCES, INC., a Delaware corporation; CONTRACTORS AND BUILDERS PERSONEL nka EASTRIDGE WORKFORCE SOLUTIONS and EASTRIDGE WORKFORCE TECHNOLOGY, INC., a California corporation; EXPANSION SPECIALTIES, INC., a Nevada corporation; FERGUSON ENTERPRISES, INC., dba FERGUSON BATH & KITCHEN GALLERY, A Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, A Nevada corporation; HARDSTONE CONTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; MARVISTA LANDSCAPE, INC., aka MARVISTA LANDSCAPE CONTRUCTION, INC., a Nevada corporation; LAS VEGAS CONCRETE PUMPING, INC., dba POOLS BY GRUBE, A Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC., aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INSUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada corporation; STO STUDIO DESIGN GROUP, INC. a California corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BRITHERS TILE, LLC, a Nevada limited liability company; XL STEEL, INC., a Nevada corporation; and ROE Individuals 1-100 and ROE Business Entities 2-100,

Third-Party Defendants,

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

PERINI BUILDING COMPANY, an Arizona corporation;

Third-Party Plaintiffs,

vs.

A-1 MECHANICAL, a Nevada Corporation; ABDA, INC., A Nevada Corporation; ALLIED WEST CONSTRUCTION, a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP , INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, A Nevada Limited Liability Company; BERGELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BTI STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, A Nevada Corporation; EHB MANAGEMENT CORP., LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., A Nevada Corporation; EXPANSION SEPCIALTIES, A Nevada Corporation; GIROUX GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC., a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC., a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTNING PROTECTION SYSTEMS, LLC dba VFC, INC., a Utah Limited Liability Company; LYNCO ASSOCIATES, a Nevada Corporation; M.A. ENGINEERING, INC., a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC. a Nevada Corporation; QUEENSRIDGE TOWERS, LLC. A Nevada Limited Liability Company; QT MANAGEMENT, LLC., a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC. a Nevada Corporation; RS ANALYSIS, INC. , a California Corporation; S3h, INC., a Nevada Corporation; SIEMENS CORPORATION, a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC.. a Nevada Corporation; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada

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300 South 4th Street, Suite 1550
Las Vegas, NV 89101

Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS CENTRAL, A Nevada Corporation, DOE INDIVIDUALS 1100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 310-400.,

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation;

Cross-Claimant,

vs.

EXECUTIVE HOMES, INC., a Nevada corporation,

Cross-Defendant,

EXECUTIVE HOMES, INC., a Nevada corporation,

Counter-Claimant,

vs.

PERINI BUILDING COMPANY, an Arizona corporation,

Counter-Defendant.

DEFENDANT PERFORMANCE CONTRACTING INC.'S JOINDER TO PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC. AND MA. INC.'S MOTION FOR CONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON ORDER SHORTENING TIME

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300 South 4th Street, Suite 1550
Las Vegas, NV 89101

Defendant PERFORMANCE CONTRACTING, INC. ("PERFORMANCE CONTRACTING"), by and through its attorneys of record, Robert E. Schumacher, Esq. and Bradley G. Taylor, Esq. of the law offices of GORDON & REES LLP, hereby joins in **PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC. AND MA. INC.'S MOTION FOR CONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON ORDER SHORTENING TIME** in the above-entitled matter.

By way of this Joinder, PERFORMANCE CONTRACTING adopts the points and authorities set forth in PERINI's Opposition. If the Opposition becomes moot or is withdrawn by PERINI, the Joinder becomes its own stand-alone opposition and the Court shall consider its points and authorities in conjunction with those in the motion. EDCT.220(d).

DATED this 12th day of September, 2016.

GORDON & REES LLP

By: _____

ROBERT E. SCHUMACHER, ESQ.
Nevada State Bar No. 7504
BRADLEY G. TAYLOR, ESQ.
State Bar No. 13778
JAMES E. CAVANAUGH, ESQ.
State Bar No. 6929
300 South 4th Street, Suite 1550
Las Vegas, Nevada 89101

Attorneys for Defendant PERFORMANCE CONTRACTING, INC.

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2016, I served a true and correct copy of the foregoing **DEFENDANT PERFORMANCE CONTRACTING INC.'S JOINDER TO PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC. AND MA. INC.'S MOTION FOR CONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON ORDER SHORTENING TIME** on all parties listed in the master service list in accordance with the electronic filing order entered in this matter.

/s/ Andrea Montero

An Employee of Gordon & Rees LLP

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

TAB – 117

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CLERK OF THE COURT

MARTIN J. KRAVITZ, ESQ.
Nevada Bar No. 00083
KRISTOPHER T. ZEPPENFELD, ESQ.
Nevada Bar No. 12144
KRAVITZ, SCHNITZER
& JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, NV 89123
Tele: (702) 362-6666
Fax: (702) 362-2203
mkravitz@ksjattorneys.com
kzeppenfeld@ksjattorneys.com
Attorneys forThird-Party Defendant,
HARRIS CONSULTING ENGINEERS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, IN C., a Nevada non-profit corporation,

Plaintiff,

v.

PERINI BUILDING COMPANY, an Arizona corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada corporation; EXECUTIVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100; Defendants.
EXECUTIVE HOMES, INC., a Nevada corporation,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation, BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC. dba BTI TILE & STONE, a California corporation; DESERT PLASTERING, LLC, a Nevada limited liability company; EXPANSION SPECIALTIES. INC.. a Nevada corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PANTING CONTRACTORS, INC. aka

Case No.: A-12-661825-D

Dept. No.: XXXI

THIRD-PARTY DEFENDANT HARRIS CONSULTING ENGINEERS, LLC'S JOINDER TO JMA ARCHITECTS, INC., AND M.A. ENGINEERING, INC.'S MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON ORDER SHORTENING TIME

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8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada limited liability company; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BROTHERS TILE, LLC, a Nevada limited liability company; Y AMAS CONTROLS SOUTHWEST, INC., a Delaware corporation; and ROES 1-100, Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona corporation,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation: BTI STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, a Nevada Corporation; EHB MANAGEMENT CORP, LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., a Nevada Corporation; EXPANSION SPECIALTIES, a Nevada Corporation; GIROUX

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8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC, a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTNING PROTECTION SYSTEMS, LLC dba VFC, INC., a Utah Limited Liability Company; LYNCO ASSOCIATES, a Nevada Corporation; M.A. ENGINEERING, INC., a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada Limited liability Company; QT MANAGEMENT, LLC, a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS CORPORATION, a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS CENTRAL, a Nevada Corporation; DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 301-400, Third-Party Defendants. QUEENSRIDGE TOWERS, LLC, a Nevada limited liability company; and DOES 1 through 100,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, LLC, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL ELECTRIC, a California Corporation; BOMEL

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8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

CONSTRUCTION CO., INC., a California Corporation; BAJA TILE, INC. dba BTI TILE & STONE, a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DESERT PLASTERING, LLC, a Nevada Limited Liability Company; DIVERSIFIED CONCRETE CUTTING a Nevada Corporation. ELSTER AMCO WATER, a Florida Corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia Corporation; GIROUX GLASS, a California Corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS & RUTH PAINTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California Corporation; HI-CON, INC., a California Corporation; INSUL-FLOW, INC., a California Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada Corporation; LYNCO ASSOCIATES, a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation: RS ANALYSIS. INC.. a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada Limited Liability Company; SLATER DESIGN STUDIOS, INC., a Nevada Corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada Corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada Corporation; RICHARD ALAMANDER dba STONE DESIGNS, an Individual; T. BROTHERS TILE, LLC, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an

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8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

Individual; Y AMAS CONTROLS SOUTHWEST, INC., a Delaware Corporation; and DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-1 00; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURES 302-400,
Third-Party Defendants.

GIROUX GLASS, INC., a California corporation,
Third-Party Plaintiff,

v.

ZOE MATERIAL SUPPLIERS 1 through 10; and MOE PRODUCT MANUFACTURERS 1 through 10,
Third-Party Defendants.

COMES NOW, Third-Party Defendant HARRIS CONSULTING ENGINEERS, LLC. ("Harris"), by and through its counsel of record, Martin J. Kravitz, Esq., and Kristopher T. Zeppenfeld, Esq., of the law firm KRAVITZ, SCHNITZER & JOHNSON, CHTD., and hereby joins JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion for Reconsideration of Order Denying Motion for a Good Faith Determination Barring Claims Against the Design Professionals on Order Shortening Time, which was served on August 26, 2016.

DATED this 15th day of September, 2016.

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.

MARTIN J. KRAVITZ, EQ.
Nevada Bar No. 00083
KRISTOPHER T. ZEPPENFELD, ESQ.
Nevada Bar No. 12144
Attorneys for Third-Party Defendant,
HARRIS CONSULTING ENGINEERS, LLC

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of September, 2016, I served a true and correct copy of the foregoing **THIRD-PARTY DEFENDANT HARRIS CONSULTING ENGINEERS, LLC'S JOINDER TO JMA ARCHITECTS, INC., AND M.A. ENGINEERING, INC.'S MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON ORDER SHORTENING TIME** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

An employee of Kravitz, Schnitzer & Johnson, Chtd.

KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

TAB – 118

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CLERK OF THE COURT

MARTIN J. KRAVITZ, ESQ.
Nevada Bar No. 00083
KRISTOPHER T. ZEPPENFELD, ESQ.
Nevada Bar No. 12144
KRAVITZ, SCHNITZER
& JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, NV 89123
Tele: (702) 362-6666
Fax: (702) 362-2203
mkravitz@ksjattorneys.com
kzeppenfeld@ksjattorneys.com
Attorneys forThird-Party Defendant,
HARRIS CONSULTING ENGINEERS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, IN C., a Nevada non-profit corporation,

Plaintiff,

v.

PERINI BUILDING COMPANY, an Arizona corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada corporation; EXECUTIVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100; Defendants.
EXECUTIVE HOMES, INC., a Nevada corporation,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation, BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC. dba BTI TILE & STONE, a California corporation; DESERT PLASTERING, LLC, a Nevada limited liability company; EXPANSION SPECIALTIES. INC.. a Nevada corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PANTING CONTRACTORS. INC. aka

Case No.: A-12-661825-D

Dept. No.: XXXI

THIRD-PARTY DEFENDANT HARRIS CONSULTING ENGINEERS, LLC'S JOINDER TO JMA ARCHITECTS, INC., AND M.A. ENGINEERING, INC.'S MOTION TO RECONSIDER THE ORDER TO BAR ANY FURTHER CLAIMS AGAINST THE PROJECT DESIGN PROFESSIONALS BASED ON THE STATUTE OF REPOSE; OR IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFFS' SECOND AMENDED COMPLAINT AGAINST DOE DEFENDANT DESIGN PROFESSIONALS ON ORDER SHORTENING TIME

HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada limited liability company; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BROTHERS TILE, LLC, a Nevada limited liability company; Y AMAS CONTROLS SOUTHWEST, INC., a Delaware corporation; and ROES 1-100, Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona corporation,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation: BTI STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, a Nevada Corporation; EHB MANAGEMENT CORP, LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., a Nevada Corporation; EXPANSION SPECIALTIES, a Nevada Corporation; GIROUX

KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC, a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTNING PROTECTION SYSTEMS, LLC dba VFC, INC., a Utah Limited Liability Company; LYNCO ASSOCIATES, a Nevada Corporation; M.A. ENGINEERING, INC., a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada Limited liability Company; QT MANAGEMENT, LLC, a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS CORPORATION, a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS CENTRAL, a Nevada Corporation; DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 301-400, Third-Party Defendants. QUEENSRIDGE TOWERS, LLC, a Nevada limited liability company; and DOES 1 through 100,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, LLC, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL ELECTRIC, a California Corporation; BOMEL

KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

CONSTRUCTION CO., INC., a California Corporation; BAJA TILE, INC. dba BTI TILE & STONE, a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DESERT PLASTERING, LLC, a Nevada Limited Liability Company; DIVERSIFIED CONCRETE CUTTING a Nevada Corporation. ELSTER AMCO WATER, a Florida Corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia Corporation; GIROUX GLASS, a California Corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS & RUTH PAINTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California Corporation; HI-CON, INC., a California Corporation; INSUL-FLOW, INC., a California Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada Corporation; LYNCO ASSOCIATES, a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation: RS ANALYSIS. INC.. a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada Limited Liability Company; SLATER DESIGN STUDIOS, INC., a Nevada Corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada Corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada Corporation; RICHARD ALAMANDER dba STONE DESIGNS, an Individual; T. BROTHERS TILE, LLC, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an

KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

Individual; Y AMAS CONTROLS SOUTHWEST, INC., a Delaware Corporation; and DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-1 00; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURES 302-400,
Third-Party Defendants.

GIROUX GLASS, INC., a California corporation,
Third-Party Plaintiff,

v.

ZOE MATERIAL SUPPLIERS 1 through 10; and MOE PRODUCT MANUFACTURERS 1 through 10,
Third-Party Defendants.

COMES NOW, Third-Party Defendant HARRIS CONSULTING ENGINEERS, LLC. ("Harris"), by and through its counsel of record, Martin J. Kravitz, Esq., and Kristopher T. Zeppenfeld, Esq., of the law firm KRAVITZ, SCHNITZER & JOHNSON, CHTD., and hereby joins JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion to Reconsider the Order to Bar any Further Claims Against the Project Design Professionals Based on the Statute of Repose; or in the alternative, Motion for Judgment on the Pleadings as to Plaintiff's Second Amended Complaint Against Doe Defendant Design Professionals on Order Shortening Time, which was served on August 26, 2016.

DATED this 15th day of September, 2016.

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.

MARTIN J. KRAVITZ, EQ.
Nevada Bar No. 00083
KRISTOPHER T. ZEPPENFELD, ESQ.
Nevada Bar No. 12144
Attorneys for Third-Party Defendant,
HARRIS CONSULTING ENGINEERS, LLC

KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

JMA-WRIT004509

CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of September, 2016, I served a true and correct copy of the foregoing **THIRD-PARTY DEFENDANT HARRIS CONSULTING ENGINEERS, LLC'S JOINDER TO JMA ARCHITECTS, INC., AND M.A. ENGINEERING, INC.'S MOTION TO RECONSIDER THE ORDER TO BAR ANY FURTHER CLAIMS AGAINST THE PROJECT DESIGN PROFESSIONALS BASED ON THE STATUTE OF REPOSE; OR IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFFS' SECOND AMENDED COMPLAINT AGAINST DOE DEFENDANT DESIGN PROFESSIONALS ON AN ORDER SHORTENING TIME** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

An employee of Kravitz, Schnitzer & Johnson, Chtd.

KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

TAB – 119

MARTIN J. KRAVITZ, ESQ.
Nevada Bar No. 00083
KRISTOPHER T. ZEPPENFELD, ESQ.
Nevada Bar No. 12144
KRAVITZ, SCHNITZER
& JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, NV 89123
Tele: (702) 362-6666
Fax: (702) 362-2203
mkravitz@ksjattorneys.com
kzeppenfeld@ksjattorneys.com
Attorneys forThird-Party Defendant,
HARRIS CONSULTING ENGINEERS, LLC

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, IN C., a Nevada non-profit corporation,

Plaintiff,

v.

PERINI BUILDING COMPANY, an Arizona corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada corporation; EXECUTIVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100; Defendants.
EXECUTIVE HOMES, INC., a Nevada corporation,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation, BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC. dba BTI TILE & STONE, a California corporation; DESERT PLASTERING, LLC, a Nevada limited liability company; EXPANSION SPECIALTIES. INC.. a Nevada corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PANTING CONTRACTORS, INC. aka

Case No.: A-12-661825-D

Dept. No.: XXXI

THIRD-PARTY DEFENDANT HARRIS CONSULTING ENGINEERS, LLC'S JOINDER TO JMA ARCHITECTS, INC., AND M.A. ENGINEERING, INC.'S MOTION TO RECONSIDER THE ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE MOTION FOR JUDGMENT ON THE PLEADINGS

HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada limited liability company; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BROTHERS TILE, LLC, a Nevada limited liability company; Y AMAS CONTROLS SOUTHWEST, INC., a Delaware corporation; and ROES 1-100, Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona corporation,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation: BTI STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, a Nevada Corporation; EHB MANAGEMENT CORP, LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., a Nevada Corporation; EXPANSION SPECIALTIES, a Nevada Corporation; GIROUX

KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC, a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTNING PROTECTION SYSTEMS, LLC dba VFC, INC., a Utah Limited Liability Company; LYNCO ASSOCIATES, a Nevada Corporation; M.A. ENGINEERING, INC., a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada Limited liability Company; QT MANAGEMENT, LLC, a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS CORPORATION, a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS CENTRAL, a Nevada Corporation; DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 301-400, Third-Party Defendants. QUEENSRIDGE TOWERS, LLC, a Nevada limited liability company; and DOES 1 through 100,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, LLC, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL ELECTRIC, a California Corporation; BOMEL

KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

CONSTRUCTION CO., INC., a California Corporation; BAJA TILE, INC. dba BTI TILE & STONE, a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DESERT PLASTERING, LLC, a Nevada Limited Liability Company; DIVERSIFIED CONCRETE CUTTING a Nevada Corporation. ELSTER AMCO WATER, a Florida Corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia Corporation; GIROUX GLASS, a California Corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS & RUTH PAINTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California Corporation; HI-CON, INC., a California Corporation; INSUL-FLOW, INC., a California Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada Corporation; LYNCO ASSOCIATES, a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation: RS ANALYSIS. INC.. a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada Limited Liability Company; SLATER DESIGN STUDIOS, INC., a Nevada Corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada Corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada Corporation; RICHARD ALAMANDER dba STONE DESIGNS, an Individual; T. BROTHERS TILE, LLC, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an

KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

Individual; Y AMAS CONTROLS SOUTHWEST, INC., a Delaware Corporation; and DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-1 00; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURES 302-400,
Third-Party Defendants.
GIROUX GLASS, INC., a California corporation,
Third-Party Plaintiff,

v.

ZOE MATERIAL SUPPLIERS 1 through 10; and MOE PRODUCT MANUFACTURERS 1 through 10,
Third-Party Defendants.

COMES NOW, Third-Party Defendant HARRIS CONSULTING ENGINEERS, LLC. ("Harris"), by and through its counsel of record, Martin J. Kravitz, Esq., and Kristopher T. Zeppenfeld, Esq., of the law firm KRAVITZ, SCHNITZER & JOHNSON, CHTD., and hereby joins JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings, or in the alternative, Motion for Judgment on the Pleadings, which was served on August 29, 2016.

DATED this 15th day of September, 2016.

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.

MARTIN J. KRAVITZ, ESQ.
Nevada Bar No. 00083
KRISTOPHER T. ZEPPENFELD, ESQ.
Nevada Bar No. 12144
Attorneys for Third-Party Defendant,
HARRIS CONSULTING ENGINEERS, LLC

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2016, I served a true and correct copy of the foregoing **THIRD-PARTY DEFENDANT HARRIS CONSULTING ENGINEERS, LLC'S JOINDER TO JMA ARCHITECTS, INC., AND M.A. ENGINEERING, INC.'S MOTION TO RECONSIDER THE ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE MOTION FOR JUDGMENT ON THE PLEADINGS** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

An employee of Kravitz, Schnitzer & Johnson, Chtd.

KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

TAB – 120

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CLERK OF THE COURT

OPPS
BRUCE MAYFIELD, ESQ., NVB:007440
MICHAEL C. RUBINO, ESQ., NVB:005758
DANIEL H. CLIFFORD, ESQ., NVB: 007656
FENTON GRANT MAYFIELD KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900 / (702) 947-4901 Fax

(Pro Hac Vice)
BRAD BRIAN, ESQ.
MARK H. EPSTEIN, ESQ.
BRIONNA N. NED, ESQ.
MUNGER TOLLES & OLSON, LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071-1560
(213) 683-9100 / (213) 687-3702 Fax
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada non-profit corporation,

Plaintiff,

v.

PERINI BUILDING COMPANY, an Arizona corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada corporation; EXECUTIVE HOMES INC., a Nevada corporation; QUEENSRIDGE TOWERS, LLC, a Nevada limited liability company; F. RODGERS INSULATION OF NEVADA, INC.; a Nevada corporation; PERFORMANCE CONTRACTING, INC., a Kansas corporation; QUALITY MECHANICAL CONTRACTORS LLC, a Delaware limited liability company; and DOES 4 through 100;

Defendants.

KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation;

Third-Party Plaintiff,

v.

HAMMOND CAULKING, INC., a Nevada

CASE NO.: A-12-661825-D
DEPT NO.: XXXI

(Electronic Filing Case)

ASSOCIATION OPPOSITION TO THE DESIGN PROFESSIONALS MOTION FOR RECONSIDERATION OF THE COURT'S DENIAL OF THEIR MOTION ON THE PLEADINGS OR ALTERNATIVELY, MOTION ON THE PLEADINGS

Hearing Date: **10/5/16**
Hearing Time: **9:00 a.m.**

Corporation; ZOES 1 through 100,

Third-Party Defendant.

EXECUTIVE HOMES, INC., a Nevada corporation;

Third-Party Plaintiff,

v.

PERINI BUILDING COMPANY, an Arizona corporation; A-I MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation; BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC. dba BTI TILE & STONE, a California corporation; CHAMPION UTILITY SUB-METERING SOLUTIONS, LLC, a Nevada limited liability company; CLP RESOURCES, INC., a Delaware corporation; CONTRACTORS AND BUILDERS PERSONNEL nka EASTRIDGE WORKFORCE SOLUTIONS and EASTRIDGE WORKFORCE TECHNOLOGY, INC., a California corporation; EXPANSION SPECIALTIES, INC., a Nevada corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PAINTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; MARVISTA LANDSCAPE, INC. aka MARVISTA LANDSCAPE CONSTRUCTION, INC., a Nevada corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHER NEVADA PAVING, INC., aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL

FENTON GRANT MAYFIELD
KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900

JMA-WRIT004518

CONCRETE, INC., a Nevada corporation; STO DESIGN GROUP, INC., a California corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BROTHERS TILE, LLC, a Nevada limited liability company; XL STEEL, INC., a Nevada corporation; and ROE Individuals 1-100 and ROE Business Entities 2-100;

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation;

Third-Party Plaintiff,

v.

A-I MECHANICAL, a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BTl STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, a Nevada Corporation; EHB MANAGEMENT CORP., LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., a Nevada Corporation; EXPANSION SPECIALTIES, a Nevada Corporation; GIROUX GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC, a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC., aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTING PROTECTION SYSTEMS, LLC dba VFC, INC., a Utah Limited Liability Company; LYNCH ASSOCIATES, a Nevada Corporation; NIBCO, an Indiana

FENTON GRANT MAYFIELD
KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900

JMA-WRIT004519

Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada Limited Liability Company; QT MANAGEMENT, LLC, a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS CORPORATION, a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS CENTRAL, a Nevada Corporation; DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 301-400;

Third-Party Defendants.

NIBCO INC., an Indiana Corporation,

Fourth-Party Plaintiff,

v.

NOVASFER, S.R.L., an Italian single member company; HERZ VALVES UK LTD., a British entity; DOES 1 through 10; and ROE BUSINESSES 1 through 15, inclusive,

Fourth-Party Defendants.

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FENTON GRANT MAYFIELD
KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900

MEMORANDUM OF POINTS AND AUTHORITIES

COMES NOW plaintiff One Queensridge Place Homeowners' Association, Inc. ("Association"), by and through Fenton Grant Mayfield Kaneda & Litt, LLP, its attorneys of record, with its Opposition the Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings or in the Alternative Motion for Judgment on the Pleading filed by third-party defendants JMA Architects, Inc. and M.A. Engineering Inc. (collectively "JMA") as follows:

ISSUE PRESENTED

Should this Court grant a late filed motion for rehearing of the Court's denial of JMA's alleged motion on the pleadings or enter judgment on the pleadings in favor of JMA "dismissing the design claims of Plaintiff HOA against PBC" where JMA does not specify which, if any, of the Association's claims are the subject of the motion and where JMA makes no comment of error in the Court's order but merely rehashes its prior argument.

STATEMENT OF FACTS

The Association is the governing body of a condominium common-interest ownership association formed pursuant to NRS Chapter 116. It has brought an action for damages arising out of the defective construction of the "Subject Property" that was developed in Las Vegas Nevada by Queensridge Towers, LLC ("QT") with Perini Building Company ("Perini") and Executive Homes, Inc. ("EHC") as the general contractors. JMA provided design services. JMA has not been named as a direct party in the Association's action.

ARGUMENTS

1. The Motion for Reconsideration must fail Because JMA has not Identified the Order for Which it Seeks Reconsideration.

Nowhere in the multiple pages of the motion and included memorandum of points and authorities does JMA specify the order for which it seeks reconsideration. No order is identified and no order is attached. Accordingly, the Association is at a loss as to those arguments JMA makes regarding the Court's order. Without such supporting documentation, the Court must deny JMA's motion for vagueness.

...

FENTON GRANT MAYFIELD
KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900

2. The Motion for Reconsideration must fail Because it Fails to Meet the Requirement of EDCR 2.24.

JMA asserts the motion for reconsideration has been filed pursuant to EDCR 2.24.[1] It does not.

EDCR 2.24 specifies:

> A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief *within 10 days after service of written notice of the order or judgment* unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the 30-day period for filing a notice of appeal from a final order or judgment.[2]

The motion for reconsideration was filed on August 29, 2016. Giving JMA the benefit of the doubt, the motion for rehearing was a least one day late from the notice of entry of the Court's August 3, 2016 order.

3. JMA Fails to Identify Which, if any, of the Association's Claims Against Perini are Design Based.

Buried on the very last page of JMA's P&As request to have the Court "enter judgment on the pleadings dismissing the design claims of Plaintiff HOA against PBC…" JMA fails to provide the Court with any information that would allow the Court to make a cognizable order as to which claims JMA seeks to have dismissed. In reality what JMA seeks is rulings which would not provide any meaningful guidance for the parties. The Court should not rise to this inappropriate challenge.

4. JMA's Motion to Reconsider re Plaintiff Seeks an Improper Advisory Opinion.

The Court must not render advisory opinions. It's duty is to resolve actual controversies by an enforceable judgment.[3]

Here, the Association has not named JMA as a party defendant in the underlying case. Until such time as that should happen, JMA's arguments are premature, JMA is attempting a prophylactic opposition to an event that may never happen. But, should it happen, JMA would have ample

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[1]Motion P&A at 9:13.
[2]Added emphasis.
[3]*NCAA v. University of Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981).

FENTON GRANT MAYFIELD
KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900

opportunity to raise whatever defenses it may have at that time.

CONCLUSION

JMA is dissatisfied with the Court's August 3, 2016 order denying JMA's Motion for a Good Faith Determination Barring Existing Claims Against the Project Design Professionals. However, a party's dissatisfaction, by itself, is no cause for the Court to entertain a motion for reconsideration.

In this motion for reconsideration JMA fails to state any supportable reason for the Court to retract its previously correct ruling on JMA's prior motion and, in virtually every instance, JMA, contrary to Nevada law, either reargues that which it previously argued or raises new issues that never have been before the Court.

Dated this 16th day of September, 2016.

FENTON GRANT MAYFIELD KANEDA & LITT, LLP

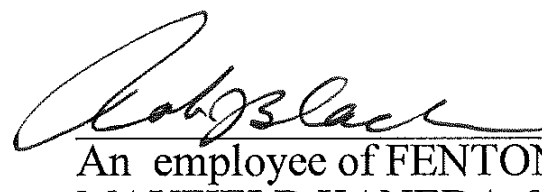
By: _____

BRUCE MAYFIELD, ESQ., NVB:007440
MICHAEL C. RUBINO, ESQ., NVB:005758
DANIEL H. CLIFFORD, ESQ., NVB: 007656
1955 Village Center Circle
Las Vegas, Nevada 89134

Attorneys for Plaintiff

CERTIFICATE OF E-FILING/E-SERVICE

I hereby certify that on the 16th day of September, 2016, I caused to be submitted **ASSOCIATION OPPOSITION TO THE DESIGN PROFESSIONALS MOTION FOR RECONSIDERATION OF THE COURT'S DENIAL OF THEIR MOTION ON THE PLEADINGS OR ALTERNATIVELY, MOTION ON THE PLEADINGS** to the court for electronic filing and for service via Wiznet upon the parties on the Court's service list for the above-referenced case.



An employee of FENTON GRANT
MAYFIELD KANEDA & LITT, LLP

F:\Queensridge_Pleadings\Assn Oppo to JMA Mot for ReHearing- Judgmnt on the Pldgs.wpd

FENTON GRANT MAYFIELD
KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900

TAB – 121

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CLERK OF THE COURT

RIS
MICHAEL M. EDWARDS, ESQ.
Nevada Bar No. 6281
ROBERT A. SCHAFFER, ESQ.
Nevada Bar No. 10215
NICHOLAS L. HAMILTON, ESQ.
Nevada Bar No. 10893
Wolfenzon Rolle Edwards
6725 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
(702)836-3138
medwards@wolfenzon.com
rschaffer@wolfenzon.com
nhamilton@wolfenzon.com

Attorneys for Third-Party Defendants
JMA Architects, Inc. and M.A. Engineering Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada Non-Profit Corporation,

Plaintiff,

vs.

PERINI BUILDING COMPANY, an Arizona Corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation; EXECUTVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100,

Defendants.

AND ALL RELATED CLAIMS

CASE NO.: A-12-661825-D

Dept. No. XXXI

JMA ARCHITECTS, INC. AND M.A. ENGINEERING, INC.'S REPLY IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON AN ORDER SHORTENING TIME

Comes now Third-Party Defendants JMA ARCHITECTS, INC. ("JMA") and M.A. EINGNEERING, INC., by and through their attorneys of record, WOLFENZON, ROLLE EDWARDS, and files this **REPLY IN SUPPORT OF THEIR MOTION FOR**

JMA-WRIT004525

RECONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON AN ORDER SHORTENING TIME.

This Reply is based upon the points and authorities attached hereto, the papers and pleadings on file, and any oral argument presented to the Court.

DATED this 16th day of September, 2016

WOLFENZON ROLLE EDWARDS

MICHAEL M. EDWARDS, ESQ.
Nevada Bar No. 6281
ROBERT A. SCHAFFER, ESQ.
Nevada Bar No. 10215
NICHOLAS HAMILTON, ESQ.
Nevada Bar No. 10893
6725 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
(702) 836-3138

Attorneys for Third-Party Defendants
JMA Architects, Inc. and M.A. Engineering Inc.

JMA-WRIT004526

MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

A. JMA AND MA'S MOTION FOR WAS REHEARING AND RECONSIDERATION

Plaintiffs assert JMA Architects, Inc. ("JMA") and MA Engineering ("MA") omitted a step in filing a motion for reconsideration. However, JMA and MA's MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS (hereinafter "Motion to Reconsider") was filed pursuant to EDCR 2.24. JMA and MA specifically asked this court to rehear and reconsider the underlying Motion For Good Faith Determination Barring Claims against the design professionals which was originally filed on March 11, 2016 and heard on June 20, 2016. (See Motion to Reconsider Order Denying Good Faith Determination" at page 18:4-5). JMA and MA requested this motion be heard on an order shortening time, and the fact the order shortening time was issued suggests this honorable Court has agreed to rehear the underlying motion.

B. TIMING OF THE MOTIONS MAKES SENSE.

Perini Building Company ("PBC") complains JMA and MA's Motion to Reconsider Order Denying Good Faith Determination which was brought on an order shortening time is curious because JMA and MA also filed a Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings was not brought on an order shortening time. They cannot fathom how that motion would not impact the parties' trial preparation while this one will. It is simple, if this motion is granted, the subsequent motion will become irrelevant. At the hearing on the original motions, which were included in one pleading, the attorneys at the hearing frequently

JMA-WRIT004527

argued the facts and law asserted and applicable to just one motion, in conjunction with the other motion. It is JMA and MA's position this created confusion and detracted from the purpose of the Motion for Determination of Good Faith settlement, which if granted, will result in all claims being barred by *Otak Nevada, LLC. v. Eighth Judicial District Court*, 129 Nev. Adv. Op 86, 312 P.2d 491 (2013).

C. THE MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT SHOULD BE RECONSIDERED AND GRANTED.

1) Even Though The Plaintiff has generically alleged design issues They have failed to perfect any claims against the Design Professionals

As complainants, the Plaintiff has the right to decide for themselves whom they shall sue. Here they could have sued the settling parties directly and they should have as PBC is not liable for design defects if they simply followed the plans. (See JMA and MA's Motion to Reconsider the Order Denying Motion for Judgment on the Pleadings, filed on August 29, 2016, and incorporated by reference as though fully set forth herein.) Plaintiffs chose not to sue the design professionals before the expiration of the statute of repose and their vague allegations against the DOE architect and engineer in their Complaint(s) was not a proper use of a DOE provision and cannot result in the substitution of the settling parties for the DOES because the *Nurenberger Hercules- Werke GMBH v. Virostek*, 107 Nev. 873, 822 P.2d 1100, 1105-06 (1991)[1] requirements of were not met. Moreover, Plaintiff concurs with JMA and MA this is not a design case when they stated "To be fair, Plaintiff's experts concur with that general analysis" that the designs were proper and any defects at One Queensridge Place are the result of poor

[1] "In summary, the effective utilization of Rule 10(a) requires: (1) pleading fictitious or doe defendants in the caption of the complaint; (2) pleading the basis for naming defendants by other than their true identity, and clearly specifying the connection between the intended defendants and the conduct, activity, or omission upon which the cause of action is based; and (3) exercising reasonable diligence in ascertaining the true identity of the intended defendants and promptly moving to amend the complaint in order to substitute the actual for the fictional. Satisfaction of all three of the aforementioned elements is necessary to the granting of an amendment that relates back to the date of the filing of the original complaint. *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 822 P.2d 1100, 1105-06 (1991)" Elements (2) and (3) were not met by Plaintiffs.

JMA-WRIT004528

construction, not poor design. (See Plaintiff's Opposition to the Motion for Good Faith Settlement Determination filed on April 15, 2015, page 12, lines 21-23 and footnote 5).

2) PBC does not have valid claims against the Design professionals.

PBC is prohibited by the *Spearin* doctrine from being liable to Plaintiffs for following the plans. *See United States v. Spearin,* 248 U.S. 132, 136, 39 S. Ct. 59, 63 L. Ed. 166, 54 Ct. Cl. 187 (1918) (impliedly adopted by the Nevada Supreme Court by allowing contractors to rely upon the doctrine in *Halcrow, Inc. v. Eighth Judicial District Court of the State*, 302 P.3d 1148, 1154 n.3 (Nev 2013 Additionally, NRS 40.640(1) prevents PBC from being liable to Plaintiffs for those who are not their agent, employee or subcontractor. As such, it will be impossible for Plaintiffs to recover directly from PBC for design issues of the settling parties with whom it had no contract. If PBC is not liable to Plaintiffs for design issues, then PBC has no design claims to pass on to the settling parties. Just because Plaintiffs chose not to timely sue the design professionals directly does not make PBC suddenly liable for the design professionals' work – even if the court assumes arguendo the design professionals' work was terrible and in breach of the standard of care. It cannot be forgotten PBC has also agreed with the design professionals that they do not believe the design claims have merit. (See Declarations of PBC's Experts Sidney Friedman, Michael Wintheiser and John Martin attached to PBC's Opposition to the Motion for Good Faith Settlement Determination filed on *April* 1, 2016).

Further, PBC's Third Party Complaint is wholly improper as a matter of law because the Third Party practice devise is not available in a case involving allegedly joint or concurrent tort feasors having no legal relation to one another, and each allegedly having a duty of care to the injured party. *Reid v. Royal,* 80 Nev 137 (1964) at 141; See also NRCP 14(a).

JMA-WRIT004529

3) **This Court Failed to Adequately Consider All Applicable Criteria when ruling upon the Motion for A Good Faith Determination Barring Claims against the Design Professionals**.

This motion asserted this court put undue weight on the total amount of settlement and potential assets available given the weaknesses in the claims against the design professionals, and given the fact complete recovery can be afforded to others through QT with whom the design professionals did enter a contract. If Plaintiffs agree this is not a design case and the issues are caused by faulty construction, and if PBC's experts believe any assertions of design claims by Plaintiffs experts do not have merit, then payment of $750,000 is extraordinarily generous. Because liability does not exist, all of the other MGM factors such as amount of insurance, allocation of settlement proceeds, and the financial condition of the settling defendants becomes far less important. When giving the weakness of PBC's claim against the settling defendants proper weight, it is clear the prior decision denying the motion for good faith settlement determination was erroneous.

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II.

CONCLUSION

Based on the foregoing, JMA and MA respectfully request this honorable court to rehear and reconsider the motion, and to enter a finding the subject settlement was in good faith.

DATED this 16th day of September, 2016

WOLFENZON ROLLE EDWARDS



MICHAEL M. EDWARDS, ESQ.
Nevada Bar No. 6281
ROBERT A. SCHAFFER, ESQ.
Nevada Bar No. 10215
NICHOLAS HAMILTON, ESQ.
Nevada Bar No. 10893
6725 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
(702) 836-3138

Attorneys for Third-Party Defendants
JMA Architects, Inc. and M.A. Engineering Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of September, 2016, I served a true and correct copy of the foregoing **JMA ARCHITECTS, INC. AND M.A. ENGINEERING, INC.'S REPLY IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION FOR A GOOD FAITH DETERMINATION BARRING CLAIMS AGAINST THE DESIGN PROFESSIONALS ON AN ORDER SHORTENING TIME** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

An Employee of WOLFENZON ROLLE EDWARDS

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CLERK OF THE COURT

RIS
MICHAEL M. EDWARDS, ESQ.
Nevada Bar No. 6281
ROBERT A. SCHAFFER, ESQ.
Nevada Bar No. 10215
NICHOLAS L. HAMILTON, ESQ.
Nevada Bar No. 10893
Wolfenzon Rolle Edwards
6725 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
(702)836-3138
medwards@wolfenzon.com
rschaffer@wolfenzon.com
nhamilton@wolfenzon.com

Attorneys for Third-Party Defendants
JMA Architects, Inc. and M.A. Engineering Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada Non-Profit Corporation,

Plaintiff,

vs.

PERINI BUILDING COMPANY, an Arizona Corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation; EXECUTVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100,

Defendants.

AND ALL RELATED CLAIMS

CASE NO.: A-12-661825-D

Dept. No. XXXI

JMA ARCHITECTS, INC. AND M.A. ENGINEERING, INC.'S REPLY IN SUPPORT OF THEIR MOTION TO RECONSIDER THE ORDER TO BAR ANY FURTHER CLAIMS AGAINST THE PROJECT DESIGN PROFESSIONALS BASED ON THE STATUTE OF REPOSE; OR IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFFS' SECOND AMENDED COMPLAINT AGAINST DOE DEFENDANT DESIGN PROFESSIONALS ON ORDER SHORTENING TIME

Comes now Third-Party Defendants JMA ARCHITECTS, INC. ("JMA") and M.A. EINGNEERING, INC., by and through their attorneys of record, WOLFENZON, ROLLE EDWARDS, and files this **REPLY IN SUPPORT OF THEIR MOTION TO RECONSIDER**

JMA-WRIT004533

THE ORDER TO BAR ANY FURTHER CLAIMS AGAINST THE PROJECT DESIGN PROFESSIONALS BASED ON THE STATUTE OF REPOSE; OR IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFFS' SECOND AMENDED COMPLAINT AGAINST DOE DEFENDANT DESIGN PROFESSIONALS ON ORDER SHORTENING TIME.

This Reply is based upon the points and authorities attached hereto, the papers and pleadings on file, and any oral argument presented to the Court.

DATED this 16th day of September, 2016

WOLFENZON ROLLE EDWARDS

MICHAEL M. EDWARDS, ESQ.
Nevada Bar No. 6281
ROBERT A. SCHAFFER, ESQ.
Nevada Bar No. 10215
NICHOLAS HAMILTON, ESQ.
Nevada Bar No. 10893
6725 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
(702) 836-3138

Attorneys for Third-Party Defendants
JMA Architects, Inc. and M.A. Engineering Inc.

DECLARATION OF MICHAEL EDWARDS, ESQ.

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

I, Michael Edwards, Esq, being duly sworn, depose and state the following:

1. I am an attorney at law duly licensed to practice before all courts in the State of Nevada. I am a partner with the firm Wolfenzon Rolle Edwards, attorneys of record for Defendant JMA Architects, Inc. (hereinafter "JMA") and M.A. Engineering, Inc. I have personal knowledge of the facts stated herein and could competently testify thereto if called as a witness.

2. I submit this declaration in support of **JMA ARCHITECTS, INC. AND M.A. ENGINEERING, INC.'S MOTION TO RECONSIDER THE ORDER TO BAR ANY FURTHER CLAIMS AGAINST THE PROJECT DESIGN PROFESSIONALS BASED ON THE STATUTE OF REPOSE; OR IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFFS' SECOND AMENDED COMPLAINT AGAINST DOE DEFENDANT DESIGN PROFESSIONALS ON ORDER SHORTENING TIME.**

3. Attached to JMA's to this Reply at "**Exhibit A**" are true and correct copies of pertinent portions of the June 10, 2016 transcript of proceedings, pages 84-87.

FURTHER AFFIANT SAYETH NOT.

Dated this 16th day of September, 2016

Michael Edwards, Esq.

JMA-WRIT004535

MEMORANDUM OF POINTS AND AUTHORITIES

I.
ARGUMENT

A. JMA AND MA'S MOTION FOR WAS RECONSIDERATION, OR IN THE ALTERNATIVE A MOTION FOR JUDGMENT ON THE PLEADINGS

JMA ARCHITECTS, INC., MA. ENGINEERING, INC. AND HARRIS CONSULTING ENGINEERS, LLC'S JOINT MOTION (1) TO BAR ANY CLAIMS AGAINST THE PROJECT DESIGN PROFESSIONALS BASED UPON THE STATUTE OF REPOSE; (2) FOR JUDGMENT ON THE PLEADINGS AS TO PERINI'S SECOND AMENDED THIRD PARTY COMPLAINT AGAINST THE PROJECT DESIGN PROFESSIONALS; AND (3) FOR A GOOD FAITH SETTLEMENT DETERMINATION BARRING EXISTING CLAIMS AGAINST THE PROJECT DESIGN PROFESSIONALS (hereinafter "Motion to Bar Claims" filed on March 11, 2016), was filed as one motion. This Motion for Reconsideration was filed as to only the first section of the original motion, the Motion to Bar Any Claims Against the Project Design Professionals Based upon the Statute of Repose. In it JMA and MA alleged a clear error had been made because the court failed to consider its arguments regarding NRS 40.6884, regarding the court's ability to adjudicate the claims, and regarding the improper DOE defendants so the court should rehear and reconsider the motion (See Motion to Reconsider at page 21:3-5). In the alternative to its Motion for Reconsideration of the Order denying the Motion to Bar Claims, which was denied without prejudice, JMA and MA requested judgment on the pleadings as to Plaintiff's Second Amended Complaint.

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JMA-WRIT004536

B. THIRD PARTY DEFENDANTS HAVE THE SAME DEFENSES AGAINST PLAINTIFF HOA AS DEFENDANT PERINI.

Plaintiff ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., ("HOA" or "Plaintiff") asserts JMA and MA lack standing to bring its motion for judgment on the pleadings, claiming that pursuant to NRCP Rule 12 it must be filed after service of a complaint and before responding thereto. (See Plaintiff's Omnibus Opposition at page 4). They further assert because Plaintiffs never served a complaint on JMA and MA, that JMA and MA cannot raise defenses to Plaintiff's claims. *Id.* Plaintiffs neglect to recall the status of the pleadings and NRCP 14. JMA and MA are in this case as third-party defendants pursuant to NRCP 14. JMA and MA's liability is derivative of the Third-Party plaintiff Perini Building Company ("PBC"), and NRCP 14(a) states that a third-party defendant has the same defenses against plaintiff that the defendant has. Specifically, NRCP 14(a) states:

> The third-party defendant may assert against the plaintiff **any defenses** which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. (Emphasis added)

PBC could have filed a motion for judgment on the pleadings as to failure of the HOA to perfect any design claims against the DOE defendant architect and engineer before the statute of repose ran. They elected not to do so, but JMA and MA "may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim." NRCP 14(a). PBC could file a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment as to Plaintiffs entire complaint based upon the statute of repose or statute of limitations, which would necessarily include all DOE and ROE defendants. Likewise, JMA and MA may assert these defenses against plaintiff's complaint to obtain judgment on the pleadings on their thirty-first affirmative regarding the statute of repose, or simply to dismiss a portion of Plaintiff's complaint.

JMA-WRIT004537

Additionally, just like PBC can move to dismiss or otherwise dispose of just part of Plaintiff's Complaint, so can JMA and MA. Likewise, PBC can move to dismiss the entire Complaint, which would necessarily include causes of action asserted against others including DOES. For instance, had the statute of repose run before the first Chapter 40 notice was ever served by Plaintiffs upon PBC, and then Plaintiffs filed suit, PBC would be well within its rights to file a Motion to Dismiss based upon the expiration of the statute of repose as to the entire complaint which is asserted against several parties including DOES. Or, for instance if Plaintiff's complaint which was filed in the District Court alleged total damages in an amount of $1000, PBC could file a motion to dismiss the entire complaint for lack of subject matter jurisdiction pursuant to NRS § 4.37 as the matter should be filed in the Justice Court. A party is not limited to challenging only claims asserted directly against it.

There is no case law or statute in Nevada which prevents JMA and MA as a third-party defendant from seeking dismissal of the allegations asserted by Plaintiff against DOE Defendant engineers or architects. Likewise, while the Nevada Supreme Court has not provided direct guidance on this issue, California courts[1] recently issued an unpublished[2] decision which discusses the issue at bar, *Thompson v. Walgreen Co.* In that case, Defendant Walgreen and no other defendants demurred and Plaintiff Thompson's Second Amended Complaint was dismissed with prejudice due to the statute of limitations. *Thompson v. Walgreen Co.*, A136797,

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[1] Nevada courts may look to California courts for guidance when interpreting similar statutes. *City of Las Vegas Downtown Redevelopment Agency v. Pappas*, 119 Nev. 429, 446, 76 P.3d 1, 13 (2003). Both California and Nevada allow Plaintiff's to name defendants fictitiously if certain circumstances are met. CCP 474 states in pertinent part, "When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint… and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly." Similarly, NRCP 10(a) provides, "A party whose name is not known may be designated by any name, and when the true name is discovered, the pleading may be amended accordingly."

[2] The repeal of Supreme Court Rule 123 prohibiting citation of unpublished orders or opinions of the Nevada Supreme Court allows movants to rely upon this case. NRAP 36(c)(3) allows parties to cite unpublished dispositions for its persuasive authority.

JMA-WRIT004538

2014 WL 1691894, at *2 (Cal. Ct. App. Apr. 30, 2014). In her appeal, Thompson asserted the complaint should not have been dismissed as to the DOE defendants. *Id.* The issue surrounding the dismissal was whether the shorter statute of limitations, Cal. Civ. Proc. Code § 340.5, applicable to health care providers applied to the DOES which were dismissed. When considering her arguments, the Court of Appeals stated,

> Thompson named 51 Doe defendants: John Doe and Does 1 through 50. (§ 474.) She alleged on information and belief that John Doe was the pharmacy technician who improperly dispensed the wrong drug and Doe 1 was the supervising pharmacist. In the very next sentence, however, she alleged John Doe "was a regular employee" or agent of Walgreen and was "neither a Pharmacy Technician nor a Pharmacist." In the latter capacity she claimed his action in filling the prescription was not that of a health care provider, but rather was "ministerial" in nature. …With respect to the other Doe defendants, Thompson claimed only that they "wrongfully gave Plaintiff the incorrect medication, that ultimately caused injuries to Plaintiff," thus giving rise to an inference that they were some sort of health care providers.
>
> **True, the demurrer was brought only by Walgreen. Plaintiff, therefore, argues the court erred in dismissing the entire action, rather than simply dismissing it against Walgreen. She cites no authority prohibiting such a dismissal….**
>
> **In some circumstances it might be inappropriate to dismiss Doe defendants upon a demurrer by a named defendant. After all, a complaint may be maintained against only fictitiously named defendants.** (*Pearlson v. Does 1 To 646* (1999) 76 Cal.App.4th 1005, 1010; *Wallis v. Southern Pac. Transportation Co.* (1976) 61 Cal.App.3d 782, 784–785.) Hence, the dismissal of the complaint against Walgreen would not necessarily result in its dismissal against the Doe defendants. *Thompson v. Walgreen Co.*, A136797, 2014 WL 1691894, at *13 (Cal. Ct. App. Apr. 30, 2014)

The appellate court then examined the facts to determine if the motion applied to the DOES, and in affirming the order dismissing the complaint, concluded the dismissal of the DOE defendants by the motion brought by another defendant was appropriate so long as the reason for the dismissal applied to the DOES dismissed. The Court stated,

> But, here, plaintiff's allegations against the Doe defendants ascribe to them no role that would take them out of the definition of health care providers. They were all alleged to be Walgreen employees.
>
> Any professional negligence or negligence-based action against them would be time-barred to the same extent it is barred against Walgreen.. *Id.*

Similar to Walgreen who filed a demurrer (motion to dismiss) seeking to dismiss a complaint against all defendants including DOES, JMA and MA have brought a motion to dismiss claims against DOE defendants. Plaintiffs allegations against DOE defendant Design Professionals ascribe to them no role that would remove them from the applicable statues of repose, from NRCP 10(a), or from the application of NRS 40.6884 and NRS 40.6885. Like Walgreen, JMA and MA may seek dismissal of causes of action asserted against others. They have standing to assert the prior Motion to Bar Claims as well as standing to assert the present motion.

C. <u>THE STATUTE OF REPOSE ISSUE IS RIPE</u>

(1) <u>JMA and MA both Asserted An Affirmative Defense based upon the Statute of Repose against Plaintiffs</u>

PBC and Plaintiff assert this Court determined the Motion to Bar Claims was unripe because moving parties were seeking an advisory opinion as no cause of action for declaratory relief had been asserted, so the court could not preclude any claims of the Plaintiffs against the Design Professionals. PBC and Plaintiffs both ignore the fact both JMA and MA raised as an affirmative defense the statute of repose in this Motion for Reconsideration and/or Motion for Judgment on the Pleadings as to Plaintiffs' Second Amended Complaint (<u>See</u> Motion at page 7:25-8:5). The issue is ripe. JMA and MA are not seeking an advisory opinion. In fact, during

JMA-WRIT004540

the hearing, when the court was considering JMA and MA's statute of repose arguments[3] the following discussion took place.

> COURT: [Y]ou can't.... can't do advisory opinions.
> EDWARDS: I think it would also be inappropriate [sic] as – as an affirmative order based upon our affirmative defenses based upon the statute of repose, as well.
> COURT: Is it pled that way? As being your firm –
> EDWARDS: Certainly, the – statute of repose was raised as a defense to all claims known and unknown, which is exactly what JMA and the other design professionals are trying to buy our peace from. So in addition to the affirmative claims that are out there that have not been brought, I think it's appropriate to rule that the statute of repose as – as an affirmative defense – is granted, as well. And certainly that is an appropriate mechanism for the Court to utilize in ruling upon a party's legal validity of their affirmative defense.
> COURT: Would you mind pointing me to somewhere in the pleadings where it talks about that you're asking for relief based upon your affirmative defense, so that – I mean, I didn't see that that was the way the motion was. I mean, I appreciate you have the affirmative defense, but I just didn't see – because I didn't see it raised by any of the oppositions, either, or –
> ....

(Transcript of Proceedings page 84:3- 85:1, at "**Exhibit A**"). During the hearing, Plaintiff's counsel misrepresented to the Court "there's no complaint, **no answer was filed with affirmative defenses that has been served on plaintiff from the design professionals in connection with any claim we might raise,** etcetera..." ("**Exhibit A**" at 87:1-4) (Emphasis added). This Court was confused by Plaintiff's misrepresentations and concluded,

> COURT: Substantive to rule on things that aren't before me and rely on affirmative defenses on claims that haven't even been filed against one of the parties seeking relief is really where the concern of the Court is. (**Exhibit A**, 87:16-23).

[3] The Motion to Bar Claims which was filed on March 11, 2016, contained extensive arguments concerning the statute of repose at pages 17-19. Those arguments were not rebutted by Plaintiffs. Rather, Plaintiffs asserted the moving parties were seeking an advisory opinion. In fact, Plaintiffs admitted the passage of time would make claims against the design professionals problematic.

JMA-WRIT004541

But, the Answers of JMA and MA both asserted as affirmative defenses against Plaintiffs causes of action the statute of repose. The court did not consider the affirmative defenses because Plaintiff's counsel had misinformed the court about the status of the pleadings despite contrary information provided by JMA and MA's counsel. JMA's and MA's Answers set forth as their 31st affirmative defenses, and in conjunction with NRCP 14(a), stated "the causes of action as set forth in the plaintiffs' complaint are barred pursuant to the provisions of NRS Sections 11.190, 11.202, 11203, 11.204, 11.205, et. seq," the applicable statues of repose and limitations. Not only did JMA and MA's Answers assert the statute of repose as an affirmative defense against **PLAINTIFF's** Complaint, but those answers **were served** upon plaintiff. (See JMA's Answer to Perini Building Company's Second Amended Third Party Complaint filed and served on January 26, 2016, and MA Engineering's Answer to Perini Building Company's Second Amended Third Party Complaint filed and served upon Plaintiff on January 26, 2016). The issue of the affirmative defense was before the court, and is before the court.

It is appropriate to do a motion for judgment on the pleadings with regard to an affirmative defense. The moving parties brought forth evidence to this court the statute of repose and limitations were asserted as affirmative defenses to Plaintiff's complaint. In the underlying Motion to Bar Claims, the moving parties established the statute of repose had expired, demonstrating substantial completion took place on November 14, 2007, and the certificate of occupancy was issued on November 14, 2008 (See Motion to Bar Claims, page 12, lines 1-6; See also Exhibits 1 and 2 to Motion to Bar Claims). Neither Plaintiffs, nor PBC, nor the multiple subcontractors disputed these facts. (See Plaintiff's Opposition to the "Motion to Bar Claims" filed on April 15, 2016; See PBC's Opposition to "Motion to Bar Claims" filed on April 1, 2016). They have not disputed these facts now. It is clear moving parties have established the statute

JMA-WRIT004542

of repose expired as to any claims the Plaintiffs could assert against them. This court does have the ability to adjudicate JMA and MA's thirty-first affirmative defenses and to find as a matter of law the statute of repose expired before any claims were brought against JMA and MA by Plaintiff. JMA and MA have established they asserted statute of repose as an affirmative defense, and are entitled to a ruling on that issue.

D. THE RELATION BACK DOCTRINE DOES NOT APPLY TO NRCP 10(A), NOR THE STATUTE OF REPOSE, AND EVEN IF IT DID, THE PLAINTIFFS HAVE NOT ASSERTED IT SAVES THEIR CLAIMS

JMA and MA briefed the relation back doctrine and its application through NRCP 10(a) and NRCP 15(c), as well as Nevada law through the *Nurenberger Hercules- Werke GMBH v. Virostek,* 107 Nev. 873, 822 P.2d 1100, 1105-06 (1991). In its opposition, PBC did not dispute JMA and MA's interpretation and application of this doctrine to Plaintiff's claims against the DOE defendant design professional.

Plaintiffs bizarrely asserted "JMA takes the unprecedented position that as a result of JMA's proposed settlement with QT, the Court must dismiss the Association's claims against DOE defendants who have never been named in the action." (Omnibus Opposition, 5:13-16). The subject Motion never made this assertion. The settlement is actually irrelevant to JMA and MA's arguments. The proper questions are whether the Plaintiffs asserted claims against JMA and MA prior to the expiration of the statute of repose, whether they could be brought in as DOE defendant design professionals through an analysis of NRCP 10(a), as well as *Nurenberger Hercules- Werke GMBH v. Virostek,* 107 Nev. 873, 822 P.2d 1100, 1105-06 (1991), and assuming they could be brought in as DOE defendants and whether relation back doctrine is even applicable to statutes of repose. In response to JMA and MA's arguments regarding the foregoing, the Plaintiffs did not oppose the arguments. They simply disregarded them in one

JMA-WRIT004543

large lump by stating "JMA relies upon federal cases for the proposition that statutes of repose are a complete bar to the cause of action. [fn24] However, the majority of circuits hold that lack of knowledge of identity does not constitute a mistake pursuant to FRCP Rule 15(ac)(2) for purposes of relating back." (Omnibus Opposition, 5:17-19).

JMA and MA relied upon ample Nevada authority in their motion, so Plaintiff's assertion makes no sense. Secondly, when JMA and MA did rely upon federal authority it did so because no Nevada case directly on point concerning statutes of repose exists. Historically, in absence of Nevada court cases, the Nevada courts will look to federal courts for guidance. *Towbin Dodge, LLC v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 121 Nev. 251, 258, 112 P.3d 1063, 1068 (2005). It should be noted, in the recent case of *Badger v. Eighth Jud. Dist. Ct.*, 132 Nev. Adv. Op. 39, 373 P.3d 89, 95 (2016), the Supreme Court of Nevada strictly construed a different statute of repose when it simply did not allow for the use of NRCP 15(c) to allow claims made after the statute of repose had expired to relate back to the complaint which was filed before the expiration of the statutory deadline.[4] Third, Plaintiff's statement, "the majority of circuits hold that lack of knowledge of identity does not constitute a mistake pursuant to FRCP Rule 15(c)(2) for purposes of relating back" does not aid their position. The case they cited in support of that statement, *Western Contracting Corp. v. Bechtel Corp.*, 86-1056, 1989 WL 106308 (4th Cir. 1989), found the relation back doctrine could not be applied to save the plaintiff's claims which were filed after a particular statute of *limitations* had expired. This case does not examine a statue of repose, and is inapposite. Moreover, it actually helps JMA and MA's arguments in that, even if this court determines the relation back doctrine from NRCP

[4] The statute at issue in Badger was previously recognized a statue of repose in the dissent of the FDIC v. Rhodes, 130 Nev. Adv Op. 88, 336 P.3d 961 (2014) opinion. The majority of that opinion avoided defining the statute by the way they decided the case.

JMA-WRIT004544

15(c) can be applied to a statute of repose, lack of knowledge of identity does not allow for relation back. Moreover, the NRCP 15 relation back doctrine does not apply when substituting a party in as a DOE defendant. "NRCP 15(c), by its terms, applies only to *claims* or *defenses,* neither of which may be logically construed to include the adding or substituting of parties." *Nurenberger Hercules-Werke GMBH v. Virostek,* 107 Nev. 873, 882, 822 P.2d 1100, 1106 (1991). The question is truly whether Plaintiffs can assert JMA and MA are proper DOE defendants according to the three factors outlined by the *Nurenberger* court. "NRCP 10(a) allows a plaintiff to amend his or her complaint to substitute a Doe or Roe defendant with a named party when the true name is discovered. To do so, the plaintiff must meet all elements of the three-part test established in *Nurenberger. See* 107 Nev. at 881, 822 P.2d at 1106. If those elements are satisfied, then the amended complaint shall relate back to the date of the filing of the original complaint. *Id.* at 881–82, 822 P.2d at 1106." *Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 294, 255 P.3d 238, 243 (2011). With the proper use of a DOE amendment, where the identity of the defendant is truly not known, and the Plaintiff is diligent in learning their identity, and "the true name of a defendant is substituted for the fictitious name, then the defendant is to be considered a party to the action from its commencement." *Sullivan v. Terra Mktg. of Nevada,* 96 Nev. 232, 234, 607 P.2d 111, 112 (1980).

Plaintiffs and PBC did not dispute JMA and MA's position that even if the relation back doctrine could be applied to a statute of repose (as opposed to a statute of limitations), that the doctrine would not save the claims because (1) JMA and MA's identities were known to Plaintiffs since 2011 and Plaintiffs did not sue them nor explain why their true names were not named in the Complaint, (2) the statute of repose has run, (3) the Plaintiff did not exercise reasonable diligence in ascertaining the true identity of the DOE defendants and promptly move

JMA-WRIT004545

to amend the complaint to substitute them in. Those arguments are completely absent from the oppositions, and are an admission pursuant to EDCR 2.20(e) the movants' arguments are correct. In summary, it is movants' position that the relation back doctrine does not apply to a statute of repose; however, even if it could be applied given the right facts, when considering the *Nurenberger Hercules- Werke GMBH v. Virostek,* 107 Nev. 873, 822 P.2d 1100, 1105-06 (1991) factors it is clear it does not apply in this situation. It is clear, the claims asserted against the DOE defendants design professionals must be dismissed from the Plaintiffs Second Amended Complaint.

E. This matter is ripe because Plaintiffs failed to comply with NRS 40.6884.

Plaintiffs assert NRS 40.6884 should be read to state a certificate of merit must be filed when an identifiable design professional is served and not when they are identified as a DOE in a Complaint. They cite as authority a federal district court order, *not an appellate decision.* Regardless, the quote they cited supports JMA and MA's position. It stated, "NRS 40.6884 … requires that the first pleading in a construction defect action against a design professional include an affidavit of merit." (See Plaintiff's Opposition at page 6, footnote 29)(See also *Edge at Reno Condo. Unit-Owners Ass'n, Inc. v. Snowden Eng'g,* Inc., 3:11-CV-00085-HDM, 2011 WL 1375678, at *2 (D. Nev. Apr. 12, 2011). Read in conjunction with NRCP 10(a)[5] which allows the use of a DOE designation in place of the name of a defendant, "A party whose name is not known may be designated by any name, and when the true name is discovered, the pleading

[5] When interpreting a statute, this court must give its terms their plain meaning, considering its provisions as a whole so as to read them 'in a way that would not render words or phrases superfluous or make a provision nugatory.' Further, it is the duty of this court, when possible, to interpret provisions within a common statutory scheme 'harmoniously with one another in accordance with the general purpose of those statutes' and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent." *S. Nevada Homebuilders Ass'n v. Clark County,* 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (citations omitted)

JMA-WRIT004546

may be amended accordingly" makes it clear that a defendant who is properly identified as a DOE because the Plaintiff does not know their identity is part of the case. This is not the case of a NRCP 15(c) substitution where claims are added, but a properly identified DOE defendant "is to be considered a party to the action from its commencement." *Sullivan v. Terra Mktg. of Nevada,* 96 Nev. 232, 234, 607 P.2d 111, 112 (1980). The commencement of the action took place with the filing of the Complaint which identified the DOE defendants.

NRS 40.6884 does not state a certificate of merit shall be filed when "an identifiable design professional" is served. Plaintiffs are adding words to the statute that simply are not there. NRS 40.6884(1) states in pertinent part as follows:

> in **an action** governed by NRS 40.600 to 40.695, inclusive**, that is commenced against a design professional or a person primarily engaged in the practice of professional engineering**… the attorney for the **complainant shall file an affidavit with the court concurrently with the service of the first pleading in the action** stating that the attorney:
> (a) Has reviewed the facts of the case;
> (b) Has consulted with an expert;
> (c) Reasonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and
> (d) Has concluded on the basis of the attorney's review and the consultation with the expert that the action has a reasonable basis in law and fact. NRS § 40.6884.

Notably, absent from the list of information that is required to be in the affidavit is the name of the design professional about whom the Complaint is asserted. Also notably absent is a description limiting the service of the first pleading in the action to those documents served upon the design professional. The legislature clearly could have included limiting words such as "identifiable design defendant" and "service upon the design defendant of the first pleading in the action" but intentionally did not. Additionally, NRS 40.4884(3) provides,

JMA-WRIT004547

In addition to the statement included in the affidavit pursuant to subsection 1, **a report must be attached to the affidavit**. Except as otherwise provided in subsection 4, the report must be prepared by the expert consulted by the attorney and include, without limitation:
(a) The resume of the expert;
(b) A statement that the expert is experienced in each discipline which is the subject of the report;
(c) A copy of each non-privileged document reviewed by the expert in preparing the expert's report, including, without limitation, each record, report and related document that the expert has determined is relevant to the allegations of negligent conduct that are the basis for the action;
(d) The conclusions of the expert and the basis for the conclusions; and
(e) A statement that the expert has concluded that there is a reasonable basis for filing the action.

Notably, absent from the list of information that is required to be in the expert report is the name of the design professional about whom the Complaint is asserted.

Finally, NRS 40.6885 provides,

> 1. The court **shall dismiss an action** governed by NRS 40.600 to 40.695, inclusive, **that is commenced against a design professional** or a person primarily engaged in the practice of professional engineering, …architecture … including, without limitation, an action for professional negligence, if the attorney for the complainant fails to:
> (a) File an affidavit required pursuant to NRS 40.6884;
> (b) File a report required pursuant to subsection 3 of NRS 40.6884; or
> (c) Name the expert consulted in the affidavit required pursuant to subsection 1 of NRS 40.6884.
> 2. The fact that an attorney for a complainant has complied or failed to comply with the provisions of NRS 40.6884 is admissible in the action. NRS § 40.6885.

Again, the statute does not state the action needs to be commenced against an "identifiable design professional" just against a "design professional." It is clear from the fact of Plaintiff's Complaint(s) they asserted causes of action against DOE defendant design professionals. As such, they should have complied with NRS 40.6884 concurrently with the service of the first pleading in the action, the original Complaint. This analysis is supported by

JMA-WRIT004548

the analysis of *Bartoletti v. County of Beaver*, CIV.A. 07-439, 2008 WL 3833878, at *3 (W.D. Pa. Aug. 15, 2008). It is instructive to note that in Pennsylvania, when applying their certificate of merit provision in a medical malpractice action, the Court there ruled the Plaintiff was required to provide a certificate of merit for a DOE defendant. *Bartoletti v. County of Beaver,* CIV.A. 07-439, 2008 WL 3833878, at *3 (W.D. Pa. Aug. 15, 2008)

> Lastly, the Doe Defendants seek dismissal of the negligence claim pled against them because the Plaintiff failed to file a certificate of merit as required under Pennsylvania law. ...The Plaintiff concedes that he has not filed the required certificate, but asserts that he has not identified the "professional status" of the Doe Defendants and, accordingly, a certificate of merit is not required. Bartoletti's argument lacks merit.
>
> The Doe Defendants are identified in the Complaint as "medical personnel" at the prison, and they are alleged to have failed to provide "medically appropriate" care. By setting out these facts in his Complaint, Bartoletti has clearly alleged that these Defendants acted outside of a professional standard of care. Further, the certificate requirement applies to nurses as well as physicians. *See* Pa. R.C.P., Rule 1042.1(b)(1)(i), (vii). It would be folly for this court to find that the Plaintiff should be excused from filing the required certificate of merit based upon a deficient pleading. Consequently, the Motion to Dismiss the negligence claim should be granted. *Bartoletti v. County of Beaver*, CIV.A. 07-439, 2008 WL 3833878, at *3 (W.D. Pa. Aug. 15, 2008)

Similar to the Plaintiff in *Bartoletti*, Plaintiff here asserts the certificate of merit is not required until Plaintiffs have named an "Identifiable design professional." The DOE defendants are identified as design professionals such as the architect and engineer, and they have clearly alleged those DOES were responsible for inadequate design and failed to use reasonable care. (See Second Amended Complaint, Paragraphs 9, 18, 22, 29, 31, 32 and 33). It would be folly for this court to find Plaintiff should be excused from filing the required certificate of merit regarding its claims against the DOE design professionals. Therefore, this motion should be granted.

///

JMA-WRIT004549

II.

CONCLUSION

Based on the foregoing, JMA and MA respectfully request this honorable court to rehear and reconsider the motion, to enter a finding pursuant to JMA and MA's thirty-first affirmative defenses that Plaintiffs have failed to assert their claims against JMA and MA prior to the expiration of the statute of repose, and to dismiss the DOE allegations asserted against the Design Professionals in the Second Amended Complaint.

DATED this 16th day of September, 2016

WOLFENZON ROLLE EDWARDS

MICHAEL M. EDWARDS, ESQ.
Nevada Bar No. 6281
ROBERT A. SCHAFFER, ESQ.
Nevada Bar No. 10215
NICHOLAS HAMILTON, ESQ.
Nevada Bar No. 10893
6725 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
(702) 836-3138

Attorneys for Third-Party Defendants
JMA Architects, Inc. and M.A. Engineering Inc.

JMA-WRIT004550

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of September, 2016, I served a true and correct copy of the foregoing **JMA ARCHITECTS, INC. AND M.A. ENGINEERING, INC.'S REPLY IN SUPPORT OF THEIR MOTION TO RECONSIDER THE ORDER TO BAR ANY FURTHER CLAIMS AGAINST THE PROJECT DESIGN PROFESSIONALS BASED ON THE STATUTE OF REPOSE; OR IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFFS' SECOND AMENDED COMPLAINT AGAINST DOE DEFENDANT DESIGN PROFESSIONALS ON ORDER SHORTENING TIME** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

An Employee of WOLFENZON ROLLE EDWARDS

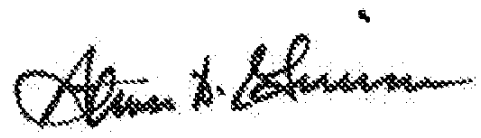
JMA-WRIT004551

One Queensridge Place
Homeowners' Association, Inc.
vs.
Perini Building Company, et.al.

Case No.: A-12-661825-D
Dept. No. XXXI

EXHIBIT A

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

ONE QUEENSRIDGE PLACE HOMEOWNERS ASSOCIATION INC, Plaintiff, vs. PERINI BUILDING COMPANY, Defendant.	CASE NO. A-12-661825 DEPT NO. XXXI **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

MOTIONS

FRIDAY, JUNE 10, 2016

See Page 2 for Appearances

RECORDED BY RACHELLE HAMILTON, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

APPEARANCES:

For the Plaintiff:	BRUCE G. MAYFIELD, ESQ. MARK EPSTEIN, ESQ. - Telephonic
For the Defendants:	PETER C. BROWN, ESQ. LUCIAN J. GRECO, ESQ. PRESCOTT T. JONES, ESQ. SEAN ALLEN, ESQ. ANDREW R. MUEHLBAUER, ESQ. MICHAEL M. EDWARDS, ESQ. DAVID R. CLAYSON, ESQ. AARON M. YOUNG, ESQ. MEGAN K. DORSEY, ESQ. SRILATA R. SHAH, ESQ. KYLEE GLOECKNER, ESQ. DANIELLE KOLKOSKI, ESQ. HASHEM KAROUM, ESQ. MARC J. DEREWETZKY, ESQ. JEFFREY H. BALLIN, ESQ. DAVID R. GORDON, ESQ. JIM CAVANAUGH, ESQ. RENEE GREEN, ESQ.

RECORDED BY RACHELLE HAMILTON, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

LAS VEGAS, NEVADA, FRIDAY, JUNE 10, 2016, 8:30 A.M.

* * * * *

THE COURT: —— helping me out today to the extent that my regular clerk who is more familiar with each of your names, I'm going to remind you, please, when you do speak, to please state your names, again, just so we make sure we have a clear record with this number of individuals. Okay. Let me wait one second because we have one more person coming in and then we will commence with appearances. Okay.

Go ahead, Counsel.

MR. MAYFIELD: Bruce Mayfield for Plaintiff.

THE COURT: And just so we're clear, madam clerk and madam recorder, this is, of course, Case Number 661625, One Queensridge Place HOA versus Perini Building, et al., related cross claims, counter claims, third party claims, et cetera. Sorry. So we have Mr. Mayfield's appearance.

Go ahead, Counsel.

MR. DEREWETZKY: Marc Derewetzky for QT, LLC.

MR. BROWN: Good morning, Your Honor. Peter Brown on behalf of Perini Building Company.

MR. GRECO: Lucian Greco also on behalf of Perini Building Company.

MR. JONES: Good morning, Your Honor. Prescott Jones, also on behalf of Perini Building Company.

MS. GREEN: Renee Green on behalf of Harris

JMA-WRIT004555

THE COURT: Respectfully, I disagree with counsel --

MR. EDWARDS: -- inappropriate --

THE COURT: -- you can't -- can't do advisory opinions.

MR. EDWARDS: I think it would also be inappropriate as -- as an affirmative order based upon our affirmative defenses based upon the statute of repose, as well.

THE COURT: Is it pled that way? As being your firm --

MR. EDWARDS: Certainly, the -- the statute of repose was raised as a defense to all claims known and unknown, which is exactly what JMA and the other design professionals are trying to buy our peace from. So in addition to the affirmative claims that are out there that have not been brought, I think it's appropriate to rule that the statute of repose as -- as an affirmative defense is -- is granted, as well. And certainly that is an appropriate mechanism for the Court to utilize in ruling upon a party's legal validity of their affirmative defense.

THE COURT: Would you mind pointing me to somewhere in the pleadings where it talks about that you're asking for relief based upon your affirmative defense, so that -- I mean, I didn't see that that was the way this motion was. I mean, I appreciate you have the affirmative defense, but I just didn't see -- because I didn't see it raised by any of the

JMA-WRIT004556

oppositions, either, or --

MR. EDWARDS: Well, there -- there were no oppositions. So let's -- we can start there.

THE COURT: There was --

MR. EDWARDS: So it's an unopposed motion. But the motion is --

THE COURT: Well, no. It was opposed. It was saying that it wasn't right for the Court to bring it. And so, I mean, it -- there was no basis, it was unripe and it was in the joined opposition of Perini.

MR. EDWARDS: Well, Perini didn't oppose the motion except if it might have applied to them. And I think we've clarified that's not the case. So based upon the homeowners association's opposition, which does contain no legal authority, we've settled -- we've cited the statute of repose as amended by AB125, as it relates to future claims that may be brought by the HOA. And also the statute of repose was pled as -- as our affirmative defense. And again is -- is -- no one is disputing, from what I hear, the applicability of that statute as to any potential claims against the design professionals.

THE COURT: I thought the HOA said that it was --

MR. EDWARDS: They're claiming it's not -- not ripe. But as Mr. Derewetzky identified, it's very similar to a claim for indemnity. An indemnity claim isn't ripe until someone's

actually paid money, and yet that happens all the time.

THE COURT: That's a pleading. But -- okay. HOA, are you objecting to this? I heard that there was no opposition.

MR. MAYFIELD: Well, that's --

THE COURT: I just -- I just want for clarity's sake.

MR. MAYFIELD: That's simply not true. We did file an opposition pointing out to the Court that there was no case, no statutory, no rule that would give the Court the authority to essentially grant an advisory opinion requested by the defendants in this case. It's just one more thing they tried to gild their Motion for Good Faith settlement with by --

THE COURT: Okay. I'm not going into good faith -- we're not going there.

MR. MAYFIELD: All right. So there's --

THE COURT: I just need to know, did you --

MR. MAYFIELD: We oppose it.

THE COURT: It --

MR. MAYFIELD: We believe there should not be any order given by this Court at this time that the statute of repose or any statute of limitations for that matter or anything would bar claims being brought by plaintiff in the future against the design professionals. Because it's not

JMA-WRIT004558

before the Court, there's no declaratory relief, there's no complaint, no answer was filed with affirmative defenses that has been served on plaintiff from the design professionals in connection with any claim we might raise, etcetera, and it's inappropriate, Your Honor.

THE COURT: Okay. Thank you. Queensridge Towers, and then --

MR. DEREWETZKY: Yes, Your Honor. Marc Derewetzky on behalf of Queensridge Towers LLC.

Doesn't the Court have inherent discretion to manage its calender and set dates and deadlines and --

THE COURT: Procedural --

MR. DEREWETZKY: -- hasn't the Court -- excuse me?

THE COURT: Procedurally, yes.

MR. DEREWETZKY: Well --

THE COURT: Substantive to rule on things that aren't before me and rely on affirmative defenses on claims that haven't even been filed against one of the parties seeking relief is really where the concern of the Court is.

MR. DEREWETZKY: Yeah, there are deadlines set all the time, Your Honor, for bringing in parties and amending pleadings and deadlines --

THE COURT: Right.

MR. DEREWETZKY: -- are deadlines. And the HOA's had a long time and has exceeded the statute of repose for

JMA-WRIT004559

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

KARR REPORTING, INC.
Aurora, Colorado



KIMBERLY LAWSON

JMA-WRIT004560

TAB – 123

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CLERK OF THE COURT

MICHAEL C. RUBINO, ESQ., NVB:005758
CHARLES M. LITT, ESQ., NVB: 006040
BRUCE MAYFIELD, ESQ., NVB:007440
FENTON GRANT MAYFIELD KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900 / (702) 947-4901 Fax

(Pro Hac Vice)
BRAD BRIAN, ESQ.
MARK H. EPSTEIN, ESQ.
BRIONNA N. NED, ESQ.
MUNGER TOLLES & OLSON, LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071-1560
(213) 683-9100 / (213) 687-3702 Fax
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada non-profit corporation,

Plaintiff,

v.

PERINI BUILDING COMPANY, an Arizona corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada corporation; EXECUTIVE HOMES INC., a Nevada corporation; QUEENSRIDGE TOWERS, LLC, a Nevada limited liability company; F. RODGERS INSULATION OF NEVADA, INC.; a Nevada corporation; PERFORMANCE CONTRACTING, INC., a Kansas corporation; QUALITY MECHANICAL CONTRACTORS LLC, a Delaware limited liability company; and DOES 4 through 100;

Defendants.

KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation;

Third-Party Plaintiff,

v.

HAMMOND CAULKING, INC., a Nevada

CASE NO.: A-12-661825-D
DEPT NO.: XXXI

(Electronic Filing Case)

ASSOCIATION'S LIMITED JOINDER TO DEFENDANT PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC., AND M.A. ENGINEERING, INC.'S MOTION TO RECONSIDER THE ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS

Hearing Date: October 5, 2016
Hearing Time: 9:00a.m.

Corporation; ZOES 1 through 100,

Third-Party Defendant.

EXECUTIVE HOMES, INC., a Nevada corporation;

Third-Party Plaintiff,

v.

PERINI BUILDING COMPANY, an Arizona corporation; A-I MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation; BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC. dba BTl TILE & STONE, a California corporation; CHAMPION UTILITY SUB-METERING SOLUTIONS, LLC, a Nevada limited liability company; CLP RESOURCES, INC., a Delaware corporation; CONTRACTORS AND BUILDERS PERSONNEL nka EASTRIDGE WORKFORCE SOLUTIONS and EASTRIDGE WORKFORCE TECHNOLOGY, INC., a California corporation; EXPANSION SPECIALTIES, INC., a Nevada corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PAINTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; MARVISTA LANDSCAPE, INC. aka MARVISTA LANDSCAPE CONSTRUCTION, INC., a Nevada corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHER NEVADA PAVING, INC., aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL

FENTON GRANT MAYFIELD
KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900

CONCRETE, INC., a Nevada corporation; STO DESIGN GROUP, INC., a California corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BROTHERS TILE, LLC, a Nevada limited liability company; XL STEEL, INC., a Nevada corporation; and ROE Individuals 1-100 and ROE Business Entities 2-100;

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation;

Third-Party Plaintiff,

v.

A-I MECHANICAL, a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BTl STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, a Nevada Corporation; EHB MANAGEMENT CORP., LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., a Nevada Corporation; EXPANSION SPECIALTIES, a Nevada Corporation; GIROUX GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC, a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC., aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTING PROTECTION SYSTEMS, LLC dba VFC, INC., a Utah Limited Liability Company; LYNCH ASSOCIATES, a Nevada Corporation; NIBCO, an Indiana

FENTON GRANT MAYFIELD
KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900

Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada Limited Liability Company; QT MANAGEMENT, LLC, a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS CORPORATION, a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS CENTRAL, a Nevada Corporation; DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 301-400;

Third-Party Defendants.

NIBCO INC., an Indiana Corporation,

Fourth-Party Plaintiff,

v.

NOVASFER, S.R.L., an Italian single member company; HERZ VALVES UK LTD., a British entity; DOES 1 through 10; and ROE BUSINESSES 1 through 15, inclusive,

Fourth-Party Defendants.

COMES NOW Plaintiff One Queensridge Place Homeowners Association ("Plaintiff" and/or "Association") by and through its counsel of record, FENTON GRANT MAYFIELD KANEDA & LITT, LLP, and hereby submits its limited joinder to Defendant Perini Building Company's Opposition to JMA Architects, Inc., and M.A. Engineering, Inc.'s Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings Or, in the Alternative, for Judgment on the Pleadings ("Opposition") as follows:

The Association joins Defendant Perini Building Company's Opposition with the exception of its reliance on *Dark Peak*, which is an unpublished decision with no procedural

FENTON GRANT MAYFIELD
KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900

value which should not be cited.

Dated this 16th day of September 2016.

FENTON GRANT MAYFIELD KANEDA & LITT, LLP

By: */s/ Bruce Mayfield*
MICHAEL C. RUBINO, ESQ., NVB:005758
CHARLES M. LITT, ESQ., NVB: 006040
BRUCE MAYFIELD, ESQ., NVB:007440
1955 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

CERTIFICATE OF E-FILING/E-SERVICE

I hereby certify that on the 16th day of September, 2016, I caused to be submitted an ***ASSOCIATION'S LIMITED JOINDER TO DEFENDANT PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC., AND M.A. ENGINEERING, INC.'S MOTION TO RECONSIDER THE ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS*** to the court for electronic filing and for service via Wiznet upon the parties on the Court's service list for the above-referenced case.

_____
An employee of FENTON GRANT MAYFIELD KANEDA & LITT, LLP

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FENTON GRANT MAYFIELD
KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134
(702) 947-4900

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PETER C. BROWN, ESQ.
Nevada State Bar No. 5887
LUCIAN J. GRECO, JR., ESQ.
Nevada State Bar No. 10600
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
lgreco@bremerwhyte.com

ROBERT NIDA, ESQ. (PRO HAC VICE)
MARK WENDORFF, ESQ. (PRO HAC VICE)
CASTLE & ASSOCIATES
8383 WILSHIRE BLVD., SUITE 810
BEVERLY HILLS, CA 90211
TELEPHONEE: (310) 286-3400
FACSIMILE: (310) 286-3404
rnida@castlelawoffice.com
mwendorff@castlelawoffice.com

Attorneys for Defendant/Third-Party Plaintiff/Cross-Claimant/Counter-Defendant,
PERINI BUILDING COMPANY

DISTRICT COURT

CLARK COUNTY; NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada Non-Profit Corporation, Plaintiff, vs. PERINI BUILDING COMPANY, an Arizona Corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation; EXECUTIVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100, Defendants. KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation, Third-Party Plaintiff, vs. HAMMOND CAULKING, INC., a Nevada	Case No. A-12-661825-D Dept. No.: XXXI **PERINI BUILDING COMPANY'S OPPOSITION TO JMA ARCHITECTS, INC. AND M.A. ENGINEERING, INC.'S MOTION TO RECONSIDER THE ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE MOTION FOR JUDGMENT ON THE PLEADINGS**

Corporation; ZOES 1 through 100,

Third-Party Defendant.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation; BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC. dba BTI TILE & STONE, a California corporation; CHAMPION UTILITY SUB-METERING SOLUTIONS, LLC, a Nevada limited liability company; CLP RESOURCES, INC., a Delaware corporation; CONTRACTORS AND BUILDERS PERSONNEL nka EASTRIDGE WORKFORCE SOLUTIONS and EASTRIDGE WORKFORCE TECHNOLOGY, INC., a California corporation; EXPANSION SPECIALTIES, INC., a Nevada corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PAINTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; MARVISTA LANDSCAPE, INC. aka MARVISTA LANDSCAPE CONSTRUCTION, INC., a Nevada corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada corporation; STO DESIGN GROUP, INC., a California corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T.

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

BROTHERS TILE, LLC, a Nevada limited liability company; XL STEEL, INC., a Nevada corporation; and ROE Individuals 1-100 and ROE Business Entities 2-100,

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BTI STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, a Nevada Corporation; EHB MANAGEMENT CORP., LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., a Nevada Corporation; EXPANSION SPECIALTIES, a Nevada Corporation; GIROUX GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC, a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation ; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTNING PROTECTION SYSTEMS, LCC dba VFC, INC., a Utah Limited Liability Company; LYNCO ASSOCIATES, a Nevada Corporation; M.A. ENGINEERING, INC., a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation;

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1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

QUEENSRIDGE TOWERS, LLC, a Nevada Limited Liability Company; QT MANAGEMENT, LLC, a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS SOUTHWEST, INC., a Nevada Corporation; DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 2-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 302-400,

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation,

Cross-Claimant,

vs.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Cross-Defendant.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Counter-Claimant,

vs.

PERINI BUILDING COMPANY, a Arizona Corporation,

Counter-Defendant.

NIBCO, INC., an Indiana Corporation,

Fourth-Party Plaintiff,

vs.

NOVASFER, S.R.L., an Italian single member company; HERZ VALVES UK LTD, a British

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Suite 250
Las Vegas, NV 89144
(702) 258-6665

entity; DOES 1 through 10; and ROE BUSINESSES 1 through 15, inclusive,

Fourth-Party Defendants.

QUEENSRIDGE TOWERS, LLC, a Nevada Limited Liability Company; and DOES 1 through 100,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, INC., a Nevada CORPORATION; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, LLC, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BAJA TILE, INC. dba BTI TILE & STONE, a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DESERT PLASTERING, LLC a Nevada Limited Liability Company; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; ELSTER AMCO WATER, a Florida Corporation; FERGUSON ENTERPRISES, INC., dba FERGUSON BATH & KITCHEN GALLERY, a Virginia Corporation; GIROUX GLASS, a California Corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC., dba FLOOR TOPIA, a Nevada Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS & RUTH PAINITNG CONTRACTORS, INC., aka HARRIS & RUTH PAINTING CONTRACTORS, INC., a California Corporation; HI-CON, INC., a California Corporation; INSUL-FLOW, INC., a California Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PLUMPING, INC. dba POOLS BY GRUBE, a Nevada Corporation; LYNCO ASSOCIATES, a Nevada Corporation; NIBCO, AN INDIANA CORPORATION; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE

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1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

ROOFING, INC., a Nevada Corporation; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada Limited Liability Company; SLATE DESIGN STUDIOS, INC., a Nevada Corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada Corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada Corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an Individual; T. BROTHERS TILES, LLC, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS SOUTHWEST, INC., a Delaware Corporation; and DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 302-400,

Third-Party Defendants.

SLATER DEISGN STUDIOS, INC., a Nevada Corporation,

Cross-Plaintiff,

vs.

PRESTIGE ROOFING, INC., a Nevada Corporation; DOES INDIVIDUALS 1-100, and ROE ENTITIES 101-200,

Cross-Defendants.

COMES NOW, PERINI BUILDING COMPANY (hereinafter "PERINI"), by and through its attorneys of record, Peter C. Brown, Esq. and Lucian J. Greco, Jr., Esq. of the law firm of BREMER WHYTE BROWN & O'MEARA, and Nomi Castle, Esq. and Robert Nida, Esq. of the law firm CASTLE & ASSOCIATES, and hereby files this Opposition to JMA ARCHITECTS, INC. ("JMA") and M.A. ENGINEERING, INC.'s ("MA") Motion to Reconsider the Order

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

Denying the Motion for Judgment on the Pleadings or in the Alternative Motion for Judgment on the Pleadings.

This Opposition is made and based on the attached Memorandum and Points and Authorities, the pleadings, documents, and records on file in this matter, as well as any oral argument presented at the time of hearing.

Dated: September 16, 2016

BREMER WHYTE BROWN & O'MEARA LLP

By: _____

Peter C. Brown, Esq., Bar No. 5887
Lucian J. Greco, Jr., Esq., Bar No. 10600
Attorneys for Defendant/Third-Party
Plaintiff/Cross-Claimant
PERINI BUILDING COMPANY

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

JMA and MA bring the instant Motion to Reconsider the Order Denying the Design Professionals' Motion for Judgment on the Pleadings or in the Alternative Motion for Judgment on the Pleadings ("Motion to Reconsider the Order Denying the Design Professionals Motion for Judgment on the Pleadings") seeking dismissal of the design defect claims asserted by the HOA against Perini and, via third-party practice, JMA and MA. JMA, HARRIS CONSULTING ENGINEERS, LLC ("HCE") and MA's Motion for Judgment on the Pleadings as to Perini's Second Amended Third-Party Complaint against the Project Design Professionals came for hearing before this Court on June 10, 2016 and was denied. JMA and MA are the **only** parties seeking reconsideration[1].

The Design Professionals' Motion for Reconsideration must fail as Perini's Second Amended Third-Party Complaint is properly plead and permits recovery against the Design

[1] HCE has filed an untimely joinder that is the subject of a separate Motion to Strike.

Professionals. Additionally, NRS 40.646 allows Perini to provide Chapter 40 Notice and to pursue claims against each design professional it reasonably believes is responsible for alleged defects. The explicit language of NRS 40.600 et. seq., maxims of third-party practice, and settled Nevada Supreme Court precedent supports Perini's claims against the Design Professionals. This Court did not err in ruling that Perini's Second Amended Third-Party Complaint against the Design Professionals survives a Motion for Judgment on the Pleadings.

II.

ARGUMENT

A. Legal Standard

The Design Professionals' stated basis for Reconsideration pursuant to Rule 2.24 is this Court's decision is "clearly erroneous." In addressing motions for reconsideration pursuant to Rule 2.24, the Nevada Supreme Court noted that, "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244 (1976). A district court may also entertain a motion for reconsideration of a previously decided issue if the decision was clearly erroneous. Masonry and Tile v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941, P2d 486 (1997). However, "[p]oints or contentions not raised in the original hearing cannot be maintained or considered at rehearing." Achrem v. Expressway Plaza Ltd., 112 Nev. 737, 742, 917 P.2d 447 (1996). In addressing whether it will rehear issues previously decided, the Supreme Court has noted there is a two-step process. First, the aggrieved party must petition the court for rehearing with a non-argumentative brief pointing out the conflict created by the decision or the controlling matter overlooked by the court. Only if the rehearing petition is granted does the party have the right to persuade the court that it is entitled to a different decision on the merits. Gershenhorn v. Walter R. Stutz Enterprises, 72 Nev. 293, 312 (1957).

B. The Spearin Doctrine does not preclude Perini from bringing claims against the Design Professionals.

Perini acknowledges that under the Spearin Doctrine a contractor "will not be responsible

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

to the owner, at least after the work is completed, for any loss or damage which results **solely** from the defects or insufficient plans or specifications, in the absence of any negligence on the part of the contractor * * *." Home Furniture v. Brunzell Constr. Co, 84 Nev. 309, 313, 440 P.2d 398, 401 (1968) (Emphasis added). See also United States v, Spearin, 248 U.S. 132, 136, 39 S. Ct. 59, 63 L.3d. 166 (1918). However, the Design Professionals' application of Spearin Doctrine to the facts of the instant case is improper as no factual determination has been made that the defects alleged by the HOA result **solely** from defective design. Accordingly, Perini believes, and has thereupon alleged that the Design Professionals may be responsible, in whole or in part, for the design defect allegations. Accordingly, the Design Professionals argument that the Spearin Doctrine precludes Perini's claims must fail.

C. The HOA has alleged design-related defects and Perini's Second Amended Third-Party Complaint has sufficient factual and legal basis to support the claims against the Design Professionals to withstand a Rule 12(c) analysis.

The Design Professionals' Rule 12(c) argument hinges on the proposition that the HOA's design defect claims against Perini are "legally nonexistent," thereby precluding Perini from asserting the design defect claims against those parties it believes are responsible. In fact, the Design Professionals suggest that Perini is not the intended subject of the "deliberately vague Complaint allegations," which it asserts are the "very embodiment of [the] term BOILERPLATE, and are of no legal import or consequence."[2] While Perini would certainly welcome the dismissal of the HOA's design defect claims, this Court has made no such ruling that would bar the HOA from pursuing design-related claims against Perini.[3] Thus, in attempting to demonstrate Perini's failure to state a claim upon which relief may be granted pursuant to Rule 12(c), the Design Professionals erroneously assume that the Plaintiff has not asserted, or cannot assert, design claims.

The Design Professionals' rejection of key factual assertions set forth in Perini's Second Amended Complaint precludes this Court from granting the Design Professionals' Motion for

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[2] Motion, p. 11, lines 3-8.

[3] Perini reserves its right to seek dismissal of the HOA's claims. Nothing in this brief shall be construed as an admission that the HOA's claims have merit and/or are properly alleged against Perini.

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1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

Judgment on the Pleadings. Rule 12(c) provides a means of disposing of cases when material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings. Bernard v. Rockhill Dev. Co., 103 Nev. 132, 136, 734 P.2d 1238, 1241 (1987). In reviewing a NRCP 12(c) motion, a court must "accept the factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party." Sadler v. Pacificare of Nev., 130 Nev. Adv. Op. 98, 340 P.3d 1264, 1266 (2014). A third-party defendant will not succeed on a motion under NRCP 12(c) if there are allegations in the third-party complaint that, if proven, would permit recovery. Bernard, 103 Nev. at 136, 734 P.2d at 1241.

The HOA has clearly asserted design defect claims against Perini. Paragraph 18 of the HOA's Second Amended Complaint asserts:

> Plaintiff is informed and believes and thereon alleges that Defendants DEVELOPER, PERINI BUILDING COMPANY, KEENAN HOPKINS SUDER & STOWELL CONTRACTORS, INC.; EXECUTIVE HOMES INC., and DOES 1 through 100, inclusive, did inspect and market said homes and appurtenances and knew, or should have known of the defects in the construction of the Association Development, the **deficiencies in design**, installation and supervision thereof. In particular, Plaintiff is informed and believes and thereon alleges that said Defendants in the inspection, **design**, installation and supervision of Association Development, engaged in a course of conduct to reduce the costs of development by the use of substandard, **deficient and inadequate design**, and construction techniques and materials. (Emphasis added).

In addition, the HOA's first cause of action for breach of implied warranties and second cause of action for negligence contain specific allegations related to defective design. See Second Amended Complaint, ¶¶ 24, 29, 30, 31, 32.

Additionally, as Perini demonstrated at great length through its original briefing, the HOA has clearly asserted multiple design-related claims through its expert reports. To date, there has been no judicial determination that those claims are improper or should be dismissed. Accordingly, JMA and MA's argument must fail as the Court had more than an adequate basis upon which to deny this portion of the Motion for Judgment on the Pleadings. The Court's decision on this was issue was not clearly erroneous.

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1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

D. NRS Chapter 40 and established Nevada law allow Perini to bring claims against the Design Professionals, and the Court's decision allowing Perini to move forward with those claims was not clearly erroneous.

NRCP 14(a) provides in pertinent part "[a]t any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action **who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff**." (Emphasis added).

Further, NRS 40.600 et. seq. absolutely allows contractors such as Perini to provide Chapter 40 Notice to Design Professionals and to pursue claims against Design Professionals. NRS 40.646 provides:

> Except as otherwise provided in subsection 2, not later than 30 days after the date on which a contractor receives notice of a constructional defect pursuant to NRS 40.645, the contractor shall forward a copy of the notice by certified mail, return receipt requested, to the last known address of each subcontractor, supplier or **design professional** whom the contractor reasonably believes is responsible for a defect specified in the notice. (Emphasis added).

In support of their argument, the Design Professionals seek a radical reinterpretation of Olson v. Richard, 120 Nev. 240 (2004). The Design Professionals contend that the Economic Loss Doctrine applies to Chapter 40 residential construction defect claims if the claims against a design professional are asserted by someone other than a homeowner. This supposition is not only in direct contravention of well settled Nevada Supreme Court precedent, but also NRS 40.600 et seq. The current state of the economic loss doctrine in Chapter 40 cases was recently set forth in Dark *Peak Drive Homeowners Ass'n v. Del Webb Cmtys of Nev., Inc*. 2014 Nev. Unpub. LEXIS 1039, No 54884 (June 27, 2014).[4] The Nevada Supreme Court explains:

> [T]his court has previously determined that the economic loss doctrine does not apply in Chapter 40 residential construction defect claims, Olson, 120 Nev. at 243-44, 89 P.3d at 32-33; see also Terracon Consultants W., Inc. v. Mandalay Resort Grp., 125 Nev. 66, 71 n.3, 206 P.3d 81, 85 n.3 (2009) (recognizing Olson's conclusion that the economic loss doctrine does not apply to prevent tort claims "in which plaintiffs seek to recover purely economic losses resulting from alleged construction defects"), and thus a plaintiff can recover under a negligence theory for

[4] While the decision is unpublished and, at best, persuasive to this Court, Perini cites to the case for its description of the state of the law through citation to published opinions.

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1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

> solely economic losses resulting from a defect. Id., see Skender v, Brunsonbuilt Constr. & Dev. Co., 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006).

When reaffirming its holding in Olson, the Nevada Supreme Court never sought to limit the ruling to only negligence causes of action brought by homeowners. The Design Professionals are asking this Court to create out of thin air something only the Supreme Court can expressly decide, which it did not.

If this Court was to accept the argument by the Design Professionals that Olson precludes a contractor from ever making a claim against a design professional, it would completely abrogate NRS 40.646, which requires a contractor to provide notice of constructional defects to each design professional it reasonably believes is responsible for the defects. Given NRS 40.646's express, clear and unequivocal language, it is inconceivable to presume that the Legislature intended to preclude a contractor from having a claim against a design professional.

The Design Professionals criticize Perini for its interpretation of NRS 40.620 (definition of a contractor), but they omit crucial language from their discussion of NRS 40.6884 (definition of complainant), a "misrepresentation by omission" using the Design Professionals' own argument against them. NRS 40.6884 states in full:

> As used in NRS 40.6884 and 40.6885, **unless the context otherwise requires**, "complainant" means a person who makes a claim or files an action against a design professional **pursuant to NRS 40.600 to 40.695,** inclusive. (Emphasis added).

By defining a complainant as a person who makes a claim or files an action against a design professional pursuant to NRS 40.600 to 40.695, the Legislature clearly intended to include a contractor in its definition of a complainant. This is exactly what the Legislature contemplated – a context where Perini is filing a claim against the Design Professionals given the HOA allegations of design defects for which Perini contends the Design Professionals are responsible.

This Court properly concluded that the Nevada Supreme Court mandates that the economic loss doctrine does **not** apply to residential cases brought under NRS 40.600, et seq. See Order Denying Motion dated August 9, 2016, attached hereto as **Exhibit "A."**

A duty of care may arise through statute, contract, the general character of the activity, or the relationship between the parties. *J'Aire Corp. v. Gregory*, 157 Cal. Rptr. 407, 598 P.2d 60 (Cal

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Suite 250
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(702) 258-6665

1979). NRS Chapter 40 creates a duty on the part of the design professionals and holds them accountable to contractors such as Perini.

Additionally, Perini is not filing an independent action for negligence as it relates to the Design Professionals. Perini is engaged in third-party practice pursuant to Rule 14. Perini's causes of action against the Design Professionals flow purely from the HOA's claims for relief and causes of action filed pursuant to NRS 40.600 et seq. In that sense, Perini's claims could be categorized as derivative in nature.

Perini's negligence claim is further supported by the general character of the activity and relationship between the parties. Here, there are thousands of pages of documents including Requests for Information, Notices of Clarification, Field Directives, Plan Details and Product Approvals that support both JMA and MA's ongoing involvement at the project. The briefing from Perini and the HOA in Opposition to the original Motion for Judgment on the Pleadings cited to an overwhelming amount of project documentation, architectural drawings, expert reports, and deposition testimony, all demonstrating the Design Professionals' direct and significant involvement in the design and construction of the Queensridge project.

In total, Perini has identified 36 defect allegations, which, if deemed meritorious by the jury, Perini's experts believe are the responsibility of the Design Professionals. See Declarations of Perini's Experts Sidney Friedman and John Martin attached to Perini's Opposition to JMA, MA, and HCE's Joint Motion, filed on April 1, 2016, attached hereto as **Exhibit "B."** Perini issued Chapter 40 Notice to the Design Professionals. Additionally, Perini complied with the additional pleading requirements for actions against design professionals. Pursuant to NRS 40.8544(1), Perini has reviewed the facts of the case, consulted with two licensed architects and a licensed structural engineer whom Perini reasonably believes have knowledge in the relevant disciplines associated with JMA and MA's respective scopes of work, and concluded that the instant action has a reasonable basis in law in fact. In addition to affirming the legal and factual basis for the claims against the Design Professionals, Perini has further provided certificates of merit prepared by its experts pursuant to NRS 40.8544(3).

As demonstrated at length, Perini has brought proper claims against the Design

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

Professionals. These claims are not only supported by NRS Chapter 40 and established Nevada Law, but are further supported by the allegations asserted by Plaintiff and the facts of this case.

E. Perini has contractual claims against M.A. Engineering

As argued at great length in Perini's original briefing, MA entered into a contract with Perini for structural engineering services dated March 28, 2005. See MA's contract with Perini dated March 28, 2005, attached hereto as **Exhibit "C."** Perini's contract with MA contains the following indemnity provision:

INDEMNIFICATION:

> The Consultant agrees to defend, indemnify and hold harmless the Contractor, its directors, officers, and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorney's fees, for or on account of any kind of injury to persons bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by Contractor or others, in any way arising out of services and operations performed hereunder by the Consultant including the Contractor's reliance on or use of the services or products provided by the Consultant under the terms of this agreement. The Consultant shall not be liable for loss or damage attributable solely to the negligence of Contractor.

Perini's contractual and implied indemnity claims are properly plead and there is no basis whatsoever for the Design Professionals to argue that these claims should be dismissed pursuant to Rule 12(c).

III.

CONCLUSION

In light of the foregoing, JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion for Reconsideration of Order Denying the Design Professionals Motion for Judgment on the Pleadings must be denied.

Dated: September 16, 2016

BREMER WHYTE BROWN & O'MEARA LLP

By: _____

Peter C. Brown, Esq., Bar No. 5887
Lucian J. Greco, Jr., Esq., Bar No. 10600
Attorneys for Defendant/Third-Party
Plaintiff/Cross-Claimant
PERINI BUILDING COMPANY

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2016, a true and correct copy of the foregoing document was electronically served through Wiznet upon all parties on the master e-file and serve list.

Crystal Williams

Crystal Williams, an Employee of
BREMER, WHYTE, BROWN & O'MEARA, LLC

Exhibit ‘A’

Exhibit ‘A’

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Nevada State Bar No. 10600
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
lgreco@bremerwhyte.com

ROBERT NIDA, ESQ. (PRO HAC VICE)
MARK WENDORFF, ESQ. (PRO HAC VICE)
CASTLE & ASSOCIATES
8383 WILSHIRE BLVD., SUITE 810
BEVERLY HILLS, CA 90211
TELEPHONEE: (310) 286-3400
FACSIMILE: (310) 286-3404
rnida@castlelawoffice.com
mwandorff@castlelawoffice.com

Attorneys for Defendant/Third-Party Plaintiff/Cross-Claimant/Counter-Defendant,
PERINI BUILDING COMPANY

DISTRICT COURT

CLARK COUNTY; NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada Non-Profit Corporation, Plaintiff, vs. PERINI BUILDING COMPANY, an Arizona Corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation; EXECUTIVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100, Defendants. KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation, Third-Party Plaintiff, vs. HAMMOND CAULKING, INC., a Nevada Corporation; ZOES 1 through 100,	Case No. A-12-661825-D Dept. No.: XXXI **ORDER DENYING JMA ARCHITECTS, INC., M.A. ENGINEERING, INC., AND HARRIS CONSULTING ENGINEERS, LLC'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PERINI'S SECOND AMENDED THIRD PARTY COMPLAINT AGAINST THE PROJECT DESIGN PROFESSIONALS**

Third-Party Defendant.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation; BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC. dba BTI TILE & STONE, a California corporation; CHAMPION UTILITY SUB-METERING SOLUTIONS, LLC, a Nevada limited liability company; CLP RESOURCES, INC., a Delaware corporation; CONTRACTORS AND BUILDERS PERSONNEL nka EASTRIDGE WORKFORCE SOLUTIONS and EASTRIDGE WORKFORCE TECHNOLOGY, INC., a California corporation; EXPANSION SPECIALTIES, INC., a Nevada corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PAINTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; MARVISTA LANDSCAPE, INC. aka MARVISTA LANDSCAPE CONSTRUCTION, INC., a Nevada corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada corporation; STO DESIGN GROUP, INC., a California corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BROTHERS TILE, LLC, a Nevada limited

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Suite 250
Las Vegas, NV 89144
(702) 258-6665

liability company; XL STEEL, INC., a Nevada corporation; and ROE Individuals 1-100 and ROE Business Entities 2-100,

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BTI STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, a Nevada Corporation; EHB MANAGEMENT CORP., LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., a Nevada Corporation; EXPANSION SPECIALTIES, a Nevada Corporation; GIROUX GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC, a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation ; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTNING PROTECTION SYSTEMS, LCC dba VFC, INC., a Utah Limited Liability Company; LYNCO ASSOCIATES, a Nevada Corporation; M.A. ENGINEERING, INC., a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada

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1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

Limited Liability Company; QT MANAGEMENT, LLC, a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS SOUTHWEST, INC., a Nevada Corporation; DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 2-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 302-400,

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation,

Cross-Claimant,

vs.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Cross-Defendant.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Counter-Claimant,

vs.

PERINI BUILDING COMPANY, a Arizona Corporation,

Counter-Defendant.

NIBCO, INC., an Indiana Corporation,

Fourth-Party Plaintiff,

vs.

NOVASFER, S.R.L., an Italian single member company; HERZ VALVES UK LTD, a British entity; DOES 1 through 10; and ROE

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Suite 250
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(702) 258-6665

JMA-WRIT004586

BUSINESSES 1 through 15, inclusive,

Fourth-Party Defendants.

QUEENSRIDGE TOWERS, LLC, a Nevada Limited Liability Company; and DOES 1 through 100,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, INC., a Nevada CORPORATION; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, LLC, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BAJA TILE, INC. dba BTI TILE & STONE, a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DESERT PLASTERING, LLC a Nevada Limited Liability Company; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; ELSTER AMCO WATER, a Florida Corporation; FERGUSON ENTERPRISES, INC., dba FERGUSON BATH & KITCHEN GALLERY, a Virginia Corporation; GIROUX GLASS, a California Corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC., dba FLOOR TOPIA, a Nevada Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS & RUTH PAINITNG CONTRACTORS, INC., aka HARRIS & RUTH PAINTING CONTRACTORS, INC., a California Corporation; HI-CON, INC., a California Corporation; INSUL-FLOW, INC., a California Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PLUMPING, INC. dba POOLS BY GRUBE, a Nevada Corporation; LYNCO ASSOCIATES, a Nevada Corporation; NIBCO, AN INDIANA CORPORATION; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation;

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1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

JMA-WRIT004587

RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada Limited Liability Company; SLATE DESIGN STUDIOS, INC., a Nevada Corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada Corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada Corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an Individual; T. BROTHERS TILES, LLC, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS SOUTHWEST, INC., a Delaware Corporation; and DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 302-400,

Third-Party Defendants.

SLATER DEISGN STUDIOS, INC., a Nevada Corporation,

Cross-Plaintiff,

vs.

PRESTIGE ROOFING, INC., a Nevada Corporation; DOES INDIVIDUALS 1-100, and ROE ENTITIES 101-200,

Cross-Defendants.

On June 10, 2016, JMA Architects, Inc., M.A. Engineering, Inc., and Harris Consulting Engineers, LLC's Motion For Judgment On The Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals came for hearing before this Court. The Court, having reviewed the papers and pleadings currently on file herein, having heard the

arguments of counsel relating to the facts and law, and with good cause appearing and there being no just cause for delay, the Court concludes as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that because documents attached to the briefs are incorporated through the pleadings, this Court will treat the instant Motion as one for judgment on the pleadings.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Nevada Supreme Court's ruling in *Olson v. Richard*, 120 Nev. 240 (2004), as clarified in *Terracon Consultants W., Inc. v. Mandalay Resort Grp.*, 125 Nev. 66 (2009) and *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430 (2006), mandates that the economic loss doctrine does not apply to residential construction defect cases brought under N.R.S. 40.600, *et seq.*

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Motion For Judgment On The Pleadings as to Perini's Second Amended Third Party Complaint Against the Project Design Professionals is denied without prejudice.

DATED and DONE this 3 day of ~~July~~ 2016.

JOANNA S. KISHNER

DISTRICT COURT JUDGE

Submitted by:
BREMER WHYTE BROWN & O'MEARA LLP

By: _____
Peter C. Brown, Esq.
Nevada State Bar No. 5887
Lucian J. Greco, Esq.
Nevada State Bar No. 10600
Attorneys for Defendant/Third-Party Plaintiff,
PERINI BUILDING COMPANY

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

Exhibit ‘B’

Exhibit ‘B’

DECLARATION OF SIDNEY FRIEDMAN IN SUPPORT OF REPLY IN SUPPORT OF MOTION FOR DECLARATORY RELIEF

I, SIDNEY FRIEDMAN, hereby declare that the following assertions are true and correct of my own personal knowledge:

1. I am an expert retained by PERINI to offer opinions and testimony relating to alleged architectural issues with the Queensridge project.

2. I am employed by Madsen Kneppers & Associates and am one of the experts that has been retained to testify on behalf of PERINI in the above-captioned matter.

3. I have also been retained by PERINI to offer opinions and testimony related to allocation of defect claims made by the Plaintiff.

4. In anticipation of drafting this declaration, I have reviewed relevant subcontracts, architectural plans and drawings, all expert reports, destructive testing, and other documents produced during discovery, and I based the following opinions on my experience and review of these documents.

5. Based on the foregoing, while I do not believe that the Plaintiff's defect allegations have merit, I believe that JMA Architecture bears responsibility for the following defect claims made by Plaintiff that relate to the design of the building:

a. 5.1 – Inadequate expansion joints in gypsum wallboard walls, which has a corresponding cost of repair of $284,043.00.

b. 5.1.3 – Lack of reverse slope at private deck surfaces, 25 sf, which has a corresponding cost of repair of $540,129.00.

c. 5.1.6 - Lack of weatherdrop at deck access doors, which has a cost of repair that is included in 5.1.3

d. 5.1.9 – Spalled stucco finish at concrete curbs at deck edges, which has a corresponding cost of repair of $623,982.00.

e. 5.2.4 – Lack of reverse slope at private decks on garden level, 150 sf, which has a corresponding cost of repair of $333,627.00.

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f. M-03 – T-Bar clgs. piping precludes proper access to service, which has a corresponding cost of repair of $102,282.00.

g. 1.4.3 – Non-compliant means of egress SGD's, which has a cost of repair included in 1.4.17.

h. 1.4.6 – Elevation change of interior to exterior finish surfaces at balconies, which has a cost of repair included in 1.4.17.

i. 1.4.17 – Sliding glass door repairs, which has a cost of repair of $10,288,375.00.

j. 1.5.1 – Water infiltration at panda sliding glass doors, which has a cost of repair included in 1.5.10.

k. 1.5.3 – Leaks in collector boxes, which has a cost of repair included in 1.5.10.

l. 1.5.4 – Sill pan traps water, which has a cost of repair included in 1.5.10.

m. 1.5.9 – Insufficient track height, which has a cost of repair included in 1.5.10.

n. 1.5.10 – PANDA sliding glass door repairs, which has a cost of repair of $1,241,769.

o. Overall, I believe JMA is responsible for defect allegations that constitute $13,414,207.00 of Plaintiff's cost of repair.

7. Further, Declarant sayeth naught.

Sidney Friedman

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Suite 250
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DECLARATION OF JOHN A. MARTIN, JR. IN SUPPORT OF REPLY IN SUPPORT OF MOTION FOR DECLARATORY RELIEF

I, JOHN A. MARTIN, JR., hereby declare that the following assertions are true and correct of my own personal knowledge:

1. I am an expert retained by PERINI to offer opinions and testimony relating to alleged structural issues with the Queensridge project.

2. I am employed by John A. Martin and Associates, Inc. and am one of the experts that has been retained to testify on behalf of PERINI in the above-captioned matter.

3. I have also been retained by PERINI tc offer opinions and testimony related to allocation of defect claims made by the Plaintiff.

4. In anticipation of drafting this declaration, I have reviewed architectural and structural drawings, expert reports, and other documents produced during discovery, and I based the following opinions on my experience and review of these documents.

5. Based on the foregoing, I believe that M.A. Engineering bears some responsibility for the following defect claims made by Plaintiff that relate to the design of the building:

a. 5.1 – Inadequate expansion joints in gypsum wallboard walls, which has a cost of repair of $284,043.00.

b. 5.1.6 – Steel stud headers cross expansion joints, which has a cost of repair of $20,334.00.

c. 5.1.13 – Inadequate uplift attachment for the metal roofs, which does not have an associated cost of repair.

d. 5.1.14 – Inadequate anchorage of balcony railings, which has a cost of repair of $1,602,714.

e. Overall, while I do not agree with the Plaintiff's defect claims, I believe M.A. Engineering bears some responsibility for defect allegations that constitute $1,907,091.00 of Plaintiff's cost of repair.

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1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-8665

6. Further, Declarant sayeth naught.



John Martin

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

JMA-WRIT004594

Exhibit ‘C’

Exhibit ‘C’

Perini *Building Company*
360 E. Coronado Road
Phoenix, Arizona 85004

PROFESSIONAL SERVICES AGREEMENT

Project Name:	**One Queensridge Place - Phase I**
Project Location:	**9101 West Alta Drive** **Las Vegas, Nevada 89145**
Project Number:	**20-020-607**
Cost Code:	**30330.005 S**
PSA Number:	**607-PSA-017**

This Agreement, made and effective as of **March 28,2005**, by and between ***Perini Building Company, Inc.***, a Corporation, hereinafter referred to as Contractor, and **M.A. Engineering, Inc.** a Consultant, hereinafter referred to as Consultant whose address is 3281 So. Highland Dr. Ste 813, Las Vegas, NV 89109

Witnesseth: That the parties hereto for the considerations hereinafter set forth agree as follows:

I. STATE OF SERVICES:

Except as expressly specified herein, Consultant hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all things necessary for the proper completion of the Work generally described as the:

Structural Engineering Services

(hereinafter referred to as the Work) in accordance with all the provisions of the Contract and General Conditions attached hereto and incorporated herein by reference.

II. CONTRACT PRICE:

The Contractor hereby agrees to pay the Consultant, as full consideration for the complete and satisfactory performance of the Contract, a price not to exceed **Twenty Five Thousand and 00/100 Dollars ($25,000.00)**

III. TIME AND MANNER OF PAYMENTS:

All invoices complete with necessary support information shall be submitted in triplicate to the Contractor. Monthly progress payments equal to one hundred (100) percent of the value of Work performed to date may be submitted by the Consultant for payment by the Contractor, based upon satisfactory performance of the Work for the fees, prices, rates or schedule of values set forth above.

Initial

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V. CONTRACT SCHEDULE:

Time is of the essence. The work to be performed under the Contract shall be commenced on or before **March 28,2005** and shall be completed on or before **June 30,2006.**

In Witness whereof,, the parties hereto have signed this Agreement as of the effective date of Contract first above written.

M.A. Engineering, Inc.
Consultant

By: _____

Print Name: Mustapha Assi

Title: Principal

Date: 7.20.05

Perini *Building Company*
General Contractor

By: BD Rockman

Bill Lockman
Project Manager

Date: 7-29-05

MA
Initial

EHI211555

JMA-WRIT004597

EXHIBIT "B"

"GENERAL CONDITIONS"

INDEPENDENT CONSULTANT:

The Consultant shall be and operate as an independent Consultant in the performance of this Contract. The Consultant shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Consultant shall be employees of said Consultant and not employees of the Contractor in any respect.

COMPLIANCE WITH LAWS:

The Consultant shall comply with all applicable laws and regulations, Federal, Statc, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract.

SUBCONTRACTS:

The Consultant shall not subcontract any of the Work to be performed by it hereunder without the express written consent of the Contractor.

INDEMNIFICATION:

The Consultant agrees to defend, indemnify, and hold harmless the Contractor, its directors, officers, and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by Contractor or others, in any way arising out of services and operations performed hereunder by the Consultant, including the Contractor's reliance on or use of the services or products provided by the Consultant under the terms of this agreement. The Consultant shall not be liable for loss or damage attributable solely to the negligence of Contractor.

INSURANCE:

Consultant shall furnish Contractor the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts fixed by the Contractor. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to Contractor. Contractor and such additional persons and entities as may be deemed to have an exposure to liability as a result of the performance of Consultant's Work shall be named as additional insureds.

In addition to the foregoing, the Consultant shall maintain Professional Liability "errors and omissions" insurance in the form and for the coverages satisfactory to Contractor.

The Contractor and Consultant waive all rights against each other and against the Owner, the Architect/Engineer, Subcontractors, and other consultants for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance.

Initial

CHANGES:

The Consultant shall make any and all changes in the work without invalidating this Contract when specifically ordered to do so in writing by the Contractor. Consultant, prior to the commencement of such changed or revised work, shall submit promptly to the Contractor, a written cost or credit proposal for such revised work. If the Contractor and Consultant shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall, nevertheless, be the duty of Consultant, upon written notice from the Contractor, to immediately proceed with such alteration or change, and Consultant shall be compensated the reasonable value of such work.

ARBITRATION:

All claims, disputes, and other matters in question arising out of, or relating to, this Contract or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Notice of the demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen, but in no event shall it be made after substantial completion of the project for which this Contract is awarded.

TERMINATION:

The Contractor shall have the right to terminate the Contract at any time for any reason by giving the Consultant two (2) days prior written notice to such effect. Contractor shall pay to the Consultant in full satisfaction and discharge of all amounts owing to the Consultant under the Contract an amount equal to the cost of all Work performed by the Consultant up to such termination date, less all amounts previously -paid to the Consultant on account of the Contract Price. The Consultant shall submit to the Contractor its statement for the aforesaid amount, in such reasonable detail as the Contractor shall request, within thirty (30) days after such date of termination. The Contractor shall not be liable to the Consultant for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

ACCOUNTING:

During the period of this Contract, the Consultant shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The Contractor shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Consultant.

END OF GENERAL CONDITIONS

Perini Building Company	U.S. Western Division
Exhibit: C (Subcontractor's Insurance Requirements)	
Job Name: **One Queensridge Place Phase I**	
Job Number: **20-020-607**	

Exhibit C Contains:

1. Subcontractor's Insurance Requirements
2. Sample Insurance Certificate showing required limits.
3. Sample Additional Insured Endorsement. (Please ensure the "Endorsement Page" accompanies the insurance Certificate and contains all the information listed in the attached "Endorsement Sample").

Note: Our automotive policy is for $100,000/$300,000
Not $1,000,000.

We do not have an umbrella policy.

Initial

EHI211558

JMA-WRIT004600

Exhibit "C"

Subcontractors Insurance Requirements

Subcontractor shall, at his own expense, maintain until final completion and acceptance, through insurers admitted/licensed in the State where the contract work is to be performed, and through policy forms satisfactory to Contractor, minimum insurance as prescribed below.

The following limits or specific coverages do not restrict or limit any contractual obligation between the parties as may be defined elsewhere. The Contractors failure to identify insurance deficiencies does not relieve the subcontractor from any insurance obligations.

1. **Workers Compensation and Employers Liability Insurance:**

   Meeting the statutory requirements of the state or states in which work shall be performed, covering all subcontractors' employees directly or indirectly engaged in the performance of the subcontract. This insurance will provide not less than $5,000,000 in Employers' Liability coverage. This coverage shall include an all states endorsement where applicable.

2. **Policy Limits:**

Coverage	Minimum Limit Required
General Liability:	$1,000,000 Each occurrence.
	$2,000,000 Aggregate.
Automotive Liability:	$1,000,000 Combined Single Limit each occurrence.
Umbrella or Excess Liability:	$5,000,000 Each occurrence.
	$5,000,000 Aggregate.
Workers Compensation:	Statutory
	$1,000,000 Employer's Liability.

The above limits may be achieved by any combination of primary and excess insurance. When excess insurance is used, Umbrella Form must be provided.

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JMA-WRIT004601

3. General Liability:

1. Commercial General Liability
    1. 1988 ISO Occurrence Form or equivalent, including
        1. Blanket contractual liability covering all parties indemnified by contract.
        2. Products and Completed Operations Coverage including a three-year extension beyond acceptance date.
        3. Broad Form Property Damage.
        4. Independent Contractors.
        5. Blanket Explosion, Collapse, and Underground Property Damage Liability.
        6. Employees as additional insureds.
        7. Aggregate Limits of Insurance (Per Project) form must be included with the Commercial General Liability Policy.

4. Business Automobile:

1. Covers all owned, non-owned and hired vehicles.
2. Limit $1 million for any one loss for Bodily Injury, including death, and Property Damage combined.

5. Additional Insured Endorsements:

1. Insurance policies specified above, with the exception of Workers Compensation, shall name Perini Building Company, Inc, their directors, officers, employees, subsidiaries and affiliates as Additional Insureds. The coverage provided by Subcontractor will be primary, and any other insurance or self-insurance maintained by the Owner or Contractor shall be excess only and shall not be called upon to contribute with this insurance.
2. The additional insured endorsement shall be ISO form B, CG20101185, or its equivalent. The endorsement shall contain no restrictions not found in ISO form B.

6. Applicable to all-insurance:

1. Certificates shall include an insurer obligation to provide thirty days prior written notice of cancellation, material change or non-renewal by certified mail, return receipt requested.

MA
Initial

2. Contractor has the right but not the duty to receive copies of all insurance policies on request. Policies shall not include any exclusions that are unacceptable to Contractor. Contractor may require that all policies must be certified by an insurance carrier as true and complete.

3. The Subcontractor, at his own expense, is required to provide any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances, or regulations regarding the performance of the subcontract work.

4. Contractor must bc provided updated renewal certificates or policies and required endorsements as appropriate. Failure of Contractor to request renewal certificates or endorsements does not relieve the subcontractor from the obligation to maintain such insurances as required herein.

5. Claims made policies are not acccptable except where specifically authorized by the Contractor.

Initial

ACORD

CERTIFICATE OF INSURANCE

DATE MM/DD/YY

PRODUCER

INSURANCE REQUIREMENTS FOR SUBCONTRACTORS

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Name of Insured SUBCONTRACTOR

Address of Insured

COMPANIES AFFORDING COVERAGE

COMPANY A

COMPANY B

COMPANY C

COMPANY D

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR ☐ OWNER'S & CONTRACTOR'S PROI ☐ ☐	General Liability Policy # Any combination of primary and umbrella policies may be used as long as the required limits are provided.			GENERAL AGGREGATE	$ 2,000,000
					PRODUCTS COMP/OP AGG	$2,000,000
					PERSONAL & ADV INJURY	$1,000,000
					EACH OCCURRENCE	$1,000,000
					FIRE DAMAGE	$1,000,000
					MED EXP (Any one person)	$10,000
	AUTOMOTIVE LIABILITY ☐ X ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON OWNED AUTOS ☐	**Sample**			COMBINED SINGLE LIMIT	$1,000,000
					BODILY INJURY (Per person)	$
					BODILY INJURY (Per accident)	$
					PROPERTY DAMAGE	$
	GARAGE LIABILITY ☐ ANY AUTO ☐ ☐	**Certificate**			AUTO ONLY-EA ACCIDENT	$
					OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	$
					AGGREGATE	$
	EXCESS LIABILITY ☐ X UMBRELLA FORM ☐ OTHER THAN UMBRELLA FORM	Excess Liability Policy #			EACH OCCURRENCE	$5,000,000
					AGGREGATE	$5,000,000
						$
	WORKDERS COMPENSATION AND EMPLOYERS LIABILITY THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: ☐	Workers Compensation & Employers Liability #			X STATUTORY LIMITS	
					EACH ACCIDENT	$1,000,000
					DISEASE - POLICY LIMIT	$1,000,000
					DISEASE - EACH EMPLOYEE	$1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES SPECIAL ITEMS

One Queensridge Place – Job # 20-020-607, Perini Building Company, Queensridge Tower LLC, it's officers, directors, employees and agents and any wholly-owned subsidiaries, managed companies or parent organizations are added as additional insured, per endorsements equivalent to ISO form 20 10 (11/85-Form B). Coverage is primary and non-contributory. Waiver of Subrogation is included for General Liability, Workers Compensation and Automobile Liability per Endorsement # attached.

CERTIFICATE HOLDER	CANCELLATION
Queensridge Tower LLC PERINI BUILDING COMPANY 9811 W. CHARLESTON BLVD., STE. 2-332 LAS VEGAS, NV 89117	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND, UPON THE COMPANY, ITS AGENTS, OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
ACORD 25-S (3-93)	By: ACORD CORPORATION 1993

Initial

EHI211562

JMA-WRIT004604

Perini *Building Company*	U.S. Western Division
Exhibit "C" **(Insurance Endorsement)**	
Job Name: One Queensridge Place	Date: 02/28/05
Job Number: **20-020-607**	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED-OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies the insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

Schedule: Perini Job No. **20-020-607**
9811 W. Charleston Blvd., Ste. 2-332
Las Vegas, NV 89117

Name of Person or Organization:

One Queensridge Place Job #20-020-607 Perini Building Company, Queensridge Tower LLC, its officers, directors, employees and agents and any wholly-owned subsidiaries, managed companies or parent organizations are added as additional insured, per endorsements equivalent to ISO form 20 10 (11/85-Form B). Coverage is primary and non-contributory. Waiver of Subrogation is included for General Liability, Worker's Compensation and Automobile Liability per Endorsement#__ attached.

(If no entry appears above information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising our of your ongoing operations performed for that insured.

Endorsement Page must also show:

1. Name of Policy Holder (insured)
2. Policy Number

Initial

TAB – 125

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CLERK OF THE COURT

PETER C. BROWN, ESQ.
Nevada State Bar No. 5887
LUCIAN J. GRECO, JR., ESQ.
Nevada State Bar No. 10600
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
lgreco@bremerwhyte.com

ROBERT NIDA, ESQ. (PRO HAC VICE)
CASTLE & ASSOCIATES
8383 WILSHIRE BLVD., SUITE 810
BEVERLY HILLS, CA 90211
TELEPHONEE: (310) 286-3400
FACSIMILE: (310) 286-3404
rnida@castlelawoffice.com

Attorneys for Defendant/Third-Party Plaintiff/Cross-Claimant/Counter-Defendant,
PERINI BUILDING COMPANY

DISTRICT COURT

CLARK COUNTY; NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada Non-Profit Corporation, Plaintiff, vs. PERINI BUILDING COMPANY, an Arizona Corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation; EXECUTIVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100, Defendants. KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation, Third-Party Plaintiff, vs. HAMMOND CAULKING, INC., a Nevada Corporation; ZOES 1 through 100,	Case No. A-12-661825-D Dept. No.: XXXI **PERINI BUILDING COMPANY'S MOTION TO STRIKE HARRIS CONSULTING ENGINEERS LLC'S UNTIMELY JOINDERS TO JMA ARCHITECTS, INC. AND M.A. ENGINEERING INC.'S MOTIONS FOR RECONSIDERATION ON ORDER SHORTENING TIME**

DEPARTMENT XXXI
NOTICE OF HEARING
DATE 9/23/16 TIME 9:00 am
APPROVED BY

09-19-16 P01:32 IN

Third-Party Defendant.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation; BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC. dba BTI TILE & STONE, a California corporation; CHAMPION UTILITY SUB-METERING SOLUTIONS, LLC, a Nevada limited liability company; CLP RESOURCES, INC., a Delaware corporation; CONTRACTORS AND BUILDERS PERSONNEL nka EASTRIDGE WORKFORCE SOLUTIONS and EASTRIDGE WORKFORCE TECHNOLOGY, INC., a California corporation; EXPANSION SPECIALTIES, INC., a Nevada corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PAINTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; MARVISTA LANDSCAPE, INC. aka MARVISTA LANDSCAPE CONSTRUCTION, INC., a Nevada corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada corporation; STO DESIGN GROUP, INC., a California corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BROTHERS TILE, LLC, a Nevada limited liability company; XL STEEL, INC., a Nevada

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Las Vegas, NV 89144
(702) 258-6665

corporation; and ROE Individuals 1-100 and ROE Business Entities 2-100,

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BTI STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, a Nevada Corporation; EHB MANAGEMENT CORP., LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., a Nevada Corporation; EXPANSION SPECIALTIES, a Nevada Corporation; GIROUX GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC, a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation ; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTNING PROTECTION SYSTEMS, LCC dba VFC, INC., a Utah Limited Liability Company; LYNCO ASSOCIATES, a Nevada Corporation; M.A. ENGINEERING, INC., a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada Limited Liability Company; QT

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MANAGEMENT, LLC, a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS SOUTHWEST, INC., a Nevada Corporation; DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 2-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 302-400,

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation,

Cross-Claimant,

vs.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Cross-Defendant.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Counter-Claimant,

vs.

PERINI BUILDING COMPANY, a Arizona Corporation,

Counter-Defendant.

NIBCO, INC., an Indiana Corporation,

Fourth-Party Plaintiff,

vs.

NOVASFER, S.R.L., an Italian single member company; HERZ VALVES UK LTD, a British entity; DOES 1 through 10; and ROE BUSINESSES 1 through 15, inclusive,

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Las Vegas, NV 89144
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Fourth-Party Defendants.

QUEENSRIDGE TOWERS, LLC, a Nevada Limited Liability Company; and DOES 1 through 100,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, INC., a Nevada CORPORATION; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, LLC, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BAJA TILE, INC. dba BTI TILE & STONE, a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DESERT PLASTERING, LLC a Nevada Limited Liability Company; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; ELSTER AMCO WATER, a Florida Corporation; FERGUSON ENTERPRISES, INC., dba FERGUSON BATH & KITCHEN GALLERY, a Virginia Corporation; GIROUX GLASS, a California Corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC., dba FLOOR TOPIA, a Nevada Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS & RUTH PAINITNG CONTRACTORS, INC., aka HARRIS & RUTH PAINTING CONTRACTORS, INC., a California Corporation; HI-CON, INC., a California Corporation; INSUL-FLOW, INC., a California Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PLUMPING, INC. dba POOLS BY GRUBE, a Nevada Corporation; LYNCO ASSOCIATES, a Nevada Corporation; NIBCO, AN INDIANA CORPORATION; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; RAGLEN SYSTEM BALANCE, INC., a Nevada

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JMA-WRIT004610

Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada Limited Liability Company; SLATE DESIGN STUDIOS, INC., a Nevada Corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada Corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada Corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an Individual; T. BROTHERS TILES, LLC, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS SOUTHWEST, INC., a Delaware Corporation; and DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 302-400,

Third-Party Defendants.

SLATER DEISGN STUDIOS, INC., a Nevada Corporation,

Cross-Plaintiff,

vs.

PRESTIGE ROOFING, INC., a Nevada Corporation; DOES INDIVIDUALS 1-100, and ROE ENTITIES 101-200,

Cross-Defendants.

COMES NOW, PERINI BUILDING COMPANY (hereinafter "PERINI"), by and through its attorneys of record, Peter C. Brown, Esq. and Lucian J. Greco, Jr., Esq. of the law firm of BREMER WHYTE BROWN & O'MEARA, and Nomi Castle, Esq. and Robert Nida, Esq. of the law firm of CASTLE & ASSOCIATES, and hereby files this Motion to Strike Harris Consulting Engineers, LLC's untimely Joinders to JMA Architects, Inc. and M.A. Engineering Inc.'s Motion

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Suite 250
Las Vegas, NV 89144
(702) 258-6665

to Reconsider the Order Denying the Design Professionals Motion to Bar Any Further Claims Against the Project Design Professionals Based on the State of Repose; or in the Alternative, Motion for Judgement on the Pleadings as to Plaintiff's Second Amended Complaint against DOE Defendant Design Professionals on Order Shortening Time ("Motion to Bar Further Claims"); Motion for Reconsideration of the Order Denying the Design Professionals' Motion for Good Faith Determination Barring Claims Against the Design Professionals on Order Shortening Time ("Motion for Good Faith Settlement"); and Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings or in the Alternative Motion for Judgement on the Pleadings ("Motion for Judgment on the Pleadings") (collectively "Motions for Reconsideration").

This Motion is based upon the papers and pleadings on file, the attached Points and Authorities, and such oral argument as may be entertained at the time and place of the hearing of this Motion.

Dated: September 16, 2016

BREMER WHYTE BROWN & O'MEARA LLP

By: _____
Peter C. Brown, Esq., Bar No. 5887
Lucian J. Greco, Jr., Esq., Bar No. 10600
Attorneys for Defendant/Third-Party Plaintiff/Cross-Claimant
PERINI BUILDING COMPANY

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS HEREBY ORDERED that **PERINI BUILDING COMPANY'S MOTION TO STRIKE HARRIS CONSULTING ENGINEERS LLC'S UNTIMELY JOINDERS TO JMA ARCHITECTS, INC. AND M.A. ENGINEERING INC.'S MOTIONS FOR RECONSIDERATION ON ORDER SHORTENING TIME** be heard on the 28 day of September 2016, at 9:00 a.m. in the above-referenced Court.

DISTRICT COURT JUDGE

Dated: September 16, 2016

BREMER WHYTE BROWN & O'MEARA LLP

By: _____
Peter C. Brown, Esq., Bar No. 5887
Lucian J. Greco, Jr., Esq., Bar No. 10600
Attorneys for Defendant/Third-Party
Plaintiff/Cross-Claimant
PERINI BUILDING COMPANY

Motion must be filed/served by: 9/20/16 @ 5pm

Opposition must be filed/served by: 9/23/16 @ 5pm

Reply must be filed/served by: 9/27/16 @ 5pm

Please provide courtesy copies to Chambers upon filing.

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1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

AFFIDAVIT OF PETER C. BROWN, ESQ. IN SUPPORT OF PERINI BUILDING COMPANY'S MOTION TO STRIKE THIRD-PARTY DEFENDANT HARRIS CONSULTING ENGINEERS, LLC'S UNTIMELY JOINDERS TO JMA ARCHITECTS, INC AND M.A. ENIGNEERING INC'S MOTIONS FOR RECONSIDERATION ON ORDER SHORTENING TIME

STATE OF NEVADA)
): ss
COUNTY OF CLARK)

I, Peter C. Brown, Esq., being first duly sworn, deposes and states:

1. I am an attorney at the law firm of Bremer, Whyte, Brown & O'Meara LLP. I am in good standing and licensed to practice law in the State of Nevada.

2. I have personal knowledge of the following facts, and if called to testify I could competently do so.

3. This Affidavit is made in support of Perini Building Company's ("Perini") Motion to Strike Harris Consulting Engineers, LLC's Untimely Joinders to JMA Architects, Inc. and M.A. Engineering LLC's Motions for Reconsideration pursuant to EDCR 2.21 on Order Shortening Time.

4. The Hearing on Third-Party Defendants JMA Architects, Inc. and M.A. Engineering Inc.'s Motions for Reconsideration is set for September 28, 2016 at 9:00 a.m.

5. An Order shortening the time in which the Court will hear the instant Motion at the time of or prior to JMA Architects, Inc. and M.A. Engineering LLC's Motions for Reconsideration is necessary as the outcome of the instant Motion will impact how the parties will proceed with JMA Architects, Inc. and M.A. Engineering LLC's Motions for Reconsideration.

6. I have reviewed the court filings as well as the e-service lists for this case on Odyssey/Wiznet.

7. Based on my review, Third-Party Defendants JMA Architects, Inc. and M.A. Engineering Inc.'s filed their Motion to Reconsider the Order Denying the Design Professionals Motion to Bar Further Claims and the Motion for Reconsideration of the Order Denying the Design Professionals' Motion for Good Faith Settlement on August 26, 2016. Subsequently, JMA Architects, Inc. and M.A. Engineering Inc. filed a Motion to Reconsider the Order Denying the Design Professionals Motion for Judgment on the Pleadings on August 26, 2016.

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Suite 250
Las Vegas, NV 89144
(702) 258-6665

8. Harris Consulting Engineers, LLC e-filed its Joinders to all of JMA Architects, Inc. and M.A. Engineering Inc.'s Motions for Reconsideration on September 15, 2016.

9. Both Joinders are untimely pursuant to EDCR 2.21

10. Further, Affiant sayeth naught.

Peter C. Brown, Esq.

SUBSCRIBED and SWORN to before me this 14th day of September, 2016.

Crystal Williams
Notary Public in and for
County of Clark, State of Nevada

CRYSTAL WILLIAMS
Notary Public-State of Nevada
APPT. NO. 14-13546-1
My App. Expires March 04, 2018

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On August 26, 2016, Third-Party Defendants JMA Architects, Inc., and M.A. Engineering Inc. (hereinafter collectively referred to as "JMA") filed a Motion to Reconsider the Order Denying the Design Professionals' Motion for Good Faith Settlement and a Motion to Reconsider the Order Denying the Design Professionals' Motion to Bar Further Claims. The Motions were filed on Shortened Time and are scheduled for hearing on September 28, 2016.

On August 29, 2016 JMA filed a Motion to Reconsider the Order Denying the Design Professionals' Motion for Judgment on the Pleadings. This Motion is set for October 5, 2016.

Pursuant to an Agreement of the parties to amend the briefing schedule, the deadline for Oppositions to the Motions scheduled to be heard on September 28, 2016 was extended to September 9, 2016. On September 9, 2016, PERINI timely filed its Opposition to the aforementioned Motions for Reconsideration. On September 16, 2016, PERINI timely filed its Opposition to JMA's Motion to Reconsider the Order Denying the Design Professionals Motion for Judgment on the Pleadings.

On September 15, 2016, Third-Party Defendant, Harris Consulting Engineers, LLC filed its untimely Joinders to **all** of JMA's Motions for Reconsideration.

II. LEGAL STANDARD

NRCP 2.20 provides a deadline for filing joinders to motions as follows:

> (d) Within 5 days after service of the motion, a nonmoving party may file written joinder thereto, together with a memorandum of points and authorities and any supporting affidavits. If the motion becomes moot or is withdrawn by the movant, the joinder becomes its own stand-alone motion and the court shall consider its points and authorities in conjunction with those in the motion.

NRCP 6 provides the computation for filing pleadings, as follows:

> (a) When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and nonjudicial days shall be excluded in the computation except for those proceedings filed under Titles 12 or 13 of the Nevada Revised Statutes.
>
> (e) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of

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Suite 250
Las Vegas, NV 89144
(702) 258-6665

> a notice or other paper, other than process, upon the party and the notice or paper is served upon the party by mail or by electronic means, 3 days shall be added to the prescribed period.

III. ARGUMENT

Pursuant to NRCP 2.20, any Joinder was required to be filed within five (5) days of service of the Motions for Reconsideration. Harris filed its Joinders to the Motions for Reconsideration on September 15, 2016, which is well beyond the required deadline.

JMA's Motion to Reconsider the Order Denying the Design Professionals Motion for Good Faith Settlement and JMA's Motion to Reconsider the Order Denying the Design Professionals Motion to Bar Further Claims were filed on August 26, 2016 and served on August 29, 2016. Therefore, Joinders to those Motions were due no later than September 9, 2016[1]. More importantly, Harris' joinders were filed *after* PERINI filed its Opposition.

Moreover, JMA filed its Motion to Reconsider the Order Denying the Design Professionals Motion for Judgment on the Pleadings on August 29, 2016 and served on August 30, 2016. Therefore, any Joinder was due no later than September 12, 2016[2].

IV. CONCLUSION

Based upon the arguments presented above, PERINI respectfully requests this Court strike Harris' untimely Joinders to the Design Professionals' Motions for Reconsideration.

Dated: September 16, 2016

BREMER WHYTE BROWN & O'MEARA LLP

By: _____
Peter C. Brown, Esq., Bar No. 5887
Lucian J. Greco, Jr., Esq., Bar No. 10600
Attorneys for Defendant/Third-Party
Plaintiff/Cross-Claimant
PERINI BUILDING COMPANY

---

[1] This calculation is based off the date of service and includes three (3) additional days for service and excludes counting Labor Day.

[2] This calculation is also based off the date of service and includes three (3) additional days for service and excludes counting Labor Day.

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Suite 250
Las Vegas, NV 89144
(702) 258-6665

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 2016, a true and correct copy of the foregoing document was electronically served through Wiznet upon all parties on the master e-file and serve list.

Crystal Williams

Crystal Williams, an Employee of
BREMER, WHYTE, BROWN & O'MEARA, LLC

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

TAB – 126

MARTIN J. KRAVITZ, ESQ.
Nevada Bar No. 00083
GINA M. MUSHMECHE, ESQ.
Nevada Bar No. 10411
KRISTOPHER T. ZEPPENFELD, ESQ.
Nevada Bar No. 12144
KRAVITZ, SCHNITZER
& JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, NV 89123
Tele: (702) 362-6666
Fax: (702) 362-2203
mkravitz@ksjattorneys.com
gmushmeche@ksjattorneys.com
kzeppenfeld@ksjattorneys.com
Attorneys forThird-Party Defendant,
HARRIS CONSULTING ENGINEERS, LLC

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09/23/2016 11:41:29 AM

CLERK OF THE COURT

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

DISTRICT COURT

CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, IN C., a Nevada non-profit corporation,

Plaintiff,

v.

PERINI BUILDING COMPANY, an Arizona corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada corporation; EXECUTIVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100; Defendants.

EXECUTIVE HOMES, INC., a Nevada corporation,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation, BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC. dba BTI TILE & STONE, a California corporation; DESERT PLASTERING, LLC, a Nevada limited liability company; EXPANSION SPECIALTIES. INC.. a Nevada corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada corporation;

Case No.: A-12-661825-D

Dept. No.: XXXI

THIRD-PARTY DEFENDANT HARRIS CONSULTING ENGINEERS, LLC'S LIMITED OPPOSITION TO PERINI BUILDING COMPANY'S MOTION TO STRIKE UNTIMELY JOINDERS TO JMA ARCHITECT'S, INC. AND M.A. ENGINEERING INC.'S MOTIONS FOR RECONSIDERATION

JMA-WRIT004619

HARDSTONE CONSTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PANTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada limited liability company; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BROTHERS TILE, LLC, a Nevada limited liability company; Y AMAS CONTROLS SOUTHWEST, INC., a Delaware corporation; and ROES 1-100, Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona corporation,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation: BTI STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, a Nevada Corporation; EHB MANAGEMENT CORP, LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida

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Las Vegas, Nevada 89123
(702) 362-6666

Corporation; EXECUTIVE HOME BUILDERS, INC., a Nevada Corporation; EXPANSION SPECIALTIES, a Nevada Corporation; GIROUX GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC, a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTNING PROTECTION SYSTEMS, LLC dba VFC, INC., a Utah Limited Liability Company; LYNCO ASSOCIATES, a Nevada Corporation; M.A. ENGINEERING, INC., a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada Limited liability Company; QT MANAGEMENT, LLC, a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS CORPORATION, a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS CENTRAL, a Nevada Corporation; DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 301-400, Third-Party Defendants. QUEENSRIDGE TOWERS, LLC, a Nevada limited liability company; and DOES 1 through 100,

Third-Party Plaintiff,

v.

A-1 MECHANICAL, INC., a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, LLC, a

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8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BAJA TILE, INC. dba BTI TILE & STONE, a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DESERT PLASTERING, LLC, a Nevada Limited Liability Company; DIVERSIFIED CONCRETE CUTTING a Nevada Corporation. ELSTER AMCO WATER, a Florida Corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia Corporation; GIROUX GLASS, a California Corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS & RUTH PAINTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California Corporation; HI-CON, INC., a California Corporation; INSUL-FLOW, INC., a California Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada Corporation; LYNCO ASSOCIATES, a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation: RS ANALYSIS. INC.. a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada Limited Liability Company; SLATER DESIGN STUDIOS, INC., a Nevada Corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada Corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada Corporation; RICHARD ALAMANDER dba STONE DESIGNS, an Individual; T. BROTHERS TILE, LLC, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company;

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8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; Y AMAS CONTROLS SOUTHWEST, INC., a Delaware Corporation; and DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-1 00; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURES 302-400,
Third-Party Defendants.
GIROUX GLASS, INC., a California corporation,
Third-Party Plaintiff,

v.

ZOE MATERIAL SUPPLIERS 1 through 10; and MOE PRODUCT MANUFACTURERS 1 through 10,
Third-Party Defendants.

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8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

COMES NOW Third-Party Defendant HARRIS CONSULTING ENGINEERS, LLC. ("HCE"), by and through its counsel of record, Martin J. Kravitz, Esq., and Kristopher T. Zeppenfeld, Esq., of the law firm KRAVITZ, SCHNITZER & JOHNSON, CHTD., and hereby submits its Limited Opposition to Perini Building Company's Motion to Strike Untimely Joinders to JMA Architects, Inc. and M.A. Engineering Inc.'s Motions for Reconsideration

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Honorable Court should deny Perini's Motion to Strike ("Motion") as it relates solely to HCE's Joinder to JMA Architects, Inc. and M.A. Engineering, Inc.'s Motion for Reconsideration of Order Denying Motion for a Good faith Determination Barring Claims Against the Design Professionals ("Joinder"). HCE was a party to the underlying Joint Motion for Good Faith Settlement ("GFS") related to the aforementioned Joinder. As such, this Court's ruling on the Motion for Reconsideration would apply to HCE—with or without a Joinder. Moreover, Perini suffers no prejudice should this Court accept HCE's Joinder. Consequently, this Court should deny Perini's Motion.

Lastly, HCE hereby withdraws its Joinders to both JMA Architects, Inc., and M.A.

Engineering, Inc.'s Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings or in the alternative Motion for Judgment on the Pleadings **and** to Reconsider the order to Bar any Further Claims Against the Project Design Professionals Based on the Statute of Repose; or in the alternative, Motion for Judgment on the Pleadings as to Plain tiffs' Second Amended Complaint Against Doe Defendant Design Professionals.

II. ARGUMENT

HCE filed its Joinder in good faith, with no intent to ambush, vex or annoy Perini or this Court. In fact, HCE did not object to Perini's request for an extension to file its Opposition related to the underlying Motions for Reconsideration. HCE is (and has been throughout this litigation) more than willing to cooperate with, and agree to any requests for extensions. Nonetheless, admittedly, HCE's Joinder was untimely filed due to an inadvertent calendaring error on the part of the undersigned. However, the requested relief sought in JMA's Motion for Reconsideration applies to HCE.

By way of reminder, JMA's Joint Motion for GFS originally included HCE as one of the design professionals seeking relief. HCE also filed a separate Joinder to the GFS. This Court heard arguments on the GFS and subsequently denied the motion. JMA's Motions for Reconsideration seek similar relief to that of the prior GFS Motions. This relief should include HCE, just as it would have if the Court granted the prior GFS Motions. HCE's interests have always been aligned with JMA's due to their status as design professionals on the Queensridge project. HCE's Joinder merely joins in the arguments asserted within JMA and M.A.'s Motion. The Joinder does not assert any additional arguments warranting a response from Perini. Perini is not prejudiced by HCE's untimely filing. As such, the Court should accept the Joinder.

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KRAVITZ, SCHNITZER & JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

III. CONCLUSION

Based upon the foregoing, HCE requests this Court deny Perini's Motion to Strike HCE's Joinder only as it relates to the GFS.

DATED this 23rd day of September, 2016.

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.

MARTIN J. KRAVITZ, ESQ.
Nevada Bar No. 00083
GINA M. MUSHMECHE, ESQ.
Nevada Bar No. 10411
KRISTOPHER T. ZEPPENFELD, ESQ.
Nevada Bar No. 12144
Attorneys for Third-Party Defendant,
HARRIS CONSULTING ENGINEERS, LLC

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.
8985 S. Eastern Ave., Ste. 200
Las Vegas, Nevada 89123
(702) 362-6666

CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of September, 2016, I served a true and correct copy of the foregoing **THIRD-PARTY DEFENDANT HARRIS CONSULTING ENGINEERS, LLC'S LIMITED OPPOSITION TO PERINI BUILDING COMPANY'S MOTION TO STRIKE UNTIMELY JOINDERS TO JMA ARCHITECT'S, INC. AND M.A. ENGINEERING INC.'S MOTIONS FOR RECONSIDERATION** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

An employee of Kravitz, Schnitzer
& Johnson, Chtd.

TAB – 127

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09/26/2016 03:29:33 PM

CLERK OF THE COURT

PETER C. BROWN, ESQ.
Nevada State Bar No. 5887
LUCIAN J. GRECO, JR., ESQ.
Nevada State Bar No. 10600
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
lgreco@bremerwhyte.com

ROBERT NIDA, ESQ. (PRO HAC VICE)
CASTLE & ASSOCIATES
8383 WILSHIRE BLVD., SUITE 810
BEVERLY HILLS, CA 90211
TELEPHONEE: (310) 286-3400
FACSIMILE: (310) 286-3404
rnida@castlelawoffice.com

Attorneys for Defendant/Third-Party Plaintiff/Cross-Claimant/Counter-Defendant,
PERINI BUILDING COMPANY

DISTRICT COURT

CLARK COUNTY; NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada Non-Profit Corporation, Plaintiff, vs. PERINI BUILDING COMPANY, an Arizona Corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation; EXECUTIVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100, Defendants. KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation, Third-Party Plaintiff, vs. HAMMOND CAULKING, INC., a Nevada Corporation; ZOES 1 through 100,	Case No. A-12-661825-D Dept. No.: XXXI **PERINI BUILDING COMPANY'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO STRIKE HARRIS CONSULTING ENGINEERS, LLC'S UNTIMELY JOINDERS TO JMA ARCHITECTS, INC. AND M.A. ENGINEERING, INC.'S MOTIONS FOR RECONSIDERATION ON ORDER SHORTENING TIME**

Third-Party Defendant.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, INC., a Nevada corporation; ABDA, INC., a Nevada corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada corporation; BEAUTY WITH PAVERS, LLC, a Nevada limited liability company; BAJA TILE, INC. dba BTI TILE & STONE, a California corporation; CHAMPION UTILITY SUB-METERING SOLUTIONS, LLC, a Nevada limited liability company; CLP RESOURCES, INC., a Delaware corporation; CONTRACTORS AND BUILDERS PERSONNEL nka EASTRIDGE WORKFORCE SOLUTIONS and EASTRIDGE WORKFORCE TECHNOLOGY, INC., a California corporation; EXPANSION SPECIALTIES, INC., a Nevada corporation; FERGUSON ENTERPRISES, INC. dba FERGUSON BATH & KITCHEN GALLERY, a Virginia corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC. dba FLOOR TOPIA, a Nevada corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada limited liability company; HARRIS & RUTH PAINTING CONTRACTORS, INC. aka HARRIS & RUTH PAINTING CONTRACTING, INC., a California corporation; HI-CON, INC., a California corporation; STACY THOMASSON dba HIGH TECH PROFESSIONAL WINDOW CLEANING, an individual; INSUL-FLOW, INC., a California corporation; MARVISTA LANDSCAPE, INC. aka MARVISTA LANDSCAPE CONSTRUCTION, INC., a Nevada corporation; LAS VEGAS CONCRETE PUMPING, INC. dba POOLS BY GRUBE, a Nevada corporation; PRESTIGE ROOFING, INC., a Nevada corporation; S3H, INC., a Nevada corporation; SLATER DESIGN STUDIOS, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada corporation; STO DESIGN GROUP, INC., a California corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an individual; T. BROTHERS TILE, LLC, a Nevada limited liability company; XL STEEL, INC., a Nevada

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1160 N. Town Center Drive
Suite 250
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(702) 258-6665

corporation; and ROE Individuals 1-100 and ROE Business Entities 2-100,

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, a Nevada Corporation; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BTI STONE & TILE fka BAJA TILE, INC., a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; EHB CORPORATION, a Nevada Corporation; EHB MANAGEMENT CORP., LLC, a Nevada Limited Liability Company; ELSTER AMCO WATER, a Florida Corporation; EXECUTIVE HOME BUILDERS, INC., a Nevada Corporation; EXPANSION SPECIALTIES, a Nevada Corporation; GIROUX GLASS, a California Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS CONSULTING ENGINEERS, LLC, a Nevada Limited Liability Company; HI-CON, INC., a Nevada Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation ; LAS VEGAS CONCRETE PUMPING dba POOLS BY GRUBE, a Nevada Corporation; LIGHTNING PROTECTION SYSTEMS, LCC dba VFC, INC., a Utah Limited Liability Company; LYNCO ASSOCIATES, a Nevada Corporation; M.A. ENGINEERING, INC., a Nevada Corporation; NIBCO, an Indiana Corporation; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; QUEENSRIDGE TOWERS, LLC, a Nevada Limited Liability Company; QT

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MANAGEMENT, LLC, a Nevada Limited Liability Company; RAGLEN SYSTEM BALANCE, INC., a Nevada Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; T. BROTHERS TILE, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS SOUTHWEST, INC., a Nevada Corporation; DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 2-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 302-400,

Third-Party Defendants.

PERINI BUILDING COMPANY, an Arizona Corporation,

Cross-Claimant,

vs.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Cross-Defendant.

EXECUTIVE HOMES, INC., a Nevada Corporation,

Counter-Claimant,

vs.

PERINI BUILDING COMPANY, a Arizona Corporation,

Counter-Defendant.

NIBCO, INC., an Indiana Corporation,

Fourth-Party Plaintiff,

vs.

NOVASFER, S.R.L., an Italian single member company; HERZ VALVES UK LTD, a British entity; DOES 1 through 10; and ROE BUSINESSES 1 through 15, inclusive,

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Las Vegas, NV 89144
(702) 258-6665

Fourth-Party Defendants.

QUEENSRIDGE TOWERS, LLC, a Nevada Limited Liability Company; and DOES 1 through 100,

Third-Party Plaintiff,

vs.

A-1 MECHANICAL, INC., a Nevada CORPORATION; ABDA, INC., a Nevada Corporation; ALLIED WEST CONSTRUCTION, INC., a Nevada Corporation; ATLAS CONSTRUCTION CLEANUP, INC., a Nevada Corporation; AZTECA STEEL, a Texas Corporation; BEAUTY WITH PAVERS, LLC, a Nevada Limited Liability Company; BERG ELECTRIC, a California Corporation; BOMEL ELECTRIC, a California Corporation; BOMEL CONSTRUCTION CO., INC., a California Corporation; BAJA TILE, INC. dba BTI TILE & STONE, a California Corporation; CIMA CONSTRUCTION, INC., a Texas Corporation; COMPONENT WEST, LLC, a Nevada Limited Liability Company; DESERT FIRE PROTECTION, a Nevada Corporation; DESERT PLASTERING, LLC a Nevada Limited Liability Company; DIVERSIFIED CONCRETE CUTTING, a Nevada Corporation; ELSTER AMCO WATER, a Florida Corporation; FERGUSON ENTERPRISES, INC., dba FERGUSON BATH & KITCHEN GALLERY, a Virginia Corporation; GIROUX GLASS, a California Corporation; PROCARE CARPET AND FLOOR MAINTENANCE, INC., dba FLOOR TOPIA, a Nevada Corporation; HARDSTONE CONSTRUCTION, LLC, a Nevada Limited Liability Company; HARRIS & RUTH PAINITNG CONTRACTORS, INC., aka HARRIS & RUTH PAINTING CONTRACTORS, INC., a California Corporation; HI-CON, INC., a California Corporation; INSUL-FLOW, INC., a California Corporation; INSULPRO PROJECTS, a Washington Corporation; JMA ARCHITECTS, INC. aka JMA ARCHITECTURE STUDIOS, a Nevada Corporation; LAS VEGAS CONCRETE PLUMPING, INC. dba POOLS BY GRUBE, a Nevada Corporation; LYNCO ASSOCIATES, a Nevada Corporation; NIBCO, AN INDIANA CORPORATION; NOORDA SHEET METAL COMPANY, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; RAGLEN SYSTEM BALANCE, INC., a Nevada

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Las Vegas, NV 89144
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Corporation; RS ANALYSIS, INC., a California Corporation; S3H, INC., a Nevada Corporation; SIEMENS INDUSTRY, INC., a Delaware Corporation; SILVER STATE SPECIALTIES COMMERCIAL, LLC, a Nevada Limited Liability Company; SLATE DESIGN STUDIOS, INC., a Nevada Corporation; SOUTHERN NEVADA PAVING, INC. aka AGGREGATE INDUSTRIES, INC. and AGGREGATE INDUSTRIES-SWR, INC., a Nevada Corporation; STEWART & SUNDELL CONCRETE, INC., a Nevada Corporation; RICHARD ALAMANDER COLE dba STONE DESIGNS, an Individual; T. BROTHERS TILES, LLC, a Nevada Limited Liability Company; TECHNICOAT MANAGEMENT, INC., a Nevada Limited Liability Company; TIMBERLINE ARCHITECTURAL OPENINGS, LLC, a Nevada Limited Liability Company; VALENTIN GARCIA GUZMAN, an Individual; YAMAS CONTROLS SOUTHWEST, INC., a Delaware Corporation; and DOE INDIVIDUALS 1-100; ROE SUBCONTRACTORS 1-100; ROE DESIGN PROFESSIONALS 101-200; ROE MATERIAL SUPPLIERS 201-300; and ROE PRODUCT MANUFACTURERS 302-400,

Third-Party Defendants.

SLATER DEISGN STUDIOS, INC., a Nevada Corporation,

Cross-Plaintiff,

vs.

PRESTIGE ROOFING, INC., a Nevada Corporation; DOES INDIVIDUALS 1-100, and ROE ENTITIES 101-200,

Cross-Defendants.

COMES NOW, PERINI BUILDING COMPANY (hereinafter "Perini"), by and through its attorneys of record, Peter C. Brown, Esq. and Lucian J. Greco, Jr., Esq. of the law firm of BREMER WHYTE BROWN & O'MEARA, and Nomi Castle, Esq. and Robert Nida, Esq. of the law firm of CASTLE & ASSOCIATES, and hereby files this Reply Brief in Support of its Motion to Strike Harris Consulting Engineers, LLC's Untimely Joinders to JMA Architects, Inc. and M.A. Engineering Inc.'s Motion to Reconsider the Order Denying the Design Professionals Motion to

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Suite 250
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Bar Any Further Claims Against the Project Design Professionals Based on the Statute of Repose; or in the Alternative, Motion for Judgement on the Pleadings as to Plaintiff's Second Amended Complaint against DOE Defendant Design Professionals on Order Shortening Time ("Motion to Bar Further Claims"); Motion for Reconsideration of the Order Denying the Design Professionals' Motion for Good Faith Determination Barring Claims Against the Design Professionals on Order Shortening Time ("Motion for Good Faith Settlement"); and Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings or in the Alternative Motion for Judgement on the Pleadings ("Motion for Judgment on the Pleadings") (collectively "Motions for Reconsideration").

Dated: September 26, 2016

BREMER WHYTE BROWN & O'MEARA LLP

By: _____

Peter C. Brown, Esq., Bar No. 5887
Lucian J. Greco, Jr., Esq., Bar No. 10600
Attorneys for Defendant/Third-Party
Plaintiff/Cross-Claimant/Counter-Defendant,
PERINI BUILDING COMPANY

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. HCE does not dispute that its Joinders were filed beyond the applicable deadline.

HCE does not dispute that its Joinders to JMA and M.A.'s Motions for Reconsideration were filed after the applicable deadline. As set forth in Perini's original Motion, NRCP 2.20 provides a deadline for filing joinders to motions as follows:

> (d) Within 5 days after service of the motion, a nonmoving party may file written joinder thereto, together with a memorandum of points and authorities and any supporting affidavits. If the motion becomes moot or is withdrawn by the movant, the joinder becomes its own stand-alone motion and the court shall consider its points and authorities in conjunction with those in the motion.

NRCP 6 provides the computation for filing pleadings, as follows:

> (a) When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and nonjudicial days shall be excluded in the computation except for those proceedings filed under Titles 12 or 13 of the Nevada Revised Statutes.
>
> (e) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper, other than process, upon the party and the notice or paper is served upon the party by mail or by electronic means, 3 days shall be added to the prescribed period.

On August 26, 2016 JMA Architects, Inc., and M.A. Engineering Inc. (hereinafter referred to as "JMA & M.A.") filed a Motion to Reconsider the Order Denying the Design Professionals' Motion for Good Faith Settlement and a Motion to Reconsider the Order Denying the Design Professionals' Motion to Bar Further Claims. On August 29, 2016 JMA & M.A. filed a Motion to Reconsider the Order Denying the Design Professionals' Motion for Judgment on the Pleadings.

On September 15, 2016 Harris Consulting Engineers, LLC filed its Joinders to **all** of JMA & M.A.'s Motions for Reconsideration. **There is no dispute that these Joinders do not comply with NRCP 2.20 or NRCP 6.**

HCE has attempted to withdraw its Joinders to the Motion to Reconsider the Order Denying the Design Professionals' Motion to Bar Further Claims and the Motion to Reconsider the Order

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1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

Denying the Design Professionals' Motion for Judgment on the Pleadings. However, HCE still wants this Court to allow its untimely Joinder to JMA & M.A.'s Motion to Reconsider the Order Denying the Design Professionals' Motion for Good Faith Settlement.

B. <u>The mere fact that HCE filed Joinders to the original Motions does not relieve HCE of its obligation to file timely Joinders to the Motions for Reconsideration.</u>

As part of its Opposition, HCE asserts the argument that, since it joined the original Motion for Determination of Good Faith Settlement, it should automatically benefit from a possible decision granting the Motion for Reconsideration – with or without a Joinder. Therefore, HCE is taking the position that Perini has not, and will not, suffer any prejudice from the late Joinder. This argument must fail for multiple reasons. First, HCE is not represented by counsel for JMA and M.A. As a result, without a timely Joinder, HCE cannot offer argument at the time of the hearing on the Motion for Reconsideration. HCE's untimely Joinder is not irrelevant to the upcoming hearings (as espoused by HCE) and, in fact, is determinative as to whether any argument can be offered on the part of HCE at the time of the hearing.

Moreover, Perini disagrees with the proposition that HCE would automatically benefit from the Motion for Reconsideration solely because HCE was included as a "settling party" in the original Motion. HCE has not included any legal authority whatsoever to support this position. In fact, since HCE was absolutely intertwined with the original lump sum settlement (this Court will recall the confirmation from both counsel for Queensridge Towers, LLC and counsel for JMA & M.A. that it was an "all or nothing" settlement package), this Court cannot grant the subject Motion for Reconsideration without HCE being a part of the Briefing. In other words, since the original Motion included all three (3) design professionals (HCE, JMA, and M.A.), in order for reconsideration to even be considered, proper briefing absolutely needs to be submitted by all three (3) design professionals. Here, Harris did not jointly file the subject Motion for Reconsideration, did not timely join the Motion, and did not file its own timely Motion for Reconsideration. Therefore, there is nothing before the Court asking it to reconsider the HCE portion of the original Motion.

/ / /

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

II. CONCLUSION

Based upon the arguments presented above, Perini respectfully requests this Court strike Harris' untimely Joinders to the Design Professionals' Motions for Reconsideration.

Dated: September 26, 2016

BREMER WHYTE BROWN & O'MEARA LLP

By: _____

Peter C. Brown, Esq., Bar No. 5887
Lucian J. Greco, Jr., Esq., Bar No. 10600
Attorneys for Defendant/Third-Party Plaintiff/Cross-Claimant/Counter-Defendant, PERINI BUILDING COMPANY

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2016, a true and correct copy of the foregoing document was electronically served through Wiznet upon all parties on the master e-file and serve list.

Crystal Williams

Crystal Williams, an Employee of
BREMER, WHYTE, BROWN & O'MEARA, LLC

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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CLERK OF THE COURT

RIS
MICHAEL M. EDWARDS, ESQ.
Nevada Bar No. 6281
ROBERT A. SCHAFFER, ESQ.
Nevada Bar No. 10215
NICHOLAS L. HAMILTON, ESQ.
Nevada Bar No. 10893
Wolfenzon Rolle Edwards
6725 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
(702)836-3138
medwards@wolfenzon.com
rschaffer@wolfenzon.com
nhamilton@wolfenzon.com

Attorneys for Third-Party Defendants
JMA Architects, Inc. and M.A. Engineering Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

ONE QUEENSRIDGE PLACE HOMEOWNERS' ASSOCIATION, INC., a Nevada Non-Profit Corporation, Plaintiff, vs. PERINI BUILDING COMPANY, an Arizona Corporation; KEENAN, HOPKINS, SUDER & STOWELL CONTRACTORS, INC., a Nevada Corporation; EXECUTVE HOMES, INC., a Nevada Corporation; and DOES 1 through 100, Defendants. AND ALL RELATED CLAIMS	CASE NO.: A-12-661825-D Dept. No. XXXI **JMA ARCHITECTS, INC. AND M.A. ENGINEERING, INC.'S REPLY IN SUPPORT OF THEIR MOTION TO RECONSIDER THE ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE MOTION FOR JUDGMENT ON THE PLEADINGS** Date of Hearing: October 5, 2016 Time of Hearing: 9:00 a.m.

Comes now Third-Party Defendant JMA ARCHITECTS, INC. ("JMA") and M.A. EINGNEERING, INC., by and through its attorneys of record, WOLFENZON, ROLLE EDWARDS, files this **REPLY IN SUPPORT OF MOTION TO RECONSIDER THE**

JMA-WRIT004637

ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE MOTION FOR JUDGMENT ON THE PLEADINGS.

This Motion is based upon the points and authorities attached hereto, the papers and pleadings on file, and any oral argument presented to the Court.

DATED this 28th day of September, 2016

WOLFENZON ROLLE EDWARDS

MICHAEL M. EDWARDS, ESQ.
Nevada Bar No. 6281
ROBERT A. SCHAFFER, ESQ.
Nevada Bar No. 10215
NICHOLAS HAMILTON, ESQ.
Nevada Bar No. 10893
6725 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
(702) 836-3138

Attorneys for Third-Party Defendants
JMA Architects, Inc. and M.A. Engineering Inc.

JMA-WRIT004638

DECLARATION OF MICHAEL M EDWARDS, ESQ. IN SUPPORT OF REPLY

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

I, Michael Edwards, Esq, being duly sworn, depose and state the following:

1. I am an attorney at law duly licensed to practice before all courts in the State of Nevada. I am a partner with the firm Wolfenzon Rolle Edwards, attorneys of record for Defendant JMA Architects, Inc. (hereinafter "JMA") and M.A. Engineering, Inc. ("MA") I have personal knowledge of the facts stated herein and could competently testify thereto if called as a witness.

2. I submit this declaration in support of **JMA ARCHITECTS, INC. AND M.A. ENGINEERING, INC.'S REPLY IN SUPPORT OF MOTION TO RECONSIDER THE ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE MOTION FOR JUDGMENT ON THE PLEADINGS ("Reply").**

3. Attached to JMA and MA's Reply Appendix filed concurrently herewith, at **Exhibit A** is a true and correct copy of the contracts between Perini Building Company (hereafter "PBC") and Queensridge Towers ("QT").

4. Attached to JMA and MA's Reply Appendix filed concurrently herewith, at **Exhibit B** is a true and correct copy of the contracts between QT and JMA.

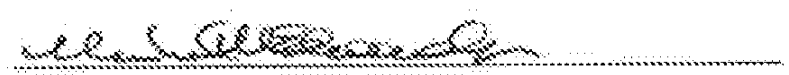
5. Attached to JMA and MA's Reply Appendix filed concurrently herewith, at **Exhibit C** is a true and correct copy of the JMA-MA consulting agreement.

6. Attached to JMA and MA's Reply Appendix filed concurrently herewith at "**Exhibit D**" is a true and correct copy of the following pages of the Deposition Transcript of Mustapha Assi, 41:24-49:20.

JMA-WRIT004639

7. Attached to JMA and MA's Reply Appendix filed concurrently herewith at "**Exhibit E**" is a true and correct copy of the Order which JMA and MA challenged through the subject motion for reconsideration.

Dated this 28th day of September, 2016



Michael M. Edwards, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

A. LEGAL STANDARD

Perini Building Company ("PBC") asserts movants have not met the clearly erroneous standard which is articulated in the subject motion for reconsideration. On the contrary, the movants clearly established this court erred when it created a duty which does not otherwise exist in the law. As such, the court should rehear and grant the motion for judgment on the pleadings. Regardless, of what the standard is for this court to consider a motion for reconsideration pursuant to EDCR 2.24, movants specifically asked this court in the alternative to grant the motion, as a Motion for Judgment on the Pleadings.

B. THE *SPEARIN* DOCTRINE DOES PRECLUDE PERINI FROM BRINGING CLAIMS AGAINST THE DESIGN PROFESSIONALS

PBC's defense to the motion is the *Spearin* doctrine, infra, does not apply because the alleged loss or damage is not solely resulting from negligent design, but also from allegations PBC poorly constructed the project. PBC misinterprets the quote upon which they rely. The quote upon which they rely states a contractor "will not be responsible to the owner, at least after the work is completed, for any loss or damage which results solely from the defects or insufficient plans or specifications, in the absence of any negligence on the part of the contractor." *Home Furniture v. Brunzell Constr.*, Co. 84 Nev. 309, 313, 440 P.22d 398, 401 (1968). See also *United States v. Spearin*, 248 U.S. 132, 136, 39 S. Ct. 59, 63 (1918). This does not state a contractor is liable to an owner for following insufficient plans or specifications if they were also negligent; it is not stating a contractor automatically subsumes the liability of the design professional if the contractor is negligent in a different fashion. Rather, if a homeowner is claiming improper

JMA-WRIT004641

design, then the contractor who followed plans is not liable to the plaintiff for following those plans. The fact the contractor followed plans does not exonerate their negligence in performing other areas of work. If it did, then every contractor would automatically claim and attempt to prove they simply followed improper designs and therefore are completely exonerated of liability for an entire project. In the *Brunzell* case, the Supreme Court noted,

> The record before the trial court supports the trial judge's decision. Appellant failed to show any deviation by the contractor from the architect's plans and specifications. On the contrary, Mr. Berger, the architect, testified that the prestressed concrete slab floor in question was poured in accordance with the specifications of the contract.

Brunzell at 314, 402. Because the architect testified the construction followed the plans, there was no basis in liability from the contractor to the owner for the poorly designed project. The only claims that existed in *Brunzell* were design claims. Had a deviation from the plans been evident which caused additional damages, then the contractor would have been liable for that deviation from the plans, and not for following the defective plans in the first place. Because the HOA has no valid design claims against PBC, PBC cannot as a matter of law be liable for following the plans. Likewise, because PBC is not liable to the HOA for design claims, JMA and MA are not liable to PBC.

C. EVEN THROUGH THE HOA ALLEGED VAGUE DESIGN CLAIMS AGAINST DOE DESIGN PROFESSIONALS, THEY CANNOT RECOVER FOR THOSE DAMAGES THROUGH PERINI SO PERIN'S CLAIMS MUST BE DISMISSED

PBC believes the fact the HOA asserted vague design claims against DOE defendants makes the movants somehow liable to the HOA for any design defects. When the HOA filed its Complaint, it knew PBC could not be liable for simply following the plans and specifications so it alleged benign design claims against DOE defendant architect and engineers. The HOA concurs this is not a design case, so did not take steps to perfect any claims against those DOE

JMA-WRIT004642

design professionals before the expiration of the statute of repose. Because any claims for improper design are not properly brought against PBC by the HOA due to the *Spearin* doctrine, the design claims against JMA and MA also fail and must be dismissed pursuant to NRCP 12(c).

1. CHAPTER 40 DOES NOT CREATE A CAUSE OF ACTION.

For foundation, remove the application of NRS 40, from this situation entirely:

A. Perini has no contract with JMA, therefore, Perini cannot sue JMA for Breach of Contract or any other contract based claims. To further this point beyond legimitate argument, the controlling Contract Documents[1] for this project specifically states:

> The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and contractor.

B. Perini has no legal relationship with JMA and is thus prohibited, as a matter of law, from suing JMA for Negligence, i.e. there is no legal duty upon which to baw such a tort cause of action.

Perini claims that somehow, NRS Chapter 40 creates a duty between Perini and JMA, yet NRS Chapter 40 specifically states that it does not create a cause of action not otherwise allowed under the law.

Nevada is a jurisdiction that follows the Economic loss doctrine. Therefore, Perini's lack of privity prevents Perini from suing JMA on tort. Specifically, there is no legal duty to the contractor, absent privity. To be sure, Perini can maintain a negligence action against the party they are in privity with; namely the owner, here, Queensridge Towers, LLC. Applying NRS

[1] A111-1997: Standard Form of Agreement Between Owner and Contractor; Queensridge Towers LLC and Perini Building Company; dated 12/21/2004, Article 1; B141-1997: Standard Form of Agreement Between Owner and Architect; Queensridge Towers LLC (EHB) and JMA Architectural Studios; dated 1/26/2005, Article 1; A101-1997: Standard Form of Agreement Between Owner and Contractor; Queensridge Towers LLC and Executive Homes, Inc. dated 11/03/2005, Article 1; A201-1997: General Conditions of the Contract for Construction: Perini Building Company, Queensridge Towers LLC, JMA and EHI, Article 1

JMA-WRIT004643

40.635 to this fact pattern does not create a duty that did not exist before. While the Nevada case law interpreting NRS 40 and the Economic loss doctrine do not apply to owners of a defect, it does not apply to Perini.

PBC argues, without support, that because NRS 40.6884 and NRS 40.646 reference claims against design professionals that this gives them the authority to sue the design professionals even though they do not have valid underlying claims. They even go so far as to equate the statute allowing a contractor to serve the design professional with "Notice" equates to statutory authority to ignore established law, create a legal duty between a contractor and design professional and maintain a suit for negligence. Their position is incorrect.

To understand this, consider the following example: Assume for instance the HOA's Chapter 40 Notices were served upon PBC after the statute of repose and statute of limitations had run. Likewise, suppose the HOA's original Complaint against PBC was filed after the statute of repose and statute of limitations had run. The HOA would not have valid causes of action against PBC. Likewise, PBC would not have valid causes of action for indemnity against third-party defendants because PBC would not be liable to Plaintiffs so there would be no shifting of liability from the defendant PBC to the third-party defendants as there is no underlying liability.

Chapter 40 does not create a new theory upon which liability can be based. NRS 40.635. So, PBC could not use NRS 40.6884 and NRS 40.646 as a sword to recover money from design professionals in that hypothetical, because the underlying claim against PBC was stale and invalid as it was filed after the statute of repose and limitations had expired.

Similarly, in this case PBC cannot use NRS 40.6884 and NRS 40.646 as its sword, creating a cause of action against design professionals, when none exists. PBC cannot as a matter of law

JMA-WRIT004644

be liable to the HOA for following the plans provided by the design professionals. In turn, there are no claims to pass on to the design professionals through NRCP 14.

D. NEVADA CASE LAW ALLOWS ONLY THE "OWNER OF A DEFECT" TO AVOID THE ECONOMIC LOSS RULE, NOT A CONTRACTOR

PBC asserts JMA and MA's interpretation of *Olson v. Richard*, 120 Nev. 240 (2004) is radical. It is not. In fact, JMA's position literally uses the exact words of the decision and it is Perini that stretches the actual holding for its own purposes.

The *Olson* Plaintiffs, who contracted with Structure Control, Inc. ("SCI") for new stucco suffered damages because the stucco did not have a smooth texture and the application which improperly filled the weep-screeds caused leaks. The stucco was installed by subcontractor Aztech who was hired by SCI alone. *Id.* at 242. The homeowners sued both Aztech with whom it had no contract and SCI with whom they did have a contract. *Id.* *Olson* concluded that when drafting Chapter 40, the legislature envisioned more than contractual remedies so the homeowners (owners of the defect) could sue the subcontractor Aztech directly. *Id* at 243.

The Supreme Court of Nevada held, "[I]t is reasonable to infer that the Legislature did not intend for the economic loss doctrine to preclude **a homeowner from alleging a negligence claim** in a construction defects cause of action initiated under Chapter 40." *Id.* at 243. (emphasis added).

Thus, the *Olson's* claim filed directly against a subcontractor with whom Plaintiffs were not in contractual privity was not barred by the economic loss doctrine. What *Olson* did not do was address (or radically expand) the application of the economic loss doctrine to any claims between the general contractor SCI and subcontractor Aztech. In fact, when considering whether the economic loss doctrine applies to claims between design professionals and a general contractor, the Supreme Court noted, "exceptions to the economic loss doctrine exist in broad

JMA-WRIT004645

categories of cases in which the policy concerns about administrative costs and a disproportional balance between liability and fault are insignificant, and other countervailing considerations weigh in favor of liability." *Terracon consultants Western, Inc. v. Mandalay resort Group,* 125 Nev. 66, 76. (2009). While the *Terracon* case involved commercial construction, if it instead involved residential construction, the Plaintiffs could have appropriately sued general contractor Mandalay or design professional Terracon for their purely economic losses. Between the design professional and the general contractor, however, no exception to the economic loss doctrine was carved out.

> In the context of engineers and architects, the bar created by the economic loss doctrine applies to commercial activity for which contract law is better suited to resolve professional negligence claims. This legal line between contract and tort liability promotes useful commercial economic activity, while still allowing tort recovery when personal injury or property damage are present. Further, as in this case, contracting parties often address the issue of economic losses in contract provisions.

Id. at 77. The economic loss doctrine was applied to preclude contractor Mandalay's claims against the subcontractor Terracon. Terracon did not create a duty between a contractor and a design professional upon which PBC can assert claims for negligence against design professionals.

PBC entered into contracts with Queensridge Towers LLC ("QT") to build a luxury high rise condominium project. As between PBC and QT, the contract agreements extensively addressed the rights and duties between the parties for defense and indemnification with regard to the project and the potential for litigation. As sophisticated contracting parties, the issue of economic losses and consequential damages was addressed through their negotiated contract. (See PBC-QT contract at **Exhibit A**) Likewise, as between contracting party's QT and JMA, as sophisticated contracting parties their contracts also addressed consequential damages, economic

JMA-WRIT004646

losses, defense and indemnification. (See JMA-MA contract at **Exhibit B**). Finally, as between JMA and its subconsultant MA, as sophisticated contracting party's economic losses were addressed. (See JMA-MA consultant agreement at **Exhibit C**).

When financial injury between a general contractor and design consultants exists resulting in a financial injury due to disappointed expectations, negligent design claims are barred by the economic loss doctrine because contract law is better suited to the nature of the loss. *Terracon* at 77 citing *Holden Farms, Inc. Hog Slat Inc.*, 347 F.3d 1055 (8th Circuit). So, reading *Olson* alongside *Terracon*, it is clear a homeowner (owner of a defect) can recover for economic losses from a contractor or a design professional directly. However, as between the contractor and design professionals, the exception to the economic loss doctrine does not extend to apply as those losses which should be borne according to the contracts of the sophisticated contracting parties. Chapter 40 does not create a cause of action between PBC, JMA and MA where none exists.

The economic loss doctrine does not arrogate NRS 40.646 which requires a contractor to forward a Chapter 40 notice to a design professional "the contractor reasonably believes is responsible for a defect specified in the notice." NRS 40.646 does not create in the contractor a cause of action against the design professional. It says nothing remotely like that.

If the design professional entered into a contract with the contractor which addressed the losses the contractor sustained related to an alleged defective residential house, then the contractor would have a valid cause of action against the design professional for express indemnity and breach of contract. The economic loss doctrine does not prevent this. But, it does not create a duty in negligence between a design professional and a general contractor in tort. NRS 40.646 simply limits the ability of the contractor to recover damages from a design

JMA-WRIT004647

professional with whom it has a contract if it fails to forward the Chapter 40 notice as specified in the statute.

It is impossible to interpret NRS 40.646 as creating a duty between a design professional and a contractor as NRS 40.635(4) specifically does "not create a new theory upon which liability may be based." Moreover, NRS 40.635(3) provides Chapter 40 also does "not bar or limit any defense otherwise available." It does not bar JMA and MA's economic loss doctrine defense as against the contractor PBC.

1. PERINI AGAIN MISREPRESENTS FACTS TO THIS COURT REGARDING ITS AGREEMENT WITH M.A.

In opposition to the original motion for judgment on the pleadings, PBC misrepresented to the court the nature of its agreement with M.A. Whether or not M.A. had an agreement with PBC has no bearing on the arguments asserted on behalf of JMA. Secondly, PBC intentionally misrepresented to this court the nature of the MA-PBC agreement. MA's principal Mustapha Assi testified he did not sign nor was ever shown anything beyond the first two pages of the contract which PBC asserts he signed. (See Deposition Transcript of Mustapha Assi, 41:24-49:20 at **Exhibit D** to this Reply; Curious that Perini never mentions this deposition testimony?). During the deposition, counsel for JMA and MA objected to the introduction and use of the "contract" as lacking foundation and assuming facts not in evidence, and again objected when Replying to its original motion for judgment on the pleadings, and again objects now. PBC cannot rely upon the "indemnity" agreement it alleges exists between it and MA to establish its claims for economic losses.

2. THE ORDER BEING CHALLENGED IS THE ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS WHICH WAS ENTERED ON AUGUST 10, 2016

Plaintiff asserts they are confused because they do not know which order is being

JMA-WRIT004648

challenged through the subject motion for reconsideration. The motion made was titled "Motion to Reconsider the Order Denying the Motion for Judgment on the Pleadings." There was only one order Denying JMA and MA's Motion for Judgment on the Pleadings, and that was the Order which is attached at **Exhibit E**. JMA and MA are unclear as to how Plaintiffs are confused.

3. THE MOTION FOR RECONSIDERATION WAS TIMELY

The motion for reconsideration was timely. EDCR 2.24 provides, "a party seeking reconsideration…must file a motion for such relief within 10 days after service of a written notice of order…" EDCR 2.24. The Notice of Entry of Order was filed on August 10, 2016. Pursuant to EDCR 1.14, the day which the designated period of time begins to run must not be included. Also, when "the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and non-judicial days must be excluded in computation." Starting counting on August 11, 2016, omitting weekends, results in an August 24, 2016 date. But, EDCR 1.14(c) provides three days for service must be added to the prescribed period. That brings the due date to Saturday August 27, 2016. But, then "if any day on which an act required to be done by any one of these rules falls on a Saturday, Sunday, or legal holiday, the act may be performed on the next succeeding judicial day." EDR 1.14(b). Therefore, the Motion for Reconsideration was required to be filed on Monday August 29, 2016 when it was filed.

/ / /

/ / /

II.

CONCLUSION

Based on the foregoing, JMA respectfully requests this honorable court to rehear and reconsider the motion, and to enter judgment on the pleadings dismissing the design claims of Plaintiff HOA against PBC, and dismissing PBCs claims against the design professionals.

DATED this 28th day of September, 2016

WOLFENZON ROLLE EDWARDS

MICHAEL M. EDWARDS, ESQ.
Nevada Bar No. 6281
ROBERT A. SCHAFFER, ESQ.
Nevada Bar No. 10215
NICHOLAS HAMILTON, ESQ.
Nevada Bar No. 10893
6725 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
(702) 836-3138

Attorneys for Third-Party Defendants
JMA Architects, Inc. and M.A. Engineering Inc.

CERTIFICATE OF ELECTRONIC SERVICE

I certify that I am an employee of WOLFENZIN ROLLE EDWARDS, and that on this 28th day of September, 2016, I did cause a true copy of **JMA ARCHITECTS, INC. AND M.A. ENGINEERING, INC.'S REPLY IN SUPPORT OF MOTION TO RECONSIDER THE ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE MOTION FOR JUDGMENT ON THE PLEADINGS** to be E-Filed and E-Served through the Court's WIZNET to all registered parties, and this document applies to Case Number A-12-661825-D.

BY Leah Davis
An Employee of WOLFENZON ROLLE EDWARDS

JMA-WRIT004651

One Queensridge Place
Homeowners' Association, Inc.
vs.
Perini Building Company, et.al.

Case No.: A-12-661825-D
Dept. No. XXXI

EXHIBIT A

AIA® Document A111™ – 1997

Standard Form of Agreement Between Owner and Contractor
where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

AGREEMENT made as of the 21st day of December in the year 2004

(Paragraph deleted)

BETWEEN the Owner:

Queensridge Towers, LLC
c/o Executive Homes Inc.
8670 West Spring Mountain Road
Las Vegas, Nevada 89117

and the Contractor:

Perini Building Company
360 E. Coronado Road
Phoenix, AZ 85004
(602) 256-6777

The Project is:
One Queensridge Place

Phase One of this project is located on Alta Drive near Rampart. The project consists of two towers, a connector lobby, a recreation deck, two below grade levels, site improvements and a central plant. There are no off-site improvements included in the project.
Phase 2 work and the new clubhouse are not part of this agreement

The Architect is:

JMA Architecture
10150 Covington Cross Drive

(Paragraph deleted)

Las Vegas, NV 89144

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by the Associated General Contractors of America.

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User Notes:
(4268558026)

CORE 2-0005
JMA00171711

JMA-WRIT004653

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts and covenants with the Owner to cooperate with the Architect and exercise the Contractor's reasonable skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

The date of commencement shall be pursuant to a Notice to Proceed from the Owner to the Contractor after Owner and Contractor have received all building permit(s) for the Project. The Date of Commencement shall not be earlier than the date the Contractor receives the building permit and completed working drawings and specifications.

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the following portion of the Work not later than 507 calendar days (as extended by change order) from the Date of Commencement (the "Initial Substantial Completion Date"): (February 14, 2005 through July 6, 2006). as referenced in Exhibit C.

§ 4.3.1 The parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual and consequential damages the Owner would incur should the Contractor delay in achieving the Substantial Completion Date, and accordingly the parties agree that if the Contractor fails to so achieve Substantial Completion within such time, and provided that the progress of the Work is not delayed, in whole or in part, by an event that is beyond the control of the Contractor, including, but not limited to, the action as and/or inactions of the Owner or Architect, then the Owner's sole and exclusive remedy for such failure shall be to recover from the Contractor as liquidated damages, and not as a penalty, for each calendar day Substantial Completion is so delayed by the Contractor, the following amount: (i) $ 15,000 per day of delay after Substantial Completion Date; it being acknowledged and agreed by the parties hereto that the liquidated damages identified in this paragraph relate solely to the Contractor's delay in achieving the Substantial Completion Date. The Contractor's aggregate liability for any and all liquidated damages as set forth in this Paragraph 4.3.1 shall be limited to a maximum of 50% of the Contractor's Fee (as such fee may be adjusted pursuant to this Agreement

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ARTICLE 5 BASIS FOR PAYMENT

§ 5.1 CONTRACT SUM

§ 5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.2 The Contractor's Fee is:
The Contractor's Fee is calculated at four percent (4%) of the total cost of the work as defined herein in Article Seven and converted to a fixed dollar amount upon execution of this contract. Contractor's fee for all added change order work will be four percent. Fee will not be adjusted for deductive change order work.

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work, the construction contingency and the Contractor's Fee is guaranteed by the Contractor not to exceed One hundred fifty three million nine hundred eighty eight thousand two hundred twenty five dollars ($153,988,225.00), subject to additions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§5.2.1.1 If the Owner objects to any Subcontractor Bid recommended by the Contractor, the Owner and the Contractor shall jointly select the accepted Bid and the GMP shall be adjusted upward (or downward) by an amount equal to the difference between the parties accepted Bid and the rejected bid.

§5.2.1.2 The GMP includes a Construction Contingency of Six million six hundred eighty eight thousand two hundred ninety one dollars ($6,688,291.00). The Construction Contingency shall be used by the Contractor to perform the scope of the Work under this Agreement and shall not be available for Change Order or Construction Change Directives unless all parties to this Agreement execute a Change Order to permit such use.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(Paragraph deleted)

See Exhibit A

§ 5.2.3 Unit prices, if any, are as follows:
See Exhibit A

§ 5.2.4 Allowances, if any, are as follows

(Paragraph deleted)

See Exhibit E

(Paragraph deleted)

§ 5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:
See Exhibit E

§ 5.2.6 To the extent that the Drawings and Specifications are to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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§ 5.2.7 In the event that the Contractor is required to pay or bear the burden of any new federal, state, or local tax, or of any rate increase of an existing tax (except a tax on net profits), as a result of any statute, court decision, written ruling, or regulation taking effect after the contract date, such taxes shall be a Cost of the Work and Guaranteed Maximum Price shall be increased by the amount of the new tax or tax increase.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-1997.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Section 5.1.2 of this Agreement.

§ 6.4 If no specific provision is made in Section 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

§ 7.2.2 Wages or salaries (inclusive of bonuses included in Exhibit A General Conditions) of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval.

(Paragraph deleted)

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. The following personnel and rates shall apply: See Exhibit G.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.3 SUBCONTRACT COSTS

§ 7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

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§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. Contractor may provide Contractor owned equipment at general prevailing rates. Refer to Exhibit "F".

§ 7.5.3 Costs of removal of debris from the site.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work, including those identified in 7.2.3.

§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Data processing costs related to the Work at a rate of .20% of the contract amount.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence .

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

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§ 7.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner; which approval shall not be unreasonably withheld or delayed.

§ 7.6.10 Labor and materials furnished and installed by the Contractor's own forces and employees and trade crafts (self-perform work) at Cost of the Work plus five percent (5.0%) Contractor's fee. This additional fee for self performed work shall be in addition to the fee as set forth in paragraph 5.1.2, but in no way cause the contract sum to be in excess of the terms or amount set forth in Article 5.

§ 7.6.11 Expenses for the use of centrally based or Internet based Project management software.

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document A201-1997.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

§ 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Sections 7.2.2 and 7.2.3 or as may be provided in Article 14 and as indicated in the project General Conditions cost breakdown.

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

§ 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

§ 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

§ 8.1.5 Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2.

§ 8.1.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ 8.1.7 Any cost not specifically and expressly described in Article 7.

§ 8.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

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§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. Provided a Guaranteed Maximum Price has not been established, the Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment to the Contractor not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the Architect receives the Application for Payment.

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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§ 12.1.6 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 lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;

.2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 add the Contractor's Fee, less retainage in accordance with 14.6.1. The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 subtract the aggregate of previous payments made by the Owner;

.5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

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§ 12.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-1997. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of the AIA Document A201-1997.

§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

§ 12.2.6 Upon the date of Final Completion of the Work, an accounting will be made to Owner of the Cost of the Work plus the Contractor's Fee plus any unused amount remaining in the Construction Contingency, and should the actual final cost be less than the Guaranteed Maximum Cost, as adjusted pursuant to the Agreement, (a) any savings from the unallocated Allowances shall accrue 100% to Owner, (b) all other savings shall accrue 75% to Owner and 25% to Contractor. Contractor shall be paid Contractor's share of savings pursuant to this Section, within sixty (60) days of the date when final payment is due to Contractor.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

§ 13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

§ 13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

§ 13.2.3 Subtract the aggregate of previous payments made by the Owner.

§ 13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included

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in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.2 and Section 6.4 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Payments due and unpaid under the Contract shall bear interest at a rate of ten percent (10%) per annum from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Paragraphs deleted)

§ 14.3 The Owner's representative is:

Mr. Yohan Lowie
Queensridge Towers LLC
c/o Executive Homes Inc.
8670 West Spring Mountain Road
Las Vegas, Nevada 89117

§ 14.4 The Contractor's representative is:

Mr. Travis Burton
360 E. Coronado Road
Phoenix, AZ 85004

§ 14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 14.6 Other provisions:

§ 14.6.1 A ten percent (10%) retainage will be withheld from progress payments until the Project is fifty percent (50%) complete, after which five percent (5%) which has been withheld shall be paid in the next regular monthly payment and all remaining retention shall be withheld at five percent (5%)..

§ 14.6.2 Upon Substantial Completion of the Work, the Contractor will be paid all retainage, exclusive of a reasonable estimate of the work to be completed and one hundred fifty percent (150%) of the value attributable to "punch list" work. As items on the punch list are completed, the Contractor will be paid one hundred fifty (150%) of their value at the next progress payment.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997, as modified by the parties. All references in the Contract Documents to the A111 are to such document as modified by the parties.

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§ 15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997, as modified by the parties.

§ 15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Project Manual dated July 1, 2004. See Exhibit D.

§ 15.1.4 The Specifications are those contained in the Project Manual dated as in Section 15.1.3, and are as follows:

(Paragraphs deleted)

Project Manual not provided

§ 15.1.5 The Drawings are as follows: See Exhibit D.

(Paragraph deleted)

§ 15.1.6 The Addenda, if any, are as follows: See Exhibit D.

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

Schedule of Values – Exhibit A
Differentiation Document – Exhibit B
Construction Schedule – Exhibit C
Document List – Exhibit D
Clarifications and Allowances – Exhibit E
Equipment Rates – Exhibit F
Labor Rates – Exhibit G

ARTICLE 16 INSURANCE AND BONDS
Owner to provide an "Owner Controlled Insurance Program" (OCIP), acceptable to the Contractor prior to start of work.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

Queensridge Towers, LLC	Perini Building Company
OWNER *(Signature)*	CONTRACTOR *(Signature)*
Mr. Yohan Lowie, President Queensridge Towers LLC	Craig W. Shaw, President Perini Building Company

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