



CLERK OF THE COURT

1 AACC

Steve Morris, Bar No. 1543

2 [sm@morrislawgroup.com](mailto:sm@morrislawgroup.com)

Rosa Solis-Rainey, Bar No. 7921

3 [rsr@morrislawgroup.com](mailto:rsr@morrislawgroup.com)

MORRIS PETERSON

4 900 Bank of America Plaza

300 South Fourth Street

5 Las Vegas, Nevada 89101

Andrew Baum, Nevada Bar No. 10854

6 [abaum@glaserweil.com](mailto:abaum@glaserweil.com)

G. Lance Coburn, Nevada Bar No. 6604

7 [lcoburn@glaserweil.com](mailto:lcoburn@glaserweil.com)

GLASER, WEIL, FINK, JACOBS,

8 HOWARD & SHAPIRO, LLP

3763 Howard Hughes Parkway, Suite 300

9 Las Vegas, Nevada 89169

Tel: 702.650.7900 // Fax: 702.650.7950

10 Stephen V. O'Neal, *Pro Hac Vice Pending*

[oneals@howrey.com](mailto:oneals@howrey.com)

11 Clark Thiel, Nevada Bar No. 10778

[thielc@howrey.com](mailto:thielc@howrey.com)

12 HOWREY LLP

525 Market Street, Suite 3600

13 San Francisco, California 94105

Tel: 415.848.4900 // Fax: 415.848.4999

14 Attorneys for Defendants, Counterclaimants,  
15 and Third Party Plaintiffs

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

17 PERINI BUILDING COMPANY, INC., an  
18 Arizona corporation,

Plaintiff,

19 vs.

20 MGM MIRAGE DESIGN GROUP, a Nevada  
corporation; CITYCENTER LAND, LLC, a  
21 Nevada limited liability company; CITYCENTER  
HARMON HOTEL HOLDINGS, LLC, a Nevada  
22 limited liability company; CITYCENTER  
VDARA DEVELOPMENT, LLC, a Nevada  
23 limited liability company; THE CRYSTALS AT  
CITYCENTER, LLC, a Nevada limited liability  
24 company; CITYCENTER VEER TOWERS  
DEVELOPMENT, LLC, a Nevada limited  
25 liability company; ARIA RESORT & CASINO  
HOLDINGS, LLC, a Nevada limited liability  
26 company; CITYCENTER BOUTIQUE HOTEL  
HOLDINGS, LLC, a Nevada limited liability  
27 company; CITYCENTER BOUTIQUE  
RESIDENTIAL DEVELOPMENT, LLC, a  
Nevada limited liability company; ALBERT  
28 FACCINTO and KATHLEEN FACCINTO, as  
Trustees of the FACCINTO JR. FAMILY

Case No.: A-10-612676

Dept. No.: XI

**COUNTERCLAIM, THIRD PARTY  
COMPLAINT, AND ANSWER TO FIRST  
AMENDED COMPLAINT**

1 TRUST; JASON B. MATECKI, an individual;  
2 INLAND EMPIRE MO. INC.. et al..

3 Defendants.

4 MGM MIRAGE DESIGN GROUP, a Nevada  
5 corporation; CITYCENTER LAND, LLC, a  
6 Nevada limited liability company; CITYCENTER  
7 HARMON HOTEL HOLDINGS, LLC, a Nevada  
8 limited liability company; CITYCENTER  
9 VDARA DEVELOPMENT, LLC, a Nevada  
10 limited liability company; THE CRYSTALS AT  
11 CITYCENTER, LLC, a Nevada limited liability  
12 company; CITYCENTER VEER TOWERS  
13 DEVELOPMENT, LLC, a Nevada limited  
14 liability company; ARIA RESORT & CASINO  
15 HOLDINGS, LLC, a Nevada limited liability  
16 company; CITYCENTER BOUTIQUE HOTEL  
17 HOLDINGS, LLC, a Nevada limited liability  
18 company; CITYCENTER BOUTIQUE  
19 RESIDENTIAL DEVELOPMENT, LLC, a  
20 Nevada limited liability company,

21 Counterclaimants,

22 vs.

23 PERINI BUILDING COMPANY, INC., an  
24 Arizona corporation,

25 Counterdefendant.

26 MGM MIRAGE DESIGN GROUP, a Nevada  
27 corporation; CITYCENTER LAND, LLC, a  
28 Nevada limited liability company; CITYCENTER  
HARMON HOTEL HOLDINGS, LLC, a Nevada  
limited liability company; CITYCENTER  
VDARA DEVELOPMENT, LLC, a Nevada  
limited liability company; THE CRYSTALS AT  
CITYCENTER, LLC, a Nevada limited liability  
company; CITYCENTER VEER TOWERS  
DEVELOPMENT, LLC, a Nevada limited  
liability company; ARIA RESORT & CASINO  
HOLDINGS, LLC, a Nevada limited liability  
company; CITYCENTER BOUTIQUE HOTEL  
HOLDINGS, LLC, a Nevada limited liability  
company; CITYCENTER BOUTIQUE  
RESIDENTIAL DEVELOPMENT, LLC, a  
Nevada limited liability company,

Third Party Plaintiffs,

vs.

TUTOR PERINI CORPORATION, a  
Massachusetts corporation; and ROES 1 through  
500, inclusive,

Third Party Defendants.

## INTRODUCTION

CityCenter hired Perini Building Company in 2005 to construct a first-class project of historical proportion that includes the Aria Resort & Casino, the Vdara hotel and condominiums, the Mandarin Oriental Hotel and Residences, the Crystals retail shopping center, the Veer condominium towers, the Harmon Hotel Spa and Residences (the “Harmon”), and other related components. After CityCenter paid Perini nearly \$6 billion, Perini delivered the project without the Harmon and demanded \$490 million in additional compensation. Perini made this enormous demand *before* it had submitted a final application for payment with supporting documentation as required under the contract and the law. In fact, Perini recorded a \$490 million lien on CityCenter’s property, filed this lawsuit seeking \$490 million in damages, amended its complaint to foreclose on CityCenter’s property, and embarked on a massive publicity campaign to smear CityCenter and its management for failing to pay Perini’s demand — all before Perini had submitted its final application for payment to CityCenter.

Only after launching a scorched-earth legal, media, and political attack on CityCenter did Perini get around to submitting its final application for payment. When the application for payment was delivered to CityCenter on May 4, 2010, it consisted of 140 banker’s boxes containing over 300,000 pages of disorganized, allegedly supporting documentation that CityCenter must now organize and analyze to determine how much money, if any, is actually owed to Perini. CityCenter has begun to review this vast amount of material and believes that the final amount owed to Perini for project work will be far less than Perini’s demand and, in any event, less than CityCenter’s damages and offsets against Perini for Perini’s various breaches of contract — not the least of which is Perini’s abject failure to properly construct the Harmon. CityCenter estimates its damages against Perini for the defective Harmon alone will be in the hundreds of millions of dollars. Indeed, in filing this case and taking its media onslaught to the streets, Perini has also omitted to tell its audience that Perini consented to pay a fine to the Nevada State Contractors Board last year for its “substandard workmanship” at the Harmon.

Beyond its premature and grossly inflated demand for payment, Perini has failed to properly manage the subcontractor close-out process on this project. As a result, Perini has not paid a number of its subcontractors, who have recorded liens on CityCenter’s property. Now that Perini has finally

1 submitted what purports to be its final application for payment, CityCenter has commenced its own  
2 subcontractor close-out process to resolve subcontractor claims. CityCenter has undertaken this course  
3 of action even though it has no contractual obligation to Perini's subcontractors.

4 It is for Perini's highly-compensated but substandard performance that CityCenter brings the  
5 following Counterclaim and Third-Party Complaint against Perini Building Company and its parent  
6 guarantor of performance, Tutor Perini Corporation.

### 7 **COUNTERCLAIM AND THIRD PARTY COMPLAINT**

8 Counterclaimants and Third Party Plaintiffs MGM MIRAGE DESIGN GROUP, a Nevada  
9 corporation; CITYCENTER LAND, LLC, a Nevada limited liability company; CITYCENTER  
10 HARMON HOTEL HOLDINGS, LLC, a Nevada limited liability company; CITYCENTER VDARA  
11 DEVELOPMENT, LLC, a Nevada limited liability company; THE CRYSTALS AT CITYCENTER,  
12 LLC, a Nevada limited liability company; CITYCENTER VEER TOWERS DEVELOPMENT, LLC,  
13 a Nevada limited liability company; ARIA RESORT & CASINO HOLDINGS, LLC, a Nevada limited  
14 liability company; CITYCENTER BOUTIQUE HOTEL HOLDINGS, LLC, a Nevada limited liability  
15 company; and CITYCENTER BOUTIQUE RESIDENTIAL DEVELOPMENT, LLC, a Nevada  
16 limited liability company, allege as follows:

### 17 **FACTS COMMON TO ALL CLAIMS**

#### 18 **A. The Parties**

19 1. Counterclaimants and Third-Party Plaintiffs MGM MIRAGE Design Group, LLC;  
20 CityCenter Land, LLC; CityCenter Harmon Development, LLC; CityCenter Boutique Residential  
21 Development, LLC; CityCenter Veer Towers Development, LLC; CityCenter Vdara Development,  
22 LLC; CityCenter Vdara Condo Holdings, LLC; Aria Hotel & Casino Holdings, LLC; The Crystals and  
23 CityCenter, LLC; CityCenter Harmon Hotel Holdings, LLC; and CityCenter Boutique Hotel Holdings,  
24 LLC (collectively "CityCenter") are each a limited liability company duly formed under the laws of  
25 the State of Nevada with a principal place of business in unincorporated Clark County, Nevada.

26 2. Counter-Defendant Perini Building Company, Inc. ("Perini") is an Arizona corporation  
27 duly formed under the laws of the State of Arizona and doing business in the State of Nevada. At all  
28 times relevant hereto Perini has been engaged in the business of general contracting and construction.

1           3.       CityCenter is informed and believes and based thereon alleges that Third Party  
2 Defendant Tutor Perini Corporation, formerly known as Perini Corporation (“Tutor Perini”), is a  
3 Massachusetts corporation duly formed under the laws of the State of Massachusetts and doing  
4 business in the State of Nevada. At all times relevant hereto Tutor Perini has been engaged in the  
5 business of general contracting and construction. CityCenter is informed and believes and based  
6 thereon alleges that Perini is a wholly owned subsidiary of Tutor Perini.

7           4.       At this time CityCenter does not know the true names and capacities of Roes 1 through  
8 500, inclusive, and therefore sues them under fictitious names. CityCenter is informed and believes  
9 and based thereon alleges that each Roe is responsible in some manner for the acts and occurrences  
10 alleged herein, and that each Roe is liable therefore to CityCenter for the damages suffered by  
11 CityCenter as hereinafter set forth. CityCenter will seek leave of Court to amend this Counterclaim  
12 and Third-Party Complaint when the identities of the Roes are known. Unless otherwise stated, any  
13 mention of or reference to any named cross-defendant, and any allegation or cause of action stated in  
14 this Counterclaim and Third-Party Complaint against any named third-party defendants, is intended to  
15 include and apply to all of the fictitiously-named third-party defendants.

16           5.       On information and belief, CityCenter alleges that Perini and each of the third-party  
17 defendants herein, including the fictitiously-named third-party defendants (collectively “Third-Party  
18 Defendants”), is and was at all times referred to herein, the agent, representative and/or employee of  
19 one another, and was acting within the course and scope of said agency, representation and/or  
20 employment and was acting with the knowledge and consent of each of the remaining cross-defendants  
21 and under their direct supervision and control.

22 **B.     The Project**

23           6.       CityCenter is the owner of an urban mixed-use development in unincorporated Clark  
24 County, Nevada (the “Project”). The Project encompasses nearly 17 million square feet of finished  
25 space located on over 66 acres on the southwest corner of Las Vegas Boulevard South and West  
26 Harmon Avenue, Clark County, Nevada (the “Site”).

27           7.       As built, the Project includes the Aria Resort & Casino, the Aria Convention Center, the  
28 Vdara hotel and condominiums, the Mandarin Oriental Hotel and Residences, the Crystals retail

1 shopping center, the Veer Towers condominiums, the Cirque du Soleil Elvis showroom, a central  
2 plant, several parking structures, and other related components. As designed, it also included the  
3 Harmon Hotel Spa and Residences, a 47-story high-rise tower consisting of a luxury hotel and  
4 residences to be located at the northeast corner of the Project (the "Harmon").

5 **C. The Construction Agreement**

6 8. As of March 9, 2005, Perini entered into a written contract with CityCenter's  
7 predecessor in interest for the construction of the Project ("Construction Agreement"). The  
8 Construction Agreement was made by and between Perini and MGM MIRAGE Design Group, who is  
9 described in the agreement as "Owner's Representative." CityCenter Land, LLC later succeeded to the  
10 rights of MGM MIRAGE Design Group as Owner's Representative under the Construction  
11 Agreement. The Construction Agreement further provides that MGM MIRAGE and certain of its  
12 affiliates, collectively defined in the agreement as "Owner," shall be a third party beneficiary of all  
13 Perini's representations, warranties, covenants, and obligations under the Construction Agreement.  
14 CityCenter Land, LLC, CityCenter Harmon Development, LLC, CityCenter Boutique Residential  
15 Development, LLC, CityCenter Veer Towers Development, LLC, CityCenter Vdara Development,  
16 LLC, CityCenter Vdara Condo Holdings, LLC, Aria Hotel & Casino Holdings, LLC, The Crystals and  
17 CityCenter, LLC, CityCenter Harmon Hotel Holdings, LLC, and CityCenter Boutique Hotel Holdings,  
18 LLC succeeded to the rights of "Owner" as defined in the Construction Agreement.

19 9. Perini was and is obligated under the Construction Agreement "to perform, supply and  
20 complete" the planning and construction of the Project, including but not limited to the "scheduling,  
21 procuring and supervising [of] construction, and providing all construction management services  
22 related thereto," and "managing and coordinating all Subcontractors and Vendors." Furthermore,  
23 Perini agreed to exercise the highest level of skill, experience, and expertise for the planning and  
24 construction of a first class luxury resort and casino on the Las Vegas Strip.

25 10. The Construction Agreement required the establishment of a guaranteed maximum  
26 price ("GMP") for various components of the Project, including Aria, Vdara, the Harmon, the  
27 Mandarin Oriental, Veer Towers, Crystals retail shopping center and others. Ultimately, eight GMPs  
28

1 were established to correspond to eight separate components. The eight GMPs were later subdivided  
2 into nineteen individual “projects” for the purposes of billing and construction management.

3 11. As of the same date of the Construction Agreement, March 9, 2005, Perini’s parent  
4 company, Tutor Perini, executed a written Performance Guaranty (the “Guaranty”), in favor of  
5 CityCenter, which was and is binding and enforceable against Tutor Perini. Pursuant to the Guaranty,  
6 Tutor Perini absolutely, unconditionally, and irrevocably guaranteed the full, complete and punctual  
7 observance, performance and satisfaction of all of Perini’s obligations, duties, covenants and  
8 agreements under the Construction Agreement.

9 **D. Perini’s Defective Work at the Harmon**

10 12. One of the components of the Project is the Harmon, designed to be a 47-story mixed-  
11 use concrete and glass tower consisting of condominiums and hotel rooms over public space located at  
12 the most visible portion of the Site, where the project meets the Las Vegas Strip at the corner of  
13 Harmon Avenue and Las Vegas Boulevard. The Harmon was developed and designed to be a  
14 “lifestyle” hotel and residence, catering to a young and wealthy demographic. The hotel focused on  
15 modern design, a superior level of amenities, and fostering a “place to be and be seen” image.  
16 CityCenter entered into an agreement with a third party to manage the Harmon, who in turn entered  
17 into contracts with a restaurateur (Mr. Chow’s) and a salon (Frederic Fekkai) for the Harmon.

18 13. Perini subcontracted with Century Steel, Inc. (“Century”) to install the steel reinforcing  
19 at the Harmon. CityCenter is informed and believes and based thereon alleges that Century, after  
20 having performed some of the reinforcing steel work at the Harmon, was subsequently acquired by and  
21 assigned the subcontract, in total, to Pacific Coast Steel, Inc. (“PCS”), which also performed some of  
22 the reinforcing steel work at the Harmon. Pursuant to the Construction Agreement, Perini was  
23 responsible for supervising and managing the work of its subcontractors, including Century and PCS,  
24 at all times. Moreover, Perini was required under the Construction Agreement to guaranty that all of  
25 the work performed at the Project, including the work of Century, PCS, and other subcontractors,  
26 conformed to the contract plans and specifications, satisfied the applicable standard of care, and was  
27 free of defects in materials and workmanship.

1           14.     After the Harmon was partially constructed, it was discovered that Perini and its  
2 subcontractors Century and PCS had defectively installed reinforcing steel in the Harmon.  
3 Specifically, CityCenter learned that certain reinforcing steel was installed incorrectly in various  
4 locations within the Harmon which, after the provision of further work and materials, including  
5 pouring concrete, became what are known as link beams. As a result of this discovery, construction  
6 was stopped on the Harmon and destructive testing was performed to determine the extent of the  
7 defective construction in approximately fifteen floors at the Harmon. By and through the destructive  
8 testing it was determined that there was substantial defective construction, including defective  
9 installation of reinforcing steel, in other areas of the Harmon.

10           15.     As a result of the defectively installed reinforcing steel, the decision was made to  
11 eliminate construction of the floors above floor 26. Additional link beam repairs were made based on  
12 modified requirements due to the reduced height building. However, further construction at the  
13 Harmon was indefinitely stopped, among other reasons, to allow for further assessment of the  
14 reinforcing steel work. Subsequent investigations detected structural defects in other components of  
15 the Harmon, including without limitation the shear walls, link beams below the 6th floor, and several  
16 critical beam-to-column and slab-to-beam connections. Investigations of the condition of the building  
17 continue.

18           16.     As described in the foregoing paragraphs, Perini breached the Construction Agreement  
19 and applicable standard of care by failing to perform its own work and failing to supervise the work of  
20 its subcontractors at the Harmon (a) in a workmanlike and non-negligent manner, (b) in accordance  
21 with the Construction Agreement and the plans and specifications, and (c) in accordance with  
22 applicable industry standards, laws, building codes, regulations, and/or ordinances.

23           17.     As a direct, foreseeable, and proximate result of Perini's breaches of the Construction  
24 Agreement and applicable standard of care, including negligent and grossly negligent acts and  
25 omissions, CityCenter has suffered damages, including but not limited to the costs of investigation,  
26 repairs, mitigation of losses, legal fees, costs of experts and consultants, lost profits, loss of business  
27 opportunities, damage to economic and prospective business relationships, consequential damages, and  
28 other compensatory damages. These damages include, without limitation, property damage, damages



1 because of property damage, physical injury to tangible property, including resulting loss of use of that  
2 property, and loss of use of tangible property that is not physically injured, including but not limited to:

- 3 (a) weakening and/or deformation of structural components in the Harmon;
- 4 (b) damage to the elasticity, structural integrity, ability to resist deformation, load-bearing  
5 capability, and other physical properties of structural components in the Harmon;
- 6 (c) the incorporation into the Harmon, and various parts of the Harmon, of defective,  
7 hazardous, and potentially dangerous materials and work that is physically touching and  
8 linked with the building and its components and that must be removed and repaired in  
9 order to avoid the hazard or danger;
- 10 (d) the necessary tearing out, removal, and/or replacing of building components and other  
11 tangible property of others as to which it is not possible to access, repair, and/or replace  
12 the defective materials and work without damaging or destroying such other building  
13 components and other tangible property;
- 14 (e) the need to take remedial or mitigation measures to address the foregoing deficiencies in  
15 order to avoid further injury or damage, including without limitation additional property  
16 damage and/or potential bodily injury if the Harmon had been built to its full height;
- 17 (f) physical injury to other tangible property and resulting loss of use of that other property,  
18 as well as other damages because of property damage; and
- 19 (g) substantial loss of use of the Harmon, various aspects of the Harmon, other building  
20 components, and other tangible property.

21 **E. Perini's Other Non-Conforming Work**

22 18. In addition to the defective reinforcing steel work at the Harmon, there are numerous  
23 instances where Perini's work on the Project failed to conform to the requirements of the plans and  
24 specifications and failed to satisfy the required standard of workmanship ("Non-Conforming Work").  
25 This Non-Conforming Work includes, but is not limited to, deficient placement of concrete at Veer  
26 Towers resulting in uneven floors and ceilings, defective slab elevations at the Crystals, out-of-  
27 tolerance concrete at the Aria Convention Center, defective installation of waterproofing membrane at  
28 the central plant resulting in roof leaks, defectively performed drywall installation and finishing at the

1 Mandarin, and other defectively performed work that had to be that had to be fully repaired at  
2 additional cost to CityCenter to eliminate the non-conforming conditions to make those components  
3 satisfactory, sound, and safe for human occupancy and use.

4 19. CityCenter provided Perini with timely notice of the Non-Conforming Work (including,  
5 without limitation, the work alleged in the preceding paragraph) and provided Perini an opportunity to  
6 re-perform the Non-Conforming Work. In some instances, Perini repaired the Non-Conforming Work  
7 and billed CityCenter for the cost of curing its own defective work. In other instances, Perini was  
8 unwilling or unable to correct the Non-Conforming Work and CityCenter was forced to hire other  
9 contractors to correct Perini's Non-Conforming Work.

10 20. Perini's performance of Non-Conforming Work on the Project, and its refusal to correct  
11 that Non-Conforming Work, constitutes a material breach of the Construction Agreement.

12 21. As a direct, foreseeable, and proximate result of Perini's Non-Conforming Work,  
13 CityCenter has incurred damages in the form of repair costs, costs of investigation, mitigation of  
14 losses, legal fees, costs of experts and consultants, and other foreseeable damages including property  
15 damage as alleged above.

16 **F. Perini's Improper Billing Practices**

17 22. Throughout the course of its performance of work on the Project, Perini engaged in a  
18 continued practice of billing CityCenter for and accepting payment for items for which Perini was not  
19 entitled to be paid. Among other things: Perini improperly billed work to the wrong GMP in situations  
20 where billing that work to the correct GMP would have resulted in non-payment because the GMP had  
21 been exceeded; Perini billed work to change orders that should have been billed as base contract work;  
22 and Perini billed for work that Perini performed to correct its own defective work. Perini also mispaid  
23 funds that CityCenter placed in a Project escrow account, resulting in subcontractor overpayments and  
24 other misapplications, and has failed to provide a proper accounting for the use of such funds.

25 23. Perini consistently submitted change order requests that did not meet the requirements  
26 of the Construction Agreement and did not include the proper supporting documentation. Among  
27 other things, Perini failed to consistently use the contractually required on-line management system  
28 ("Skire") to track and manage requested change orders, and Perini failed to maintain, for both itself

1 and its subcontractors, detailed change-order related documentation, as required by the Construction  
2 Agreement. Despite its failure to comply with the change order requirement in the Construction  
3 Agreement, Perini repeatedly billed CityCenter for improper change order requests.

4 24. As a direct and proximate result of Perini's improper billing practices as described  
5 above, CityCenter paid Perini compensation to which Perini was not entitled to be paid, and  
6 CityCenter has been damaged in a sum the precise amount of which is presently unknown.

7 **G. Perini's Failure to Manage the Subcontractor Close-out Process**

8 25. Perini is obligated under the Construction Agreement to manage its subcontractors and  
9 to keep the Project and the Site free of mechanic's liens at all times prior to final completion as that  
10 term is defined in the Construction Agreement. The existence of a lien prior to final completion is  
11 considered to be a "Non-Curable Default," unless the lien is released or Perini bonds around the lien  
12 within 10 days.

13 26. Perini breached its obligation to manage the subcontractor close-out process and ensure  
14 that the Project and the Site remained lien free prior to final completion. Among other things, Perini  
15 delayed submitting its final application for payment, which included requests for payment for work  
16 performed by subcontractors. Prior to submitting its final application for payment, Perini recorded a  
17 lien on the Project and the Site for \$490 million, filed its complaint initiating this action, amended its  
18 complaint to allege a cause of action to foreclose upon its lien, permitted numerous subcontractors to  
19 record liens on the Project and the Site totaling more than \$300 million, and held a public meeting at  
20 which it accused CityCenter of failing to pay subcontractors despite the fact that Perini is the party  
21 contractually required to pay subcontractors. When Perini finally delivered its final application for  
22 payment on May 4, 2010, over one month after it filed its complaint in this action, the application for  
23 payment consisted of 140 banker's boxes containing over 300,000 pages.

24 27. Because of Perini's actions, the subcontractor close-out process as contemplated under  
25 the Construction Agreement was derailed. Once Perini's final application for payment was submitted  
26 on May 4, 2010, CityCenter commenced its own subcontractor close-out process in an effort to resolve  
27 subcontractor payment claims. CityCenter has undertaken this process even though it has no  
28

1 contractual obligation to Perini's subcontractors. Perini's failure to manage the subcontractor close-  
2 out process and keep the Project and the Site lien free is a breach of the Construction Agreement.

3 28. As a direct and proximate result of Perini's failure to manage the subcontractor close-  
4 out process and keep the Project and the Site lien free, CityCenter has made and is continuing to make  
5 payments directly to subcontractors for which Perini is legally responsible, and CityCenter has been  
6 damaged in a sum the precise amount of which is presently unknown.

### 7 **FIRST CLAIM FOR RELIEF**

#### 8 **(Breach of Contract – Against Perini, Tutor Perini, and Roes 1-250)**

9 29. CityCenter repeats and realleges paragraphs 1 through 28 above, inclusive, as though  
10 fully set forth herein.

11 30. The Construction Agreement executed by Perini is a valid and enforceable agreement.  
12 Under the Construction Agreement, Perini promised and agreed, among other things, (i) to furnish its  
13 best skill and judgment and to cooperate with CityCenter in furthering CityCenter's best interests,  
14 furthering the Work and the Project, and (ii) to use good faith in performing its obligations under the  
15 Construction Agreement and other Contract Documents. The Construction Agreement further  
16 provides that the standard by which Perini shall be judged in its performance of the Work and its  
17 exercise of judgment shall be that of a contractor with the highest level of skill, experience and  
18 expertise for the planning and construction of a first class luxury resort and casino on the "Las Vegas  
19 strip," and otherwise consistent with all of Perini's representations, warranties, and covenants  
20 contained in the Construction Agreement and other Contract Documents.

21 31. CityCenter and its predecessors have performed their obligations and satisfied all  
22 conditions required of them under the Construction Agreement, except as to those obligations and  
23 conditions that were waived, released, prevented, or excused, or which Perini is estopped to assert.

24 32. Perini has breached the Construction Agreement by the acts alleged above, including  
25 but not limited to: (a) failing to construct the Harmon in accordance with the Construction Agreement  
26 and in a reasonably workmanlike manner free from construction defects; (b) performing Non-  
27 Conforming Work and failing or refusing to correct that Non-Conforming Work; (c) improperly  
28 charging and receiving payment for work which was not actually, reasonably and necessarily incurred

1 and failing and refusing to fully and properly submit cost reporting data for change orders; and  
2 (d) failing to manage the subcontractor close-out process and keep the Site free of liens.

3 33. As a direct, proximate, and foreseeable result of Perini's breaches of the Construction  
4 Agreement and other Contract Documents, CityCenter has suffered the damages alleged above,  
5 including without limitation actual and consequential damages in an amount to be proven at trial, but  
6 believed to be in the hundreds of millions of dollars, including but not limited to the costs of  
7 investigation, repairs, mitigation of losses, attorney's fees, costs of experts and consultants, other lost  
8 profits, loss of business opportunities, damage to economic and prospective business relationships,  
9 consequential damages, and other compensatory damages.

10 34. Pursuant to the Guaranty, Tutor Perini absolutely, unconditionally, and irrevocably  
11 guaranteed for the benefit of CityCenter the full, complete and punctual observance, performance and  
12 satisfaction of all of Perini's obligations, duties, covenants and agreements under the Construction  
13 Agreement and other Contract Documents. CityCenter performed any obligations and satisfied any  
14 conditions under the Guaranty, except as to those obligations and conditions that were waived,  
15 released, prevented, or excused, or which Tutor Perini is estopped to assert. Despite the acts and  
16 omissions of Perini as alleged above that caused CityCenter to suffer the damages alleged above, Tutor  
17 Perini has failed and refused to perform its promises and obligations under the Guaranty, for which  
18 Tutor Perini is liable for all of the damages suffered by CityCenter as alleged above.

19 35. The Construction Agreement provides that the prevailing party in an action or  
20 proceeding to enforce or interpret the Construction Agreement or other Contract Documents, or to  
21 protect or establish a right or remedy under the Construction Agreement, shall recover all costs and  
22 expenses, including without limitation reasonable attorneys' fees, paralegal fees, and expenses  
23 (including, without limitation, fees, costs and expenses of experts and consultants). As a direct,  
24 proximate, and foreseeable result of Perini's breaches of the Construction Agreement and other  
25 Contract Documents, CityCenter has been forced to incur such costs and expenses. CityCenter is  
26 therefore entitled to recover such costs and expenses under the Construction Agreement.

1 **SECOND CLAIM FOR RELIEF**

2 **(Breach of Implied Covenant of Good Faith and Fair Dealing – Against**  
3 **Perini, Tutor Perini, and Roes 1-250)**

4 36. CityCenter repeats and realleges paragraphs 1 through 28, and 30 through 35, above,  
5 inclusive, as though fully set forth herein.

6 37. Under Nevada law, a covenant of good faith and fair dealing is implied in every  
7 contract, including the Construction Agreement.

8 38. Perini breached the terms of this covenant by committing the acts and omissions set  
9 forth above, which were unfaithful to the purpose of the Construction Agreement and which denied the  
10 justified expectations of CityCenter and its predecessor(s).

11 39. As a direct, proximate, and foreseeable result of Perini's breaches of the Construction  
12 Agreement and other Contract Documents, CityCenter has suffered the damages alleged above,  
13 including without limitation actual and consequential damages in an amount to be proven at trial, but  
14 believed to be in the hundreds of millions of dollars, including but not limited to the costs of  
15 investigation, repairs, mitigation of losses, attorney's fees, costs of experts and consultants, other lost  
16 profits, loss of business opportunities, damage to economic and prospective business relationships,  
17 consequential damages, and other compensatory damages.

18 **THIRD CLAIM FOR RELIEF**

19 **(Specific Performance – Against Perini, Tutor Perini, and Roes 1-250)**

20 40. CityCenter repeats and realleges paragraphs 1 through 28, 30 through 35, and 37  
21 through 39, above, inclusive, as though fully set forth herein.

22 41. Perini has breached and continues to be in breach of its obligations under the  
23 Construction Agreement to bond around or otherwise cause the release of subcontractor mechanic's  
24 liens which have been recorded on the CityCenter Project and Site, despite CityCenter's demands that  
25 Perini comply with its contractual obligations to either bond around or have these liens released.

26 42. CityCenter is entitled to court-ordered specific performance, both preliminarily and  
27 permanently, requiring Perini to bond around or otherwise cause the release of these subcontractor  
28 mechanic's liens in order to avoid irreparable injury to CityCenter. The Project and the Site constitute

1 unique real property. The mechanic's liens recorded by the subcontractors are causing and will  
2 continue to cause irreparable injury to the Project and the Site, including without limitation, impairing  
3 the loan covenants for the Project and CityCenter's ability to raise and access capital, impairing its  
4 ability to enter into and close transactions for the sale of condominiums within the Project, and  
5 damaging the reputation and goodwill of the Project. Equity demands specific performance of the  
6 obligation of Perini to bond around or otherwise cause the release of these subcontractor mechanic's  
7 liens.

#### 8 **FOURTH CLAIM FOR RELIEF**

##### 9 **(Breach of Express Warranty – Against Perini, Tutor Perini, and Roes 1-250)**

10 43. CityCenter repeats and realleges paragraphs 1 through 28, 30 through 35, 37 through  
11 39, and 41 through 42, above, inclusive, as though fully set forth herein.

12 44. Perini expressly warranted that the Harmon and other components of the Project would  
13 be constructed in accordance with the plans and specifications required under the Construction  
14 Agreement and other Contract Documents, in accordance with industry standards, first class in quality,  
15 free from all defects whatsoever, and commensurate with construction practices and quality applicable  
16 to first class projects associated with a luxury resort and hotel on the Las Vegas Strip. Perini further  
17 warranted that it would be liable for all defects in its construction of the Harmon and other components  
18 of the Project. Said warranties (collectively the "Express Warranty") became part of the basis of the  
19 bargain made between the parties.

20 45. Perini breached the Express Warranty by failing to construct the Harmon and other  
21 components of the Project in accordance with the requirements of the Express Warranty.

22 46. As a direct, proximate, and foreseeable result of Perini's breaches of the Express  
23 Warranty, CityCenter has suffered the damages alleged above, including without limitation actual and  
24 consequential damages in an amount to be proven at trial, but believed to be in the hundreds of  
25 millions of dollars, including but not limited to the costs of investigation, repairs, mitigation of losses,  
26 attorney's fees, costs of experts and consultants, other lost profits, loss of business opportunities,  
27 damage to economic and prospective business relationships, consequential damages, and other  
28 compensatory damages.

1 **FIFTH CLAIM FOR RELIEF**

2 **(Breach of Implied Warranty – Against Perini)**

3 47. CityCenter repeats and realleges paragraphs 1 through 28, 30 through 35, 37 through  
4 39, 41 through 42, and 44 through 46, above, inclusive, as though fully set forth herein.

5 48. During the construction of the Harmon and other components of the Project, Perini  
6 impliedly warranted that the Harmon and other components of the Project were constructed in  
7 accordance with the plans and specifications required by the Construction Agreement and other  
8 Contract Documents and were constructed in accordance with industry standards and in a workmanlike  
9 manner; Perini further impliedly warranted that all products, materials, goods, and services furnished  
10 for components at the Project were merchantable, fit, and suitable for their intended purposes, and the  
11 same were otherwise free from construction defects (collectively the “Implied Warranty”).

12 49. The Implied Warranty by Perini was intended and made for the benefit of CityCenter  
13 and with knowledge that CityCenter was relying on the Implied Warranty.

14 50. CityCenter relied on the skill and judgment of Perini to construct the Harmon and other  
15 components of the Project in accordance with the plans and specifications, in accordance with industry  
16 standards, and in a workmanlike manner. CityCenter further relied on Perini to furnish products,  
17 materials, goods, and services for the Project that were merchantable and suitable for their intended  
18 purposes.

19 51. Notice was timely given to Perini of the breach of the Implied Warranty. Perini,  
20 however, has failed and refused to make repairs or otherwise compensate CityCenter for breach of the  
21 Implied Warranty.

22 52. As a direct, proximate, and foreseeable result of Perini’s breaches of the Implied  
23 Warranty, CityCenter has suffered the damages alleged above, including without limitation actual and  
24 consequential damages in an amount to be proven at trial, but believed to be in the hundreds of  
25 millions of dollars, including but not limited to the costs of investigation, repairs, mitigation of losses,  
26 attorney’s fees, costs of experts and consultants, other lost profits, loss of business opportunities,  
27 damage to economic and prospective business relationships, consequential damages, and other  
28 compensatory damages.



1 **SIXTH CLAIM FOR RELIEF**

2 **(Negligence and Gross Negligence – Against Perini)**

3 53. CityCenter repeats and realleges paragraphs 1 through 28, 30 through 35, 37 through  
4 39, 41 through 42, 44 through 46, and 48 through 52, above, inclusive, as though fully set forth herein.

5 54. Perini agreed to undertake to act and perform as the general contractor for the planning  
6 and construction of the Harmon and other components of the Project during the ordinary course of its  
7 business. By reason of this undertaking, and various other representations and undertakings by Perini  
8 (including but not limited to under the Construction Agreement and other Contract Documents)  
9 concerning its ability and commitment to competently and properly perform and/or supervise the work  
10 at the Harmon, Perini owed a duty to provide its work with reasonable care, in a workmanlike manner,  
11 and in accordance with applicable laws, regulations, ordinances, and standards of care; and to use  
12 appropriate skill and judgment in carrying out its work (collectively “Duties of Care”).

13 55. Perini was negligent and grossly negligent in its supervision, inspection, and  
14 construction of, and in supplying and installing materials, products, and/or goods for, the Harmon and  
15 other Components of the Project. As a consequence, Perini’s negligence and gross negligence resulted  
16 in the defective and nonconforming work alleged above, for which it is liable.

17 56. As a direct, proximate, and foreseeable result of Perini’s gross negligence, CityCenter  
18 has suffered the damages alleged above, including without limitation actual and consequential  
19 damages in an amount to be proven at trial, but believed to be in the hundreds of millions of dollars,  
20 including but not limited to the costs of investigation, repairs, mitigation of losses, attorney’s fees,  
21 costs of experts and consultants, other lost profits, loss of business opportunities, damage to economic  
22 and prospective business relationships, consequential damages, and other compensatory damages.

23 **SEVENTH CLAIM FOR RELIEF**

24 **(Express Indemnity – Against Perini, Tutor Perini, and ROES 1-250)**

25 57. CityCenter repeats and realleges paragraphs 1 through 28, 30 through 35, 37 through  
26 39, 41 through 42, 44 through 46, 48 through 52, and 54 through 56, above, inclusive, as though fully  
27 set forth herein.

1        58.     The Construction Agreement provides in part:

2                **13.1     Contractor Indemnity.** To the fullest extent permitted under  
3                any Laws, Contractor hereby indemnifies and agrees to protect, defend, and  
4                hold Owner, Owner's Representative, ... and each of their respective  
5                subsidiaries, affiliates, parent companies and their respective members,  
6                officers, directors, managers, employees, agents, shareholders, successors  
7                and assigns, heirs, administrators, and personal representatives (collectively,  
8                "**Owner Indemnitees**") harmless from and against any and all claims,  
9                liabilities, obligations, losses, suits, actions, legal proceedings, damages,  
10               costs, expenses, awards, or judgments, including, without limitation,  
11               reasonable attorneys' fees and costs (whether or not a suit is filed)  
12               (collectively, "**Actions**") that any Owner Indemnitees may suffer or incur or  
13               be threatened with, whether based upon statutory, contractual, tort or other  
14               theory, and relate to or arise out of or result from, directly or indirectly, the  
15               performance of the Work, or from any act or omission of Contractor, or any  
16               Subcontractor, or Vendor, or anyone directly or indirectly employed by any  
17               of the foregoing, or anyone for whose acts any of them are liable or  
18               responsible under Laws or under the Contract Documents..., regardless of  
19               whether or not such Action is caused by an Owner Indemnitee..."

20               **13.2     Defense Costs.** Contractor's indemnity obligations under  
21               Section 13.1 above, shall include all attorney's fees, investigation costs,  
22               expert witness fees and costs, court costs, and other costs and expenses  
23               incurred by the Owner Indemnitees in connection with any Action.

24        59.     Despite timely demands by CityCenter that Perini indemnify and hold harmless  
25     CityCenter and the Owner Indemnitees from and against any and all liabilities and losses, suits that any  
26     of the Owner Indemnitees may have suffered or incurred, or may suffer or incur or be threatened with,  
27     including but not limited to the liabilities and losses alleged above, Perini has failed and refused to  
28     honor or perform those duties to indemnify and hold harmless CityCenter and the Owner Indemnitees

60. As a direct, proximate, and foreseeable result of Perini's failure to indemnify and hold harmless CityCenter and the Owner Indemnitees, CityCenter has suffered the damages alleged above, including without limitation actual and consequential damages in an amount to be proven at trial, but believed to be in the hundreds of millions of dollars, including but not limited to the costs of investigation, repairs, mitigation of losses, attorney's fees, costs of experts and consultants, other lost profits, loss of business opportunities, damage to economic and prospective business relationships, consequential damages, and other compensatory damages.

## EIGHTH CLAIM FOR RELIEF

**(Equitable Indemnity – Against Perini)**

61. CityCenter repeats and realleges paragraphs 1 through 28, 30 through 35, 37 through 39, 41 through 42, 44 through 46, 48 through 52, and 54 through 56, and 58 through 60, above, inclusive, as though fully set forth herein.

62. By engaging in the foregoing conduct, Perini breached its duties of care, and engaged in acts and omissions that were negligent and acts and omissions that were grossly negligent, including but not limited to failing to perform and supervise the Work in a workmanlike and non-negligent manner, and in accordance and full compliance with the requirements of the Construction Agreement, the requirements for construction of the Harmon, applicable laws, regulations, and ordinances, and applicable standards of care.

63. As a direct, foreseeable, and proximate result of Perini's breaches of its duties of care and negligent and grossly negligent acts and omissions, and other conduct alleged above, equity requires that Perini indemnify and pay CityCenter for its liabilities, losses, and damages, including but not limited to actual and consequential damages in an amount to be proven at trial, but believed to be in the hundreds of millions of dollars, including but not limited to the costs of investigation, repairs, mitigation of losses, attorney's fees, costs of experts and consultants, other lost profits, loss of business opportunities, damage to economic and prospective business relationships, consequential damages, and other compensatory damages, which were caused primarily and proximately by the negligence, gross negligence, or other acts and omissions of Perini.

1 **NINTH CLAIM FOR RELIEF**

2 **(Breach of Contract – Against Tutor Perini and Roes 1-250)**

3 64. CityCenter repeats and realleges paragraphs 1 through 28, 30 through 35, 37 through  
4 39, 41 through 42, 44 through 46, 48 through 52, and 54 through 56, 58 through 60, and 62 through 63,  
5 above, inclusive, as though fully set forth herein.

6 65. Under the Guaranty, Tutor Perini absolutely, unconditionally, and irrevocably  
7 guaranteed for the benefit of CityCenter the full, complete and punctual observance, performance and  
8 satisfaction of all of Perini's obligations, duties, covenants and agreements under the Construction  
9 Agreement, including, without limitation, ensuring that: (a) "each Block of the Project will be  
10 constructed in accordance with the Contract Documents for such Block, including, without limitation,  
11 all Drawings and Specifications therefor"; (b) "each Block of the Project will be completed, lien free,  
12 and ready for occupancy..."; and (c) "Perini will duly and punctually perform and observe all other  
13 terms, covenants and conditions of the Contract Documents for each Block, including, without  
14 limitation, all payment obligations ('Payment Obligations') of Perini, including, without limitation,  
15 any obligation to pay liquidated damages and consequential damages...."

16 66. Tutor Perini breached the Guaranty by and through its failure and refusal to ensure the  
17 foregoing, to perform the Construction Agreement, and to otherwise perform its promises and  
18 obligations under the Guaranty.

19 **TENTH CLAIM FOR RELIEF**

20 **(Declaratory Relief – Against Perini, Tutor Perini, and ROES 1-500)**

21 67. CityCenter repeats and realleges paragraphs 1 through 28, 30 through 35, 37 through  
22 39, 41 through 42, 44 through 46, 48 through 52, and 54 through 56, 58 through 60, 62 through 63, and  
23 65 through 66, above, inclusive, as though fully set forth herein.

24 68. CityCenter contends that Perini has breached and continues to be in breach of its  
25 obligations under the Construction Agreement to bond around or otherwise cause the release of  
26 subcontractor mechanic's liens which have been recorded on the Project and the Site, whereas  
27 CityCenter is informed and believes that Perini contends that it is not in breach and has no obligation  
28

1 under the Construction Agreement to bond around or otherwise cause the release of subcontractor  
2 mechanics' liens which have been recorded on the Project and the Site.

3 69. Further, CityCenter contends that Perini is obligated by the Construction Agreement to  
4 indemnify and hold harmless CityCenter for all losses and liabilities suffered, or in the future to be  
5 suffered, due to Perini's conduct, as alleged above, whereas CityCenter is informed and believes that  
6 Perini contends that it is not so obligated.

7 70. In addition, CityCenter contends that Tutor Perini is obligated to honor and perform the  
8 Guaranties and other obligations under the Guaranty, as alleged above, whereas CityCenter is informed  
9 and believes that Tutor Perini contends that it is not so obligated.

10 71. An actual, justiciable controversy has arisen between the parties as to whether (a) Perini  
11 and Tutor Perini have an obligation arising out of the Construction Agreement and Guaranty to bond  
12 around or otherwise cause the release of subcontractor mechanic's liens which have been recorded on  
13 the Project and the Site, (b) Perini and Tutor Perini are obligated by the Construction Agreement to  
14 indemnify and hold harmless CityCenter for all losses and liabilities suffered, or in the future to be  
15 suffered, as alleged above, and (c) Tutor Perini is obligated to honor and perform the obligations under  
16 the Guaranty, as alleged above. CityCenter seeks and is entitled to a declaratory judgment that Perini  
17 and Tutor Perini are so obligated.

18 72. A declaration of these rights and obligations arising out of the Construction Agreement  
19 is appropriate and will promote judicial efficiency.

20 73. As a direct, proximate, and foreseeable result of Tutor Perini's breaches of the  
21 Guaranty, CityCenter has suffered the damages alleged above, including without limitation actual and  
22 consequential damages in an amount to be proven at trial, but believed to be in the hundreds of  
23 millions of dollars, including but not limited to the costs of investigation, repairs, mitigation of losses,  
24 attorney's fees, costs of experts and consultants, other lost profits, loss of business opportunities,  
25 damage to economic and prospective business relationships, consequential damages, and other  
26 compensatory damages.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Counterclaimant and Third-Party Plaintiff CityCenter prays for judgment  
3 against Counterdefendant Perini and Third Party Defendants Tutor Perini, and each of them, as  
4 follows:

5 1. For general and consequential damages, in an amount in the hundreds of millions of  
6 dollars to be proven at trial;

7 2. For specific performance, both preliminarily and permanently, requiring Perini, Tutor  
8 Perini, and/or ROES 1 through 250 to bond around or otherwise cause the release of the subcontractor  
9 mechanic's liens alleged above which have been recorded on the Project and Site;

10 3. For a declaratory judgment that Perini, Tutor Perini, and ROES 1 through 500 are  
11 obligated, and have breached their obligations, (a) to bond around or otherwise cause the release of  
12 subcontractor mechanics' liens alleged above which have been recorded on the CityCenter Project and  
13 Site, (b) to indemnify and hold harmless CityCenter Land for all losses and liabilities suffered, or in  
14 the future to be suffered, as alleged above, and (c) as to Tutor Perini, to honor and perform the  
15 Guaranties and other obligations under the Guaranty agreement, as alleged above;

16 4. For prejudgment interest on all damages to the maximum extent permitted by law;

17 5. For attorney's fees, expert and consulting fees, and other costs of suit incurred herein, to  
18 the maximum extent permitted by law; and

19 6. For such other and further relief as the Court may deem just and proper.  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **ANSWER**

2 Defendants MGM MIRAGE DESIGN GROUP a Nevada Limited Liability Company;  
3 CITYCENTER LAND, LLC, a Nevada Limited Liability Company, CITYCENTER HARMON  
4 HOTEL HOLDINGS, LLC a Nevada Limited Liability Company; CITYCENTER VDARA  
5 DEVELOPMENT, LLC a Nevada Limited Liability Company; THE CRYSTALS AT CITYCENTER,  
6 LLC a Nevada Limited Liability Company; CITYCENTER VEER TOWERS DEVELOPMENT, LLC  
7 a Nevada Limited Liability Company; ARIA RESORT & CASINO HOLDINGS, LLC a Nevada  
8 Limited Liability Company; CITYCENTER BOUTIQUE HOTEL HOLDINGS, LLC a Nevada  
9 Limited Liability Company; and CITYCENTER BOUTIQUE RESIDENTIAL DEVELOPMENT,  
10 LLC a Nevada Limited Liability Company (collectively, "CityCenter Defendants") answer the First  
11 Amended Complaint (the "FAC") of Plaintiff PERINI BUILDING COMPANY, INC. ("Plaintiff") as  
12 follows:

13 **GENERAL ALLEGATIONS**

- 14 1. The CityCenter Defendants admit the allegations in Paragraph 1 of the FAC.
- 15 2. The CityCenter Defendants admit the allegations in Paragraph 2 of the FAC.
- 16 3. Answering Paragraph 3 of the FAC, the CityCenter Defendants admit that CityCenter  
17 Land, LLC is a Nevada limited liability company that has an ownership interest in certain properties  
18 identified in the FAC. The CityCenter Defendants deny the remaining allegations in Paragraph 3.
- 19 4. Answering Paragraph 4 of the FAC, the CityCenter Defendants admit that CityCenter  
20 Harmon Hotel Holdings, LLC is a Nevada limited liability company that has an ownership interest in  
21 certain properties identified in the FAC. The CityCenter Defendants deny the remaining allegations in  
22 Paragraph 4.
- 23 5. Answering Paragraph 5 of the FAC, the CityCenter Defendants admit that CityCenter  
24 Vdara Development, LLC is a Nevada limited liability company that has an ownership interest in  
25 certain properties identified in the FAC. The CityCenter Defendants deny the remaining allegations in  
26 Paragraph 5.
- 27 6. Answering Paragraph 6 of the FAC, the CityCenter Defendants admit that The Crystals  
28 at CityCenter, LLC is a Nevada limited liability company that has an ownership interest in certain

1 properties identified in the FAC. The CityCenter Defendants deny the remaining allegations in  
2 Paragraph 6.

3 7. Answering Paragraph 7 of the FAC, Defendants admit that CityCenter Veer Towers  
4 Development, LLC is a Nevada limited liability company that has an ownership interest in certain  
5 properties identified in the FAC. The CityCenter Defendants deny the remaining allegations in  
6 Paragraph 7.

7 8. Answering Paragraph 8 of the FAC, the CityCenter Defendants admit that Aria Resort  
8 & Casino Holdings, LLC is a Nevada limited liability company that has an ownership interest in  
9 certain properties identified in the FAC. The CityCenter Defendants deny the remaining allegations in  
10 Paragraph 8.

11 9. Answering Paragraph 9 of the FAC, the CityCenter Defendants admit that CityCenter  
12 Boutique Hotel Holdings, LLC is a Nevada limited liability company that has an ownership interest in  
13 certain properties identified in the FAC. The CityCenter Defendants deny the remaining allegations in  
14 Paragraph 9.

15 10. Answering Paragraph 10 of the FAC, the CityCenter Defendants admit that CityCenter  
16 Boutique Residential Development, LLC is a Nevada limited liability company that has an ownership  
17 interest in certain properties identified in the FAC. The CityCenter Defendants deny the remaining  
18 allegations in Paragraph 10.

19 11. The CityCenter Defendants lack the information necessary to either admit or deny the  
20 allegations in Paragraph 11 of the FAC and on that basis deny the allegations in that paragraph.

21 12. The CityCenter Defendants lack the information necessary to either admit or deny the  
22 allegations in Paragraph 12 of the FAC and on that basis deny the allegations in that paragraph.

23 13. The CityCenter Defendants lack the information necessary to either admit or deny the  
24 allegations in Paragraph 13 of the FAC and on that basis deny the allegations in that paragraph.

25 14. The CityCenter Defendants lack the information necessary to either admit or deny the  
26 allegations in Paragraph 14 of the FAC and on that basis deny the allegations in that paragraph.

27 15. The CityCenter Defendants lack the information necessary to either admit or deny the  
28 allegations in Paragraph 15 of the FAC and on that basis deny the allegations in that paragraph.



1           16.     The CityCenter Defendants lack the information necessary to either admit or deny the  
2 allegations in Paragraph 16 of the FAC and on that basis deny the allegations in that paragraph.

3           17.     The CityCenter Defendants lack the information necessary to either admit or deny the  
4 allegations in Paragraph 17 of the FAC and on that basis deny the allegations in that paragraph.

5           18.     The CityCenter Defendants lack the information necessary to either admit or deny the  
6 allegations in Paragraph 18 of the FAC and on that basis deny the allegations in that paragraph.

7           19.     The CityCenter Defendants lack the information necessary to either admit or deny the  
8 allegations in Paragraph 19 of the FAC and on that basis deny the allegations in that paragraph.

9           20.     The CityCenter Defendants lack the information necessary to either admit or deny the  
10 allegations in Paragraph 20 of the FAC and on that basis deny the allegations in that paragraph.

11                   **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

12           21.     Answering Paragraph 21 of the FAC, the CityCenter Defendants admit that MGM  
13 MIRAGE Design Group and Plaintiff entered into the Construction Agreement effective March 9,  
14 2005. The Construction Agreement, not Plaintiff's characterization of the document, best reflects the  
15 contents of the document. The CityCenter Defendants deny the remaining allegations in Paragraph 21.

16           22.     The CityCenter Defendants deny the allegations in Paragraph 22 of the FAC.

17           23.     The CityCenter Defendants deny the allegations in Paragraph 23 of the FAC.

18           24.     The CityCenter Defendants deny the allegations in Paragraph 24 of the FAC.

19           25.     The CityCenter Defendants deny the allegations in Paragraph 25 of the FAC.

20           26.     The CityCenter Defendants deny the allegations in Paragraph 26 of the FAC.

21           27.     The CityCenter Defendants deny the allegations in Paragraph 27 of the FAC.

22           28.     The CityCenter Defendants deny the allegations in Paragraph 28 of the FAC.

23           29.     Answering Paragraph 29 of the FAC, the CityCenter Defendants state that the  
24 Construction Agreement, not Plaintiff's characterization of the document, best reflects the contents of  
25 the document. The CityCenter Defendants deny the remaining allegations in Paragraph 29.

26           30.     The City Center Defendants deny the allegations in Paragraphs 30 of the FAC.

27           31.     The CityCenter Defendants deny the allegations in Paragraph 31 of the FAC.  
28

1           32.     Answering Paragraph 32 of the FAC, the CityCenter Defendants state that the  
2 Construction Agreement, not Plaintiff's characterization of the document, best reflects the contents of  
3 the document. The CityCenter Defendants deny the remaining allegations in Paragraph 32.

4           33.     The CityCenter Defendants deny the allegations in Paragraph 33 of the FAC.

5           34.     Answering Paragraph 34 of the FAC, the CityCenter Defendants state that the  
6 Construction Agreement, not Plaintiff's characterization of the document, best reflects the contents of  
7 the document. The CityCenter Defendants deny the remaining allegations in Paragraph 34.

8           35.     The CityCenter Defendants deny the allegations in Paragraphs 35 of the FAC.

9           36.     The CityCenter Defendants deny the allegations in Paragraph 36 of the FAC.

10          37.     The CityCenter Defendants deny the allegations in Paragraphs 37 of the FAC.

11          38.     The CityCenter Defendants deny the allegations in Paragraph 38 of the FAC.

12          39.     The CityCenter Defendants deny the allegations in Paragraph 39 of the FAC.

13          40.     The CityCenter Defendants deny the allegations in Paragraph 40 of the FAC.

14          41.     The CityCenter Defendants deny the allegations in Paragraph 41 of the FAC.

15          42.     The CityCenter Defendants deny the allegations in Paragraph 42 of the FAC.

16          43.     Answering Paragraph 43 of the FAC, the CityCenter Defendants admit that certain  
17 condominium units have closed. The CityCenter Defendants deny the remaining allegations in  
18 Paragraph 43.

19          44.     The CityCenter Defendants deny the allegations in Paragraph 44 of the FAC.

20          45.     The CityCenter Defendants deny the allegations in Paragraph 45 of the FAC.

21          46.     The CityCenter Defendants deny the allegations in Paragraph 46 of the FAC.

22          47.     The CityCenter Defendants deny the allegations in Paragraph 47 of the FAC.

23          48.     The CityCenter Defendants deny the allegations in Paragraph 48 of the FAC.

24          49.     The CityCenter Defendants deny the allegations in Paragraph 49 of the FAC.

25          50.     The CityCenter Defendants deny the allegations in Paragraph 50 of the FAC.

26          51.     The CityCenter Defendants deny the allegations in Paragraph 51 of the FAC.

27          52.     The CityCenter Defendants deny the allegations in Paragraph 52 of the FAC.

28          53.     The CityCenter Defendants deny the allegations in Paragraph 53 of the FAC.

54. The CityCenter Defendants deny the allegations in Paragraph 54 of the FAC.

55. The CityCenter Defendants deny the allegations in Paragraph 55 of the FAC.

56. Answering Paragraph 56 of the FAC, the CityCenter Defendants' allegations against Plaintiff speak for themselves. The CityCenter Defendants deny the remaining allegations in Paragraph 56.

57. The CityCenter Defendants deny the allegations in Paragraph 57 of the FAC.

58. The CityCenter Defendants deny the allegations in Paragraph 58 of the FAC.

59. The CityCenter Defendants deny the allegations in Paragraph 59 of the FAC.

60. The CityCenter Defendants deny the allegations in Paragraph 60 of the FAC.

61. The CityCenter Defendants deny the allegations in Paragraph 61 of the FAC.

62. Answering Paragraph 62 of the FAC, the CityCenter Defendants admit that they own the Property. The CityCenter Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 62, which are on that basis denied.

63. The CityCenter Defendants deny the allegations in Paragraph 63 of the FAC.

64. The CityCenter Defendants deny the allegations in Paragraph 64 of the FAC.

65. The CityCenter Defendants admit the allegations in Paragraph 65 of the FAC.

66. The CityCenter Defendants lack the information necessary to either admit or deny the allegations in Paragraph 66 of the FAC and on that basis deny the allegations in that paragraph.

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract)**

67. Answering Paragraph 67 of the FAC, the CityCenter Defendants incorporate by reference each and every response to Paragraphs 1 through 66, inclusive, of the FAC as set forth above as if fully set forth herein.

68. The CityCenter Defendants admit the allegations in Paragraph 68 of the FAC.

69. The CityCenter Defendants deny the allegations in Paragraph 69 of the FAC.

70. The CityCenter Defendants deny the allegations in Paragraph 70 of the FAC.

71. The CityCenter Defendants deny the allegations in Paragraph 71 of the FAC.

72. The CityCenter Defendants deny the allegations in Paragraph 72 of the FAC.

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

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

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

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

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

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

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

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

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

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

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

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

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

8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

9  
0  
1  
2  
3  
4  
5  
6  
7  
8

0  
1  
2  
3  
4  
5  
6  
7  
8

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2  
3  
4  
5  
6  
7  
8

5  
6  
7  
8

6  
7  
8

7  
8

8

1           89.     The CityCenter Defendants deny the allegations in Paragraph 89 of the FAC.

2                                   **FIFTH CLAIM FOR RELIEF**

3                                   **(Fraud/Intentional Misrepresentation)**

4           90.     Answering Paragraph 90 of the FAC, the CityCenter Defendants incorporate by  
5 reference each and every response to paragraphs 1 through 66, inclusive, of the FAC as set forth above  
6 as if fully set forth herein.

7           91.     The CityCenter Defendants deny the allegations in Paragraph 91 of the FAC.

8           92.     The CityCenter Defendants deny the allegations in Paragraph 92 of the FAC.

9           93.     The CityCenter Defendants deny the allegations in Paragraph 93 of the FAC.

10          94.     The CityCenter Defendants deny the allegations in Paragraph 94 of the FAC.

11          95.     The CityCenter Defendants deny the allegations in Paragraph 95 of the FAC.

12          96.     The CityCenter Defendants deny the allegations in Paragraph 96 of the FAC.

13          97.     The CityCenter Defendants deny the allegations in Paragraph 97 of the FAC.

14          98.     The CityCenter Defendants deny the allegations in Paragraph 98 of the FAC.

15          99.     The CityCenter Defendants deny the allegations in Paragraph 99 of the FAC.

16                                   **SIXTH CLAIM FOR RELIEF**

17                                   **(Foreclosure of Mechanic's Lien)**

18          100.    Answering Paragraph 100 of the FAC, the CityCenter Defendants incorporate by  
19 reference each and every response to paragraphs 1 through 66, inclusive, of the FAC as set forth above  
20 as if fully set forth herein.

21          101.    The CityCenter Defendants deny the allegations in Paragraph 101 of the FAC.

22          102.    The CityCenter Defendants deny the allegations in Paragraph 102 of the FAC.

23          103.    The CityCenter Defendants deny the allegations in Paragraph 103 of the FAC.

24          104.    The CityCenter Defendants deny the allegations in Paragraph 104 of the FAC.

25          105.    The CityCenter Defendants deny the allegations in Paragraph 105 of the FAC.

1 **SEVENTH CLAIM FOR RELIEF**

2 **(Claim of Priority)**

3 106. Answering Paragraph 106 of the FAC, the CityCenter Defendants incorporate by  
4 reference each and every response to paragraphs 1 through 66, inclusive, of the FAC as set forth above  
5 as if fully set forth herein.

6 107. The CityCenter Defendants deny the allegations in Paragraph 107 of the FAC.

7 108. The CityCenter Defendants deny the allegations in Paragraph 108 of the FAC.

8 109. The CityCenter Defendants deny the allegations in Paragraph 109 of the FAC.

9 **AFFIRMATIVE DEFENSES**

10 110. The CityCenter Defendants allege the following separate and distinct affirmative  
11 defenses. By referring to the following allegations as "Affirmative Defenses," the CityCenter  
12 Defendants do not concede that they bear the burden of proof as to such allegations.

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State a Claim)**

15 111. The FAC, and each purported claim for relief alleged therein, fails to state a claim upon  
16 which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Laches)**

19 112. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Waiver)**

22 113. Plaintiff, by reason of its conduct, has waived some or all of the rights it asserts in the  
23 FAC.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 **(Unclean Hands)**

26 114. By reason of its acts and/or conduct, Plaintiff has unclean hands and is not entitled to  
27 some or all of the relief sought through its FAC.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Estoppel)**

3 115. The FAC, and each purported claim for relief alleged therein, is barred in whole or in  
4 part by the doctrine of estoppel.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 **(Statute of Limitations)**

7 116. Plaintiff's claims are barred by the applicable statute of limitations.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 **(Conduct of Other Parties)**

10 117. Plaintiff's claims are reduced, in whole or in part, by virtue of the actions of third  
11 persons over whom the CityCenter Defendants exercised no control and whose actions were a  
12 proximate cause of Plaintiff's alleged damages, if any.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 **(Failure to Mitigate Damages)**

15 118. Plaintiff's recovery under each claim for relief alleged therein, if any, must be reduced  
16 to the extent that its injuries and/or damages, if any, were caused by Plaintiff's failure to properly  
17 mitigate any alleged damages.

18 **NINTH AFFIRMATIVE DEFENSE**

19 **(Conditions Precedent)**

20 119. Plaintiff has failed to satisfy conditions precedent to bringing any actions against the  
21 CityCenter Defendants.

22 **TENTH AFFIRMATIVE DEFENSE**

23 **(Failure to Satisfy Mechanic's Lien Requirements)**

24 120. Plaintiff has failed to comply the requirements of N.R.S. Chapter 108, et. seq. regarding  
25 mechanic's liens.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(Premature Mechanic's Lien)**

3 121. Plaintiff's mechanic's lien is premature under N.R.S. Chapter 108, et. seq., and  
4 therefore invalid.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 **(Frivolous Mechanic's Lien)**

7 122. Plaintiff's lien is frivolous and was made without reasonable cause, entitling the  
8 CityCenter Defendants to an order releasing the lien and awarding costs and reasonable attorney's fees.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 **(Lien Exceeds Value of Materials/Services)**

11 123. The FAC, and each purported claim for relief alleged therein, is barred to the extent that  
12 the amount claimed in Plaintiff's purported mechanic's lien exceeds the reasonable value of the  
13 materials delivered and/or services or work performed.

14 **FOURTEENTH AFFIRMATIVE DEFENSE**

15 **(Materials Not Used in Work of Improvement)**

16 124. The FAC, and each purported claim for relief alleged therein, is barred to the extent that  
17 not all of the materials or services for which Plaintiff claims a lien were incorporated into the Project  
18 for which the lien is claimed.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 **(Payment)**

21 125. The FAC, and each purported claim for relief alleged therein, is barred to the extent that  
22 Plaintiff has been paid all sums earned by Plaintiff and that are due and owing to Plaintiff.

23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 **(Setoff/Offset)**

25 126. Plaintiff's claims are barred, in whole or in part, by the doctrine of setoff or offset.  
26  
27  
28



1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 **(Defective Work)**

3 127. Plaintiff is not entitled to some or all of the alleged damages sought because Plaintiff's  
4 work on the Project was defective.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 **(Good Faith)**

7 128. At all times relevant to this action, the CityCenter Defendants have acted in good faith,  
8 acted reasonably, and dealt fairly with Plaintiff, and did not directly or indirectly commit or induce any  
9 act upon which liability to the CityCenter Defendants can be predicated.

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 **(Discharge of Duty/Full Performance)**

12 129. The CityCenter Defendants allege on information and belief, without admitting the  
13 existence of any duties or obligations as alleged in the FAC, that any duties or obligations, contractual  
14 or otherwise, which Plaintiff claims are owed by the CityCenter Defendants to Plaintiff have been fully  
15 performed, satisfied or discharged.

16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 **(Legally Excused)**

18 130. The CityCenter Defendants allege on information and belief, without admitting the  
19 existence of any duties or obligations as alleged in the FAC, that any duties or obligations, contractual  
20 or otherwise, which Plaintiff claims are owed by the CityCenter Defendants to Plaintiff have been  
21 legally excused.

22 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

23 **(Improper Conduct in Course of Construction)**

24 131. The FAC, and each purported claim for relief alleged therein, is barred to the extent that  
25 Plaintiff failed to properly maintain, control, construct, inspect or otherwise conduct Plaintiff's  
26 activities on the subject Project, or Plaintiff otherwise failed to take adequate measure to minimize  
27 delays, damages, and extra costs during the course of work on the Project.  
28

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

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Failure to Join Necessary Parties)**

132. The FAC, and each purported claim for relief alleged therein, is barred to the extent that Plaintiff has failed to join necessary parties as defendants.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Knowledge, Acquiescence, Ratification and Consent)**

133. The FAC, and each purported claim for relief alleged therein, is barred to the extent that Plaintiff had knowledge of, acquiesced in, approved of, consented to, and/or ratified some or all of the acts, conduct or omissions alleged in the FAC.

**ADDITIONAL AFFIRMATIVE DEFENSES**

134. Pursuant to N.R.C.P. 11, to the extent that additional affirmative defenses have not been alleged herein, including without limitation due to sufficient facts being unavailable despite reasonable inquiry, the CityCenter Defendants reserve the right to amend their Answer to allege additional affirmative defenses.

**PRAYER FOR RELIEF**

WHEREFORE, the CityCenter Defendants pray:

1. That Plaintiff take nothing by its FAC;
2. That the FAC be dismissed with prejudice;
3. For attorney's fees, expert and consulting fees, and other costs of suit incurred herein, to the maximum extent permitted by law; and
4. For such other and further relief as the Court may deem just and proper.

DATED: May 14, 2010

MORRIS PETERSON

By: 

Steve Morris, Bar No. 1543

Rosa Solis-Rainey, Bar No. 7921

300 South Fourth Street, Suite 900

Las Vegas, Nevada 89101

Attorneys for Defendants, Counterclaimants, and  
Third-Party Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D), I certify that I am an employee of MORRIS  
3 PETERSON; that I served the following documents by electronic means as indicated below:

4 **COUNTERCLAIM, THIRD PARTY COMPLAINT, AND ANSWER TO FIRST AMENDED**  
5 **COMPLAINT**

6  
7 TO:

8 Attorneys for Plaintiffs

9 George F. Ogilvie, III  
10 Paul J. Georgeson  
11 Brandon M. Barkhuff  
12 MCDONALD CARANO WILSON LLP  
2300 West Sahara Avenue, Suite 1000  
Las Vegas, Nevada 89102  
Facsimile: (702) 873-9966

13 Robert D. Martin  
14 Noah G. Allison  
15 MARTIN & ALLISON  
3191 East Warm Springs Road  
16 Las Vegas, Nevada 89120-3147  
Facsimile: (702) 933-4445  
17 Email:  
nallison@battlebornlaw.com  
18 rmartin@battlebornlaw.com  
cbradford@battlebornlaw.com  
19 tfrey@battlebornlaw.com  
lwright@battlebornlaw.com  
mwarner@battlebornlaw.com

20  
21 DATED this 14th day of May, 2010.

22 By   
23  
24  
25  
26  
27  
28