

CHAPTER.....

AN ACT relating to liens; making various changes to the provisions related to mechanics' and materialmen's liens; requiring a lessee to record a notice of posted security under certain circumstances; requiring certain lessees to establish a construction disbursement account and obtain the services of a construction control; establishing requirements for administering a construction disbursement account; providing that a lien claimant has a lien against a construction disbursement account under certain circumstances; changing the form for a notice of lien; prohibiting a stay of a district court's ruling on a motion related to a frivolous or excessive notice of lien under certain circumstances; revising the requirements of a notice of nonresponsibility; revising the calculation of interest related to an award of a lienable amount; changing the form of a surety bond posted to release a notice of lien; revising the requirements for bringing an action against a principal and surety; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 108 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. *“Construction control” has the meaning ascribed to it in NRS 627.050.*

Sec. 4. 1. *Except as otherwise provided in section 4.5 of this act, before a lessee may cause a work of improvement to be constructed, altered or repaired upon property that he is leasing, the lessee shall:*

(a) Record a notice of posted security with the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired; and

(b) Either:

(I) Establish a construction disbursement account and:

(I) Fund the account in an amount equal to the total cost of the work of improvement, but in no event less than the total amount of the prime contract;

(II) Obtain the services of a construction control to administer the construction disbursement account; and

(III) Notify each person who gives the lessee a notice of right to lien of the establishment of the construction disbursement account as provided in paragraph (f) of subsection 2; or

(2) Record a surety bond for the prime contract that meets the requirements of subsection 2 of NRS 108.2415 and notify each person who gives the lessee a notice of right to lien of the recording of the surety bond as provided in paragraph (f) of subsection 2.

2. The notice of posted security required pursuant to subsection 1 must:

(a) Identify the name and address of the lessee;

(b) Identify the location of the improvement and the address, legal description and assessor's parcel number of the property upon which the improvement is or will be constructed, altered or repaired;

(c) Describe the nature of the lessee's interest in:

(1) The property upon which the improvement is or will be constructed, altered or repaired; and

(2) The improvement on such property;

(d) If the lessee establishes a construction disbursement account pursuant to subsection 1, include:

(1) The name and address of the construction control;

(2) The date that the lessee obtained the services of the construction control and the total amount of funds in the construction disbursement account; and

(3) The number of the construction disbursement account, if any;

(e) If the lessee records a surety bond pursuant to subsection 1, include:

(1) The name and address of the surety;

(2) The surety bond number;

(3) The date that the surety bond was recorded in the office of the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired;

(4) The book and the instrument or document number of the recorded surety bond; and

(5) A copy of the recorded surety bond with the notice of posted security; and

(f) Be served upon each person who gives a notice of right to lien within 10 days after receipt of the notice of right to lien, in one of the following ways:

(1) By personally delivering a copy of the notice of posted security to the person who gives a notice of right to lien at the address identified in the notice of right to lien; or

(2) *By mailing a copy of the notice of posted security by certified mail, return receipt requested, to the person who gives a notice of right to lien at the address identified in the notice of right to lien.*

3. *If a lessee fails to satisfy the requirements of subsection 1 of this section or subsection 2 of section 5 of this act, the prime contractor has furnished or will furnish materials or equipment for the work of improvement may stop work. If the lessee:*

(a) *Satisfies the requirements of subsection 1 of this section or subsection 2 of section 5 of this act within 25 days after any work stoppage, the prime contractor who stopped work shall resume work and the prime contractor and his lower-tiered subcontractors and suppliers are entitled to compensation for any reasonable costs and expenses that any of them have incurred because of the delay and remobilization; or*

(b) *Does not satisfy the requirements of subsection 1 of this section or subsection 2 of section 5 of this act within 25 days after the work stoppage, the prime contractor who stopped work may terminate his contract relating to the work of improvement and the prime contractor and his lower-tiered subcontractors and suppliers are entitled to recover:*

(1) *The cost of all work, materials and equipment, including any overhead the prime contractor and his lower-tiered subcontractors and suppliers incurred and profit the prime contractor and his lower-tiered subcontractors and suppliers earned through the date of termination;*

(2) *The balance of the profit the prime contractor and his lower-tiered subcontractors and suppliers would have earned if the contract had not been terminated;*

(3) *Any interest, costs and attorney's fees that the prime contractor and his lower-tiered subcontractors and suppliers are entitled to pursuant to NRS 108.237; and*

(4) *Any other amount awarded by a court or other trier of fact.*

4. *The rights and remedies provided pursuant to this section are in addition to any other rights and remedies that may exist at law or in equity, including, without limitation, the rights and remedies provided pursuant to NRS 624.606 to 624.630, inclusive.*

Sec. 4.5. 1. *The provisions of sections 4 and 5 of this act do not apply:*

(a) *In a county with a population of 400,000 or more with respect to a ground lessee who enters into a ground lease for real property which is designated for use or development by the county for commercial purposes which are compatible with the operation of the international airport for the county.*

(b) If all owners of the property, individually or collectively, record a written notice of waiver of the owners' rights set forth in NRS 108.234 with the county recorder of the county where the property is located before the commencement of construction of the work of improvement.

2. Each owner who records a notice of waiver pursuant to paragraph (b) of subsection 1 must serve such notice by certified mail, return receipt requested, upon the prime contractor of the work of improvement and all other lien claimants who may give the owner a notice of right to lien pursuant to NRS 108.245, within 10 days after the owner's receipt of a notice of right to lien or 10 days after the date on which the notice of waiver is recorded pursuant to this subsection.

3. As used in this section:

(a) "Ground lease" means a written agreement:

(1) To lease real property which, on the date on which the agreement is signed, does not include any existing buildings or improvements that may be occupied on the land; and

(2) That is entered into for a period of not less than 10 years, excluding any options to renew that may be included in any such lease.

(b) "Ground lessee" means a person who enters into a ground lease as a lessee with the county as record owner of the real property as the lessor.

Sec. 5. 1. If a construction disbursement account is established and funded pursuant to subsection 2 of this section or subsection 1 of section 4 of this act, each lien claimant has a lien upon the funds in the account for an amount equal to the lienable amount owed to him.

2. Upon the disbursement of any funds from the construction disbursement account for a given pay period:

(a) The lessee shall deposit into the account such additional funds as may be necessary to pay for the completion of the work of improvement, including, without limitation, the costs attributable to additional and changed work, material or equipment;

(b) The construction control described in subsection 1 of section 4 of this act shall certify in writing the amount necessary to pay for the completion of the work of improvement; and

(c) If the amount necessary to pay for the completion of the work of improvement exceeds the amount remaining in the construction disbursement account:

(1) The construction control shall give written notice of the deficiency by certified mail, return receipt requested, to the prime contractor and each person who has given the construction control a notice of right to lien; and

(2) The provisions of subsection 3 of section 4 of this act shall be deemed to apply.

3. The construction control shall disburse money to lien claimants from the construction disbursement account for the lienable amount owed such lien claimants.

4. A lien claimant may notify the construction control of a claim of lien by:

(a) Recording a notice of lien pursuant to NRS 108.226; or

(b) Personally delivering or mailing by certified mail, return receipt requested, a written notice of a claim of lien to the construction control within 90 days after the completion of the work of improvement.

5. Except as otherwise provided in subsection 6, the construction control shall pay a legitimate claim of lien upon receipt of the written notice described in subsection 4 from the funds available in the construction disbursement account.

6. The construction control may bring an action for interpleader in the district court for the county where the property or some part thereof is located if:

(a) The construction control reasonably believes that all or a portion of a claim of lien is not legitimate; or

(b) The construction disbursement account does not have sufficient funds to pay all claims of liens for which the construction control has received notice.

7. If the construction control brings an action for interpleader pursuant to paragraph (a) of subsection 6, the construction control shall pay to the lien claimant any portion of the claim of lien that the construction control reasonably believes is legitimate.

8. If an action for interpleader is brought pursuant to subsection 6, the construction control shall:

(a) Deposit with the court an amount equal to one and one-half times the amount of the lien claims to the extent that there are funds available in the construction disbursement account;

(b) Provide notice of the action for interpleader by certified mail, return receipt requested, to each person:

(1) Who gives the construction control a notice of right to lien;

(2) Who serves the construction control with a claim of lien;

(3) Who has performed work or furnished materials or equipment for the work of improvement; or

(4) Of whom the construction control is aware may perform work or furnish materials or equipment for the work of improvement; and

(c) Publish a notice of the action for interpleader once each week, for 3 successive weeks, in a newspaper of general circulation in the county in which the work of improvement is located.

9. A construction control who brings an action for interpleader pursuant to subsection 6 is entitled to be reimbursed from the construction disbursement account for the reasonable costs that he incurred in bringing such action.

10. If a construction control for a construction disbursement account established by a lessee does not provide a proper certification as required pursuant to paragraph (b) of subsection 2 or does not comply with any other requirement of this section, the construction control and its bond are liable for any resulting damages to any lien claimants.

Sec. 6. NRS 108.221 is hereby amended to read as follows:

108.221 As used in NRS 108.221 to 108.246, inclusive, *and sections 2 to 5, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 108.22104 to 108.22188, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 7. NRS 108.22132 is hereby amended to read as follows:

108.22132 “Lien” means the statutory rights and security interest in *a construction disbursement account established pursuant to section 4 of this act, or* property or any improvements thereon provided to a lien claimant by NRS 108.221 to 108.246, inclusive ~~§~~, *and sections 2 to 5, inclusive, of this act.*

Sec. 8. NRS 108.22144 is hereby amended to read as follows:

108.22144 “Material” means appliances, equipment, machinery and substances affixed, *used or to be* used, consumed or incorporated in the improvement of property or the construction, alteration or repair of any improvement, property or work of improvement.

Sec. 8.5. NRS 108.22148 is hereby amended to read as follows:

108.22148 1. “Owner” includes:

(a) The record owner or owners of the property or an improvement to the property as evidenced by a conveyance or other instrument which transfers that interest to him and is recorded in the office of the county recorder in which the improvement or the property is located;

(b) The reputed owner or owners of the property or an improvement to the property;

(c) The owner or owners of the property or an improvement to the property, as shown on the records of the county assessor for the county where the property or improvement is located;

(d) The person or persons whose name appears as owner of the property or an improvement to the property on the building permit; ~~{or}~~

(e) A person who claims an interest in or possesses less than a fee simple estate in the property ~~{;}~~;

(f) This State or a political subdivision of this State, including, without limitation, an incorporated city or town, that owns the property or an improvement to the property if the property or improvement is used for a private or nongovernmental use or purpose; or

(g) A person described in paragraph (a), (b), (c), (d) or (e) who leases the property or an improvement to the property to this State or a political subdivision of this State, including, without limitation, an incorporated city or town, if the property or improvement is privately owned.

2. The term does not include:

(a) A mortgagee;

(b) A trustee or beneficiary of a deed of trust; ~~{or}~~

(c) The owner or holder of a lien encumbering the property or an improvement to the property ~~{;}~~ ; *or*

(d) Except as otherwise provided in paragraph (f) of subsection 1, this State or a political subdivision of this State, including, without limitation, an incorporated city or town.

Sec. 9. NRS 108.2216 is hereby amended to read as follows:

108.2216 “Prime contract” means a contract between a prime contractor and the owner *or lessee* of property about which the contract relates.

Sec. 10. NRS 108.22164 is hereby amended to read as follows:

108.22164 “Prime contractor” means:

1. A person who contracts with an owner *or a lessee* of property to provide work, materials or equipment to be used for the improvement of the property or in the construction, alteration or repair of a work of improvement; or

2. A person who is an owner of the property, is licensed as a general contractor *pursuant to chapter 624 of NRS* and provides work, materials or equipment to be used for the improvement of the property or in the construction, alteration or repair of a work of improvement.

Sec. 11. NRS 108.2218 is hereby amended to read as follows:

108.2218 “Surety bond” means a bond issued by a surety for the release of a ~~{notice-of}~~ *prospective or existing* lien pursuant to NRS 108.2413 to 108.2425, inclusive.

Sec. 12. NRS 108.222 is hereby amended to read as follows:

108.222 1. Except as otherwise provided in subsection 2, a lien claimant has a lien upon the property , ~~{and}~~ any improvements

for which the work, materials and equipment were furnished *or to be furnished, and any construction disbursement account established pursuant to section 4 of this act*, for:

(a) If the parties agreed *, by contract or otherwise*, upon a specific price or method for determining a specific price for some or all of the work, material and equipment furnished *or to be furnished* by or through the lien claimant, the unpaid balance of the price agreed upon for such work, material or equipment, as the case may be, whether performed *, ~~or~~ furnished or to be performed or furnished* at the instance of the owner or his agent; and

(b) If the parties did not agree *, by contract or otherwise*, upon a specific price or method for determining a specific price for some or all of the work, material and equipment furnished *or to be furnished* by or through the lien claimant, *including, without limitation, any additional or changed work, material or equipment*, an amount equal to the fair market value of such work, material or equipment, as the case may be, including a reasonable allowance for overhead and a profit, whether performed *, ~~or~~ furnished or to be performed or furnished* at the instance of the owner or at the instance of his agent.

2. If a contractor or professional is required to be licensed pursuant to the provisions of NRS to perform his work, the contractor or professional will only have a lien pursuant to subsection 1 if he is licensed to perform the work.

Sec. 13. NRS 108.226 is hereby amended to read as follows:

108.226 1. To perfect his lien, a lien claimant must record his notice of lien in the office of the county recorder of the county where the property or some part thereof is located in the form provided in subsection 5:

(a) Within 90 days after the date on which the latest of the following occurs:

- (1) The completion of the work of improvement;
- (2) The last delivery of material or furnishing of equipment by the lien claimant for the work of improvement; or
- (3) The last performance of work by the lien claimant for the work of improvement; or

(b) Within 40 days after the recording of a valid notice of completion, if the notice of completion is recorded and served in the manner required pursuant to NRS 108.228.

2. The notice of lien must contain:

- (a) A statement of the lienable amount after deducting all just credits and offsets.
- (b) The name of the owner if known.
- (c) The name of the person by whom he was employed or to whom he furnished the material *~~or~~ or equipment*.
- (d) A brief statement of the terms of payment of his contract.

(e) A description of the property to be charged with the notice of lien sufficient for identification.

3. The notice of lien must be verified by the oath of the lien claimant or some other person. The notice of lien need not be acknowledged to be recorded.

4. It is unlawful for a person knowingly to make a false statement in or relating to the recording of a notice of lien pursuant to the provisions of this section. A person who violates this subsection is guilty of a gross misdemeanor and shall be punished by a fine of not less than \$5,000 nor more than \$10,000.

5. A notice of lien must be substantially in the following form:

Assessor's Parcel Numbers

NOTICE OF LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished *or to be furnished* for the improvement of the property:

1. The amount of the original contract is: \$.....
2. The total amount of all ~~[changes and additions,]~~ *additional or changed work, materials and equipment,* if any, is: \$.....
3. The total amount of all payments received to date is: \$.....
4. The amount of the lien, after deducting all just credits and offsets, is: \$.....
5. The name of the owner, if known, of the property is:
.....
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished *or agreed to furnish* work, materials or equipment is:
7. A brief statement of the terms of payment of the lien claimant's contract is:
8. A description of the property to be charged with the lien is:
.....

.....
(Print Name of Lien Claimant)

By:.....
(Authorized Signature)

State of Nevada)
) ss.
County of)

..... (print name), being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

.....
(Authorized Signature of Lien Claimant)

Subscribed and sworn to before me
this day of the month of of the year

.....
Notary Public in and for
the County and State

6. ~~HH~~ *Except as otherwise provided in subsection 7, if* a work of improvement involves the construction, alteration or repair of multifamily or single-family residences, *including, without limitation, apartment houses*, a lien claimant, except laborers, must serve a 15-day notice of intent to lien incorporating substantially the same information required in a notice of lien upon both the owner and the *reputed* prime contractor before recording a notice of lien. Service of the notice of intent to lien must be by personal delivery or certified mail and will extend the time for recording the notice of lien described in subsection 1 by 15 days. A notice of lien for materials or equipment furnished or *to be furnished* for work or services *performed or to be* performed, except labor, for a work of improvement involving the construction, alteration or repair of multifamily or single-family residences may not be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, *and sections 2 to 5, inclusive, of this act*, unless the 15-day notice of intent to lien has been given ~~to~~ *to the owner*.

7. The provisions of subsection 6 do not apply to the construction of any nonresidential construction project.

Sec. 14. NRS 108.2275 is hereby amended to read as follows:

108.2275 1. The debtor of the lien claimant or a party in interest in the property subject to the notice of lien who believes the notice of lien is frivolous and was made without reasonable cause, or that the amount of the notice of lien is excessive, may apply by motion to the district court for the county where the property or some part thereof is located for an order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted.

2. The motion must:

(a) Set forth in detail the legal and factual grounds upon which relief is requested; and

(b) Be supported by:

(1) A notarized affidavit signed by the applicant setting forth a concise statement of the facts upon which the motion is based; and

(2) Documentary evidence in support of the affidavit, if any.

3. If the court issues an order for a hearing, the applicant shall serve notice of the application and order of the court on the lien claimant within 3 days after the court issues the order. The court shall conduct the hearing within not less than 15 days or more than 30 days after the court issues the order for a hearing.

4. The order for a hearing must include a statement that if the lien claimant fails to appear at the time and place noted, the notice of lien will be released with prejudice and the lien claimant will be ordered to pay the reasonable costs the applicant incurs in bringing the motion, including reasonable attorney's fees.

5. If, at the time the application is filed, an action to foreclose the notice of lien has not been filed, the clerk of the court shall assign a number to the application and obtain from the applicant a filing fee of \$85. If an action has been filed to foreclose the notice of lien before the application was filed pursuant to this section, the application must be made a part of the action to foreclose the notice of lien.

6. If, after a hearing on the matter, the court determines that:

(a) The notice of lien is frivolous and was made without reasonable cause, the court shall make an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant for bringing the motion.

(b) The amount of the notice of lien is excessive, the court may make an order reducing the notice of lien to an amount deemed appropriate by the court and awarding costs and reasonable attorney's fees to the applicant for bringing the motion.

(c) The notice of lien is not frivolous and was made with reasonable cause or that the amount of the notice of lien is not excessive, the court shall make an order awarding costs and reasonable attorney's fees to the lien claimant for defending the motion.

7. Proceedings conducted pursuant to this section do not affect any other rights and remedies otherwise available to the parties.

8. An appeal may be taken from an order made pursuant to subsection 6. *A stay may not be granted if the district court does not release the lien pursuant to subsection 6.*

9. If an order releasing or reducing a notice of lien is entered by the court, and the order is not stayed, the applicant may, within 5 days after the order is entered, record a certified copy of the order in the office of the county recorder of the county where the property or

some part thereof is located. The recording of a certified copy of the order releasing or reducing a notice of lien is notice to any interested party that the notice of lien has been released or reduced.

Sec. 15. NRS 108.234 is hereby amended to read as follows:

108.234 1. Except as otherwise provided in subsection 2, every improvement constructed, altered or repaired upon property shall be deemed to have been constructed, altered or repaired at the instance of each owner having or claiming any interest therein, and the interest owned or claimed must be subject to each notice of lien recorded in accordance with the provisions of NRS 108.221 to 108.246, inclusive ~~[]~~, *and sections 2 to 5, inclusive, of this act.*

2. The interest of a disinterested owner in any improvement and the property upon which an improvement is constructed, altered or repaired is not subject to a notice of lien if the disinterested owner, within 3 days after he first obtains knowledge of the construction, alteration or repair, or the intended construction, alteration or repair, gives notice that he will not be responsible for the improvement by recording a notice in writing to that effect with the county recorder of the county where the property is located and, in the instance of a disinterested owner who is:

(a) A lessor, the notice of nonresponsibility shall be deemed timely recorded if the notice is recorded within 3 days immediately following the effective date of the lease or by the time of the execution of the lease by all parties, whichever occurs first; or

(b) An optionor, the notice of nonresponsibility shall be deemed timely recorded if the notice is recorded within 3 days immediately following the date on which the option is exercised in writing.

3. ~~[Each]~~ *To be effective and valid, each* notice of nonresponsibility recorded pursuant to this section must identify:

(a) The ~~[name and address]~~ *names and addresses* of the disinterested owner ~~[]~~ *and the person who is causing the work of improvement to be constructed, altered or repaired;*

(b) The location of the improvement and the *address and legal description of the* property upon which the improvement is or will be constructed, altered or repaired;

(c) The nature and extent of the disinterested owner's interest in the improvement and the property upon which the improvement is or will be constructed, altered or repaired; ~~[and]~~

(d) The date on which the disinterested owner first learned of the construction, alteration or repair of the improvement that is the subject of the notice of nonresponsibility ~~[]~~

~~4. Any lessee who causes a work of improvement to be constructed, altered or repaired upon property that is leased, shall provide a payment and completion bond from a surety licensed to do business in this State in an amount equal to not less than 1.5 times the total amount of the construction contract. The surety bond must~~

~~be recorded in accordance with NRS 108.2415 to 108.2425, inclusive, before commencement of the construction, alteration or repair of the work of improvement and must be payable upon default by the lessee of any undisputed amount pursuant to the construction contract that is due and payable to the prime contractor for more than 30 days. If a lessee fails to record a surety bond as required pursuant to this section, the prime contractor may invalidate the construction contract and may recover damages including, without limitation, consequential damages, reasonable attorney's fees and costs.] ; and~~

(e) Whether the disinterested owner has notified the lessee in writing that the lessee must comply with the requirements of section 4 of this act.

4. To be effective and valid, each notice of nonresponsibility that is recorded by a lessor pursuant to this section must be served by personal delivery or by certified mail, return receipt requested:

(a) Upon the lessee within 10 days after the date on which the notice of nonresponsibility is recorded pursuant to subsection 2; and

(b) Upon the prime contractor for the work of improvement within 10 days after the date on which the lessee contracts with the prime contractor for the construction, alteration or repair of the work of improvement.

5. If the prime contractor for the work of improvement receives a notice of nonresponsibility pursuant to paragraph (b) of subsection 4, the prime contractor shall:

(a) Post a copy of the notice of nonresponsibility in an open and conspicuous place on the property within 3 days after his receipt of the notice of nonresponsibility; and

(b) Serve a copy of the notice of nonresponsibility by personal delivery, facsimile or by certified mail, return receipt requested, upon each lien claimant from whom he received a notice of right to lien, within 10 days after his receipt of the notice of nonresponsibility or a notice of right to lien, whichever occurs later.

6. An owner who does not comply with the provisions of this section may not assert any claim that his interest in any improvement and the property upon which an improvement is constructed, altered or repaired is not subject to or is immune from the attachment of a lien pursuant to NRS 108.221 to 108.246, inclusive, and sections 2 to 5, inclusive, of this act.

7. As used in this section, "disinterested owner" means an owner who ~~[did not personally or through his agent or representative, directly or indirectly, request, require, authorize, consent to or cause a work of improvement, or any portion thereof, to be constructed, altered or repaired upon the property of the~~

~~owner. The term must not be interpreted to invalidate a notice of nonresponsibility recorded pursuant to this section or to deny the rights granted pursuant to this section upon the recording of a notice of nonresponsibility because:~~

~~—(a) The disinterested owner is a lessor or an optionor under a lease that requests, requires, authorizes or consents to his lessee causing the work of improvement to be constructed, altered or repaired upon the property;~~

~~—(b) The lessee personally or through his agent or representative enters into a contract and causes the work of improvement to be constructed, altered or repaired upon the property; and~~

~~—(c) The lessor or optionor notifies the lessee in writing that pursuant to subsection 4, the lessee must record a surety bond before causing a work of improvement to be constructed, altered or repaired upon the property.]:~~

(a) Does not record a notice of waiver as provided in section 4.5 of this act; and

(b) Does not personally or through his agent or representative, directly or indirectly, contract for or cause a work of improvement, or any portion thereof, to be constructed, altered or repaired upon the property or an improvement of the owner.

↪ The term does not include an owner who is a lessor if the lessee fails to satisfy the requirements set forth in sections 4 and 5 of this act.

Sec. 16. NRS 108.235 is hereby amended to read as follows:

108.235 1. A prime contractor:

(a) Upon a notice of lien, may recover the lienable amount as may be due to him, plus all amounts that may be awarded to him by the court pursuant to NRS 108.237; and

(b) Upon receipt of the amount described in paragraph (a), shall pay all liens for the work, equipment or materials which were furnished *or to be furnished* to him as provided in NRS 108.221 to 108.246, inclusive ~~[]~~, *and sections 2 to 5, inclusive, of this act.*

2. In all cases where a prime contractor has been paid for the work, materials or equipment which are the subject of a notice of lien recorded under NRS 108.221 to 108.246, inclusive, *and sections 2 to 5, inclusive, of this act*, the prime contractor shall defend the owner in any action brought thereupon at his own expense.

3. Except as otherwise provided in this subsection, if a lien claimant records a notice of lien for the work, equipment or materials furnished *or to be furnished* to the prime contractor, the owner may withhold from the prime contractor the amount of money for which the lien claimant's notice of lien is recorded. If the lien claimant's notice of lien resulted from the owner's failure to pay the prime contractor for the lien claimant's work, materials or

equipment, the owner shall not withhold the amount set forth in the notice of lien from the prime contractor if the prime contractor *or lien claimant* tenders a release of the lien claimant's lien to the owner. In case of judgment against the owner or his property which is the subject of the lien, the owner may deduct, from any amount due or to become due by him to the prime contractor, the amount paid by the owner to the lien claimant for which the prime contractor was liable and recover back from the prime contractor any amount so paid by the owner in excess of the amount the court has found that the owner owes to the prime contractor.

Sec. 17. NRS 108.237 is hereby amended to read as follows:

108.237 1. The court shall award to a prevailing lien claimant, whether on its lien or on a surety bond, the lienable amount found due to the lien claimant by the court and the cost of preparing and ~~{filing the lien claim,}~~ *recording the notice of lien*, including, without limitation, attorney's fees, if any, and interest. The court shall also award to the prevailing lien claimant, whether on its lien or on a surety bond, the costs of the proceedings, including, without limitation, reasonable attorney's fees, the costs for representation of the lien claimant in the proceedings, and any other amounts as the court may find to be justly due and owing to the lien claimant.

2. The court shall calculate interest for purposes of subsection 1 based upon:

(a) The rate of interest agreed upon in the lien claimant's contract; or

(b) If a rate of interest is not provided in the lien claimant's contract, interest at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus ~~{2}~~ *4* percent, on the amount of the lien found payable. The rate of interest must be adjusted accordingly on each January 1 and July 1 thereafter until the amount of the lien is paid. Interest is payable from the date on which the payment is found to have been due, as determined by the court.

3. If the lien claim is not upheld, the court may award costs and reasonable attorney's fees to the owner or other person defending against the lien claim if the court finds that the notice of lien was pursued by the lien claimant without a reasonable basis in law or fact.

Sec. 18. NRS 108.239 is hereby amended to read as follows:

108.239 1. A notice of lien may be enforced by an action in any court of competent jurisdiction ~~{}~~ *that is located within the county where the property upon which the work of improvement is located*, on setting out in the complaint the particulars of the

demand, with a description of the property to be charged with the lien.

2. At the time of filing the complaint and issuing the summons, the lien claimant shall:

(a) File a notice of pendency of the action in the manner provided in NRS 14.010; and

(b) Cause a notice of foreclosure to be published at least once a week for 3 successive weeks, in one newspaper published in the county, and if there is no newspaper published in the county, then in such mode as the court may determine, notifying all persons holding or claiming a notice of lien pursuant to the provisions of NRS 108.221 to 108.246, inclusive, *and sections 2 to 5, inclusive, of this act* on the property to file with the clerk and serve on the lien claimant and also on the defendant, if the defendant is within the State or is represented by counsel, written statements of the facts constituting their liens, together with the dates and amounts thereof.

3. All persons holding or claiming a notice of lien may join a lien claimant's action by filing a statement of facts within ~~10 days after the last~~ *a reasonable time after* publication of the notice of foreclosure ~~or receiving notice of the foreclosure, whichever occurs later~~. Any number of persons claiming liens may join in the same action if they timely file a statement of facts in the lien claimant's action. The lien claimant and other parties adversely interested must be allowed 20 days to answer the statements.

4. If it appears from the records of the county recorder that there are other notices of lien recorded against the same property at the time of the commencement of the action, the lien claimant shall, in addition to and after the initial publication of the notice of foreclosure as provided in paragraph (b) of subsection 2, mail to those other lien claimants, by registered or certified mail, or deliver in person a copy of the notice of foreclosure as published.

5. At the time of any change in the venue of the action, the lien claimant shall file a notice of pendency of the action, in the manner provided in NRS 14.010, and include in the notice the court and county to which the action is changed.

6. When separate actions are commenced by lien claimants to foreclose on their respective notices of lien, the court may consolidate all the actions. The consolidation does not affect or change the priority of lien claims.

7. The court shall enter judgment according to the right of the parties, and shall, by decree, proceed to hear and determine the claims in a summary way, or may, if it be the district court, refer the claims to a special master to ascertain and report upon the liens and the amount justly due thereon. No consequential damages may be recovered in an action pursuant to this section. All liens not so

exhibited shall be deemed to be waived in favor of those which are so exhibited.

8. Upon petition by a lien claimant for a preferential trial setting:

(a) The court shall give preference in setting a date for the trial of an action brought pursuant to this section; and

(b) If a lien action is designated as complex by the court, the court may take into account the rights and claims of all lien claimants in setting a date for the preferential trial.

9. If the lienable amount of a lien claimant's lien is the subject of binding arbitration:

(a) The court may, at the request of a party to the arbitration, stay the lien claimant's action to foreclose the lien pending the outcome of the binding arbitration. If the foreclosure on the lien involves the rights of other lien claimants or persons whose claims are not the subject of the binding arbitration, the court may stay the lien claimant's foreclosure proceeding only upon terms which are just and which afford the lien claimant a fair opportunity to protect his lien rights and priorities with respect to other lien claimants and persons.

(b) Upon the granting of an award by the arbitrator, any party to the arbitration may seek an order from the court in the action to foreclose on the lien confirming or adopting the award and determining the lienable amount of the lien claimant's lien in accordance with the order, if any. Upon determining the lienable amount, the court shall enter a judgment or decree for the lienable amount, plus all amounts that may be awarded by the court to the lien claimant pursuant to NRS 108.237, and the court may include as part of the lien all costs and attorney's fees awarded to the lien claimant by the arbitrator and all costs and attorney's fees incurred by the lien claimant pertaining to any application or motion to confirm, adopt, modify or correct the award of the arbitrator. A judgment or decree entered by the court pursuant to this subsection may be enforced against the property as provided in subsections 10, 11 and 12.

10. On ascertaining the whole amount of the liens with which the property is justly chargeable, as provided in NRS 108.221 to 108.246, inclusive, *and sections 2 to 5, inclusive, of this act*, the court shall cause the property to be sold in satisfaction of all liens and the costs of sale, including all amounts awarded to all lien claimants pursuant to NRS 108.237, and any party in whose favor judgment may be rendered may cause the property to be sold within the time and in the manner provided for sales on execution, issued out of any district court, for the sale of real property.

11. If the proceeds of sale, after payment of the costs of sale, are not sufficient to satisfy all liens to be included in the decree of

sale, including all amounts awarded to all lien claimants pursuant to NRS 108.237, the proceeds must be apportioned according to the right of the various lien claimants. If the proceeds of the sale amount to more than the sum of all liens and the cost of sale, the remainder must be paid over to the owner of the property.

12. Each party whose claim is not satisfied in the manner provided in this section is entitled to personal judgment for the residue against the party legally liable for it if that person has been personally summoned or has appeared in the action.

Sec. 19. NRS 108.2415 is hereby amended to read as follows:

108.2415 1. To obtain the release of a *lien for which a* notice of lien ~~[-a]~~ *has been recorded against the property, the* principal and a surety must execute a surety bond *in an amount equal to 1.5 times the lienable amount in the notice of lien,* which must be in the following form:

(Assessor's Parcel Numbers)

(Title of court and cause, if action has been commenced)

WHEREAS, (name of principal), located at (address of principal), desires to give a bond for releasing the following described property owned by (name of owners) from that certain notice of lien in the sum of \$..... recorded (month) (day) (year) in the office of the recorder in (name of county where the property is located):

(Legal Description)

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to the lien claimant named in the notice of lien,, (name of lien claimant) under the conditions prescribed by NRS 108.2413 to 108.2425, inclusive, in the sum of \$..... (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by his lien, including the total amount awarded pursuant to NRS 108.237 ~~[-]~~, *but the liability of the surety may not exceed the penal sum of the surety bond.*

IN TESTIMONY WHEREOF, the principal and surety have executed this bond at, Nevada, on the day of the month of of the year

.....
(Signature of Principal)
(Surety Corporation)
By
(Its Attorney in Fact)

State of Nevada }
County of } ss.

On (month) (day) (year) before me, the undersigned, a notary public of this county and state, personally appeared who acknowledged that he executed the foregoing instrument as principal for the purposes therein mentioned and also personally appeared known (or satisfactorily proved) to me to be the attorney in fact of the surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the surety therein named, and he acknowledged to me that the surety executed the foregoing instrument.

(Notary Public in and for
the County and State)

2. *To obtain the release of all prospective and existing lien rights of lien claimants related to a work of improvement, the principal and a surety must execute and cause to be recorded a surety bond in an amount equal to 1.5 times the amount of the prime contract, which must be in the following form:*

(Assessor's Parcel Numbers)

(Title of court and cause, if action has been commenced)

WHEREAS, (name of principal), located at (address of principal), desires to give a bond for releasing the following described property owned by (name of owners) from all prospective and existing lien rights and notices of liens arising from materials, equipment or work provided or to be provided under the prime contract described as follows:

(Parties to the Prime Contract)
(Amount of the Prime Contract)
(Date of the Prime Contract)
(Summary of Terms of the Prime Contract)

3. The principal must record the surety bond in the office of the county recorder in *the county in* which the ~~[notice of lien was recorded,]~~ *property upon which the improvement is located*, either before or after the commencement of an action to enforce the lien. A certified copy of the recorded surety bond shall be deemed an original for purposes of this section.

~~[3.]~~ 4. Upon the recording of the surety bond, the principal must serve a file-stamped copy of the recorded surety bond in the following manner:

(a) If *a lien claimant has appeared in* an action *that* is pending to enforce the notice of lien, service must be made by certified or registered mail, return receipt requested, upon the lien claimant at the address set forth in the lien and the lien claimant's counsel of record at his place of business; ~~[or]~~

(b) If *a notice of lien is recorded at the time the surety bond is recorded and* no action is pending to enforce the notice of lien, personal service must be made upon ~~[the]~~ *each* lien claimant pursuant to Rule 4 of the Nevada Rules of Civil Procedure ~~[~~
~~—4.]~~; *or*

(c) *If no notice of lien is recorded at the time the surety bond is recorded, service must be made by personal service or certified mail, return receipt requested, upon each lien claimant and prospective lien claimant that has provided or thereafter provides the owner or lessee with a notice of a right to lien. Such service must be within 10 days after the recording of the surety bond, or the service of notice of the right to lien upon the owner by a lien claimant, whichever is later.*

5. Failure to serve the surety bond as provided in subsection ~~[3]~~ 4 does not affect the validity of the surety bond, but the statute of limitations on any action on the surety bond, including a motion excepting to the sufficiency of the surety pursuant to NRS 108.2425, is tolled until notice is given.

~~[5.]~~ 6. Subject to the provisions of NRS 108.2425, the recording and service of the surety bond pursuant to ~~[this section]~~ :

(a) *Subsection 1* releases the property described in the surety bond from the lien and the surety bond shall be deemed to replace the property as security for the lien.

(b) *Subsection 2 releases the property described in the surety bond from any liens and prospective liens for work, materials or equipment related to the prime contract and the surety bond shall be deemed to replace the property as security for the lien.*

Sec. 20. NRS 108.2421 is hereby amended to read as follows:

108.2421 1. The lien claimant is entitled to ~~[~~

~~—(a) Bring]~~ *bring* an action against ~~[; or~~

~~—(b) If an action has been commenced, join in the pending action against,~~

~~1~~ the principal and surety on the surety bond and the lien claimant's debtor ~~1~~ *in any court of competent jurisdiction that is located within the county where the property upon which the work of improvement is located.*

2. *If an action by a lien claimant to foreclose upon a lien has been brought:*

(a) *Before the surety bond is recorded:*

(1) *The lien claimant may amend his complaint to state a claim against the principal and the surety on the surety bond; or*

(2) *The liability of the principal and surety on the surety bond may be enforced pursuant to NRS 108.2423; or*

(b) *After the surety bond is recorded:*

(1) *If the surety bond is recorded pursuant to subsection 1 of NRS 108.2415, the lien claimant may bring an action against the principal and the surety not later than 9 months after the date that the lien claimant was served with notice of the recording of the surety bond.*

(2) *If the surety bond is recorded pursuant to subsection 2 of NRS 108.2415, the lien claimant may bring an action against the principal and the surety within the later of:*

(I) *Nine months after the date that the lien claimant was served with notice of the recording of the surety bond; or*

(II) *Nine months after the date of the completion of the work of improvement.*

3. At any time after the filing of a joint case conference report pursuant to Rule 16.1 of the Nevada Rules of Civil Procedure or, if the case is designated by the court as complex litigation, after the approval of the initial case management order by the court, each lien claimant in the action may serve upon the adverse party a "demand for preferential trial setting" and file the demand with the clerk of the court. Upon filing, the clerk of the court shall, before the Friday after the demand is filed, vacate a case or cases in a department of the court and set the lien claimant's case for hearing, on a day or days certain, to be heard within 60 days after the filing of the "demand for preferential trial setting." Only one such preferential trial setting need be given by the court, unless the hearing date is vacated without stipulation of counsel for the lien claimant in writing. If the hearing date is vacated without that stipulation, upon service and filing, a new preferential trial setting must be given.

~~3~~ 4. A lien claimant shall, at the time of making his demand for a preferential trial setting, and each other party to the preferential trial shall, within 20 days after the lien claimant's service of the demand, serve upon all parties to the preferential trial the following documents and information:

(a) A copy of all documents that the party intends to rely upon at the time of the trial;

(b) A list of witnesses whom the party intends to call at the time of the trial, which must include for each witness:

- (1) The name of the witness;
- (2) The company for whom the witness works and title of the witness; and
- (3) A brief summary of the expected testimony of the witness;

(c) Any supplemental discovery responses as required by the Nevada Rules of Civil Procedure;

(d) The identity of each person whom the party expects to call as an expert witness at the trial, together with a statement of the substance of the facts and opinions to which the expert witness is expected to testify and a summary of the grounds for each opinion;

(e) Any expert reports not previously disclosed; and

(f) A detailed summary of all claims, offsets and defenses that the party intends to rely upon at the trial.

~~[4]~~ **5.** Within 20 days after receipt of an opposing party's identification of an expert witness, a party who desires to call a rebuttal expert witness at the trial must identify each person whom the party expects to call as a rebuttal expert witness, and must provide a statement of the substance of the facts and opinions to which the rebuttal expert witness is expected to testify and a summary of the grounds for each opinion.

~~[5]~~ **6.** A prevailing lien claimant on a claim against a surety bond must be awarded the lienable amount plus the total amount that may be awarded by the court pursuant to NRS 108.237 ~~[4]~~, *so long as the liability of the surety is limited to the penal sum of the surety bond*. Such a judgment is immediately enforceable and may be appealed regardless of whether any other claims asserted or consolidated actions or suits have been resolved by a final judgment.

Sec. 21. NRS 108.2425 is hereby amended to read as follows:

108.2425 1. The lien claimant may, within 15 days after the service of a copy of the surety bond pursuant to subsection ~~[3]~~ **4** of NRS 108.2415, file a motion with the clerk of the court in a pending action, or if no action has been commenced, file a petition with the court, excepting to the sufficiency of the surety or the surety bond, and shall, at the same time and together with that motion or petition, file an affidavit setting forth the grounds and basis of the exceptions to the surety or the surety bond, and shall serve a copy of the motion or petition and a copy of the affidavit upon the principal at the address set forth in the surety bond within 5 business days after the date of filing. A hearing must be had upon the justification of the surety or the surety bond not less than 10 days and not more than 20 days after the filing of the motion or petition. If the court determines that the surety or surety bond is insufficient, the lien claimant's lien

will remain against the property or the court may allow the substitution of a sufficient surety and surety bond.

2. If, at any time after the recording of a surety bond pursuant to NRS 108.2415, the surety becomes unauthorized to transact surety business in this State pursuant to NRS 679A.030 or is dropped from the United States Department of the Treasury's Listing of Approved Sureties or there exists any other good cause, a lien claimant or other person having an interest in the surety bond may apply to the district court in a pending action, or commence an action if none is pending, for an order to require *the principal to provide* additional security or to change, substitute or add securities, or to enforce or change any other matter affecting the security provided by the surety bond.

3. If a court finds that the amount of a surety bond recorded pursuant to NRS 108.2415 is insufficient to pay the total amount that may be awarded by the court pursuant to NRS 108.237, the court shall ~~increase~~ *order the principal to obtain additional security or to change or substitute securities so that* the amount of the ~~surety bond to~~ *security provided is* 1.5 times the total amount that may be awarded.

4. Any surety that records or consents to the recording of a surety bond pursuant to NRS 108.2415 will ~~be~~ *—(a) Remain* remain fully liable ~~on~~ *to any lien claimant for up to the penal sum of* the surety bond regardless of the payment or nonpayment of any surety bond premium. ~~It and~~ *—(b) Be liable for any increase in the amount of the surety bond as ordered by the court pursuant to this subsection.]*

Sec. 22. NRS 108.243 is hereby amended to read as follows:

108.243 1. Any ~~notice of~~ lien may be assigned in the same manner as any other chose in action after it has been perfected by recording.

2. An assignment of a lien before recording will not be effective until written notice of the assignment has been given to the owner by the assignee. The notice will be sufficient if delivered in person or mailed by certified mail to the owner. After such notice the assignee may perfect the lien in his own name.

3. One or more lien claimants of any class may assign their notices of lien by written assignment, signed by each assignor, to any other person or lien claimant of any class, and the assignee may commence and prosecute the action upon all of the notices of lien in his own name or in the name of the original lien claimant.

4. In the event that a claim for which a lien may be filed is assigned before it is perfected, such assignment does not discharge or defeat the right to perfect the lien, if the lien is reassigned to the lien claimant, and thereafter the lien is timely perfected.

Sec. 23. NRS 108.244 is hereby amended to read as follows:

108.244 A lien claimant or assignee of a lien claimant or claimants may not file a complaint for foreclosure of his notice of lien or the assigned notice of lien or notices of lien until 30 days have expired immediately following the ~~filing~~ *recording* of his notice of lien or following the ~~filing~~ *recording* of the assigned notice of lien or the last of the assigned notices of liens. This provision does not apply to or prohibit the filing of any statement of fact constituting a lien or statements of fact constituting a lien:

1. In an action already filed for foreclosure of a notice of lien;
or

2. In order to comply with the provisions of NRS 108.239.

Sec. 24. NRS 108.245 is hereby amended to read as follows:

108.245 1. Except as otherwise provided in subsection 5, every lien claimant, other than one who performs only labor, who claims the benefit of NRS 108.221 to 108.246, inclusive, *and sections 2 to 5, inclusive, of this act* shall, at any time after the first delivery of material or performance of work or services under his contract, deliver in person or by certified mail to the owner of the property a ~~preliminary~~ notice of right to lien in substantially the following form:

Notice of Right to Lien

To:

(Owner's name and address)

The undersigned notifies you that he has supplied materials or equipment or performed work or services as follows:

.....
(General description of materials, equipment, work or services)
for improvement of property identified as (property description or street address) under contract with (general contractor or subcontractor). This is not a notice that the undersigned has not been or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, record a notice of lien as provided by law against the property if the undersigned is not paid.

.....
(Claimant)

A subcontractor or equipment or material supplier who gives such a notice must also deliver in person or send by certified mail a copy of the notice to the prime contractor for information only. The failure by a subcontractor to deliver the notice to the prime contractor is a ground for disciplinary proceedings against the subcontractor under chapter 624 of NRS but does not invalidate the notice to the owner.

2. Such a notice does not constitute a lien or give actual or constructive notice of a lien for any purpose.

3. No lien for materials or equipment furnished or for work or services performed, except labor, may be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, *and sections 2 to 5, inclusive, of this act* unless the notice has been given.

4. The notice need not be verified, sworn to or acknowledged.

5. A prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section.

6. A lien claimant who is required by this section to give a notice of right to lien to an owner and who gives such a notice has a right to lien for materials or equipment furnished or for work or services performed in the 31 days before the date the notice of right to lien is given and for the materials or equipment furnished or for work or services performed anytime thereafter until the completion of the work of improvement.

Sec. 25. NRS 108.2453 is hereby amended to read as follows:

108.2453 1. Except as otherwise provided in NRS 108.221 to 108.246, inclusive, *and sections 2 to 5, inclusive, of this act*, a person may not waive or modify a right, obligation or liability set forth in the provisions of NRS 108.221 to 108.246, inclusive ~~§~~, *and sections 2 to 5, inclusive, of this act*.

2. A condition, stipulation or provision in a contract or other agreement for the improvement of property or for the construction, alteration or repair of a work of improvement in this State that attempts to do any of the following is *contrary to public policy and is void* ~~§~~ *and unenforceable*:

(a) Require a lien claimant to waive rights provided by law to lien claimants or to limit the rights provided to lien claimants, other than as expressly provided in NRS 108.221 to 108.246, inclusive ~~§~~, *and sections 2 to 5, inclusive, of this act*;

(b) Relieve a person of an obligation or liability imposed by the provisions of NRS 108.221 to 108.246, inclusive ~~§~~, *and sections 2 to 5, inclusive, of this act*;

(c) Make the contract or other agreement subject to the laws of a state other than this State;

(d) Require any litigation, arbitration or other process for dispute resolution on disputes arising out of the contract or other agreement to occur in a state other than this State; or

(e) Require a *prime* contractor or subcontractor to waive , *release or extinguish* a claim *or right that* the *prime* contractor or subcontractor may otherwise possess *or acquire* for delay , *acceleration, disruption or impact* damages or an extension of time for delays incurred, for any delay , *acceleration, disruption or impact event* which was unreasonable under the circumstances, not

within the contemplation of the parties at the time the contract was entered into, ~~{and}~~ *or* for which the *prime* contractor or subcontractor is not responsible.

Sec. 26. NRS 108.2457 is hereby amended to read as follows:

108.2457 1. Any term of a contract that attempts to waive or impair the lien rights of a contractor, subcontractor or supplier is void. An owner, contractor or subcontractor by any term of a contract, or otherwise, may not obtain the waiver of, or impair the lien rights of, a contractor, subcontractor or supplier, except as provided in this section. Any written consent given by a lien claimant that waives or limits his lien rights is unenforceable unless the lien claimant:

(a) Executes and delivers a waiver and release that is signed by the lien claimant or his authorized agent in the form set forth in this section; and

(b) In the case of a conditional waiver and release, receives payment of the amount identified in the conditional waiver and release.

2. An oral or written statement purporting to waive, release or otherwise adversely affect the rights of a lien claimant is not enforceable and does not create any estoppel or impairment of a lien unless:

(a) There is a written waiver and release in the form set forth in this section; *and*

(b) The lien claimant received payment for the lien ~~{claim}~~ and then only to the extent of the payment ~~{; or~~

~~—(c) Payment has been}~~ *received.*

3. *Payment in the form of a two-party joint check* made payable to ~~{the}~~ *a* lien claimant and another joint payee ~~{by way of a two party joint check which,}~~ *who are in privity with each other shall*, upon endorsement by the lien claimant and the joint check clearing the bank upon which it is drawn, ~~{shall}~~ be deemed to be payment to the lien claimant ~~{of:~~

~~—(1)}~~ *for only:*

(a) The amount of the joint check;

~~{(2)}~~ (b) The amount the ~~{owner}~~ *payor* intended to pay the lien claimant out of the joint check; or

~~{(3)}~~ (c) The balance owed to the lien claimant for the work , ~~{and}~~ materials *or equipment* covered by the joint check, whichever is less.

~~{3-}~~ 4. This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court or arbitration, provided the accord and satisfaction or settlement make specific reference to the lien rights waived or impaired and is in a writing signed by the lien claimant.

~~[4.]~~ 5. The waiver and release given by any lien claimant is unenforceable unless it is in the following forms in the following circumstances:

(a) Where the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress billing and the lien claimant is not in fact paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must be in the following form:

**CONDITIONAL WAIVER AND RELEASE
UPON PROGRESS PAYMENT**

Property Name:
Property Location:
Undersigned's Customer:
Invoice/Payment Application Number:
Payment Amount:
~~[Payment Period:]~~

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished ~~for invoiced after the Payment Period.]~~ *that are not paid.* Before any recipient of this document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated:.....

.....
(Company Name)

By:

Its:

(b) Where the lien claimant has been paid in full or a part of the amount provided for in the progress billing, the waiver and release of the amount paid must be in the following form:

UNCONDITIONAL WAIVER AND RELEASE
UPON PROGRESS PAYMENT

Property Name:.....
Property Location:
Undersigned's Customer:
Invoice/Payment Application Number:
Payment Amount:
~~Payment Period:~~

The undersigned has been paid and has received a progress payment in the above referenced Payment Amount for all work, materials and equipment the undersigned furnished to his Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished ~~for invoiced after the Payment Period.~~ *that are not paid.* The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated:.....

.....
(Company Name)

By:

Its:

(Each unconditional waiver and release must contain the following language, in type at least as large as the largest type otherwise on the document:)

Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it to the extent of the Payment Amount or the amount received. If you have not been paid, use a conditional release form.

(c) Where the lien claimant is required to execute a waiver and release in exchange for or to induce payment of a final billing and the lien claimant is not paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must be in the following form:

CONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT

Property Name:
Property Location:
Undersigned's Customer:
Invoice/Payment Application Number:
Payment Amount:
Payment Period:
Amount of Disputed Claims:

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers the final payment to the undersigned for all work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer and does not cover payment for Disputed Claims, if any. Before any recipient of this document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from the final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated:.....

.....
(Company Name)

By:

Its:

(d) Where the lien claimant has been paid the final billing, the waiver and release must be in the following form:

**UNCONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT**

Property Name:

Property Location:

Undersigned's Customer:

Invoice/Payment Application Number:

Payment Amount:

Amount of Disputed Claims:

The undersigned has been paid in full for all work, materials and equipment furnished to his Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property, except for the payment of Disputed Claims, if any, noted above. The undersigned warrants that he either has already paid or will use the money he receives from this final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials and equipment that are the subject of this waiver and release.

Dated:.....

.....
(Company Name)

By:

Its:

(Each unconditional waiver and release must contain the following language, in type at least as large as the largest type otherwise on the document:)

Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.

(e) Notwithstanding any language in any waiver and release form set forth in this section, if the payment given in exchange for any waiver and release of lien is made by check, draft or other such negotiable instrument, and the same fails to clear the bank on which it is drawn for any reason, then the waiver and release shall be deemed null, void and of no legal effect whatsoever and all liens, lien rights, bond rights, contract rights or any other right to recover payment afforded to the lien claimant in law or equity will not be affected by the lien claimant's execution of the waiver and release.