

Del. Exb  
11B

CREDIT  
Form 502  
Rev. 9/97

CUSTOMER NAME  
AGM Development Corp - California

CLA CREDIT TRAN CODES		
523 Charge Off Fees	533 Unshed. Interest Reduction	543 Credit Principal S. Insurance
525 Credit Late Charges	534 Unshed. Principal Reduction	543 Delinquent Income Credit Adj.
528 Credit Insurance	535 Credit Prepaid	544 Prepayment Delinquent Income
530 Credit LOC Advances	536 Credit Interest	545 Waiver Interest
531 Credit LOC Fees	537 Waiver Insurance	544 Delinquent Renewable Insurance
532 Waiver LOC Fees	537 Waiver Late Charges	549 Mortgage Insurance

ACCOUNT NUMBER 7211701	TRAN CODE 328	AMOUNT 4,135,181.98
---------------------------	------------------	------------------------

⑆051405285⑆

CLA  
COMMERCIAL LOAN  
CREDIT  
Form 502  
Rev. 9/97

DATE 9/3/98  
CUSTOMER NAME  
AGM Development Corp

CLA CREDIT TRAN CODES		
523 Charge Off Fees	533 Unshed. Interest Reduction	543 Credit Principal S. Insurance
525 Credit Late Charges	534 Unshed. Principal Reduction	543 Delinquent Income Credit Adj.
528 Credit Insurance	535 Credit Prepaid	544 Prepayment Delinquent Income
530 Credit LOC Advances	536 Credit Interest	545 Waiver Interest
531 Credit LOC Fees	537 Waiver Insurance	544 Delinquent Renewable Insurance
532 Waiver LOC Fees	537 Waiver Late Charges	549 Rebate Insurance

ACCOUNT NUMBER 7211601	TRAN CODE 328	AMOUNT 500.00
---------------------------	------------------	------------------

⑆051405285⑆

THIS CHECK IS VOID WITHOUT A DURABLE ORANGE BACKGROUND AND AN ARTIFICIAL WATERMARK CERTIFICATION SEAL ON THE BACK - HOLD AT ANGLE TO VIEW SEAL.

**MBK** Construction Ltd.  
175 Technology  
Irvine CA 92618

**BANK OF AMERICA  
COMMUNITY DEVELOPMENT BANK**  
1500 NEWELL AVE. ST. 200  
WALNUT CREEK, CA 94596 NO. 711408

90-4102/1211

EIGHT THOUSAND EIGHT HUNDRED AND 00/100 \*\*\*\*\*

DATE	AMOUNT
09/02/98	\$*****8,800.00

PAY TO THE ORDER OF  
A.G.M. Development Corporation  
5596 Greenwich Road  
Virginia Beach VA 23462

AUTHORIZED SIGNATURE  
*[Signature]*

⑆711408⑆ ⑆121141822⑆73137⑆00771⑆

THIS CHECK IS VOID WITHOUT A DURABLE ORANGE BACKGROUND AND AN ARTIFICIAL WATERMARK CERTIFICATION SEAL ON THE BACK - HOLD AT ANGLE TO VIEW SEAL.

**MBK** Construction Ltd.  
175 Technology  
Irvine CA 92618

**BANK OF AMERICA  
COMMUNITY DEVELOPMENT BANK**  
1500 NEWELL AVE. ST. 200  
WALNUT CREEK, CA 94596 NO. 711407

90-4102/1211

ONE HUNDRED TWENTY SIX THOUSAND NINE HUNDRED TWO AND 22/100 \*\*\*\*\*

DATE	AMOUNT
09/02/98	\$***126,902.22

PAY TO THE ORDER OF  
A.G.M. Development Corporation  
5596 Greenwich Road  
Virginia Beach VA 23462

AUTHORIZED SIGNATURE  
*[Signature]*

⑆711407⑆ ⑆121141822⑆73137⑆00771⑆

# Batch Transactions

## AGM Development Corporation - Retainage Account

Batch Date: 9/ 3/98

Batch Status: Posted

<u>Customer Code</u>	<u>Customer Name</u>	<u>Trans Type</u>	<u>Trans Date</u>	<u>Posting Date</u>	<u>Document Number</u>	<u>Description</u>	<u>Trans Amount</u>
MBK Construction	M. B. K. Construction, Inc.	Payment	09/03/98	09/03/98	461-3RA	Thank you	(10,094.50)
		Payment	09/03/98	09/03/98	461-4R	Thank you	(9,600.00)
Opus East L.L.C.	Opus East L.L.C.	Payment	09/03/98	09/03/98	449-1R	Thank you	(1,981.85)
Pizzagalli	Pizzagalli	Payment	09/03/98	09/03/98	426-9AR	Thank you	(28,304.54)
		Payment	09/03/98	09/03/98	426-10R	Thank you	(32,000.00)
The Pool & Kent Corp.	The Pool & Kent Corp.	Payment	09/03/98	09/03/98	451-4R	Thank you	(3,419.83)
		Payment	09/03/98	09/03/98	451-5R	Thank you	(16,400.00)
Waterfront Marine Construction, Inc.	Waterfront Marine Construction, Inc.	Payment	09/03/98	09/03/98	392-7R	Thank you	(1,000.00)
		Payment	09/03/98	09/03/98	392-9R	Thank you	(11,000.00)
		Payment	09/03/98	09/03/98	392-10R	Thank you	(4,900.00)
Wright Construction Corp.	Wright Construction Corp.	Payment	09/03/98	09/03/98	456-1R	Thank you	(3,081.20)
		Payment	09/03/98	09/03/98	456-5R	Thank you	(13,400.00)

<u>Count</u>	<u>Trans Type</u>	<u>Trans Amount</u>
0	Sales	0.00
0	Finance Charges	0.00
0	Debit Memos	0.00
0	Miscellaneous Fees	0.00
12	Payments	(135,181.92)
0	Credit Memos	(0.00)
0	Returns	(0.00)
0	Discounts	(0.00)
0	Chargebacks	(0.00)

**Total Customers Printed: 6**                      **12 All Transactions**                      **(\$ 135,181.92)**

1-20-1998 6:50PM

FROM AGM\*FINANCE 5180732

P. 3

TEL: 320-2353

P: 05

JAN-20-1998 TUE 12:56 ID:EDC

32307

COPY

EDC

DATE	INVOICE NO.	DESCRIPTION	INVOICE AMOUNT	DEDUCTION	BALANCE
9-25-97	012*4R	OPEN INV'S	17970.75	.00	17970.75
		Req INV'S ←			
	462-3	\$15,874.47			
	462-3A	\$ 7,241.40			
		Ret INV'S			
	462-1B	\$ 8,000.00			
	462-3R	\$9,100.00			
CHECK DATE	1-15-98	CHECK NUMBER	32307	TOTALS	
			17970.75	.00	17970.75

EDC

EDC  
1001 BOULDERS PARKWAY  
SUITE 100 RICHMOND, VA 23225

JEFFERSON NATIONAL BANK  
Richmond, Virginia 23260  
88-824610

32307

Pay: \*\*\*\*\*Seventeen thousand nine hundred seventy dollars and 75 cents

DATE: January 15, 1998  
CHECK NO.: 32307  
AMOUNT: \*\*\*\*\*17,970.75

PAY TO THE ORDER OF: AGM Development Corp.  
5596 Greenwich Road  
Virginia Beach, VA 23462

EDC  
Jenny A. Kames  
AUTHORIZED SIGNATURE

⑈032307⑈ ⑆051005245⑆309110092⑆01

Nelda-

LET ME KNOW how you apply  
this CHECK. It will be here  
via UPS 1/21/98.

Thanks,  
Robin

1-20-1998 6:50PM

FROM AGM\*FINANCE 5180732

P. 2

ATTN: Nelda

COPY

Clariant Corporation

Remittance Advice

No. 114379

114379

Vendor no.	Invoice date	Invoice no.	Invoice amount	Discount	Net amount
7153001	12/03/97	1-B	15,600.00	00	15,600.00
<p>#97-5024-1 \$12,100.00            EXCESS \$3500.00            LET ME KNOW HOW TO APPLY</p>					15,600.00

ORIGINAL CHECK HAS MICRO PRINTING IN THE SIGNATURE LINE AND AFD CHECK NUMBERS IMPART THROUGH TO THE BACK OF SHEET

Clariant Corporation

Check no. 114379

Date: 01/15/98

FIFTEEN THOUSAND SIX HUNDRED DOLLARS AND 00/100

Amount in U.S. dollars \*\*\*15600.00

Pay to the order of

AGM DEVELOPEMENT CORP  
5596 GREENWICH RD  
VIRGINIA BEACH VA 23462

CLARIANT CORPORATION

AUTHORIZED SIGNATURE

Wachovia Bank of N.C.  
Charlotte, NC

ORIGINAL CHECK HAS AN ARTIFICIAL WATERMARK ON REVERSE SIDE, HOLD AT AN ANGLE TO VIEW

⑈114379⑈ ⑆053100494⑆ 8730 056879⑈

**Mike Agnew**

---

**From:** "Mike Agnew" <michaelagnew@cox.net>  
**To:** "Mike Agnew" <michaelagnew@cox.net>  
**Sent:** Tuesday, August 07, 2007 5:11 PM

**§ 1005. Bank entries, reports and transactions**

Whoever, being an officer, director, agent or employee of any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act, without authority from the directors of such bank, branch, agency, or organization or company, issues or puts in circulation any notes of such bank, branch, agency, or organization or company; or

Whoever, without such authority, makes, draws, issues, puts forth, or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond, or other obligation, or mortgage, judgment or decree; or

Whoever makes any false entry in any book, report, or statement of such bank, company, branch, agency, or organization with intent to injure or defraud such bank, company, branch, agency, or organization, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, company, branch, agency, or organization, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank, company, branch, agency, or organization, or the Board of Governors of the Federal Reserve System; or

Whoever with intent to defraud the United States or any agency thereof, or any financial institution referred to in this section, participates or shares in or receives (directly or indirectly) any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such financial institution—

Shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

As used in this section, the term "national bank" is synonymous with "national banking association"; "member bank" means and includes any national bank, state bank, or bank or trust company, which has become a member of one of the Federal Reserve banks; "insured bank" includes any state bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation; and the term "branch or agency of a foreign bank" means a branch or agency described in section 20 (9) of this title. For purposes of this section, the term "depository institution holding company" has the meaning given such term in section 3(w)(1) of the Federal Deposit Insurance Act.

1 A Yes.

2 Q And then if you would look at your fax transmission  
3 sheet --

4 A Yes.

5 Q -- to Mary Smith, --

6 A Uh-huh.

7 Q -- what is it that that says? Can you make that out?

8 A "Received this audit letter today. Same answer as last  
9 audit letter sent in April."

10 Q So in April they had told you that there were no  
11 invoices totaling that amount and now, three months later,  
12 they're telling you the same thing?

13 A Well, in April they told me there was no invoices  
14 totaling that amount, but it was a lot more and obviously  
15 it's a lot less here. So they must've paid it. So they had  
16 to have had the invoices.

17 Q As long as the bank was receiving payments and being  
18 able to apply to aging accounts first, everything was okay.

19 Is that an accurate statement?

20 A We -- we applied the payments as we were told.

21 Q And, for instance, if CCI sent in -- a check came in on  
22 CCI -- on a CCI check --

23 A Uh-huh.

24 Q -- and moneys were owed on -- to a lot -- from a lot -- on  
25 a lot of accounts, a lot of lines, that had been advanced, if

1 you will, funded and advanced to AGM, could you use the check  
 2 from CCI to help satisfy other aging accounts that hadn't  
 3 been paid in a while?

4 For instance, could you apply CCI moneys  
 5 received to Pizzagalli or --

6 A No.

7 Q -- or anyone else?

8 A No.

9 Q If you could look at Defendant's Exhibit 11E.

10 A I don't have it. Okay.

11 Q And if you would pull that out of the sleeve that it's in,  
 12 please, and we would go directly --

13 There's a copy of two checks in there. They're  
 14 on the same sheet of paper. It says "From MBK --" -- it says  
 15 MBK Construction, Limited, at the top. One is \$126,902.22;  
 16 the other one is \$8,300.00.

17 A Okay.

18 Q And then there are CLA commercial loan credit sheets at  
 19 the top.

20 A Right.

21 Q What are those?

22 A Those are our internal payment tickets.

23 Q All right. So that's something that would've been  
 24 created, you know, by you or by the bank --

25 A Correct.

1 Q -- in receipting a payment; is that correct?

2 A Correct.

3 Q All right. Now, if you would look at the batch  
4 transactions page --

5 A Okay.

6 Q -- for 9/3/98.

7 A Yes.

8 Q Do you have that?

9 A Yes.

10 Q This would have been a document that would've been  
11 created by you; is that correct?

12 A Yes.

13 Q And if you look at the payments, if you will, the  
14 one thirty-five, one eighty-one ninety-two,--

15 A Yes.

16 Q -- that matches the commercial loan credit document of  
17 the one thirty-five, one eighty-one ninety-two?

18 A Yes.

19 Q And that's related to the receipt of these checks; is  
20 that correct?

21 A Yes.

22 Q Now, if you look at the batch transaction summary,  
23 is it not correct that on 9/3/98 you credited, "you" meaning  
24 the bank, credited more than MBK Construction Company, but  
25 you credited Opus East, LLC, Pizzagalli, the Pool and Kent

806

1 Corporation, Waterfront Marine Construction Company, and  
2 Wright Construction Corporation, all from that \$135,181.92  
3 that you received from CCI?

4 A Yes -- no, not from CCI.

5 Q I'm sorry. From MBK,

6 A Yes.

7 Q How does that contrast with the answer you gave me just  
8 before I asked you that question that you never took moneys  
9 from one company and applied it to payments for others?

10 A I never did that on my own. We were told to do this by  
11 AGM.

12 Q All right. So AGM told the bank how to apply payments  
13 from a particular contractor?

14 A AGM told the bank how to apply payments, yes.

15 Q So, essentially, AGM was able to do whatever it wanted  
16 to in the application of payments and the receipt of moneys  
17 from the bank?

18 A We relied on AGM to tell us which invoices that the  
19 checks were coming in to pay.

20 Q Who did you communicate with on that?

21 A I mostly communicated with Robin.

22 Q So Robin is the one that told you to take this  
23 \$135,181.92 and apply it to the following accounts?

24 A I do not remember who told us at that time. At that  
25 time the retainage account was being paid down because it was

1 going away.

2 Q Was it not the standard throughout your whole relationship  
3 with them that if they got an amount in, for instance, from  
4 MBK and MBK's current outstanding amount was less than the  
5 amount of the check, that you would just apply it to the  
6 oldest accounts to try to bring them current before they aged?

7 A If we got a check from MBK, then they would tell us  
8 how to apply it and which invoice it would be applied to.

9 Q But not necessarily to an MBK invoice?

10 A Typically to an MBK invoice.

11 Q But --

12 A But like I said, this was different --

13 Q All right.

14 A -- because it was a retainage account that was going  
15 away.

16 Q But if they told you to apply -- even though there was  
17 an outstanding balance with MBK, to apply it to -- apply a  
18 full payment to Pizzagalli, you would've done that because  
19 that's what they told you to do?

20 A I would've questioned that.

21 Q Okay. But you still would've done it because they told  
22 you --

23 A I'm not saying I would've done it.

24 Q All right. There was also a --

25 If you'll look at LLC, please. Do you have that

808

- 1 in front of you, ma'am?
- 2 A Yes, sir.
- 3 Q At the top it says, "Attention: Nelda."
- 4 Do you have that?
- 5 Yours may be out of order. I apologize.
- 6 A That's okay. I got it.
- 7 Q Whose writing is that -- "Attention: Nelda"?
- 8 A That's Robin's.
- 9 Q All right. And where it says number -- the handwritten
- 10 number 97 -- looks like SO24-1 and then the number
- 11 \$12,100.00.
- 12 A Yes.
- 13 Q And then excess, \$3500.00?
- 14 A Yes.
- 15 Q "Let ---" looks like, "Let me know how to apply"?
- 16 A That's what it says.
- 17 Q Now, if you'd look at the next page, --
- 18 A Yes.
- 19 Q -- at the bottom it says -- and I'm presuming you have a
- 20 check there that says -- shows \$17,970.75?
- 21 A Yes.
- 22 Q And at the bottom it says, "Nelda, let me know how you
- 23 apply this check"?
- 24 A Yes.
- 25 Q "It will be here via UPS 1/21/98"?

809

1 A Yes.

2 Q "Thanks, Robin"?

3 A Uh-huh.

4 Q The Robin would be Robin Lupton?

5 A Yes.

6 Q And she's asking you, Nelda, one, in the first instance,  
7 how you're going to -- let her know how you're applying the  
8 money, and in the second instance, just asking you how  
9 you're applying this check?

10 A Correct.

11 Q How does that contrast with what you just testified to  
12 that said that AGM always told you how to apply the payments?

13 A But she did tell me how to apply these payments up here.  
14 If you loo, --

15 Q Okay.

16 A -- she has the invoice and the amount, 12,000; excess  
17 was 3,500.

18 Q All right.

19 A And then she has -- on the next one, she has regular  
20 invoices and retainage invoices.

21 Q Okay.

22 A You have -- you have the batch transactions report for  
23 the retainage account only in here.

24 Q Okay.

25 A So the retainage invoices of 462-1R, eight thousand, and

010

1 then you have invoice 462-3R for 9,100. So they were applied  
2 the way she has them here.

3 You don't have the regular account here for the  
4 other ones.

5 Q The point is, the balance -- the balance of that, she  
6 was asking you to tell her how you applied it; is that  
7 correct?

8 A This one, yes.

9 Q All right.

10 A I assume that's what that was.

11 Q All right. She didn't tell you on that "Apply this to  
12 such and such an account." She was asking you to --

13 A For the excess.

14 Q Right. So you could do what you want, with the excess  
15 applied to whatever account you felt like it needed to go to.  
16 Is that accurate?

17 A Not having all of the documents here, I can't exactly  
18 say what I did. More than likely what I did was just deposit  
19 it into their general account.

20 Q All right. Now, look at the fax transmittal sheet, if  
21 you will, that's in that exhibit.

22 A Okay.

23 Q What does that say, the message?

24 A "Please review the following and let me know how you  
25 apply."

1 Q And that's from Robin?

2 A Yes.

3 THE COURT: We're going to take fifteen minutes.  
4 How are we doing, Mr. Babineau? How much longer  
5 do you think you're going to have with this witness?

6 MR. BABINEAU: I don't know. I would say probably  
7 another forty-five minutes.

8 THE COURT: You all have mistimed this case  
9 considerably, knowing the amount of cross-examination I would  
10 think that you thought that you would be doing in this case,  
11 not just looking at your side but, you know, the estimate  
12 given to the Court was that we would finish with the  
13 government's case, at first, on Friday, then later on, maybe  
14 halfway through today. I don't see how that's going to even  
15 happen today, frankly, based on the number of witnesses we  
16 still have and the type of witnesses we still have.

17 I can only tell you that the Court has other cases  
18 coming up that I have to hear. So something is going to  
19 have to be done to either speed this thing up, or something,  
20 but we're just going too slow at this point. So see what you  
21 can do.

22 Obviously, I'm not trying to keep you from  
23 defending your clients and I'm not preventing the government  
24 from presenting their case, but it's very detrimental to the  
25 Court when the Court has a good-faith estimate from counsel

1 as to how long they think a case is going to take and it  
2 doesn't look like we're going to come close to how long the  
3 case is going to take. So see what you all can do to  
4 maybe help the Court a little bit and speed things up some-  
5 what, without jeopardizing the rights of your clients.

6 MR. BABINEAU: Yes, sir.

7 THE COURT: All right, we'll take fifteen minutes.

8 (The Court recessed at 11:58 a.m. and the  
9 Court reconvened at 12:12 p.m.)

10  
11 BY MR. BABINEAU:

12 Q Miss Old, I'd ask you to look at Defendant's Exhibit  
13 46.

14 A Okay.

15 Q Through, for the record purposes, 46-16.

16 Now, when an invoice would be sent to the bank, --

17 A Yes.

18 Q -- I know you said that you didn't require or didn't  
19 check with the GCs, the general contractors, to sign off that  
20 the work had been actually completed and accepted, but you  
21 did say that the invoices were sent and were signed for by  
22 someone from AGM?

23 A Typically, yes.

24 Q Is that correct?

25 A Typically, yes.