

**IN THE SUPREME COURT OF NEVADA**

PANORAMA TOWERS CONDOMINIUM  
UNIT OWNERS' ASSOCIATION, a Nevada  
non-profit corporation,

Appellant,

vs.

LAURENT HALLIER, an individual;  
PANORAMA TOWERS I, LLC, a Nevada  
limited liability company; PANORAMA  
TOWERS I MEZZ, LLC, a Nevada limited  
liability company; and M.J. DEAN  
CONSTRUCTION, INC., a Nevada  
corporation,

Respondents.

Electronically Filed  
Sep 21 2020 06:04 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County, Nevada  
The Honorable Susan H. Johnson, District Judge  
District Court Case No. A-16-744146-D

---

**APPELLANT'S APPENDIX VOL 1 OF 27**

---

FRANCIS I. LYNCH (#4145)  
LYNCH & ASSOCIATES LAW GROUP  
1445 AMERICAN PACIFIC DRIVE  
STE 110 #293  
HENDERSON, NV 89074

MICHAEL J. GAYAN (#11135)  
JOSHUA D. CARLSON (#11781)  
KEMP JONES, LLP  
3800 HOWARD HUGHES PKWY, 17<sup>TH</sup> FL.  
LAS VEGAS, NV 89169

SCOTT WILLIAMS (*pro hac vice*)  
WILLIAMS & GUMBINER, LLP  
1010 B STREET, STE 200  
SAN RAFAEL, CA 94901

*Attorneys for Appellant*

**CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX**

<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
Chapter 40 Notice	2/24/16	1	1–51
Complaint	9/28/16	1	52–73
Defendant’s Motion to Dismiss Complaint	12/7/16	1	74–85
Plaintiffs’ Opposition to Motion to Dismiss; Appendix	1/4/17	1–2	86–222
Defendant’s Reply in Support of Motion to Dismiss	1/17/17	2	223–230
Recorder’s Transcript of Proceedings	1/24/17	2	231–260
Order Denying Motion to Dismiss	2/9/17	2	261–262
Answer and Counterclaim	3/1/17	2	263–296
Plaintiffs’ Motion for Summary Judgment on Defendant’s Counter-Claim and Plaintiffs’ Motion for Partial Summary Judgment on Their Third Claim for Relief	3/20/17	2–4	297–400
Defendant’s Opposition to Motion for Summary Judgment	4/26/17	4	401–439
Plaintiffs’ Reply in Support of Motion for Summary Judgment	5/10/17	4	440–449
Recorder’s Transcript of Proceedings	6/20/17	4	450–496
Findings of Fact, Conclusions of Law, and Order	9/15/17	4	497–516
Defendant’s Motion for Clarification	10/10/17	4	517–546
Plaintiffs’ Opposition to Motion for Clarification	10/27/17	4	547–554
Defendant’s Reply in Support of Motion for Clarification	11/15/17	4	555–560
Recorder’s Transcript of Proceedings	11/21/17	4–5	561–583
Order Denying Motion for Clarification	2/1/18	5	584–585
Recorder’s Transcript of Proceedings	3/15/18	5	586–593
Amended Chapter 40 Notice of Claims	4/5/18	5	594–641
Recorder’s Transcript of Proceedings	4/12/18	5	642–650

Plaintiffs' Motion for Summary Judgment on Defendant's April 5, 2018 Amended Notice of Claims	8/3/18	5–6	651–839
Defendant's Opposition to Motion for Summary Judgment	9/4/18	6–7	840–1077
Plaintiffs' Reply in Support of Motion for Summary Judgment	9/25/18	7	1078–1092
Recorder's Transcript of Proceedings	10/2/18	7	1093–1179
Plaintiffs' Motion for Declaratory Relief Regarding Standing; Appendices I–III.	10/22/18	7–9	1180–1450
Defendant's Opposition to Motion for Declaratory Relief; Countermotions to Exclude Inadmissible Evidence and for Rule 56(f) Relief	11/16/18	9–10	1451–1501
Errata to Defendant's Opposition to Motion for Declaratory Relief and Countermotions to Exclude Inadmissible Evidence and for Rule 56(f) Relief	11/19/18	10	1502–1507
Findings of Fact, Conclusions of Law, and Order	11/30/18	10	1508–1525
Plaintiffs' Motion for Reconsideration of their Motion for Summary Judgment on Defendant's April 5, 2018 Amended Notice of Claims	12/17/18	10–11	1526–1638
Defendant's Opposition to Motion for Reconsideration	1/22/19	11	1639–1659
Plaintiffs' Reply in Support of Motion for Declaratory Relief Regarding Standing and Oppositions to Counter-Motions to Exclude Inadmissible Evidence and for Rule 56(f) Relief; Appendix	1/22/19	11	1660–1856
Defendant's Reply in Support of Counter-Motions to Exclude Inadmissible Evidence and for Rule 56(f) Relief	1/29/19	11	1857–1862

Plaintiffs/Counter-Defendants' Reply in Support of Motion for Reconsideration of their Motion for Summary Judgment on Defendant's April 5, 2018 Amended Notice of Claims	2/4/19	11–12	1863–1908
Errata to: Plaintiffs' Reply in support of Motion for Declaratory Relief Regarding Standing and Oppositions to Defendant's Counter-Motions to Exclude Inadmissible Evidence and for Rule 56(f) Relief	2/5/19	12	1909–1947
Errata to: Plaintiffs/Counter-Defendants' Motion for Declaratory Relief Regarding Standing	2/5/19	12–14	1948–2051
Plaintiffs/Counter-Defendants' Motion for Summary Judgment Pursuant to NRS 11.202(1)	2/11/19	14	2052–2141
Recorder's Transcript of Proceedings	2/12/19	14	2142–2198
Defendant's Opposition to Motion for Summary Judgment and Conditional Countermotion for Relief Pursuant to NRS 40.695(2)	3/1/19	14	2199–2227
Order Denying Plaintiffs/Counter-Defendants' Motion for Reconsideration of Their Motion for Summary Judgment on Defendant/Counter-Claimant's April 5, 2018 Amended Notice of Claims	3/11/19	14	2228–2230
Order Denying Plaintiffs/Counter-Defendants' Motion for Declaratory Relief Regarding Standing	3/11/19	15	2231–2233
Plaintiffs' Reply in Support of Their Motion for Summary Judgment Pursuant to NRS 11.202(1); Opposition to Conditional Countermotion; Appendix	3/15/19	15	2234–2269



Defendant's Reply in Support of Counter-motion	3/19/19	15	2270–2316
Recorder's Transcript of Proceedings	4/23/19	15	2317–2376
Findings of Fact, Conclusions of Law and Order	5/23/19	15–16	2377–2395
Notice of Entry of Order	5/28/19	16	2396–2417
Defendant's Motion to Retax and Settle Costs	5/31/19	16	2418–2428
Assembly Bill 421	6/3/19	16	2429–2443
Defendant's Motion for Reconsideration of the Court's May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1) or, in the Alternative, Motion to Stay the Court's Order	6/3/19	16	2444–2474
Defendant's Motion for Reconsideration of the Court's May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	6/13/19	16	2475–2505
Plaintiffs' Motion for Attorneys' Fees; Appendices I–II	6/16/19	16–22	2506–3663
Plaintiffs/Counter-Defendants' Opposition to Motion to Retax	6/21/19	22	3664–3733
Plaintiffs/Counter-Defendants' Opposition to Defendant's Motion for Reconsideration of the Court's May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1) or, in the alternative, Motion to Stay the Court's Order; Appendix	6/21/19	22–24	3734–4042

Plaintiffs' Opposition to Defendant's Motion for Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	7/1/19	24	4043–4052
Defendant's Opposition to Motion for Attorneys' Fees	7/1/19	24	4053–4070
Defendant's Reply in Support of Motion for Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	7/9/19	24	4071–4077
Defendant's Reply in Support of Motion to Retax and Settle Costs	7/9/19	24	4078–4103
Defendant's Reply in Support of Defendant's Motion for Reconsideration, or in the Alternative, Motion to Stay the Court's Order	7/9/19	24	4104–4171
Plaintiffs/Counter-Defendants' Reply in Support of Motion for Attorneys' Fees	7/9/19	24	4172–4198
Recorder's Transcript of Proceedings	7/16/19	24	4199–4263
Plaintiffs' Opposition to Defendant's July 16, 2019 Oral Motion to Postpone to the Court's Ruling on the Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Summary Judgment	7/19/19	24–25	4264–4276
Plaintiffs' Motion to Certify Judgment as Final Under Rule 54(b) (On Order Shortening Time)	7/22/19	25	4277–4312

Order Denying Defendant's Motion for Reconsideration of the Court's May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1) or, in the Alternative, Motion to Stay the Court's Order	7/24/19	25	4313–4315
Defendant's (1) Opposition to Plaintiffs/Counter-Defendants' Motion to Certify Judgment as Final Under Rule 54(b) and (2) Response to Plaintiffs' Opposition to Defendant's July 16, 2019 Oral Motion to Postpone the Court's Ruling on the Motion for Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Summary Judgment	8/1/19	25	4316–4333
Plaintiffs' Reply in Support of Motion to Certify Judgment as Final under Rule 54(b)	8/5/19	25	4334–4343
Recorder's Transcript of Proceedings	8/6/19	25	4344–4368
Order re: Defendant's Motion for Reconsideration and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	8/9/19	25	4369–4376
Order Re: Motion to Certify Judgment as Final Under NRCP 54(b)	8/12/19	25	4377–4389
Notice of Entry of Order Re: Motion to Certify Judgment as Final Under NRCP 54(b)	8/13/19	25	4390–4405

Defendant's Motion to Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	9/9/19	25–26	4406–4476
Plaintiffs' Opposition to Motion to Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	9/26/19	26	4477–4496
Defendant's Reply in Support of Motion to Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	10/10/19	26	4497–4508
Recorder's Transcript of Proceedings	10/17/19	26	4509–4525
Order Re: Defendant's Motion to Alter or Amend Court's Findings of Fact, Conclusions of Law and Order Entered May 23, 2019	1/14/20	26	4526–4534
Notice of Entry of Order Re: Defendant's Motion to Alter or Amend Court's Findings of Fact, Conclusions of Law and Order Entered May 23, 2019	1/16/20	26	4535–4546
Plaintiffs/Counter-Defendants' First Supplement to Motion for Attorneys' Fees; Exhibits	2/6/20	26–27	4547–4753
Plaintiffs' Opposition to Defendant's Renewed Motion to Retax and Settle Costs	2/10/20	27	4754–4771
Notice of Appeal	2/13/20	27	4772–4817
Defendant's Opposition to Plaintiffs/Counter-Defendants' First Supplement to Their Motion for Attorneys' Fees	2/20/20	27	4818–4833

**ALPHABETICAL TABLE OF CONTENTS TO APPENDIX**

<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
Amended Chapter 40 Notice of Claims	4/5/18	5	594–641
Answer and Counterclaim	3/1/17	2	263–296
Assembly Bill 421	6/3/19	16	2429–2443
Chapter 40 Notice	2/24/16	1	1–51
Complaint	9/28/16	1	52–73
Defendant’s (1) Opposition to Plaintiffs/Counter-Defendants’ Motion to Certify Judgment as Final Under Rule 54(b) and (2) Response to Plaintiffs’ Opposition to Defendant’s July 16, 2019 Oral Motion to Postpone the Court’s Ruling on the Motion for Reconsideration of and/or to Alter or Amend the Court’s May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs’ Motion for Summary Judgment	8/1/19	25	4316–4333
Defendant’s Motion for Clarification	10/10/17	4	517–546
Defendant’s Motion for Reconsideration of the Court’s May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs’ Motion for Summary Judgment Pursuant to NRS 11.202(1) or, in the Alternative, Motion to Stay the Court’s Order	6/3/19	16	2444–2474
Defendant’s Motion for Reconsideration of the Court’s May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs’ Motion for Summary Judgment Pursuant to NRS 11.202(1)	6/13/19	16	2475–2505
Defendant’s Motion to Amend the Court’s May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs’ Motion for Summary Judgment Pursuant to NRS 11.202(1)	9/9/19	25–26	4406–4476

Defendant's Motion to Dismiss Complaint	12/7/16	1	74–85
Defendant's Motion to Retax and Settle Costs	5/31/19	16	2418–2428
Defendant's Opposition to Motion for Attorneys' Fees	7/1/19	24	4053–4070
Defendant's Opposition to Motion for Declaratory Relief; Countermotions to Exclude Inadmissible Evidence and for Rule 56(f) Relief	11/16/18	9–10	1451–1501
Defendant's Opposition to Motion for Reconsideration	1/22/19	11	1639–1659
Defendant's Opposition to Motion for Summary Judgment	4/26/17	4	401–439
Defendant's Opposition to Motion for Summary Judgment	9/4/18	6–7	840–1077
Defendant's Opposition to Motion for Summary Judgment and Conditional Countermotion for Relief Pursuant to NRS 40.695(2)	3/1/19	14	2199–2227
Defendant's Opposition to Plaintiffs/Counter-Defendants' First Supplement to Their Motion for Attorneys' Fees	2/20/20	27	4818–4833
Defendant's Reply in Support of Countermotion	3/19/19	15	2270–2316
Defendant's Reply in Support of Counter-Motions to Exclude Inadmissible Evidence and for Rule 56(f) Relief	1/29/19	11	1857–1862
Defendant's Reply in Support of Defendant's Motion for Reconsideration, or in the Alternative, Motion to Stay the Court's Order	7/9/19	24	4104–4171
Defendant's Reply in Support of Motion for Clarification	11/15/17	4	555–560

Defendant's Reply in Support of Motion for Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	7/9/19	24	4071–4077
Defendant's Reply in Support of Motion to Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	10/10/19	26	4497–4508
Defendant's Reply in Support of Motion to Dismiss	1/17/17	2	223–230
Defendant's Reply in Support of Motion to Retax and Settle Costs	7/9/19	24	4078–4103
Errata to Defendant's Opposition to Motion for Declaratory Relief and Countermotions to Exclude Inadmissible Evidence and for Rule 56(f) Relief	11/19/18	10	1502–1507
Errata to: Plaintiffs/Counter-Defendants' Motion for Declaratory Relief Regarding Standing	2/5/19	12–14	1948–2051
Errata to: Plaintiffs' Reply in support of Motion for Declaratory Relief Regarding Standing and Oppositions to Defendant's Counter-Motions to Exclude Inadmissible Evidence and for Rule 56(f) Relief	2/5/19	12	1909–1947
Findings of Fact, Conclusions of Law and Order	5/23/19	15–16	2377–2395
Findings of Fact, Conclusions of Law, and Order	9/15/17	4	497–516
Findings of Fact, Conclusions of Law, and Order	11/30/18	10	1508–1525
Notice of Appeal	2/13/20	27	4772–4817

Notice of Entry of Order	5/28/19	16	2396–2417
Notice of Entry of Order Re: Defendant’s Motion to Alter or Amend Court’s Findings of Fact, Conclusions of Law and Order Entered May 23, 2019	1/16/20	26	4535–4546
Notice of Entry of Order Re: Motion to Certify Judgment as Final Under NRCPP 54(b)	8/13/19	25	4390–4405
Order Denying Defendant’s Motion for Reconsideration of the Court’s May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs’ Motion for Summary Judgment Pursuant to NRS 11.202(1) or, in the Alternative, Motion to Stay the Court’s Order	7/24/19	25	4313–4315
Order Denying Motion for Clarification	2/1/18	5	584–585
Order Denying Motion to Dismiss	2/9/17	2	261–262
Order Denying Plaintiffs/Counter-Defendants’ Motion for Declaratory Relief Regarding Standing	3/11/19	15	2231–2233
Order Denying Plaintiffs/Counter-Defendants’ Motion for Reconsideration of Their Motion for Summary Judgment on Defendant/Counter-Claimant's April 5, 2018 Amended Notice of Claims	3/11/19	14	2228–2230
Order re: Defendant’s Motion for Reconsideration and/or to Alter or Amend the Court’s May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs’ Motion for Summary Judgment Pursuant to NRS 11.202(1)	8/9/19	25	4369–4376
Order Re: Defendant’s Motion to Alter or Amend Court’s Findings of Fact, Conclusions of Law and Order Entered May 23, 2019	1/14/20	26	4526–4534



Order Re: Motion to Certify Judgment as Final Under NRCP 54(b)	8/12/19	25	4377–4389
Plaintiffs/Counter-Defendants’ First Supplement to Motion for Attorneys’ Fees; Exhibits	2/6/20	26–27	4547–4753
Plaintiffs/Counter-Defendants’ Motion for Summary Judgment Pursuant to NRS 11.202(1)	2/11/19	14	2052–2141
Plaintiffs/Counter-Defendants’ Opposition to Defendant’s Motion for Reconsideration of the Court’s May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs’ Motion for Summary Judgment Pursuant to NRS 11.202(1) or, in the alternative, Motion to Stay the Court’s Order; Appendix	6/21/19	22–24	3734–4042
Plaintiffs/Counter-Defendants’ Opposition to Motion to Retax	6/21/19	22	3664–3733
Plaintiffs/Counter-Defendants’ Reply in Support of Motion for Attorneys’ Fees	7/9/19	24	4172–4198
Plaintiffs/Counter-Defendants’ Reply in Support of Motion for Reconsideration of their Motion for Summary Judgment on Defendant’s April 5, 2018 Amended Notice of Claims	2/4/19	11–12	1863–1908
Plaintiffs’ Motion for Attorneys’ Fees; Appendices I–II	6/16/19	16–22	2506–3663
Plaintiffs’ Motion for Declaratory Relief Regarding Standing; Appendices I–III.	10/22/18	7–9	1180–1450
Plaintiffs’ Motion for Reconsideration of their Motion for Summary Judgment on Defendant’s April 5, 2018 Amended Notice of Claims	12/17/18	10–11	1526–1638

Plaintiffs' Motion for Summary Judgment on Defendant's April 5, 2018 Amended Notice of Claims	8/3/18	5–6	651–839
Plaintiffs' Motion for Summary Judgment on Defendant's Counter-Claim and Plaintiffs' Motion for Partial Summary Judgment on Their Third Claim for Relief	3/20/17	2–4	297–400
Plaintiffs' Motion to Certify Judgment as Final Under Rule 54(b) (On Order Shortening Time)	7/22/19	25	4277–4312
Plaintiffs' Opposition to Defendant's July 16, 2019 Oral Motion to Postpone to the Court's Ruling on the Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Summary Judgment	7/19/19	24–25	4264–4276
Plaintiffs' Opposition to Defendant's Motion for Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	7/1/19	24	4043–4052
Plaintiffs' Opposition to Defendant's Renewed Motion to Retax and Settle Costs	2/10/20	27	4754–4771
Plaintiffs' Opposition to Motion for Clarification	10/27/17	4	547–554
Plaintiffs' Opposition to Motion to Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1)	9/26/19	26	4477–4496
Plaintiffs' Opposition to Motion to Dismiss; Appendix	1/4/17	1–2	86–222

Plaintiffs' Reply in Support of Motion for Declaratory Relief Regarding Standing and Oppositions to Counter-Motions to Exclude Inadmissible Evidence and for Rule 56(f) Relief; Appendix	1/22/19	11	1660–1856
Plaintiffs' Reply in Support of Motion for Summary Judgment	5/10/17	4	440–449
Plaintiffs' Reply in Support of Motion for Summary Judgment	9/25/18	7	1078–1092
Plaintiffs' Reply in Support of Motion to Certify Judgment as Final under Rule 54(b)	8/5/19	25	4334–4343
Plaintiffs' Reply in Support of Their Motion for Summary Judgment Pursuant to NRS 11.202(1); Opposition to Conditional Countermotion; Appendix	3/15/19	15	2234–2269
Recorder's Transcript of Proceedings	1/24/17	2	231–260
Recorder's Transcript of Proceedings	6/20/17	4	450–496
Recorder's Transcript of Proceedings	11/21/17	4–5	561–583
Recorder's Transcript of Proceedings	3/15/18	5	586–593
Recorder's Transcript of Proceedings	4/12/18	5	642–650
Recorder's Transcript of Proceedings	10/2/18	7	1093–1179
Recorder's Transcript of Proceedings	2/12/19	14	2142–2198
Recorder's Transcript of Proceedings	4/23/19	15	2317–2376
Recorder's Transcript of Proceedings	7/16/19	24	4199–4263
Recorder's Transcript of Proceedings	8/6/19	25	4344–4368
Recorder's Transcript of Proceedings	10/17/19	26	4509–4525

## CERTIFICATE OF SERVICE

I certify that on the 21st day of September, 2020, I caused to be served via the District Court's e-filing system and pursuant to NRAP 25(b) and NEFCR 9, and electronically filed the foregoing APPELLANT'S APPENDIX-VOLUMES 1-27 TO OPENING BRIEF with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-filing system (Eflex). Participants in the case who are registered Eflex users will be served by the Eflex system as follows:

Peter C. Brown  
Jeffrey W. Saab  
Devin R. Gifford  
BREMER WHYTE BROWN & O'MERA LLP  
1160 N. Town Center Drive  
Las Vegas, Nevada 89144

Daniel F. Polsenberg  
Joel D. Henriod  
Abraham G. Smith  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway #600  
Las Vegas, Nevada 89169

*Counsel for Respondents*

/s/ Ali Augustine

An employee of Kemp Jones, LLP



Edward J. Song, Esq.

esong@leachjohnson.com

February 24, 2016

Mr. Laurent Hallier,  
aka Laurence Hallier  
2510 E. Sunset Road, #5-400  
Las Vegas, NV 89120

**NOTICE TO CONTRACTOR PURSUANT TO  
NEVADA REVISED STATUTES, SECTION 40.645**

**Please take notice** that Panorama Towers Condominium Unit Owners' Association, Inc., a Nevada non-profit corporation (Claimant), intends to pursue claims against you pursuant to Nevada Revised Statutes (NRS) 40.600 *et seq.*, arising from defects in the design and/or construction of the Panorama Towers condominium development located at 4525 Dean Martin Drive, Las Vegas, Nevada (the Development). Your legal rights are affected by this notice which is being given to satisfy the requirements of NRS 40.645.

**Notice to others responsible.** Pursuant to NRS 40.646, you must forward a copy of this Notice within 30 days, by certified mail, return receipt requested, to the last known address of each subcontractor, supplier or design professional whom you reasonably believe is responsible for the constructional defects identified below. Failure to send this Notice may restrict your ability to commence an action against such a subcontractor, supplier or design professional.

**Response to notice.** Pursuant to NRS 40.6472, you must provide a written response to each of the defects identified below within 90 days from your receipt of this Notice. Your response must state, as to each constructional defect identified below, whether you elect to repair the defect, propose to pay monetary compensation for the defect, or disclaim liability for the defect and the reasons therefore.

Your response to this Notice, and all communications pertaining to this Notice, should be directed to Edward J. Song, Esq., Leach Johnson Song & Gruchow, 8945 West Russell Road, Ste. 330, Las Vegas, Nevada 89148 (702/538-9074).

**Preliminary list of constructional defects.** This claim pertains to the following defects and resulting damages:

1. **Residential tower windows** – There are two tower structures in the Development, consisting of 616 residential condominium units located above common areas and retail spaces below. The window assemblies in the residential tower units were defectively designed such that water entering the assemblies does not have an appropriate means of exiting the assemblies. There are no sill pans, proper weepage components or other drainage provisions designed to direct water from and through the window assemblies to the exterior of the building.

This is a design deficiency that exists in all (100%) of the residential tower window assemblies.



As a consequence of this deficiency, water that should have drained to the exterior of the building has been entering the metal framing components of the exterior wall and floor assemblies, including the curb walls that support the windows, and is causing corrosion damage to the metal parts and components within these assemblies. Further, this damage to the metal components of the tower structures presents an unreasonable risk of injury to a person or property resulting from the degradation of these structural assemblies.

2. **Residential tower fire blocking** – The plans called for fire blocking insulation, as required by the building code, in the ledger shelf cavities and steel stud framing cavities at the exterior wall locations between residential floors in the two tower structures. (See plan detail attached as Exhibit A.) The purpose of this insulation is to deter the spread of fire from one tower unit to the units above or below. However, the insulation was not installed as required by the plans and building code.

This installation deficiency exists in all (100%) of the residential tower units, in which insulation was omitted either from the ledger shelf cavity, from the steel stud framing cavity, or from both.

This deficiency presents an unreasonable risk of injury to a person or property resulting from the spread of fire.

3. **Mechanical room piping** – The piping in the two lower and two upper mechanical rooms in the two tower structures has sustained corrosion damage as described in the attached ATMG report dated November 17, 2011 (Exhibit B).
4. **Sewer problem** – The main sewer line connecting the Development to the city sewer system ruptured due to installation error during construction, causing physical damage to adjacent common areas. This deficiency has been repaired. In addition to causing damage, the defective installation presented an unreasonable risk of injury to a person or property resulting from the disbursement of unsanitary matter.

**Additional constructional defects.** Claimant is still in the process of investigating the existing conditions at the Development, and accordingly, this preliminary list of defects is not intended as a complete statement of all of the defects in or at the Development. Claimant reserves the right to amend or update this list in the event that new defects and/or resulting damages are discovered during the course of investigation.

**Requested documents.** Pursuant to NRS 40.681, this will serve as Claimant's demand that you provide copies of all relevant documents pertaining to the construction of the Development, including plans, specifications, shop drawings, warranties, contracts, subcontracts, change orders, requests for information, inspection or other reports, soil and other engineering reports, photos, correspondence, memoranda, work orders for repair, videotapes,

Panorama Towers Condominium

Unit Owners' Association

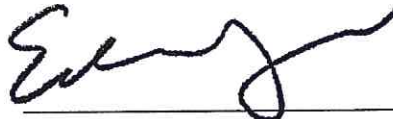
February 24, 2016

Page 3

audiotapes, and any and all policies of insurance that provided liability insurance coverage for your services or work in connection with the Development.

**Mediation demand.** Pursuant to NRS 40.680, this well serve as Claimant's demand for pre-litigation mediation with a mediator to be agreed to by the parties.

LEACH JOHNSON SONG & GRUCHOW



\_\_\_\_\_  
Edward J. Song, Esq.



**EDWARD SONG, ESQ., NVB: 007922**  
**LEACH JOHNSON SONG & GRUCHOW**  
 8945 West Russell Road, Suite 330  
 Las Vegas, Nevada 89148  
 Telephone: (702) 538-9074  
 Facsimile: (702) 538-9113

Attorneys for Claimant

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

PANORAMA TOWERS CONDOMINIUM  
UNIT OWNERS' ASSOCIATION, a  
Nevada non-profit corporation,

**VERIFICATION OF EXPERT  
REPORTS PURSUANT TO 40.645**

Claimant,

V.

LAURENT HALLIER, an individual; PANORAMA TOWERS I, LLC, a Nevada limited liability company; PANORAMA TOWERS I MEZZ, LLC, a Nevada limited liability company; PANORAMA TOWERS II, LLC, a Nevada limited liability company; PANORAMA TOWERS II MEZZ, LLC, a Nevada limited liability company; M.J. DEAN CONSTRUCTION, INC., a Nevada corporation; SIERRA GLASS & MIRROR, INC., a Nevada corporation; F. RODGERS CORPORATION, a Nevada corporation; DEAN ROOFING COMPANY, a Nevada corporation; FORD CONTRACTING, INC., a Nevada corporation; INSULPRO PROJECTS, INC., a Nevada corporation; FLIPPIN'S TRENCHING, INC., a Nevada corporation; X-TREME X-CAVATION, INC., a Nevada corporation; SOUTHERN NEVADA PAVING, INC., a Nevada corporation; BOMBARD MECHANICAL, LLC, a Nevada limited liability company; SILVER STAR PLUMBING, INC., a close corporation; FIVE STAR PLUMBING & HEATING, LLC, a Nevada limited liability company.

### Respondents.

## VERIFICATION

State of Nevada )  
                                )ss:  
County of Clark )

**LEACH JOHNSON SONG & GRUCHOW**  
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148  
Telephone: (702) 538-9074 – Facsimile (702) 538-9113



1 Dennis Kariger, being duly sworn according to law, deposes and says:

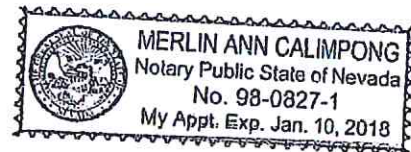
2 The undersigned on behalf of Claimant the Panorama Towers Condominium Unit  
3 Owners' Association verifies that they have reviewed the expert reports included and referenced  
4 to said notice as enumerated in Exhibit 1 and that the defects, damages, and injuries set forth in  
5 those reports exist at the locations depicted therein within the Panorama Towers Condominium  
6 community.

7 I declare under penalty of perjury that the foregoing is true and correct and that this  
8 Verification was executed on this 24<sup>th</sup> day of February, 2016.

9 Dennis B Kariger  
[Signature]

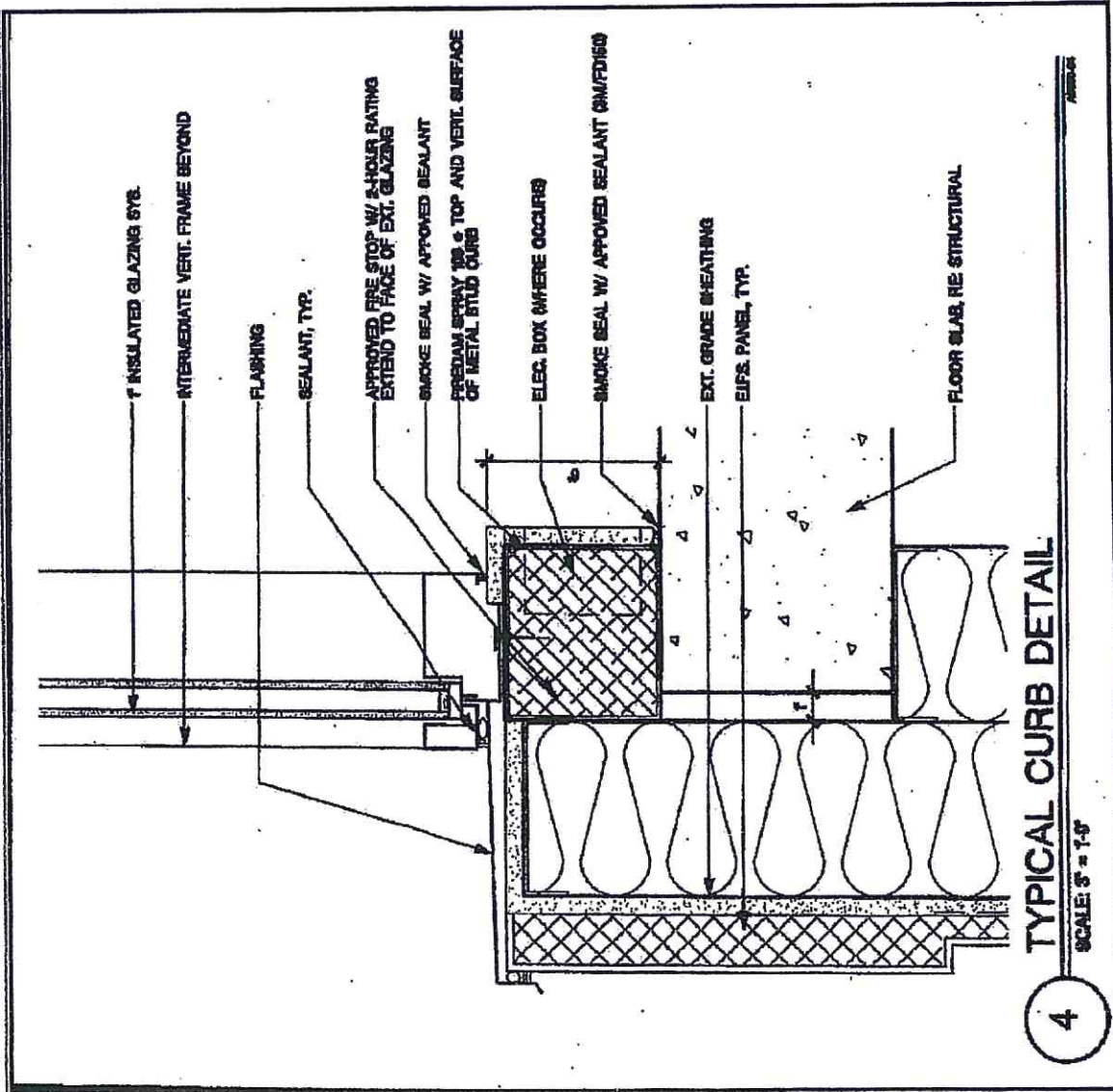
10  
11  
12  
13 Subscribed and sworn on before me  
14 this 24<sup>th</sup> day of February, 2016.

15  
16  
17 Merlin Ann Calimpong  
18 NOTARY PUBLIC In and For Said  
19 County and State



**Exhibit "A"**

**Exhibit "A"**



**Exhibit “B”**

**Exhibit “B”**

**PANORAMA TOWER 1**  
**UPPER MECHANICAL ROOM**  
**Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
Media Tanks	4 ferrous check valves		X		6
	Culligan ferrous parts		X		7
	tank steel flanges			X	
City Water Inlet	2 ferrous butterfly valves	X			4
	3 overhead butterfly valves	X			5
Zone 4 Hot Water Tank	ferrous check valve		X		2
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Zone 3 Hot Water Tank	2 ferrous check valves		X		3
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Hot Water Recirculation Pump	ferrous pump bowl assembly	X			1
	steel nipple		X		
Unidentified pipe run	carbon steel pipes, fittings, nipples		X		8
*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy					



**PANORAMA TOWER 1**  
**UPPER MECHANICAL ROOM**  
**Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
Media Tanks	4 ferrous check valves		X		6
	Culligan ferrous parts		X		7
	tank steel flanges			X	
City Water Inlet	2 ferrous butterfly valves	X			4
	3 overhead butterfly valves	X			5
Zone 4 Hot Water Tank	ferrous check valve		X		2
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Zone 3 Hot Water Tank	2 ferrous check valves		X		3
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Hot Water Recirculation Pump	ferrous pump bowl assembly	X			1
	steel nipple		X		
Unidentified pipe run	carbon steel pipes, fittings, nipples		X		8
*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy					

**PANORAMA TOWER 2**  
**LOWER MECHANICAL ROOM**  
**Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
<b>BP-1 Pump Unit</b>	ferrous* pump bowls			X	2
	angle valves		X		1
	bypass butterfly valve	X			4
	inlet butterfly valve	X			4
	outlet butterfly valve	X			4
	flex connections with steel flanges			X	3
	pump butterfly valves	X			2
<b>BP-2 Pump Unit</b>	ferrous pump bowls			X	5
	angle valves		X		5
	bypass butterfly valve	X			9
	inlet butterfly valve	X			9
	outlet butterfly valve	X			9
	flex connections with steel flanges			X	9
	pressure gage nipple	X			5
	pump butterfly valves	X			6
	west pump butterfly valve fasteners	X			7
<b>Media Tanks</b>	4 ferrous check valves		X		12
	Culligan ferrous parts	X			27
	tank steel flanges			X	12
<b>Pressure Regulator Manifold</b>	ferrous butterfly valves	X			13
	3 ferrous strainers	X			13
	4 ductile iron pressure regulator bodies		X		13, 19
	3 ductile iron regulator bonnets (tops)		X		13, 18, 19
	leaking plastic lined steel nipples	X			14, 15
	non-leaking plastic lined steel nipples		X		16
	steel drain nipples	X			17

**PANORAMA TOWER 2**  
**LOWER MECHANICAL ROOM**  
**Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
City Water Inlet Manifold	6 ferrous butterfly valves	X			20
	2 ferrous strainers	X			20
	2 pressure regulator ductile iron bodies		X		20
Zone 1 Hot Water Tank	ferrous butterfly valve	X			23, 24
	ferrous check valve		X		23, 24
Zone 2 Hot Water Tank	ferrous butterfly valve	X			21, 22
	ferrous check valve		X		21, 22
Hot Water Recirculation Pumps	ferrous pump bowl assemblies	X			25, 26
Outlet Piping Sample Connections; Connections to Sink in Maintenance room	carbon steel nipples	X			28
Filter Bank	replace all carbon steel nipples, fittings	X			na
*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy					



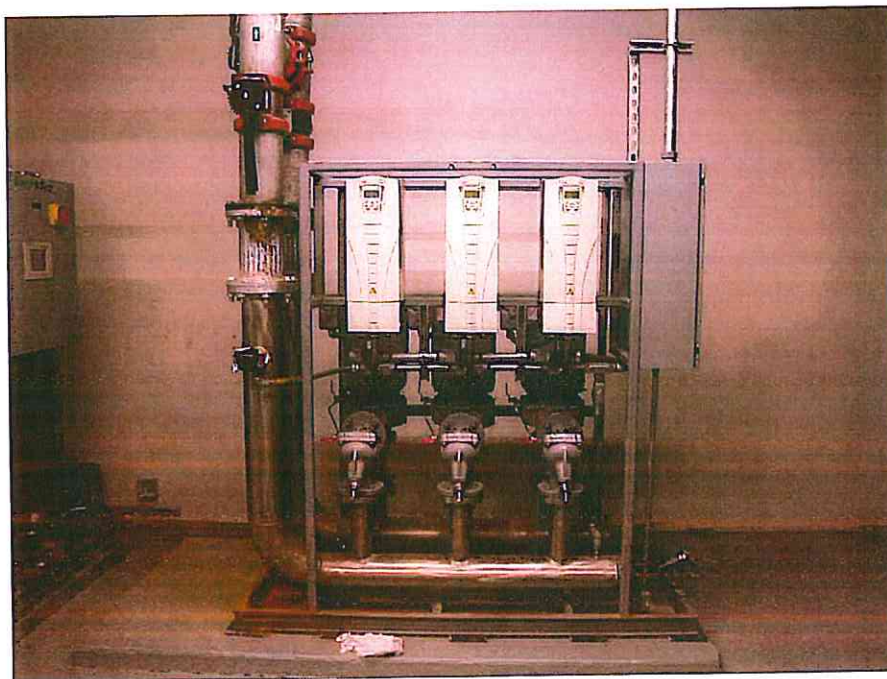
**PANORAMA TOWER 2**  
**UPPER MECHANICAL ROOM**  
**Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
Media Tanks	4 ferrous check valves		X		
	Culligan ferrous parts	X			
	tank steel flanges			X	
Overhead piping	cold to zone 3 and 4 - 2 carbon steel nipples		X		2
	carbon steel nipple to main cold line	X			1
Zone 4 Hot Water Tank	ferrous butterfly valve	X			
	ferrous check valve		X		
Zone 3 Hot Water Tank	ferrous butterfly valve	X			
	ferrous check valve		X		
Hot Water Recirculation Pumps	ferrous pump bowl assemblies	X			
	ferrous check valve		X		
<p>*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy</p>					

PANORAMA 1 Lower Mechanical Room



1. View of lower mechanical room (jpg100).



2. BP-1, (jpg66)

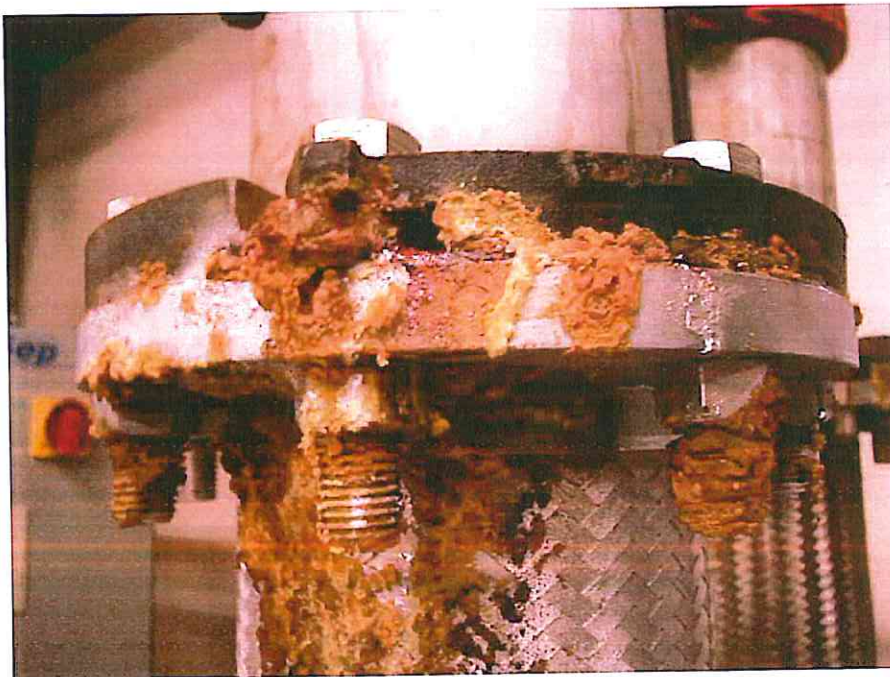


PANORAMA 1 Lower Mechanical Room



3. BP-1, flex

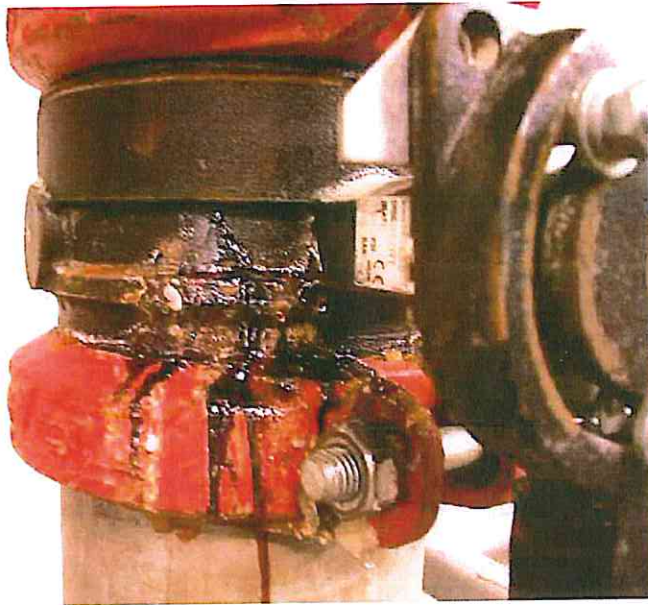
connection (jpg68)



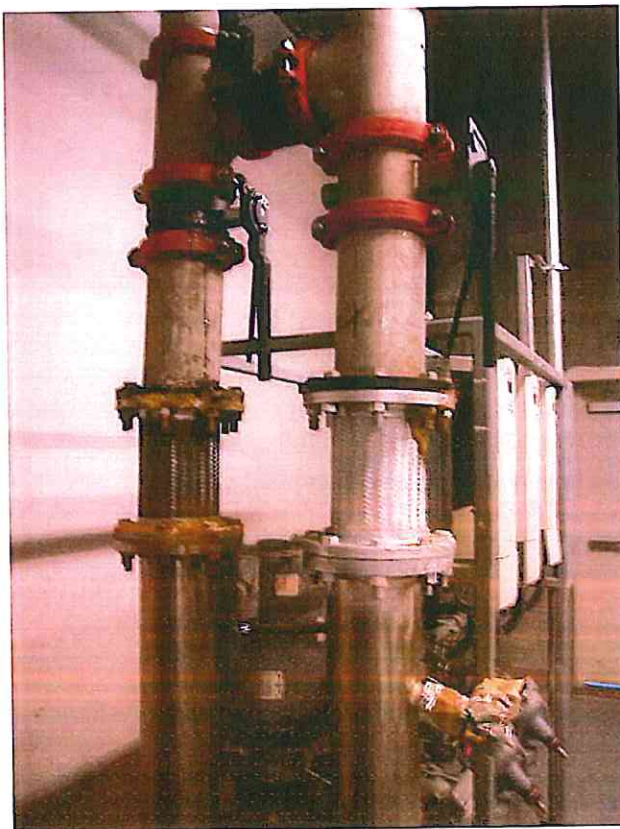
4. BP-1,

close up of leaking flex flange connection (jpg72)

PANORAMA 1 Lower Mechanical Room



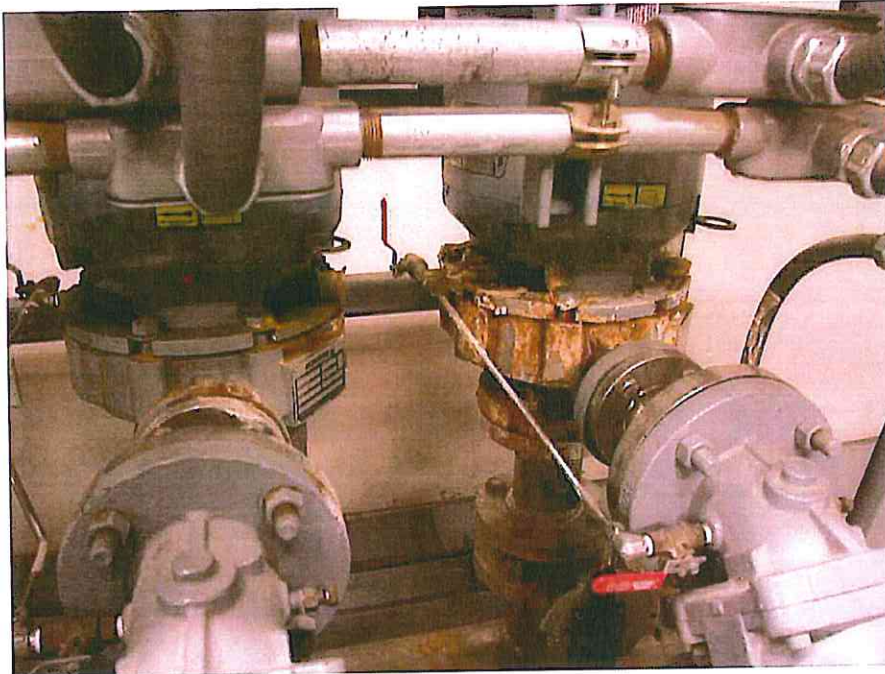
5. BP-1 (jpg 73)



6. BP-1 (jpg(74)

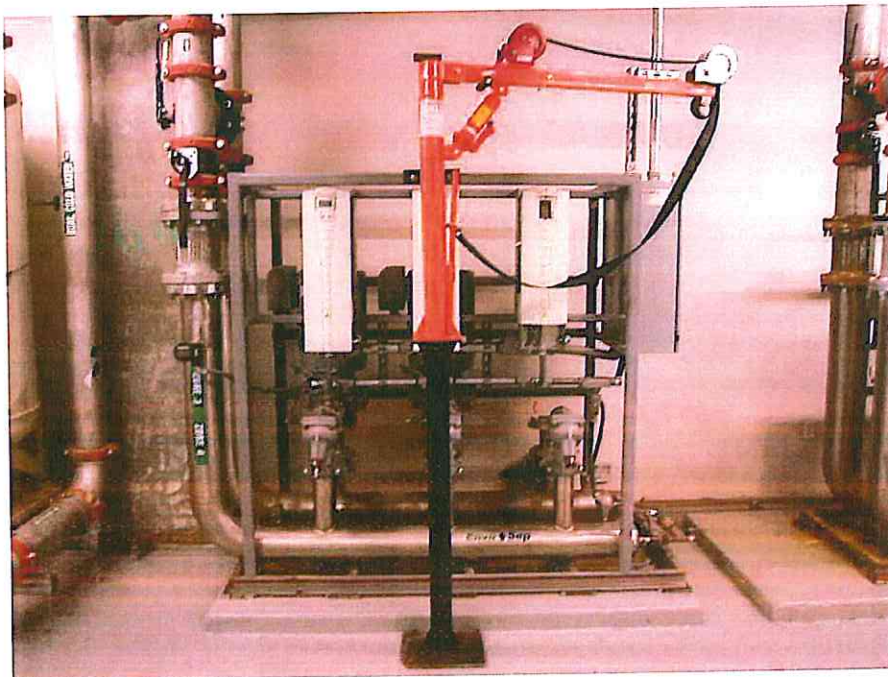


PANORAMA 1 Lower Mechanical Room



7. BP-1,

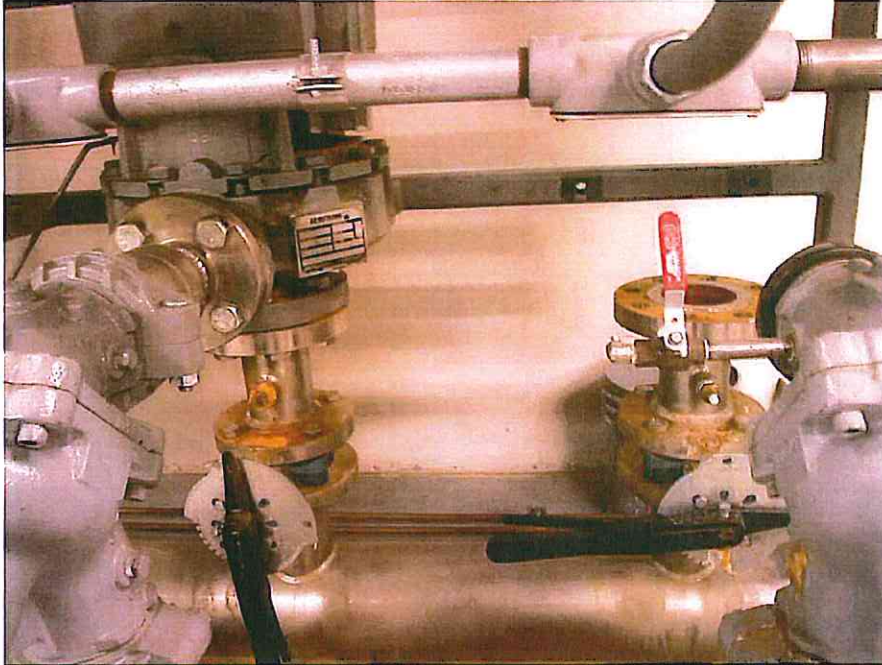
replace leaking ferrous pump housing now (jpg75).



8. BP-2, (jpg

77)

PANORAMA 1 Lower Mechanical Room



(jpg78)

9. BP-2,

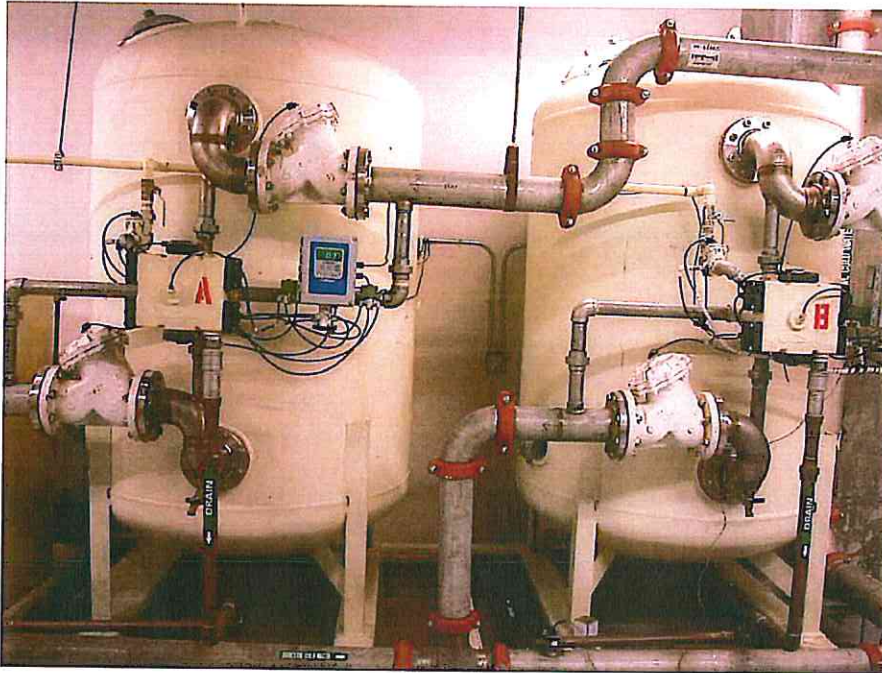


(jpg79)

10. BP-2,

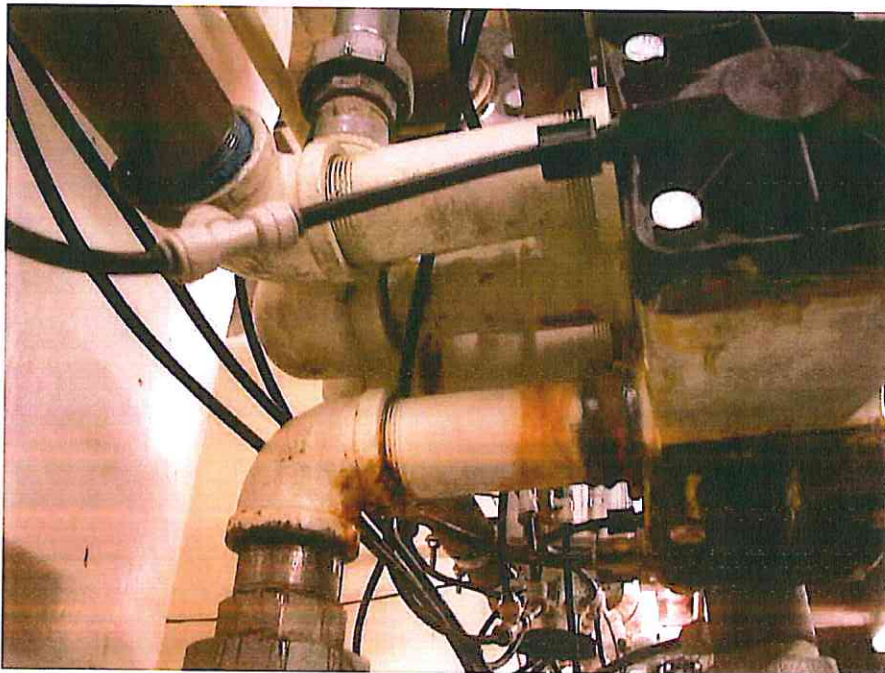


PANORAMA 1 Lower Mechanical Room



tanks (jpg80)

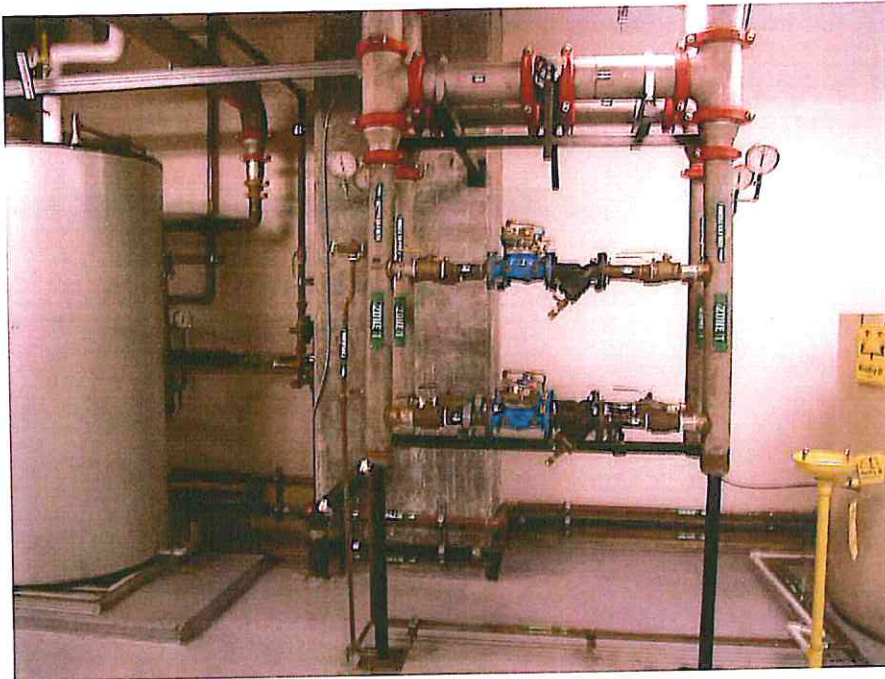
11. Media



carbon steel parts (jpg81).

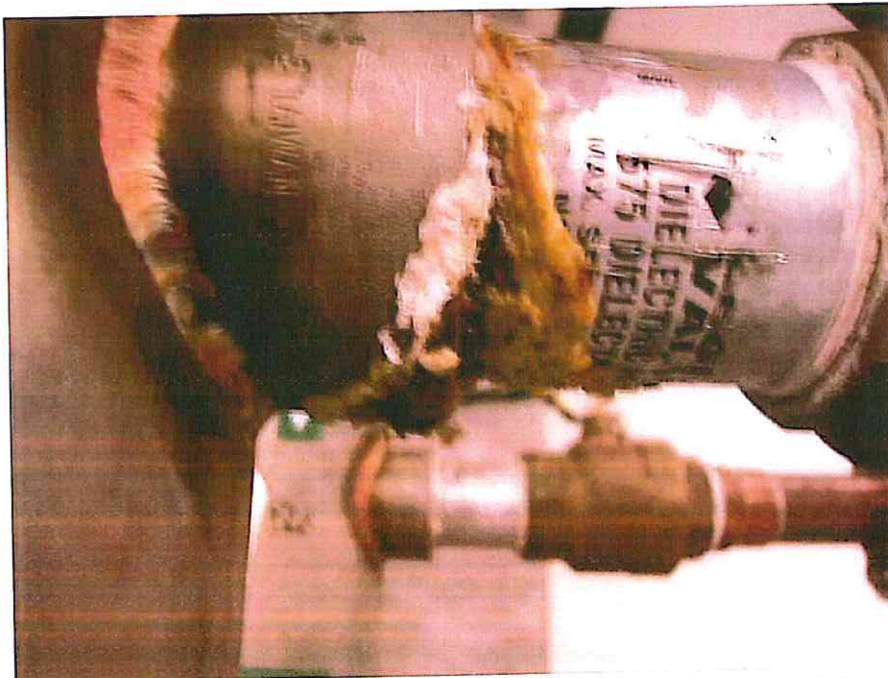
12. Culligan

PANORAMA 1 Lower Mechanical Room



13. Pressure

regulator manifold (jpg82).



14. Pressure

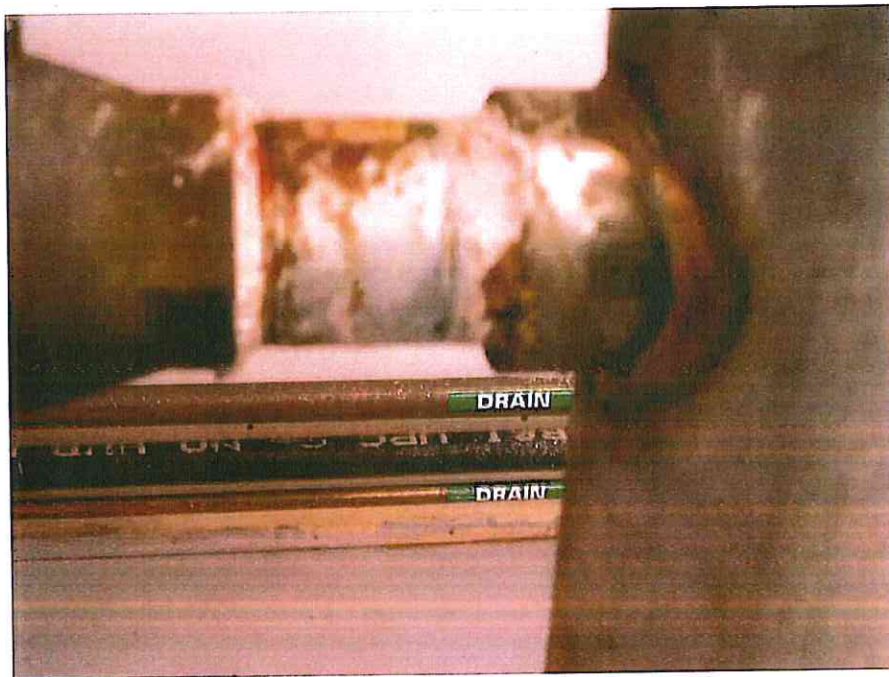
regulator manifold (jpg83) replace plastic lined steel nipple with stainless steel.



PANORAMA 1 Lower Mechanical Room



15. Another view of previous photo (jpg84).



16. Pressure regulating manifold, leaking plastic lined nipple – replace with stainless steel now(jpg85).

PANORAMA 1 Lower Mechanical Room



17. Hot water

tank ferrous check valve – replace with bronze or stainless steel (jpg86).



18. (jpg87)

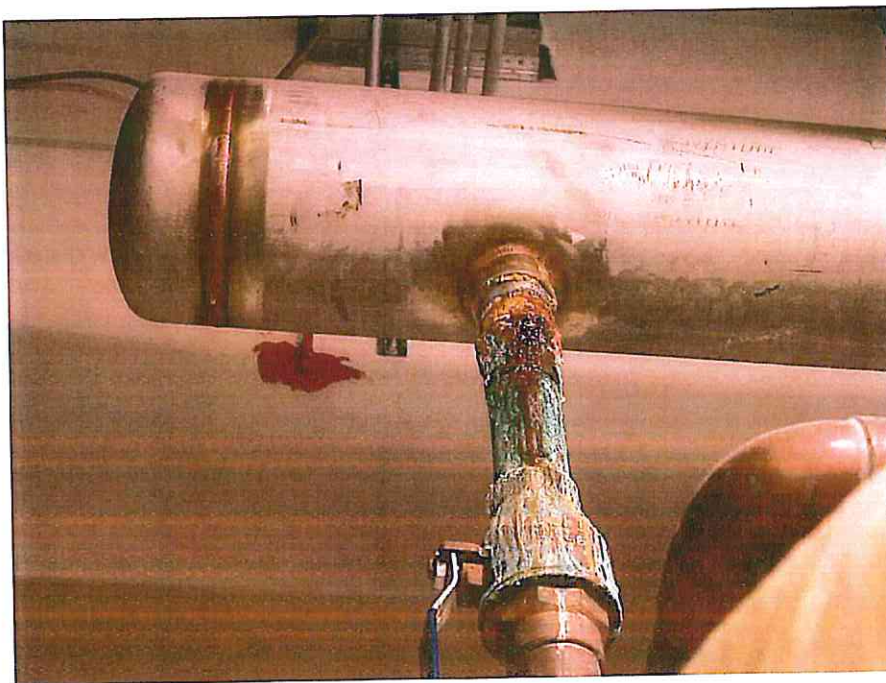


PANORAMA 1 Lower Mechanical Room



19. Filter

bank (jpg88).

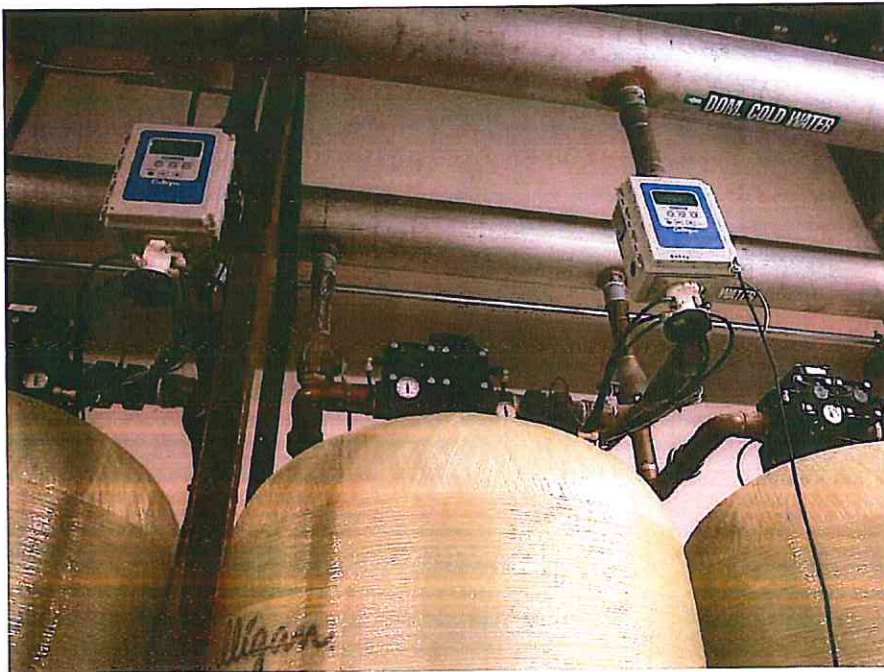


20. (jpg89)

PANORAMA 1 Lower Mechanical Room



21. (jpg91)



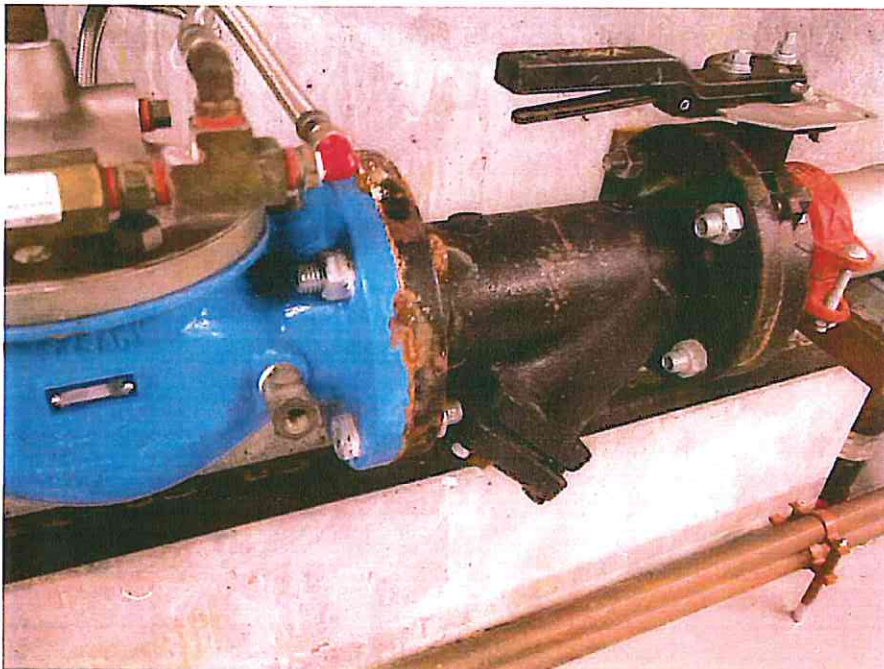
22. (jpg93)



PANORAMA 1 Lower Mechanical Room

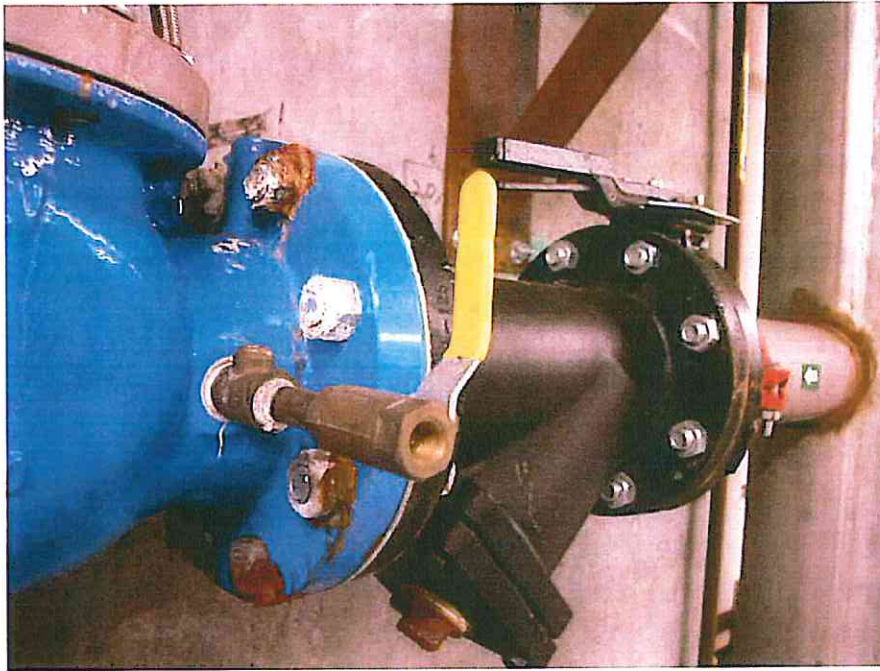


23. (jpg94)

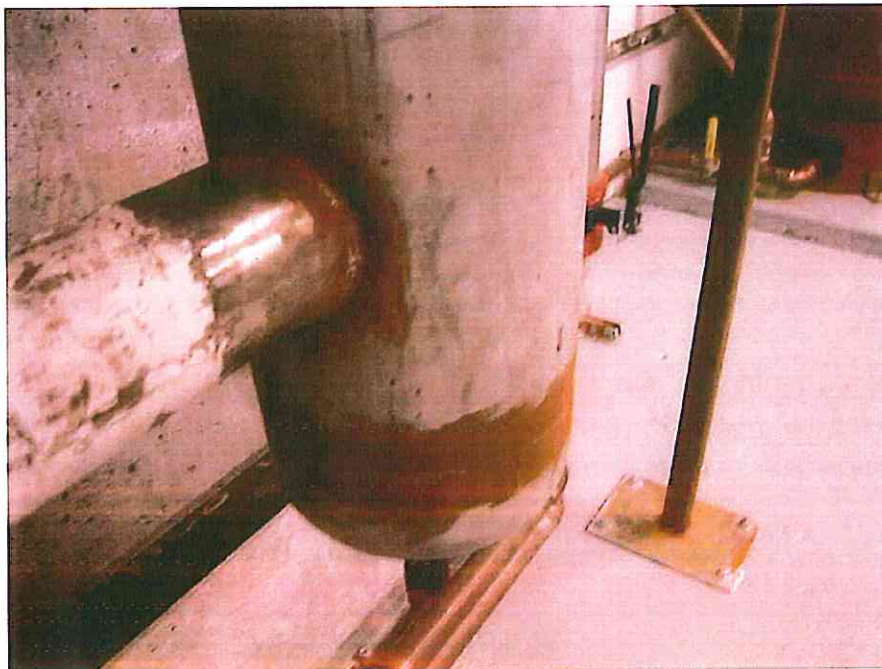


24. (jpg95)

PANORAMA 1 Lower Mechanical Room



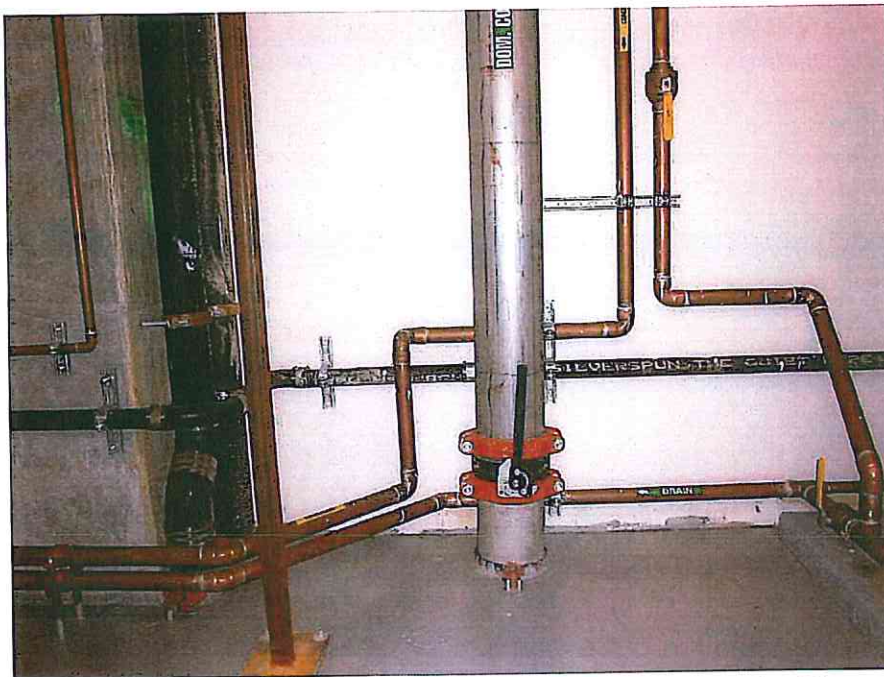
25. (jpg96)



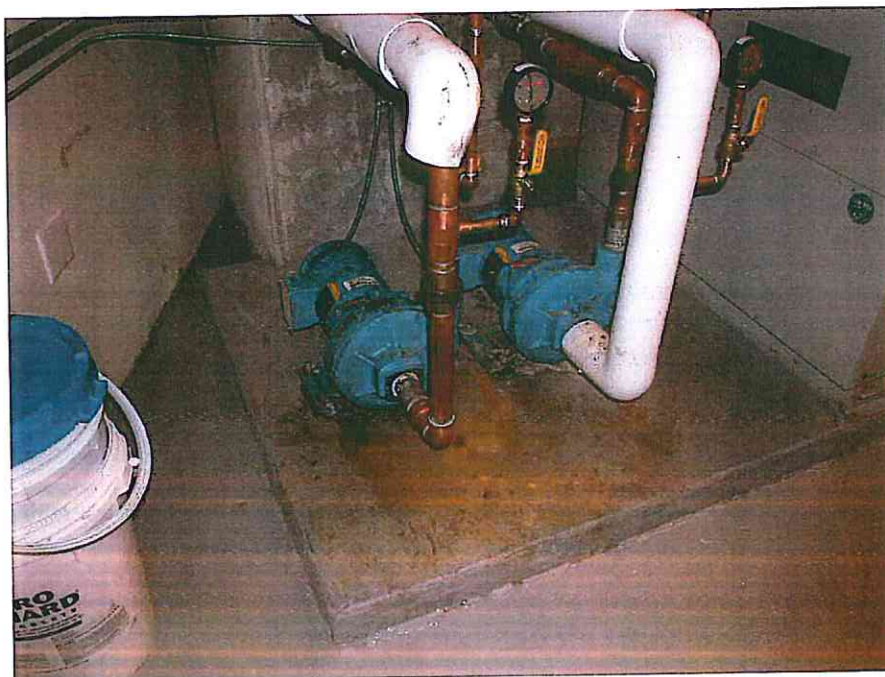
26. Evidence of removing welding tarnish with an acid e.g. hydrochloric; recommend cleaning with a stainless steel cleaner containing nitric acid.



PANORAMA 1 Lower Mechanical Room



27. City water inlet; replace ferrous butterfly valve with stainless steel (jpg98).



28. Hot water recirculation pumps – replace with nonferrous alloy (jpg99).

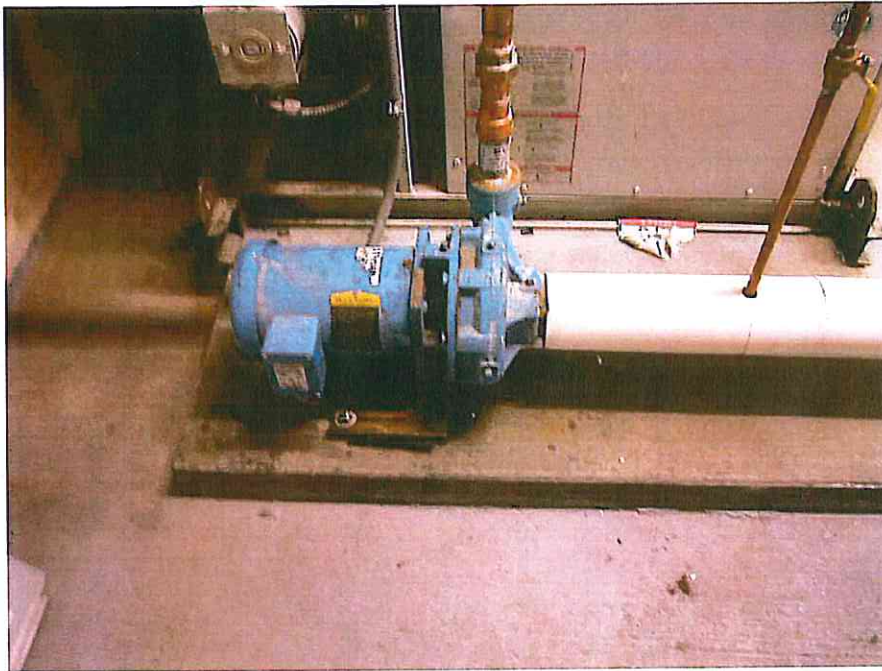
PANORAMA 1 Lower Mechanical Room



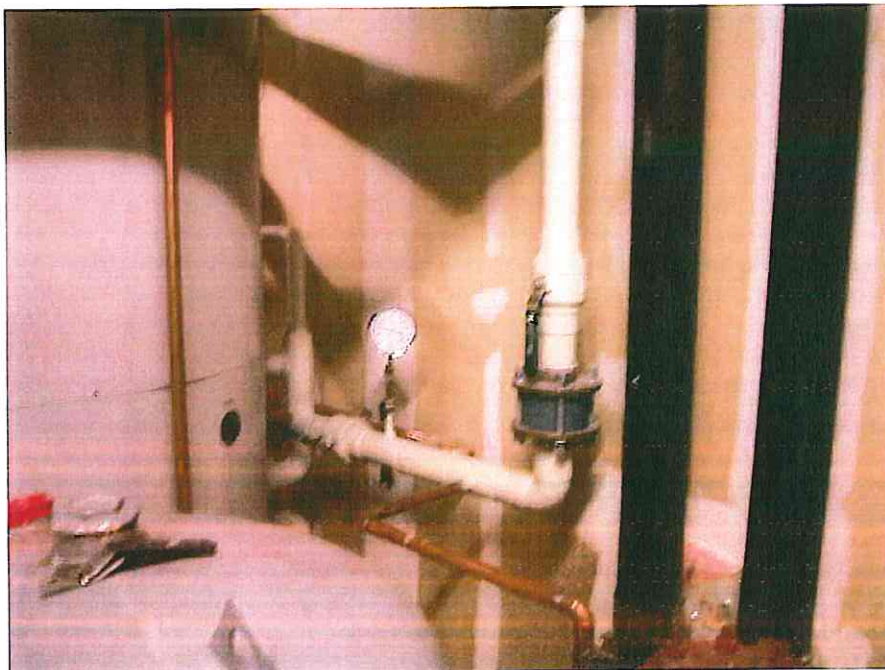
29 City water inlet manifold; rust is from acid cleaning to remove tarnish (jpg65A).



PANORAMA TOWER 1 Upper Mechanical Room



1. Hot water ferrous recirculation pump body requires replacement with a non-ferrous alloy now; replace carbon steel nipples now (jpg103).

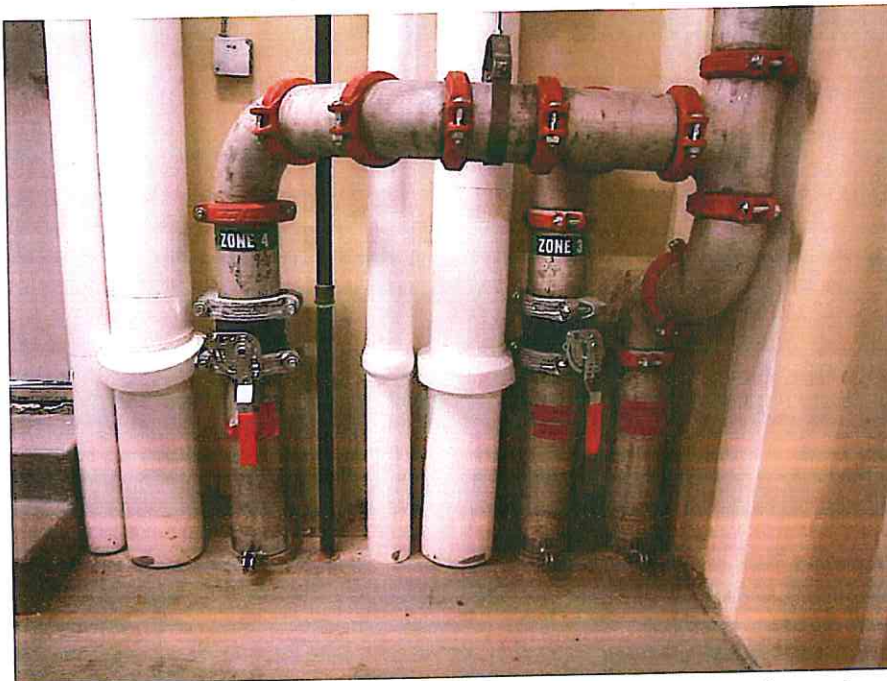


2. Zone 4 hot water system with ferrous check valve – replace within 5 years (jpg104).

PANORAMA TOWER 1 Upper Mechanical Room



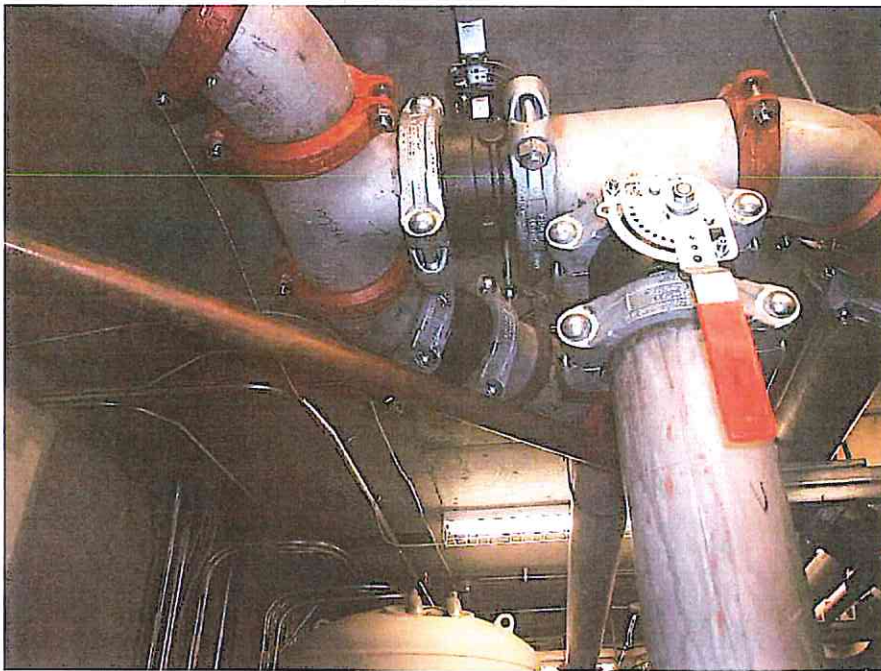
3. Zone 3 hot water system with 2 ferrous check valves that need to be replaced within 5 years.



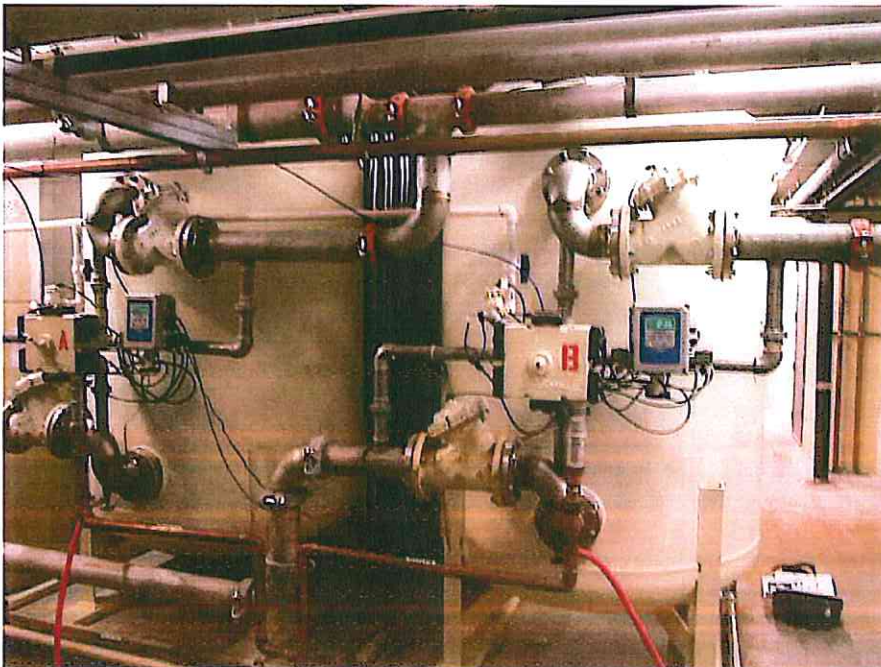
4. City water inlet, Zone 3 and 4 ferrous butterfly valves – replace with stainless or bronze valves (jpg106).



PANORAMA TOWER 1 Upper Mechanical Room

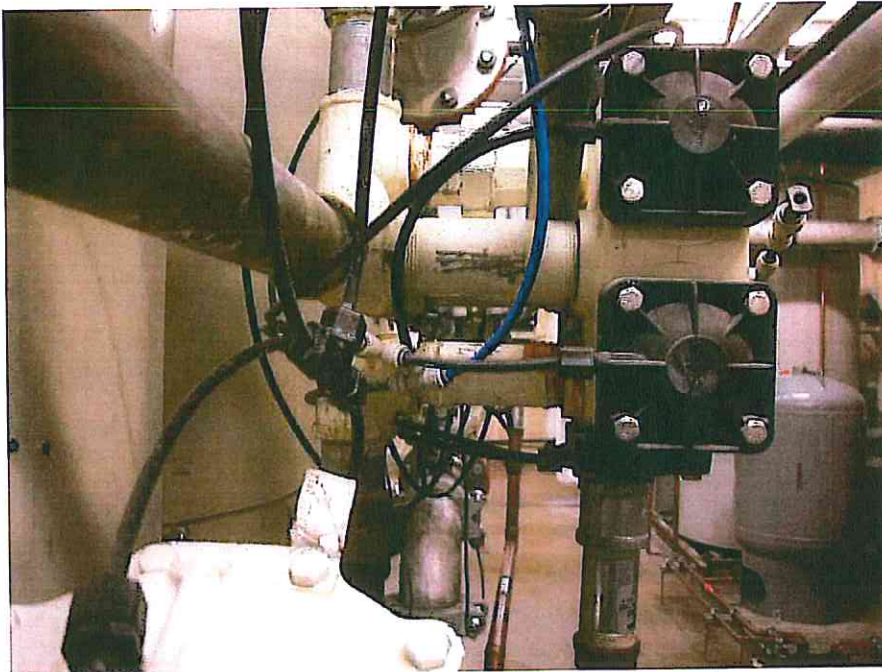


5. Feed water to water conditioners and bypass ferrous butterfly valves – replace now (jpg107).

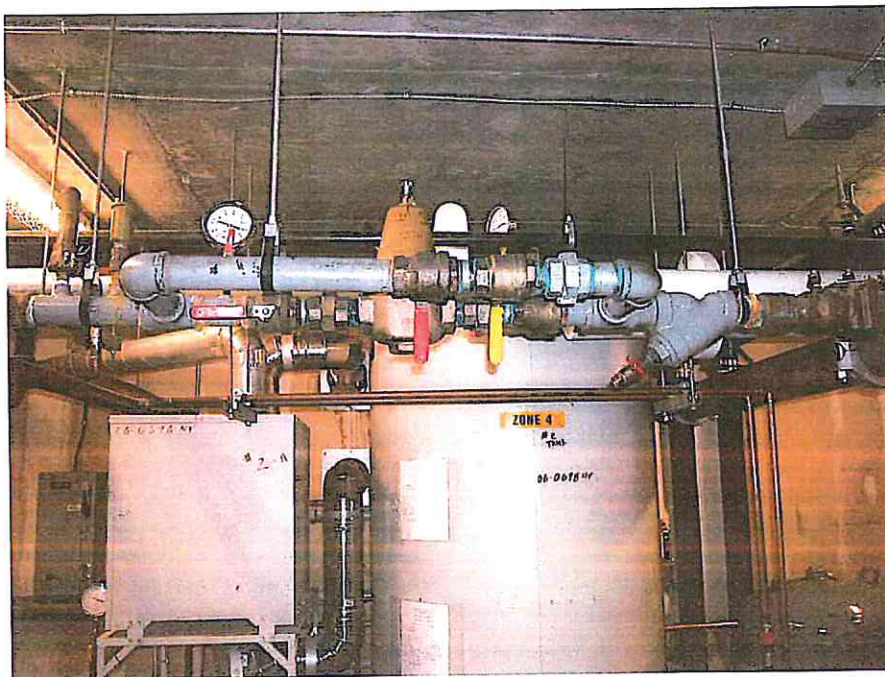


6. Media tanks with 4 ferrous check valves – replace valves within 5 years (jpg109).

PANORAMA TOWER 1 Upper Mechanical Room



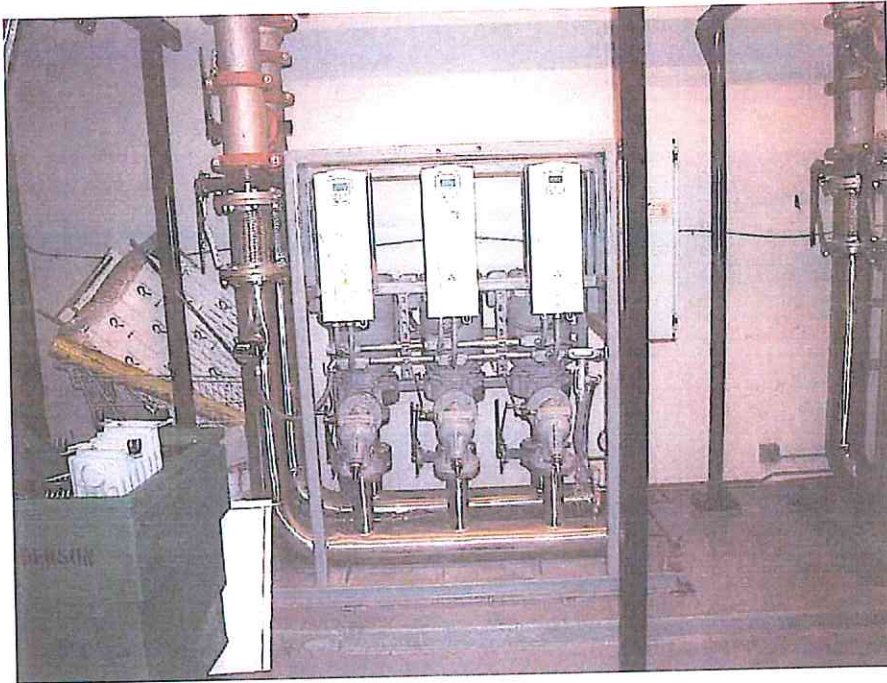
7. Media tanks with Culligan systems – replace all carbon steel nipples now; valves within 5 years (jpg108).



8. Unidentified pipe run with carbon steel lines – replace within 5 years (jpg110).

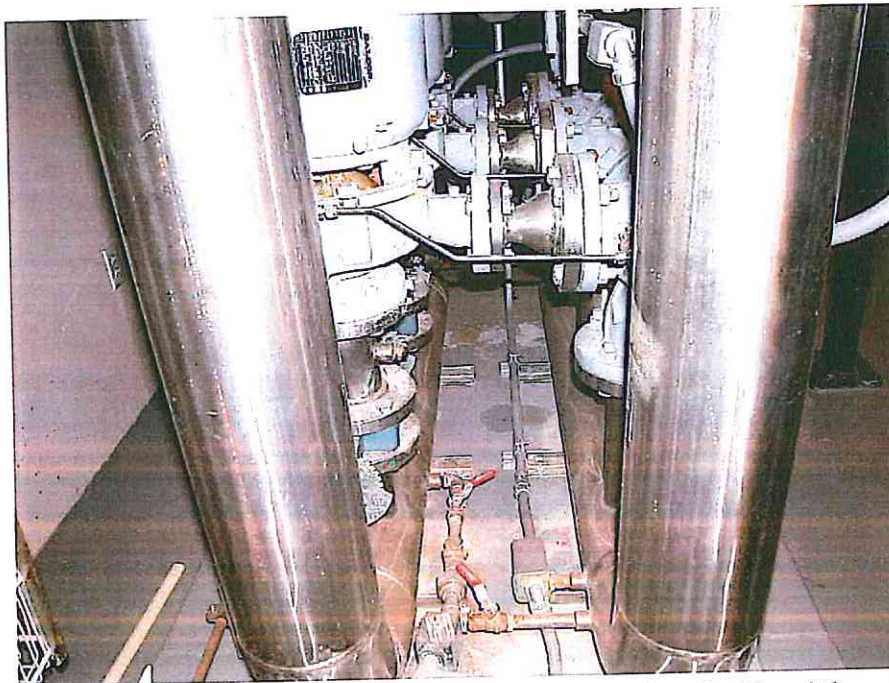


## PANORAMA 2 Lower Mechanical Room



1. BP-1 skid

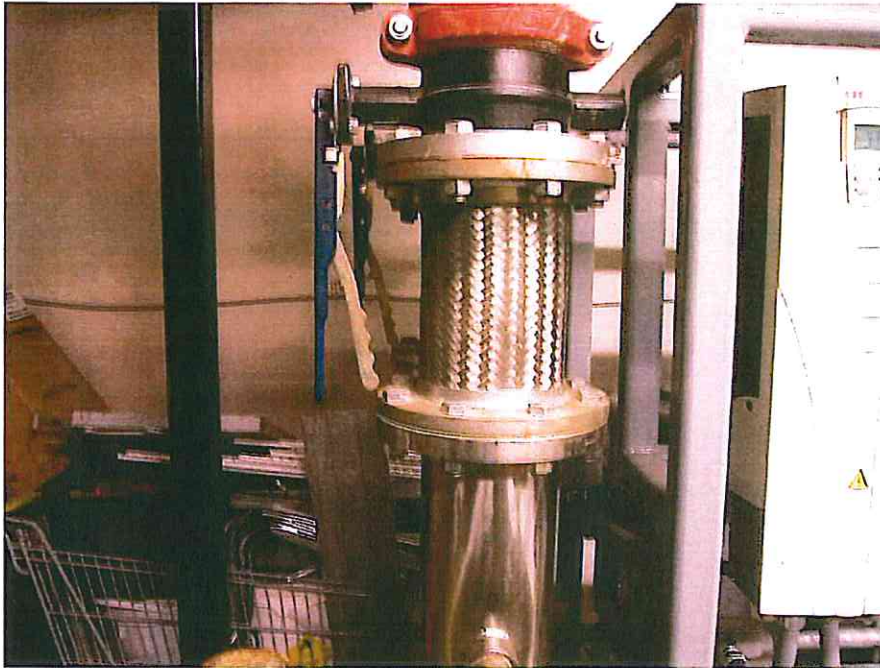
mounted unit (jpg39).



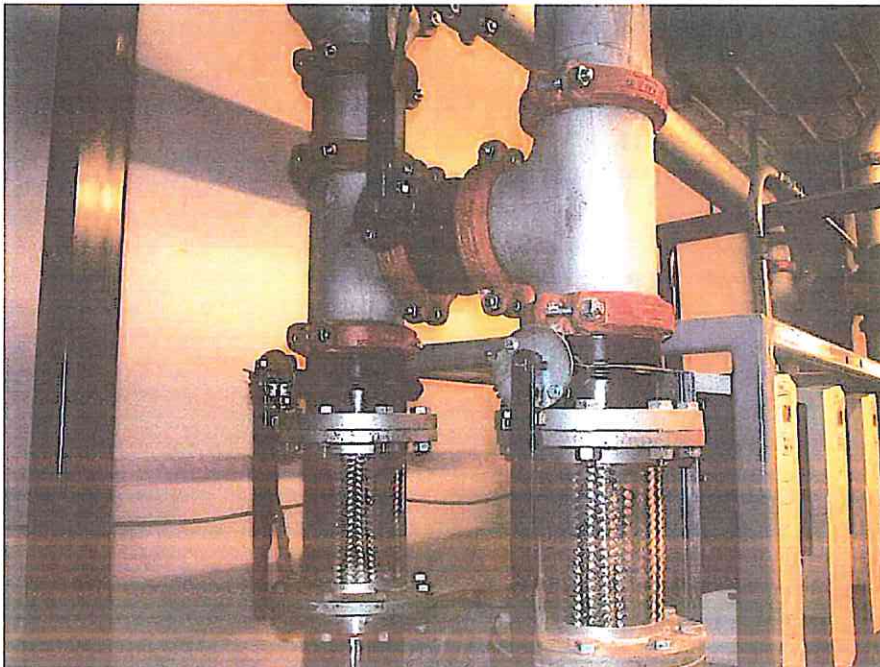
2. End view

BP-1 skid mounted unit; stainless butterfly valves shipped with unit have been replaced with carbon steel valves that should be replaced now with stainless (jpg25).

PANORAMA 2 Lower Mechanical Room



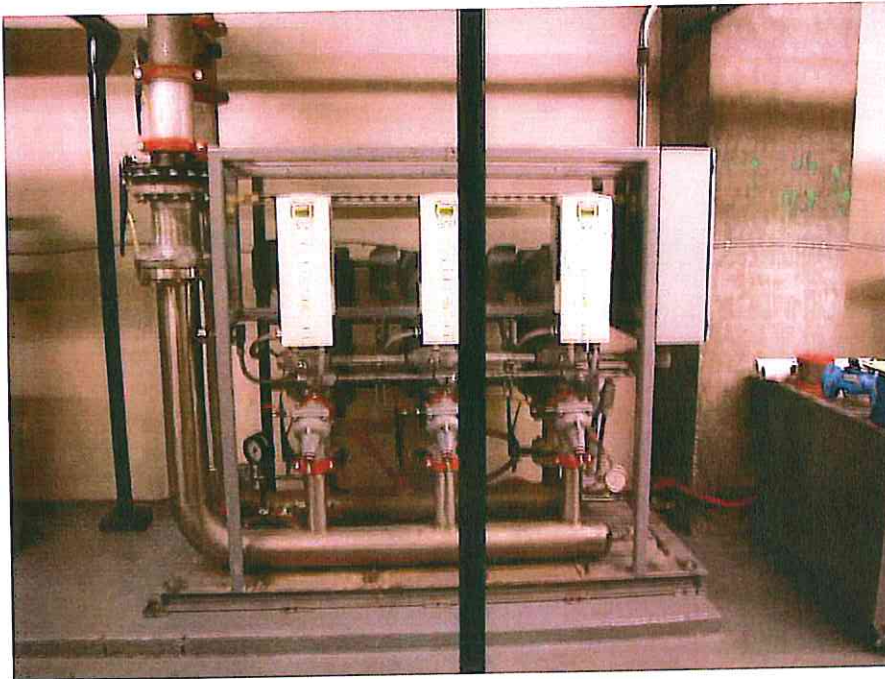
3. BP-1 Flex joint below carbon steel butterfly valve – replace valve now – see below (jpg28).



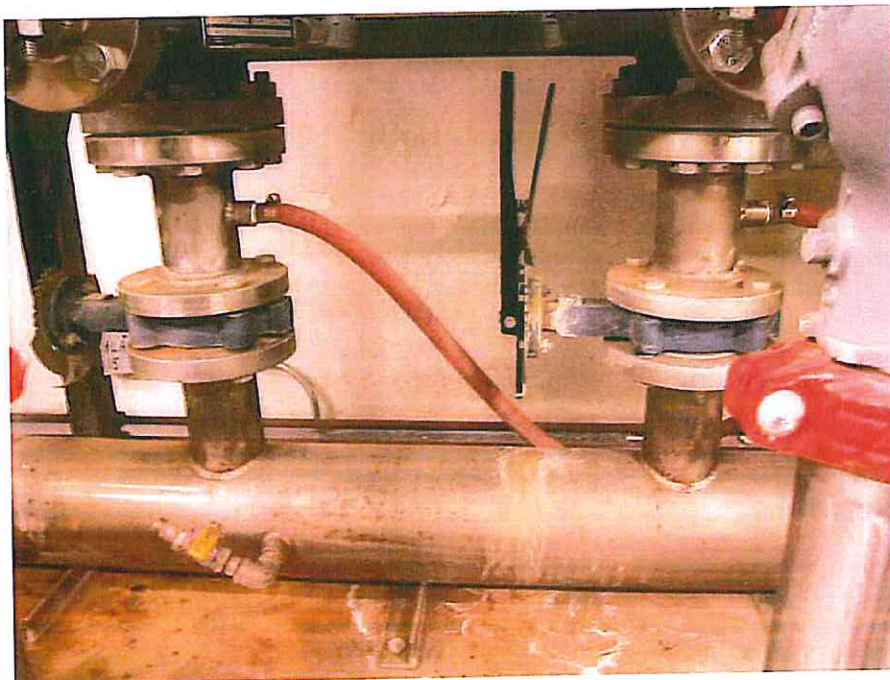
4. BP-1 showing inline and bypass carbon steel butterfly vales – all need to be replaced now (jpg29).



PANORAMA 2 Lower Mechanical Room

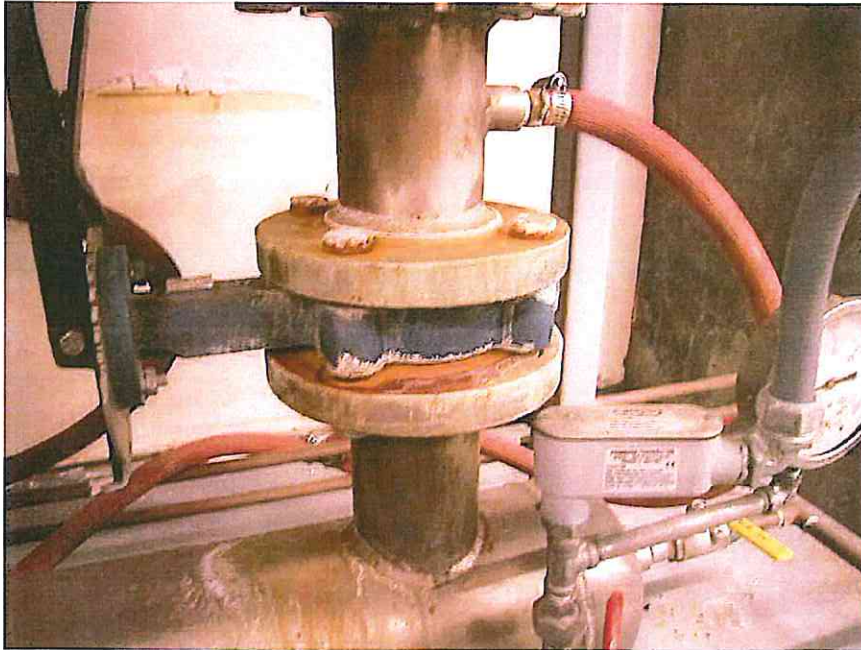


5. BP-2 high pressure skid mounted unit (jpg40).

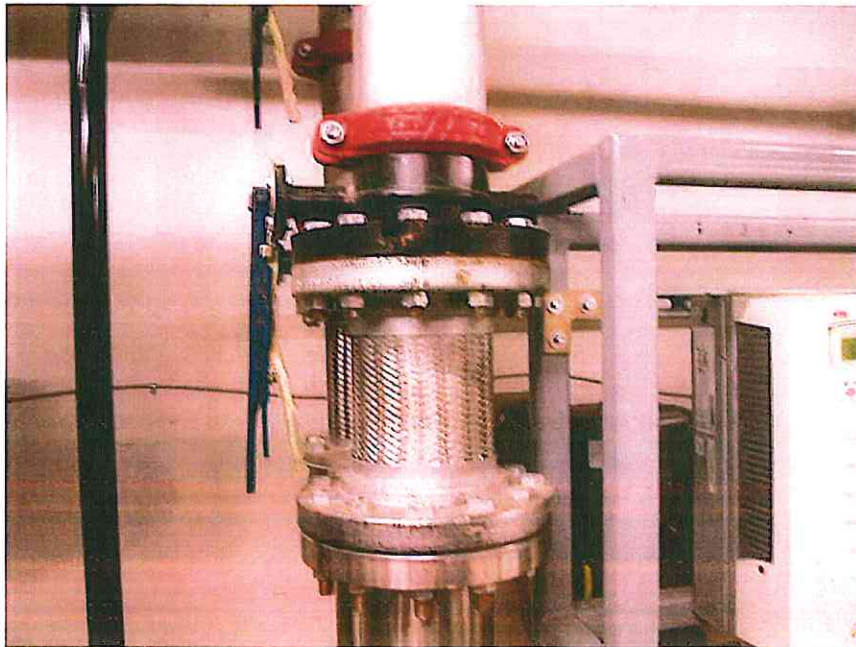


6. BP-2 center and east carbon steel butterfly valves – need to be replaced with stainless now (jpg27).

PANORAMA 2 Lower Mechanical Room



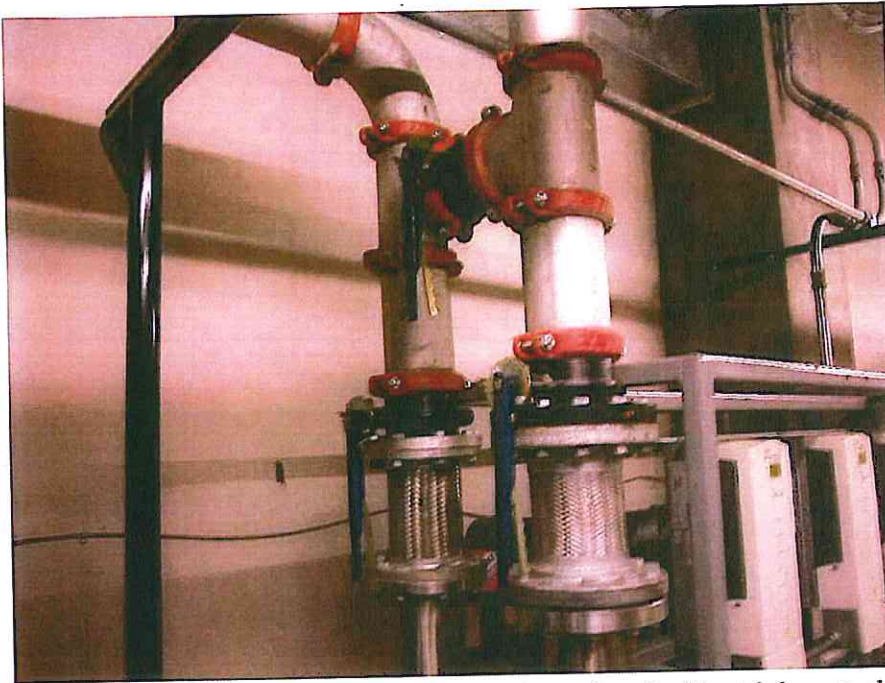
7. BP-2 west  
carbon steel butterfly valve; valve and corroded fasteners need to be replaced now (jpg26).



8. BP-2 high  
pressure flex connection with carbon steel flanges (jpg30).



## PANORAMA 2 Lower Mechanical Room



9. BP-2 inlet, outlet, and bypass butterfly valves need to be replaced with stainless steel valves now (jpg31).



10. Typical inside of carbon steel butterfly valve after several months service; this is the reason they must be replaced as soon as practical with stainless steel valves (jpg33).

## PANORAMA 2 Lower Mechanical Room



11. Name plate on typical carbon steel butterfly valve showing it has an AISI Type 416 stainless steel shaft; the ductile iron disc has a nickel edge (jpg34).

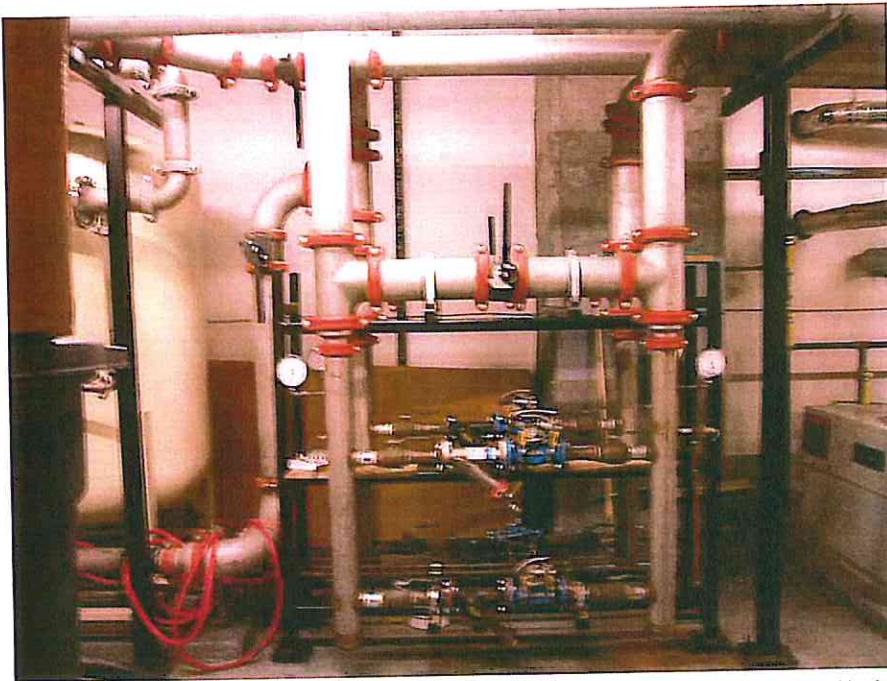


tanks (jpg41).

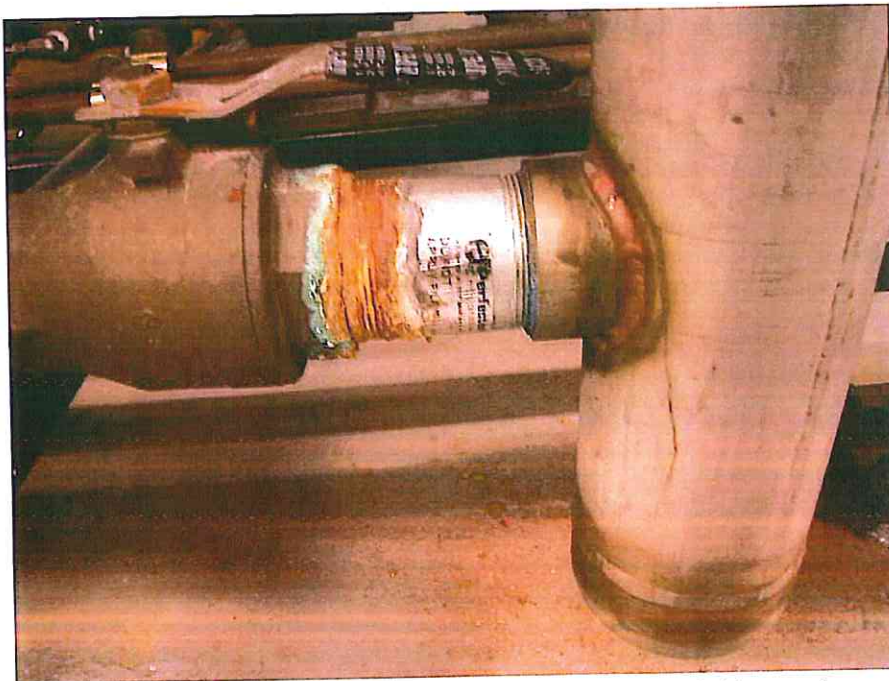
12. Media



PANORAMA 2 Lower Mechanical Room



13. PRV manifold with 3 carbon steel strainers, steel butterfly valves, and ductile iron pressure regulators (jpg42).

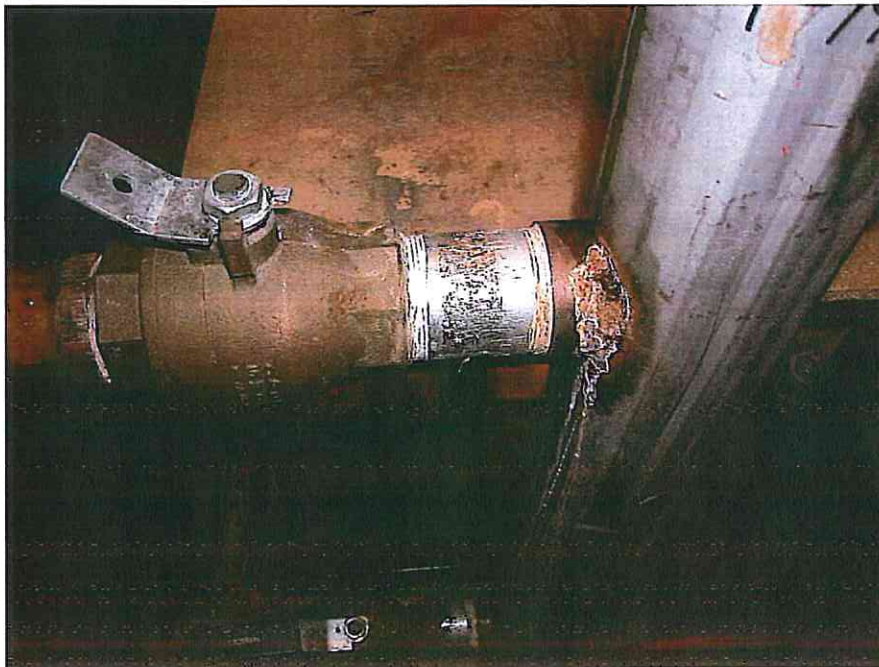


14. Carbon steel plastic lined nipple (lower northwest corner of manifold) - replace with stainless steel (jpg51).

PANORAMA 2 Lower Mechanical Room



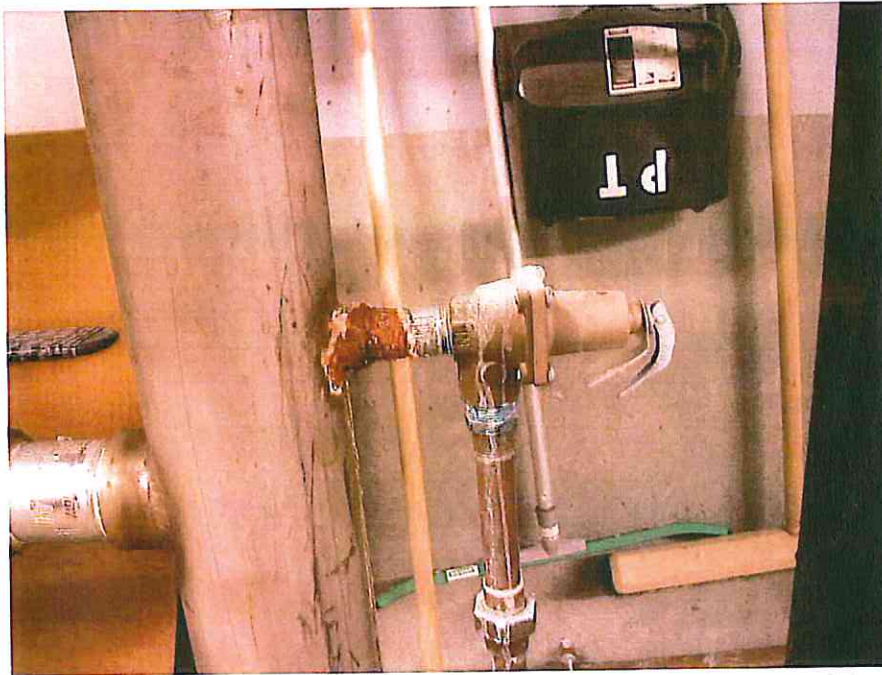
15. Carbon steel plastic lined nipple (lower southeast corner of manifold0 – replace with stainless steel (jpg52). Note: corrosion around Unistrut is a leak at the joint.



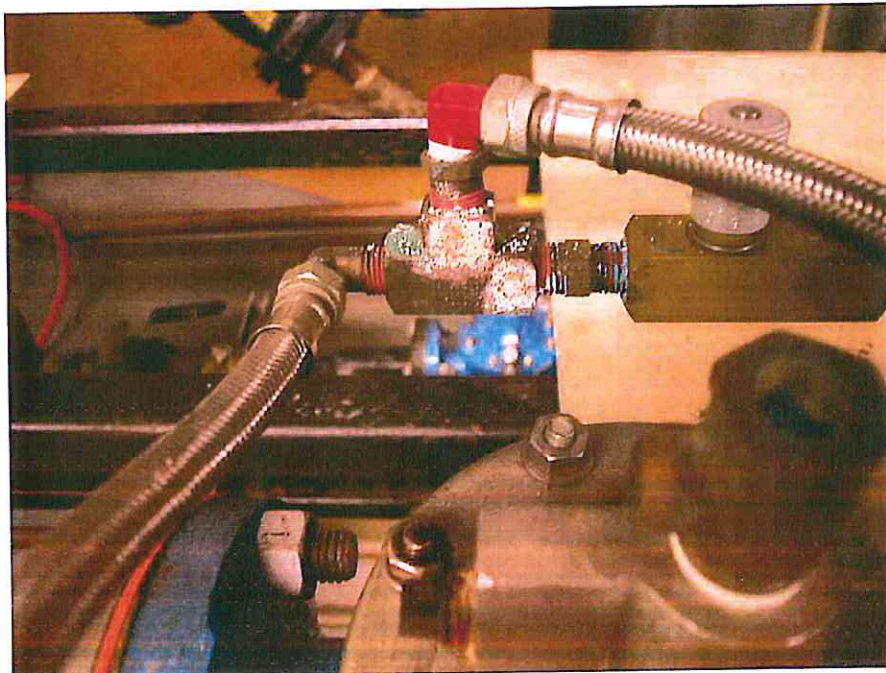
16. Leak in stainless weld leak; carbon steel plastic lined nipple not yet leaking, upper southeast corner of manifold (jpg53).



PANORAMA 2 Lower Mechanical Room

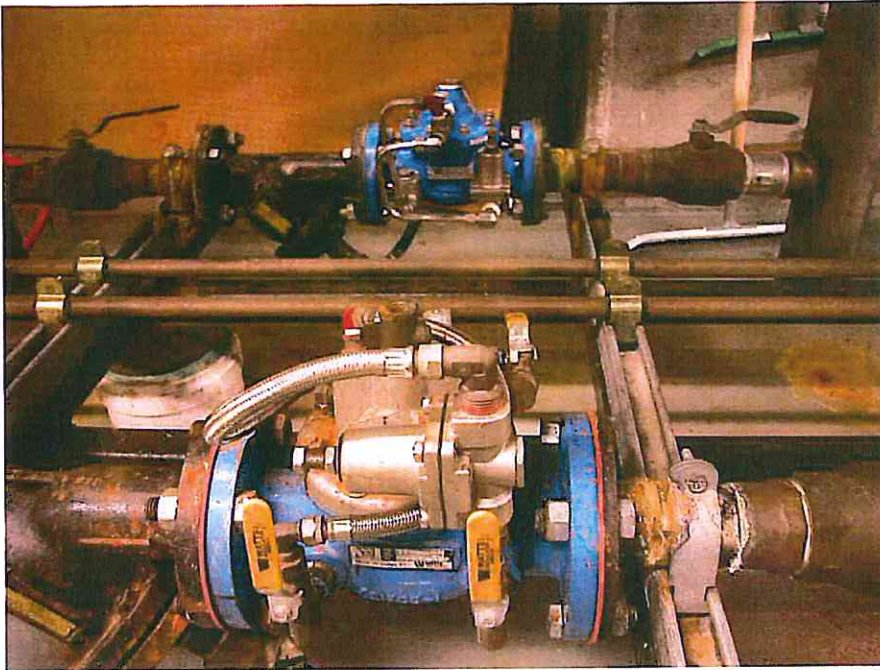


17. Carbon steel drain nipple on manifold – replace all in both buildings with stainless steel (jpg54).

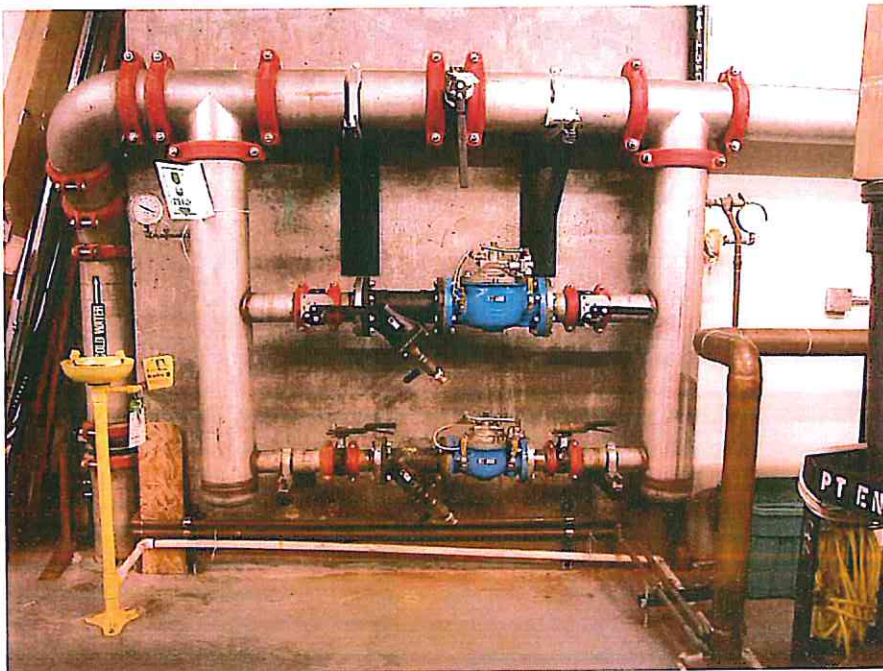


18. Yellow brass T-fitting exhibiting de-zincification corrosion through the wall – replace yellow brass fittings as they leak as part of normal maintenance (jpg55).

## PANORAMA 2 Lower Mechanical Room



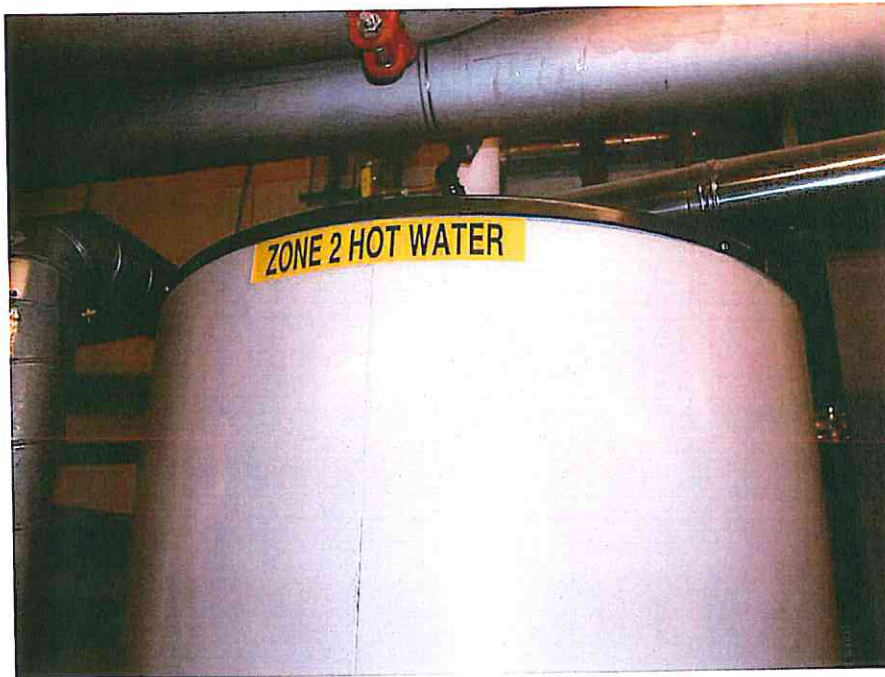
19. Lower pressure regulators; the far regulator is ductile iron top and bottom; the closer has a stainless steel top; visible residues at Unistrut are from connection leaks, not corrosion (jpg56).



20. City water inlet manifold showing steel strainers, steel butterfly valves, and ductile iron pressure regulators with stainless steel tops (jpg43).

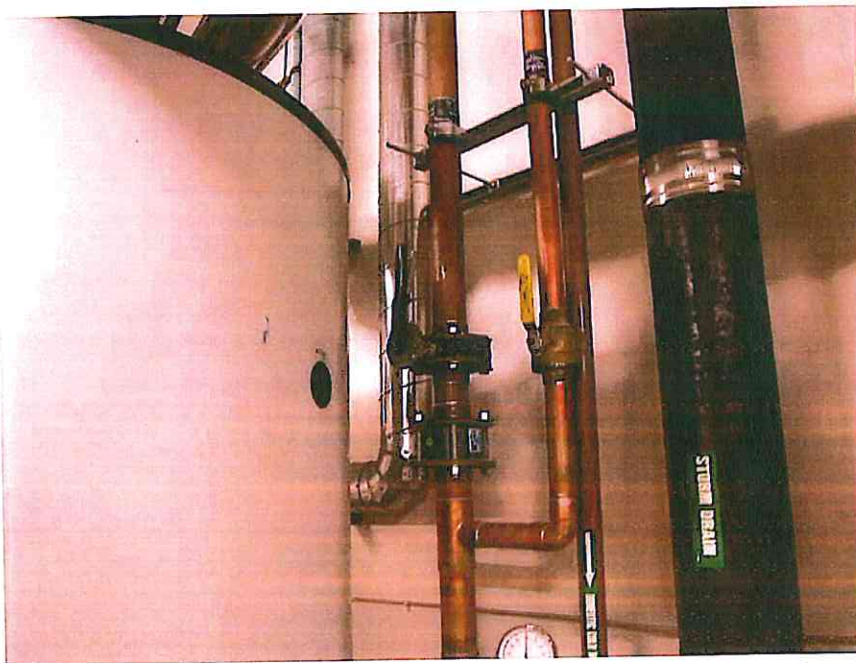


PANORAMA 2 Lower Mechanical Room



21. Zone 2

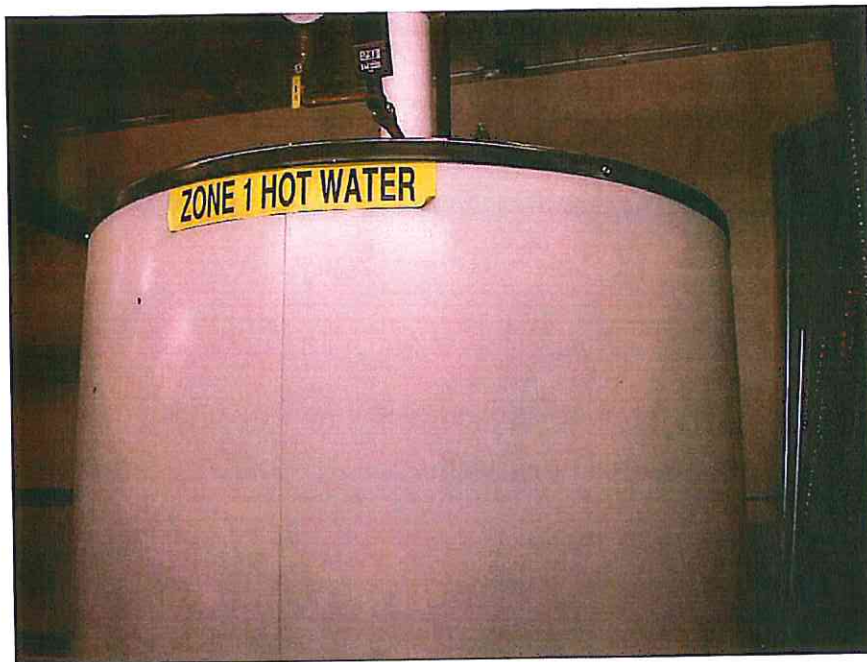
hot water tank (jpg44).



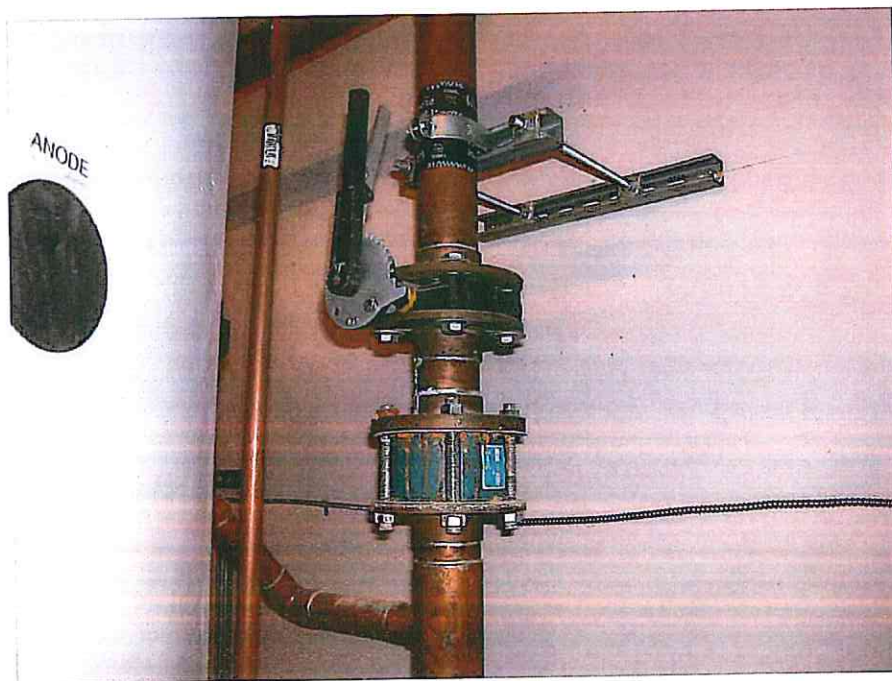
22. Piping

associated with Zone 2 hot water tank with steel butterfly valve and steel check valve (jpg45).

PANORAMA 2 Lower Mechanical Room



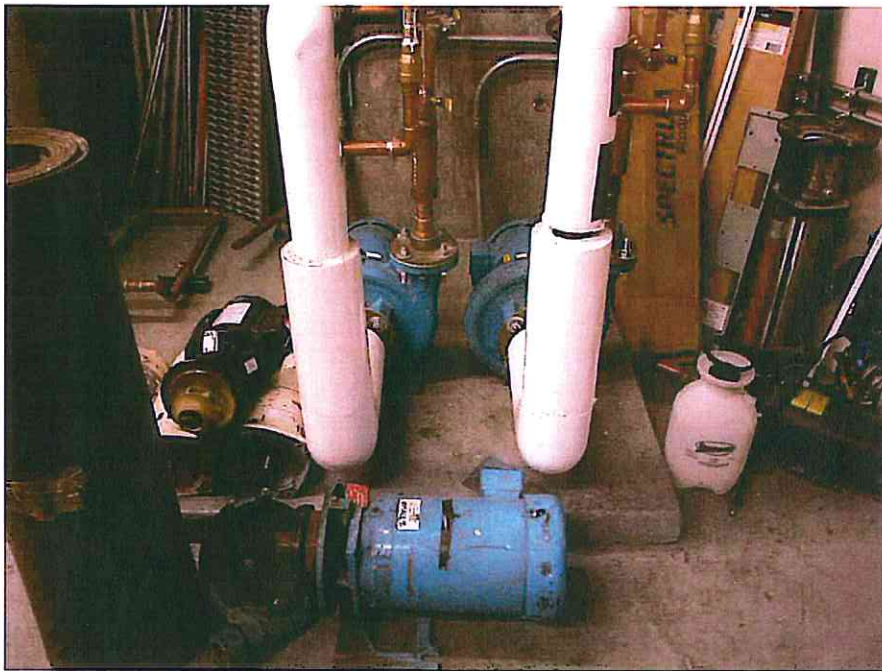
23. Zone 1 hot water tank (jpg46).



24. Piping associated with Zone 1 hot water tank with steel butterfly valve and steel check valve (jpg47).

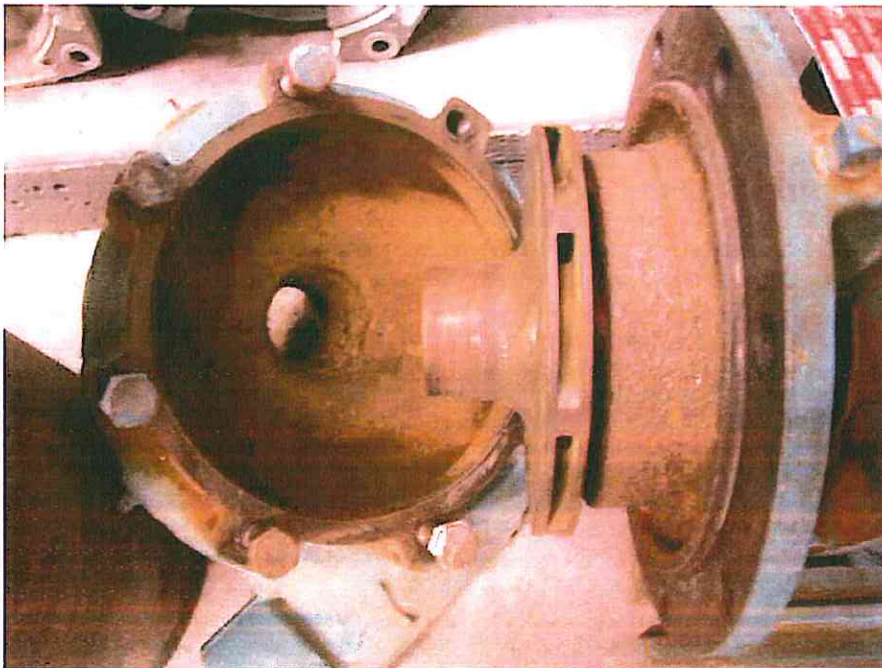


PANORAMA 2 Lower Mechanical Room



recirculation pumps with carbon steel housings (jpg48).

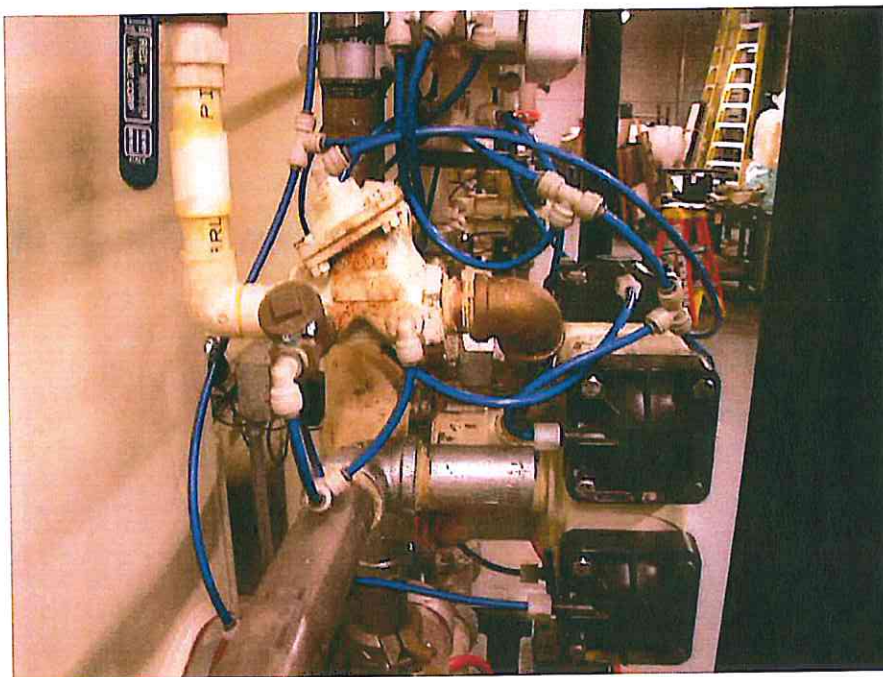
25. Hot water



view of steel pump housing exhibiting significant corrosion (jpg49).

26. Close up

PANORAMA 2 Lower Mechanical Room



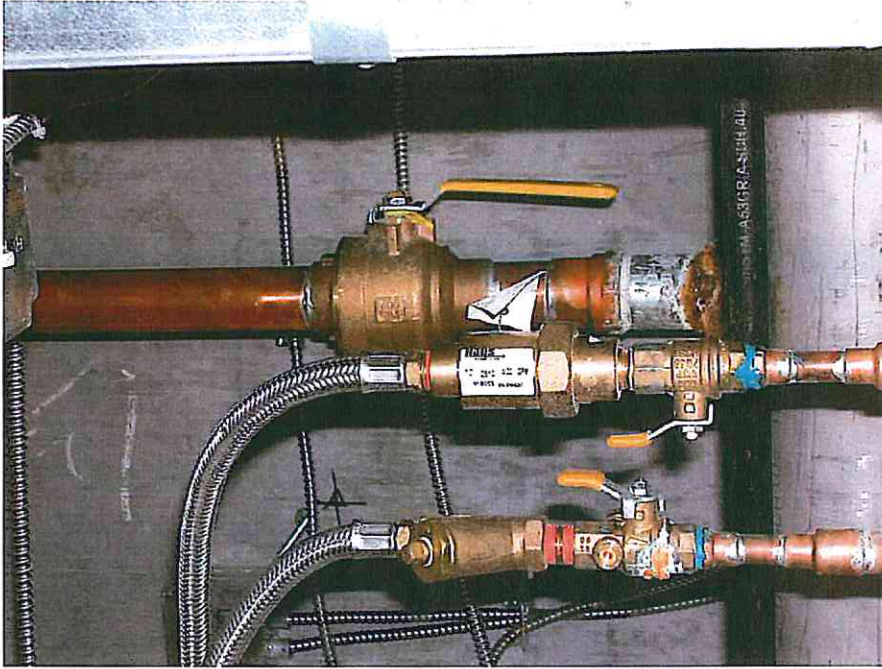
27. Ferrous (steel or iron) valve associated with Culligan water conditioning system (jpg 50).



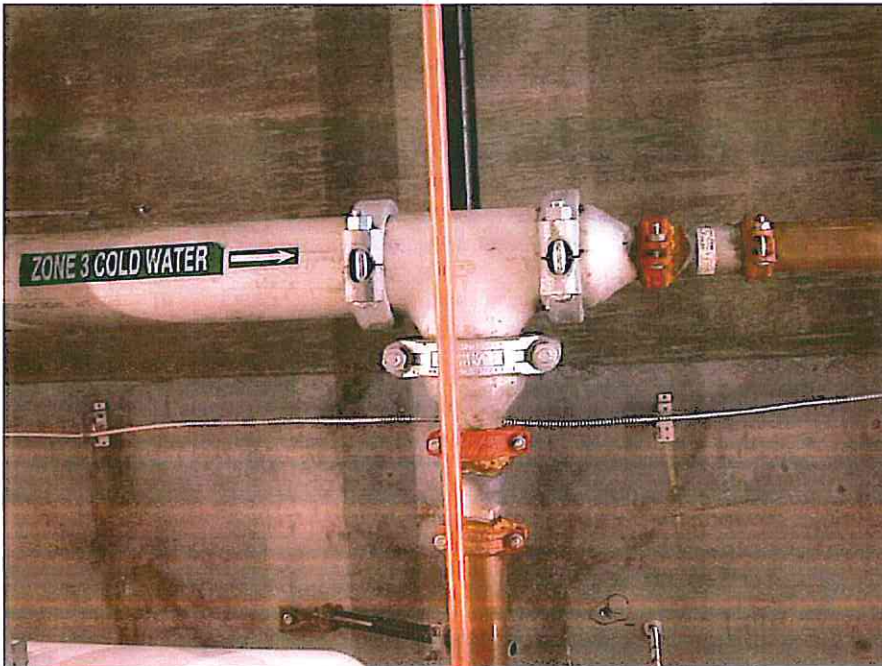
28. connections to outlet piping; replace carbon steel nipples with stainless steel (jpg57).



PANORAMA TOWER 2 Upper Mechanical Room



1. Carbon steel nipple to cold water line – replace now (jpg62). Corrosion of brass HVAC condensate valves experiencing de-zincification - replace as necessary as part of regular maintenance.



2. Carbon steel nipples needing replacement now. (jpg64).





2764 n. Green Valley Pkwy #116, Henderson, NV 89014

17 November 2011

Mike Murphy  
Panorama Towers Condominium Unit Owners Assoc.  
4525 Dean Martin Drive  
Las Vegas, NV 89103

**Re: Report for Evaluation of Corrosion Damage to Mechanical Room Piping**

Dear Mr. Murphy:

ATMG is pleased to present this report for the corrosion damage evaluation for the piping in the two lower and two upper Mechanical Rooms in the Panorama Towers. This task was performed in accordance with our proposal dated 5 October 2011.

**PROJECT INFORMATION**

On 9-20-11, a walk down was conducted of the lower and upper mechanical rooms of the two towers. The lower mechanical rooms exhibited more corrosion damage than the two upper mechanical rooms. Several replaced parts were on the floor in one of the upper mechanical rooms. Some connections were observed to be leaking. Our evaluation and reporting is in substantial accordance with the *Guideline for Structural Condition Assessment of Existing Buildings*, SEI/ASCE 11-99 published jointly by the Structural Engineering Institute and the American Society of Civil Engineers.

There are several dissimilar metal connections that are accelerating the corrosion attack on the less noble alloy in the connection. Our observations found stainless steel and copper based alloys (more noble) in contact with ductile iron and carbon steel (less noble). When dissimilar metals are in contact in a wet environment, the difference in

METALLURGY GROUP

METALLURGY • CORROSION • PAINT INSPECTION • NONDESTRUCTIVE TESTING  
AMUSEMENT RIDE INSPECTION • WELDING CONSULTING • BIO TESTING  
FAILURE ANALYSIS • STRUCTURAL CONDITION ASSESSMENT

electric potential of these alloys creates a battery effect that powers the dissolution of the less noble alloy into the environment as a corrosion product.

When measured on a copper/copper sulfate electrode scale, stainless steel and copper based alloys (copper, brass, bronze) exhibit an electric potential to their wet environment of approximately -0.2 volts; carbon steel, cast iron, and ductile iron exhibit an electric potential of approximately -0.5 volts to their wet environment. This difference of 0.3 volts creates an electric current to flow out of the less noble metal which is the one with the more negative voltage. As the current leaves, it takes metal ions with it that become a corrosion product – usually some form of rust. This condition is called a galvanic corrosion cell. One amp of current can remove 20 pounds (lbs) of iron in one year. Therefore, these dissimilar metal galvanic corrosion cells can cause serious damage over time.

ATMG was directed to identify which sections of piping, fittings, pumps, valves, and regulators need to be replaced. In addition, those items were to be identified for replacement on a time schedule of: Replace now, Replace within 5 years, or Replace long term.

## **OBSERVATIONS**

### Primary Piping Parts

The identification of parts that need replacement has been noted on spreadsheets for each of the mechanical rooms. The recommended replacement schedule is also shown. An accompanying photographic log has been cross referenced to parts listed on the spreadsheets. In theory, the plastic lined steel nipples should not create a galvanic cell. However, if the liner is damaged during installation or not installed correctly, wet metal to metal contact can result leading to leaks as has been noted.

### Yellow Brass Fittings and Valves

There are numerous small fittings and valves within the 4 rooms made of yellow brass that are experiencing a corrosion mechanism known as dezincification. A white powdery substance (zinc oxide) can be seen on the surface of these parts that confirms the water has corroded the zinc in the copper matrix to the point that it has reached the exterior surface.



This process will continue, and eventually water will begin to drip through these corroded zones. Since these parts are small and easily replaced, our recommendation is to leave them in service until the leaks begin to drip, and then replace them as is the current practice with the Maintenance Department.

#### Stainless Steel Piping Leaks

Some welded joints of the stainless steel piping exhibited leaks. Currently these are being weld repaired as they occur as part of the regular maintenance.

#### Other Observations - Bolting

In addition to the specific assigned tasks, a problem with bolting was noticed. We found mixed bolting in several flanged connections and bolts holding butterfly valves in position.

To properly share loads, bolts and cap screws in a connection should all be the same strength. Therefore, we recommend that the Maintenance Department should check each set of connections for mixed bolting. A query needs to be made with a plumbing engineering firm to find out which grade of bolts is required for each type of connection.

### **RECOMMENDATIONS**

1. The major piping parts suffering corrosion should be replaced in accordance with the schedule shown on the accompanying spreadsheets.
2. Yellow brass fittings and valves should be replaced when dripping leaks caused by dezincification are noticed as part of the regular maintenance schedule.
3. The proper grade of bolting for the various connections should be determined, and replacements made accordingly.
4. Continue the repair welding of stainless steel leaks.



Panorama Towers  
17 November 2011  
Page 4.

**ATMG**  
www.atmgllc.com

**CLOSURE**

We thank you for the opportunity to be of service. If there are any questions or needed modifications regarding this report, please contact Gregory Fehr at 702-204-4795, and we will make changes accordingly.

The assumptions, conclusions, recommendations, and opinions presented herein are: (1) based on the data provided and collected; (2) based on standard forensic methodology; (3) based on our corrosion experience and (4) prepared in accordance with generally accepted corrosion failure analysis principles and practice. We make no other warranty, either express or implied.

Sincerely,

ATMG



Gregory Fehr  
Principal, Metallurgy  
Licensed engineer (P.E.) in AL, OK  
NACE Certified Cathodic Protection Specialist  
NACE Certified Corrosion Technologist

GPF:ki

Encl: Spreadsheet - Panorama 1 Lower Mechanical Room  
Spreadsheet - Panorama 1 Upper Mechanical Room  
Spreadsheet - Panorama 2 Lower Mechanical Room  
Spreadsheet - Panorama 2 Upper Mechanical Room  
Photolog - Panorama 1 Lower Mechanical Room  
Photolog - Panorama 1 Upper Mechanical Room  
Photolog - Panorama 2 Lower Mechanical Room  
Photolog - Panorama 2 Upper Mechanical Room

# DISTRICT COURT CIVIL COVER SHEET

A-16-744146-D

County, Nevada

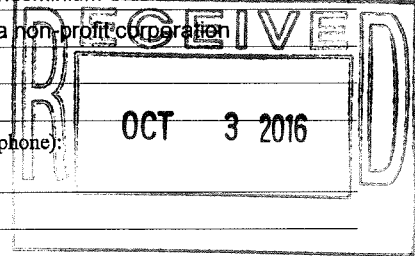
Case No. \_\_\_\_\_

XXII

(Assigned by Clerk's Office)

## I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): Laurent Hallier, an individual; Panorama Towers, I, LLC, a Nevada limited liability company; Panorama Towers I Mezz, LLC, a Nevada limited liability company; and M.J. Dean Construction, Inc., a Nevada corporation	Defendant(s) (name/address/phone): Panorama Towers Condominium Unit Owners' Association, a Nevada non-profit corporation
Attorney (name/address/phone): Peter C. Brown, Esq. and Darlene M. Cartier, Esq. Bremer, Whyte, Brown & O'Meara, LLP 1160 N. Town Center Drive, Suite 250 Las Vegas, Nevada 89144; 702-258-6665	Attorney (name/address/phone):  



## II. Nature of Controversy (please select the one most applicable filing type below)

### Civil Case Filing Types

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate (select case type and estate value)</b> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input checked="" type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

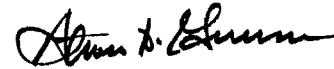
*Business Court filings should be filed using the Business Court civil coversheet.*

9/28/2016

Date

Signature of initiating party or representative

*See other side for family-related case filings.*



CLERK OF THE COURT

PETER C. BROWN, ESQ.  
Nevada Bar No. 5887  
DARLENE M. CARTIER, ESQ.  
Nevada Bar No. 8775  
BREMER WHYTE BROWN & O'MEARA LLP  
1160 N. TOWN CENTER DRIVE  
SUITE 250  
LAS VEGAS, NV 89144  
TELEPHONE: (702) 258-6665  
FACSIMILE: (702) 258-6662  
pbrown@bremerwhyte.com  
dcartier@bremerwhyte.com

Attorneys for Plaintiffs,  
LAURENT HALLIER; PANORAMA TOWERS I, LLC;  
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN  
CONSTRUCTION, INC.

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

LAURENT HALLIER, an individual;	)	Case No. A-16-744146-D
PANORAMA TOWERS I, LLC, a Nevada	)	Dept. No. XXI
limited liability company; PANORAMA	)	
TOWERS I MEZZ, LLC, a Nevada limited	)	<b>COMPLAINT</b>
liability company; and M.J. DEAN	)	
CONSTRUCTION, INC., a Nevada Corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
PANORAMA TOWERS CONDOMINIUM	)	
UNIT OWNERS' ASSOCIATION, a Nevada	)	
non-profit corporation,	)	
	)	
Defendant.	)	

COMES NOW Plaintiffs LAURENT HALLIER; PANORAMA TOWERS I, LLC;  
PANORAMA TOWERS I MEZZ LLC; and M.J. DEAN CONSTRUCTION, INC. (hereinafter  
collectively referred to as "Plaintiffs"), by and through their attorneys of record, the law firm of  
Bremer, Whyte, Brown & O'Meara LLP, and hereby bring their Complaint against Defendant  
PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION (hereinafter  
referred to as "Defendant"), and complain and allege as follows:

///



1 **PARTIES**

2 1. At all times relevant herein, Plaintiff LAURENT HALLIER, was an individual  
3 domiciled in Clark County, Nevada.

4 2. At all times relevant herein, Plaintiff PANORAMA TOWERS I, LLC, was a  
5 Nevada corporation duly licensed and authorized to conduct business in Clark County, Nevada.

6 3. At all times relevant herein, Plaintiff PANORAMA TOWERS I MEZZ, LLC, was a  
7 Nevada corporation duly licensed and authorized to conduct business in Clark County, Nevada.

8 4. At all times relevant herein, Plaintiff M.J. DEAN CONSTRUCTION, INC. was a  
9 Nevada corporation duly licensed and authorized to conduct business in Clark County, Nevada.

10 5. Upon information and belief, Plaintiffs allege that at all times relevant herein,  
11 Defendant PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, was  
12 incorporated as a Nevada non-profit Nevada corporation with its principal place of business in  
13 Clark County, Nevada.

14 **JURISDICTION AND VENUE**

15 6. This Court has jurisdiction in this matter, and venue is proper in that this Complaint  
16 involves claims for alleged construction defects and/or deficiencies at the Panorama Towers  
17 Condominiums, located at 4525 Dean Martin Drive (Tower I) and 4575 Dean Martin Drive, Las  
18 Vegas, Nevada, Clark County, Nevada (hereinafter "Subject Property").

19 **GENERAL ALLEGATIONS**

20 7. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 6,  
21 inclusive, as though fully set forth herein.

22 8. Defendant is an "Association" or "Unit-Owners' Association" as defined in NRS  
23 116.011.

24 9. On or about February 24, 2016, Defendant, through its counsel, served Plaintiffs  
25 with a "Notice to Contractor Pursuant to Nevada Revised Statutes, Section 40.645" (hereinafter  
26 "Chapter 40 Notice").

27 10. Defendant's Chapter 40 Notice alleges defects and resulting damages involving: (1)  
28 residential tower windows, (2) residential tower fire blocking; (3) mechanical room piping; and (4)

1 sewer piping.

2 11. Defendant's Chapter 40 Notice fails to comply with NRS 40.645(3)(b) and (c) in  
3 that it does not identify in specific detail, the alleged damages and the exact location of the damage(s)  
4 relating to the alleged residential tower windows, residential tower fire blocking defects or the  
5 alleged sewer piping defects.

6 12. Defendant's Chapter 40 Notice includes as an Exhibit, a report by Gregory Fehr,  
7 P.E. of Advanced Technology & Marketing Group ("ATMG"), dated November 17, 2011, in  
8 support of Defendant's mechanical room piping claims. The ATMG report states that ATMG  
9 observed alleged corrosion damage and alleged leaking connections in the mechanical rooms at the  
10 Subject Property on or about September 20, 2011. Thus, Defendant had knowledge of the alleged  
11 mechanical room piping defects more than 3½ years prior to the date it served Plaintiffs with  
12 Defendant's Chapter 40 Notice.

13 13. With respect to the alleged sewer piping defect allegation, Defendant's Chapter 40  
14 Notice states "This deficiency has been repaired. In addition to causing, damage, the defective  
15 installation presented an unreasonable risk of injury to a person or property resulting from the  
16 disbursement of unsanitary matter." Such alleged risk of injury does not and did not alleviate  
17 Defendant from its obligation to provide timely Chapter 40 Notice to Plaintiffs of the alleged  
18 defect, and to provide a Chapter 40 Notice prior to Defendant performing repairs of the alleged  
19 defect.

20 14. Defendant's Chapter 40 Notice also alleges Defendant (i.e. Claimant) is "still in the  
21 process of investigating the alleged conditions at the Development, and accordingly, this  
22 preliminary list of defects is not intended as a complete statement of all the defects in or at the  
23 Development. Claimant reserves the right to amend or update this list in the event that new defects  
24 and/or resulting damages are discovered during the course of investigation."

25 15. On March 24, 2016, pursuant to NRS 40.646, Plaintiffs inspected the defects alleged  
26 in Defendant's Chapter 40 Notice.

27 16. During Plaintiffs' March 24, 2016, inspection, Plaintiffs observed that the majority  
28 of the allegedly defective (i.e. corroded) mechanical room piping had been removed and replaced

1 prior to Plaintiffs' inspection. Defendant did not provide notice to Plaintiffs of the allegedly  
2 defective mechanical room piping prior to performing said repair work, including, but not limited  
3 to, a Chapter 40 Notice.

4 17. During Plaintiffs' March 24, 2016, inspection, Plaintiffs also became aware that the  
5 allegedly defective sewer piping had also been repaired prior to Plaintiffs' inspection. Defendant  
6 did not provide notice to Plaintiffs of the allegedly defective sewer piping prior to performing this  
7 repair work, including, but not limited to, a Chapter 40 Notice.

8 18. On March 29, 2016, Plaintiffs sent correspondence to Defendant's counsel  
9 requesting information and documents relating to (1) the sewer line defect allegations identified in  
10 Defendant's Chapter 40 Notice, including the date of occurrence and date of repair of the alleged  
11 defects, and requesting the current location of any sewer line materials that were removed and  
12 replaced as part of Defendant's repair; and (2) the mechanical room piping defect allegations  
13 identified in Defendant's Chapter 40 Notice, including the date when the allegedly corroded pipes  
14 were replaced, the date the repair work was performed, the identity of the contractor(s) who  
15 performed the repair work, and also requesting Defendant confirm whether and where the removed  
16 mechanical room pipe materials have been stored for safekeeping. Defendant did not respond to  
17 Plaintiffs' March 29, 2016 correspondence.

18 19. On April 29, 2016, Plaintiffs sent follow up correspondence to Defendant's counsel  
19 requesting Defendant promptly provide information and documents relating to (1) the alleged  
20 sewer line defect allegations identified in Defendant's Chapter 40 Notice, including the date of  
21 occurrence and date of repair of the alleged defects, and requesting the current location of any  
22 sewer line materials that were removed and replaced as part of Defendant's repair; and (2) the  
23 alleged mechanical room piping defects identified in Defendant's Chapter 40 Notice, including the  
24 date when the allegedly corroded pipes were replaced, the date the repair work was performed, the  
25 identity of the contractor(s) who performed the repair work, and also requesting Defendant confirm  
26 whether and where the removed mechanical room pipe materials have been stored for safekeeping.  
27 Plaintiff requested a response from Defendant no later than May 3, 2016. Defendant did not  
28 respond to Plaintiffs' April 29, 2016 correspondence.



20. On May 24, 2016, Plaintiffs served Defendant with Plaintiffs' Response to Defendant's Chapter 40 Notice.

21. On September 26, 2016, Plaintiffs and Defendant participated in a pre-litigation mediation regarding the claims and defects included in Defendant's Chapter 40 Notice, as required by NRS 40.680, but were unable to reach a resolution. As a result, the mandatory pre-litigation process has concluded.

22. On February 24, 2015, the Nevada Legislature enacted the Homeowner Protection Act of 2015 (aka Assembly Bill 125) (hereinafter referred to as "AB 125"). AB 125, Section 17, amended NRS 11.202(1), abolishing the previously applicable statutes of limitation and shortening the statute of repose for all claims to six (6) years from the date of substantial completion of an improvement.

23. Pursuant to AB 125, Section 21(5) and Section 22, the six-year statute of repose applies retroactively to actions in which substantial completion of the improvement to real property occurred before February 6, 2015.

24. Upon information and belief, the Clark County Building Department issued a Certificate of Occupancy for Tower I (4525 Dean Martin Drive) on January 16, 2008.

25. Upon information and belief, the Clark County Building Department issued a Certificate of Occupancy for Tower II (4572 Dean Martin Drive) on March 31, 2008.

26. Plaintiffs contend the date of substantial completion of Tower I (4525 Dean Martin Drive) (as provided in NRS 11.2055(1)) is on or about January 16, 2008.

27. Plaintiffs contend the date of substantial completion of Tower II (4572 Dean Martin Drive) (as provided in NRS 11.2055(1)) is on or about March 31, 2008.

28. Plaintiffs are informed and believe, and thereon allege, that the six-year statute of repose applies retroactively to Defendant's Chapter 40 Notice and the defects alleged therein, because substantial completion of the Subject Property occurred prior to enactment of AB 125. Therefore, Plaintiffs are informed and believe, and thereon allege, that Defendant's claims in its Chapter 40 Notice are all time barred by AB 125/NRS 11.202(1).

29. The one-year "grace period" contained in AB 125, Section 21(6)(a) allows a

1 construction defect claim to proceed under the pre-AB 125 statutes of repose (i.e. eight-year, ten-  
2 year, or unlimited statutes of repose) only if the claim “accrued before the effective date of [the] act  
3 [February 24, 2015] and was commenced within 1 year of the effective date of [the] act [February  
4 24, 2016]”.

5 30. Plaintiffs are informed and believe, and thereon allege, that in order to be able to  
6 rely on AB 125, Section 21(6)(a)’s one-year “grace period,” Defendant was required to provide  
7 Chapter 40 Notice to Plaintiffs prior to the effective date of the act [February 24, 2015] and to  
8 commence any lawsuit with regard to any unresolved claims prior to the expiration of AB 125,  
9 Section 21(6)(a)’s one-year “grace period” [February 24, 2016].

10 31. Defendant did not mail its Chapter 40 Notice to Plaintiffs until February 24, 2016,  
11 almost one year after the effective date of AB 125 (i.e. February 24, 2015).

12 32. Defendant did not contend in its Chapter 40 Notice that the claims alleged in its  
13 Chapter 40 Notice “accrued before the effective date” of AB 125.

14 33. Defendant did not commence a lawsuit within AB 125, Section 21(6)(a)’s one-year  
15 “grace period” (i.e. by February 24, 2016).

16 34. Plaintiffs are informed and believe, and thereon allege, that Defendant’s claims in its  
17 Chapter 40 Notice are all time barred by AB 125/NRS 11.202(1).

18 35. Pursuant to NRS 40.615, as amended by AB 125, Section 6, a “Constructional  
19 Defect” must present an “unreasonable risk of injury to a person or property” or “proximately cause  
20 physical damage to the residence, an appurtenance or the real property to which the residents or  
21 appurtenance is affixed.”

22 36. Plaintiffs contend that Defendant’s Chapter 40 Notice failed to provide any evidence  
23 that any of the alleged defects involved an unreasonable risk of injury to a person or property or  
24 proximately cause physical damage to the Subject Property.

25 37. Pursuant to NRS 40.615, as amended by AB 125, Section 8, a claimant’s Chapter 40  
26 Notice must “identify in specific detail each defect, damage and injury to each residence or  
27 appurtenance that is the subject of the claim, including, without limitation, the exact location of  
28 each such defect, damage and injury...”

1           38.     Plaintiffs contend that Defendant's Chapter 40 Notice failed to identify in specific  
2 detail, each defect, damage and injury to the Subject Property, including, without limitation, the  
3 exact location of each such alleged defect, damage and injury.

4           39.     Pursuant to NRS 116.3102 (1)(d), as amended by AB 125, Section 20, "...The  
5 association may not institute, defend or intervene in litigation or in arbitration, mediation or  
6 administrative proceedings in its own name on behalf of itself of units' owners with respect to an  
7 action for constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3  
8 of the act unless the action pertains exclusively to common elements."

9           40.     Plaintiffs are informed and believe, and thereon allege, that the Declaration of  
10 Covenants, Conditions and Restrictions and Grant and Reservation of Easements for Panorama  
11 Towers ("CC&Rs") for the Subject Property, were recorded by the Clark County Recorder on or  
12 about November 7, 2006.

13          41.     Article 1 of the Subject Property's CC&Rs relates to Definitions. Section 1.39  
14 provides that "Common Elements shall mean all portions of the [Subject] Property other than the  
15 Units..."

16          42.     Article 4 of the Subject Property's CC&Rs relates to the Unit and Boundary  
17 Descriptions. Section 4.2 (e) governs "apertures" and provides "Where there are apertures in any  
18 boundary, including, but not limited to, windows, doors, bay windows and skylights, such  
19 boundaries shall be extended to include the windows, doors and other fixtures located in such  
20 apertures, including all frameworks window casings and weather stripping thereof, except that the  
21 exterior surfaces made of glass and other transparent materials ...shall not be included in the  
22 boundaries of the Unit and shall therefore be Common Elements."

23          43.     Article 6 of the Subject Property's CC&Rs relates to Maintenance. Section 6.4  
24 governs maintenance of "units and limited common elements" and provides "Each Owner shall  
25 maintain, repair, replace, finish and restore or cause to be so maintained, repaired, replaced and  
26 restored, at such Owner's sole expense all portions of such Owner's Unit..."

27          44.     Plaintiffs are informed and believe, and thereon allege, that Defendant's claims  
28 relating to the residential tower windows as alleged in the Chapter 40 Notice, fall within Article 4,



1 Section 4 (e) and Article 6, Section 6.4, of the Property's CC&Rs and are not within the "Common  
2 Elements" as defined in the CC&Rs. Therefore, Plaintiffs contend that Defendant lacks standing  
3 under AB 125 to bring claims relating to the residential tower windows.

4 45. On September 9, 2009, Defendant filed a Complaint for construction defects against  
5 Plaintiffs PANORAMA TOWERS I, LLC and PANORAMA TOWERS II, LLC, entitled  
6 Panorama Towers Condominium Unit Owners' Association v. Panorama Towers I, LLC, et al.  
7 (Eighth Judicial District Court, Department XXII, Case No. A-09-598902) (hereinafter referred to  
8 as "the Prior Litigation").

9 46. On January 17, 2011, Defendant filed an Amended Complaint in the Prior  
10 Litigation, naming Plaintiff M.J. DEAN CONSTRUCTION, INC. and others as additional  
11 defendants.

12 47. The parties in the Prior Litigation reached a settlement, and the terms of the  
13 settlement were set forth in writing in a Settlement Agreement and Release (hereinafter "Settlement  
14 Agreement").

15 48. The Settlement Agreement provides that "...the Agreement may be disclosed and  
16 shall be deemed admissible as may be necessary to enforce the terms hereof..."

17 49. Parties to the Settlement Agreement in the Prior Litigation include Plaintiffs  
18 PANORAMA TOWERS I, LLC, PANORAMA TOWERS II, LLC, and "all of their past, present  
19 and future managers, members, officers, directors, predecessors, successors-in-interest, and assigns  
20 and all other persons, firms or entities with whom any of the former have been, are now, or may  
21 hereinafter be affiliated," Plaintiff M.J. DEAN CONSTRUCTION, INC., and others.

22 50. Upon information and belief, the Settlement Agreement in the Prior Litigation was  
23 executed by Defendant on June 1, 2011, and approved as to form and content by Defendant's  
24 counsel on June 3, 2011.

25 51. The Settlement Agreement in the Prior Litigation provides an irrevocable and  
26 unconditional release by Defendant of Plaintiffs PANORAMA TOWERS I, LLC, PANORAMA  
27 TOWERS II, LLC, and M.J. DEAN CONSTRUCTION, INC., and "all of their respective heirs,  
28 executors, administrators, third party administrators, insurers, trustors, trustees, beneficiaries,

1 predecessors, successors, assigns, members, partners, partnerships, parents, subsidiaries, affiliates,  
2 and related entities and each of the foregoing respective officers, directors, stockholders,  
3 controlling persons, principals, agents, servants, employees, representatives, and all persons, firms  
4 and entities connective with them, including, without limitation, their insurers and sureties, who are  
5 or who may ever become liable to them as to any and all demands, liens, claims, defects,  
6 assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys [sic]  
7 fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and  
8 nature, at equity or otherwise, either now known with respect to the construction defect claims ever  
9 asserted in the SUBJECT ACTION or related to the alleged defect claims ever asserted in the  
10 SUBJECT ACTION...This release specifically does not extend to claims arising out of defects not  
11 presently known to the HOA.”

12         52.     Plaintiffs PANORAMA TOWERS I, LLC, M.J. DEAN CONSTRUCTION, INC.  
13 and/or their privies, Plaintiffs LAURENT HALLIER, PANORAMA TOWERS I MEZZ LLC, and  
14 Defendant PANORAMA TOWERS CONDOMINIUM UNIT OWNERS’ ASSOCIATION are the  
15 same in the instant matter as in the Prior Litigation. Therefore, Plaintiffs are informed and believe,  
16 and thereon allege, that claim preclusion applies to the defects alleged in Defendant’s Chapter 40  
17 Notice and prevents Defendants from bringing said claims against Plaintiffs in a subsequent action.

18         53.     The Settlement Agreement in the Prior Litigation provides that Plaintiffs (and  
19 others) “shall bear no responsibility whatsoever as to the re-design, repairs, remediation, corrective  
20 work, maintenance, and/or damage arising therefrom, or how the settlement funds shall be divided,  
21 distributed, or spent, or to remedy any of the claims released herein.”

22         54.     The Settlement Agreement in the Prior Litigation also provides that Defendant  
23 “covenants and agrees that it shall not bring any other claim, action, suit or proceeding” against  
24 Plaintiffs (and others) “regarding the matters settled, released and dismissed hereby.”

25         55.     Furthermore, the Settlement Agreement in the Prior Litigation also provides that if  
26 Defendant, “or any person or organization on its behalf, including an insurer, ever pursues  
27 litigation related to the PROJECT which seeks to impose liability for defects that were known to  
28 [Defendant]” at the time the Settlement Agreement was executed by Defendant, than “[Defendant]

1 will defend, indemnify, and hold harmless” Plaintiffs (and others) “and their insurers with respect  
2 to such litigation.”

3 56. On September 26, 2016, Plaintiffs’ counsel personally tendered Plaintiffs’ defense  
4 and indemnity pursuant to the express terms of the Settlement Agreement in the Prior Litigation, to  
5 Defendant’s counsel.

6 57. On January 19, 2012, the Court entered an Order based upon the stipulation of  
7 counsel and the parties, ordering all claims against Plaintiffs PANORAMA TOWERS I, LLC, M.J.  
8 DEAN CONSTRUCTION, INC. and others in the Prior Litigation, be dismissed with prejudice.

9 58. Notice of Entry of the Order dismissing the Prior Litigation against PANORAMA  
10 TOWERS I, LLC, M.J. DEAN CONSTRUCTION, INC. and others, with prejudice, was entered  
11 on January 23, 2012.

12 59. The dismissal with prejudice of Plaintiffs’ asserted claims and/or related to the  
13 asserted claims in the Prior Litigation operates as a final judgment (i.e. an adjudication on the  
14 merits) in the Prior Litigation, pursuant to NRCP 41(b). Thus, the final judgment in the Prior  
15 Litigation is valid. Therefore, Plaintiffs are informed and believe, and thereon allege, that claim  
16 preclusion applies to the defects alleged in Defendant’s Chapter 40 Notice and all grounds of  
17 recovery by Defendant against Plaintiffs related thereto.

18 60. Plaintiffs are informed and believe, and thereon allege, that the defects alleged by  
19 Defendant in Defendant’s Chapter 40 Notice were asserted in the Prior Litigation and/or are related  
20 to alleged defect claims asserted in the Prior Litigation, and were irrevocably released in the  
21 Settlement Agreement. Thus, the defects alleged in Defendant’s Chapter 40 Notice are based on  
22 the same claims or are part of the same claims brought against Plaintiffs in the Prior Litigation.  
23 Therefore, Plaintiffs are informed and believe, and thereon allege, that claim preclusion applies to  
24 the defects alleged in Defendant’s Chapter 40 Notice and prevents Defendants from bringing said  
25 claims against Plaintiffs in a subsequent action.

26 **FIRST CLAIM FOR RELIEF**

27 **(Declaratory Relief – Application of AB 125)**

28 61. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 60



1 inclusive, as though fully set forth herein.

2 62. Upon information and belief, Defendant intends to file a Complaint against  
3 Plaintiffs for the alleged construction defects identified in Defendant's Chapter 40 Notice.

4 63. Upon information and belief, Defendant will seek damages against Plaintiffs for  
5 Defendant's prior repair costs, the costs of future repairs, its expert fees and costs, attorney's fees  
6 and interest, as well as other damages, relating to the alleged construction defects identified in  
7 Defendant's Chapter 40 Notice.

8 64. A justiciable controversy now exists between Plaintiffs and Defendant as to their  
9 respective rights and liabilities relating to Defendant's Chapter 40 Notice and the defects alleged  
10 therein, including whether any or all of Defendant's claims are all time barred by AB 125/NRS  
11 11.202(1), and/or whether Defendant has standing to bring claims relating to the residential tower  
12 windows.

13 65. Plaintiffs' and Defendant's interests in the controversy are adverse. Plaintiffs  
14 contend Defendant may not recover damages against Plaintiffs relating to the claims in Defendant's  
15 Chapter 40 Notice. Upon information and belief, Defendant contends otherwise. Thus, Plaintiffs'  
16 and Defendant's interests are adverse to each other.

17 66. Plaintiffs assert a claim of a legally protectible right with respect to Defendant's  
18 Chapter 40 Notice and the construction defects alleged therein. Plaintiffs have a legally protectible  
19 interest with respect to whether a jury awards damages against them in favor or Defendant.

20 67. Plaintiffs and Defendant have completed the mandatory pre-litigation process for the  
21 construction defect claims alleged in Defendant's Chapter 40 Notice. As a result, the controversy  
22 is ripe for judicial determination.

23 68. All the rights and obligations of the parties hereto arose out of what is actually one  
24 transaction or one series of transactions, happenings or events, all of which can be settled and  
25 determined in a judgment in this one action.

26 69. Plaintiffs allege that an actual controversy exists between Plaintiffs and Defendant  
27 under the circumstances alleged, which Plaintiffs request the Court resolve. A declaration of  
28 rights, responsibilities and obligations of Plaintiffs and Defendant, and each of them, is essential to

1 determine their respective obligations in connection with Defendant's Chapter 40 Notice and the  
2 claims alleged therein, and Plaintiffs have no true and speedy remedy at law of any kind.

3 70. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown  
4 & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their  
5 reasonable attorneys' fees and costs incurred therein.

6 **SECOND CLAIM FOR RELIEF**

7 **(Declaratory Relief – Claim Preclusion)**

8 71. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 70,  
9 inclusive, as though fully set forth herein.

10 72. Upon information and belief, Defendant intends to file a Complaint against  
11 Plaintiffs for the alleged construction defects identified in Defendant's Chapter 40 Notice.

12 73. Upon information and belief, Defendant will seek damages against Plaintiffs for  
13 Defendant's prior repair costs, the costs of future repairs, its expert fees and costs, attorney's fees  
14 and interest, as well as other damages, relating to the alleged construction defects identified in  
15 Defendant's Chapter 40 Notice.

16 74. A justiciable controversy now exists between Plaintiffs and Defendant as to their  
17 respective rights and liabilities relating to the Settlement Agreement in the Prior Litigation and the  
18 defects alleged and released therein.

19 75. Plaintiffs' and Defendant's interests in the controversy are adverse. Plaintiffs  
20 contend Defendant may not recover damages against Plaintiffs relating to the alleged  
21 defects/claims released in the Settlement Agreement in the Prior Litigation. Upon information and  
22 belief, Defendant contends otherwise. Thus, Plaintiffs' and Defendant's interests are adverse to  
23 each other.

24 76. Plaintiffs assert a claim of a legally protectible right with respect to the Settlement  
25 Agreement in the Prior Litigation and the defects alleged and released therein. Plaintiffs have a  
26 legally protectible interest with respect to whether a jury awards damages against them in favor or  
27 Defendant.

28





1 without limitation, the exact location of the alleged defect, damage and injury, relating to the alleged  
2 mechanical room piping defects.

3 85. Defendant failed to comply with NRS 40.645(2)(b) and (c) in that Defendant's  
4 Chapter 40 Notice does not identify in specific detail the alleged defect, damage and injury, including  
5 without limitation, the exact location of the alleged defect, damage in injury, relating to the alleged  
6 sewer line defects.

7 86. Defendant failed to comply with NRS 40.645(1)(a) in that Defendant failed to  
8 provide a Chapter 40 Notice to Plaintiffs regarding the alleged residential tower windows defects  
9 prior to performing repairs, thereby denying Plaintiffs' statutory rights under NRS 40.6472.

10 87. Defendant failed to comply with NRS 40.645(1)(a) in that Defendant failed to  
11 provide a Chapter 40 Notice to Plaintiffs regarding the alleged mechanical room piping defects  
12 prior to performing repairs, thereby denying Plaintiffs' statutory rights under NRS 40.6472.

13 88. Defendant failed to comply with NRS 40.645(1)(a) in that Defendant failed to  
14 provide a Chapter 40 Notice to Plaintiffs regarding the alleged sewer piping defects prior to  
15 performing repairs, thereby denying Plaintiffs' statutory rights under NRS 40.6472.

16 89. As a result of Defendant's failure to comply with NRS 40.600 et seq., Plaintiffs  
17 have been denied their statutory rights under NRS 40.600 et seq.

18 90. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown  
19 & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their  
20 reasonable attorneys' fees and costs incurred therein.

21 **FOURTH CLAIM FOR RELIEF**

22 **(Suppression of Evidence/Spoliation)**

23 91. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 90,  
24 inclusive, as though fully set forth herein.

25 92. Plaintiffs are informed and believe, and thereon allege that Defendant and/or its  
26 agents have intentionally suppressed and/or destroyed evidence relating to Defendant's claims  
27 against Plaintiffs and/or Plaintiffs' defenses to such claims with the intent to harm Plaintiffs, or  
28 Defendants negligently lost or destroyed such evidence.

93. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their reasonable attorneys' fees and costs incurred therein.

### **FIFTH CLAIM FOR RELIEF**

**(Breach of Contract)**

94. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 93, inclusive, as though fully set forth herein.

95. Plaintiffs and Defendant entered into a Settlement Agreement in the Prior Litigation; whereby: (1) in full and complete settlement of the claims asserted in the Prior Litigation, Plaintiffs paid a monetary settlement to Defendant, the amount of which is confidential; (2) Defendant expressly agreed it would not bring any other claim, action, suit or proceeding against Plaintiffs (and others) regarding the matters settled, released and dismissed in the Prior Litigation; and (3) Defendant agreed to defend and indemnify Plaintiffs (and others) and to hold Plaintiffs (and others) harmless with respect to any litigation relating to defects that were known to Defendant at the time Defendant executed the Settlement Agreement.

96. Plaintiffs have performed all the terms, conditions, covenants and promises required of Plaintiffs in the Settlement Agreement. Defendant failed and refused to perform the terms, conditions, covenants and promises required of Defendant in the Settlement Agreement, despite Plaintiffs' demand to do so, thereby materially breaching the terms of the settlement and the Settlement Agreement.

97. As a proximate cause of Defendant's breaches of the Settlement Agreement, Plaintiffs have and continue to suffer damages, which include, without limitation, attorney's fees, costs, statutory interest and costs, expended in pursuant of this Complaint.

98. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their reasonable attorneys' fees and costs incurred therein.

///

///

1 **SIXTH CLAIM FOR RELIEF**

2 **(Declaratory Relief - Duty to Defend)**

3 99. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 98,  
4 inclusive, as though fully set forth herein.

5 100. Pursuant to the Settlement Agreement in the Prior Litigation, Plaintiffs contend  
6 Defendant has a duty to defend Plaintiffs (and others) with respect to any subsequent litigation  
7 relating to defects that were known to Defendant at the time Defendant executed the Settlement  
8 Agreement, and upon information and belief, Defendant contends otherwise.

9 101. A justiciable controversy now exists between Plaintiffs and Defendant as to their  
10 respective rights and obligations in the Settlement Agreement in the Prior Litigation in that  
11 Plaintiffs contend that Defendant has a duty to defend Plaintiffs (and others) involving the alleged  
12 defects/claims released in the Settlement Agreement in the Prior Litigation, including, but not  
13 limited to, Defendant's alleged residential tower windows, and residential tower fire blocking  
14 defects, which Plaintiffs assert were known to Defendant at the time Defendant executed the  
15 Settlement Agreement or are reasonably related to claims that were known to Defendant at the time  
16 Defendant executed the Settlement Agreement. Upon information and belief, Defendant contends  
17 otherwise. Thus, Plaintiffs' and Defendant's interests in the controversy are adverse.

18 102. Plaintiffs assert a claim of a legally protectible right with respect to the Settlement  
19 Agreement in the Prior Litigation and the defects alleged and settled therein. Plaintiffs have a  
20 legally protectible interest with respect to whether a jury awards damages against them in favor or  
21 Defendant.

22 103. Plaintiffs and Defendant have completed the mandatory pre-litigation process for the  
23 construction defect claims alleged in Defendant's Chapter 40 Notice. As a result, the controversy  
24 is ripe for judicial determination.

25 104. All the rights and obligations of the parties hereto arose out of what is actually one  
26 transaction or one series of transactions, happenings or events, all of which can be settled and  
27 determined in a judgment in this one action.

28 105. Plaintiffs allege that an actual controversy exists between Plaintiffs and Defendant



1 under the circumstances alleged, which Plaintiffs request the Court resolve. A declaration of  
2 rights, responsibilities and obligations of Plaintiffs and Defendant, and each of them, is essential to  
3 determine their respective obligations in connection with the Settlement Agreement in the Prior  
4 Litigation, and Plaintiffs have no true and speedy remedy at law of any kind.

5 106. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown  
6 & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their  
7 reasonable attorneys' fees and costs incurred therein.

8 **SEVENTH CLAIM FOR RELIEF**

9 **(Declaratory Relief - Duty to Indemnify)**

10 107. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 106,  
11 inclusive, as though fully set forth herein.

12 108. Pursuant to the Settlement Agreement in the Prior Litigation, Plaintiffs contend  
13 Defendant has a duty indemnify Plaintiffs and to hold Plaintiffs (and others) harmless with respect  
14 to any subsequent litigation relating to defects that were known to Defendant at the time Defendant  
15 executed the Settlement Agreement, and upon information and belief, Defendant contends  
16 otherwise.

17 109. A justiciable controversy now exists between Plaintiffs and Defendant as to their  
18 respective rights and obligations in the Settlement Agreement in the Prior Litigation in that  
19 Plaintiffs contend that Defendant has a duty to defend Plaintiffs (and others) involving the alleged  
20 defects/claims released in the Settlement Agreement in the Prior Litigation, including, but not  
21 limited to, Defendant's alleged residential tower windows, and residential tower fire blocking  
22 defects, which Plaintiffs assert were known to Defendant at the time Defendant executed the  
23 Settlement Agreement or are reasonably related to claims that were known to Defendant at the time  
24 Defendant executed the Settlement Agreement. Upon information and belief, Defendant contends  
25 otherwise. Thus, Plaintiffs' and Defendant's interests in the controversy are adverse.

26 110. Plaintiffs assert a claim of a legally protectible right with respect to the Settlement  
27 Agreement in the Prior Litigation and the defects alleged and settled therein. Plaintiffs have a  
28

1 legally protectible interest with respect to whether a jury awards damages against them in favor or  
2 Defendant.

3 111. Plaintiffs and Defendant have completed the mandatory pre-litigation process for the  
4 construction defect claims alleged in Defendant's Chapter 40 Notice. As a result, the controversy  
5 is ripe for judicial determination.

6 112. All the rights and obligations of the parties hereto arose out of what is actually one  
7 transaction or one series of transactions, happenings or events, all of which can be settled and  
8 determined in a judgment in this one action.

9 113. Plaintiffs allege that an actual controversy exists between Plaintiffs and Defendant  
10 under the circumstances alleged, which Plaintiffs request the Court resolve. A declaration of  
11 rights, responsibilities and obligations of Plaintiffs and Defendant, and each of them, is essential to  
12 determine their respective obligations in connection with the Settlement Agreement in the Prior  
13 Litigation, and Plaintiffs have no true and speedy remedy at law of any kind.

14 114. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown  
15 & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their  
16 reasonable attorneys' fees and costs incurred therein.

17 **WHEREFORE**, Plaintiffs pray for judgment against Defendant, as follows:

- 18 1. For a declaration of rights and obligations as between Plaintiffs and Defendant  
19 pursuant to NRS 30.010;  
20 2. For general and special damages in excess of \$10,000.00;  
21 3. For reasonable attorney's fees, costs, expert costs and expenses, pursuant to  
22 statutory law, common law, and contract law;

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1           4.     For prejudgment interest; and  
2           5.     For such other and further relief as this Court may deem just, equitable and proper.

3 Dated: September 28, 2016

BREMER WHYTE BROWN & O'MEARA LLP

4

5

By: 

6

Peter C. Brown, Esq.  
Nevada State Bar No. 5887  
Darlene M. Cartier, Esq.  
Nevada State Bar No. 8775

7

Attorneys for Plaintiffs,  
LAURENT HALLIER; PANORAMA  
TOWERS I, LLC; PANORAMA  
TOWERS I MEZZ, LLC; and M.J. DEAN  
CONSTRUCTION, INC.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



1 PETER C. BROWN, ESQ.  
Nevada Bar No. 5887  
2 DARLENE M. CARTIER, ESQ.  
Nevada Bar No. 8775  
3 BREMER WHYTE BROWN & O'MEARA LLP  
1160 N. TOWN CENTER DRIVE  
4 SUITE 250  
LAS VEGAS, NV 89144  
5 TELEPHONE: (702) 258-6665  
FACSIMILE: (702) 258-6662  
6 pbrown@bremerwhyte.com  
dcartier@bremerwhyte.com  
7

Attorneys for Plaintiffs,  
8 LAURENT HALLIER; PANORAMA TOWERS I, LLC;  
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN  
9 CONSTRUCTION, INC.

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**  
12

13 LAURENT HALLIER, an individual;	) Case No.
PANORAMA TOWERS I, LLC, a Nevada	) Dept. No.
14 limited liability company; PANORAMA	)
TOWERS I MEZZ, LLC, a Nevada limited	) <b>INITIAL APPEARANCE FEE</b>
15 liability company; and M.J. DEAN	) <b>DISCLOSURE</b>
CONSTRUCTION, INC., a Nevada Corporation,	)
16	)
Plaintiffs,	)
17	)
vs.	)
18	)
PANORAMA TOWERS CONDOMINIUM	)
19 UNIT OWNERS' ASSOCIATION, a Nevada	)
non-profit corporation,	)
20	)
Defendant.	)
21	)

22 Pursuant to N.R.S. Chapter 19, as amended by Senate Bill 106, filing fees are submitted for  
23 the party appearing in the above-entitled action as indicated below:

24 CONSTRUCTION DEFECT FILING FEE:	\$520.00
25 LAURENT HALLIER:	\$30.00
26 PANORAMA TOWERS I, LLC:	\$30.00
27 PANORAMA TOWERS I MEZZ, LLC:	\$30.00

28 ///

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

M.J. DEAN CONSTRUCTION, INC.:

\$30.00

**TOTAL REMITTED:**

**\$640.00**

Dated: September 28, 2016

BREMER WHYTE BROWN & O'MEARA LLP

By: 

Peter C. Brown, Esq.

Nevada State Bar No. 5887

Darlene M. Cartier, Esq.

Nevada State Bar No. 8775

Attorneys for Plaintiffs,

LAURENT HALLIER; PANORAMA

TOWERS I, LLC; PANORAMA

TOWERS I MEZZ, LLC; and M.J. DEAN

CONSTRUCTION, INC.

  
CLERK OF THE COURT

**MDSM**  
Francis I. Lynch, Esq. (Nevada Bar No. 4515)  
Charles "Dee" Hopper, Esq. (Nevada Bar No. 6346)  
LYNCH HOPPER, LLP  
1210 S. Valley View Blvd., Suite 208  
Las Vegas, Nevada 89102  
Telephone: (702) 868-1115  
Facsimile: (702) 868-1114  
*Attorneys for Defendant Panorama Towers  
Unit Owners Association*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual;  
PANORAMA TOWERS I, LLC, a Nevada  
limited liability company; PANORAMA  
TOWERS I MEZZ, LLC, a Nevada limited  
liability company and M.J. DEAN  
CONSTRUCTION, INC., a Nevada Corporation,

Plaintiffs,

vs.

PANORAMA TOWERS CONDOMINIUM  
UNIT OWNERS' ASSOCIATION, a Nevada  
non-profit corporation,

Defendant.

CASE NO.: A-16-744146-D

DEPT. NO.: XXII

**MOTION TO DISMISS COMPLAINT**

PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION

(Panorama), by and through its counsel, Lynch Hopper, LLP, hereby files this Motion to Dismiss, and respectfully requests that this honorable Court enter an Order dismissing, with prejudice, the complaint filed by plaintiffs (collectively, Hallier) pursuant to NRCP 12(b)(5).

///

///

///

///

///

1 This motion is based on the pleadings on file, the following Memorandum of Points and  
2 Authorities and any argument that the Court may choose to entertain.

3 Dated: December 7, 2016

LYNCH HOPPER, LLP

4  
5 By: 

Francis I. Lynch, Esq.

Nevada Bar No. 4515

Charles "Dee" Hopper, Esq.

Nevada Bar No. 6346

1210 S. Valley View Blvd., Suite 208

Las Vegas, Nevada 89102

6  
7  
8  
9  
10  
11 **NOTICE OF MOTION**

12 TO: LAURENT HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I  
13 MEZZ, LLC, and M.J. DEAN CONSTRUCTION, INC.

14 TO: PETER C. BROWN, ESQ. and DARLENE M. CARTER, ESQ, attorneys for the  
15 Plaintiffs.

16 PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for  
17 hearing in Department XXII of the above-entitled Court on the 10 day of JANUARY <sup>2017</sup>  
18 at 10:30A 2016  
19 at 10:30A a.m..

20 Dated: December 7, 2016

LYNCH HOPPER, LLP

21  
22 By: 

Francis I. Lynch, Esq.

Nevada Bar No. 4515

Charles "Dee" Hopper, Esq.

Nevada Bar No. 6346

1210 S. Valley View Blvd., Suite 208

Las Vegas, Nevada 89102



# MEMORANDUM OF POINTS AND AUTHORITIES

## INTRODUCTION

The complaint filed by Hallier reflects a novel effort to preempt potential future construction defect litigation by suing the potential plaintiff property owner before the property owner files suit of its own. In this instance, Panorama served Hallier with a Chapter 40 notice, the parties agreed to mediate, a mediation conference was unsuccessful, and Hallier then filed the present complaint against Panorama two days after the mediation conference.

If the court allows this action to proceed, it will open the door to a new wave of litigation in Nevada in which builders file preemptive suits against property owners who have served them with Chapter 40 notices.

However, that door should remain closed because Hallier's complaint does not, and cannot state a claim upon which relief can be granted. Hallier's complaint asserts two categories of claims, neither of which is sustainable: (i) those seeking declaratory relief, and (ii) those seeking affirmative relief for alleged "damages."

The declaratory relief claims are based on Hallier's "information and belief" that Panorama may file a construction defect suit against it. However, there is no "justiciable controversy" ripe for determination where – as held by the Nevada Supreme Court – "the existence of a controversy is dependent upon the happening of future events." Unless this Court is prepared to create new law allowing a complainant to obtain judicial review of potential future events, all of the declaratory relief claims must be denied.

Similarly, Hallier wants to create new law allowing a builder to obtain affirmative relief from a property owner for "damages" arising from the service of a Chapter 40 notice by the property owner. Again, were Hallier allowed to proceed on its damage claims, we can anticipate that every builder served with a Chapter 40 notice will sue the property owner for damages. However, that should not happen because Hallier's complaint fails to identify any actionable conduct by Panorama, or any recoverable damage resulting from Panorama's conduct; *i.e.*, Hallier does not, and cannot plead a cognizable cause of action.

///

## BACKGROUND

The only background facts needed to resolve this motion are the following facts alleged in the complaint.

Panorama filed a construction defect suit against Hallier on September 9, 2009 (§45). That suit was settled pursuant to a settlement agreement signed in June 2011 (§50, the Settlement Agreement). Unlike most settlement agreements, which include a release of any and all claims, *whether known or unknown*, the release in this Settlement Agreement was for *known claims only*; it states in relevant part, “This release specifically does not extend to claims arising out of defects not presently known to the HOA” (§51).

On February 24, 2016, Panorama served Hallier with a Chapter 40 notice (§9). The notice asserted defects discovered by Panorama since the prior suit settled, involving tower windows, fire blocking, mechanical room piping and sewer piping (§10).

On September 26, 2016, the parties participated in a pre-litigation mediation regarding the defects alleged in the Chapter 40 notice, as required by NRS 40.060; however, the parties were unable to reach resolution, and the mandatory pre-litigation process was concluded (§21).

On September 28, 2016, Hallier filed the instant complaint.

## ARGUMENT

### A. MOTION TO DISMISS STANDARD

A defendant is entitled to dismissal when a plaintiff fails “to state a claim upon which relief can be granted.” NRCP 12(b)(5). A plaintiff fails to state a claim upon which relief can be granted if it appears beyond doubt that the claimant would be able to prove no set of facts that would entitle him to relief. *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670, 672 (2008); *Morris v. Bank of America*, 110 Nev. 1274, 3227 (1994).

Although Nevada is a notice-pleading jurisdiction, at minimum a complaint “must set forth sufficient facts to establish all necessary elements of a claim for relief ... so that the adverse party has adequate notice of the nature of the claim and relief sought.” *See Hay v. Hay*, 100 Nev. 196, 198 (1984); *Ravera v. City of Reno*, 100 Nev. 68, 70 (1984). In considering the motion, the court must accept all of the non-moving party’s factual allegations as true and construe them in its favor.

1 See *Buzz Stew*, 181 P.3d at 672; *Morris*, 110 Nev. at 1276. However, “the allegations must be  
2 legally sufficient to constitute the elements of a claim asserted”. *Sanchez v. Wal-Mart Stores, Inc.*,  
3 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009).

4 Additionally, it is well established that the court is “not bound to accept as true a legal  
5 conclusion couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932,  
6 2944 (1986); see also *Baily v. Gates*, 52 Nev. 432, 437, 290 P.411, 412 (1930) (“Good pleading  
7 requires that . . . the facts relating to the matter be averred, leaving the court to draw the legal  
8 conclusion . . .”).

9 **B. DECLARATORY RELIEF – HALLIER’S CLAIMS FOR DECLARATORY RELIEF**  
10 **IMPROPERLY SEEK THE COURT’S JUDICIAL DETERMINATION OF A FUTURE**  
11 **HYPOTHETICAL EVENT**

12 **1. Hypothetical future events are not justiciable**

13 Hallier’s First, Second, Sixth and Seventh Claims for Relief each seek “[a] declaration of  
14 rights, responsibilities and obligations of Plaintiffs and Defendant” (¶¶ 69, 79, 105, 113).

15 In order to state a legally sufficient claim for declaratory relief, a plaintiff must plead facts  
16 and conditions demonstrating that “(1) a justiciable controversy exists between persons with  
17 adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the  
18 controversy, and (3) the issue is ripe for judicial determination.” *County of Clark, ex rel. Univ.*  
19 *Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998), citing *Knittle v. Progressive*  
20 *Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996); *Kress v. Corey*, 65 Nev. 1, 189 P.2d  
21 at 364.

22 And, significantly, a controversy is not justiciable if it’s existence is dependent upon  
23 hypothetical future occurrences. The Nevada Supreme Court, in *Cox v. Glenbrook Co.*, 78 Nev.  
24 254, 267–68, 371 P.2d 647, 655–56 (1962), made clear that:

25 [F]actual circumstances which may arise in the future cannot be fairly  
26 determined now. As to this phase of the case we are asked to make a  
27 hypothetical adjudication, where there is presently no justiciable  
28 controversy, and where the existence of a controversy is dependent upon  
the happening of future events. [Citation omitted]. A declaratory judgment  
should deal with a present, ascertained or ascertainable state of facts....

1           “When the rights of the plaintiff are contingent upon the happening of some event which  
2 cannot be forecast and which may never take place, a court cannot provide declaratory relief.”  
3 *Knittle v. Progressive Cas. Ins. Co.*, 112 Nev. 8, 908 P.2d 725-726 (1996), citing *Farmers Ins.*  
4 *Exchange v. District Court*, 862 P2d 944 (Colo. 1993). “A primary focus...[is]...the degree to  
5 which the harm alleged by the party seeking review is sufficiently concrete, rather than remote or  
6 hypothetical, to yield a justiciable controversy. Alleged harm that is speculative or hypothetical is  
7 insufficient; an existing controversy must be present.” *Herbst v. Secretary of State*, 122 Nev. Adv.  
8 Op. 61, 141 P.3d 1224, 1231 (2006).

9           Here, Hallier’s entire complaint is based on a hypothetical future event – that Panorama  
10 may in the future file a construction defect suit against Hallier. Hallier alleges, “[u]pon information  
11 and belief, Defendant intends to file a Complaint against Plaintiffs for the alleged construction  
12 defects identified in Defendant’s Chapter 40 Notice” (§§ 62, 72).

13           All of Hallier’s declaratory relief claims are based on this hypothetical future suit, and are  
14 therefore premature. Panorama will address each of these claims separately.

15           **2. First claim – application of AB 125**

16           This claim is based on Hallier’s “information and belief” that Panorama will file a Chapter  
17 40 suit against it (§62), and will seek damages for repairs (§63). There is a “justiciable  
18 controversy,” according to Hallier, because this future suit would be time barred by AB 125/NRS  
19 11.202(1) (§64).

20           However, there is no way to know whether the claims in this future suit are or may be time  
21 barred unless and until the future suit is actually filed and one can review the allegations in the  
22 complaint to see what claims or damages are alleged, and whether they may be late.

23           There is a time tested remedy for one in Hallier’s position, which is not to file a declaratory  
24 relief suit, but to wait until the hypothetical future suit is filed and then test the statute of limitations  
25 by motion for summary judgment. Meanwhile, there is no current justiciable controversy as to  
26 whether the hypothetical claims alleged in Panorama’s hypothetical future suit are time barred.

27       ///

28       ///



1           **3.       Second claim – claim preclusion**

2           This claim is again based on Hallier's "information and belief" that Panorama will file a  
3 Chapter 40 suit against it (§72), and will seek damages for repairs (§73). There is a "justiciable  
4 controversy," according to Hallier, pertaining "to their respective rights and liabilities relating to  
5 the Settlement Agreement in the Prior Litigation and the defects alleged and released therein"  
6 (§74).

7           Presumably, Hallier wants the Court to determine now whether the claims Panorama may  
8 allege in a future suit are barred by the release in the Settlement Agreement, in which Panorama  
9 released those claims "presently known to the HOA" (§51).

10          Again, there is no way to know whether the claims in this future suit are or may be  
11 precluded by the Settlement Agreement unless and until the future suit is actually filed and one  
12 can review the allegations in the complaint to see what claims or damages are alleged, and whether  
13 they were "presently known to the HOA." There is no current justiciable controversy as to whether  
14 the hypothetical claims alleged in Panorama's hypothetical future suit are barred by the Settlement  
15 Agreement.

16           **4.       Sixth and seventh claims – duty to defend and indemnify**

17          These claims are premised on an alleged duty in the Settlement Agreement requiring  
18 Panorama to *defend and indemnify* Hallier in "any subsequent litigation relating to defects that  
19 were known to Defendant" at the time of the Settlement Agreement (§§100, 108). Hallier asserts,  
20 again based on "information and belief," that Panorama disputes this alleged duty (*id.*).

21          Again, these claims are based on a future event, the "subsequent litigation" that has yet to  
22 be filed. There can be no duty to defend or indemnify a suit that has not yet been filed, nor can  
23 there be a current justiciable controversy regarding the duty to defend or indemnify such a non-  
24 existent suit.

25          Notably, the Settlement Agreement expressly contemplates future suits by Panorama  
26 against Hallier, as reflected by the release in the Settlement Agreement, which is limited to  
27 "known" claims (§51). The fact that the parties recognized the potential for future litigation  
28 pertaining to unknown defects is entirely inconsistent with the notion proposed by Hallier that

Panorama would have some obligation to defend and indemnify Hallier in connection with such a future suit.<sup>1</sup>

## 5. Conclusion

Again, an action seeking declarations of the rights and obligations of the parties based upon factual circumstances that do not yet exist is premature and not yet ripe for judicial intervention. *Cox v. Glenbrook Co.*, 78 Nev. 254, 371 P.2d 647 (1962). Because Hallier's claims for declaratory relief are based on a yet-to-be filed future suit by Panorama against Hallier, they should be dismissed.

## C. AFFIRMATIVE RELIEF – HALLIER'S CLAIMS FOR AFFIRMATIVE RELIEF ALL FAIL BECAUSE HALLIER HAS FAILED TO ALLEGE ANY (1) ACTIONABLE CONDUCT BY PANORAMA, OR (2) ANY RESULTING DAMAGE

### 1. Introduction

It is elemental that one asserting a cause of action for affirmative relief must assert a cognizable cause of action – *i.e.*, actionable conduct by the defendant and damages resulting from the defendant's conduct. Here, Hallier has asserted three claims for affirmative relief, none of which are actionable.

### 2. Third claim – failure to comply with NRS 40.600 et seq.

Hallier alleges that Panorama's Chapter 40 notice failed to comply with the requirements contained in NRS 40.645 (§§ 82, 83, 84, 85), and that it has been denied its "statutory rights under NRS 40.6472" (§§ 86, 87, 88), requiring it "to retain the services of Bremer, Whyte, Brown & O'Meara LLP to bring this action" (§ 90).

However, Chapter 40 does not provide a right of action for defective notice. Instead, Chapter 40 offers recourse to a party if "*a claimant commences an action*" after failing to comply with noticing requirements. (NRS 40.647(2)(a) and (b), italics added.) And, again, Panorama has not commenced an action subsequent to its Chapter 40 notice. Filing a Chapter 40 notice is not

---

<sup>1</sup> In fact, the indemnity provision in the Settlement Agreement is typical of the indemnity provisions inserted in settlement agreements involving construction defect suits brought by HOAs. The HOA will typically agree to indemnify the developer for claims by third parties, such as homeowners or the HOA's insurer, not claims brought by the HOA itself. The whole concept of indemnity is that the indemnitor has agreed to protect the indemnitee from claims by third parties not claims brought by the indemnitor.

1 actionable, even if the notice is defective. And, because Hallier has a remedy for any defective  
2 notice if and when Panorama files suit, it was not required “to retain the services of Bremer, Whyte,  
3 Brown & O’Meara LLP to bring this action” – and has therefore sustained no damage other than  
4 self-inflicted damage.<sup>2</sup>

5 According to Hallier, every builder who is served with a Chapter 40 notice, alleged to be  
6 defective, has an immediate right of action against the property owner upon the conclusion of the  
7 Chapter 40 proceeding. However, serving a defective Chapter 40 notice is not actionable under  
8 Nevada law, and Hallier has alleged no damage resulting from the allegedly defective notice.

9 **3. Fourth claim – suppression of evidence/spoliation**

10 The Nevada Supreme Court has “decline[d] to recognize [that] an independent tort exists  
11 for spoliation of evidence regardless of whether the alleged spoliation is committed by a first or  
12 third party”. *Timber Tech Engineered Bldg. Products v. The Home Ins. Co.*, 118 Nev. 630, 55 P.3d  
13 952 (2002). Moreover, Hallier fails to articulate a cognizable negligence claim for spoliation. Such  
14 a claim would require the allegation the Panorama owed a duty to Hallier to preserve evidence. *Id.*  
15 In the instant action, neither the allegation nor the duty exists.

16 Hallier’s allegations regarding spoliation consist, in their entirety, of the following:

17 92. Plaintiffs are informed and believe, and thereon allege that Defendant  
18 and/or its agents have intentionally suppressed and/or destroyed evidence  
19 relating to Defendant’s *claims* against Plaintiffs and/or Plaintiffs’ *defenses*  
20 *to such claims* with the intent to harm Plaintiffs, or Defendants negligently  
lost or destroyed such evidence. [Italics added.]

21 Having alleged that the prior Chapter 40 proceeding has been concluded (§21), and having  
22 failed to allege that Panorama has since filed suit against Hallier, there are no pending “claims” by  
23 Panorama against Hallier in which the allegedly destroyed evidence could be used as a defense.  
24 Accordingly, Hallier has failed to allege any damage resulting from the alleged spoliation, for  
25 which no independent tort claim exists; nor have they alleged the elements of a negligence claim  
26 for spoliation, for which no duty to preserve presently exists.

27 <sup>2</sup> The fact that Hallier retained attorneys in the Chapter 40 pre-litigation proceeding was not because the  
28 notice was defective, but because the notice was served; Hallier would have retained attorneys to respond  
to the Chapter 40 notice whether the notice was defective or not.

1           **4. Fifth claim – breach of contract**

2           To state a legally sufficient claim for breach of contract, “[u]nder Nevada state law, the  
3 plaintiff ... must allege (1) the existence of a valid contract; (2) a breach by the defendant; and (3)  
4 damage as a result of the breach.” *Saini v. Int’l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev.  
5 2006).

6           Here, Hallier’s breach of contract claim is premised on two alleged promises made by  
7 Panorama in the Settlement Agreement: (i) “that it would not bring any other claim, action, suit or  
8 proceeding against [Hallier] ... regarding the matters settled, released and dismissed in the Prior  
9 Litigation”; and (ii) to defend and indemnify Hallier “with respect to any litigation related to  
10 defects that were known to [Panorama]” at the time of the Settlement Agreement (§95).

11           As to the first of these promises, Hallier neglects to identify either (a) which matters were  
12 settled, released and dismissed in the Prior Litigation, or (b) which settled, released and dismissed  
13 matter Panorama has brought a claim, action, suit or proceeding upon. Hallier is unable to set forth  
14 sufficient facts upon which to allege a breach of this promise because, in fact, no such facts  
15 presently exist.

16           Moreover, while Hallier neglects to plead the language in the Settlement Agreement that  
17 allegedly comprises this promise, it does plead language from the agreement that negates this  
18 alleged promise. That is, Hallier pleads the language of the release in which Panorama only agreed  
19 to release “known” claims (§51), thus demonstrating that the Settlement Agreement expressly  
20 contemplated that Panorama would bring a future “claim, action, suit or proceeding against”  
21 Hallier.

22           As to the second alleged promise, that Panorama would indemnify Hallier “with respect to  
23 any litigation,” Hallier has not alleged that the promise was breached. There is no allegation of  
24 any “litigation” that has been filed, or that Panorama has refused to defend or indemnify Hallier in  
25 any such “litigation.”

26           And, in either case, Hallier has not alleged any damage resulting from the alleged breach  
27 of these alleged promises.

28       ///



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

[illegible]

## 9

0  
1  
2  
3

5

5

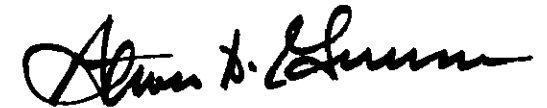
67

8920

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

BREMER WHYTE BROWN & O'MEARA LLP  
Peter C. Brown, Esq.  
Darlene M. Cartier, Esq.  
1160 N. Town Center Drive  
Suite 250  
Las Vegas, NV 89144

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



CLERK OF THE COURT

1 PETER C. BROWN, ESQ.  
Nevada State Bar No. 5887  
2 DARLENE M. CARTIER, ESQ.  
Nevada State Bar No. 8775  
3 BREMER WHYTE BROWN & O'MEARA LLP  
1160 N. TOWN CENTER DRIVE  
4 SUITE 250  
LAS VEGAS, NV 89144  
5 TELEPHONE: (702) 258-6665  
FACSIMILE: (702) 258-6662  
6 pbrown@bremerwhyte.com  
dcartier@bremerwhyte.com

7 Attorneys for Plaintiffs,  
8 LAURENT HALLIER; PANORAMA TOWERS I, LLC;  
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN  
9 CONSTRUCTION, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

13 LAURENT HALLIER, an individual;  
PANORAMA TOWERS I, LLC, a Nevada  
14 limited liability company; PANORAMA  
TOWERS I MEZZ, LLC, a Nevada limited  
15 liability company; and M.J. DEAN  
CONSTRUCTION, INC., a Nevada Corporation,

16 Plaintiffs,

17 vs.

18 PANORAMA TOWERS CONDOMINIUM  
19 UNIT OWNERS' ASSOCIATION, a Nevada  
non-profit corporation,

20 Defendant.  
21

) Case No. A-16-744146-D  
) Dept. XXII

) **PLAINTIFFS' OPPOSITION TO**  
) **DEFENDANT PANORAMA TOWERS**  
) **UNIT OWNERS ASSOCIATION'S**  
) **MOTION TO DISMISS COMPLAINT**

22 COMES NOW Plaintiffs LAURENT HALLIER; PANORAMA TOWERS I, LLC;  
23 PANORAMA TOWERS I MEZZ LLC; and M.J. DEAN CONSTRUCTION, INC., by and through  
24 their attorneys of record, the law firm of Bremer, Whyte, Brown & O'Meara LLP, and hereby bring  
25 their Opposition ("Opposition") to Defendant Panorama Towers Unit Owners Association's  
26 Motion to Dismiss Complaint.

27 ///

28 ///

1 This Opposition is made and based upon the pleadings and papers on file herein, the  
2 following Memorandum of Points and Authorities in support thereof, the Affidavit of Peter C.  
3 Brown, Esq., the Affidavit of Rachel Bounds, and any and all evidence and/or testimony accepted  
4 by this Honorable Court at the time of the hearing on this Motion.

5 Dated: January 4, 2017

BREMER WHYTE BROWN & O'MEARA LLP

6  
7 By: 

Peter C. Brown, Esq.  
Nevada State Bar No. 5887  
Darlene M. Cartier, Esq.  
Nevada State Bar No. 8775  
Attorneys for Plaintiffs,  
LAURENT HALLIER; PANORAMA  
TOWERS I, LLC; PANORAMA  
TOWERS I MEZZ, LLC; and M.J. DEAN  
CONSTRUCTION, INC.



**AFFIDAVIT OF RACHEL BOUNDS**  
**IN SUPPORT OF PLAINTIFFS' (BUILDERS') OPPOSITION TO DEFENDANT**  
**PANORAMA TOWERS UNIT OWNERS ASSOCIATION'S MOTION TO DISMISS**  
**COMPLAINT**

STATE OF NEVADA            )  
  )ss.  
COUNTY OF CLARK         )

I, RACHEL BOUNDS, being first duly sworn according to law, deposes and says:

1. I am a paralegal at the law firm of Bremer, Whyte, Brown & O'Meara, LLP.

2. Bremer, Whyte, Brown & O'Meara, LLP, is counsel for Plaintiffs, LAURENT HALLIER; PANORAMA TOWERS I, LLC; PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN CONSTRUCTION, INC. (hereinafter collectively referred to as "Builders") in the above captioned-matter.

3. I have personal knowledge of the facts set forth herein, and if called to testify, I could competently do so.

4. This Affidavit is submitted pursuant to EDCR 2.21, in support of Plaintiffs' (Builders') Opposition to Defendant Panorama Towers Unit Owners Association's Motion to Dismiss Complaint.

5. On December 29, 2016, I spoke with Jeremy Johnson, a record technician with the Clark County Building Department to obtain any Certificates of Occupancy, Notices of Completion and Final Inspection documents relating to two residential towers in the Panorama Towers Condominiums project, located at 4525 Dean Martin Drive, Las Vegas, Nevada ("Tower I") and 4575 Dean Martin Drive, Las Vegas, Nevada ("Tower II") (hereinafter together referred to as "the Project").

6. Mr. Johnson informed me that Clark County does not issue Notices of Completion or a Final Inspection report. Rather, a once a building passes final inspection Clark County issues a Certificate of Occupancy, and the date of final inspection of a building is listed on the Certificate of Occupancy as "Building Final."

///

1 7. Mr. Johnson also informed me that the Certificates of Occupancy for the Project  
2 were available on the Clark County web site.

3 8. Following my discussion with Mr. Johnson, Mr. Johnson sent me e-mail  
4 correspondence, with an attachment containing instructions on how to obtain the Certificates of  
5 Occupancy for the Project.

6 9. Attached as **Exhibit "1"** is a true and correct copy of the e-mail and instructions  
7 received from Mr. Johnson.

8 10. I followed the instructions provided by Mr. Johnson and I downloaded the  
9 Certificates of Occupancy for the Project from the Clark County web site, at  
10 <http://www.clarkcountynv.gov>.

11 11. The Certificate of Occupancy issued by Clark County for Tower I of the Panorama  
12 Towers Condominiums, located at 4525 Dean Martin Drive, is dated January 16, 2008, and  
13 identifies the date of Building Final as March 16, 2007.

14 12. Attached as **Exhibit "2"** is a true and correct copy of the Certificate of Occupancy  
15 for Tower I, obtained from the Clark County website.


16 13. The Certificate of Occupancy issued by Clark County for Tower II of the Panorama  
17 Towers Condominiums, located at 4575 Dean Martin Drive, is dated March 31, 2008, and  
18 identifies the date of Building Final as July 16, 2007.

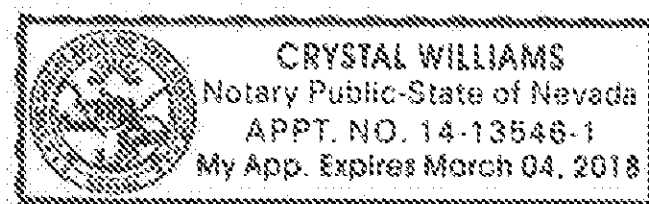
19 14. Attached as **Exhibit "3"** is a true and correct copy of the Certificate of Occupancy  
20 for Tower II, obtained from the Clark County website.

21 FURTHER YOUR AFFIANT SAYETH NAUGHT

22  
23  
24 Sworn and Subscribed to before me  
25 this 24 day of January, 2017.

26  
27 Notary Public in and for  
28 County of Clark, State of Nevada

  
Rachel Bounds



AFFIDAVIT OF PETER C. BROWN, ESQ.  
IN SUPPORT OF PLAINTIFFS' (BUILDERS') OPPOSITION TO DEFENDANT  
PANORAMA TOWERS UNIT OWNERS ASSOCIATION'S MOTION TO DISMISS  
COMPLAINT

STATE OF NEVADA           )  
  )ss.  
COUNTY OF CLARK        )

I, PETER C. BROWN, ESQ., being first duly sworn according to law, deposes and says:

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

2. Bremer, Whyte, Brown & O'Meara LLP, is counsel for Plaintiffs Laurent Hallier; Panorama Towers I, LLC; Panorama Towers I Mezz, LLC and M.J. Dean Construction, Inc. (hereinafter collectively "Builders"), in the above captioned-matter.

3. I have personal knowledge of the facts set forth herein, and if called to testify, I could competently do so.

4. This Affidavit is submitted pursuant to EDCR 2.21, in support of Plaintiffs' (Builders') Opposition ("Opposition") to Defendant Panorama Towers Unit Owners Association's ("Association") Motion to Dismiss Complaint.

5. On September 9, 2009, the Association filed a Complaint for construction defects against Builders PANORAMA TOWERS I, LLC and PANORAMA TOWERS II, LLC, entitled *Panorama Towers Condominium Unit Owners' Association v. Panorama Towers I, LLC, et al.* (Eighth Judicial District Court, Department XXII, Case No. A-09-598902) (hereinafter referred to as "the Prior Litigation"). On January 17, 2011, the Association filed an Amended Complaint in the Prior Litigation, naming Builders M.J. DEAN CONSTRUCTION, INC. and others as additional defendants.

6. The parties in the Prior Litigation reached a settlement, and the terms of the settlement were set forth in writing in a Confidential Settlement Agreement and Release (hereinafter "Settlement Agreement").

7. A true and correct copy of the Settlement Agreement in the Prior Litigation has been provided to the Court *in camera*, concurrently with the filing of Builders' Opposition. The

1 Settlement Agreement shall be referenced as **Exhibit “4”** in this Opposition.

2       8. On or about February 24, 2016, the Association, through its counsel, separately  
3 served Laurent Hallier (the principal of Panorama Towers I, LLC) and M.J. Dean with a “Notice to  
4 Contractor Pursuant to Nevada Revised Statutes, Section 40.645” (“Chapter 40 Notice”). Other  
5 than the addressee’s name, the Chapter 40 Notices served on Mr. Hallier and M.J. Dean are the  
6 same.

7       9. Attached as **Exhibit “5”** is a true and correct copy of the Association’s Chapter 40  
8 Notice dated February 24, 2016.

9       10. The Association’s Chapter 40 Notice alleges defects and damages involving: (1)  
10 residential tower windows, (2) residential tower fire blocking; (3) mechanical room piping; and (4)  
11 sewer piping.

12       11. On or about March 24, 2016, Builders, via their experts, visually inspected the  
13 defects alleged in Defendant’s Chapter 40 Notice.

14       12. During Builders’ March 24, 2016, inspection, Builders observed that the majority of  
15 the allegedly defective (i.e. corroded) mechanical room piping had been removed and replaced  
16 prior to Builders’ inspection. The Association did not provide notice to Builders of the allegedly  
17 defective mechanical room piping prior to the removal and replacement of this piping, including,  
18 but not limited to, a Chapter 40 Notice.

19       13. During Builders’ March 24, 2016, inspection, Builders also became aware that the  
20 allegedly defective sewer piping had also been repaired prior to Builders’ inspection. The  
21 Association did not provide notice to Builders of the allegedly defective sewer piping prior to this  
22 repair work being performed, including, but not limited to, a Chapter 40 Notice.

23       14. On March 29, 2016, Builders sent correspondence to the Association (via its  
24 counsel) requesting information and documents relating to (1) the sewer line defect allegations  
25 identified in the Association’s Chapter 40 Notice, including the date of occurrence and date of  
26 repair of the alleged defects, and requesting the current location of any sewer line materials that  
27 were removed and replaced as part of the Association’s repair; and (2) the mechanical room piping  
28 defect allegations identified in the Association’s Chapter 40 Notice, including the date when the



1 allegedly corroded pipes were replaced, the date the repair work was performed, the identity of the  
2 contractor(s) who performed the repair work, and also requesting the Association confirm whether  
3 and where the removed mechanical room pipe materials have been stored for safekeeping. The  
4 Association did not respond to Builders' March 29, 2016 correspondence.

5 15. Attached as **Exhibit "6"** is a true and correct copy of Builders' March 29, 2016  
6 correspondence to the Association.

7 16. On April 29, 2016, Builders sent follow up correspondence to the Association (via  
8 its counsel) again requesting the Association promptly provide information and documents  
9 requested in Builders' March 29, 2016 correspondence. Builders requested a response from the  
10 Association no later than May 3, 2016. However, the Association did not respond to Builders'  
11 April 29, 2016 correspondence.

12 17. Attached as **Exhibit "7"** is a true and correct copy of Builders' April 29, 2016  
13 correspondence to the Association.

14 18. On May 24, 2016, Builders served the Association with Builders' Response to the  
15 Association's Chapter 40 Notice.

16 19. On September 26, 2016, Builders and the Association participated in a pre-litigation  
17 mediation regarding the claims and defects included in the Association's Chapter 40 Notice, as  
18 required by NRS 40.680, but were unable to reach a resolution. As a result, the mandatory pre-  
19 litigation process concluded.

20 20. At the pre-litigation on September 26, 2016, Builders tendered their defense and  
21 indemnity to the Association pursuant to the terms of the Settlement Agreement.

22 21. Attached as **Exhibit "8"** is a true and correct copy of Builders' tender of defense  
23 and indemnity, dated September 26, 2016.

24 22. On November 28, 2016, the Association provided its response to Builders' tender of  
25 defense and indemnity, wherein it declined to defend and/or indemnify Builders.

26 23. Attached as **Exhibit "9"** is a true and correct copy of the Association's November  
27 28, 2016 correspondence, declining to defend and/or indemnify Builders.

28 24. On February 24, 2015, the Nevada Legislature enacted the Homeowner Protection

1 Act of 2015 (aka Assembly Bill 125) (hereinafter referred to as "AB 125"), which amended  
2 Chapter 40 and the statute of repose for bringing a construction defect claim.

3 25. Attached as **Exhibit "10"** is a true and correct copy of AB 125.

4 26. As of the date of the filing of this Opposition, Builders have incurred attorney's fees  
5 in the amount of \$28,232.00. This figure does not include additional attorney's fees that will be  
6 incurred to prepare for and to attend oral arguments on the Association's Motion to Dismiss.

7 27. As of the date of the filing of this Opposition, Builders have incurred legal costs,  
8 including but not limited to, court filing fees in the amount of \$2,910.45.

9 28. As of the date of the filing of this Opposition, Builders have incurred mediator fees  
10 in the amount of \$3,714.59.

11 29. As of the date of the filing of this Opposition, Builders have incurred expert fees in  
12 the amount of \$2,065.30.

13 30. As of the date of the filing of this Opposition, the Association has not withdrawn its  
14 Chapter 40 Notice to Builders. As a result, Builders will continue to incur attorney's fees, legal  
15 costs, expert fees and other fees and costs as a result of the Association's claims against Builders,  
16 including but not limited to, costs to defend themselves against these claims and/or to pursue third-  
17 party claims against other potentially responsible persons or companies.

18 FURTHER YOUR AFFIANT SAYETH NAUGHT

19

20

21

Sworn and Subscribed to before me  
this 4th day of January, 2017.

22

23

24

Crystal Williams

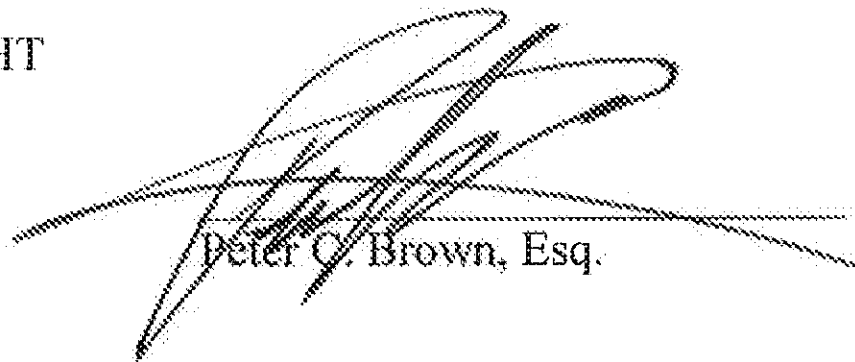
Notary Public in and for  
County of Clark, State of Nevada

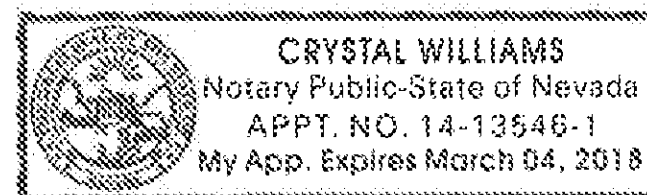
25

26

27

28

  
Peter C. Brown, Esq.



1 MEMORANDUM OF POINTS & AUTHORITIES

2 I. INTRODUCTION

3 Although entitled "Motion to Dismiss Complaint" (hereinafter "Motion"), the Association  
4 is asking this Court to consider matters outside of the Motion. As a result, the Court should treat  
5 Association's Motion as a Motion for Summary Judgment and not a Motion to Dismiss. As  
6 discussed in detail below, the Association's Chapter 40 claim against Builders is improper for  
7 multiple reasons. Builders have sustained damages as a result of the Association's improper  
8 Chapter 40 claim as well as the Association's breach of the Settlement Agreement in the Prior  
9 Litigation involving the same claims alleged in the Association's Chapter 40 Notice.

10 Builders' Complaint is proper and meets the requisite elements for declaratory relief. As  
11 result, whether the Court analyzes the Association's Motion under NRCP 12(b)(5) or NRCP 56(c),  
12 the Association's Motion is premature and should be denied, and Builders should be permitted to  
13 pursue the claims alleged in their Complaint on the merits.

14 II. FACTUAL BACKGROUND

15 A. The Project

16 This case involves alleged construction defects at two towers in the Panorama Towers  
17 Condominiums project, located at 4525 Dean Martin Drive, Las Vegas, Nevada ("Tower I") and  
18 4575 Dean Martin Drive, Las Vegas, Nevada ("Tower II") (hereinafter together referred to as "the  
19 Project"). Plaintiffs, Laurent Hallier and Panorama Towers I, LLC (hereinafter together referred to  
20 as "Developer"), were the owner and developer entities for the Project, and Plaintiff M.J. Dean  
21 Construction, Inc. ("M.J. Dean") was the Project's general contractor. Laurent Hallier, Panorama  
22 Towers I, LLC and M.J. Dean shall hereinafter be collectively referred to as "Builders."

23 The Clark County Building Department issued a Certificate of Occupancy for Tower I  
24 (4525 Dean Martin Drive) on January 16, 2008. (Exhibit "2"). The Clark County Building  
25 Department issued a Certificate of Occupancy for Tower II (4575 Dean Martin Drive) on March  
26 31, 2008. (Exhibit "3").

27 ///

28 ///

1           **B.     Prior Litigation**

2           On September 9, 2009, the Association filed a Complaint for construction defects against  
3 Panorama Towers I, LLC and Panorama Towers II, LLC, entitled *Panorama Towers Condominium*  
4 *Unit Owners' Association v. Panorama Towers I, LLC, et al.* (Eighth Judicial District Court,  
5 Department XXII, Case No. A-09-598902-D) (hereinafter referred to as "the Prior Litigation"). On  
6 January 17, 2011, the Association filed an Amended Complaint in the Prior Litigation, naming M.J.  
7 Dean Construction, Inc. and others as additional defendants. The Association was represented in  
8 the Prior Litigation by the law firm of Feinberg Grant Mayfield Kaneda & Litt.

9           The parties in the Prior Litigation reached a settlement, and the terms of the settlement were  
10 set forth in writing in a Confidential Settlement Agreement and Release (hereinafter "Settlement  
11 Agreement"). (Exhibit "4"; submitted to the Court *in camera*). The Settlement Agreement  
12 provides that "...the Agreement may be disclosed and shall be deemed admissible as may be  
13 necessary to enforce the terms hereof..." (Exhibit "4"; p. 7, ¶ #8.).

14           On January 19, 2012, the Court entered an Order based on the stipulation of counsel and the  
15 parties, ordering all claims against Panorama Towers I, LLC, M.J. Dean Construction, Inc. and  
16 others in the Prior Litigation be dismissed with prejudice. Notice of Entry of the Order dismissing  
17 the Prior Litigation against Panorama Towers I, LLC, M.J. Dean Construction, Inc. and others,  
18 with prejudice, was entered on January 23, 2012.

19           **C.     The Association's Chapter 40 Notice**

20           On or about February 24, 2016, the Association, through its counsel, served Builders with a  
21 "Notice to Contractor Pursuant to Nevada Revised Statutes, Section 40.645" (hereinafter "Chapter  
22 40 Notice"). (Exhibit "5"). The Association's Chapter 40 Notice alleges defects and damages  
23 involving: (1) residential tower windows, (2) residential tower fire blocking; (3) mechanical room  
24 piping; and (4) sewer piping.

25           On or about March 24, 2016, Builders inspected the defects alleged in the Association's  
26 Chapter 40 Notice. During Builders' March 24, 2016, inspection, Builders observed that the  
27 majority of the allegedly defective (i.e. corroded) mechanical room piping had been removed and  
28 replaced prior to Builders' inspection. The Association did not provide notice to Builders of the



1 allegedly defective mechanical room piping prior to this removal and replacement of the piping,  
2 including, but not limited to, a Chapter 40 Notice. During Builders' March 24, 2016, inspection,  
3 Builders also became aware that the allegedly defective sewer piping had also been repaired prior  
4 to Builders' inspection. As with the repairs to the mechanical room piping, the Association did not  
5 provide notice to Builders of the allegedly defective sewer piping prior to the repair work being  
6 performed, including, but not limited to, a Chapter 40 Notice.

7 On March 29, 2016, Builders sent correspondence to the Association requesting  
8 information and documents relating to (1) the sewer line defect allegations identified in the  
9 Association's Chapter 40 Notice, including the date of occurrence and date of repair of the alleged  
10 defects, and requesting the current location of any sewer line materials that were removed and  
11 replaced as part of the Association's repair; and (2) the mechanical room piping defect allegations  
12 identified in the Association's Chapter 40 Notice, including the date when the allegedly corroded  
13 pipes were replaced, the date the repair work was performed, the identity of the contractor(s) who  
14 performed the repair work, and also requesting the Association confirm whether and where the  
15 removed mechanical room pipe materials have been stored for safekeeping. (Exhibit "6"). The  
16 Association did not respond to Builders' March 29, 2016 correspondence.

17 On April 29, 2016, Builders sent follow up correspondence to the Association again  
18 requesting the Association promptly provide the information and documents requested in Builders'  
19 March 29, 2016 correspondence. Builders requested a response from the Association by May 3,  
20 2016. (Exhibit "7"). However, the Association did not respond to Builders' April 29, 2016  
21 correspondence.

22 On May 24, 2016, Builders served the Association with Builders' Response to the  
23 Association's Chapter 40 Notice.<sup>1</sup>

24 On September 26, 2016, Builders and the Association participated in a pre-litigation  
25 mediation regarding the claims and defects included in Association's Chapter 40 Notice, as  
26

27 <sup>1</sup> Builders' Response to the Association's Chapter 40 Notice is identified as "Intended for Mediation and Settlement  
28 Purposes Only." As a result, a copy of the Response has not been included as an Exhibit to Builders' Opposition

required by NRS 40.680, but were unable to reach a resolution. As a result, the mandatory pre-litigation process concluded.

**D. Builders' Tender of Defense and Indemnity to the Association**

At the pre-litigation mediation on September 26, 2016, Builders tendered their defense and indemnity to the Association pursuant to the terms of the Settlement Agreement. (Exhibit "8"). On November 28, 2016, the Association provided its response to Builders' tender of defense and indemnity, wherein it declined to defend and/or indemnify Builders. (Exhibit "9").

**III. PROCEDURAL STATUS**

On September 28, 2016, Builders filed a Complaint against the Association, asserting the following claims for relief: (1) Declaratory Relief – Application of AB 125; (2) Declaratory Relief – Claim Preclusion; (3) Failure to Comply with NRS 40.600 et seq.; (4) Suppression of Evidence/Spoliation; (5) Breach of Contract; (6) Declaratory Relief – Duty to Defend; and (7) Declaratory Relief - Duty to Indemnify. In response, the Association filed the pending Motion to Dismiss.

Discovery has not commenced and no trial date has been set.

**IV. LEGAL AUTHORITY**

**A. Nevada Rule of Civil Procedure 12(b)(5)**

Rule 12(b) of the Nevada Rules of Civil Procedure governs the presentation of a defensive motion, and provides in relevant part:

**(b) How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ... (5) failure to state a claim upon which relief can be granted... If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, **matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.**

(Emphasis added).

The standard of review for a dismissal under NRCP 12(b)(5) is rigorous as this court "must

1 construe the pleading liberally and draw every fair intendment in favor of the [non-moving  
2 party]."*Vacation Village, Inc. v. Hitachi America, Ltd.*, 110 Nev. 481, 484, 874 P.2d, 744, 746  
3 (1994) (emphasis added) (internal citations omitted). "The test for determining whether the  
4 allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give  
5 fair notice of the nature and basis of a legally sufficient claim and the relief requested." *Vacation*  
6 *Village, Inc. v. Hitachi America, Ltd.*, 110 Nev. 481, 484, 874 P.2d, 744, 746 (1994) (dismissal of  
7 appellant's complaint for failure to state a claim on which relief can be granted was error, because  
8 the complaint gave fair notice to the respondent as to the nature and basis of a legally sufficient  
9 claim and the relief requested).

10 Thus, a motion to dismiss should not be granted unless it appears to a certainty that the  
11 plaintiff is not entitled to relief under any set of facts, which could be provided in support of the  
12 plaintiff's claim. *See Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163, 400 P.2d 621 (1965);  
13 *Edgar v. Wagner*, 101 Nev. 226, 669 p.2d 110 (1985); *see also, Tahoe Village Homeowners*  
14 *Association v. Douglas County*, 106 Nev. 660, 799 P.2d 556 (1993).

15 **B. Nevada Rule of Civil Procedure 56(c)**

16 Nevada Rule of Civil Procedure 56(c) provides in pertinent part that,

17 . . . judgment sought shall be rendered forthwith if the pleadings,  
18 depositions, answers to interrogatories, and admissions on file,  
19 together with the affidavits, if any, show that there is no genuine  
issue as to any material fact and that the moving party is entitled to a  
judgment as a matter of law.

20 The governing legal standard for summary judgment motions is set out in *Wood v. Safeway,*  
21 *Inc.*, 121 Nev. 724, 730 (2005). In *Safeway*, the Court referred approvingly to prior holdings that  
22 when reviewing a motion for summary judgment, the evidence, and any reasonable inferences  
23 drawn from it, must be viewed in a light most favorable to the **non-moving party**.

24 In setting forth the new standard, the Court stated:

25 We now adopt the standard employed in *Liberty Lobby, Celotex*, and  
26 *Matsushita*. Summary judgment is appropriate under NRCP 56 when  
27 the pleadings, depositions, answers to interrogatories, admissions,  
28 and affidavits, if any, that are properly before the court demonstrate  
that **no genuine issue of material fact exists, and the moving party**  
**is entitled to judgment as a matter of law**. The substantive law  
controls which factual disputes are material and will preclude

summary judgment; other factual disputes are irrelevant. A **factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.**

*Id.* at 1031 (emphasis added; internal citations omitted).

Summary judgment should only be entered against a party who, **after adequate time for discovery**, fails to make a showing to establish the existence of an element on which that party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2547, 2552 (1986).

Given that the Association's Motion is asking this Court to consider matters outside of the pleadings (i.e. terms of the Settlement Agreement,<sup>2</sup> the Court should treat the Association's Motion as a Motion for Summary Judgment, not a Motion to Dismiss. No discovery has taken place in this case. In addition, genuine issues of material fact exist, including but not limited to, whether the claims asserted by the Association in its Chapter 40 Notice were released in the Prior Litigation. On that basis alone, the Association's Motion must be denied.

**C. Assembly Bill 125**

On February 24, 2015, the Nevada Legislature enacted the Homeowner Protection Act of 2015 (aka Assembly Bill 125) (hereinafter referred to as "AB 125"). (Exhibit "10"). AB 125 resulted in significant changes to Chapter 40, including but not limited to, the requirements for a Chapter 40 Notice, prevents a homeowner's association from bringing claims not involving common areas, and also modified the timeframe for bringing construction defect claims.

**D. The Six-Year Statute of Repose**

AB 125, Section 17, amended NRS 11.202(1), abolishing the previously applicable statutes of limitation and shortening the statute of repose for all claims to six (6) years from the date of substantial completion of an improvement:

**NRS 11.202 Actions for damages for injury or wrongful death  
caused by deficiency in construction of improvements to real**

<sup>2</sup> The Association is asking this Court to consider certain terms in the Settlement Agreement in support of the arguments in its Motion, including that the Settlement Agreement purportedly contemplates future suits by Panorama Towers against Hallier, and that Builders' claims relating to the indemnity provision are inconsistent with the Settlement Agreement. (Motion p. 7, ln. 25 – p. 8, ln. 2.)



property.

1. **No action** may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property **more than 6 years after the substantial completion of such an improvement, for the recovery of damages for:**

(a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement; or

(b) Injury to real or personal property caused by any such deficiency...

\*\*\*

NRS 11.202 (emphasis added).

Pursuant to AB 125, Section 21(5) and Section 22, the six-year statute of repose applies retroactively to actions in which substantial completion of the improvement to real property occurred before the effective date of the Act (i.e. February 24, 2015). (Exhibit "10," p. 25).

Statutes of repose and statutes of limitation are different and are sometimes confused. In discussing the difference between the statutes of repose and the statutes of limitation, the Nevada Supreme Court has stated:

**Statutes of repose** bar causes of action after a certain period of time, **regardless of whether damage or an injury has been discovered.** In contrast, "statutes of limitation" foreclose suits after a fixed period of time following occurrence or discovery of an injury.

*G&H Assoc. v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 271; 934 P.2d 229, 233 (1997) (internal citations omitted) (emphasis added). In other words, a statute of repose sets an outside time limit, after which a claim for construction defects may not be brought. *Id.* "Therefore, in addition to proving the elements of the cause of action, a plaintiff must also prove that the cause of action was brought within the time frame set forth by the statute of repose." *Id.*

Although a statute of limitation is generally considered "procedural," a statute of repose defines a "substantive" right "based on a legislative balance of the respective rights of potential plaintiffs and defendants." *Albano v. Shea Homes L.P.*, 227 Ariz. 121, 127, 254 P.3d 360, 366 (2011). Thus, a statute of repose is not subject to "equitable tolling" and bars all suits brought after the statutory timeframe has expired, even if the period ends before a plaintiff has suffered or

1 became aware of a resulting injury.

2 **E. Date of Substantial Completion**

3 “In determining when a cause of action accrues for purposes of a statute of repose, most  
4 jurisdictions, **including Nevada**, have concluded that the time limits set forth in a statute of repose  
5 commence **at the time of substantial completion of the building and not at the time of**  
6 **discovery of an injury.”** *G&H Assoc. v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 271; 934 P.2d 229,  
7 233 (1997); *Tahoe Village Homeowners Association, v. Douglas County*, 106 Nev. 660, 663, 799  
8 p.2d 566, 558 (1990); *Alsenz v. Twin Lakes Village, Inc.*, 108 Nev. 1117, 1121, 843 P.2d 834, 836  
9 (1992); *see also Lamb, v. Wedgewood South Corp.*, 302 S.E.2d 868, 873 (N.C. 1983); *Texas Gas*  
10 *Exploration v. Fluor Corp.*, 828 S.W.2d 28, 32 (Tex. Ct. App. 1991) (emphasis added).

11 NRS 11.2055 provides that in actions for damages caused by alleged construction defects,  
12 the date of “substantial completion” of an improvement to real property is determined as follows:

13 **NRS 11.2055 Actions for damages for injury or wrongful death**  
14 **caused by deficiency in construction of improvements to real**  
15 **property: Determination of date of substantial completion of**  
16 **improvement to real property.**

17 1. Except as otherwise provided in subsection 2, for the  
18 purposes of this section and NRS 11.202, the date of substantial  
19 completion of an improvement to real property shall be deemed to be  
20 the date on which:

- 21 (a) The final building inspection of the improvement is  
22 conducted;  
23 (b) A notice of completion is issued for the improvement; or  
24 (c) A certificate of occupancy is issued for the improvement,  
25 whichever occurs later.

26 2. If none of the events described in subsection 1 occurs, the  
27 date of substantial completion of an improvement to real property  
28 must be determined by the rules of the common law.

(Emphasis added).

22 **V. LEGAL ARGUMENT**

23 Builders have sustained damages as a result of the Association’s *improper* Chapter 40 claim  
24 as well as the Association’s breach of the Settlement Agreement in the Prior Litigation, including  
25 but not limited to attorney’s fees, expert fees and legal costs in excess of \$36,900.00 (and  
26 climbing). Builders properly seek recovery for these damages in their Complaint, and Nevada  
27 permits such an action, whether by complaint, by counterclaim, or any other pleading permitted  
28

1 under NRCP 7.

2 **A. Builders' Request for Declaratory Relief is Proper**

3 In 1929, Nevada enacted the Uniform Declaratory Judgments Act (NRS 30.010, *et seq.*)  
4 ("UDJA"), which provides in relevant part:

5 \*\*\*

6 **NRS 30.030 Scope.** Courts of record within their respective  
7 jurisdictions shall have power to declare rights, status and other  
8 legal relations whether or not further relief is or could be  
9 claimed. No action or proceeding shall be open to objection on the  
10 ground that a declaratory judgment or decree is prayed for. The  
11 declaration may be either affirmative or negative in form and effect;  
12 and such declarations shall have the force and effect of a final  
13 judgment or decree. (Emphasis added).

14 **NRS 30.040 Questions of construction or validity of  
15 instruments, contracts and statutes.**

16 1. Any person interested under a deed, written contract or  
17 other writings constituting a contract, or whose rights, status or  
18 other legal relations are affected by a statute, municipal ordinance,  
19 contract or franchise, may have determined any question of  
20 construction or validity arising under the instrument, statute,  
21 ordinance, contract or franchise and obtain a declaration of rights,  
22 status or other legal relations thereunder. (Emphasis added)

23 \*\*\*

24 **NRS 30.050 Contract may be construed before or after  
25 breach.** A contract may be construed either before or after there  
26 has been a breach thereof.

27 \*\*\*

28 **NRS 30.140 Construction.** NRS 30.010 to 30.160, inclusive, are  
declared to be remedial; their purpose is to settle and to afford  
relief from uncertainty and insecurity with respect to rights,  
status and other legal relations; and are to be liberally construed  
and administered. (Emphasis added).

The remedial policies served by the UDJA were described by the Nevada Supreme Court in  
*Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948):

It was a defect of the judicial procedure which developed under the  
common law that the doors of the courts were invitingly opened to a  
plaintiff whose legal rights had already been violated, but were  
rigidly closed upon a party who did not wish to violate the rights of  
another nor to have his own rights violated, thus compelling him,  
where a controversy arose with his fellow, to run the risk of a  
violation of his fellow's rights or to wait until the anticipated  
wrong had been done to himself before an adjudication of their  
differences could be obtained. Thus was a penalty placed upon the  
party who wished to act lawfully and in good faith ...

1 The declaration has opened the shutters of the forensic camera much  
2 wider (than the limits of equity jurisdiction) and admits to judicial  
3 cognizance an entirely new group of interests, including aggrieved  
4 persons who, being prospective defendants to ordinary actions,  
5 were not theretofore perceived by the law until they were sued.  
6 They were not allowed to initiate proceedings. As already  
7 observed, the disquietude and uncertainty of a prospective  
8 defendant and obligor, like an alleged infringer of patents, the  
9 covenantors of a building restriction, lessees equally with lessors,  
10 justify judicial relief."

11 *Kress v. Corey*, 65 Nev. 1, 35 - 38, 189 P.2d 352, 369 - 370 (1948).

12 In *Kress v. Corey*, the Court set forth the requirements generally necessary to qualify for a  
13 declaratory judgment: (1) there must exist a justiciable controversy (i.e. a controversy in which a  
14 claim of right is asserted against one who has an interest in contesting it); (2) the controversy must  
15 be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a  
16 legally protectable interest in the controversy; and (4) the issue involved in the controversy must be  
17 ripe for judicial determination. *Kress v. Corey*, 65 Nev. 1, 26, 189 P.2d 352, 365 (1948). Builders'  
18 Complaint meets each of the elements necessary for declaratory relief relating to its First, Second,  
19 Sixth and Seventh Claims for Relief.

20 **1. A Justiciable Controversy Exists Between Builders and the Association**

21 Pursuant to NRS 11.2055, the date of substantial completion of Tower I is January 1, 2008  
22 and the date of substantial completion of Tower II is March 31, 2008. (Exhibits "2" and "3").  
23 Thus, under NRS 11.202(1) as amended by AB 125, the deadline for the Association to bring any  
24 action against Builders for construction defects (including a Chapter 40 claim) was not more than  
25 six (6) years following the dates of substantial completion – not later than January 1, 2014 for  
26 Tower I and not later than March 31, 2014 for Tower II. Any claim after these dates is barred by  
27 Nevada law, regardless of when the alleged defect may have been discovered by the Association.  
28 *G&H Assoc. v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 271; 934 P.2d 229, 233 (1997); *Tahoe Village  
Homeowners Association, v. Douglas County*, 106 Nev. 660, 663, 799 p.2d 566, 558 (1990); *Alsenz  
v. Twin Lakes Village, Inc.*, 108 Nev. 1117, 1121, 843 P.2d 834, 836 (1992); *see also Lamb, v.  
Wedgewood South Corp.*, 302 S.E.2d 868, 873 (N.C. 1983); *Texas Gas Exploration v. Fluor Corp.*,  
828 S.W.2d 28, 32 (Tex. Ct. App. 1991).



1 A justiciable controversy exists between Builders and the Association as to their respective  
2 rights and liabilities relating to the Association's Chapter 40 Notice and the defects alleged in the  
3 Notice, including whether any or all of the Association's claims are time barred by AB 125/NRS  
4 11.202(1), whether the Association has standing to bring claims relating to the residential tower  
5 windows, and whether Builders have any obligations as it relates to the life/safety issues alleged in  
6 the Chapter 40 Notice. In addition, a justiciable controversy exists as to the Association's breach  
7 of the Settlement Agreement in the Prior Litigation and Builders' right to recover its fees and costs  
8 against the Association as result of this breach. Furthermore, the Association has declined to  
9 defend and indemnify Builders regarding the claims alleged in the Association's Chapter 40  
10 Notice. (Exhibits "8" and "9"). Thus, a controversy exists as to the Association's obligation to  
11 defend and indemnify Builders.

12 The facts associated with controversy and each of Builders' causes of action alleged in their  
13 Complaint, as well as the damages sustained by Builders, are present, ascertained or ascertainable,  
14 and are not hypothetical or speculative. As noted by Justice Badt in his concurrence in *Cox v.*  
15 *Glenbrook Co.*, declaratory relief is still proper such as here when the Association has expressed its  
16 future intent to pursue claims against Builders.

17 "While it is undoubtedly true that "factual circumstances which may  
18 arise in the future cannot be fairly determined now," it is likewise  
19 true than an expressed purpose and intention to perform acts  
20 that will, under satisfactory proof, surcharge the servient  
21 tenement with an unreasonable burden is a present threat of  
invasion of plaintiff's rights and subject to declaratory  
determination. It need not await event." NRS 30.030, 30.040,  
30.050, 30.070, 30.140; *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352, and  
cases therein cited).

22 *Cox v. Glenbrook Co.*, 78 Nev. 254, 271, 371 P.2d 647, 657 (1962) (emphasis added).

23 The express remedial purpose of the UDJA is to settle and to provide relief from  
24 uncertainty with respect to a party's rights, and Builders properly seek such relief from this Court.  
25 NRS 30.010 *et seq.*

26 **2. The Interests of Builders and the Association are Adverse**

27 Builders contend that the Association may not recover damages against Builders relating to  
28 the claims in the Association's Chapter 40 Notice, and Builders seek recovery of their fees and

1 costs incurred as a result of the Association's improper Chapter 40 Notice/Chapter 40 claims. The  
2 Association asserts that Builders may not seek such recovery unless and until the Association files  
3 a lawsuit against Builders. In addition, the Association's Chapter 40 Notice expressly states:  
4 **"Please take notice that the Panorama Towers Condominium Unit Owners' Association, Inc., ...**  
5 **intends to pursue claims against you** pursuant to Nevada Revised Statutes NRS) 40.600 et seq.,  
6 arising from defects in the design and/or construction of the Panorama Towers condominium  
7 development..." (Exhibit "5," p. 1., ¶ 1)(underline emphasis added; bold text in original). For  
8 these reasons, the interests of Builders and the Association are clearly adverse to each other.

9 **3. Builders Have a Legally Protectible Interest in the Controversy**

10 Builders have a legally protectible interest with respect to enforcement of the terms of the  
11 Settlement Agreement in the Prior Litigation, including the defects settled and released in the Prior  
12 Litigation. The UDJA expressly provides for a judicial determination of Builders' rights as to the  
13 Settlement Agreement, and Builders' request for this relief is permitted by law. NRS 30.040, NRS  
14 30.050.

15 **4. The Issues Involved in the Controversy are Ripe for Judicial**  
16 **Determination**

17 Builders have incurred fees and costs in excess of \$36,900.00 (and climbing), as a result of  
18 the Association's improper Chapter 40 claim and the Association's breach of the Settlement  
19 Agreement in the Prior Litigation. As a result, the controversy is ripe for judicial determination.

20 **B. Builders' Affirmative Claims for Relief Are Proper**

21 The Association's Chapter 40 claim against Builders is improper for multiple reasons: (1)  
22 the Association's Chapter 40 Notice fails to comply with NRS 40.600 et seq.; (2) the claims are  
23 time barred by NRS 11.202(1) as amended by AB 125; (3) the Association's claim involves alleged  
24 defects, which were both known by the Association and settled and released by the Association in  
25 the Prior Litigation, and in bringing these released claims the Association has breached the terms of  
26 the Settlement Agreement in the Prior Litigation. Builders have sustained damages as a result of  
27 the Association's improper Chapter 40 claim as well as the Association's breach of the Settlement  
28 Agreement in the Prior Litigation, including but not limited to attorney's fees, expert fees and legal

costs.

**1. Third Claim For Relief: Failure to Comply with Chapter 40**

The Association failed to comply with NRS 40.645(2)(b) and (c) in that its Chapter 40 Notice does not identify in specific detail the alleged defect, damage and injury, including without limitation, the exact location of the alleged defect, damage and injury, relating to the alleged residential tower window defects, the alleged residential tower fire blocking defects, the alleged mechanical room piping defects or the alleged sewer line defects. (Exhibit "5").

In addition, the Association failed to comply with NRS 40.645(1)(a) in that the Association failed to provide a Chapter 40 Notice to Builders prior to performing repairs to the allegedly defective residential tower windows, mechanical room piping, or sewer piping. (Affidavit of Peter C. Brown, Esq., p. 6, ¶¶ 12-13). The Association contends that "because Hallier has a remedy for any defective notice if and when Panorama files suit," Builders were not required to retain legal counsel and Builders only damages are "self-inflicted." (Motion, p. 9, Ins. 1 -- 3). The Association's Chapter 40 Notice expressly states the Association "intends to pursue claims against [Builders.]" (Exhibit "5," p. 1 ¶ 1). It also contends that the alleged residential tower window and the residential tower fire blocking "present an unreasonable risk of injury to a person or property," and that the alleged sewer problem "presented an unreasonable risk of injury to a person or property." (Exhibit "5," p. 1 - 2). In order to protect their rights under Chapter 40, and to respond to the alleged life-safety issues that the Association alleges it intends to pursue Builders for, Builders had to retain experts to inspect the claims alleged in the Notice, at a cost of \$2,065.30. Given the alleged present life-safety issues, Builders had no alternative but to take the Association at its word and inspect these conditions rather than to solely challenge the adequacy of the Chapter 40 Notice. Builders have incurred damages as a result of the Association's failure to Comply with Chapter 40 and the Association's Motion should be denied.

**2. Fourth Claim For Relief: Suppression of Evidence/Spoliation**

The Association does not deny that it has failed to respond to Builders' two prior requests for information and documents relating to the repairs performed to the sewer line and mechanical room piping. (Exhibits "6" and "7"). To the extent the Court finds that no independent cause of

1 action exists for spoliation of the above evidence, Builders request leave to amend their Complaint  
2 to allege additional facts to support this cause of action.

3 **3. Fifth Claim for Relief: Breach of Contract**

4 Builders and the Association entered into a Settlement Agreement in the Prior Litigation,  
5 whereby: (1) in full and complete settlement of the claims asserted in the Prior Litigation, Builders  
6 paid a monetary settlement to the Association, the amount of which is confidential; (2) the  
7 Association expressly agreed it would not bring any other claim, action, suit or proceeding against  
8 Builders (and others) regarding the matters settled, released and dismissed in the Prior Litigation;  
9 and (3) the Association agreed to defend and indemnify Builders (and others) and to hold Builders  
10 (and others) harmless with respect to any litigation relating to defects that were known to the  
11 Association at the time the Association executed the Settlement Agreement. (Exhibit "4").

12 The Association contends that Builders have failed to identify which matters were settled,  
13 released and dismissed in the Prior Litigation. (Motion, p. 10). As discussed above, there is no  
14 such requirement under NRCP or Nevada law for Builders to provide such information in its  
15 Complaint. Furthermore, the matters settled and released in the Prior Litigation are issues of fact,  
16 which are in dispute and for which discovery has not commenced. As a result, summary judgment  
17 against Builders on their Fifth Cause of Action is improper.

18 **4. Sixth and Seventh Claims for Relief: Duty to Defend and Duty to**  
19 **Indemnity**

20 In order to consider the Association's arguments relating to the Association's duty to  
21 defend and duty to indemnify Builders, the Court must consider evidence outside the Association's  
22 Motion (i.e. the Settlement Agreement in the Prior Litigation), and thus, must apply the standard  
23 for summary judgment under NRCP 56(c). The Association, as the moving party, has failed to  
24 provide any evidence to show the absence of a disputed material fact. In addition, summary  
25 judgment would be improper as discovery has not commenced. *See Celotex Corp. v. Catrett*, 477  
26 U.S. 317, 322, 106 S.Ct. 2547, 2552 (1986). As a result, the Association's Motion should be  
27 denied.

28 ///



1 **VI. CONCLUSION**

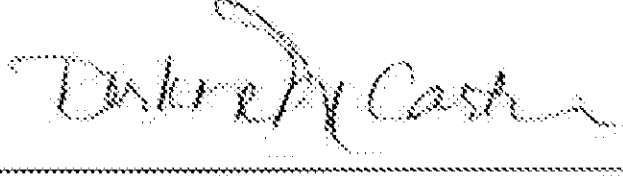
2 Actions for declaratory relief in Nevada are governed by the same liberal pleading standards  
3 that are applied to other civil actions. *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 858 P.  
4 2d 1258 (1993); *Vacation Village, Inc. v. Hitachi America, Ltd.*, 110 Nev. 481, 484, 874 P.2d 744,  
5 746 (1994). Thus, Builders are not required to argue the merits of their case or provide evidentiary  
6 support for each claim alleged in their Complaint. Rather, NRCP 8(e)(1) merely requires that  
7 “[e]ach averment of a pleading shall be simple, concise and direct. No technical forms of pleading  
8 or motions are required.” Builders’ Complaint complies with NRCP 8(e)(1), and Builders are  
9 entitled to seek declaratory relief, whether or not further relief is or could be claimed under NRS  
10 30.030.

11 In addition to their affirmative claims against the Association, Builders seek declaratory  
12 judgment of their rights under UDJA, not on a hypothetical basis, but upon present and established  
13 facts as demonstrated above. The declaration of Builders’ rights by this Court is essential, and  
14 Builders have no other true and speedy remedy at law of any kind. Under NRCP 12(b)(5), this  
15 Court must construe Builders’ Complaint liberally and as the non-moving party the Court must  
16 draw every fair inference in favor of Builders and deny the Association’s Motion. In addition,  
17 summary judgment is improper under NRCP 56(c) because there are genuine issues of material fact  
18 as it relates to the claims settled and released in the Prior Litigation and brought again by the  
19 Association in its Chapter 40 claim. For these reasons, Builders respectfully request this Court  
20 deny the Association’s Motion and allow Builders to pursue their claims on the merits.

21 Dated: January 4, 2017

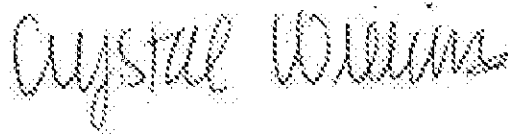
BREMER WHYTE BROWN & O’MEARA LLP

22  
23 By:

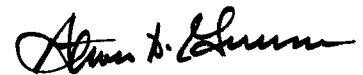
  
Peter C. Brown, Esq.  
Nevada State Bar No. 5887  
Darlene M. Cartier, Esq.  
Nevada State Bar No. 8775  
Attorneys for Plaintiffs,  
LAURENT HALLIER; PANORAMA  
TOWERS I, LLC; PANORAMA  
TOWERS I MEZZ, LLC; and M.J. DEAN  
CONSTRUCTION, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of January, 2017, a true and correct copy of the foregoing document was electronically served through Wiznet upon all parties on the master e-file and serve list.



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



CLERK OF THE COURT

PETER C. BROWN, ESQ.  
Nevada State Bar No. 5887  
DARLENE M. CARTIER, ESQ.  
Nevada State Bar No. 8775  
BREMER WHYTE BROWN & O'MEARA LLP  
1160 N. TOWN CENTER DRIVE  
SUITE 250  
LAS VEGAS, NV 89144  
TELEPHONE: (702) 258-6665  
FACSIMILE: (702) 258-6662  
pbrown@bremerwhyte.com  
dcartier@bremerwhyte.com  
  
Attorneys for Plaintiffs,  
LAURENT HALLIER; PANORAMA TOWERS I, LLC;  
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN  
CONSTRUCTION, INC.

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

LAURENT HALLIER, an individual;	)	Case No. A-16-744146-D
PANORAMA TOWERS I, LLC, a Nevada	)	Dept. XXII
limited liability company; PANORAMA	)	
TOWERS I MEZZ, LLC, a Nevada limited	)	<b>APPENDIX TO PLAINTIFFS'</b>
liability company; and M.J. DEAN	)	<b>OPPOSITION TO DEFENDANT</b>
CONSTRUCTION, INC., a Nevada Corporation,	)	<b>PANORAMA TOWERS UNIT OWNERS</b>
	)	<b>ASSOCIATION'S MOTION TO</b>
Plaintiffs,	)	<b>DISMISS COMPLAINT</b>
	)	
vs.	)	
	)	
PANORAMA TOWERS CONDOMINIUM	)	
UNIT OWNERS' ASSOCIATION, a Nevada	)	
non-profit corporation,	)	
	)	
Defendant.	)	

COMES NOW Plaintiffs LAURENT HALLIER, PANORAMA TOWERS I, LLC,  
PANORAMA TOWERS I MEZZ, LLC, and M.J. DEAN CONSTRUCTION, INC. by and through  
their attorneys of record, Peter C. Brown, Esq. and Darlene M. Cartier, Esq. of the law firm  
BREMER, WHYTE, BROWN & O'MEARA, LLP, and hereby submits their APPENDIX TO  
PLAINTIFFS' OPPOSITION TO DEFENDANT PANORAMA TOWERS UNIT OWNERS  
ASSOCIATION'S MOTION TO DISMISS COMPLAINT, filed on January 4, 2017.

///

1	<b>Exhibit No.</b>	<b>Brief Description</b>	<b># of Pages (including exhibit page)</b>	<b>Location of exhibit within Opposition</b>
2	1	A true and correct copy of the e-mail and instructions received from Mr. Johnson	10	Page 4
3	2	A true and correct copy of the Certificate of Occupancy for Tower I, obtained from the Clark County website	2	Pages 4 & 9
4	3	A true and correct copy of the Certificate of Occupancy for Tower II, obtained from the Clark County website	2	Pages 4 & 9
5	4	A true and correct copy of the Settlement Agreement in the Prior Litigation has been provided to the Court in camera, concurrently with the filing of Builders' Opposition (submitted in camera to the Court)	23	Pages 6, 10 & 22
6	5	A true and correct copy of the Association's Chapter 40 Notice dated February 24, 2016	52	Pages 6, 10, 20 & 21
7	6	A true and correct copy of Builders' March 29, 2016 correspondence to the Association	3	Pages 7 & 11
8	7	A true and correct copy of Builders' April 29, 2016 correspondence to the Association	3	Pages 7 & 11
9	8	A true and correct copy of Builders' tender of defense and indemnity, dated September 26, 2016	4	Pages 7 & 12
10	9	A true and correct copy of the Association's November 28, 2016 correspondence, declining to defend and/or indemnify Builders	3	Pages 7 & 12
11	10	A true and correct copy of AB 125	29	Pages 8, 14 & 15

Dated: January 4, 2017

BREMER WHYTE BROWN & O'MEARA LLP

By: 

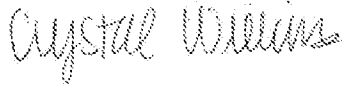
Peter C. Brown, Esq.  
Nevada State Bar No. 5887  
Darlene M. Cartier, Esq.  
Nevada State Bar No. 8775  
Attorneys for Plaintiffs,  
LAURENT HALLIER; PANORAMA  
TOWERS I, LLC; PANORAMA  
TOWERS I MEZZ, LLC; and M.J. DEAN  
CONSTRUCTION, INC.



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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of January, 2017, a true and correct copy of the foregoing document was electronically served through Wiznet upon all parties on the master e-file and serve list.



---

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

# Exhibit 1

# Exhibit 1

## Rachel Bounds

---

**From:** Jeremy A. Johnson <Jeremy.Johnson@ClarkCountyNV.gov>  
**Sent:** Thursday, December 29, 2016 2:52 PM  
**To:** Rachel Bounds  
**Subject:** Records Research Instructions  
**Attachments:** Records Research on Internet Instructions 61812.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Per our conversation, please see the attached instruction sheet on how to access and use the Clark County Building & Fire Prevention document image search web page to find the document(s) you're looking for. If you have any questions feel free to call us at (702) 455-3029 and we'll help you out.

Thanks and have a great day.

v/r  
Jeremy

Jeremy Johnson  
Records Technician  
Clark County Building Department  
Phone: 702-455-3029  
Fax: 702-382-3566  
[jeremy.johnson@clarkcountynv.gov](mailto:jeremy.johnson@clarkcountynv.gov)

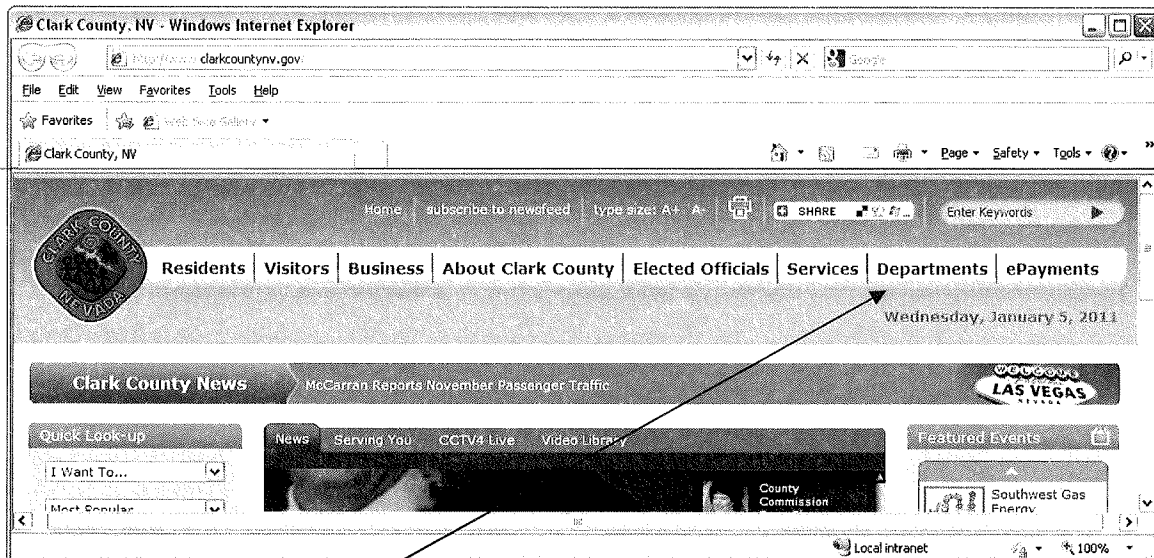
## Records Research on Internet Instructions

The following applications and corresponding documents are available online:

- Building Applications
- Land Use (Zoning) Applications
- Offsite Improvement Plans
- Traffic Studies
- Drainage Studies
- Encroachment Permits
- Fema Elevation Certificates
- Code Enforcement Documents

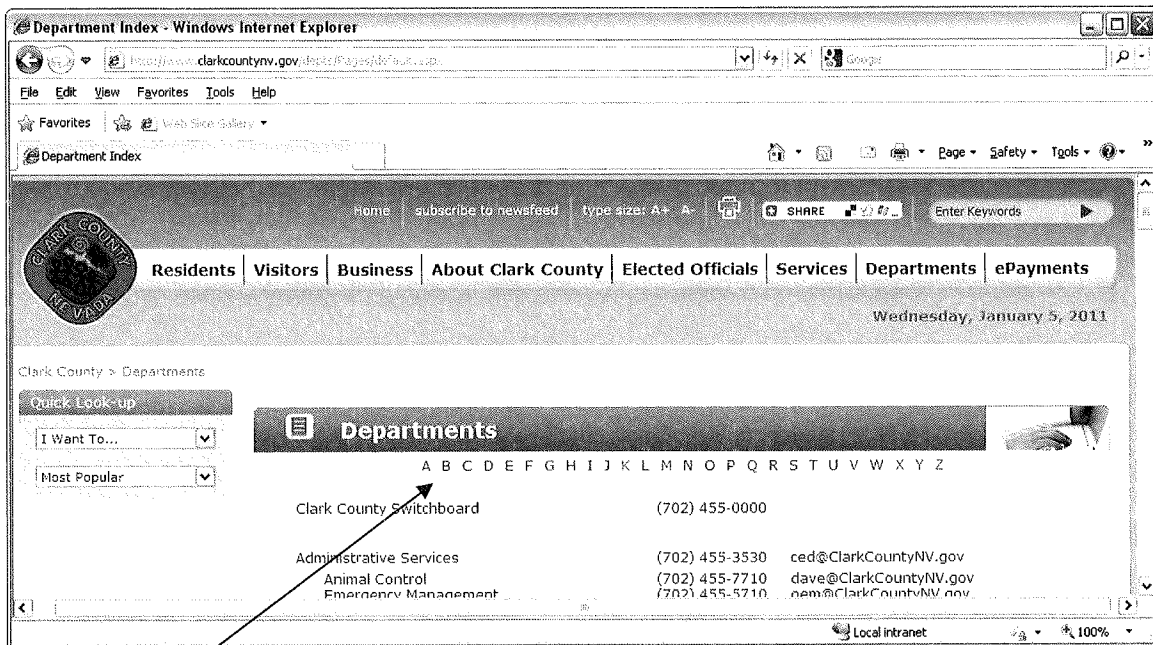
\*Please be aware Copyrighted items are not available online\*

Go to Clark County's Website at <http://www.clarkcountynv.gov>

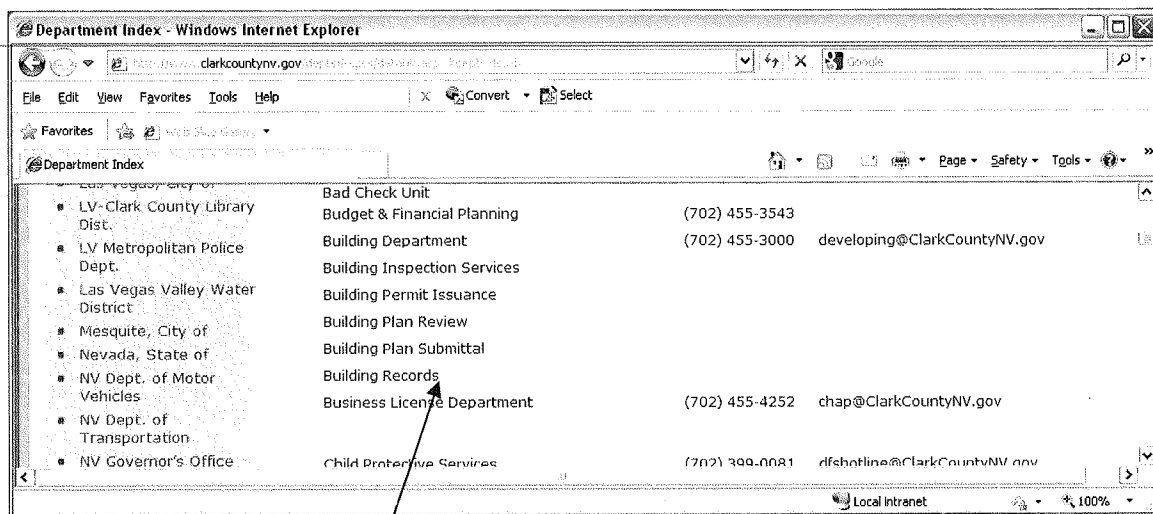


Click on Departments

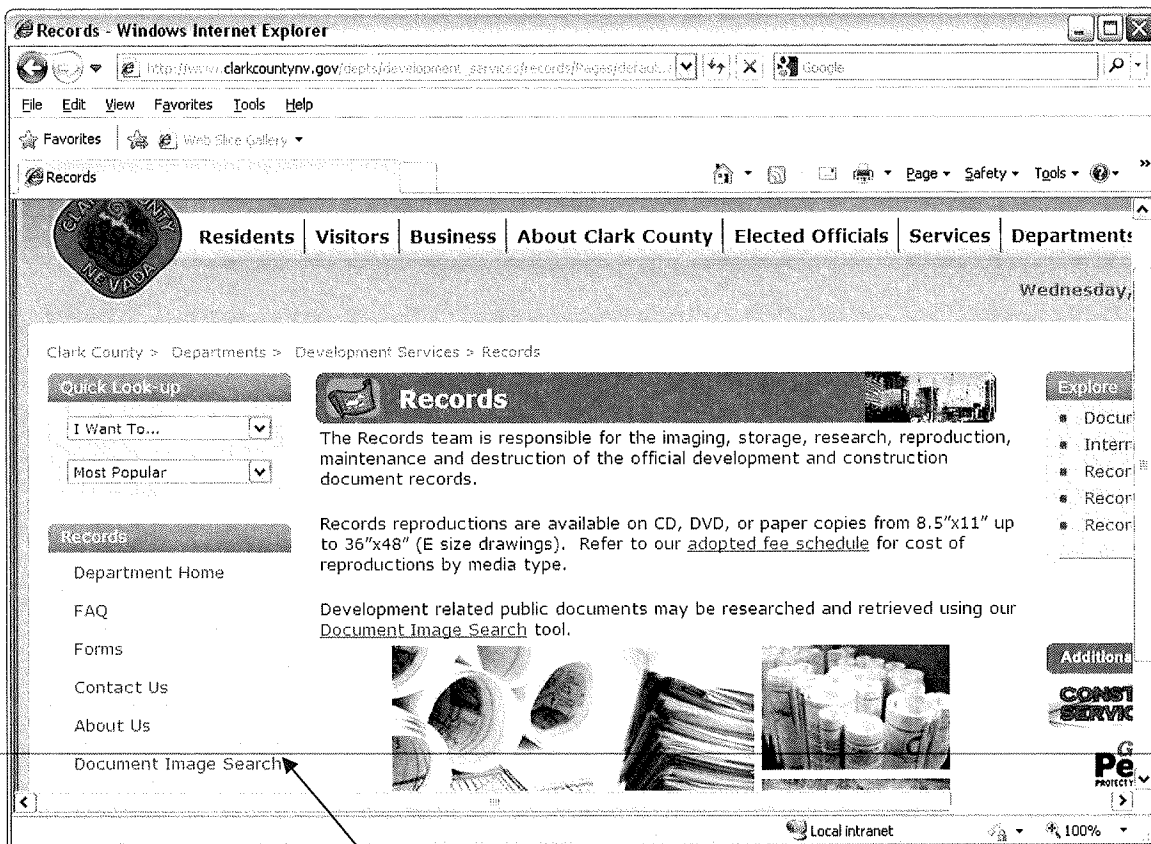




Click on "B" for Building Records



Click on Building Records



Click Document Image Search

Clark County - Nevada - Development Services - Windows Internet Explorer

http://idsnet.co.clark.nv.us/webimage10/(S(0e1593h0wvrgch2nufudj9))/DS

File Edit View Favorites Tools Help

Clark County - Nevada - Development Services

**Document Image Search**  
Clark County Comprehensive Planning,  
Development Services & Public Works

*Online*

**SEARCH HITLIST VIEW**

Step 1. Select Application Type:

Building Department Documents

Step 2. Select Search Type:

☒ Application Number  
☐ Parcel Number  
☐ Street Address

Step 3: Select Optional Document Type (Check Up To 5):

☒ ~~ALL~~ DOCUMENTS  
☐ ABTPLN: ABATEMENT PLAN  
☐ ABTPIC: ABATEMENT PLAN PHOTOS  
☐ ACKLTR: ACKNOWLEDGEMENT LETTER  
☐ ADCHPLN: ADDRESS CHANGE PLAN  
☐ AD: ADDRESS CHANGE  
☐ ADCH: ADDRESS CHANGE  
☐ ADL: ADDRESS LIST  
☐ ADDMISC: ADDRESSING

Step 4: Enter Application Num

Find Images

Click Find Images

Documents are made available here, however, some may inadvertently not display. Please note, documents that are subject to copyright protection are not available on this website and must be viewed at the Records office. Customers wishing the view Development Services construction documents or plans may do so at the Records office of the Department of Development Services at 4701 West Russell Road, Las Vegas, Nevada. Customers wishing the view Comprehensive Planning or Public Works documents, plans or maps may do so at the Records office located on the 1st floor of the Clark County Government Center at 500 S. Grand Central Pkwy, Las Vegas, Nevada.

Done Local intranet 100%

1. Select Application Type

Step 1. Select Application Type:

Building Department Documents

Step 2. Select Search Type:

☒ Application Number

☐ Parcel Number

☐ Street Address

Step 3: Select Optional Document Type (Check Up To 5):

☒ ~~ALL~~ DOCUMENTS

☐ ABTPLN: ABATEMENT PLAN

☐ ABTPIC: ABATEMENT PLAN PHOTOS

☐ ACKLTR: ACKNOWLEDGEMENT LETTER

☐ ADCHPLN: ADDRESS CHANGE PLAN

☐ AD: ADDRESS CHANGE

☐ ADCH: ADDRESS CHANGE

☐ ADL: ADDRESS LIST

☐ ADDMISC: ADDRESSING

Step 4: Enter Application Num

Find Images

Click Find Images

Documents are made available here, however, some may inadvertently not display. Please note, documents that are subject to copyright protection are not available on this website and must be viewed at the Records office. Customers wishing the view Development Services construction documents or plans may do so at the Records office of the Department of Development Services at 4701 West Russell Road, Las Vegas, Nevada. Customers wishing the view Comprehensive Planning or Public Works documents, plans or maps may do so at the Records office located on the 1st floor of the Clark County Government Center at 500 S. Grand Central Pkwy, Las Vegas, Nevada.

1. To Select Application Type, click down arrow

2. You can search on Application Number, Parcel Number, Street Address or Intersection

Once you enter your search criteria Click on Find Images

Clark County - Nevada - Development Services - Windows Internet Explorer

http://dnet.co.clark.nv.us/webimage10f5t02b5nywhjvtrvome

File Edit View Favorites Tools Help

Clark County - Nevada - Development Services

**Document Image Search**  
Clark County Comprehensive Planning,  
Development Services & Public Works

*Online*

**SEARCH HITLIST VIEW**

Documents noted by NAO are **Not Available Online**. These types of documents may be viewed or copies may be obtained by visiting our Records office at 4701 W Russell Rd. [Click Here for a map](#)

**NEW!** Click Column headings to sort (Note: documents over 15 pages may take several minutes to generate)  
Click Here To Download this hitlist to a comma separated .csv file (Note ", " characters have been replaced with "\_")

Select # of Documents returned per page 20

View	Application Number	Address	Document Type	Date	Pages	Rev
View	11-28046	4701 RUSSELL W RD	CERTIFICATE OF COMPL	12/14/2011	1	
View	11-28046	4701 RUSSELL W RD	CHECKLIST	10/19/2011	1	
View	11-28046	4701 RUSSELL W RD	PROJECT START-UP	10/19/2011	1	
NAO	11-28046	4701 RUSSELL W RD	CEMENT MIX	10/19/2011	1	
NAO	11-28046	4701 RUSSELL W RD	CALCULATIONS - STRUCTURE	10/19/2011	13	
View	11-28046	4701 RUSSELL W RD	QUALITY ASSUR CNTRCT	10/19/2011	2	

Local Intranet 100%

To view documents click on View, Adobe Acrobat will open the document and you will be able to view and print from this screen

Clark County - Nevada - Development Services - Windows Internet Explorer

http://dnet.co.clark.nv.us/webimage10f5t02b5nywhjvtrvome

File Edit View Favorites Tools Help

Clark County - Nevada - Development Services

**Document Image Search**  
Clark County Comprehensive Planning,  
Development Services & Public Works

*Online*

**SEARCH HITLIST VIEW**

1 / 1 75.9% Collaborate Sign

**CLARK COUNTY NEVADA**

**DEPARTMENT OF DEVELOPMENT SERVICES**  
4701 W. RUSSELL ROAD • LAS VEGAS, NV 89118 • (702) 455-3000

**CERTIFICATE OF COMPLETION**

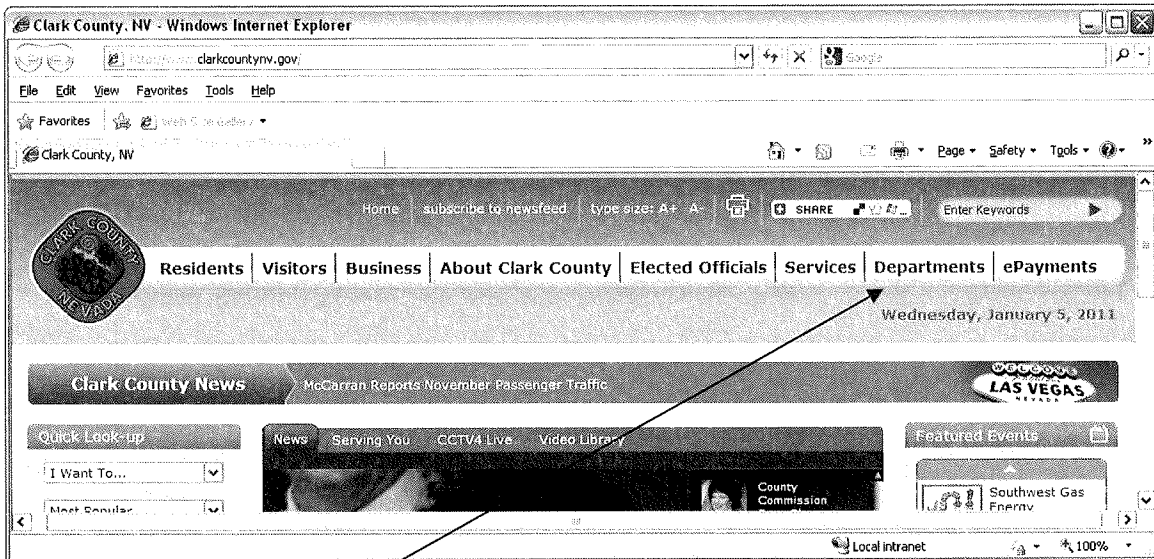
Permit #: 11-28046 Zone: P-F

Done Local Intranet 100%

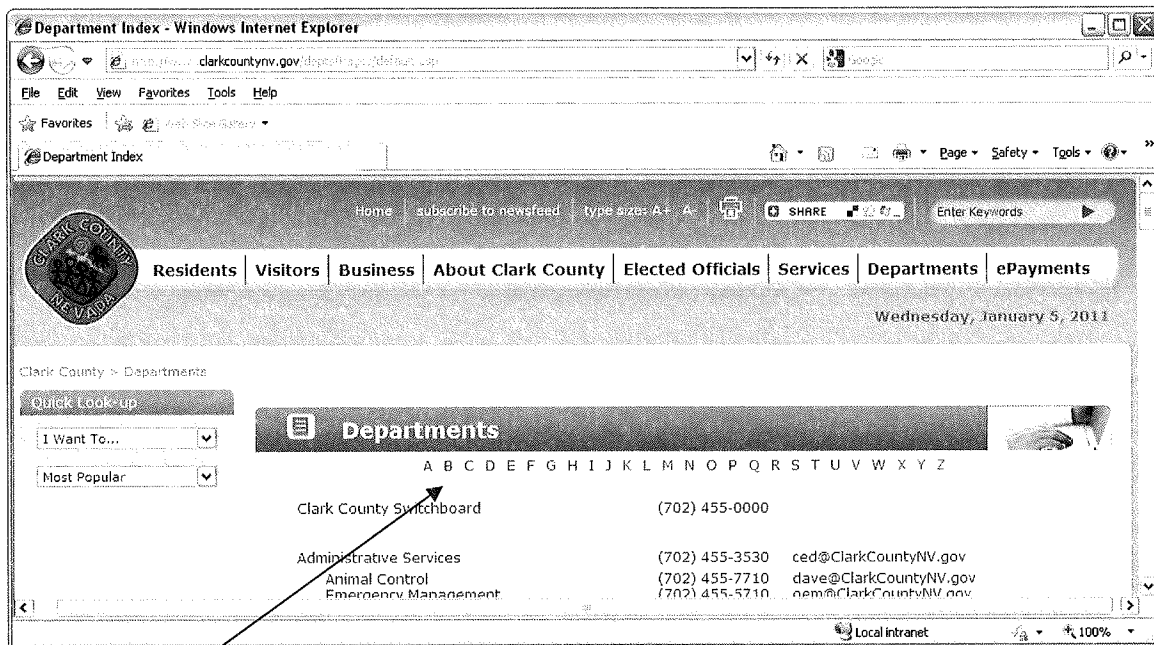
To view a different document, click on the Hitlist button and it will take you back to the hitlist. To do a different search, click on the Search button, and it will take you back to the screen where you can enter a new address.

## To view Inspection Histories do the following:

Go to Clark County's Website at <http://www.clarkcountynv.gov>



Click on Departments



Click on "B" and choose Building Department

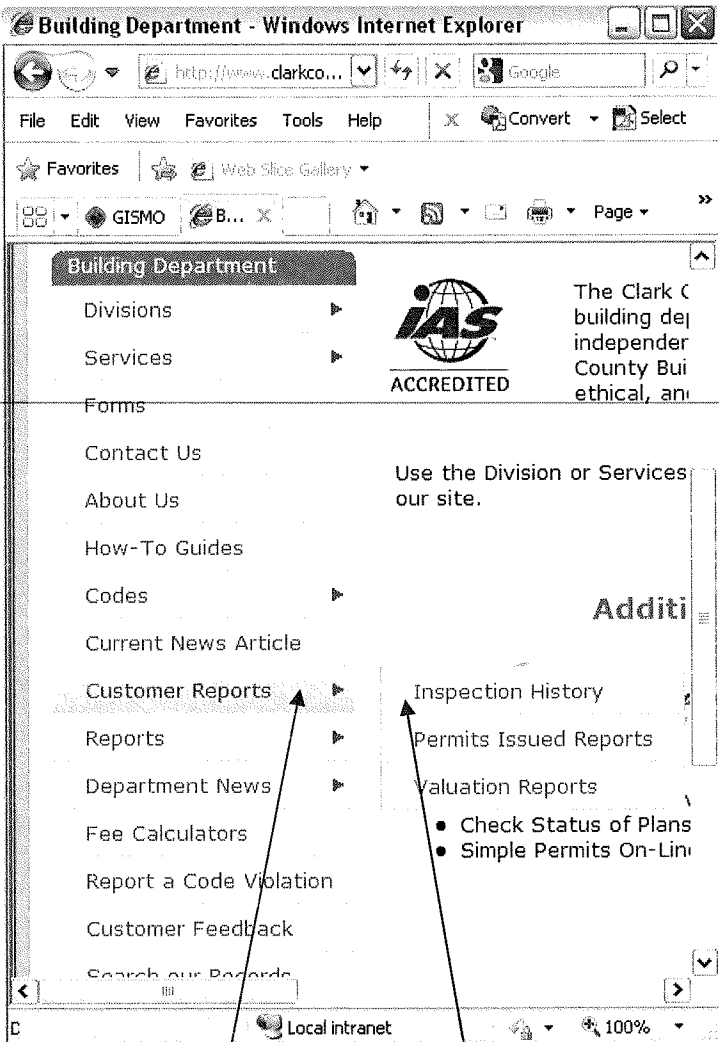


B

Bad Check Unit	(702) 671-4701
Billing and Payments	(702) 455-3557
Budget & Financial Planning	(702) 455-3543
Building Department	(702) 455-3000
Building Engineering	(702) 455-3000
Building Inspection	(702) 455-3000

dainfo@clarkcountynv.gov  
paymentinfo@ClarkCountyNV.gov  
  
developing@ClarkCountyNV.gov  
dsengineer@clarkcountynv.gov

Click on Building Department



Click on Customer Reports, then Inspection History

Inspection History - Windows Internet Explorer

http://www.clarkcountynv.gov/infocbids/development\_services/Pages/...  
 File Edit View Favorites Tools Help  
 X Convert Select  
 Favorites Web Site Golden  
 Inspection History

Home subscribe to newsfeed type size: A+ A- SHARE

**Clark County Nevada**

**Residents | Visitors | Business | About Clark County | Elected Officials | Services | De**

Clark County > Departments > Building Department > Inspection History

**Quick Look-up**

I Want To...  
 Most Popular

**Building Department**

Divisions

**Building Department**

ENTER PERMIT APPLICATION NUMBER TO DISPLAY A COMPLETE INSPECTION HISTOR

**Permit Number:**

Submit

Done Local Intranet 100%

Enter the Permit # you are looking for and click Submit

Your Inspection History will appear as below

http://dsnet.co.clark.nv.us/pdf/inspHist11-123.pdf - Windows Internet Explorer

http://dsnet.co.clark.nv.us/pdf/inspHist11-123.pdf

File Edit Go To Favorites Help

Convert Select

Favorites Web Site Gallery

http://dsnet.co.clark.nv.us/pdf/inspHist11-123.pdf

Page Safety Tools

1 / 1 26.9%

Inspection History Report

Date Placed: 10/28/12

Patchment	Address	Permit Type	Permit Number	Inspection Type	S.O.S	Result Date	Result Status	Comments	Page
1100	5000 JAW DRIVE NE, ST	2012-10-28 10:00:00	101-00-751-01	2012-10-28 10:00:00	101-00-751-01	10/28/12	APPROVED	2012-10-28 10:00:00	1/1

Unknown Zone

# Exhibit 2

# Exhibit 2



## DEPARTMENT OF DEVELOPMENT SERVICES

4701 W. RUSSELL RD. LAS VEGAS, NEVADA 89118 (702) 455-3000

# CERTIFICATE OF OCCUPANCY

Permit # : 04-36699 Zone: U-V  
Site Address : 4525 DEAN MARTIN DR  
Prop. Description: PARCEL MAP FILE 108 PAGE 93 LOT 1  
  
Project Name : PANORAMA TOWERS CONDOMINIUMS  
Tenant Name : PANORAMA TOWERS Tenant # :  
Owner Name : PANORAMA TOWERS I L L C  
Contractor Name : M J DEAN CONSTRUCTION INC State Lic. # : 0032338  
Contractor Addr. : 5055 W PATRICK LN STE 101  
LAS VEGAS NV, LAS VEGAS NV 89118  
  
Ctr. Phone : (702) 873-1947 Parcel # : 162-20-302-020 # of Units : 313  
Principal Design Professional : KLAI JUBA ARCHITECTURAL  
Construction Type : I-A Occupancy : R2 Occupant Load:  
Sq. Ft. : 668677 Building Final : 3/16/07 Issue Date : 1/16/08  
Application Type : CONDOMINIUM-NEW (PHASED)  
Description of Work CONDOMINIUM TOWER 34 STORIES

### NOTICE TO APPLICANT

This structure is deemed to be in substantial compliance with fire, life safety and structural provisions of the adopted codes of construction. Records concerning the construction of this building are on file with the building department in compliance with the appropriate records procedures.

This Certificate must be posted and maintained within any non-single family building or structure referenced above. Any construction to be done beyond the final building inspection date, above, requires a new building permit.

1/16/08

DATE APPROVED

 for  
RONALD L. LYNN, BUILDING OFFICIAL

*This Certificate of Occupancy provides no warranty or guarantee either expressed or implied.*

# Exhibit 3

# Exhibit 3





## DEPARTMENT OF DEVELOPMENT SERVICES

4701 W. RUSSELL RD. LAS VEGAS, NEVADA 89118 (702) 455-3000

# CERTIFICATE OF OCCUPANCY

Permit # : 05-2857 Zone: U-V  
Site Address : 4575 DEAN MARTIN DR  
Prop. Description: PARCEL MAP FILE 108 PAGE 93 LOT 2  
  
Project Name : PANORAMA TOWER II CONDOMINIUMS  
Tenant Name : PANORAMA TOWER II CONDO Tenant # :  
Owner Name : PANORAMA TOWERS I L L C  
Contractor Name : M J DEAN CONSTRUCTION INC State Lic. # : 0032338  
Contractor Addr. : 5055 W PATRICK LN STE 101  
LAS VEGAS NV, LAS VEGAS NV 89118  
  
Ctr. Phone : (702) 873-1947 Parcel # : 162-20-302-021 # of Units : 309  
Principal Design Professional : KLAI JUBA ARCHITECT  
Construction Type : I-A Occupancy : R2 Occupant Load:  
Sq. Ft. : 427230 Building Final : 7/16/07 Issue Date : 3/31/08  
Application Type : CONDOMINIUM-NEW (PHASED)  
Description of Work NEW CONDOMINIUM TOWER II

### NOTICE TO APPLICANT

This structure is deemed to be in substantial compliance with fire, life safety and structural provisions of the adopted codes of construction. Records concerning the construction of this building are on file with the building department in compliance with the appropriate records procedures.

This Certificate must be posted and maintained within any non-single family building or structure referenced above. Any construction to be done beyond the final building inspection date, above, requires a new building permit.

3/31/08

DATE APPROVED

 for  
RONALD L. LYNN, BUILDING OFFICIAL

*This Certificate of Occupancy provides no warranty or guarantee either expressed or implied.*

# Exhibit 4

# Exhibit 4

**THIS EXHIBIT HAS BEEN  
SUBMITTED FOR AN IN  
CAMERA REVIEW**

# Exhibit 5

# Exhibit 5



Edward J. Song, Esq.

esong@leachjohnson.com

February 24, 2016

Mr. Laurent Hallier,  
aka Laurence Hallier  
2510 E. Sunset Road, #5-400  
Las Vegas, NV 89120

**NOTICE TO CONTRACTOR PURSUANT TO  
NEVADA REVISED STATUTES, SECTION 40.645**

**Please take notice** that Panorama Towers Condominium Unit Owners' Association, Inc., a Nevada non-profit corporation (Claimant), intends to pursue claims against you pursuant to Nevada Revised Statutes (NRS) 40.600 *et seq.*, arising from defects in the design and/or construction of the Panorama Towers condominium development located at 4525 Dean Martin Drive, Las Vegas, Nevada (the Development). Your legal rights are affected by this notice which is being given to satisfy the requirements of NRS 40.645.

**Notice to others responsible.** Pursuant to NRS 40.646, you must forward a copy of this Notice within 30 days, by certified mail, return receipt requested, to the last known address of each subcontractor, supplier or design professional whom you reasonably believe is responsible for the constructional defects identified below. Failure to send this Notice may restrict your ability to commence an action against such a subcontractor, supplier or design professional.

**Response to notice.** Pursuant to NRS 40.6472, you must provide a written response to each of the defects identified below within 90 days from your receipt of this Notice. Your response must state, as to each constructional defect identified below, whether you elect to repair the defect, propose to pay monetary compensation for the defect, or disclaim liability for the defect and the reasons therefore.

Your response to this Notice, and all communications pertaining to this Notice, should be directed to Edward J. Song, Esq., Leach Johnson Song & Gruchow, 8945 West Russell Road, Ste. 330, Las Vegas, Nevada 89148 (702/538-9074).

**Preliminary list of constructional defects.** This claim pertains to the following defects and resulting damages:

1. **Residential tower windows** – There are two tower structures in the Development, consisting of 616 residential condominium units located above common areas and retail spaces below. The window assemblies in the residential tower units were defectively designed such that water entering the assemblies does not have an appropriate means of exiting the assemblies. There are no sill pans, proper weepage components or other drainage provisions designed to direct water from and through the window assemblies to the exterior of the building.

This is a design deficiency that exists in all (100%) of the residential tower window assemblies.



As a consequence of this deficiency, water that should have drained to the exterior of the building has been entering the metal framing components of the exterior wall and floor assemblies, including the curb walls that support the windows, and is causing corrosion damage to the metal parts and components within these assemblies. Further, this damage to the metal components of the tower structures presents an unreasonable risk of injury to a person or property resulting from the degradation of these structural assemblies.

2. **Residential tower fire blocking** – The plans called for fire blocking insulation, as required by the building code, in the ledger shelf cavities and steel stud framing cavities at the exterior wall locations between residential floors in the two tower structures. (See plan detail attached as Exhibit A.) The purpose of this insulation is to deter the spread of fire from one tower unit to the units above or below. However, the insulation was not installed as required by the plans and building code.

This installation deficiency exists in all (100%) of the residential tower units, in which insulation was omitted either from the ledger shelf cavity, from the steel stud framing cavity, or from both.

This deficiency presents an unreasonable risk of injury to a person or property resulting from the spread of fire.

3. **Mechanical room piping** – The piping in the two lower and two upper mechanical rooms in the two tower structures has sustained corrosion damage as described in the attached ATMG report dated November 17, 2011 (Exhibit B).
4. **Sewer problem** – The main sewer line connecting the Development to the city sewer system ruptured due to installation error during construction, causing physical damage to adjacent common areas. This deficiency has been repaired. In addition to causing damage, the defective installation presented an unreasonable risk of injury to a person or property resulting from the disbursement of unsanitary matter.

**Additional constructional defects.** Claimant is still in the process of investigating the existing conditions at the Development, and accordingly, this preliminary list of defects is not intended as a complete statement of all of the defects in or at the Development. Claimant reserves the right to amend or update this list in the event that new defects and/or resulting damages are discovered during the course of investigation.

**Requested documents.** Pursuant to NRS 40.681, this will serve as Claimant's demand that you provide copies of all relevant documents pertaining to the construction of the Development, including plans, specifications, shop drawings, warranties, contracts, subcontracts, change orders, requests for information, inspection or other reports, soil and other engineering reports, photos, correspondence, memoranda, work orders for repair, videotapes,

Panorama Towers Condominium  
Unit Owners' Association  
February 24, 2016  
Page 3

audiotapes, and any and all policies of insurance that provided liability insurance coverage for your services or work in connection with the Development.

**Mediation demand.** Pursuant to NRS 40.680, this well serve as Claimant's demand for pre-litigation mediation with a mediator to be agreed to by the parties.

LEACH JOHNSON SONG & GRUCHOW



Edward J. Song, Esq.

**LEACH JOHNSON SONG & GRUCHOW**  
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148  
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

**EDWARD SONG, ESQ., NVB: 007922**  
**LEACH JOHNSON SONG & GRUCHOW**  
 8945 West Russell Road, Suite 330  
 Las Vegas, Nevada 89148  
 Telephone: (702) 538-9074  
 Facsimile: (702) 538-9113

Attorneys for Claimant

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

PANORAMA TOWERS CONDOMINIUM  
UNIT OWNERS' ASSOCIATION, a  
Nevada non-profit corporation,

## VERIFICATION OF EXPERT REPORTS PURSUANT TO 40.645

Claimant,

V.

LAURENT HALLIER, an individual;  
PANORAMA TOWERS I, LLC, a Nevada  
limited liability company; PANORAMA  
TOWERS I MEZZ, LLC, a Nevada limited  
liability company; PANORAMA TOWERS  
II, LLC, a Nevada limited liability company;  
PANORAMA TOWERS II MEZZ, LLC, a  
Nevada limited liability company; M.J.  
DEAN CONSTRUCTION, INC., a Nevada  
corporation; SIERRA GLASS & MIRROR  
INC., a Nevada corporation; F. RODGERS  
CORPORATION, a Nevada corporation;  
DEAN ROOFING COMPANY, a Nevada  
corporation; FORD CONTRACTING, INC., a  
Nevada corporation; INSULPRO PROJECTS,  
INC., a Nevada corporation; FLIPPIN'S  
TRENCHING, INC., a Nevada corporation;  
X-TREME X-CAVATION, INC., a Nevada  
corporation; SOUTHERN NEVADA  
PAVING, INC., a Nevada corporation;  
BOMBARD MECHANICAL, LLC, a  
Nevada limited liability company; SILVER  
STAR PLUMBING, INC., a close  
corporation; FIVE STAR PLUMBING &  
HEATING, LLC, a Nevada limited liability  
company,

### Respondents.

## VERIFICATION

State of Nevada             )  
County of Clark         )ss:

1 Dennis Kariger, being duly sworn according to law, deposes and says:

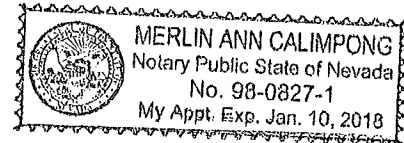
2 The undersigned on behalf of Claimant the Panorama Towers Condominium Unit  
3 Owners' Association verifies that they have reviewed the expert reports included and referenced  
4 to said notice as enumerated in Exhibit 1 and that the defects, damages, and injuries set forth in  
5 those reports exist at the locations depicted therein within the Panorama Towers Condominium  
6 community.

7 I declare under penalty of perjury that the foregoing is true and correct and that this  
8 Verification was executed on this 24<sup>th</sup> day of February, 2016.

9 Dennis B Kariger  
10 [Signature]

11  
12  
13 Subscribed and sworn on before me  
14 this 24<sup>th</sup> day of February, 2016.

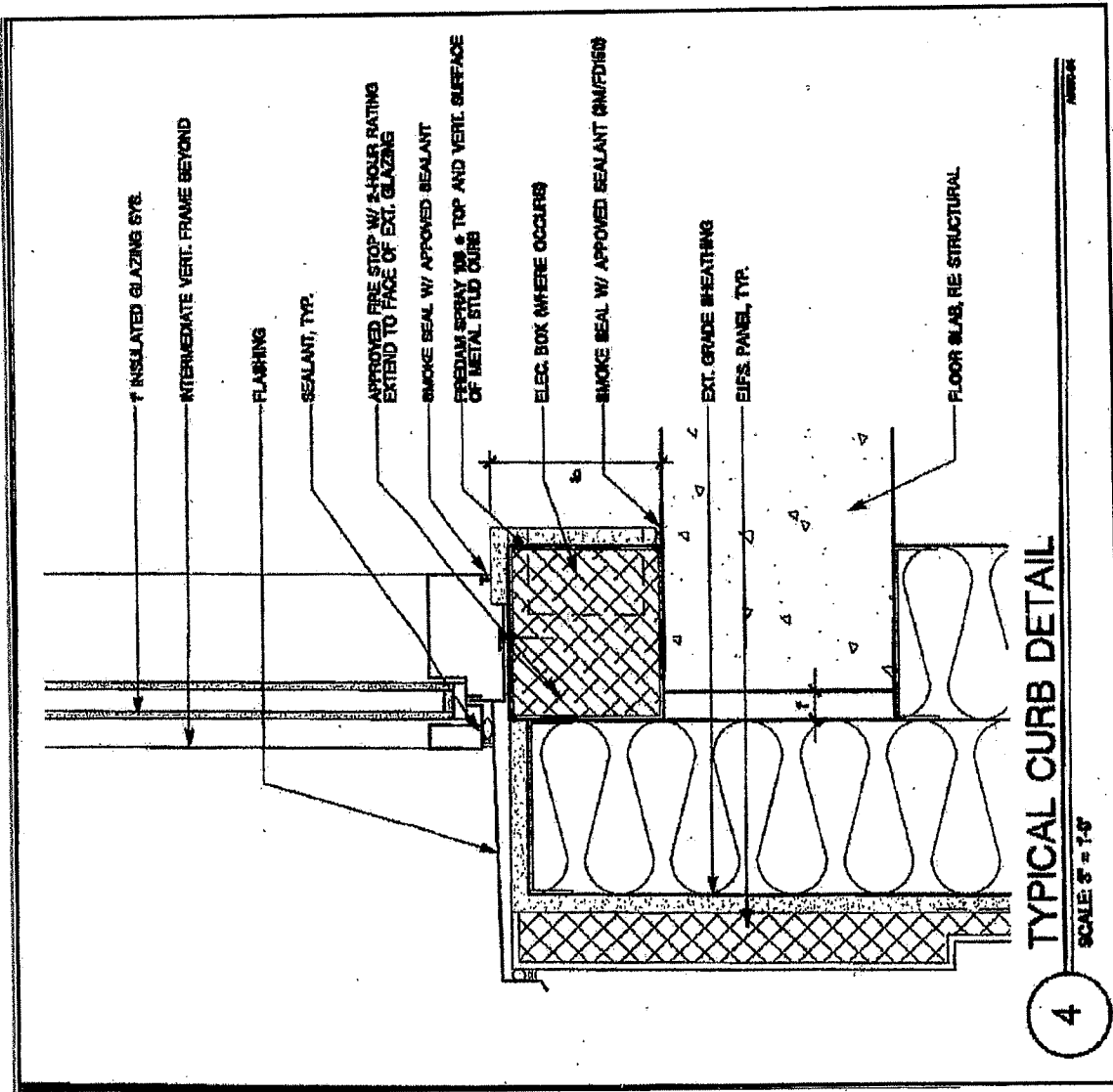
15  
16 Merlin Ann Calimpong  
17 NOTARY PUBLIC In and For Said  
18 County and State



# Exhibit “A”

# Exhibit “A”





**Exhibit “B”**

**Exhibit “B”**

**PANORAMA TOWER 1**  
**UPPER MECHANICAL ROOM**  
**Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
Media Tanks	4 ferrous check valves		X		6
	Culligan ferrous parts		X		7
	tank steel flanges			X	
City Water Inlet	2 ferrous butterfly valves	X			4
	3 overhead butterfly valves	X			5
Zone 4 Hot Water Tank	ferrous check valve		X		2
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Zone 3 Hot Water Tank	2 ferrous check valves		X		3
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Hot Water Recirculation Pump	ferrous pump bowl assembly	X			1
	steel nipple		X		
Unidentified pipe run	carbon steel pipes, fittings, nipples		X		8
<p>*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy</p>					

**PANORAMA TOWER 1**  
**UPPER MECHANICAL ROOM**  
**Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
Media Tanks	4 ferrous check valves		X		6
	Culligan ferrous parts		X		7
	tank steel flanges			X	
City Water Inlet	2 ferrous butterfly valves	X			4
	3 overhead butterfly valves	X			5
Zone 4 Hot Water Tank	ferrous check valve		X		2
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Zone 3 Hot Water Tank	2 ferrous check valves		X		3
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Hot Water Recirculation Pump	ferrous pump bowl assembly	X			1
	steel nipple		X		
Unidentified pipe run	carbon steel pipes, fittings, nipples		X		8
*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy					

**PANORAMA TOWER 2**  
**LOWER MECHANICAL ROOM**  
**Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
<b>BP-1 Pump Unit</b>	ferrous* pump bowls			X	2
	angle valves		X		1
	bypass butterfly valve	X			4
	inlet butterfly valve	X			4
	outlet butterfly valve	X			4
	flex connections with steel flanges			X	3
	pump butterfly valves	X			2
<b>BP-2 Pump Unit</b>	ferrous pump bowls			X	5
	angle valves		X		5
	bypass butterfly valve	X			9
	inlet butterfly valve	X			9
	outlet butterfly valve	X			9
	flex connections with steel flanges			X	9
	pressure gage nipple	X			5
	pump butterfly valves	X			6
	west pump butterfly valve fasteners	X			7
<b>Media Tanks</b>	4 ferrous check valves		X		12
	Culligan ferrous parts	X			27
	tank steel flanges			X	12
<b>Pressure Regulator Manifold</b>	ferrous butterfly valves	X			13
	3 ferrous strainers	X			13
	4 ductile iron pressure regulator bodies		X		13, 19
	3 ductile iron regulator bonnets (tops)		X		13, 18, 19
	leaking plastic lined steel nipples	X			14, 15
	non-leaking plastic lined steel nipples		X		16
	steel drain nipples	X			17



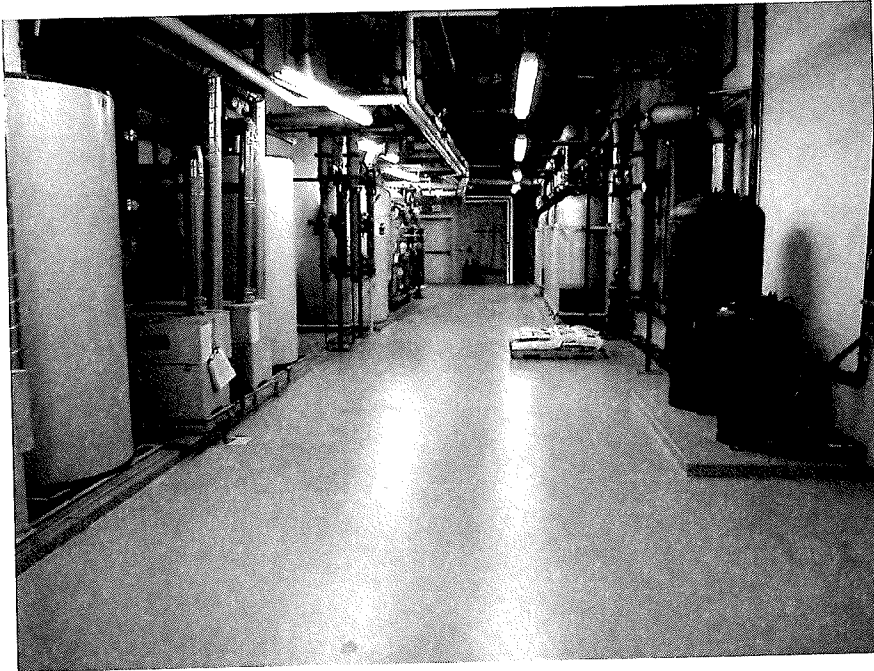
**PANORAMA TOWER 2**  
**LOWER MECHANICAL ROOM**  
 Replacement Recommendation

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
City Water Inlet Manifold	6 ferrous butterfly valves	X			20
	2 ferrous strainers	X			20
	2 pressure regulator ductile iron bodies		X		20
Zone 1 Hot Water Tank	ferrous butterfly valve	X			23, 24
	ferrous check valve		X		23, 24
Zone 2 Hot Water Tank	ferrous butterfly valve	X			21, 22
	ferrous check valve		X		21, 22
Hot Water Recirculation Pumps	ferrous pump bowl assemblies	X			25, 26
Outlet Piping Sample Connections; Connections to Sink in Maintenance room	carbon steel nipples	X			28
Filter Bank	replace all carbon steel nipples, fittings	X			na
*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy					

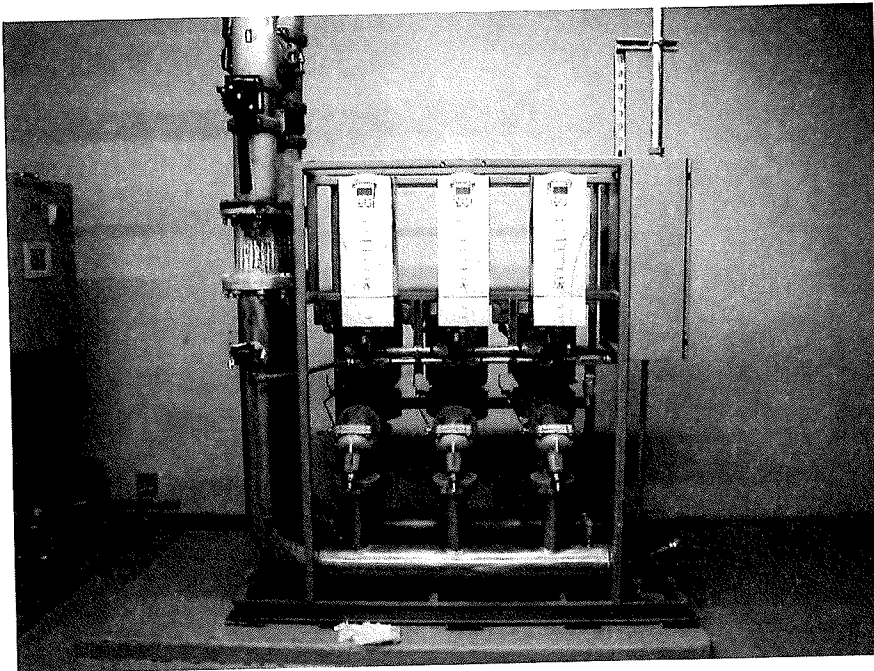
**PANORAMA TOWER 2**  
**UPPER MECHANICAL ROOM**  
**Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
Media Tanks	4 ferrous check valves		X		
	Culligan ferrous parts	X			
	tank steel flanges			X	
Overhead piping	cold to zone 3 and 4 - 2 carbon steel nipples		X		2
	carbon steel nipple to main cold line	X			1
Zone 4 Hot Water Tank	ferrous butterfly valve	X			
	ferrous check valve		X		
Zone 3 Hot Water Tank	ferrous butterfly valve	X			
	ferrous check valve		X		
Hot Water Recirculation Pumps	ferrous pump bowl assemblies	X			
	ferrous check valve		X		
<p>*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy</p>					

## PANORAMA 1 Lower Mechanical Room

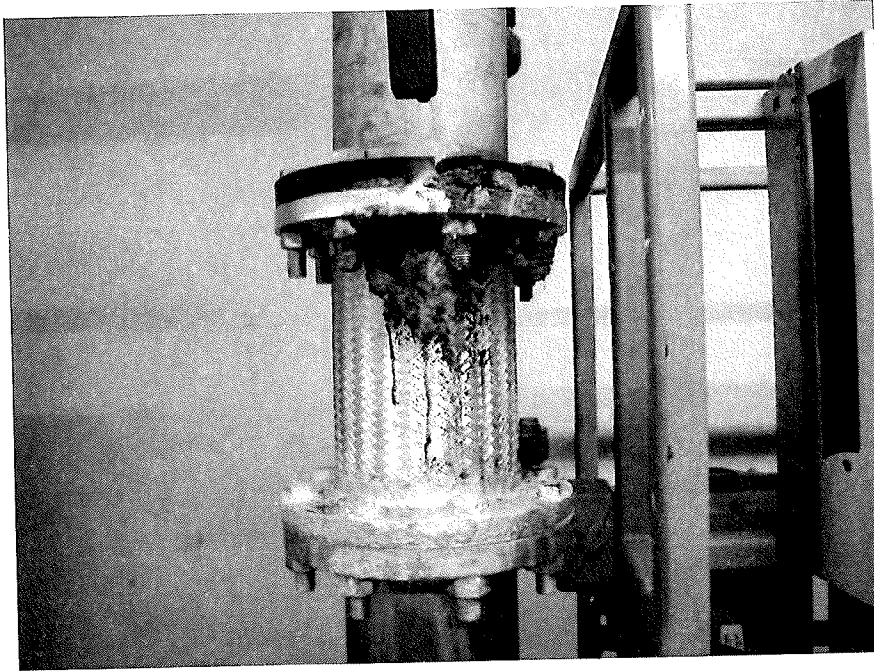


1. View of  
lower mechanical room (jpg100).



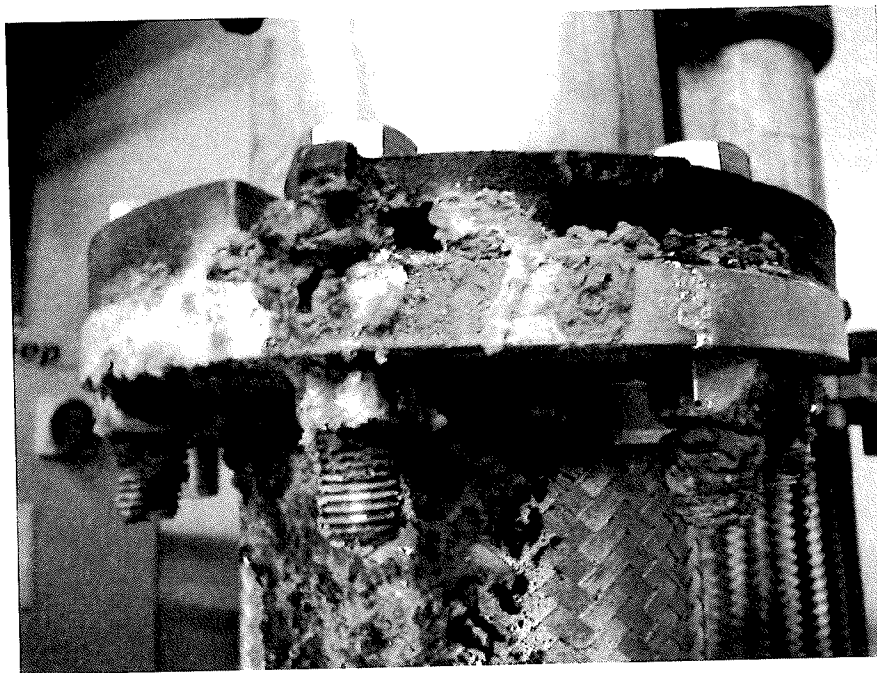
2. BP-1,  
(jpg66)

PANORAMA 1 Lower Mechanical Room



3. BP-1, flex

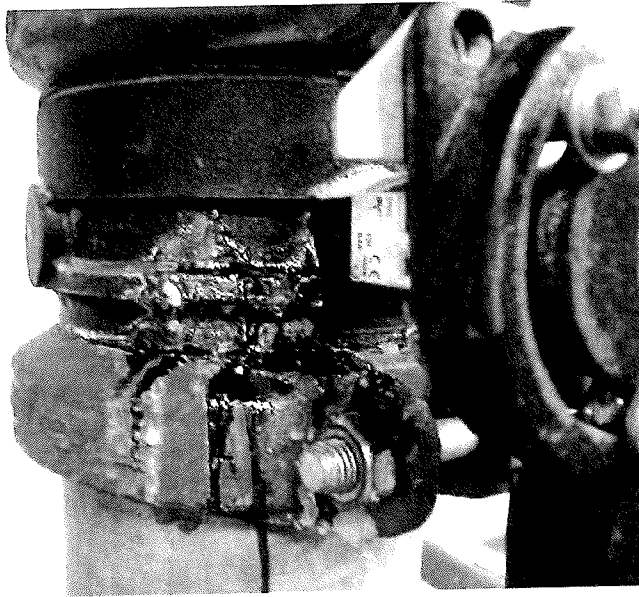
connection (jpg68)



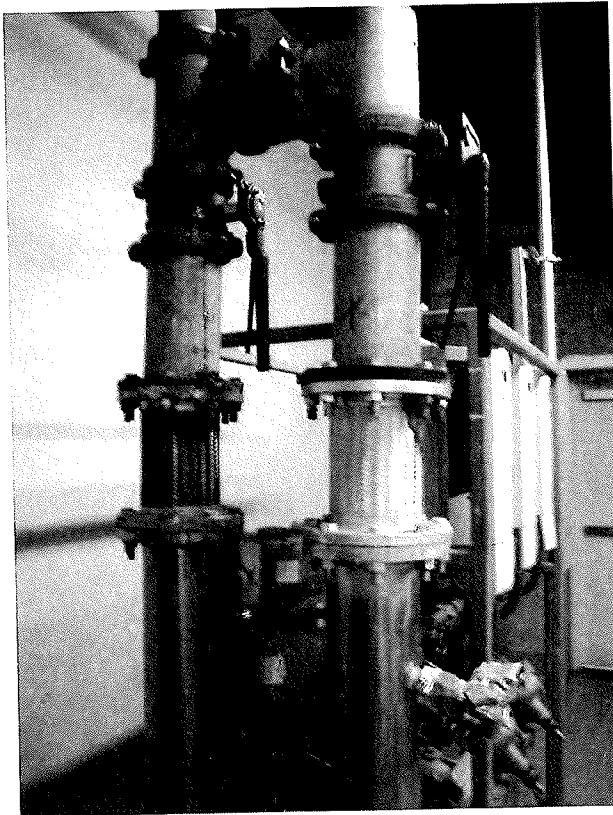
4. BP-1,

close up of leaking flex flange connection (jpg72)

PANORAMA 1 Lower Mechanical Room



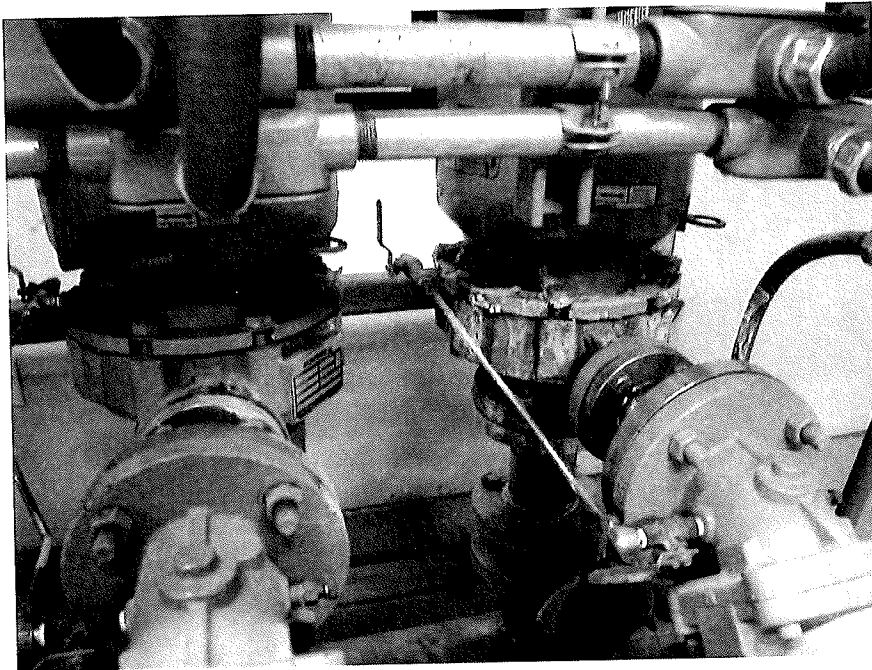
5. BP-1 (jpg 73)



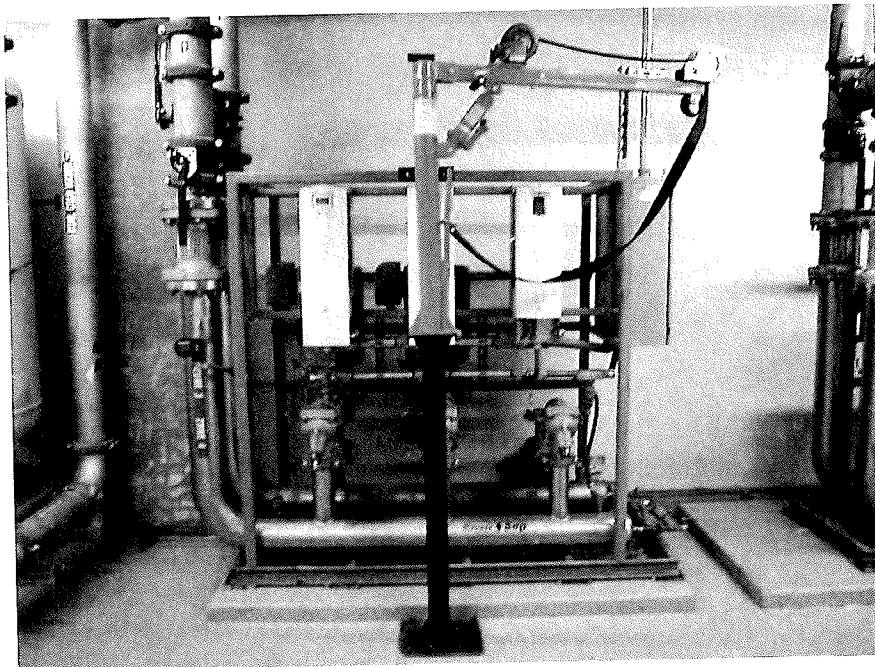
6. BP-1 (jpg(74)



PANORAMA 1 Lower Mechanical Room

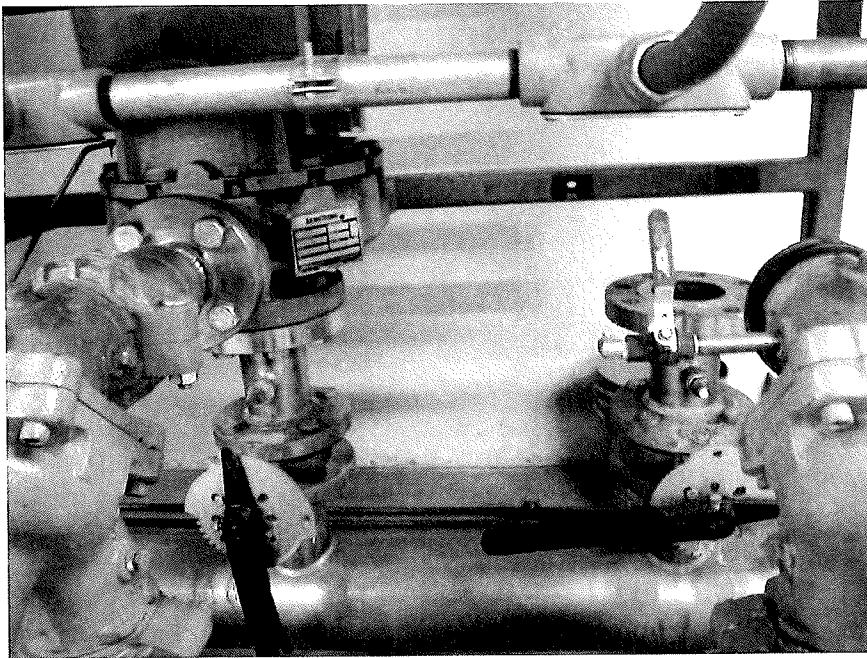


7. BP-1,  
replace leaking ferrous pump housing now (jpg75).



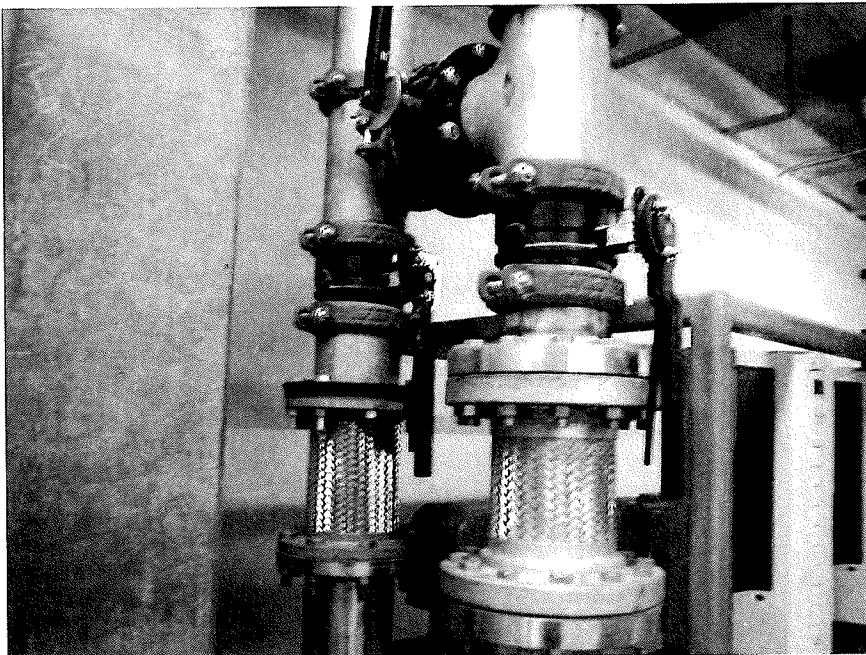
8. BP-2, (jpg  
77)

PANORAMA 1 Lower Mechanical Room



9. BP-2,

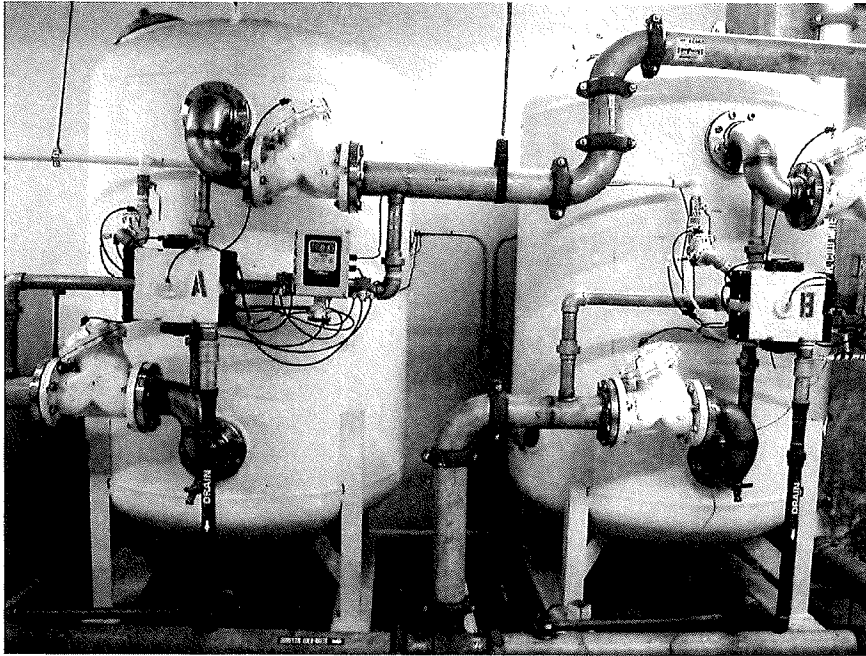
(jpg78)



10. BP-2,

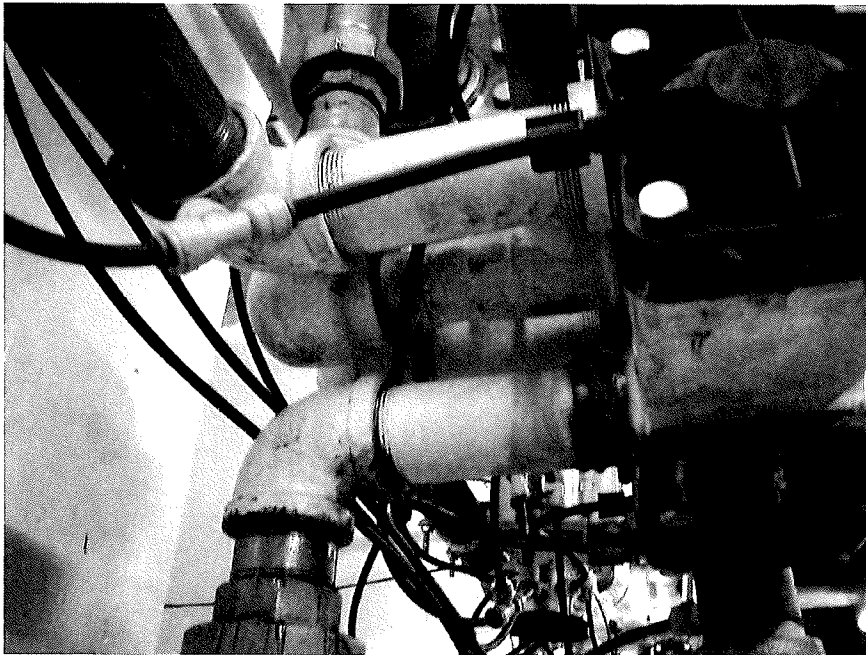
(jpg79)

PANORAMA 1 Lower Mechanical Room



tanks (jpg80)

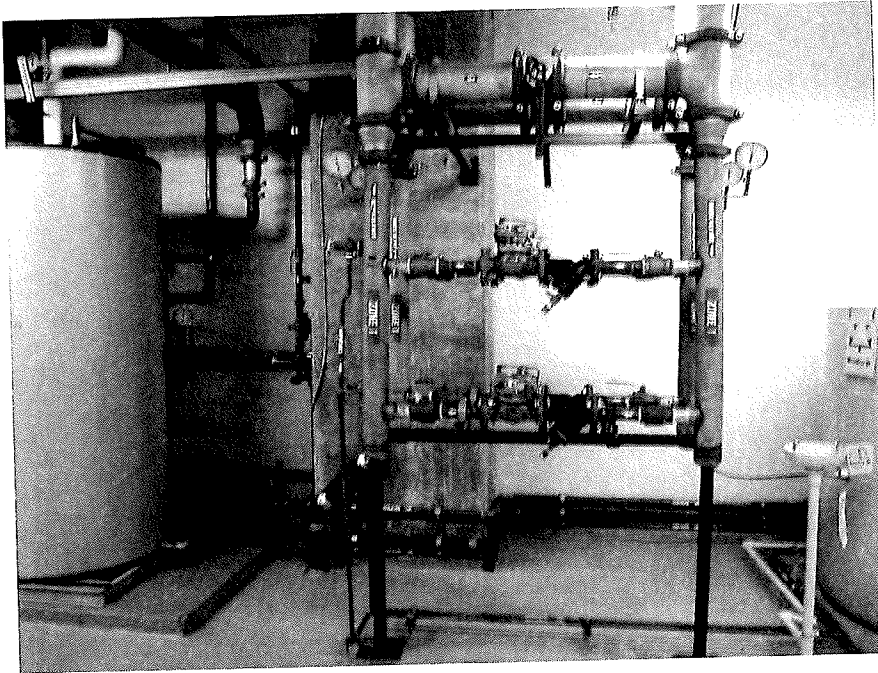
11. Media



carbon steel parts (jpg81).

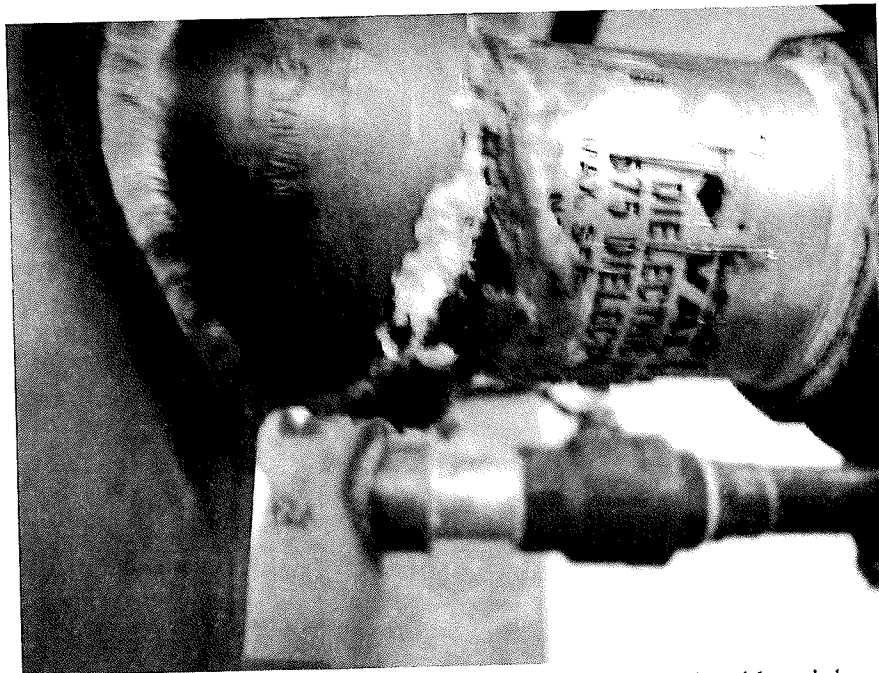
12. Culligan

PANORAMA 1 Lower Mechanical Room



13. Pressure

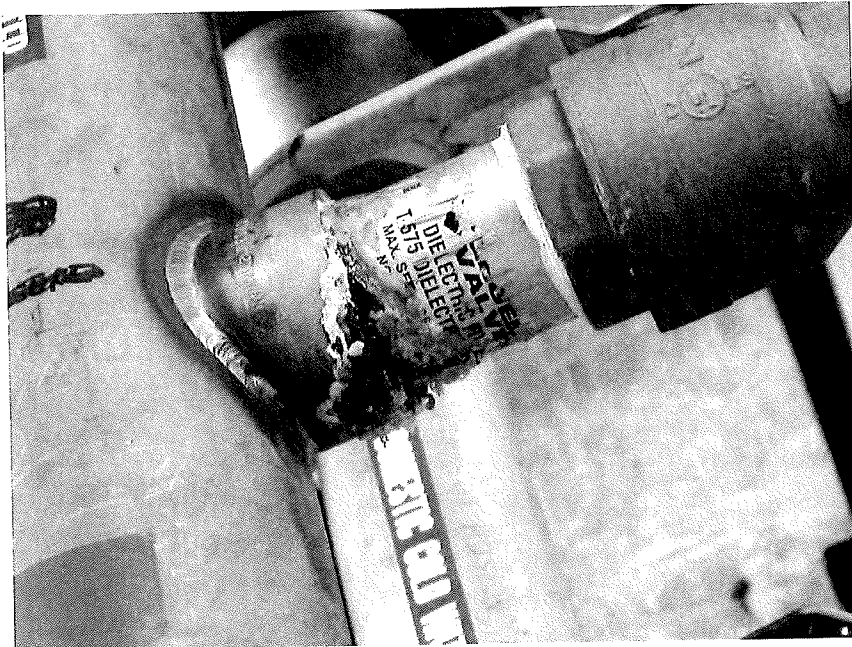
regulator manifold (jpg82).



14. Pressure

regulator manifold (jpg83) replace plastic lined steel nipple with stainless steel.

PANORAMA 1 Lower Mechanical Room



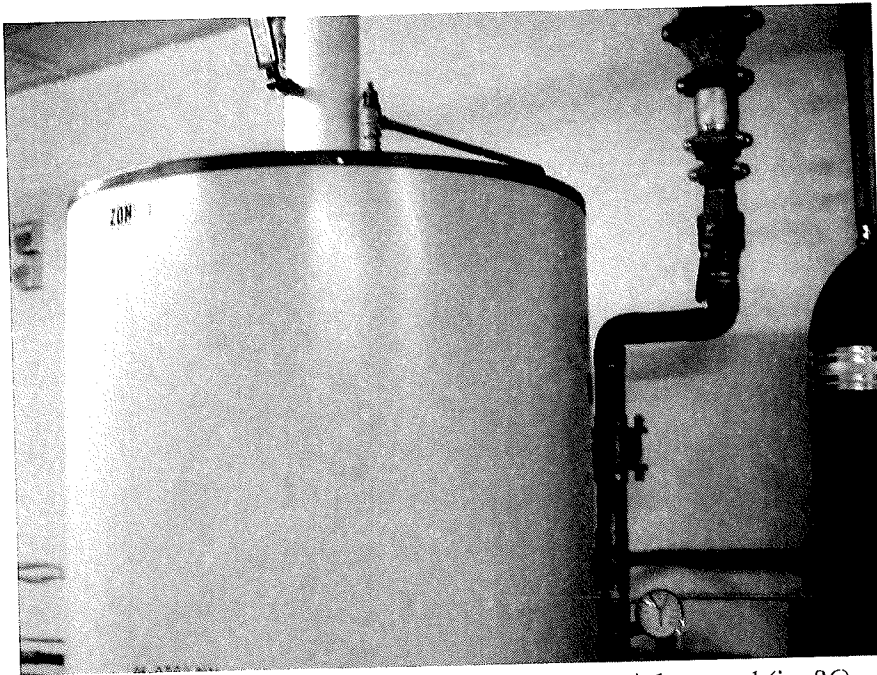
15. Another view of previous photo (jpg84).



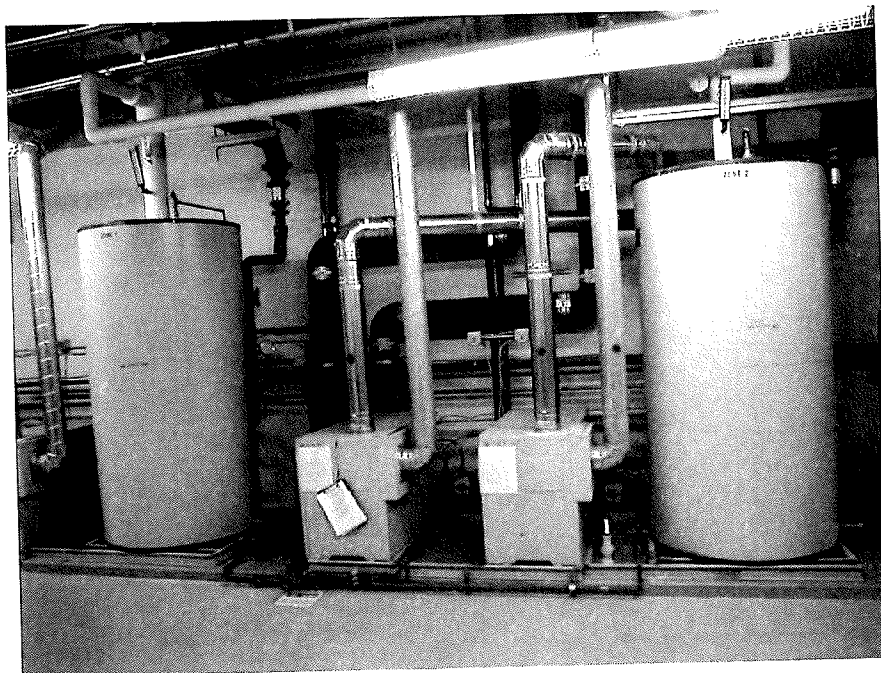
16. Pressure regulating manifold, leaking plastic lined nipple – replace with stainless steel now(jpg85).



PANORAMA 1 Lower Mechanical Room



17. Hot water tank ferrous check valve – replace with bronze or stainless steel (jpg86).



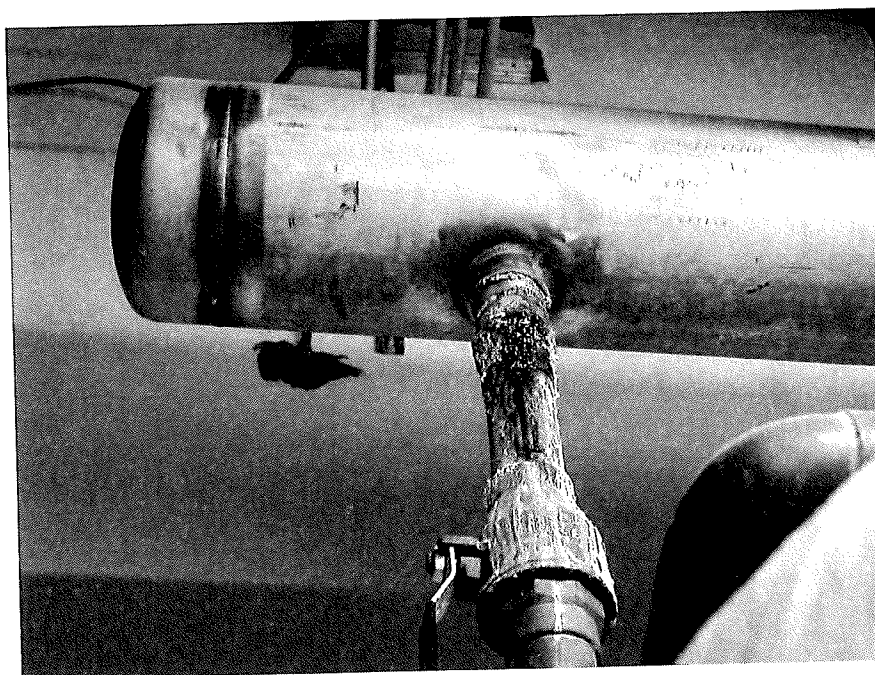
18. (jpg87)

PANORAMA 1 Lower Mechanical Room



19. Filter

bank (jpg88).

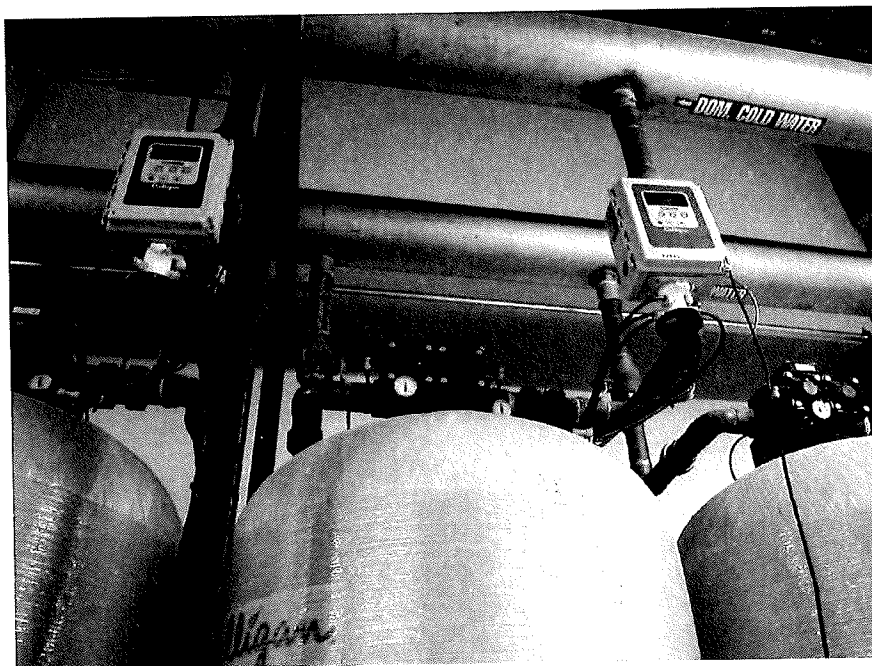


20. (jpg89)

PANORAMA 1 Lower Mechanical Room

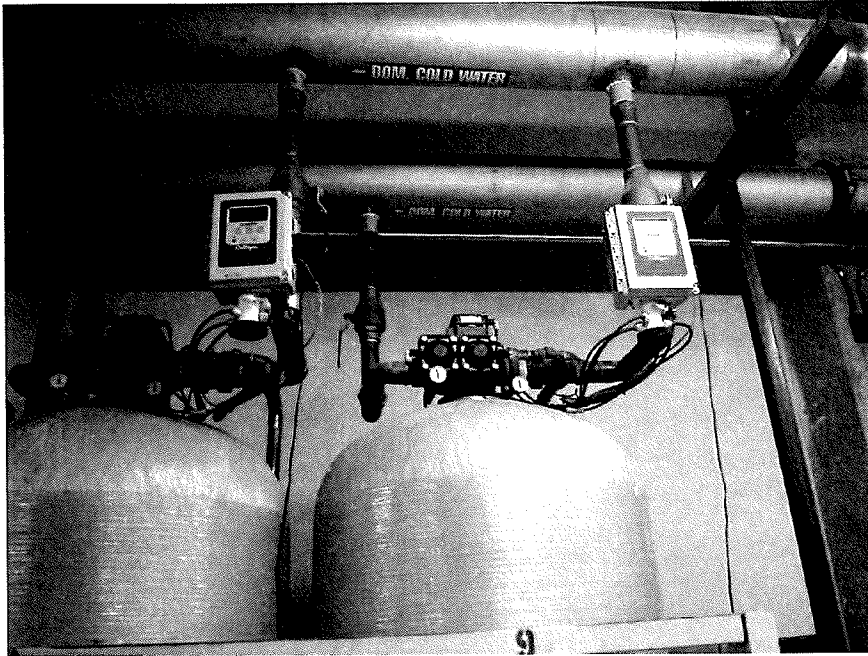


21. (jpg91)

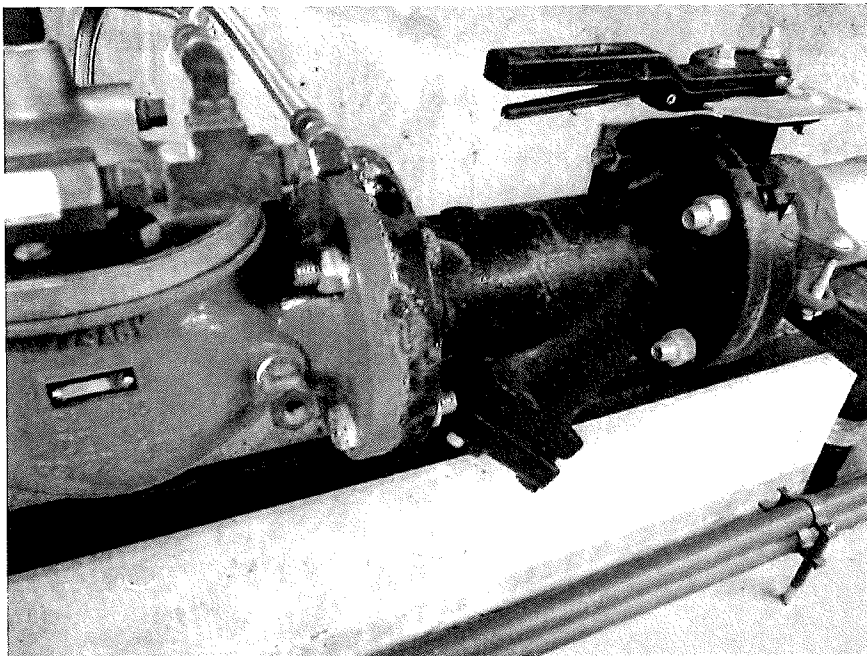


22. (jpg93)

PANORAMA 1 Lower Mechanical Room

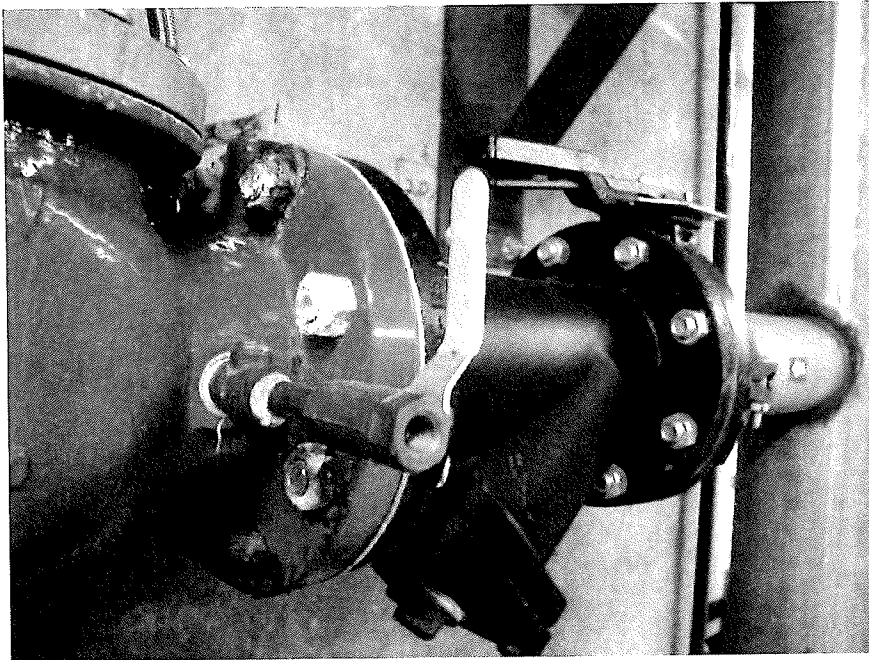


23. (jpg94)

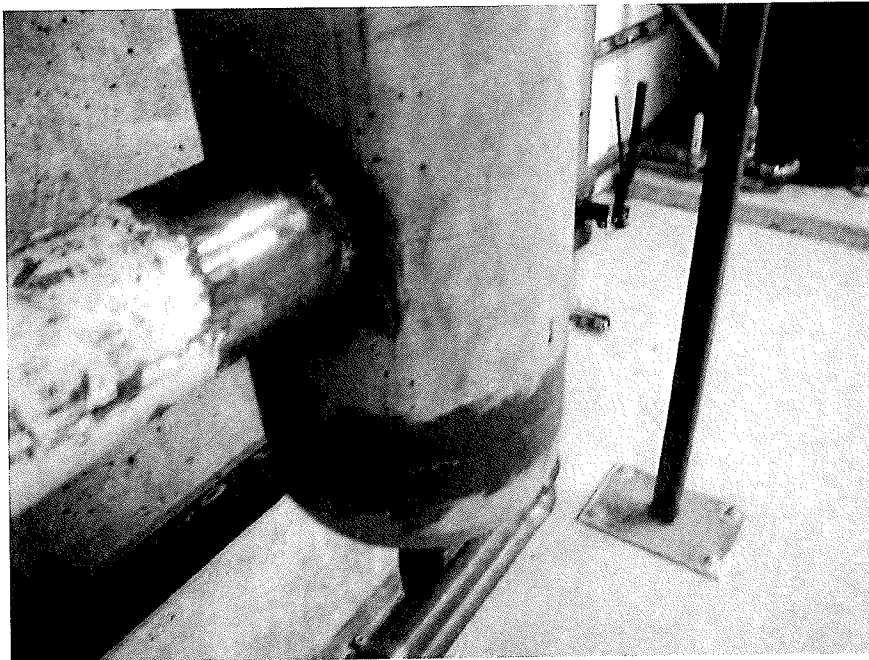


24. (jpg95)

PANORAMA 1 Lower Mechanical Room



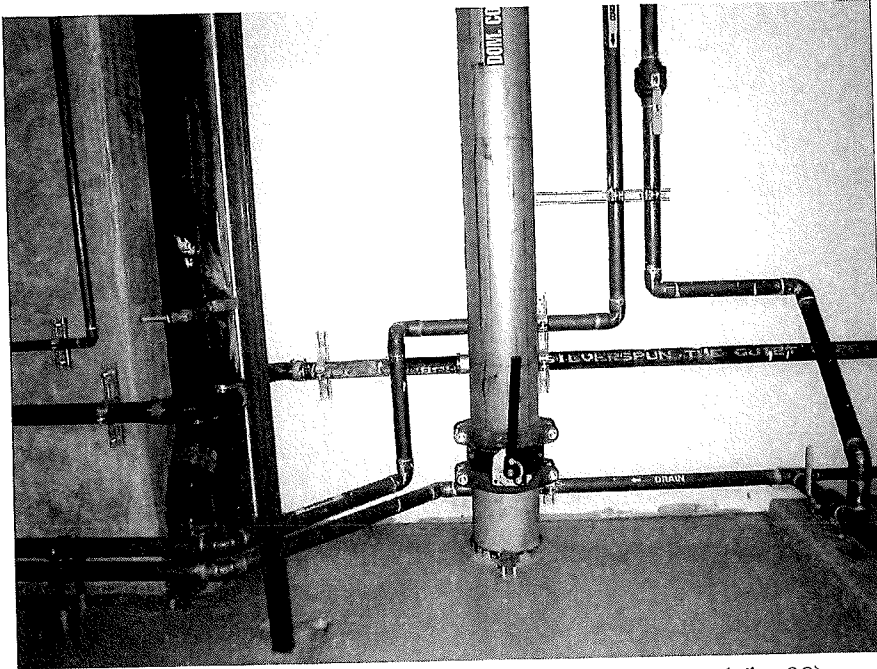
25. (jpg96)



26. Evidence of removing welding tarnish with an acid e.g. hydrochloric; recommend cleaning with a stainless steel cleaner containing nitric acid.

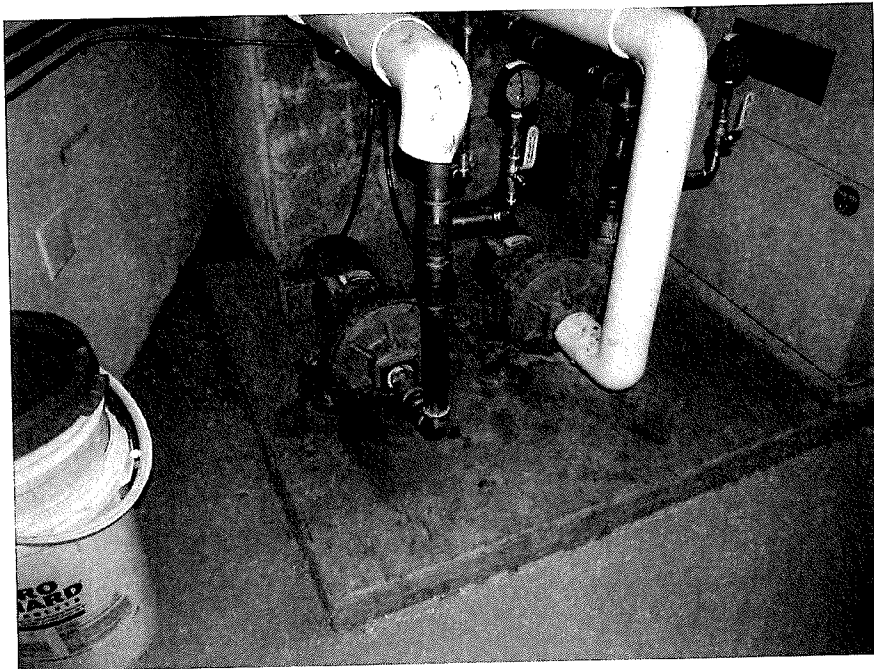


## PANORAMA 1 Lower Mechanical Room



27. City

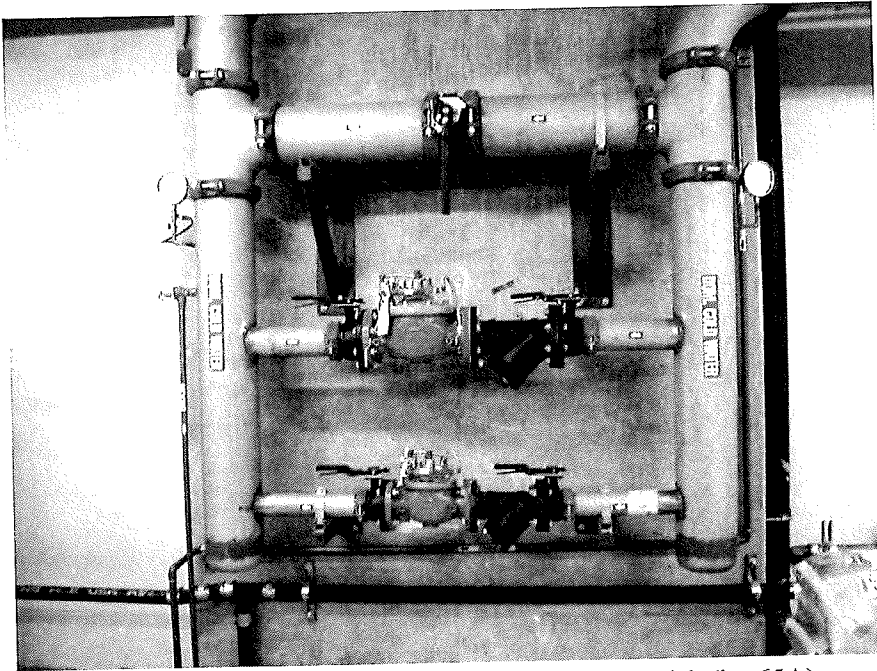
water inlet; replace ferrous butterfly valve with stainless steel (jpg98).



28. Hot water

recirculation pumps – replace with nonferrous alloy (jpg99).

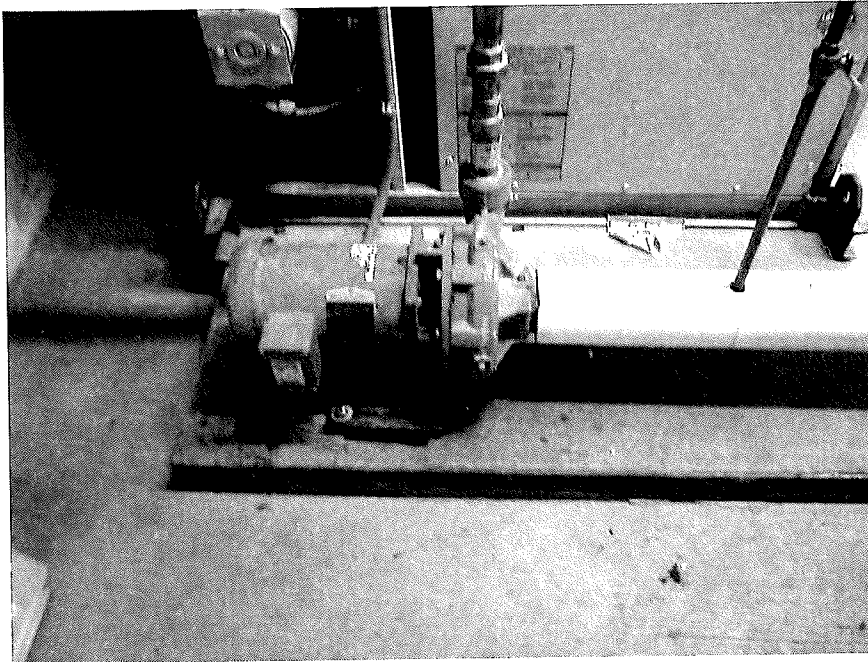
## PANORAMA 1 Lower Mechanical Room



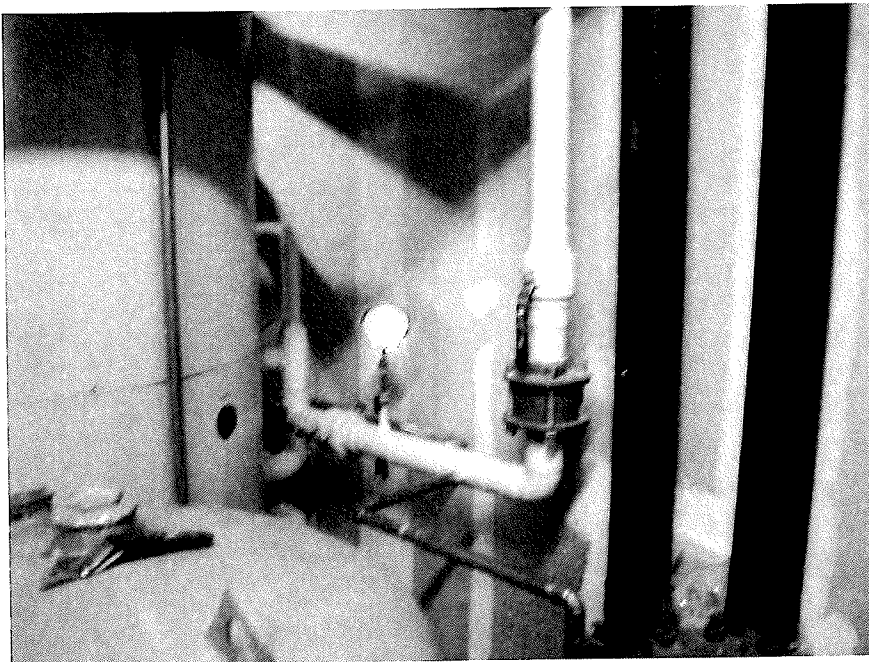
29 City water

inlet manifold; rust is from acid cleaning to remove tarnish (jpg65A).

PANORAMA TOWER 1 Upper Mechanical Room

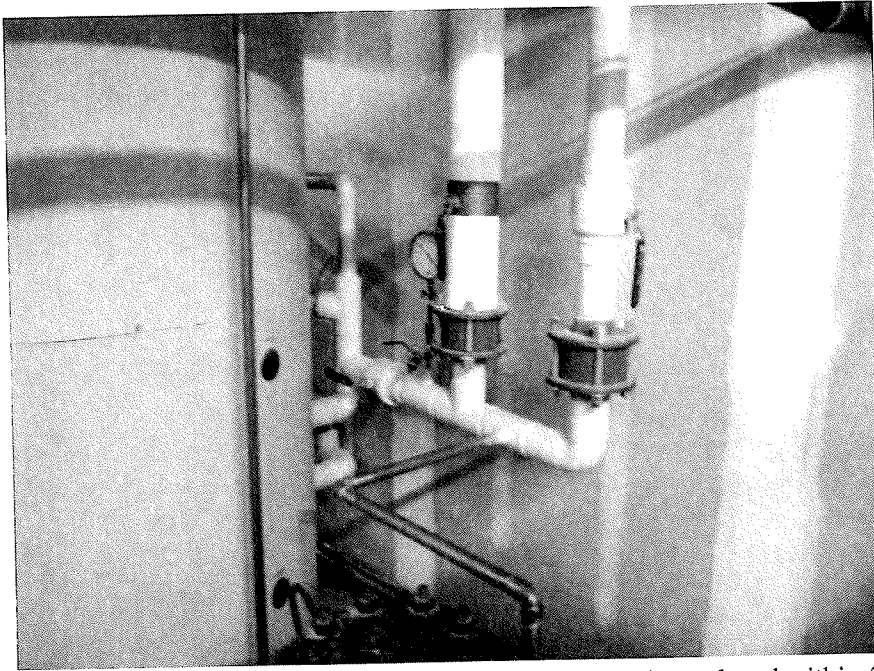


1. Hot water ferrous recirculation pump body requires replacement with a non-ferrous alloy now; replace carbon steel nipples now (jpg103).

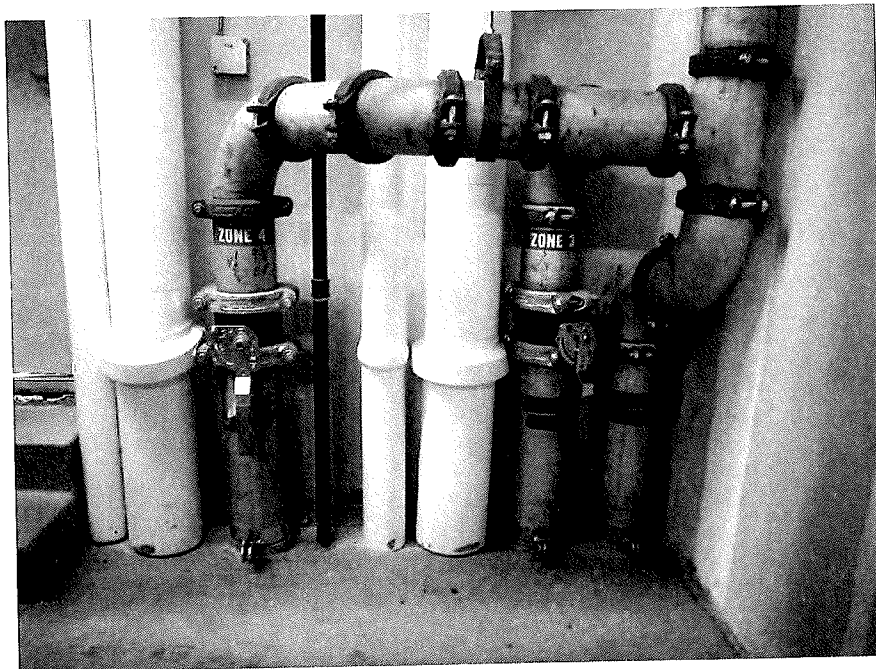


2. Zone 4 hot water system with ferrous check valve – replace within 5 years (jpg104).

## PANORAMA TOWER 1 Upper Mechanical Room

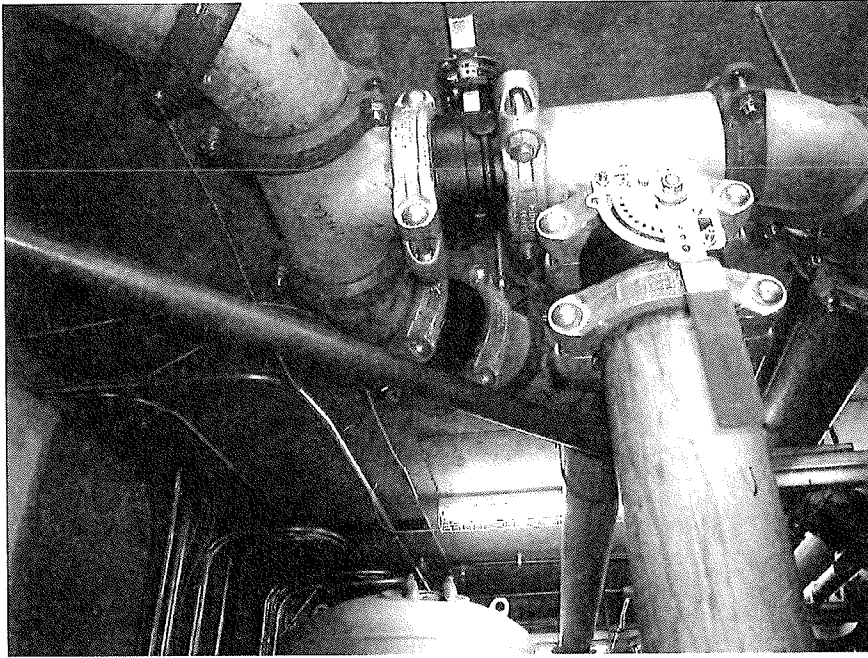


3. Zone 3 hot water system with 2 ferrous check valves that need to be replaced within 5 years.

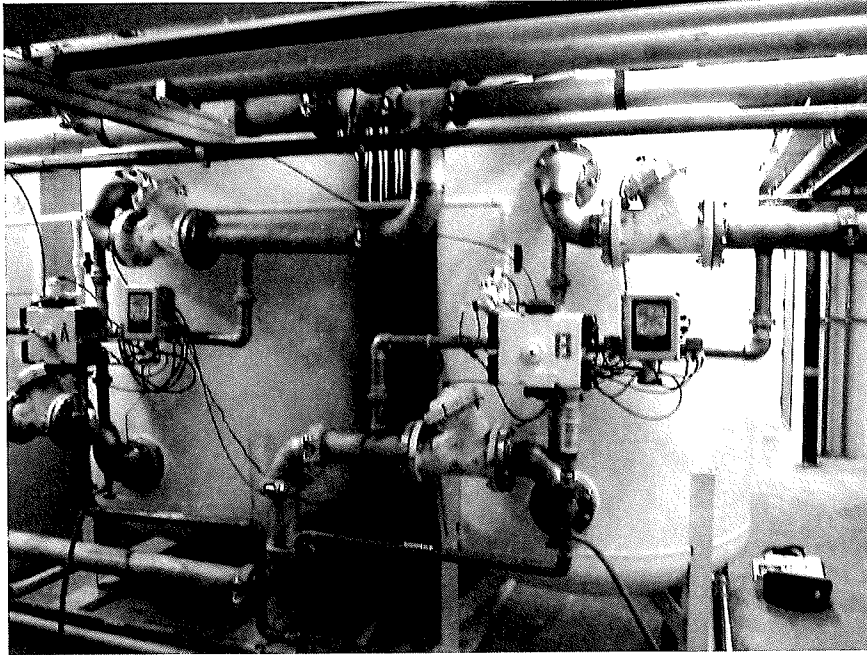


4. City water inlet, Zone 3 and 4 ferrous butterfly valves – replace with stainless or bronze valves (jpg106).

PANORAMA TOWER 1 Upper Mechanical Room



5. Feed water to water conditioners and bypass ferrous butterfly valves – replace now (jpg107).



6. Media tanks with 4 ferrous check valves – replace valves within 5 years (jpg109).