

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 06:12 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 5 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, 17TH 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

Document	Date	Vol.	Pages
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

Document	Date	Vol.	Pages
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 NRCp 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

1 Mr. Hindeya's affidavit proves that the Chapter 40 Notice itself was incorrect when it
2 was provided to my clients, but also, Your Honor, when you look at Exhibit A to the
3 opposition to our Motion for Summary Judgment on page 3 of 6, Your Honor – and I
4 don't know if you have the pleadings. What I did, I brought – we referenced it in our
5 opposition, Your Honor, and we said: "Affidavit of Omar Hindeyah, 6(a), 6(b)
6 attached as Exhibit A to the Association's Opposition." I have a copy of that
7 opposition, Your Honor, if you'd like to see that.

8 THE COURT: Have you seen it?

9 MR. SALZANO: I'm having a hard time following his argument as to what
10 he's specifically referring to, Judge. What did you just hand me, counsel?

11 MR. BROWN: I handed you the affidavit from Mr. Hindeyah which was
12 provided in support of your opposition to the Motion for Summary Judgment which
13 you're seeking clarification on. We referenced that on page 5 of our opposition to
14 this Motion for Clarification and refer the Court to that opposition which is attached
15 to the original opposition to the motion.

16 MR. SALZANO: I'm quite familiar with the affidavit.

17 THE COURT: Okay. Go ahead.

18 MR. BROWN: In that affidavit, Your Honor, if you look on page 3, line 14
19 specifically talking about fire blocking and insulation, Mr. Hindeyah notes that while
20 investigating the alleged leakage conditions in Unit 300 we discovered that
21 insulation was missing in the ledger shelf cavities and that fire blocking was missing
22 in the steel stud framing cavities at exterior wall locations between residential floors
23 and the two tower structures. He then goes on under oath to say the plans call – or
24 in a sworn affidavit to say the plans call for insulation and fire blocking as required
25 by the building code at these locations. So, in the affidavit that Mr. Hindeyah

1 provided he specifically said he looked at the plans so he knows where he believes
2 both the insulation and the fire blocking should be.

3 Paragraph 6. Mr. Hindeyah reveals that from November 2015 through
4 January 2016 his company inspected fifteen units to determine if the conditions
5 observed in Unit 300 existed in other units in the towers. We've noted previously
6 that there is no notice of this to my clients and we still have not received any
7 documentation with regards to those inspections, but if you look on page 4
8 subparagraph B, starting at line 2, Mr. Hindeyah says: "Based upon the inspections
9 that he performed in those fifteen units of the ledger shelf cavities inspected 76%
10 had no insulation, many of the steel stud framing cavities had questionable and/or a
11 lack of proper fire blocking provisions." So, what you have is Mr. Hindeyah
12 specifically stating in a sworn affidavit that this particular issue regarding insulation
13 is found in 76 not the 100 as set forth on the Chapter 40 Notice and then with regard
14 to the second aspect of this allegation that many – who knows what many means.
15 Many could mean 60, 50, 40 30. We don't know what percentage that is but what
16 we do know is that Mr. Hindeyah in his affidavit has affirmed that he knows or he
17 believes these two elements of construction should have had either fire blocking or
18 insulation.

19 So, there is no question but that the HOA has all the information that it
20 needs in order to perform whatever investigation it wants to do in all of the units to
21 confirm whether this particular issue is found in those units. What they're asking
22 you to do is to reconsider what you have said. Although they didn't challenge it and
23 counsel here today was telling you, oh, I'm not asking you to change this but they
24 truly are asking you to clarify and say, you know what? It's all right; go forth based
25 upon the inspection of the fifteen units, based upon Mr. Hindeyah's determination of

1 76% incident rate for one half of that allegation and then an unknown percentage
2 just the word “many” whatever that means with regard to the incident rate. As to the
3 other half of that allegation that’s sufficient. Your Honor, that’s nothing more than a
4 request for reconsideration by this Court of what it set forth in its lengthy order
5 regarding the fact that extrapolation is no longer an accepted practice when giving
6 notice of an alleged Chapter 40 allegation under AB125.

7 There is nothing to clarify, Your Honor, just as it was inappropriate
8 when I was a sophomore in high school to expect something to be clarified; I had to
9 figure it out for myself. It is inappropriate for the HOA to be coming in and to seek
10 clarification from you in that respect. They’re asking you to give an advisory opinion
11 as to what would be a sufficient Chapter 40 Notice before they proceed. That’s not
12 the Court’s job. The Court has made its ruling that what was done was insufficient.
13 The Court has made its determination as to whether the findings of fact and
14 conclusions of law. You’ve given all the information that they need; you’ve told them
15 that what you did is insufficient. It is not this jobs [sic] – the Court’s role to then give
16 them additional guidance. Now, they point out to you, well, you said that on the
17 window issues since that’s a design allegation then it’s sufficient, it should be
18 sufficient to identify the locations of the windows and the various windows because
19 that’s in the plans and counsel didn’t disagree with that. Relief for another day, Your
20 Honor, whether what you said has anything to do with another aspect of that window
21 issue and it’s not before the Court. But, Your Honor, if you recall the window issue
22 is not just that there is a design element but there’s an allegation that it’s lead to
23 water intrusion and that the water intrusion has caused corrosion in the structural
24 steel. Well, I’ll tell you, Your Honor, that’s motions for another day if they do not
25 identify each and every instance whether it is water intrusion and each and every

1 instance where there is corrosion. But that's not before the Court, I'm just gonna set
2 forth right now that my clients do not read your ruling as being carte blanche to the
3 HOA to freely just rely upon the plans because the plans cannot tell you where the
4 water is, the plans cannot tell you where the corrosion is, the alleged corrosion. But
5 they're using that, Your Honor, for what you identified and they identified today and
6 in their moving papers as a design issue with regards to the windows themselves.
7 Fire blocking issues, we're talking strictly about installation, not design because Mr.
8 Hindeyah has told this Court via his affidavit that he knows what the plans – what he
9 believes the plans called for. So, all it is now is a location of where there's an
10 alleged absence or insufficient installation of fire blocking or installation.

11 Your Honor, this is no different than if we were talking about leaving
12 aside what we're dealing with here which are curtain wall, punched out windows that
13 are part of a high rise. This is no different than if we were dealing with regular
14 condominiums, two or three story condominium project or single family homes. If
15 someone came in and said, well, we inspected ten windows and we found that there
16 was this particular issue for these ten windows. In five of the ten they could not
17 proceed with regard to uninspected homes where they've not provided any actual
18 notice based upon evidence of that allegation existing in that particular home. Not
19 under the new AB125. It's no different. They're asking this Court to feel sorry for
20 the HOA. Again, not this Court's role, not this Court's role to say, gosh, that sounds
21 like a lot of money. That sounds like a significant amount of time and expense and
22 this Court is gonna bend over backwards to give the HOA a break. That's what
23 they're asking; they're asking you to clarify but to clarify so that they can rely upon
24 what they've done to date. And in essence what they're asking this Court to do is to
25 switch the responsibility because if this Court says to the HOA with regards to the

1 sewer issues go ahead, it's fine for you to continue in this case even though you
2 don't have the pipe, even though you never gave notice, even though Mr. Brown's
3 clients never had the opportunity to inspect then everything comes on my client. I've
4 got to seek discovery, I've got to go out and do something to try to find their
5 evidence for them.

6 And it's more egregious with regard to the fire blocking and insulation
7 issue, Your Honor, because if you clarify as they're seeking that it is okay for them
8 to rely upon the inspection of fifteen units by Mr. Hindayah, fifteen which even he
9 says that it's not 100% and it's not a design issue, that it's up to my client to go into
10 all these particular units and to say I don't know if that condition exists. But the HOA
11 asked for clarification and the Court said go forth and so now my client has to go in
12 and do that investigation. So, the burden that they're saying don't put on the HOA
13 where else is it gonna fall? It's gonna fall on my client because they're going to give
14 notice, they're going to say we're gonna move forward and this Court has said it's
15 fine for us to rely upon these fifteen units. Well, I guess my client can go into those
16 fifteen units. It'll be the first time that I know which fifteen they are. But for all the
17 other units my client is going in blind because there's no information as required
18 under the statute that they identify with specificity the exact location of every defect,
19 damage and injury. That's what's written, Your Honor, there's nothing to clarify.
20 You don't have to clarify and you certainly can't write – re-write what the legislature
21 did with AB125. That's what's required.

22 Any questions, Your Honor?

23 THE COURT: What happened to the girl?

24 MR BROWN: We went out for a year and then she broke up with me.

25 THE COURT: Oh. She didn't like you anymore.

1 MR. BROWN: She liked a guy that had a jeep.

2 THE COURT: And you didn't go get a jeep?

3 MR. BROWN: I did not have the – I did not have the wherewithal or the deep
4 pocketed parents to say I need a jeep. But it was a fine year, it was a fine – my
5 sophomore year was good. I was depressed during my junior year.

6 THE COURT: Okay. Thank you. Counsel.

7 MR. SALZANO: Your Honor, Mr. Brown just doesn't get it. I don't know why
8 he doesn't get it. He has the ability to read the motions and yet he stands up in front
9 of you and he weaves a story with his stories about his sophomore year that are
10 completely unrelated to what we asked you in our motion. Completely unrelated.
11 Twenty-three minutes we sat and listened to his stories, he went through your order
12 and pointed out everything that your order said that we're not challenging. Well, as
13 my kids would say, duh, we're not challenging those things. I'm not asking you to
14 re-write your order. I'm not asking you to change any aspect of your order. I'm
15 asking you did you mean when you said that the sewer pipe is – where it remains
16 uninspected and unrepaired or no opportunity for the Builder. If that means that
17 Chapter 40 can never be complied with then just say so and dismiss the claim
18 because then I'm not left in limbo with my client, I can move forward. I can decide
19 whether I'm gonna appeal it, whether I'm gonna change it in some way and try again
20 or whether I'm just gonna let it die on the vine and let it go away. But I can't do that
21 because right now it's in limbo because it is not yet dismissed. Peter said in his
22 opposition we think it's dismissed. Well, I don't know that I disagree with him. In
23 fact, for the twenty however minutes he was standing up here I agreed with virtually
24 everything he said. Now, not the girl stories because I don't want to go there, but
25 just about everything else he said I completely agree with.

1 But he doesn't get the purpose of our motion. I'm not asking you to tell
2 me how to run my case, I'm asking you to tell me do I have to go out and inspect
3 every single location at a cost of \$8 million? Now, I told you when I stood up, I told
4 you that even as to the window issue they're gonna have a problem with it and sure
5 enough he stood up and said, well, Your Honor, just because they can find the
6 defect on the plans doesn't mean that we're not gonna make them go out and open
7 up every single window because we have to see where the water damage was, we
8 have to see where the corrosion was on that window. So, Omar's \$8 million
9 estimate on what it's gonna cost for us -- just to satisfy the notice requirements of
10 AB125 is back in play, it's gonna cost us a full \$8 million if not more.

11 So, my clarification is as to the windows and as to the fire blocking if
12 that's what this Court is gonna require I'm fine with it, I don't care. I'm not trying to
13 change your mind on anything. I just want the analysis in your order to explain that
14 specifically so I have guidance as to how to go forward. I'm not asking for an
15 advisory opinion because I'm not asking you to draw any legal conclusion that you
16 haven't already drawn. I've got six months to figure out how to produce a Chapter
17 40 Notice that's gonna satisfy this Court that meets AB125. And so, yes, it's not
18 uncommon for attorneys to come into your courtroom and ask for guidance on how
19 to comply with your orders and that's what we're doing.

20 Now, as to the due process issue which I didn't see any ten foot pole
21 but he didn't touch it. If this Court's gonna require us to do that type of testing and if
22 it's going to be north of \$8 million to do that type of testing, just to produce an AB125
23 compliant Chapter 40 Notice then again we have to determine where we're going
24 from that. Are we gonna come into your Court and seek some type of revision to the
25 order? Are we gonna go up to the appellate court and determine whether or not

1 sure enough our due process rights are violated? I'm not asking you to change your
2 order; I just want to know where you stand on this so that I can plan my future
3 accordingly. I may not have a time machine to go backwards to fix the sewer claim
4 but I certainly have the ability to make sure that in the future I know exactly what I'm
5 doing with these claims.

6 As to the rest of the things that Peter raised, I don't really know how to
7 address twenty-five minutes of him agreeing with me. But in large part that's all he
8 did, he agreed with me. I'm not trying to change your order. So, Your Honor, if we
9 could get that guidance, if we could just get clarification on the two issues, the sewer
10 pipe issue is it dismissed or not? And as to the fire blocking and now I guess the
11 window issue is the cost of the investigation to create the Chapter 40 Notice under
12 AB125 is that not an issue when it comes to the interpretation of AB125? If I get
13 those answers then we could take our six months and go and try to comply with this
14 Court's order. Thank you.

15 THE COURT: Okay. Well, counsel, with respect to the \$8 million destructive
16 testing or investigation, I just want you to understand that that's not my requirement;
17 it's something that the Nevada legislature came down with on requiring specific
18 detail and I am just interpreting what they did. And so believe me I don't like the
19 idea of you guys incurring a lot of costs in destructive testing and I tried to give some
20 guidance particularly with, you know, when we were talking about the windows that
21 you don't have to destructively test whenever you're complaining about a design.
22 So, it's kind of hard for me to respond to that. I am just interpreting what the Nevada
23 legislature did and I think I did it pretty thoroughly in my twenty page decision.

24 With respect to dismissal of claims, I was giving you an opportunity to
25 see if you could not state your Chapter 40 Notice sufficiently with whatever the

1 claims are. So, as far as I'm concerned right now things are not dismissed out until
2 you have an opportunity to see if you can't state your claim sufficiently and abiding
3 by the AB125 guidelines – or I shouldn't say guidelines, the requirements now.

4 MR. SALZANO: Are you referring to the sewer claim?

5 THE COURT: Pardon me?

6 MR. SALZANO: Are you referring to the sewer claim?

7 THE COURT: I am.

8 MR. SALZANO: Because the sewer claim you did state in your order that
9 because we didn't allow them to inspect and offer a repair that we can never satisfy
10 Chapter 40.

11 THE COURT: Well, yeah. The thing is though I don't know if you got the
12 pieces and parts and all of that kind of stuff. I –

13 MR. SALZANO: Even if we had the pieces and parts how do we go back and
14 allow them an opportunity to do a repair?

15 THE COURT: I understand, I know what you're saying.

16 MR. SALZANO: So – so that claim is in limbo, that's our issue.

17 THE COURT: Well, I was gonna wait until March 15 to give you an
18 opportunity to do what you need to do. I don't know if there's other defects in the
19 sewer –

20 MR. SALZANO: Okay.

21 THE COURT: -- system –

22 MR. SALZANO: Okay.

23 THE COURT: -- or anything like that, but –

24 MR. SALZANO: I did – I belatedly – and I hate to do this to Peter, but he is
25 flat wrong on one issue. Omar's affidavit states that 100% of the units have

1 problems but the 76% is in the location of the defect. The fire blocking issue is not
2 just located in one place in each unit so –

3 THE COURT: Well –

4 MR. SALZANO: -- we have –

5 THE COURT: -- you gotta –

6 MR. SALZANO: -- multiple locations –

7 THE COURT: -- remember –

8 MR. SALZANO: -- if you find the 76 failure rate you're likely gonna find a
9 100% unit failure rate.

10 THE COURT: Okay. Well, the thing is though you can't do things by
11 extrapolation anymore.

12 MR. SALZANO: Oh. No, we understand that. In fact, we – I know he
13 bloviated a lot about how we were trying to get reconsideration. We understand and
14 accept that. We're not asking to go in and extrapolate in any way, shape or form.
15 We understand your – your ruling. You just – we were hoping that you understood
16 our position that it puts us in with regards to complying with AB125.

17 THE COURT: I'm not –

18 MR. SALZANO: And it –

19 THE COURT: -- saying I –

20 MR. SALZANO: -- sounds like – it sounds like you do.

21 THE COURT: And, Mr. Salzano, I'm not – I'm not happy with idea of having
22 to go through \$8 million of destructive testing. I think you understand that. But
23 unfortunately AB125 put it out that way and blame the legislature.

24 MR. SALZANO: We likely will. Thank you.

25 THE COURT: Okay.

1 MR. SALZANO: Thank you, Your Honor.

2 THE COURT: Counsel, your Motion for Clarification is denied because I think
3 I got it clear as a bell.

4 MR. SALZANO: Yes. Thank you, Your Honor.

5 THE COURT: Okay.

6 MR. BROWN: We'll prepare the proposed order, Your Honor.

7 THE COURT: All right. Thank you. Make sure you pass it by counsel.

8 MR. BROWN: Of course.

9 THE COURT: Okay.

10 [Proceedings concluded at 12:54:12 p.m.]

11 * * * * *

12

13

14

15

16 ATTEST: I do hereby certify that I have truly and correctly transcribed the
17 audio/video recording in the above-entitled case to the best of my ability.

18

19

20

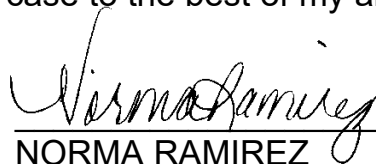
21

22

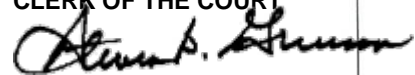
23

24

25



NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572



ORDER

PETER C. BROWN, ESQ.
Nevada State Bar No. 5887
JEFFREY W. SAAB, ESQ.
Nevada State Bar No. 11261
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
jsaab@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;
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. XXII

) **ORDER DENYING DEFENDANT
PANORAMA TOWERS
CONDOMINIUM UNIT OWNERS'
ASSOCIATION'S MOTION FOR
CLARIFICATION OF THIS COURT'S
SEPTEMBER 5, 2017 ORDER**

On November 21, 2017, Defendant Panorama Towers Unit Owners Association's Motion for Clarification of This Court's September 5, 2017 Order came for hearing before this Court. The Court, having reviewed the papers and pleadings currently on file herein, having heard the arguments of counsel relating to the facts and law, and with good cause appearing and there being no just cause for delay, the Court concludes as follows:

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Panorama
2 Towers Unit Owners Association's Motion for Clarification of This Court's September 5, 2017
3 Order is DENIED.

4 DATED this 30th Jan 2018 day of January, 2018.

5
6
7 L Susan Johnson
8 DISTRICT COURT JUDGE
9 A-16-744146-D

10 Submitted by:

11 BREMER, WHYTE, BROWN & O'MEARA, LLP

12 By: [Signature]

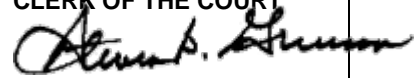
13 Peter C. Brown, Esq.
14 Nevada State Bar No. 5887
15 Jeffrey W. Saab, Esq.
16 Nevada State Bar No. 11261
17 Attorneys for Plaintiffs,
18 LAURENT HALLIER; PANORAMA TOWERS I, LLC;
19 PANORAMA TOWERS I MEZZ, LLC; and
20 M.J. DEAN CONSTRUCTION, INC.

21 Approved for Form and Content:

22 LYNCH HOPPER, LLP

23 By: [Signature]

24 Francis I. Lynch, Esq.
25 Nevada State Bar No. 4515
26 Charles "Dee" Hopper, Esq.
27 Nevada State Bar No. 6346
28 Attorneys for Defendant,
PANORAMA TOWERS UNIT
OWNERS ASSOCIATION



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

LAURENT HALLIER,

Plaintiff,

vs.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS ASSOCIATION,

Defendant.

CASE NO. A-16-744146-D

DEPT. XXII

BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE

MARCH 15, 2018

RECORDER'S TRANSCRIPT OF HEARING RE

STATUS CHECK RE: STAY (PER 9/15/17 ORDER)

APPEARANCES:

For the Plaintiff:

PETER C. BROWN, ESQ.

For the Defendant:

FRANCIS I. LYNCH, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 THURSDAY, MARCH 15, 2018 AT 12:18:41 P.M.

2
3 THE COURT: Okay. Let's go with Hallier versus Panorama Towers
4 Condominium Unit Owners Association on page 22, and that is case number A-16-
5 744146-D.

6 MR BROWN: Good morning, Your Honor. Peter Brown on behalf of the
7 builder entity, the Plaintiff.

8 THE COURT: Okay. And we're getting somebody on the phone.

9 MR. LYNCH: Hi, this is Francis.

10 THE COURT: Hi, Mr. Lynch.

11 MR. LYNCH: Hi, Judge. How are you today?

12 THE COURT: Just fine. This is Judge Johnson, Department 22, the Eighth
13 Judicial District Court and I've just called the case of Hallier versus Panorama
14 Towers Condominium Unit Owners Association, case number A-16-744146-
15 D. And counsel who is present would you again identify yourself for the record as
16 Mr. Lynch is present.

17 MR. BROWN: Peter Brown on behalf of the builder entity Plaintiffs.

18 THE COURT: Okay. And --

19 MR. LYNCH: Francis Lynch on behalf of the Association.

20 THE COURT: Okay. Okay. Here we are -- this is a status check on the stay.
21 So, Mr. Brown.

22 MR. BROWN: Yes, Your Honor.

23 The last time we were before you was on the Motion for Clarification
24 that was filed by the Defense with regards to the Court's earlier ruling on the
25 Chapter 40 notice and various claims in the case and the Court denied that Motion

1 for Clarification and we were at that time still within the time period that the Court
2 had set a stay for the HOA to rectify the issues regarding the Chapter 40 notice. As
3 of today my clients have not received a revised Chapter 40 notice. I will tell you that
4 Mr. Lynch contacted me last week requesting whether or not this hearing date could
5 be moved. We discussed and I agreed that so long as this particular hearing date
6 was not moved more than thirty days and so long as my client received a revised
7 Chapter 40 notice one week before a new date that I was amenable to – as a
8 professional courtesy to Mr. Lynch as well as his co-counsel who I believe is
9 currently in trial to move that particular date.

10 We had a special master hearing, Your Honor, about three weeks ago
11 and at that time – I want to say it was Mr. Salzano on behalf of the HOA represented
12 that they were working on a revised Chapter 40 notice. The representation was that
13 my clients likely would not find that Chapter 40 notice to be to their liking and that
14 they fully expected that there would be subsequent motion practice on the new
15 Chapter 40 notice. Not having received the Chapter 40 notice I can't represent to
16 the Court at this time what may or may not be inadequate or delinquent with regard
17 to the Chapter 40 notice, but I did speak with Mr. Lynch last week, Mr. Lynch
18 assured me that he would have a revised Chapter 40 notice to my clients in the very
19 near future at which point I'll have to look at it, Your Honor, and then make a
20 determination as to what additional motion practice may be necessary.

21 If you will recall, Your Honor, you issued a very lengthy order which
22 took into account numerous aspects of the original Chapter 40 notice in particular
23 saying that the claims in the mechanical room would be dismissed given the nature
24 of the claims and the facts that have been presented that you agree that my client
25 had not received any Chapter 40 notice with regards to the sewer claim. And then

1 as for the remaining claims which is dealing with the windows and also dealing with
2 some party walls and fire blocking issues that the HOA would have to satisfy the
3 current statutory requirements. And so I'm waiting to see whether or not they've
4 attempted to do that and how they attempted to do that and at this point, Your
5 Honor, we're still waiting for the Chapter 40 notice – the revised which has been
6 months since we last were before you in which -- they had time in which to do their
7 investigation and to provide a revised Chapter 40 notice.

8 So, I did as a professional courtesy agree that we could move this
9 particular hearing date or to extend it, but I told counsel since I am in trial that it
10 needed to be no later than – and Mr. Lynch will correct me, but I thought I said it
11 was no later than thirty days from today's date and that absolutely the Chapter 40
12 notice would be provided to my client and provided to my office no later than one
13 week prior to that hearing so that I can then at the very least represent to the Court
14 what I anticipate being the motion practice that will be necessitated by the revised
15 Chapter 40 notice because based upon the representation of counsel at a special
16 master hearing that occurred three weeks ago I fully expect that there will be
17 additional motion practice based upon the representations of what my client is going
18 to receive.

19 THE COURT: Okay. Mr. Lynch.

20 MR. LYNCH: I apologize, Your Honor. I heard most of what Peter said. I told
21 him that I'd be able to give him a new Chapter 40 notice on the three claims that
22 survived the last time we were in front of you and we'll go ahead and do that. And
23 that would give him some time before – give him some time to see what he's gonna
24 do with that but I'll have notice to him in three weeks.

25 THE COURT: Okay. So, if I continue this out and continue the stay for thirty

1 days the parties are okay with that?

2 MR. LYNCH: That's fine, Your Honor.

3 MR. BROWN: I just have to check my trial calendar, Your Honor.

4 THE COURT: You're in trial?

5 MR. BROWN: Yes, Your Honor.

6 THE COURT: In front of who?

7 MR. BROWN: In front of Judge Alf. It is an interesting case. It's a bench trial
8 and so we are – we are going intermittently for probably the next six months about
9 four days per month depending upon her – Judge Alf's availability.

10 THE COURT: Okay.

11 MR. LYNCH: Everybody knows that Peter is the hardest working guy in town.

12 MR. BROWN: Well, Mr. Lynch always says that to me and I think he's trying
13 to butter me up and –

14 THE COURT: Does it work?

15 MR. BROWN: It hasn't worked yet but it may. Who knows? So, if we are
16 looking at a – so we'd be then looking at an April 12th date with a provision of the
17 revised Chapter 40 notice no later than the 5th of April, Mr. Lynch.

18 MR. LYNCH: That's fine, Peter.

19 THE COURT: Okay. We'll reschedule this hearing until April 12th, at what
20 time?

21 THE COURT CLERK: 10:30 a.m.

22 THE COURT: 10:30.

23 MR. BROWN: And if I could ask Mr. Lynch one clarification. He mentioned
24 that he thought that there were three claims that survived and my recollection was
25 that the mechanical issues did not survive and I didn't believe that the sewer issues

1 survived. And if Mr. Lynch could just clarify whether or not he believes that he's
2 providing another Chapter 40 notice for something other than the window issues and
3 the fire blocking issues.

4 THE COURT: You know, I did say sewer in my order. I'm just trying to figure
5 out – let's see –

6 MR. BROWN: It was something, Your Honor, that – from the earlier hearing
7 when you were talking with counsel about a notice and that was if you recall on the
8 sewer claim that my client never received a notice on the sewer claim and as far as
9 we know all evidence related to that sewer claim is gone because we have
10 requested numerous times for the provision of any evidence with regard to the
11 sewer claim and have never been provided that.

12 THE COURT: Okay. Let's see. I'm just looking at page 14 of my decision.
13 Let's see. The NRS 40.645 notice stated the main sewer line connecting the
14 development to the city water system ruptured due to installation, erred during
15 construction causing physical damage to the adjacent areas. This deficiency has
16 been repaired. In addition to causing damages the defective installation presented
17 an unreasonable risk of injury to a person or property resulting from the
18 disbursement of unsanitary matter. I said: "Such notice does not specify the
19 installation error made or what physical damage occurred. For this reason this
20 Court concludes this portion of the NRS 40.645 notice addressing the sewer
21 problem is not sufficient." So –

22 MR. BROWN: And, Your Honor, I don't have that. Is that from your fax or is
23 that from the order section?

24 THE COURT: That's one of my conclusions.

25 MR. BROWN: Okay.

1 THE COURT: So, I think that they – anyway, I’m now going down to page 18
2 – let’s see – 19 where I said: “It is ordered, adjudged and decreed this Court finds
3 and concludes the NRS 40.645 notice of constructional defect served upon
4 Plaintiff’s counter defendants is deficient and Plaintiff’s counter defendants have met
5 their burden of overcoming the presumption of the notices validity, however, this
6 Court declines to dismiss Defendants – counter claimants’ counterclaim pursuant to
7 NRS 40.647 2(a) as such would prevent the association from filing another action.
8 This Court therefore stays the proceedings with respect to the constructional defects
9 relating to the window assemblies, fire blocking and sewer problems for a period of
10 six months or until March 15.” Which is today.

11 MR. BROWN: That clarifies it, Your Honor. Thank you.

12 Just for the record, we’ll note again that my client did request through
13 my office numerous times for the provision of any evidence with regard to the sewer
14 claim, but I understand the Court’s order and we’ll see what is provided with regard
15 to that particular claim.

16 THE COURT: Yes. But the mechanical room issues are barred by the statute
17 of – let’s see, did I say limitations or repose?

18 MR. LYNCH: Four years, Your Honor, statute of limitations.

19 THE COURT: Yes. Statute of limitations, 11.202. Okay.

20 MR. BROWN: And, Your Honor, for the record. When Mr. Lynch and I were
21 discussing a proposed stipulation to move this I did note – and Mr. Lynch, I would
22 ask him to confirm that that did not preclude and I was reserving all rights with
23 regard to the fact that we’ve had to wait this long for the provision of a Chapter 40
24 notice and that my understanding was today that we were supposed to report back
25 to the Court as to how that had been taken care of and the fact that it’s not been

1 taken care of by now especially with regard to something like the sewer claim which
2 from day one I've asked for evidence of that that my client is not prejudiced by this
3 extension of time and reserves all rights with regards to any arguments that might
4 apply to the provision of this Chapter 40 notice regardless of what it says. I didn't
5 want today's agreement to extend this in any way to take away any of the
6 arguments that my client may have with regard to the revised Chapter 40 notice.

7 THE COURT: Okay. All right, I'll see you guys on April 12th.

8 MR. BROWN: Thank you, Your Honor.

9 MR. LYNCH: Thanks, Your Honor.

10 THE COURT: Thank you.

11
12 [Proceedings concluded at 12:30:51 p.m.]

13 * * * * *

14
15
16
17
18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio/video recording in the above-entitled case to the best of my ability.

20 
21 _____

22 NORMA RAMIREZ
23 Court Recorder
24 District Court Dept. XXII
25 702 671-0572

Francis I. Lynch, Esq. (Nevada Bar No. 4145)
LYNCH HOPPER, LLP
1210 S. Valley View Blvd., Suite 208
Las Vegas, Nevada 89102
Telephone:(702) 868-1115
Facsimile:(702) 868-1114

Scott Williams (California Bar No. 78588)
WILLIAMS & GUMBINER LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904
Telephone:(415) 755-1880
Facsimile:(415) 419-5469
(Admitted Pro Hac Vice)

Counsel for Defendant/Counter-claimant

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.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation, and Does 1 through 1000,

Counter-claimant,

CASE NO: A-16-744146-D

DEPT. NO: XXII

**PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION'S
AMENDED NOTICE OF CLAIMS
PURSUANT TO NRS § 40.645**

1 vs.

2 LAURENT HALLIER, an individual;
3 PANORAMA TOWERS I, LLC, a Nevada
4 limited liability company; PANORAMA
5 TOWERS I MEZZ, LLC, a Nevada limited
6 liability company; M.J. DEAN
7 CONSTRUCTION, INC., a Nevada Corporation;
8 SIERRA GLASS & MIRROR, INC.; F.
9 ROGERS CORPORATION,; DEAN ROOFING
10 COMPANY; FORD CONTRACTING, INC.;
11 INSULPRO, INC.; XTREME XCAVATION;
12 SOUTHERN NEVADA PAVING, INC.;
13 FLIPPINS TRENCHING, INC.; BOMBARD
14 MECHANICAL, LLC; R. RODGERS
15 CORPORATION; FIVE STAR PLINBING &
16 HEATING, LLC, dba Silver Star Plumbing; and
17 ROES 1 through 1000, inclusive,

18
19
20
21
22
23
24
25
26
27
28
Counter-defendants.

14
15 PLEASE TAKE NOTICE that Defendant and Counter-claimant Panorama Towers
16 Condominium Unit Owners' Association, a Nevada non-profit corporation (the "Association"),
17 hereby provides amended notice of claims for constructional defects (as the term is defined and used
18 is NRS § 40.600 – 40.695) against Plaintiff and Counter-defendants as captioned and identified
19 above (the "Builders"). Said claims include those arising directly from the defects described herein
20 as well as any and all other rights of claim or causes of action under any other statutory or common
21 law rights which the Association may have against the Builders, and each of them individually,
22 jointly and severally.

23 **AMENDED CHAPTER 40 NOTICE**

24 This Amended Notice is being given to satisfy the requirements of NRS 40.645. The
25 Association intends to pursue claims against the Counter-defendants identified above pursuant to
26 Nevada Revised Statutes (NRS) 40.600 *et seq.*, arising from defects in the design and construction of
27 the Panorama Towers condominium development located at 4525 Dean Martin Drive, Las Vegas,
28 Nevada (the "Development").

1 By virtue of this Amended Notice, you, and each of you, must also take notice that you have
2 certain timely obligations to the Association herein above described, as well as to persons, firms or
3 corporations with whom or which you may have contracted to perform the work complained of at
4 the Development, all under the provisions of NRS § 40.646 – 40.649, inclusive.

5 This Amended Notice incorporates by reference and amends the previous Notice dated
6 February 24, 2016, including the Verification signed under penalty of perjury by a member of the
7 executive board and/or an officer of the Association verifying that each such defect, damage and
8 injury specified in the Notice exists, with respect to the following claims:

9 **1. Residential tower windows**

10 There are two residential tower structures in the Development, consisting of 616
11 condominium units located above common areas and retail spaces below. The window assemblies in
12 the residential tower units were defectively designed such that water entering the assemblies does
13 not have an appropriate means of exiting the assemblies.

14 The window assemblies were built in accordance with the project plans, which contained two
15 significant design deficiencies that are identified in specific detail in the accompanying report
16 prepared by the Association’s architect, Karim Allana, which is attached hereto as “Exhibit A” and
17 incorporated by reference:

- 18 1) Contrary to applicable requirements of the 2000 International Building Code, ASTM and
19 ICBO standards, and the EIFS manufacturer’s installation instructions, the plans failed to
20 specify pan flashings at the rough openings for the windows.
21 2) Contrary to applicable requirements of the 2000 International Building Code, ASTM and
22 ICBO standards, and the EIFS manufacturer’s installation instructions, the plans failed to
23 specify head flashings at the rough openings for the windows.

24 Because these flashings were not called for in the plans and specifications, they were not
25 installed.

26 This is a design deficiency that exists in all (100%) of the residential tower window
27 assemblies. The location of each of the windows installed in accordance with this defective design is
28 marked on the exterior plan elevations for the two towers and attached hereto as “Exhibit B”.

1 As a consequence of this deficiency, water that should have drained to the exterior of the
2 building has been entering the metal framing components of the exterior wall and floor assemblies,
3 including the curb walls that support the windows, and is causing corrosion damage to the metal
4 parts and components within these assemblies as described and identified in Exhibit A. The resulting
5 damage to the metal components of the tower structures presents an unreasonable risk of injury to a
6 person or property resulting from the degradation of these structural assemblies.

7 **2. Residential tower exterior wall insulation**

8 The plans called for insulation/fire blocking, as required by the building code, in the ledger
9 shelf cavities and steel stud framing cavities at the exterior wall locations between residential floors
10 in the two tower structures. The purpose of this insulation is to act as a fire block provision to deter
11 the spread of fire from one tower unit to the units above or below, and to prevent condensation from
12 occurring within the exterior wall assemblies. However, the insulation was not installed as required
13 by the plans and building code.

14 This installation deficiency exists in the majority of the locations where it is required for the
15 616 residential tower units, in which insulation was omitted either from the ledger shelf cavity, from
16 the steel stud framing cavity, or from both. From November of 2015, through January of 2016, 15
17 units in the Development were inspected. Units were selected from different towers and with
18 different exposures to obtain a mixed sampling. Of the ledger shelf cavities inspected, 76% had no
19 fire blocking insulation and many of the steel stud framing cavities had questionable and/or a lack
20 of proper fire blocking provisions. *See* Affidavit of Omar Hindiyeh In Support of Panorama's
21 Opposition to Hallier's Motion for Partial Summary Judgment attached hereto as "Exhibit C".

22 This deficiency presents an unreasonable risk of injury to a person or property resulting from
23 the spread of fire, and from the accumulation of additional moisture in the wall assemblies, thereby
24 exacerbating the window drainage deficiency described above.

25 **3. Sewer problem**

26 The main sewer line connecting the Development to the city sewer system ruptured due to
27 installation error during construction, causing physical damage to adjacent common areas.
28

1 The rupture of the sewer line caused raw sewage to be deposited on the common area of the
2 development in the location of the rupture. In addition to causing damage in the vicinity of the
3 rupture, the defective installation presented an unreasonable risk of injury to a person or property
4 resulting from the disbursement of unsanitary matter.

5 Because the Association had previously settled a suit against the Builders and had not yet
6 discovered the window and insulation claims, it was assumed by the Association that this isolated
7 incident would not be the subject of a Chapter 40 claim. The Association therefore repaired the
8 ruptured sewer line without giving notice to the Builders.

9
10 DATED: April 5, 2018

LYNCH HOPPER, LLP

11
12 /s/ Francis Lynch
13 Francis I. Lynch, Esq.
14 Attorneys for Defendant and Counter-Claimant

15 **CERTIFICATE OF SERVICE**

16 The undersigned hereby certifies that on the 5th day of April, 2018, a copy of the foregoing,
17 PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION'S AMENDED
18 NOTICE OF CLAIMS PURSUANT TO NRS § 40.645, was electronically served through Odyssey
19 upon Counsel for Plaintiffs/Counter-defendants and sent by certified mail, return receipt requested,
20 to:

21
22 BREMER WHYTE BROWN & O'MEARA LLP
23 Peter C. Brown, Esq.
24 Darlene M. Cartier, Esq.
25 1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144

26 By: 
27
28

EXHIBIT A

EXHIBIT A

EXHIBIT A

March 14, 2018

Preliminary Defect Report

Panorama Towers Condominium Unit Owner's Association



Allana Buick & Bers, Inc.
990 Commercial Street
Palo Alto, CA 94303
t 650.543.5600
f 650.543.5625
www.abbae.com

ALLANA BUICK & BERS

Making Buildings Perform Better

Prepared for:

Mr. Francis Lynch
Lynch Hopper LLP.
1210 South Valley View BLVD
Suite 208
Las Vegas NV 89102

ABBAE PN# 18-5172.01

Mediation/Settlement Communications
Evidence Codes 1119 and 1152



Table of Contents

Table of Contents 1

Executive Summary 2

Building Construction and Governing Codes..... 2

Limitations 3

Defect List..... 4

1.0 Windows and Doors..... 4

 1.01 Omission of pan flashing at window assemblies 4

 1.02 Omission of head flashings at window assemblies..... 6

Exhibits 9



Executive Summary

Allana Buick and Bers, Inc. (**ABBAE**) was retained by Mr. Francis Lynch of Lynch Hopper LLP. to further investigate the deficiencies associated with the Exterior Insulation and Finish System (EIFS) at the Panorama Towers. The towers consist of two high-rise buildings with a total of 616 residential units and is located at 4525 Dean Martin Drive, Las Vegas Nevada.

ABBAE's investigation focused on reviewing construction documents and testing reports performed by construction consulting groups that were present on site during the investigation. As ABBAE was not previously involved in the investigation process; this report is based on the review of the available reports, photographs by others, architectural, and shop drawings related to the overlooked issues associated with the Exterior Insulation and Finish System (EIFS). ABBAE also performed a limited visual survey of the exterior of the tower buildings in order to determine what Exterior Insulation and Finish System (EIFS) has been utilized on the high-rises.

After an additional review of the ESR reports, construction drawings, shop drawings, and various Exterior Insulation and Finish System (EIFS) details, ABBAE is able to determine that the high-rise towers were installed using the STO Exterior Insulation and Finish System (EIFS).

Building Construction and Governing Codes

Owner: Hallier Properties LLC

Architect: KLAI JUBA Architects

Civil Engineer: LOCHSA Engineering

Structural Engineer: LOCHSA Engineering

Mechanical, Electrical, Plumbing Engineer: JBA Consulting Engineers

Applicable Codes and Occupancy per Architectural Drawings

Code: 2000 IBC with Clark County Amendments

Occupancy Group: R-2

Construction Type: 1-A

Provided by Lynch Hopper LLP., ABBAE reviewed the architectural drawings dated December 11, 2006, EIFS shop drawings consisting of Structural EIFS details dated December 3rd 2004, and shop drawings dated on August 15 and September 15 of 2006. In addition, ABBAE reviewed the reports from Paoli & Co, CMA Consulting, and Allen Group Architects, Inc. and photographs from CMA's repairs and investigations.



Limitations

This investigation is based on limited visual observations, destructive testing documentation performed by other consulting groups, and available construction documents.

Key Words

This Statement of Claims (SOC) is organized by individual observed deficiencies herein referred to as "Defect." Each major category is listed in the Table of Contents. The sub-category of each issue is organized as follows:

- **Defect**
- **Codes and Standards**
- **Resultant Damage**

The following is a brief explanation of each sub-category:

Defect: The defects noted are specific in nature where investigated, and the location of the defects is noted where observed. Defects listed in this report are not an exhaustive list of all defects that may be found on this project; they are not based on complete investigation of all the issues; nor do they represent an exhaustive review of the construction documents. Photographs of each of the defects are included in this report and follow the defect list.

Codes and Standards: The construction defects were interpreted in accordance with the requirements of 2000 International Building Code and ICBO ICC-ES Reports for the Sto Exterior Insulation and Finishing Systems (EIFS). The architectural construction drawings, Sto Exterior Insulation and Finishing Systems (EIFS) and Tower EIFS shop drawings were available for review. Please see Appendix A for more information.

Resultant Damage: Resultant damage already includes water damage, and may include loss of life expectancy, and loss of fire rating and/or diminished resale value of the property. Due to the limited nature of our destructive and non-invasive testing, the resultant damages section includes both damage that were observed during destructive testing as well as projected damages based on ABBAE's experience.



Defect List

1.0 Exterior Insulation and Finish System

1.01 Omission of pan flashings at EIFS system rough openings (window assemblies)

1.02 Omission of head flashings at EIFS system rough openings (window assemblies)

1.0 Windows and Doors

1.01 Omission of pan flashing at window assemblies

Discussion:

Based on our investigation, ABBAE determined that pan flashings are omitted at the Exterior Insulation and Finish System (EIFS) rough window openings on the two (2) towers. Based on as-built shop drawings and visual review, we were able to confirm that this defect is universal and occurs at all windows of the high-rise buildings. These critical pan flashings are required by the material manufacturers and building code and its omission, is a code violation.

Upon the review of the EIFS shop drawings (dated 09/15/2006), Details 1, Sheet F4.01 (Exhibit 01), the design is defective as it does not depict a pan flashing. In lieu of a pan flashing, a sill flashing is shown. In order to confirm that the windows were built as depicted in the shop drawings, limited destructive testing was performed by CMA Consulting from August 2013 to July 2016, where some windows were disassembled to confirm if the construction followed the design intent. The sill condition shows a sill flashing running from outside and terminating approximately half (1/2") inch in from the exterior of the window system at the window "rock and roll" bracket. The lack of a complete pan flashing can also be visually confirmed by observing the window sill from the inside of the units. Based on review of EIFS shop drawings, visual and destructive testing, we were able to confirm that the windows were in fact incorrectly built to the design intent, per the shop drawings. Photos from CMA's investigation observations are attached herein as Exhibit 05 and Exhibit 06.

Sto drawing detail 1.24a (Exhibit 02) and ICBO reports calls for a use of the window pan flashing. Additionally, the following statement is made in the "Notes:" section of the Sto detail: "2. Protect rough opening against water penetration by wrapping with a barrier membrane Direct any water penetration to the exterior at or above the sill pan flashing."

The omission of the sill pan flashing, in observed construction, resulted in leaks, damage, staining and rust under the window and sill flashing assembly.

Codes and Standards:

2000 International Building Code, Section 1403.2 Weather Protection:

"Exterior walls shall provide the building with a weather resistant exterior wall envelope. The exterior wall envelope shall include flashings, described in Section 1405.3. The exterior wall envelope shall be designed and constructed in such a manner as to prevent the accumulation of water within the wall assembly by providing a water-resistive barrier behind the exterior veneer, as described in section 1404.2 and a means for draining water that enters the assembly to the exterior of the veneer..."

- The installed Sto Exterior Insulation and Finish System (EIFS) does not have the code required weather resistive barrier.



2000 International Building Code (IBC) allows for a “barrier” system without a weather resistive barrier as an exception in section 1403.2 Weather Protection, Exceptions 2.:

“Compliance with the requirements for means of drainage, and the requirements of Section 1405.2 and Section 1405.3, shall not be required for an exterior wall envelope that has demonstrated to resist wind-driven rain through testing of the exterior wall envelope, including joints, penetrations and intersections with dissimilar materials, in accordance with ASTM E331...The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate control joints in the exterior wall envelope, joints at the perimeter of openings penetration, or intersection of terminations with dissimilar materials.”

- This exception requires that all systems without weather barriers be tested for air and water infiltration per ASTM E331

ASTM E331, Scope 1.2:

“This test method is applicable to any curtain-wall area or to windows, skylights, or doors alone.”

ASTM E331, Scope 1.3:

“This test method addresses water penetration through a manufactured assembly. Water that penetrates the assembly, but does not result in a failure as defined herein...”

ICBO ES Report ER-3906, October 1, 2001, Figure 2, Page 6, “STO EIFS at Window Sill”:

Window sill detail shows a continuous pan flashing with back leg going from the back of the window assembly to the exterior past the sill and adhered with sealant to the EIFS assembly.

ICBO ES Report ER-3906, October 1, 2001, Section 4.1 Findings:

“Construction is as set forth in this report and the manufacturer's instructions.”

ICBO ES Report ER-3906, October 1, 2001, Section 4.5 Findings:

“Installation is by applicators trained by STO Corporation.

ICC Evaluation Report, AC24 Acceptance Criteria for Exterior Insulation and Finis Systems, Approved June 2003

Section 2.2.1 (EIFS Wall Covering Assembly with Drainage): “An EIFS wall covering assembly with drainage is a nonbearing exterior wall covering assembly applied to a solid substrate. It includes a water-resistive coating that may be trowled-, spray- or rolled-applied over the surface of a sheathing substrate, or a weather-resistive barrier as defined in Sections 1402 and 2506.4 of the UBC or a water-resistive barrier as defined in Sections 1404.2 and 2510.6 of the IBC or weather-resistant sheathing paper as defined in Sections R703.2 of the IRC; a drainage medium, or other means of drainage...”

Section 5.7 (Exterior Wall Construction): “Plans, details, and specifications, concerning proper installation of the EIFS, that are applicable to the specific building under consideration, must be a part of documents submitted to the building official for approval. When installed on framed walls of Type V, Group R, Division 1 or Division 3 Occupancies (UBC), Type V, Group R1, R2, R3, R4 Occupancies (IBC), or building under the IRC, EIFS wall covering assemblies with drainage, defined in Section 2.2 are required.”

Section 7.0 (Application): “Application instructions bearing the date of publication must be submitted. Instructions must include the information noted in Section 7.1 through 7.6. Installation details need to be consistent with assemblies tested under Section 6.10.3, as applicable.”

Section 7.1.1 (Application): Flashing and/or sealing around heads, sills and jambs of windows and doors, and at the top of exposed walls.

STO EIFS Details, April, 2000:

Detail 1.24a: Detail shows a continuous sill pan flashing with a back leg and end dam underneath the window assembly.



STO EIFS Details, April, 2000, Detail 1.24a, Attention Section (bottom of the page)

"Sto products are intended for use by qualified professional contractors...They should be installed in accordance with those specifications and Sto's instructions..."

Tower 2 EIFS Shops, Detail 3, Sheet F6.02:

Detail shows a sill condition at the window assembly without a window sill pan flashing.

Resultant Damage:

Omission of window sill pan flashings may result in water intrusion into occupied and concealed building spaces; resulting in damage to building components, finishes and personal property.

1.02 Omission of head flashings at window assemblies

Discussion:

ABBAE reviewed the architectural drawings, EIFS shop drawings and investigation photographs taken by other consulting groups during the destructive testing of the window assemblies and was able to determine the windows and EIFS assembly does not have window head flashings. Based on as-built shop drawings and visual review, we were able to confirm that this defect is universal and occurs at all windows of the high-rise buildings. These critical window head flashings are required by the material manufacturers and building code and its omission is a code violation.

Based on the review of the EIFS shop drawings detail 4, sheet F4.01 (Exhibit 03), the design is defective as it does not depict a window head flashing; which is required by the Sto Exterior Insulation and Finish System details and installation guide. In order to confirm that the windows were built as depicted in the shop drawings, limited destructive testing was performed by CMA Consulting from August 2013 to July 2016, where some windows were disassembled to confirm if the construction followed the design intent. The photographs showing the removal of the window assembly, confirm the omission of the window head flashing; therefore, we are able to confirm that the EIFS and window assemblies were in fact incorrectly built to the design intent, per the shop drawings. Photos from CMA's investigation and ABB's observations are attached herein as Exhibit 07 though Exhibit 09.

Sto drawing detail 1.23a (Exhibit 04) and ICBO reports calls for a use of the window head flashing. Additionally, the following statement is made in the Sto detail "Notes:" section: "2. Provide flashing installed over the window to direct water away from the window..."

The omission of the window head flashings prevents water from properly being shed from the exterior surface of the towers, resulting in water intrusion beyond the exterior of the building's surface.

Codes and Standards:

2000 International Building Code, Section 1403.2 Weather Protection:

"Exterior walls shall provide the building with a weather resistant exterior wall envelope. The exterior wall envelope shall include flashings, described in Section 1405.3. The exterior wall envelope shall be designed and constructed in such a manner as to prevent the accumulation of water within the wall assembly by providing a water-resistive barrier behind the exterior veneer, as described in section 1404.2 and a means for draining water that enters the assembly to the exterior of the veneer..."

- The installed Sto Exterior Insulation and Finish System (EIFS) does not have the code required weather resistive barrier.

2000 International Building Code (IBC) allows for a "barrier" system without a weather resistive barrier as an exception in section 1403.2 Weather Protection, Exceptions 2.:



"Compliance with the requirements for means of drainage, and the requirements of Section 1405.2 and Section 1405.3, shall not be required for an exterior wall envelope that has demonstrated to resist wind-driven rain through testing of the exterior wall envelope, including joints, penetrations and intersections with dissimilar materials, in accordance with ASTM E331...The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate control joints in the exterior wall envelope, joints at the perimeter of openings penetration, or intersection of terminations with dissimilar materials."

- This exception requires that all systems without weather barriers be tested for air and water infiltration per ASTM E331

ASTM E331, Scope 1.2:

"This test method is applicable to any curtain-wall area or to windows, skylights, or doors alone."

ASTM E331, Scope 1.3:

"This test method addresses water penetration through a manufactured assembly. Water that penetrates the assembly, but does not result in a failure as defined herein..."

ICBO ES Report ER-3906, October 1, 2001, Figure 2, Page 6, "STO EIFS at Window Head":

Window head detail shows a head flashing.

ICBO ES Report ER-3906, October 1, 2001, Section 4.1 Findings:

"Construction is as set forth in this report and the manufacturer's instructions."

ICBO ES Report ER-3906, October 1, 2001, Section 4.5 Findings:

"Installation is by applicators trained by STO Corporation."

ICC Evaluation Report, AC24 Acceptance Criteria for Exterior Insulation and Finis Systems, Approved June 2003

Section 2.2.1 (EIFS Wall Covering Assembly with Drainage): "An EIFS wall covering assembly with drainage is a nonbearing exterior wall covering assembly applied to a solid substrate. It includes a water-resistive coating that may be trowled-, spray- or rolled-applied over the surface of a sheathing substrate, or a weather-resistive barrier as defined in Sections 1402 and 2506.4 of the UBC or a water-resistive barrier as defined in Sections 1404.2 and 2510.6 of the IBC or weather-resistant sheathing paper as defined in Sections R703.2 of the IRC; a drainage medium, or other means of drainage..."

Section 5.7 (Exterior Wall Construction): "Plans, details, and specifications, concerning proper installation of the EIFS, that are applicable to the specific building under consideration, must be a part of documents submitted to the building official for approval. When installed on framed walls of Type V, Group R, Division 1 or Division 3 Occupancies (UBC), Type V, Group R1, R2, R3, R4 Occupancies (IBC), or building under the IRC, EIFS wall covering assemblies with drainage, defined in Section 2.2 are required."

Section 7.0 (Application): "Application instructions bearing the date of publication must be submitted. Instructions must include the information noted in Section 7.1 through 7.6. Installation details need to be consistent with assemblies tested under Section 6.10.3, as applicable."

Section 7.1.1 (Application): Flashing and/or sealing around heads, sills and jambs of windows and doors, and at the top of exposed walls.

STO EIFS Details, April, 2000:

Detail 1.23a: Detail shows a window head flashing with note: "Flashing over window folder over window jamb-head interface"

STO EIFS Details, April, 2000, Detail 1.23a, Attention Section (bottom of the page)



"Sto products are intended for use by qualified professional contractors, they should be installed in accordance with those specifications and Sto's instructions..."

Tower 2 EIFS Shops, Detail 4, Sheet F4.01:

Detail shows a window head condition without the head flashing

Resultant Damage:

Omission of window head flashings may result in water intrusion into occupied and concealed building spaces; resulting in damage to building components, finishes and personal property.



Exhibits

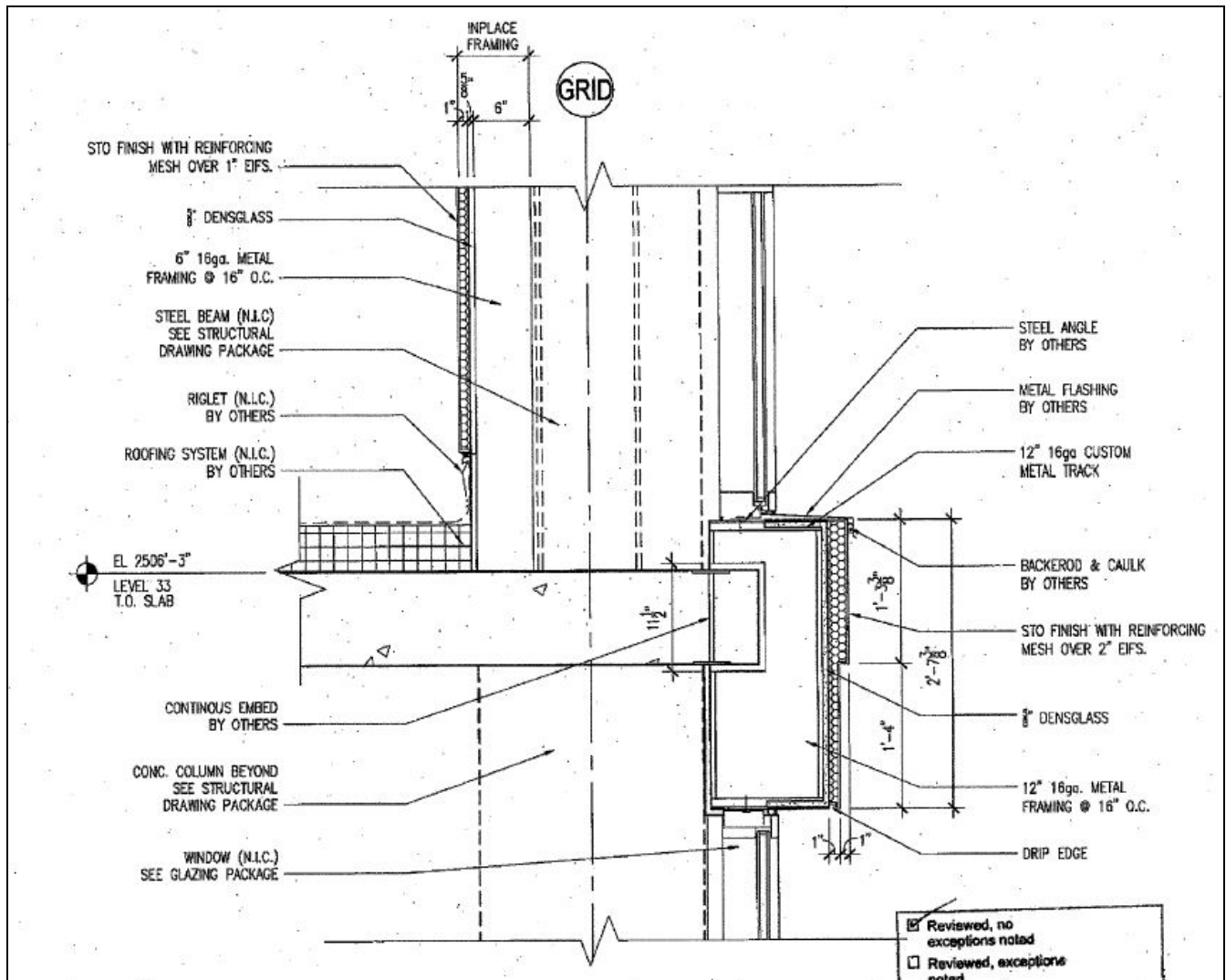


Exhibit 1 – Construction Drawings: EIFS Shop Drawing Detail 1 Showing no Sill Pan Flashing



Sto EIFS
Commercial Window Jamb

Detail No.: 1.24a

Date: April 2000

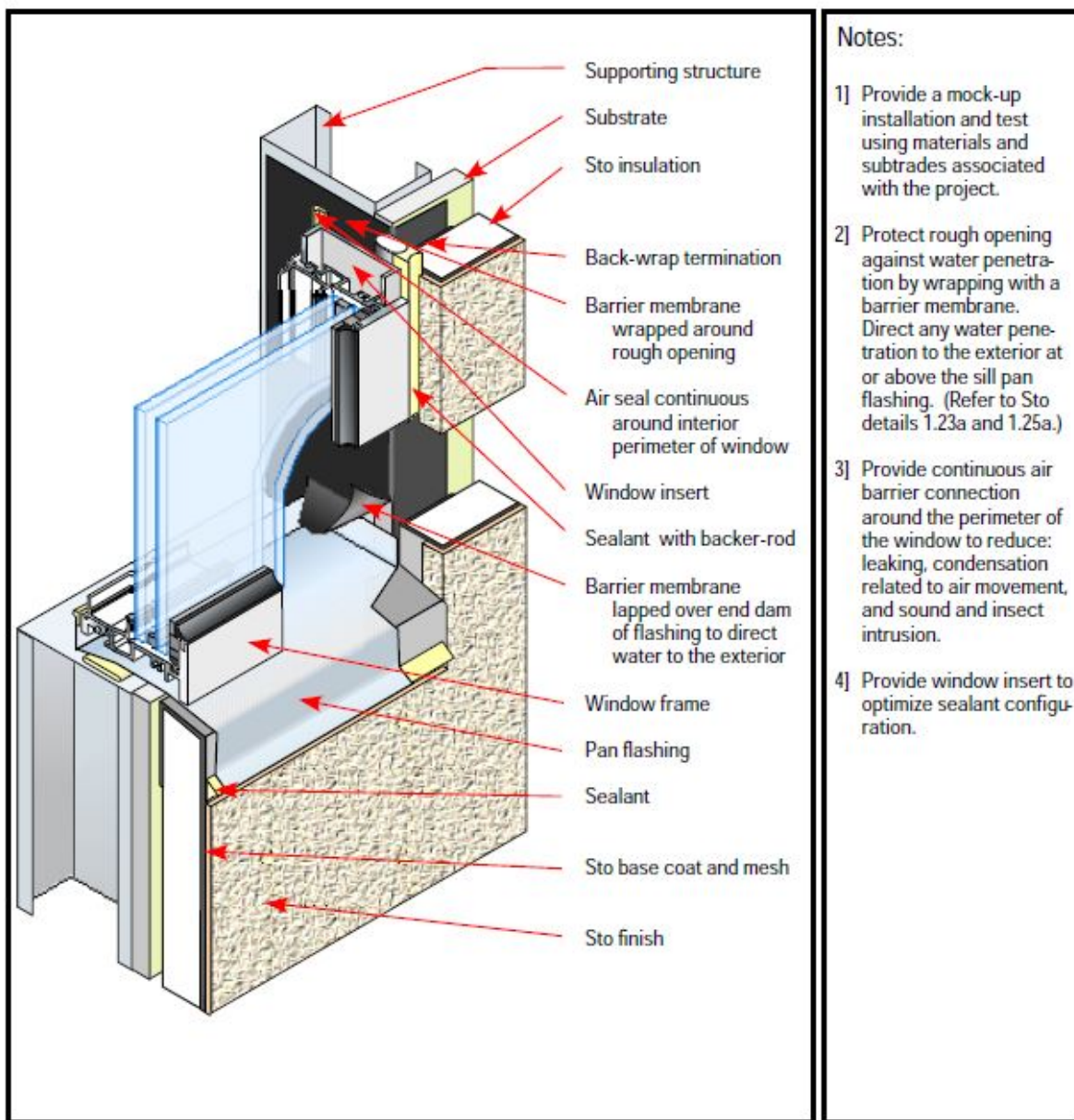


Exhibit 02 – Sill Pan Flashing Detail from Sto

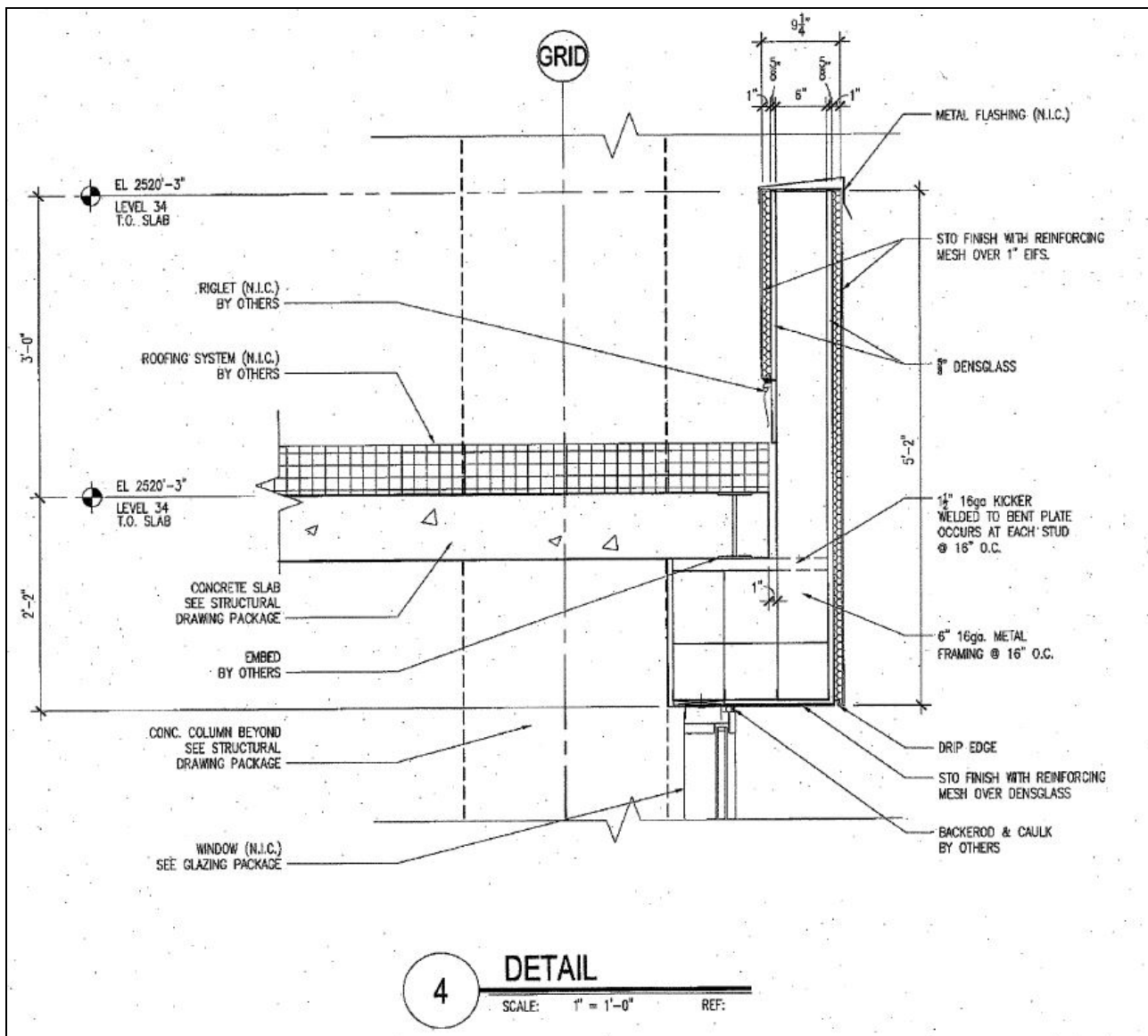


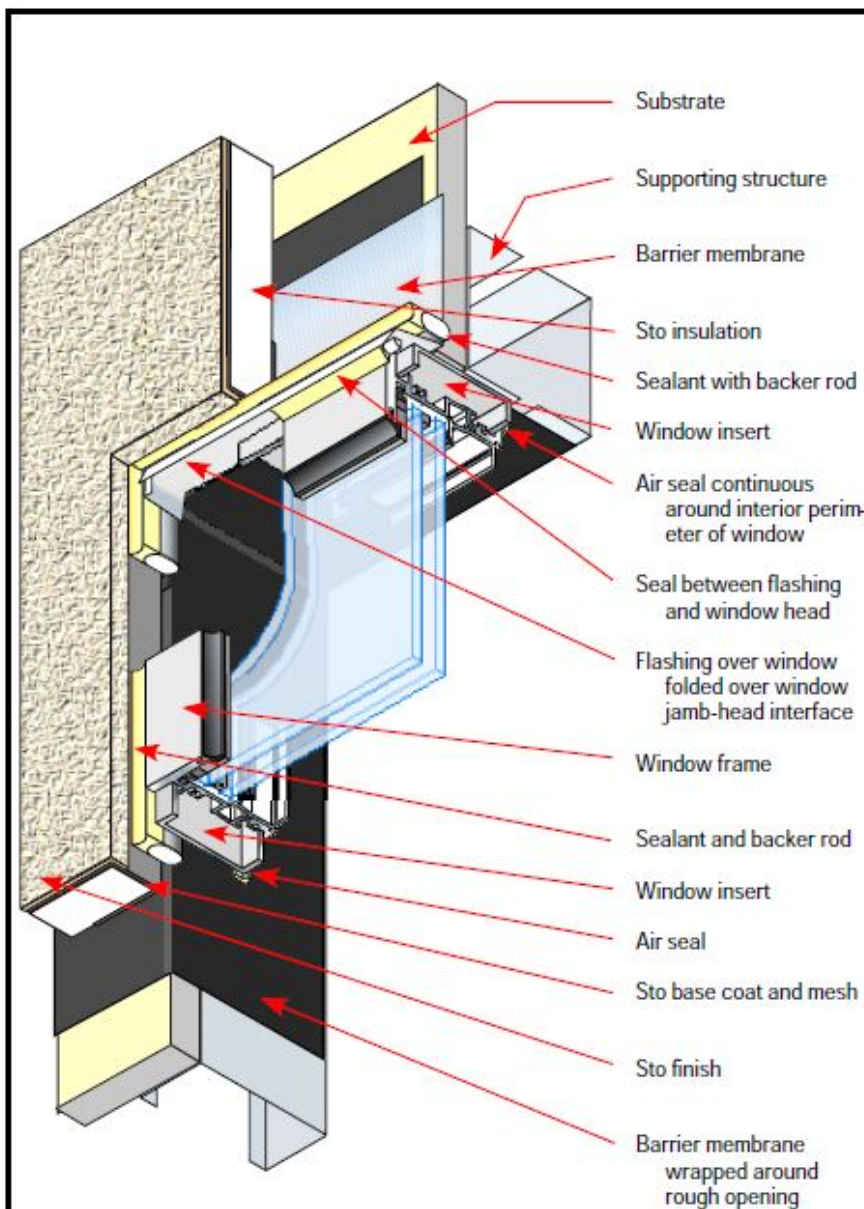
Exhibit 03 – Construction Drawings: EIFS Shop Drawing Detail 4 Showing no Head Flashing



Sto EIFS
Commercial Window Head

Detail No.: 1.23a

Date: April 2000



Notes:

- 1] Provide a mock-up installation and test using materials and substrates associated with the project.
- 2] Provide flashing installed over the window to direct water away from the window. Verify requirements for head flashing with local codes and window manufacturer. If not required, seal between window head and EIFS.
- 3] Protect rough opening against water penetration by wrapping with a barrier membrane. Direct any water penetration to the exterior at or above the sill pan flashing. (Refer to Sto details 1.24a and 1.25a)
- 4] Provide continuous air barrier connection around the perimeter of the window to reduce: leaking, condensation related to air movement, and sound and insect intrusion.

Exhibit 04 – Head Flashing Detail from Sto



CMA Consulting - Investigations Catalog



Exhibit 5 – CMA Consulting Photograph: Depicting Omission of Sill Pan Flashing



CMA Consulting - Investigations Catalog



Exhibit 6 – CMA Consulting Photograph: Depicting Omission of Sill Pan Flashing



CMA Consulting - Investigations Catalog



Exhibit 7 – CMA Consulting Photograph: Depicting Omission of Head Flashings



Exhibit 8 – ABBAE Photograph: View of the Tower Window System Showing Omission of Head Flashing



Exhibit 9 – ABBAE Photograph: View of the Tower Window System Showing Omission of Head Flashing

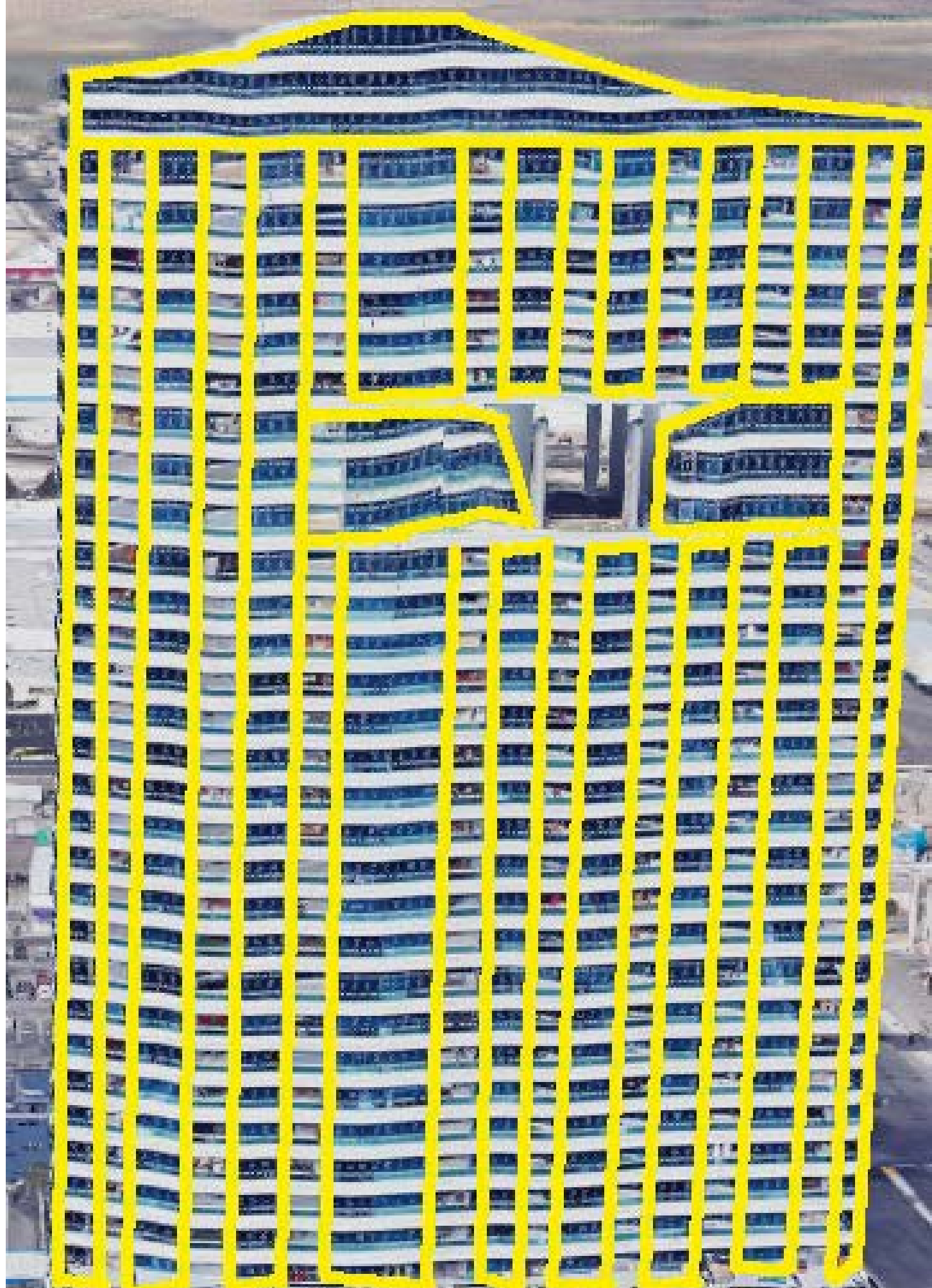
EXHIBIT B

EXHIBIT B

EXHIBIT B

EXHIBIT B

Tower 1 – East Side Windows



AA0620

EXHIBIT B

Tower 1 – North Side Windows



EXHIBIT B

Tower 1 – South Side Windows



EXHIBIT B

Tower 1 – West Side Windows

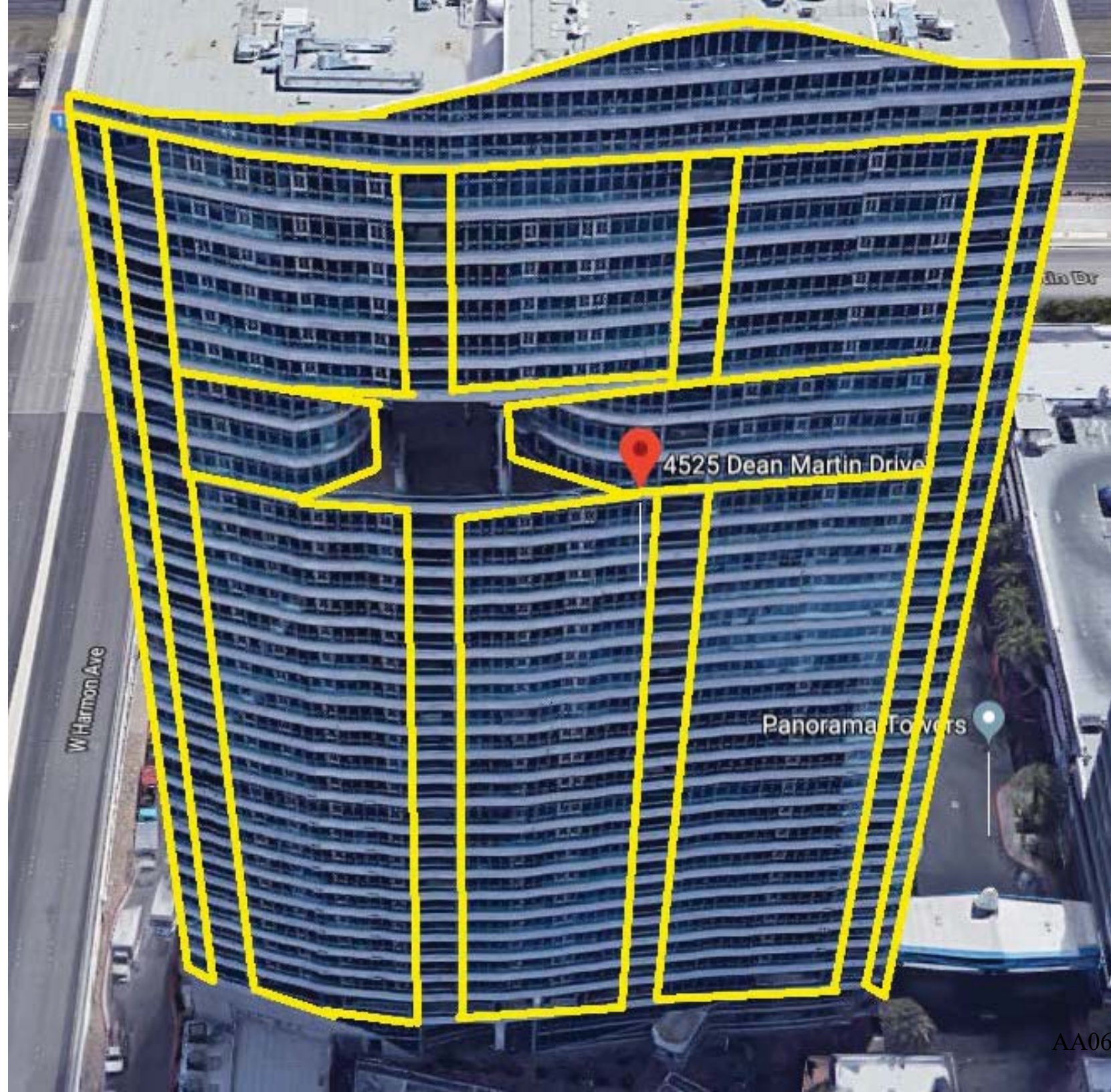


EXHIBIT B

Tower 2 – East Side Windows



Panorama Towers

AA0628

EXHIBIT B

Tower 2 – North Side Windows



AA0630

EXHIBIT B

Tower 2 – South Side Windows



EXHIBIT B

Tower 2 – West Side Windows

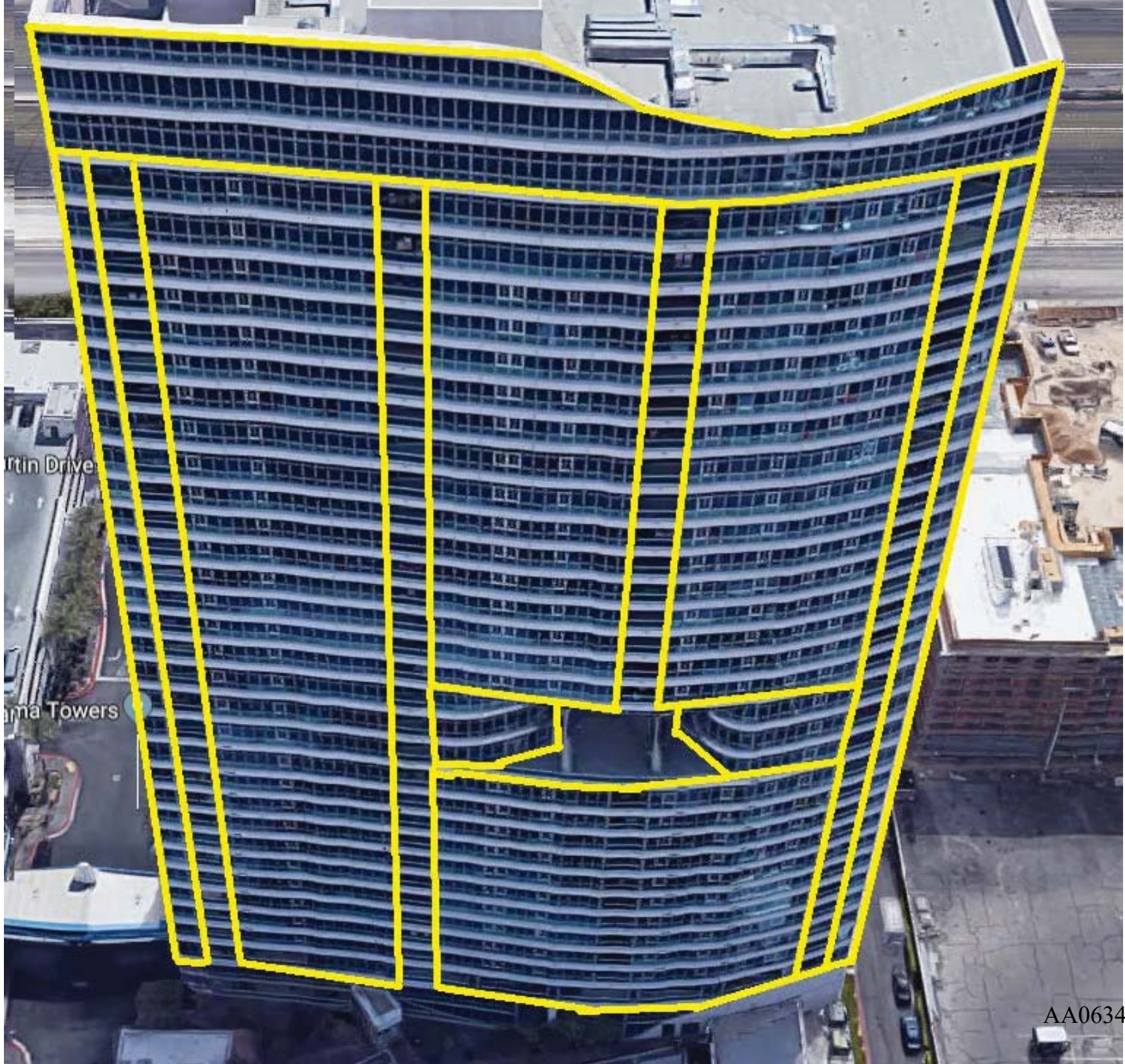


EXHIBIT C

EXHIBIT C

EXHIBIT C

1 Francis I. Lynch, Esq. (Nevada Bar No. 4145)
Charles "Dee" Hopper, Esq. (Nevada Bar No. 6346)
2 LYNCH HOPPER, LLP
1210 S. Valley View Blvd., Suite 208
3 Las Vegas, Nevada 89102
4 Telephone:(702) 868-1115
Facsimile:(702) 868-1114

5 Scott Williams (California Bar No. 78588)
6 WILLIAMS & GUMBINER LLP
100 Drakes Landing Road, Suite 260
7 Greenbrae, California 94904
8 Telephone:(415) 755-1880
Facsimile:(415) 419-5469
9 (Admitted Pro Hac Vice)

10 *Counsel for Defendant*

11 EIGHTH JUDICIAL DISTRICT COURT
12 CLARK COUNTY, NEVADA
13

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

18 Plaintiffs,

19 vs.

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

22 Defendant.

23
24 PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
25 non-profit corporation, and Does 1 through 1000,

26 Counterclaimants,

27 vs.

28 LAURENT HALLIER, an individual:

CASE NO.: A-16-744146-D

DEPT. NO.: XXII

PANORAMA TOWERS I, LLC, a Nevada limited liability company; PANORAMA TOWERS I MEZZ, LLC, a Nevada limited liability company; M.J. DEAN CONSTRUCTION, INC., a Nevada Corporation; SIERRA GLASS & MIRROR, INC.; F. ROGERS CORPORATION;; DEAN ROOFING COMPANY; FORD CONTRACTING, INC.; INSULPRO, INC.; XTREME XCAVATION; SOUTHERN NEVADA PAVING, INC.; FLIPPINS TRENCHING, INC.; BOMBARD MECHANICAL, LLC; R. RODGERS CORPORATION; FIVE STAR PLINBING & HEATING, LLC, dba Silver Star Plumbing; and ROES 1 through 1000, inclusive,

Counterdefendants.

**AFFIDAVIT OF OMAR HINDIYEH IN SUPPORT OF
PANORAMA'S OPPOSITION TO
HALLIER'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Omar Hindiye, being first duly sworn, state as follows:

1. I received a Bachelor of Science degree in civil engineering from San Jose State University in 1978. I am a licensed general contractor in California (license no. 757672) and in Nevada (license no. 53133). I am the owner and president of CMA Consulting (CMA), formed in 1985, which specializes in construction management and forensic investigation services. A copy of my CV, which includes my licenses, certifications and professional affiliations, is attached hereto as Exhibit 1.

2. If called as a witness, I could and would testify to the matters stated herein based on my own personal knowledge.

3. CMA Consulting was retained by the Panorama Towers Condominium Unit Owners' Association in August, 2013, to investigate and repair leakage conditions in one of the units of the Panorama development, Unit 300, located on the third story of Tower 1, 4525 Dean

1 Martin Drive, Las Vegas. When CMA was retained, the walls had all already been opened by
2 another contractor and the mold conditions in the wall assemblies had been remediated.

3 4. I was personally involved in all phases of CMA's investigation and repair of Unit
4 300, which took place over the period August 2013 through July 2016, at a total cost of \$206,058
5 (exclusive of demolition and mold remediation).

6 5. The conditions in Unit 300 that required repair were twofold:

7 (a) Window leakage – The exterior wall window assemblies were not
8 properly designed with drainage provisions, such as sill pans and weepage components, with the
9 result that water entering the window assemblies was not diverted to the exterior of the building,
10 but instead drained into the wall assemblies below and adjacent to the windows, causing
11 corrosion to the metal framing components of the exterior wall assemblies, including the curb
12 walls that support the windows, thereby compromising the structural integrity of the exterior
13 walls.

14 (b) Fire blocking and insulation – While investigating the leakage conditions
15 in Unit 300, we discovered that insulation was missing in the ledger shelf cavities and that fire
16 blocking was missing in the steel stud framing cavities at the exterior wall locations between
17 residential floors in the two tower structures. The plans called for insulation and fire blocking, as
18 required by the building code, at these locations. The purpose of the fire blocking and insulation
19 is to deter the spread of fire from one tower unit to the units above or below, and to prevent
20 condensation from occurring within the exterior wall assemblies.

21 6. From November, 2015, through January, 2016, CMA inspected 15 units in the
22 two towers to determine if the conditions observed in Unit 300 existed in other units in the
23 towers. Units in the two towers were selected from different floors and with different facing
24 exposures to obtain a mixed sampling. The inspections, which typically included multiple
25 locations within each unit inspected, included pulling back carpet, removing electrical outlet
26 faceplates, pulling back baseboards and/or cutting through the sheetrock behind the baseboards.
27 These inspections yielded the following results:

28 (a) Window leakage – The steel stud framing was found to be corroded as the

1 result of leakage in 76% of the window locations inspected.

2 (b) Fire blocking and insulation – Of the ledger shelf cavities inspected, 76%
3 had no insulation. Many of the steel stud framing cavities had questionable and/or a lack of
4 proper fire blocking provisions.

5 7. For purposes of responding to Hallier's motion, CMA was asked to estimate the
6 costs that would be required to perform the following:

7 (a) Identify "in specific detail ... the exact location of each ... defect, damage
8 and injury" related to (i) leakage through the window assemblies that is causing corrosion
9 damage to the metal framing components of the building, and (ii) required fire blocking and
10 insulation that is missing.

11 (b) Schedule and have a CMA representative "present" for inspections by
12 Hallier's representatives to provide them with the identifications described in Paragraph 7(a),
13 above.

14 8. In order to perform the above functions, the following steps would be required for
15 each unit in each of the two towers:

16 (a) Preparation – It would be necessary to retain a contractor to first remove
17 all furniture and fixtures adjacent or connected to the exterior walls of the unit, and pull back any
18 carpeting from those areas. In the case of kitchens, this would include the removal of cabinetry
19 and built-in kitchen appliances on the exterior walls. The removed furniture, fixtures and
20 appliances would have to be stored in a secure location if there is insufficient room within the
21 unit. The contractor would have to then provide protective floor coverings for paths of ingress
22 and egress and the work areas adjacent to the exterior walls.

23 (b) Destructive testing – In order to identify "the exact location of each ...
24 defect, damage and injury" related to (i) corrosion, mold and other damage caused by leaking
25 windows, and (ii) missing insulation and fire blocking, the following destructive testing would
26 be required: Remove all baseboards along the entire length of the exterior walls of the unit,
27 remove all sheetrock covering the curbs below each of the windows, and remove all water proof
28 membranes, mineral wool and fiberglass insulation from the curbs.

1 (c) Inspection – It would be necessary to have a CMA representative and
2 Hallier’s representative present for the above testing to conduct an inspection to identify “in
3 specific detail ... the exact location of each ... defect, damage and injury.” They would have to
4 be present during the testing, instead of after the testing is completed, because, for example,
5 evidence of “damage” – *e.g.*, evidence of biological growth on the back of sheetrock – would be
6 removed during the testing. Notably, inherent delays are involved when scheduling mutually
7 convenient dates and times when multiple parties are involved, which would add to the cost of
8 the inspections.

9 (d) Put-back work – It be necessary following the inspection to have the
10 contractor return and install insulation and waterproof membrane in all the curbs, reinstall
11 cabinetry, fixtures and appliances that had been removed (and/or stored), touch-up paint the
12 cabinetry, replace the sheetrock and baseboard that had been removed, repaint the baseboard,
13 retexture and repaint the sheetrock on walls that had been painted, replace wallpaper or other
14 wall coverings where appropriate, replace all carpeting furniture that had been removed (and/or
15 stored) from the exterior wall locations.

16 9. CMA estimates that the foregoing expenses – for the work and materials provided
17 by a contractor, storage of the occupant’s property, and charges for CMA’s services – would
18 amount to an average cost of \$13,145 per unit. There are 616 “standard” units in the two towers,
19 which would bring the total cost to \$8,097,320 (\$13,145 x 616 units) for the standard units. This
20 does not include an additional 20 townhouse units, 12 lofts and retail and office space in the two
21 towers, the testing and inspections of which would substantially increase this estimated cost.

22 10. Also, the above cost does not include the cost of placing the occupants in
23 temporary housing during the testing and inspections.

24 11. Performing the above described testing and inspections, at a cost of \$8,097,320
25 for the 616 “standard” units, would result in a phenomenal waste of money, as all these costs
26 would have to be duplicated when the Association subsequently undertakes to repair the defects
27 involved.

28 12. I declare under the penalty of perjury under the laws of Nevada that the foregoing

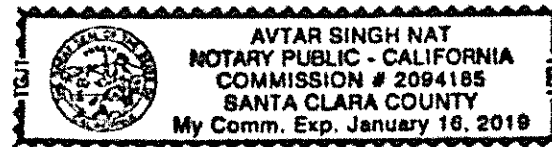
1 is true and correct. If called as a witness, I could and would competently testify thereto.

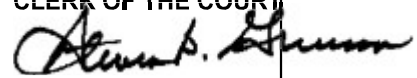
2
3
4 Omar Hindiye

5 SUBSCRIBED and SWORN to before me this 26 day of April, 2017.

6 Avtar Singh Nat

7 NOTARY PUBLIC





RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

LAURENT HALLIER,
Plaintiff,

vs.

PANORAMA TOWERS
CONDOMINIUM UNIT
OWNERS ASSOCIATION,
Defendant.

CASE#: A-16-744146-D
DEPT. XXII

BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE
THURSDAY, APRIL 12, 2018

**RECORDER'S TRANSCRIPT OF HEARING:
STATUS CHECK RE: STAY (PER 9/15/17 ORDER)**

APPEARANCES:

For the Plaintiff:

PETER C. BROWN, ESQ.

For the Defendant:

FRANCIS I. LYNCH, ESQ.
SCOTT WILLIAMS, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 Las Vegas, Nevada, Thursday, April 12, 2018

2
3 [Case called at 10:55 a.m.]

4 THE COURT: How about Hallier versus Panorama Towers
5 Condominium Unit Owners Association versus -- well, Hallier versus
6 Panorama Towers Condominium Unit Owners Association, Case
7 Number A-16-744146-D.

8 MR. BROWN: Good morning, Your Honor, Peter Brown on
9 behalf of the Plaintiff builder entities.

10 MR. LYNCH: Good morning, Your Honor, Francis Lynch on
11 behalf of the Association.

12 MR. WILLIAMS: And, good morning, Scott Williams also on
13 behalf of the Association.

14 THE COURT: Okay. And this is a status check per stay.

15 MR. BROWN: Thank you, Your Honor, Peter Brown on behalf
16 of the Plaintiff builder entities.

17 Last week -- you recall the last time we were here, an
18 agreement reached my clients and counsel for the Defendants with
19 regards to the issuance of an extension of time for the issuance of the
20 revised Chapter 40 Notice. Because when we were before you the last
21 time that had been after the six month period where you had placed a
22 stay in the proceedings to allow the Plaintiffs to make whatever attempt
23 they might have to correct the deficiencies of the Chapter 40 Notice.

24 Prior to that hearing I was contacted by counsel for the
25 Plaintiffs requesting that at that particular hearing that my clients agree

1 to a slight extension of time beyond that six month time period for the
2 issuance of the Chapter 40 Notice. As a professional courtesy, I agreed
3 to counsel's request and that is what we talked about when we here the
4 last time.

5 Your Honor, last week we received the revised Chapter 40
6 Notice, and to my chagrin, as I discussed with counsel yesterday, it
7 includes a new defect.

8 And, Your Honor, I don't want to get into the issues with
9 regard to whether that is appropriate. I'm here to tell the Court that what
10 I believe is necessary is for the Court to set a briefing schedule with
11 regards to the new Chapter 40 Notice because there are myriad
12 problems still with that issue, which I will put into a motion, not the least
13 of which is the identification of a brand new defect, which given the
14 timing it would seem to me to be years beyond the time frame that they
15 would be allowed to allege a new defect given the change in the statute
16 and the six year statute of repose for bringing in any claims.

17 Your Honor, I also am here to say that I want an agreement
18 from counsel or an order -- and I can brief this, Your Honor, as well if
19 necessary -- but a stay on my client's statutory requirement to, number
20 one, provide notice to subcontractors, manufactures, and design
21 professionals; two, the statutory time frame for my client to do an
22 inspection with regards to the revised Chapter 40 Notice; and, three, an
23 extension of time for my clients to issue a response to the Chapter 40
24 Notice because there are numerous issues with the new Chapter 40
25 Notice that require decisions from this Court based upon my analysis of

1 that motion.

2 And the most that I can really say, Your Honor, is that we will
3 be filing a renewed motion with regard to the Chapter 40 Notice. And
4 rather than my client having to go through the expense of doing
5 inspections, the expense of placing subcontractors, manufactures, and
6 design professionals on notice and the expense of having to do a
7 response, Your Honor, I believe that it's appropriate and also given the
8 extension of time provided to the Plaintiffs to provide a revised Chapter
9 40 Notice of which they used the entire six months and more in which to
10 do that new Chapter 40 Notice. I do not believe that my request for an
11 extension of statutory requirements for my clients is unreasonable and I
12 would intend to likely have a motion on file.

13 I'm in trial currently, Your Honor, but I have my -- I will work
14 with my office to get a response or a motion on file. We're still assessing
15 how that motion will be styled, whether it be motion to strike, a motion for
16 declaratory relief, a motion for partial summary judgment. We're still
17 going through the -- what the potential motion might be, Your Honor.

18 But I will say for the record that if counsel had contacted me
19 and said, number one, that he wanted an extension of time in which to
20 assert a new defect, I would have said, absolutely not. Because I do not
21 believe that what this Court afforded the HOA was the opportunity to
22 allege new defects in addition to attempting to correct the errors of the
23 original Chapter 40 Notice, which this Court gave them six months -- the
24 HOA six months to rectify.

25 So, Your Honor, this is something that just came up with the

1 issuance of the new Chapter 40 Notice last week. I did talk with counsel
2 yesterday, I will represent to the Court that I was not -- I was not happy
3 about what I saw with the new Chapter 40 Notice. I believe that it was
4 pushing beyond the bounds of what this Court allowed the HOA to do
5 and that it will be the subject of motion practice. And that is what I'm
6 here to request the Court for the relief in that regard that there be a stay
7 on statutory requirements of my client until that motion is heard and
8 ruled upon by the Court and that a briefing schedule will be set with
9 regards to that motion, Your Honor.

10 THE COURT: Counsel.

11 MR. LYNCH: Good morning, Your Honor.

12 Peter's right, he called me yesterday and --

13 THE COURT: He wasn't happy with you?

14 MR. LYNCH: It turns out. I had just gotten off the plane; I had
15 flown in from Ojai, which I -- where I live now -- for the status check and
16 he was screaming at me for the first five minutes about this new defect,
17 and I thought someone had stolen his Knights tickets until he finally told
18 me what was the problem. I disagreed with him. I still disagree with
19 him. The original Chapter 40 talked about window assemblies and we
20 gave you a copy of the new Chapter 40 this week. I told Peter on the
21 phone we would give him any kind of extension that he wanted for as
22 long as he wanted. We disagree that this is a new issue at all. I don't
23 think it is. But like I said on the phone yesterday, we can proceed at
24 Peter's time table. If he wants a -- excuse me, set up a briefing
25 schedule we can do that, that's easy.

1 THE COURT: Mr. Brown, I can go ahead and I would be
2 happy to accord you a stay on your Chapter 40 statutory requirements in
3 terms of the deadlines and notifying the subs and all that kind of stuff.
4 I'm inclined to just go ahead and stay those requirements for three
5 months and that would give you time to go ahead and file your motion
6 and then get it heard, I would think. I mean, if you got a motion done in
7 30 days or so, it would be heard 30 days thereafter. If you're a little bit
8 later with that, that's fine, we'd still have a three-month window.

9 What's your thoughts?

10 MR. BROWN: Your Honor, one thing to add to that is I would
11 also request that there be -- that the HOA be precluded from placing --
12 sending that Chapter 40 Notice to subcontractors, design professionals,
13 or manufactures. The reason being, Your Honor, is that there is a wrap
14 policy in place and so consequently what that will do is it will just
15 increase the costs that are being incurred if those particular parties that
16 are associated with the defects in the Chapter 40 Notice are then
17 required to retain their own counsel to go through that.

18 So I believe, Your Honor, what is appropriate -- I appreciate
19 the offer of the three months and I will accept that. But I also believe
20 that there cannot be a parallel track where the HOA is then forcing the
21 subcontractors, design professionals, and/or the manufactures to go
22 through the Chapter 40 process and to incur the expense, which I don't
23 believe is appropriate not just for my client but also for those parties until
24 the Court determines whether or not this new Chapter 40 Notice has
25 been appropriately drafted by the HOA.

1 THE COURT: Is this, by the way, a consuming policy?

2 MR. BROWN: I'm sorry?

3 THE COURT: Is this wrap policy, is it a consuming policy?

4 MR. BROWN: No, it is not, Your Honor.

5 THE COURT: Okay. All right.

6 Your thoughts? Are you agree?

7 MR. LYNCH: Yes, Your Honor. We've got no problem with
8 that. I do find it curious though when we were here last time, six months
9 ago, one of our major arguments regarding not just what these design
10 defects are but installation issues, essentially -- in addition to the design
11 stuff. And our argument was that it was going to cost us so much more
12 money to investigate everything that Peter wants us to investigate, we
13 want to save the expense, and here Peter is saying the same thing.

14 We have no problem. I haven't seen his policy. I'm not
15 concerned about it at this point. We're not going to send out the Chapter
16 40 to anybody else.

17 THE COURT: Okay. Well, you could put that into the
18 proposed order on that, on the stay.

19 And Mr. Lynch, understand this isn't my new rule, it's what the
20 legislature put into being, they took out the extrapolation. And, you
21 know, I think I set that forth in the order. Of course, it's been awhile
22 since I've read the order that I wrote, what, nine months ago or
23 something like that. So I feel your pain; okay.

24 Why don't we go ahead and set this for status on the stay, as
25 well as filing of motions and all that kind of stuff. And if you get the

1 motion done before, fine, I imagine that a hearing will be set before and
2 we can address everything then. But I at least want a sunset provision
3 on what you're doing. Okay?

4 THE CLERK: Three months?

5 THE COURT: Three months.

6 THE CLERK: Okay. That will be on July 17th at 10:30.

7 THE COURT: July 17th, 10:30.

8 MR. LYNCH: Pardon me, Your Honor, in the order for today,
9 setting out the schedule, do you want us to put in there, you know, once
10 Peter gets -- gives us his motion we have three weeks or a month
11 from --

12 THE COURT: Well, I just see that you just follow the rules
13 of --

14 MR. LYNCH: In the ordinary course?

15 THE COURT: -- under EDCR 2.20.

16 MR. BROWN: Your Honor, could we set -- I -- I -- could we
17 possibly set the return date to -- sometime in August. The reason being,
18 Your Honor, is that I will be in Colorado on the 17th for a trial and then I
19 have another trial the following week and another trial the following
20 week. And so I'm asking whether or not we might be able to move this --
21 it's an additional month, Your Honor. Just because of my trial dates in
22 Colorado I will not be able to personally be present in the entire month of
23 July.

24 THE COURT: Any problem with that?

25 MR. LYNCH: No, Your Honor.

1 THE COURT: What's your trial schedule like? Do you have
2 anything in August that's hot that we need to worry about?

3 MR. LYNCH: Not us, Your Honor, no, we're fine.

4 THE COURT: Okay. Let's go ahead and set it 120 days then.

5 THE CLERK: Okay. August 7th, 10:30.

6 THE COURT: How's August 7th?

7 MR. BROWN: That works, Your Honor. Thank you very
8 much.

9 THE COURT: Okay. No problem. Okay. All right.

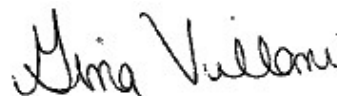
10 MR. LYNCH: Great. Thank you, Your Honor.

11 THE COURT: Thank you.

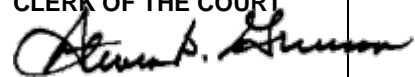
12
13 [Hearing concluded at 11:07 a.m.]

14 * * * * *

15
16
17
18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23 

24 Gina Villani
25 Court Recorder/Transcriber



PETER C. BROWN, ESQ.
Nevada State Bar No. 5887
JEFFREY W. SAAB, ESQ.
Nevada State Bar No. 11261
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
jsaab@bremerwhyte.com

Attorneys for Plaintiffs/Counter-Defendants
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;
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.

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

Counter-Claimant,

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;

) Case No. A-16-744146-D
)
) Dept. XXII
)
) **PLAINTIFFS/COUNTER-DEFENDANTS**
) **LAURENT HALLIER, PANORAMA**
) **TOWERS I, LLC, PANORAMA**
) **TOWERS I MEZZ, LLC, AND M.J.**
) **DEAN CONSTRUCTION, INC.'S**
) **MOTION FOR SUMMARY JUDGMENT**
) **ON DEFENDANT/COUNTER-**
) **CLAIMANT PANORAMA TOWER**
) **CONDOMINIUM UNIT OWNERS'**
) **ASSOCIATION'S APRIL 5, 2018**
) **AMENDED NOTICE OF CLAIMS**

1 SIERRA GLASS & MIRROR, INC.; F.)
2 ROGERS CORPORATION; DEAN ROOFING)
3 COMPANY; FORD CONTRACTING, INC.;)
4 INSULPRO, INC.; XTREME EXCAVATION;)
5 SOUTHERN NEVADA PAVING, INC.;)
6 FLIPPINS TRENCHING, INC.; BOMBARD)
7 MECHANICAL, LLC; R. RODGERS)
8 CORPORATION; FIVE STAR PLUMBING &)
9 HEATING, LLC, dba SILVER STAR)
10 PLUMBING; and ROES 1 through , inclusive,)
11 Counter-Defendants.)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

COME NOW Plaintiffs/Counter-Defendants Laurent Hallier, Panorama Towers I, LLC, Panorama Towers I Mezz, LLC and M.J. Dean Construction, Inc. (hereinafter collectively referred to as "Builders"), by and through their attorneys of record Peter C. Brown, Esq. and Jeffrey W. Saab, Esq. of the law firm of Bremer Whyte Brown & O'Meara LLP, and hereby files their Motion for Summary Judgment on Defendant/Counter-Claimant Panorama Tower Condominium Unit Owners' Association's April 5, 2018 Amended Notice of Claims.

This Motion is made and based upon the pleadings and papers on file herein, the following Memorandum of Points and Authorities in support thereof, the Declaration of Peter C. Brown, Esq., Declaration of Michelle Robbins, AIA, and any and all evidence and/or testimony accepted by this Honorable Court at the time of the hearing on this Motion.

Dated: August 3, 2018

BREMER WHYTE BROWN & O'MEARA LLP

By: 

Peter C. Brown, Esq.
Nevada State Bar No. 5887
Jeffrey W. Saab, Esq.
Nevada State Bar No. 11261
Attorneys for Plaintiffs/Counter-Defendants
LAURENT HALLIER, PANORAMA
TOWERS I, LLC, PANORAMA
TOWERS I MEZZ, LLC, and M.J. DEAN
CONSTRUCTION, INC.

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE COUNSEL:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that PLAINTIFFS/COUNTER-DEFENDANTS LAURENT HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC, AND M.J. DEAN CONSTRUCTION, INC.'S MOTION FOR SUMMARY JUDGMENT ON DEFENDANT/COUNTER-CLAIMANT APRIL 5, 2018 AMENDED CHAPTER 40 NOTICE will come on for hearing before the above-entitled Court on the 06 day of September, 2018 at 9:00 a.m., or as soon thereafter as counsel may be heard.

Dated: August 3, 2018

BREMER WHYTE BROWN & O'MEARA LLP

By: _____

Peter C. Brown, Esq.
Nevada State Bar No. 5887
Jeffrey W. Saab, Esq.
Nevada State Bar No. 11261
Attorneys for Plaintiffs/Counter-Defendants
LAURENT HALLIER, PANORAMA
TOWERS I, LLC, PANORAMA
TOWERS I MEZZ, LLC, and M.J. DEAN
CONSTRUCTION, INC.

1 **DECLARATION OF PETER C. BROWN, ESQ. IN SUPPORT OF**
2 **PLAINTIFFS/COUNTER-DEFENDANTS LAURENT HALLIER, PANORAMA TOWERS**
3 **I, LLC, PANORAMA TOWERS I MEZZ, LLC AND M.J. DEAN CONSTRUCTION,**
4 **INC.'S MOTION FOR SUMMARY JUDGMENT ON DEFENDANT/COUNTER-**
5 **CLAIMANT PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION'S**
6 **APRIL 5, 2018 AMENDED NOTICE OF CLAIMS**

7 STATE OF NEVADA)
8) : ss
9 COUNTY OF CLARK)

10 I, PETER C. BROWN, ESQ. declare under penalty of perjury

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

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

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

18 4. This Declaration is submitted pursuant to EDCR 2.21, in support of
19 Plaintiffs/Counter-Defendants Laurent Hallier, Panorama Towers I, LLC, Panorama Towers I
20 Mezz, LLC and M.J. Dean Construction, Inc.'s Motion for Summary Judgment on
21 Defendant/Counter-Claimant Panorama Tower Condominium Unit Owners' Association's April 5,
22 2018 Amended Notice of Claims ("Motion").

23 5. On or about February 24, 2016, the Defendant/Counter-Claimant, Panorama Tower
24 Condominium Unit Owners' Association (hereinafter "Association"), through its counsel,
25 separately served Laurent Hallier (the principal of Panorama Towers I, LLC), M.J. Dean
26 Construction, Inc. ("M.J. Dean") and others, with a "Notice to Contractor Pursuant to Nevada
27 Revised Statutes, Section 40.645" ("Chapter 40 Notice"). Other than the addressee's name, the
28 Chapter 40 Notices served on Mr. Hallier and M.J. Dean are the same.

 6. Attached as **Exhibit "1"** is a true and correct copy of the Association's initial
Chapter 40 Notices dated February 24, 2016.

 7. The Association's February 24, 2016 Chapter 40 Notice alleges defects and

1 damages involving: (1) residential tower windows; (2) residential tower fire blocking; (3)
2 mechanical room piping; and (4) sewer piping.

3 8. On or about March 24, 2016, Builders, via their experts, visually inspected the
4 defects alleged in the Association's February 24, 2016 Chapter 40 Notice.

5 9. During Builders' March 24, 2016, inspection, Builders observed that work was
6 being performed on the windows in Unit 300 and that the windows had been removed and replaced
7 prior to Builders' inspection. The Association did not provide notice to Builders of the allegedly
8 defective windows in Unit 300 prior to the removal and replacement of the windows, including but
9 not limited to, a Chapter 40 Notice.

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

15 11. During Builders' March 24, 2016, inspection, Builders also became aware that the
16 allegedly defective sewer piping had also been repaired prior to Builders' inspection. The
17 Association did not provide notice to Builders of the allegedly defective sewer piping prior to the
18 repair work being performed, including, but not limited to, a Chapter 40 Notice.

19 12. On March 29, 2016, Builders sent correspondence to the Association (via its
20 counsel) requesting information and documents relating to (1) the sewer line defect allegations
21 identified in the Association's February 24, 2016 Chapter 40 Notice, including the date of
22 occurrence and date of repair of the alleged defects, and requesting the current location of any
23 sewer line materials that were removed and replaced as part of the Association's repair; and (2) the
24 mechanical room piping defect allegations identified in the Association's February 24, 2016
25 Chapter 40 Notice, including the date when the allegedly corroded pipes were replaced, the date the
26 repair work was performed, the identity of the contractor(s) which performed the repair work, and
27 also requesting that the Association confirm where and whether the removed mechanical room pipe
28 materials had been stored for safekeeping. The Association did not respond to Builders' March 29,

1 2016 correspondence.

2 13. Attached as **Exhibit “2”** is a true and correct copy of Builders’ March 29, 2016
3 correspondence to the Association.

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

9 15. Attached as **Exhibit “3”** is a true and correct copy of Builders’ April 29, 2016
10 correspondence to the Association.

11 16. On May 24, 2016, Builders served the Association with Builders’ Response to the
12 Association’s February 24, 2016 Chapter 40 Notice.

13 17. On September 26, 2016, Builders and the Association participated in a pre-litigation
14 mediation regarding the claims and defects included in the Association’s February 24, 2016
15 Chapter 40 Notice, as required by NRS 40.680, but were unable to reach a resolution. As a result,
16 the mandatory pre-litigation process concluded.

17 18. On February 24, 2015, the Nevada Legislature enacted the Homeowner Protection
18 Act of 2015 (aka Assembly Bill 125) (hereinafter referred to as “AB 125”).

19 19. Attached as **Exhibit “4”** is a true and correct copy of AB 125.

20 20. On March 30, 2017, Builders filed a Motion for Partial Summary Judgment on the
21 Association’s Third Claim for Relief, which came on for hearing on June 20, 2017.

22 21. On September 15, 2017, this Court issued its Findings of Fact and Conclusions of
23 Law.

24 22. Pursuant to same, the Court afforded the Association an opportunity to correct the
25 deficiencies in its February 24, 2016 Chapter 40 Notice.

26 23. Attached as **Exhibit “5”** is a true and correct copy of this Court’s September 15,
27 2017 Order.

28 ///

24. On October 10, 2017 the Association filed a Motion for Clarification of the Court's September 15, 2017 Order.

25. On October 27, 2017 Builders filed an Opposition to the Association's Motion for Clarification.

26. The Association's Motion for Clarification came on for hearing on November 21, 2017.

27. The Court denied the Association's Motion for Clarification and the Order was entered on February 1, 2018.

28. Attached as **Exhibit “6”** is a true and correct copy of the Order denying the Association’s Motion for Clarification.

29. On April 5, 2018, served Builders with an Amended Chapter 40 Notice.

30. Attached as **Exhibit “7”** is a true and correct copy of the Association’s April 5, 2018 Amended Ch. 40 Notice.

31. Attached as Exhibit “8” is a true and correct copy of the Declaration of Michelle Robbins, AIA.



Peter C. Brown, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case involves alleged construction defects at two towers in the Panorama Towers Condominium 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”). Tower I consists of 33 floors, 308 units, 10 townhomes, 6 lofts, retail space, pool, and a 5-level parking garage. Tower II consists of 34 floors, 308 units, 10 townhomes, 6 lofts, retail space, pool, and a 5-level parking garage. Laurent Hallier and Panorama Towers I, LLC (hereinafter together referred to as “Developer”) were the owner and developer entities for the Project. M.J. Dean Construction, Inc. (“M.J. Dean”) was the Project’s general contractor. Laurent Hallier, Panorama Towers I, LLC and M.J. Dean shall be collectively referred to as “Builders.”

As set forth in detail below, Defendant/Counter-Claimant Panorama Tower Condominium Unit Owners’ Association (“Association”), despite being afforded an opportunity to correct the deficiencies in its February 24, 2016 Chapter 40 Notice, have again failed in the April 5, 2108 Amended Chapter 40 Notice to comply with the express and mandatory requirements of Chapter 40 facilitating the need for the instant Motion for Summary Judgment.

II. PROCEDURAL HISTORY

A. The Association’s Initial Chapter 40 Notice

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

On or about March 24, 2016, Builders attended a visual inspection of the alleged defects in the Association’s Initial Chapter 40 Notice. During the inspection, Builders observed that work was being performed on the windows in Unit 300 and that the windows had been removed and replaced prior to Builders’ inspection. Builders also observed that the majority of the allegedly defective (i.e. corroded) mechanical room piping had been removed and replaced prior to Builders’

1 inspection. In addition, Builders became aware that the allegedly defective sewer piping had also
2 been repaired prior to Builders' inspection. The Association did not provide the statutory required
3 notice to Builders of the allegedly defective windows in Unit 300, the allegedly defective
4 mechanical room piping or the allegedly defective sewer piping prior to removing and replacing
5 and/or repairing the windows and piping, including, but not limited to, a Chapter 40 Notice.

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

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

20 On May 24, 2016, Builders served the Association with Builders' Response to the
21 Association's Initial Chapter 40 Notice.¹ On September 26, 2016, Builders and the Association
22 participated in a pre-litigation mediation regarding the claims and defects included in Association's
23 Initial Chapter 40 Notice, as required by NRS 40.680, but were unable to reach a resolution. As a
24 result, the mandatory pre-litigation process concluded.

25 ///

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

1 **B. Builders' Complaint for Declaratory Relief**

2 On September 28, 2016, Builders filed a Complaint against the Association, asserting the
3 following claims for relief: (1) Declaratory Relief – Application of AB 125; (2) Declaratory Relief
4 – Claim Preclusion; (3) Failure to Comply with NRS 40.600 et seq.; (4) Suppression of
5 Evidence/Spoliation; (5) Breach of Contract; (6) Declaratory Relief – Duty to Defend; and (7)
6 Declaratory Relief - Duty to Indemnify. In response, the Association filed a Motion to Dismiss
7 Builders' Complaint. The Motion was heard on January 24, 2017, and the Court denied the
8 Association's Motion.²

9 On March 1, 2017, the Association filed its Answer to Builders' Complaint as well as a
10 Counter-Claim against Builders and other named "counter-defendants." The parties stipulated to
11 deem the case complex and to appoint Floyd Hale as Special Master.³ Discovery has not
12 commenced, and no trial date has been set.

13 **C. Builders' March 30, 2017 Motion for Summary Judgment**

14 On March 30, 2017, Builders filed a Motion for Partial Summary Judgment on the
15 Associations' Third-Claim for Relief. On September 15, 2017, this Court issued its Findings of
16 Fact and Conclusions of Law allowing the Association, in part, an opportunity to remedy
17 deficiencies in its Initial Chapter 40 Notice. On October 10, 2017, the Association filed a Motion
18 for Clarification of this Court's September 15, 2017 Findings of Fact of Conclusions of Law. The
19 Association's Motion was denied.

20 **D. The Association's April 5, 2018 Chapter 40 Notice**

21 On or about April 5, 2018, the Association, through its counsel, served Builders with a
22 "Notice to Contractor Pursuant to Nevada Revised Statutes, Section 40.645" (hereinafter
23 "Amended Chapter 40 Notice"). The Association's Amended Chapter 40 Notice alleges defects
24 and damages involving: (1) residential tower windows; (2) residential tower exterior wall
25

26 _____
27 ² The Order denying the Association's Motion as well as the Notice of Entry of Order was filed on February 9, 2017.

28 ³ The Order deeming the case complex and appointing Floyd Hale as Special Master and the Notice of Entry of Order was filed on January 10, 2017.

insulation; and (3) sewer problems. Despite the fact that the Association was given an opportunity to fix the errors in the Initial Chapter 40 Notice, the Amended Notice still fails to comply with the express requirements set forth in NRS 40.600 et seq. Furthermore, the Amended Notice improperly includes new defect allegations which are both untimely and not contemplated or allowed by this Court's September 15, 2017 Order.

III. SUMMARY OF UNDISPUTED FACTS

The following facts relevant to this Motion are undisputed:

	Fact	Source	Exhibit
1.	On or about February 24, 2016, the Association, through its counsel, served Builders with a "Notice to Contractor Pursuant to Nevada Revised Statutes, Section 40.645" (hereinafter "Initial Chapter 40 Notice").	The Association's Initial Chapter 40 Notice Affidavit of Peter C. Brown, Esq. ¶ 5	Exhibit "1"
2.	The Association's Initial Chapter 40 Notice alleges defects and damages involving: (1) residential tower windows; (2) residential tower fire blocking; (3) mechanical room piping; and (4) sewer piping.	The Association's Initial Chapter 40 Notice Affidavit of Peter C. Brown, Esq. ¶ 5	Exhibit "1" p. 1 - 2
3.	On March 24, 2016, Builders attended a visual inspection of the alleged defects in the Association's Initial Chapter 40 Notice.	Affidavit of Peter C. Brown, Esq. ¶ 8	N/A
4.	During Builders' March 24, 2016, inspection, Builders observed that work was being performed on the windows in Unit 300 and that the windows had been removed and replaced prior to Builders' inspection. The Association did not provide notice to Builders of the allegedly defective windows in Unit 300 prior to the removal and replacement of the windows, including, but not limited to, a Chapter 40 Notice.	Affidavit of Peter C. Brown, Esq. ¶ 9	N/A
5.	During Builders' March 24, 2016 inspection, Builders also observed that the majority of the allegedly defective (i.e. corroded) mechanical room piping had been removed and replaced prior to Builders' inspection. The Association did not provide notice to Builders of the allegedly defective mechanical room piping prior to the removal and replacement of this piping, including, but not limited to, a Chapter 40 Notice.	Affidavit of Peter C. Brown, Esq. ¶ 10	N/A
6.	During Builders' March 24, 2016	Affidavit of Peter C.	N/A

	Fact	Source	Exhibit
	inspection, Builders also became aware that the allegedly defective sewer piping had also been repaired prior to Builders' inspection. The Association did not provide notice to Builders of the allegedly defective sewer piping prior to this repair work being performed, including, but not limited to, a Chapter 40 Notice.	Brown, Esq. ¶ 11	
7.	On March 29, 2016, Builders sent correspondence to the Association (via its counsel) requesting information and documents relating to (1) the sewer line defect allegations identified in the Association's Chapter 40 Notice, including the date of occurrence and date of repair of the alleged defects, and requesting the current location of any sewer line materials that were removed and replaced as part of the Association's repair; and (2) the mechanical room piping defect allegations identified in the Association's Chapter 40 Notice, including the date when the allegedly corroded pipes were replaced, the date the repair work was performed, the identity of the contractor(s) which performed the repair work, and also requesting the Association confirm whether and where the removed mechanical room pipe materials have been stored for safekeeping. The Association did not respond to Builders' March 29, 2016 correspondence.	Affidavit of Peter C. Brown, Esq. ¶ 12	Exhibit "2"
8.	On April 29, 2016, Builders sent follow up correspondence to the Association (via its counsel) again requesting the Association promptly provide information and documents requested in Builders' March 29, 2016 correspondence. Builders requested a response from the Association no later than May 3, 2016. The Association did not respond to Builders' April 29, 2016 correspondence.	Affidavit of Peter C. Brown, Esq. ¶ 13	Exhibit "3"
9.	On February 24, 2015, the Nevada Legislature enacted the Homeowner Protection Act of 2015 (aka Assembly Bill 125) (hereinafter referred to as "AB 125").	Assembly Bill No. 125 – Committee on Judiciary February 6, 2016	Exhibit "4"

	Fact	Source	Exhibit
10.	On March 30, 2017, Builders filed a Motion for Partial Summary Judgment on the Association's Third Claim for Relief, which came on for hearing on June 20, 2017. On September 15, 2017, the Court issued its Findings of Fact and Conclusions of Law. Pursuant to same, the Association was afforded an opportunity to correct deficiencies in its February 24, 2016 Initial Chapter 40 Notice.	Affidavit of Peter C. Brown, Esq. ¶¶ 22-24.	Exhibits "5"
11.	On October 10, 2017, the Association filed a Motion for Clarification of the Court's September 15, 2017 Order. Builders opposed the Motion and it was ultimately denied by the Court.	Affidavit of Peter C. Brown, Esq. ¶¶ 25-28.	Exhibit "6"
12.	On April 5, 2018, the Association served Builders with a revised Chapter 40 Notice which contained the same deficiencies as the Initial Notice, but which also included untimely new issues which could have and should have been identified as part of the Initial Chapter 40 Notice.	Affidavit of Peter C. Brown, Esq. ¶¶ 29-30.	Exhibit "7" See also Chapter 40 Notice Comparison/Analysis below, Section 1, pg. 18, Section 2, pg. 19. See Also Exhibit "8" and Declaration of Michelle Robbins, AIA.
13.	The Associations revised Chapter 40 Notice does not cure deficiencies in its Initial Chapter 40 Notice with respect to alleged window claims. More specifically, pursuant to the Court's September 25, 2017 Findings of Fact and Conclusions of Law, "NRS 40.645 now requires not just reasonable, but specific detail of each defect, damage and injury. As there are in excess of 9,500 windows and assemblies of various types, sizes and locations, NRS 40.645 requires each defect, damage and injury to be detailed specifically within the pre-litigation notice. In this case, the notice does not discuss the method or extent of the Association's inspection of and its findings in the over 9,500 window assemblies which varies in type, size and location.12 For these reasons, this Court concludes the portion of the NRS 40.645 notice, which outlines the existence of the same or similar deficiencies in over 9,500	Affidavit of Peter C. Brown, Esq. ¶¶ 30-31.	Exhibit "5" pg. 12, ¶¶ 12-21. See Also, Exhibit "8", Declaration of Michelle Robbins, AIA.

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

	Fact	Source	Exhibit
	window assemblies, is not sufficient.”		
14.	<p>The Associations Amended Chapter 40 Notice does not cure the deficiencies in its Initial Chapter 40 Notice with respect to alleged insulation claims. More specifically, pursuant to the Court’s September 25, 2017 Findings of Fact and Conclusions of Law “The NRS 40.645 notice identifies the particular constructional deficiency, but it is not specific in terms of each defect's location. Notably, the notice states “.. the insulation was omitted either from the ledger shelf cavity, from the steel stud framing cavity, or from both.” (Emphasis added) The "specific detail" requirement of NRS 40.645 necessitates the exact location of the defect in each unit, whether it be within the ledger shelf cavity, the steel stud framing hollow space, or in both areas. Further, the notice does not indicate the method or extent of the inspection, or specifically, how the homeowners' association knows this particular "installation deficiency" exists in all or 100 percent of all the residential tower</p>	<p>Affidavit of Peter C. Brown, Esq. ¶¶ 30-31.</p>	<p>Exhibit “5” pg. 13, ¶¶ 3-13. See Also, Exhibit “8”, Declaration of Michelle Robbins, AIA</p>

	Fact	Source	Exhibit
	<p>units.¹³ For these reasons, this Court concludes the portion of the NRS 40.645 notice, which addresses the lack of fire blocking insulation, is not sufficient.”</p> <p>Despite being given a second chance, the Association failed to cure these deficiencies in its Amended Chapter 40 Notice.</p>		
15.	<p>The Court’s September 15, 2017 Findings of Fact and Conclusions of Law did not allow the Association to incorporate new, untimely defects into its Amended Chapter 40 Notice. More specifically, the Court noted that “In 2015, approximately one year before PANORAMA TOWERS CONDOMINIUM UNIT OWNERS’ ASSOCIATION served its notice of constructional deficiencies in this case, the Nevada Legislature made sweeping revisions to the state’s laws relating to constructional defects with the enactment of Assembly Bill (AB) 125.” As a consequence, all new claims raised in the Association’s April 5, 2018 Amended Chapter 40 Notice, e.g., the omission of head flashing, are untimely and therefore time barred.</p>	Affidavit of Peter C. Brown, Esq. ¶¶ 30-31.	See Exhibit “8”, Declaration of Michelle Robbins, AIA
16.	<p>The Association does not dispute that Builders has been divested of its statutory right to inspect and repair the alleged sewer deficiencies. The Association will never be able to cure this deficiency.</p>	Affidavit of Peter C. Brown, Esq. ¶¶ 29-30.	See Ex. “7” pg. 5 ¶¶ 1-8.

IV. LEGAL STANDARD

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

. . . judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file,

1 together with the affidavits, if any, show that there is no genuine
2 issue as to any material fact and that the moving party is entitled to a
judgment as a matter of law.

3 Summary judgment is proper when, reviewing the evidence in the light most favorable to
4 the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to
5 judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 728, 121 P.3d 1026, 1029
6 (2005).

7 Summary judgment is appropriate under NRCP 56 when the
8 pleadings, depositions, answers to interrogatories, admissions, and
9 affidavits, if any, that are properly before the court demonstrate that
10 no genuine issue of material fact exists, and the moving party is
11 entitled to judgment as a matter of law. The substantive law controls
12 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.

13 *Id.* at 1031 (internal citations omitted).

14 A party opposing summary judgment must set forth facts demonstrating the existence of a
15 genuine issue for the Court or have summary judgment entered against it. Bulbman, Inc. v. Nevada
16 Bell, 108 Nev. 105, 110 (1992); Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 294, 662 P.2d
17 610, 617 (1983). In addition, a party opposing summary judgment cannot simply rest upon
18 allegations in the pleadings; rather, it must affirmatively set forth facts demonstrating the existence
19 of a material issue of fact. Garvey v. Clark County, 91 Nev. 127, 130, 532 P. 2d 269, 271 (1978);
20 Adamson v. Bowker, 85 Nev. 115, 118-20, 450 P. 2d 796, 799-800 (1969). By its very terms, the
21 summary judgment standard provides that the mere existence of some alleged factual dispute
22 between the parties will not defeat an otherwise properly supported motion for summary judgment.
23 Wood v. Safeway, Inc., 121 P.3d at 1030. Conclusory allegations are insufficient to satisfy such a
24 burden. The non-moving party must produce evidence to support its claim. Bird v. Casa Royale
25 West, 97 Nev. 67, 69-70, 624 P.2d 17 (1981).

26 **V. LEGAL ARGUMENT**

27 **A. The Association Failed to Comply with NRS 40.645(2)(b)**

28 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 “4”**). AB 125 resulted in significant changes to Chapter 40 including, but not limited to, the requirements for a Chapter 40 Notice. Specifically, pursuant to NRS 40.645(2), as amended by AB 125, Section 8, a Chapter 40 Notice must:

(a) Include a statement that the notice is being given to satisfy the requirements of this section;

(b) Identify in **specific detail each defect, damage and injury to each residence or appurtenance that is the subject of the claim, including, without limitation, the exact location of each such defect, damage and injury;**

(c) Describe in reasonable detail the cause of the defects if the cause is known **and the nature and extent that is known of the damage or injury resulting from the defects; and**

(d) Include a signed statement, by each named owner of a residence or appurtenance in the notice, that each such owner verifies that each such defect, damage and injury specified in the notice exists in the residence or appurtenance owned by him or her. If a notice is sent on behalf of a homeowners’ association, the statement required by this paragraph must be signed under penalty of perjury by a member of the executive board or an officer of the homeowners’ association.

(**Exhibit “4,”** p. 11 – 12 (emphasis added).

As discussed more fully below, the Association’s Amended Chapter 40 Notice fails to comply with NRS 40.645(2)(b) in that the Association’s Amended Chapter 40 Notice does not identify in **specific** detail the alleged defect, damage and injury to each residence or appurtenance that is the subject of the Association’s claim, including, **without limitation, the exact location of each such defect, damage and injury.** The Association also did not comply with NRS 40.6452(c) by failing to describe in reasonable detail the nature and extent that is known of the **alleged damage resulting from the alleged defects.**

In addition, the Association utterly fails to give any convincing explanation as to why it never provided Chapter 40 Notice to Builders of the alleged sewer line issue. Merely stating that the Association did not foresee future Chapter 40 litigation is certainly not sufficient. What the Court is left with is an admission by the Association that the sewer line issue was never the subject of a timely Chapter 40 Notice. Nevertheless, the Association contends that since a new Chapter 40 Notice is being issued for window and fire blocking issues, then the Court should allow the Association to include the sewer line claim, ignoring the Association’s failure to comply with NRS

40.600 et seq. when the sewer line issue first allegedly arose.

Finally, the Association attempts to shoehorn in new untimely allegations which could and/or should have been identified in its Initial Chapter 40 Notice.

1. Residential Tower Windows

Summary of Initial Notice	Analysis
<p>The Association's Initial Chapter 40 Notice provides the following vague description of the alleged window "defect and resulting damages":</p> <p>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 were defectively designed such that water entering the assemblies does not have 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.</p> <p>This is a design deficiency that exists in all (100%) of the residential tower assemblies.</p> <p>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 wall that supports 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.</p> <p>(Exhibit "1," p. 1 - 2).</p>	<p>The Association's Initial Notice provided no specific details regarding the location of the alleged defects, as required by NRS 40.645(2)(b), and gives only an overly-broad reference that the defect exists in 100% of all the residential tower assemblies.</p> <p>The purpose of requiring a claimant to provide specific details regarding an alleged defect is to allow a contractor to inspect the alleged defect. There are in excess of 9,500 windows in the two Towers, and these window and assemblies are of various types, sizes and locations,</p> <p>The lack of information in the Association's Initial Chapter 40 Notice placed an unreasonable burden on Builders to try to ascertain the specific nature and location of the allegedly defective condition and resulting damages.</p> <p>Even as it relates to the repairs that had already been performed to the windows in Unit 300, the Association failed to provide any information to Builders regarding the specific details of any defects or the alleged damages. (Exhibit "2" and Exhibit "3")</p>

Summary of Amended Notice	Analysis
<p>There are two residential tower structures in the Development consisting of 616 residential condominium units located above common areas and retail spaces below. The window assemblies were defectively designed such that water entering the assemblies does not have appropriate means of exiting the</p>	<p>The Association's Amended Notice, like the Initial Notice, provides no specific details regarding the location of the alleged defects, as required by NRS 40.645(2)(b) other than an overly-broad, unsupported reference that defects exists in 100% of all the residential tower assemblies.</p>

Summary of Amended Notice	Analysis
<p>assemblies.</p> <p>The window assemblies were built in accordance with the project plans, which contained two significant design deficiencies that are identified in specific detail in the accompany report prepared by the Association's Architect, Karim Allana.</p> <p>Moreover, the Association contends that since the plans failed to specify head flashings and pan flashings, they were not installed.</p> <p>The Association contends that this deficiency exists in 100% of the residential tower windows and that water has been entering the metal frame components of the exterior walls and floor assemblies, including the curb walls that support the windows and causing corrosion damage to the metal components.</p>	<p>The Amended Notice and corresponding report prepared by Mr. Allana, reference an "investigation" of windows. However, other than a document review, Mr. Allana relies primarily on generic photographs taken by Omar Hindiyeh. It is telling that nowhere in the Amended Chapter 40 Notice is there ever a representation that all of towers' windows were inspected for the omission of the head and/or sill pan flashing. This is because the Association has never inspected all of the windows and is attempting to rely on extrapolation of a few photographs as proof of the alleged defective condition being throughout the entirety of the Project.</p> <p>Moreover, the alleged omission of the head flashing is a <u>new issue</u>. The Association provides no explanation as to why this new issue was not raised in its Initial Chapter 40 Notice and/or what subsequent investigation, if any, brought this alleged defect to light.</p> <p>Other than providing a few examples, the Association, once again, fails to identify with specificity where alleged water intrusion and corrosion has occurred in the 616 units at issue.</p>

2. Residential Tower Fire Blocking

Summary of Initial Notice	Analysis
<p>The Association's Initial Chapter 40 Notice describes the alleged fireblocking "defect and resulting damages" as follows:</p> <p>Fire Blocking:</p> <p>The plans call 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. The purpose of this insulation is to deter the spread of fire from one tower unit to the unit above or below. However, the insulation was not installed as required by the plans and the building code.</p> <p>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.</p>	<p>The Association fails to provide Builders with specific details regarding the location of the alleged fire blocking defect or the resulting damages. The Association's Initial Chapter 40 Notice states that insulation was omitted from either or both the ledger shelf cavity or the steel stud framing cavity or both, yet the Association fails to identify even a single specific location where this alleged condition occurred. See Exhibit "8"</p>

Summary of Initial Notice	Analysis
<p>This deficiency presents an unreasonable risk of injury to a person or property resulting from the spread of fire. (Exhibit “1,” p. 2).(emphasis added)</p>	
Summary of Amended Notice	Analysis
<p>The plans called for insulation/fire blocking as required by code in the ledger shelf cavities and steel stud framing cavities at the exterior wall locations. The insulation was not installed as required by plans and building code. The installation deficiency exists in the “majority” of the where it is required for the majority of the 616 residential tower units. From November of 2015, through January 26, 2016, a total of 15 units were inspected.</p> <p>This deficiency presents an unreasonable risk of injury to person or property resulting from the spread of fire, and from the accumulation of additional moisture in the wall assemblies, thereby exacerbating the window drainage deficiency described above.</p>	<p>Pursuant to the Amended Notice, the Association investigated 15 of the 615 units (2.439%) from November of 2015 through January of 2016. The Association has done no additional investigation of the subject units since January of 2016 even though the Court afforded the Association an opportunity to do so. This is problematic for two reasons: (i) the Association has failed to identify damage and injury to <u>each</u> residence or appurtenance that is the subject of the Association’s claim, including, <u>without limitation</u>, the exact location of <u>each</u> such defect, damage and injury; and (ii) had the Association conducted a thorough investigation, it would have identified the installation of the fire blocking. More specifically, Mr. Hindiye and Mr. Allana fail to acknowledge that the fire blocking could have been installed in 2 different locations, both of which are code compliant. Unfortunately, Mr. Hindiye only inspected the top of the face. Inspection of the second location could have been performed via a simple borescope.</p> <p>In addition to failing to conduct a thorough investigation and then extrapolating, the Association now asserts a new issue. More specifically, that the lack of insulation will contribute to the accumulation of moisture exacerbating the alleged window deficiencies. This is a <u>new issue</u> for which the Association provides no explanation as to why it was not identified in its Initial Chapter 40 Notice. Moreover, the Association does not identify with specificity all of the locations where the accumulation occurred and/or any damage as a result of same. See Exhibit 8.</p>

3. Sewer Problem

Summary of Initial Notice	Analysis
<p>The Association's Initial Chapter 40 Notice provides the following ambiguous description of the alleged sewer "defect and resulting damages":</p> <p>Sewer Problems: 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.</p> <p>(Exhibit "1," p. 2).</p>	<p>The Association failed to provide a Chapter 40 Notice that complies with NRS 40.645(2)(b) and also failed to comply with NRS 40.647(1)(b). Both of which are mandatory in order to pursue a construction defect claim against Builders.</p> <p>The Association acknowledges in its Chapter Notice that this alleged defect has been repaired. However, despite Builders' requests, the Association has failed to provide any information regarding the date when the alleged sewer line issue occurred or when it was repaired, (Exhibit "2" and Exhibit "3"). More importantly, the Association failed to identify in its Chapter 40 Notice the "physical damage to the adjacent common areas" purportedly caused by this alleged defect. Given that the Association's Chapter 40 Notice states "[t]his deficiency has been repaired," the Association was in possession of this information at the time it served its Initial Chapter 40 Notice.</p> <p>The Association failed to provide any notice prior to performing repairs to the sewer line.</p> <p>NRS 40.600 et seq. was intended to resolve construction defect claims between homeowners and contractors, both by allowing a contractor the opportunity to inspect and repair an alleged defect and by providing a remedy for homeowners if a contractor is unresponsive or refuses to repair an alleged defect. <i>See ANSE, Inc. v. District Court</i>, 124 Nev. Adv. Op 24, 192 P.3d 738 (2009). <i>See also D.R. Horton v. Dist. Ct.</i> 123 Nev. 438, 168 P.3d 731 (2007).</p> <p>The Association contended in its Initial Chapter 40 Notice that the alleged sewer problems "presented an unreasonable risk of injury to a person or property." (Exhibit "1," p. 2). However, as with the window and fireblocking defects, the Association was still obligated to provide Notice to Builders to allow Builders to take reasonable steps to cure the alleged defect as soon as practicable. <i>See</i> NRS 40.670.</p>

Summary of Amended Notice	Analysis
<p>The main sewer line connecting the Development to the City sewer system ruptured due to an installation error during construction, causing physical damage to adjacent common areas. The rupture caused raw sewage to be deposited on the common area of the development in the location of the rupture. In addition to causing damage in the vicinity of the rupture, the defective installation presented an unreasonable risk of injury to person or property resulting from the disbursement of unsanitary matter.</p> <p>The defective installation error during construction caused physical damage to adjacent common areas.</p> <p>It was assumed by the Association that this isolated incident would not be the subject of a Chapter 40 claim.</p>	<p>The alleged defect is the same, but the language in support of same has been modified. More specifically, the Association now contends that as a result of the defective condition, raw sewage seeped into the common areas and that there was damage in the vicinity of the rupture.</p> <p>Modification of the description of the alleged defect is of no consequence as Builders will never be able to exercise its statutory right to inspect and repair the alleged deficiency.</p>


VI. CONCLUSION

As demonstrated above, there are no genuine issues of material fact. The Association was given an opportunity to correct the deficiencies in the Initial Chapter 40 Notice, yet failed, once again, to comply with the **mandatory** requirements set forth in Chapter 40 thereby denying Builders of its statutory rights under NRS 40.6472. In addition to trying to backdoor some untimely new issues into the Amended Notice, the Association simply offers a regurgitation of its Initial February 24, 2016, Chapter 40 Notice. Consequently, Builders are entitled to Summary Judgment.

Dated: August 3, 2018

BREMER WHYTE BROWN & O'MEARA LLP

By: _____


Peter C. Brown, Esq.
Nevada State Bar No. 5887
Jeffrey W. Saab, Esq.
Nevada State Bar No. 11261
Attorneys for Plaintiffs/Counter-Defendants
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 3rd day of August, 2018, a true and correct copy of the foregoing document was electronically served through Odyssey upon all parties on the master e-file and serve list.



Lexi Kim, an Employee of
BREMER, WHYTE, BROWN & O'MEARA, LLC

Exhibit “1”

Exhibit “1”



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,

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; P. 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 OF EXPERT
REPORTS PURSUANT TO 40.645

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 24th day of February, 2016.

9 Dennis B Kariger
[Signature]

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

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

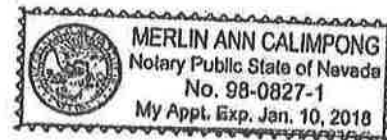


Exhibit “A”

Exhibit “A”

KLAI JURA

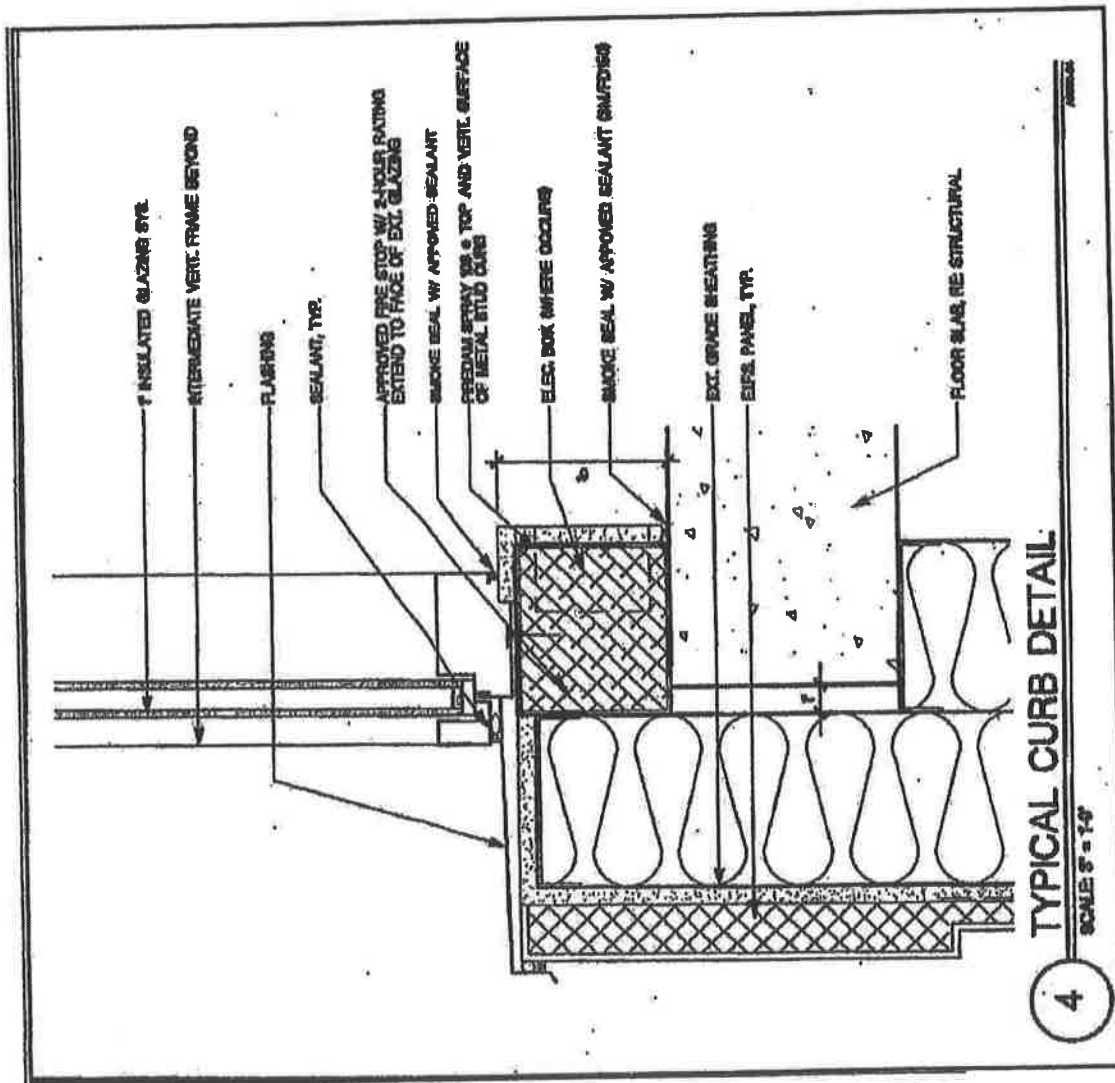


NO.	REVISION	DATE
1	REVISION 1	11-01-05
2	REVISION 2	11-01-05
3	REVISION 3	11-01-05
4	REVISION 4	11-01-05
5	REVISION 5	11-01-05
6	REVISION 6	11-01-05
7	REVISION 7	11-01-05
8	REVISION 8	11-01-05
9	REVISION 9	11-01-05
10	REVISION 10	11-01-05
11	REVISION 11	11-01-05
12	REVISION 12	11-01-05
13	REVISION 13	11-01-05
14	REVISION 14	11-01-05
15	REVISION 15	11-01-05
16	REVISION 16	11-01-05
17	REVISION 17	11-01-05
18	REVISION 18	11-01-05
19	REVISION 19	11-01-05
20	REVISION 20	11-01-05



DETAIL

A9.00.0



TYPICAL CURB DETAIL

SCALE 5' = 1'-0"

4

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					

ATMG

PANORAMA TOWER 1
UPPER MECHANICAL ROOM
Replacement Recommendation

Corrosion Assessment

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>					

AA0684

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	
BP-1 Pump Unit	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
BP-2 Pump Unit	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
Media Tanks	4 ferrous check valves		X		12
	Culligan ferrous parts	X			27
	tank steel flanges			X	12
Pressure Regulator Manifold	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

ATMG

PANORAMA TOWER 2
LOWER MECHANICAL ROOM
Replacement Recommendation

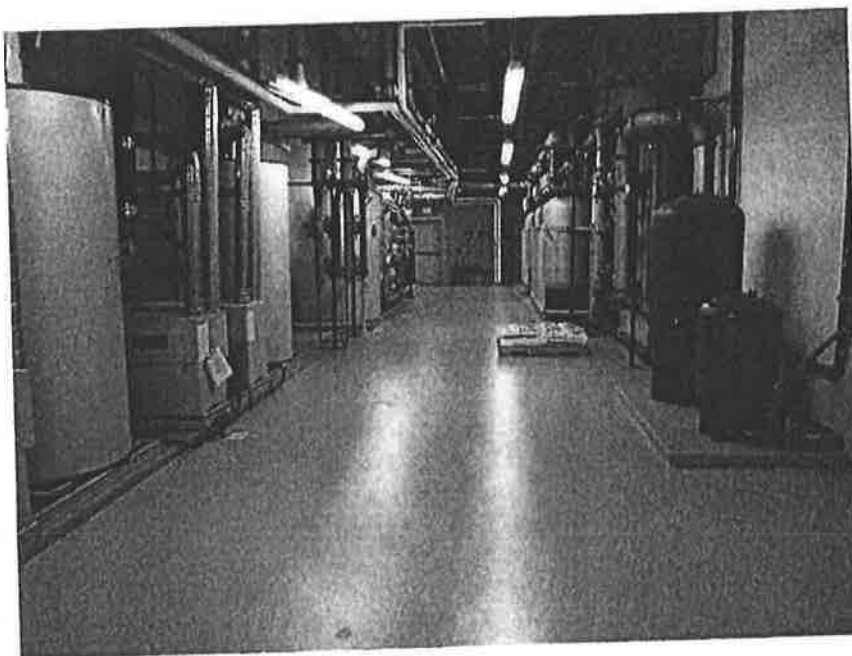
Corrosion Assessment

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					

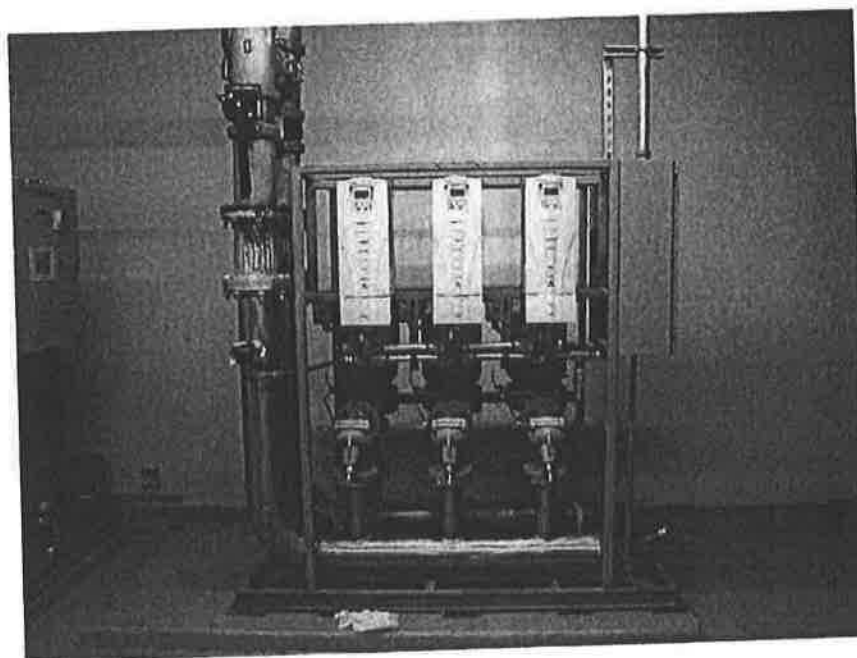
**PANORAMA TOWER 2
UPPER MECHANICAL ROOM
Replacement Recommendation**

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 align="center">*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).

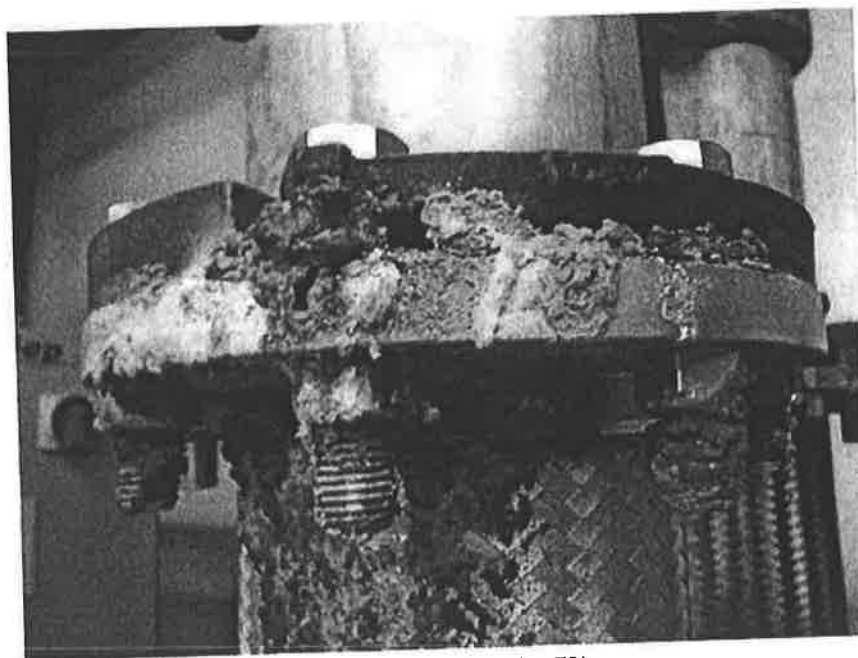


2. BP-1,
(jpg66)

PANORAMA 1 Lower Mechanical Room

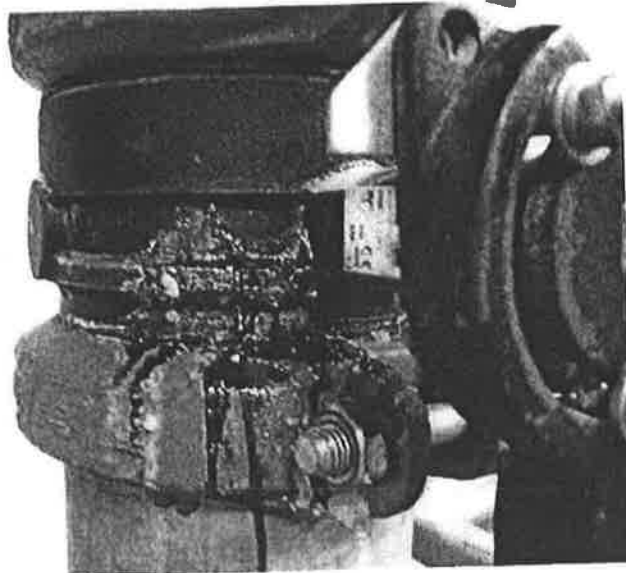


3. BP-1, flex
connection (jpg68)

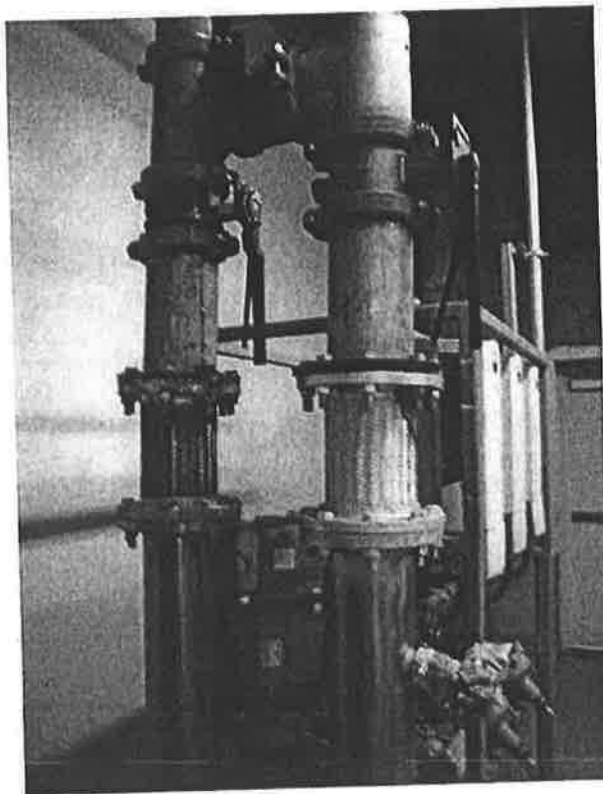


4. BP-1,
close up of leaking flex flange connection (jpg72)

PANORAMA 1 Lower Mechanical Room

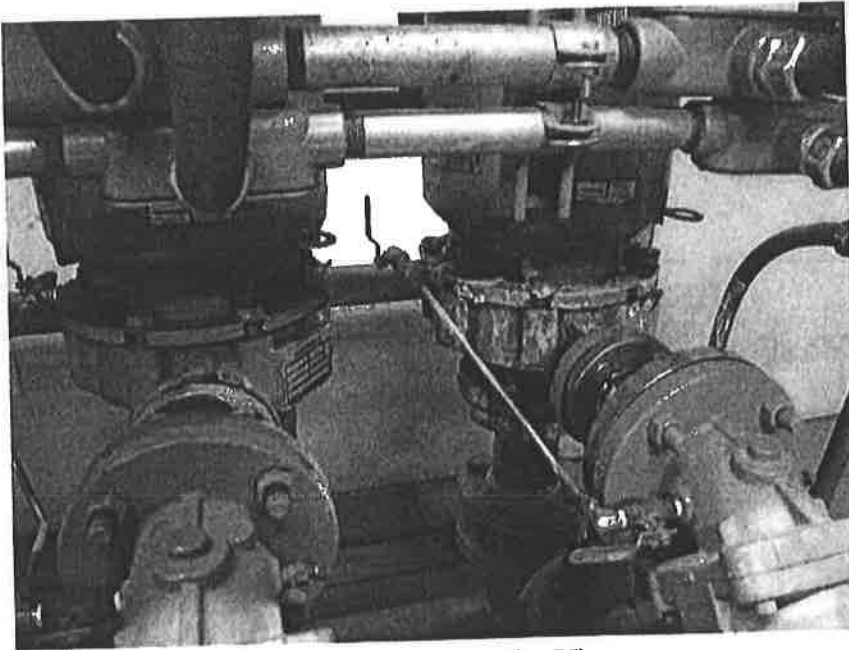


5. BP-1 (jpg 73)

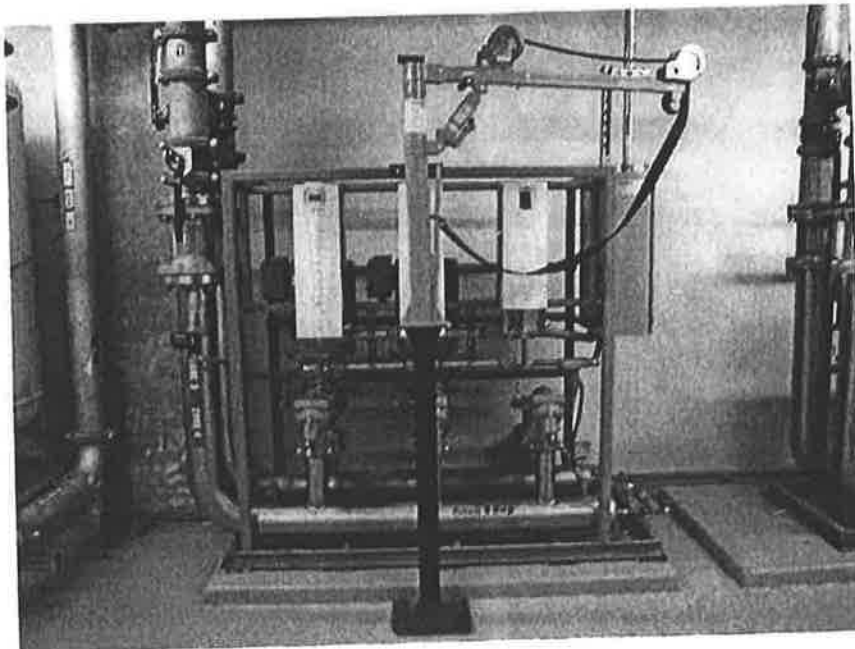


6. BP-1 (jpg(74)

PANORAMA 1 Lower Mechanical Room



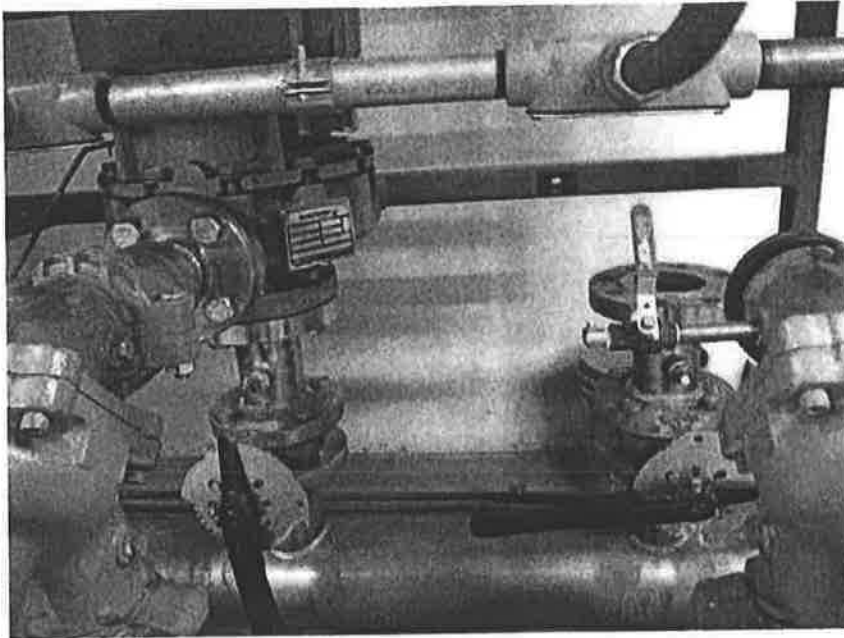
7. BP-1,
replace leaking ferrous pump housing now (jpg75).



77)

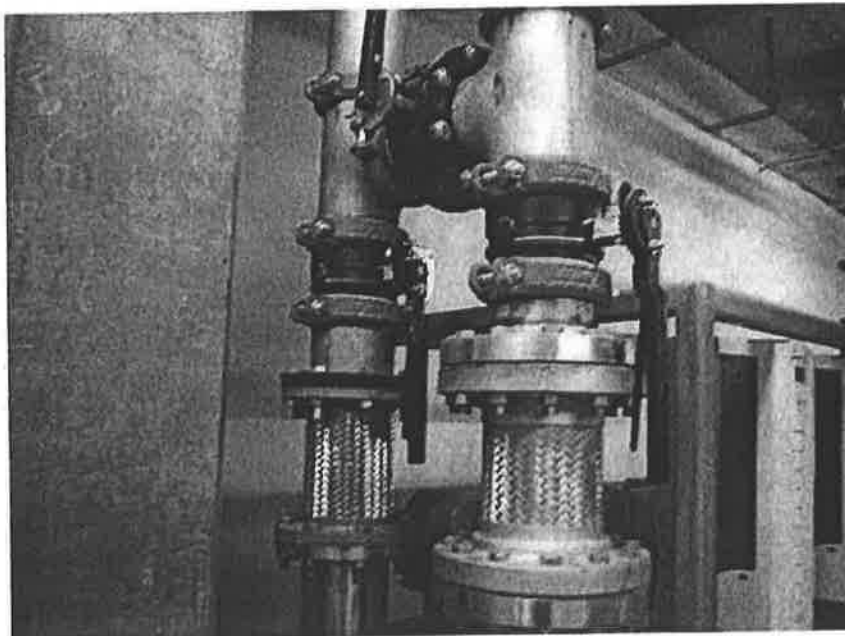
8. BP-2, (jpg

PANORAMA 1 Lower Mechanical Room



9. BP-2,

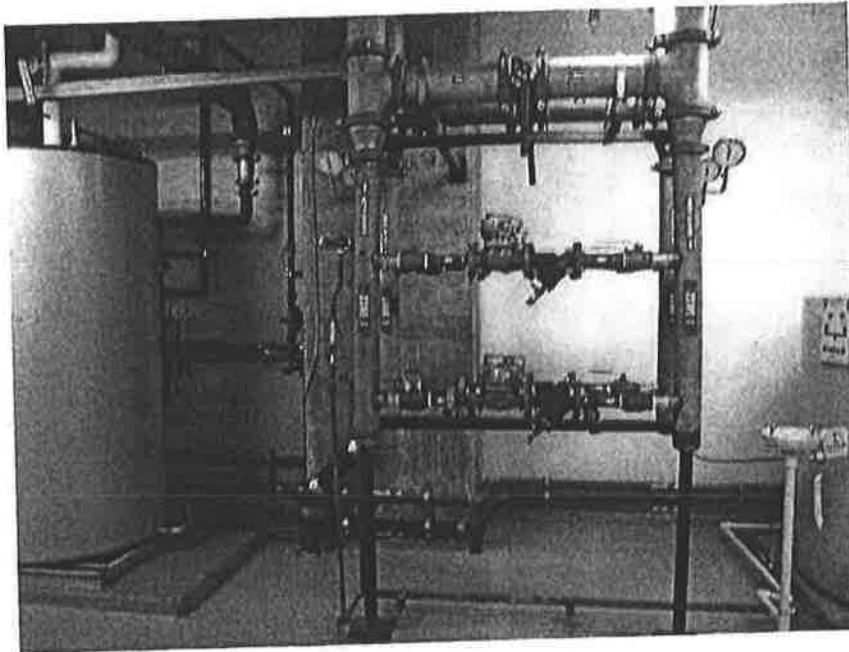
(jpg78)



10. BP-2,

(jpg79)

PANORAMA 1 Lower Mechanical Room



regulator manifold (jpg82).

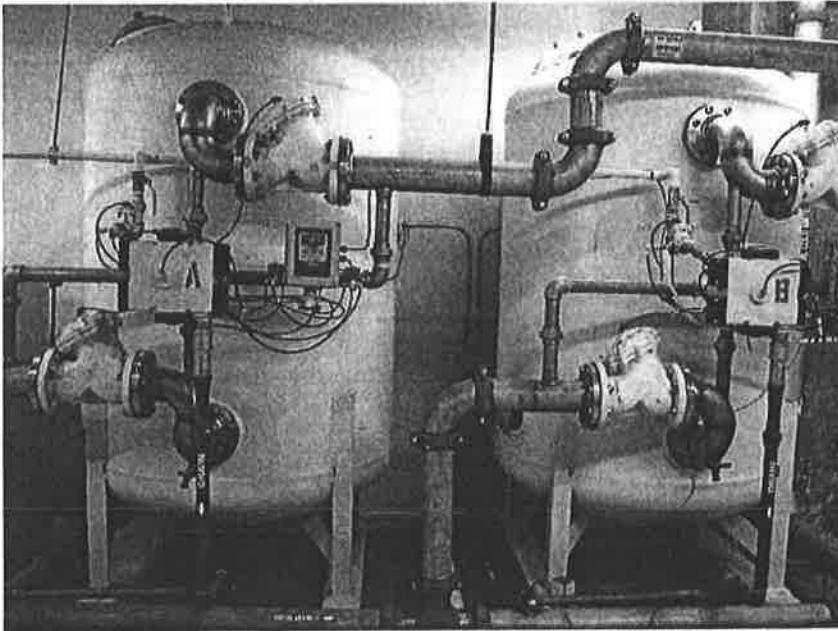
13. Pressure



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

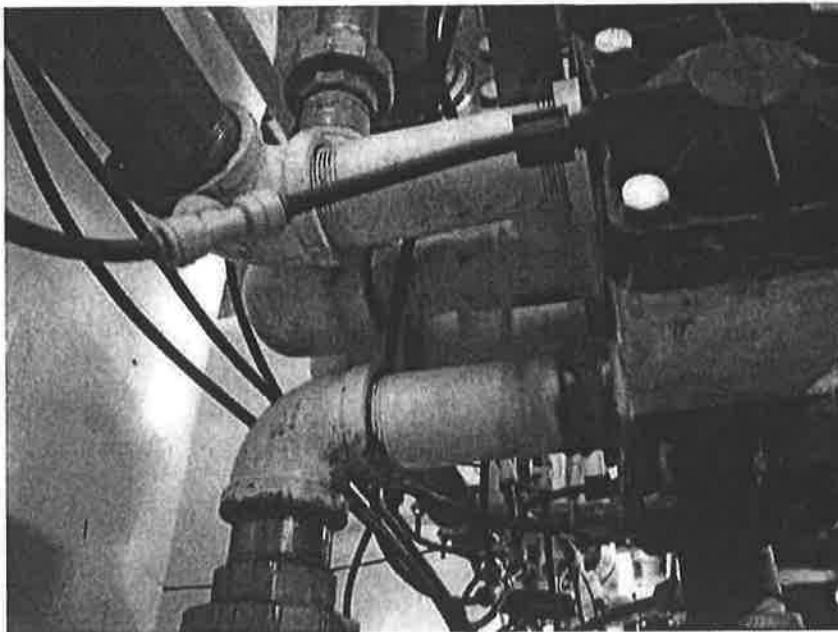
14. Pressure

PANORAMA 1 Lower Mechanical Room



tanks (jpg80)

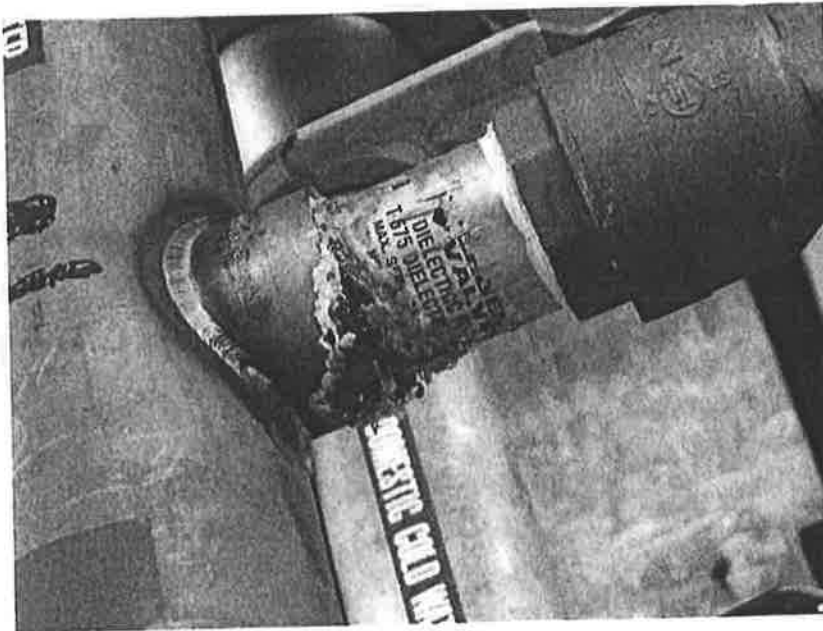
11. Media



carbon steel parts (jpg81).

12. Culligan

PANORAMA 1 Lower Mechanical Room

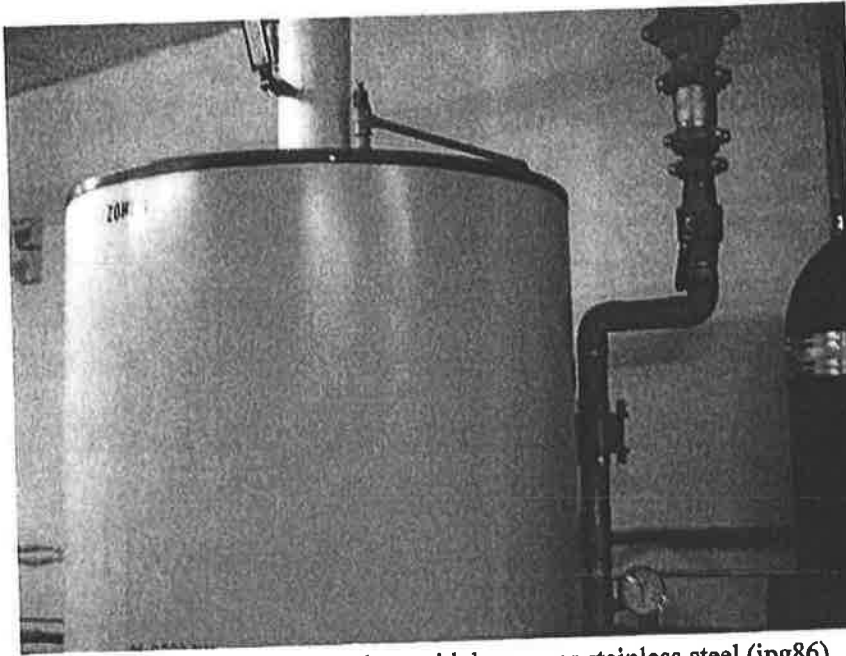


15. Another view of previous photo (jpg84).



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

PANORAMA 1 Lower Mechanical Room

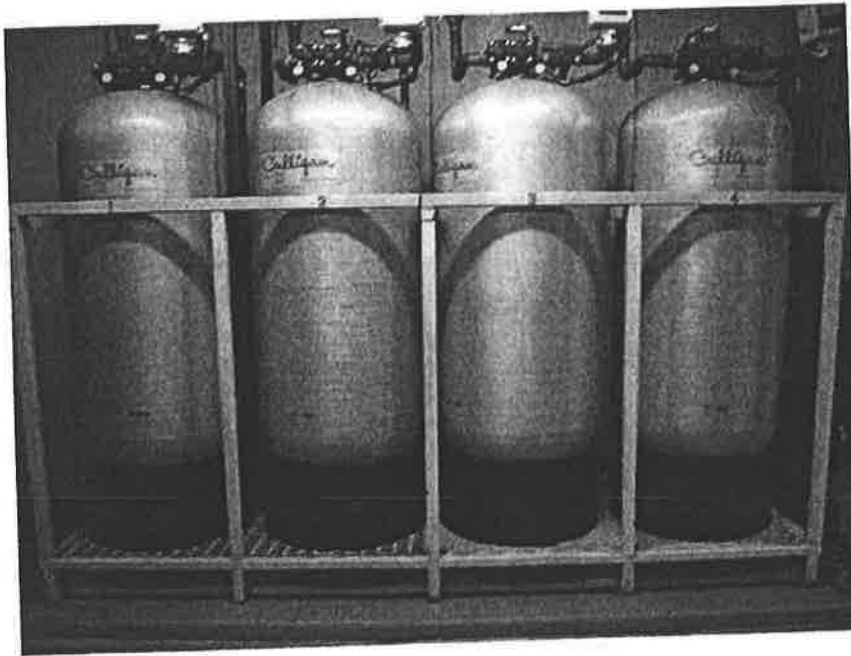


17. Hot water tank ferrous check valve – replace with bronze or stainless steel (jpg86).



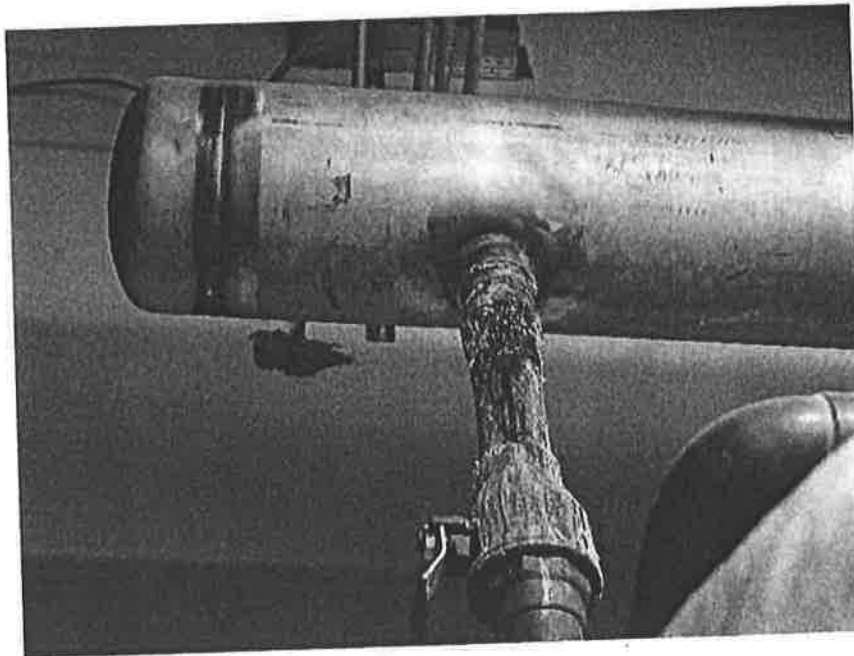
18. (jpg87)

PANORAMA 1 Lower Mechanical Room



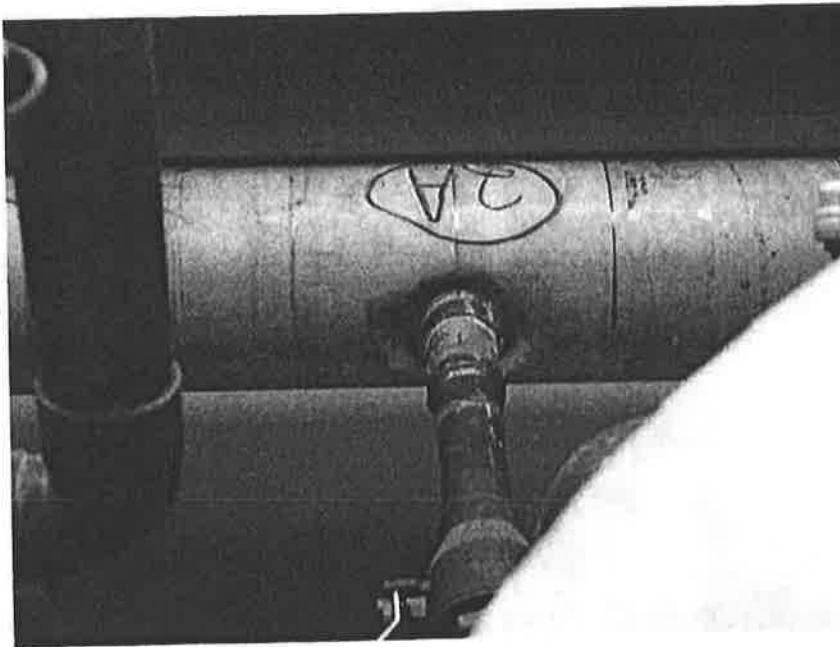
19. Filter

bank (jpg88).

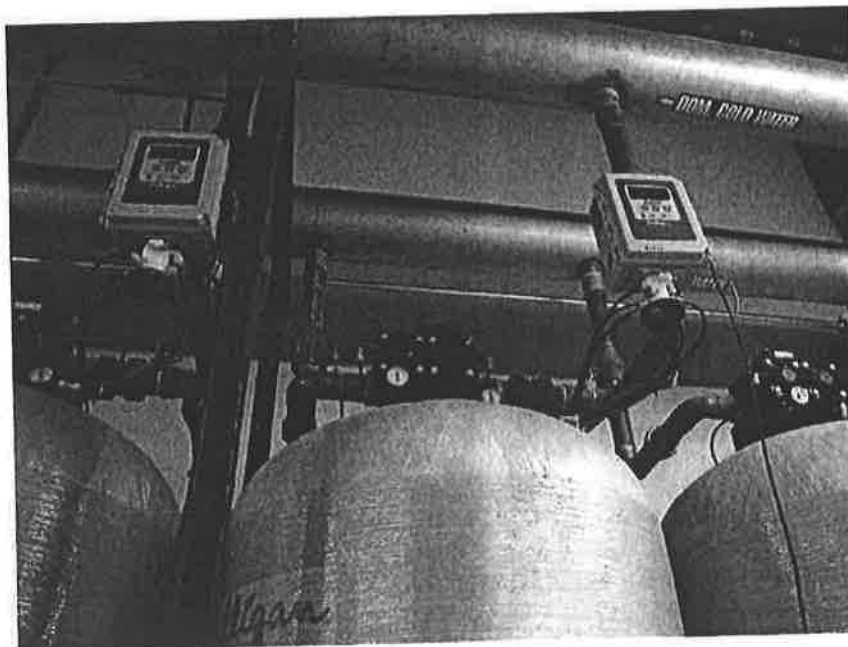


20. (jpg89)

PANORAMA 1 Lower Mechanical Room

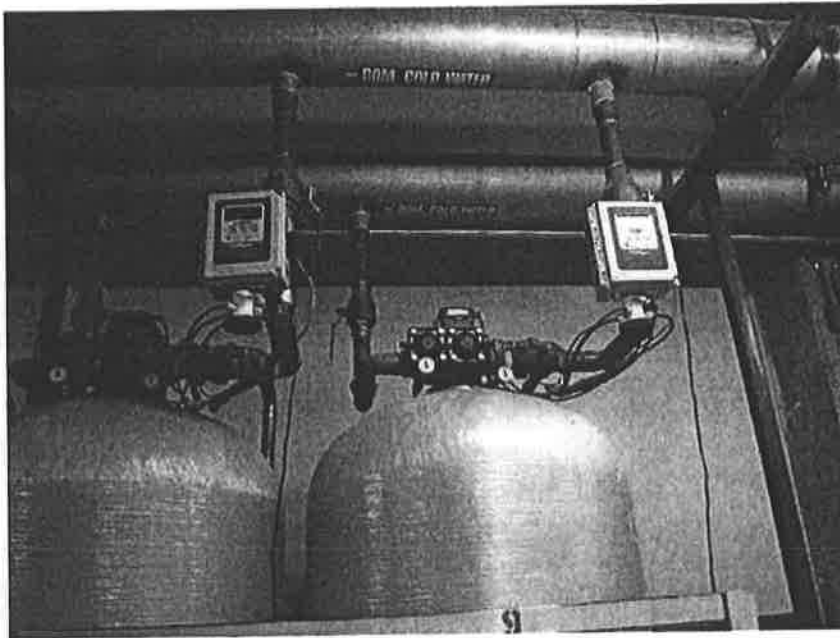


21. (jpg91)

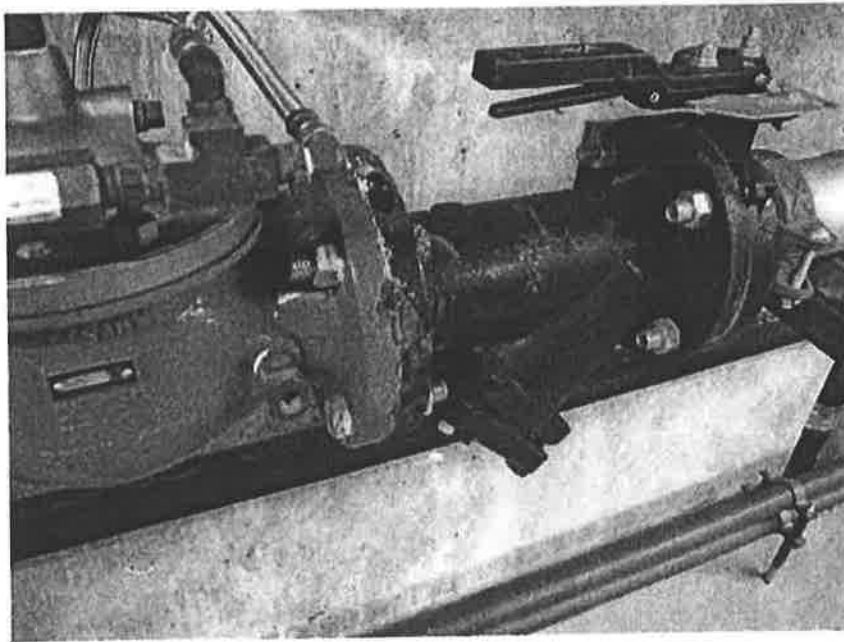


22. (jpg93)

PANORAMA 1 Lower Mechanical Room

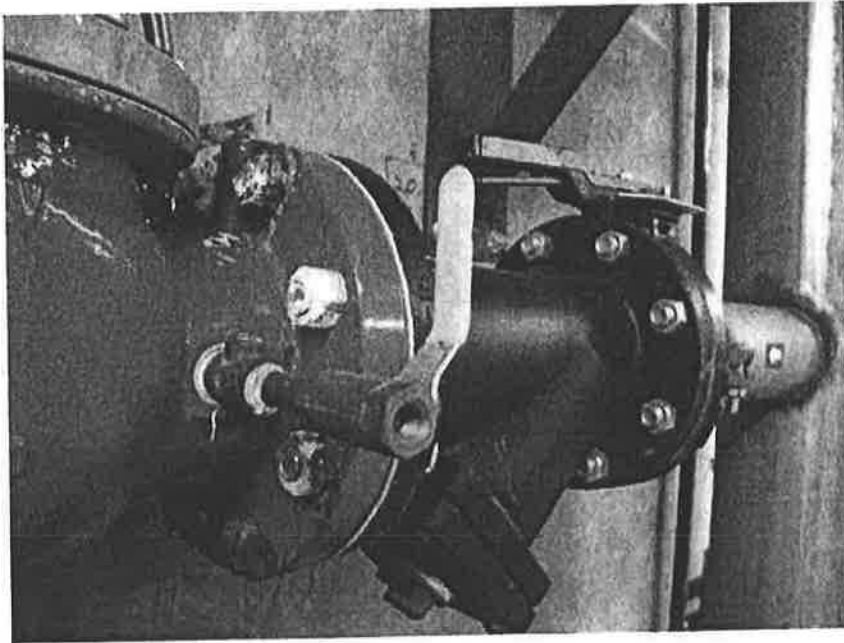


23. (jpg94)

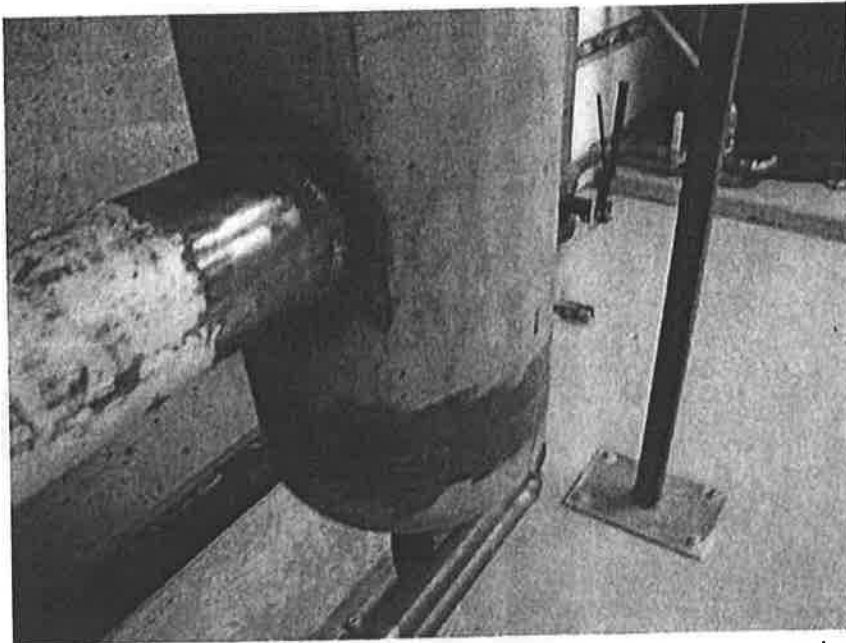


24. (jpg95)

PANORAMA 1 Lower Mechanical Room

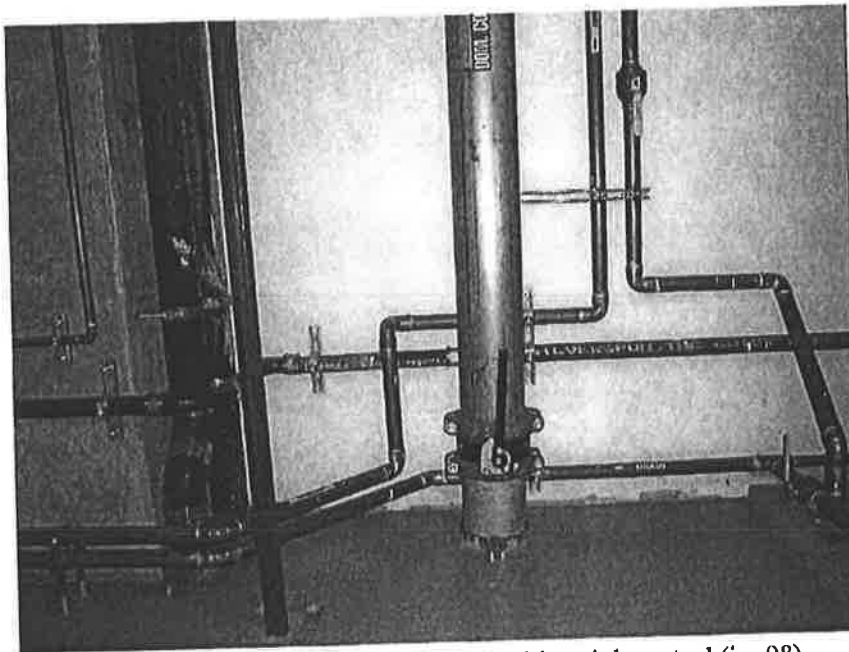


25. (jpg96)



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

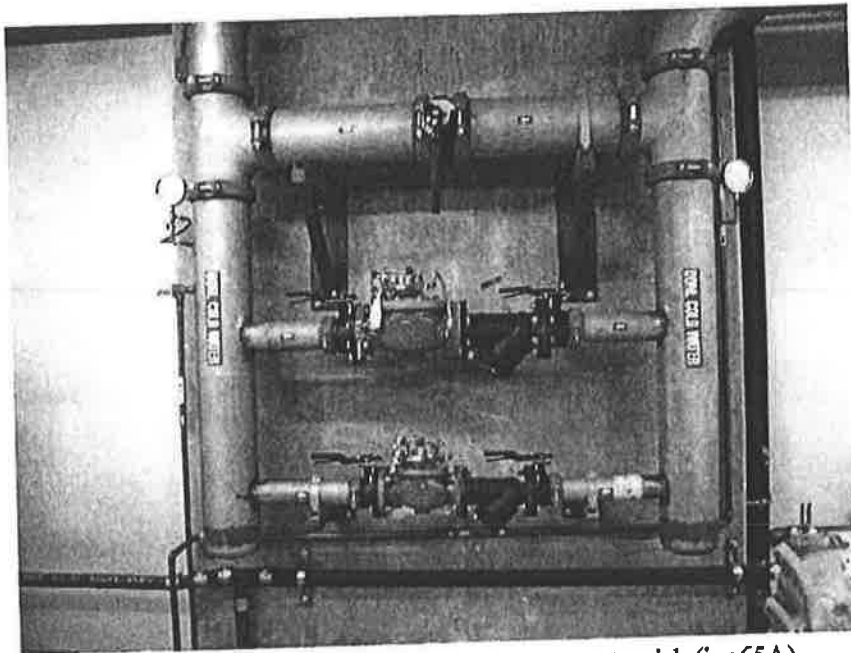
water inlet; replace ferrous butterfly valve with stainless steel (jpg98).



28. Hot water

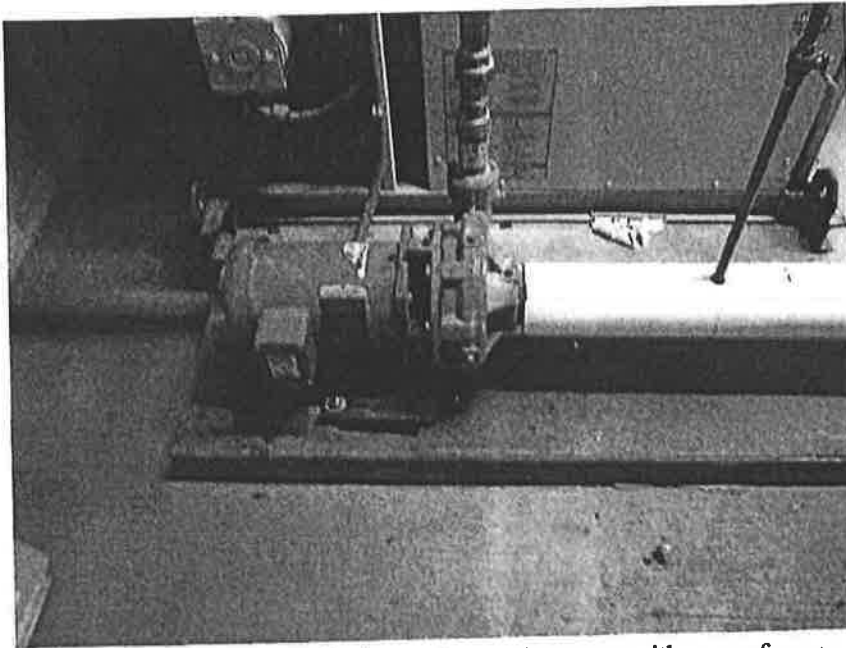
recirculation pumps – replace with nonferrous alloy (jpg99).

PANORAMA 1 Lower Mechanical Room

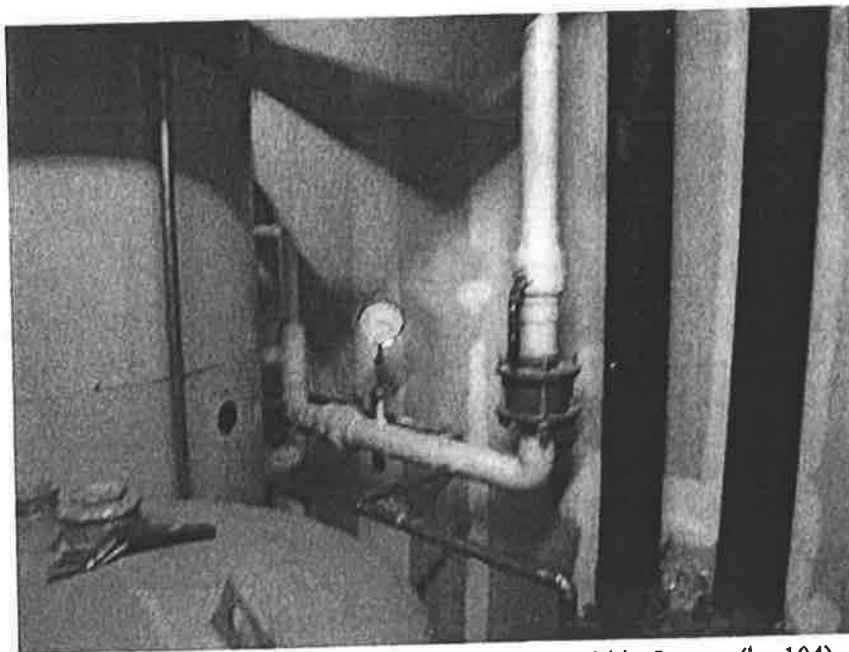


29 City water inlet manifold; rust is from acid cleaning to remove tarnish (jpg65A).

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).

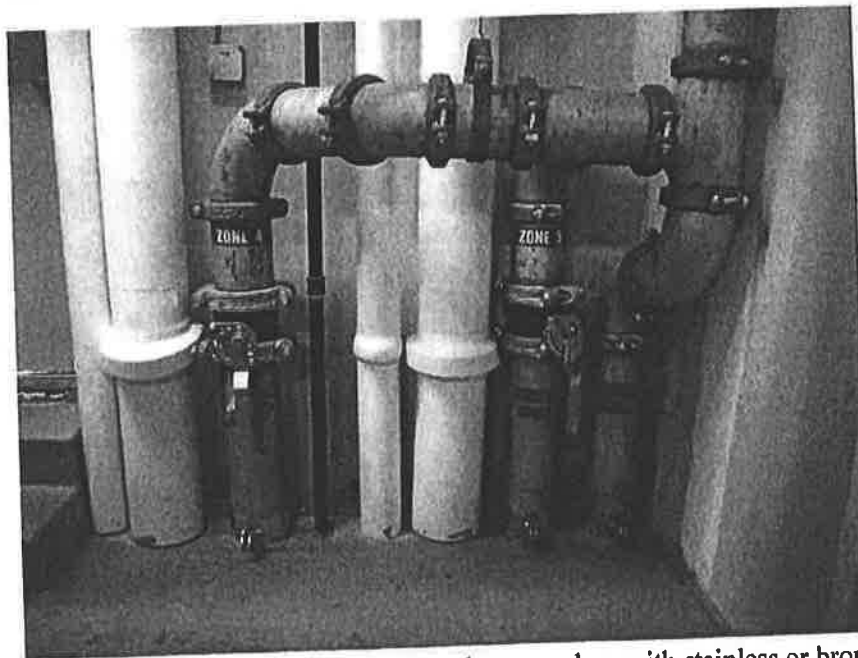


2. Zone 4 hot water system with ferrous check valve – replace within 5 years (jpg104).

PANORAMA TOWER 1 Upper Mechanical Room

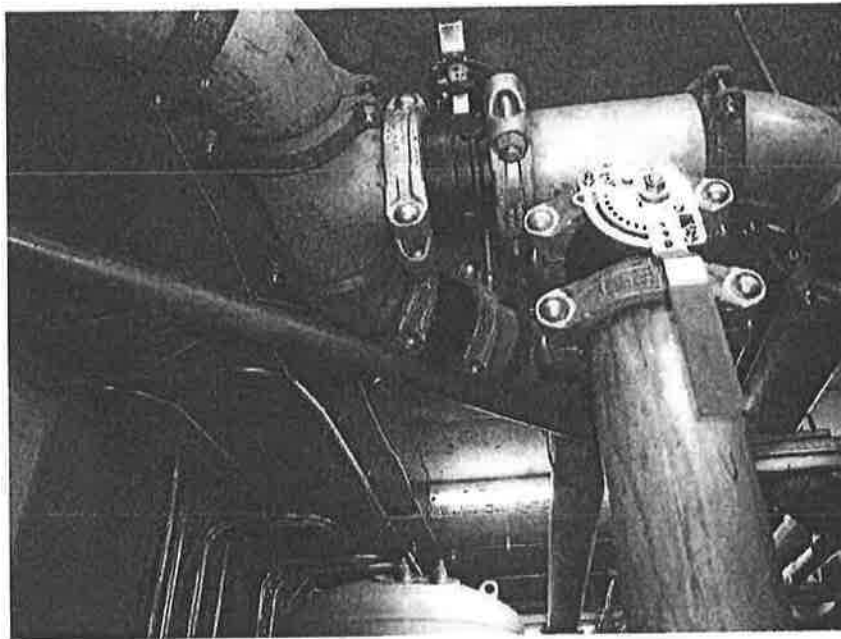


3. Zone 3 hot water system with 2 ferrous check valves that need to be replaced within 5 years.

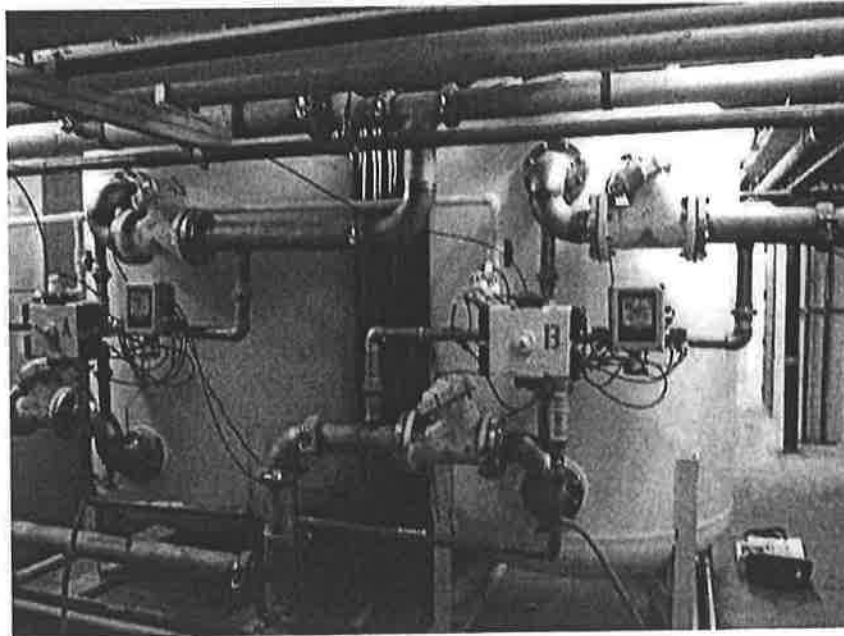


4. City water inlet, Zone 3 and 4 ferrous butterfly valves – replace with stainless or bronze valves (jpg106).

PANORAMA TOWER 1 Upper Mechanical Room

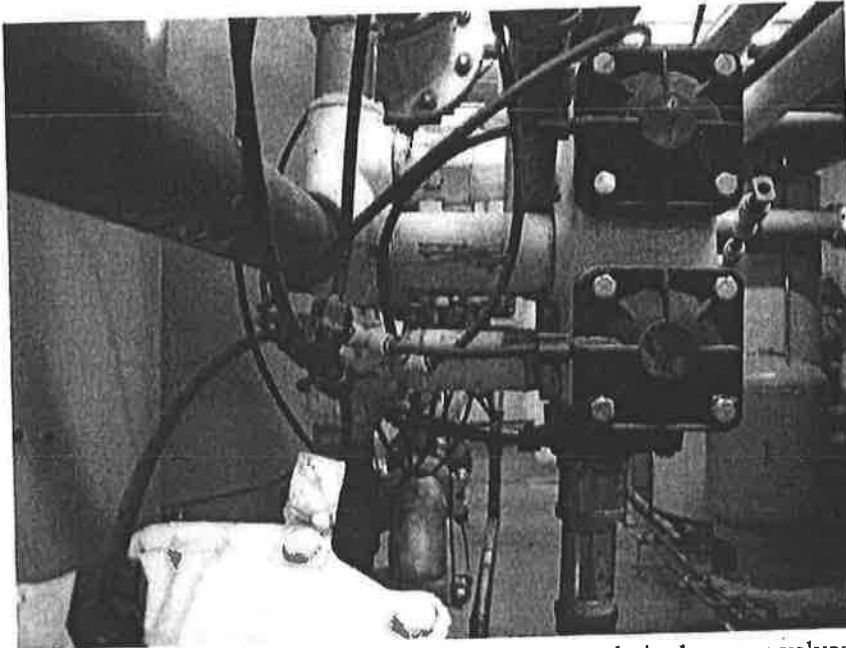


5. Feed water to water conditioners and bypass ferrous butterfly valves – replace now (jpg107).

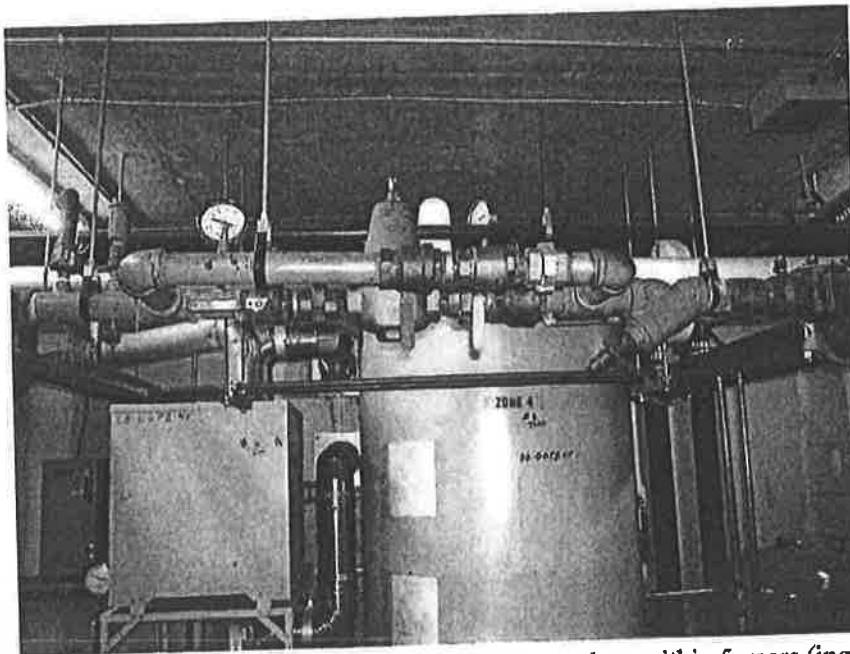


6. Media tanks with 4 ferrous check valves – replace valves within 5 years (jpg109).

PANORAMA TOWER 1 Upper Mechanical Room

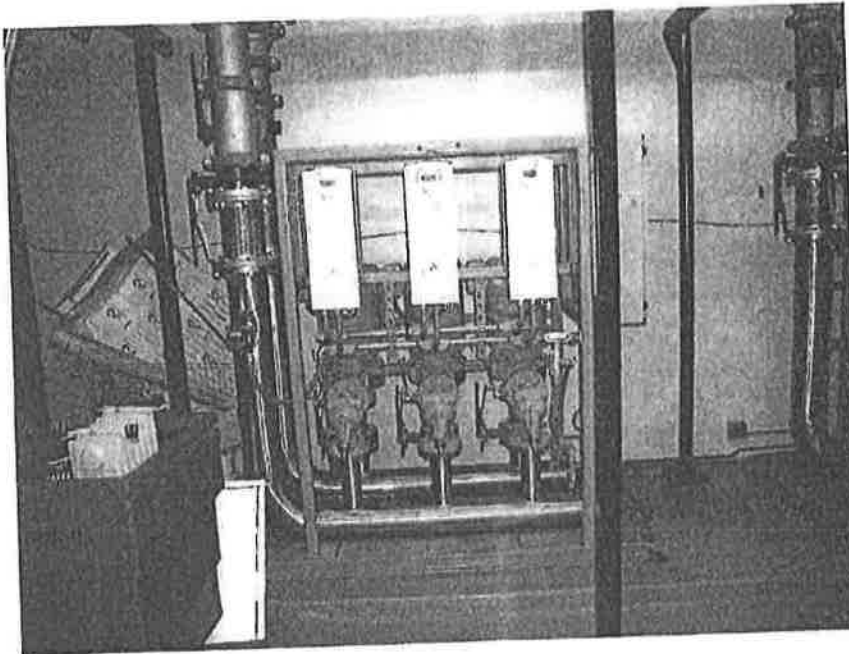


7. Media tanks with Culligan systems – replace all carbon steel nipples now; valves within 5 years (jpg108).

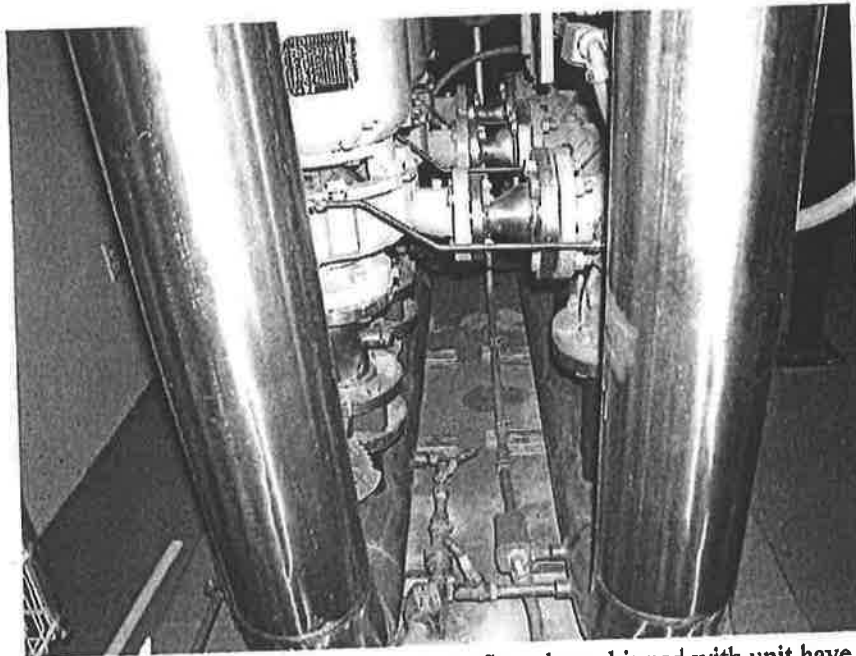


8. Unidentified pipe run with carbon steel lines – replace within 5 years (jpg110).

PANORAMA 2 Lower Mechanical Room

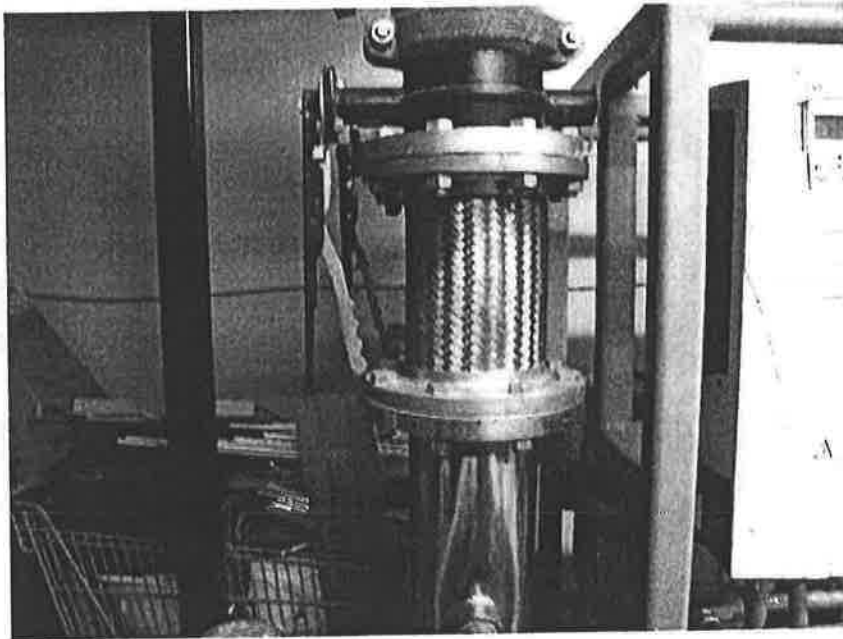


1. BP-1 skid mounted unit (jpg39).



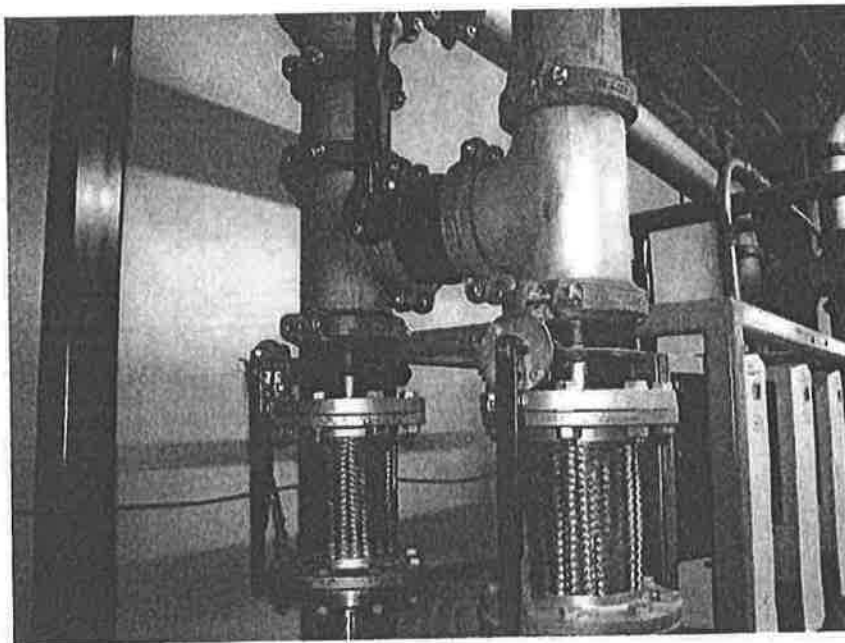
2. End view BP-1 skid mounted unit; stainless butterfly valves shipped with unit have been replaced with carbon steel valves that should be replaced now with stainless (jpg25).

PANORAMA 2 Lower Mechanical Room



3. BP-1 Flex

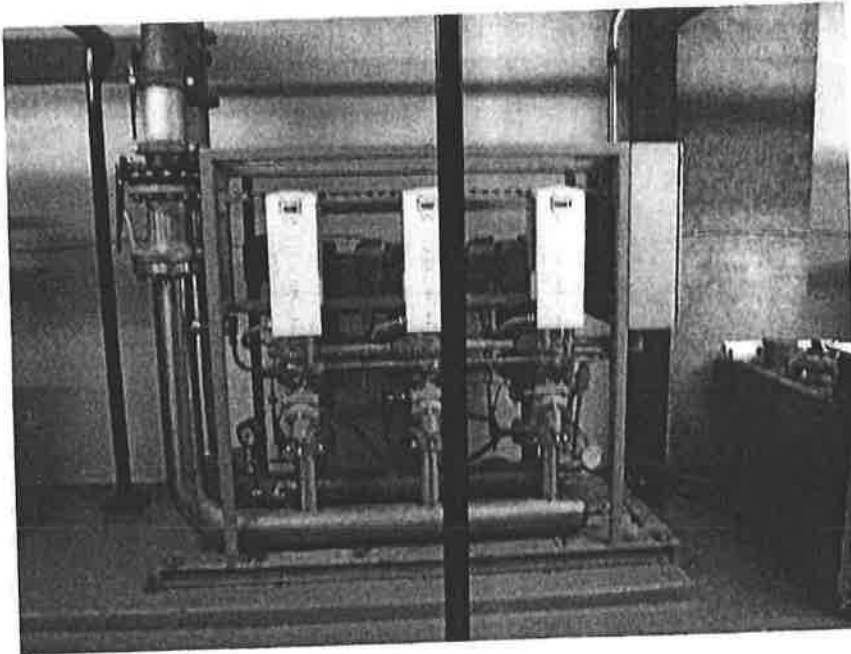
joint below carbon steel butterfly valve – replace valve now – see below (jpg28).



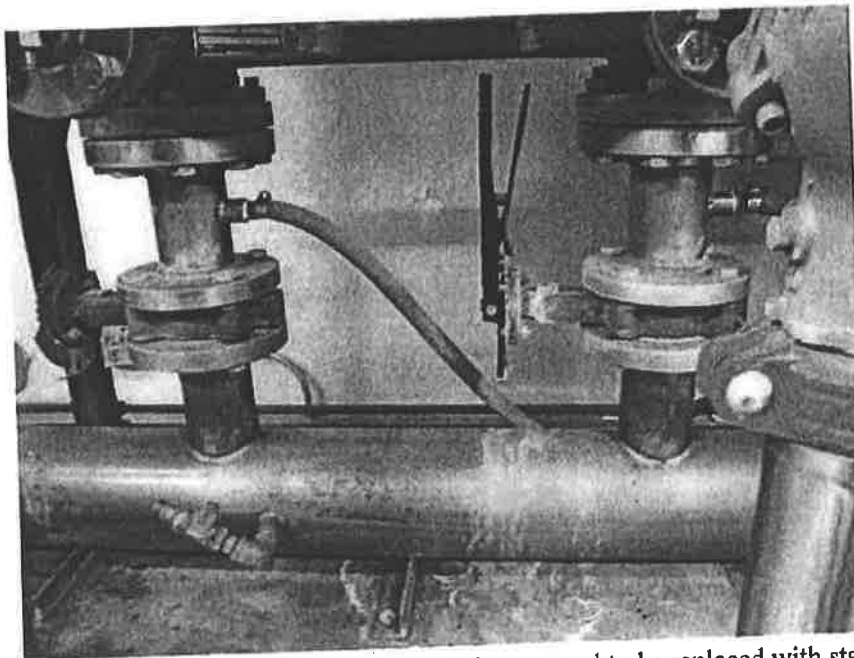
4. BP-1

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

PANORAMA 2 Lower Mechanical Room

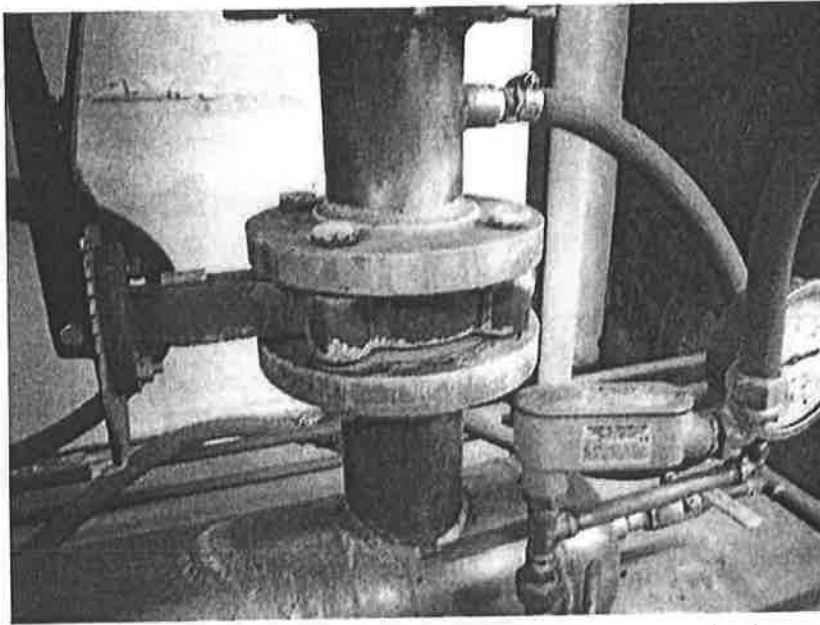


5. BP-2 high pressure skid mounted unit (jpg40).

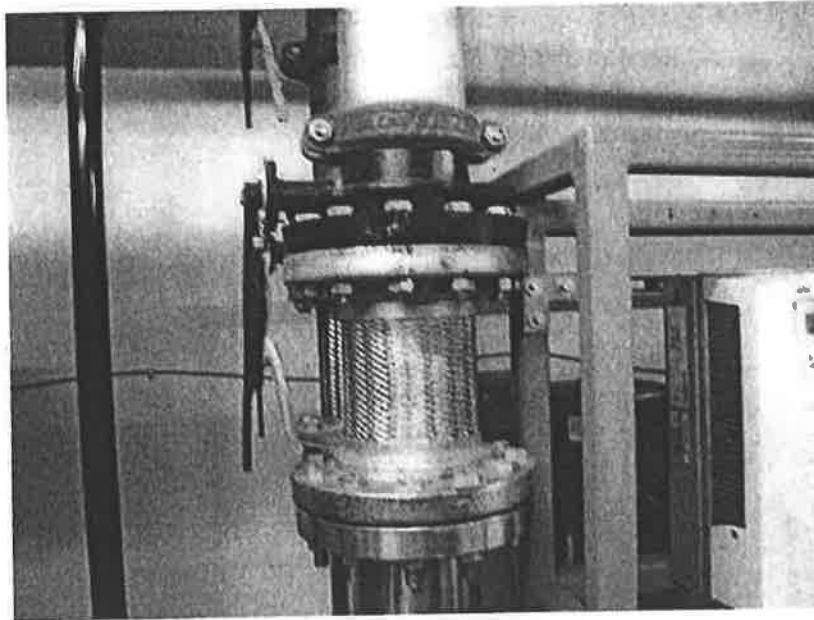


6. BP-2 center and east carbon steel butterfly valves – need to be replaced with stainless now (jpg27).

PANORAMA 2 Lower Mechanical Room

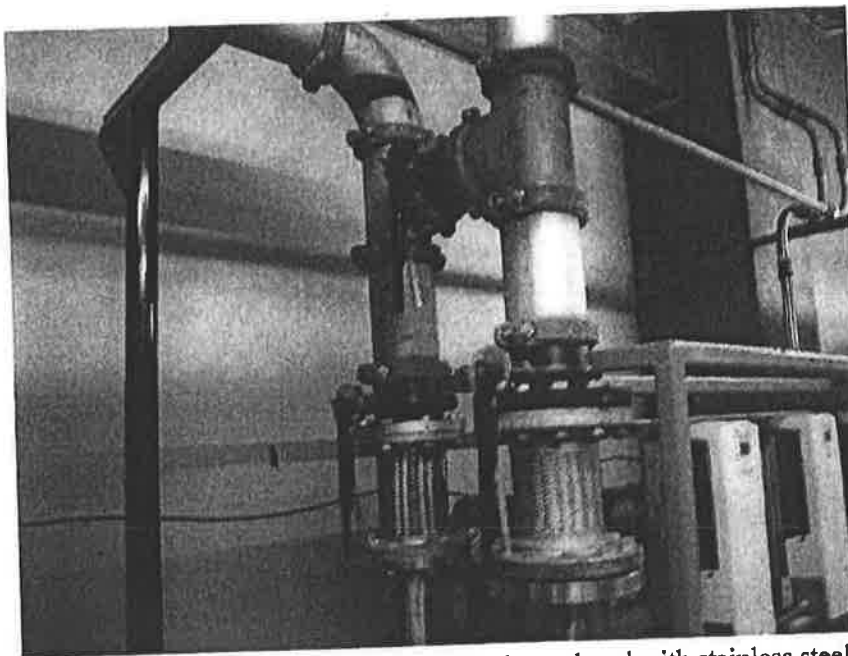


7. BP-2 west carbon steel butterfly valve; valve and corroded fasteners need to be replaced now (jpg26).

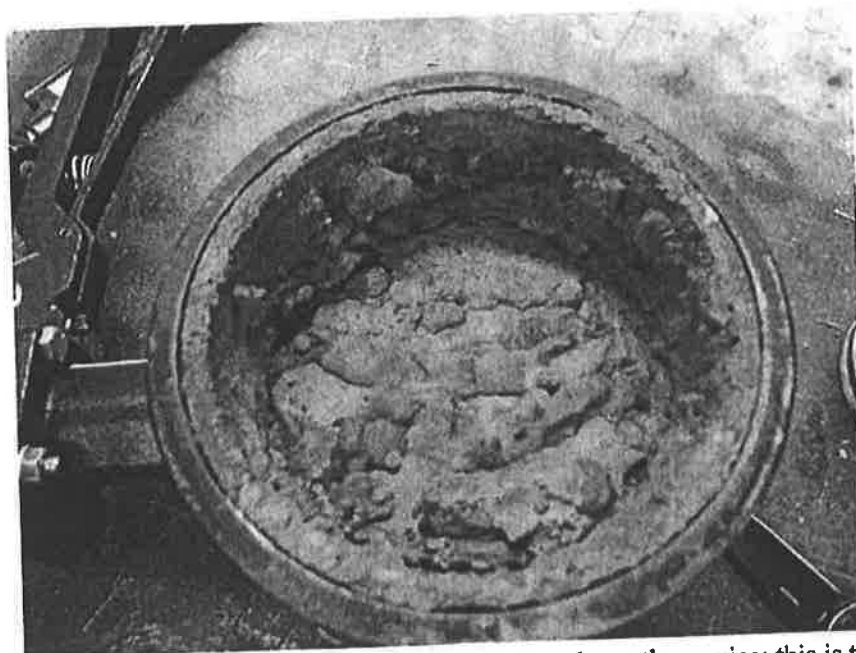


8. BP-2 high pressure flex connection with carbon steel flanges (jpg30).

PANORAMA 2 Lower Mechanical Room



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

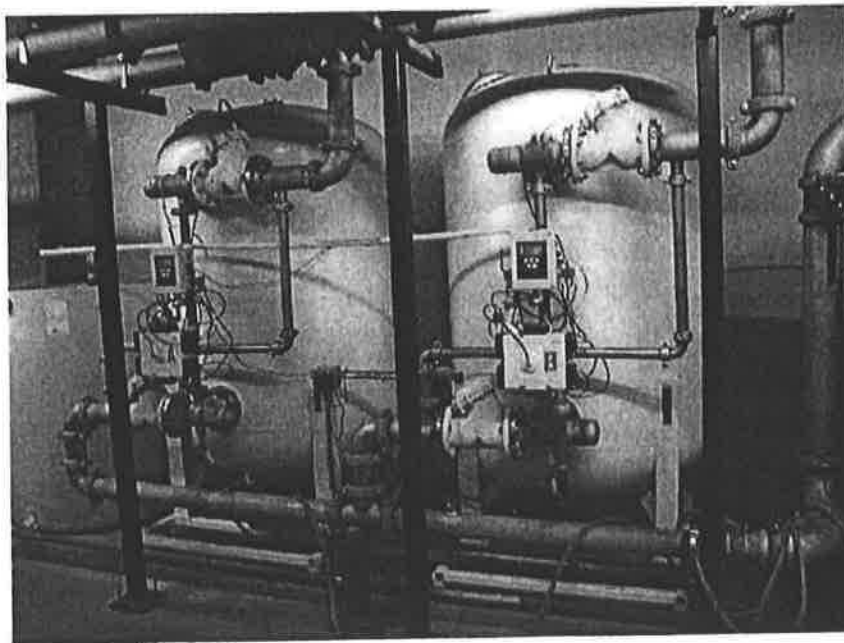


10. Typical inside of carbon steel butterfly valve after several months service; this is the reason they must be replaced as soon as practical with stainless steel valves (jpg33).

PANORAMA 2 Lower Mechanical Room



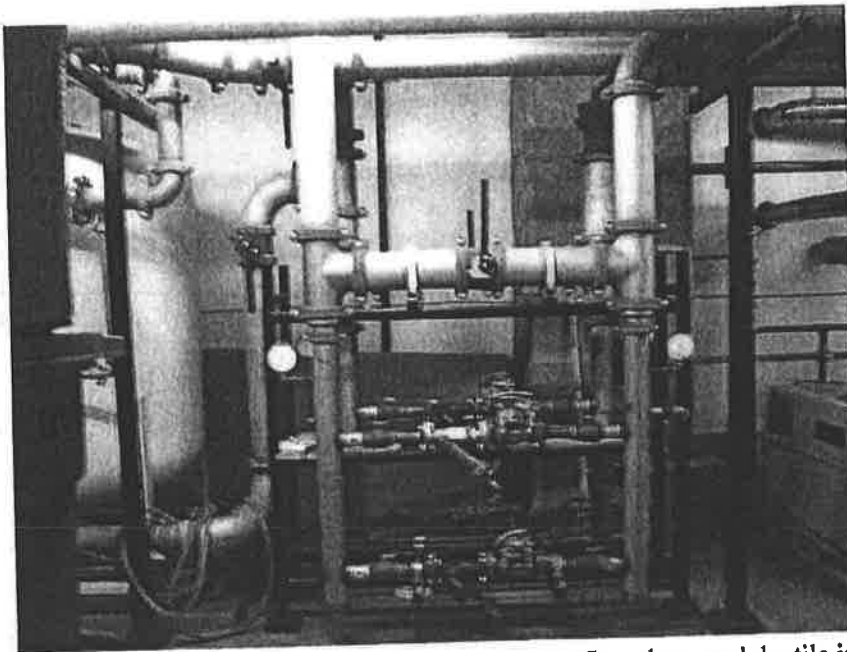
11. Name plate on typical carbon steel butterfly valve showing it has an AISI Type 416 stainless steel shaft; the ductile iron disc has a nickel edge (jpg34).



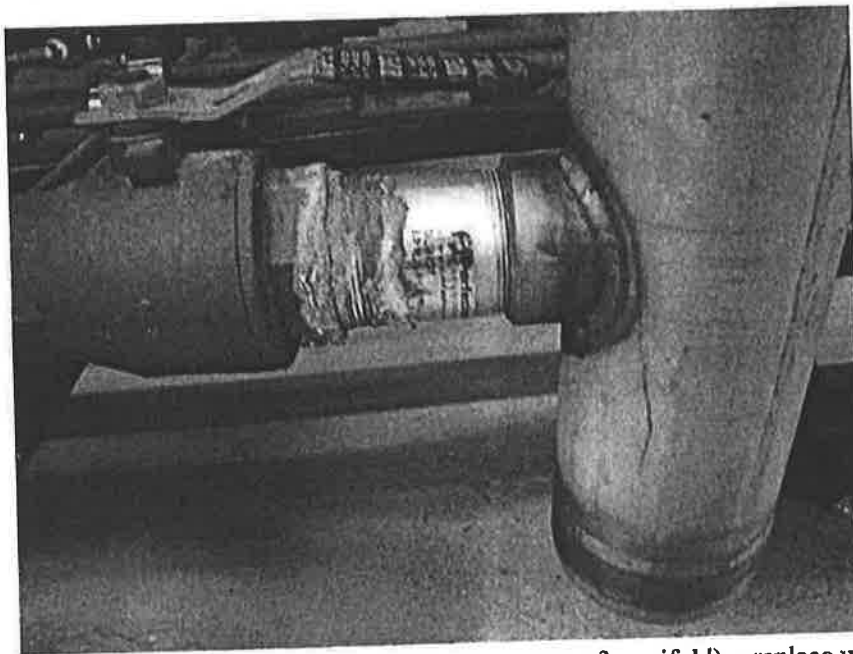
tanks (jpg41).

12. Media

PANORAMA 2 Lower Mechanical Room

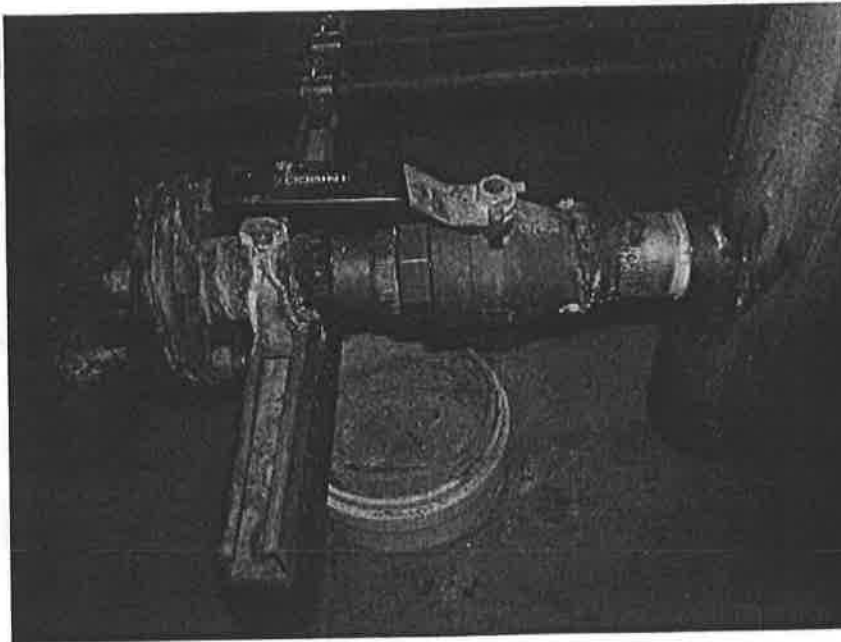


13. PRV manifold with 3 carbon steel strainers, steel butterfly valves, and ductile iron pressure regulators (jpg42).



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

PANORAMA 2 Lower Mechanical Room

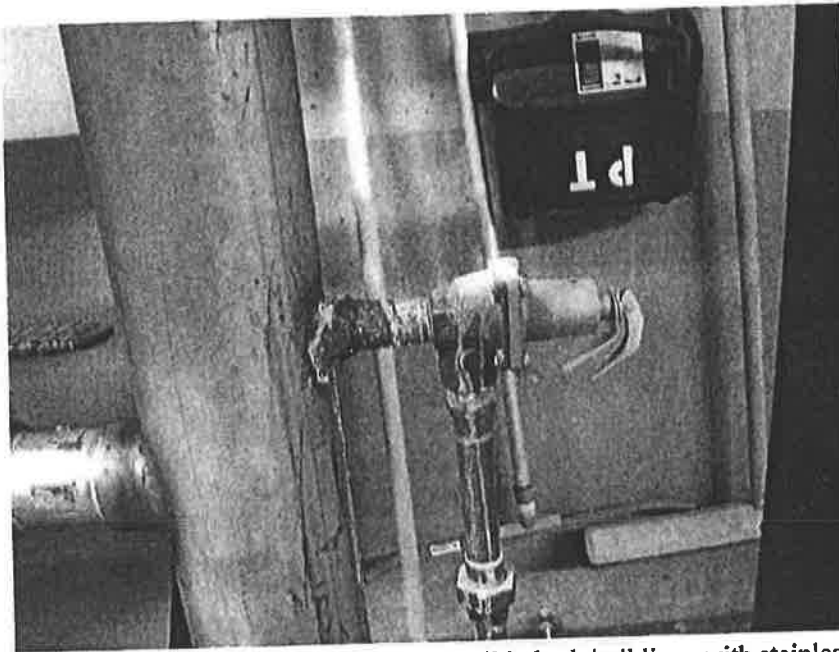


15. Carbon steel plastic lined nipple (lower southeast corner of manifold0 – replace with stainless steel (jpg52). Note: corrosion around Unistrut is a leak at the joint.

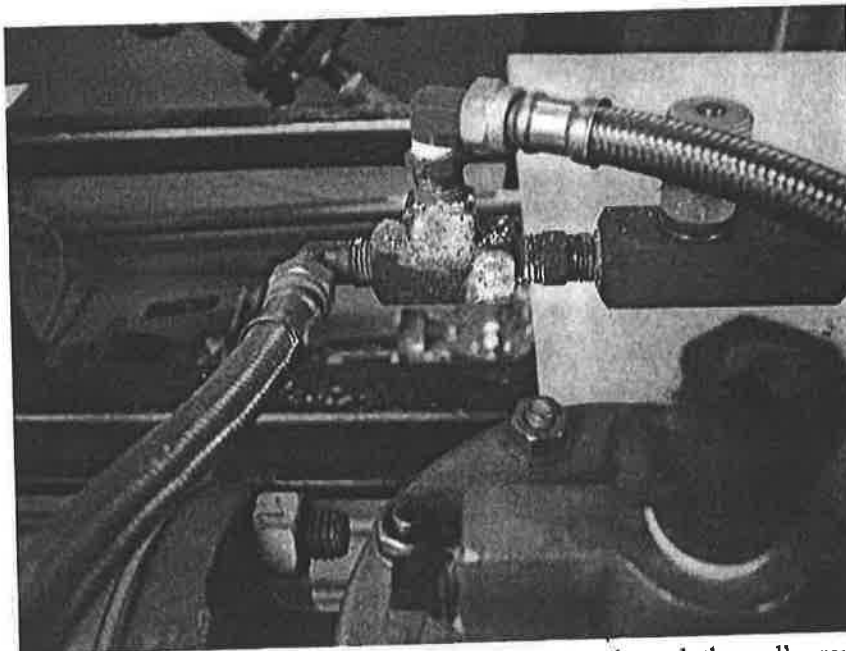


16. Leak in stainless weld leak; carbon steel plastic lined nipple not yet leaking, upper southeast corner of manifold (jpg53).

PANORAMA 2 Lower Mechanical Room

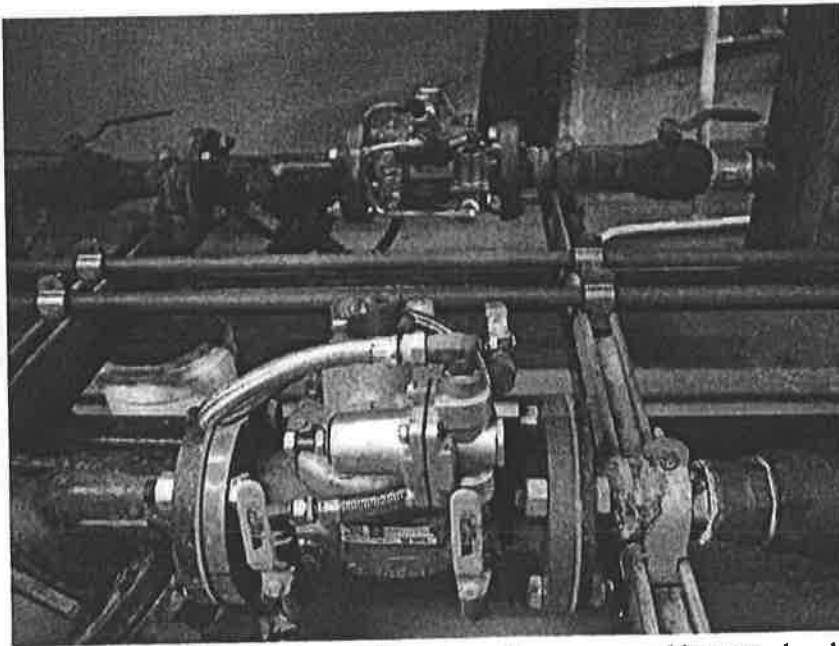


17. Carbon steel drain nipple on manifold – replace all in both buildings with stainless steel (jpg54).

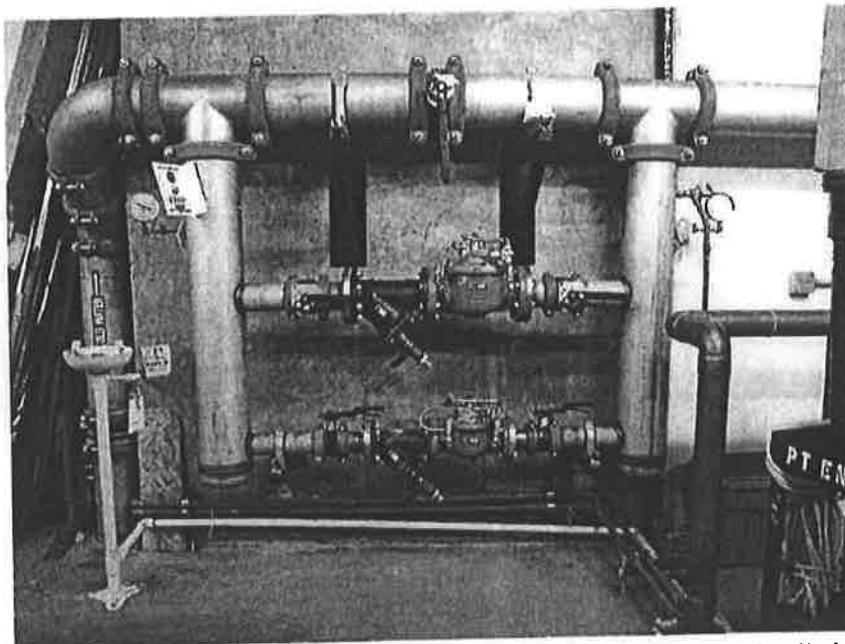


18. Yellow brass T-fitting exhibiting de-zincification corrosion through the wall – replace yellow brass fittings as they leak as part of normal maintenance (jpg55).

PANORAMA 2 Lower Mechanical Room

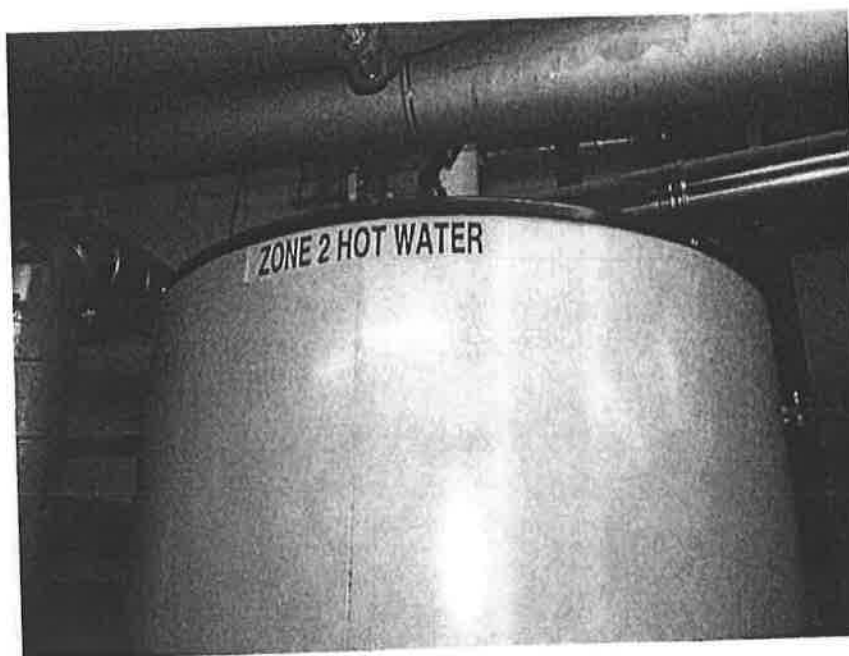


19. Lower pressure regulators; the far regulator is ductile iron top and bottom; the closer has a stainless steel top; visible residues at Unistrut are from connection leaks, not corrosion (jpg56).



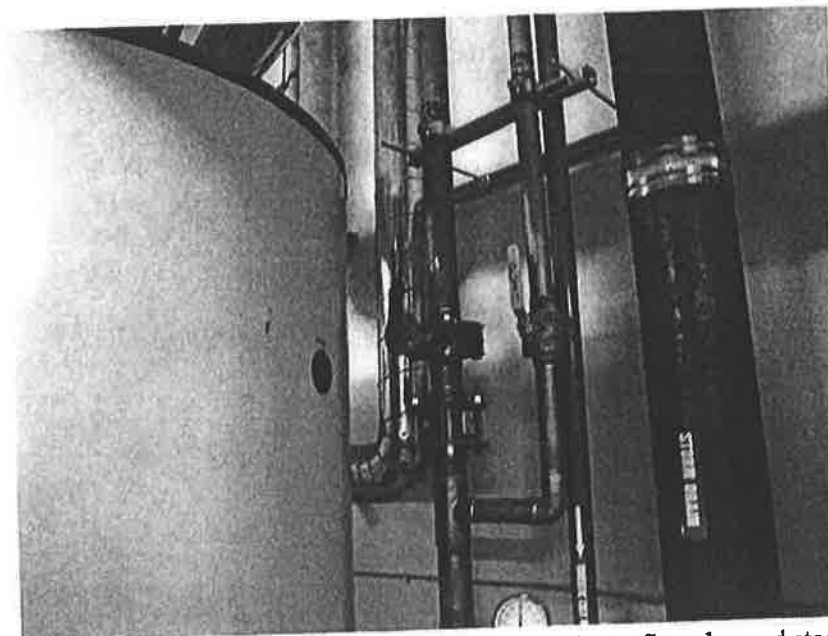
20. City water inlet manifold showing steel strainers, steel butterfly valves, and ductile iron pressure regulators with stainless steel tops (jpg43).

PANORAMA 2 Lower Mechanical Room



21. Zone 2

hot water tank (jpg44).



22. Piping

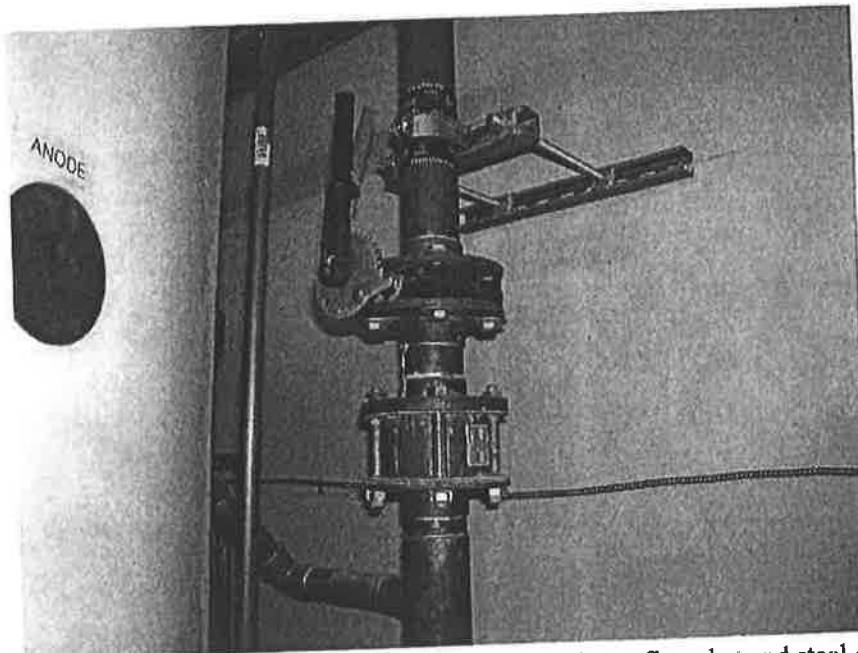
associated with Zone 2 hot water tank with steel butterfly valve and steel check valve (jpg45).

PANORAMA 2 Lower Mechanical Room



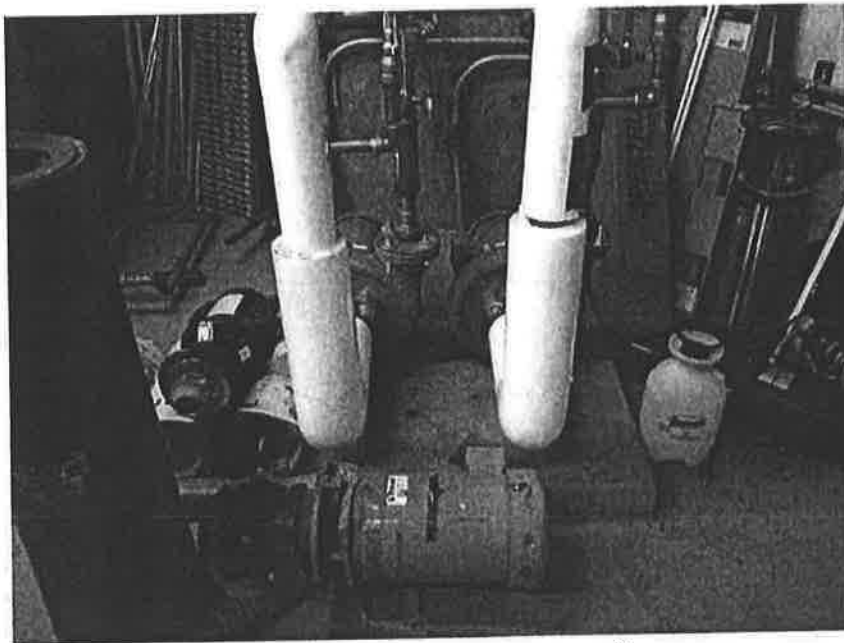
water tank (jpg46).

23. Zone 1 hot

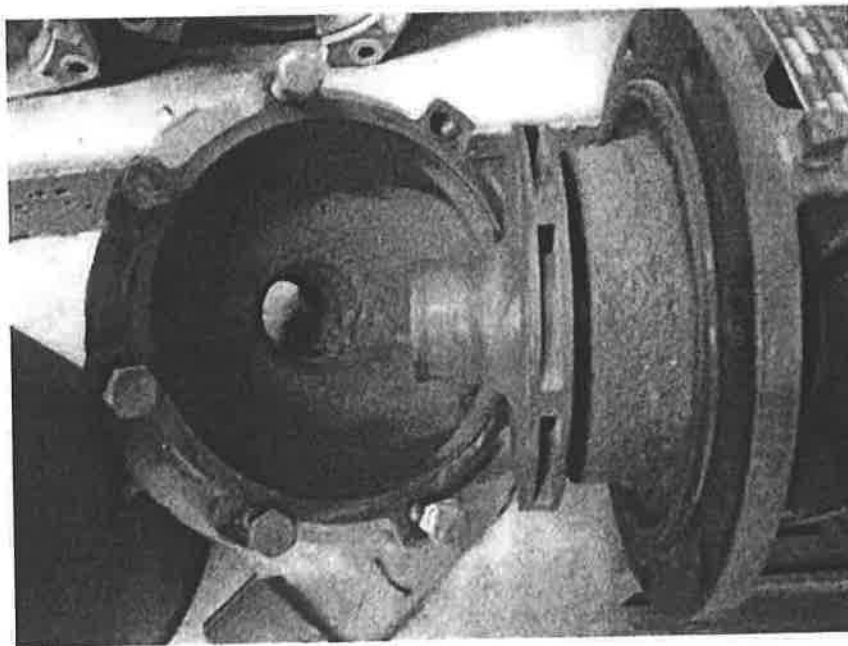


24. Piping associated with Zone 1 hot water tank with steel butterfly valve and steel check valve (jpg47).

PANORAMA 2 Lower Mechanical Room

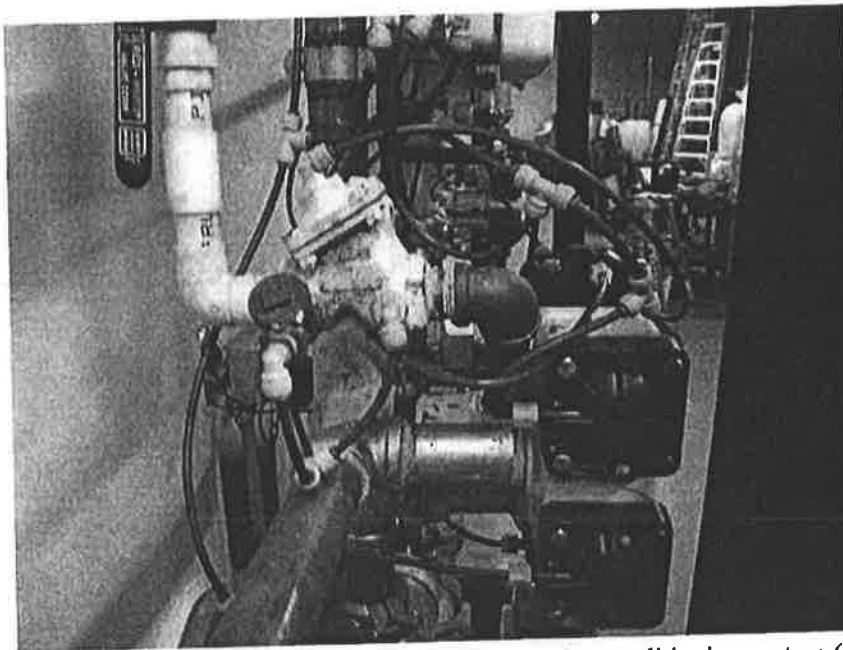


25. Hot water recirculation pumps with carbon steel housings (jpg48).

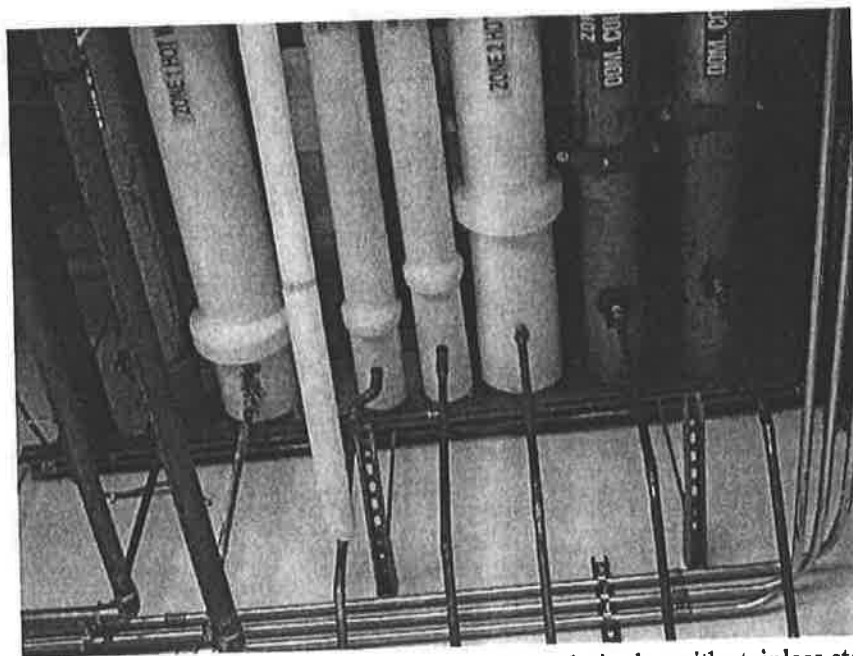


26. Close up view of steel pump housing exhibiting significant corrosion (jpg49).

PANORAMA 2 Lower Mechanical Room

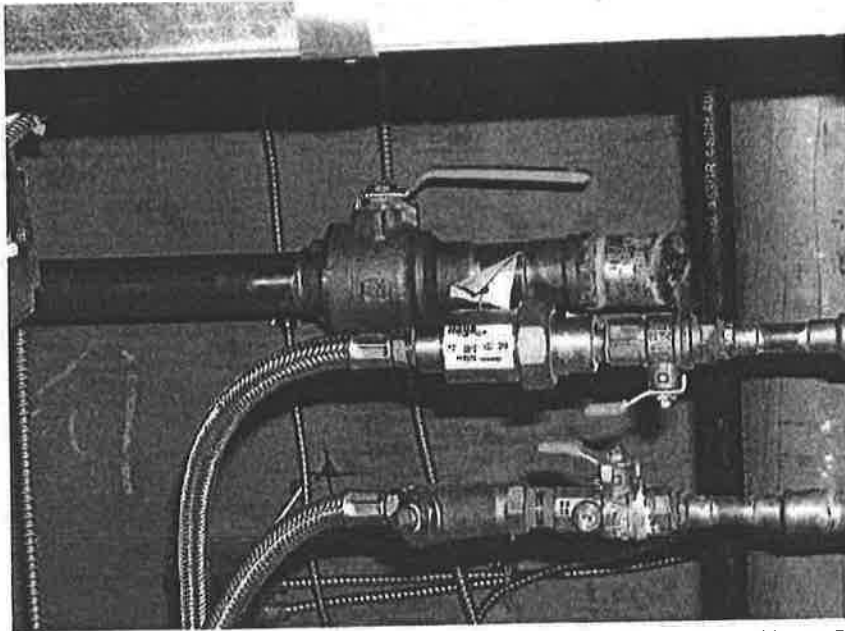


27. Ferrous (steel or iron) valve associated with Culligan water conditioning system (jpg 50).

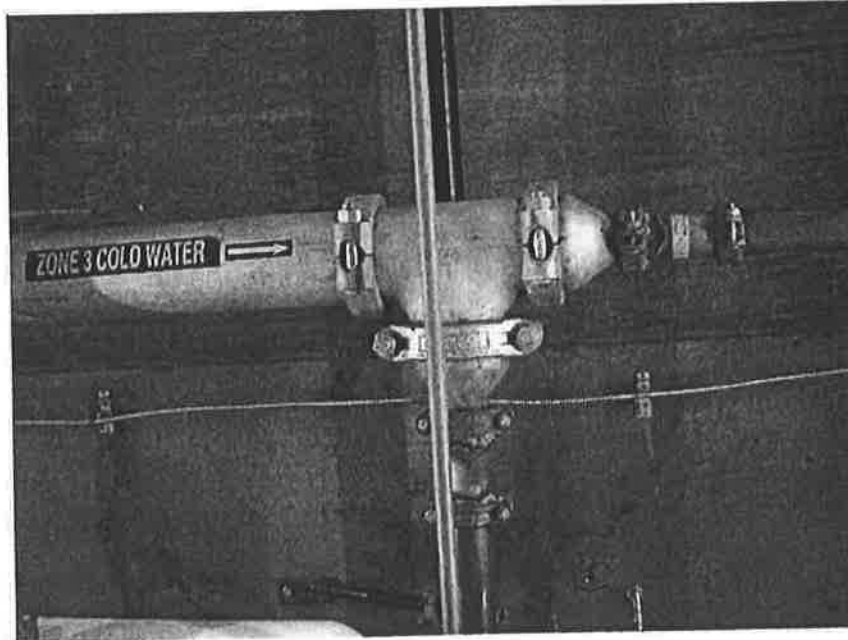


28. connections to outlet piping; replace carbon steel nipples with stainless steel (jpg57).

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

80/48BS

AA0722

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

2764 N. Green Valley pkwy #116, Henderson, NV 89014
702-204-4795 fax 702-454-2098

AA0725

Exhibit “2”

Exhibit “2”

BREMER WHYTE

BREMER WHYTE BROWN & O'MEARA LLP

1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
(702) 258-6665
(702) 258-6662 FAX
www.bremerwhyte.com

NICOLE WHYTE^{11,14,15}
KEVIN O. BREMER¹
RAYMOND MEYER, JR.¹
PETER C. BROWN^{1,14,15}
JOHN V. O'MEARA^{14,15}
KERRY K. TICKNER¹
TYLER D. OFFENHAUSER¹
PATRICK AU¹
NELSON L. COHEN¹⁴
JEREMY S. JOHNSON¹
JOHN H. TOOLEY¹³
VIK NAGPAL¹
KAREN M. DAYTOSH¹²
MONIQUE R. DONAVAN¹
ARASH S. ARABI¹
LANETTA D.W. KINSHART¹
JOHN J. BELANGER¹
PAULA A. ACKER¹
ALISON K. HURLEY¹
LUCIAN J. GRICO, JR.¹
ANTHONY T. GARASI¹
RACHEL A. MIRAF¹
MICHAEL A. D'ANDREA¹
SHILOA C. STILBO¹

1. Admitted in California
2. Admitted in Nevada
3. Admitted in Arizona
4. Admitted in Colorado
5. Admitted in Ohio
6. Admitted in Washington D.C.
7. Admitted in Oregon
8. Admitted in Texas
9. Admitted in Washington
10. Admitted in New Jersey
11. Admitted in New York
12. Admitted in Illinois
13. Admitted in Utah
14. Admitted in Pennsylvania
15. Admitted in New Mexico
* Certified Family Law Specialist
The State Bar of California Board
of Legal Specialization

NICK L. PETERSON¹
LANCE J. PEDERSEN¹
DANIEL A. CRUSPO¹
JOHN C. GOTTLEB¹
JOHN R. CAYANGYANG¹
ALEXANDER M. GIANNETTO^{1,14,15}
R. TODD WINDISCH¹
TROY A. CLARK¹³
JEFFREY W. SAAB¹
BENJAMIN L. PRICE¹
NICOLE M. SLATTERY¹⁴
KYLE P. CARROLL¹⁴
BRANDI M. FLANET¹⁴
PRESCOTT T. JONES¹
BRIAN E. CERNIAWSKI¹⁴
LIZA VELAZCO^{1,11}
CARL J. BASILE¹
JONATHAN A. KAPLAN¹
KATHERINE SHRAKEN¹
SCOTT W. ULIN¹
ALEX M. CHAZEN¹
JASON S. DIDIOTA¹
HOLLY A. BARTUSKA¹⁴
CAMERON B. GORDON¹
EILEEN J. GAISFORD¹
CHIARA N. HOLT¹
LINDA T. LAM¹
DARLENE M. CARTIER¹
NICOLE L. SCHMIDT¹
KEVIN I. ITO¹
AUGUST B. HOTCHKISS¹³
JARED G. CHRISTENSEN^{14,15}
NICHOLAS C. YOUNG¹
KERRY R. O'BRIEN¹
CHRISTOPHER SCHON¹
KENNETH L. MARSDEN II¹
NICOLE RUZZO¹
JENNA M. WARDEN¹
KEVIN Y. KANDORI¹
LANCE ROGERS¹
PATRICK TAYLOR¹
SARITA PATEL¹

MICHELLE CAMPBELL¹
CHELSIE A. ADAMS¹
LAURIE ELZA¹⁴
CHRISTIE M. MONTGOMERY¹
CATHERINE T. BARRHART¹
DANIELLE W. LINDORF¹
PAUL A. DILOADILLO¹
JENNIFER YANNI¹
NICHOLAS S. KAM¹
MARISSA C. MARXON¹
KELLI M. WINKLE-PETERSON¹
JENNA C. GARZA¹
ROSS A. DILLON¹
DAVID C. LARSEN¹
BRIAN T. ANDERS¹
R. CHRISTOPHER JACKSON¹
LYLE M. CHAN¹
NATASHA M. WU¹
MORGAN D. HALLLEY^{1,11}
CYNTHIA R. BEE¹⁴
BRADLEY J. BIGGS¹⁴
I. WILLIAM LOCKE¹
TIFFANY L. BACON¹
MICHAEL MTATADIUKWA-WALKER¹
KEVIN H. PARK^{1,11}
HEATHER L. FRIMMER¹
ERIC B. ALDEN¹
DAVID J. RYASSEE¹
RAYMOND E. AKSHENKO¹⁴
ALEXANDRA N. IORFINO¹
MERRITT E. COSOROVU¹
TRACY L. STROMBERG¹
JACQUELINE A. MARCOTT¹
MADELINE M. ANCELLANA¹
LESLIE A. TOWERS¹
VICTOR XU¹
HAASTY S. BURNS¹
NORMAN S. PULTON III¹
JASON H. DANG¹
MATTHEW E. PRISM¹
BRADLEY D. BACE¹
PETER M. JAYNES¹

March 29, 2016

VIA E-MAIL

Edward Song, Esq.
esong@leachjohnson.com
LEACH JOHNSON SONG & GRUCHOW

Scott Williams, Esq.
swilliams@williamsgumbiner.com
LAW OFFICE OF WILLIAMS &
GUMBINER, LLP

Re: Panorama Towers Condominium Unit Owners' Association v. Panorama Towers I, LLC, Panorama Towers II, LLC and M.J. Dean Construction, Inc.
BWB&O Client/Insured: Panorama Towers I, LLC, Panorama Towers II, LLC, and M.J. Dean Construction, Inc.
BWB&O File No.: 1287.551
Subject: **Panorama Towers Condominium Unit Owners' Association February 24, 2016 Notice of Contractor Pursuant to Nevada Revised Statutes, Section 40.645**

Dear Counsel:

On February 24, 2016, Panorama Towers Condominium Unit Owners' Association (the "HOA") served a Notice to Contractor Pursuant to Nevada Revised Statutes, Section 40.645. The Notice identified four categories of purported construction defects.

The Notice did not contain necessary information regarding the alleged sewer line, including the date of occurrence and the date of repair. Please provide that information at your earliest convenience. In addition, please confirm the current location of any sewer line materials that were removed and replaced as part of the repair.

Newport Beach	Las Vegas	Los Angeles	San Diego	Berkeley	Phoenix	Riverside	Denver	Reno
949.221.1000	702.258.6665	818.712.9800	619.236.0048	510.540.4881	602.274.1204	951.276.9020	303.256.6327	775.398.3087

H:\1287\551\Com\Counsel 002.docx

AA0727

Edward Song, Esq.
Scott Williams, Esq.
BWB&O File No.:
March 29, 2016
Page 2

During the recent inspection of the alleged mechanical room piping issues, it became apparent that the vast majority of the alleged corroded pipes had already been replaced. Please provide the date(s) when that work was done and the identity of the contractor(s). Please also confirm whether and where the removed pipes have been stored for safekeeping.

This letter is not intended to serve as my clients' formal response to the Chapter 40 Notice. All rights are reserved and a formal response to the Chapter 40 Notice will be timely provided as per statute.

Should you have any questions regarding the above, please do not hesitate to contact the undersigned.

Very truly yours,

BREMER WHYTE BROWN & O'MEARA LLP



Peter C. Brown, Esq.

pbrown@bremerwhyte.com
PCB:as

Exhibit “3”

Exhibit “3”

BREMER WHYTE

BREMER WHYTE BROWN & O'MEARA LLP

1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
(702) 258-6665
(702) 258-6662 FAX
www.bremerwhyte.com

NICOLE WHYTE^{1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58,59,60,61,62,63,64,65,66,67,68,69,70,71,72,73,74,75,76,77,78,79,80,81,82,83,84,85,86,87,88,89,90,91,92,93,94,95,96,97,98,99,100,101,102,103,104,105,106,107,108,109,110,111,112,113,114,115,116,117,118,119,120,121,122,123,124,125,126,127,128,129,130,131,132,133,134,135,136,137,138,139,140,141,142,143,144,145,146,147,148,149,150,151,152,153,154,155,156,157,158,159,160,161,162,163,164,165,166,167,168,169,170,171,172,173,174,175,176,177,178,179,180,181,182,183,184,185,186,187,188,189,190,191,192,193,194,195,196,197,198,199,200,201,202,203,204,205,206,207,208,209,210,211,212,213,214,215,216,217,218,219,220,221,222,223,224,225,226,227,228,229,230,231,232,233,234,235,236,237,238,239,240,241,242,243,244,245,246,247,248,249,250,251,252,253,254,255,256,257,258,259,260,261,262,263,264,265,266,267,268,269,270,271,272,273,274,275,276,277,278,279,280,281,282,283,284,285,286,287,288,289,290,291,292,293,294,295,296,297,298,299,300,301,302,303,304,305,306,307,308,309,310,311,312,313,314,315,316,317,318,319,320,321,322,323,324,325,326,327,328,329,330,331,332,333,334,335,336,337,338,339,340,341,342,343,344,345,346,347,348,349,350,351,352,353,354,355,356,357,358,359,360,361,362,363,364,365,366,367,368,369,370,371,372,373,374,375,376,377,378,379,380,381,382,383,384,385,386,387,388,389,390,391,392,393,394,395,396,397,398,399,400,401,402,403,404,405,406,407,408,409,410,411,412,413,414,415,416,417,418,419,420,421,422,423,424,425,426,427,428,429,430,431,432,433,434,435,436,437,438,439,440,441,442,443,444,445,446,447,448,449,450,451,452,453,454,455,456,457,458,459,460,461,462,463,464,465,466,467,468,469,470,471,472,473,474,475,476,477,478,479,480,481,482,483,484,485,486,487,488,489,490,491,492,493,494,495,496,497,498,499,500,501,502,503,504,505,506,507,508,509,510,511,512,513,514,515,516,517,518,519,520,521,522,523,524,525,526,527,528,529,530,531,532,533,534,535,536,537,538,539,540,541,542,543,544,545,546,547,548,549,550,551,552,553,554,555,556,557,558,559,560,561,562,563,564,565,566,567,568,569,570,571,572,573,574,575,576,577,578,579,580,581,582,583,584,585,586,587,588,589,590,591,592,593,594,595,596,597,598,599,600,601,602,603,604,605,606,607,608,609,610,611,612,613,614,615,616,617,618,619,620,621,622,623,624,625,626,627,628,629,630,631,632,633,634,635,636,637,638,639,640,641,642,643,644,645,646,647,648,649,650,651,652,653,654,655,656,657,658,659,660,661,662,663,664,665,666,667,668,669,670,671,672,673,674,675,676,677,678,679,680,681,682,683,684,685,686,687,688,689,690,691,692,693,694,695,696,697,698,699,700,701,702,703,704,705,706,707,708,709,710,711,712,713,714,715,716,717,718,719,720,721,722,723,724,725,726,727,728,729,730,731,732,733,734,735,736,737,738,739,740,741,742,743,744,745,746,747,748,749,750,751,752,753,754,755,756,757,758,759,760,761,762,763,764,765,766,767,768,769,770,771,772,773,774,775,776,777,778,779,780,781,782,783,784,785,786,787,788,789,790,791,792,793,794,795,796,797,798,799,800,801,802,803,804,805,806,807,808,809,810,811,812,813,814,815,816,817,818,819,820,821,822,823,824,825,826,827,828,829,830,831,832,833,834,835,836,837,838,839,840,841,842,843,844,845,846,847,848,849,850,851,852,853,854,855,856,857,858,859,860,861,862,863,864,865,866,867,868,869,870,871,872,873,874,875,876,877,878,879,880,881,882,883,884,885,886,887,888,889,890,891,892,893,894,895,896,897,898,899,900,901,902,903,904,905,906,907,908,909,910,911,912,913,914,915,916,917,918,919,920,921,922,923,924,925,926,927,928,929,930,931,932,933,934,935,936,937,938,939,940,941,942,943,944,945,946,947,948,949,950,951,952,953,954,955,956,957,958,959,960,961,962,963,964,965,966,967,968,969,970,971,972,973,974,975,976,977,978,979,980,981,982,983,984,985,986,987,988,989,990,991,992,993,994,995,996,997,998,999,1000,1001,1002,1003,1004,1005,1006,1007,1008,1009,1010,1011,1012,1013,1014,1015,1016,1017,1018,1019,1020,1021,1022,1023,1024,1025,1026,1027,1028,1029,1030,1031,1032,1033,1034,1035,1036,1037,1038,1039,1040,1041,1042,1043,1044,1045,1046,1047,1048,1049,1050,1051,1052,1053,1054,1055,1056,1057,1058,1059,1060,1061,1062,1063,1064,1065,1066,1067,1068,1069,1070,1071,1072,1073,1074,1075,1076,1077,1078,1079,1080,1081,1082,1083,1084,1085,1086,1087,1088,1089,1090,1091,1092,1093,1094,1095,1096,1097,1098,1099,1100,1101,1102,1103,1104,1105,1106,1107,1108,1109,1110,1111,1112,1113,1114,1115,1116,1117,1118,1119,1120,1121,1122,1123,1124,1125,1126,1127,1128,1129,1130,1131,1132,1133,1134,1135,1136,1137,1138,1139,1140,1141,1142,1143,1144,1145,1146,1147,1148,1149,1150,1151,1152,1153,1154,1155,1156,1157,1158,1159,1160,1161,1162,1163,1164,1165,1166,1167,1168,1169,1170,1171,1172,1173,1174,1175,1176,1177,1178,1179,1180,1181,1182,1183,1184,1185,1186,1187,1188,1189,1190,1191,1192,1193,1194,1195,1196,1197,1198,1199,1200,1201,1202,1203,1204,1205,1206,1207,1208,1209,1210,1211,1212,1213,1214,1215,1216,1217,1218,1219,1220,1221,1222,1223,1224,1225,1226,1227,1228,1229,1230,1231,1232,1233,1234,1235,1236,1237,1238,1239,1240,1241,1242,1243,1244,1245,1246,1247,1248,1249,1250,1251,1252,1253,1254,1255,1256,1257,1258,1259,1260,1261,1262,1263,1264,1265,1266,1267,1268,1269,1270,1271,1272,1273,1274,1275,1276,1277,1278,1279,1280,1281,1282,1283,1284,1285,1286,1287,1288,1289,1290,1291,1292,1293,1294,1295,1296,1297,1298,1299,1300,1301,1302,1303,1304,1305,1306,1307,1308,1309,1310,1311,1312,1313,1314,1315,1316,1317,1318,1319,1320,1321,1322,1323,1324,1325,1326,1327,1328,1329,1330,1331,1332,1333,1334,1335,1336,1337,1338,1339,1340,1341,1342,1343,1344,1345,1346,1347,1348,1349,1350,1351,1352,1353,1354,1355,1356,1357,1358,1359,1360,1361,1362,1363,1364,1365,1366,1367,1368,1369,1370,1371,1372,1373,1374,1375,1376,1377,1378,1379,1380,1381,1382,1383,1384,1385,1386,1387,1388,1389,1390,1391,1392,1393,1394,1395,1396,1397,1398,1399,1400,1401,1402,1403,1404,1405,1406,1407,1408,1409,1410,1411,1412,1413,1414,1415,1416,1417,1418,1419,1420,1421,1422,1423,1424,1425,1426,1427,1428,1429,1430,1431,1432,1433,1434,1435,1436,1437,1438,1439,1440,1441,1442,1443,1444,1445,1446,1447,1448,1449,1450,1451,1452,1453,1454,1455,1456,1457,1458,1459,1460,1461,1462,1463,1464,1465,1466,1467,1468,1469,1470,1471,1472,1473,1474,1475,1476,1477,1478,1479,1480,1481,1482,1483,1484,1485,1486,1487,1488,1489,1490,1491,1492,1493,1494,1495,1496,1497,1498,1499,1500,1501,1502,1503,1504,1505,1506,1507,1508,1509,1510,1511,1512,1513,1514,1515,1516,1517,1518,1519,1520,1521,1522,1523,1524,1525,1526,1527,1528,1529,1530,1531,1532,1533,1534,1535,1536,1537,1538,1539,1540,1541,1542,1543,1544,1545,1546,1547,1548,1549,1550,1551,1552,1553,1554,1555,1556,1557,1558,1559,1560,1561,1562,1563,1564,1565,1566,1567,1568,1569,1570,1571,1572,1573,1574,1575,1576,1577,1578,1579,1580,1581,1582,1583,1584,1585,1586,1587,1588,1589,1590,1591,1592,1593,1594,1595,1596,1597,1598,1599,1600,1601,1602,1603,1604,1605,1606,1607,1608,1609,1610,1611,1612,1613,1614,1615,1616,1617,1618,1619,1620,1621,1622,1623,1624,1625,1626,1627,1628,1629,1630,1631,1632,1633,1634,1635,1636,1637,1638,1639,1640,1641,1642,1643,1644,1645,1646,1647,1648,1649,1650,1651,1652,1653,1654,1655,1656,1657,1658,1659,1660,1661,1662,1663,1664,1665,1666,1667,1668,1669,1670,1671,1672,1673,1674,1675,1676,1677,1678,1679,1680,1681,1682,1683,1684,1685,1686,1687,1688,1689,1690,1691,1692,1693,1694,1695,1696,1697,1698,1699,1700,1701,1702,1703,1704,1705,1706,1707,1708,1709,1710,1711,1712,1713,1714,1715,1716,1717,1718,1719,1720,1721,1722,1723,1724,1725,1726,1727,1728,1729,1730,1731,1732,1733,1734,1735,1736,1737,1738,1739,1740,1741,1742,1743,1744,1745,1746,1747,1748,1749,1750,1751,1752,1753,1754,1755,1756,1757,1758,1759,1760,1761,1762,1763,1764,1765,1766,1767,1768,1769,1770,1771,1772,1773,1774,1775,1776,1777,1778,1779,1780,1781,1782,1783,1784,1785,1786,1787,1788,1789,1790,1791,1792,1793,1794,1795,1796,1797,1798,1799,1800,1801,1802,1803,1804,1805,1806,1807,1808,1809,1810,1811,1812,1813,1814,1815,1816,1817,1818,1819,1820,1821,1822,1823,1824,1825,1826,1827,1828,1829,1830,1831,1832,1833,1834,1835,1836,1837,1838,1839,1840,1841,1842,1843,1844,1845,1846,1847,1848,1849,1850,1851,1852,1853,1854,1855,1856,1857,1858,1859,1860,1861,1862,1863,1864,1865,1866,1867,1868,1869,1870,1871,1872,1873,1874,1875,1876,1877,1878,1879,1880,1881,1882,1883,1884,1885,1886,1887,1888,1889,1890,1891,1892,1893,1894,1895,1896,1897,1898,1899,1900,1901,1902,1903,1904,1905,1906,1907,1908,1909,1910,1911,1912,1913,1914,1915,1916,1917,1918,1919,1920,1921,1922,1923,1924,1925,1926,1927,1928,1929,1930,1931,1932,1933,1934,1935,1936,1937,1938,1939,1940,1941,1942,1943,1944,1945,1946,1947,1948,1949,1950,1951,1952,1953,1954,1955,1956,1957,1958,1959,1960,1961,1962,1963,1964,1965,1966,1967,1968,1969,1970,1971,1972,1973,1974,1975,1976,1977,1978,1979,1980,1981,1982,1983,1984,1985,1986,1987,1988,1989,1990,1991,1992,1993,1994,1995,1996,1997,1998,1999,2000,2001,2002,2003,2004,2005,2006,2007,2008,2009,2010,2011,2012,2013,2014,2015,2016,2017,2018,2019,2020,2021,2022,2023,2024,2025,2026,2027,2028,2029,2030,2031,2032,2033,2034,2035,2036,2037,2038,2039,2040,2041,2042,2043,2044,2045,2046,2047,2048,2049,2050,2051,2052,2053,2054,2055,2056,2057,2058,2059,2060,2061,2062,2063,2064,2065,2066,2067,2068,2069,2070,2071,2072,2073,2074,2075,2076,2077,2078,2079,2080,2081,2082,2083,2084,2085,2086,2087,2088,2089,2090,2091,2092,2093,2094,2095,2096,2097,2098,2099,2100,2101,2102,2103,2104,2105,2106,2107,2108,2109,2110,2111,2112,2113,2114,2115,2116,2117,2118,2119,2120,2121,2122,2123,2124,2125,2126,2127,2128,2129,2130,2131,2132,2133,2134,2135,2136,2137,2138,2139,2140,2141,2142,2143,2144,2145,2146,2147,2148,2149,2150,2151,2152,2153,2154,2155,2156,2157,2158,2159,2160,2161,2162,2163,2164,2165,2166,2167,2168,2169,2170,2171,2172,2173,2174,2175,2176,2177,2178,2179,2180,2181,2182,2183,2184,2185,2186,2187,2188,2189,2190,2191,2192,2193,2194,2195,2196,2197,2198,2199,2200,2201,2202,2203,2204,2205,2206,2207,2208,2209,2210,2211,2212,2213,2214,2215,2216,2217,2218,2219,2220,2221,2222,2223,2224,2225,2226,2227,2228,2229,2230,2231,2232,2233,2234,2235,2236,2237,2238,2239,2240,2241,2242,2243,2244,2245,2246,2247,2248,2249,2250,2251,2252,2253,2254,2255,2256,2257,2258,2259,2260,2261,2262,2263,2264,2265,2266,2267,2268,2269,2270,2271,2272,2273,2274,2275,2276,2277,2278,2279,2280,2281,2282,2283,2284,2285,2286,2287,2288,2289,2290,2291,2292,2293,2294,2295,2296,2297,2298,2299,2300,2301,2302,2303,2304,2305,2306,2307,2308,2309,2310,2311,2312,2313,2314,2315,2316,2317,2318,2319,2320,2321,2322,2323,2324,2325,2326,2327,2328,2329,2330,2331,2332,2333,2334,2335,2336,2337,2338,2339,2340,2341,2342,2343,2344,2345,2346,2347,2348,2349,2350,2351,2352,2353,2354,2355,2356,2357,2358,2359,2360,2361,2362,2363,2364,2365,2366,2367,2368,2369,2370,2371,2372,2373,2374,2375,2376,2377,2378,2379,2380,2381,2382,2383,2384,2385,2386,2387,2388,2389,2390,2391,2392,2393,2394,2395,2396,2397,2398,2399,2400,2401,2402,2403,2404,2405,2406,2407,2408,2409,2410,2411,2412,2413,2414,2415,2416,2417,2418,2419,2420,2421,2422,2423,2424,2425,2426,2427,2428,2429,2430,2431,2432,2433,2434,2435,2436,2437,2438,2439,2440,2441,2442,2443,2444,2445,2446,2447,2448,2449,2450,2451,2452,2453,2454,2455,2456,2457,2458,2459,2460,2461,2462,2463,2464,2465,2466,2467,2468,2469,2470,2471,2472,2473,2474,2475,2476,2477,2478,2479,2480,2481,2482,2483,2484,2485,2486,2487,2488,2489,2490,2491,2492,2493,2494,2495,2496,2497,2498,2499,2500,2501,2502,2503,2504,2505,2506,2507,2508,2509,2510,2511,2512,2513,2514,2515,2516,2517,2518,2519,2520,2521,2522,2523,2524,2525,2526,2527,2528,2529,2530,2531,2532,2533,2534,2535,2536,2537,2538,2539,2540,2541,2542,2543,2544,2545,2546,2547,2548,2549,2550,2551,2552,2553,2554,2555,2556,2557,2558,2559,2560,2561,2562,2563,2564,2565,2566,2567,2568,2569,2570,2571,2572,2573,2574,2575,2576,2577,2578,2579,2580,2581,2582,2583,2584,2585,2586,2587,2588,2589,2590,2591,2592,2593,2594,2595,2596,2597,2598,2599,2600,2601,2602,2603,2604,2605,2606,2607,2608,2609,2610,2611,2612,2613,2614,2615,2616,2617,2618,2619,2620,2621,2622,2623,2624,2625,2626,2627,2628,2629,2630,2631,2632,2633,2634,2635,2636,2637,2638,2639,2640,2641,2642,2643,2644,2645,2646,2647,2648,2649,2650,2651,2652,2653,2654,2655,2656,2}

Edward Song, Esq.
Scott Williams, Esq.
April 29, 2016
Page 2

In addition, we request that you provide the date when any of the alleged corroded mechanical room pipes were replaced, the date(s) when this work was performed and the name and address of the contractor that performed this work. Please also confirm whether and where the removed pipes have been stored for safekeeping.

Please provide the above information no later than **May 3, 2016**.

This letter is not intended to serve as our clients' formal response to the Chapter 40 Notice. All rights are reserved and a formal response to the Chapter 40 Notice will be timely provided as per statute.

Thank you for your time and attention.

Very truly yours,

BREMER WHYTE BROWN & O'MEARA LLP



Darlene M. Cartier, Esq.
Peter C. Brown, Esq.

dcartier@bremerwhyte.com
pbrown@bremerwhyte.com

Exhibit “4”

Exhibit “4”

ASSEMBLY BILL NO. 125—COMMITTEE ON JUDICIARY

FEBRUARY 6, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to constructional defects.
(BDR 3-588)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~permitted-material~~ is material to be omitted.

AN ACT relating to constructional defects; enacting provisions governing the indemnification of a controlling party by a subcontractor for certain constructional defects; enacting provisions governing wrap-up insurance policies or consolidated insurance programs covering certain claims for constructional defects; authorizing the parties to a claim for a constructional defect to agree to have a judgment entered before the filing of a civil action under certain circumstances; revising the definition of “constructional defect”; revising provisions governing the information required to be provided in a notice of constructional defect; removing provisions authorizing claimants to give notice of common constructional defects in residences or appurtenances; requiring a claimant to pursue a claim under a homeowner’s warranty under certain circumstances; revising provisions governing the damages recovered by a claimant; revising the statutes of repose regarding actions for damages resulting from certain deficiencies in construction; revising provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; prohibiting a homeowners’ association from pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.



Legislative Counsel's Digest:

Under existing law, before an owner of a residence or appurtenance or certain other persons may commence a civil action against a contractor, subcontractor, supplier or design professional for certain defects in the residence or appurtenance, the claimant must provide notice of the defect to the contractor. Not later than 30 days after the date on which the contractor receives the notice, the contractor must forward a copy of the notice to each subcontractor, supplier or design professional whom the contractor reasonably believes is responsible for a defect specified in the notice. The subcontractor, supplier or design professional who receives the notice must inspect the alleged constructional defect and may elect to repair the defect. (NRS 40.645, 40.646, 40.647)

Section 2 of this bill establishes the circumstances under which a provision in a residential construction contract requiring a subcontractor to indemnify, defend or otherwise hold harmless a controlling party for the negligence or intentional acts or omissions of the controlling party is void and unenforceable. **Section 2** also enacts provisions governing: (1) when a subcontractor's duty to defend a controlling party arises; (2) the manner in which a controlling party may pursue indemnification from a subcontractor when the controlling party is named as an additional insured in the commercial general liability insurance policy of the subcontractor; and (3) wrap-up insurance policies or consolidated insurance programs that cover two or more contractors or subcontractors who perform work on residential construction for risks associated with the construction.

Existing law establishes a procedure by which the parties in a civil action may agree to have a judgment entered in the action in accordance with the terms and conditions of an offer of judgment. A court is prohibited from awarding costs or attorney's fees to a party who rejects such an offer of judgment and fails to obtain a more favorable judgment at trial. (NRS 17.115; N.R.C.P. 68) **Section 3** of this bill establishes a similar procedure under which a person who has given notice of a constructional defect and a contractor, subcontractor, supplier or design professional who has received such a notice may agree to have a judgment entered before a civil action for the constructional defect is commenced.

Section 6 of this bill amends the existing definition of "constructional defect" to provide that a constructional defect is a defect: (1) which presents an unreasonable risk of injury to a person or property; or (2) which is not completed in a good and workmanlike manner and proximately causes physical damage to the residence or appurtenance.

Section 8 of this bill amends the provision of existing law requiring certain information to be included in a notice of constructional defect to require the notice to: (1) state in specific detail, rather than in reasonable detail, each defect, damage and injury to each residence or appurtenance that is subject to the notice; (2) state the exact location of each defect, damage and injury, rather than describe in reasonable detail the location of the defect; and (3) include a statement signed by the owner of the residence or appurtenance in the notice that the owner verifies that each defect, damage and injury exists in the residence or appurtenance.

Sections 5, 8-13 and 22 of this bill remove a provision of existing law which authorizes one notice to be sent concerning similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects.

Section 11 of this bill requires a claimant and an expert who provided an opinion concerning an alleged constructional defect, or a representative of the expert who has knowledge of the alleged defect, to: (1) be present when a contractor, subcontractor, supplier or design professional conducts the required inspection of the alleged defect; and (2) identify the exact location of the alleged defect.



Under existing law, if a residence or appurtenance is covered by a homeowner's warranty that is purchased by or on behalf of the claimant, the claimant must diligently pursue a claim under the contract. (NRS 40.650) Section 14 of this bill: (1) prohibits a claimant from filing a notice of constructional defect or pursuing a claim for a constructional defect unless the claimant has submitted a claim under the homeowner's warranty and the insurer has denied the claim; and (2) provides that a claim for a constructional defect may include only the claims that have been denied under the homeowner's warranty. Section 14 further provides that statutes of limitation or repose are tolled from the time the claimant submits a claim under the homeowner's warranty until 30 days after the insurer denies the claim, in whole or in part.

Section 15 of this bill removes the provision of existing law that provides that a claimant may recover reasonable attorney's fees as part of the claimant's damages in a cause of action for constructional defects. Section 15 also provides that certain costs recoverable as damages must have been incurred for constructional defects proven by the claimant.

Existing law provides that the statutes of limitation and repose applicable to a claim for constructional defects are tolled from the time that a claimant gives notice of a claim for constructional defects until 30 days after the mediation required by existing law is concluded or waived. (NRS 40.695) Section 16 of this bill provides that the period for which the statutes of limitation and repose are tolled may not exceed 1 year. Section 16 further authorizes a court to extend the tolling period if the claimant demonstrates good cause for such an extension.

Existing law generally limits the period in which an action for damages caused by a deficiency in construction of improvements to real property may be commenced after substantial completion of the improvement. These periods of limitation are known as statutes of repose, and the period set forth in each statute of repose during which an action must be commenced is: (1) for a known deficiency, 10 years after substantial completion of the improvement; (2) for a latent deficiency, 8 years after substantial completion of the improvement; and (3) for a patent deficiency, 6 years after substantial completion of the improvement. However, if a deficiency was a result of willful misconduct or was fraudulently concealed, an action may be commenced at any time after substantial completion of the improvement. (NRS 11.202-11.205) Sections 17-19 and 22 of this bill provide that the statute of repose for all actions for damages caused by a deficiency in construction of improvement to real property is 6 years after substantial completion of the improvement. Sections 17-19 and 22 also eliminate existing provisions of law that allow such actions to be commenced within 2 years after the date of an injury which occurs during the final year of the particular period of limitation. Section 21 of this bill: (1) provides that the revised statutes of repose set forth in sections 17-19 apply retroactively under certain circumstances; and (2) establishes a 1-year grace period during which a person may commence an action under the existing statutes of repose, if the action accrued before the effective date of this bill.

Existing law authorizes a homeowners' association to institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community. (NRS 116.3102) In *D.R. Horton, Inc. v. Eighth Judicial District Court*, 125 Nev. 449 (2009), the Nevada Supreme Court held that existing law grants standing to a homeowners' association to pursue constructional defect claims on behalf of units' owners with respect to constructional defects in individual units. Sections 5 and 20 of this bill provide that an association may not pursue a constructional defect claim on behalf of itself or units' owners, unless the claim pertains exclusively to the common elements of the association.



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

1 **Section 1.** Chapter 40 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *In any action or other proceeding involving a*
4 *constructional defect asserted by a claimant and governed by NRS*
5 *40.600 to 40.695, inclusive, and sections 2 and 3 of this act:*

6 *(a) Except as otherwise provided in paragraph (b), any*
7 *provision in a contract entered into on or after the effective date of*
8 *this act for residential construction that requires a subcontractor*
9 *to indemnify, defend or otherwise hold harmless a controlling*
10 *party from any liability, claim, action or cause of action resulting*
11 *from a constructional defect caused by the negligence, whether*
12 *active or passive, or intentional act or omission of the controlling*
13 *party is against public policy and is void and unenforceable.*

14 *(b) Except as otherwise provided in paragraph (c), a provision*
15 *in a contract entered into on or after the effective date of this act*
16 *for residential construction is not against public policy and is not*
17 *void and unenforceable under paragraph (a) to the extent that the*
18 *provision requires a subcontractor to indemnify, defend or*
19 *otherwise hold harmless a controlling party from any liability,*
20 *claim, action or cause of action resulting from a constructional*
21 *defect arising out of, related to or connected with the*
22 *subcontractor's scope of work, negligence, or intentional act or*
23 *omission.*

24 *(c) A provision in a contract entered into on or after the*
25 *effective date of this act for residential construction is against*
26 *public policy and is void and unenforceable under paragraph (a)*
27 *to the extent that it requires a subcontractor to defend, indemnify*
28 *or otherwise hold harmless a controlling party from any liability,*
29 *claim, action or cause of action resulting from a constructional*
30 *defect arising out of, related to or connected with that portion of*
31 *the subcontractor's work which has been altered or modified by*
32 *another trade or the controlling party.*

33 *(d) Except as otherwise provided in paragraph (e), if a*
34 *provision of a contract entered into on or after the effective date of*
35 *this act for residential construction that requires a subcontractor*
36 *to indemnify, defend or otherwise hold harmless a controlling*
37 *party is not against public policy and is not void and*
38 *unenforceable under this subsection, the duty of the subcontractor*
39 *to defend the controlling party arises upon presentment of a notice*
40 *pursuant to subsection 1 of NRS 40.646 containing a particular*
41 *claim, action or cause of action from which it can be reasonably*
42 *inferred that an alleged constructional defect was caused by or*



1 attributable to the subcontractor's work, negligence, or wrongful
2 act or omission.

3 (e) If a controlling party gives a notice to a subcontractor
4 pursuant to NRS 40.646 that contains a claim, action or cause of
5 action from which it can be reasonably inferred that an alleged
6 constructional defect was caused by or attributable to the
7 subcontractor's work, negligence, or wrongful act or omission, the
8 claim, action or cause of action is covered by the subcontractor's
9 commercial general liability policy of insurance issued by an
10 insurer, and the controlling party is named as an additional
11 insured under that policy of insurance:

12 (1) The controlling party, as an additional insured, must
13 pursue available means of recovery of its defense fees and costs
14 under the policy before the controlling party is entitled to pursue a
15 claim against the subcontractor.

16 (2) Upon the final settlement of or issuance of a final
17 judgment in an action involving a claim for a constructional
18 defect, if the insurer has not assumed the controlling party's
19 defense and reimbursed the controlling party for the defense
20 obligation of the subcontractor, or if the defense obligation is not
21 otherwise resolved by the settlement or final judgment, the
22 controlling party has the right to pursue a claim against the
23 subcontractor for reimbursement of that portion of the attorney's
24 fees and costs incurred by the controlling party which are
25 attributable to the claims, actions or causes of action arising out
26 of, related to or connected with the subcontractor's scope of work,
27 negligence, or intentional act or omission.

28 (3) The provisions of subparagraphs (1) and (2) do not
29 prohibit a controlling party from:

30 (I) Following the requirements of NRS 40.600 to 40.695,
31 inclusive, and sections 2 and 3 of this act relating to providing
32 notice of an alleged constructional defect or any other procedures
33 set forth in those provisions; or

34 (II) Filing a third-party complaint against the
35 subcontractor if a claimant commences an action or amends a
36 complaint to add a cause of action for a constructional defect
37 against a controlling party which arises out of, relates to or is
38 otherwise connected with the subcontractor's scope of work,
39 negligence, or wrongful act or omission.

40 2. For any wrap-up insurance policy or other consolidated
41 insurance program that covers a subcontractor who performs
42 work on residential construction for which a contract is entered
43 into on or after the effective date of this act, for claims, actions or
44 causes of action for a constructional defect governed by NRS
45 40.600 to 40.695, inclusive, and sections 2 and 3 of this act:



* A B 1 2 5 R 1 *

1 (a) The controlling party obtaining the wrap-up insurance
2 policy or other consolidated insurance program shall disclose the
3 total amount or method of calculation of any credit or
4 compensation for the premium required from a subcontractor or
5 other participant for that wrap-up insurance policy in the contract
6 documents.

7 (b) Except as otherwise provided in paragraph (c), the contract
8 documents must disclose, if and to the extent known:

- 9 (1) The policy limits;
10 (2) The scope of policy coverage;
11 (3) The policy term;
12 (4) The basis upon which the deductible or occurrence is
13 triggered by the insurer;

14 (5) If the policy covers more than one work of
15 improvement, the number of units, if any, indicated on the
16 application for the insurance policy; and

17 (6) A good faith estimate of the amount of available limits
18 remaining under the policy as of a date indicated in the disclosure
19 obtained from the insurer.

20 (c) The disclosure requirements of subparagraphs (1) to (4),
21 inclusive, of paragraph (b) may be satisfied by providing the
22 participant with a copy of the binder or declaration.

23 (d) The disclosures made pursuant to subparagraphs (5) and
24 (6) of paragraph (b):

25 (1) May be based upon information available at the time
26 the disclosure is made and are not inaccurate or made in bad faith
27 solely because the disclosures do not accurately reflect the actual
28 number of units covered by the policy or the amount of insurance
29 available, if any, when a later claim is made.

30 (2) Are presumptively made in good faith if:

31 (I) The disclosure pursuant to subparagraph (5) of
32 paragraph (b) is the same as that contained in the application to
33 the wrap-up insurance policy insurer; and

34 (II) The disclosure pursuant to subparagraph (6) of
35 paragraph (b) was obtained from the wrap-up insurance policy
36 insurer or broker.

37 ➡ The presumptions stated in subparagraph (2) may be overcome
38 only by a showing that the insurer, broker or controlling party
39 intentionally misrepresented the facts identified in subparagraph
40 (5) or (6) of paragraph (b).

41 (e) Upon the written request of any participant in the wrap-up
42 insurance policy or consolidated insurance program, a copy of the
43 insurance policy must be provided, if available, that shows the
44 coverage terms and items in subparagraphs (1) to (5), inclusive, of
45 paragraph (b). If the policy is not available at the time of the



1 request, a copy of the insurance binder or declaration of coverage
2 may be provided in lieu of the actual policy.

3 (f) Any party receiving a copy of the policy, binder or
4 declaration shall not disclose it to third parties other than the
5 participant's insurance broker or attorney unless required to do so
6 by law. The participant's insurance broker or attorney may not
7 disclose the policy, binder or declaration to any third party unless
8 required to do so by law.

9 (g) If the controlling party obtaining the wrap-up insurance
10 policy or other consolidated insurance program does not disclose
11 the total amount or method of calculation of the premium credit or
12 compensation to be charged to the participant before the time the
13 participant submits its bid, the participant is not legally bound by
14 the bid unless that participant has the right to increase the bid up
15 to the amount equal to the difference between the amount the
16 participant included, if any, for insurance in the original bid and
17 the amount of the actual bid credit required by the controlling
18 party obtaining the wrap-up insurance policy or other
19 consolidated insurance program. This paragraph does not apply if
20 the controlling party obtaining the wrap-up insurance policy or
21 other consolidated insurance program did not require the
22 subcontractor to offset the original bid amount with a deduction
23 for the wrap-up insurance policy or program.

24 (h) The subcontractor's monetary obligation for enrollment in
25 the wrap-up insurance policy or consolidated insurance program
26 ceases upon the subcontractor's satisfaction of its agreed
27 contribution percentage, which may have been paid either as a
28 lump sum or on a pro rata basis throughout the subcontractor's
29 performance of the work.

30 (i) In the event of an occurrence, the dollar amount required
31 to be paid by a subcontractor as a self-insured retention or
32 deductible must not be greater than the amount that the
33 subcontractor would have otherwise been required to pay as a self-
34 insured retention or deductible under a commercial general
35 liability policy of comparable insurance in force during the
36 relevant period for that particular subcontractor and within the
37 specific market at the time the subcontract is entered into.

38 3. As used in this section:

39 (a) "Controlling party" means a person who owns real
40 property involved in residential construction, a contractor or any
41 other person who is to be indemnified by a provision in a contract
42 entered into on or after the effective date of this act for residential
43 construction.



1 (b) "Residential construction" means the construction of a
2 new residence, of an alteration of or addition to an existing
3 residence, or of an appurtenance.

4 (c) "Wrap-up insurance policy" is an insurance policy, or
5 series of policies, written to cover risks associated with the
6 construction, repair or landscaping of a new residence, of an
7 alteration of or addition to an existing residence, or of an
8 appurtenance, and covering two or more of the contractors or
9 subcontractors that work on that construction, repair or
10 landscaping.

11 Sec. 3. 1. At any time after a claimant has given notice
12 pursuant to NRS 40.645 and before the claimant commences an
13 action or amends a complaint to add a cause of action for a
14 constructional defect against a contractor, subcontractor, supplier
15 or design professional, the claimant or any contractor,
16 subcontractor, supplier or design professional who has received
17 notice pursuant to NRS 40.645 or 40.646 may serve upon one or
18 more other parties a written offer to allow judgment to be entered
19 without action in accordance with the terms and conditions of the
20 offer of judgment.

21 2. Except as otherwise provided in subsection 7, if, within 10
22 days after the date of service of an offer of judgment, the party to
23 whom the offer was made serves written notice that the offer is
24 accepted, the party who made the offer or the party who accepted
25 the offer may file the offer, the notice of acceptance and proof of
26 service with the clerk of the district court. Upon receipt by the
27 clerk, the clerk shall enter a judgment according to the terms of
28 the offer. Any judgment entered pursuant to this section shall be
29 deemed a compromise settlement. The judgment, the offer, the
30 notice of acceptance and proof of service, with the judgment
31 endorsed, become the judgment roll.

32 3. If the offer of judgment is not accepted pursuant to
33 subsection 2 within 10 days after the date of service, the offer shall
34 be deemed rejected by the party to whom it was made and
35 withdrawn by the party who made it. The rejection of an offer does
36 not preclude any party from making another offer pursuant to this
37 section. Evidence of a rejected offer is not admissible in any
38 proceeding other than a proceeding to determine costs and fees.

39 4. Except as otherwise provided in this section, if a party who
40 rejects an offer of judgment fails to obtain a more favorable
41 judgment in an action for a constructional defect, the court:

42 (a) May not award to the party any costs or attorney's fees;

43 (b) May not award to the party any interest on the judgment
44 for the period from the date of service of the offer to the date of
45 entry of the judgment;



1 (c) Shall order the party to pay the taxable costs incurred by
2 the party who made the offer; and

3 (d) May order the party to pay to the party who made the offer
4 any or all of the following:

5 (1) A reasonable sum to cover any costs incurred by the
6 party who made the offer for each expert witness whose services
7 were reasonably necessary to prepare for and conduct the trial of
8 the case.

9 (2) Any applicable interest on the judgment for the period
10 from the date of service of the offer to the date of entry of the
11 judgment.

12 (3) Reasonable attorney's fees incurred by the party who
13 made the offer for the period from the date of service of the offer
14 to the date of entry of the judgment. If the attorney of the party
15 who made the offer is collecting a contingent fee, the amount of
16 any attorney's fees awarded to the party pursuant to this
17 subparagraph must be deducted from that contingent fee.

18 5. To determine whether a party who rejected an offer of
19 judgment failed to obtain a more favorable judgment:

20 (a) If the offer provided that the court would award costs, the
21 court must compare the amount of the offer with the principal
22 amount of the judgment, without inclusion of costs.

23 (b) If the offer precluded a separate award of costs, the court
24 must compare the amount of the offer with the sum of:

25 (1) The principal amount of the judgment; and

26 (2) The amount of taxable costs that the claimant who
27 obtained the judgment incurred before the date of service of the
28 offer.

29 6. Multiple parties may make a joint offer of judgment
30 pursuant to this section.

31 7. A party may make to two or more other parties pursuant to
32 this section an apportioned offer of judgment that is conditioned
33 upon acceptance by all the parties to whom the apportioned offer
34 is made. Each party to whom such an offer is made may serve
35 upon the party who made the offer a separate written notice of
36 acceptance of the offer. If any party rejects the apportioned offer:

37 (a) The action must proceed as to all parties to whom the
38 apportioned offer was made, whether or not the other parties
39 accepted or rejected the offer; and

40 (b) The sanctions set forth in subsection 4:

41 (1) Apply to each party who rejected the apportioned offer.

42 (2) Do not apply to any party who accepted the apportioned
43 offer.

44 8. The sanctions set forth in subsection 4 do not apply to:



1 (a) An offer of judgment made to multiple parties who received
2 a notice pursuant to NRS 40.645 or 40.646 unless the same person
3 is authorized to decide whether to settle the claims against all the
4 parties to whom the offer is made and:

5 (1) There is a single common theory of liability against all
6 the parties to whom the offer is made;

7 (2) The liability of one or more of the parties to whom the
8 offer is made is entirely derivative of the liability of the remaining
9 parties to whom the offer is made; or

10 (3) The liability of all the parties to whom the offer is made
11 is entirely derivative of a common act or omission by another
12 person.

13 (b) An offer of judgment made to multiple claimants unless the
14 same person is authorized to decide whether to settle the claims of
15 all the claimants to whom the offer is made and:

16 (1) There is a single common theory of liability claimed by
17 all the claimants to whom the offer is made;

18 (2) The damages claimed by one or more of the claimants
19 to whom the offer is made are entirely derivative of an injury to
20 the remaining claimants to whom the offer is made; or

21 (3) The damages claimed by all the claimants to whom the
22 offer is made are entirely derivative of an injury to another person.

23 Sec. 4. NRS 40.600 is hereby amended to read as follows:

24 40.600 As used in NRS 40.600 to 40.695, inclusive, and
25 sections 2 and 3 of this act, unless the context otherwise requires,
26 the words and terms defined in NRS 40.603 to 40.634, inclusive,
27 have the meanings ascribed to them in those sections.

28 Sec. 5. NRS 40.610 is hereby amended to read as follows:

29 40.610 "Claimant" means:

30 1. An owner of a residence or appurtenance; or

31 2. A representative of a homeowners' association ~~that is~~
32 ~~responsible for a residence or appurtenance and is~~ acting within the
33 scope of the representative's duties pursuant to chapter 116 or 117
34 of NRS. ~~†; or~~

35 ~~3. Each owner of a residence or appurtenance to whom a notice~~
36 ~~applies pursuant to subsection 4 of NRS 40.645.†~~

37 Sec. 6. NRS 40.615 is hereby amended to read as follows:

38 40.615 "Constructional defect" means a defect in the design,
39 construction, manufacture, repair or landscaping of a new residence,
40 of an alteration of or addition to an existing residence, or of an
41 appurtenance and includes, without limitation, the design,
42 construction, manufacture, repair or landscaping of a new residence,
43 of an alteration of or addition to an existing residence, or of an
44 appurtenance:



1 1. Which ~~is done in violation of law, including, without~~
2 ~~limitation, in violation of local codes or ordinances;~~

3 ~~2. Which presents an unreasonable risk of injury to a person~~
4 ~~or property; or~~

5 2. Which is not completed in a good and workmanlike
6 manner and proximately causes physical damage to the residence,
7 an appurtenance or the real property to which the residence or
8 appurtenance is affixed. ~~It~~

9 ~~3. Which is not completed in a good and workmanlike manner~~
10 ~~in accordance with the generally accepted standard of care in the~~
11 ~~industry for that type of design, construction, manufacture, repair or~~
12 ~~landscaping; or~~

13 ~~4. Which presents an unreasonable risk of injury to a person or~~
14 ~~property.~~

15 Sec. 7. NRS 40.635 is hereby amended to read as follows:

16 40.635 NRS 40.600 to 40.695, inclusive ~~it~~, and sections 2
17 and 3 of this act:

18 1. Apply to any claim that arises before, on or after July 1,
19 1995, as the result of a constructional defect, except a claim for
20 personal injury or wrongful death, if the claim is the subject of an
21 action commenced on or after July 1, 1995.

22 2. Prevail over any conflicting law otherwise applicable to the
23 claim or cause of action.

24 3. Do not bar or limit any defense otherwise available, except
25 as otherwise provided in those sections.

26 4. Do not create a new theory upon which liability may be
27 based, except as otherwise provided in those sections.

28 Sec. 8. NRS 40.645 is hereby amended to read as follows:

29 40.645 1. Except as otherwise provided in this section and
30 NRS 40.670, before a claimant commences an action or amends a
31 complaint to add a cause of action for a constructional defect against
32 a contractor, subcontractor, supplier or design professional, the
33 claimant:

34 (a) Must give written notice by certified mail, return receipt
35 requested, to the contractor, at the contractor's address listed in the
36 records of the State Contractors' Board or in the records of the
37 office of the county or city clerk or at the contractor's last known
38 address if the contractor's address is not listed in those records; and

39 (b) May give written notice by certified mail, return receipt
40 requested, to any subcontractor, supplier or design professional
41 known to the claimant who may be responsible for the
42 constructional defect, if the claimant knows that the contractor is no
43 longer licensed in this State or that the contractor no longer acts as a
44 contractor in this State.

45 2. The notice given pursuant to subsection 1 must:



* A B 1 2 5 R 1 *

1 (a) Include a statement that the notice is being given to satisfy
2 the requirements of this section;

3 (b) ~~{Specify in reasonable detail the defects or any damages or~~
4 ~~injuries}~~ **Identify in specific detail each defect, damage and injury**
5 **to each residence or appurtenance that is the subject of the claim {;**
6 ~~and~~ **, including, without limitation, the exact location of each**
7 **such defect, damage and injury;**

8 (c) Describe in reasonable detail the cause of the defects if the
9 cause is known {; and the nature and extent that is known of the
10 damage or injury resulting from the defects {and the location of each
11 defect within each residence or appurtenance to the extent known.

12 ~~— 3. Notice that includes an expert opinion concerning the cause~~
13 ~~of the constructional defects and the nature and extent of the damage~~
14 ~~or injury resulting from the defects which is based on a valid and~~
15 ~~reliable representative sample of the components of the residences~~
16 ~~or appurtenances may be used as notice of the common~~
17 ~~constructional defects within the residences or appurtenances to~~
18 ~~which the expert opinion applies.~~

19 ~~— 4. Except as otherwise provided in subsection 5, one notice~~
20 ~~may be sent relating to all similarly situated owners of residences or~~
21 ~~appurtenances within a single development that allegedly have~~
22 ~~common constructional defects if:~~

23 ~~— (a) An expert opinion is obtained concerning the cause of the~~
24 ~~common constructional defects and the nature and extent of the~~
25 ~~damage or injury resulting from the common constructional defects;~~

26 ~~— (b) That expert opinion concludes that based on a valid and~~
27 ~~reliable representative sample of the components of the residences~~
28 ~~and appurtenances included in the notice, it is the opinion of the~~
29 ~~expert that those similarly situated residences and appurtenances~~
30 ~~may have such common constructional defects; and~~

31 ~~— (c) A copy of the expert opinion is included with the notice.~~

32 ~~— 5. { ; and~~

33 (d) **Include a signed statement, by each named owner of a**
34 **residence or appurtenance in the notice, that each such owner**
35 **verifies that each such defect, damage and injury specified in the**
36 **notice exists in the residence or appurtenance owned by him or**
37 **her. If a notice is sent on behalf of a homeowners' association, the**
38 **statement required by this paragraph must be signed under**
39 **penalty of perjury by a member of the executive board or an**
40 **officer of the homeowners' association.**

41 3. A representative of a homeowners' association may send
42 notice pursuant to this section on behalf of an association {that is
43 responsible for a residence or appurtenance} if the representative is
44 acting within the scope of the representative's duties pursuant to
45 chapter 116 or 117 of NRS.



1 ~~{6-}~~ 4. Notice is not required pursuant to this section before
2 commencing an action if:

3 (a) The contractor, subcontractor, supplier or design professional
4 has filed an action against the claimant; or

5 (b) The claimant has filed a formal complaint with a law
6 enforcement agency against the contractor, subcontractor, supplier
7 or design professional for threatening to commit or committing an
8 act of violence or a criminal offense against the claimant or the
9 property of the claimant.

10 **Sec. 9.** NRS 40.646 is hereby amended to read as follows:

11 40.646 1. Except as otherwise provided in subsection 2, not
12 later than 30 days after the date on which a contractor receives
13 notice of a constructional defect pursuant to NRS 40.645, the
14 contractor shall forward a copy of the notice by certified mail, return
15 receipt requested, to the last known address of each subcontractor,
16 supplier or design professional whom the contractor reasonably
17 believes is responsible for a defect specified in the notice.

18 2. If a contractor does not provide notice as required pursuant
19 to subsection 1, the contractor may not commence an action against
20 the subcontractor, supplier or design professional related to the
21 constructional defect unless the contractor demonstrates that, after
22 making a good faith effort, the contractor was unable to identify the
23 subcontractor, supplier or design professional whom the contractor
24 believes is responsible for the defect within the time provided
25 pursuant to subsection 1.

26 3. ~~{Except as otherwise provided in subsection 4, not}~~ Not later
27 than 30 days after receiving notice from the contractor pursuant to
28 this section, the subcontractor, supplier or design professional shall
29 inspect the alleged constructional defect in accordance with
30 ~~{subsection 1 of}~~ NRS 40.6462 and provide the contractor with a
31 written statement indicating:

32 (a) Whether the subcontractor, supplier or design professional
33 has elected to repair the defect for which the contractor believes the
34 subcontractor, supplier or design professional is responsible; and

35 (b) If the subcontractor, supplier or design professional elects to
36 repair the defect, an estimate of the length of time required for the
37 repair, and at least two proposed dates on and times at which the
38 subcontractor, supplier or design professional is able to begin
39 making the repair.

40 4. ~~{If the notice of a constructional defect forwarded by the~~
41 ~~contractor was given pursuant to subsection 4 of NRS 40.645 and~~
42 ~~the contractor provides a disclosure of the notice of the alleged~~
43 ~~common constructional defects to the unnamed owners to whom the~~
44 ~~notice may apply pursuant to NRS 40.6452;~~



1 —(a) The contractor shall, in addition to the notice provided
2 pursuant to subsection 1, upon receipt of a request for an inspection,
3 forward a copy of the request to or notify each subcontractor,
4 supplier or design professional who may be responsible for the
5 alleged defect of the request not later than 5 working days after
6 receiving such a request; and
7 —(b) Not later than 20 days after receiving notice from the
8 contractor of such a request, the subcontractor, supplier or design
9 professional shall inspect the alleged constructional defect in
10 accordance with subsection 2 of NRS 40.6462 and provide the
11 contractor with a written statement indicating:
12 —(1) Whether the subcontractor, supplier or design
13 professional has elected to repair the defect for which the contractor
14 believes the subcontractor, supplier or design professional is
15 responsible; and
16 —(2) If the subcontractor, supplier or design professional elects
17 to repair the defect, an estimate of the length of time required for the
18 repair, and at least two proposed dates on and times at which the
19 subcontractor, supplier or design professional is able to begin
20 making the repair.
21 —5.† If a subcontractor, supplier or design professional elects to
22 repair the constructional defect, the contractor or claimant may hold
23 the subcontractor liable for any repair which does not eliminate the
24 defect.

25 **Sec. 10.** NRS 40.6462 is hereby amended to read as follows:
26 40.6462 †1. Except as otherwise provided in subsection 2,
27 after† After notice of a constructional defect is given to a contractor
28 pursuant to NRS 40.645, the claimant shall, upon reasonable notice,
29 allow the contractor and each subcontractor, supplier or design
30 professional who may be responsible for the alleged defect
31 reasonable access to the residence or appurtenance that is the subject
32 of the notice to determine the nature and extent of a constructional
33 defect and the nature and extent of repairs that may be necessary. To
34 the extent possible, the persons entitled to inspect shall coordinate
35 and conduct the inspections in a manner which minimizes the
36 inconvenience to the claimant.

37 †2. If notice is given to the contractor pursuant to subsection 4
38 of NRS 40.645, the contractor and each subcontractor, supplier or
39 design professional who may be responsible for the defect do not
40 have the right to inspect the residence or appurtenance of an owner
41 who is not named in the notice unless the owner requests the
42 inspection in the manner set forth in NRS 40.6452. If the owner
43 does not request the inspection, the owner shall be deemed not to
44 have provided notice pursuant to NRS 40.645.†



* A B 1 2 5 R 1 *

1 **Sec. 11.** NRS 40.647 is hereby amended to read as follows:
2 40.647 1. ~~{Except as otherwise provided in NRS 40.6452,~~
3 ~~after}~~ *After* notice of a constructional defect is given pursuant to
4 NRS 40.645, before a claimant may commence an action or amend a
5 complaint to add a cause of action for a constructional defect against
6 a contractor, subcontractor, supplier or design professional, the
7 claimant must:

8 (a) Allow an inspection of the alleged constructional defect to be
9 conducted pursuant to NRS 40.6462; ~~and~~

10 (b) *Be present at an inspection conducted pursuant to NRS*
11 *40.6462 and identify the exact location of each alleged*
12 *constructional defect specified in the notice and, if the notice*
13 *includes an expert opinion concerning the alleged constructional*
14 *defect, the expert, or a representative of the expert who has*
15 *knowledge of the alleged constructional defect, must also be*
16 *present at the inspection and identify the exact location of each*
17 *alleged constructional defect for which the expert provided an*
18 *opinion; and*

19 (c) Allow the contractor, subcontractor, supplier or design
20 professional a reasonable opportunity to repair the constructional
21 defect or cause the defect to be repaired if an election to repair is
22 made pursuant to NRS 40.6472.

23 2. If a claimant commences an action without complying with
24 subsection 1 or NRS 40.645, the court shall:

25 (a) Dismiss the action without prejudice and compel the
26 claimant to comply with those provisions before filing another
27 action; or

28 (b) If dismissal of the action would prevent the claimant from
29 filing another action because the action would be procedurally
30 barred by the statute of limitations or statute of repose, the court
31 shall stay the proceeding pending compliance with those provisions
32 by the claimant.

33 **Sec. 12.** NRS 40.6472 is hereby amended to read as follows:

34 40.6472 1. Except as otherwise provided in NRS ~~{40.6452,}~~
35 40.670 and 40.672, a written response must be sent by certified
36 mail, return receipt requested, to a claimant who gives notice of a
37 constructional defect pursuant to NRS 40.645:

38 (a) By the contractor not later than 90 days after the contractor
39 receives the notice; and

40 (b) If notice was sent to a subcontractor, supplier or design
41 professional, by the subcontractor, supplier or design professional
42 not later than 90 days after the date that the subcontractor, supplier
43 or design professional receives the notice.

44 2. The written response sent pursuant to subsection 1 must
45 respond to each constructional defect in the notice and:



1 (a) Must state whether the contractor, subcontractor, supplier
2 or design professional has elected to repair the defect or cause
3 the defect to be repaired. If an election to repair is included in the
4 response and the repair will cause the claimant to move from the
5 claimant's home during the repair, the election must also include
6 monetary compensation in an amount reasonably necessary for
7 temporary housing or for storage of household items, or for both, if
8 necessary.

9 (b) May include a proposal for monetary compensation, which
10 may include contribution from a subcontractor, supplier or design
11 professional.

12 (c) May disclaim liability for the constructional defect and state
13 the reasons for such a disclaimer.

14 3. If the claimant is a homeowners' association, the association
15 shall send a copy of the response to each member of the association
16 not later than 30 days after receiving the response.

17 4. If the contractor, subcontractor, supplier or design
18 professional has elected not to repair the constructional defect, the
19 claimant or contractor may bring a cause of action for the
20 constructional defect or amend a complaint to add a cause of action
21 for the constructional defect.

22 5. If the contractor, subcontractor, supplier or design
23 professional has elected to repair the constructional defect, the
24 claimant must provide the contractor, subcontractor, supplier or
25 design professional with a reasonable opportunity to repair the
26 constructional defect.

27 **Sec. 13.** NRS 40.648 is hereby amended to read as follows:

28 40.648 1. If the response provided pursuant to NRS 40.6472
29 includes an election to repair the constructional defect:

30 (a) The repairs may be performed by the contractor,
31 subcontractor, supplier or design professional, if such person is
32 properly licensed, bonded and insured to perform the repairs and, if
33 such person is not, the repairs may be performed by another person
34 who meets those qualifications.

35 (b) The repairs must be performed:

36 (1) On reasonable dates and at reasonable times agreed to in
37 advance with the claimant;

38 (2) In compliance with any applicable building code and in a
39 good and workmanlike manner in accordance with the generally
40 accepted standard of care in the industry for that type of repair; and

41 (3) In a manner which will not increase the cost of
42 maintaining the residence or appurtenance than otherwise would
43 have been required if the residence or appurtenance had been
44 constructed without the constructional defect, unless the contractor



* A B 1 2 5 R 1 *

1 and the claimant agree in writing that the contractor will compensate
2 the claimant for the increased cost incurred as a result of the repair.

3 (c) Any part of the residence or appurtenance that is not
4 defective but which must be removed to correct the constructional
5 defect must be replaced.

6 (d) The contractor, subcontractor, supplier or design
7 professional shall prevent, remove and indemnify the claimant
8 against any mechanics' liens and materialmen's liens.

9 2. Unless the claimant and the contractor, subcontractor,
10 supplier or design professional agree to extend the time for repairs,
11 the repairs must be completed:

12 (a) ~~If the notice was sent pursuant to subsection 4 of NRS~~
13 ~~40.645 and there are four or fewer owners named in the notice, for~~
14 ~~the named owners, not later than 105 days after the date on which~~
15 ~~the contractor received the notice.~~

16 ~~(b) If the notice was sent pursuant to subsection 4 of NRS~~
17 ~~40.645 and there are five or more owners named in the notice, for~~
18 ~~the named owners, not later than 150 days after the date on which~~
19 ~~the contractor received the notice.~~

20 ~~(c) If the notice was sent pursuant to subsection 4 of NRS~~
21 ~~40.645, not later than 105 days after the date on which the~~
22 ~~contractor provides a disclosure of the notice to the unnamed~~
23 ~~owners to whom the notice applies pursuant to NRS 40.6452.~~

24 ~~(d) If the notice was not sent pursuant to subsection 4 of~~
25 ~~NRS 40.645:~~

26 ~~(1) Not later than 105 days after the date on which the~~
27 ~~notice of the constructional defect was received by the contractor,~~
28 ~~subcontractor, supplier or design professional if the notice of a~~
29 ~~constructional defect was received from four or fewer owners; or~~

30 ~~(2) (b) Not later than 150 days after the date on which the~~
31 ~~notice of the constructional defect was received by the contractor,~~
32 ~~subcontractor, supplier or design professional if the notice was~~
33 ~~received from five or more owners or from a representative of a~~
34 ~~homeowners' association.~~

35 3. If repairs reasonably cannot be completed within the time set
36 forth in subsection 2, the claimant and the contractor, subcontractor,
37 supplier or design professional shall agree to a reasonable time
38 within which to complete the repair. If the claimant and contractor,
39 subcontractor, supplier or design professional cannot agree on such
40 a time, any of them may petition the court to establish a reasonable
41 time for completing the repair.

42 4. Any election to repair made pursuant to NRS 40.6472 may
43 not be made conditional upon a release of liability.

44 5. Not later than 30 days after the repairs are completed, the
45 contractor, subcontractor, supplier or design professional who



1 repaired or caused the repair of a constructional defect shall provide
2 the claimant with a written statement describing the nature and
3 extent of the repair, the method used to repair the constructional
4 defect and the extent of any materials or parts that were replaced
5 during the repair.

6 **Sec. 14.** NRS 40.650 is hereby amended to read as follows:

7 40.650 1. If a claimant unreasonably rejects a reasonable
8 written offer of settlement made as part of a response pursuant to
9 paragraph (b) of subsection 2 of NRS 40.6472 and thereafter
10 commences an action governed by NRS 40.600 to 40.695, inclusive,
11 *and sections 2 and 3 of this act*, the court in which the action is
12 commenced may:

13 (a) Deny the claimant's attorney's fees and costs; and

14 (b) Award attorney's fees and costs to the contractor.

15 ➤ Any sums paid under a homeowner's warranty, other than sums
16 paid in satisfaction of claims that are collateral to any coverage
17 issued to or by the contractor, must be deducted from any recovery.

18 2. If a contractor, subcontractor, supplier or design professional
19 fails to:

20 (a) Comply with the provisions of NRS 40.6472;

21 (b) Make an offer of settlement;

22 (c) Make a good faith response to the claim asserting no
23 liability;

24 (d) Agree to a mediator or accept the appointment of a mediator
25 pursuant to NRS 40.680; or

26 (e) Participate in mediation,

27 ➤ the limitations on damages and defenses to liability provided in
28 NRS 40.600 to 40.695, inclusive, *and sections 2 and 3 of this act*
29 do not apply and the claimant may commence an action or amend a
30 complaint to add a cause of action for a constructional defect
31 without satisfying any other requirement of NRS 40.600 to 40.695,
32 inclusive ~~††~~, *and sections 2 and 3 of this act*.

33 3. If a residence or appurtenance that is the subject of the claim
34 is covered by a homeowner's warranty that is purchased by or on
35 behalf of a claimant pursuant to NRS 690B.100 to 690B.180,
36 inclusive ~~†, a claimant shall diligently pursue a claim under the~~
37 ~~contract.†~~:

38 (a) *A claimant may not send a notice pursuant to NRS 40.645*
39 *or pursue a claim pursuant to NRS 40.600 to 40.695, inclusive,*
40 *and sections 2 and 3 of this act unless the claimant has first*
41 *submitted a claim under the homeowner's warranty and the*
42 *insurer has denied the claim.*

43 (b) *A claimant may include in a notice given pursuant to NRS*
44 *40.645 only claims for the constructional defects that were denied*
45 *by the insurer.*



* A B 1 2 5 R 1 *

1 (c) If coverage under a homeowner's warranty is denied by an
2 insurer in bad faith, the homeowner and the contractor,
3 subcontractor, supplier or design professional have a right of action
4 for the sums that would have been paid if coverage had been
5 provided, plus reasonable attorney's fees and costs.

6 (d) *Statutes of limitation or repose applicable to a claim based*
7 *on a constructional defect governed by NRS 40.600 to 40.695,*
8 *inclusive, and sections 2 and 3 of this act are tolled from the time*
9 *notice of the claim under the homeowner's warranty is submitted*
10 *to the insurer until 30 days after the insurer rejects the claim, in*
11 *whole or in part, in writing.*

12 4. Nothing in this section prohibits an offer of judgment
13 pursuant to Rule 68 of the Nevada Rules of Civil Procedure or NRS
14 17.115 ~~if the offer of judgment includes all damages to which the~~
15 ~~claimant is entitled pursuant to NRS 40.655.~~ *or section 3 of this*
16 *act.*

17 **Sec. 15.** NRS 40.655 is hereby amended to read as follows:

18 40.655 1. Except as otherwise provided in NRS 40.650, in a
19 claim governed by NRS 40.600 to 40.695, inclusive, *and sections 2*
20 *and 3 of this act*, the claimant may recover only the following
21 damages to the extent proximately caused by a constructional
22 defect:

23 (a) ~~Any reasonable attorney's fees;~~

24 ~~—(b)—~~ The reasonable cost of any repairs already made that were
25 necessary and of any repairs yet to be made that are necessary to
26 cure any constructional defect that the contractor failed to cure and
27 the reasonable expenses of temporary housing reasonably necessary
28 during the repair;

29 ~~—(c)—~~ (b) The reduction in market value of the residence or
30 accessory structure, if any, to the extent the reduction is because of
31 structural failure;

32 ~~—(d)—~~ (c) The loss of the use of all or any part of the residence;

33 ~~—(e)—~~ (d) The reasonable value of any other property damaged
34 by the constructional defect;

35 ~~—(f)—~~ (e) Any additional costs reasonably incurred by the
36 claimant ~~for constructional defects proven by the claimant,~~
37 including, but not limited to, any costs and fees incurred for the
38 retention of experts to:

39 (1) Ascertain the nature and extent of the constructional
40 defects;

41 (2) Evaluate appropriate corrective measures to estimate the
42 value of loss of use; and

43 (3) Estimate the value of loss of use, the cost of temporary
44 housing and the reduction of market value of the residence; and

45 ~~—(g)—~~ (f) Any interest provided by statute.



* A B 1 2 5 R 1 *

1 2. ~~{The amount of any attorney's fees awarded pursuant to this~~
2 ~~section must be approved by the court.~~

3 ~~—3.—~~ If a contractor complies with the provisions of NRS 40.600
4 to 40.695, inclusive, *and sections 2 and 3 of this act*, the claimant
5 may not recover from the contractor, as a result of the constructional
6 defect, ~~{anything}~~ *any damages* other than ~~{that which is provided}~~
7 *damages authorized* pursuant to NRS 40.600 to 40.695, inclusive ~~{~~
8 ~~—4.—~~, *and sections 2 and 3 of this act.*

9 3. This section must not be construed as impairing any
10 contractual rights between a contractor and a subcontractor, supplier
11 or design professional.

12 ~~{5.—}~~ 4. As used in this section, "structural failure" means
13 physical damage to the load-bearing portion of a residence or
14 appurtenance caused by a failure of the load-bearing portion of the
15 residence or appurtenance.

16 **Sec. 16.** NRS 40.695 is hereby amended to read as follows:

17 40.695 1. Except as otherwise provided in ~~{subsection}~~
18 *subsections 2 ~~{~~ and 3*, statutes of limitation or repose applicable to
19 a claim based on a constructional defect governed by NRS 40.600 to
20 40.695, inclusive, *and sections 2 and 3 of this act* are tolled from
21 the time notice of the claim is given, until ~~{30}~~ *the earlier of:*

22 (a) *One year after notice of the claim is given; or*

23 (b) *Thirty days after mediation is concluded or waived in*
24 *writing pursuant to NRS 40.680.*

25 2. *Statutes of limitation and repose may be tolled under this*
26 *section for a period longer than 1 year after notice of the claim is*
27 *given only if, in an action for a constructional defect brought by a*
28 *claimant after the applicable statute of limitation or repose has*
29 *expired, the claimant demonstrates to the satisfaction of the court*
30 *that good cause exists to toll the statutes of limitation and repose*
31 *under this section for a longer period.*

32 3. Tolling under this section applies to a third party regardless
33 of whether the party is required to appear in the proceeding.

34 **Sec. 17.** NRS 11.202 is hereby amended to read as follows:

35 11.202 1. ~~{A.}~~ *No* action may be commenced against the
36 owner, occupier or any person performing or furnishing the design,
37 planning, supervision or observation of construction, or the
38 construction of an improvement to real property ~~{at any time}~~ *more*
39 *than 6 years* after the substantial completion of such an
40 improvement, for the recovery of damages for:

41 (a) Any deficiency in the design, planning, supervision or
42 observation of construction or the construction of such an
43 improvement; ~~{which is the result of his or her willful misconduct~~
44 ~~or which he or she fraudulently concealed;}~~



* A B 1 2 5 R 1 *

- 1 (b) Injury to real or personal property caused by any such
2 deficiency; or
3 (c) Injury to or the wrongful death of a person caused by any
4 such deficiency.
5 2. The provisions of this section do not apply ~~to~~ :
6 (a) *To a claim for indemnity or contribution.*
7 (b) *In an action brought against:*
8 ~~the~~ (1) The owner or keeper of any hotel, inn, motel, motor
9 court, boardinghouse or lodging house in this State on account of his
10 or her liability as an innkeeper.
11 ~~the~~ (2) Any person on account of a defect in a product.
12 **Sec. 18.** NRS 11.2055 is hereby amended to read as follows:
13 11.2055 1. Except as otherwise provided in subsection 2, for
14 the purposes of *this section and* NRS 11.202 , ~~to 11.206,~~
15 ~~inclusive,~~ the date of substantial completion of an improvement to
16 real property shall be deemed to be the date on which:
17 (a) The final building inspection of the improvement is
18 conducted;
19 (b) A notice of completion is issued for the improvement; or
20 (c) A certificate of occupancy is issued for the improvement,
21 ~~whichever occurs later.~~
22 2. If none of the events described in subsection 1 occurs, the
23 date of substantial completion of an improvement to real property
24 must be determined by the rules of the common law.
25 **Sec. 19.** NRS 113.135 is hereby amended to read as follows:
26 113.135 1. Upon signing a sales agreement with the initial
27 purchaser of residential property that was not occupied by the
28 purchaser for more than 120 days after substantial completion of the
29 construction of the residential property, the seller shall:
30 (a) Provide to the initial purchaser a copy of NRS 11.202 ~~to~~
31 ~~11.206, inclusive,~~ , 11.2055 and 40.600 to 40.695, inclusive ~~to~~ ,
32 *and sections 2 and 3 of this act;*
33 (b) Notify the initial purchaser of any soil report prepared for the
34 residential property or for the subdivision in which the residential
35 property is located; and
36 (c) If requested in writing by the initial purchaser not later than
37 5 days after signing the sales agreement, provide to the purchaser
38 without cost each report described in paragraph (b) not later than 5
39 days after the seller receives the written request.
40 2. Not later than 20 days after receipt of all reports pursuant to
41 paragraph (c) of subsection 1, the initial purchaser may rescind the
42 sales agreement.
43 3. The initial purchaser may waive his or her right to rescind
44 the sales agreement pursuant to subsection 2. Such a waiver is



* A B 1 2 5 R 1 *

1 effective only if it is made in a written document that is signed by
2 the purchaser.

3 **Sec. 20.** NRS 116.3102 is hereby amended to read as follows:

4 116.3102 1. Except as otherwise provided in this chapter, and
5 subject to the provisions of the declaration, the association:

6 (a) Shall adopt and, except as otherwise provided in the bylaws,
7 may amend bylaws and may adopt and amend rules and regulations.

8 (b) Shall adopt and may amend budgets in accordance with the
9 requirements set forth in NRS 116.31151, may collect assessments
10 for common expenses from the units' owners and may invest funds
11 of the association in accordance with the requirements set forth in
12 NRS 116.311395.

13 (c) May hire and discharge managing agents and other
14 employees, agents and independent contractors.

15 (d) May institute, defend or intervene in litigation or in
16 arbitration, mediation or administrative proceedings in its own name
17 on behalf of itself or two or more units' owners on matters affecting
18 the common-interest community. *The association may not institute,*
19 *defend or intervene in litigation or in arbitration, mediation or*
20 *administrative proceedings in its own name on behalf of itself or*
21 *units' owners with respect to an action for a constructional defect*
22 *pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3*
23 *of this act unless the action pertains exclusively to common*
24 *elements.*

25 (e) May make contracts and incur liabilities. Any contract
26 between the association and a private entity for the furnishing of
27 goods or services must not include a provision granting the private
28 entity the right of first refusal with respect to extension or renewal
29 of the contract.

30 (f) May regulate the use, maintenance, repair, replacement and
31 modification of common elements.

32 (g) May cause additional improvements to be made as a part of
33 the common elements.

34 (h) May acquire, hold, encumber and convey in its own name
35 any right, title or interest to real estate or personal property, but:

36 (1) Common elements in a condominium or planned
37 community may be conveyed or subjected to a security interest only
38 pursuant to NRS 116.3112; and

39 (2) Part of a cooperative may be conveyed, or all or part of a
40 cooperative may be subjected to a security interest, only pursuant to
41 NRS 116.3112.

42 (i) May grant easements, leases, licenses and concessions
43 through or over the common elements.

44 (j) May impose and receive any payments, fees or charges for
45 the use, rental or operation of the common elements, other than



1 limited common elements described in subsections 2 and 4 of
2 NRS 116.2102, and for services provided to the units' owners,
3 including, without limitation, any services provided pursuant to
4 NRS 116.310312.

5 (k) May impose charges for late payment of assessments
6 pursuant to NRS 116.3115.

7 (l) May impose construction penalties when authorized pursuant
8 to NRS 116.310305.

9 (m) May impose reasonable fines for violations of the governing
10 documents of the association only if the association complies with
11 the requirements set forth in NRS 116.31031.

12 (n) May impose reasonable charges for the preparation and
13 recordation of any amendments to the declaration or any statements
14 of unpaid assessments, and impose reasonable fees, not to exceed
15 the amounts authorized by NRS 116.4109, for preparing and
16 furnishing the documents and certificate required by that section.

17 (o) May provide for the indemnification of its officers and
18 executive board and maintain directors and officers liability
19 insurance.

20 (p) May assign its right to future income, including the right to
21 receive assessments for common expenses, but only to the extent the
22 declaration expressly so provides.

23 (q) May exercise any other powers conferred by the declaration
24 or bylaws.

25 (r) May exercise all other powers that may be exercised in this
26 State by legal entities of the same type as the association.

27 (s) May direct the removal of vehicles improperly parked on
28 property owned or leased by the association, as authorized pursuant
29 to NRS 487.038, or improperly parked on any road, street, alley or
30 other thoroughfare within the common-interest community in
31 violation of the governing documents. In addition to complying with
32 the requirements of NRS 487.038 and any requirements in the
33 governing documents, if a vehicle is improperly parked as described
34 in this paragraph, the association must post written notice in a
35 conspicuous place on the vehicle or provide oral or written notice to
36 the owner or operator of the vehicle at least 48 hours before the
37 association may direct the removal of the vehicle, unless the vehicle:

38 (1) Is blocking a fire hydrant, fire lane or parking space
39 designated for the handicapped; or

40 (2) Poses an imminent threat of causing a substantial adverse
41 effect on the health, safety or welfare of the units' owners or
42 residents of the common-interest community.

43 (t) May exercise any other powers necessary and proper for the
44 governance and operation of the association.



* A B 1 2 5 R 1 *

1 2. The declaration may not limit the power of the association to
2 deal with the declarant if the limit is more restrictive than the limit
3 imposed on the power of the association to deal with other persons.

4 3. The executive board may determine whether to take
5 enforcement action by exercising the association's power to impose
6 sanctions or commence an action for a violation of the declaration,
7 bylaws or rules, including whether to compromise any claim for
8 unpaid assessments or other claim made by or against it. The
9 executive board does not have a duty to take enforcement action if it
10 determines that, under the facts and circumstances presented:

11 (a) The association's legal position does not justify taking any or
12 further enforcement action;

13 (b) The covenant, restriction or rule being enforced is, or is
14 likely to be construed as, inconsistent with current law;

15 (c) Although a violation may exist or may have occurred, it is
16 not so material as to be objectionable to a reasonable person or to
17 justify expending the association's resources; or

18 (d) It is not in the association's best interests to pursue an
19 enforcement action.

20 4. The executive board's decision under subsection 3 not to
21 pursue enforcement under one set of circumstances does not prevent
22 the executive board from taking enforcement action under another
23 set of circumstances, but the executive board may not be arbitrary or
24 capricious in taking enforcement action.

25 5. Notwithstanding any provision of this chapter or the
26 governing documents to the contrary, an association may not impose
27 any assessment pursuant to this chapter or the governing documents
28 on the owner of any property in the common-interest community
29 that is exempt from taxation pursuant to NRS 361.125. For the
30 purposes of this subsection, "assessment" does not include any
31 charge for any utility services, including, without limitation,
32 telecommunications, broadband communications, cable television,
33 electricity, natural gas, sewer services, garbage collection, water or
34 for any other service which is delivered to and used or consumed
35 directly by the property in the common-interest community that is
36 exempt from taxation pursuant to NRS 361.125.

37 **Sec. 21.** 1. Section 2 of this act applies only to residential
38 construction for which a contract is entered into on or after the
39 effective date of this act.

40 2. The provisions of NRS 40.615 and 40.655, as amended by
41 sections 6 and 15 of this act, apply to any claim that arises on or
42 after the effective date of this act.

43 3. The provisions of NRS 40.645, 40.650 and 40.695, as
44 amended by sections 8, 14 and 16 of this act, apply to a notice of a
45 constructional defect given on or after the effective date of this act.



1 4. The provisions of NRS 40.647, as amended by section 11 of
2 this act, apply only to an inspection conducted pursuant to NRS
3 40.6462, as amended by section 10 of this act, on or after the
4 effective date of this act.

5 5. Except as otherwise provided in subsection 6, the period of
6 limitations on actions set forth in NRS 11.202, as amended by
7 section 17 of this act, applies retroactively to actions in which the
8 substantial completion of the improvement to the real property
9 occurred before the effective date of this act.

10 6. The provisions of subsection 5 do not limit an action:

11 (a) That accrued before the effective date of this act, and was
12 commenced within 1 year after the effective date of this act; or

13 (b) If doing so would constitute an impairment of the obligation
14 of contracts under the Constitution of the United States or the
15 Constitution of the State of Nevada.

16 7. The provisions of NRS 116.3102, as amended by section 20
17 of this act, do not apply if a unit-owners' association has given
18 notice of a constructional defect pursuant to NRS 40.600 to 40.695,
19 inclusive, and sections 2 and 3 of this act on or before the effective
20 date of this act.

21 8. As used in this section:

22 (a) "Residential construction" means the construction of a new
23 residence, of an alteration of or addition to an existing residence, or
24 of an appurtenance.

25 (b) "Unit-owners' association" has the meaning ascribed to it in
26 NRS 116.011.

27 **Sec. 22.** NRS 11.203, 11.204, 11.205, 11.206 and 40.6452 are
28 hereby repealed.

29 **Sec. 23.** This act becomes effective upon passage and
30 approval.

LEADLINES OF REPEALED SECTIONS

**11.203 Actions for damages for injury or wrongful death
caused by deficiency in construction of improvements to real
property: Known deficiencies.**

**11.204 Actions for damages for injury or wrongful death
caused by deficiency in construction of improvements to real
property: Latent deficiencies.**

**11.205 Actions for damages for injury or wrongful death
caused by deficiency in construction of improvements to real
property: Patent deficiencies.**



* A B 1 2 5 R 1 *

11.206 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Limitation of actions not a defense in actions based on liability as innkeeper or for defect in product.

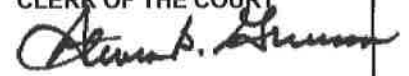
40.6452 Common constructional defects within single development: Response to notice of defect by contractor; disclosure to unnamed owners; effect of contractor failing to provide disclosure to unnamed owners.

③



Exhibit “5”

Exhibit “5”



1 FFCO

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 LAURENT HALLIER, an individual;
7 PANORAMA TOWERS I, LLC, a Nevada
8 limited liability company; PANORAMA
9 TOWERS I MESS, LLC, a Nevada limited
10 liability company; and M.J. DEAN
11 CONSTRUCTION, INC., a Nevada
12 corporation,

13 Plaintiffs,

14 Vs.

15 PANORAMA TOWERS
16 CONDOMINIUM UNIT OWNERS'
17 ASSOCIATION, a Nevada non-profit
18 corporation.

19 Defendant.

20 PANORAMA TOWERS
21 CONDOMINIUM UNIT OWNERS'
22 ASSOCIATION, a Nevada non-profit
23 corporation,

24 Counter-Claimant,

25 Vs.

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

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

1 PANORAMA TOWERS
2 CONDOMINIUM UNIT OWNERS'
3 ASSOCIATION, a Nevada non-profit
4 corporation,

5 Third-Party Plaintiff,

6 Vs.

7 SIERRA GLASS & MIRROR, INC.; F.
8 ROGERS CORPORATION; DEAN
9 ROOFING COMPANY; FORD
10 CONSTRUCTING, INC.; INSULPRO,
11 INC.; XTREME EXCAVATION;
12 SOUTHERN NEVADA PAVING, INC.;
13 FLIPPINS TRENCHING, INC.;
14 BOMBARD MECHANICAL, LLC; R.
15 RODGERS CORPORATION; FIVE
16 STAR PLUMBING & HEATING, LLC
17 dba SILVER STAR PLUMBING; and
18 ROES 1 through 1000, inclusive,

19 Third-Party Defendants.¹

20 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

21 This matter, concerning Plaintiffs'/Counter-Defendants' Motion for Summary Judgment on
22 Defendants'/Counter-Claimants' Counter-Claim, and Motion for Partial Summary Judgment on the
23 Third-Claim for Relief contained in Plaintiffs'/Counter-Defendants' Complaint for Declaratory
24 Relief filed March 20, 2017, came on for hearing on the 20th day of June 2017 at the hour of 10:30
25 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada,
26 with JUDGE SUSAN H. JOHNSON presiding; Plaintiffs/Counter-Defendants appeared by and
27 through their attorneys, PETER C. BROWN, ESQ. and JEFFREY W. SAAB, ESQ. of the law firm,
28 BREMER WHYTE BROWN & O'MEARA; and Defendants/Counter-Claimants/Third-Party
Plaintiffs appeared by and through their attorneys, SERGIO SALZANO, ESQ., CHARLES "DEE"

¹ As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

HOPPER, ESQ. and FRANCIS I. LYNCH, ESQ. of the law firm, LYNCH HOPPER. Having reviewed the papers and pleadings on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. This case arises as a result of alleged constructional defects within both the common areas and the 616 residential condominium units located within two tower structures of the PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada.²

2. On February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION served its NRS 40.645 Notice of Constructional Defects upon Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), identifying the following deficiencies:

1. ***Residential tower windows***—There are two tower structures in the Development, consisting of 616 residential condominium units located above common areas and retails (sic) 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 into 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.

...

²According to Plaintiffs, 4525 Dean Martin Drive or "Tower I" consists of 33 floors, 308 units, 10 townhomes, 6 lofts, retail space, pool and a 5-level parking garage. 4575 Dean Martin Drive or "Tower II" has 34 floors, 308 units, 10 townhomes, 6 lofts, retail space, pool and a 5-level parking garage. See Plaintiffs'/Counter-Defendants' Motion for Summary Judgment on Defendant's/Counter-Claimant's Counter-Claim, and their Motion for Partial Summary Judgment on Third-Claim for Relief within the Complaint for Declaratory Relief filed March 20, 2017, p. 7.

1 2. **Residential tower fire blocking**—The plans called for fire blocking insulation, as
2 required by the building code, in the ledger shelf cavities and steel stud framing cavities at
3 the exterior wall locations between residential floors in the two tower structures. ... The
4 purpose of this insulation is to deter the spread of fire from one tower unit to the units above
5 or below. However, the insulation was not installed as required by the plans and building
6 code.

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

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

12 3. **Mechanical room piping**—The piping in the two lower and two upper mechanical
13 rooms in the two tower structures has sustained corrosion damage as described in the
14 attached ATMG report dated November 17, 2011. ...

15 4. **Sewer problem**—The main sewer line connecting the Development to the city sewer
16 system ruptured due to installation error during construction, causing physical damage to
17 adjacent common areas. This deficiency has been repaired. In addition to causing damage,
18 the defective installation presented an unreasonable risk of injury to a person or property
19 resulting from the disbursement of unsanitary matter.³

20 3. The Contractors elected to inspect the constructional defects identified within the
21 Association's NRS 40.645 Notice on March 24, 2016.⁴ During the inspection, the Contractors
22 observed windows located in Unit 300 had been already been removed and replaced. Likewise,
23 prior to the Contractors' inspection, the majority of the alleged corroded mechanical room piping, as
24 well as the averred defective sewer piping had also been removed, replaced and/or repaired. The
25 Contractors were not provided notice of the removal or replacement of the alleged constructional
26 defective windows in Unit 300 or the deficient piping in the mechanical room prior to the March 24,
27 2016 inspection.

28 ...

³See Exhibit 1 attached to Plaintiffs'/Counter-Defendants Motion for Summary Judgment on
Defendant's/Counter-Claimant's Counter-Claim, and Motion for Partial Summary Judgment on the Third Claim for
Relief of the Complaint for Declaratory Relief filed March 20, 2017.

⁴This Court understands neither the Association's representative nor its experts attended this inspection.

1 4. On March 29, 2016, the Contractors' lawyer sent a letter to the attorneys for the
2 Association, requesting "information regarding the alleged sewer line, including the date of
3 occurrence and the date of repair. ...In addition, please confirm the current location of any sewer
4 line materials that were removed and replaced as part of the repair." Further, counsel requested "the
5 date(s) when that work [in replacing the pipes in the mechanical room] was done and the identity of
6 the contractor(s). Please also confirm whether and where the removed pipes have been stored for
7 safekeeping."⁵ As there was no response from the Owners' Association to the March 29, 2016
8 correspondence, the Contractors' attorney followed-up with another letter sent a month later, April
9 29, 2016.⁶ However, there was also no response to the April 29, 2016 letter.

11 5. The Contractors thereafter responded to the Association's NRS 40.645 notice, and the
12 parties subsequently engaged in the NRS 40.680 pre-litigation mediation with no success on
13 September 26, 2016.

14 6. Contractors filed their Complaint on September 28, 2016 against the Owners'
15 Association, asserting the following claims:

- 17 1. Declaratory Relief—Application of AB 125;
- 18 2. Declaratory Relief—Claim Preclusion;
- 19 3. Failure to Comply with NRS 40.600, *et seq.*;
- 20 4. Suppression of Evidence/Spoliation;
- 21 5. Breach of Contract (Settlement Agreement in Prior Litigation);
- 22 6. Declaratory Relief—Duty to Defend; and
- 23 7. Declaratory Relief—Duty to Indemnify.

24
25
26 ⁵See Exhibit 2 attached to Plaintiffs'/Counter-Defendants Motion for Summary Judgment on
27 Defendant's/Counter-Claimant's Counter-Claim, and Motion for Partial Summary Judgment on the Third Claim for
28 Relief of the Complaint for Declaratory Relief.

⁶See Exhibit 3 attached to Plaintiffs'/Counter-Defendants Motion for Summary Judgment on
Defendant's/Counter-Claimant's Counter-Claim, and Motion for Partial Summary Judgment on the Third Claim for
Relief of the Complaint for Declaratory Relief.

1 7. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT OWNERS'
2 ASSOCIATION filed its Answer and Counter-Claim, alleging the following claims:

3 1. Breach of NRS 116.4113 and 116.4114 Express and Implied Warranties; as
4 well as those of Habitability, Fitness, Quality and Workmanship;

5 2. Negligence and Negligence *Per Se*;

6 3. Products Liability (against the manufacturers);

7 4. Breach of (Sales) Contract;

8 5. Intentional/Negligent Disclosure; and

9 6. Duty of Good Faith and Fair Dealing; Violation of NRS 116.1113.

10 8. The Contractors now move this Court for summary judgment, or dismissal of the
11 Counter-Claim upon the bases:

12 (1) the Association failed to comply with NRS 40.645(2)(b) by not

13 (a) listing each defect in *specific* detail,

14 (b) describing in reasonable detail the nature and extent that is known of the damage
15 or injury resulting from the defects,

16 (c) providing verification from each owner the defect exists in his unit, and

17 (d) arranging for its representative and expert to be present at the inspection; and

18 (2) the Owners' Association failed to provide notice of defects prior to performing repairs.

19 In this regard, the Contractors also seek partial summary judgment with respect to the Third Claim
20 for Relief contained in their Complaint.

21 9. The Owners' Association opposes, arguing its NRS 40.645 notice is presumed to be
22 valid, and further, the notice statutes are meant to require substantial as opposed to technical or strict
23 compliance. Further, the Contractors' interpretation of AB 125 is not reasonable, leads to absurd
24 results and violates due process. Notwithstanding these arguments, if this Court found the notice to

1 be deficient, the appropriate remedy would be to stay the case and provide curative instructions, as
2 opposed to dismissal of the Counter-Claim. *See* NRS 40.647(2)(b).

3 CONCLUSIONS OF LAW

4 1. Summary judgment is appropriate and "shall be rendered forthwith" when the
5 pleadings and other evidence on file demonstrates no "genuine issue as to any material fact
6 [remains] and that the moving party is entitled to a judgment as a matter of law." *See* NRCP 56(c);
7 Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026 (2005). The substantive law controls
8 which factual disputes are material and will preclude summary judgment; other factual disputes are
9 irrelevant. *Id.*, 121 Nev. at 731. A factual dispute is genuine when the evidence is such that a
10 rational trier of fact could return a verdict for the non-moving party. *Id.*

11 2. While the pleadings and other proof must be construed in a light most favorable to
12 the non-moving party, that party bears the burden "to do more than simply show that there is some
13 metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in
14 the moving party's favor. Matsushita Electric Industrial Co. v. Zenith Radio, 475, 574, 586 (1986),
15 cited by Wood, 121 Nev. at 732. The non-moving party "must, by affidavit or otherwise, set forth
16 specific facts demonstrating the evidence of a genuine issue for trial or have summary judgment
17 entered against him." Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992),
18 cited by Wood, 121 Nev. at 732. The non-moving party "is not entitled to build a case on the
19 gossamer threads of whimsy, speculation, and conjecture." Bulbman, 108 Nev. at 110, 825 P.2d
20 591, quoting Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

21 Sufficiency of the NRS 40.645 Notice and Adherence to NRS Chapter 40 Process

22 3. There is no question the provisions of NRS 40.600 to 40.695 were enacted by the
23 Nevada Legislature with the intent to provide contractors an opportunity to repair constructional
24 defects and avoid litigation. *See* D.R. Horton, Inc. v. District Court, 123 Nev. 468, 476, 168 P.3d
25

1 731 (2007).⁷ To ensure contractors were given an opportunity to repair, the Nevada Legislature
2 required a homeowner or claimant to give the contractor notice of constructional defects initially in
3 “reasonable detail,”⁸ and based upon that notice, allow the contractor time and opportunity to inspect
4 and make repairs when a deficiency was verified.⁹ A claimant’s failure to comply with those
5 requirements before filing a constructional defect action results in the dismissal or postponement of
6 that action until those mandates are complied.¹⁰

7
8 4. In 2015, approximately one year before PANORAMA TOWERS CONDOMINIUM
9 UNIT OWNERS’ ASSOCIATION served its notice of constructional deficiencies in this case, the
10 Nevada Legislature made sweeping revisions to the state’s laws relating to constructional defects
11 with the enactment of Assembly Bill (AB) 125. Of significance here, AB 125 amended provisions
12 governing the information required to be provided within a notice of constructional defects. It
13 revised the statutes of repose regarding actions for damages resulting from certain deficiencies in
14 construction. Further, it prohibited a homeowners’ association from pursuing an action for
15 constructional defects unless the litigation pertained exclusively to the association’s common
16 elements.
17

18 5. As alluded to above, NRS 40.645(2), as revised in AB 125, sets forth more stringent
19 requirements for the constructional defect notice than what was in place prior to February 25, 2015.
20 It now provides:
21

22 The notice given pursuant to [NRS 40.645(1)] must:

23 (a) Include a statement that the notice is being given to satisfy the
24 requirements of this section;

25 (b) Identify in *specific* detail each defect, damage and injury to each
26 residence or appurtenance that is the subject of the claim including, without

27 ⁷This case is commonly referred to as “*First Light I*” by practicing lawyers and judges.

28 ⁸See NRS 40.645 in effect prior to February 25, 2015. Assembly Bill (AB) 125, which became effective on
February 25, 2015, resulted in a change to NRS 40.645(2) to require “specificity” or “specific detail.”

⁹See NRS 40.647(1).

¹⁰See NRS 40.647(2).

limitation, the exact location of each such defect, damage and injury;

(c) Describe in reasonable detail the cause of the defects if the cause is known and the nature and extent that is known of the damage or injury resulting from the defects; and

(d) Include a signed statement, by each named owner of a residence or appurtenance in the notice, that each such owner verifies that each such defect, damage and injury specified in the notice exists in the residence or appurtenance owned by him or her. If a notice is sent on behalf of a homeowners' association, the statement required by this paragraph must be signed under penalty of perjury by a member of the executive board or an officer of the homeowners' association. (Emphasis added)

6. While NRS 40.645 was revised to include more stringent requirements within the pre-litigation notice to contractors, this Court notes such notices still are presumed valid. See D.R. Horton, Inc., 123 Nev. at 481. A contractor who wishes to challenge the adequacy of a pre-litigation notice bears the burden of doing so with specificity. *Id.* Because each case is factually distinct, the district courts have wide discretion to consider each contractor's challenge to the reasonableness¹¹ of each pre-litigation notice. As noted by the Nevada Supreme Court in D.R. Horton, Inc., 123 Nev. at 481, "the district courts are well suited to determine whether a notice preserves a contractor's opportunity to repair."

7. NRS 40.647(1) also sets forth other requirements such as the claimant must allow inspection of and reasonable opportunity to the contractor to repair the defect. Further, he or his expert is required to be present at the inspection. NRS 40.647(1) specifically states:

After notice of a constructional defect is given pursuant to NRS 40.645, before a claimant may commence an action or amend a claim to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant must:

(a) Allow an inspection of the alleged constructional defect to be conducted pursuant to NRS 40.6462;

(b) Be present at an inspection conducted pursuant to NRS 40.6462 and identify the exact location of each alleged constructional defect specified in the notice

¹¹The Nevada Supreme Court's decision in D.R. Horton, Inc., pre-dates the enactment of AB 125, which includes the amendment to NRS 40.645(2). This Court presumes, if presented the same issues today, the high court's interpretation would have indicated the district courts have wide discretion to consider the contractor's challenge to the "specificity," rather than "reasonableness" of the pre-litigation notice.

and, if the notice includes an expert opinion concerning the alleged constructional defect, the expert, or a representative of the expert who has knowledge of the alleged constructional defect, must also be present at the inspection and identify the exact location of each alleged constructional defect for which the expert provided an opinion; and

(c) Allow the contractor, subcontractor, supplier or design professional a reasonable opportunity to repair the constructional defect or cause the defect to be repaired if an election to repair is made pursuant to NRS 40.6472.

8. If the claimant commences an action without complying with NRS 40.647(1) or NRS 40.645, the court shall:

(a) Dismiss the action without prejudice and compel the claimant to comply with those provisions before filing another action; or

(b) If dismissal of the action would prevent the claimant from filing another action because the action would be procedurally barred by the statute of limitations or statute of repose, the court shall stay the proceeding pending compliance with those provisions by the claimant.

NRS 40.647(2)(b); also see D.R. Horton, Inc. v. District Court, 131 Nev.Ad.Op. 86, 358 P.3d 925

(2015) [district court did not abuse its discretion in granting an *ex parte* stay under NRS

40.647(2)(b) permitting a homeowners' association to complete the NRS Chapter 40 process and in denying a motion to dismiss the underlying breach of warranty complaint pursuant to the five-year rule in NRCP 41(e)].

9. When a defect exists that creates imminent threat to health or safety, NRS 40.670 sets forth the parties' duties and rights to cure the deficiency; this statute specifically states:

1. A contractor, subcontractor, supplier or design professional who receives written notice of a constructional defect resulting from work performed by the contractor, subcontractor, supplier or design professional which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. The contractor, subcontractor, supplier or design professional shall not cure the defect by making any repairs for which such person is not licensed or by causing any repairs to be made by a person who is not licensed to make those repairs. If the contractor, subcontractor, supplier or design professional fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor, subcontractor, supplier or design professional the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to other damages recoverable by any other law.

...

1 2. A contractor, subcontractor, supplier or design professional who does not cure
2 a defect pursuant to this section because such person has determined, in good faith and after
3 reasonable inspection, that there is not an imminent threat to the health or safety of the
4 inhabitants is not liable for attorney's fees and costs pursuant to this section, except that if a
5 building inspector, building official or other similar authority employed by a governmental
6 body with jurisdiction certifies that there is an imminent threat to the health and safety of the
7 inhabitants of the residence, the contractor, subcontractor, supplier or design profession is
8 subject to the provisions of subsection 1.

9 10. As noted above, the Contractors move for summary judgment or dismissal of the
10 homeowners' association's counter-claim, as well as partial summary judgment of their Third Claim
11 for Relief in the primary action, *inter alia*, upon the following bases:

12 (1) the homeowners' association failed to comply with NRS 40.645(2)(b) by not:

13 (a) listing each defect in *specific* detail,

14 (b) describing in reasonable detail the nature and extent that is known of the damage
15 or injury resulting from the defects,

16 (c) providing verification from each owner the defect exists in his unit, and

17 (d) arranging for its representative and expert to be present at the inspection; and

18 (2) the homeowners' association failed to provide notice of defects prior to performing
19 repairs.

20 This Court addresses the Contractors' challenge to the validity of the NRS 40.645 notice
21 with respect to each of the four identified constructional defects below.

22 a. Residential tower windows: As noted above, within the NRS 40.645 notice, the
23 Association claims there is a constructional defective design of 100 percent of "[t]he window
24 assemblies in the [616] residential tower units" as water entering these mechanisms has no
25 appropriate means of draining or exiting these fabrications. The Association states "there are no sill
26 pans, proper weepage components or other drainage provisions designed to direct water from and
27 through the window assemblies to the interior of the building." Because of this deficient design,
28

1 “water that should have drained to the exterior of the building has been entering into the metal
2 framing components of the exterior wall and floor assemblies, including the curb walls that support
3 the windows, and is causing corrosion damage to the metal parts and components within these
4 assemblies. Further, this damage to the metal components of the tower structures presents an
5 unreasonable risk of injury to a person or property resulting from the degradation of these structural
6 assemblies.” The Contractors argue such descriptions set forth in the NRS 40.645 notice do not
7 provide the “specific detail” of each defect, damage and injury that is the subject of the claim
8 including, without limitation, their exact location. In this regard, the Contractors note there are in
9 excess of 9,500 windows within the two residential towers, and these windows and their assemblies
10 are of various types, sizes and locations.
11

12 As noted above, NRS 40.645 now requires not just *reasonable*, but *specific* detail of *each*
13 defect, damage and injury. As there are in excess of 9,500 windows and assemblies of various
14 types, sizes and locations, NRS 40.645 requires *each* defect, damage and injury to be detailed
15 specifically within the pre-litigation notice. In this case, the notice does not discuss the method or
16 extent of the Association’s inspection of and its findings in the over 9,500 window assemblies which
17 varies in type, size and location.¹² For these reasons, this Court concludes the portion of the NRS
18 40.645 notice, which outlines the existence of the same or similar deficiencies in over 9,500 window
19 assemblies, is not sufficient.
20
21

22 **b. Residential tower fire blocking:** The NRS 40.645 notice indicates there is no fire
23 blocking insulation within the ledger shelf cavities, steel stud framing hollow spaces or both at the
24 exterior wall locations between the residential floors although such installation was required in the
25 building plans. According to the Association, this deficiency exists in 100 percent of the residential
26

27 ¹²This Court assumes the defective window assemblies in question are located exclusive within the
28 association’s common elements. If they are not, the affected unit owner must also verify, under penalties of perjury, the
particular constructional defect exists within the residence or appurtenance owned by him or her. See NRS 40.645(2)(d).

1 tower units, and presents an unreasonable risk of injury in the event of fire. The Contractors argue
2 such statement does not specifically detail the location of each defect, damage or injury.

3 The NRS 40.645 notice identifies the particular constructional deficiency, but it is not
4 specific in terms of each defect's location. Notably, the notice states "...the insulation was omitted
5 either from the ledger shelf cavity, from the steel stud framing cavity, or from both." (Emphasis
6 added) The "specific detail" requirement of NRS 40.645 necessitates the exact location of the defect
7 in each unit, whether it be within the ledger shelf cavity, the steel stud framing hollow space, or in
8 both areas. Further, the notice does not indicate the method or extent of the inspection, or
9 specifically, how the homeowners' association knows this particular "installation deficiency" exists
10 in all or 100 percent of all the residential tower units.¹³ For these reasons, this Court concludes the
11 portion of the NRS 40.645 notice, which addresses the lack of fire blocking insulation, is not
12 sufficient.
13

14
15 c. **Mechanical Room Piping:** The NRS 40.645 notice states the piping in the two
16 lower and two upper mechanical rooms in the towers "has sustained corrosion damage as described
17 in the attached ATMG report dated November 17, 2011." Given the reference, this Court
18 incorporates the information within the ATMG report within the NRS 40.645 notice. The report
19 contains a spreadsheet, along with photographs of the particular parts that need to be replaced and
20 when. However, this Court could not discern whether replacement of certain parts, such as "inlet
21 carbon steel nipple "steel nipple," or the "ferrous pump bowl assembly," which needed to be
22 replaced either "now" or in "1 – 5 years," was required because of defects in construction or as a
23 result of normal wear and tear. This Court also could not determine whether the "welded joints of
24 the stainless steel piping" exhibiting leaks was due to constructional defects or normal wear and tear.
25
26

27 ¹³If this defect "exists in all (100%) of the residential tower units," one may question the standing of the
28 Association to make such claims. If such claim for constructional defect is located within the residence, the homeowner
is the real party in interest and must also verify the deficiency exists in his or her unit. See NRS 40.645(2)(d).

1 The report did indicate constructional defects with respect to "numerous" small fittings and valves
2 made of yellow brass which are experiencing dezincification, presumably at the locations identified
3 in the spreadsheet. There were "problems" discussed with the "bolting," and particularly the finding
4 of "mixed bolting in several flanged connections and bolts holding butterfly valves in position," but
5 unfortunately, these items were not listed in the spreadsheets, and the number and types of such
6 defects and their locations were not identified. For these reasons, this Court concludes the portion of
7 the NRS 40.645 notice, which addresses the mechanical room piping, is not sufficient.

8
9 d. Sewer problem: The NRS 40.645 notice stated "[t]he main sewer line connecting
10 the Development to the city sewer system ruptured due to installation error during construction,
11 causing physical damage to the adjacent areas. This deficiency has been repaired. In addition to
12 causing damage, the defective installation presented an unreasonable risk of injury to a person or
13 property resulting from the disbursement of unsanitary matter." Such notice does not specify the
14 "installation error made" or what physical damage occurred. For this reason, this Court concludes
15 this portion of the NRS 40.645 notice, addressing the sewer problem, is not sufficient.

16
17 In summary, following the requirements set forth in the newly-amended NRS 40.645, this
18 Court concludes the Contractors met their burden to demonstrate Association's pre-litigation notice
19 addressing all four constructional defects is deficient, and thus, they overcome the presumption of
20 the notice's validity.

21
22 11. While it has not proposed the newly amended statutes or AB 125 are ambiguous, the
23 Association has argued the Contractors' challenge to the validity of its NRS 40.645 notice is based
24 solely upon their interpretation of AB 125 which it believes is unreasonable, leads to an absurd
25 result and violates its due process rights.¹⁴ In this regard, the Association argues, "[t]he costs

26
27
28 ¹⁴The Association did not set forth how the Contractors' interpretation of AB 125 violates its due process rights,
and it provided no authority in support of its position.

1 associated with the inspection and destructive testing for **each and every** occurrence of the defects
2 is prohibitive.”¹⁵ The Association proposes NRS Chapter 40 requires notice to identify the specific
3 defect, including its location, within a “typical unit,” but it does not require every defect to be
4 specifically located within “each and every unit.”

5 In this case, the Court disagrees with the Association’s assessment for several reasons. *First*,
6 nowhere within NRS 40.645 did the 2015 Nevada Legislature include the words “typical unit.” The
7 AB 125 amendment unambiguously states the NRS 40.645 notice “must” “[i]dentify in *specific*
8 detail *each* defect, damage and injury to *each* residence or appurtenance that is the subject of the
9 claim including, without limitation, the *exact location* of each such defect, damage and injury.”
10 (Emphasis added) Clearly, the Legislature intended the defect and its exact location to be
11 specifically identified to allow the contractor to make a meaningful investigation. If the 2015
12 Nevada Legislature intended constructional defects found in a “typical unit” be extrapolated as
13 existing in other residences, it would have said so. Instead, by deleting such provisions from the
14 pre-2015 NRS 40.645, the lawmakers demonstrated their intent extrapolation was no longer an
15 acceptable practice. *Second*, requiring each defect, damage and injury to each residence to be
16 specifically identified does not necessarily lead to absurd results, incurrence of prohibitive costs or
17 require destructive testing. Such is especially true when one claims the deficiency is in the design of
18 the windows and their assemblies as the Association does here. For example, if there is a defect in
19 the unit’s design, the Association or other claimant can identify the exact location by use of the
20 building blueprints or plans.¹⁶ Defects in the window assembly’s design can be discerned through
21
22
23
24

25 ¹⁵See the Association’s Opposition to Motion for Summary Judgment on the Counter-Claim and motion for
26 Partial Summary Judgment on Plaintiffs’/Counter-Defendants’ Third Claim for Relief in their Complaint for Declaratory
27 Relief, p. 14. (Emphasis in original)

28 ¹⁶Again, it is not clear whether these window assemblies are located within the individual units or common
area. If the window assemblies are located within the individual units, the Association does not have standing to bring
claims for constructional defects within the residences. Further, the individual unit owner must provide a signed
statement, verifying the defect exists within his residence.

1 the manufacturer's plans, sketches or diagrams. Further, according to the Association, leaks and
2 corrosion in the mechanical room piping or ruptures in the sewer system allegedly caused by
3 constructional defects were readily apparent, meaning one did not need to destructively test to find
4 them. Notwithstanding such premise, any destructive testing by the Association either was or could
5 have been conducted contemporaneously with the repair and/or replacement of the plumbing
6 systems.

7
8 12. The Contractors also argue the homeowners association did not comply with the NRS
9 Chapter 40 process in other respects, and, notably, for not arranging for its representative or expert
10 to be present at their inspection, which took place March 24, 2016. As discussed above, NRS
11 40.647(1) specifically requires the claimant not only allow an inspection but be present and "identify
12 the exact location of each alleged constructional defect specified in the notice." Further, if the notice
13 included an expert opinion, that expert or his representative, who has knowledge of the alleged
14 defect must also be present and identify the exact location of each constructional defect. The
15 homeowners' association does not dispute the Contractors' position. It had no representative or
16 expert present at the March 24, 2016 inspection.

17
18 13. Further, the contractor must be allowed a reasonable opportunity either to repair the
19 defect or cause the deficiency to be repaired if an election to repair is made pursuant to NRS
20 40.6472. In this case, the Contractors were not accorded its right to inspect and repair the defects in
21 the mechanical room and sewer system, as the deficiencies were removed and replaced prior to the
22 March 26, 2016 inspection. This Court understands, to this day, the Contractors have not been
23 provided access to the defective piping, fittings and other materials. Given these facts, this Court
24 finds the Contractors' arguments the Association did not comply with NRS Chapter 40's pre-
25 litigation requirements have credence.

26 ***
27
28

1 14. This Court also does not find the Association's conduct in making repairs and
2 disposing of defective material to be excused by NRS 40.670. NRS 40.670 requires written notice
3 be made to the contractor, subcontractor, supplier or design professional of the constructional defect
4 that is creating an imminent threat to health and safety. Upon receiving such notice, the contractor,
5 subcontractor, supplier or design professional must take reasonable steps to cure the defect as soon
6 as practicable. In this case, repairs were made prior to the Contractors receiving the NRS 40.645
7 notice. Further, this Court questions whether there was an imminent threat to health and safety when
8 the defects to the mechanical room were based, at least in part, upon a 2011 expert report.

9
10 15. The Association argues, *even if* its compliance with NRS Chapter 40 was found
11 deficient, NRS 40.647(2)(b) requires this Court to stay the proceedings pending compliance with the
12 pre-litigation process as dismissal of the action would prevent it from filing another. This Court
13 finds the Association's position persuasive. Clearly, if this Court dismisses the Counter-Claim, the
14 Association would be prevented from filing another action. For this reason, excepting the matter
15 discussed below, this Court stays the proceeding pending compliance.

16
17 Statute of Limitation re: Mechanical room piping

18 16. Statutes of limitation foreclose lawsuits after a fixed period of time following
19 occurrence or discovery of an injury. *See Alenz v. Twin Lakes Village*, 108 Nev. 1117, 1120, 832
20 P.2d 834, 836 (1993), *citing Allstate Insurance Co. v. Furgerson*, 104 Nev. 772, 775 n.2, 766 P.2d
21 904, 906 n.2 (1988). NRS Chapter 11, which identifies various limiting periods, does not set forth a
22 specific statute of limitations dealing with the discovery of constructional defects located within a
23 residence or appurtenance thereto. However, the Nevada Supreme Court has held these types of
24 claims are subject to the "catch all" statute, NRS 11.202. *See Hartford Insurance Group v. Statewide*
25
26
27
28

1 Appliances, Inc., 87 Nev. 195, 198, 484 P.2d 569, 571 (1971).¹⁷ This statute specifically provides
2 “[a]n action for relief, not hereinbefore provided for, must be commenced within 4 years after the
3 cause of action shall have accrued.”

4 17. The four-year limitations period identified in NRS 11.220 begins to run at the time
5 the plaintiff learns, or in the exercise of reasonable diligence should have learned of the harm to the
6 property caused by the constructional defect. Tahoe Village Homeowners Association v. Douglas
7 County, 106 Nev. 660, 662-663, 799 P.2d 556, 558 (1990), citing Oak Grove Investment v. Bell &
8 Gossett Co., 99 Nev. 616, 621-623, 669 P.2d 1075, 1078-1079 (1983); also see G and H Associates
9 v. Earnest W. Hahn, Inc., 113 Nev. 265, 272, 934 P.2d 229, 233, citing Nevada State Bank v.
10 Jamison Partnership, 106 Nev. 792, 800, 801 P.2d 1377, 1383 (1990) (statutes of limitation are
11 procedural bars to a plaintiff’s action; the time limits do not commence and the cause of action does
12 not accrue until the aggrieved party knew or reasonable should have known of the facts giving rise
13 to the damage or injury); Beazer Homes Nevada, Inc. v. District Court, 120 Nev. 575, 587, 997 P.3d
14 1132, 1139 (2004) (“For constructional defect cases the statute of limitations does not begin to run
15 until ‘the time the plaintiff learns, or in the exercise of reasonable diligence should have learned, of
16 the harm to the property.’”).

17 18. In this case, the Association learned of the constructional defects existing in the
18 towers’ mechanical rooms, at the latest, on or about November 17, 2011, the date of the ATMG
19 report. Therefore, Association’s action based upon constructional defects located in the mechanical
20 rooms commenced and accrued November 17, 2011. The Association had up to four (4) years in
21 which to serve its NRS 40.645 notice. The notice was not served until February 24, 2016, which is
22

23
24
25
26 ¹⁷In Hartford Insurance Group, an action was brought for damages to a home caused by an explosion of a
27 heater made for use with natural as opposed to propane gas. The high court held such matter was not an “action for
28 waste or trespass to real property” subject to a three-year statute of limitation nor was it an “action upon a contract...not
founded upon an instrument in writing” even though plaintiff sued under a theory of breach of express and implied
warranties. See NRS 11.190. This action fell into the “catch all” section, i.e. NRS 11.220, the statute of limitations of
four (4) years.

1 outside the four-year period. As a consequence, this Court concludes the Association's claims as
2 they are based upon constructional defects located in the mechanical rooms are time-barred pursuant
3 to NRS 11.202. This Court, therefore, grants summary judgment in favor of the Contractors with
4 respect to the mechanical room constructional defect claims.

5 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Plaintiffs'/Counter-
7 Defendants' Motion for Summary Judgment on Defendants'/Counter-Claimants' Counter-Claim,
8 and Motion for Partial Summary Judgment on the Third-Claim for Relief contained in
9 Plaintiffs'/Counter-Defendants' Complaint for Declaratory Relief filed March 20, 2017 is granted in
10 part, denied in part *without prejudice*, as set forth in more detail below;
11

12 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** this Court finds and
13 concludes the NRS 40.645 Notice of Constructional Defects served upon Plaintiffs/Counter-
14 Defendants is deficient, and Plaintiffs/Counter-Defendants have met their burden of overcoming the
15 presumption of the notice's validity. However, this Court declines to dismiss Defendant's/Counter-
16 Claimant's Counter-Claim pursuant to NRS 40.647(2)(a) as such would prevent the Association
17 from filing another action. This Court, therefore, stays the proceedings with respect to the
18 constructional defects relating to window assemblies, fire blocking and sewer problems for a period
19 of six (6) months or until March 15, 2018 at 10:30 a.m., at which time this Court schedules a
20 hearing to check the status of this matter; and
21

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** there remains no genuine
23 issue of material fact concerning the time-barring effect of the four-year statute of limitations, and
24

25 ...

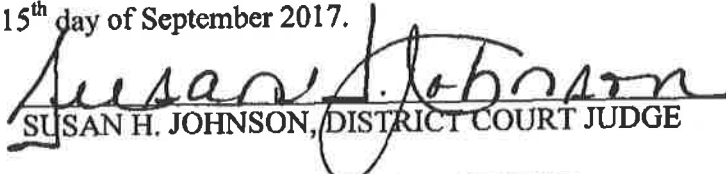
26 ...

27 ...

28 ...

1 thus, Defendant's/Counter-Claimant's claims for constructional defects located in the mechanical
2 rooms are dismissed pursuant to NRS 11.202.

3 DATED this 15th day of September 2017.

4 
5 SUSAN H. JOHNSON, DISTRICT COURT JUDGE

6 **CERTIFICATE OF SERVICE**

7 I hereby certify, on the 15th day of September 2017, I electronically served (E-served), placed
8 within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true
9 and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
10 to the following counsel of record, and that first-class postage was fully prepaid thereon:
11

12 PETER C. BROWN, ESQ.
13 BREMER WHYTE BROWN & O'MEARA, LLP
14 1160 North Town Center Drive, Suite 250
15 Las Vegas, Nevada 89144
16 pbrown@bremerwhyte.com

17 FRANCIS I. LYNCH, ESQ.
18 CHARLES "DEE" HOPPER, ESQ.
19 SERGIO SALZANO, ESQ.
20 LYNTH HOPPER, LLP
21 1210 South Valley View Boulevard, Suite 208
22 Las Vegas, Nevada 89102

23 SCOTT WILLIAMS
24 WILLIAMS & GUMBINER, LLP
25 100 Drakes Landing Road, Suite 260
26 Greenbrae, California 94904

27 
28 Laura Banks, Judicial Executive Assistant

Exhibit “6”

Exhibit “6”

Steven D. Grierson

1 **ORDR**
2 PETER C. BROWN, ESQ.
3 Nevada State Bar No. 5887
4 JEFFREY W. SAAB, ESQ.
5 Nevada State Bar No. 11261
6 BREMER WHYTE BROWN & O'MEARA LLP
7 1160 N. TOWN CENTER DRIVE
8 SUITE 250
9 LAS VEGAS, NV 89144
10 TELEPHONE: (702) 258-6665
11 FACSIMILE: (702) 258-6662
12 pbrown@bremerwhyte.com
13 jsaab@bremerwhyte.com

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

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

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

26 Plaintiffs,

27 vs.

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

Defendant.

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

) **ORDER DENYING DEFENDANT**
) **PANORAMA TOWERS**
) **CONDOMINIUM UNIT OWNERS'**
) **ASSOCIATION'S MOTION FOR**
) **CLARIFICATION OF THIS COURT'S**
) **SEPTEMBER 5, 2017 ORDER**

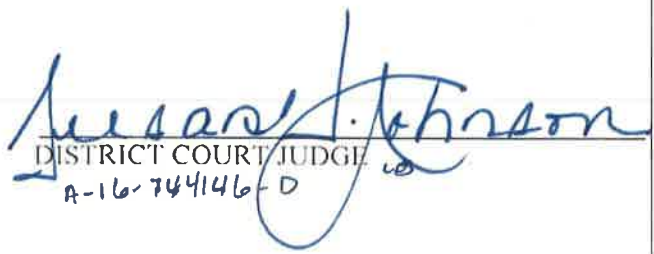
On November 21, 2017, Defendant Panorama Towers Unit Owners Association's Motion for Clarification of This Court's September 5, 2017 Order came for hearing before this Court. The Court, having reviewed the papers and pleadings currently on file herein, having heard the arguments of counsel relating to the facts and law, and with good cause appearing and there being no just cause for delay, the Court concludes as follows:

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


C:\Users\chughes\Desktop\Order - Panorama Towers Condo HOA Mtn for Clairification.docx

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Panorama
2 Towers Unit Owners Association's Motion for Clarification of This Court's September 5, 2017
3 Order is DENIED.

4 DATED this 30th Jan 2018 day of January, 2017.
5
6

7 
8 DISTRICT COURT JUDGE
9 A-16-744146-D

10 Submitted by:
11 BREMER, WHYTE, BROWN & O'MEARA, LLP

12 By: 
13 Peter C. Brown, Esq.
14 Nevada State Bar No. 5887
15 Jeffrey W. Saab, Esq.
16 Nevada State Bar No. 11261
17 Attorneys for Plaintiffs,
18 LAURENT HALLIER; PANORAMA TOWERS I, LLC;
19 PANORAMA TOWERS I MEZZ. LLC; and
20 M.J. DEAN CONSTRUCTION, INC.

21 Approved for Form and Content:
22 LYNCH HOPPER, LLP


23 By: 
24 Francis I. Lynch, Esq.
25 Nevada State Bar No. 4515
26 Charles "Dee" Hopper, Esq.
27 Nevada State Bar No. 6346
28 Attorneys for Defendant,
PANORAMA TOWERS UNIT
OWNERS ASSOCIATION

Exhibit “7”

Exhibit “7”

Francis I. Lynch, Esq. (Nevada Bar No. 4145)
LYNCH HOPPER, LLP
1210 S. Valley View Blvd., Suite 208
Las Vegas, Nevada 89102
Telephone:(702) 868-1115
Facsimile:(702) 868-1114

Scott Williams (California Bar No. 78588)
WILLIAMS & GUMBINER LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904
Telephone:(415) 755-1880
Facsimile:(415) 419-5469
(Admitted Pro Hac Vice)

Counsel for Defendant/Counter-claimant

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.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation, and Does 1 through 1000,

Counter-claimant,

CASE NO: A-16-744146-D

DEPT. NO: XXII

**PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION'S
AMENDED NOTICE OF CLAIMS
PURSUANT TO NRS § 40.645**

1 vs.

2 LAURENT HALLIER, an individual;
3 PANORAMA TOWERS I, LLC, a Nevada
4 limited liability company; PANORAMA
5 TOWERS I MEZZ, LLC, a Nevada limited
6 liability company; M.J. DEAN
7 CONSTRUCTION, INC., a Nevada Corporation;
8 SIERRA GLASS & MIRROR, INC.; F.
9 ROGERS CORPORATION;; DEAN ROOFING
10 COMPANY; FORD CONTRACTING, INC.;
11 INSULPRO, INC.; XTREME XCAVATION;
12 SOUTHERN NEVADA PAVING, INC.;
13 FLIPPINS TRENCHING, INC.; BOMBARD
14 MECHANICAL, LLC; R. RODGERS
15 CORPORATION; FIVE STAR PLUMBING &
16 HEATING, LLC, dba Silver Star Plumbing; and
17 ROES 1 through 1000, inclusive,

18
19
20
21
22
23
24
25
26
27
28
Counter-defendants.

15 PLEASE TAKE NOTICE that Defendant and Counter-claimant Panorama Towers
16 Condominium Unit Owners' Association, a Nevada non-profit corporation (the "Association"),
17 hereby provides amended notice of claims for constructional defects (as the term is defined and used
18 is NRS § 40.600 – 40.695) against Plaintiff and Counter-defendants as captioned and identified
19 above (the "Builders"). Said claims include those arising directly from the defects described herein
20 as well as any and all other rights of claim or causes of action under any other statutory or common
21 law rights which the Association may have against the Builders, and each of them individually,
22 jointly and severally.

23 **AMENDED CHAPTER 40 NOTICE**

24 This Amended Notice is being given to satisfy the requirements of NRS 40.645. The
25 Association intends to pursue claims against the Counter-defendants identified above pursuant to
26 Nevada Revised Statutes (NRS) 40.600 *et seq.*, arising from defects in the design and construction of
27 the Panorama Towers condominium development located at 4525 Dean Martin Drive, Las Vegas,
28 Nevada (the "Development").

1 By virtue of this Amended Notice, you, and each of you, must also take notice that you have
2 certain timely obligations to the Association herein above described, as well as to persons, firms or
3 corporations with whom or which you may have contracted to perform the work complained of at
4 the Development, all under the provisions of NRS § 40.646 – 40.649, inclusive.

5 This Amended Notice incorporates by reference and amends the previous Notice dated
6 February 24, 2016, including the Verification signed under penalty of perjury by a member of the
7 executive board and/or an officer of the Association verifying that each such defect, damage and
8 injury specified in the Notice exists, with respect to the following claims:

9 **1. Residential tower windows**

10 There are two residential tower structures in the Development, consisting of 616
11 condominium units located above common areas and retail spaces below. The window assemblies in
12 the residential tower units were defectively designed such that water entering the assemblies does
13 not have an appropriate means of exiting the assemblies.

14 The window assemblies were built in accordance with the project plans, which contained two
15 significant design deficiencies that are identified in specific detail in the accompanying report
16 prepared by the Association's architect, Karim Allana, which is attached hereto as "Exhibit A" and
17 incorporated by reference:

- 18 1) Contrary to applicable requirements of the 2000 International Building Code, ASTM and
19 ICBO standards, and the EIFS manufacturer's installation instructions, the plans failed to
20 specify pan flashings at the rough openings for the windows.
- 21 2) Contrary to applicable requirements of the 2000 International Building Code, ASTM and
22 ICBO standards, and the EIFS manufacturer's installation instructions, the plans failed to
23 specify head flashings at the rough openings for the windows.

24 Because these flashings were not called for in the plans and specifications, they were not
25 installed.

26 This is a design deficiency that exists in all (100%) of the residential tower window
27 assemblies. The location of each of the windows installed in accordance with this defective design is
28 marked on the exterior plan elevations for the two towers and attached hereto as "Exhibit B".

1 As a consequence of this deficiency, water that should have drained to the exterior of the
2 building has been entering the metal framing components of the exterior wall and floor assemblies,
3 including the curb walls that support the windows, and is causing corrosion damage to the metal
4 parts and components within these assemblies as described and identified in Exhibit A. The resulting
5 damage to the metal components of the tower structures presents an unreasonable risk of injury to a
6 person or property resulting from the degradation of these structural assemblies.

7 **2. Residential tower exterior wall insulation**

8 The plans called for insulation/fire blocking, as required by the building code, in the ledger
9 shelf cavities and steel stud framing cavities at the exterior wall locations between residential floors
10 in the two tower structures. The purpose of this insulation is to act as a fire block provision to deter
11 the spread of fire from one tower unit to the units above or below, and to prevent condensation from
12 occurring within the exterior wall assemblies. However, the insulation was not installed as required
13 by the plans and building code.

14 This installation deficiency exists in the majority of the locations where it is required for the
15 616 residential tower units, in which insulation was omitted either from the ledger shelf cavity, from
16 the steel stud framing cavity, or from both. From November of 2015, through January of 2016, 15
17 units in the Development were inspected. Units were selected from different towers and with
18 different exposures to obtain a mixed sampling. Of the ledger shelf cavities inspected, 76% had no
19 fire blocking insulation and many of the steel stud framing cavities had questionable and/or a lack
20 of proper fire blocking provisions. *See* Affidavit of Omar Hindiyeh In Support of Panorama's
21 Opposition to Hallier's Motion for Partial Summary Judgment attached hereto as "Exhibit C".

22 This deficiency presents an unreasonable risk of injury to a person or property resulting from
23 the spread of fire, and from the accumulation of additional moisture in the wall assemblies, thereby
24 exacerbating the window drainage deficiency described above.

25 **3. Sewer problem**

26 The main sewer line connecting the Development to the city sewer system ruptured due to
27 installation error during construction, causing physical damage to adjacent common areas.
28

1 The rupture of the sewer line caused raw sewage to be deposited on the common area of the
2 development in the location of the rupture. In addition to causing damage in the vicinity of the
3 rupture, the defective installation presented an unreasonable risk of injury to a person or property
4 resulting from the disbursement of unsanitary matter.

5 Because the Association had previously settled a suit against the Builders and had not yet
6 discovered the window and insulation claims, it was assumed by the Association that this isolated
7 incident would not be the subject of a Chapter 40 claim. The Association therefore repaired the
8 ruptured sewer line without giving notice to the Builders.

9
10 DATED: April 5, 2018

LYNCH HOPPER, LLP

11
12 /s/ Francis Lynch
13 Francis I. Lynch, Esq.
14 Attorneys for Defendant and Counter-Claimant

15 **CERTIFICATE OF SERVICE**

16 The undersigned hereby certifies that on the 5th day of April, 2018, a copy of the foregoing,
17 PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION'S AMENDED
18 NOTICE OF CLAIMS PURSUANT TO NRS § 40.645, was electronically served through Odyssey
19 upon Counsel for Plaintiffs/Counter-defendants and sent by certified mail, return receipt requested,
20 to:

21
22 BREMER WHYTE BROWN & O'MEARA LLP
23 Peter C. Brown, Esq.
24 Darlene M. Cartier, Esq.
25 1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144

26 By: 
27
28

EXHIBIT A

EXHIBIT A

EXHIBIT A

March 14, 2018

Preliminary Defect Report

Panorama Towers Condominium Unit Owner's Association



Allana Buick & Bers, Inc.
990 Commercial Street
Palo Alto, CA 94303
t 650.543.5600
f 650.543.5625
www.abbae.com

ALLANA BUICK & BERS

Making Buildings Perform Better

Prepared for:

Mr. Francis Lynch
Lynch Hopper LLP.
1210 South Valley View BLVD
Suite 208
Las Vegas NV 89102

ABBAE PN# 18-5172.01

Mediation/Settlement Communications
Evidence Codes 1119 and 1152



Table of Contents

Table of Contents	1
Executive Summary	2
Building Construction and Governing Codes	2
Limitations	3
Defect List	4
1.0 Windows and Doors	4
1.01 Omission of pan flashing at window assemblies	4
1.02 Omission of head flashings at window assemblies	6
Exhibits	9