

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.

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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 6 OF 27

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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:

ABBAAE 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

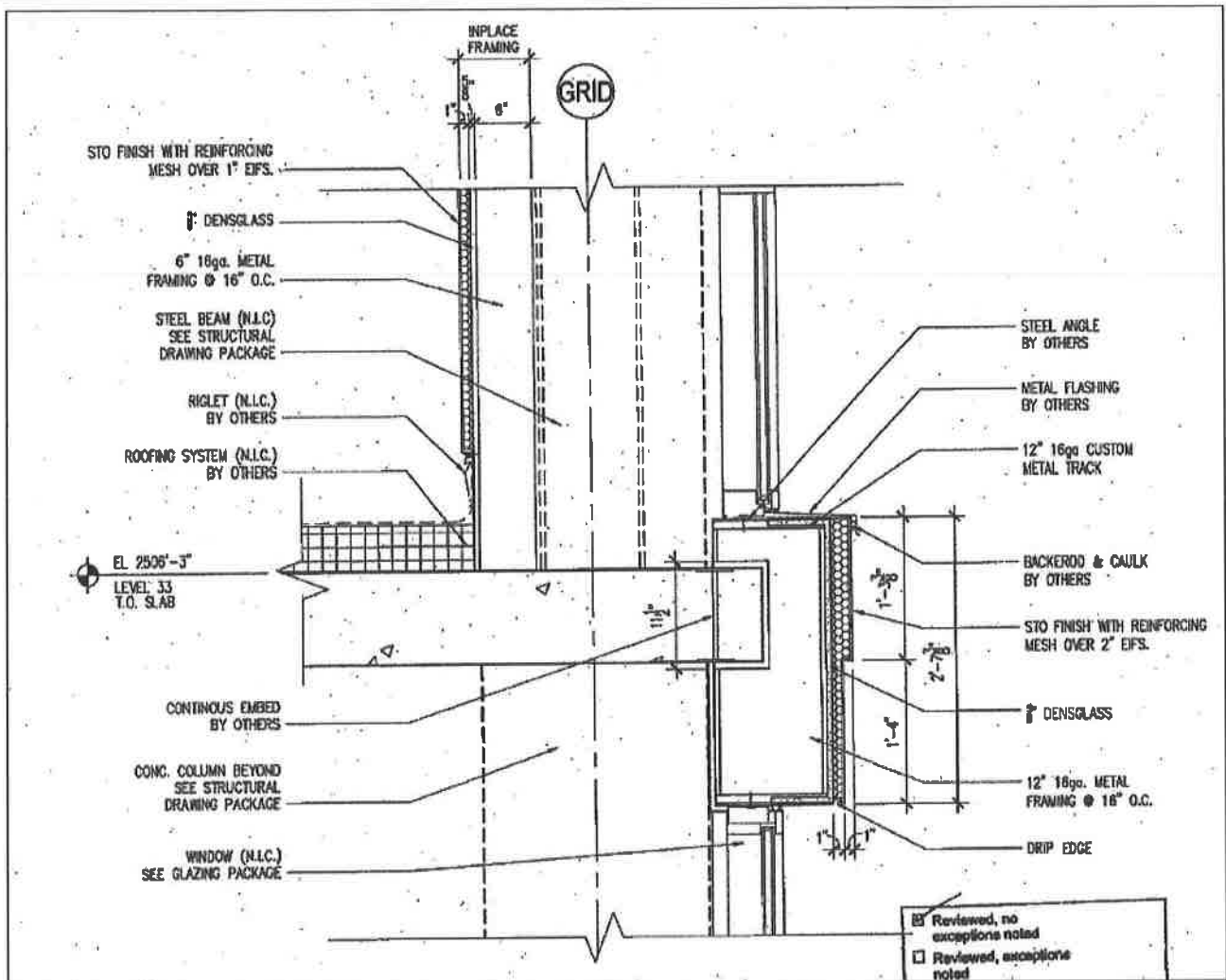


Exhibit 1 – Construction Drawings: EIFS Shop Drawing Detail 1 Showing no Sill Pan Flashing



Sto EIFS
Commercial Window Jamb

Detail No.: 1.24a

Date: April 2000

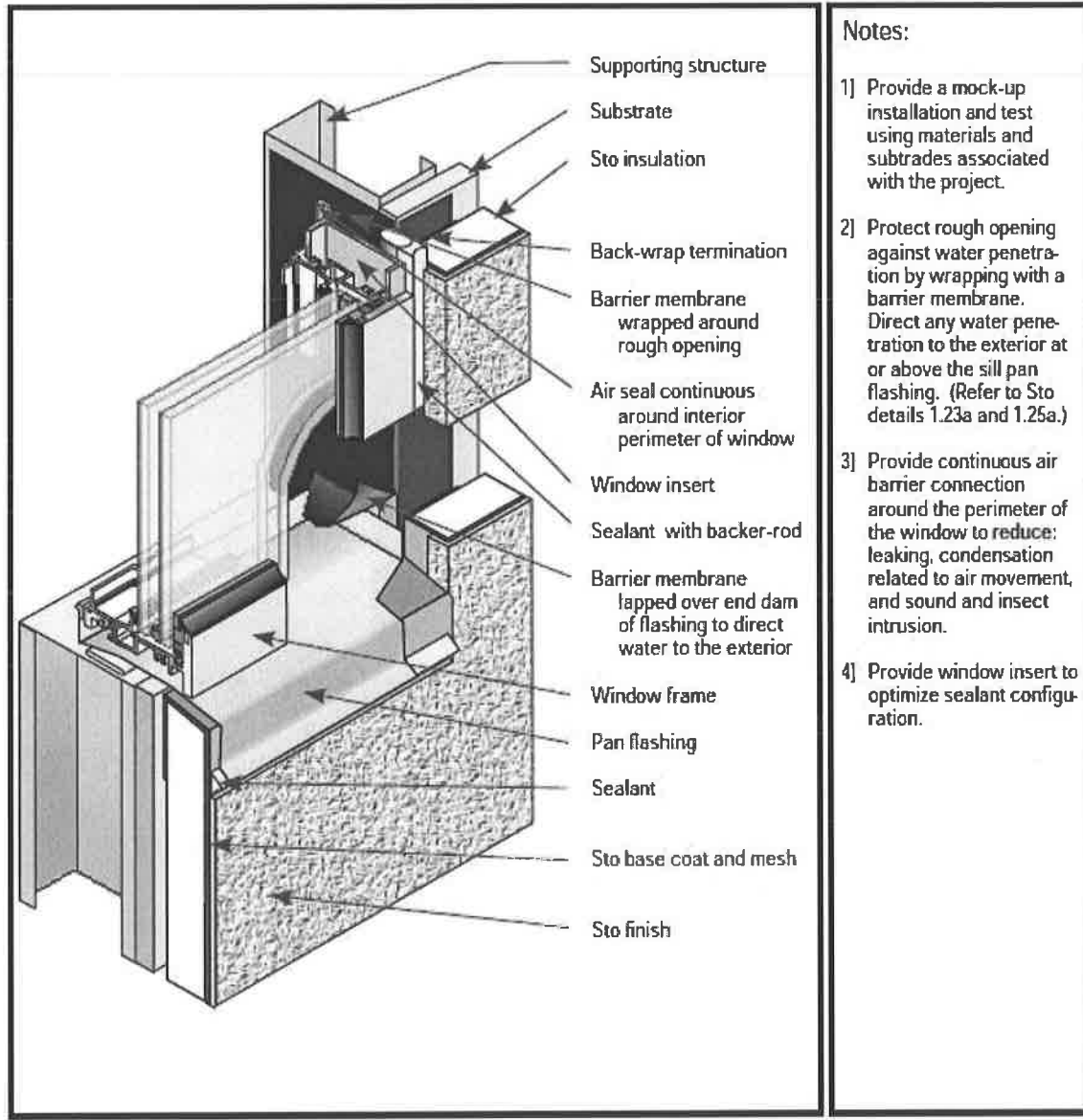


Exhibit 02 – Sill Pan Flashing Detail from Sto

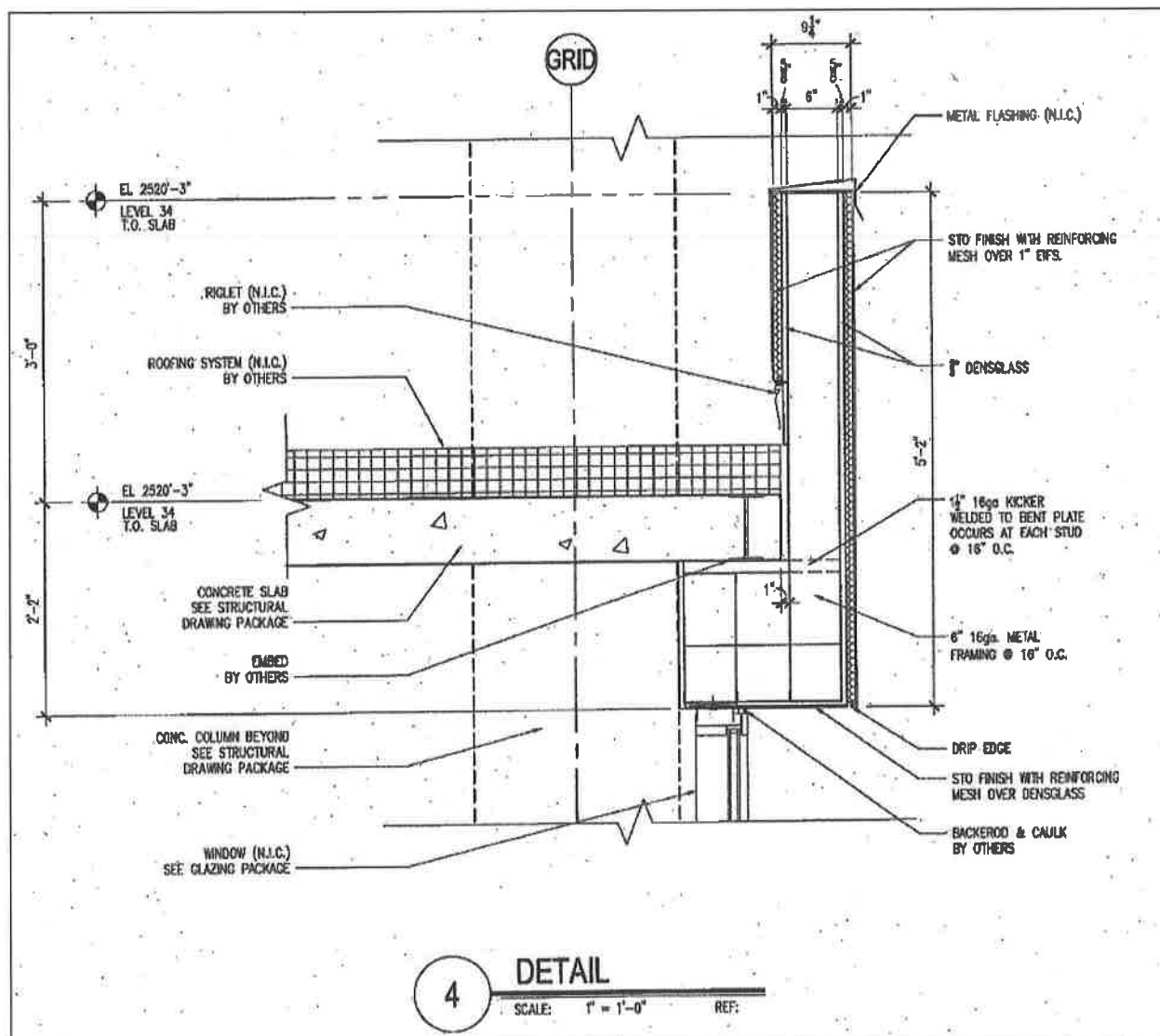


Exhibit 03 – Construction Drawings: EIFS Shop Drawing Detail 4 Showing no Head Flashing



Sto EIFS
Commercial Window Head

Detail No.: 1.23a

Date: April 2000

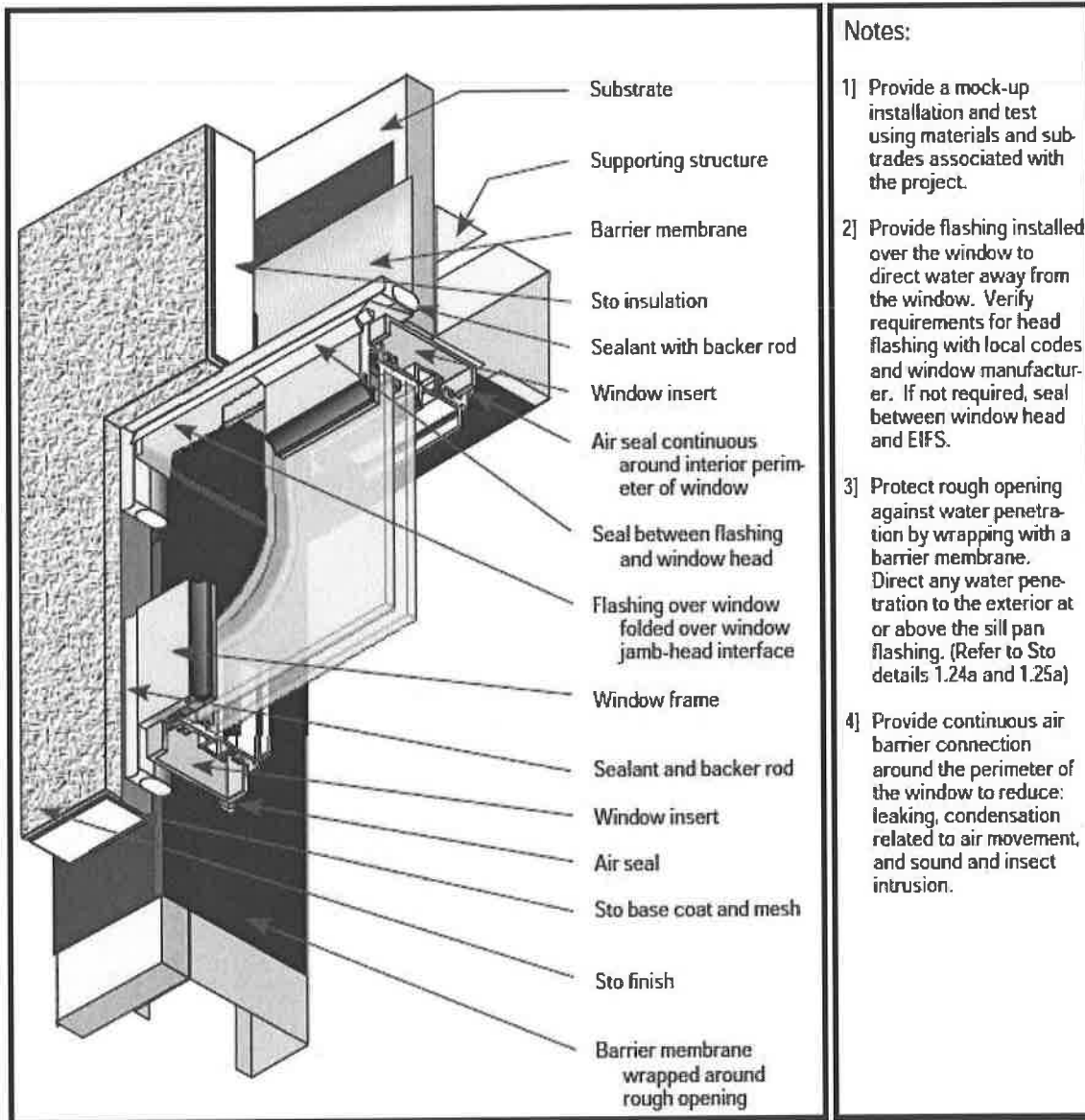


Exhibit 04 – Head Flashing Detail from Sto



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

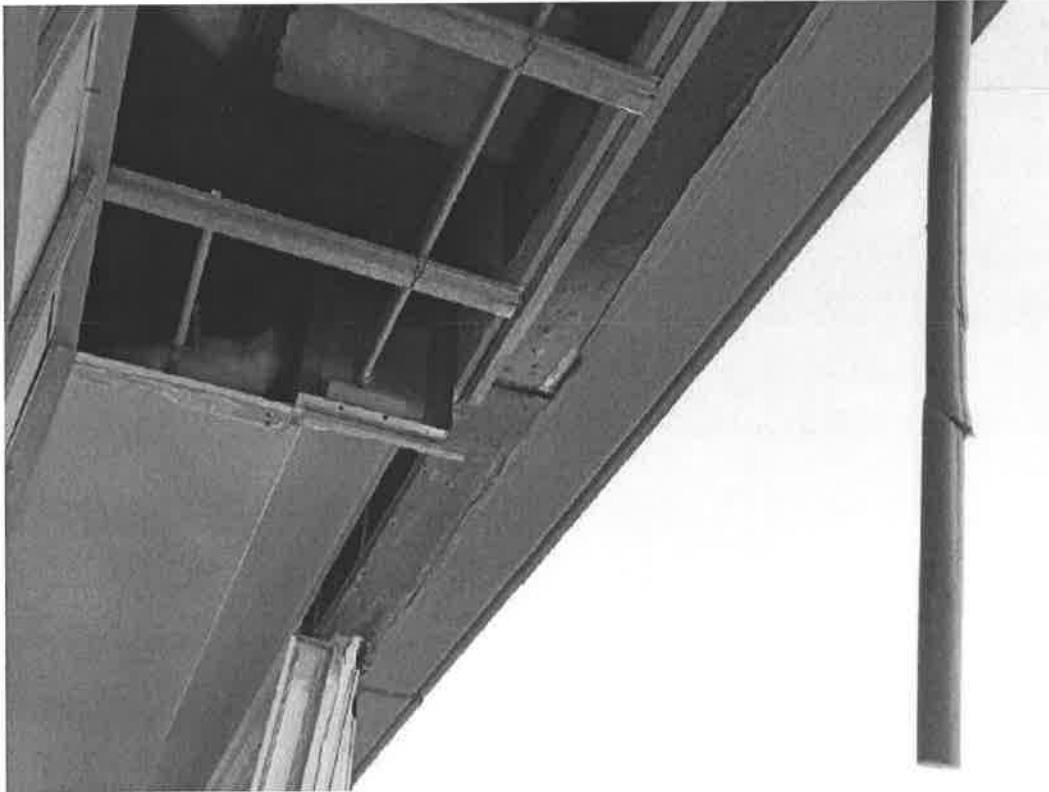


Exhibit 7 – CMA Consulting Photograph: Depicting Omission of Head Flashings



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

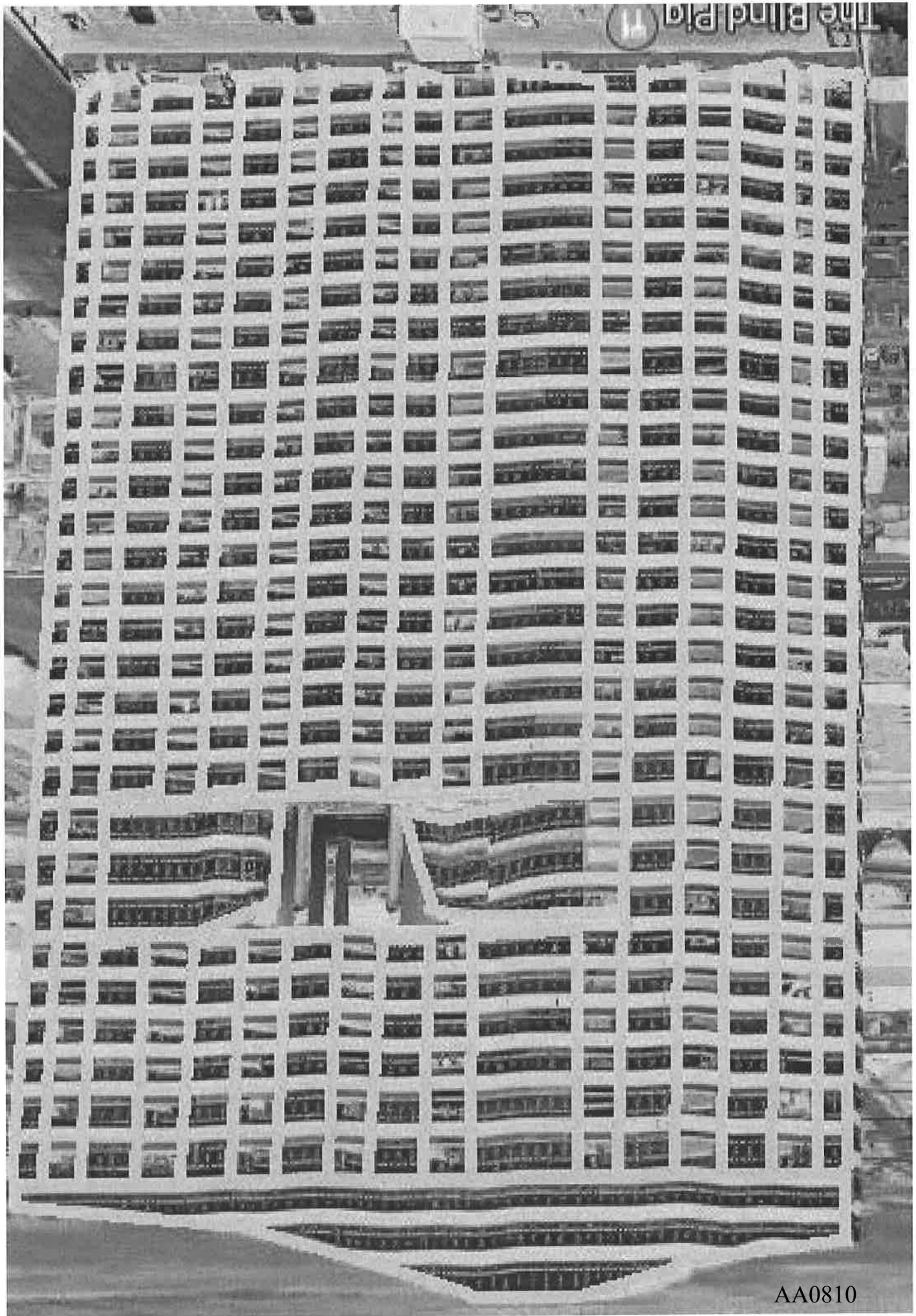
EXHIBIT B

EXHIBIT B

EXHIBIT B

EXHIBIT B

Tower 1 – East Side Windows



AA0810

EXHIBIT B

Tower 1 – North Side Windows



EXHIBIT B

Tower 1 – South Side Windows



EXHIBIT B

Tower 1 – West Side Windows

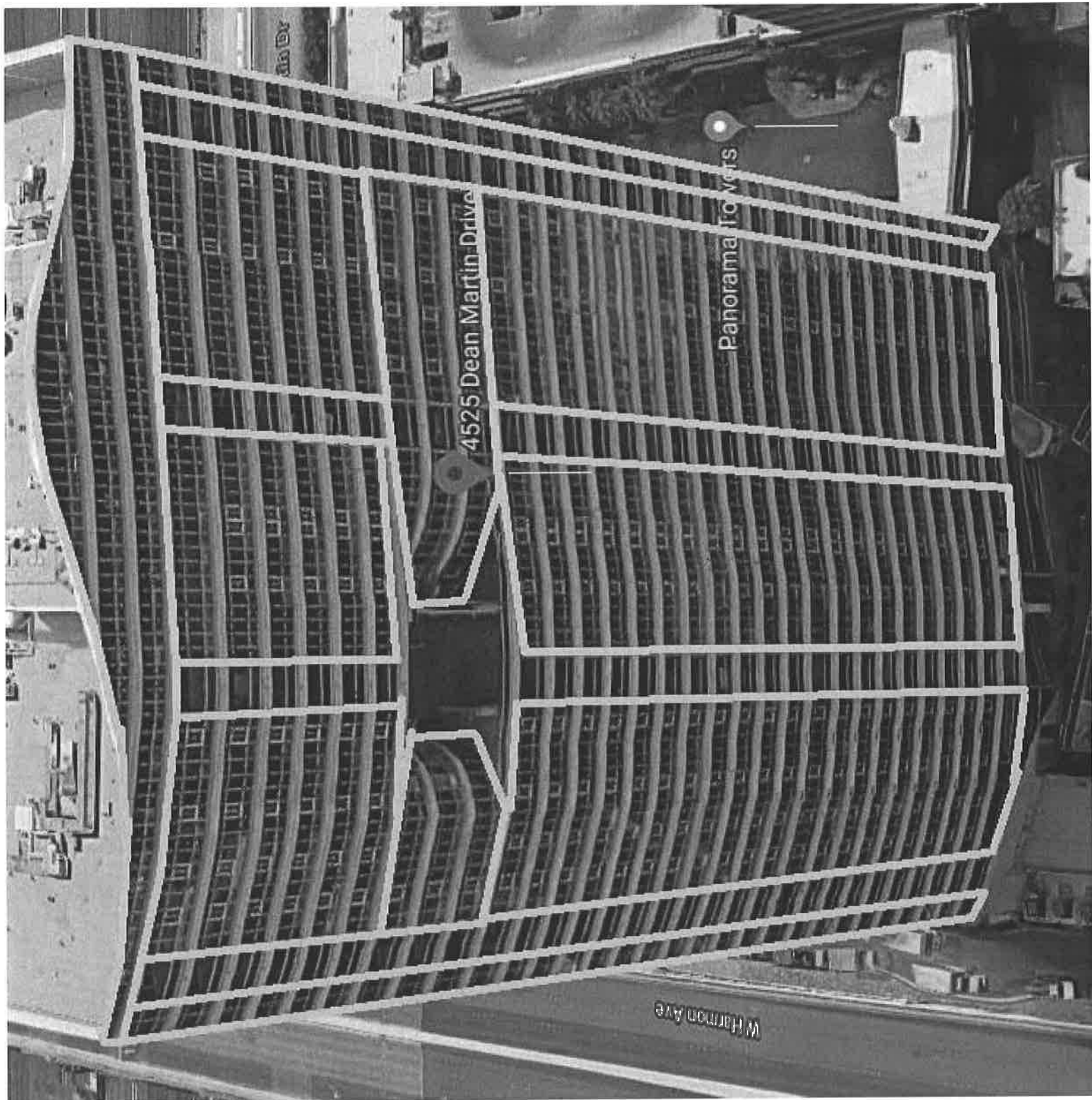


EXHIBIT B

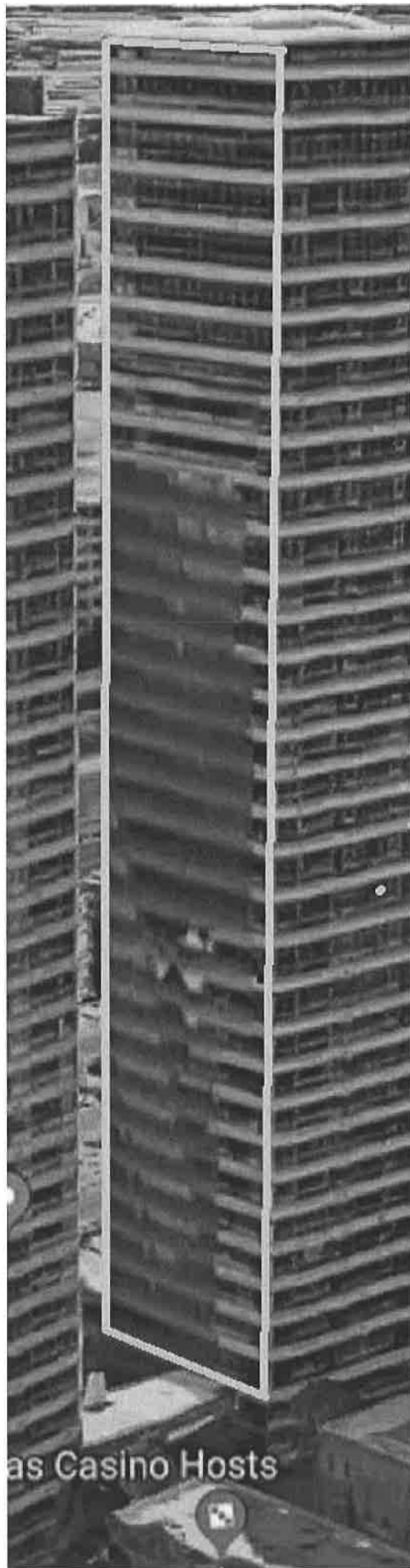
Tower 2 – East Side Windows



Pennsylvania Powers

EXHIBIT B

Tower 2 – North Side Windows



AA0820

EXHIBIT B

Tower 2 – South Side Windows

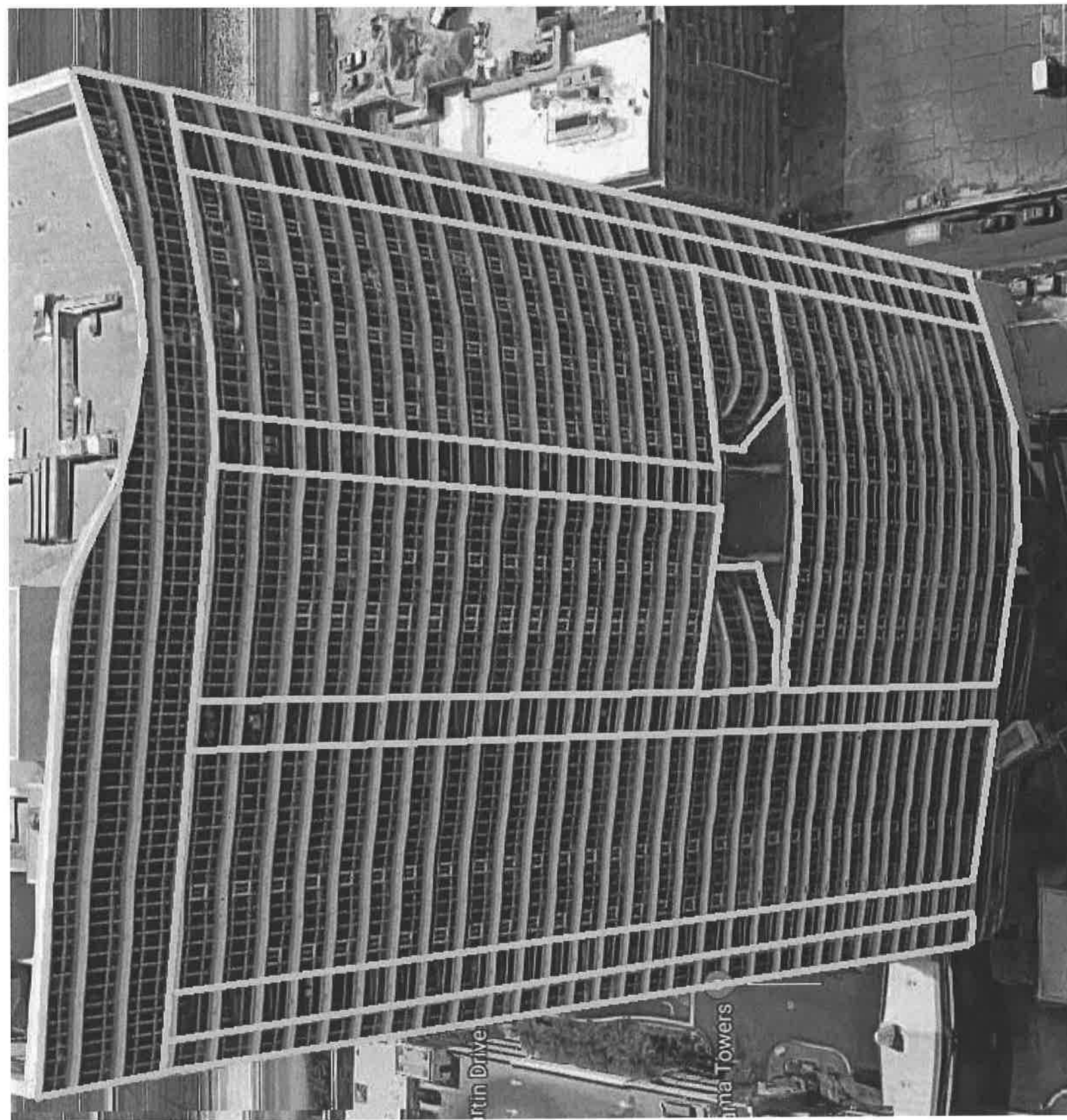


Las Vegas Casino Hosts

Panorama Tower

EXHIBIT B

Tower 2 – West Side Windows



AA0824

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
6 Scott Williams (California Bar No. 78588)
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

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

9 Counterdefendants.

10
11
12 **AFFIDAVIT OF OMAR HINDIYEH IN SUPPORT OF**
13 **PANORAMA'S OPPOSITION TO**
HALLIER'S MOTION FOR PARTIAL SUMMARY JUDGMENT

14 STATE OF NEVADA)
15 COUNTY OF CLARK) ss:

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

17 1. I received a Bachelor of Science degree in civil engineering from San Jose State
18 University in 1978. I am a licensed general contractor in California (license no. 757672) and in
19 Nevada (license no. 53133). I am the owner and president of CMA Consulting (CMA), formed in
20 1985, which specializes in construction management and forensic investigation services. A copy
21 of my CV, which includes my licenses, certifications and professional affiliations, is attached
22 hereto as Exhibit 1.

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

25 3. CMA Consulting was retained by the Panorama Towers Condominium Unit
26 Owners' Association in August, 2013, to investigate and repair leakage conditions in one of the
27 units of the Panorama development, Unit 300, located on the third story of Tower 1, 4525 Dean
28

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.

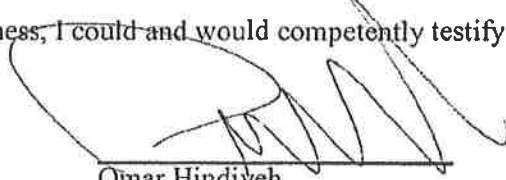
16 9. CMA estimates that the foregoing expenses – for the work and materials provided
17 by a contractor, storage of the occupant’s property, and charges for CMA’s services – would
18 amount to an average cost of \$13,145 per unit. There are 616 “standard” units in the two towers,
19 which would bring 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 
7 NOTARY PUBLIC

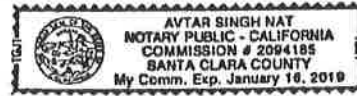


Exhibit “8”

Exhibit “8”

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

7 I, Michelle Robbins, AIA, declare under penalty of perjury under the law of the State of
8 Nevada that the following is true and correct:

9 1. I have personal knowledge of the facts and can testify hereto and would be
10 competent to testify in open Court. I make this Declaration in support of Plaintiffs/Counter-
11 Defendants Laurent Hallier, Panorama Towers I, LLC, Panorama Towers I Mezz, LLC and M.J.
12 Dean Construction, Inc.'s Motion for Summary Judgment on Defendant/Counter-Claimant
13 Panorama Tower Condominium Unit Owners' Association's April 5, 2018 Amended Notice of
14 Claims. My qualifications and trial experience are attached as Exhibit "A" to this Declaration.

15 2. I have reviewed following documents in formulation of my opinions:

- 16 a. 2000 International Building Code
- 17 b. OMEGA EIFS details
- 18 c. Panorama Tower 1 drawings sheet A9.00.0, details 4 and 7
- 19 e. Panorama Tower 1 drawings sheet A9.00.1, detail 12
- 20 f. Panorama Tower 2 drawings A9.00.1 detail 12
- 21 g. Panorama Tower 2 shop drawings by Texas Wall Systems sheet 2D.19, detail 2
- 22 h. Panorama Tower 2 shop drawings by Texas Wall Systems sheet 3D.01, detail 1
- 23 i. September 15, 2017 Findings of Fact and Conclusions of Law

24 3. The Association's Amended Chapter 40 Notice does not provide specific details
25 regarding the location of the alleged defects and/or any damage stemming from same. There are in
26 excess of 28,000 windows between the two towers. The Association failed to identify with
27 specificity each and every location of resultant damage, if any. Additionally, the alleged omission
28 of head flashing is a new issue which the Association could have identified by way of its Initial
Chapter 40 Notice. More specifically, head flashing was never called for in the plans.

29 ///

1 4. The plans and specifications for both tower 1 and 2 allow for the installation of fire
2 blocking at either of two locations: (1) the framing cavity below the window sill (top of face); and
3 (2) the EIFS framing cavity at the exterior edge of the slab. Installation at either location is code
4 compliant and in conformance with the plans and specifications. The Association only inspected
5 for fire blocking at the top of face. The Association failed to investigate for fireblocking at the
6 EIFS framing cavity at the exterior edge of the slab. The investigation of the EIFS framing cavity at
7 the exterior edge of the slab could have been performed without destructive testing, by way of a
8 borescope. The Association's Initial Chapter 40 Notice was not specific in terms of each defect's
9 location. The "specific detail" requirement of NRS 40.645 necessitates the exact location of defect
10 in each unit, whether it be within the ledger shelf cavity, the steel stud framing hollow space, or in
11 both areas. The Association's revised Chapter 40 Notice merely states that the fire blocking is in
12 the "majority" of the intended locations, but the revised Chapter 40 Notice does not specifically
13 identify where the fireblocking is missing. Additionally, the Association now asserts that the lack
14 of insulation will lead to an accumulation of moisture. This a new issue which the Association
15 could have identified by way of its Initial Chapter 40 Notice had it conducted a reasonable
16 investigation. Finally, the Association failed to identify with specificity each and every location of
17 resultant damage, if any.

18
19 8.3-18
20 Dated


21
22
23
24
25
26
27
28 Michelle Robbins, AIA

EXHIBIT A

EXPERIENCE

Michelle J. Robbins has over 35 years of experience in the construction industry and is both a licensed General Contractor and Architect. Her experience includes all aspects of design/development, bidding and construction. She has been involved with a wide-range of projects, including multi-family housing, childcare and senior day care centers, alcohol and drug rehabilitation facilities, custom homes, shelters for the homeless, historic preservation as well as hotel and commercial facilities.

Ms. Robbins' experience includes an emphasis on housing developments, involving architecture, construction documents, construction, bidding, contracts, construction safety, financing, land acquisition, insurance requirements, property management, project feasibility, environmental analysis, site analysis and building permit approval process.

Her focus in litigated matters has been in the assessment of claimed construction defects and the development of both the response and apportionment of fault to these claims. Ms. Robbins has been qualified as an expert and has participated in a multitude of construction litigated projects which include single-family residential, multi-family residential, office buildings, warehouse facilities, schools and community centers. These projects require code analysis, fault apportionment and repair recommendations. Her experience includes negotiations, settlement process in mediations and arbitrations, and she has been deposed and testified in trial.

While in practice for herself, Ms. Robbins was involved with the architecture, construction and development of over 1,200 apartment units that totaled over \$55,000,000 worth of construction. She was involved with design, development and construction of 30 custom residences and 12 childcare facilities.

Ms. Robbins has taught in the architecture departments at both the Southern California Institute of Architecture and the University of Nevada Las Vegas as an adjunct professor. The courses were in the area of Environmental Design, Architectural Design and Urban Planning.

Starting in January, 2009, Ms. Robbins was approved by the Nevada State Bar Association to teach Continuing Legal Education courses.

WORK HISTORY

2016 - Present **Executive Manager** - *Madsen, Kneppers & Associates, Inc.*, Las Vegas, Nevada
2003 - 2015 **Regional Manager** - *Madsen, Kneppers & Associates, Inc.*, Las Vegas, Nevada

MKA **Madsen, Kneppers & Associates, Inc.**

Construction Consultants & Engineers

100% Employee Owned Company

WORK HISTORY *continued*

- 1993 - 2003 Principal - Michelle Stalk (Robbins), Architect, Las Vegas, Nevada
- 1998 - 2002 Managing Member - Urban Construction Co., LLC, Las Vegas, Nevada
- 1994 - 1997 Adjunct Professor - University of Nevada, Las Vegas, Nevada
- 1989 - 1991 Adjunct Professor - Southern California Institute of Architecture, Santa Monica, California
- 1983 - 1987 Assistant to the Architect - Savel Architecture (part-time and full-time), Los Angeles, California
- 1980 - 1998 Principal - Designers + and Stalk + Stalk, Architecture, Planning, Development & Construction Firm, Los Angeles, California

EDUCATION

Bachelor of Arts Degree in Architecture, Southern California Institute of Architecture (SCI-ARC), Santa Monica, California, 1983

CONTINUING EDUCATION

Numerous continuing education units and certificates received through attendance at seminars, lectures and symposiums on professional and construction related subjects.

INSTRUCTOR - CONTINUING LEGAL EDUCATION

Accredited Continuing Legal Education (CLE) Instructor in the state(s) of Nevada and Arizona, in the following topics:

- Course 1 – Building Codes, Disciplines and Construction Documents
- Course 2 – Building Components and Sub-Contractors
- Course 3 – Roofs and Decks
- Course 4 – Stucco, Windows, Sliding Glass Doors & Entry Doors
- Course 5 – ADA, Fire-Rated Walls, Bathroom Tile & Shower Enclosures and CMU Walls

PROFESSIONAL CERTIFICATIONS & AFFILIATIONS

American Institute of Architects, Member
American Architectural Manufacturers Association, Member
National Council of Architectural Registration Board, Certificate No. 44084

PROFESSIONAL ARCHITECT LICENSES

Arizona 63594
California C21391
Colorado ARC.00404475
Florida AR98162
Nevada 3169
Texas 26404

GENERAL CONTRACTOR LICENSES

California – 1002821, Responsible Managing Employee, *Madsen, Kneppers & Associates, Inc.*
Nevada - 54156, bid limit \$9,500,000, Qualified Individual, *Madsen, Kneppers & Associates, Inc.*
Utah - 8375252-5501, Qualifier, *Madsen, Kneppers & Associates, Inc.*

AWARDS & HONORS

Award of Merit for Restoration of the Chernow House Shelter - City of Los Angeles
Conservancy
Commendations for Design & Planning of Remodel of Governor's Mansion - Nevada
Commended for Work with the Homeless - City of Los Angeles, California
Women's Outstanding Achievement Award - Nevada



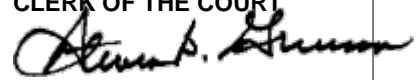
Michelle Robbins, Architect, NCARB

EXPERT TESTIMONY

Project No.	Project Name	Location	Deposition	Court
N/A	Fremont v. Bramble**	Nevada	Approx. 2000	
2003.0264D	Federico v. Earth	Nevada	7/27/2005	
2004.1040H	Hayward v. Del Webb (Class Action Certification)	Nevada		9/1/2005
2007.0925D	Ward v. Christopher Homes	Nevada	9/4/2008	
2010.0814T	Humphrey v. Ryland Homes	Nevada		7/17/2012
2010.0814T	Humphrey v. Ryland Homes	Nevada		7/18/2012
2012.2483H	Vinnettilli, et al. v. KB Home Nevada, inc	Nevada		6/1/2015
2011.1548D	Eng, Wayne & Donna v. Palm Canyon Development, LLC**	Nevada	7/29/2015	
2011.1548D	Eng, Wayne & Donna v. Palm Canyon Development, LLC**	Nevada	8/6/2015	
2013.0066D	Stetson Ranch Communities v. Distinctive Homes (aka Bedrosian)	Nevada	8/25/2015	
2013.0066D	Stetson Ranch Communities v. Distinctive Homes (aka Bedrosian)	Nevada	8/26/2015	
2013.0066D	Stetson Ranch Communities v. Distinctive Homes (aka Bedrosian)	Nevada	10/2/2015	
2014.0929D	Fourteen Rings	Nevada	1/21/2016	
2014.0929D	Fourteen Rings	Nevada	1/22/2016	
2013.2372D	College Villas	Nevada	2/22/2016	
2013.2372D	College Villas	Nevada	2/23/2016	
2013.2372D	College Villas	Nevada	2/24/2016	
2013.2372D	College Villas	Nevada	3/9/2016	
2015.2380D	HTA Plumbing & Mechanical	Nevada	7/11/2016	
2016.0909D	Wigwam East Estates HOA	Nevada	3/22/2017	
2016.0928D	Engelien, et al. v. D.R. Horton, Inc.	Nevada	7/20/2017	
2016.0928T	Engelien, et al. v. D.R. Horton, Inc.	Nevada		11/13/2017
2016.0928T	Engelien, et al. v. D.R. Horton, Inc.	Nevada		11/14/2017
2016.0928T	Engelien, et al. v. D.R. Horton, Inc.	Nevada		11/21/2017
2016.0928T	Engelien, et al. v. D.R. Horton, Inc.	Nevada		11/22/2017
2016.2792D	Park v. Meritage Homes of Nevada, Inc.	Nevada	11/29/2017	
2016.2855D	Cedola v. PN II, Inc.	Nevada	12/12/2017	
2016.0845D	Aton v. D.R. Horton, Inc.	Nevada	12/14/2017	
2016.0090D	Strode v. PN II, Inc.	Nevada	12/21/2017	
2016.3081D	TWC Construction, Inc. v. Eziagu Properties, LLC	Nevada	2/2/2018	
2016.1463D	Anthem Highlands v. PN II, Inc.	Nevada	2/23/2018	
2013.2089D	Madeira Canyon v. PN II	Nevada	3/20/2018	
2016.1297D	Elkhorn Ponderosa II (Chiang) v. D.R. Horton, Inc.	Nevada	4/4/2018	
2016.1296D	Elkhorn Ponderosa I (JFB Trust) v. D.R. Horton, Inc.	Nevada	4/17/2018	
2015.2234D	Schone, et al. v. PN II, Inc.	Nevada	4/23/2018	
2016.0941D	Gargus, et al. v. Sun Mesa, LLC	Nevada	7/16/2018	

**Attended deposition on behalf of the Plaintiffs

D = Deposition T = Trial H = Hearing



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(Admitted Pro Hac Vice)

Attorneys for Defendant/Counterclaimant

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,

Counterclaimants,

vs.

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada

CASE NO.: A-16-744146-D

DEPT. NO.: XXII

**DEFENDANT/COUNTERCLAIMANT
PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION'S
OPPOSITION TO
PLAINTIFFS/COUNTER-DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
ON
DEFENDANT/COUNTERCLAIMANT'S
APRIL 5, 2018 AMENDED NOTICE OF
CLAIMS**

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

Counterdefendants

10 Defendant/Counterclaimant PANORAMA TOWERS CONDOMINIUM UNIT
11 OWNERS' ASSOCIATION (hereinafter "Panorama" or "the Association"), by and through its
12 counsel of record, hereby files their Opposition to Plaintiffs/Counterdefendants Laurent Hallier,
13 Panorama Towers I, LLC, Panorama Towers I Mezz, LLC, and M.J. Dean Construction, Inc.'s
14 Motion for Summary Judgment on Defendant/Counterclaimant Panorama Tower Condominium
15 Unit Owners' Association's April 5, 2018 Amended Notice of Claims.

16 This Opposition is based upon the papers and pleadings on file, the Declaration of Francis
17 I. Lynch, Esq., the following Memorandum of Points and Authorities, and any other argument that
18 the Court may choose to entertain.

19 Dated: September 4, 2018

LYNCH HOPPER, LLP

21 By: /s/ Francis I. Lynch
22 Francis I. Lynch, Esq.
23 Nevada Bar No. 4145
24 1445 American Pacific, Suite 110 #293
25 Henderson, Nevada 89074
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1. The facts stated herein are based upon my own knowledge and observation and if called upon to testify, I could and would competently do so.

3. I am a founding partner of Lynch Hopper LLP, counsel of record for the Plaintiff in the above-captioned matter.

5. On or about February 24, 2016, the Association separately served the Builders with their Notice to Contractor Pursuant to Nevada Revised Statutes, Section 40.645 (“Notice”), alleging constructional defects related to the residential tower windows, residential tower fire blocking, mechanical room piping, and sewer piping. A true and correct copy the Notice is attached hereto as **Exhibit A**.

7. On September 26, 2016, the Association and the Builders participated in NRS 40.680 pre-litigation mediation regarding the claim contained in the Association's Notice without resolution.

8. On September 28, 2016, Builders filed a lawsuit against the Association (their “Complaint”). The Complaint asserts seven (7) claims for relief: (1) Declaratory Relief – Application of AB 125; (2) Declaratory Relief – Clam Preclusion; (3) Failure to Comply with NRS 40.600 et seq.; (4) Suppression of Evidence/Spoliation; (5) Breach of Contract; (6) Declaratory Relief: Duty to Defend; and (7) Declaratory Relief – Duty to Indemnify. A true and correct copy of the Complaint is attached hereto as **Exhibit B**.

1 9. The Association moved for dismissal of the Complaint arguing, among other things, the
2 absence of a justiciable controversy and the absence of a cognizable tort claim for spoliation under
3 Nevada law. The Court denied the Association's motion on January 24, 2017.

4 10. On March 30, 2017, Builders filed a Motion for Partial Summary Judgment, which was
5 heard by this Court on June 20, 2017.

6 11. On September 15, 2017, this Court issued its Findings of Fact, Conclusions of Law, and
7 Order ("Order"). A true and correct copy of this Court's Order is attached hereto as **Exhibit C**.

8 12. The Association sought clarification of the Order by motion on October 10, 2017. Builders
9 opposed the motion for clarification by filed opposition on October 27, 2017. The Court denied
10 the Associations motion for clarification at the hearing of the motion on November 21, 2017.

11 13. Pursuant to the Order, the Association served Builders with their Amended Notice of
12 Claims Pursuant to NRS 40.645 ("Amended Notice") on April 5, 2018. A true and correct copy of
13 the Association's Amended Notice is attached hereto as **Exhibit D**.

14 14. On April 12, 2018, a Status Check was held concerning the Order and the Amended Notice.
15 Counsel for the Builders requested, among other things, that the proceedings be stayed for a period
16 of four months in order to put objections to the Amended Notice into a motion. Counsel for the
17 Association agreed, and the Court issued the requested stay on proceedings.

18 15. On August 3, 2018, Builders filed the instant Motion for Summary Judgment ("Motion").

19 16. A Status Check concerning the stay was held on August 7, 2018. At the Status Check, a
20 continuance for the hearing on the Motion was requested and granted. The hearing was continued
21 into October of 2018.

22 17. A true and correct copy of the Homeowner Protection act of 2015 ("AB 125") is attached
23 hereto as **Exhibit E**.

24 18. A true and correct copy of pages 1, 41-42 of the Hearing on S.B. 241 Before the Assembly
25 Committee on Judiciary, 72nd Leg. (Nev., May 8, 2003) is attached hereto as **Exhibit F**.

26 19. A true and correct copy of pages 1, 40 of the Hearing on S.B. 241 Before the Assembly
27 Committee on Judiciary, 72nd Leg. (Nev., May 16, 2003) is attached hereto as **Exhibit G**.


1 20. A true and correct copy of page 4 of Exhibit G to the Assembly Judiciary Committee for
2 the Hearing on S.B. 241 Before the Assembly Committee on Judiciary, 72nd Leg. (Nev., May 16,
3 2003) is attached hereto as **Exhibit H**.

4 21. A true and correct copy of Enrolled S.B. 241, 72nd Leg. (Nev. May 28, 2003) is attached
5 hereto as **Exhibit I**.

6 22. A true and correct copy of the Affidavit of Omar Hindiye, previously attached as Exhibit
7 A to the Association's Opposition to the Builders' previous motion for summary judgment, is
8 attached hereto as **Exhibit J**.

9 I declare under the penalty of perjury under the laws of the United States and the State of
10 Nevada that the foregoing is true and correct.

11 Executed on September 4, 2018.

12
13 By: 

14 Francis I. Lynch, Esq.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 The instant action arises, in part, out of allegations of construction defects at the Panorama
4 Towers Condominiums development (“Development”). The Development is a two-tower Master
5 Planned Community located at 4525 Dean Martin Drive, Las Vegas, Nevada (“Tower I”) and 4575
6 Dean Martin Drive, Las Vegas, Nevada (“Tower II”). The Development is composed of 616
7 separate interest condominium units, together with various common elements and amenities
8 appurtenant thereto. Plaintiffs/Counterdefendants Laurent Hallier, Panorama Towers I, LLC,
9 Panorama Towers I Mezz, LLC were the developer entities for the Development, and
10 Plaintiff/Counterdefendant M.J. Dean Construction, Inc. was the Development’s general
11 contractor. Collectively, the Plaintiffs/Counterdefendants are herein referred to as “Builders”.

12 However, the suggestion that this action arises solely out of allegations of construction
13 defects at the Development is inaccurate. In fact, this action arises more directly out of the
14 Builders’ choice to file a preemptive lawsuit against the Association seeking not just various forms
15 of declaratory relief but affirmative damages for conduct related to the allegations of construction
16 defects as well. No statute, law, or instrument required the Builders to file such a suit; it was a
17 choice. Whether this choice was made out of an enthusiasm to wield AB 125’s recent changes to
18 NRS Chapter 40, a desire to test AB 125’s limits, or simply as a strategic consideration, the causes
19 of this choice are less important than its effect. Under the plain language of NRS 40.645(4), which
20 remains unaltered by AB 125, the Builders’ choice to file suit against the Association concerning
21 allegations of construction defects removes from the Association any statutory requirement to
22 provide Chapter 40 notice of defects before pursuing an action related to those defects. As a result,
23 the sufficiency of the Association’s Amended Notice of Claims is no longer relevant or lawfully
24 challengeable.¹

25 Now, Builders seek summary judgment concerning the Association’s April 5, 2018
26 Amended Notice of Claims, because the Builders allege that the Association “failed in the April

27 _____
28 ¹ See NRS 40.645(4)(a).

1 5, [2018] Amended Chapter 40 Notice to comply with the express and mandatory requirements of
2 Chapter 40”². Builders’ Motion should be denied for the following reasons.

3 First, the Builders’ Motion ignores both NRS 40.645(4) and the procedural history of this
4 case, in which the Builders elected to sue the Association. Therefore, under the plain language of
5 NRS 40.645(4), no notice or opportunity to repair was required from the Association prior to
6 pursuing an action to recover for construction defects once the Builders filed a lawsuit for
7 affirmative damages.

8 Second, although such a notice became unnecessary once the Builders elected to sue the
9 Association, the Amended Notice of Claims complies with both the statutory requirements of NRS
10 40.600 et seq., and with this Court’s interpretation of Chapter 40’s requirements as set forth in its
11 Findings of Fact, Conclusions of Law, and Order³.

12 Third, the Builders’ Motion continues to rely upon a statutory interpretation of AB 125
13 notice requirements that lacks authority, leads to absurd and unreasonable results, violates due
14 process, and ignores this Court’s guidance on the matter.

15 Finally, summary judgment is inappropriate as a matter of law as there remain unresolved
16 questions of fact.

17 Therefore, the Association asks this Court to deny the Builders’ Motion in its entirety.

18 PROCEDURAL HISTORY

19 A. THE PRIOR LITIGATION

20 The Association filed a construction defect suit against the Builders on September 9, 2009.
21 That suit was settled pursuant to a settlement agreement in June, 2011, which specifically **did not**
22 extend to claims arising out of defects that were not known to the Association at the time the
23 agreement was executed.⁴ Builder’s Counsel in the instant litigation represented the Builders in
24 the prior litigation.

25 ² See Builders’ Motion, p.8:14-15.

26 ³ Dated September 15, 2017.

27 ⁴ See **Exhibit B**, ¶51; See also Exhibit 4 to Plaintiffs’ Opposition to Defendant Panorama Towers Unit Owners
28 Association’s Motion to Dismiss Complaint (submitted for in-camera review on January 4, 2017).

1 **B. THE CHAPTER 40 PRE-LITIGATION PROCESS**

2 On February 24, 2016, the Association served Builders with a Chapter 40 Notice (“Notice”)
3 asserting defects discovered by the Association subsequent to the settlement of the prior litigation.
4 The Chapter 40 Notice alerted Builders to defects and damages involving (1) residential tower
5 windows; (2) residential tower fire blocking; (3) mechanical room piping; and (4) sewer piping.⁵

6 On or about March 24, 2016, Builders attended a visual inspection of the defects alleged
7 in the Notice. During the inspection, Builders observed that certain repairs to the defects alleged
8 in the Notice had been commenced or completed based upon their imminent threat to the health
9 and safety of the Development’s occupants. Builders declined to cure or participate in the any of
10 the repairs at that time.

11 On May 24, 2016, Builders served the Association with their Response to the Association’s
12 Chapter 40 Notice. In their Response, Builders disclaimed liability for each defect and elected not
13 to perform repairs. On September 26, 2016, the parties participated in a pre-ligation mediation
14 conference regarding the allegations contained the Chapter 40 Notice.

15 However, instead of participating in the mediation conference in good faith to simplify the
16 dispute resolution process or to prevent litigation, Builders’ participation was perfunctory. At no
17 point were the merits of the Association’s Notice challenged, nor was its legal sufficiency. In fact,
18 instead of endeavoring to avoid litigation, Builders expressly announced their intent to sue the
19 Association for having given notice of the defects, going so far as to prepare a tender of defense
20 which was theatrically served upon the Association’s counsel at the mediation.⁶

21 The legislative intent behind Chapter 40 can only be accomplished if the parties work
22 together in good faith.⁷ For precisely that reason, the Legislature included a duty of good faith in
23
24

25 ⁵ See **Exhibit B.**

26 ⁶ See Builders’ Opposition to Motion to Dismiss, p.7:20-23.

27 ⁷ See e.g. *Olson v. Richard*, 120 Nev. 240, 246, 89 P.3d 31, 25 (2004) (dissent) (Chapter 40 “is an alternative dispute
28 resolution process with penalties for failure to participate or bad faith participation”) (*citing* 2 Journal S., 68th Leg.
1186-87 (Nev. 1995); Hearing on S.B. 395 Before the Assembly Comm. On Judiciary, 68th Leg. 5 (Nev., June 23,
1995)).

1 the statute, expressed in terms of reasonableness.⁸ Builders clearly did not intend to mediate in
2 good faith, as further evidence by the fact that their Complaint was filed roughly 48 hours after the
3 close of mediation.

4 **C. THE BUILDERS' COMPLAINT**

5 On September 28, 2016, two days after the mediation conference, Builders filed a
6 Complaint against the Association. The Complaint asserts the following claims for relief: (1)
7 Declaratory Relief – Application of AB 125; (2) Declaration Relief – Claim Preclusion; (3) Failure
8 to Comply with NRS 40.600 et seq.; (4) Suppression of Evidence/Spoliation; (5) Breach of
9 Contract; (6) Declaratory Relief – Duty to Defend; and (7) Declaratory Relief – Duty to Indemnify.
10 While the Complaint has occasionally been referred to as the Builders' Complaint for Declaratory
11 Relief, that title is a misnomer. The Builders' Complaint specifically asserts claims for Breach of
12 Contract and Spoliation and further seeks relief in the form of general and special damages. The
13 Association moved for dismissal of Builders' Complaint, which was denied at the motion's hearing
14 on January 24, 2017.

15 The Association filed its Answer to Builders' Complaint as well as a Counterclaim against
16 Builders and other named Counterdefendants.

17 **D. SUMMARY JUDGMENT AND AMENDED NOTICE**

18 On March 30, 2017 Builders filed a Motion for Partial Summary Judgment. The
19 Association opposed the motion. The motion was heard on June 20, 2017, and the Court issued its
20 Order on September 15, 2017.

21 On October 10, 2017, the Association filed its Motion for Clarification of the Court's
22 Order. Builders opposed the motion. The motion was heard on November 17, 2017 and was denied.

23 On April 5, 2018, the Association served the Builders with its Amended Notice. Contrary
24 to Builders' repeated protestations, the Amended Notice gave Builders notice of precisely the same
25 claims contained in the original Notice, but with heightened specificity consistent with the Court's
26

27 ⁸ See e.g. NRS 40.650 (contractor's denial of liability must be made in good faith, NRS 40.670(2) (liability for
28 attorney's fees and costs dependent upon contractor's good faith in certain circumstances, NRS 40.680 and 40.684(2)
(requirement to mediate in good faith))).

1 Order. Builders have subsequently taken to erroneously calling the inclusion of additional details
2 sought by their previous motion “new issues”.⁹

3 **DISPUTED AND UNDISPUTED FACTS**

4 In their Motion, Builders set forth their “Summary of Undisputed Facts”. The Association
5 hereby responds to the summary set forth by the Builders. However, one material and undisputed
6 fact was omitted from Builders’ summary: Builders filed the instant action against the Association,
7 setting forth claims for declaratory relief **and** affirmative damages, on September 28, 2016.¹⁰ This
8 fact alone determines that the Association can pursue its claims for constructional defects
9 regardless of the contents of the original or Amended Notice as the statutory exception set forth
10 by NRS 40.645(4) is clear on its face and provides that notice is not required. Based upon this
11 undisputed fact alone, Builders’ Motion should be denied.

12 It is undisputed that:

- 13 1. On February 24, 2015, the Nevada Legislature enacted Assembly Bill 125,
14 entitled the Homeowner Protection Act of 2015 (“AB 125”)
- 15 2. On or about February 24, 2016, the Association separately served the Builders
16 with their Notice to Contractor Pursuant to Nevada Revised Statutes, Section
17 40.645 (“Notice”), alleging constructional defects related to the residential
18 tower windows, residential tower fire blocking, mechanical room piping, and
19 sewer piping.
- 20 3. On or about May 2016, Builders served the Association with their response to
21 the Association’s Notice.
- 22 4. On September 26, 2016, the Association and the Builders participated in NRS
23 40.680 pre-litigation mediation regarding the claim contained in the
24 Association’s Notice without resolution.
- 25 5. On September 28, 2016, Builders filed a lawsuit against the Association (their
26

27 ⁹ See e.g. Builders’ Motion, p.13:12-16.

28 ¹⁰ See **Exhibit B**.

1 “Complaint). The Complaint asserts seven (7) claims for relief: (1) Declaratory
2 Relief – Application of AB 125; (2) Declaratory Relief – Claim Preclusion; (3)
3 Failure to Comply with NRS 40.600 et seq.; (4) Suppression of
4 Evidence/Spoliation; (5) Breach of Contract; (6) Declaratory Relief: Duty to
5 Defend; and (7) Declaratory Relief – Duty to Indemnify.

6 6. The Association moved for dismissal of the Complaint arguing, among other
7 things, the absence of a justiciable controversy and the absence of a cognizable
8 tort claim for spoliation under Nevada law, and that the Court denied the
9 Association’s motion on January 24, 2017.

10 7. On March 30, 2017, Builders filed a Motion for Partial Summary Judgment,
11 which was heard by this Court on June 20, 2017.

12 8. On September 15, 2017, this Court issued its Findings of Fact, Conclusions of
13 Law, and Order.

14 9. On April 5, 2018, the Association served the Builders with its Amended Notice.

15 10. The Association’s Amended Notice listed three claims, each of which was also
16 contained in the original notice: (1) Residential tower windows; (2) Residential
17 tower exterior wall insultation, and; (3) Sewer problem.

18 11. The Amended Notice identified the residential tower window defects as being
19 the result of two design deficiencies, which were identified in specific detail in
20 the report prepared by the Association’s architect, Karim Allana, and attached
21 to the Amended Notice as Exhibit A.¹¹

22 However, it is disputed that:

23 ///

24 ///

25 ///

26 ///

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28 ¹¹ See **Exhibit D.**

Alleged Fact	Source of Dispute
<p>The Amended Notice contains “new, untimely issues”.¹²</p>	<p>Exhibits A and D</p> <p>A plain reading of the Notice and the Amended Notice reveals that, in both instances, the residential tower windows issue is described as a design deficiency. The Association maintains that providing the “specific detail” sought by the Builders concerning the nature of the deficient design does not constitute a new defect.</p>
<p>The Amended Notice “does not cure deficiencies in its Initial Chapter 40 Notice with respect to alleged window claims”.¹³</p>	<p>Exhibits A, C and D; NRS 40.645(4)</p> <p>The Association maintains that the descriptions of the window claims contained in the Amended Notice are consistent with this Court’s Order, whereby “the Association ...can identify the exact location by use of the building blueprints or plans”¹⁴, with NRS 40.645’s requirements.</p>
<p>The Amended Notice “does not cure the deficiencies in its Initial Chapter 40 Notice with respect to alleged insulation claims”.¹⁵</p>	<p>Exhibits A and D; NRS 40.645(4)</p> <p>The Association maintains that the descriptions of the insulation claims are consistent with this Court’s Order, with NRS 40.645’s requirements, and unnecessary given the plain language of NRS 40.645(4).</p>

¹² Builders’ Motion, p.13:13-15.

¹³ *Id.*, p.13:16-18.

¹⁴ *See Exhibit C*, p.15:20-23.

¹⁵ Builders’ Motion., p.14:2-6.

<p>“Builders [have] been divested of its statutory right to inspect and repair the alleged sewer deficiencies”.¹⁶</p>	<p>Exhibits A, B and D; NRS 40.645(4)</p> <p>The Association maintains that the Builders’ cannot be divested of statutory rights that their own choices have waived. Specifically, the Builders’ Complaint seeks affirmative damages from the Association for Spoliation concerning the sewer deficiencies. The plain language of NRS 40.645(4) makes clear that no notice is required to pursue claims for which a claimant has already been sued for by the Builders.</p>
<p>“[T]he omission of head flashing[] [is] untimely and therefore time barred.”¹⁷</p>	<p>Exhibits A and D</p> <p>A plain reading of the Notice and the Amended Notice reveals that, in both instances, the residential tower windows issue is described as a design deficiency. The Association maintains that providing the “specific detail” sought by the Builders concerning the nature of the deficient design does not constitute a new defect and therefore cannot be untimely. One cannot simply demand “specific detail” about an issue and then balk when they find the additional detail inconvenient.</p>

¹⁶ *Id.*, p.15:21-23.

¹⁷ *Id.*, p.15:17-19.

LEGAL ARGUMENT

A. LEGAL STANDARD

1. Summary Judgment Standard

Summary judgment is appropriate only when, reviewing the evidence in the light most favorable to the non-moving party, “the pleadings and other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.’”¹⁸

Moreover, “[t]he substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.”¹⁹

2. NRS 40.600 et seq.

NRS Chapter 40, NRS 40.600, et al., entitled “Actions Resulting From Constructional Defects”, governs construction defect actions in Nevada. NRS 40.600 et seq., was enacted to promote and facilitate the timely and cost-effective settlement of complex construction defect cases without resort to litigation.²⁰ The pre-litigation notice provisions, which are intended to allow homeowners and contractors working together to resolve disputes without litigation, should thus be interpreted in such a way that an unsophisticated layperson can comply with the statute unaided by counsel.²¹ Public policy favors this approach, and for obvious reasons. The Chapter 40 pre-litigation process strips property owners of their constitutional right to timely access to justice and equal protection of the law if contractors are allowed to use the process as a shield to frustrate civil litigation.²² These principles are paramount to this Court’s “wide discretion” in equity to review these virtually automatic, and almost perfunctory, defense challenges to notices regardless of their content.

Generally, under the present and previous iterations of Chapter 40, a construction defect

¹⁸ *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

¹⁹ *Id.* at 1031.

²⁰ *D.R. Horton, Inc. v. Eighth Judicial Dist. Ct.*, 123 Nev. at 481, 168 P.3d at 741 (2007) (“*First Light I*”).

²¹ *Id.* at 478-479, 738-39.

²² *Id.* at 482, 741; *See also* NV. Const. Art. 1§3; NV. Const. Art. XIV §1.

1 action begins with a claimant providing a notice to a contractor, who is given the opportunity to
2 inspect and repair the defects identified in the notice. However, NRS 40.645(4) provides, by its
3 express terms, exceptions to the notice and repair requirements:

4 **4. Notice is not required pursuant to this section before commencing an**
5 **action if:**

6 (a) **The contractor, subcontractor, supplier or design professional has filed**
7 **an action against the claimant; or**

8 (b) The claimant has filed a formal complaint with a law enforcement agency
9 against the contractor, subcontractor, supplier or design professional for threatening
10 to commit or committing an act of violence or a criminal offense against the
11 claimant or the property of the claimant.²³

12 During the 2015 legislative session, the Nevada Legislature enacted the dubiously named
13 Homeowner Protection Act of 2015, more commonly known as AB 125. AB 125 made sweeping
14 changes to Nevada's Chapter 40 processes, several of which are properly identified and aptly
15 described in the Builders' Motion. NRS 40.645(4), however, remained unchanged even in the
16 midst of AB 125's other, less homeowner-friendly alterations.²⁴ So, while it is true that AB 125
17 imposed stricter requirements concerning the required contents of pre-litigation notices under
18 Chapter 40, it still admits of exceptions to the requirement to provide notice and a right to repair.
19 Specifically, the plain language of NRS 40.654(4) provides that such notice is **not required** where,
20 as here, a contractor has filed an action against the Chapter 40 claimant.

21 **B. NRS 40.645(4) PRECLUDES SUMMARY JUDGMENT CONCERNING THE**
22 **AMENDED NOTICE BECAUSE NOTICE IS NOT REQUIRED ONCE BUILDERS**
23 **INITIATE AN ACTION AGAINST A CLAIMANT**

24 **1. Builders filed the instant lawsuit against the Association, giving rise to**
25 **the application of NRS 40.654(4).**

26 On September 28, 2016, Builders filed their Complaint against the Association. After the
27 Builders' decision to initiate an action against the Association, and according to the plain language
28 of NRS 40.645(6), no notice or opportunity to repair was required from the Association claimants
before commencing their own action to recover for constructional defects. By way of their Answer
and Counterclaim, the Association filed such an action on March 1, 2017, only after the Builders

²³ NRS 40.645(4) (emphasis added)

²⁴ See **Exhibit E** at p.13:1-9.

1 had filed their own action against the Association.

2 Builders now ask this Court to ignore the express statutory exception provided by NRS
3 40.645(4) and deny the Association any mechanism to pursue their claims for construction defects.
4 Absolutely nothing required the Builders to file a suit against the Association. The decision to do
5 so was purely volitional. Even if the Builders found the original notice deficient, there remained
6 alternative avenues of recourse. By way of example, the Builders might simply have waited for
7 the Association to file their own suit before challenging the notice by motion or counterclaim, as
8 has been the customary practice in Nevada since Chapter 40's inception decades ago. Instead, the
9 Builders elected to pursue their own lawsuit at their earliest opportunity, scarcely 48 hours
10 following the close of mediation discussions. This choice has statutory consequences.

11 It is important to note that the Builders' Complaint is not simply a complaint for declaratory
12 relief concerning the sufficiency of the Association's Notice, or even a complaint for declaratory
13 relief as it has often been described. On the contrary, the Builders' Complaint alleges claims for
14 affirmative damages by way of its Fourth and Fifth Claims for Relief, in addition to a prayer for
15 general and special damages. This is not a suit simply asking this Court to declare rights and
16 obligations. It is full fledged lawsuit that the Association has an obligation to defend against. In
17 other words, it is precisely the type of action contemplated by NRS 40.645(4).

18 It is anticipated that the Builders will endeavor to argue that simple declaratory relief
19 actions are exempted, in practice if not in law, from NRS 40.645(4). Several factors weigh against
20 this position. First, the proposition that *any* action is exempted from the plain meaning of NRS
21 40.645(4) is without support in law. Had the legislature intended to exempt a certain class of
22 actions from the statute, such language would be expected to be found within the statute itself. It
23 is not. Second, assuming *arguendo* that actions whose sole purpose is to challenge the sufficiency
24 of a Chapter 40 Notice were exempted from the application of NRS 40.645(4), the Builders'
25 Complaint would have no claim to such an exemption. As discussed in the preceding paragraph,
26 the Builders not only chose to file a complaint against the claimant Association when nothing
27 required them to do so, but they further chose to pursue a complaint for far more than declaratory
28 relief. Even if a carveout may have existed for a declaratory relief action, a complaint that seeks

1 general and special damages for spoliation and/or a breach of a contract would not qualify.

2 **2. NRS 40.645(4)'s meaning is plain and unambiguous.**

3 Many of Nevada's guidelines for statutory construction are so long held and well founded
4 as to be axiomatic. Nonetheless, the Nevada Supreme Court set forth several such guidelines in
5 *Banegas v. State Industrial Insurance System*, 117 Nev. 222, 19 P.3d 245 (2001.) For example:

6 It is well established that when the language of a statute is plain and unambiguous,
7 a court should give that language its ordinary meaning and not go beyond it. *See*
8 *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 891, 784 P.2d 974, 977
(1989).²⁵

9 Here, the words of NRS 40.645(4) are plain and unambiguous:

10 Notice is not required pursuant to this section before commencing an action if: (a)
11 The contractor, subcontractor, supplier or design professional has filed an action
against the claimant...

12 Given that statutory construction is not necessary when the meaning of a statute is clear on
13 its face, nothing more than its own language is required to discern NRS 40.645(4)'s meaning.
14 Where, as here, a contractor elects to initiate a lawsuit against a claimant, notice is not required for
15 the claimant to pursue its own action for construction defects.

16 Builders cannot be entitled to summary judgment concerning the Association's Amended
17 Notice where, as a consequence of their wholly voluntary decision to sue the Association, notice
18 is not required "pursuant to this section before commencing an action".²⁶

19 **3. Although unnecessary, additional guidelines for statutory construction weigh in**
20 **favor of the NRS 40.645(4)'s application.**

21 Although NRS 40.645(4) is plain on its face, additional factors may be reviewed to discern
22 its meaning. For example, the title of a statute may be considered in determining legislative
23 intent.²⁷ The title of NRS 40.645 reads as follows:

24 Notice of defect: Required before commencement of or addition to certain
25 actions; content; persons authorized to provide notice; **exceptions.** (emphasis

26 ²⁵ *Banegas* at 225.

27 ²⁶ NRS 40.645(4)

28 ²⁷ *Banegas* at 230.

1 added).

2 NRS 40.645(4), located at the end of the statute, contains the exceptions to the notice requirements
3 specified in the title. Thus, it is clear that the legislature intended that the section's otherwise
4 mandatory notice requirements admit of exceptions. Specifically, the section's notice requirements
5 cease to be requirements where, as here, a contractor has elected to sue the claimant.

6 Should it become necessary to look further to legislative intent with regard to the
7 interpretation of NRS 40.645(4):

8 With regard to statutory construction, this court has stated that 'The leading rule for
9 the construction of statutes is to ascertain the intention of the legislature in enacting
10 the statute, and the intent, when ascertained will prevail over the literal sense. The
11 meaning of words used in a statute may be sought by examining the context and by
12 considering the reason or spirit of the law or the causes which induced the
13 legislature to enact it. The entire subject matter and the policy of the law may also
14 be involved to aid in its interpretation, and it should always be construed so as to
15 avoid absurd results.'²⁸

16 Chapter 40 was, and to a lesser degree remains, a consumer protection statute. Even AB
17 125, which was the most draconian alteration to Chapter 40 since its inception, acknowledges this
18 fact by its title, "The Homeowner Protection Act of 2015".

19 The legislative intent for NRS 40.645(4) can be found in the legislative history for Chapter
20 40.²⁹ During the 2003 legislative session, the homebuilders in Nevada, along with the residential
21 construction subcontractors, fought hard for a mandatory "right to repair" before being subject to
22 a lawsuit. The homebuilders succeeded in getting a particularly draconian measure passed through
23 the Nevada State Senate. However, the Assembly leadership was unwilling to deprive homeowners
24 in the State of Nevada of the rights that would be stripped by way of the Senate bill. During
25 discussion before the Assembly Committee on Judiciary, members of the Nevada Trial Lawyers
26 Association offered testimony against the builder-proposed measure addressing this very issue:

27 ²⁸ *Moody v. Manny's Auto Repair*, 110 Nev. 320, 325, 871 P.2d 935, 938 (1994) (quoting *Welfare Div. v. Washoe Co.*
28 *Welfare Dep't*, 88 Nev. 635, 637-38, 503 P.2d 457, 458-59 (1972). *Advanced Sports Information, Inc. v. Novotnak*,
114 Nev. 336, 340, 956 P.2d 806, 808-09 (1998).

²⁹ The contents of today's NRS 40.645(4) were previously located in NRS 40.645(6) until 2015, when AB 125's
alterations of NRS 40.600 et seq. removed portions of NRS 40.645, requiring NRS 40.645(6) to be relocated to NRS
40.645(4).

1 “The mandatory right to repair in S.B. 241 is unfair; ... There is no exception for
2 homeowners who are already in litigation with contractors.”³⁰

3 By the May 16, 2003 Assembly Committee on Judiciary hearing, a new proposed
4 amendment had been agreed to in principle by the homebuilders and the Nevada Trial Lawyers
5 Association. Here, members of the Nevada Trial Lawyers Association testified that this
6 amendment contained, among other things, a provision that:

7 “Clarifies that a homeowner who has been sued by a builder **for any reason**,
8 including defamation, is not required to provide notice to a contractor in order to
commence an action.”³¹

9 This testimony is further reflected in the submission of Exhibit G to the Assembly Judiciary
10 Committee by the homebuilders, which reads, in pertinent part:

11 **“Exceptions to the notice requirement**

12 A claimant is not required to provide a contractor with notice pursuant to this
chapter before commencing a course of action for constructional defect if:

13 1. The contractor has a lawsuit pending against the claimant regarding the
residence...”³²

14 Senate Bill 241, as enrolled on May 28, 2003, reads as follows at Section 20(6), amending
15 NRS 40.645:

16 “Notice is not required pursuant to this section before commencing an action if:
17 (a) The contractor, subcontractor, supplier or design professional has filed an action
18 against the claimant;”³³

19 This language ultimately became NRS 40.645(6)(a) until 2015, when the passage of AB
20 125 moved the same language to NRS 40.645(4)(a).

21 The notice provisions of NRS 40.645 are provided so that a contractor who chooses the
22

23
24 ³⁰ Hearing on S.B. 241 Before the Assembly Committee on Judiciary, 72nd Leg. (Nev., May 8, 2003) page 41-42. A
true and correct copy of pages 1, 41-42 is attached as **Exhibit F**.

25 ³¹ Hearing on S.B. 241 Before the Assembly Committee on Judiciary, 72nd Leg. (Nev., May 16, 2003) page 40
(emphasis added). A true and correct copy of pages 1, 40 is attached as **Exhibit G**.

26 ³² Hearing on S.B. 241 Before the Assembly Committee on Judiciary, 72nd Leg. (Nev., May 16, 2003) Exhibit G, page
27 4 (emphasis in original). A true and correct copy of page 4 is attached as **Exhibit H**.

28 ³³ Enrolled S.B. 241, 72nd Leg. (Nev. May 28, 2003), at page 13. A true and correct copy of Enrolled S.B. 241 is
attached as **Exhibit I**.

1 right to repair provided therein has knowledge of the defects sufficient to carry out the repairs. No
2 right to repair is given to a contractor such as the Builders herein who “[have] filed an action
3 against the claimant.” The legislative intent to create an exception to the notice and right to repair
4 provisions is clear: where, as here, a contractor elects to sue a claimant, they give up pre-litigation
5 right to repair notice rights under NRS 40.645, pursuant to NRS 40.645(4).

6 **C. THE AMENDED NOTICE IS SUFFICIENT UNDER NRS 40.645 AND**
7 **CONSISTENT WITH THIS COURT’S ORDER**

8 **1. Residential tower windows**

9 The Association has maintained, from the service of their initial Notice, that the residential
10 tower windows defect is a “design deficiency that exists in all (100%) of the residential tower
11 window assemblies”.³⁴

12 This Court has concluded that the “portion of the [Notice], which outlines the existence of
13 the same or similar deficiencies in over 9,500 window assemblies, is not sufficient.”³⁵ The Court
14 was similarly unpersuaded by the Association pointing out that strict compliance with AB 125’s
15 noticing requirements would, in this instance, lead to the absurd result of incurring a seven-figure-
16 plus (\$1,000,000.00+) filing fee in the form of pre-litigation investigation and testing before the
17 Association could even gain access to the court. This Court noted that such a result was not
18 inevitable, “especially...when one claims the deficiency is in the design of the windows and their
19 assemblies ... if there is a defect in the unit’s design, the Association or other claimant can identify
20 the exact location by use of the building blueprints or plans.”³⁶ The Court further noted that
21 “[d]efects in the window assembly’s design can be discerned though the manufacturer’s plans,
22 sketches or diagrams”.³⁷ The Association agreed, and did precisely as this Court suggested.

23 The Association’s Amended Notice made use of building’s plans, along with window plans
24 and diagrams, to identify in specific detail the specific nature of the deficient design, the specific

25 ³⁴ Exhibit A.

26 ³⁵ Exhibit C, p.12:18-21.

27 ³⁶ *Id.*, p.15:17-23.

28 ³⁷ *Id.*, p.15:23 through p.16:1.

1 locations of the missing components in the window assemblies, and the specific locations of the
2 improperly designed windows.³⁸ The Amended Notice included the pertinent plans and diagrams
3 for the Builders' review, and also included an affidavit describing the methodology by which the
4 defects were discerned.³⁹ This is entirely consistent with not only the statutory requirements of
5 NRS 40.645 (assuming arguendo that notice is required despite the application of NRS 40.645(4))
6 but also with this Court's specific conclusions of law pertaining thereto. The Association
7 encourages the Court to review the Amended Notice, maintaining that it speaks for itself.

8 **2. Fire blocking and sewer pipe**

9 Regrettably, similar notice methodology is not available for the Association's fire blocking
10 and sewer room claims⁴⁰. The Development's plans and drawings predictably called for the
11 presence of fire blocking insulation, despite its observed absence in limited testing, and the repairs
12 of the sewer pipe, which were required pursuant to an imminent life-safety issue⁴¹, were completed
13 years prior to the original notice.

14 In the absence of millions of dollars to perform the destructive testing required to locate
15 the precise absence of fire blocking installation, the notice demanded by the Builders simply
16 cannot be produced. Moreover, (and the Association does not wish to appear glib here) in the
17 absence of any mechanism to change the past, the notice demanded by the Builders is similarly
18 unavailable concerning the sewer pipe. The Builders are aware of this, pointing out in their Motion
19 that "[t]he Association will never be able to cure this deficiency".⁴²

20 However, given that the Association has been sued by the Builders, notice is "not required"
21 under NRS 40.645(4). This is particularly true given that the Builders sued the Association for
22 spoliation pertaining to the sewer claim.⁴³ As the Association has previously argued, Nevada has

24 ³⁸ **Exhibit D.**

25 ³⁹ *Id.*

26 ⁴⁰ The Association moved the Court for clarification of its Order on these matters, but its motion was denied.

27 ⁴¹ Which the Court correctly and humorously noted was a "crappy situation" at a previous hearing in this matter.

28 ⁴² Builders' Motion, p.15:22-24.

⁴³ **Exhibit B**, ¶s 91-93.

1 “decline[d] to recognize [that] an independent tort exists for spoliation regardless of whether the
2 alleged spoliation is committed by a first or third party”.⁴⁴ As the Court declined to dismiss this
3 claim for relief, the Association must assume that it proceeds under its only other cognizable form,
4 as a common law claim sounding in negligence.⁴⁵ It is clear that the Builders’ Complaint is not
5 simply a declaratory relief action concerning notice requirements, but rather a complaint that
6 alleges claims for affirmative damages against which the Association *must* defend. It is precisely
7 this type of action that is contemplated by NRS 40.645(4) in providing an exception to the sections
8 other requirements.

9 It is also important to note that the window assembly claims and the fire blocking claims
10 are linked. It was during the repairs and investigation described in **Exhibit J** that the absence of
11 fire blocking was observed in the first place. The repair work that will ultimately be required to
12 remedy the defectively designed window assemblies will also expose the ledger shelf cavities
13 where fire blocking has been observed to be missing.

14 As discussed above, the Builders’ Complaint alleges claims and damages against which
15 the Association must defend. More is at stake for the parties than the sufficiency of the original or
16 Amended Notice. In the face of affirmative damage claims for breach of contract⁴⁶, the Association
17 is entitled to rely upon the claims contained in its Amended Notice to defend against the allegations
18 of a breach. Similarly, in the face of a claim sounding in negligence concerning the sewer pipe,
19 the Association is entitled to rely upon their allegations concerning the sewer pipe to defend against
20 the damages sought by the Builders. Even the Builders’ claims for duties to defend and indemnify
21 will require the Association to rely upon the contents of their Notices to defend against the
22 allegation that the alleged duties are or have been triggered. Summary adjudication concerning the
23 Amended Notice not only strips the Association of the claims for constructional defects, but of
24 their defense to the Builders’ remaining claims. It is that outcome that the application of NRS
25

26 ⁴⁴ *Timber Tech Engineered Bldg. Products v. The Home Ins. Co.*, 118 Nev. 630, 55 P.3d 952 (2002).

27 ⁴⁵ *Id* at 952, 954.

28 ⁴⁶ The contract in this case being the prior settlement agreement.

1 40.645(4) anticipates and precludes.

2 **D. THE BUILDER’S INTERPRETATION OF AB 125 IS UNREASONABLE, LEADS TO**
3 **AN ABSURD RESULT, AND VIOLATES DUE PROCESS**

4 The Association finds it necessary to repeat its position from the first time the sufficiency
5 of its Notice was challenged here. The Builders will almost certainly argue that this position has
6 been heard and decided by the Court, but that argument would be incomplete. The Association, in
7 opposing the Builders’ earlier Motion, argued that the Builders’ construction of NRS 40.600
8 Motion is contrary to Nevada law, is unreasonable, leads to an absurd result, and violates the due
9 process rights of the Association. The Court has indeed heard these arguments, but its Order only
10 addresses them as they relate to the Association’s window assembly claim.⁴⁷ The Association
11 noted the Court’s analysis concerning the window assembly claim and, as discussed *supra*,
12 prepared its Amended Notice consistent with this Court’s specific conclusions of law on the
13 subject.

14 However, no such conclusions were reached regarding the effect of the Builders’ statutory
15 construction upon the Association’s fire blocking insulation and sewer pipe claim. Although the
16 Association sought clarification of the Order concerning these claims, its Motion for Clarification
17 was denied. Consequently, the Association renews its position as it relates to the fire blocking and
18 sewer pipe claims.

19 Builders grossly overstate the requirements of Chapter 40 with respect to the requirements
20 for descriptions of defects. This is significant as Builders’ interpretation requires the inspection
21 and destructive testing of each of the Developments 616 residential units in order locate instances
22 where fire blocking insulation, although required by code and called for in the buildings plans, is
23 absent. It would raise the Associations’ costs exponentially in the Chapter 40 process and is a part
24 of the profound chilling effect AB 125 has had upon homeowners endeavoring to exercise their
25 rights under Chapter 40. This is precisely the type of absurd result that statutory interpretation
26

27
28 ⁴⁷ Exhibit C, p.15:17 through p.16:7.

1 must avoid.⁴⁸

2 Builders' strained interpretation leads to additional absurd and unreasonable results. The
3 costs associated with the inspection and destructive testing for each and every occurrence of the
4 defects is prohibitive. It is also duplicative, given that the repair work that is required for all of the
5 residential tower windows (whose defects are discernible from their design) would ultimately
6 confirm the absence of fire blocking in each and every location where it should have been installed
7 but wasn't. The specific identification of each and every occurrence the installation deficiency
8 relating to the residential tower fire blocking on its own would be so expensive as to frustrate even
9 preliminary pursuit of the Association's claims. For example, inspection and testing for the
10 absence of fire blocking in each and every unit would require: (1) the retention of contractors to
11 remove furniture, cabinetry, carpeting, and appliances in preparation for testing; (2) the removal
12 of baseboards, sheetrock, water proof membranes and mineral wool fiberglass insulation; (3) the
13 attendance of representative for both parties *during* the testing, instead of before and/or after, as
14 evidence of damage would be removed during the testing; and (4) extensive put back work,
15 including the return and installation of all items moved or removed during preparation.⁴⁹
16 According to Builders' interpretation of AB 125, this work would need to be repeated in each and
17 every of the Development's 616 units. The projected cost of such work exceeds \$8,000,000 for a
18 combination of window assembly and fire blocking inspection and testing.⁵⁰ Even if this work for
19 the fire blocking insulation by itself represented only half of the overall cost, it would still require
20 the Association claimant to expend in excess of \$4,000,000.00 *before* even gaining access to the
21 Courts. These costs do not include financial expenditures for testing of the additional 20 townhouse
22 units or the loft, retail and office space. Nor do they account for the costs that would incurred in
23 providing the residents with temporary housing during the testing and inspections.⁵¹

24 ⁴⁸ See *Westpark Owners' Ass'n v. Eight Judicial Dist. Ct.*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007); See also
25 *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 ("a statute's language "should not be read to produce absurd or
26 unreasonable results."").

26 ⁴⁹ **Exhibit J**, p.4:15-25 and p.5:1-23.

27 ⁵⁰ *Id.*, ¶ 9

28 ⁵¹ *Id.*, ¶s 9-10.

1 Effectively requiring a claimant to expend costs exceeding \$4,000,000 before they may
2 even gain access to the courts is not a pragmatic application of NRS Chapter 40, and this is
3 precisely what Builders' interpretation requires. More importantly, these costs demonstrate that
4 this strained reading of the statute produces results that are both absurd and unreasonable, which
5 is what courts aim to avoid when interpreting statutes like those at issue here.⁵²

6 In addition to the absurd and unreasonable results yielded by Builders' interpretation of
7 AB 125, it also violates the Association's due process rights. The Nevada Supreme Court has
8 already recognized that NRS 40.645 is "ambiguous" and puts up extraordinary impediments to the
9 constitutional right of access to justice.⁵³ By requiring homeowners to expend exorbitant costs to
10 specifically identify each defect and its location in each and every instance where it occurs,
11 Builders put up impediments to the constitutional right of access to justice that aren't simply
12 extraordinary, they are plainly unconstitutional.⁵⁴

13 **E. SUMMARY JUDGMENT IS INAPPROPRIATE AS THERE ARE UNRESOLVED**
14 **QUESTIONS OF FACT**

15 **1. Triable issues of fact exist concerning the content of the residential**
16 **window tower defect in the Amended Notice.**

17 While unnecessary to deny the pending Motion, which can be properly denied for the
18 reasons set forth above, a triable issue of material fact exists concerning the residential tower
19 window assembly design defect as alleged in the Amended Notice. There is a valid and material
20 factual dispute over whether the absence of head flashing in the design of the window assembly is
21 a new defect, as the Builders claim, or a specific detail about the defective design of the windows
22 that has always been the heart of the Association's claims for constructional defects.

23
24

⁵² See *Westpark*, 123 Nev. at 349, 357; See also *Leven v. Frey*, 123 Nev. at 399, 405.

25 ⁵³ *D.R. Horton, Inc. v. Eighth Judicial Dist. Ct.*, 123 Nev. at 481, 482 168 P.3d at 741 (2007)

26 ⁵⁴ See *DeWitt v. Pail*, 366 F.2d 682, 685 (9th Cir. 1966) ("Reasonable access to courts, state and federal, is guaranteed
27 by [the Due Process Clause of the Fourteenth Amendment]"); See also *In re Consol. U.S. Atmospheric Testing Litig.*,
28 820 F.2d 982, 990 (9th Cir. 1987) (citing *Logan v. Zimmerman Brush Co.*, 445 U.S. 422, 428 102 S. Ct. 1148. 1154.
71 L.Ed. 2d 265 (1982) ("[] Congress must comply with due process when abolishing or substantially modifying a
common law cause of action."))

1 The Association has submitted, as part of its Amended Notice, an expert report and opinion
2 setting forth facts in support of its position. Builders have attached, as part of their Motion, a two-
3 page Declaration from their expert which reaches a different conclusion. Notwithstanding the fact
4 that this declaration is wholly devoid of anything even remotely resembling expert analysis and is
5 instead a bland recitation of legal conclusions bereft of anything that would require an architect's
6 opinion, the Declaration nonetheless demonstrates the existence of a triable and disputed material
7 fact relating to the Amended Notice.

8 As the nature of the design deficiency, and evidence related thereto, are questions of fact
9 more appropriately addressed by a trier of fact, after being presented with evidence, summary
10 adjudication of this matter as a matter of law is inappropriate.

11 **2. Triable issues of fact exist concerning remainder of the Builders'**
12 **Complaint, which are inextricably connected to the Associations'**
13 **claims.**

14 Given that the action presently at bar is a Complaint whose allegations and claims for relief
15 exceed a simple declaratory relief action, unresolved questions of fact exist concerning the
16 remainder of the Builders' claims for relief. The Association is consequently defending against a
17 negligence claim, a breach of contract claim, and claims concerning duties that may or may not
18 arise for Association in connection with that contract. Integral to the Association's ability to defend
19 against these claims are its own allegations of constructional defects and the material facts related
20 thereto. Whether the Association is in breach of the prior settlement agreement is a factual
21 question. Whether the Association has a duty to defend against its own claims, or to indemnify the
22 Builders for the same claims, is contingent almost entirely upon the factual content of those claims.
23 Each of these considerations are rooted in questions of material fact, and each of them remains
24 unresolved. Summary adjudication of the Association's Amended Notice, which is where these
25 factual disputes are rooted, is not only inappropriate for all these reasons described more fully
26 above but also because it deprives the Association of the ability to defend against the Builders'
27 remaining claims.
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EXHIBIT A

EXHIBIT A

EXHIBIT A



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; F. RODGERS
CORPORATION, a Nevada corporation;
DEAN ROOFING COMPANY, a Nevada
corporation; FORD CONTRACTING, INC., a
Nevada corporation; INSULPRO PROJECTS,
INC., a Nevada corporation; FLIPPIN'S
TRENCHING, INC., a Nevada corporation;
X-TREME X-CAVATION, INC., a Nevada
corporation; SOUTHERN NEVADA
PAVING, INC., a Nevada corporation;
BOMBARD MECHANICAL, LLC, a
Nevada limited liability company; SILVER
STAR PLUMBING, INC., a close
corporation; FIVE STAR PLUMBING &
HEATING, LLC, a Nevada limited liability
company,

Respondents.

VERIFICATION 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

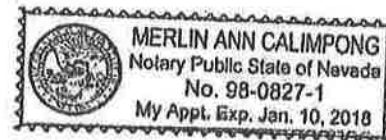


Exhibit “A”

Exhibit “A”

KLAI JURA

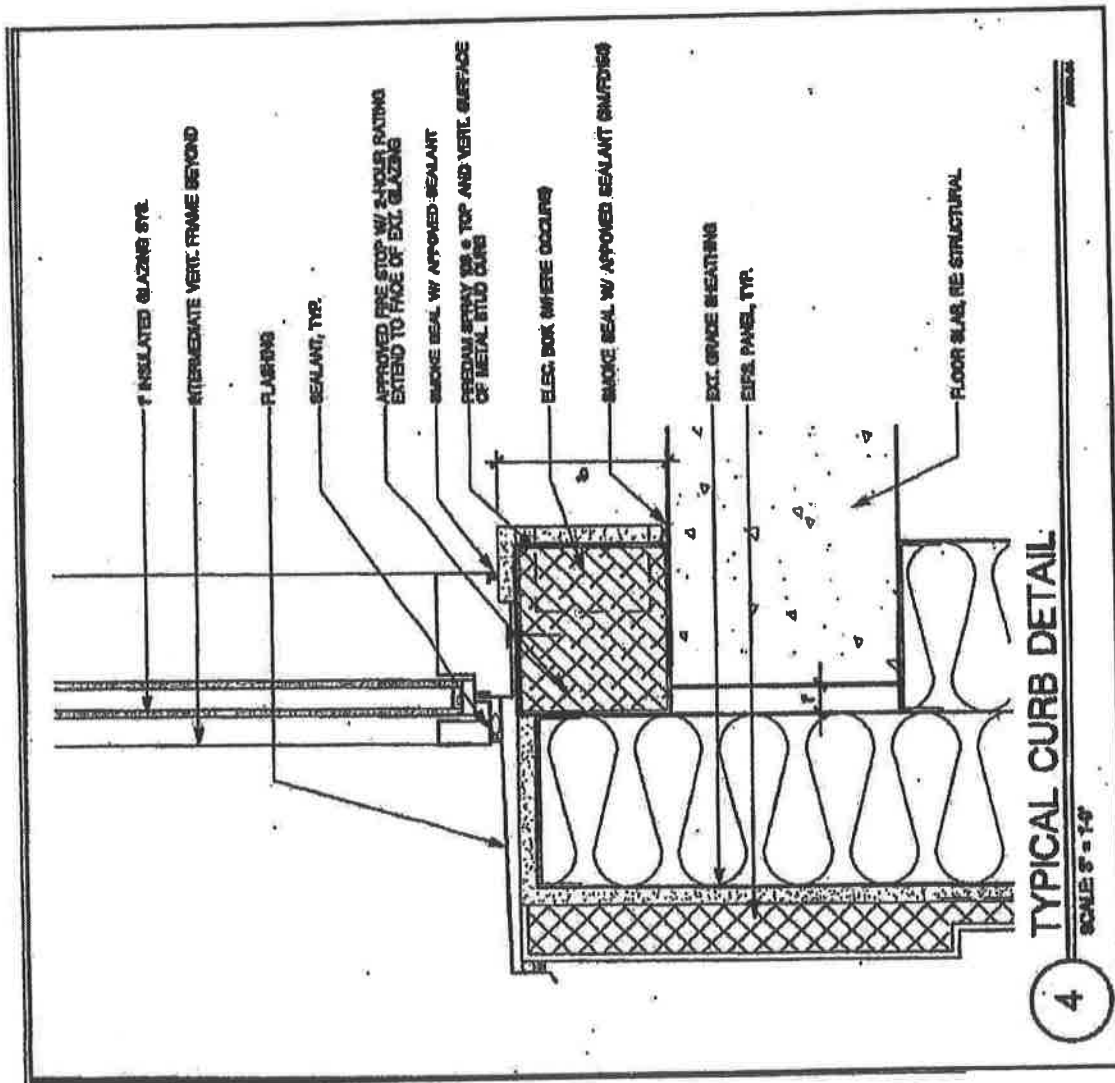


NO.	REVISION	DATE
1	REVISION 1	11-01-05
2	REVISION 2	11-01-05
3	REVISION 3	11-01-05
4	REVISION 4	11-01-05
5	REVISION 5	11-01-05
6	REVISION 6	11-01-05
7	REVISION 7	11-01-05
8	REVISION 8	11-01-05
9	REVISION 9	11-01-05
10	REVISION 10	11-01-05
11	REVISION 11	11-01-05
12	REVISION 12	11-01-05
13	REVISION 13	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



4

TYPICAL CURB DETAIL

SCALE 5' = 1'-0"

AA0875

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
*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					

AA0878

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

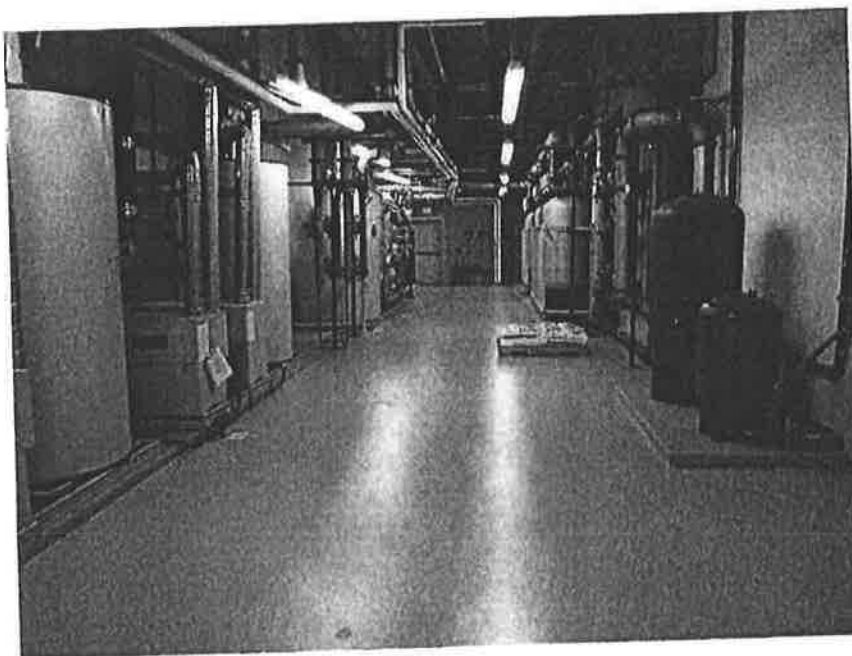
Corrosion Assessment

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
<p>*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy</p>					

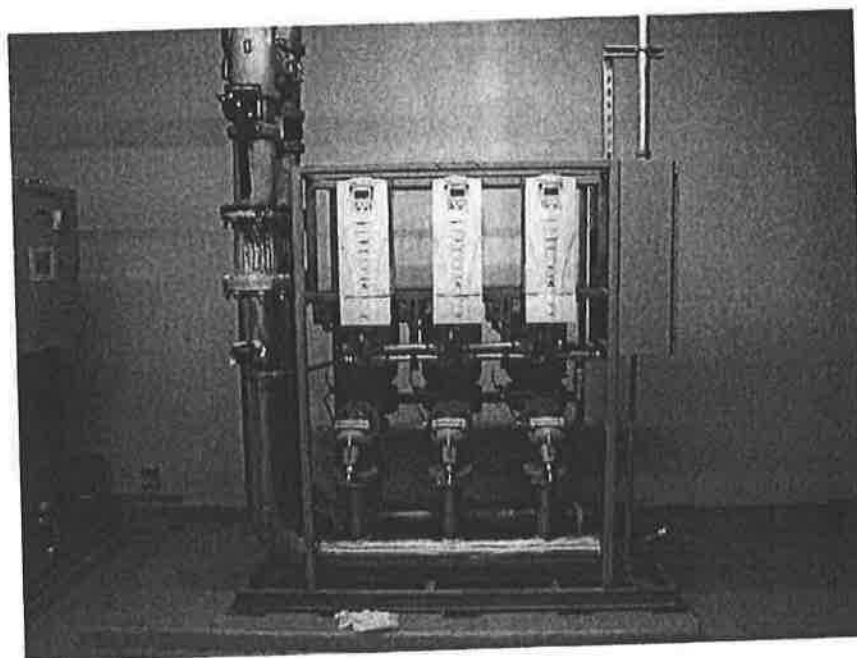
PANORAMA TOWER 2
UPPER MECHANICAL ROOM
Replacement Recommendation

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).

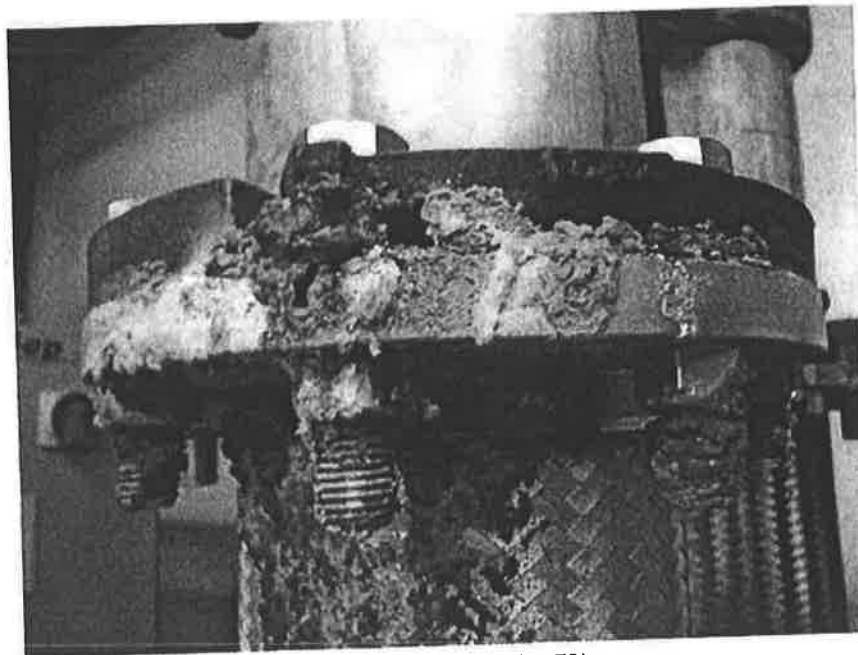


2. BP-1,
(jpg66)

PANORAMA 1 Lower Mechanical Room

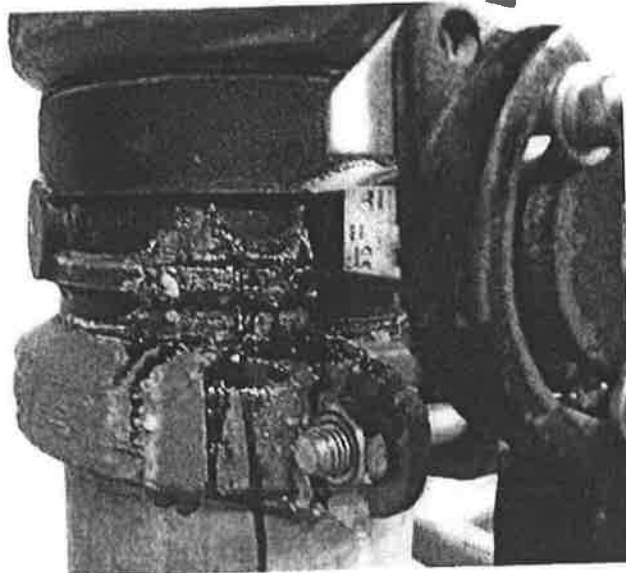


3. BP-1, flex
connection (jpg68)

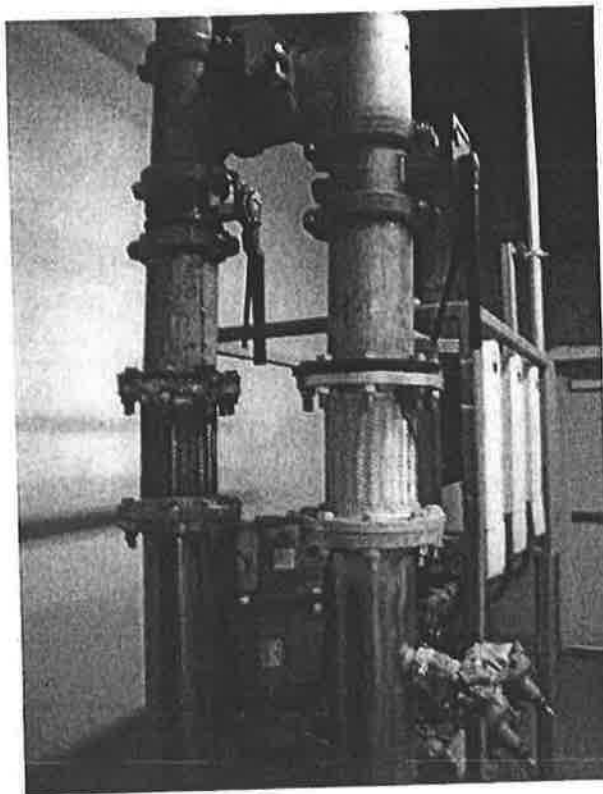


4. BP-1,
close up of leaking flex flange connection (jpg72)

PANORAMA 1 Lower Mechanical Room

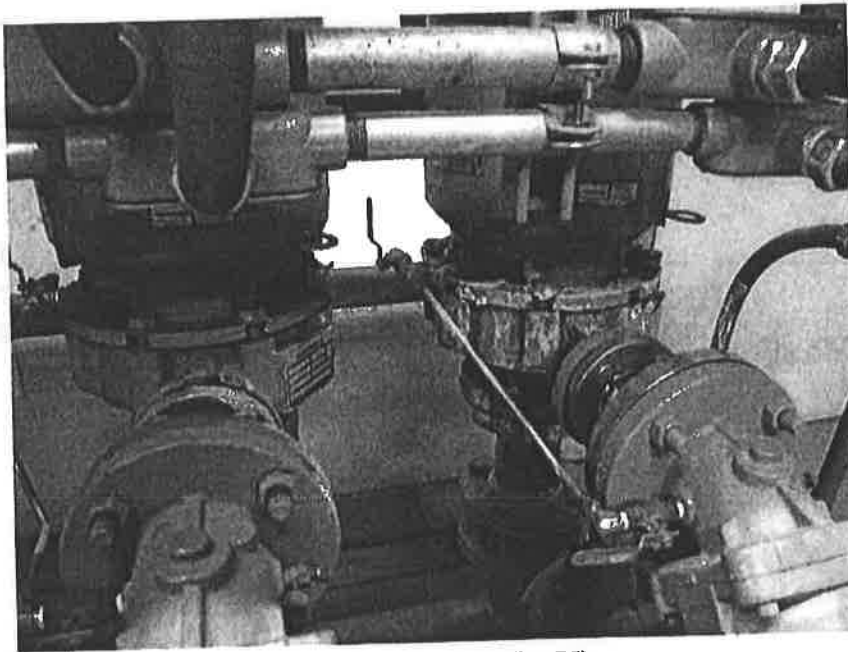


5. BP-1 (jpg 73)

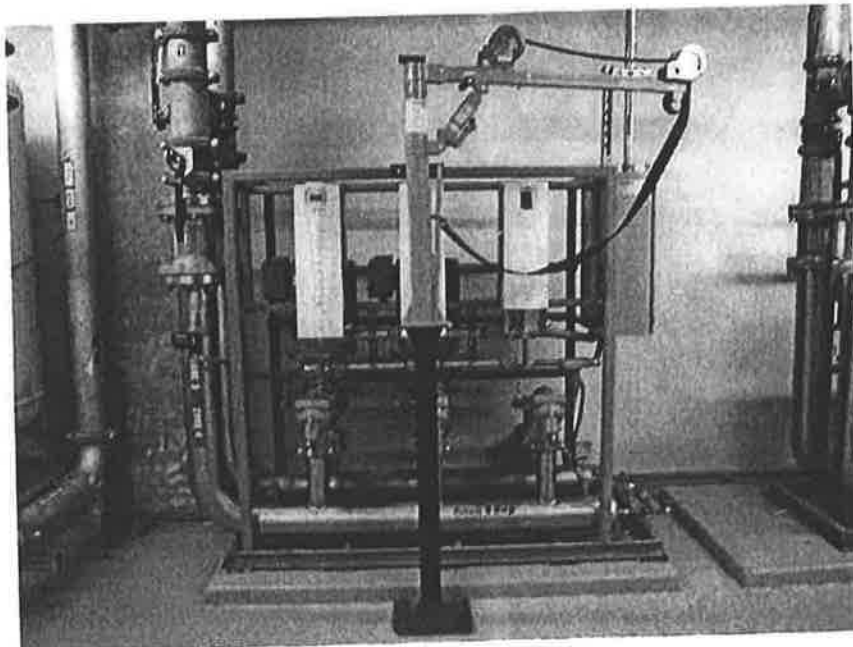


6. BP-1 (jpg(74)

PANORAMA 1 Lower Mechanical Room



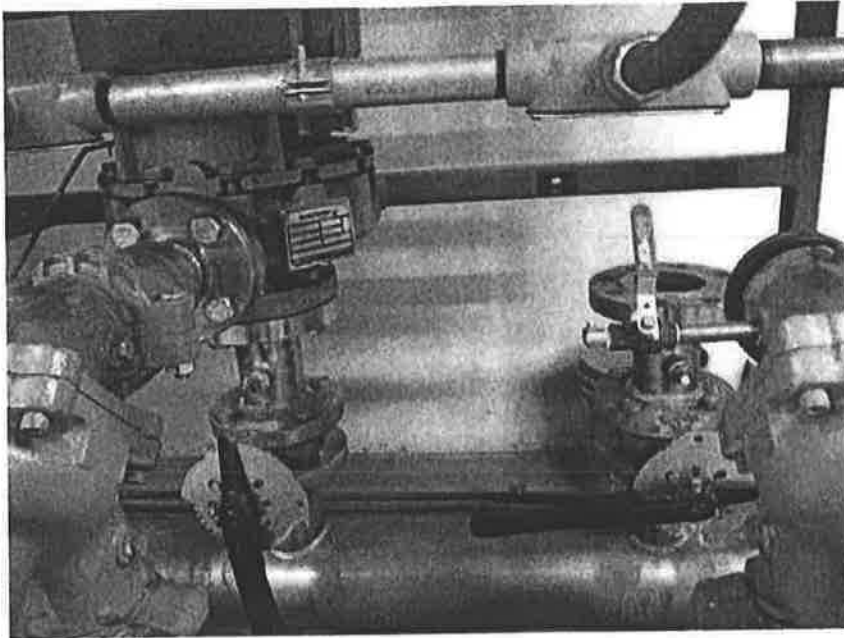
7. BP-1,
replace leaking ferrous pump housing now (jpg75).



77)

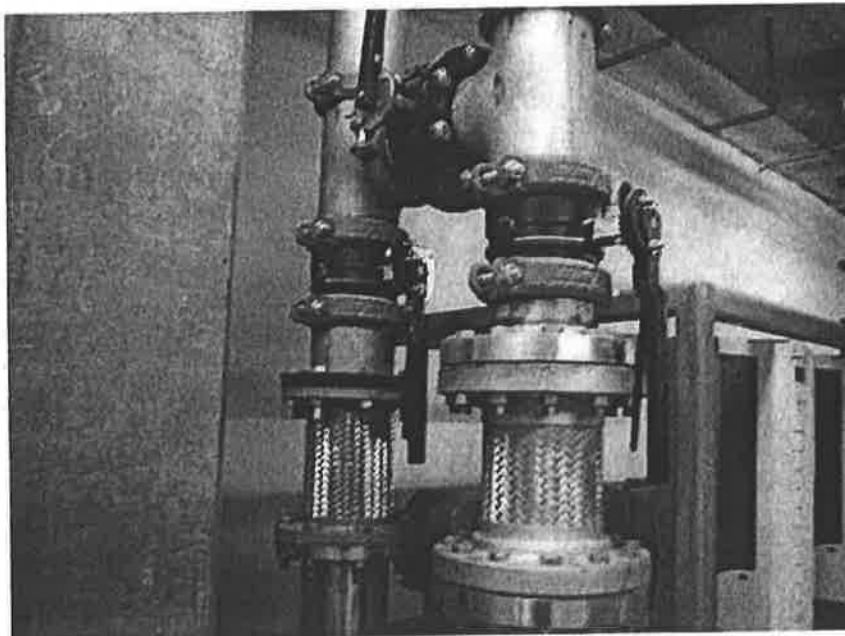
8. BP-2, (jpg

PANORAMA 1 Lower Mechanical Room



9. BP-2,

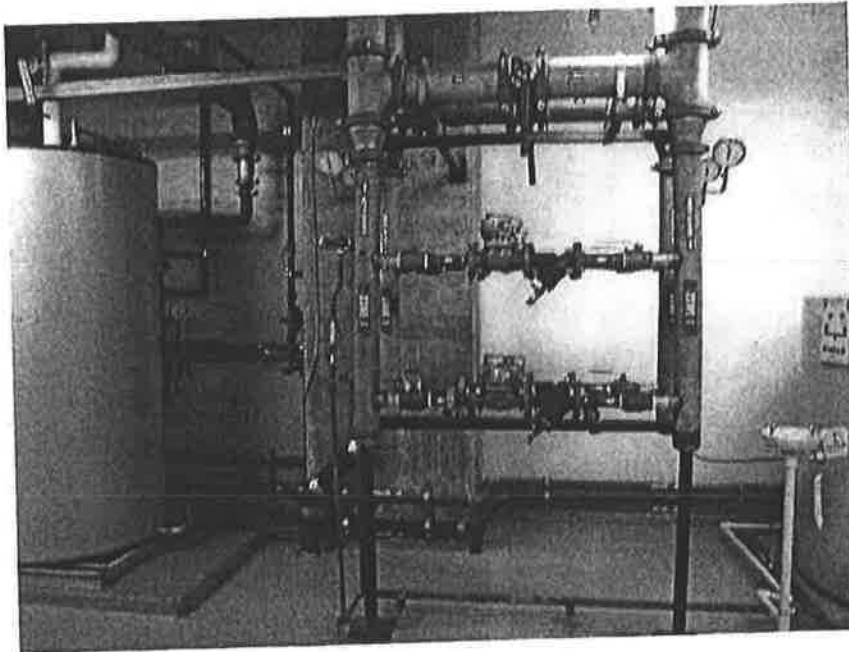
(jpg78)



10. BP-2,

(jpg79)

PANORAMA 1 Lower Mechanical Room



13. Pressure

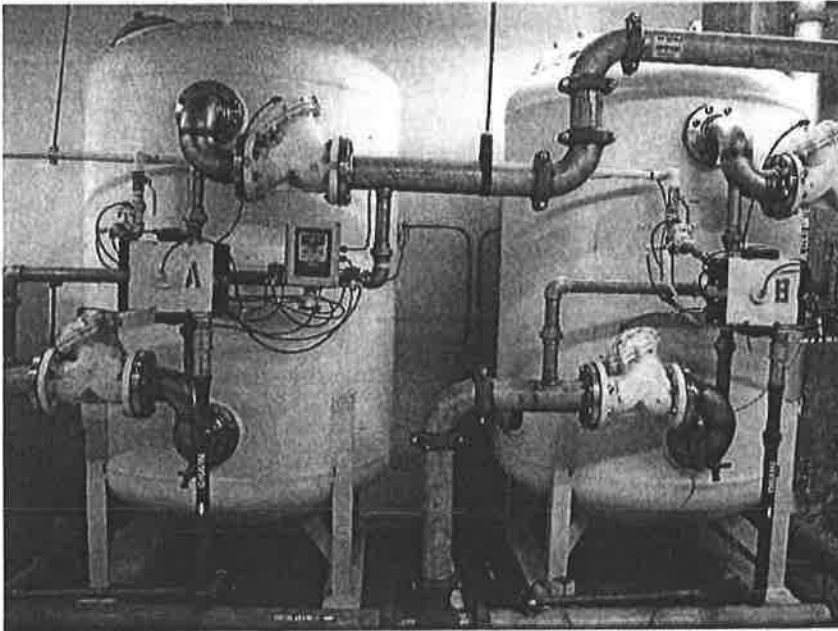
regulator manifold (jpg82).



14. Pressure

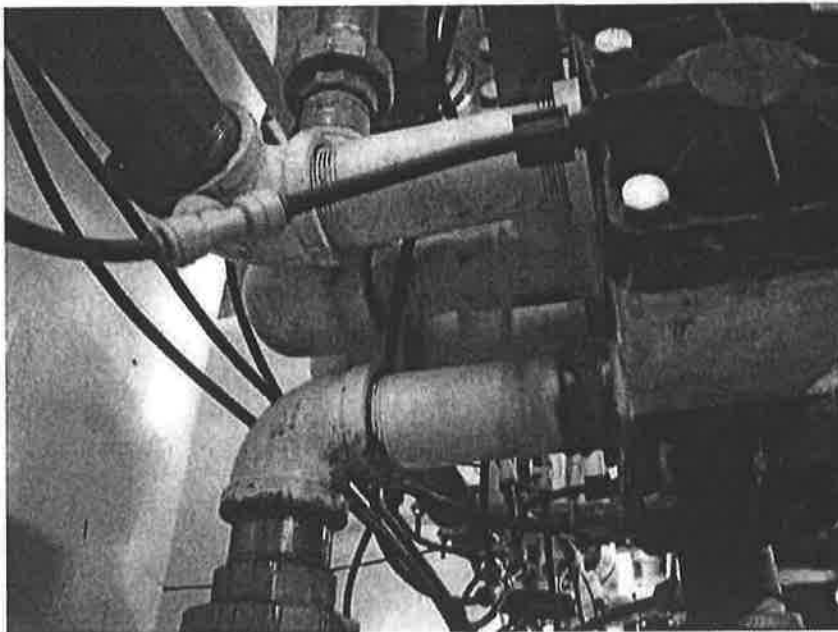
regulator manifold (jpg83) replace plastic lined steel nipple with stainless steel.

PANORAMA 1 Lower Mechanical Room



tanks (jpg80)

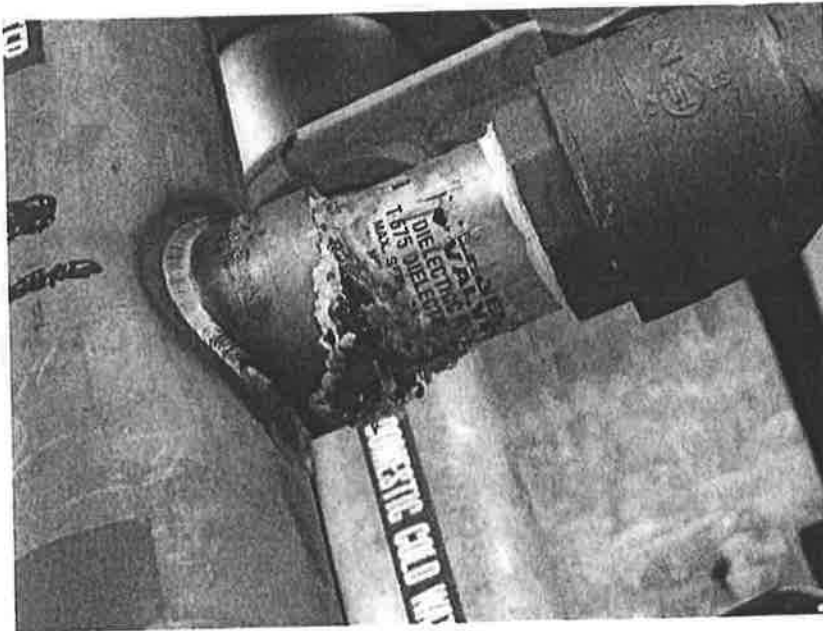
11. Media



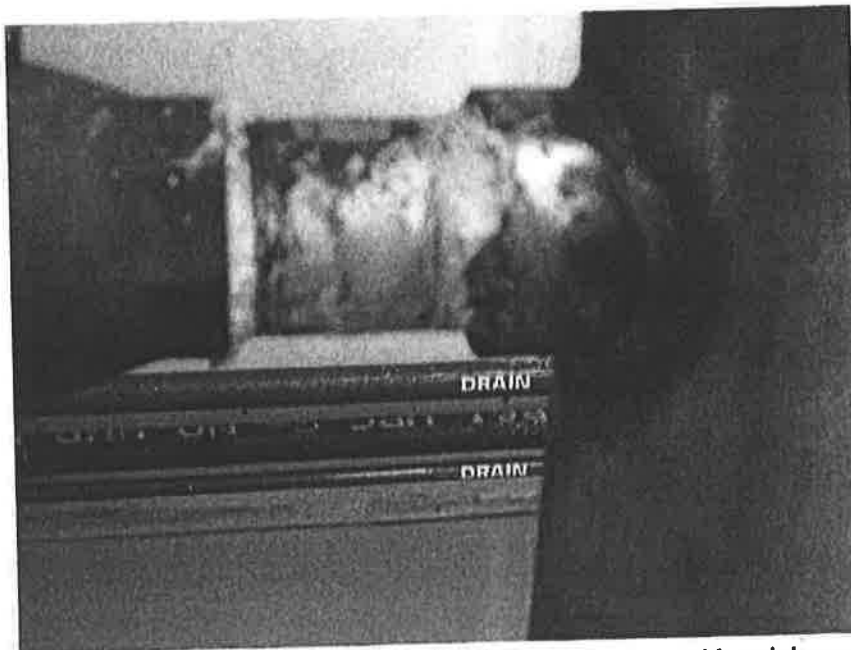
carbon steel parts (jpg81).

12. Culligan

PANORAMA 1 Lower Mechanical Room

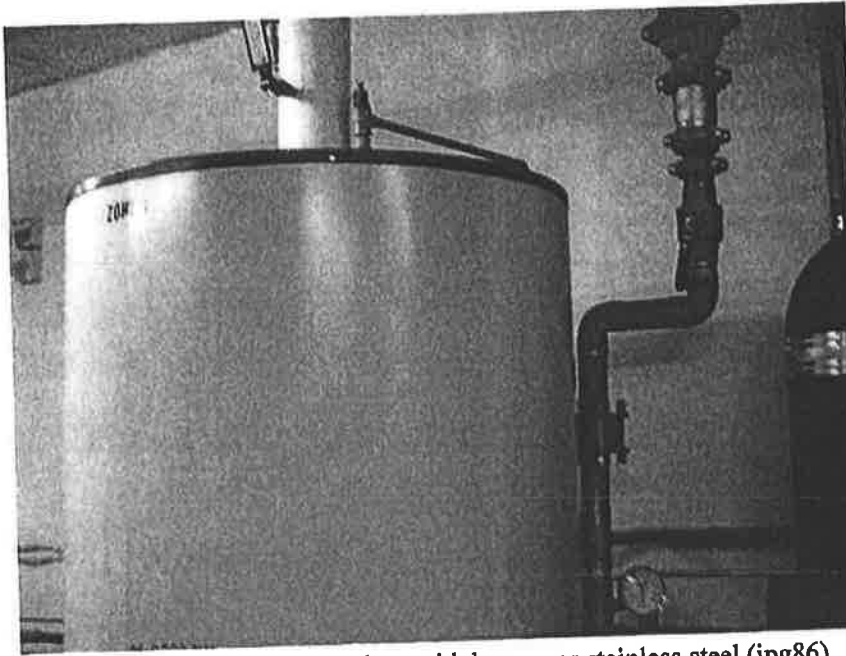


15. Another view of previous photo (jpg84).



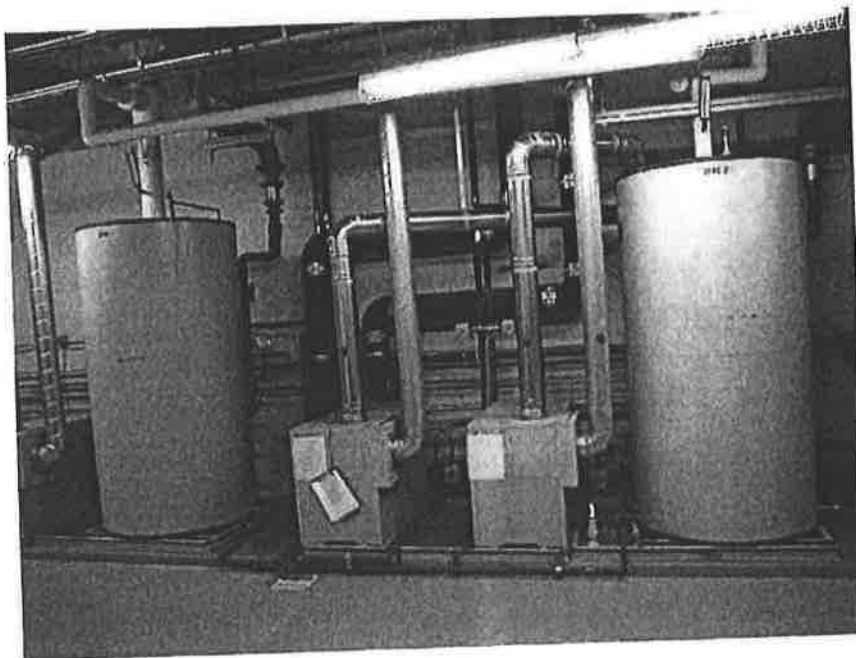
16. Pressure regulating manifold, leaking plastic lined nipple – replace with stainless steel now(jpg85).

PANORAMA 1 Lower Mechanical Room



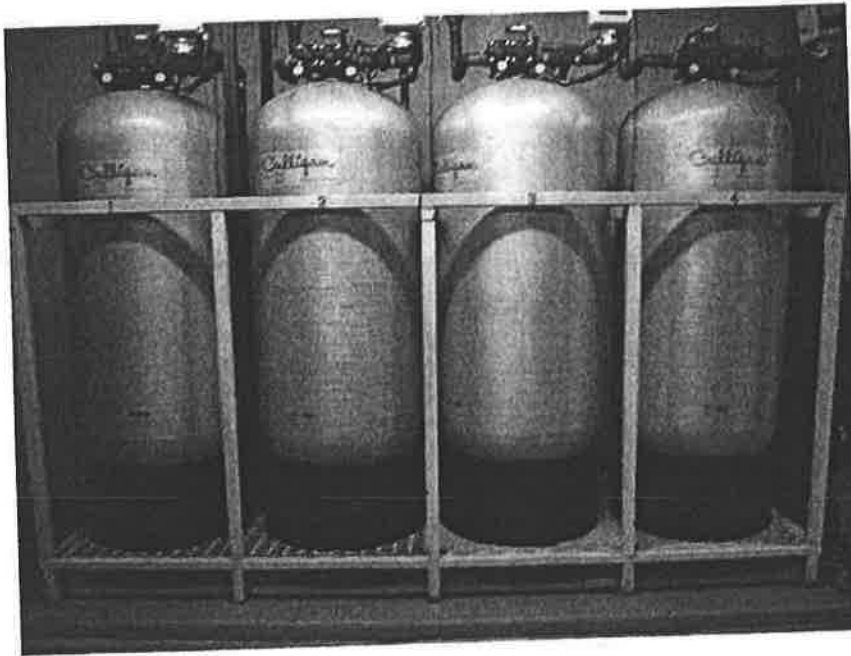
17. Hot water

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



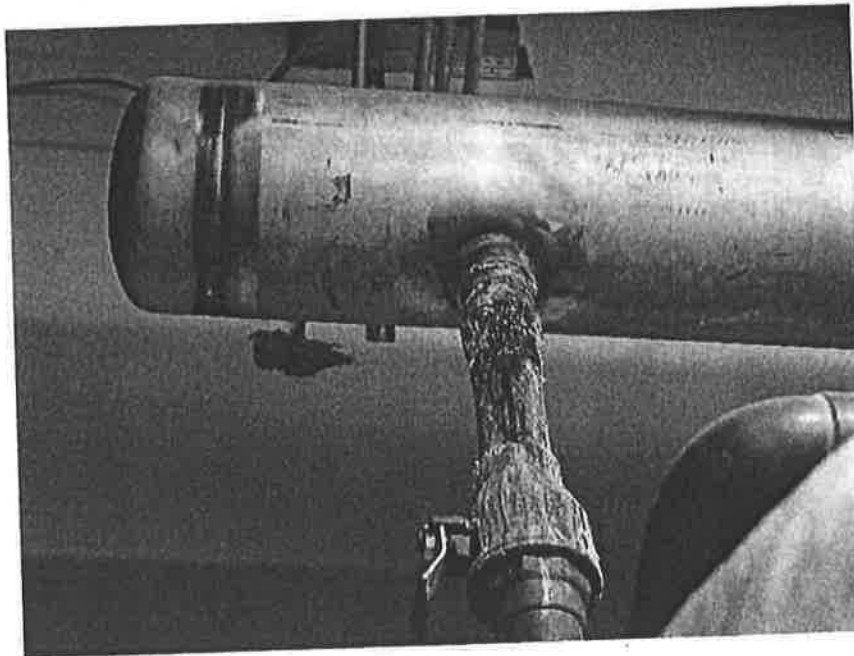
18. (jpg87)

PANORAMA 1 Lower Mechanical Room



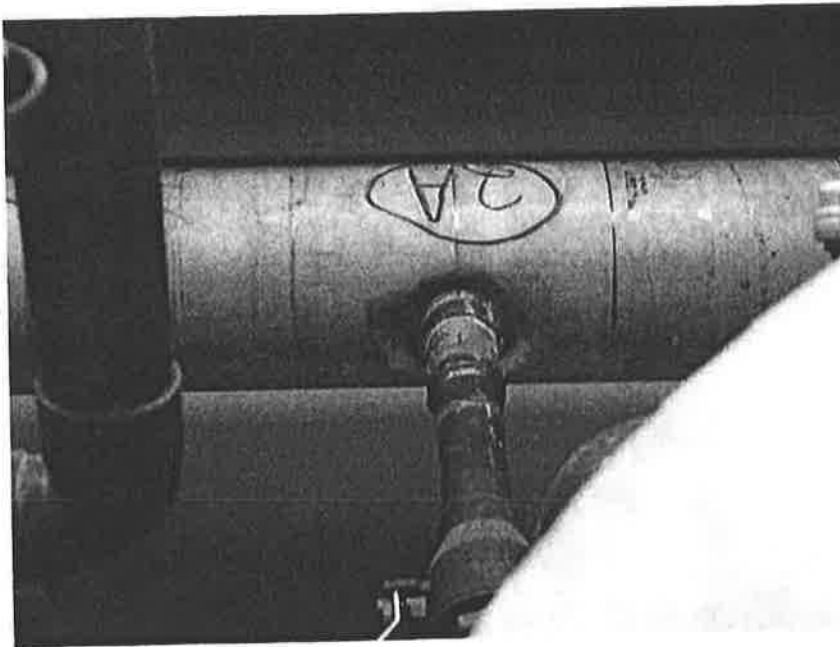
19. Filter

bank (jpg88).

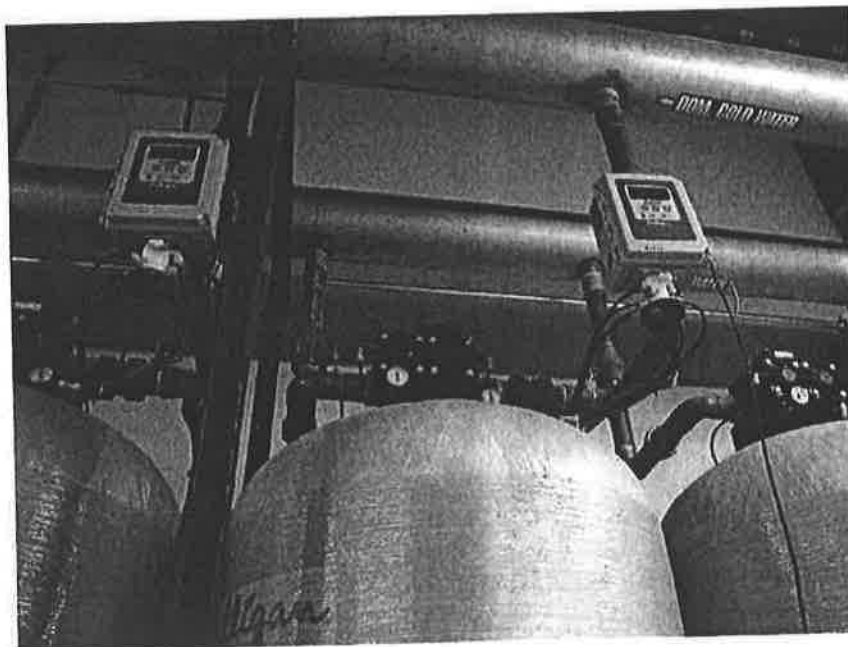


20. (jpg89)

PANORAMA 1 Lower Mechanical Room

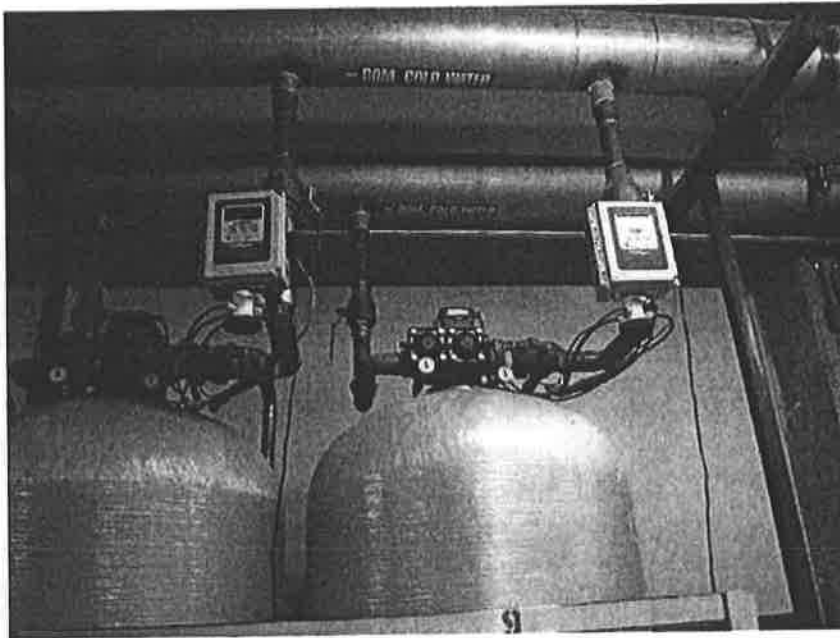


21. (jpg91)

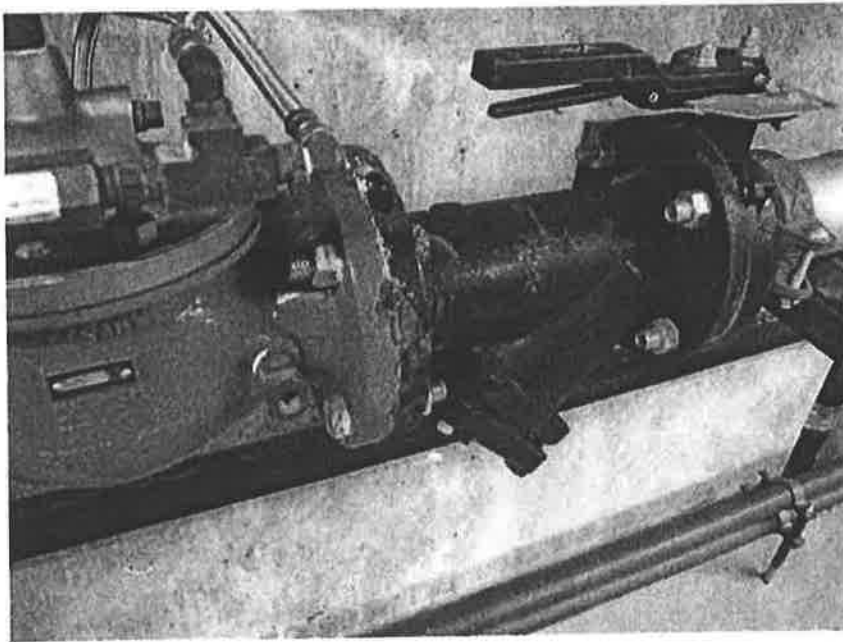


22. (jpg93)

PANORAMA 1 Lower Mechanical Room

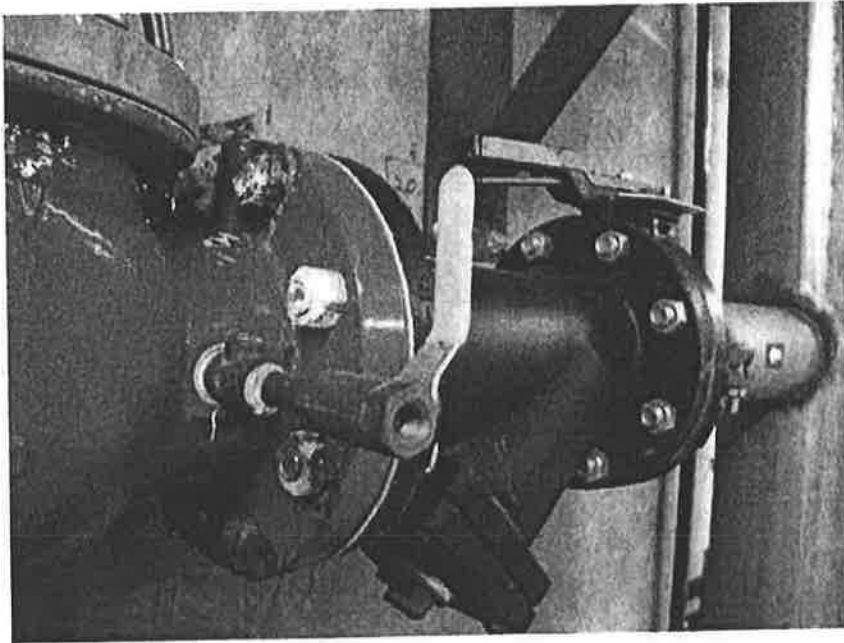


23. (jpg94)

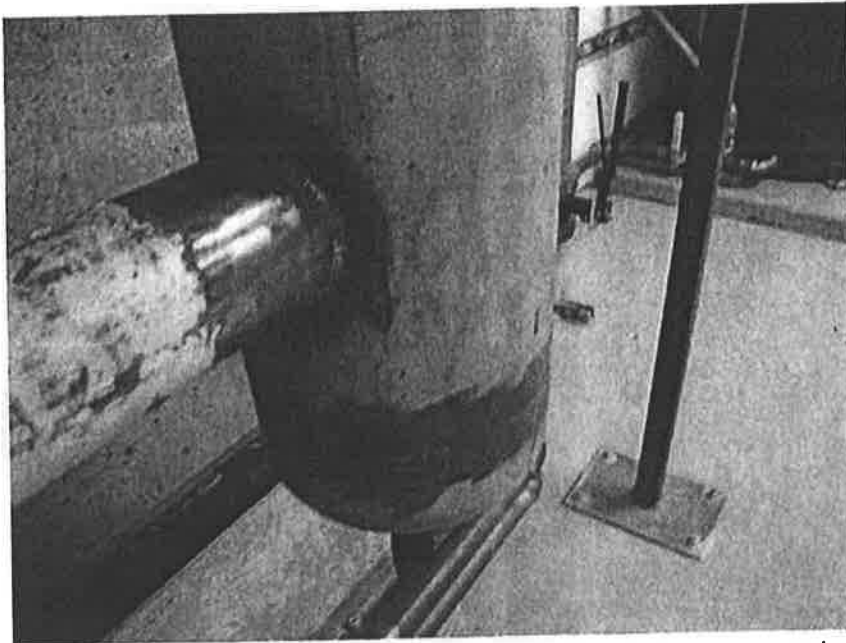


24. (jpg95)

PANORAMA 1 Lower Mechanical Room

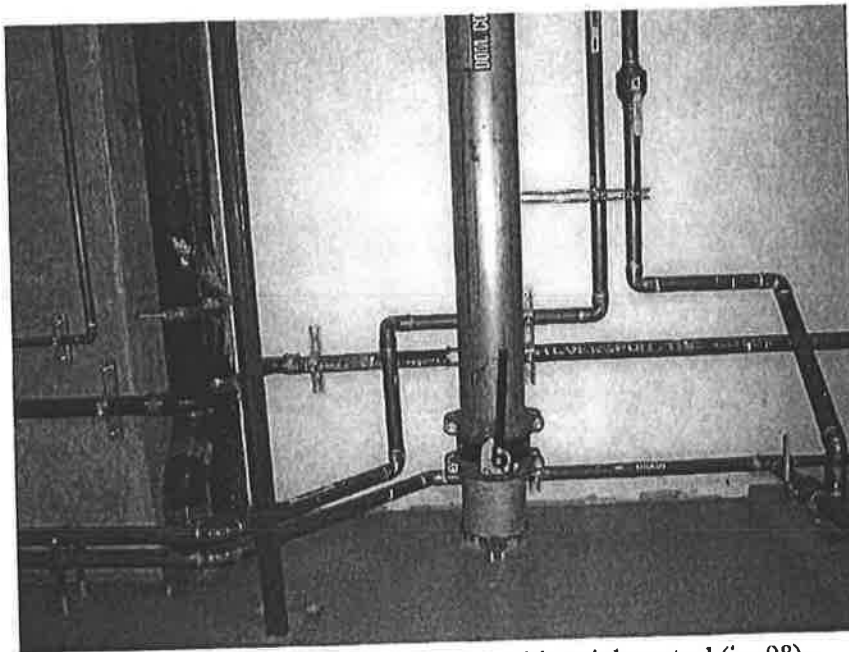


25. (jpg96)



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

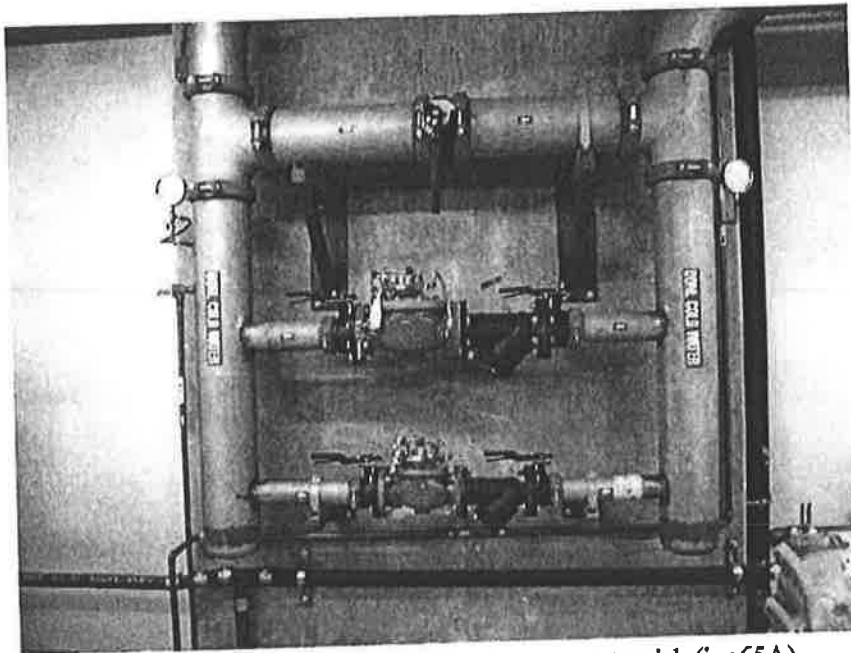
water inlet; replace ferrous butterfly valve with stainless steel (jpg98).



28. Hot water

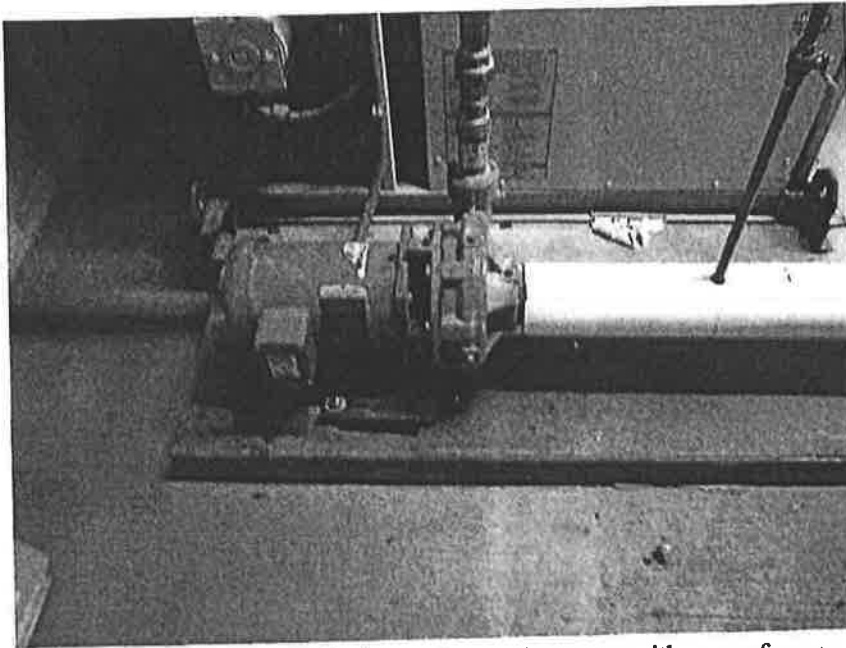
recirculation pumps – replace with nonferrous alloy (jpg99).

PANORAMA 1 Lower Mechanical Room

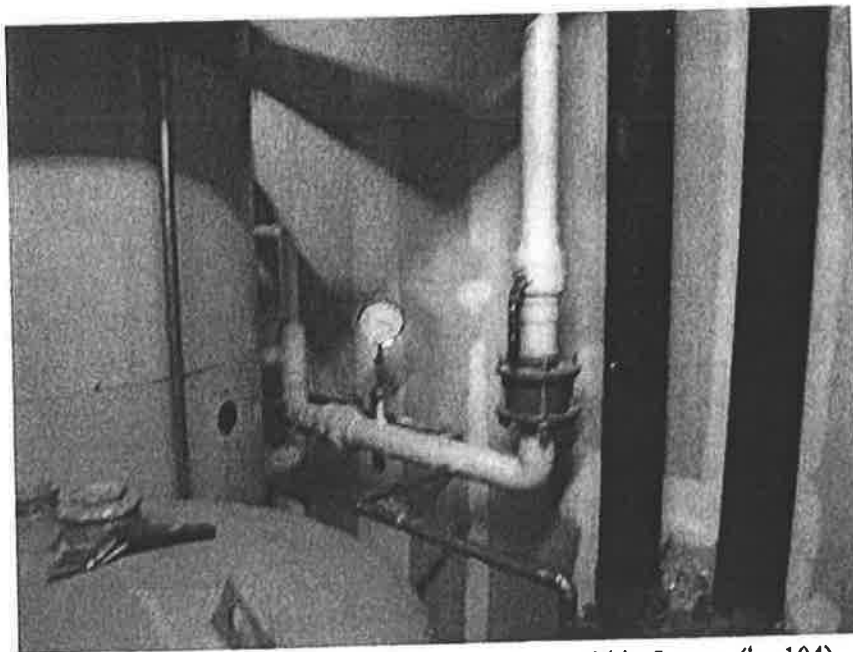


29 City water inlet manifold; rust is from acid cleaning to remove tarnish (jpg65A).

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).

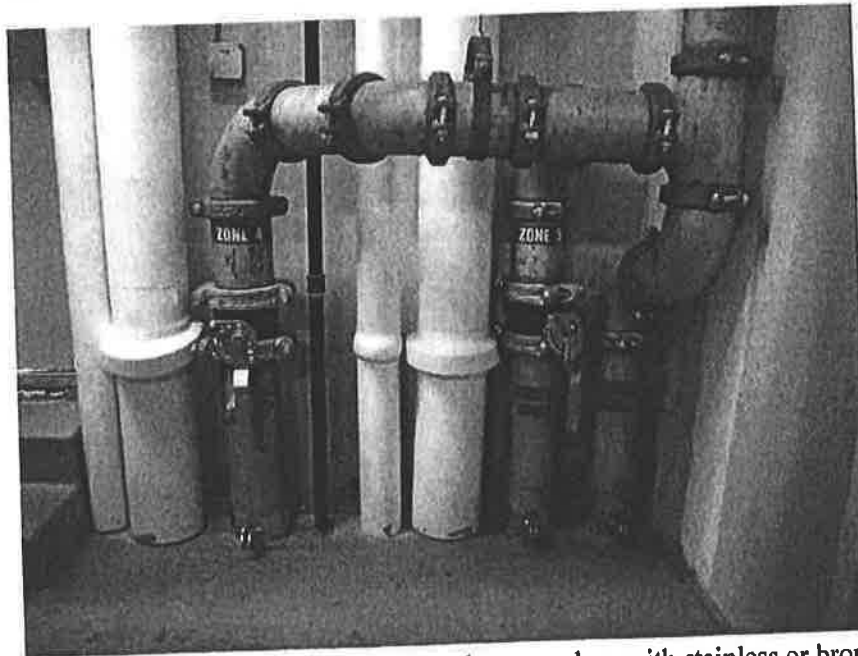


2. Zone 4 hot water system with ferrous check valve – replace within 5 years (jpg104).

PANORAMA TOWER 1 Upper Mechanical Room

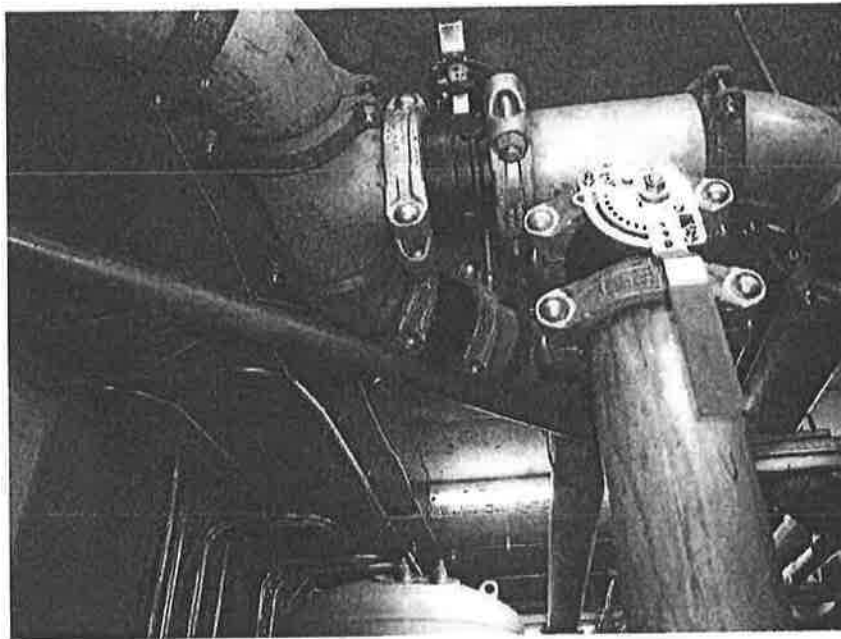


3. Zone 3 hot water system with 2 ferrous check valves that need to be replaced within 5 years.

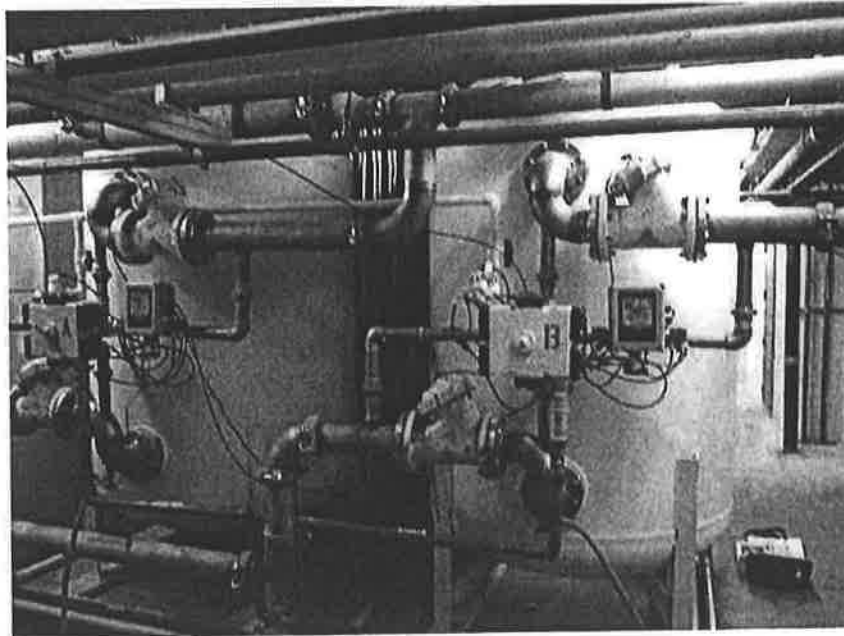


4. City water inlet, Zone 3 and 4 ferrous butterfly valves – replace with stainless or bronze valves (jpg106).

PANORAMA TOWER 1 Upper Mechanical Room

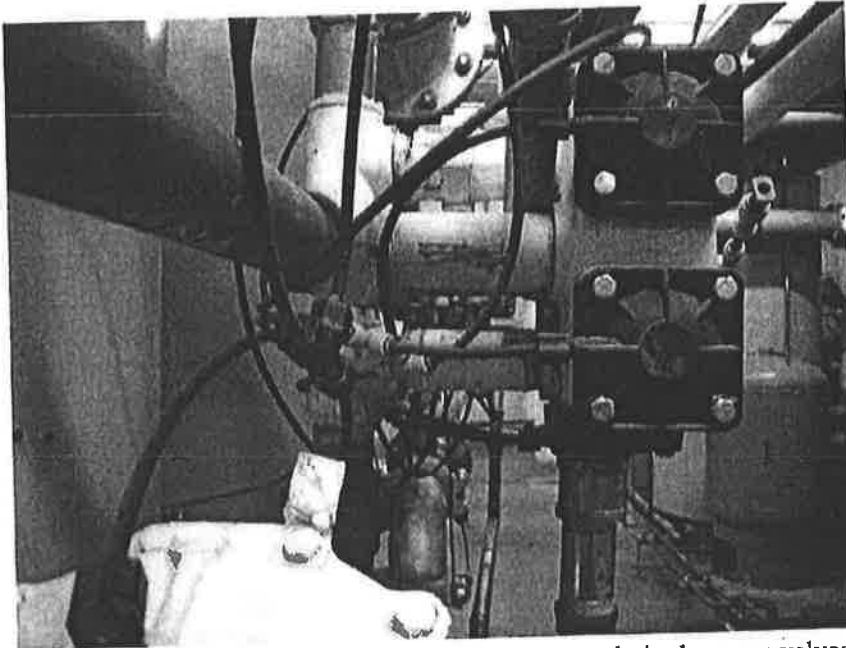


5. Feed water to water conditioners and bypass ferrous butterfly valves – replace now (jpg107).

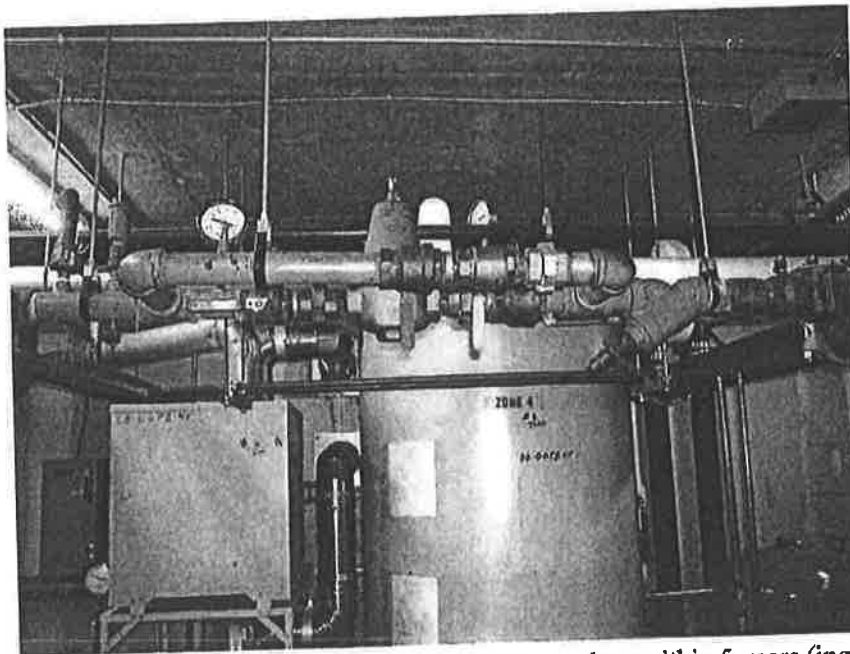


6. Media tanks with 4 ferrous check valves – replace valves within 5 years (jpg109).

PANORAMA TOWER 1 Upper Mechanical Room

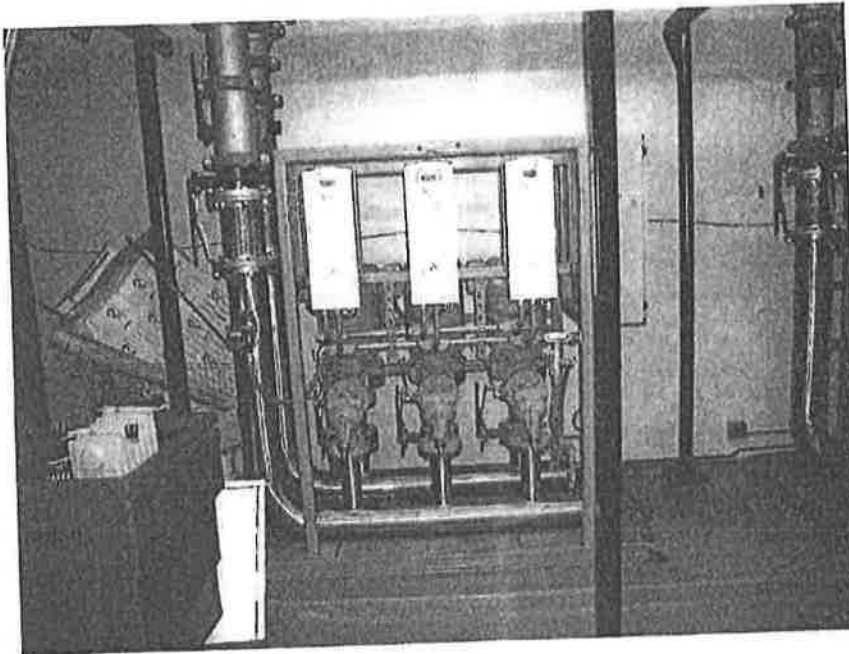


7. Media tanks with Culligan systems – replace all carbon steel nipples now; valves within 5 years (jpg108).

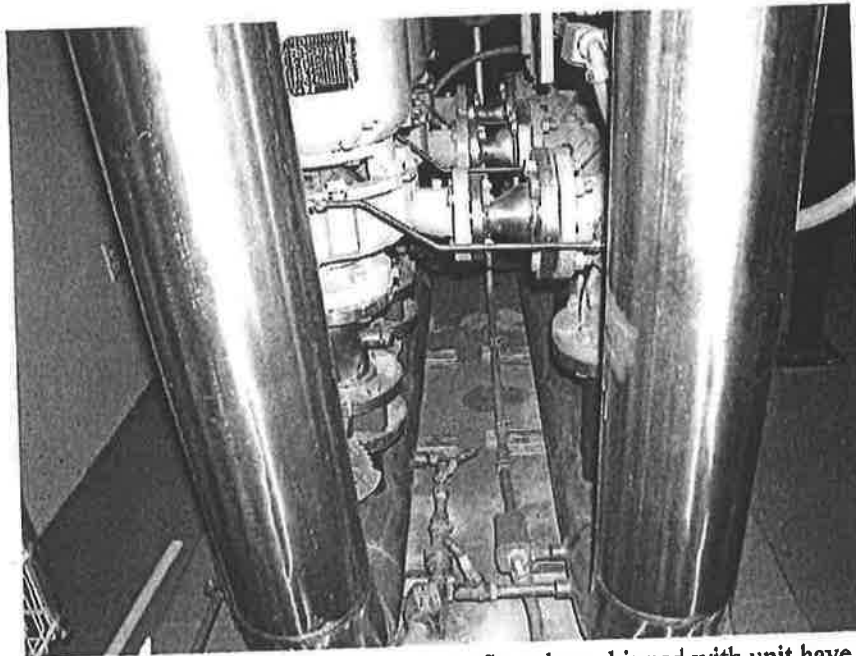


8. Unidentified pipe run with carbon steel lines – replace within 5 years (jpg110).

PANORAMA 2 Lower Mechanical Room

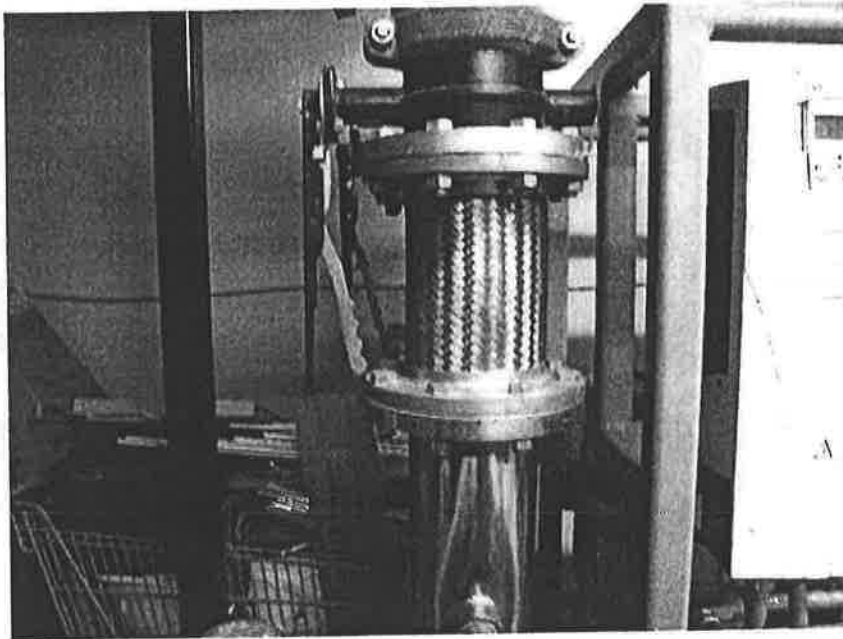


1. BP-1 skid mounted unit (jpg39).



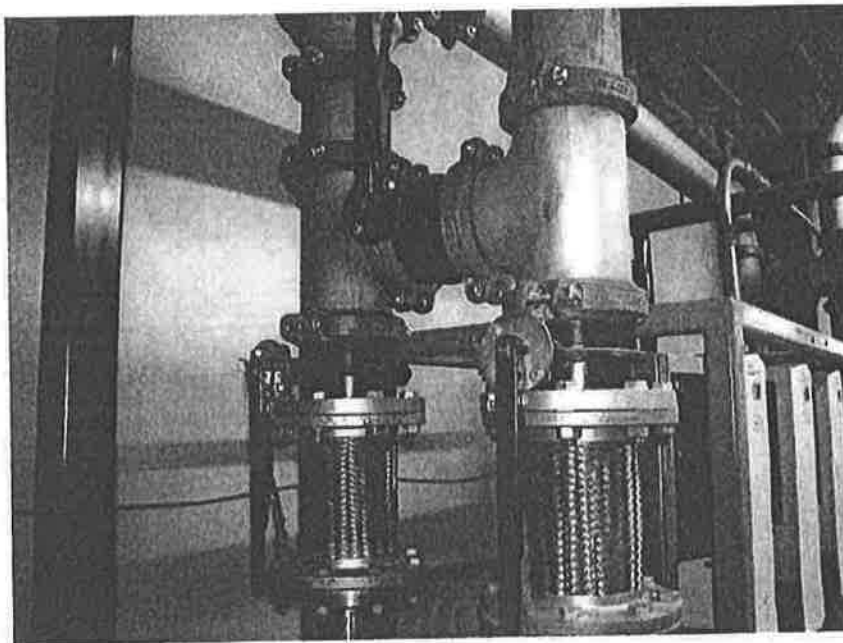
2. End view BP-1 skid mounted unit; stainless butterfly valves shipped with unit have been replaced with carbon steel valves that should be replaced now with stainless (jpg25).

PANORAMA 2 Lower Mechanical Room



3. BP-1 Flex

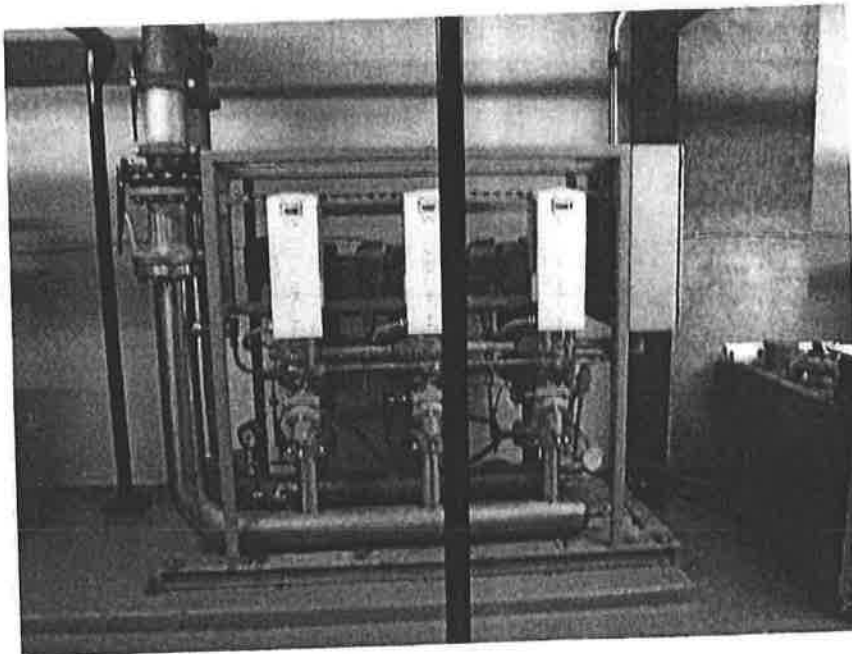
joint below carbon steel butterfly valve – replace valve now – see below (jpg28).



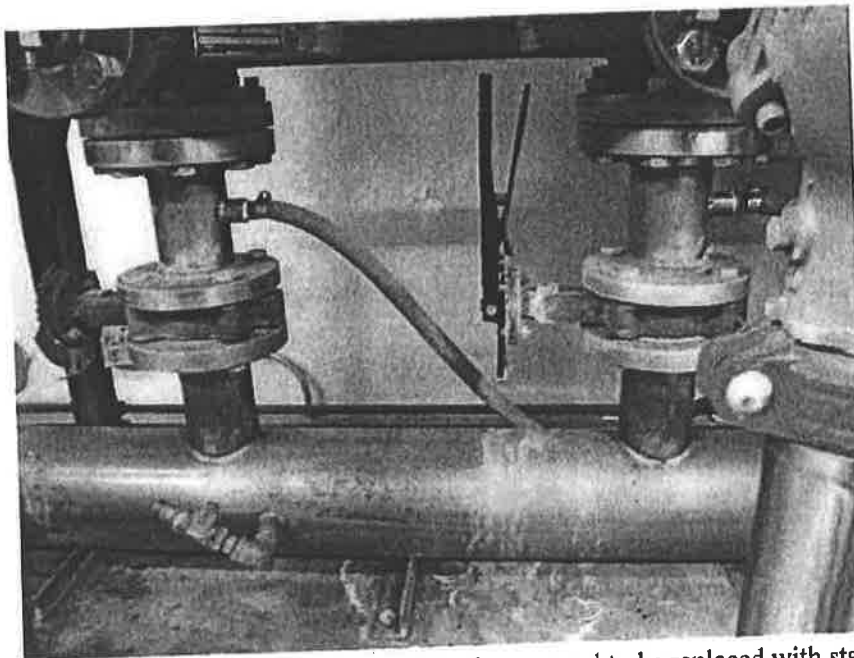
4. BP-1

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

PANORAMA 2 Lower Mechanical Room

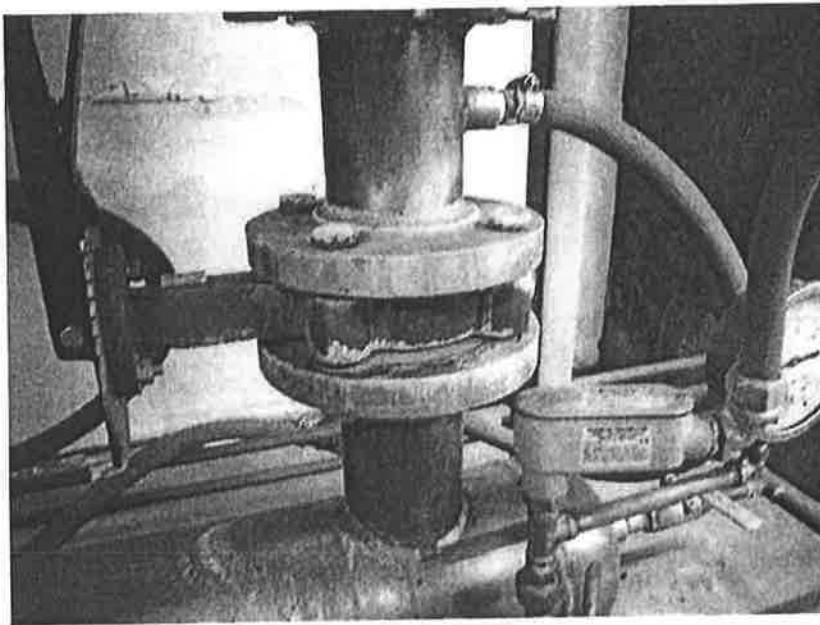


5. BP-2 high pressure skid mounted unit (jpg40).

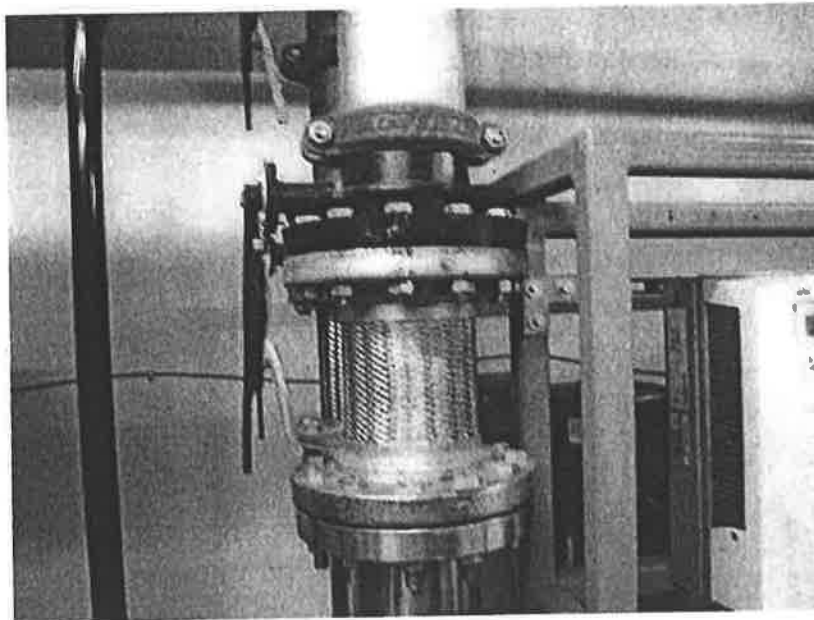


6. BP-2 center and east carbon steel butterfly valves – need to be replaced with stainless now (jpg27).

PANORAMA 2 Lower Mechanical Room

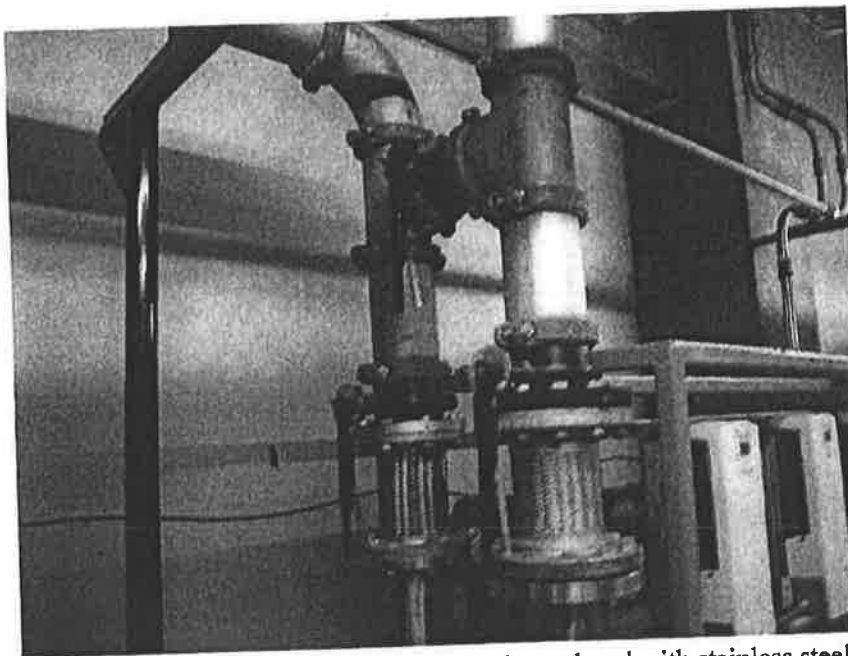


7. BP-2 west carbon steel butterfly valve; valve and corroded fasteners need to be replaced now (jpg26).

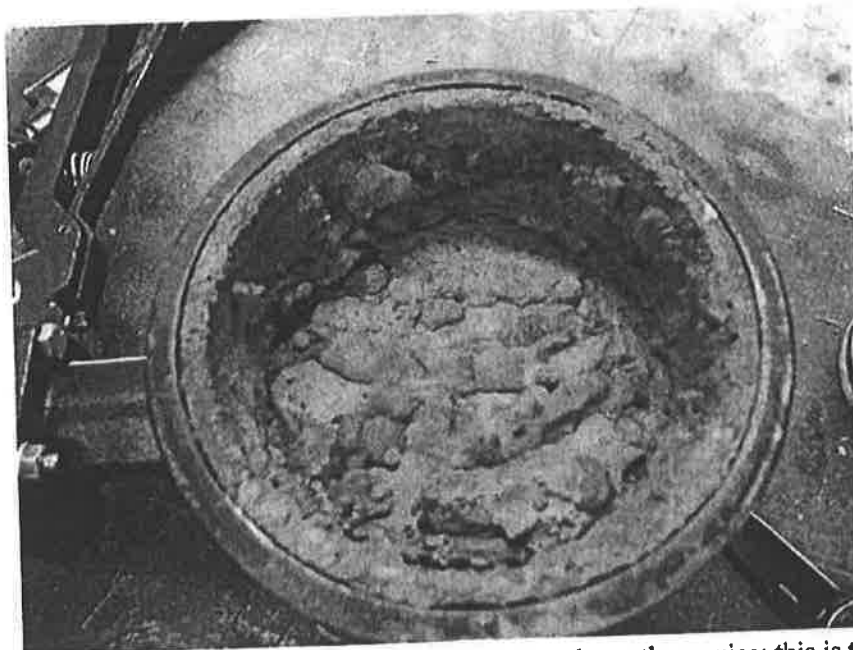


8. BP-2 high pressure flex connection with carbon steel flanges (jpg30).

PANORAMA 2 Lower Mechanical Room



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

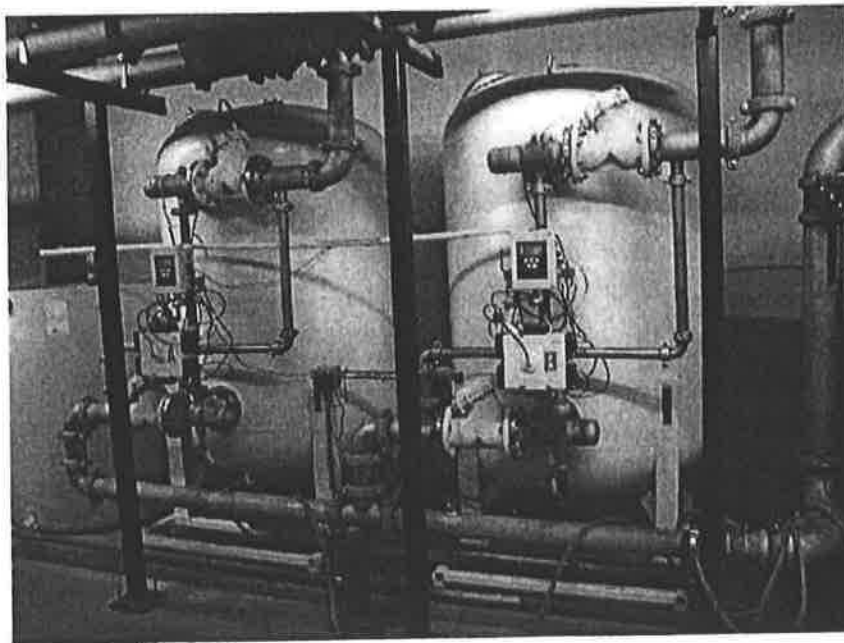


10. Typical inside of carbon steel butterfly valve after several months service; this is the reason they must be replaced as soon as practical with stainless steel valves (jpg33).

PANORAMA 2 Lower Mechanical Room



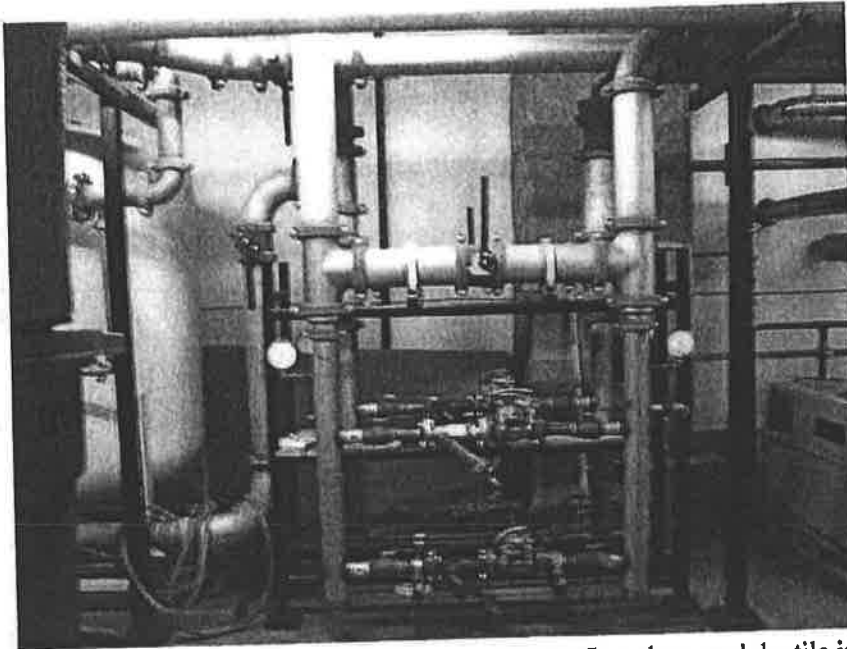
11. Name plate on typical carbon steel butterfly valve showing it has an AISI Type 416 stainless steel shaft; the ductile iron disc has a nickel edge (jpg34).



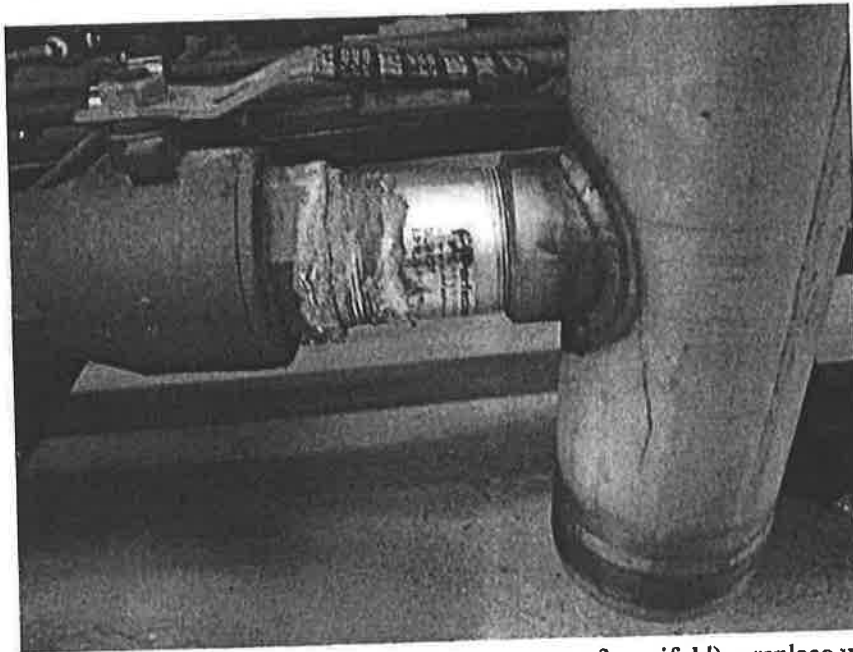
tanks (jpg41).

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

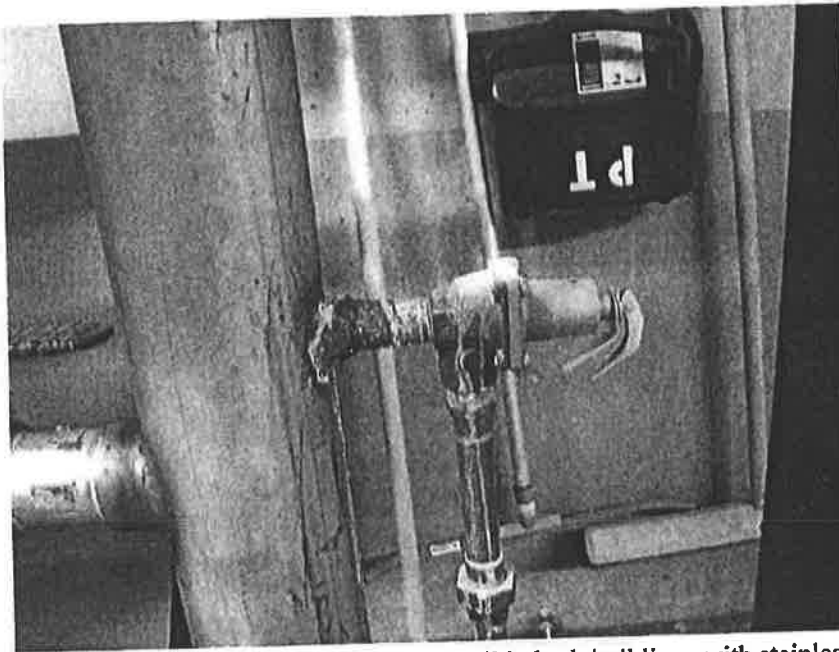


15. Carbon steel plastic lined nipple (lower southeast corner of manifold0 – replace with stainless steel (jpg52). Note: corrosion around Unistrut is a leak at the joint.

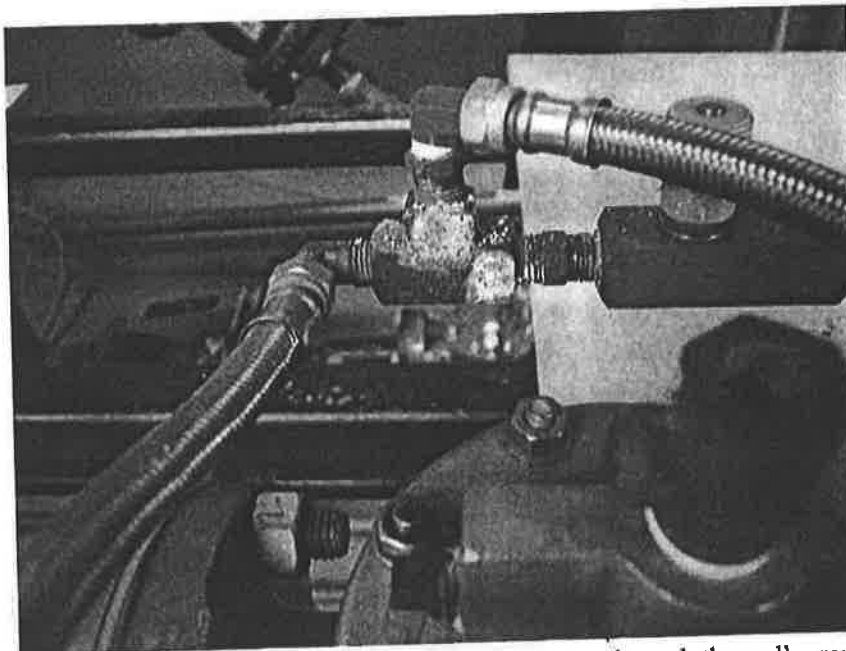


16. Leak in stainless weld leak; carbon steel plastic lined nipple not yet leaking, upper southeast corner of manifold (jpg53).

PANORAMA 2 Lower Mechanical Room

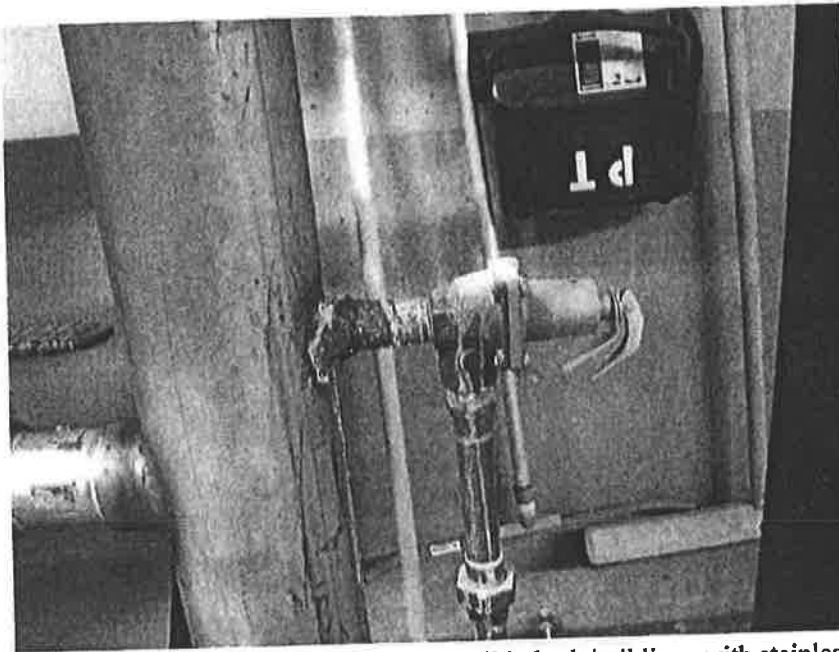


17. Carbon steel drain nipple on manifold – replace all in both buildings with stainless steel (jpg54).

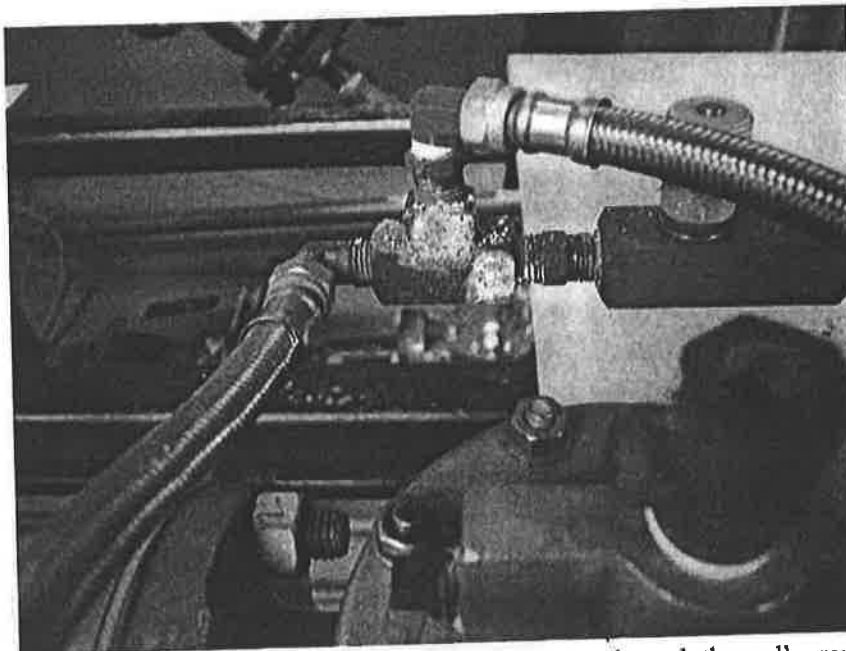


18. Yellow brass T-fitting exhibiting de-zincification corrosion through the wall – replace yellow brass fittings as they leak as part of normal maintenance (jpg55).

PANORAMA 2 Lower Mechanical Room

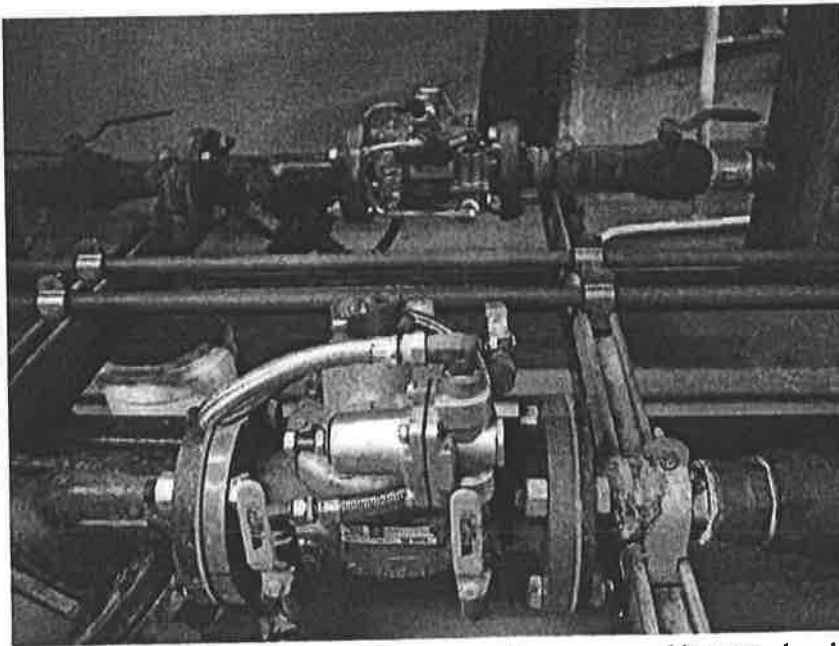


17. Carbon steel drain nipple on manifold – replace all in both buildings with stainless steel (jpg54).

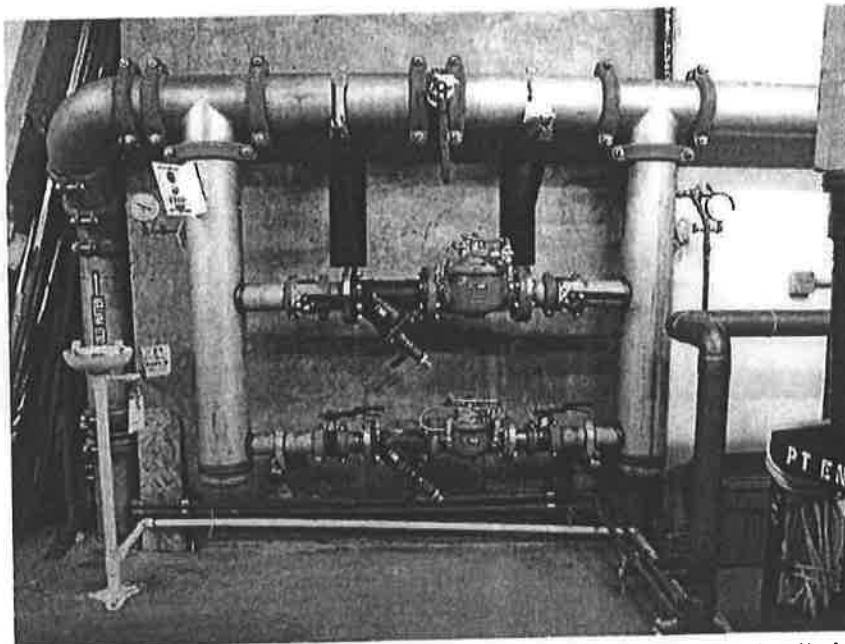


18. Yellow brass T-fitting exhibiting de-zincification corrosion through the wall – replace yellow brass fittings as they leak as part of normal maintenance (jpg55).

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).

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

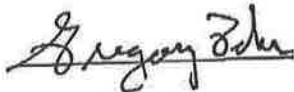
CLOSURE

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

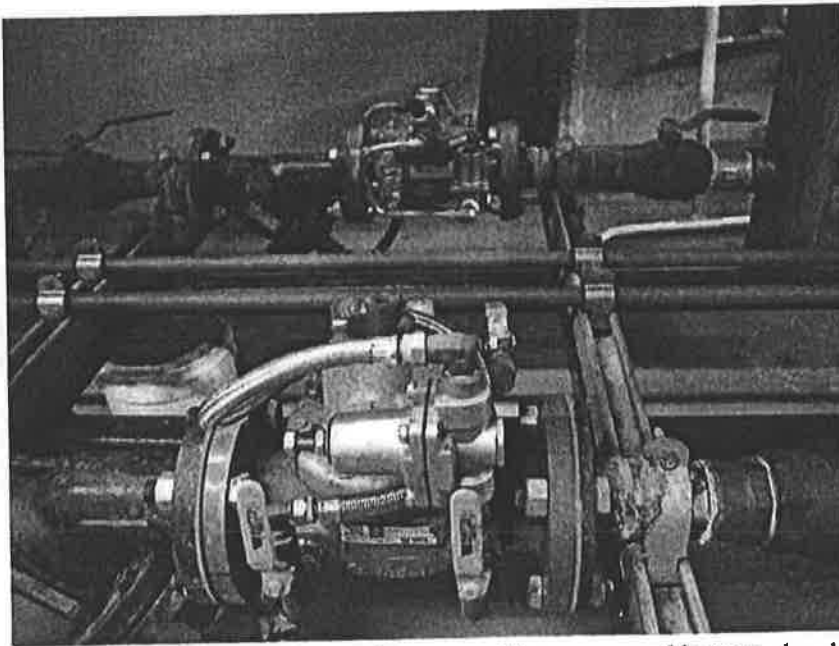
GPF:ki

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

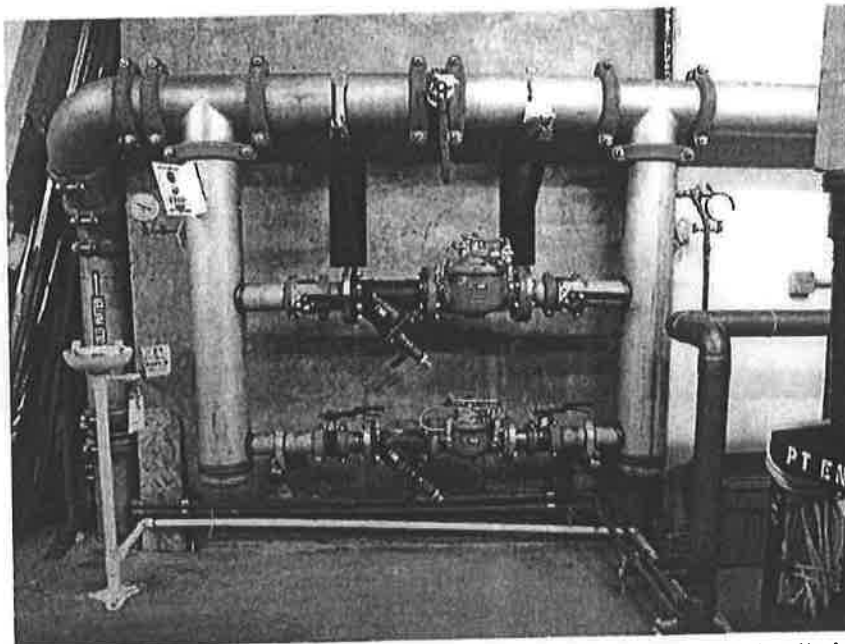
2764 N. Green Valley pkwy #116, Henderson, NV 89014
702-204-4795 fax 702-454-2098

AA0914

PANORAMA 2 Lower Mechanical Room

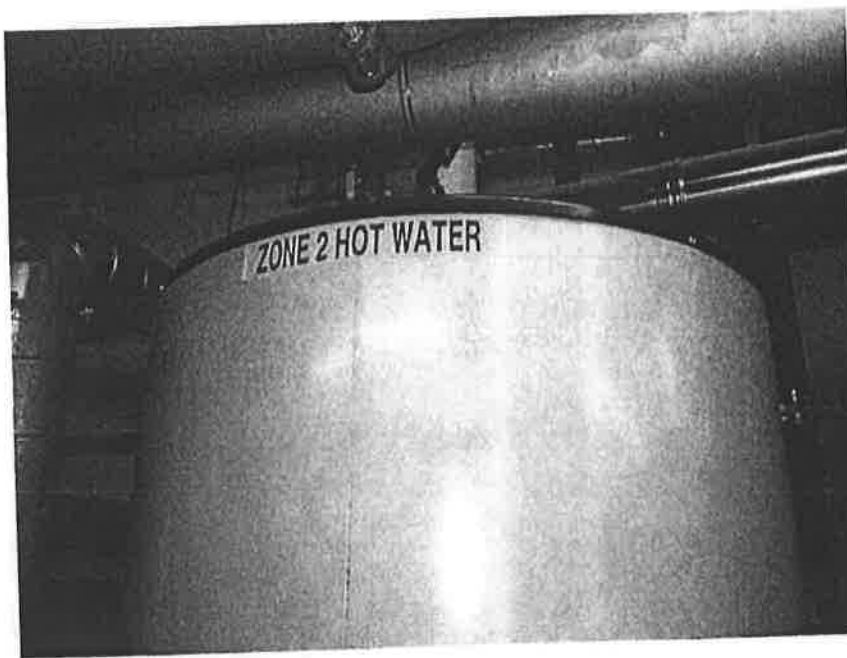


19. Lower pressure regulators; the far regulator is ductile iron top and bottom; the closer has a stainless steel top; visible residues at Unistrut are from connection leaks, not corrosion (jpg56).



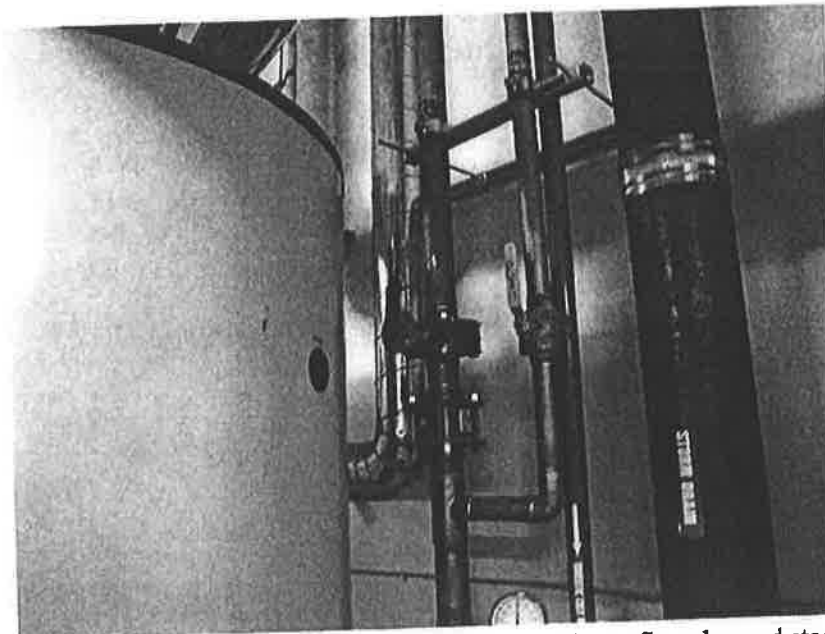
20. City water inlet manifold showing steel strainers, steel butterfly valves, and ductile iron pressure regulators with stainless steel tops (jpg43).

PANORAMA 2 Lower Mechanical Room



21. Zone 2

hot water tank (jpg44).



22. Piping

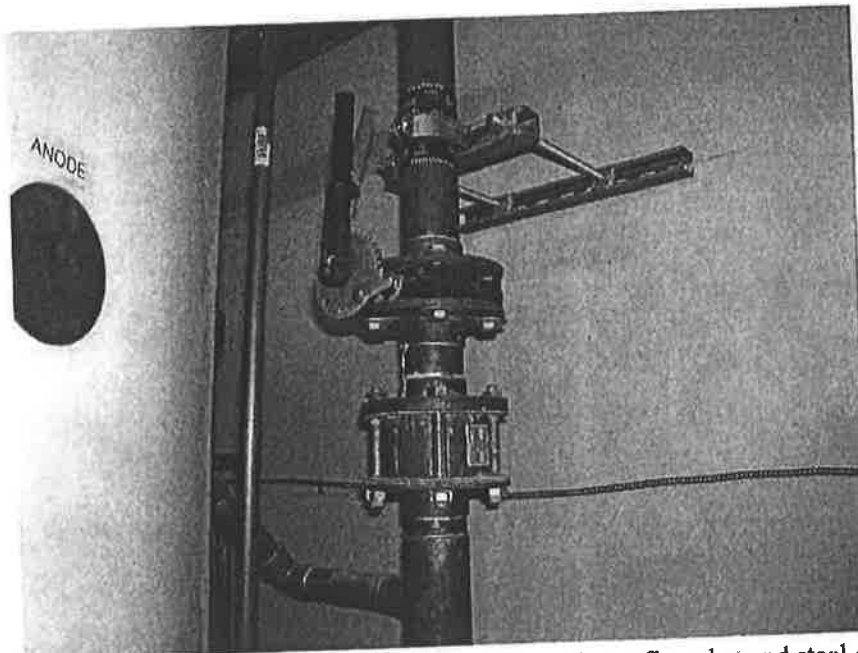
associated with Zone 2 hot water tank with steel butterfly valve and steel check valve (jpg45).

PANORAMA 2 Lower Mechanical Room



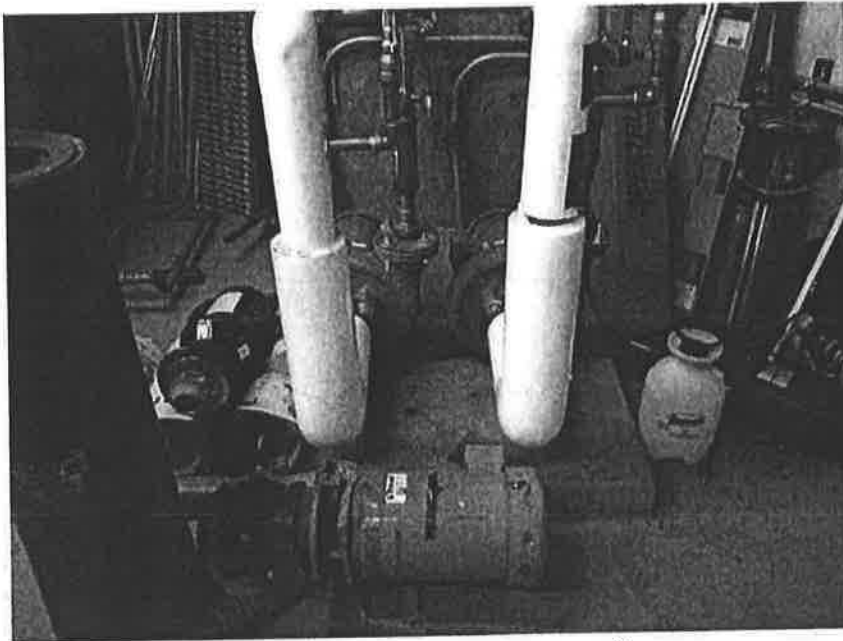
water tank (jpg46).

23. Zone 1 hot



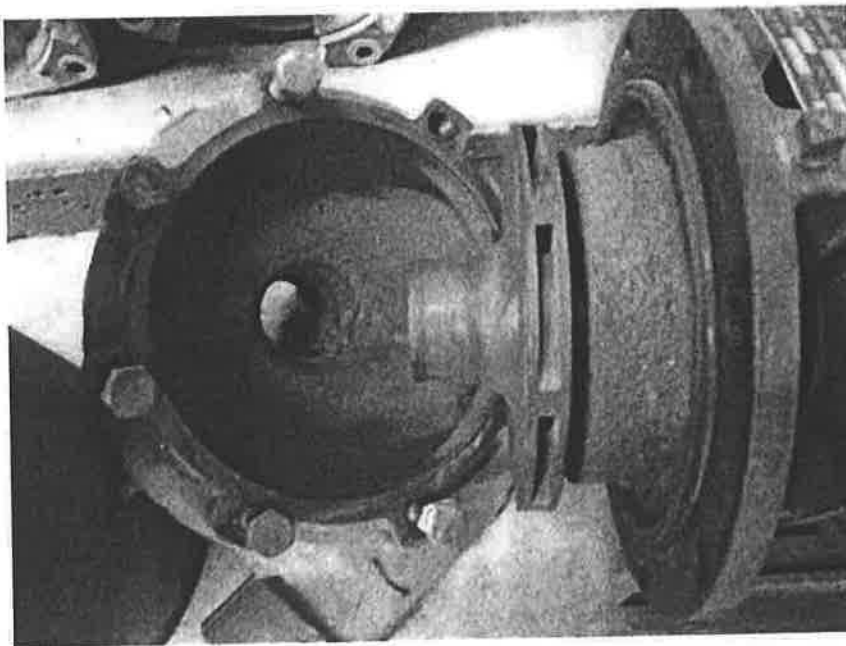
24. Piping associated with Zone 1 hot water tank with steel butterfly valve and steel check valve (jpg47).

PANORAMA 2 Lower Mechanical Room



recirculation pumps with carbon steel housings (jpg48).

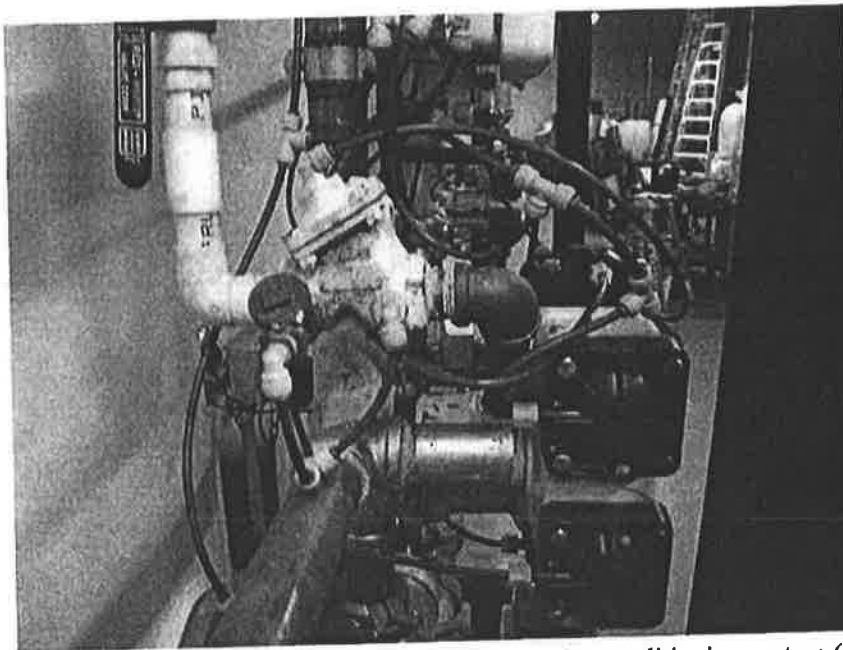
25. Hot water



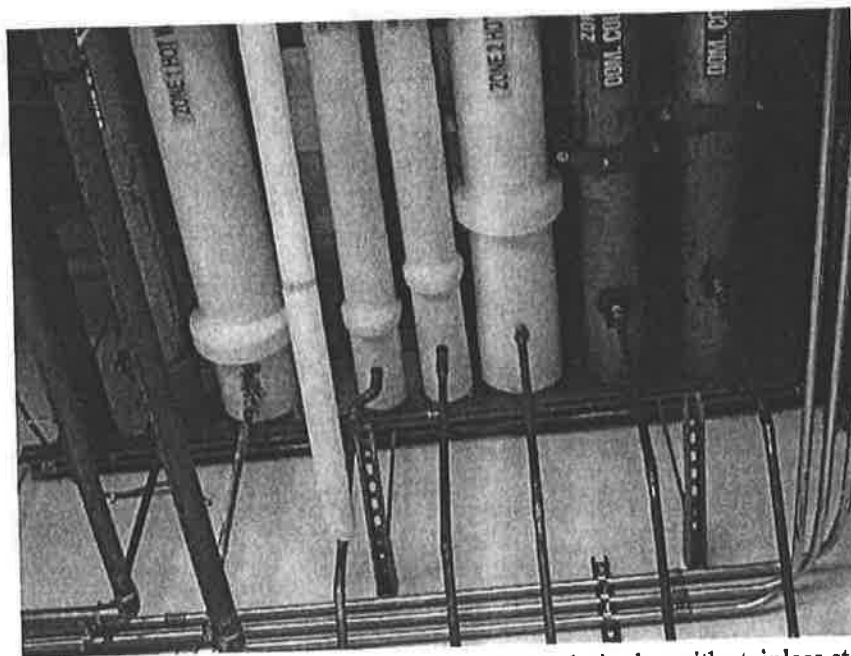
view of steel pump housing exhibiting significant corrosion (jpg49).

26. Close up

PANORAMA 2 Lower Mechanical Room



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



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

EXHIBIT B

EXHIBIT B

EXHIBIT B

DISTRICT COURT CIVIL COVER SHEET

A-16-744146-D

County, Nevada

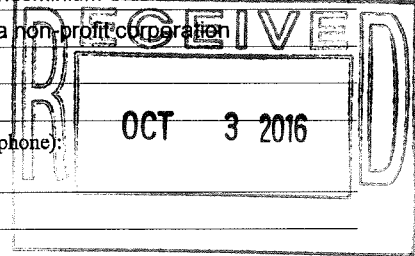
Case No. _____

XXII

(Assigned by Clerk's Office)

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

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



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

Civil Case Filing Types

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

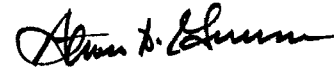
Business Court filings should be filed using the Business Court civil coversheet.

9/28/2016

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

///

1 **PARTIES**

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

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

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

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

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

14 **JURISDICTION AND VENUE**

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

19 **GENERAL ALLEGATIONS**

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

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

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

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

1 sewer piping.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **FIRST CLAIM FOR RELIEF**

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

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

1 inclusive, as though fully set forth herein.

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

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

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

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

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

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

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

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

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

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

6 **SECOND CLAIM FOR RELIEF**

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

21 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

4 **FIFTH CLAIM FOR RELIEF**

5 **(Breach of Contract)**

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

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

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

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

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

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1 **SIXTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

8 **SEVENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: September 28, 2016

BREMER WHYTE BROWN & O'MEARA LLP

By: _____



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Darlene M. Cartier, Esq.
Nevada State Bar No. 8775
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LAURENT HALLIER; PANORAMA
TOWERS I, LLC; PANORAMA
TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

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

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

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

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

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

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M.J. DEAN CONSTRUCTION, INC.:

\$30.00

TOTAL REMITTED:

\$640.00

Dated: September 28, 2016

BREMER WHYTE BROWN & O'MEARA LLP

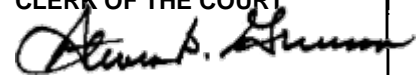
By: 

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

EXHIBIT C

EXHIBIT C

EXHIBIT C



FFCO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No. A-16-744146-D

Dept. No. XXII

**LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MESS, 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.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

**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,**

Counter-Defendants.

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."

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

4 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

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

8 2. On February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS
9 CONDOMINIUM UNIT OWNERS' ASSOCIATION served its NRS 40.645 Notice of
10 Constructional Defects upon Plaintiffs/Counter-Defendants (also identified herein as the
11 "Contractors" or "Builders"), identifying the following deficiencies:
12

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

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

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

28 ...

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.

15 6. Contractors filed their Complaint on September 28, 2016 against the Owners'
16 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.

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

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

13 (1) the Association failed to comply with NRS 40.645(2)(b) by not
14

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

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

18 (c) providing verification from each owner the defect exists in his unit, and
19

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

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

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

24 9. The Owners' Association opposes, arguing its NRS 40.645 notice is presumed to be
25 valid, and further, the notice statutes are meant to require substantial as opposed to technical or strict
26 compliance. Further, the Contractors' interpretation of AB 125 is not reasonable, leads to absurd
27 results and violates due process. Notwithstanding these arguments, if this Court found the notice to
28

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
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26
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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
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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

19 18. In this case, the Association learned of the constructional defects existing in the
20 towers’ mechanical rooms, at the latest, on or about November 17, 2011, the date of the ATMG
21 report. Therefore, Association’s action based upon constructional defects located in the mechanical
22 rooms commenced and accrued November 17, 2011. The Association had up to four (4) years in
23 which to serve its NRS 40.645 notice. The notice was not served until February 24, 2016, which is
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 through 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

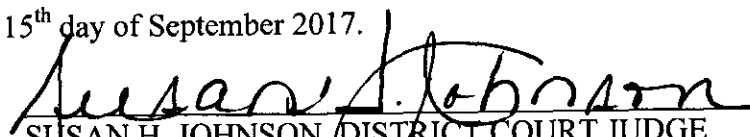
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28

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 D

EXHIBIT D

EXHIBIT D

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(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,

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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.
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Palo Alto, CA 94303
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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



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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:

ABBAAE 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

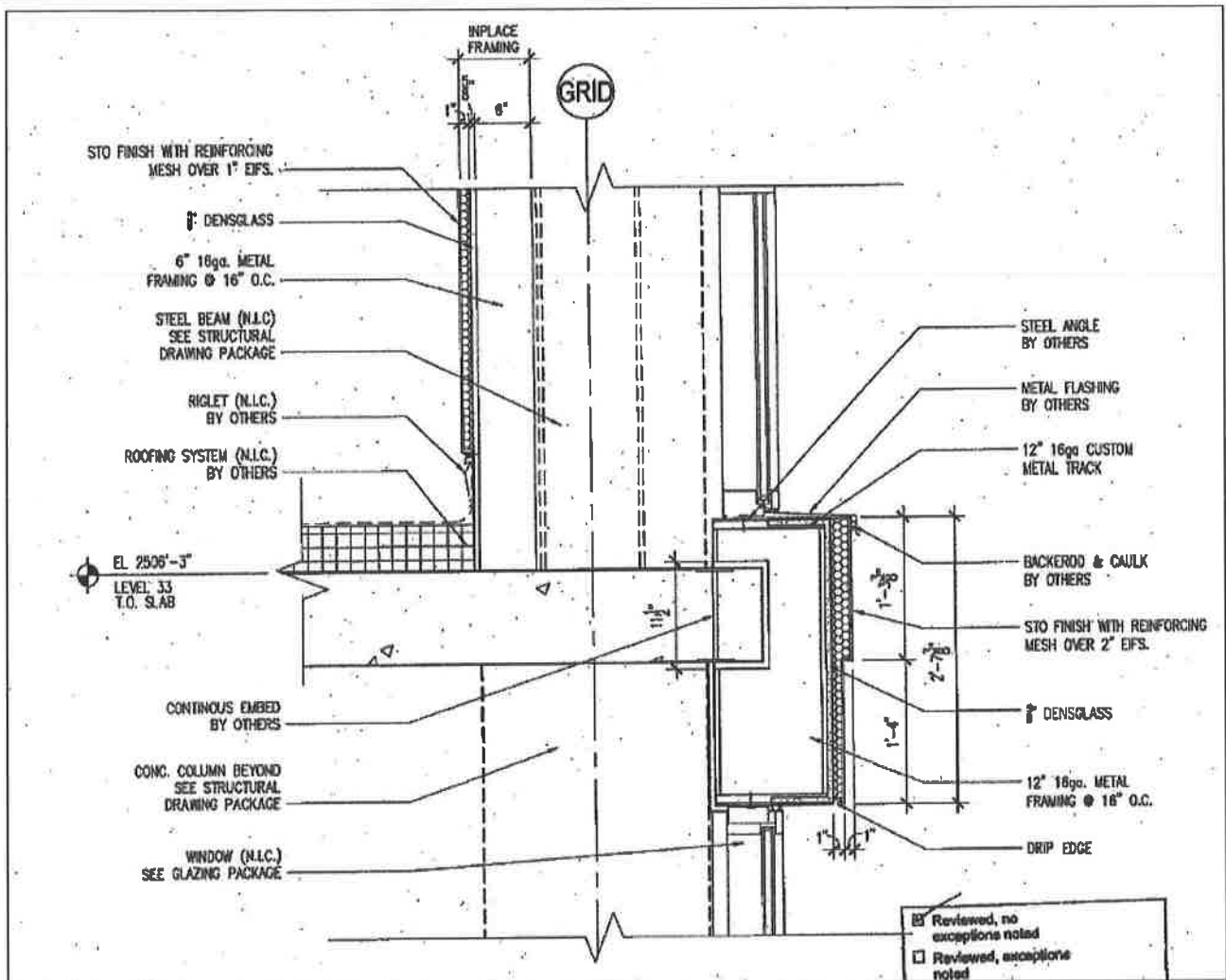


Exhibit 1 – Construction Drawings: EIFS Shop Drawing Detail 1 Showing no Sill Pan Flashing



Sto EIFS
Commercial Window Jamb

Detail No.: 1.24a

Date: April 2000

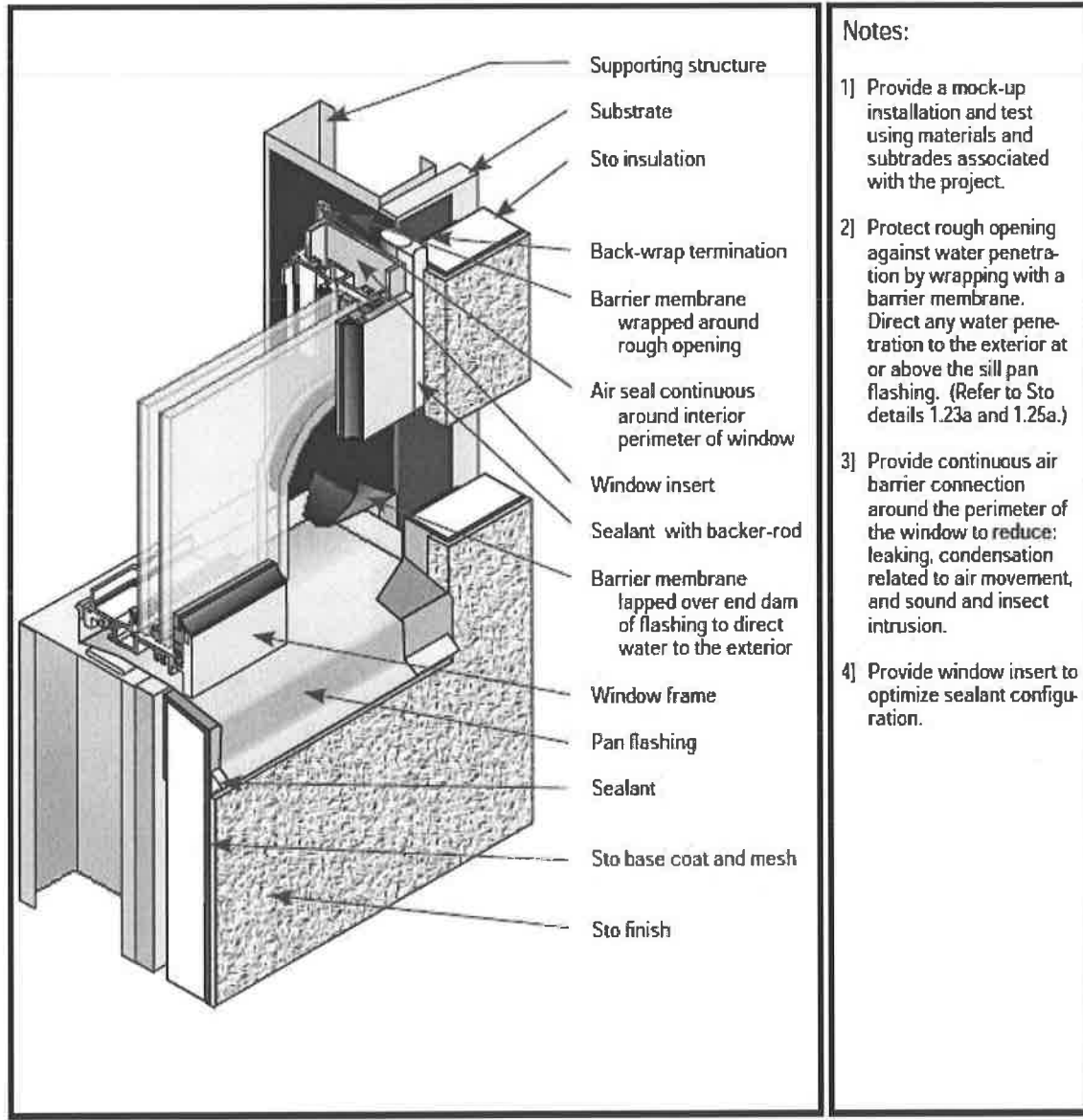


Exhibit 02 – Sill Pan Flashing Detail from Sto

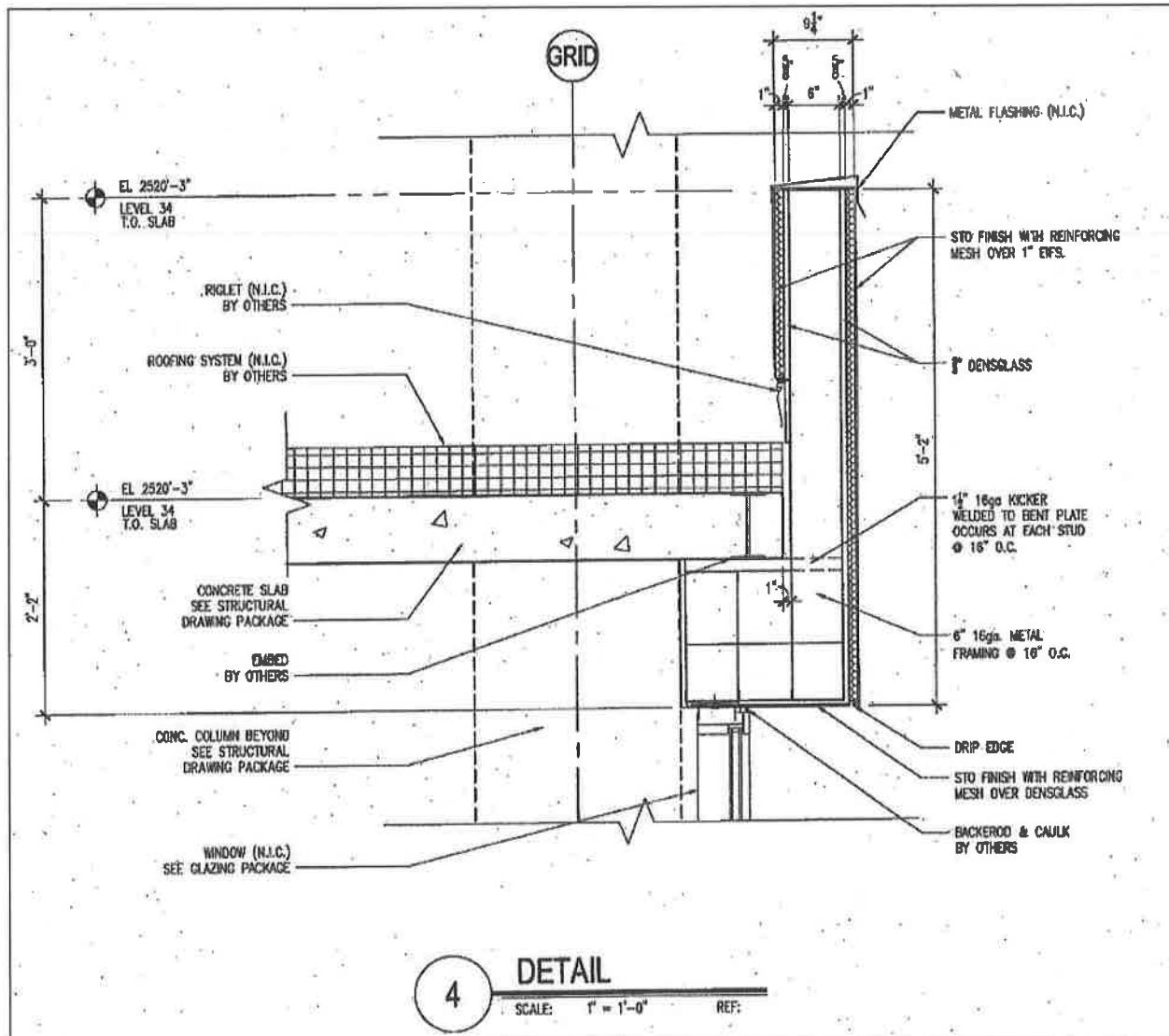


Exhibit 03 – Construction Drawings: EIFS Shop Drawing Detail 4 Showing no Head Flashing



Sto EIFS
Commercial Window Head

Detail No.: 1.23a

Date: April 2000

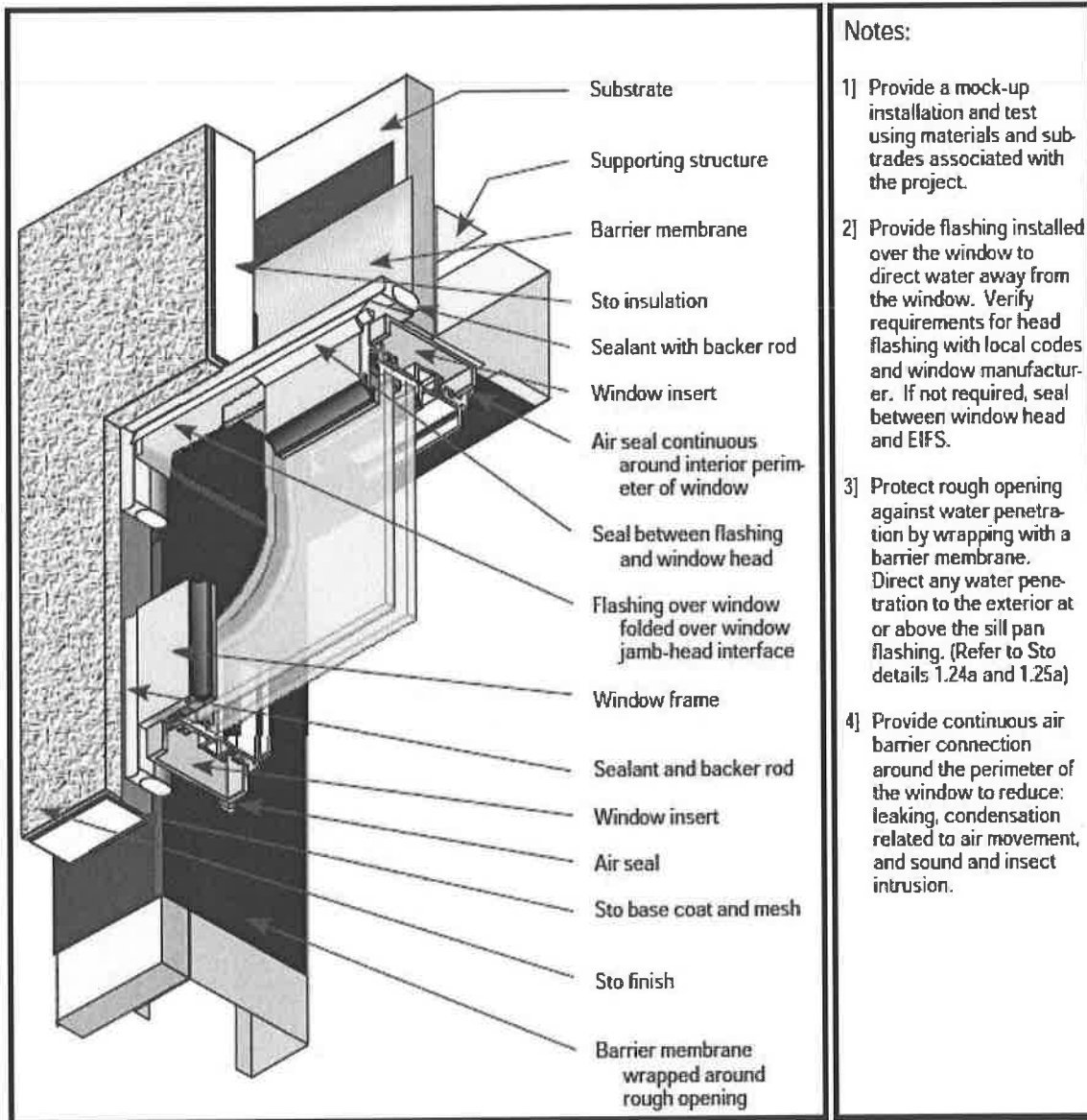


Exhibit 04 – Head Flashing Detail from Sto



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

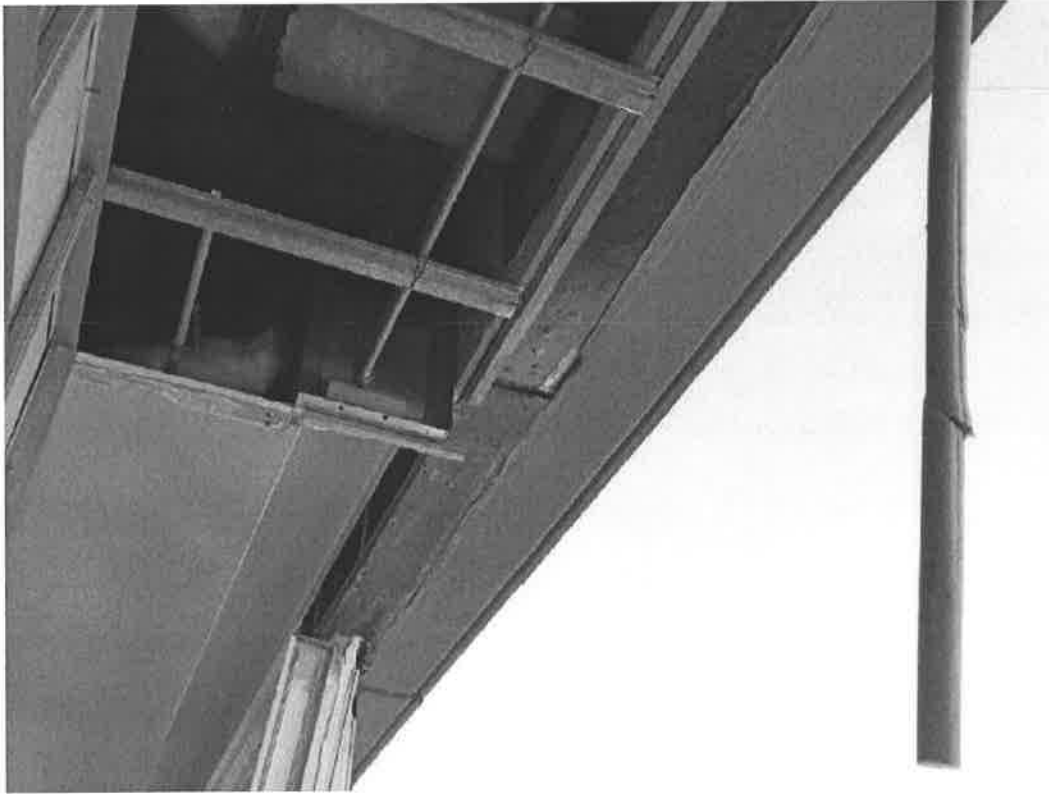


Exhibit 7 – CMA Consulting Photograph: Depicting Omission of Head Flashings



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

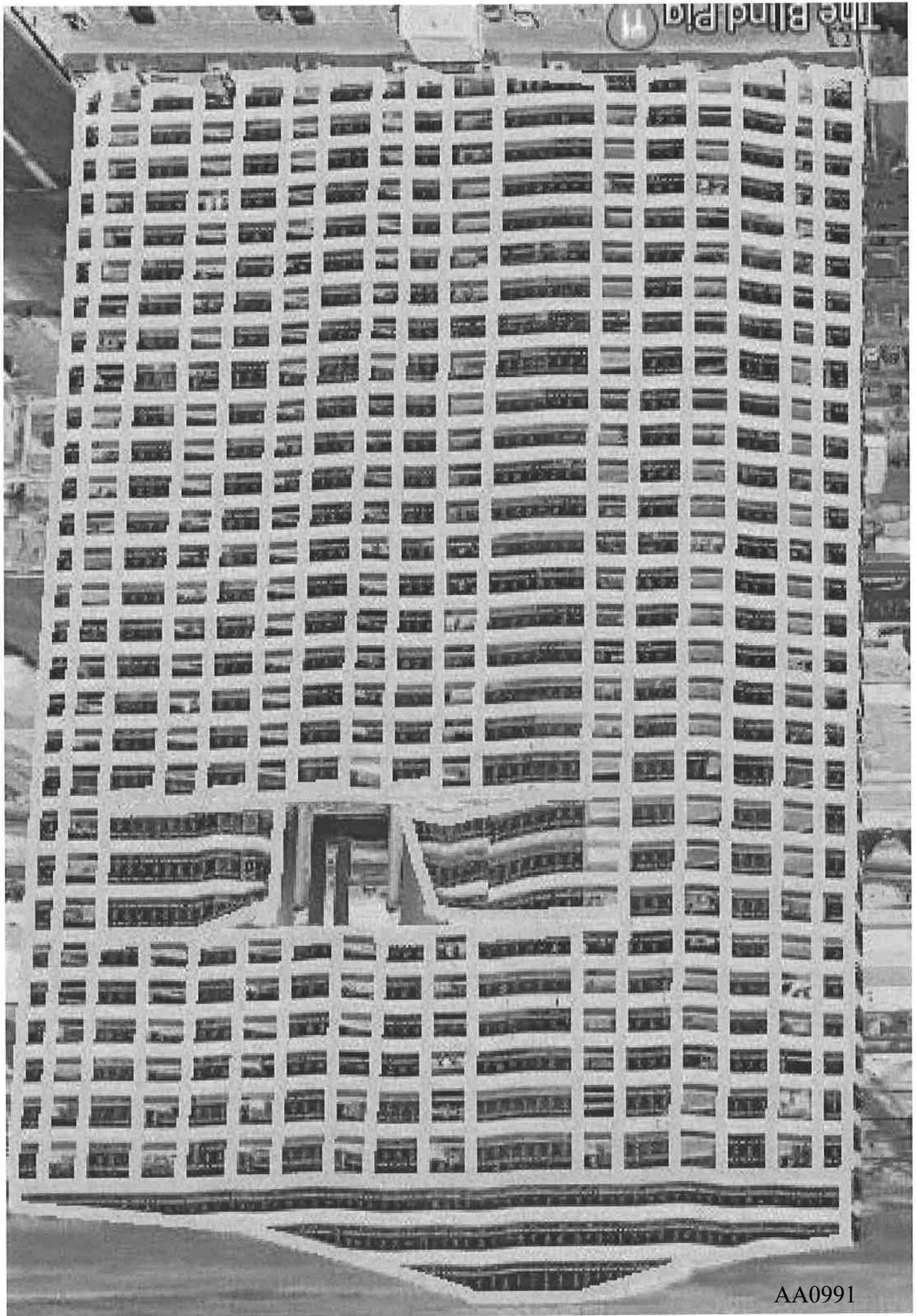
EXHIBIT B

EXHIBIT B

EXHIBIT B

EXHIBIT B

Tower 1 – East Side Windows



AA0991

EXHIBIT B

Tower 1 – North Side Windows



AA0993

EXHIBIT B

Tower 1 – South Side Windows



AA0995

EXHIBIT B

Tower 1 – West Side Windows

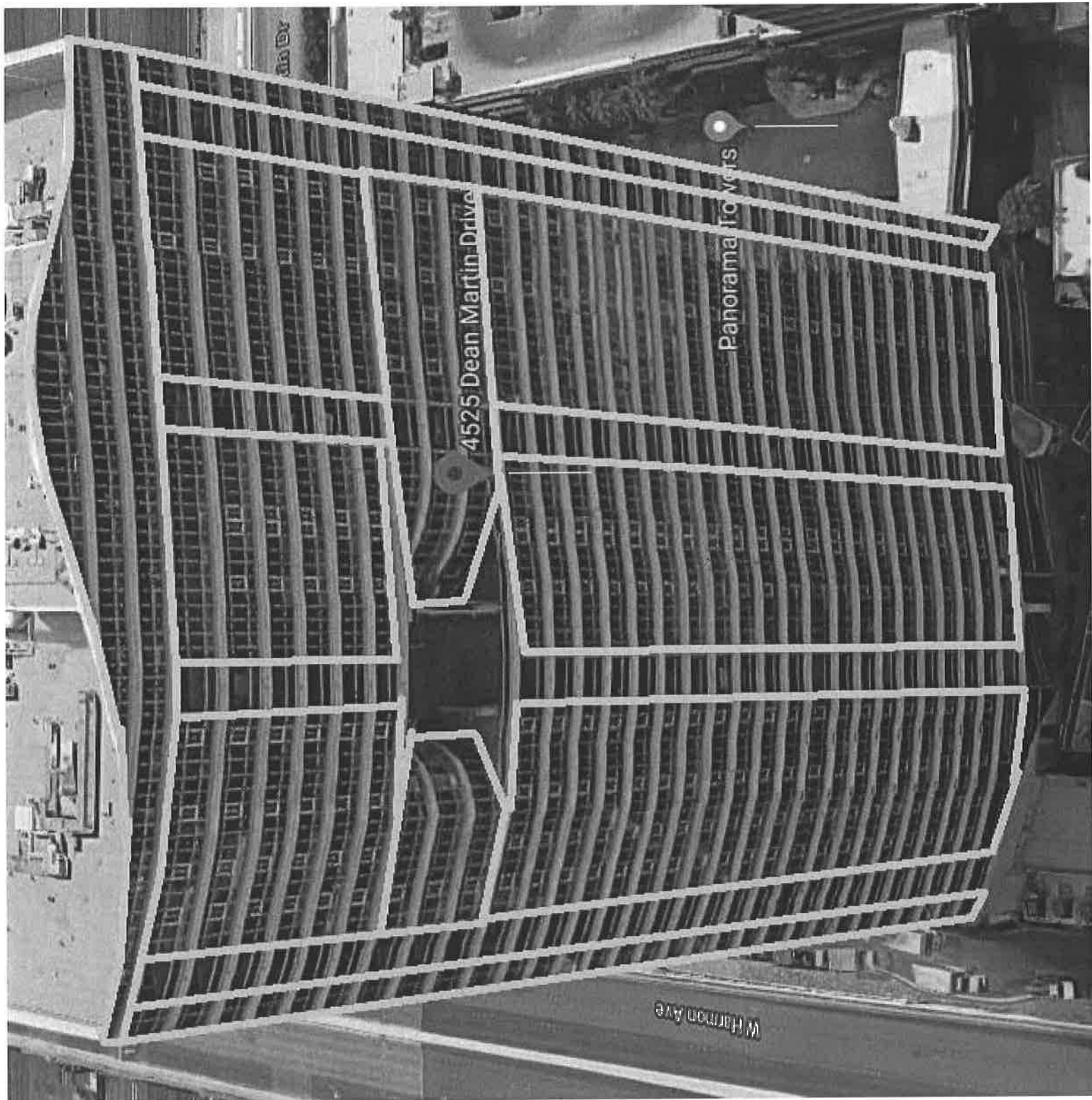


EXHIBIT B

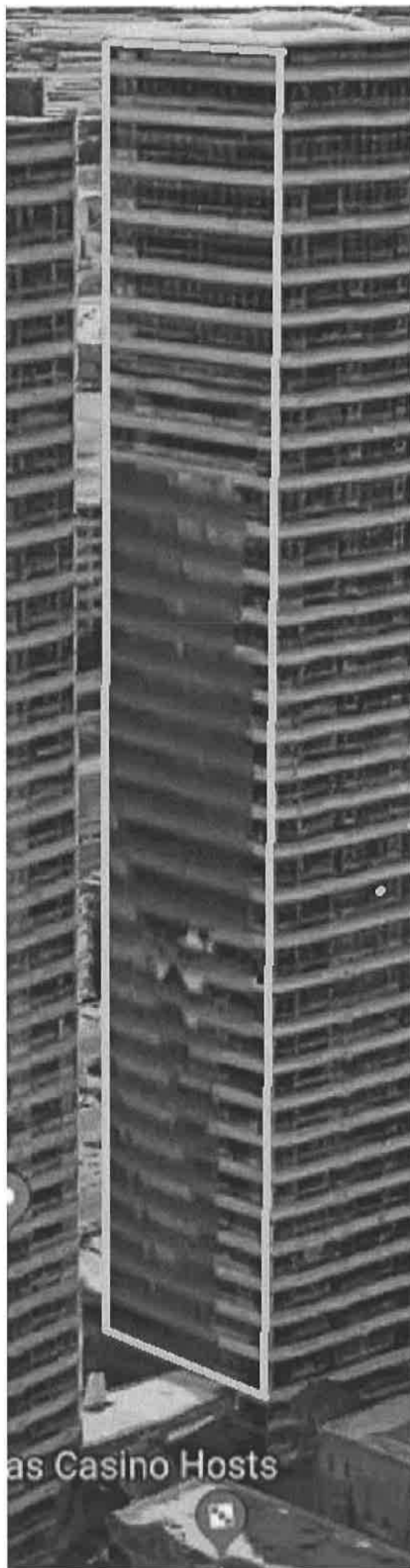
Tower 2 – East Side Windows



Pennsylvania Powers

EXHIBIT B

Tower 2 – North Side Windows



as Casino Hosts

EXHIBIT B

Tower 2 – South Side Windows



EXHIBIT B

Tower 2 – West Side Windows

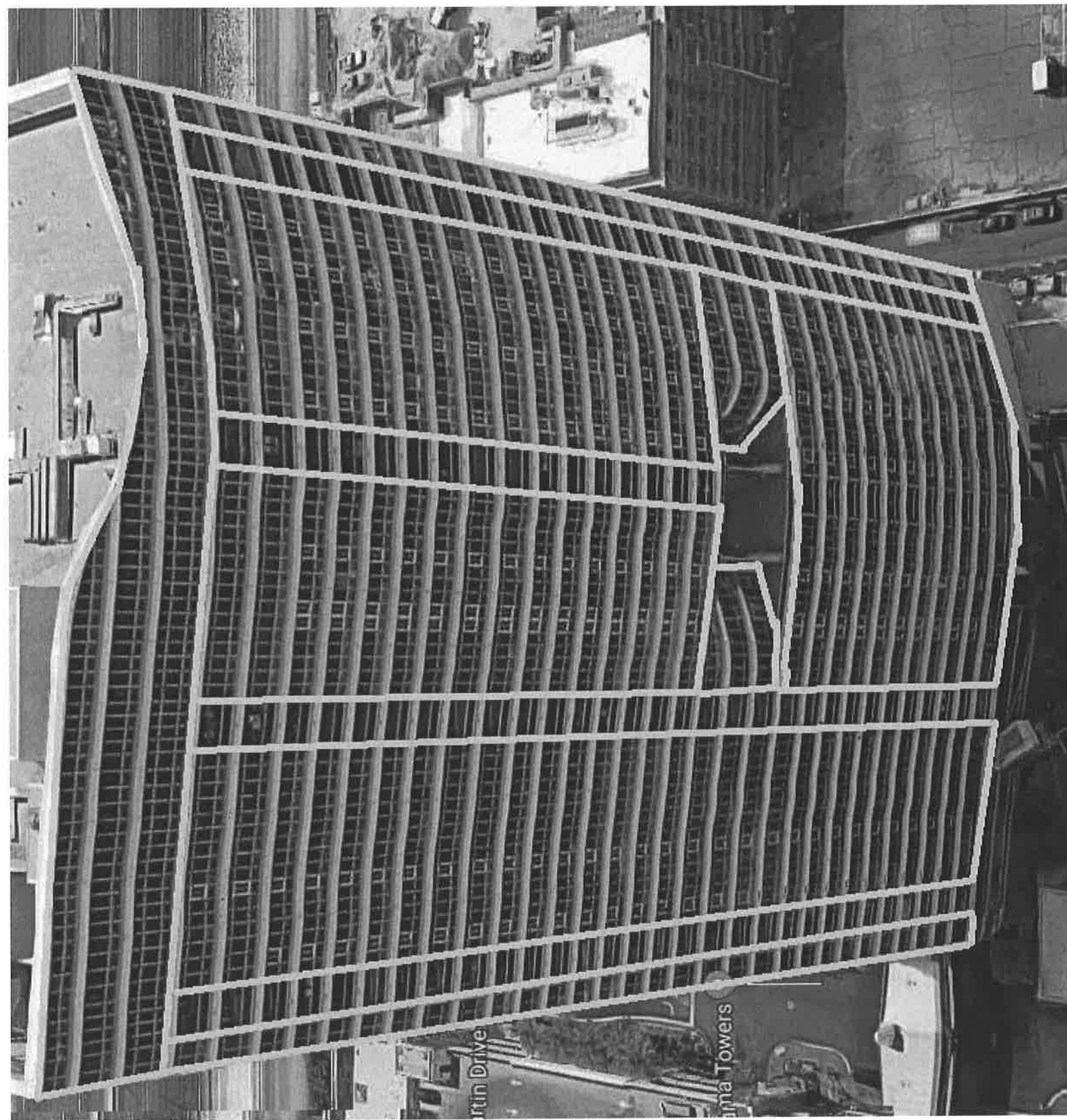


EXHIBIT C

EXHIBIT C

EXHIBIT C

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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

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

9 Counterdefendants.

10
11
12 **AFFIDAVIT OF OMAR HINDIYEH IN SUPPORT OF**
13 **PANORAMA'S OPPOSITION TO**
HALLIER'S MOTION FOR PARTIAL SUMMARY JUDGMENT

14 STATE OF NEVADA)
15 COUNTY OF CLARK) ss:

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

17 1. I received a Bachelor of Science degree in civil engineering from San Jose State
18 University in 1978. I am a licensed general contractor in California (license no. 757672) and in
19 Nevada (license no. 53133). I am the owner and president of CMA Consulting (CMA), formed in
20 1985, which specializes in construction management and forensic investigation services. A copy
21 of my CV, which includes my licenses, certifications and professional affiliations, is attached
22 hereto as Exhibit 1.

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

25 3. CMA Consulting was retained by the Panorama Towers Condominium Unit
26 Owners' Association in August, 2013, to investigate and repair leakage conditions in one of the
27 units of the Panorama development, Unit 300, located on the third story of Tower 1, 4525 Dean
28

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.

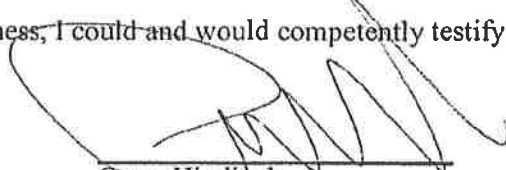
16 9. CMA estimates that the foregoing expenses – for the work and materials provided
17 by a contractor, storage of the occupant’s property, and charges for CMA’s services – would
18 amount to an average cost of \$13,145 per unit. There are 616 “standard” units in the two towers,
19 which would bring 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 
7 NOTARY PUBLIC

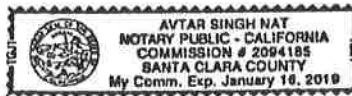


EXHIBIT E

EXHIBIT E

EXHIBIT E

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.

