

**IN THE SUPREME COURT OF NEVADA**

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

Appellant,

vs.

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

Respondents.

Electronically Filed  
Sep 21 2020 06:23 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

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

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**APPELLANT'S APPENDIX VOL 12 OF 27**

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

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

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

*Attorneys for Appellant*

**CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX**

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

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

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



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

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

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

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

## **ALPHABETICAL TABLE OF CONTENTS TO APPENDIX**

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

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

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

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



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

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

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

- 1 7. The Court issued its Findings of Fact, Conclusions of Law and Order regarding the  
2 Builders' Motion for Summary Judgment on the Associations' April 5, 2018 Amended  
3 Notice of claims on November 30, 2018 ("2018 Order")
- 4 8. Attached as **Exhibit "F"** is a true and correct copy of the Declaration of Michelle Robbins  
5 in support of the Builder's MSJ on April 5, 2018 Amended Chapter 40 Notice.
- 6 9. Attached as **Exhibit "G"** is a true and correct copy of the EIFS Shop Drawing contained  
7 within the Association's Amended Chapter 40 Notice, but with added highlighting and/or  
8 embellishments, as explained *infra*.
- 9 10. Attached as **Exhibit "H"** is a true and correct copy of an excerpt of the Declaration of  
10 Covenants, Conditions and Restrictions.
- 11 11. Attached as **Exhibit "I"** is a true and correct copy of the Declaration of Michelle Robbins,  
12 AIA in support of this Reply Brief.
- 13 12. Attached as **Exhibit "J"** is a true and correct copy of a Sto Detail, as contained in the  
14 Association's Amended Chapter 40 Notice, but with added highlighting and/or  
15 embellishments, as explained *infra*.
- 16 13. Attached as **Exhibit "K"** are true and correct copies of Panorama Project Plan A5.00.0, but  
17 with added highlighting and/or embellishments, as explained *infra*.
- 18 14. Attached as **Exhibit "L"** are true and correct excerpts of Texas Wall Systems Shop  
19 Drawings for the Panorama Project, but with added highlighting and/or embellishments, as  
20 explained *infra*.

21 FURTHER AFFIANT SAYETH NAUGHT.

22  
23   
24 JEFFREY W. SAAB, ESQ.

25 Subscribed and Sworn before me  
26 this 4 day of Feb., 2019.

27   
28 Notary Public in and for said State and County



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1 alleged omission of head flashings and find that indeed this is a new issue not conceived of in the  
2 Original Chapter 40 Notice.

## 3 II.

### 4 LEGAL ARGUMENTS

#### 5 **A. The Builders' Motion for Reconsideration was Filed Timely Pursuant to EDCR 1.14**

6 The Eighth Judicial District Court ("EDCR") rules provide guidelines for computation of  
7 time in filing motions such as motions for reconsideration. As the Association cites in their  
8 Opposition, EDCR 2.24 states that a party seeking reconsideration "must file a motion for such  
9 relief within 10 days after service of written notice of the order or judgment unless the time is  
10 shortened or enlarged by order." EDCR 2.24. In calculating the 10-day period, EDCR 1.14 "Time;  
11 judicial days; service by mail" provides the following, in part:

- 12 (a) In computing any period of time prescribed or allowed by these rules, by order  
13 of court, or by any applicable statute, the day of the act, event or default from  
14 which the designated period of time begins to run must not be included. ...  
15 When the period of time prescribed or allowed is **less than 11 days,**  
**intermediate Saturdays, Sundays, and non-judicial days must be excluded**  
**in the computation.**

16 ...

- 17 (c) Except as otherwise provided in paragraph (d) of this rule, whenever a party  
18 has the right or is required to do some act or take some proceedings within a  
19 prescribed period after the service of a notice or other paper, other than  
20 process, a motion for a new trial, a motion to vacate judgment pursuant  
21 to NRCP 59 or a notice of appeal, and the notice or paper is served upon the  
22 party by mail, either U.S. Mail **or court authorized electronic mail, or by**  
**electronic means, three (3) days must be added to the prescribed period.**  
(Emphasis added).

23 The Court filed its Findings of Fact, Conclusions of Law and Order regarding the Builders' Motion  
24 for Summary Judgment on Defendant/Counter-Claimant Panorama Tower Condominium Unit  
25 Owners' Association's April 5, 2018 Amended Notice of Claims ("2018 Order") on November 30,  
26 2018 (*See* Exhibit B to Motion, Findings of Fact, Conclusions of Law and Order).

27 The Association cites to EDCR Rule 2.24 in simplistically claiming that the Builders had 10  
28 days and no longer to file a Motion for Reconsideration of the Court's 2018 Order. Since 10 days

1 are less than 11 days, the 10-day computation would exclude intermediate Saturdays, Sundays and  
2 non-judicial days. (See EDCR 1.14(a)). Furthermore, since the Builders had a right to seek  
3 reconsideration of an order within a prescribed period per EDCR 1.14(c), and since the 2018 Order  
4 was served on the parties via court authorized electronic mail and/or by electronic means, three (3)  
5 calendar days must be added to the prescribed period. EDCR 1.14(c).

6 November 30, 2018, a Friday, is not included in the computation per the first line of EDCR  
7 1.14(a). Therefore, the first judicial day of the count would be Monday, December 3, 2018.  
8 Counting from there, excluding the following Saturday and Sunday, the 10<sup>th</sup> judicial day fell on  
9 Friday, December 14, 2018. Adding the 3 extra calendar days mandated by EDCR 1.14(c) results  
10 in a final filing date of Monday, December 17, 2018. This was the day the Builders filed their  
11 Motion for Reconsideration. The Builders' Motion was timely filed.

12 **B. The Builders' Arguments in its Motion for Reconsideration are Not New, and the**  
13 **Court has Discretion to Hear Those Arguments When New Evidence is Obtained**

14 The Court has discretion to reconsider a prior issue if new evidence is subsequently  
15 introduced. *Masonry & Tile Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741 (1997).  
16 On October 22, 2018, twenty days *after* the October 2, 2018 Hearing on the Builders' Motion for  
17 Summary Judgment on the Association's April 5, 2018 Amended Notice of Claims, the Builders  
18 filed a Motion for Declaratory Relief Regarding Standing. On November 16, 2018, nearly a month  
19 *after* the October 2, 2018 hearing, the Association filed its Opposition to the Builders' Motion for  
20 Declaratory Relief Regarding Standing. Attached to its Opposition as Exhibit 2 is the declaration  
21 of one of the Association's experts, Omar Hindiyeh. In that declaration, Mr. Hindiyah claims that  
22 "head flashings... had they been installed, would have been part of the exterior EIFS cladding  
23 system, **not part of the window assembly.**" (See Exhibit E, Affidavit of Omar Hindiyeh, Exhibit  
24 2 to the Association's Opposition to the Builders' Motion for Declaratory Relief Regarding  
25 Standing, Pg. 5, Par. 18, Ln. 24-26). (emphasis added).

26 The Association references *Arnold v. Kip* in acknowledging that the Court has discretion to  
27 consider arguments for the first time in a motion for reconsideration. (See Opp., Pg. 4., Ln. 3-6).  
28 The Builders do not dispute that the Court does indeed have this authority. Oddly, however, the

1 Association then cites to *Achrem v. Expressway Plaza Ltd.* to argue that the Court in fact does not  
2 have authority to hear arguments raised for the first time in such a motion, which appears to be  
3 directly opposite to the *Arnold* case. Nevertheless, the *Achrem* case is distinguishable from the  
4 present case.

5 The Association's position that the Builders' arguments are brand new is fallacious, which  
6 renders the Association's use of the above two cases meaningless. The Builders' position that the  
7 alleged omission of head flashings is a new issue is absolutely not a new argument. The Builders'  
8 Motion for Summary Judgment on the Association's April 5, 2018 Amended Notice of Claims  
9 specifically argued that "the alleged omission of the head flashing is a new issue." (See Exhibit  
10 "A", Builder's MSJ on April 5, 2018 Amended Notice, Pgs. 13, 19, 20, and 22). The Builders'  
11 expert, Michelle Robbins, AIA, noted in her affidavit in support of the Builders' Motion for  
12 Summary Judgment on the Association's April 5, 2018 Amended Notice of Claims that the alleged  
13 omission of head flashing is a brand-new issue. (See **Exhibit "F"**, Declaration of Michelle Robbins  
14 in support of the Builder's MSJ on April 5, 2018 Amended Notice, Pg. 1, Ln. 23-26.)

15 The Builders and their experts are wholeheartedly convinced that the alleged lack of head  
16 flashings is a completely new issue, not conceived of in the Original Chapter 40 Notice. Thus,  
17 despite the Association's contention that the Builders are using NRS 40.645 as a shield to block the  
18 Association from "legitimate litigation," the Builders have meritorious arguments as to why the  
19 Association's litigation is anything but legitimate. (See Opp., Pg. 7, Ln. 1-5). The Association  
20 cites to *DR. Horton v. Eighth Judicial District Court*. *Id.* Interestingly, that case also provides that  
21 "a contractor who wishes to challenge the adequacy of a pre-litigation notice bears the burden of  
22 doing so with specificity. Because each case is factually distinct, the district courts have wide  
23 discretion to consider each contractor's challenge to the reasonableness of each pre-litigation  
24 notice." *D.R. Horton, Inc. v. Eighth Judicial Dist. Court of Nev.*, 123 Nev. 468, 482 (2007). Here,  
25 the Builders had the burden to show with specificity as to why the Association's Chapter 40 Notice  
26 and Amended Notice are deficient. Moreover, the Court has wide discretion to consider each of  
27 those challenges. *Id.*

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1       **C. The Association's Expert's Admission that Head Flashings Do Not Form Part of the**  
2       **Window Assembly Means There is No Material Issue of Disputed Fact and the**  
3       **Builders are Entitled to Summary Judgment**

4       Summary judgment is proper when, reviewing the evidence in the light most favorable to  
5       the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to  
6       judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 728, 121 P.3d 1026, 1029  
7       (2005). Summary judgment is appropriate under NRCP 56 when the pleadings, depositions,  
8       answers to interrogatories, admissions, **and affidavits**, if any, that are properly before the court  
9       demonstrate **that no genuine issue of material fact exists**, and the moving party is entitled to  
10      judgment as a matter of law.” *Wood*, 121 Nev. at 731, 1031 (internal citations omitted). Moreover,  
11      “the substantive law controls which factual disputes are material and will preclude summary  
12      judgment; other factual disputes are irrelevant.” *Id.* (internal citations omitted).

13      The Association's own expert, Mr. Hindiye, stated under oath that head flashings are not  
14      part of the window assemblies, a tacit admission by the Association that the lack of head flashings  
15      is an entirely new issue outside the scope of the Original Chapter 40 Notice. The allegations in the  
16      Original Chapter 40 Notice related to the tower windows, not the EIFS, hence why the section was  
17      titled “1. Residential Tower Windows.” (Exhibit B, November 30, 2018 Findings of Fact,  
18      Conclusions of Law and Order, Pg. 3) (emphasis added). Mr. Hindiye even goes so far as to  
19      agree that the omitted head flashings form part of the EIFS system, not the window assemblies.  
20      There were no EIFS-related defects in the original Chapter 40 Notice. *Id.* Now, given the  
21      Builders' pending Motion for Reconsideration, the Association desperately backpedals and has  
22      somehow convinced its own expert to provide a shockingly conflictory affidavit. In a 180-degree  
23      shift, and in an obvious effort to manufacture a material issue of fact to defeat summary judgment,  
24      Mr. Hindiye now claims that, in actuality, head flashings *do* form part of the window assemblies.  
25      When the Builders call him on his original, sworn opinion, the Association responds in an absurd  
26      manner equal to Mr. Hindiye's shameful about-face.

27      The Opposition, in criticism of the Builders' Motion, states:

28               “Because, according to the Builders, the head flashings are *not part of the*  
              *window assemblies*, they are not included in the original Chapter 40  
              notice... Wrong!” (Opp. Pg. 8, Ln. 25 to Pg. 9, Ln. 3).

1 The Association misquotes the Builders' Motion. Rather, the above statement that head flashings  
2 are not part of the window assemblies is a direct quote from the *Association's* expert, Mr.  
3 Hindiye. (See Exhibit E, Affidavit of Omar Hindiye, Exhibit 2 to the Association's Opposition to  
4 the Builders' Motion for Declaratory Relief Regarding Standing, Pg. 5, Par. 18, Ln. 24-26).  
5 (emphasis added). The Association criticizes the Builders for something the Association's expert  
6 testified to under oath. It appears, therefore, that the Association disagrees with its own expert's  
7 testimony, which was entered under penalty of perjury.

8 Mr. Hindiye's purported excuses as to why he said what he said are unpersuasive. He first  
9 claims the reason he said that head flashings do not form part of the window assemblies was  
10 because he was trying to interpret the definition of "apertures" in the Declaration. (See Opp.,  
11 Exhibit A, Pg. 3, Ln 5-8). Any interpretation on Mr. Hindiye's part cannot be relied upon because  
12 he has consistently misquoted the language in the declaration. Mr. Hindiye references Section  
13 4.2(e) "Apertures," but only include the following:

14 "where there are apertures in any boundary, including but not limited to  
15 windows... such boundaries shall be extended to include the  
16 windows...including all frameworks, window casings and  
weatherstripping thereof..." (See Exhibit 1 to Opp., Pg. 3, Ln. 7-8).

17 However, there is key information that Mr. Hindiye which conveniently omits. Without a  
18 complete picture of the full Declaration language, how can Mr. Hindiye expect the Court or the  
19 parties to rely on *his* interpretation of what the Declaration says or means? He cannot possibly  
20 provide meaningful context to something when the basis for his opinion is incomplete. Either the  
21 Association never gave its expert the whole section 4.2(e) to review to make his determination  
22 (which would be grounds to strike his opinions), or both the Association and the expert want the  
23 Court to ignore what the Declaration *actually* says. Section 4.2(e) states, in complete terms:

24 "Where there are apertures in any boundary, including, but not limited to,  
25 windows, doors, bay windows and skylights, such boundaries shall be  
26 extended to include the windows, doors **and other fixtures located in such**  
27 **apertures, including** all frameworks, windows casings and weatherstripping  
thereof, except that exterior surfaces made of glass or other transparent  
materials..." (Exhibit "H," Excerpts of Declaration, Pg. 2, Section 4.2(e))  
(emphasis added).

1 Mr. HindiyeH also attempts to argue about construction sequencing as an excuse for why he  
2 initially stated that head flashings do not form part of the window assemblies. Mr. HindiyeH claims  
3 that:

4 “had the head flashings been installed by the EIFS installer, they would  
5 have been part of the EIFS system because, sequentially, the window  
6 assemblies were already in place when the EIFS installer performed its  
7 installation work, including the head flashings and the EIFS cladding.”  
(Exhibit 1 to Opp., Declaration of Mr. HindiyeH, Par. 7(b))

8 Mr. HindiyeH’s argument here is beyond flawed. First, Mr. HindiyeH’s reference to construction  
9 sequencing in his prior declaration was in relation to pan flashings only, not head flashings. (See  
10 Exhibit E, “November 15, 2018 Declaration”, Pg. 4, Ln. 6-9). Second, Mr. HindiyeH’s November  
11 15, 2018 Declaration left open the possibility that flashings could have been, in Mr. HindiyeH’s  
12 own words, installed by the sheet metal contractor, framing contractor or the window installer, and  
13 not just the EIFS installer. *Id.* Mr. HindiyeH’s newly fabricated opinion that head flashings would  
14 become part of the EIFS system was based upon the premise that the head flashings were installed  
15 by the EIFS installer. He does not evaluate how the sequencing of construction would be impacted  
16 had another trade installed the head flashings. Mr. HindiyeH’s arguments are therefore  
17 unpersuasive, to say the least.

18 Mr. HindiyeH’s conflated attempt to steer the Court in an entirely new direction again leads  
19 to the conclusion that the alleged omitted head flashings are an entirely new defect. Recall, the  
20 focus of the Original Chapter 40 notice was on the *escape* of water that had already gotten behind  
21 the windows assemblies themselves. (See Exhibit B, Pg. 3). The Original Chapter 40 Notice states,  
22 in part:

23 **“1. Residential Tower Windows: ..... The window assemblies in the**  
24 **residential tower units were defectively designed such that water entering**  
25 **the assemblies does not have an appropriate means of exiting the**  
26 **assemblies. There are no sill pans, proper weepage components or other**  
27 **drainage provisions designed to direct water from and through the window**  
28 **assemblies to the exterior of the building.”**

The Original Chapter 40 Notice had absolutely nothing to do with capturing water behind the  
drainage plain on the EIFS and jettisoning it to the exterior of the building, out and above the

1 windows. (See Opp. Pg. 8, Ln. 13-16). For reasons more fully set forth below, this position does  
2 not even make sense given the design and construction of the Panorama Towers. There is no  
3 factual dispute that the omitted head flashings were not conceived of in the Original Chapter 40  
4 Notice.

5 **D. The Association's Reliance on Mr. HindiyeH is Further Misguided Because His**  
6 **Diagram is Disingenuous**

7 The Association argues that the Builders' expert, Michelle Robbins, should have addressed  
8 the issue of whether the head flashings formed part of the EIFS system or the window assembly in  
9 her affidavit in support of the MSJ on the April 5, 2018 Amended Chapter 40 Notice. It was never  
10 the Builders' obligation to anticipate and raise the Association's arguments for them. The  
11 Association, through its expert, was the one who introduced *new evidence* to the Court that head  
12 flashings, if installed, would form part of the EIFS cladding system, "**not part of the window**  
13 **assembly.**" (See Exhibit E, Affidavit of Omar HindiyeH, Exhibit 2 to the Association's Opposition  
14 to the Builders' Motion for Declaratory Relief Regarding Standing, Pg. 5, Par. 18, Ln. 24-26)  
15 (emphasis added). Now, Mr. HindiyeH flip-flops into saying the opposite, solely because it suits  
16 the Association's needs in supporting *this Opposition* but not the Opposition to the Motion for  
17 Declaratory Relief. The Association and Mr. HindiyeH cannot be allowed to present such  
18 unabashed prevarication.

19 Irrespective, Mr. HindiyeH's arguments are unpersuasive because he obviously has a gross  
20 misunderstanding of the design of the Panorama Towers. The Association's Amended Chapter 40  
21 Notice contains various pictures and details to allegedly support the position that head flashings  
22 were not installed as required. (See Exhibit D, Pgs. 18 and 22-24). These documents are important  
23 because they should have revealed to Mr. HindiyeH how the Panorama Towers were constructed,  
24 specifically regarding the EIFS to window transitions. Yet, somehow, understanding the design  
25 has entirely evaded Mr. HindiyeH.

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1           i. Mr. Hindiye's "Diagram" Does Not Accurately Reflect the Design of the  
2           Windows at the Project

3           Mr. Hindiye attempts to mislead the Court by providing a diagram of a window. Mr.  
4 Hindiye draws out a diagram that might appear at first glance to represent the windows at the  
5 Panorama Project. (See Opp., Exhibit A, Diagram Attachment (hereinafter "the Hindiye  
6 diagram")). However, a closer examination is in order.

7           A quick glance to the Sto Detail, attached to the Amended Chapter 40 Notice, is important.  
8 (See Exhibit D, Pg. 19). That detail, which the Builders continuously object to given that it has no  
9 relevance to the Panorama Project, is an isometric drawing, a three-dimensional rendering showing  
10 how a head flashing *would* be incorporated *if* required. *Id.* That detail shows a window that is  
11 virtually flush with the face of the finish of the building (the face of the building being labeled "Sto  
12 finish" in the Sto Detail Drawing). *Id.* In other words, the window depicted in that detail is not set  
13 back from the face of the building, but rather, is essentially positioned on the same vertical plane as  
14 the face of the EIFS (again, the "Sto Finish" in the Sto Detail Drawing). *Id.* This is important  
15 because the Sto Detail (pg. 19 of Exhibit D) does not reflect the design of the windows at the  
16 Panorama Towers, as depicted, for example, in the EIFS Shop Drawing (pg. 18 of Exhibit D) of the  
17 head detail (Detail 4) in the Amended Chapter 40 Notice. (*Id.*, See also, **Exhibit "G"**, EIFS Shop  
18 Drawing with highlighted section illustrating significant window set-back from the face of the  
19 EIFS; See also, **Exhibit "I"**, Declaration of Michelle Robbins, AIA). As shown in **Exhibit "J"**,  
20 attached hereto, the pink highlighted section inside the red rectangle on the left side shows a very  
21 thin strip of EIFS that protrudes nominally away from the window frame. (**Exhibit "J"**, Sto Detail  
22 with Highlighting). The same area in the Hindiye diagram is depicted in a sideways and  
23 "exploded" (meaning the elements are separated to show each one individually) view of it. (See  
24 **Exhibit "I"**, Declaration of Michelle Robbins, AIA). The Sto Detail and the Hindiye diagram  
25 both depict window systems that are virtually flush with the face of the EIFS (See **Exhibit "I"**,  
26 Declaration of Michelle Robbins, AIA). In sum, the Sto Detail and the Hindiye diagram both  
27 show designs that are inconsistent with the EIFS Shop Drawing detail in the Amended Chapter 40  
28 Notice, as well as the photos therein, and plan A5.00.0, which all clearly represent a significant

1 window set back. (See Exhibit D, Pg. 18 and 22-24; See also, **Exhibit “I”**, Declaration of Michelle  
2 Robbins, AIA).

3 A comparison of the Sto Detail (Pg. 19 of Exhibit D) of the Amended Chapter 40 Notice  
4 compared to the EIFS shop drawing on pg. 18 of same reveals a significant difference in design.  
5 The overhang of the EIFS over the window is *far* greater in the EIFS shop drawing than in the Sto  
6 Detail. (Compare **Exhibit “G”**, EIFS Shop Drawing from Amended Chapter 40 Notice –  
7 highlighted section, versus **Exhibit “J”**, Sto Detail with Highlighting). The highlighting on both  
8 details represent the same thing - the EIFS overhang beyond the face of the window. In the EIFS  
9 Shop Drawing, which actually reflects the window designs on the Project (see Exhibit D, Pgs., 18  
10 and 22-24 – showing significant window set back, at least 6 inches), there is a significant window  
11 set back of at least 6 inches. (See Exhibit D, Pg. 18; See also, **Exhibit “I”**, Declaration of Michelle  
12 Robbins, AIA). In the Sto Detail, however, the window is set back a negligible amount such that it  
13 could be considered nearly flush with the surface of the EIFS, as depicted by the minimal thickness  
14 of the EIFS highlighted in pink and enclosed in a red box on the left side of the drawing. (See  
15 **Exhibit “J”**, Sto Detail with Highlights).

16 The Association has utilized its expert to mislead the Court with drawings that do not  
17 pertain to the Panorama Project, all in order to argue that head flashings should have been installed.  
18 In reality, the actual design of the building and windows is very different than what is depicted in  
19 the Sto Detail and the Hindiye diagram. The building windows, as are depicted in the Amended  
20 Chapter 40 Notice photographs, Exhibit D, pgs. 22-24, are set back at least 6 inches from the face  
21 of the EIFS and provide other means of shedding water. (See **Exhibit “I”**, Declaration of Michelle  
22 Robbins, AIA). Head flashings on the design depicted in the EIFS Shop Drawing and the  
23 Amended Chapter 40 Notice photographs are not only infeasible, they simply are not required.  
24 (**Exhibit “I”**, Declaration of Michelle Robbins, AIA).

25 The wall section details on the Project plans also prove that windows are set back at least 6  
26 inches. (See **Exhibit “K”**, Plan A5.00.0). The Hindiye diagram does not depict a detail consistent  
27 with the wall section detail in plan A5.00.0 or the EIFS Shop Drawing (See **Exhibit “K”**, Plan  
28 A5.00; See also, **Exhibit “I”**, Declaration of Michelle Robbins, AIA; See also, Exhibit D, Pg. 18).

1 Mr. Hindiye's use of an irrelevant drawing for the purpose of showing the Court how head  
2 flashings would be installed on the system depicted in the Hindiye diagram does absolutely  
3 nothing to support the Association's argument that the lack of head flashings is causing problems at  
4 the Project. What the Association is proposing is tantamount to installing wheels on a boat. It is a  
5 fruitless endeavor because, just as boats are not designed to have wheels, the windows at  
6 Panorama, as depicted in the Amended Chapter 40 Notice (Exhibit D, Pgs. 22-24), were not  
7 designed to have head flashings.

8 In developing his diagram, Mr. Hindiye did not take into consideration the true  
9 configuration of the building EIFS and windows. His diagram is therefore worthless.

10 **ii. Head Flashings Were Not Required at Panorama and Their Inclusion Would Not**  
11 **be Feasible**

12 Incorporating head flashings into the existing design at the Panorama tower windows, as  
13 shown on plan A5.00.0, the photographs in the Amended Chapter 40 Notice and the EIFS Shop  
14 drawing in the Amended Chapter 40 Notice, would be infeasible. The Panorama Towers were not  
15 designed to have head flashings. Head flashings were not called for in the Project plans, the  
16 window shop drawings, EIFS shop drawings or the Sto Detail. Even though the Sto Detail shows a  
17 head flashing, this does not mean that head flashings were required at the Panorama Project. The  
18 Sto Detail defers the decision to incorporate head flashings to the manufacturer of the windows.  
19 (See Exhibit D, Pg. 19, Note 2). Here, Texas Wall Systems, the manufacturer of the windows, did  
20 not require head flashings, as per the Texas Wall Systems Shop Drawings. (See Exhibit "L",  
21 Excerpt of Texas Wall Systems Shop Drawing, Pg. 2, Detail 1). In the Texas Wall Systems Shop  
22 Drawings, Detail 1 "Head Frame" does not depict a head flashing. Moreover, this Detail is also  
23 illustrative of the fact that the window is set back from the face of the EIFS (the set-back is  
24 indicated by the pink highlighting). *Id.*

25 Given the design intent of set-back windows at Panorama, it would be infeasible and  
26 fruitless to install head flashings. (See Exhibit "I", Declaration of Michelle Robbins, AIA). Mr.  
27 Hindiye opines that head flashings, if installed, would provide drainage from the EIFS, above.  
28 Mr. Hindiye asserts that had the head flashings been installed, they would have captured water

1 that got behind the EIFS cladding and drained it out over the top of the window. A look at the  
2 Project plans reveals that this contention is preposterous.

3 Attached on page 3 of **Exhibit “K”** is a close-up of the window-to-EIFS transition. (See  
4 **Exhibit “K”**, Plan A5.00.0, specifically pg. 3). The cladding that Mr. Hindiyeh refers to is  
5 illustrated in the rectangle. *Id.* If water were to penetrate the cladding and drain down below it, the  
6 water would still not hit the top of the windows (windows are identified by the pink highlighting).  
7 (See **Exhibit “I”**, Declaration of Michelle Robbins, AIA). The window is set back from the edge  
8 of the EIFS cladding and does not rest below it (see window set-back measurement icon illustrating  
9 distance between window and face of EIFS). (See **Exhibit “K”**, Plan A5.00.0, specifically pg. 3).  
10 Therefore, any incidental water that got behind the cladding would drain downward and out,  
11 completely away from the window. Based on what is depicted in Plan A5.00.0, attached as  
12 **Exhibit “K”**, the photos in Exhibit D (the Amended Chapter 40 Notice), and the EIFS Shop  
13 Drawing (attached as **Exhibit “G”**), it would be both infeasible and unnecessary to incorporate the  
14 Hindiyeh diagram design into the Project as designed and constructed. (See **Exhibit “I”**,  
15 Declaration of Michelle Robbins, AIA; See also, Exhibit D, Pg. 18 and 22-24). Moreover, this  
16 repair, if it were even possible to perform, would simply not have the benefit the Association  
17 speculates it would.

18 Without an accurate diagram exhibiting the design that is physically installed at the Project,  
19 the Association lacks the proper foundation to argue that head flashings, if incorporated, would  
20 form part of the window assemblies or not. The Hindiyeh diagram shows a completely different  
21 system than what is depicted at Panorama, as exemplified by the large window set-back shown in  
22 the Amended Chapter 40 photographs. (See Exhibit D, Pg. 22-24).

23 Mr. Hindiyeh’s diagram inaccurately reflects the accurate design of the Panorama windows,  
24 and therefore, his recommendation that head flashings are required cannot be trusted.

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III.

CONCLUSION

In light of the *new evidence* of Mr. Hindiye's admission, which was provided *after* the October 2, 2018 hearing, the Builders respectfully request that, based on the new evidence and the arguments presented, this Honorable Court reconsider its decision with respect to the omission of head flashings and find that indeed this is a new issue not conceived of in the Original Chapter 40 Notice.

Dated: February 4, 2019

BREMER WHYTE BROWN & O'MEARA LLP

By: 

Peter C. Brown, Esq.

Nevada State Bar No. 5887

Jeffrey W. Saab, Esq.

Nevada State Bar No. 11261

Devin R. Gifford, Esq.

Nevada State Bar No. 14055

Attorneys for Plaintiffs/Counter-Defendants

LAURENT HALLIER, PANORAMA

TOWERS I, LLC, PANORAMA

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

CONSTRUCTION, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of February 2019, a true and correct copy of the foregoing document was electronically served through Odyssey upon all parties on the master e-file and serve list.



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Alondra Reynolds, an Employee of  
BREMER, WHYTE, BROWN & O'MEARA, LLC

Exhibit “F”

Exhibit “F”

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.

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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.

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19       8.3-18  
20 Dated

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22         
23 Michelle Robbins, AIA  
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# 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

# EXHIBIT “G”

# EXHIBIT “G”

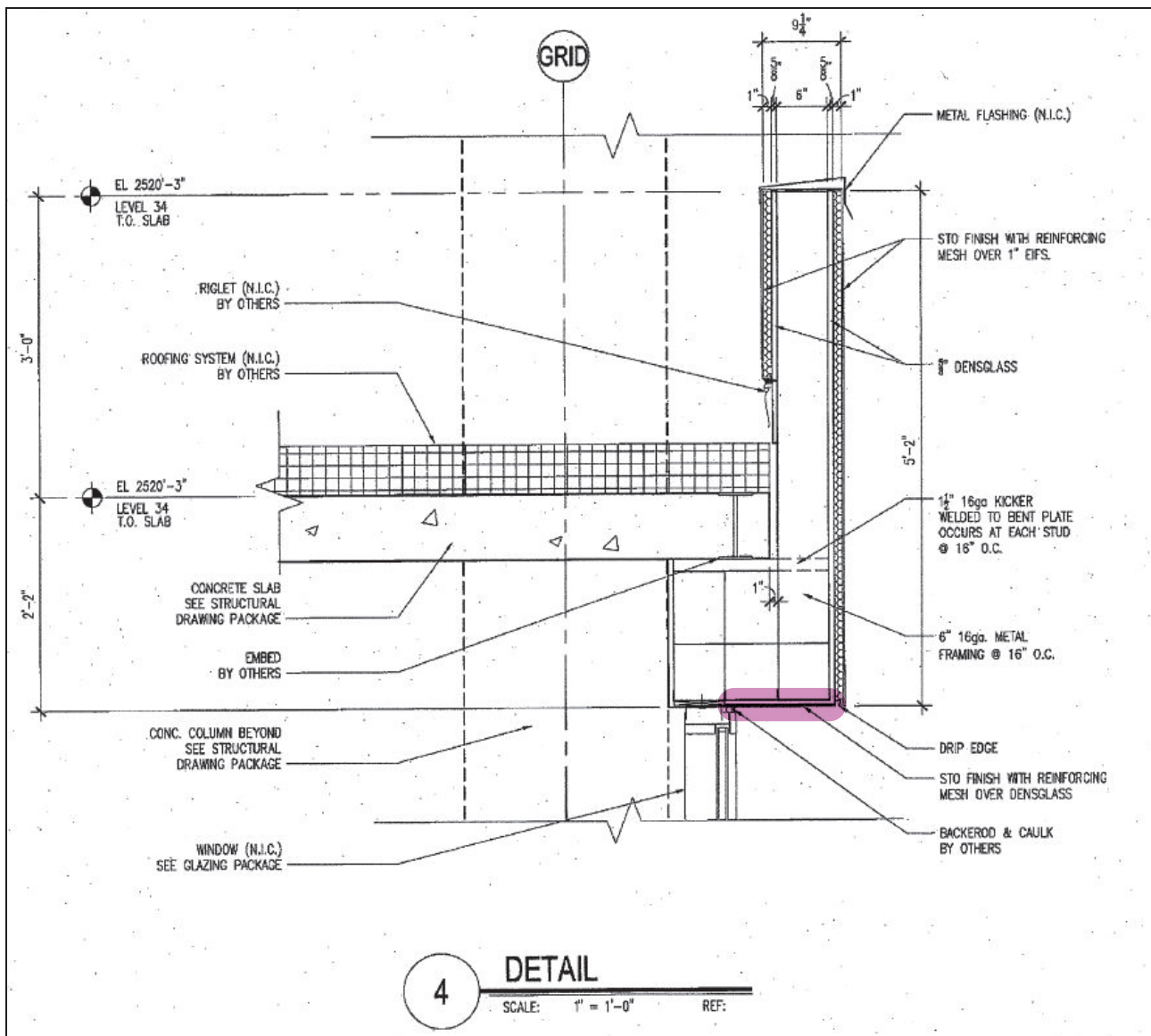


Exhibit 03 – Construction Drawings: EIFS Shop Drawing Detail 4 Showing no Head Flashing

# EXHIBIT “H”

# EXHIBIT “H”

**Receipt/Conformed Copy**

APN: 16220311000

When Recorded Mail To:

Jones Vargas  
3773 Howard Hughes Parkway  
Third Floor South  
Las Vegas, Nevada 89169  
Attn: Michael E. Buckley, Esq.

Requestor:

TITLEONE

11/07/2006 14:57:53 T20060197532

Book/Instr: 20061107-0004723

Restrictio Page Count: 141

Fees: \$154.00 N/C Fee: \$25.00

Charles Harvey  
Clark County Recorder

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND GRANT AND RESERVATION OF EASEMENTS FOR  
PANORAMA TOWERS

all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Unit.

(d) Vertical Perimetrical Boundaries. Except as provided herein, the perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries. Where, however, the perimetrical walls (as initially constructed by Declarant) consist of sheetrock, the perimetrical boundaries of that portion of the Unit shall be the vertical planes of the unfinished exterior surface of the sheet rock bounding the Unit (such that the Unit extends up to, but does not include, the face of any support studs in the walls) extended to their planar intersections with each other and with the upper and lower boundaries. Only for the purpose of calculating total square footage of each Unit, the dimensions shall be taken from (and shall include all areas bounded within) the centerline of any shared party wall, and from the exterior surface of the condominium building for any non-shared walls.

(e) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, except that exterior surfaces made of glass or other transparent materials and exteriors of any and all doors facing interior Common Element hallways shall not be included in the boundaries of the Unit and shall therefore be Common Elements. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO POST TENSION WIRING CONTAINED IN THE BUILDING SHALL BE CONSIDERED A PART OF A UNIT. AS SUCH WIRING IS ESSENTIAL TO THE STRUCTURE AND SUPPORT OF THE BUILDING, ALL POST TENSION WIRING SHALL BE DEEMED COMMON ELEMENTS OF THE CONDOMINIUM AND MAY NOT BE DISTURBED OR ALTERED WITHOUT THE WRITTEN CONSENT OF THE BOARD.

(f) Exclusions. Except when specifically included by other provisions of this Section, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in (a), (b), (c), (d) and (e) above; central heating and other central services; and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both (except the openings and outlets thereof when located in the Unit); the interior contents of any portion thereof designated on a Plat as a "utility shaft," whether or not otherwise located within the boundaries of the Unit (it being the intent that such shall be treated as Common Elements hereunder); and the contents of any wall. Any utility fixtures that are located partially within the Unit and partially in the Common Elements, such as electrical outlets, and that exclusively serve the Unit are part of the Unit. Areas within a dropped ceiling that contain utilities that serve two or more Units are Limited Common Elements and not part of the Unit.

(g) Noncontiguous Portions. Certain Units may include special portions, pieces or equipment such as air conditioning compressors, meter boxes, utility connection structures and storage portions situated in buildings or structures that are detached or semi-detached from the Building containing the principal occupied portion of the Units. These special

EXHIBIT “I”

EXHIBIT “I”



1                   **DECLARATION OF MICHELLE ROBBINS, AIA, IN SUPPORT OF**  
2                   **PLAINTIFFS/COUNTER-DEFENDANTS LAURENT HALLIER, PANORAMA TOWERS**  
3                   **I, LLC, PANORAMA TOWERS I MEZZ, LLC, AND M.J. DEAN CONSTRUCTION,**  
4                   **INC.'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF THEIR**  
5                   **MOTION FOR SUMMARY JUDGMENT ON DEFENDANT/COUNTER-CLAIMANT**  
6                   **PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION'S APRIL 5,**  
7                   **2018 AMENDED NOTICE OF CLAIMS**

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

- 10                  1. I have personal knowledge of the facts and can testify hereto and would be competent to  
11                  testify in open Court. This Declaration is submitted in support of Plaintiffs/Counter-  
12                  Defendants Laurent Hallier, Panorama Towers I, LLC, Panorama Towers I Mezz, LLC, and  
13                  M.J. Dean Construction, Inc.'s (the "Builders") Reply in Support of Motion For  
14                  Reconsideration of Their Motion For Summary Judgment on Defendant/Counter-Claimant  
15                  Panorama Tower Condominium Unit Owners' Association's April 5, 2018 Amended Notice  
16                  of Claims.
- 17                  2. I have reviewed the Opposition to the Builders' Motion for Reconsideration of Their Motion  
18                  for Summary Judgment on Defendant/Counter-Claimant Panorama Tower Condominium  
19                  Unit Owners' Association's April 5, 2018 Amended Notice of Claims and attached exhibits,  
20                  including the Declaration of Omar Hindiye and supporting exhibits.
- 21                  3. I have reviewed the Amended Chapter 40 Notice and attached exhibits.
- 22                  4. I have reviewed Project plans for the Panorama Project, including plan A5.00.01, and Texas  
23                  Wall Systems' Shop Drawings.
- 24                  5. The EIFS Shop Drawing of the window head detail in the Amended Chapter 40 Notice shows  
25                  window set-back from the face of the EIFS, which more accurately reflects the design of the  
26                  Panorama Tower windows as designed and installed than does the Sto Detail.
- 27                  6. The Sto Detail is an isometric diagram that is reflective of the type of window system  
28                  installation depicted in Mr. Hindiye's Diagram, attached to his affidavit. Both of these  
                    illustrations, however, do not depict the design of the windows at the Project, as they are  
                    inconsistent with the EIFS Shop Drawing detail in the Amended Chapter 40 Notice, as well

- 1 as the photos therein, the Texas Wall Systems Shop Drawings, and Panorama plan A5.00.0,  
2 which all clearly represent a significant window set-back.
- 3 7. The illustrations in the Sto Detail and the HindiyeH Diagram reveal window systems that are  
4 virtually flush with the face of the EIFS.
- 5 8. In fact, the HindiyeH Diagram appears to be a sideways and “exploded” (meaning the  
6 elements are separated to show each one individually) version of the Sto Detail.
- 7 9. Supplementing Mr. HindiyeH’s own Diagram more accurately illustrates how the windows at  
8 Panorama would be configured in relation to the EIFS (See **Exhibit 1** attached to this  
9 Declaration – illustrating the bottom and front face of the EIFS in pink highlighting).
- 10 10. The EIFS Shops Drawing appears to depict window set-back of at least six inches.
- 11 11. The detail on Plan A5.00.0 also reflects the fact that windows are set back at least 6 inches.
- 12 12. Incorporating head flashings into the existing design at the Panorama tower windows, as  
13 shown on plan A5.00.0, the photographs in the Amended Chapter 40 Notice, the Texas Wall  
14 Systems Shop Drawings and the EIFS Shop drawing in the Amended Chapter 40 Notice,  
15 would be infeasible and unnecessary.
- 16 13. Head flashings were not called for in the Project plans, the Texas Wall Systems Shop  
17 Drawings, EIFS shop drawings or the Sto Detail. Even though the Sto Detail shows a head  
18 flashing, this does not mean that head flashings were required on the Panorama Project. Even  
19 the Sto Detail, under note 2, defers the decision to incorporate head flashings to the  
20 manufacturer of the windows. Here, Texas Wall Systems, the manufacturer of the windows,  
21 did not require head flashings, as per the Texas Wall Systems Shop Drawings.
- 22 14. Given the design intent behind the set-back windows at Panorama, it would be infeasible and  
23 unnecessary to install head flashings on those windows.

24  
25 1-31-19  
26 Dated

27  
28   
Michelle Robbins, AIA

# EXHIBIT 1



CAVITY INSULATION

SHEATHING

AIR/BARRIER

CONTINUOUS INSULATION

REINFORCING MESH

BASECOAT

FINISH

FLEXIBLE FLASHING

HEAD FLASHING

SEALANT

WINDOW FRAME

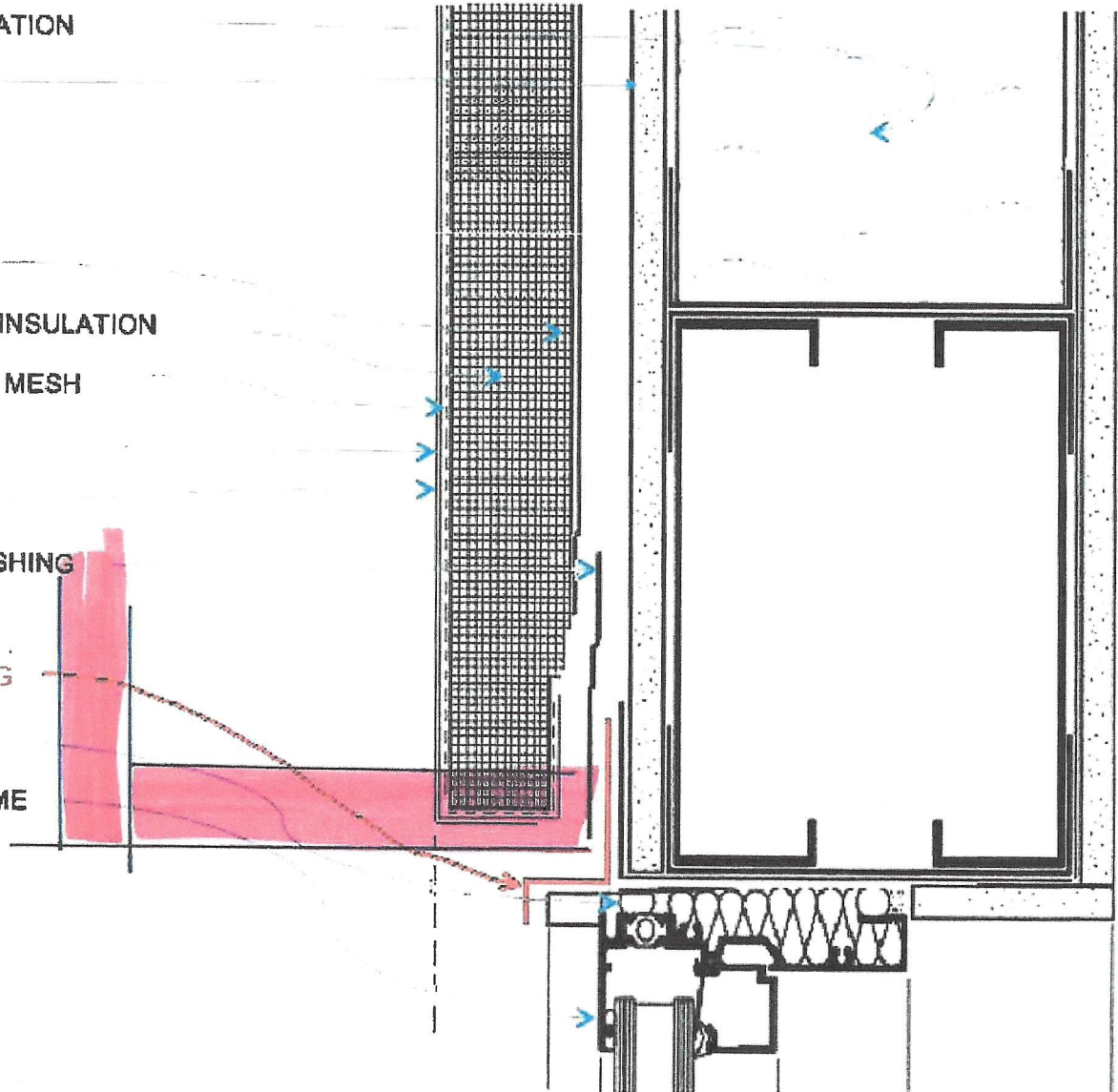


EXHIBIT “J”

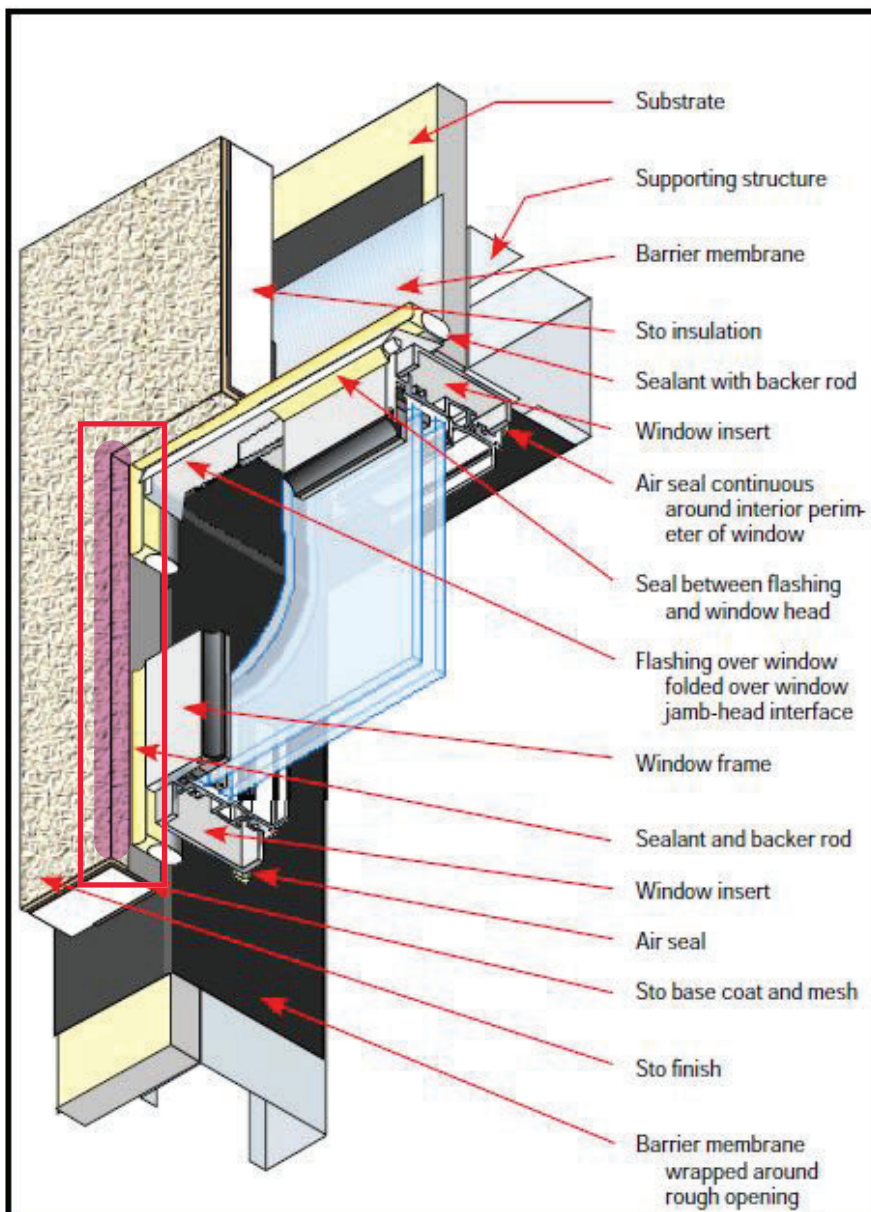
EXHIBIT “J”



Sto EIFS  
Commercial Window Head

Detail No.: 1.23a

Date: April 2000



Notes:

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

Exhibit 04 – Head Flashing Detail from Sto

Exhibit “K”

Exhibit “K”

KJA Job Number: 03104

Issue Date: 12-03-04

Revision	Date
1	12-03-04
2	03-09-05
3	05-03-06

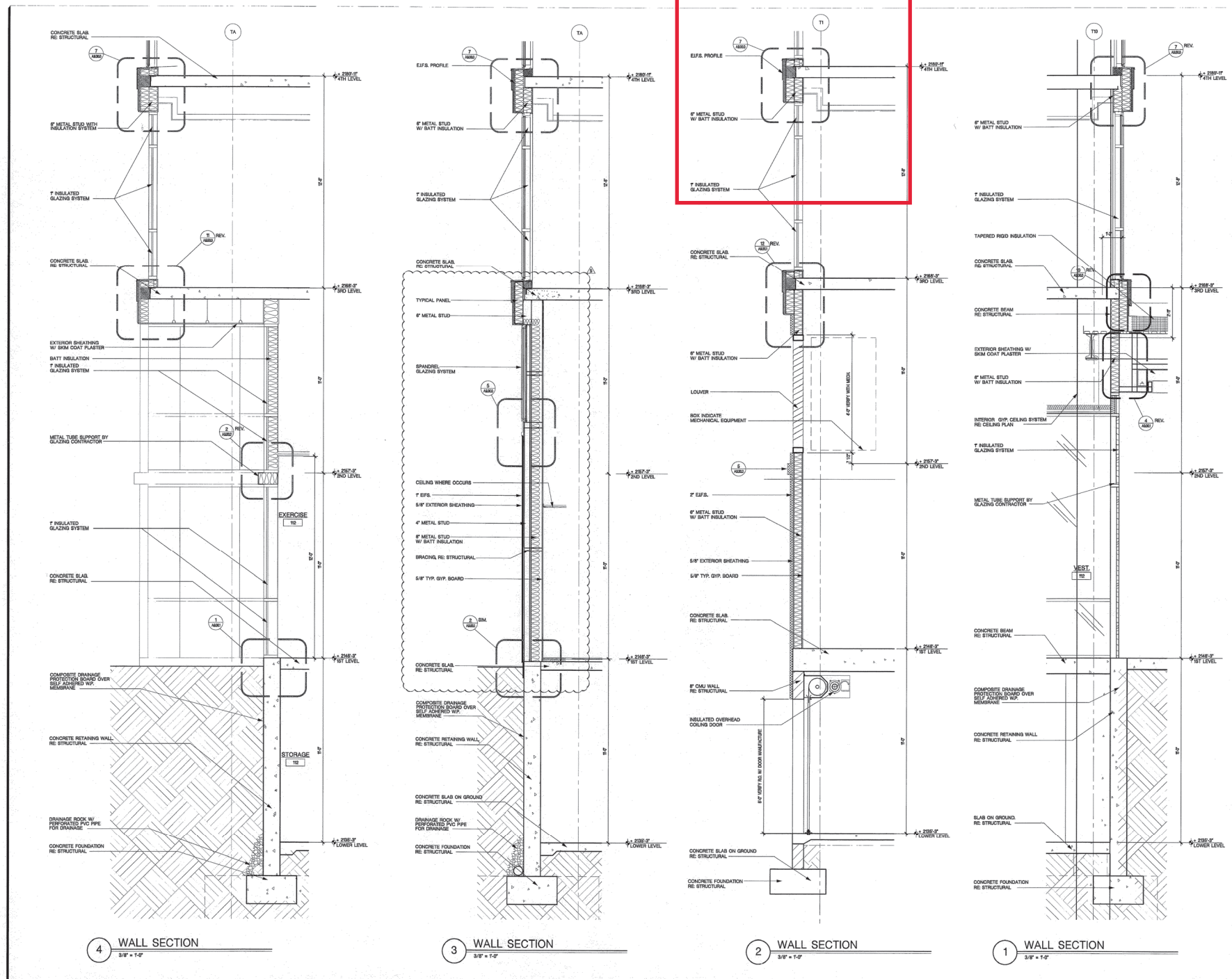
REVISION 5: 03-10-06

NAC 623.780  
OWNER AND ARCHITECT SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE BUILDING FROM THE EFFECTS OF THE ELEMENTS OF NATURE. THE ARCHITECT SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING TO RESIST THE EFFECTS OF THE ELEMENTS OF NATURE. THE ARCHITECT SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING TO RESIST THE EFFECTS OF THE ELEMENTS OF NATURE.

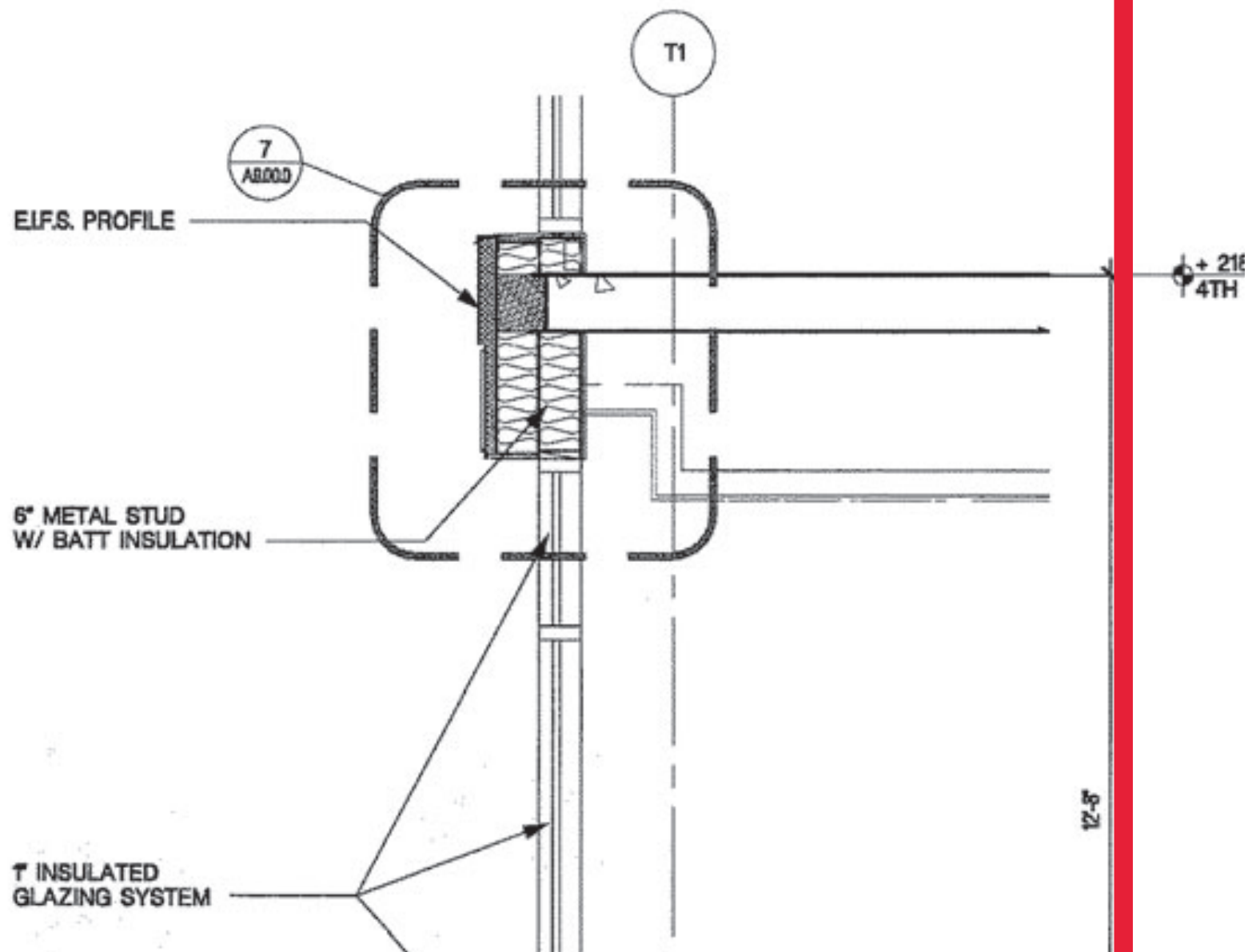
John R. Hall, Jr., Principal  
John B. Hall, Jr., Principal  
KLAI JUBA ARCHITECTS  
4444 West Russell Road Suite J  
Las Vegas, Nevada 89118  
Phone 702 • 221 • 2254  
Fax 702 • 221 • 7555

WALL SECTION

**A5.00.0**







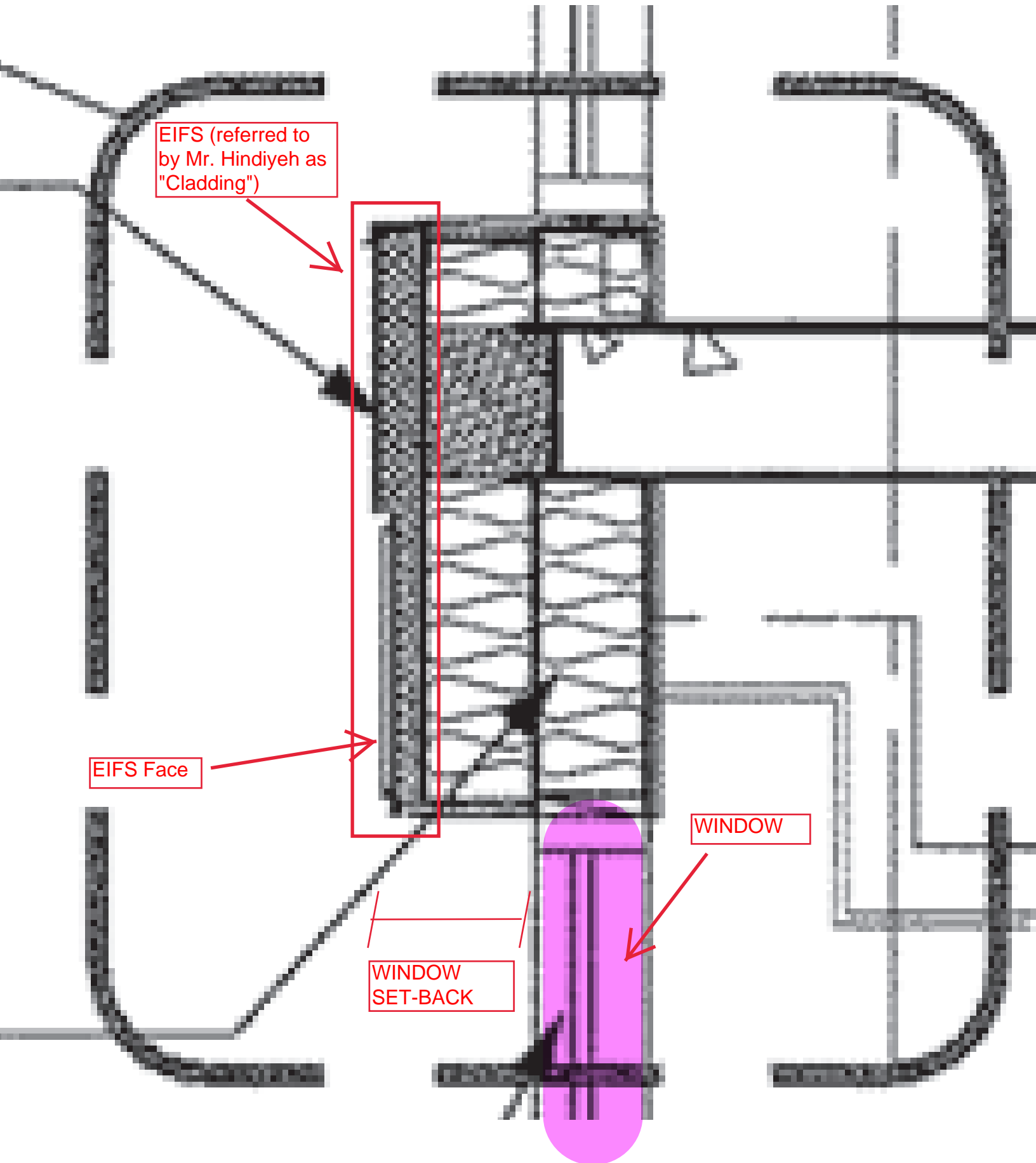
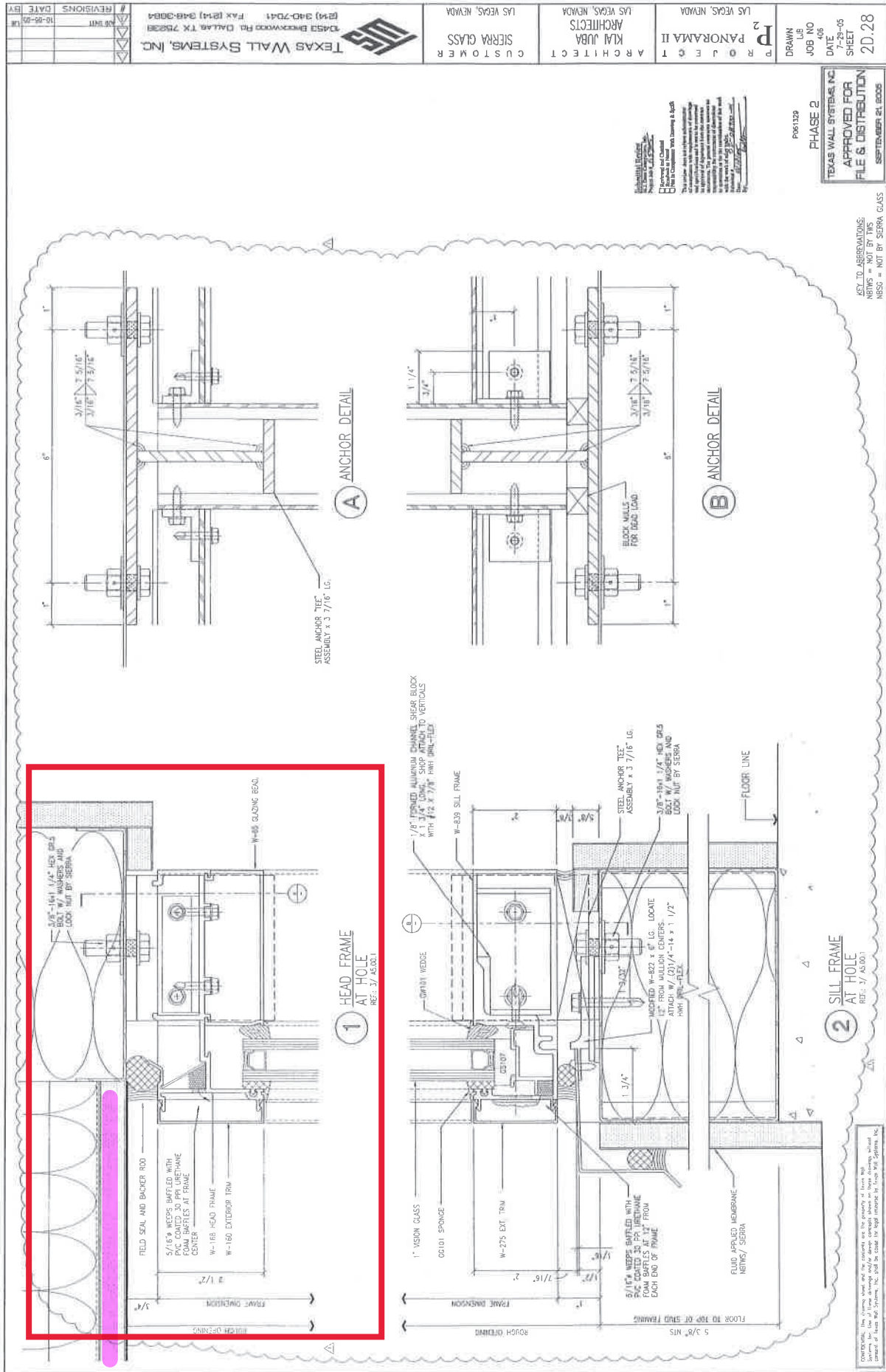


Exhibit “L”

Exhibit “L”





DATE	10-09-09	BY	10
REVISIONS	#	DATE	BY
1	08/01/10		

**TEXAS WALL SYSTEMS, INC.**  
4043 BUCKWOOD RD. DALLAS, TX 75229  
(214) 940-7041 FAX (214) 948-0884

CUSTOMER  
**SIERRA GLASS**  
LAS VEGAS, NEVADA

ARCHITECT  
**KIM JUBA ARCHITECTS**  
LAS VEGAS, NEVADA

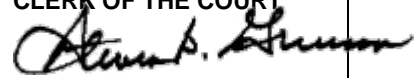
PROJECT  
**PANORAMA II**  
LAS VEGAS, NEVADA

DRAWN  
**LIB**  
JOB NO  
DATE  
7-29-09  
SHEET  
2D.28

PHASE 2  
P081329

TEXAS WALL SYSTEMS, INC.  
APPROVED FOR  
FILE & DISTRIBUTION  
SEPTEMBER 21, 2009

KEY TO ABBREVIATIONS:  
NBWS = NOT BY TWS  
NSSG = NOT BY SIERRA GLASS



**ERR**

PETER C. BROWN, ESQ.  
Nevada State Bar No. 5887  
JEFFREY W. SAAB, ESQ.  
Nevada State Bar No. 11261  
DEVIN R. GIFFORD, ESQ.  
Nevada State Bar No. 14055  
BREMER WHYTE BROWN & O'MEARA LLP  
1160 N. TOWN CENTER DRIVE  
SUITE 250  
LAS VEGAS, NV 89144  
TELEPHONE: (702) 258-6665  
FACSIMILE: (702) 258-6662  
[pbrown@bremerwhyte.com](mailto:pbrown@bremerwhyte.com)  
[jsaab@bremerwhyte.com](mailto:jsaab@bremerwhyte.com)  
[dgifford@bremerwhyte.com](mailto:dgifford@bremerwhyte.com)

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

Counter-Claimant,

vs.

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

) Case No. A-16-744146-D

) Dept. XXII

) **ERRATA TO:**

) **PLAINTIFFS/COUNTER-**  
) **DEFENDANTS' REPLY IN SUPPORT**  
) **OF MOTION FOR DECLARATORY**  
) **RELIEF REGARDING STANDING AND**  
) **OPPOSITIONS TO**  
) **DEFENDANT/COUNTERCLAIMANT'S**  
) **COUNTER-MOTIONS TO EXCLUDE**  
) **INADMISSIBLE EVIDENCE AND FOR**  
) **RULE 56(F) RELIEF**

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

COMES NOW, Plaintiffs/Counter-Defendants Laurent Hallier, Panorama Towers I, LLC, Panorama Towers I Mezz, LLC and M.J. Dean Construction, Inc. (hereinafter collectively referred to as “the Builders”), by and through their attorneys of record Peter C. Brown, Esq. and Jeffrey W. Saab, Esq. and Devin R. Gifford, Esq. of the law firm of Bremer Whyte Brown & O’Meara LLP, hereby submits its Errata to Plaintiffs/Counter-Defendants Reply in support of Motion for Declaratory Relief Regarding Standing and Oppositions to Defendant/Counterclaimant’s Counter-Motions to Exclude Inadmissible Evidence and for Rule 56(f) Relief (“Reply”), filed on January 22, 2019 (“Errata”). The Builders inadvertently made citation errors in their Oppositions to Defendant/Counter-Claimant’s Countermotions. This Errata seeks to correct those errors.

The first citation error is on Page 24, the sentence starting on Line 27 and ending on Page 25, Line 2. There should not be quotations around this entire sentence as this was not in its entirety a verbatim holding from the referenced case *Aviation Ventures v. Joan Morris, Inc.* Rather, the sentence in question should read:

Specifically, a party seeking an NRCP 56(f) continuance for further discovery must demonstrate “how further discovery will lead to the creation of a genuine issue of material fact.” *Aviation Ventures v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110 P.3d 59, 62 (2005).

The second citation error is on Page 25 starting at line 5, wherein the Builders omitted a citation. The cited sentence should read, instead (see bolded citation section below for the additional citation):

As stated by the Supreme Court of Nevada, “it is insufficient for a party seeking such a continuance to merely allege that additional discovery is necessary; instead, the party **must** identify what additional facts might be

1 obtained that are necessary to oppose the motion for summary judgment.”  
2 (*Anderson v. Wells Cargo, Inc.*, 2011 Nev. Unpub. LEXIS 1726 at 5  
3 (2011) (emphasis added) (citing *Bakerink v. Orthopaedic Associates,*  
4 *Ltd.*, 94 Nev. 428, 431, 581 P.2d 9, 11 (1978)).

5 The third citation error is on Page 25, starting at line 13. The Builders inadvertently failed to reference  
6 the cited case. The sentence that begins on Page 25, Line 13 should state, as follows (see bolded citation  
7 section below for the additional citation):

8 Specifically, the Court of Appeal held the following:

9 A “litigant must submit to the trial court an affidavit or other  
10 authoritative document showing (i) good cause for his inability to  
11 have discovered or marshalled the necessary facts earlier in the  
12 proceedings; (ii) a plausible basis for believing that additional facts  
13 probably exist and can be retrieved within a reasonable time; and  
14 (iii) an explanation of how those facts, if collected, will suffice to  
15 defeat the pending summary judgment motion.” *Rivera-Torres v.*  
16 *Rey-Hernandez*, 502 F.3d 7, 10 (1st Cir. 2007) (citing  
17 *Velez v. Awning Windows, Inc.*, 375 F.3d 35, 40 (1st Cir. 2004);  
18 *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d  
19 985, 988 (1st Cir. 1998).

20 Dated: February 5, 2019

BREMER WHYTE BROWN & O’MEARA LLP

21 By: 

22 Peter C. Brown, Esq.  
23 Nevada State Bar No. 5887  
24 Jeffrey W. Saab, Esq.  
25 Nevada State Bar No. 11261  
26 Devin R. Gifford, Esq.  
27 Nevada State Bar No. 14055  
28 Attorneys for Plaintiffs/Counter-Defendants  
LAURENT HALLIER, PANORAMA  
TOWERS I, LLC, PANORAMA  
TOWERS I MEZZ, LLC, and M.J. DEAN  
CONSTRUCTION, INC.



1  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of February 2019, a true and correct copy of was electronically served through Odyssey upon all parties on the master e-file and serve list.

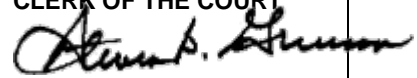


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Alondra Reynolds, an employee of Bremer  
Whyte Brown & O'Meara

EXHIBIT “A”

EXHIBIT “A”



**RPLY**

PETER C. BROWN, ESQ.  
Nevada State Bar No. 5887  
JEFFREY W. SAAB, ESQ.  
Nevada State Bar No. 11261  
DEVIN R. GIFFORD, ESQ.  
Nevada State Bar No. 14055  
BREMER WHYTE BROWN & O'MEARA LLP  
1160 N. TOWN CENTER DRIVE  
SUITE 250  
LAS VEGAS, NV 89144  
TELEPHONE: (702) 258-6665  
FACSIMILE: (702) 258-6662  
[pbrown@bremerwhyte.com](mailto:pbrown@bremerwhyte.com)  
[jsaab@bremerwhyte.com](mailto:jsaab@bremerwhyte.com)  
[dgifford@bremerwhyte.com](mailto:dgifford@bremerwhyte.com)

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

Counter-Claimant,

vs.

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

) Case No. A-16-744146-D  
)  
) Dept. XXII  
)  
) **PLAINTIFFS/COUNTER-**  
) **DEFENDANTS' REPLY IN SUPPORT**  
) **OF MOTION FOR DECLARATORY**  
) **RELIEF REGARDING STANDING AND**  
) **OPPOSITIONS TO**  
) **DEFENDANT/COUNTERCLAIMANT'S**  
) **COUNTER-MOTIONS TO EXCLUDE**  
) **INADMISSIBLE EVIDENCE AND FOR**  
) **RULE 56(F) RELIEF**

1 limited liability company; PANORAMA )  
TOWERS I MEZZ, LLC, a Nevada limited )  
2 liability company; and M.J. DEAN )  
CONSTRUCTION, INC., a Nevada Corporation; )  
3 SIERRA GLASS & MIRROR, INC.; F. )  
ROGERS CORPORATION; DEAN ROOFING )  
4 COMPANY; FORD CONTRACTING, INC.; )  
INSULPRO, INC.; XTREME EXCAVATION; )  
5 SOUTHERN NEVADA PAVING, INC.; )  
FLIPPINS TRENCHING, INC.; BOMBARD )  
6 MECHANICAL, LLC; R. RODGERS )  
CORPORATION; FIVE STAR PLUMBING & )  
7 HEATING, LLC, dba SILVER STAR )  
PLUMBING; and ROES 1 through , inclusive, )  
8 Counter-Defendants. )  
9 )  
10 )

11 COME NOW Plaintiffs/Counter-Defendants Laurent Hallier, Panorama Towers I, LLC,  
12 Panorama Towers I Mezz, LLC and M.J. Dean Construction, Inc. (hereinafter collectively referred  
13 to as “the Builders”), by and through their attorneys of record Peter C. Brown, Esq., Jeffrey W. Saab,  
14 Esq. and Devin R. Gifford, Esq. of the law firm of Bremer Whyte Brown & O’Meara LLP, and  
15 hereby file their Reply in Support of Motion for Declaratory Relief Regarding Standing (“Reply”)  
16 and Oppositions to Defendant/Counter-Claimant’s Counter-Motions (“Counter-Motions”) to  
17 Exclude Inadmissible Evidence and For Rule 56(F) Relief (“Oppositions”).

18 This Reply and Oppositions are made and based upon the attached Memorandum of Points  
19 and Authorities, the pleadings and papers on file herein, including the instant Motion, the Declaration

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1 of Peter C. Brown, Esq., and any and all evidence and/or testimony accepted by this Honorable Court  
2 at the time of the hearing on the Motion and Counter-Motions.

3 Dated: January 22, 2019

BREMER WHYTE BROWN & O'MEARA LLP

4  
5 By: 

Peter C. Brown, Esq.  
Nevada State Bar No. 5887  
Jeffrey W. Saab, Esq.  
Nevada State Bar No. 11261  
Devin R. Gifford, Esq.  
Nevada State Bar No. 14055  
Attorneys for Plaintiffs/Counter-Defendants  
LAURENT HALLIER, PANORAMA  
TOWERS I, LLC, PANORAMA  
TOWERS I MEZZ, LLC, and M.J. DEAN  
CONSTRUCTION, INC.

11 **NOTICE OF MOTION**

12 TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE COUNSEL:

13 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that  
14 **PLAINTIFFS/COUNTER-DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR**  
15 **DECLARATORY RELIEF REGARDING STANDING AND OPPOSITIONS TO**  
16 **DEFENDANT/COUNTERCLAIMANT'S COUNTER-MOTIONS TO EXCLUDE**  
17 **INADMISSIBLE EVIDENCE AND FOR RULE 56(F) RELIEF** will come on for hearing before  
18 the above-entitled Court on the 12<sup>th</sup> day of February 2019 at 8:30 a.m.

19 Dated: January 22, 2019

BREMER WHYTE BROWN & O'MEARA LLP

20  
21  
22 By: 

Peter C. Brown, Esq.  
Nevada State Bar No. 5887  
Jeffrey W. Saab, Esq.  
Nevada State Bar No. 11261  
Devin R. Gifford, Esq.  
Nevada State Bar No. 14055  
Attorneys for Plaintiffs/Counter-Defendants  
LAURENT HALLIER, PANORAMA  
TOWERS I, LLC, PANORAMA  
TOWERS I MEZZ, LLC, and M.J. DEAN  
CONSTRUCTION, INC.

1 **AFFIDAVIT OF PETER C. BROWN, ESQ. 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 REPLY IN**  
4 **SUPPORT OF MOTION FOR DECLARATORY RELIEF REGARDING STANDING**

4 STATE OF NEVADA                    )  
5 CLARK COUNTY                    ) ss.  
6

7 I, **PETER C. BROWN, ESQ.**, do swear under penalty of perjury of the laws of the State of  
8 Nevada as follows:

- 9 1. I am duly licensed to practice law before all Courts of the State of Nevada, and I am an  
10 attorney with the law firm Bremer Whyte Brown & O'Meara, LLP.
- 11 2. I am one of the attorneys representing for Plaintiffs/Counter-Defendants in this matter.
- 12 3. I know the following facts to be true of my own knowledge, and if called to testify I could  
13 competently do so.
- 14 4. This Declaration is submitted in support of Plaintiffs/Counter-Defendants Laurent Hallier,  
15 Panorama Towers I, LLC, Panorama Towers I Mezz, LLC, and M.J. Dean Construction,  
16 Inc.'s Reply in Support of Motion for Declaratory Relief Regarding Standing.
- 17 5. On or about February 24, 2016, the Defendant/Counter-Claimant, Panorama Tower  
18 Condominium Unit Owners' Association (hereinafter "Association"), through its counsel,  
19 separately served Laurent Hallier (the principal of Panorama Towers I, LLC), M.J. Dean  
20 Construction, Inc. ("M.J. Dean") and others with a "Notice to Contractor Pursuant to Nevada  
21 Revised Statutes, Section 40.645" ("Chapter 40 Notice"). Other than the addressee's name,  
22 the Chapter 40 Notices served on Mr. Hallier and M.J. Dean are the same.
- 23 6. Attached as **Exhibit "I"** is a true and correct copy of the Findings of Fact and Conclusions  
24 of Law and Order Regarding Motion for Declaratory Relief from the *One Queensridge Place*  
25 *HOA, Inc. v. Perini Building Company, et al.*, case, Case No., A-12-661825-D.
- 26 7. Attached as **Exhibit "J"** is a true and correct copy of the Affidavit of John A. Martin, Jr.,  
27 SE.
- 28 8. Attached as **Exhibit "K"** is a true and correct copy of the Affidavit of Ashley Allard.


- 1 9. Attached as **Exhibit "L"** is a true and correct copy of the Affidavit of Simon Loadsman.
- 2 10. Attached as **Exhibit "M"** is a true and correct copy of the Affidavit of Michelle Robbins,
- 3 AIA.
- 4 11. Attached as **Exhibit "N"** are true and correct copies of Texas Wall System Shop Drawings.
- 5 12. Attached as **Exhibit "O"** is a true and correct copy of an Unconditional Waiver and Release
- 6 from the Panorama Project.
- 7 13. Attached as **Exhibit "P"** are true and correct excerpts from the AAMA Installer Training
- 8 Manual

9 FURTHER AFFIANT SAYETH NAUGHT.

10   
11 PETER C. BROWN, ESQ.

12

13 Subscribed and Sworn before me  
14 this 22nd day of January, 2019.

15   
16 Notary Public in and for said State and County



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1 Summary Judgment. *Baldanado* addressed several issues in the context of Nevada’s employment  
2 law. One such issue involved whether declaratory relief was appropriately sought. The *Baldanado*  
3 Court noted that contrary to the appellants’ assertion that they merely desired an interpretation of a  
4 statute, appellants had actually requested a step further, that the interpretation be applied to grant  
5 them injunctive relief, thereby voiding the applicable policy and damages. The *Baldanado* Court  
6 ruled that such issues are not appropriate for declaratory relief actions when an administrative  
7 remedy is provided for by statute. In the present case, there is no such applicable administrative  
8 remedy.

9       The *Public Employees’ Benefits Program* case merely provides one example where  
10 declaratory relief was granted via a Motion for Summary Judgment. The case does not stand for the  
11 premise that Motions for Declaratory Relief are inappropriate. *Gordon v. Mckee* similarly provides  
12 an example of the use of a summary judgment motion seeking declaratory relief and does not stand  
13 for the premise that Motions for Declaratory Relief are per se inappropriate.

14       Lastly, the Association points to *Cox. v. Glenbrook* to stand for the position that declaratory  
15 relief is inappropriate because issues of fact should have to be tried and determined in the same  
16 manner as issues of fact are tried and determined in other civil cases. The Association’s reliance on  
17 the *Cox* case is misguided. Of note, the Association misquotes the case by adding in the term  
18 “[must],” essentially re-writing part of the *Cox* Court’s ruling (*See Opp. Pg. 9, Ln 16-19*).

19       In *Cox*, the servient estate sought a declaration as to the extent of an easement. The *Cox*  
20 Court evaluated the language of the easement in light of the facts of the case, and formulated  
21 decisions on several fronts. The one question the *Cox* Court did not decide was whether the  
22 development would cause an unreasonable burden on the servient estate *in the future*. The *Cox* Court  
23 reasoned that because there were no presently ascertainable facts illustrating what impact the not-  
24 yet-constructed development would have once built, the Court was not yet in a position to evaluate  
25 those facts and make a decision. Contrary to the Association’s assertion, the *Cox* Court did not hold  
26 that courts are precluded from analyzing factual questions when formulating rulings on declaratory  
27 relief. The *Cox* Court did just that.

28 ///

1 Many courts have analyzed and ruled in the movant's favor on Motions for Declaratory  
2 Relief, both in Nevada and other states. For example, in *One Queensridge Place Homeowners'*  
3 *Association, Inc. v. Perini Building Company, et al.*, the Honorable Joanna S. Kishner analyzed an  
4 almost identical Motion for Declaratory Relief on Standing and granted it. (See **Exhibit "I"**, Findings  
5 of Fact and Conclusions of Law re: Motion for Declaratory Relief in *Queensridge* matter).

6 Motions for Declaratory Relief have been ruled upon and granted in other jurisdictions as  
7 well. In *Alvarado v. McCoy*, a California District Court granted a Motion for Declaratory Relief, in  
8 part. (See *Alvarado v. McCoy*, 2010 U.S. Dist. LEXIS 101605). Similarly, in *Satchell v. FedEx*  
9 *Express*, a California District Court granted the plaintiffs' Motion for Declaratory Relief. (*Satchell*  
10 *v. FedEx Express*, 2008 U.S. Dist. LEXIS 105690).

11 The Association has failed to establish that Motions for Declaratory Relief are per se  
12 improper. Moreover, Courts have routinely granted Motions for Declaratory Relief, including in  
13 Clark County.

14 **B. Even if the Builders' Motion Were a Motion for Summary Judgment, the Builders**  
15 **Would Still Prevail**

16 **i. The Association's Failure to Assert a Triable Issue of Fact Disputing That Omitted**  
17 **Sill Pan Flashings Are Classified as Fixtures in Apertures is Fatal to Their**  
18 **Opposition**

19 The Association spends a great deal of time arguing that the Builders' Motion is not in fact a  
20 Motion for Declaratory Relief, but rather, a Motion for Summary Judgment. Based upon that  
21 assertion, the Association cites to numerous cases to contend that summary judgment is unwarranted.  
22 The Builders did not file a Motion for Summary Judgment. Even if they had, however, the  
23 Association has failed to satisfy its burden in opposing the Motion.

24 The primary theme in the Opposition on this point is that because the Builders used an expert  
25 affidavit, which the Association then similarly does, an issue of fact has been generated, precluding  
26 the court's ability to make a ruling. The Association cites to case law suggesting that a trial judge  
27 may not, in granting summary judgment, evaluate the credibility of opposing affidavits. (See *Opp.*  
28

Pg. 11, Ln. 19-20; *citing Short v. Hotel Riviera, Inc.* 378 P.2d 979 (1963)). In a subsequent case that distinguished itself from the *Short* case, the Nevada Supreme Court also said the following:

In [*Short v. Hotel*], a case classic for its liberality in permitting inferences to overcome a motion for summary judgment, at least some minimum standards were established for the quality of facts that should be shown to allow the trial court to pass upon as controverted evidence. But the rule is well-settled that the opposing party is not entitled to have the motion for summary judgment denied on the mere hope that at trial he will be able to discredit movant's evidence; he must at the hearing be able to point out to the court something indicating the existence of a triable issue of fact. *Bair v. Berry*, 86 Nev. 26, 29 (1970).

Because they ignore pertinent parts of Section 4.2(e) of the Declaration, describing apertures, the Association fails to establish a triable issue of fact as to whether flashings fall within the scope of “other fixtures included in such apertures.” (*See* Exhibit D, Pg. 38, Sec. 4.2(e))

By offering Mr. Hindiyyeh’s lengthy affidavit, which provides the predominant support for the Association’s arguments, the Association is asking the Court to do exactly what they complain about of the Builders, to evaluate the credibility of an affidavit. In contrast to Mr. Hindiyyeh’s affidavit, the Builders have complete faith in the Court’s ability to evaluate the evidence even absent their expert’s, Mr. Loadsman, affidavit. His affidavit merely provides context and support for arguments that are readily apparent based on the evidence presented in the Motion. The Court is fully capable of analyzing the Declaration without relying on Mr. Loadsman’s affidavit and ruling that, based upon the language in the Declaration, the omitted sill pan flashings necessarily fall within the definition of “apertures,” which includes “windows, doors **and other fixtures located in such apertures**, including all frameworks, windows casings and weatherstripping.” (*See* Exhibit D., Pg. 38, Sec. 4.2(e)) (emphasis added).

The Association also argues that summary judgment should not be used as a tool to shortcut resolution of triable issues. The issues presented in this case revolve around the impact that alleged water intrusion has on the structural elements of the building. The triable issues in this matter do not involve whether the Association has standing to assert certain claims. Standing issues should be resolved at the outset of litigation. Besides, it is unclear what additional evidence or facts the Association intends to investigate that would somehow help them substantiate their argument that

1 flashings fall outside of the unit boundaries. Certainly, the Association fails to clarify this point.  
2 That said, the Association clearly had no reservations about arguing exactly how and why they do  
3 not believe flashings fall within the unit boundaries and they do not claim they are missing any pieces  
4 of information in doing so. The Association has already presented its standing arguments, which  
5 involved the use of Mr. Hindiye's interpretation of *portions* of the Declaration. His qualifications  
6 to do so are not substantiated in the least. It is ironic that the Association criticizes the Builders'  
7 expert's (Mr. Loadman) affidavit of interpreting the terms of the Declaration when Mr. Loadman  
8 in actuality does none of the kind.

9       The Association spends a great deal of time criticizing the use of the Builders' expert, Mr.  
10 Loadman, and his affidavit. Despite their contention that the Court is precluded from evaluating  
11 the credibility of competing expert affidavits, the Association asks this Court to scrutinize Mr.  
12 Loadman's affidavit and his credentials to the point of seeking a motion to exclude it. First, the  
13 Builders' Motion is not one for summary judgment, so Rule 56(e) does not apply. Second, contrary  
14 to the Association's position that Mr. Loadman "says nothing about his competence...", Mr.  
15 Loadman *does* explain his credentials. What more is needed? Third, contrary to the Association's  
16 argument that Mr. Loadman opines as to the missing head flashings, he says nothing about head  
17 flashings. The Builders, therefore, are not asking the Court to weigh conflicting expert opinions on  
18 the subject of whether head flashings should have been installed. Instead, the Association is asking  
19 the Court to do that.

20       Even if applying the Motion for Summary Judgment standard to view the evidence in favor  
21 of the non-movant, the Association still cannot prevail. The root of the Association's Opposition  
22 regarding pan flashings is that despite the fact that pan flashings comprise part of the window  
23 system and window assemblies, they fall outside of the definition of "apertures," as described in the  
24 Declaration. The Association relies entirely on its expert on this point (unlike the Builders who rely  
25 on the evidence presented to the Court with the added support of an expert affidavit to provide  
26 context and support for what is already plainly evident). Even if the Court were to view what the  
27 Association's expert's claims as true, that still does not preclude summary judgment. The  
28

1 Association's expert's claims are conclusory in nature and not supported by facts. Moreover, neither  
2 the Association, nor its expert, address the fact that pan flashings fit squarely within the classification  
3 of "other fixtures located in such apertures." (*See* Exhibit 2 to Opp., Pg. 4, Par's 9 & 10; *See also*,  
4 Exhibit D, Pg. 38, Sec. 4.2(e))

5 Both the Opposition and Mr. HindiyeH cite to Section 4.2(e) "Apertures," as follows:

6 "[w]here there are apertures in any boundary, including but not limited to windows...  
7 such boundaries shall be extended to include the windows...including all  
8 frameworks, window casings and weatherstripping thereof..." (*See* Exhibit 2 to Opp.,  
Pg. 4, Ln. 3-5; *See also*, Opp. Pg. 8, Ln. 2-4).

9 However, there is key information both the Association and Mr. HindiyeH conveniently omit. That  
10 is, Section 4.2(e) more completely states:

11 "Where there are apertures in any boundary, including, but not limited to,  
12 windows, doors, bay windows and skylights, such boundaries shall be  
13 extended to include the windows, doors **and other fixtures located in such  
apertures**, including all frameworks, windows casings and weatherstripping  
thereof, except that exterior surfaces made of glass or other transparent  
materials..." (Exhibit D, Pg. 38, Section 4.2(e)) (emphasis added).

14 Even taking the Association's and Mr. HindiyeH's arguments that the missing flashings fall outside  
15 the description of "window," "frameworks," "casings," or "weatherstripping" as true, the fact that  
16 these flashings would certainly be categorized as "other fixtures located in such apertures" is  
17 completely ignored. NRCP 56(e) states, in part:

18 "When a motion for summary judgment is made and supported as provided in  
19 this rule, an adverse party may not rest upon the mere allegations or denials  
20 of his pleading, but his response, by affidavits or as otherwise provided in this  
21 rule, must set forth specific facts showing that there is a genuine issue for trial.  
**If he does not so respond, summary judgment, if appropriate, shall be  
entered against him.**" NRCP 56(e) (emphasis added).

22 Because the Association has failed to oppose this argument, it is an admission that it is true. So even  
23 if the statements above were accepted as true, the Association still fails to raise a material issue of  
24 disputed fact as to whether the omitted flashings would comprise "other fixtures located in such  
25 apertures." (*See* Exhibit D, Pg. 38, Section 4.2(e))

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1           **i. The Association Does Not Dispute that the Declaration Unambiguously Includes Sill**  
2           **Pan Flashings**

3           The Association argues that the Builders have impliedly admitted that the Declaration is  
4           ambiguous, and therefore summary judgment in their favor is inappropriate. The Builders contention  
5           has never been that the Declaration is ambiguous. On the contrary, the Declaration unambiguously  
6           considers apertures, including windows, and other fixtures located in such apertures, including  
7           frameworks, casings and weatherstripping, to be within the boundaries of a unit. (See Exhibit D, Pg.  
8           38, Section 4.2(e)). The Association only disputes that flashings fall outside of the definition of  
9           “frameworks, casings and weatherstripping.” (See Opp. Pg. 15, Ln. 16 – Pg. 16, Ln. 7; See also,  
10          Exhibit 2 to Opp., affidavit of Omar Hindiyeh, Par.’s 9 & 10). In doing so, the Association  
11          hypocritically uses the AAMA glossary to argue that flashings do not fall within the definition of  
12          these terms. If anything, the inclusion of these specific examples of what *does* fall within the  
13          apertures is a testament to the definition’s breadth in defining “other fixtures.” (See Exhibit D, Pg.  
14          38, Section 4.2(e)).

15          Therefore, even if the Builders had sought summary adjudication, the Builders would  
16          succeed.

17          **C. Contrary to The Association’s Contention, Sill Pan Flashings Do Form Part of the**  
18          **Window Apertures, and Therefore the Association Does Not Have Standing to Raise**  
19          **These Issues Against the Builders**

20          The Association tries to treat the Builders’ Motion for Declaratory Relief as a Motion for  
21          Summary Judgment, then offers a litany of contentions to create a material dispute aimed at beating  
22          a motion for summary judgment. The Association first attempts to convolute what is clear and  
23          unambiguous from the Declaration by either regurgitating several portions that are either  
24          misconstrued, misquoted or simply do not assist with the Association’s arguments.

25               **i. The Association’s “Statement of Facts” Comprises Incomplete Trimmings From the**  
26               **Declaration That Take it Completely Out of Context**

27          Like a patchwork quilt, the Association cherry-picks random portions of the Declaration and  
28          incorporates them into a so-called “Statement of Facts,” none of which support the Association’s  
position that flashings fall outside of the unit boundaries.

1 The Association provides several examples of “Common Elements” taken from Section 1.39  
2 of the Declaration, including “...all apparatus, installation, and equipment of any Building existing  
3 for the use of one or more of the Owners; [and] [a]n easement of support in every portion of a Unit  
4 which contributes to the support of the Building, other Units and/or any part of the Common  
5 Elements.” (*See Opp.*, Pg. 4; Ln 11-17). As can be seen, the Association patches together random  
6 portions of various subsections into one sentence, taking the Declaration completely out of context.  
7 The Association omits in their Opposition the first sentence of Section 1.39, which states: “Common  
8 Elements shall mean all portions of the Property other than the Units.” (*See Exhibit D*, Pg. 16, Sec.  
9 1.39). Furthermore, the section that provides “all apparatus, installation and equipment of any  
10 Building...” is clearly referring to equipment devices, as it talks about pumps, tanks, motors,  
11 compressors, and ducts, not window parts. (*See Exhibit D*, Pg. 16, Sec. 1.39(c)). If the term “all  
12 apparatus, installation and equipment” were interpreted to include window parts, then arguably,  
13 every portion of the building could be categorized as “all apparatus, installation and equipment.”

14 Moreover, the Association’s allusion to Section 1.39(e) regarding easements of support is  
15 misconstrued. First, the windows at the Project do not contribute to the structural support of the  
16 Panorama towers. (*See Exhibit “J”*, Affidavit of John A. Martin, Jr., S.E.) The buildings will stand  
17 with or without the windows and the curbs they sit on when installed. (*Id.*; *See also, Exhibit “K”*,  
18 Affidavit of Ashley Allard – attesting to the floor plan of Unit 300). Second, the argument that  
19 missing flashings is causing corrosion to critical building components designed to support the  
20 building is outlandish. (*See Opp.*, Pg. 15. Ln. 4-5). There is no absolutely no evidence that this has  
21 occurred or is occurring. Besides, neither windows, nor curb walls upon which windows sit, are part  
22 of the principal structure of the Panorama Towers, and not essential to their overall structure stability.  
23 (*See Exhibit “J”*, Affidavit of John A. Martin, Jr., S.E.) Even if water did get into the curb wall,  
24 this does not compromise the primary structural integrity of the Panorama towers, as the Association  
25 suggests. (*See Opp.*, Pg. 15. Ln. 4-5).

26 The Association extracts various portions of Section 1.128 which addresses about the  
27 physical boundaries of a Unit not being determined by interpretation of Deeds or Plats. (*See Opp.*  
28

1 Pg. 4, Ln 18-22). However, the Association is way off-base in including these provisions because  
2 this section of the Declaration discusses how to interpret boundary lines when settling or lateral  
3 shifting of the buildings has occurred. (*See* Exhibit D., CC&R's, Pg. 28, Sec. 1.128). There is no  
4 evidence of that here.

5 The Association also incorporates the last sentence of Section 1.128 into their "Statement of  
6 Facts," which discusses what a "Unit" includes. (*See* Opp., Pg. 4; Ln. 20-22). The Builders agree  
7 that a Unit includes all improvements situated within its boundaries, including interior walls,  
8 appliances, cabinets, interior doors and all electrical, heating, plumbing and other utility fixtures.  
9 Nothing in this sentence suggests that a Unit excludes parts of the window system, so it is unclear  
10 why the Association threw this section in, except perhaps to confuse the reader.

11 The Association then includes the part of the Declaration that refers to apertures. (*See* Opp.  
12 Pg. 4, Ln. 23 – Pg. 5, Ln. 3). Following that section, the Association then inputs another section that  
13 would seem to contradict the prior section regarding apertures. (*See* Opp. Pg. 5, Ln. 4-5). To help  
14 clarify the Association's misconception on this point, apertures and any fixtures therein are an  
15 exception to the general premise that items within walls are not part of the Unit. (*See* Exhibit D,  
16 CC&R's, Pg. 38, Sections 4.2(e)-(f)). Besides, there can be no dispute that sill pan flashings are not  
17 contained inside walls, but rather, are located in the apertures, or openings, of the building,  
18 comprising part of the window system, which too is included in the aperture (*See* Exhibit B.,  
19 Amended Chapter 40 Notice, Pgs. 16-17 - revealing that flashings, had they been incorporated, fit  
20 inside the building apertures, or openings, and not inside any walls; *See also*, Opp., Pg. 7, Ln. 19-23  
21 – agreeing that, as for sill pan flashings, they form part of the window system; *See also*, Exhibit 2 to  
22 Opp., Affidavit of Omar Hindiye, Pg. 4, Ln 13-14 – admitting that sill pan flashings would form  
23 part of the window assemblies; *See also*, **Exhibit "L"**, Affidavit of Simon Loadsman; *See also*,  
24 **Exhibit "M"**, Affidavit of Michelle Robbins)). The Builders' experts agree that sill pan flashings,  
25 had they been installed, would form part of the building apertures, or openings. *Id.* Even the  
26 Association and its expert agree, as they too contend that sill pan flashings are installed in the window  
27 openings. (*See* Opp., Pg. 6, Ln. 13-14).



1 Next, the Association argues that it has a maintenance obligation for drainage systems. (*See*  
2 *Opp.* Pg. 5, Ln 6-9). Not surprisingly, the Association again misconstrues the Declaration,  
3 specifically section 6.3(c). Section 6.3(c) is titled: “Specific Maintenance Obligation (Drainage and  
4 Landscaping),” and begins by stating: “[t]he Board shall cause all drainage related systems and  
5 related landscape installation on the Property to be inspected...” (Exhibit D, Pg. 44) (emphasis  
6 added). It is telling, but not surprising, that the Association excluded this portion of Section 6.3(c)  
7 in their Opposition. Obviously, this section refers only to drainage systems that are *related to*  
8 *landscape installations*. Sill pan flashings, which would be part of the tower structure windows,  
9 have nothing to do with landscaping.

10 In their Motion, the Builders present the Court with the relevant portions of the Declaration  
11 that pertain to maintenance obligations of unit owners. (*See Mot*, Pg. 15, Ln. 4-27). A plain reading  
12 of that section makes it clear that maintenance obligations for the tower windows falls on the unit  
13 owner. It is telling that the Association’s Opposition completely ignores the Builders’ Motion on  
14 this point, which includes provisions which unequivocally state that unit owners are responsible for  
15 maintaining, repairing, replacing, finishing and restoring all portions of their Unit, which specifically  
16 includes the windows. (*See Mot.* Pg. 15, Ln 4 – 27; *See also*, Exhibit D, Pg. 45, Section 6.4).

17 The Association’s “Statement of Facts” includes a section from the Uniform Common-  
18 Interest Ownership Act (“UCIO Act”), NRS 116.2102, to perhaps argue that the Act prevails over  
19 the Declaration in determining what falls within unit boundaries, and therefore, flashings fall outside  
20 the unit. (*See Opp.* Pg. 5, Ln 15-23). The problem however is that NRS 116.2102 prefaces its entire  
21 section with the statement: “Except as otherwise provided by the Declaration.” (*See Opp.* Pg. 5, Ln.  
22 15; *See also*, NRS 116.2102). There is a built-in provision in the Act that defers to the Declaration.  
23 Whatever the Association’s argument was in relation to the UCIO Act, therefore, fails.

24 **ii. The Board’s Decision to Treat One Unit’s Repairs as “Common Elements” Cannot,**  
25 **Alone, Modify the Terms of the Declaration**

26 The Association’s next argument aimed at proving flashings form part of the “Common  
27 Elements” involves an affidavit from Mr. Kariger, an alleged resident and the president of the  
28 Association’s Board. (*See Opp.* Pg. 6, Ln. 1-16; *See also*, Exhibit 1 to *Opp.*). According to Mr.

1 Kariger's affidavit, the Association, "after reviewing the matter in detail," decided to treat the "failed  
2 and/or missing window components" as common elements and therefore assumed responsibility for  
3 the repairs. First, it is unclear what sort of "detailed review" a group of board members did for them  
4 to determine that "failing and/or missing" window components fell within the common areas. *See*  
5 *Id.* However, the fact that the Board was not able to even determine whether the window components  
6 were either "failing" or "missing" means that such investigation was meager, at best. The fact that  
7 the affidavit uses "and/or" means the Board's mere decision to take responsibility for one instance  
8 of alleged water intrusion did not rest upon a determination of whether the issue derived from the  
9 missing window components at all. More surprising is that Mr. Kariger even admits in his affidavit  
10 that the "failing" or "missing" elements are in fact "window components." *Id.*

11 Irrespective of the obvious misgivings of the Kariger affidavit, it should be obvious that a  
12 simple Board decision aimed at appeasing a unit owner by paying for repairs to some portions of his  
13 unit, does not automatically modify the written terms of the Declaration. The Association cannot  
14 simply change the language of the Declaration, like those sections that define Unit boundaries, by  
15 virtue of a mere Board decision. (*See* Exhibit D, Pg. 80, Section 13.4 – providing that changing the  
16 boundaries of a unit requires unanimous consent of the owners whose units are directly affected and  
17 the consent of a majority of owners and declarant). Rather, a detailed and coordinated process need  
18 be undertaken. (*See* Exhibit D, Pg. 80-81, Sec. 13.1-13.7).

19 Section 13.1 provides that the Declaration "may be amended only by vote or agreement of a  
20 Majority of Owners. *Id.* Section 13.1 also states that "[t]he procedure for amendment must follow  
21 the procedures set forth in the Act." *Id.* To preclude any further mischaracterization by the  
22 Association, it is worth noting that in accordance with the last section of Section 13.1, the procedure  
23 for amendments to the Declaration as contained in Article 13 do *not* conflict with the requirements  
24 of NRS 116.2117 "Amendment of Declaration."

25 Here, the Association's argument that the Board has unfettered, unilateral power to alter the  
26 provisions of the Declaration is a direct violation of the Declaration and NRS 116.2117. The  
27 Association did not receive unanimous consent of all impacted unit owners, it did not receive a  
28

majority vote from all association members, and it did not record any written amendments to the Declaration with the County.

Therefore, the Board's alleged decision, following repairs to one unit, does not and cannot alter the scope of a unit's boundaries as contained in the Declaration.

**D. The Association's Own Expert, Mr. Hindiye, Tacitly Admits that Sill Pan Flashings Form Part of a Unit**

Despite the Association's contentions that the Builders' Motion would collapse without the use of its Simon Loadman's affidavit, the Association hypocritically utilizes its own expert, Omar Hindiye, to play the Association's "starring role" in arguing, among numerous other things, that sill pan flashings do not comprise part of the Unit.

Despite the steadfast contention that expert affidavits cannot be used to weigh evidence for purposes of Motions for Summary Judgment, which is how the Association is treating the Builder's Motion, the Association offers a **6-page** affidavit of their purported expert, Omar Hindiye. This affidavit carries with it numerous, unsubstantiated arguments that attempt to prop up the Association's flimsy claims, some of which are entirely unrelated to Mr. Hindiye's purported "expertise." This affidavit is nothing more than a brutally self-serving document that inevitably contradicts itself, a far cry from the minimal affidavit the Builders utilized in their Motion, which was aimed merely to provide context and support to a couple of the Builders' arguments. Mr. Hindiye boasts that he is "an accredited and certified window installation instructor for the AAMA, which promulgates standards and guidelines for window installation that are generally accepted nationwide..." (See Exhibit 2 to Opp., Pg. 2, Par. 2). It is interesting that the Association so heavily scrutinizes the Builders' use of the AAMA glossary in light of the fact that Mr. Hindiye's primary claim-to-fame is his involvement with the very organization that published the AAMA Glossary.

Mr. Hindiye makes sweeping contentions in his affidavit that lack proof and merit. First, Mr. Hindiye claims that alleged water intrusion at Unit 300 was directly affected by the lack of pan flashing and weepage components. Mr. Hindiye provides no basis for how he was able to make that determination. Second, Mr. Hindiye's apparent contention that water intrusion into the substrate could somehow compromise the structural integrity of the exterior walls is preposterous.

1 Mr. HindiyeH has not done *any* testing and has no proof that *any* damage to the structural integrity  
2 of the walls has occurred, nor could he. It does not appear that Mr. HindiyeH is even qualified to  
3 render such opinion, as he is not a structural engineer.

4 The Association is big on criticizing others' use of affidavits, but their expert's affidavit falls  
5 short even of their own mark. The Opposition cites to *Saka v. Sahara-Nevada Corp.* to argue that  
6 "it is not sufficient that pleadings be supported by affidavits alleging specific facts; these facts must  
7 be made upon the affiant's own personal knowledge, and there must be an affirmative showing of  
8 his competency to testify to them." (*See* Opp. Pg. 12, Ln 20-25). If that is not the height of hypocrisy,  
9 it is unclear what is. Mr. HindiyeH's affidavit fails to provide an affirmative showing that he is  
10 competent to testify on matters concerning the impact water might have on the structural integrity of  
11 buildings or their walls. Certainly, his affidavit lacks *any* facts to suggest that he has personal  
12 knowledge of this.

13 One thing that Mr. HindiyeH got right, however, was the fact that pan flashings do indeed  
14 form part of the window system and window assemblies. (*See* Opp., Pg. 7, Ln. 19-23.; *See also*,  
15 Exhibit 2 to Opp., Pg. 3, Ln. 25-27; *See also*, Exhibit 2 to Opp., Affidavit of Omar HindiyeH, Pg. 4,  
16 Ln 13-14). The problem, however, comes when Mr. HindiyeH tries to backtrack by saying that even  
17 though pan flashings form part of the window system, they do not fall within the window "apertures,  
18 as defined by the Declaration." (*See* Exh 2 to Opp, Affidavit of Omar HindiyeH, Pg. 3, Ln. 25-26).  
19 This is ridiculous and problematic for several reasons.

20 Mr. HindiyeH's affidavit provides no basis as to his qualifications to interpret the Declaration  
21 or the intent of its drafters. Also, it is apparent that the only way he was comfortable opining that  
22 sill pan flashings do not comprise "apertures" was by conditioning his statement by saying, "as  
23 defined in the Declaration." (*See* Exh 2 to Opp, Affidavit of Omar HindiyeH, Pg. 3, Ln. 25-26). It  
24 is hard to imagine how one could possibly argue that sill pan flashings do not fall inside apertures.  
25 Apertures can generally be described as openings. (*See* "aperture." Merriam-Webster Online  
26 Dictionary. 2004. <http://www.merriam-webster.com> (21 Jan. 2019); *See* **Exhibit "L"**, Affidavit of  
27 Simon Loadsman; *See also*, **Exhibit "M"**, Affidavit of Michelle Robbins, AIA). Even the  
28

1 Association's so-called "Sto Details" and the two plans attached to the Amended Chapter 40 Notice  
2 aptly show that sill pan flashings form part of the aperture. (*See* Exhibit B, Pg. 17). The Unit 300  
3 repair photos attached to the Amended Chapter 40 Notice provide a good illustration of why sill pan  
4 flashings, if installed, would be installed in the apertures of the building. (*See* Exhibit B, Pg. 20-21).  
5 There is no dispute that windows and their frameworks, casings and weaterstripping fall within the  
6 apertures, or openings, of a building. All these items, as is plainly shown in the photos, rest atop the  
7 short curb wall. *Id.* Sill pan flashings, had they been installed, would similarly rest atop the curb  
8 walls, inside the aperture, or opening, of the building. (*See* **Exhibit "XX"**, Affidavit of Simon  
9 Loadsman). Yet, Mr. Hindiye has the audacity to say that the although windows, their frameworks,  
10 casings and weatherstripping fall within the "apertures," sill pan flashings do not.

11 Let's break down what Mr. Hindiye is actually saying: (a) he agrees that windows comprise  
12 part of the apertures; and (b) that sill pan flashing comprises a portion of the window  
13 system/assembly (*supra*); but (c) he claims sill pan flashing does not comprise part of the apertures.  
14 (*See* Exh 2 to Opp, Affidavit of Omar Hindiye, Pg. 3, Ln. 25-26). Deductive reasoning tells us,  
15 therefore, that Mr. Hindiye believes that although windows fall within apertures, window  
16 systems/assemblies do not. This must mean therefore that Mr. Hindiye considers the terms window  
17 and window system/assembly to be mutually exclusive terms. In other words, Mr. Hindiye is  
18 asserting that a window does not comprise part of a window system/assembly. This is nonsensical.

19 Another problem with Mr. Hindiye's affidavit is that he omits, just like the Opposition, key  
20 terms from the definition of "apertures" per the Declaration. Instead of the Association or its  
21 purported expert, Mr. Hindiye, transcribing complete sections of the Declaration, they yet again  
22 pick out tidbits of information that seemingly suit their needs. Both the Opposition and Mr. Hindiye  
23 cite to Section 4.2(e) "Apertures," but only include the following: "where there are apertures in any  
24 boundary, including but not limited to windows... such boundaries shall be extended to include the  
25 windows...including all frameworks, window casings and weatherstripping thereof..." (*See* Exhibit  
26 2 to Opp., Pg. 4, Ln. 3-5; *See also*, Opp. Pg. 8, Ln. 2-4). However, there is key information both the  
27 Association and Mr. Hindiye conveniently omit. Either the Association never gave its expert the  
28

1 whole section 4.2(e) to review to make his determination (which would be grounds to strike his  
2 opinions), or both the Association and the expert want the Court to ignore what the Declaration  
3 *actually* says. That is, Section 4.2(e) states, in more complete terms:

4                   “Where there are apertures in any boundary, including, but not limited to,  
5 windows, doors, bay windows and skylights, such boundaries shall be  
6 extended to include the windows, doors **and other fixtures located in such**  
7 **apertures**, including all frameworks, windows casings and weatherstripping  
thereof, except that exterior surfaces made of glass or other transparent  
materials...” (Exhibit D, Pg. 38, Section 4.2(e)) (emphasis added).

8           Did the Association and its expert really think they could get away with omitting this portion  
9 of the Declaration? The Builders did not omit that portion from their Motion. (*See* Mot., Pg. 13).  
10 Mr. HindiyeH is critical that the Declaration specifically omits flashings, but the language is  
11 overinclusive and clearly indicates that *all fixtures* in the apertures are part of the Unit. (*See* Exhibit  
12 2 to Opp., Affidavit of Omar HindiyeH, Pg. 4, Ln 10-15; *See also*, Exhibit D, Pg. 38, Section 4.2(e)).  
13 Section 4.2(e) provides some *examples* of items that fall within the apertures, including frameworks,  
14 window casings and weatherstripping. The section also *specifically* omits exterior glass. The broad  
15 nature of the language in Section 4.2(e) (“all fixtures” in apertures), combined with specific  
16 omissions (i.e., exterior glass), therefore, unambiguously means that all fixtures located in the  
17 apertures are part of the unit, include portions that comprise the window system/assembly. The  
18 Opposition is bereft of any argument in dispute of this point.

19           According to Mr. HindiyeH’s interpretation of the Declaration, only those items specifically  
20 listed in the Declaration are included in the apertures, but nothing else. (*See* Exhibit 2 to Opp.,  
21 Affidavit of Omar HindiyeH, Pg. 4, Par. 10). This makes no logical sense because why, then, would  
22 the drafters of the Declaration include the phrase: “and other fixtures located in such apertures” if  
23 they did not mean it? The Association is obviously aware of the damaging nature this overinclusive  
24 language has on their arguments, but instead of facing it head on, they avoid it by omitting key  
25 language from the Declaration. Not every item that would fall within an aperture could reasonably  
26 be described in the Declaration. The list could potentially be endless. Therefore, the Declaration  
27 unambiguously includes parts of the window system/assembly in the definition of “apertures.”

1       **E. Other Courts Would Agree that The Window-Related Defects in the Association's**  
2       **Amended Chapter 40 Notice Could Not Conceivably Fall Under the Common Elements**

3       In *One Queensridge Place Homeowners' Association, Inc. v. Perini Building Company, et*  
4       *al.*, the Honorable Joanna S. Kishner analyzed an almost identical Motion and granted it. (*See*  
5       **Exhibit "I"**, Findings of Fact and Conclusions of Law re: Motion for Declaratory Relief in  
6       *Queensridge* matter). In doing so, Judge Kishner ruled that among all the fixed window-related  
7       defects, most of which alleged water intrusion, the only one that could not conceivably fall within  
8       the "common elements" was the scratched/pitted glass defect. *Id.* At 19. Even then, Judge Kishner  
9       noted that since the scratched/pitted glass defect was only alleged to be on the inside of the glass,  
10      that therefore meant that all of the window defects pertaining to "fixed windows" were part of the  
11      unit and not conceivably related to the common elements. *Id.* Importantly, the Declaration in the  
12      *Queensridge* case, the one that Judge Kishner analyzed, had the **same pertinent language regarding**  
13      **the apertures**. In short, the language regarding "apertures" in the *Queensridge* Declaration  
14      provided:

15               "Where there are Apertures in any boundary, including, but not limited to  
16               windows, doors, bay windows and skylights, such boundaries shall be  
17               extended to include the windows, doors and other fixtures located in such  
18               Apertures, including all frameworks, window casings and weather stripping  
              thereof, except that exterior surfaces made of glass or other transparent  
              materials and exteriors or doors facing all vestibules shall not be included in  
              the boundaries of the Unit and shall therefore be Common Elements (*See*  
              **Exhibit "I"**, Pg. 10, Ln. 20-27).

19      Judge's Kishner's ruling gives credence to the position that based upon the Declaration's  
20      language concerning apertures, the only aspect of the windows that are excluded from the units is  
21      solely the exterior glass itself. Given the contention that the windows in both cases deal with water  
22      intrusion, and the legal reasoning utilized in the *Queensridge* matter, the Builders firmly believe that  
23      Judge Kishner would agree that the alleged lack of weatherproofing of the windows in the present  
24      case falls within the auspice of the unit, not the common elements.

25      **F. Despite the Association's reliance on Hearsay Statements from a Supposed Former**  
26      **Laborer on the Project, Texas Wall Systems Was the Manufacturer of the Windows**

27      The Association argues that Texas Wall Systems was not the manufacturer of the windows  
28      at the Project, but was instead Sierra Glass. The only evidence presented is hearsay testimony from

1 a laborer working on the Unit 300 repairs at Panorama, who claims that Sierra Glass was the  
2 manufacturer. (See Exhibit 2 to Opp., Affidavit of Omar Hindiye, Pg. 5, Par. 14). This is simply  
3 not true. There is a difference between assembling window product and manufacturing window  
4 product, which is perhaps what the laborer is confused about. In fact, often times, pre-manufactured  
5 window product can be fabricated and assembled at the site by the installer. Windows made out of  
6 curtain wall systems, like those found at the Project, are not typically labeled by the manufacturer of  
7 the window. (See **Exhibit “L”**, Affidavit of Simon Loadsman). Therefore, the fact that manufacturer  
8 labels or product markings were not included on the Unit 300 windows is not surprising. *Id.*

9 The fact that there exist shop drawings evidencing that Texas Wall Systems designed and  
10 manufactured the windows carries a great deal of weight. Texas Wall Systems developed very  
11 detailed Shop drawings for the Project. *Id.* These drawings are extremely detailed, intricate, stamped  
12 for approval, and have the identifying markings such that could only lead to one conclusion - that  
13 Texas Wall Systems manufactured the windows. (See **Exhibit “N”**, Texas Wall Systems Shop  
14 Drawings). It would be highly uncommon in the industry for a manufacturer to develop extremely  
15 detailed and costly shop drawings for a project where the manufacturer did not have a contract or  
16 work order to perform the work or supply the material. *Id.*

17 Besides, if Texas Wall Systems were not the manufacturer of the windows for Sierra Glass,  
18 the installer, then there would be no evidence that Texas Wall Systems was paid by Sierra Glass for  
19 its work or supply of materials relating to the Panorama Project. According to an Unconditional  
20 Waiver and Release relating to the Project, Texas Wall Systems executed a lien release in favor of  
21 Sierra Glass, its customer. (See **Exhibit “O”**, Unconditional Waiver and Release Upon Progress  
22 Payment). If Texas Wall Systems were not the manufacturer of the Project windows, then why else  
23 would they be getting paid by Sierra Glass, the window installer?

#### 24 **G. Head Flashings Were Not Required at the Project**

##### 25 **i. Texas Wall Systems, the Manufacturer, Did Not Call for Head Flashings**

26 The Association suggests that TWS was not the manufacturer of the windows in order to  
27 challenge the Builders’ contention that the manufacturer of the windows did not call for head  
28



1 flashings. The Association suggests, instead, that it was Sierra Glass. While this is untrue, it is  
2 unclear how exactly this helps the Association's argument. Whoever installed/manufactured them,  
3 no head flashings were called for on the Project, which is why they were not installed at the Project.  
4 As explained above, TWS was the manufacturer of the windows and TWS did not call for head  
5 flashings at the windows, per the TWS shop drawings. (See **Exhibit "N"**, Texas Wall Systems Shop  
6 Drawings, Pg. 76, Detail 1 "Head Frame").

7 **ii. The EIFS Manufacturer did Not Require Head Flashings**

8 Contrary to the Association's blatant misconception, the EIFS manufacturer did not require  
9 head flashings. The only document the Association provides in support of this position is a pre-  
10 dated, computer-generated image that has *nothing* to do with the Panorama Project. (See Exhibit B,  
11 Pg. 17). Instead of requiring head flashings, this so-called "detail" specifically states: "Verify  
12 requirements for head flashing with local codes and window manufacturer. If not required, seal  
13 between window head and EIFS." *Id.* The window manufacturer, TWS, did not require head  
14 flashings, so sealant was applied between the window head and the EIFS, as shown in the photos  
15 included in the Association's Amended Chapter 40 Notice. *Id.* At 23-24.

16 **iii. The "Home Rule Doctrine," Whatever it is, Does Not Apply**

17 The Association then argues that regardless if TWS manufactured the windows, the EIFS  
18 manufacturer required them. On that basis, the Association argues that the "Home Rule Doctrine"  
19 mandates that the most stringent guidelines should apply and therefore head flashings should have  
20 been installed. As noted above, the EIFS manufacturer did not require head flashings. Moreover,  
21 the Association's use of the "training manual" attached to Mr. Hiniyeh's affidavit is specious. (See  
22 Exhibit B to Exhibit 2 of Opp.). The Association cried out when the Builders introduced an AAMA  
23 glossary and analyzed a single term from it, even though AAMA is the same organization Mr.  
24 HindiyeH brags about in his resume. The Association is hypocritical to criticize the Builders' use of  
25 the glossary when it was simply used to provide context. At least the Builders had the courage to  
26 introduce the complete AAMA glossary in their exhibits. In contrast, Mr. HindiyeH cherry-picks  
27 portions of the "training manual," yet another attempt at trying to tunnel-vision the reader. A closer  
28

1 examination of this “training manual” is in order, in particular the parts that Mr. Hindiye  
2 conveniently omits.

3 The first thing to note is that Mr. Hindiye does not include the introduction to the “training  
4 manual,” the first sentence of which states:

5 **“1. INTRODUCTION** – This training manual addresses the installation of  
6 **residential and light commercial windows** and exterior glass doors.” (See  
7 **Exhibit “P”**, Training Manual, Pg. 4) (emphasis added)

8 Right off the bat, it is apparent that the “training manual” does not even apply to the Panorama  
9 Project, which involves high-rise windows, not residential or light commercial windows. Right  
10 below this section, still in the introduction, it states:

11 **“Important Note:** Different types of windows and doors require specific  
12 installation techniques. The information provided in this manual does not  
13 supercede installation instructions provided by the manufacturer. Always  
14 consult the manufacturer’s instructions.” *Id.*

15 The “training manual’s” section on EIFS and GRFC Walls provides that:

16 “the installer should work with the approving authority to verify the  
17 requirements of the fenestration system, flashing, sealant, and EIFS  
18 suppliers to ensure the compatibility of these materials in the completed  
19 assembly.” *Id.* at 5.

20 The “training manual” has a specific section on Manufacturers’ Installation Instructions. *Id.* at 9. It  
21 states:

22 “Manufacturer’s instructions should be considered a requirement, not an  
23 option. At any time that the manufacturer’s instructions appear inconsistent  
24 with the job requirements, the installer must seek further information from  
25 the responsible architect, builder, and manufacturer.” *Id.*

26 The “training manual” also provides:

27 “It is not the intent of this training to override the manufacturer’s  
28 recommendation on proper installation techniques.” *Id.*

29 In this case, the architect did not require head flashings, the manufacturer of the windows did  
30 not require head flashings and the manufacturer of the EIFS did not require head flashings. Pursuant  
31 to the above, it is obvious that this “training manual” is not intended to replace the manufacturer’s  
32 instructions or recommendations. Rather, it is only intended to guide individuals in the event  
33 information from the manufacturer is somehow missing.

1 As explained, Mr. Hindiye's use of the "training manual" is misguided, and even  
2 hypocritical. Had the Builder's instead introduced this "training manual" in *their* initial Motion,  
3 there is little doubt that the Association would have counter-moved to strike it as "inadmissible parol  
4 evidence." (*See Opp. Pg. 10, Ln. 20-25*).

5 **III. OPPOSITION TO DEFENDANT/COUNTER-CLAIMANT'S COUNTER-MOTION TO**  
6 **EXCLUDE INADMISSIBLE PAROL EVIDENCE**

7 In its Opposition, the Association moves to exclude the Builder's use of 1) the Architectural  
8 Manufacturers Association Glossary ("Glossary") (*See Exhibit E*), and 2) the Affidavit of Simon  
9 Loadsman ("Loadsman Affidavit") (*See Exhibit F*), based on impermissible parol evidence. The crux  
10 of the Association's argument is that the Declaration is a contract in its entirety and hence bars any  
11 extrinsic evidence from supplementing it. The disputed evidence stems from the Builder's assertion  
12 in their Motion that "sill pan flashings" and "head flashings" fall outside the purview of the "common  
13 elements." This is a dispositive issue because if these two terms fall within the unit boundaries, then  
14 they are *per se* "Common Elements," for which the Association has no standing to litigate.

15 However, the Association's request should be denied. First, the doctrine of parol evidence  
16 does not apply to the entire Declaration because the Declaration, *as a whole*, is not a contract. The  
17 Declaration operates as a set of equitable servitudes with collateral obligations rather than a contract  
18 in its entirety. The disputed terms at issue here are not distinct contractual obligations. Second,  
19 assuming that the disputed issues do fall within the purview of contractual obligations, the parol  
20 evidence rule would not bar extrinsic evidence that does not vary or contradict the meaning of terms  
21 within the Declaration.

22 **A. The Parameters and Applicability of the Parol Evidence Rule to the Disputed Issues**

23 The parol evidence rule generally bars extrinsic evidence regarding prior or contemporaneous  
24 agreements that are contrary to the terms of an integrated contract. *Crow-Spieker No. 23 v. Robinson*,  
25 97 Nev. 302, 305, 629 P.2d 1198, 1199 (1981). Put another way, extrinsic or parol evidence is  
26 inadmissible to contradict or vary the terms of an unambiguous written instrument, "since all prior  
27  
28

1 negotiations and agreements are deemed to have been merged therein.” *Kaldi v. Farmers Ins. Exch.*  
2 117 Nev. 273, 281, 21 P.3d 16, 21 (2001).

3 The “key consideration in application of the parol evidence rule, whether invoked by a party  
4 or a stranger to the contract, is whether the extrinsic evidence is being offered to reconstruct the  
5 parties’ contractual obligations.” *Thomson v. Canyon*, 129 Cal. Rptr. 3d 525, 536 (Ct. App. 2011).

6 As further stated in *Thomson v. Canyon*:

7 “...parties to an integrated written contract are bound by its terms under the  
8 parol evidence rule on the theory ‘that the parties have determined that a  
9 particular document shall be made the sole embodiment of *their* legal act  
10 for certain legal purposes [citation]. Hence, so far as that effect and those  
11 purposes are concerned, they must be found in that writing and nowhere  
12 else, no matter who may desire to avail himself of it,’ even a nonsignatory.  
13 (9 Wigmore, Evidence (Chadbourn rev. 1981) § 2446, p. 156, original  
14 italics; see *Neverkovec v. Fredericks*, *supra*, 74 Cal.App.4th 350, fn. 8  
[citing treatise with approval on this point].) ‘But so far as other effects and  
purposes are concerned, the writing has not superseded their other conduct,  
nor other persons’ conduct, and it may still be resorted to for any other  
purpose for which it is material, either by other persons or by themselves.’  
(9 Wigmore, Evidence, *supra*, § 2446, p. 156.)”

15 Thus, there are three required elements for the parol evidence rule to apply. First, there must  
16 be an **integrated** contract. Second, the disputed evidence must **contradict or vary** the terms of the  
17 written instrument. Third, that written instrument must be **unambiguous**. (*Supra*). As explained in  
18 *Thomson v. Canyon*, the key consideration in assessing whether the parol evidence rule is applicable,  
19 is whether the parties intended for the document to be the **sole embodiment of their legal act for**  
20 **certain purposes**. (*Supra*).

21 The primary flaws of the Association’s Counter-Motion are that it assumes 1) the entire  
22 Declaration is an integrated contract, including the specific definitions within, and that it was  
23 intended to be the sole embodiment of specific legal acts, and 2) that the disputed extrinsic evidence  
24 contradicts or varies the terms rather than simply assisting with their meanings.

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1                   **B. The Parol Evidence Rule Does Not Apply to the Disputed Issues Because They Are Not**  
2                   **Contractual Obligations**

3                   For the parol evidence rule to apply to the Declaration, the threshold question must first be  
4 resolved of whether the Declaration is an integrated contract. Here, the Declaration is a set of  
5 covenants that run with the land, as well as equitable servitudes.

6                   The Declaration is a product of the Nevada Revised Statutes. NRS 116.2101 permits the  
7 creation of a common-interest community “by recording a declaration executed in the same manner  
8 as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the  
9 association.” Furthermore, “CC&Rs become a part of the title to [a homeowner’s] property.” NRS  
10 116.41095(2). Thus, the CC&Rs operate as specific conditional covenants and equitable servitudes  
11 to the underlying real estate deed between the individual condominium owners and the building  
12 owners. Under NRS 116.2105(1), a declaration must contain several required statements and “may  
13 contain any other matters the declarant considers appropriate.”

14                  As equitable servitudes and covenants, the terms of a declaration run with the land and hence  
15 are enforceable against the associations and individual owners. *Pinnacle Museum Tower Association*  
16 *v. Pinnacle Market Development*, 55 Cal.4<sup>th</sup> 223, 241 (2012).

17                  The Association’s Counter-Motion, however, fails to distinguish between enforceability of  
18 the Declaration and formation of a contract. Equitable servitudes and covenants can be held  
19 enforceable and binding against the parties, but enforceability alone does not equate into a contract.  
20 Put another way, obligations to perform do not suffice for contractual obligations.

21                  The Nevada Supreme Court analyzed this distinction in the case of *United States Home Corp.*  
22 *v. Ballesteros Trust*, 415 P.3d 32 (2018). There, the issue was whether an arbitration agreement can  
23 exist within the Declaration of CC&Rs despite that the Declaration itself was not labeled a  
24 “contract.” The Court followed analysis in *Pinnacle* and found that “[a]s Pinnacle recognizes,  
25 accepting the premise that CC&Rs can impose contractual obligations to which a homeowner assents  
26 by purchasing a unit leads to the conclusion that CC&Rs can state agreements to arbitrate,  
27 enforceable under the UAA or the FAA.” (*Supra*).

1           The *Ballesteros* holding on this point is therefore that a declaration can have within it  
2 contractual obligations—such as an arbitration clause—that is binding on the parties. However,  
3 implicit in this holding is that while there can be contractual obligations within the Declaration, the  
4 Declaration **as a whole** is not a contract. In *Ballesteros*, the Court held that the arbitration clause  
5 was an enforceable contractual obligation, not that the entire document containing the arbitration  
6 clause was itself a contract. The Declaration as a whole is not a contract because while the CC&Rs  
7 are enforceable as equitable servitudes, the Declaration does not contain 1) a negotiation between  
8 the association and a buyer over the restrictions and duties imposed by owners, 2) there is no offer  
9 and acceptance, 3) there is no agreement between the association and a buyer regarding respective  
10 rights and duties, 4) there is no promise to perform, and 5) there is no valuable consideration  
11 exchanged between the association and a buyer. *Cohen-Breen v. Gray Tel. Grp., Inc.*, 661 F. Supp.  
12 2d 1158, 1171 (D. Nev. 2009). Again, mere enforceability in the form of a contractual relationship  
13 does not equate into a contractual agreement as a whole.

14           Here, the pertinent issue for the Builders’ Motion is whether “sill pan flashings” and “head  
15 flashings” fall within the unit boundaries as provided in the Declaration. This is a dispositive issue  
16 because if these two terms fall inside the classification of unit boundaries as per the Declaration, then  
17 they are not “common elements,” and therefore the Association lacks standing to assert these issues  
18 against the Builders.

19           Thus, the entire basis for the Builder’s Motion and the Association’s Counter-Motion is based  
20 on the meaning of terms within the Declaration. Definitions and terms within a declaration, however,  
21 are not themselves “contractual obligations” such as was the case with the arbitration clause in  
22 *Ballesteros*. An arbitration clause is a distinct contractual clause requiring parties to resolve their  
23 disputes through arbitration. The list of terms and their corresponding definitions - which is the basis  
24 for the dispute here - is simply that, a list of terms. By failing to recognize that the Declaration **as a**  
25 **whole** is not a “contract,” the Association improperly mischaracterizes the disputed terms as falling  
26 within the parameters of parol evidence.

27           It is for these reasons that the Association’s Counter-Motion should be denied at the outset.  
28

1       **C. The Parol Evidence Rule Does Not Apply to the Loadsman Affidavit or the Glossary**  
2       **Because They Are Not Being Used to Vary or Contradict the Definitions in the**  
3       **Declaration**

4       Assuming that parol evidence applies to the terms at issue in the Declaration, the next  
5       question is the purpose of the extrinsic evidence being introduced. Parol evidence only bars evidence  
6       that **varies or contradicts** the integrated contract. *Kaldi v. Farmers Ins. Exch.* 117 Nev. 273, 281,  
7       21 P.3d 16, 21 (2001).

8       Here, the Builders have introduced the AAMA Glossary and an affidavit of Simon Loadsman  
9       in order to provide additional context and support to show that pan flashing would fall within the  
10      definition of a “window system,” a term contained within the AAMA Glossary. (See Exhibit E and  
11      Exhibit F to Motion). Mr. Loadsman’s affidavit by no means attempts to alter or vary the terms of  
12      the Declaration, but rather describes Mr. Loadsman’s understanding of which elements comprise a  
13      “window system.” Mr. Loadsman’s interpretation of what constitutes a “window system” does not  
14      contradict the language in the Declaration. Thus, the HOA fails to recognize that since the Builder’s  
15      extrinsic evidence is not being used to vary or contradict anything, the parol evidence rule does not  
16      bar their entry.

17      **IV. OPPOSITION TO DEFENDANT/COUNTER-CLAIMANT’S COUNTER-MOTION**  
18      **FOR RULE 56(F) RELIEF**

19      **A. The Builders’ Motion Should Not Be Denied Based on the Procedural Stage of the Case**

20      NRCp 56(f) allows a party opposing a motion for summary judgment to request additional  
21      time to complete discovery to gather information that is essential to opposing the summary judgment  
22      motion:

23               **NRCp 56(f): When affidavits are unavailable.** Should it appear from the affidavits  
24               of a party opposing the motion that the party cannot for reasons stated present by  
25               affidavit facts essential to justify the party’s opposition, the court may refuse the  
26               application for judgment or may order a continuance to permit the affidavits to be  
27               obtained or depositions to be taken or discovery to be had or may make such other  
28               order as is just.

29      However, Rule 56(f) does not operate automatically. A party seeking a continuance through NRCp  
30      56(f) relief must meet certain requirements. Specifically, “a party seeking an NRCp 56(f)

1 continuance for further discovery must demonstrate how further discovery will lead to the creation  
2 of a genuine issue of material fact.” *Aviation Ventures v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110  
3 P.3d 59, 62 (2005). Furthermore, “[a] motion for continuance under NRCP 56(f) is appropriate **only**  
4 when the movant expresses how further discovery will lead to the creation of a genuine issue of  
5 material fact.” *Id.* As stated by the Supreme Court of Nevada, “it is insufficient for a party seeking  
6 such a continuance to merely allege that additional discovery is necessary; instead, the party **must**  
7 identify what additional facts might be obtained that are necessary to oppose the motion for summary  
8 judgment.” *Bakerink v. Orthopaedic Associates, Ltd.*, 94 Nev. 428, 431, 581 P.2d 9, 11 (1978).

9 NRCP 56 is closely modeled after Federal Rule of Civil Procedure Rule 56. Federal cases  
10 interpreting the Federal Rules of Civil Procedure “are strong persuasive authority, because the  
11 Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.” *Exec. Mgmt*  
12 *v. Ticor Title Ins. Co.*, 118 Nev. 46, 53 (2002). The requirements of a Rule 56(f) continuance are  
13 further clarified by the United States Court of Appeal for the First Circuit. Specifically, the Court  
14 of Appeal held the following:

15 “[A] litigant must submit to the trial court an affidavit or other authoritative  
16 document showing (i) good cause for his inability to have discovered or  
17 marshalled the necessary facts earlier in the proceedings; (ii) a plausible  
18 basis for believing that additional facts probably exist and can be retrieved  
19 within a reasonable time; and (iii) an explanation of how those facts, if  
20 collected, will suffice to defeat the pending summary judgment motion.”  
*Velez v. Awning Windows, Inc.*, 375 F.3d 35, 40 (1st Cir. 2004); *Paterson-*  
*Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985, 988 (1st Cir.  
1998).

21 The first layer of the Association’s general argument is that because no discovery has been  
22 exchanged in this case, Rule 56(f) should operate automatically in allowing for a continuance:

23 “Because discovery just commenced and the HOA has not been dilatory in  
24 pursuing discovery, it would be an abuse of this Court’s discretion to deny the  
HOA a continuance to perform the requested discovery.” (Opp., Pg. 18)

25 Thus, the Association argues that a continuance should be granted as a matter of right given the  
26 procedural status of the case. This point was reiterated again in the Opposition’s Exhibit 3, the  
27 Declaration of Michael Gayan, in which Mr. Gayan states in Paragraph 5: “To date, little if any  
28



1 discovery has occurred. Plaintiffs have not made their initial disclosures or produced any documents.  
2 From a discovery standpoint, the case is in its infancy.” Mr. Gayan also emphasizes in Paragraph 4  
3 of his Declaration that the Court has only recently issued a Case Agenda establishing discovery  
4 deadlines.

5 However, Rule 56(f) requires more than mere acknowledgement that the case might be at its  
6 infancy stage. Rather, Nevada law and its consistent Federal law counterpart (*supra*), require that  
7 the party seeking additional time meet its burden in demonstrating *how* further discovery will lead  
8 to the creation of a genuine issue of material fact. Aviation Ventures v. Joan Morris, Inc., 121 Nev.  
9 113, 118, 110 P.3d 59, 62 (2005).

10 A court is not precluded from granting summary judgment by the mere fact that additional  
11 discovery could be conducted. In the present case, the Association fails to identify *what* additional  
12 discovery is necessary in order to properly oppose a Motion for Summary Judgment (as noted in the  
13 Builders’ Reply Brief in support of their Motion for Declaratory Relief, the requested relief is not  
14 that of summary judgment). A generalized and vague argument about the *potential* for future  
15 discovery is insufficient to show how this discovery will lead to anything in dispute of the Builder’s  
16 Motion. Thus, the Association fails to adequately satisfy the grounds for a Rule 56(f) Motion even  
17 if this Court were to agree that the Builders are seeking summary judgment rather than declaratory  
18 relief.

19 **B. The Association Has Failed to Specifically Identify the Additional Discovery Needed to**  
20 **Overcome the Builders’ Motion for Declaratory Relief**

21 The Association has also failed to meet its prerequisites to obtain relief under NRCP 56(f),  
22 and thus its request for a continuance should be denied. In Nevada, “NRCP 56(f) requires that the  
23 party opposing a motion for summary judgment and seeking a denial or continuance of the motion  
24 in order to conduct further discovery provide an affidavit giving the reasons why the party cannot  
25 present facts essential to justify the party’s opposition.” *Choy v. Ameristar Casinos, Inc.*, 127 Nev.  
26 Adv. Op. 78, 265 P.3d 698 (2011).

1 The Association's only evidence relevant to its NRCP 56(f) burden is Exhibit 3, the  
2 Declaration of Michael Gayan, Esq. In Paragraph 6, Mr. Gayan states the following:

3 "The Association awaits Plaintiffs' disclosures and document productions.  
4 Thereafter, the Association intends to conduct the following discovery to  
5 develop the evidence necessary to fully respond to Plaintiffs' motion  
6 regarding standing: (a) propound written discovery to Plaintiffs; (b) depose  
7 Plaintiffs and/or their Rule 30(b)(6) representatives on various design and  
8 construction topics related to the design and construction of the windows;  
9 (c) depose other parties and/or non-parties regarding similar issues related  
10 to the design and construction of the windows; (d) designate one or more  
11 experts on the subject; and (e) depose experts designated by Plaintiffs and  
12 any other counter defendants."

13 However, none of these distinct requests specify 1) what information is being sought in  
14 discovery other than vague and generalized references, and 2) why such additional information is  
15 necessary to create a genuine issue of material fact by which the Association could overcome  
16 Builder's Motion. The most specific of the subsections in Paragraph 6 is Subsection (b), which states  
17 that the Association seeks to depose representatives on "various design and construction topics  
18 related to the design and construction of the windows."

19 The Builder's Motion narrowly relates to whether sill pan flashings and head flashings fall  
20 within the purview of unit boundaries per the Declaration. The request in Paragraph 6, Subsection  
21 (b) of Mr. Gayan's affidavit, however, lacks any detail as to what specific facts are being sought that  
22 relate to the Builder's Motion. Similarly, the HOA fails to demonstrate how a vague request to  
23 depose these representatives would yield any meaningful facts that are essential to their legal  
24 contentions and which would enable them to overcome Builder's Motion for Declaratory Relief.  
25 Rather, the HOA's vague discovery requests equate into nothing more than a fishing expedition for  
26 facts that *might* relate to Builder's Motion.

27 Rule 56(f) provides: "...Should it appear from the affidavits of a party opposing the motion  
28 that the party cannot for reasons stated present by affidavit facts essential to justify the party's  
opposition..." Mr. Gayan's affidavit is devoid of stated reasons why his expert's, Mr. Hindiyeh,  
affidavit is lacking factual evidence to support his conclusions. Mr. Hindiyeh does not claim to lack  
factual support for his contentions.

1 Based on the foregoing, the Association's Counter-Motion for a 56(f) continuance should be  
2 denied.

3 **V. CONCLUSION**

4 The Association fails to establish why the Builders' Motion is improperly brought as a  
5 Motion for Declaratory Relief. Even if the Builders' Motion were considered a Motion for Summary  
6 Judgment, the Association still fails to satisfy its burden of proof. Sill pan flashings are classified,  
7 at least, as fixtures within the apertures, a fact that the Association does not dispute. Other courts  
8 agree that window defects alleging water intrusion fall within the Unit boundaries. Despite the  
9 Association's contention, Texas Wall Systems was the manufacturer of the Windows at Panorama  
10 and it did not require head flashings. The EIFS manufacturer likewise did not require head flashings.

11 Based on the foregoing, the Court should declare that the Association lacks standing to assert  
12 defect allegations and 1.01 and 1.02. Sill pan flashings comprise part of the window system, which  
13 fall within the Unit Boundaries, and thus outside the scope of the Common Elements. Since pan  
14 flashings fall outside the scope of the Common Elements, the Associations lacks standing to assert  
15 repairs to same per NRS 116.3102(1)(d), as amended by AB 125. In addition, local codes and the  
16 "Sto detail" defers the decision to incorporate head flashings onto the manufacturer of the window  
17 system. Since the manufacturer of the window systems, Texas Wall Systems, did not require head  
18 flashings at the unit windows, the lack of head flashing does not constitute a code violation. Since  
19 head flashings are not mandated, their addition would be an unnecessary upgrade, and outside the  
20 scope of the Association's responsibilities. Thus, the Association also lacks standing to assert defect  
21 allegation 1.02.

22 In addition, the Association's reliance on the parol evidence rule to seek exclusion of the  
23 Loadman Affidavit and the AAMA Glossary is misguided. Both of these pieces of evidence fall  
24 outside of the purview of the parol evidence rule. On this basis, the Association's Counter-Motion  
25 to Exclude the Builders' Inadmissible Parol Evidence should be denied.

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1 Lastly, because the Association has failed to satisfy its burden under NRCP 56(f), the  
2 Association's Counter-Motion for NRCP 56(f) relief should be denied.

3  
4 Dated: January 22, 2019

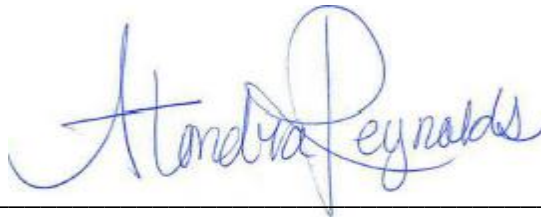
BREMER WHYTE BROWN & O'MEARA LLP

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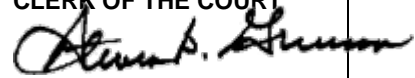
Peter C. Brown, Esq.  
Nevada State Bar No. 5887  
Jeffrey W. Saab, Esq.  
Nevada State Bar No. 11261  
Devin R. Gifford, Esq.  
Nevada State Bar No. 14055  
Attorneys for Plaintiffs/Counter-Defendants  
LAURENT HALLIER, PANORAMA  
TOWERS I, LLC, PANORAMA  
TOWERS I MEZZ, LLC, and M.J. DEAN  
CONSTRUCTION, INC.

13  
14  
15  
16 **CERTIFICATE OF SERVICE**

17  
18 I hereby certify that on this 22<sup>nd</sup> day of January 2019, a true and correct copy of the foregoing  
19 document was electronically filed and served through Odyssey upon all parties on the master e-file  
20 and serve list.

21  
22 

23 Alondra Reynolds, an Employee of  
24 BREMER, WHYTE, BROWN & O'MEARA, LLP



**ERR**

PETER C. BROWN, ESQ.  
Nevada State Bar No. 5887  
JEFFREY W. SAAB, ESQ.  
Nevada State Bar No. 11261  
DEVIN R. GIFFORD, ESQ.  
Nevada State Bar No. 14055  
BREMER WHYTE BROWN & O'MEARA LLP  
1160 N. TOWN CENTER DRIVE  
SUITE 250  
LAS VEGAS, NV 89144  
TELEPHONE: (702) 258-6665  
FACSIMILE: (702) 258-6662  
[pbrown@bremerwhyte.com](mailto:pbrown@bremerwhyte.com)  
[jsaab@bremerwhyte.com](mailto:jsaab@bremerwhyte.com)  
[dgifford@bremerwhyte.com](mailto:dgifford@bremerwhyte.com)

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

Counter-Claimant,

vs.

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

) Case No. A-16-744146-D

) Dept. XXII

) **ERRATA TO:**

) **APPENDIX TO**

) **PLAINTIFFS/COUNTER-**

) **DEFENDANTS' MOTION FOR**

) **DECLARATORY RELIEF REGARDING**

) **STANDING [Volume I of III]**

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

COMES NOW, Plaintiffs/Counter-Defendants Laurent Hallier, Panorama Towers I, LLC, Panorama Towers I Mezz, LLC and M.J. Dean Construction, Inc. (hereinafter collectively referred to as “the Builders”), by and through their attorneys of record Peter C. Brown, Esq. and Jeffrey W. Saab, Esq. and Devin R. Gifford, Esq. of the law firm of Bremer Whyte Brown & O’Meara LLP, hereby submits this Errata to its Appendix of Exhibits [Volume I of III] to their Motion for Declaratory Relief Regarding Standing, filed on October 22, 2018 (“Errata”). The Builders inadvertently filed its Appendix of Exhibits [Volume I of II] without Exhibit “A” and “B” attached. This Errata seeks to correct this error, attached hereto is Exhibit “A” and “B”.

Exhibit No.	Brief Description	# of Pages (including exhibit page)	Location of exhibit within Motion
A	Association’s initial Chapter 40 Notice dated February 24, 2016	52	Pages 5 & 6
B	Association’s Amended Chapter 40 Notice dated April 5, 2018	49	Pages 5, 7, 8, 14,16 & 17

Dated: February 5, 2019

BREMER WHYTE BROWN & O’MEARA LLP

By: \_\_\_\_\_

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

# EXHIBIT "A"

Certified Article Number

9314 8699 0430 0020 7987 21

SENDERS RECORD



LEACH JOHNSON  
SONG & GRUCHOW

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

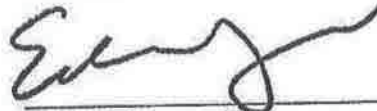
February 24, 2016

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

[illegible]



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

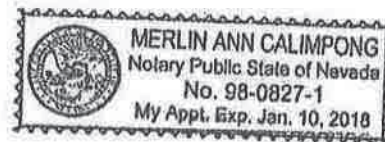
2 The undersigned on behalf of Claimant the Panorama Towers Condominium Unit  
3 Owners' Association verifies that they have reviewed the expert reports included and referenced  
4 to said notice as enumerated in Exhibit 1 and that the defects, damages, and injuries set forth in  
5 those reports exist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

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

9 Dennis Kariger  
[Signature]

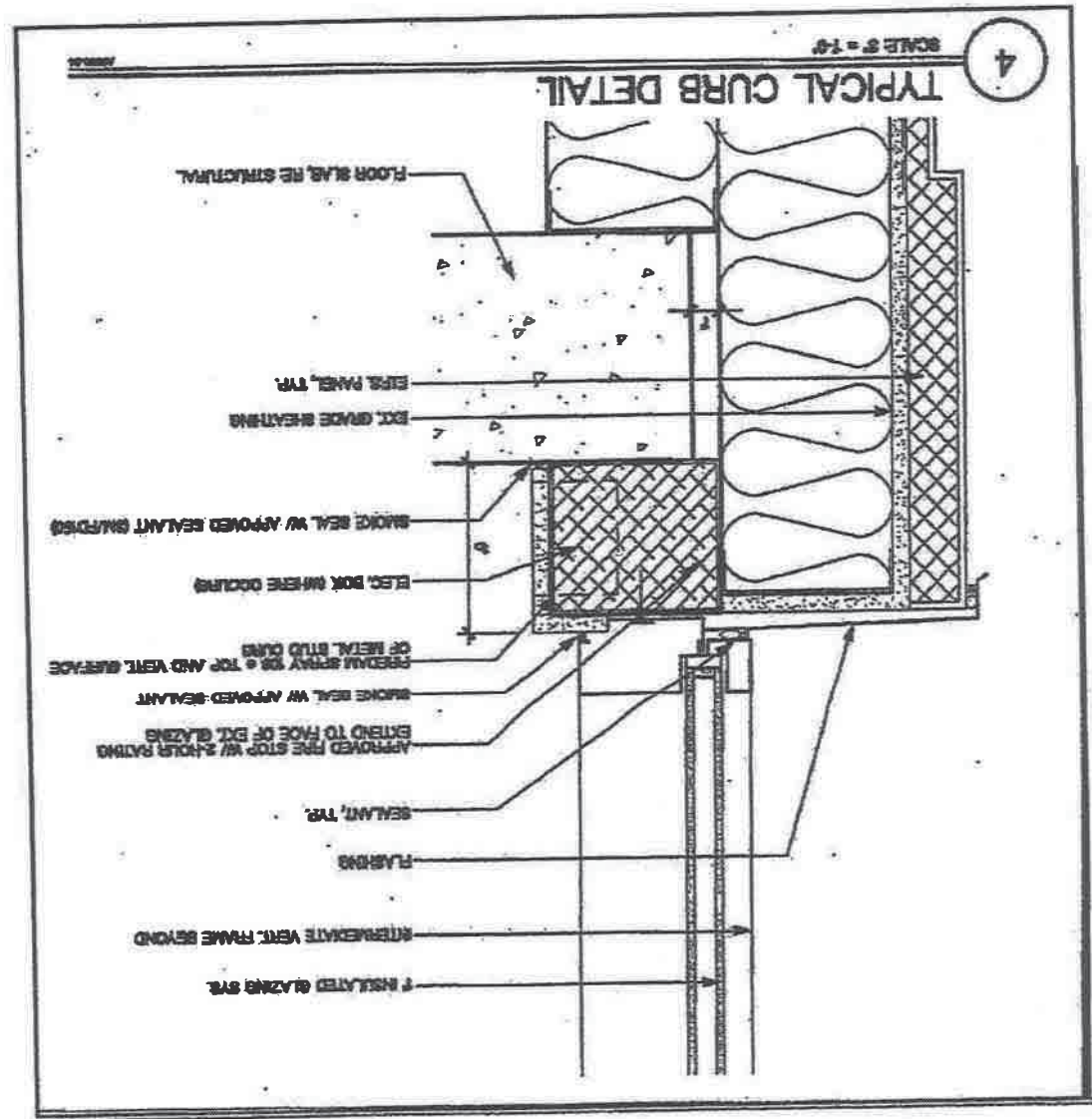
10  
11  
12  
13 Subscribed and sworn on before me  
14 this 24<sup>th</sup> day of February, 2016.

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



# **Exhibit “A”**

# **Exhibit “A”**



AS.00.0



SECTION 5-10-00

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
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KLAI JIRA

**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	
<b>Media Tanks</b>	4 ferrous check valves		X		6
	Culligan ferrous parts		X		7
	tank steel flanges			X	
<b>City Water Inlet</b>	2 ferrous butterfly valves	X			4
	3 overhead butterfly valves	X			5
<b>Zone 4 Hot Water Tank</b>	ferrous check valve		X		2
	inlet carbon steel nipple		X		
	carbon steel drains		X		
<b>Zone 3 Hot Water Tank</b>	2 ferrous check valves		X		3
	inlet carbon steel nipple		X		
	carbon steel drains		X		
<b>Hot Water Recirculation Pump</b>	ferrous pump bowl assembly	X			1
	steel nipple		X		
<b>Unidentified pipe run</b>	carbon steel pipes, fittings, nipples		X		8
<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>					



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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					

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

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

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PANORAMA TOWER 2  
LOWER MECHANICAL ROOM  
Replacement Recommendation

Corrosion Assessment

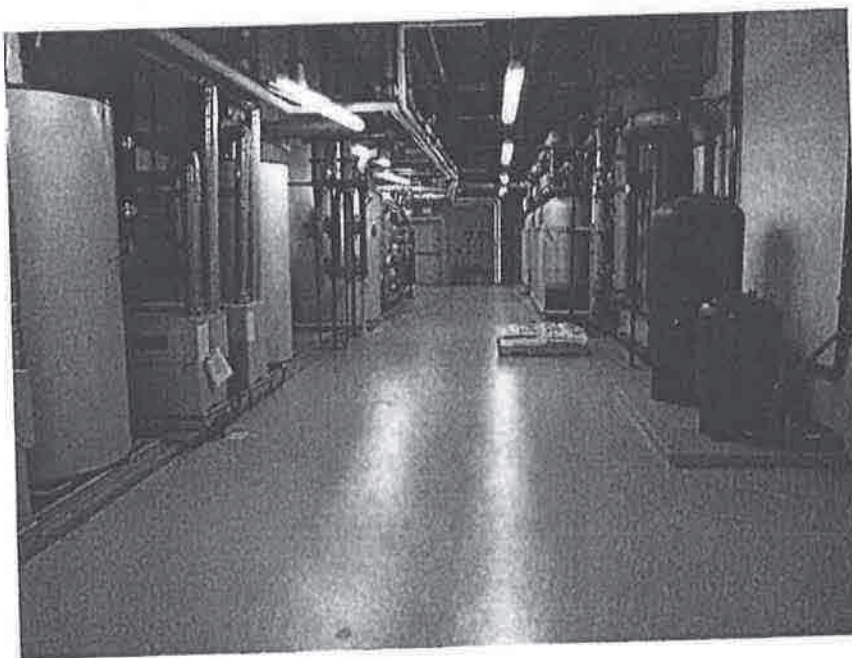
UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
City Water Inlet Manifold	6 ferrous butterfly valves	X			20
	2 ferrous strainers	X			20
	2 pressure regulator ductile iron bodies		X		20
Zone 1 Hot Water Tank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



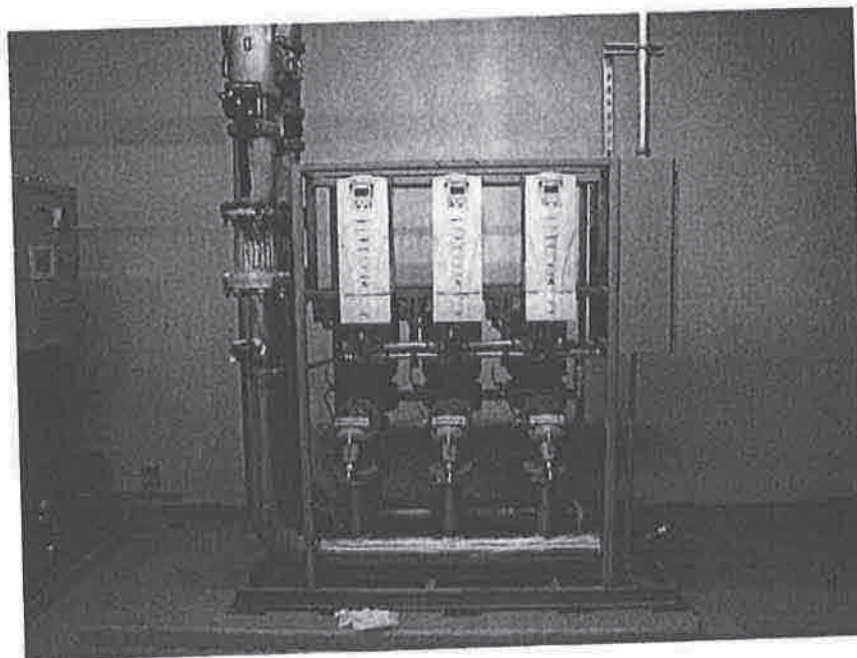
**PANORAMA TOWER 2  
UPPER MECHANICAL ROOM  
Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
Media Tanks	4 ferrous check valves		X		
	Culligan ferrous parts	X			
	tank steel flanges			X	
Overhead piping	cold to zone 3 and 4 - 2 carbon steel nipples		X		2
	carbon steel nipple to main cold line	X			1
Zone 4 Hot Water Tank	ferrous butterfly valve	X			
	ferrous check valve		X		
Zone 3 Hot Water Tank	ferrous butterfly valve	X			
	ferrous check valve		X		
Hot Water Recirculation Pumps	ferrous pump bowl assemblies	X			
	ferrous check valve		X		
<p>*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

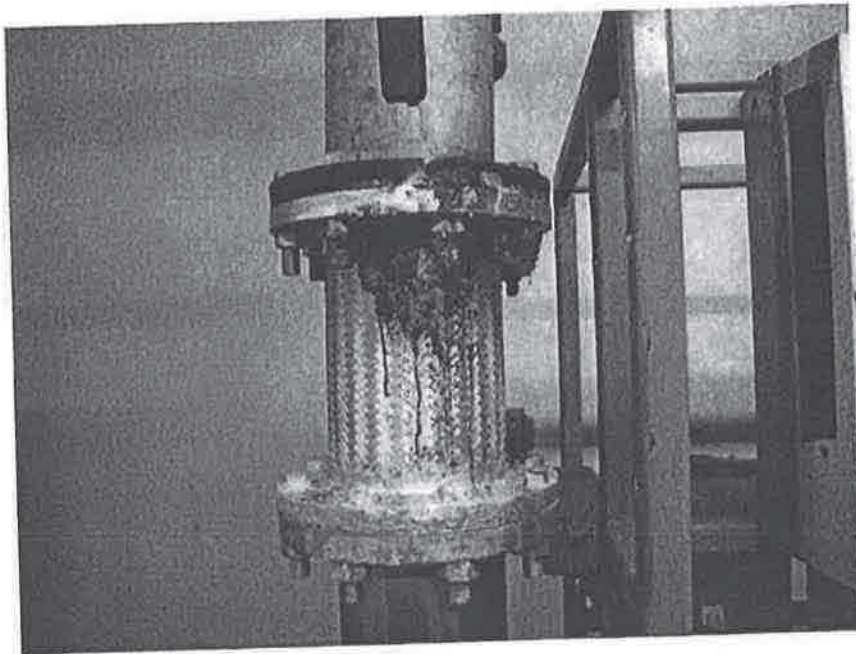


1. View of  
lower mechanical room (jpg100).

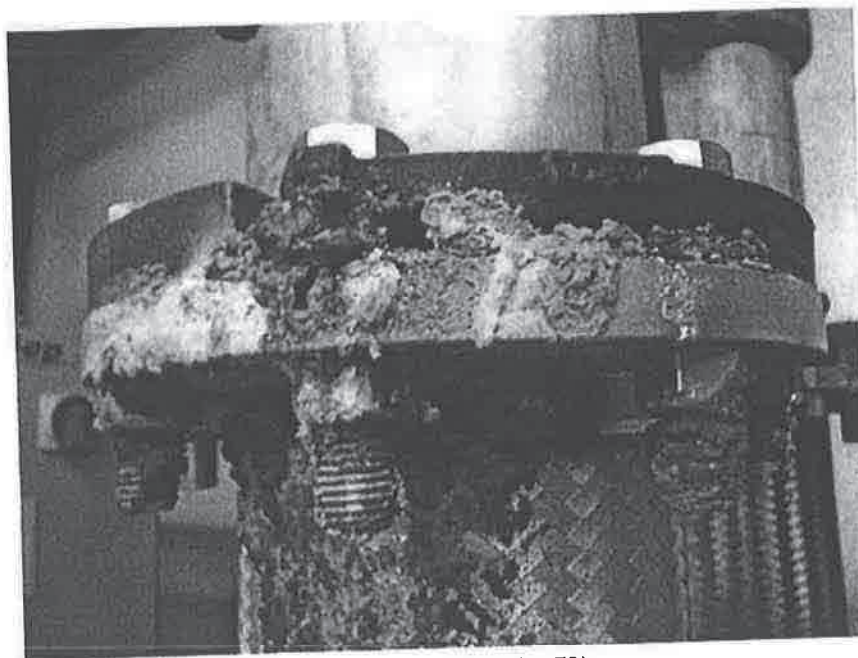


2. BP-1,  
(jpg66)

PANORAMA 1 Lower Mechanical Room



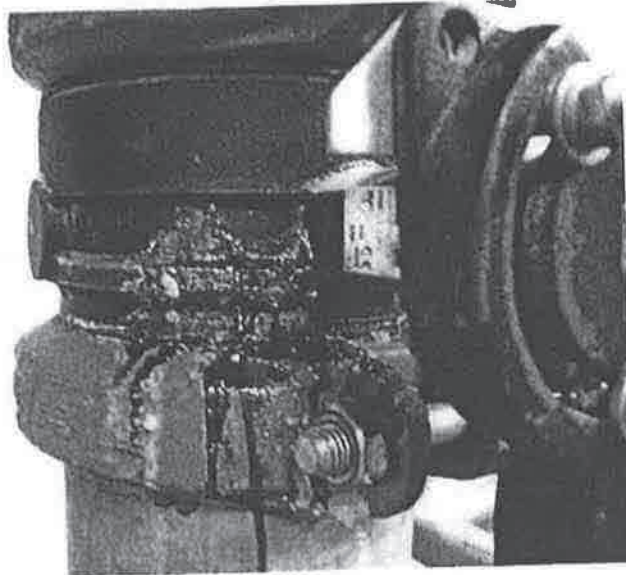
3. BP-1, flex  
connection (jpg68)



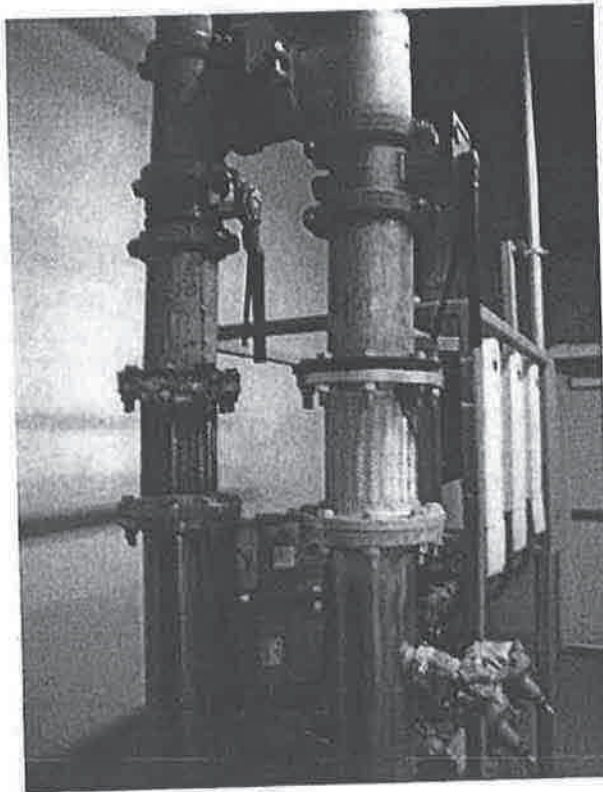
4. BP-1,  
close up of leaking flex flange connection (jpg72)



PANORAMA 1 Lower Mechanical Room

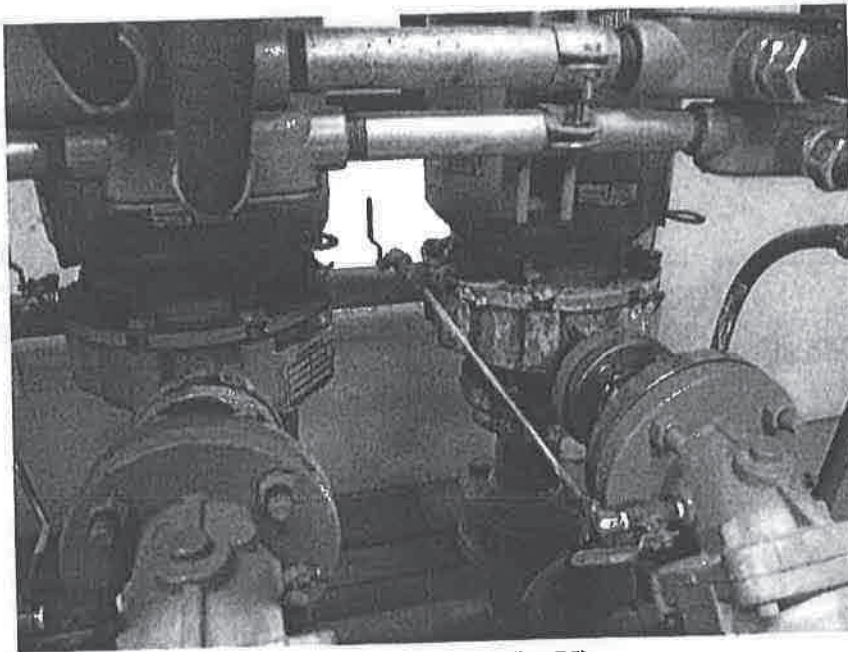


5. BP-1 (jpg 73)

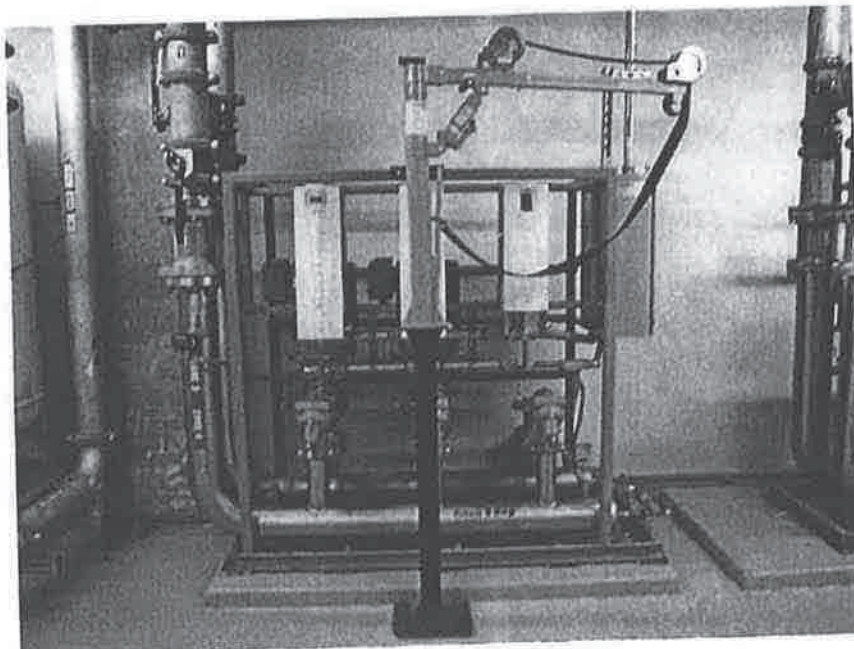


6. BP-1 (jpg(74)

PANORAMA 1 Lower Mechanical Room



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

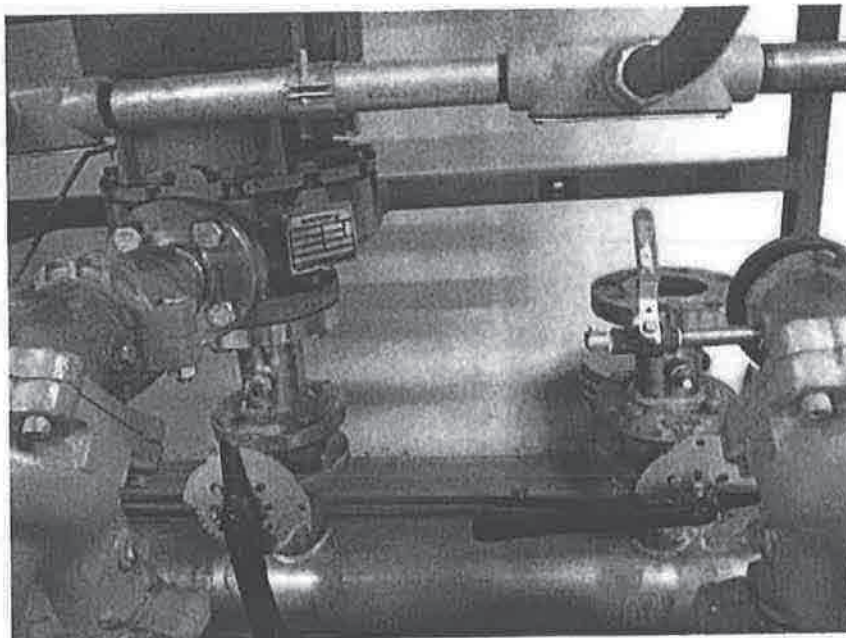


77)

8. BP-2, (jpg

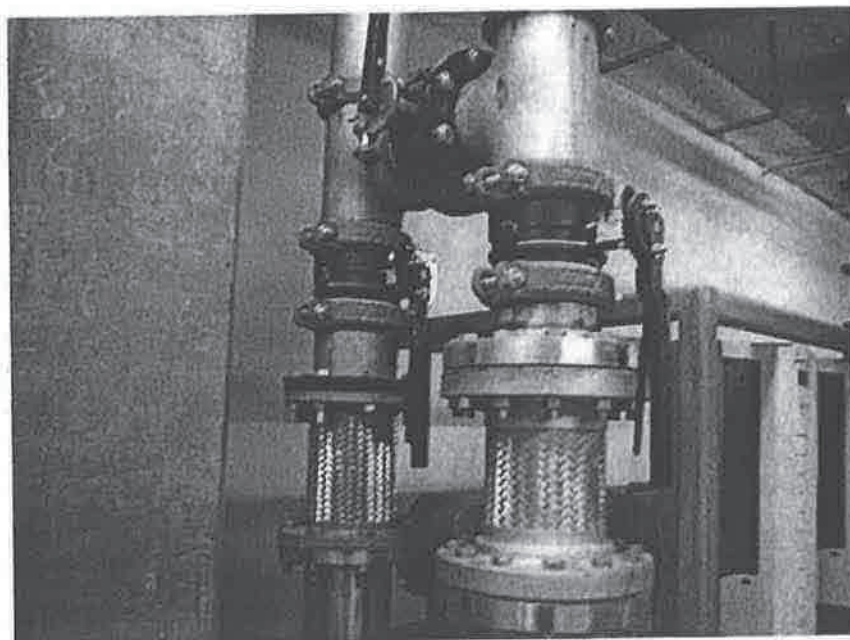


PANORAMA 1 Lower Mechanical Room



9. BP-2,

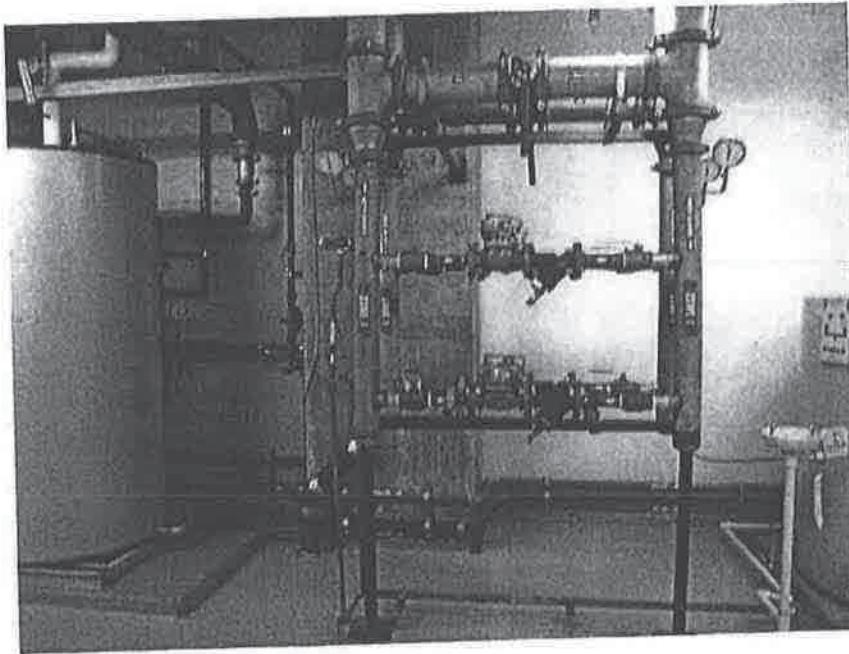
(jpg78)



10. BP-2,

(jpg79)

PANORAMA 1 Lower Mechanical Room



13. Pressure

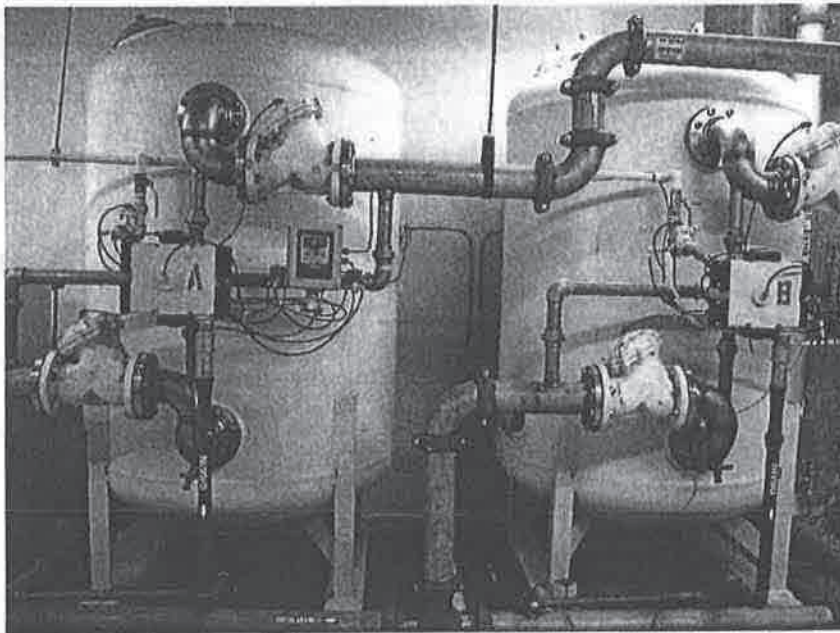
regulator manifold (jpg82).



14. Pressure

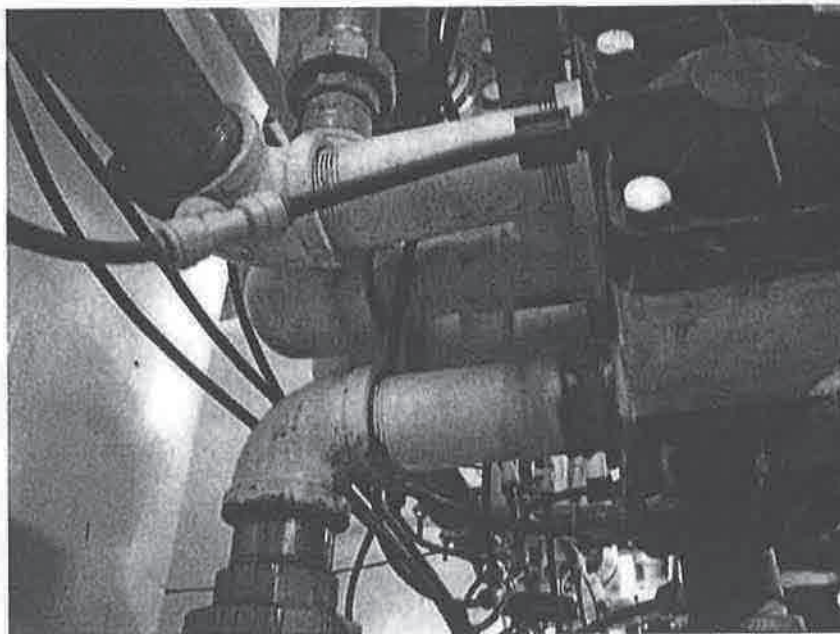
regulator manifold (jpg83) replace plastic lined steel nipple with stainless steel.

PANORAMA 1 Lower Mechanical Room



tanks (jpg80)

11. Media



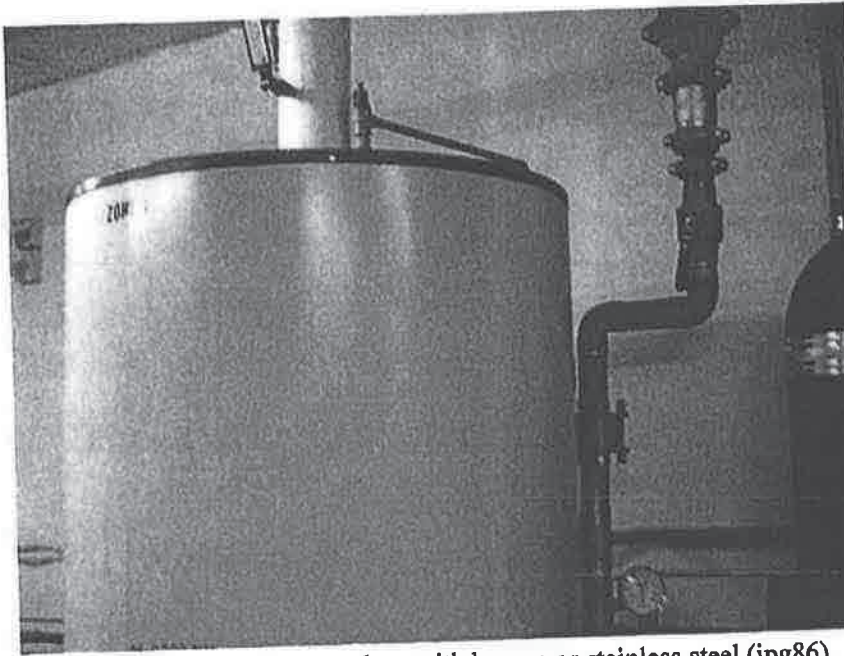
carbon steel parts (jpg81).

12. Culligan



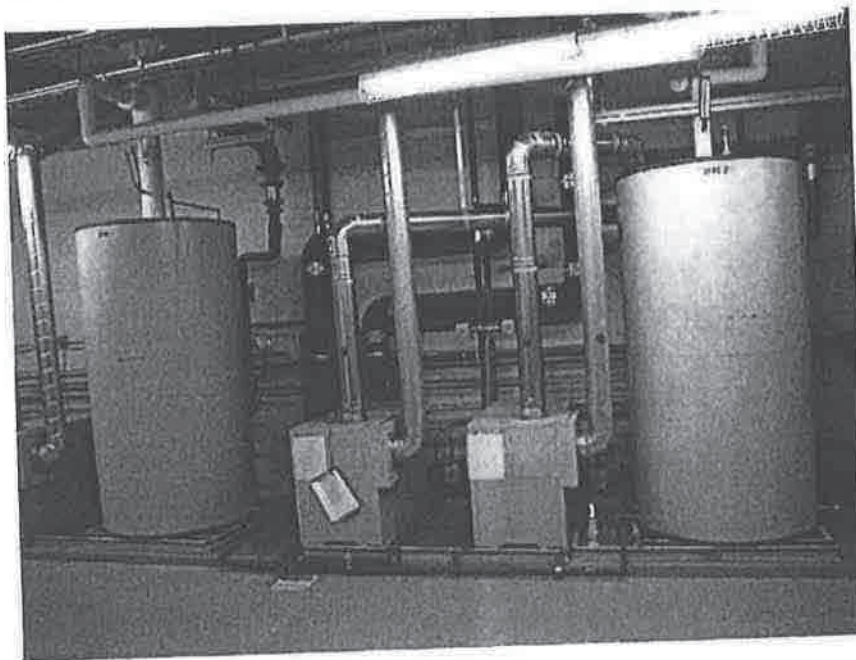


PANORAMA 1 Lower Mechanical Room



17. Hot water

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



18. (jpg87)