

EXHIBIT 3

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Attorneys for Third-Party Defendants Renco, LLC dba Renco Roofing and Desert Vista, Inc.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

GALLERY COMMUNITY
ASSOCIATION, an Arizona non-profit
corporation,

Plaintiff;

v.

K. HOVNANIAN AT GALLERY, LLC,
an Arizona limited liability company; K.
HOVNANIAN ARIZONA
OPERATIONS, LLC, an Arizona limited
liability company; K. HOVNANIAN
DEVELOPMENTS OF ARIZONA, INC.,
an Arizona corporation; K.
HOVNANIAN COMPANIES OF
ARIZONA, LLC, an Arizona limited
liability company; JOHN DOES I-X AND
JANE DOES I-X, WHITE
COPRPORTATIONS I-X ; BLACK
PARTNERSHIPS I-X; AND GRAY
LIMITED LIABILITY COMPANIES I-
X,

Defendants.

K. HOVNANIAN AT GALLERY, LLC,
an Arizona limited liability company; K.
HOVNANIAN ARIZONA

NO. CV2020-008714

**DECLARATION OF CHAD POLIVKA
ON BEHALF OF RENCO, LLC DBA
RENCO ROOFING.**

*(Assigned to the Honorable Katherine
Cooper)*

1 OPERATIONS, LLC, an Arizona limited
2 liability company; K. HOVNANIAN
3 DEVELOPMENTS OF ARIZONA, INC.,
4 an Arizona corporation; K.
5 HOVNANIAN COMPANIES OF
6 ARIZONA, LLC, an Arizona limited
7 liability company;

8 Third-Party Plaintiffs

9 v.

10 CHAS ROBERTS AIR
11 CONDITIONING, INC., an Arizona
12 corporation; DESERT VISTA, INC., an
13 Arizona corporation; GOTHIC
14 LANDSCAPING, INC., a California
15 corporation; HOME BUILDERS SITE
16 SERVICES OF ARIZONA, LLC an
17 Arizona limited liability company;
18 LEBLANC BUILDING CO., INC., an
19 Arizona corporation; LIBERTY
20 CONSTRUCTORS, LLC, an Arizona
21 limited liability company DBA LIBERTY
22 ARIZONA; RENCO LLC, an Arizona
23 limited liability company; dba RENCO
24 ROOFING; R/S SERVICE & SUPPLY,
25 INC., an Arizona corporation; SARGON
MASONRY CONSTRUCTION, LLC, an
Arizona limited liability company; and
DOES 1-50.

Third-Party Defendants.

I, Chad Polivka, make the following declaration:

1. I am over 18 and am a resident of the State of Arizona. I make this declaration based on my personal knowledge of the statements herein.

1 2. Since 1994, I have been a General Contractor. I have over 35 years of experience
2 as a general contractor in the construction field and I have knowledge regarding construction
3 means and methods, building assemblies, building codes, and the pertinent standards of care.

4 3. I hold professional licenses as a General Contractor, General Building
5 Contractor or Licensed Contractor/Supervisor in the states of Arizona, New Mexico, and
6 Tennessee.

7 4. I have been an expert witness in the construction field for 8 years. I am qualified
8 to express an opinion on the standard of care of contractors and subcontractors.
9

10 5. In Arizona, in construction defect litigation against licensed professionals, such
11 as Renco Roofing, expert opinion testimony is necessary to prove: i) a factual basis for a defect
12 claim; ii) the acts, errors or omissions that violate a pertinent care standard; and iii) the manner
13 in which the acts, errors or omissions caused or contributed to damages sought by a claimant.
14

15 6. Renco, LLC dba Renco Roofing (“Renco”) retained me to provide expert
16 consulting services in the area of general contracting and specifically pertaining to roofing and
17 related components installation and cost of repair. Based on my experience and education, I
18 am familiar with the building codes and other pertinent workmanship standards governing the
19 construction of a project like the residential condominium project at issue in this case – The
20 Gallery Condominium Association Project located at 3124 North 71st Street, Scottsdale,
21 Arizona 85251.
22

23 7. I am familiar with facts of this case and the pertinent allegations made by
24 Plaintiff, The Gallery Community Association, and Third-Party Plaintiffs K, Hovnanian.
25

1 8. I am also familiar with, and have read, the various expert reports of persons
2 retained as experts by both Plaintiff and Third-Party Plaintiffs.

3 9. The reports I have read are included in MC Consultants' Case Document Index
4 (Exhibit A).

5 10. I have completed my evaluation of the claims asserted against Renco in this
6 matter, which included but was not limited to, my evaluation of the documents included in the
7 MC Consultants' Case Document Index. **(Exhibit A).**

8 11. In addition, I prepared the following written expert reports and cost estimate
9 responsive to the allegations being asserted against Renco. The report is dated January 31,
10 2022; the Court ordered deadline for Third-Party Defendants to disclose final expert reports
11 and opinions was January 31, 2022. **(Exhibit B).**

- 12
- 13 a. MC Consultants Defect Issue Report dated January 31, 2022.
 - 14 b. MC Consultants Cost of Repair Estimate.
- 15

16 12. To perform the above-referenced tasks, and to author the MC Consultants Defect
17 Issue Report by the Court ordered deadline, \$28,165.00 **(Exhibit C – MC Consultants**
18 **Statement of costs incurred to date).**

19 13. I have been advised that on February 25, 2022, Third-Party Plaintiff emailed the
20 attorneys in this case (3) new expert reports and opinions that include new expert opinions,
21 repair protocol, costs of repair, and allocations of fault related to the Project. Based on the
22 information provided to me, the reports included:

- 23
- 24 a. Report
 - 25 b. Cost of repair

1 c. Allocation

2 14. If the untimely expert reports and opinions are permitted, significant additional
3 investigation will be necessary to evaluate the opinions, impact on Renco, and to prepare
4 written responsive reports.

5 15. I estimate it will take approximately one hundred forty six (146) additional hours
6 of expert investigation to review, prepare, and respond to the new expert reports and opinions
7 produced by Third-Party Plaintiffs on February 25, 2022, if those reports are permitted by the
8 Court. That estimate includes the following tasks:

- 9
- 10 a. Review Third-Party Plaintiff's three new expert reports;
 - 11 b. Respond thereto in a formal supplemental opinion;
 - 12 c. Conduct additional site inspections,
 - 13 d. Prepare for deposition and discovery on additional issues and reports; and
 - 14 e. Discussions with counsel to respond and recalculate the cost of repair.
- 15

16 16. The total cost associated with this additional investigation is estimated to be
17 **\$26,389.00. (146 hours x \$180/hour = \$14,625.00).**

18 17. My office has already incurred **\$28,165.00 in expert costs. (Exhibit C).**

19
20 Executed on: July 1, 2022

21
22 I declare under penalty of perjury that the foregoing is true and correct to the best of my
23 knowledge.


24
25 
Chad Polivka

EXHIBIT A

1. Visual inspections conducted on November 12, 2021.
2. Review of the following documents:
 - A. Complaint & Jury Demand, dated July 27, 2020.
 - B. Third-Party Complaint, dated October 6, 2020.
 - C. LeBlanc Building Co., Inc.'s Initial Disclosure Statement, dated April 9, 2021.
 - D. Sargon Masonry Construction, LLC's Initial Disclosure Statement, dated May 24, 2021.
 - E. Plaintiff's Initial Disclosure Statement, dated June 4, 2021.
 - F. Liberty Constructors' Initial Disclosure Statement, dated June 4, 2021.
 - G. Chas Roberts Air Conditioning, Inc.'s Initial Disclosure Statement, dated June 4, 2021.
 - H. Gothic Landscaping, Inc.'s Initial Disclosure Statement, dated June 4, 2021.
 - I. Defendants'/Third Party Plaintiff's Initial Disclosure Statement, dated June 16, 2021.
 - J. Plaintiff's 1st Supplemental Disclosure Statement, dated June 23, 2021.
 - K. SBSA, LLC, Construction and Design Compliance Report, dated June 23, 2021.
 - L. SBSA, LLC, Civil Repair Drawings.
 - M. SBSA, LLC, Defect Matrix.
 - N. SBSA, LLC, observation photographs.
 - O. SBSA, LLC, Technical Memorandum, dated July 22, 2021.

P. Plaintiff's 2nd Supplemental Disclosure Statement, dated July 23, 2021.

Q. Nautilus General Contractor, Inc., Estimate of Costs, dated July 23, 2021.

R. Plaintiff's 3rd Supplemental Disclosure Statement, dated August 5, 2021.

S. Bert L. Howe & Associates, Inc., Preliminary Defense Cost of Defense Scope Estimate, dated August 8, 2021.

T. Peterson Geotechnical Group, Civil and Geotechnical Engineering Evaluation, dated August 10, 2021.

U. Defendants'/Third Party Plaintiff's 1st Supplemental Disclosure Statement, dated August 11, 2021.

V. Bert L. Howe & Associates, Inc., Defense Response Report, dated August 11, 2021.

W. Nautilus General Contractor, Inc., observation photographs.

X. Plaintiff's 4th Supplemental Disclosure Statement, dated August 18, 2021.

Y. Defendants'/Third Party Plaintiff's 2nd Supplemental Disclosure Statement, dated August 19, 2021.

Z. Plaintiff's 5th Supplemental Disclosure Statement, dated August 25, 2021.

AA. Nautilus General Contractor, Inc., temporary repair photographs.

BB. Plaintiff's 6th Supplemental Disclosure Statement, dated September 9, 2021.

CC. Plaintiff's 7th Supplemental Disclosure Statement, dated October 4, 2021.

DD. Plaintiff's 8th Supplemental Disclosure Statement, dated October 15, 2021.

EE. SBSA, LLC, Supplemental Construction and Design Compliance Report, dated October 14, 2021.

FF. Plaintiff's 9th Supplemental Disclosure Statement, dated October 20, 2021.

GG. Renco's Answer to Third-Party Complaint, dated October 25, 2021.

HH. Plaintiff's 10th Supplemental Disclosure Statement, dated November 11, 2021.

II. Nautilus General Contractor, Inc., Revised Preliminary Estimate of Costs, dated November 11, 2021. Page 6 of 117 January 31, 2022.

JJ. Desert Vista, Inc.'s Initial Disclosure Statement, dated November 23, 2021.

KK. Plaintiff's 11th Supplemental Disclosure Statement, dated December 27, 2021.

LL. Plaintiff's 12th Supplemental Disclosure Statement, dated January 6, 2022.

MM. Renco, LLC dba Renco Roofing Initial Disclosure Statement, dated June 4, 2021.

NN. Plaintiff Responses to Renco Roofing's Discovery.

OO. K. Hovnanian Arizona Operations LLC's Responses to Plaintiff's Discovery.

PP.K. Hovnanian Arizona Operations LLC's Responses to Renco Roofing's Discovery.

QQ. Renco's Work Agreement, dated July 24, 2016.

RR. Renco's Master Subcontract Agreement, dated June 24, 2016.

SS. Unit Owner Photographs.

TT. City Approved project plans.

UU. Nautilus' Rebuttal Response to defense Estimate – BHA dated May 2, 2022.

VV. LeBlanc's First Supplemental Disclosure Statement dated February 14, 2022.

WW. LeBlanc's Expert Report dated February 14, 2022.

XX. Liberty Constructors' Second Supplemental Disclosure Statement dated January 31, 2022.

YY. Liberty's Expert, Shelton Consulting Group's Expert Report dated January 31, 2022.

ZZ. Gothic Landscaping's Expert Disclosure Statement dated January 31, 2022.

3. Review of the following industry standards:

- A. 2012 IRC
- B. McGraw-Hill Construction Databook
- C. RS Means Residential & Light Commercial Construction Standards
- D. NAHB Residential Construction Performance Guidelines
- E. David Kent Ballast Handbook of Construction Tolerances
- F. 2009 AROC Workmanship Standards for Licensed Contractors

EXHIBIT B

DEFECT ISSUE REPORT

Gallery Condominium Association

v.

K. Hovnanian at Gallery KKC

January 31, 2022

PREPARED FOR:

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INTRODUCTION

MC Consultants, Inc. has been retained by RAI & BARONE, P.C. on behalf of RenCo, LLC in the matter of Gallery v. K Hovnanian involving the Project known as The Gallery located in Scottsdale, Arizona. RenCo contracted with K. Hovnanian to provide roofing. MC Consultants has been retained to evaluate plaintiff and plaintiff Expert allegations and render opinions as to the veracity of those allegations.

MC Consultants inspected the roofs at 5 of 18 units made available by Plaintiff. Site inspections, including emergency inspections were conducted on August 13 and 23, October 6, November 12, December 14, 2021, and January 26, 2022. MC was present at Plaintiff water testing at Unit 3106 on August 23, 2021.

This report will address each alleged defect issue set forth in Plaintiff's Expert SBSA, LLC report dated June 23, 2021, and the Preliminary Estimate of Costs by Nautilus General Contractors, Inc., dated July 23, 2021, and K. Hovnanian's Expert Bert L. Howe & Associates report dated August 11, 2021.

PROJECT INFORMATION

Project Name: The Gallery
Location: Scottsdale, AZ

PROJECT OVERVIEW

Client Name: RenCo, LLC
General Contractor: K. Hovnanian at Gallery, LLC
Architect: Otak, Inc.
Structural Engineer: Felten Group
Construction Dates: 2016-2017
Jurisdiction: Maricopa County
Building & Occupancy Type: V-B / R-3
Applicable Codes: 2012 International Residential Code
2012 International Building Code
2012 International Fire Code
2012 International Plumbing Code

DOCUMENTS REVIEWED

- Construction and Design Compliance Report prepared by SBSA, dated 6/23/21
- Preliminary Estimate of Costs prepared by Nautilus General Contractors, Inc., dated 7/23/21
- Bert Howe & Associates report dated 8/11/21
- Architectural Drawings by Otak, Inc, dated 3/11/16, revised 6/8/16 and 8/2/16
- SBSA's supplemental construction and design compliance report dated October 14, 2021, (plaintiff's expert)
- Peterson Geotechnical Group's Civil and Geotechnical Engineering Evaluation Report dated August 10, 2021 (K. Hovnanian's expert – second report).
- Bert Howe's Preliminary Defense Cost of Repair Report dated August 22, 2021 (K. Hovnanian's CORE)
- Complaint, Third-Party Complaint, and Answer

- Plaintiff's Initial Disclosure Statement and First through Twelfth Supplemental Disclosure Statements
- K. Hovnanian's Initial Disclosure Statement and First and Second Supplemental Disclosure Statements
- RenCo's Initial Disclosure Statement
- Chase Roberts Initial Disclosure Statement
- Gothic Landscaping's Initial Disclosure Statement
- LeBlanc Building's Initial Disclosure Statement
- Liberty Constructors' Initial Disclosure Statement
- Desert Vista's Initial Disclosure Statement
- Sargon Masonry's Initial Disclosure Statement
- Plaintiff's Responses to Renco's First Set of Requests for Admission, First Set of Request for Production of Documents, and First Set of Non-Uniform Interrogatories
- K. Hovnanian's Responses to RenCo's First Set of Requests for Admission, First Set of Request for Production of Documents, and First Set of Non-Uniform Interrogatories
- SBSA's inspection and destructive testing photographs and field notes
- Job files of SBSA
- Arizona Registrar of Contractors ("AROC") Workmanship Standards, June 2009
- 2012 International Residential Code
- 2012 International Building Code

DESCRIPTION

The Gallery project is an 18-unit residential development in Scottsdale, Arizona (the "Project"). The Project is a townhome complex at the Southwest corner of East Earl Drive and Scottsdale Rd in Scottsdale, AZ and was constructed in approximately 2016-2017. The Project is comprised of four buildings with a total of eighteen (18) three-story townhome units. One of the buildings has three (3) units and the remaining three buildings each have five (5) units. The buildings are constructed with stucco over conventional wood framing.

C. BUILDING ENVELOPE

2.0 Moisture-Management Systems (Barriers, Flashings, Drainage, etc.)

a. Missing Sheet Metal Flashing at Fenestrations

Plaintiff allegation:

The architectural details specify 4-inch vertical leg sheet metal flashing with 1-inch drip edge and end dams at door and window heads. The flashings were detailed with 10-degree slope at door heads and 15-degree slope at window heads. The architectural details also required the WRB to be shingle-lapped over sheet metal head flashing and sealant under the drip edge to the fenestration frame. At the Gallery site, the sheet metal flashings were generally missing at the fenestration heads. The ineffectiveness of the flashing at fenestration heads is further compounded when cladding is installed tight to fenestration heads without a weep mechanism as discussed in Section C1.a. This allows water to drain directly onto the fenestration frame and accumulate. As constructed, the moisture-management system at fenestration heads is non-compliant with the architectural drawings. This non-compliant condition, along with the combination of other construction defects of the stucco system, will more likely than not reduce the functionality of the stucco system and the general appearance of the cladding in the foreseeable future.

Defense Analysis

SBSA asserts the window heads of every window are missing sheet metal flashing as specified in the construction drawings. SBSA further opines:

"The ineffectiveness of the flashing at fenestration heads is further compounded when cladding is installed tight to fenestration heads without a weep mechanism as discussed in Section C.1.a. This allows water to drain directly onto the fenestration frame and accumulate."

MC Analysis

- Sheet metal is not in client's scope of work.
- No repair offered.

B. BUILDING ENVELOPE

2.0 Moisture-Management Systems (Barriers, Flashings, Drainage, etc.)

b. Non-Compliant Flashings to Stucco Interface

Plaintiff allegation:

Metal flashing with a drip edge is installed at all deck perimeters and the perimeters of the cantilevered awnings above the end unit side doors to divert water away from the cladding below the flashing. Where the metal flashing and cladding interface is built incorrectly, the flashings cannot perform their intended function to divert water away from the cladding. Water is allowed to penetrate behind the claddings at the metal flashing interface, which results in damage to the underlying building components.

At the Gallery site, the metal flashing at the perimeter of the decks and cantilevered awnings is inset above the stucco and water drains into the stucco system below. The stucco is built out at the deck and cantilevered awning edges, which prevents the stucco from terminating behind the flashing. The architectural details illustrate stucco and wood fascia behind the metal edge flashing with a drip edge at the deck and cantilevered awnings, respectfully. At the as-constructed cantilevered awning edges, stucco was substituted for the painted wood trim. The architect specifies the edge flashing to be installed per the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) and required installation that prevents water from bucking against the cladding. At some locations, the edge flashing is installed over the stucco, which suggests the installer was cognizant of the project specifications. Stains and cracks in the stucco below the edge flashing indicate that water is not diverted away from the stucco.

Where non-compliant flashing to stucco interface exists, the as-built condition falls short of the prescriptive requirements of the relevant codes, design, and industry standards and, therefore the developer, contractor, and sub-contractors who performed the work fell below the standard of care.

Applicable Code/Industry Standard References/Project-Specific Documents:

Otak, Inc., "K. Hovnanian Homes, Gallery Townhomes," revised date August 2, 2016, Sheet AS.03 "Exterior Details," illustrates the following:

- "12/AB.03 Cantilevered Awning"*
- "5/AS.04 Deck Perimeter Flashing"*
- "10/A8.04 Deck Perimeter Flashing"*

- "9/A8.04 Deck Sheet Metal Corners"
- Sheet Metal and Air Conditioning Contractors' National Association, Inc. (SMACNA), "Residential Sheet Metal Guidelines," First Edition, 2001, Chapter 2 "Decks," subsection 2.2 "Coated Decks," subsection 2.2.1 "Deck to Wall Flashing,"

Developer Analysis:

SBSA asserts some of the balcony decks have edge metal that is buried by the stucco it is designed to cover. BHA agrees the condition is problematic and should be repaired. BHA disagrees with SBSA's excessive repair to remove the stucco and deck coating to access the existing edge metal and to reflash the decks before restoring the finishes. Where deck edge metal is buried in the stucco, extend the edge metal past the stucco face by installing new sheet metal under the existing drip edge. The new sheet metal should have a break to match the existing edge metal and be installed in a continuous bed of silicone sealant and then painted to match. No stucco or deck coating needs to be removed to facilitate this repair.

Developer Cost - \$4,650.00

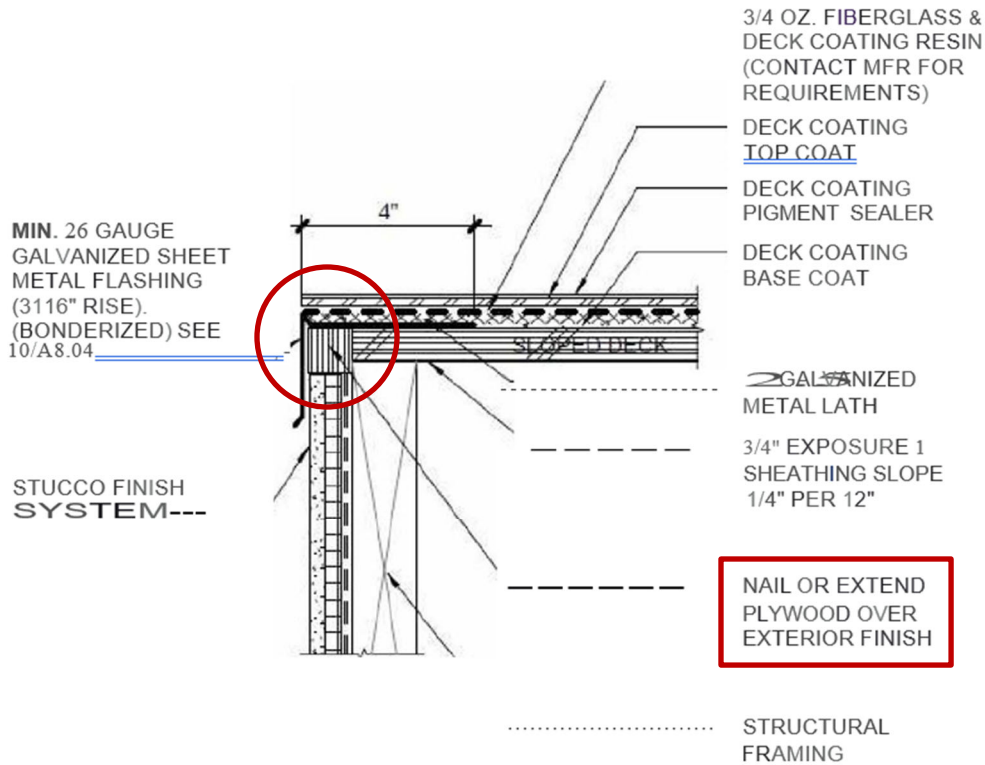
MC Analysis:

- MC did observe an improper junction of the stucco and deck edge metal at some, but not all conditions, but plaintiff has not provided evidence of leaks or damages attributable to the deck edge metal installation.



GALLERY-SBSA 001856

Deck metal properly installed over stucco



Detail 5/AS.04

- In detail 5/AS.04 Deck Perimeter Flashing (above), Note the wood block at the end of the deck 9 (circled). This block serves three purposes:
 1. A stop for the stucco
 2. A spacer for the sheet metal
 3. A nailer for the sheet metal.
 - MC did not observe a clear photograph of this component of the assembly in the plaintiff photographs to confirm the block was installed.
 - If the blocks were installed, then they were not sized properly, and the client has no responsibility for this issue.
 - If the blocks were not installed, the responsibility falls on the framer, stucco installer, general contractor, and the client.
- Ideally for this assembly, the stucco could have been installed before the deck membrane followed by the sheet metal, which would have properly lapped the stucco. However, there are other factors to consider when sequencing a construction project. MC is not critical of the sequencing per se; however, the general contractor should have devoted enough time to ensure the blocks were properly placed before the deck coatings.
- The responsibility for this allegation includes the general contractor, framer, stucco subcontractor and our client.

C. BUILDING ENVELOPE

2.0 Moisture-Management Systems (Barriers, Flashings, Drainage, etc.)

c. Non-Compliant Isolation Joints at Dissimilar Materials

Plaintiff Allegation

Interfaces of dissimilar cladding materials with each other, fenestrations, and penetrations were generally installed without a sealant joint and a backer rod. Where installed, the sealant joint width was inadequate.

Defense Analysis

SBSA asserts isolation joints at junctures between dissimilar materials is missing or is improper. From SBSA exemplar photographs in its report it appears SBSA is alleging this condition exists at windows, sliding glass doors, and stucco penetrations. SBSA does not provide any evidence of damage or non-performance.

MC Analysis

- This allegation is not relevant to client's scope of work
- No repair offered.

D. BUILDING ENVELOPE**3.0 ROOFING SYSTEM TYPE 1 – SPRAY POLYURETHANE FOAM (SPF)****a. Non-Complaint Slope of Roof Drains****Plaintiff allegation:**

Low-slope roof systems, including those used for waterproofing on roof decks, require positive slope towards the means of drainage to allow for adequate drainage of the system. The architectural drawings and the building codes require a minimum of 1/4-inch-per-foot or 2-percent for the low-slope roof system. Crickets were detailed along walls and at upslope locations towards the roof drains.

Where non-compliant slope of the roof system exists, the as-built condition falls short of the prescriptive requirements of the relevant codes, design, and industry standards and, therefore, the developer, contractor, and subcontractors who performed the work fell below the standard of care.

Plaintiff Repair:

- *Repairs to be performed at all roof decks with non-compliant drainage.*
- *Remove and replace membrane and underlying substrates as necessary to perform repairs described below.*
- *Remove and replace damaged underlying coverboard and structure, if present.*
- *Install tapered insulation to provide positive drainage (1/4-inch minimum) towards roof drains.*
- *Slope cricket a minimum of 1/4-inch-per-foot along the valley.*

Plaintiff Locations:

Repair at 100% of roofs

Developer Analysis:

SBSA asserts the foam roofs are not properly sloped which will allow water to collect on the roof and deteriorate the roof coating. SBSA did not evaluate the roof performance beyond a visual inspection. During its visual inspection SBSA observed:

"The as-built slope measurements along the roof crickets and adjacent to the drains at the units of the buildings have slopes less than required by the project-specific drawings."

While SBSA inspected all the roofs, SBSA does not make any specific roof allegations other than improper slope. SBSA did document some very small areas of ponding. The AROC recognizes ponding on flat roofs is to be expected. The AROC Workmanship Standards states:

"Minor ponding (up to 1/2" deep in small areas equivalent to no more than 1/3 of span) is acceptable providing roof is dry within 48 hours after rainfall."

BHA inspected all the roofs and did not observe any evidence the roofs are not performing. SBSA does note that two homeowners reported roof leaks but SBSA does not opine as to the cause. BHA is unaware if SBSA has performed any water testing on any of the roofs to determine if ponding water exceeds AROC allowable tolerances.

It is important to note that a foam roof needs to be maintained regularly for it to perform properly. BHA did not observe any evidence the roofs have received any maintenance other than minor repairs KHOV made during the PDA period of this litigation.

SBSA has not provided any evidence the roof is not draining properly. No defect exists. No repairs are needed.

Developer Repairs:

No Repair.

MC Analysis:

- MC agrees with Defense that the observed roof slopes to drains are adequate.
- Plaintiff did not demonstrate ponding on any of the roofs lasting over 48-hours. Such ponding would violate the AROC standards (#2 for flat built-up roofs and #9 for foam roofs) *“Minor ponding (up to 1/2" deep in small areas equivalent to no more than 1/3 of span) is acceptable providing roof is dry within 48 hours after rainfall.”*
- On July 23, 2021, Nautilus Reconstruction, Contracting and Consulting temporarily repaired a roof drain with black mastic at Unit 3106. Pre-repair Plaintiff photographs indicated there were small cracks in the membrane lapping over the edge of the roof drain.
- After the Defense report dated August 11, 2021, MC inspected the interior at Unit 3106 on August 13, 2021. A section in the laundry room ceiling was cut out below the repaired roof drain and MC also observed an area of bubbled drywall in the ceiling of the master bedroom adjacent to the laundry room. On the roof MC observed a gouge in the roof membrane near the repaired drain and cracks in the black mastic placed by Nautilus. No water testing was performed.
- On August 23, 2021, MC observed water testing at the same location in Unit 3106. The bubbled drywall ceiling in the master bedroom observed on August 13 was cut out to allow for observation of roof drain underside. The back side of the drywall was stained and the framing below the roof drain was also stained. On the roof, the black mastic at the drain had been replaced or covered by a white sealer compound as was the previously observed gouge in the roof membrane. Water testing was performed, and conditions observed did not show evidence water intrusion.
- On August 13, 2021, in Unit 3123 MC observed a stain at a kitchen ceiling can light directly below the threshold at the roof access door. Plaintiff did not conduct water testing at this location, and Plaintiff failed to demonstrate the ceiling stain results from any alleged roof membrane issues.
- On January 26, 2022, MC attended a site inspection at Unit 3112. MC did not observe evidence of ponding that would exceed the previously mentioned AROC 48-hour standard. There was evidence of repairs at the curbed LG Inverter fan, T-tops, and field patches. There were three different colors of coatings present throughout the roof: dark gray, light gray and white. This suggests two roof repairs

have occurred since the original coatings were installed by the client. MC did observe slight cuts in the membrane and other mechanical damage likely from post-installation roof traffic and work being performed on the roof by others.

- In the interior, MC observed three ceiling stains in the unit. Since Plaintiff did not conduct any water testing, MC was unable to determine if the stains were active or existed before any repairs were made.

Conclusions:

- No significant roof repairs relevant to client's scope of work are warranted and the roofs are generally performing as intended.
- Though MC observed some interior ceiling drywall stains, Plaintiff has not demonstrated any damages to the interior of any units are related to leaks through the roof membrane beyond those caused by penetrations such as roof drains (plumbing) or mechanical equipment.
- The only water testing MC is aware of occurred at a Unit 3106 roof drain. Plaintiff testing did not determine if the origin of the perceived leak was caused by the roof membrane, plumbing roof drain assembly or another unknown source.

MC Repair:

Perform a limited roof tune-up to seal penetrations, cuts, and other damages to the roof membrane.

4.0 Elevated Decks, Balconies, or Walkways

a. Non-Compliant Slope of Deck

Plaintiff Allegation

Where access to elevated decks was provided, the slope of the deck at the deck edge was inadequate to promote positive drainage and allows ponding of water.

Defense Analysis

Defense Analysis and Repair Recommendations:

SBSA asserts the private balcony decks are not properly sloped which allows water to pond. SBSA further opines:

"As built, the ponding water that collects on top of the membrane system provides an unsafe condition for residents and will lead to premature deterioration and eventual failure of the waterproofing."

SBSA did not perform any destructive or water testing at any of the balcony decks. SBSA's opinion is limited to its visual inspection of several decks. SBSA does not provide any support to its claim the decks are unsafe or are deteriorating prematurely.

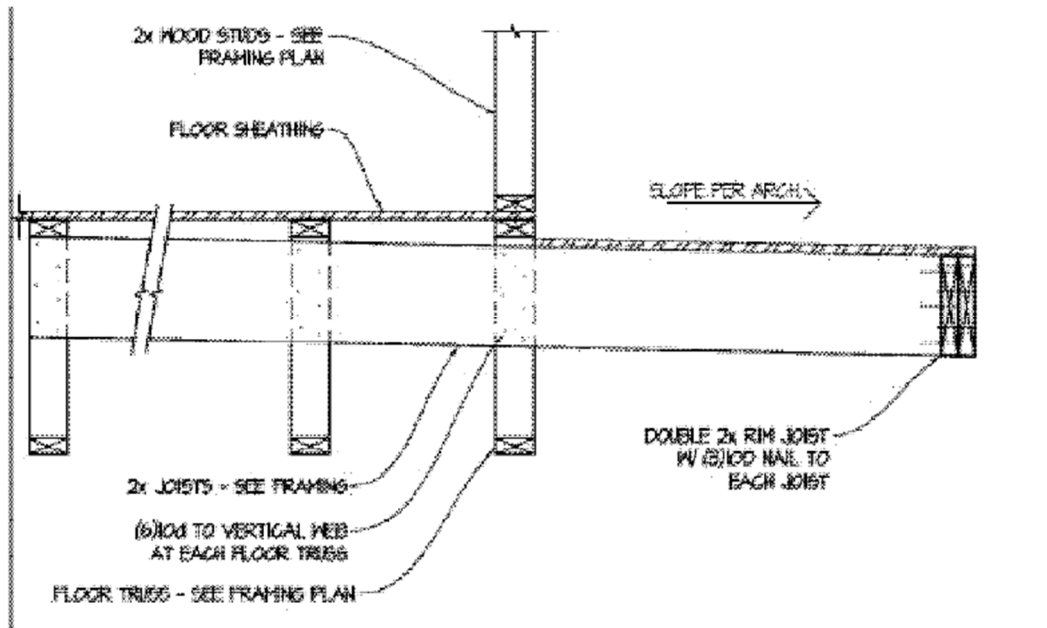
BHA inspected every deck made available and did not observe any evidence the decks are not performing. BHA did note some small spots where water had ponded at a few decks, but noted the area was very shallow. The AROC Workmanship Standards regarding flat roofs applies to balcony decks. The guideline states:

"Minor ponding (up to 1/2" deep in small areas equivalent to no more than 1/3 of span) is acceptable providing roof is dry within 48 hours after rainfall."

SBSA has not provided any evidence the private decks are not draining properly. No defect exists. No repairs are needed.

MC Analysis

- This allegation is not relevant to client's scope of work.
- Per the plans, slope was to be provided in the framing, not the deck membrane.
- Refer to Issue 2.0 b, Detail 5/AS.04, the slope is designated in the framing.
- Additionally, slope is designated in the framing in Detail 907 (below), from the Plaintiff report.



- No repair offered.

LIMITATIONS

The opinions contained in this report are solely derived in accordance with current standards of professional practices in the community where the observations have been made. Except as otherwise described herein, our opinions are based solely on visual inspections.

Standard of care is time dependent. This report has been prepared in accordance with the duty of care of forensic construction/architectural consultants as of the date on this report. We reserve the right to amend our opinions, if additional information comes to our attention, but we assume no obligation to do so.

The services performed are solely for the use of our client, RenCo, LLC. No other person or entity other than our client may rely on the opinions contained in this report without our prior written consent.

Respectfully submitted,



Chad Polivka
MC Consultants, Inc.

NCS-Gallery COA v. K. Hovnanian
Scottsdale, Arizona

Plaintiff Scope Defense Cost
Cost of Repair Estimate

1/31/2022

Prepared by:

MC Consultants, Inc.
2055 Corte del Nogal
Carlsbad, CA 92011
T 760-930-9966
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Description	Loc	Crew Type	Crew hrs.	Crew Type	Crew Wage	Labor Total	Mat Cost Loc	Equip Total Material	Equip Per Loc	Total Equip Cost	Sub SF Per	Sub Sf/Ln/Ea. Cost	Sf/Ln Lump	Labor/Mat Equip/Sub Hard- \$	
1.0	Project Set-up / Protections														
A	Protection / Safety	1	D 1	4.0	\$41.86	\$167.44	\$45.00	\$45.00		\$0.00			\$0.00	\$212.44	Site Protection / Traffic
B	Deliveries / Yard	1	D 1	2.0	\$41.86	\$83.72	\$65.00	\$65.00	\$50.00	\$50.00			\$0.00	\$198.72	Material Deliveries
C	Dumpsters / Debris	1				\$0.00		\$0.00		\$0.00	1	\$150.00	\$150.00	\$150.00	Project Debris / 1 dumpster
D	Misc. Labor / Clean up	1	D 1	4.0	\$41.86	\$167.44	\$10.00	\$10.00		\$0.00			\$0.00	\$177.44	Site Clean Up
Sub-Total Project Set-Up														\$738.60	One Time Charge
2.0A	Moisture-Management System (Barriers, Flashings, Drainage, Etc.)														
A	Missing Sheet Metal Flashing at Fenestration	1					\$0.00	\$0.00		\$0.00			\$0.00	\$0.00	No Repair
B	Non-Compliant Isolation Joints at Dissimilar Materials	1					\$0.00	\$0.00		\$0.00			\$0.00	\$0.00	No Repair
	Total Decks													\$0.00	No Repair
Total Building Envelope														\$0.00	
2.0B	Non-Complaint Flashings to Stucco Interface														
A	Protection	1	D 1	0.5	\$41.86	\$20.93	\$10.00	\$10.00		\$0.00			\$0.00	\$30.93	One man crew
B	Edge Flashings	1	RC 1	1.5	\$45.08	\$67.62	\$65.00	\$65.00		\$0.00			\$0.00	\$132.62	New edge metal
C	Sealants	1	D 1	0.7	\$41.86	\$29.30	\$25.00	\$25.00		\$0.00			\$0.00	\$54.30	Sheet Metal
D	Punch / Clean Up	1	D 1	0.5	\$41.86	\$20.93	\$10.00	\$10.00		\$0.00			\$0.00	\$30.93	One man crew
	Total Decks	18												\$248.78	Cost per location
Total Drain Repairs														\$4,478.08	
3.0	Roofing Tune-Up Type 1 - Spray Polyurethane Foam (SPF)														
A	Set up / Protection	1	D 2	1.0	\$75.67	\$75.67	\$15.00	\$15.00		\$0.00			\$0.00	\$90.67	Two Man Crew
B	Safety / Ladders / Equipment	1	D 1	1.0	\$41.86	\$41.86	\$20.00	\$20.00	\$55.00	\$55.00			\$0.00	\$116.86	One Man Crew
C	Drain Repair / Waterproofing	1	R2	16.0	\$98.21	\$1,571.36	\$75.00	\$75.00	\$65.00	\$65.00			\$0.00	\$1,711.36	Two Man Roofing Crew / 32 total hrs, 16 x 2 men
D	Roof Patch / top coat	1	R1	4.0	\$56.35	\$225.40	\$45.00	\$45.00	\$45.00	\$45.00			\$0.00	\$315.40	One Man Crew
E	Punch / Clean Up	1	D 1	1.5	\$41.86	\$62.79	\$15.00	\$15.00		\$0.00			\$0.00	\$77.79	One Man Crew
	Total Roof Units	4												\$2,312.08	Cost per building
Total Drain Repairs														\$9,248.32	

NCS-Gallery COA v. K. Hovnanian
Cost to Repair - Detail Sheet

4.0A	Description	Loc	Crew Type	Crew hrs.	Crew Wage	Labor Total	Mat Cost Loc	Total Material	Equip Per Loc	Total Equip Cost	Sub SF Per	Sub Sf/Ln/Ea. Cost	Sf/Ln Lump	Labor/Mat Equip/Sub Hard- \$	
A	Non-Complaint Slope	1					\$0.00	\$0.00		\$0.00			\$0.00	\$0.00	No Repair
														\$0.00	No Repair
Total Elevated Deck													\$0.00		
Total Hard Cost													\$14,465.00		

EXHIBIT C

MC Consultants, Inc. Consultation Estimate*

21-557 Gallery Community Assn v. K. Hovnanian at Gallery

Task	Assumptions	Designation	Hours Estimated	Rate	Subtotal
Investigation (Completed)					
Initial Call with Client and/or Attorney		Expert - GC	0.5	185.00	\$ 92.50
Document Organization and Review		Expert - GC	5	185.00	\$ 925.00
		Expert - CORE	2.5	185.00	\$ 462.50
	Includes Document Log/Index; photo organization as to pltf VI and DT	Senior Construction Consultant	15	165.00	\$ 2,475.00
		Project Manager	8	100.00	\$ 800.00
Teleconferences with Client and/or Attorney		Expert - GC	0.5	185.00	\$ 92.50
		Expert - CORE	0.5	185.00	\$ 92.50
Subtotal			32		\$ 4,940.00
Investigation (Tasks in Progress/Future Tasks)					
Document Organization and Review		Expert - GC	5	185.00	\$ 925.00
		Expert - CORE	2	185.00	\$ 370.00
		Senior Construction Consultant	6	165.00	\$ 990.00
		Project Manager	2	100.00	\$ 200.00
Subtotal			15		\$ 2,485.00
Inspections (Visual and/or Destructive Testing)(Completed)					
Prepare for Inspections		Expert - GC	1.5	185.00	\$ 277.50
		Senior Construction Consultant	10.5	165.00	\$ 1,732.50
Attend Inspections	8/13/21; 8/23/21 - Emergency Repairs; includes one way travel from MC Phoenix office (approx. 20 miles; 30 minutes - r/t)	Senior Construction Consultant	9	165.00	\$ 1,485.00
	10/7/21 - Non-emergency inspection; includes one-way travel from MC Phoenix office (approx. 20 miles; 30 minutes r/t)	Expert - GC	4.5	185.00	\$ 832.50
	11/12/21 - Non-emergency inspection; includes one-way travel from MC Phoenix office (approx. 20 miles; 30 minutes r/t)	Senior Construction Consultant	8.5	165.00	\$ 1,402.50
	12/16/21 - Non-emergency inspection; includes one-way travel from MC Phoenix office (approx. 20 miles; 30 minutes r/t)	Expert - GC	6.5	185.00	\$ 1,202.50
	1/26/21 - Emergency inspections/repairs; includes one-way travel from MC Phoenix office (approx. 20 miles; 30 minutes r/t)	Expert - GC	4.5	185.00	\$ 832.50
	3/9/22 - Emergency inspections/repairs; includes one-way travel from MC Phoenix office (approx. 20 miles; 30 minutes r/t)	Senior Construction Consultant	2	165.00	\$ 330.00
	4/1/22 - Emergency inspections/repairs; includes one-way travel from MC Phoenix office (approx. 20 miles; 30 minutes r/t)	Senior Construction Consultant	4.5	165.00	\$ 742.50
Post Inspection Work		Expert - GC	3.5	185.00	\$ 647.50
		Senior Construction Consultant	20	165.00	\$ 3,300.00
Verbal Report of inspections to Client and/or Attorney		Expert - GC	3	185.00	\$ 555.00
		Senior Construction Consultant	2	165.00	\$ 330.00
Subtotal			80		\$ 13,670.00
Inspections (Visual and/or Destructive Testing)(Tasks in Progress/Future Tasks)					
Prepare for Inspections		Expert - GC	8	185.00	\$ 1,480.00
Attend Inspections	6/13/22 - 6/17/22: Emergency Roof Repairs; Includes one-way travel from MC Phoenix office (approx. 20 miles; 30 minutes r/t).	Expert - GC	40	185.00	\$ 7,400.00
Post Inspection Work		Expert - GC	20	185.00	\$ 3,700.00
		Senior Construction Consultant	4	165.00	\$ 660.00
Verbal Report of inspections to Client and/or Attorney		Expert - GC	1	185.00	\$ 185.00
Subtotal			73		\$ 13,425.00

Task	Assumptions	Designation	Hours Estimated	Rate	Subtotal
Analysis (Tasks in Progress/Future Tasks)					
Report of Findings		Expert - GC	3.5	185.00	\$ 647.50
		Senior Construction Consultant	30	165.00	\$ 4,950.00
		Project Manager	1	100.00	\$ 100.00
Cost of Repair Estimate (CORE)		Expert - CORE	12	185.00	\$ 2,220.00
		Expert - GC	0.5	185.00	\$ 92.50
	Includes repair recommendations.	Senior Construction Consultant	6	165.00	\$ 990.00
Project Meeting and/or Teleconference with Client, Attorney, and/or co-consultants		Expert - GC	1.5	185.00	\$ 277.50
Subtotal			54.5		\$ 9,277.50
Mediation (Completed)					
Attend Mediation	12/30/21 - Telephone standby	Expert - GC	1.5	185.00	\$ 277.50
Subtotal			1.5		\$ 277.50
Expert Deposition (Tasks in Progress/Future Tasks)					
Prepare for Expert Deposition		Expert - GC	4	185.00	\$ 740.00
		Expert - CORE	4	185.00	\$ 740.00
		Project Manager	2	100.00	\$ 200.00
Prepare MC Job File Production	GC and CORE experts' job files.	Project Manager	8	100.00	\$ 800.00
Review and Analyze Deposition Transcripts	Transcripts to be identified at a later date.	Expert - GC	8	185.00	\$ 1,480.00
		Senior Construction Consultant	16	165.00	\$ 2,640.00
Pre-Deposition Meeting and/or Conference with Attorney		Expert - GC	2	185.00	\$ 370.00
		Expert - CORE	2	185.00	\$ 370.00
Attend Deposition		Expert - GC	4	350.00	Paid by others
		Expert - CORE	4	350.00	Paid by others
Post-Deposition Task Meeting and/or Teleconference with Attorney		Expert - GC	2	185.00	\$ 370.00
		Expert - CORE	2	185.00	\$ 370.00
Subtotal			58		\$ 8,080.00
Arbitration or Trial					
New Tasks (per highlights above)			146		\$ 23,990.00
Contingency 10%					\$ 2,399.00
Subtotal (New Tasks)					\$ 26,389.00
Tasks In Progress and/or Completed	Billed through 4/30/2022		168		\$ 28,165.00
Total Consultation Estimate					\$ 54,554.00
<p align="center">*This estimate is based on currently available data. It is subject to change as additional information is received and as industry practices may change. This estimate is not a guaranteed cost.</p> <p align="center">Costs for outside experts, destructive testing construction crews, and reimbursables are excluded from this estimate.</p>					