



I N S L E E B E S T
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July 23, 2013

VIA EMAIL AND REGULAR MAIL
kwilson@bbtacoma.com

Mr. Kim Wilson
Brown & Brown Insurance
1145 Broadway Plaza, Suite 700
Tacoma WA 98402

Re: City of Lynnwood v. NAC et al
Natatorium Property Damage Claim

Dear Mr. Wilson:

I represent the City of Lynnwood regarding its claims against its contractor, engineer and others for product defects and property damage at the Lynnwood Recreation Center Natatorium. This letter represents the City's claim for coverage and reimbursement for property damage incurred at the Natatorium between 2011 and the present.

Attached to this letter is a building survey completed at the request of the City that describes the building and equipment defects that have damaged various fixtures and structures. These include computer components and wiring, plumbing and lighting fixtures, building components, and ductwork. [See BCRA Envelope Investigation, June 12, 2012, Exhibit A Attached.] Since the BCRA report was produced, the City has attempted to remediate several of the items through asserting warranty claims against the builder and others. Unfortunately these efforts have not resulted in fixing the problems or repairing the damage.

The City has now filed suit against the general contractor, its engineer, and the air handling unit manufacturer. [Complaint, April 25, 2013, Exhibit B Attached.] The defendants have recently filed their responses denying liability. [Answers, Exhibit C Attached.] As a result it appears the City has a property damage claim that may not be readily recoverable without significant expense and delay. Therefore the City is filing

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Mr. Kim Wilson
July 23, 2013
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this claim for coverage under its property damage policies applicable specifically to this project and in addition any general policies that may apply.

The City requests that you refer this matter to the appropriate insurance carriers and provide the City with all policies (or summaries of policies) that were issued during this time period that might provide coverage for these losses. In addition, the carriers should be advised that the City is currently removing the air handling units and replacing them with units that are more suitable to this application. The goal of the City is to have the units removed and replaced by mid-September. The old units will be removed within the next few weeks but will be preserved in storage. If the carriers wish to investigate or review the current installation please let me know as soon as possible to arrange a time to do so. If I can be of further assistance please let me know and feel free to contact me with any questions and concerns.

Very truly yours,



William A. Linton

WAL:wal

Cc: Lynn Sordel (via email only)
Lorenzo Hines (via email only)



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Building Envelope Investigation

Lynnwood Recreation Center

Lynnwood, Washington

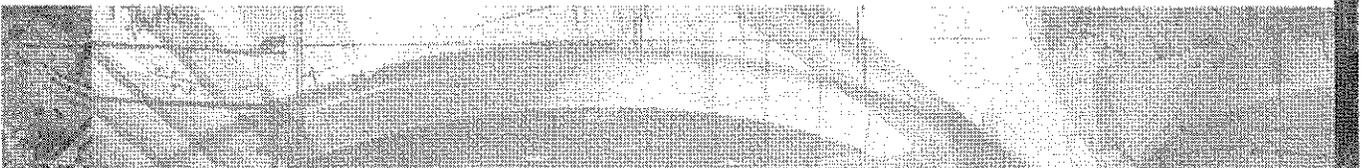
Project No: 12110

Property: 18900 44th Ave West
Lynnwood, WA 98036

For: City of Lynnwood

Date: June 12, 2012

BCRADESIGN.COM



OVERVIEW

Purpose Of Investigation – Visual, infrared, and climatic conditions assessment of recreation center, specifically regarding the interaction of natatorium spaces with the rest of the building and mechanical systems.

Scope - The issues noted in this report address actual and potential areas of degraded building materials and trapped moisture in the building. Recommendations are offered to assist the City of Lynwood in maintenance and repair of the building due to poorly performing mechanical systems and interactions between the natatorium spaces and the rest of the building.

Investigation Limitations - The methods used in the investigation site visit included visual inspection, infrared thermography, photographic documentation, and climatic data collection. Limited intrusive openings were made into the building from the exterior or interior. Any comments or recommendations are based on areas observed and discussions with the client or building occupants.

FINDINGS

Climatic Data Collection

BCRA used HOBO data loggers to record temperature, relative humidity, and light intensity data over a period of one week and placed the units in strategic locations in and around the natatorium spaces. Data points were collected every four minutes (approximately) and the resulting graphs were interpreted to draw conclusions about the performance of mechanical systems and the effects of occupant load and program schedule on the climate in and around the natatoriums.



Figure 1. Data logger placed in boiler room with thermocouple to exterior

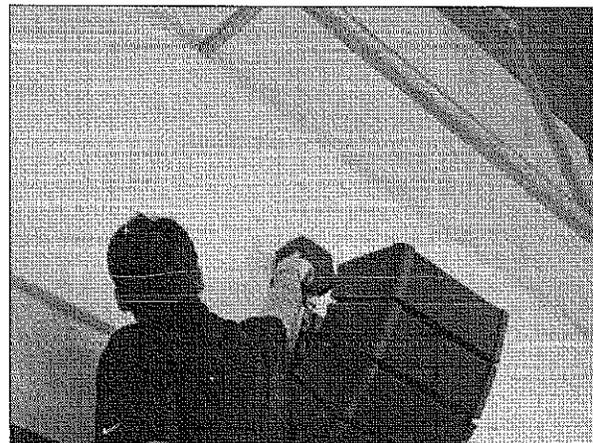


Figure 2. Data logger placed above speaker in "beach" natatorium

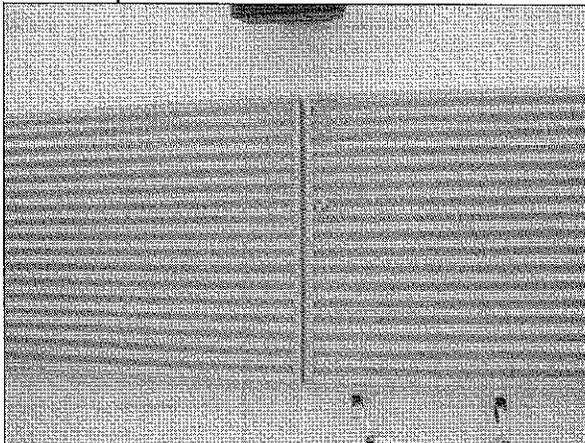


Figure 3. Data logger attached to sound damper screen in "lap" natatorium

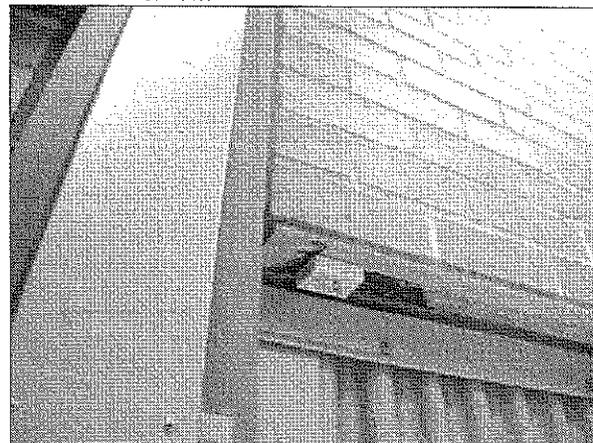


Figure 4. Data logger placed on the exterior of the building at the roof level

Results of the data collection are shown graphically as Appendix A to this report. See Table 1 below for basic statistics for the temperature and relative humidity data for each of the four locations. The data indicates that changes and additions to the HVAC system serving the natatoriums appear to have had a positive effect and have stabilized the temperature balance between the two natatorium spaces, as well as reducing the overall relative humidity to more acceptable levels. Additionally, BCRA was able to

observe that the Natatoriums are operating at a negative pressure relative to the exterior and surrounding interior spaces and are thus not pushing hot, humid air laden with chlorine and chloramines into the surrounding construction.

Table 1. Statistical Analysis of Lynnwood Recreation Center Climatic Data

	Beach Temp (*F)	Beach RH (%)	Lap Temp (*F)	Lap RH (%)	Boiler Temp (*F)	Boiler RH (%)	Ext Temp (*F)	Ext RH (%)
Minimum	78.7	31.0	81.5	29.7	69.7	26.3	48.3	24.8
Maximum	91.0	81.9	90.2	54.2	82.2	62.1	72.5	80.3
Mean	86.0	48.4	85.3	40.0	78.4	38.9	57.3	59.6

Visual and Infrared Inspection

A visual and infrared inspection of the building was performed both on the exterior and interior. The inspection centered on the natatorium areas but also included surrounding interior spaces and the roof. The findings of the inspection are documented in the following images.



Figure 5. Moisture collecting under tube slide



Figure 6. Condensation on exterior door frame

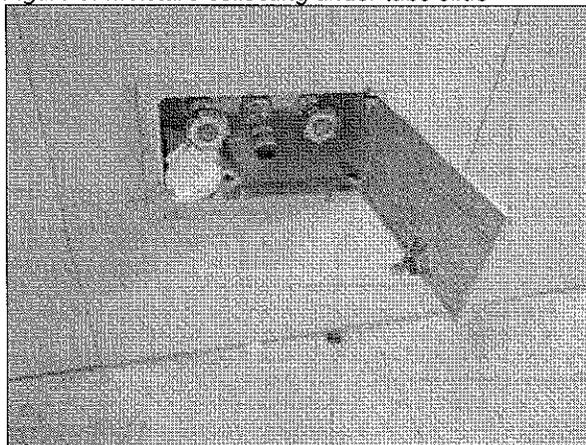


Figure 7. Corrosion on valves and housing/hardware

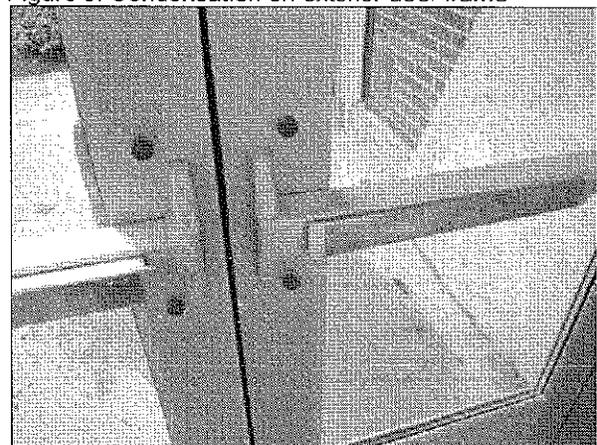


Figure 8. Corrosion on door hardware

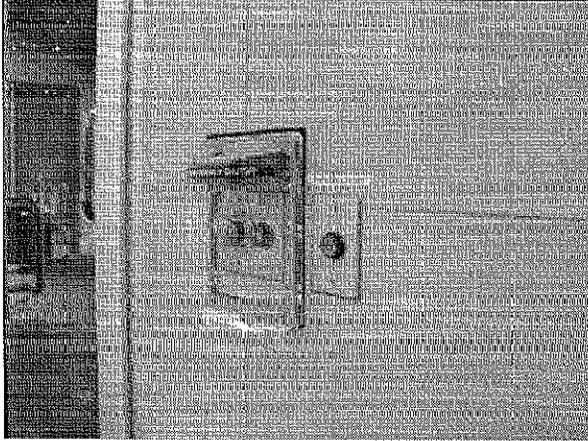


Figure 9. Corrosion on control buttons, cover was added to minimize damage

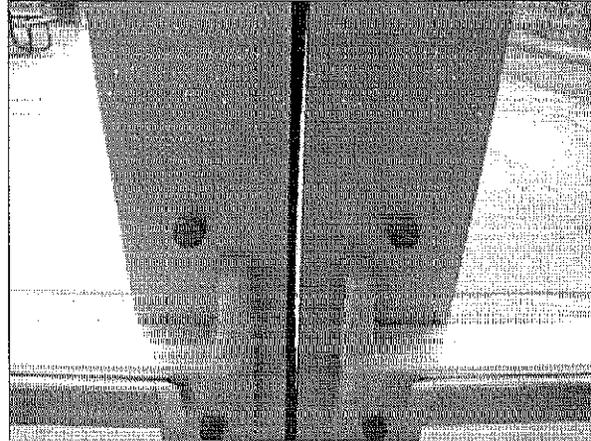


Figure 10. Gap in door weather sealing, corrosion on hardware

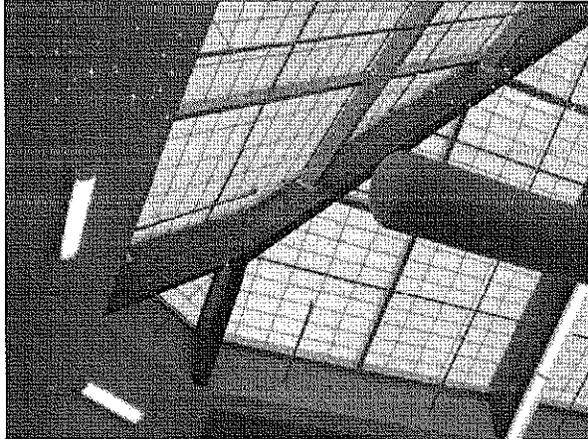


Figure 11. Condensate on translucent panels causing minor damage to glue-lams

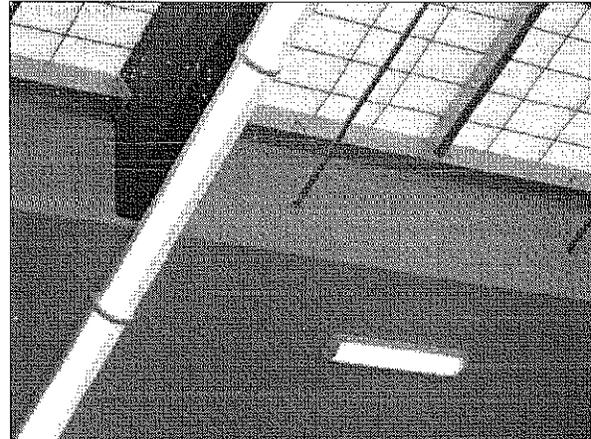


Figure 12. Condensate on translucent panels running down aluminum frames and is saturating walls

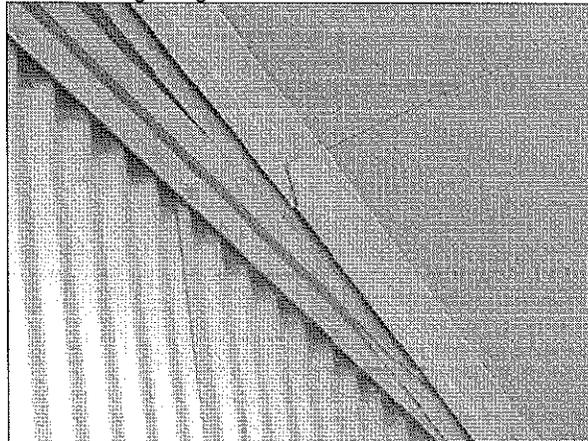


Figure 13. Corrosion of building materials evident on exterior from previous chlorine and moisture laden air leakage

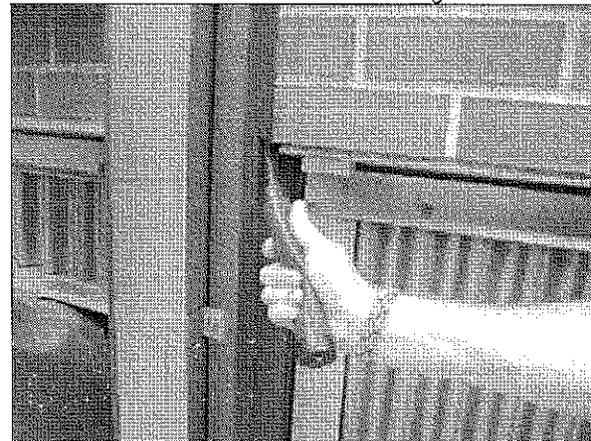


Figure 14. Smoke puffer showing air leakage into the building due to negatively pressurized natatoriums

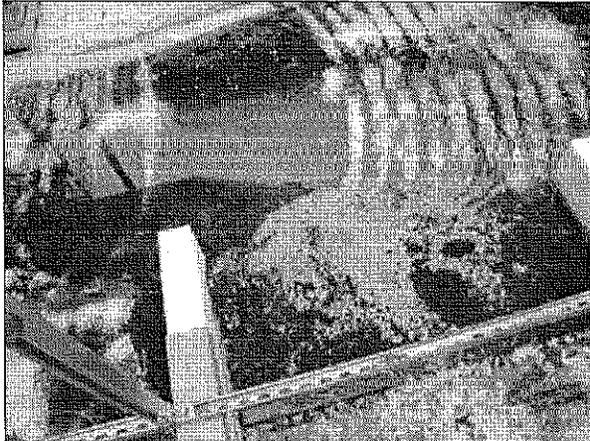


Figure 15. Ponding on roof near mechanical units

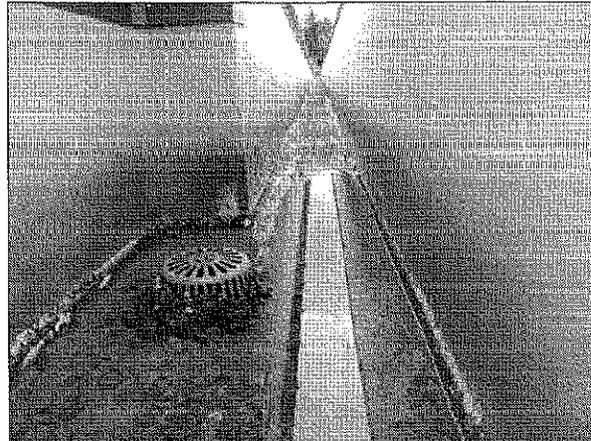


Figure 16. Clogged roof drain and ponding at base of Beach natatorium roof section

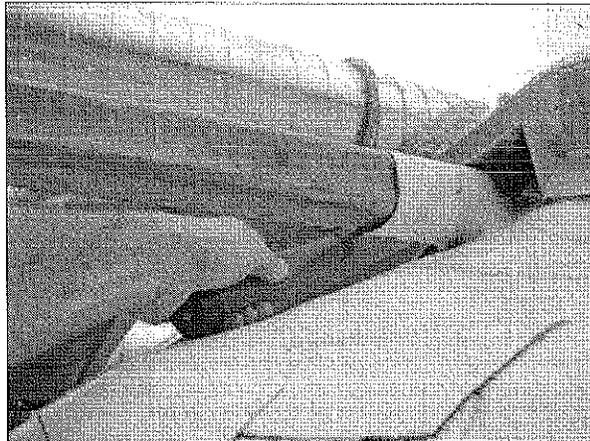


Figure 17. Air leakage at mechanical unit support penetration shows negative pressure on natatorium spaces

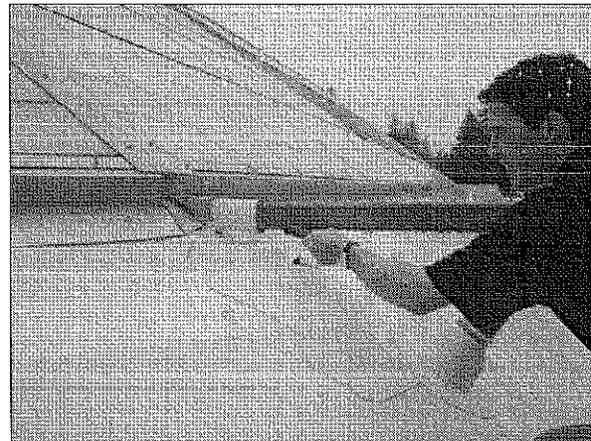


Figure 18. Rust colored on roofing below air leak

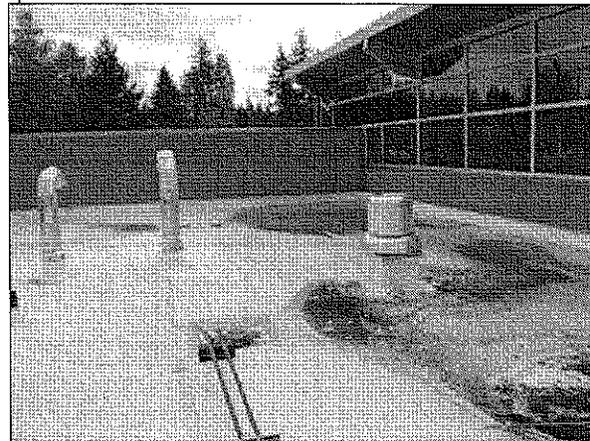


Figure 19. Ponding on roof near lobby and over racquetball courts

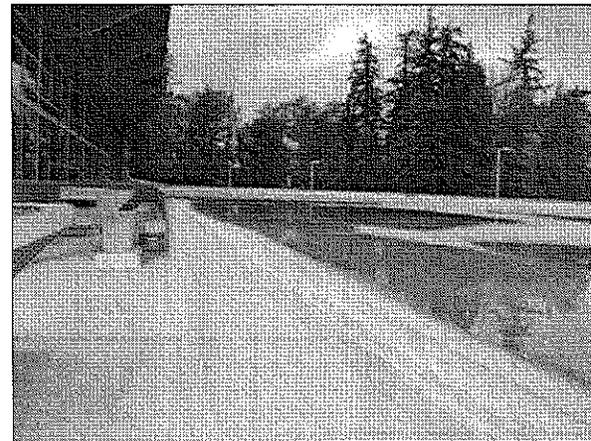


Figure 20. Ponding on roof near lobby and over racquetball courts

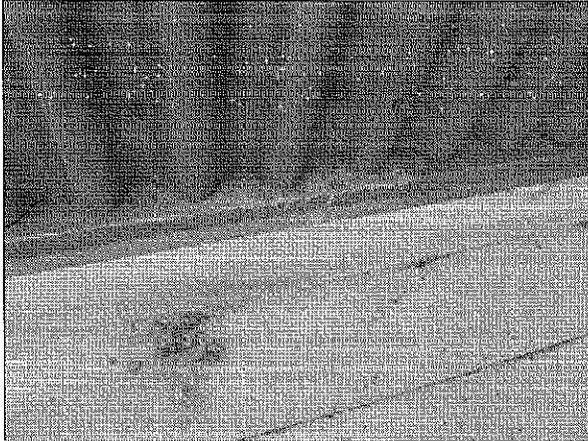


Figure 21. Evidence of in-wall corrosion being pushed out by previously positive natatorium pressure

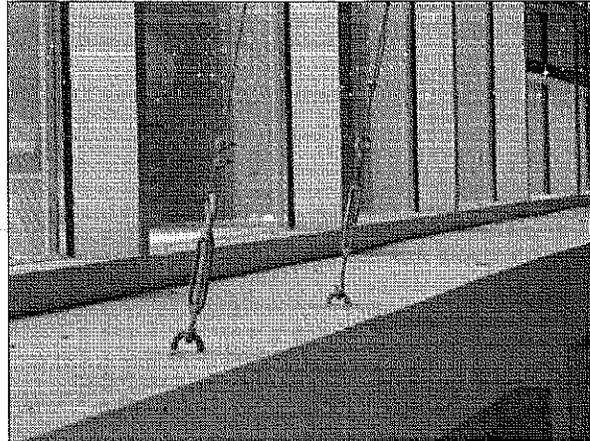


Figure 22. Corrosion on mechanical hangers in beach natatorium

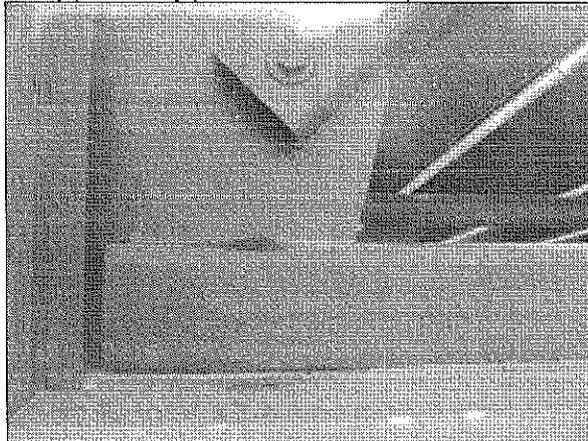


Figure 23. Rust dust has accumulated at the bottom of structural steel members in the beach natatorium

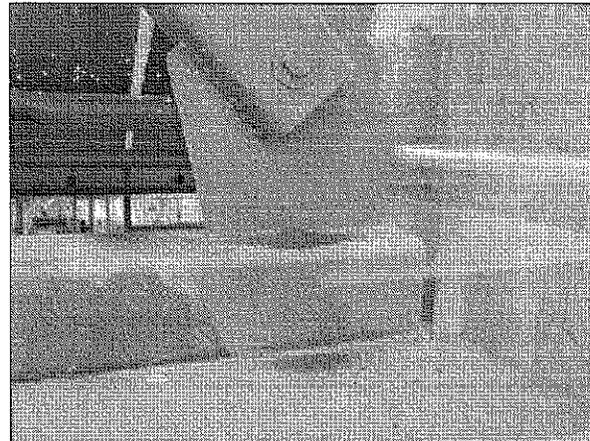


Figure 24. Rust dust has accumulated at the bottom of structural steel members in the beach natatorium

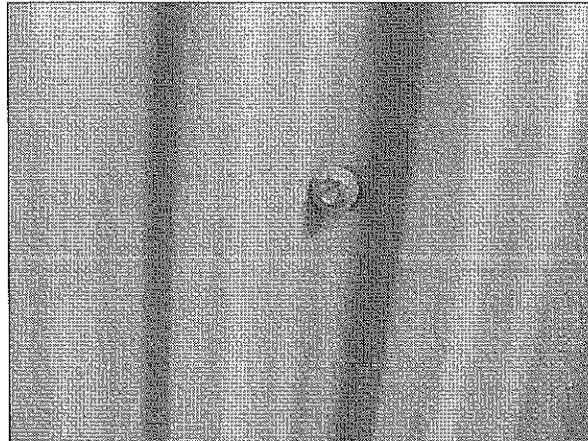


Figure 25. Surface rust on corrugated metal wall panels appears to be due to failed coating/painting and is likely unrelated to interior conditions

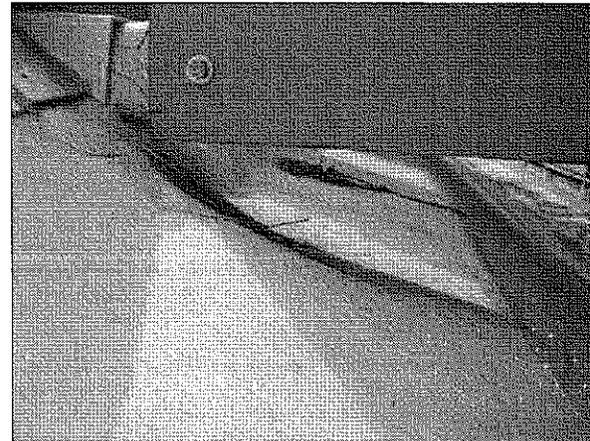


Figure 26. Rust staining on roof membrane from previous pressurized air leakage at a mechanical support penetration

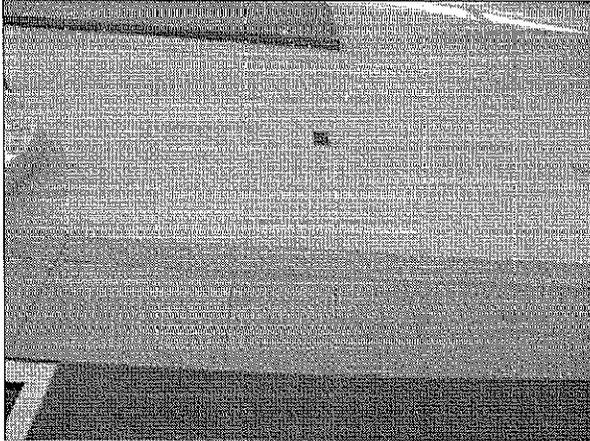


Figure 27. Corrosion on junction box cover

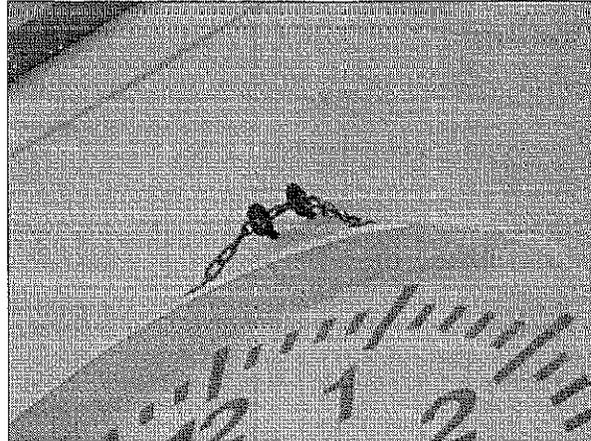


Figure 28. Corrosion on eye bolts and chain holding up clock

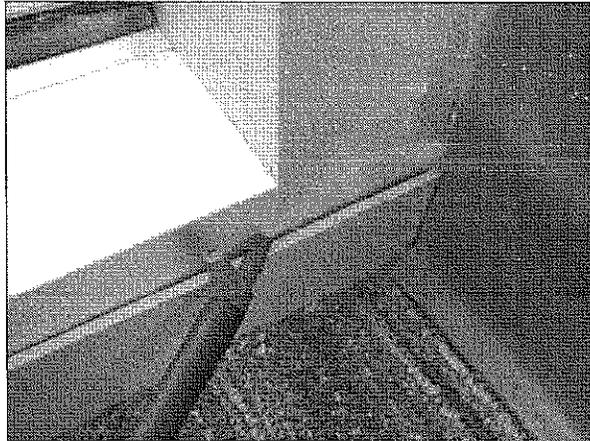


Figure 29. Air leakage into natatorium from adjacent hallway demonstrates current negative pressure

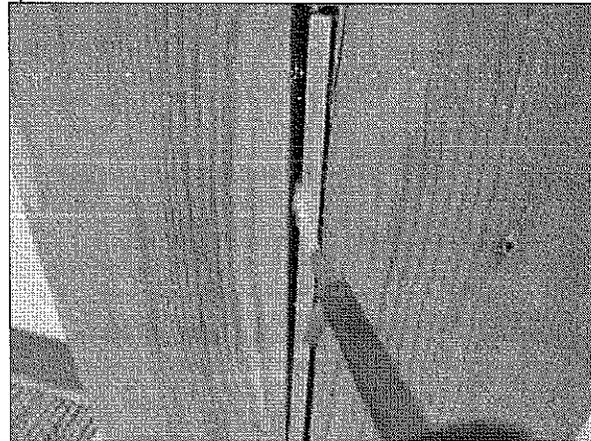


Figure 30. Air leakage into natatorium from adjacent hallway demonstrates current negative pressure

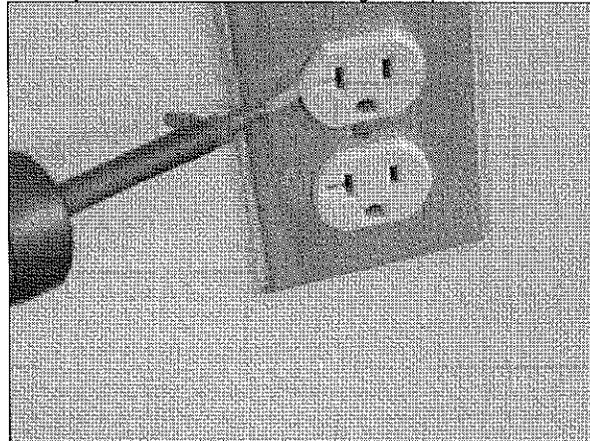


Figure 31. Air leakage into natatorium from adjacent hallway demonstrates current negative pressure

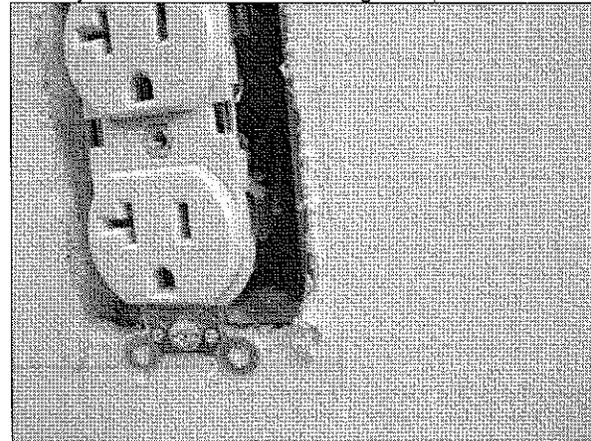


Figure 32. Air leakage into natatorium from adjacent hallway demonstrates current negative pressure

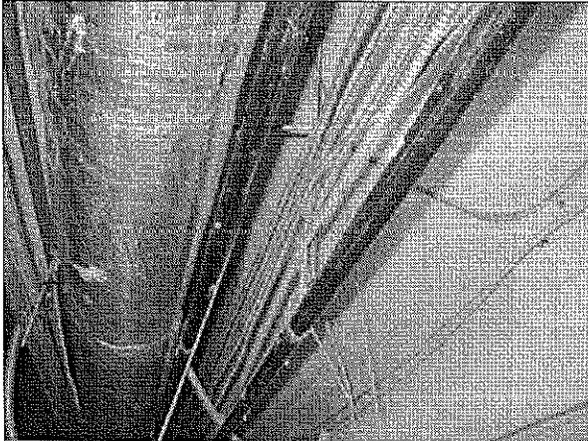


Figure 33. View above ceiling tiles in hallway showing no corrosion from previous air leakage from natatorium

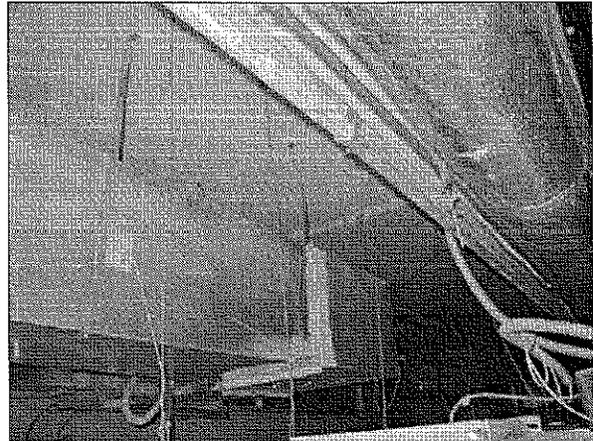


Figure 34. View above ceiling tiles in hallway showing no corrosion from previous air leakage from natatorium

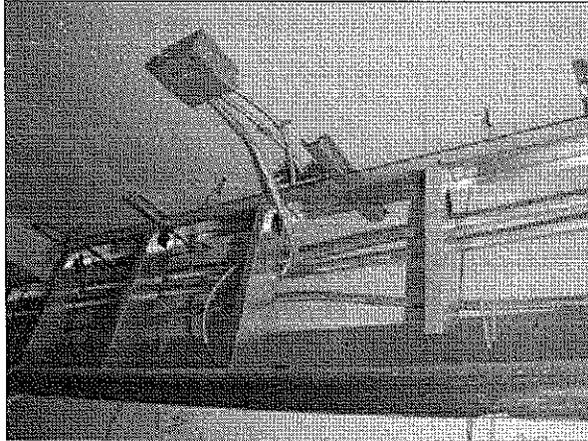


Figure 35. View above ceiling tiles in lobby showing no corrosion from previous air leakage from natatorium

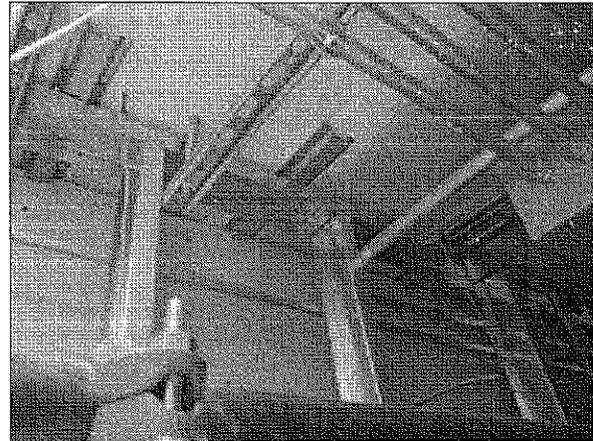


Figure 36. View above ceiling tiles in lobby showing no corrosion from previous air leakage from natatorium

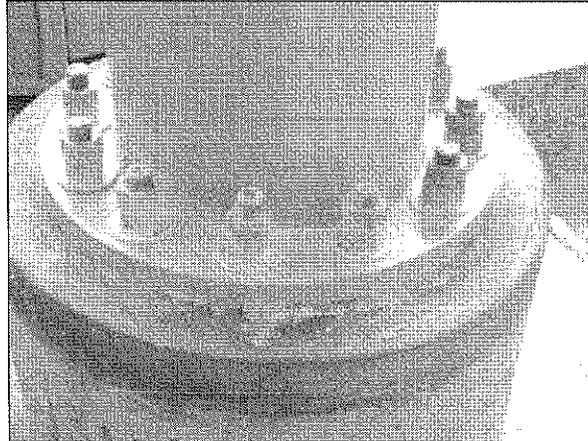


Figure 37. Corrosion on fasteners of water slide support

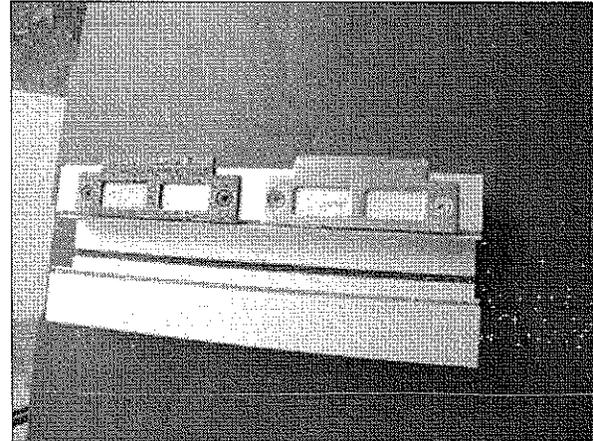


Figure 38. Corrosion test in progress door hardware showing extensive damage to 630 Stainless



Figure 39. Corrosion on stainless steel sink in staff training room



Figure 40. Corrosion on data/display connections on computer in staff training room

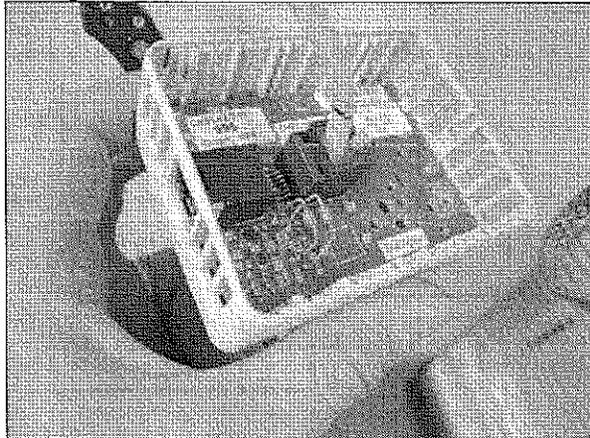


Figure 41. Corrosion on electronic components in wall sensor in staff training room



Figure 42. Corrosion on ceiling grid hangers in staff training room



Figure 43. Extensive moisture damage to drywall in boiler room has an unknown source but is believed to be originating next to the tube slide loading zone above

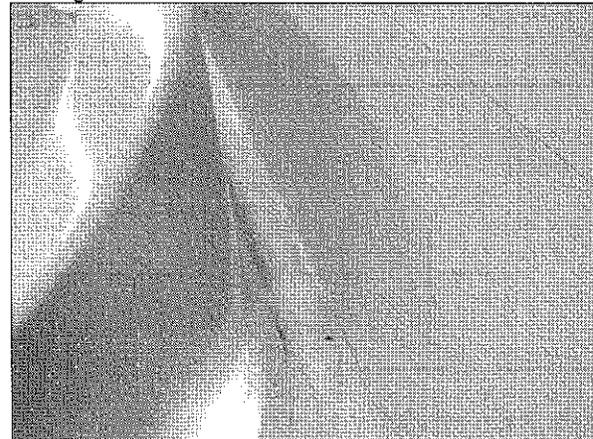


Figure 44. Extensive moisture damage to drywall in boiler room has an unknown source but is believed to be originating next to the tube slide loading zone above

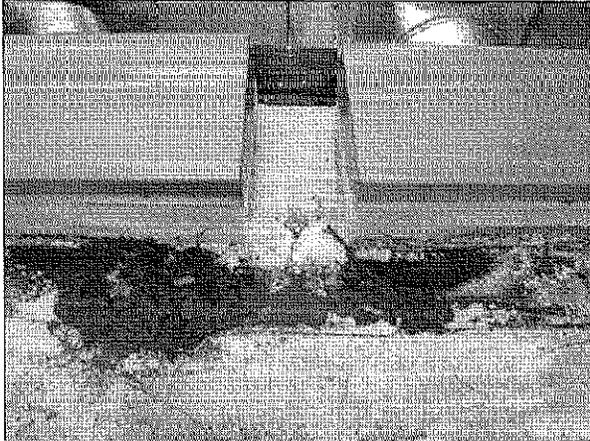


Figure 45. Scupper on high roof above boiler room/slide loading is a possible source for the unknown moisture damage in the boiler room

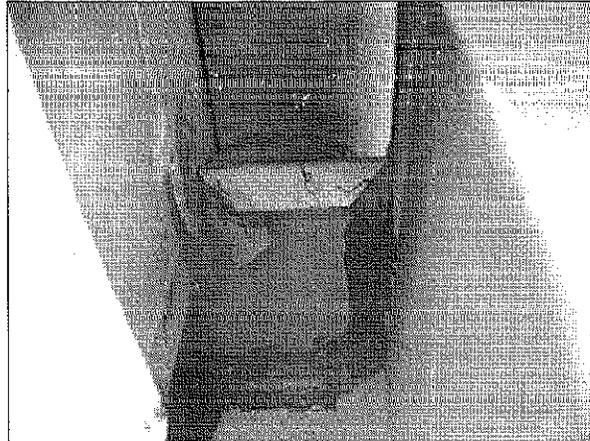


Figure 46. Scupper on high roof above boiler room/slide loading is a possible source for the unknown moisture damage in the boiler room

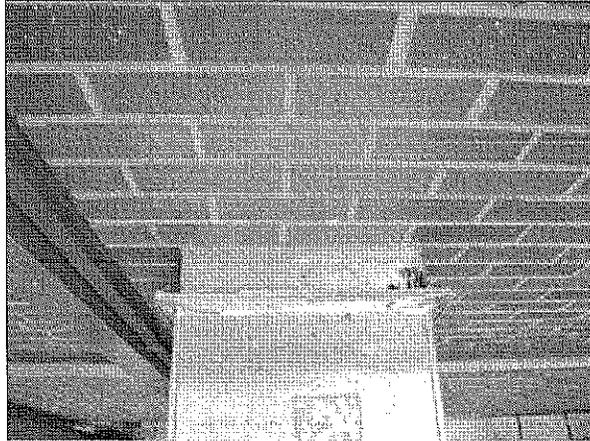


Figure 47. Duct penetration serving slide loading area is a possible source for unknown moisture damage in boiler room

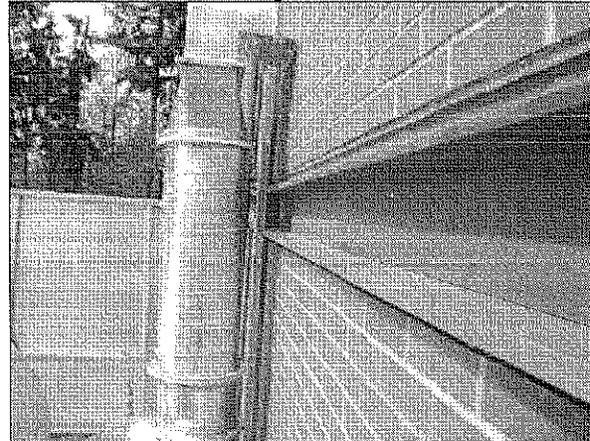


Figure 48. Duct penetration serving slide loading area is a possible source for unknown moisture damage in boiler room

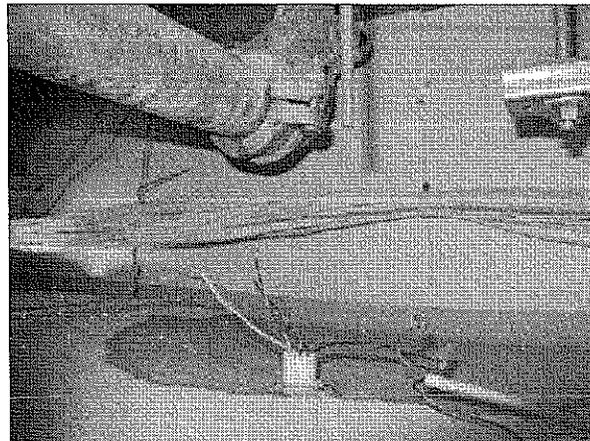


Figure 49. Leak reported by staff in staff training room appears to be either a plumbing leak from the fire sprinkler pipe or coming from above it



Figure 50. Leak reported by staff in staff training room appears to be either a plumbing leak from the fire sprinkler pipe or coming from above it

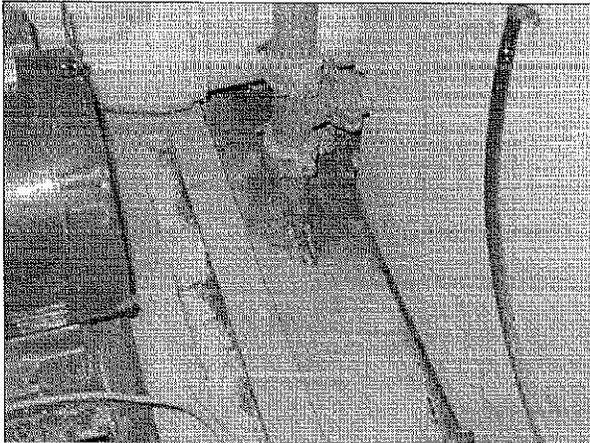


Figure 51. Fire sprinkler pipe shown from above with extra sealant at floor – proximity to moisture damage in boiler room wall suggests the leak below is related to wall damage

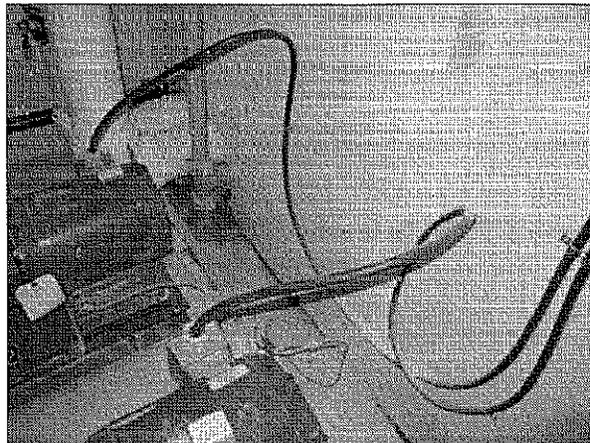


Figure 52. Fire sprinkler pipe shown from above with extra sealant at floor – proximity to moisture damage in boiler room wall suggests the leak below is related to wall damage

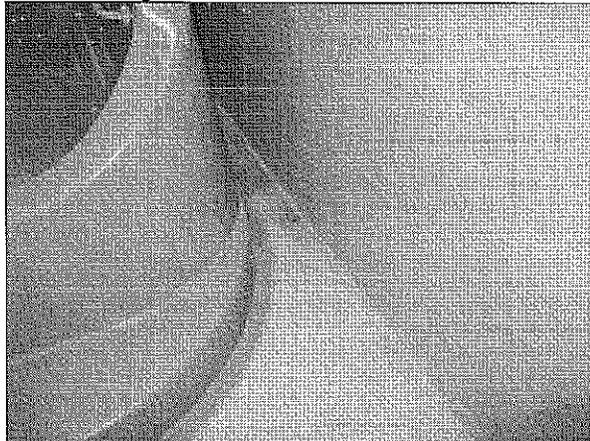


Figure 53. Maintenance staff added sealant at base of tile wall next to tube slide in hopes of solving the unknown moisture damage in the boiler room below



Figure 54. Maintenance staff added sealant at base of tile wall next to tube slide in hopes of solving the unknown moisture damage in the boiler room below

Infrared Analysis of Natatorium Spaces

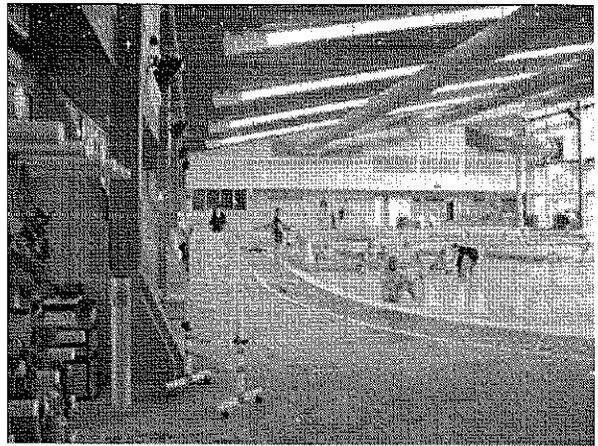
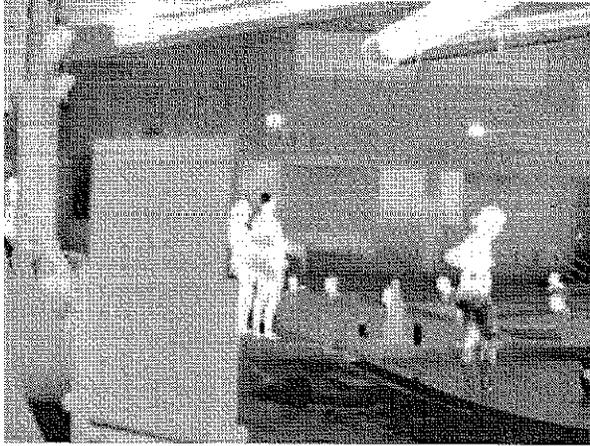


Figure 55. Infrared showing no apparent thermal anomalies



Figure 56. Infrared showing no apparent thermal anomalies

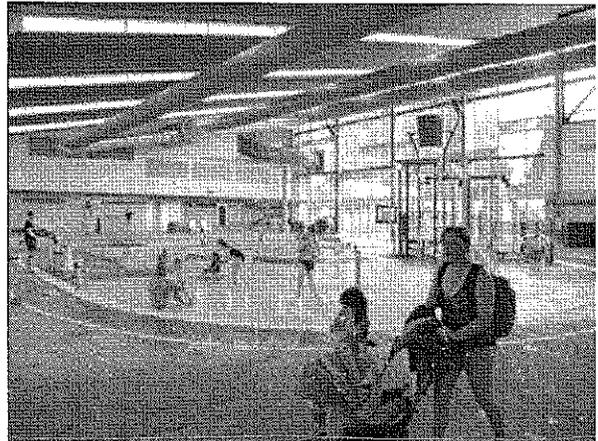
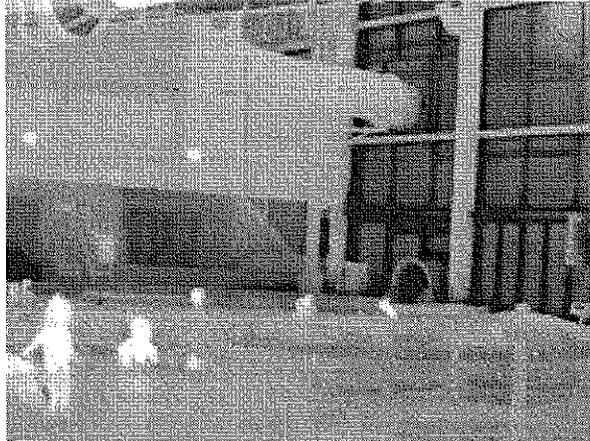


Figure 57. Infrared showing no apparent thermal anomalies

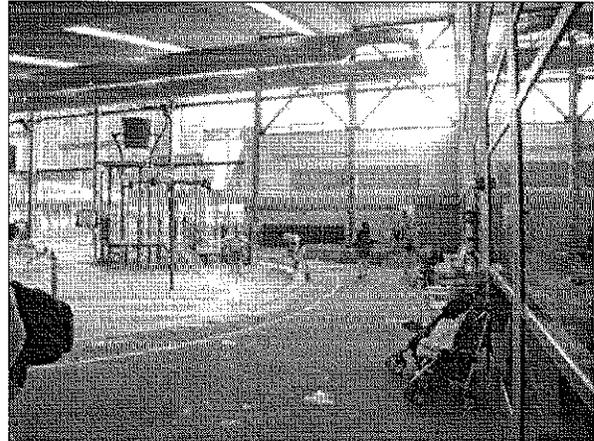


Figure 58. Infrared showing no apparent thermal anomalies

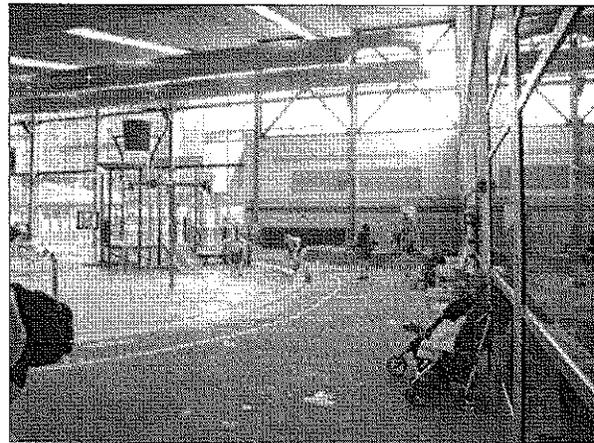


Figure 59. Infrared showing thermal bridging and possible air leakage into the wall cavity

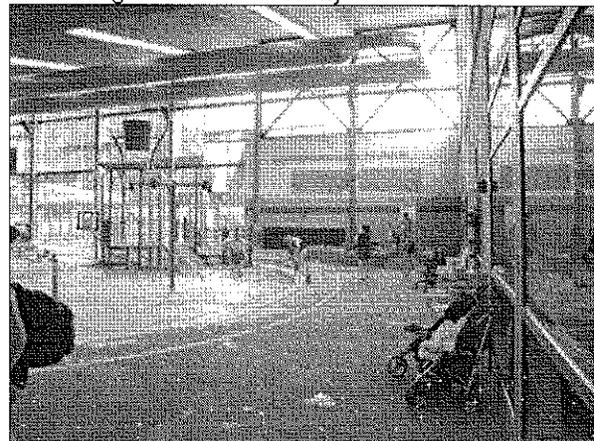
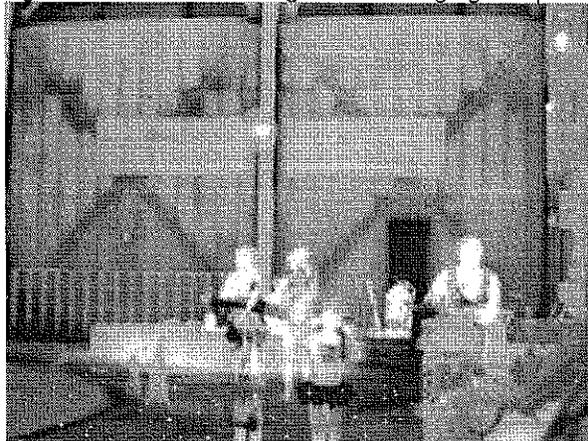


Figure 60. Infrared showing thermal bridging and air leakage

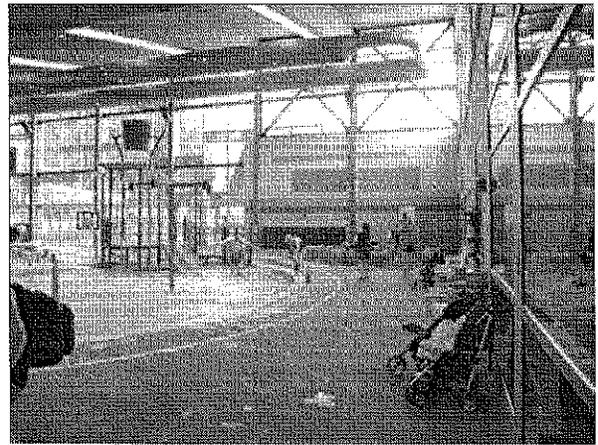
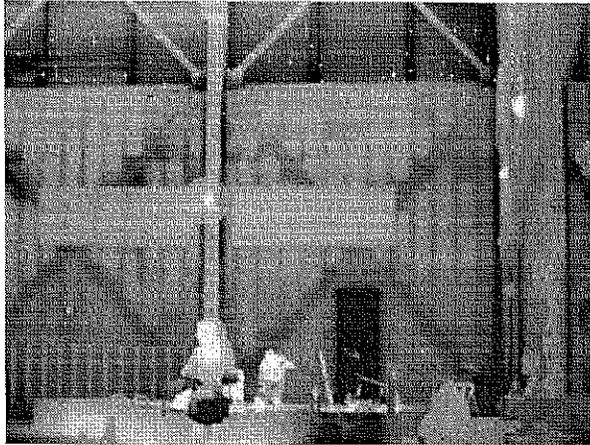


Figure 61. Infrared showing thermal bridging and air leakage

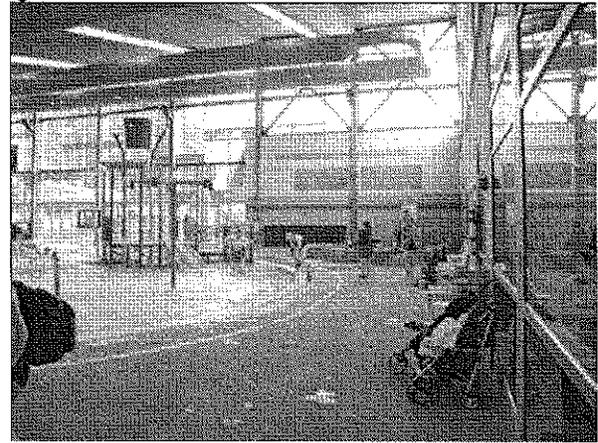
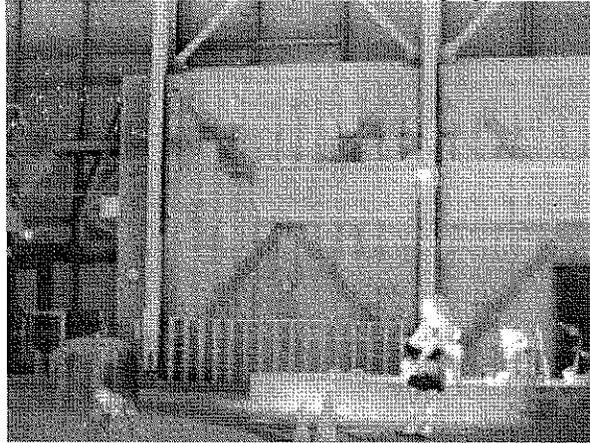


Figure 62. Infrared showing thermal bridging and air leakage

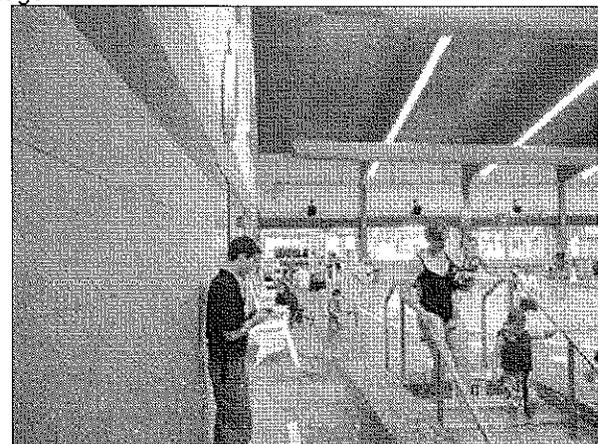
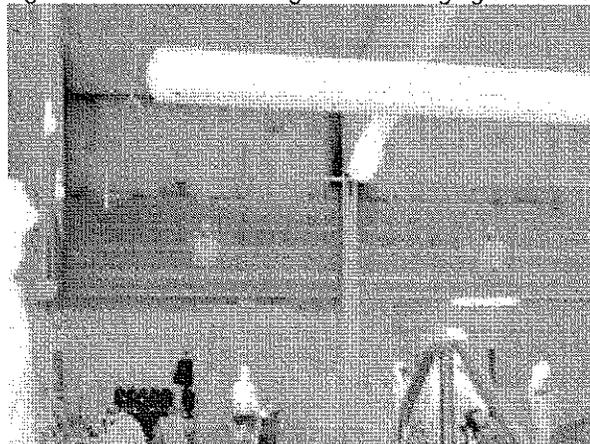


Figure 63. Infrared showing air leakage at the glu-lam/wall interface

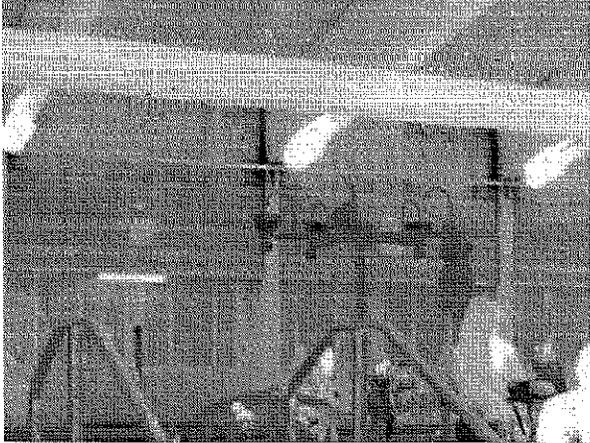


Figure 64. Infrared showing air leakage at the glu-lam/wall interface

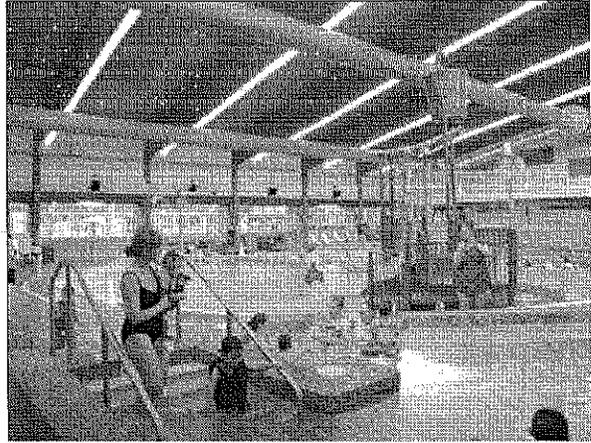


Figure 65. Infrared showing air leakage at the glu-lam/wall interface

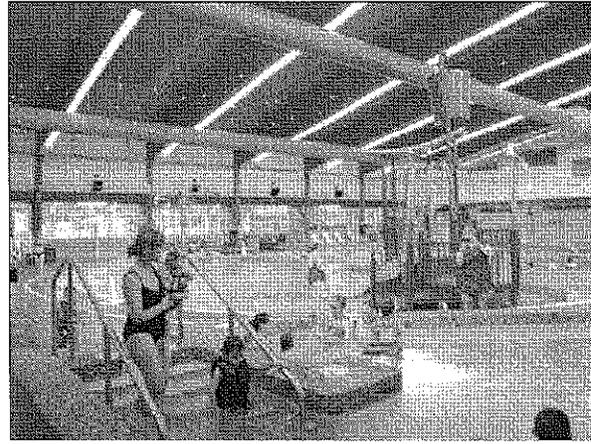
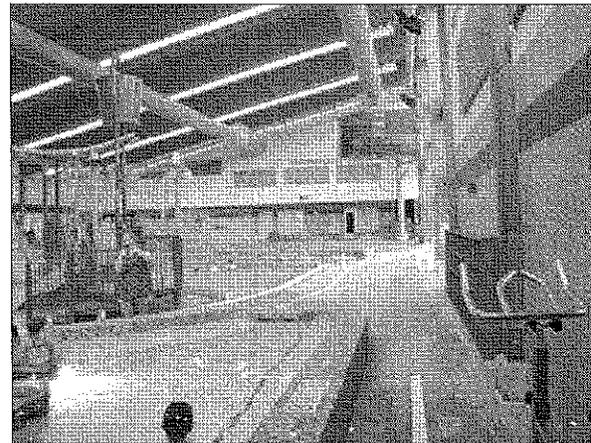


Figure 66. Infrared showing air leakage at the glu-lam/wall interface



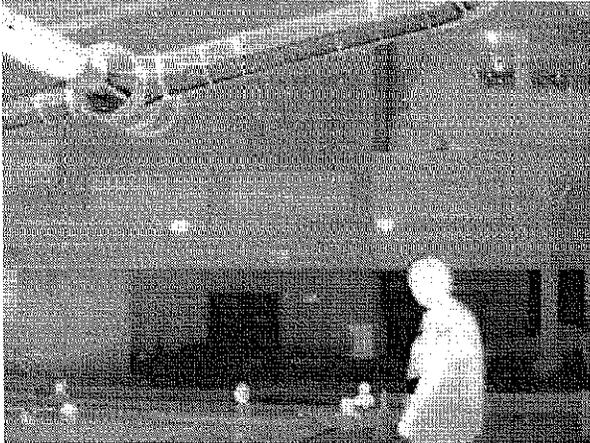


Figure 67. Infrared showing no apparent thermal anomalies

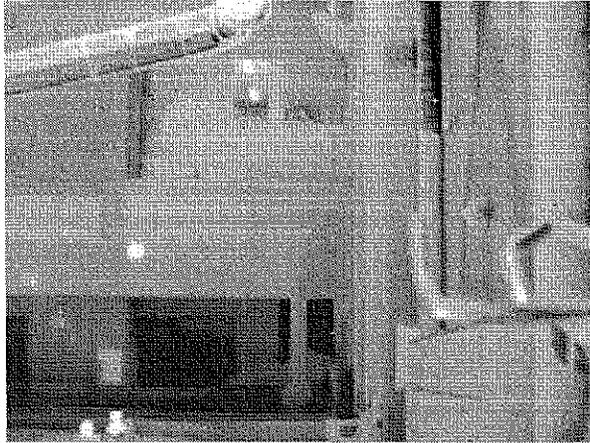
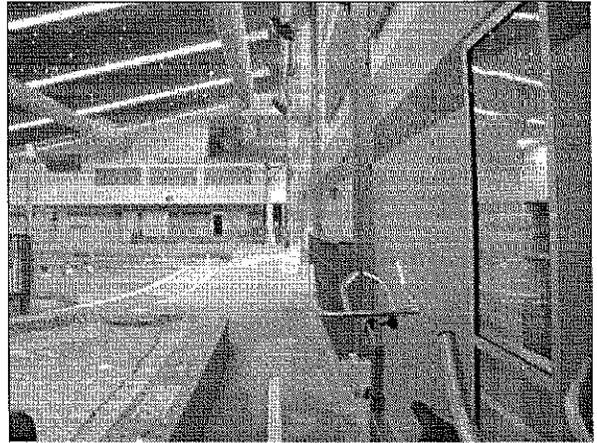


Figure 68. Infrared showing no apparent thermal anomalies

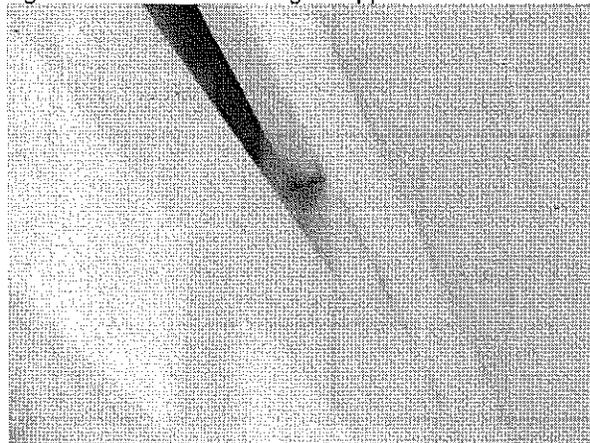
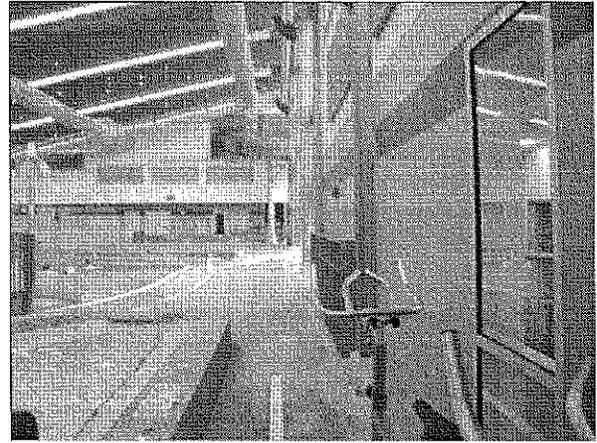
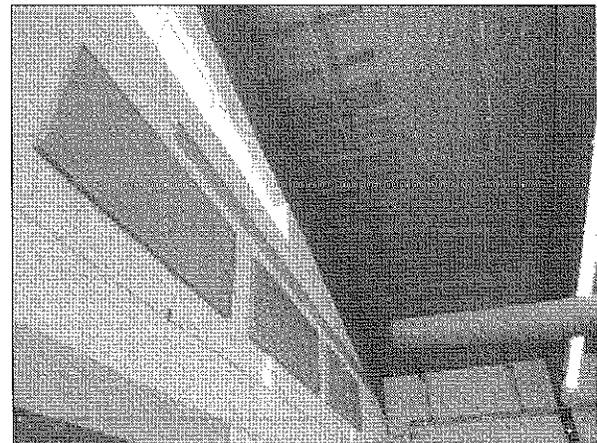


Figure 69. Infrared showing air leakage at the glu-lam/wall interface



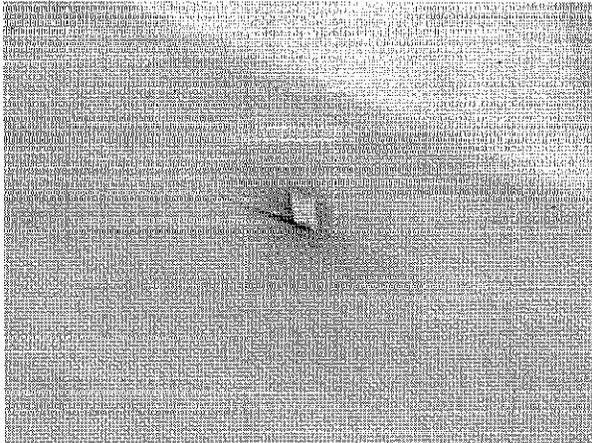


Figure 70. Infrared showing air leakage at junction box cover

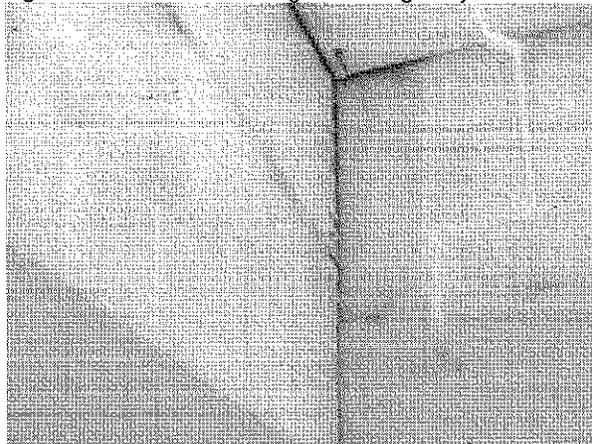
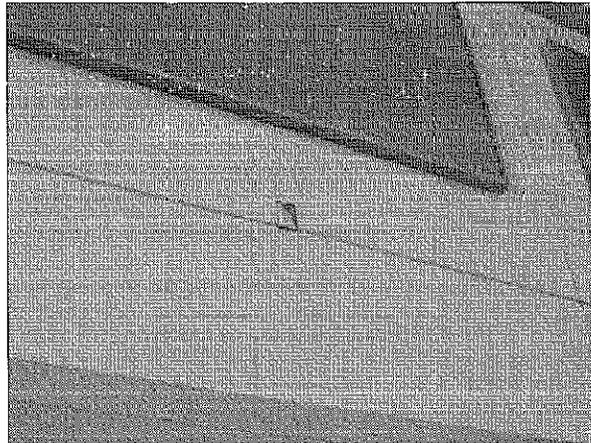


Figure 71. Infrared showing air leakage at the corner

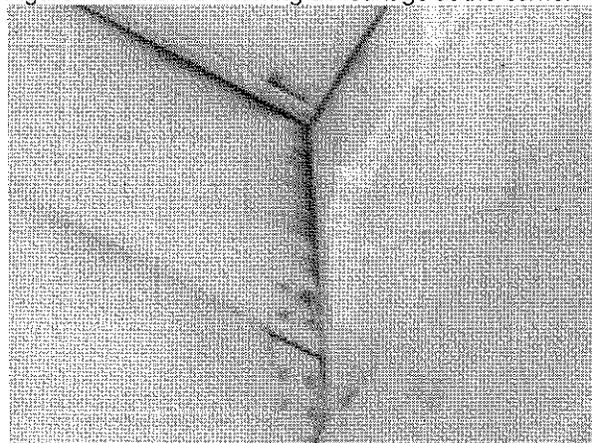
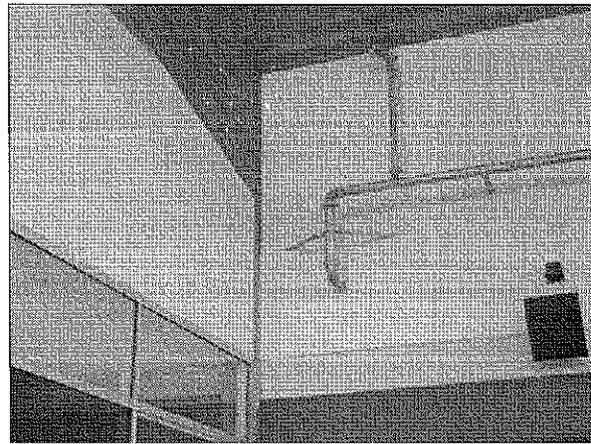
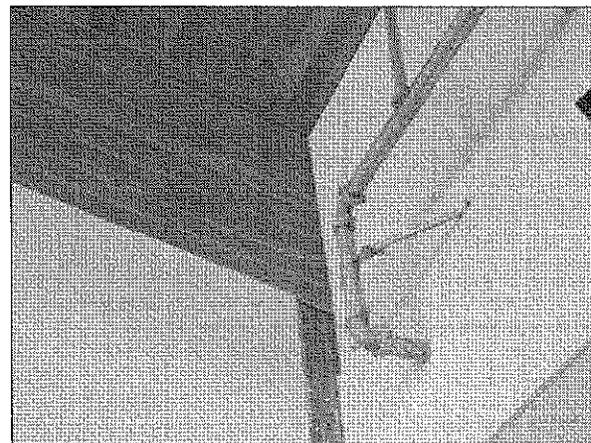


Figure 72. Infrared showing air leakage at the corner



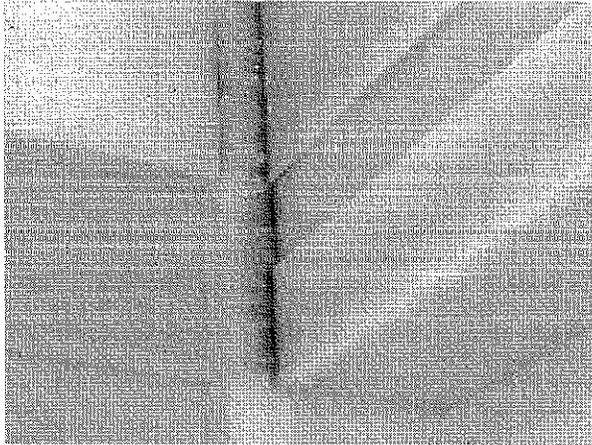


Figure 73. Infrared showing air leakage at the corner

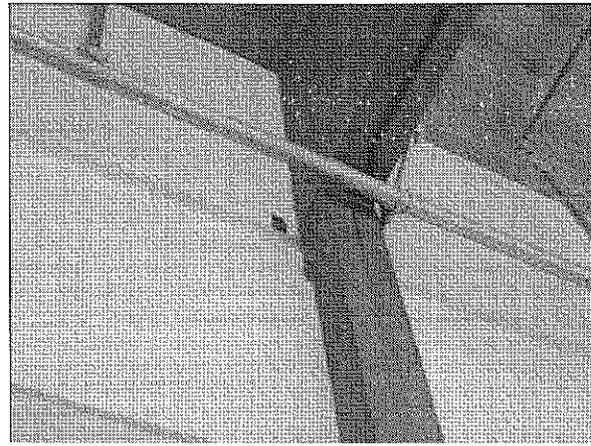
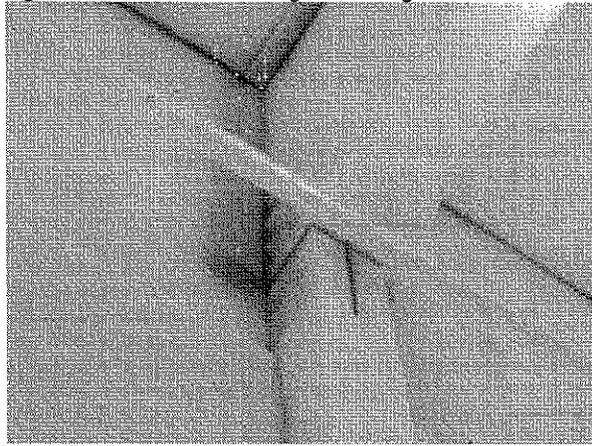
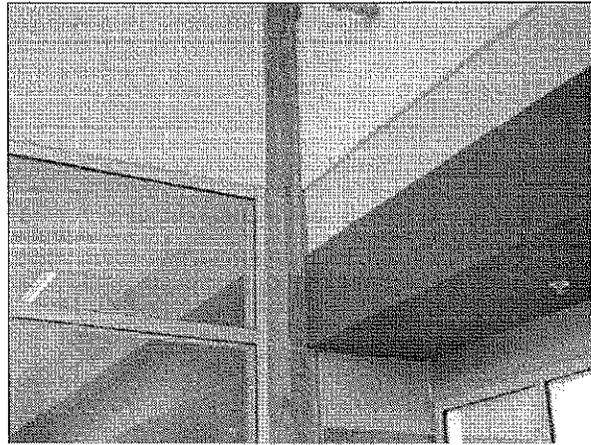


Figure 74. Infrared showing air leakage at wall to column/joist/ceiling interface

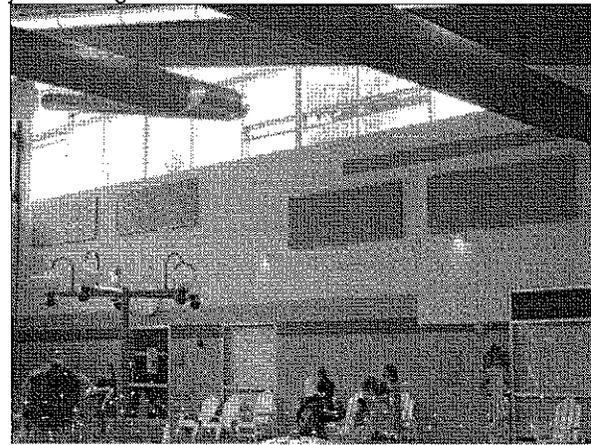


Figure 75. Infrared showing air leakage at windows and possible moisture loading in wall

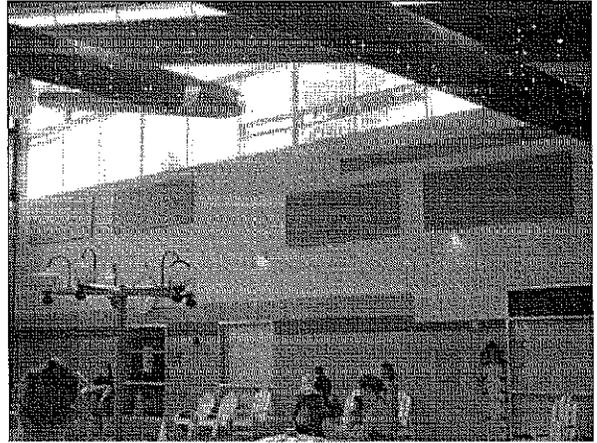
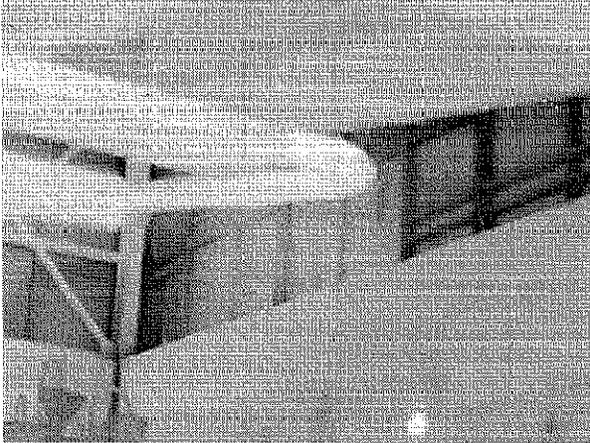


Figure 76. Infrared showing air leakage at windows and possible moisture loading in wall

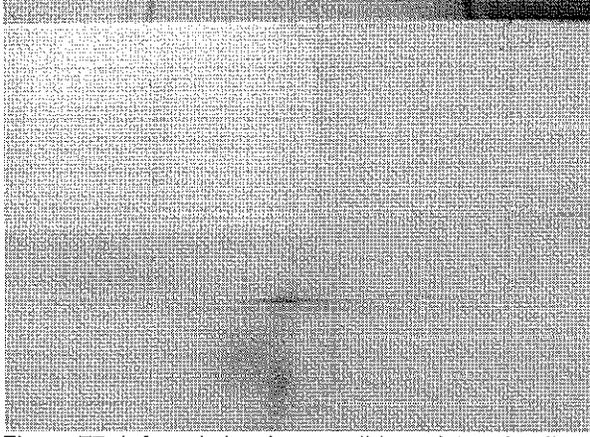


Figure 77. Infrared showing possible moisture loading in wall

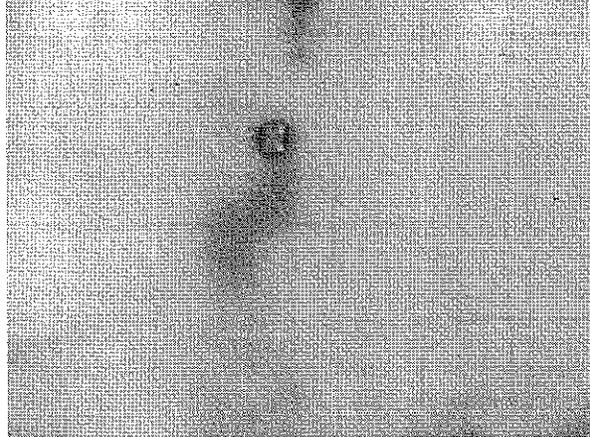


Figure 78. Infrared showing air leakage at junction box cover and possible moisture loading in wall

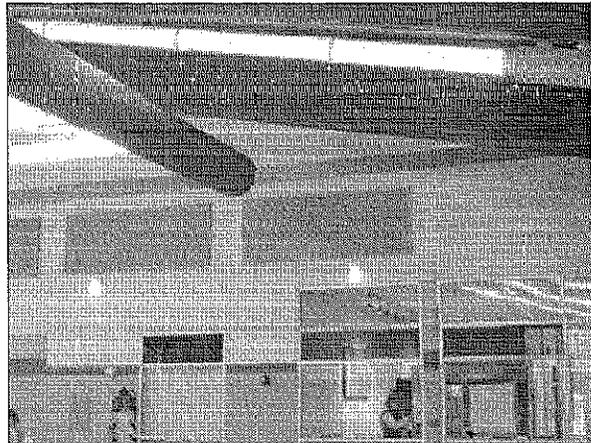
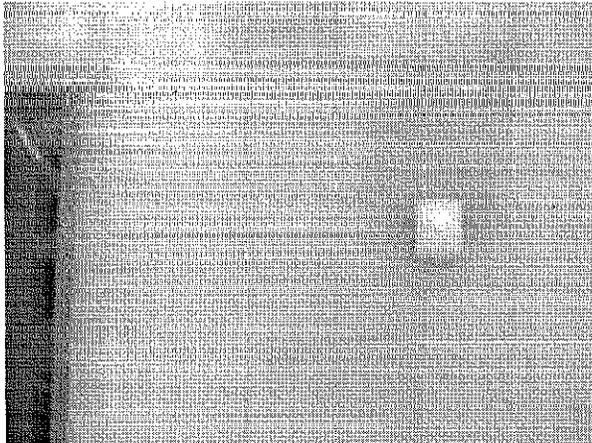


Figure 79. Infrared showing minor air leakage at wall mounted sensor

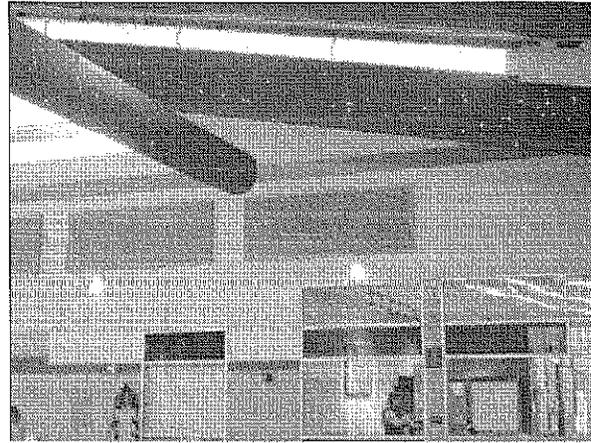
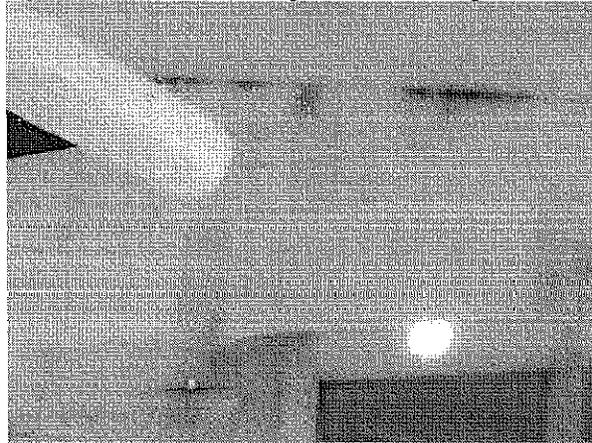


Figure 80. Infrared showing air leakage at windows and wall-to-ceiling transition and possible moisture loading in wall

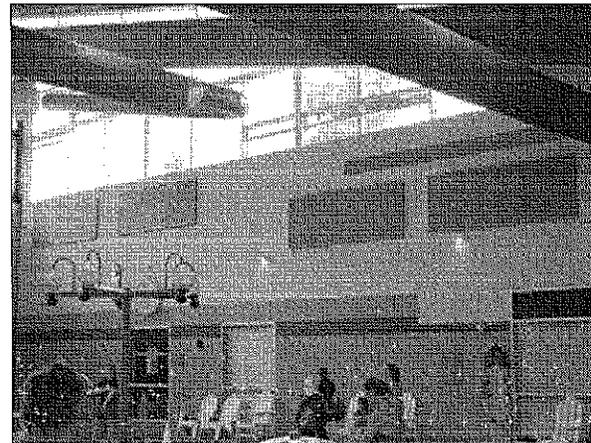
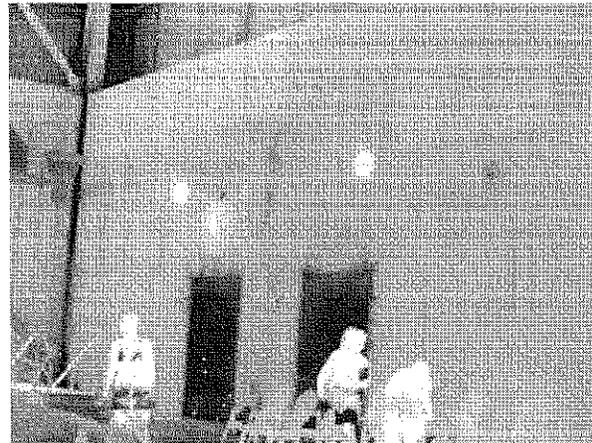


Figure 81. Infrared showing air leakage at windows and possible moisture loading in wall

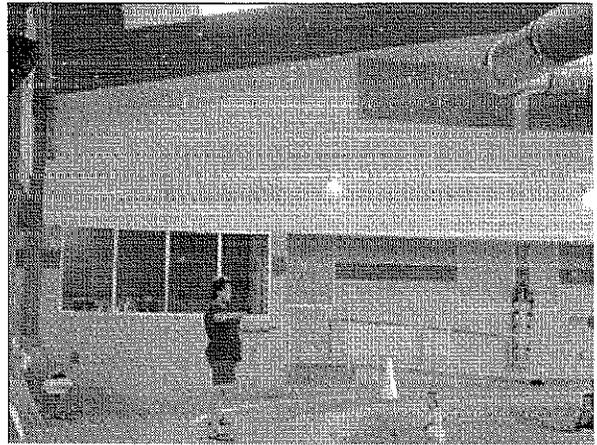
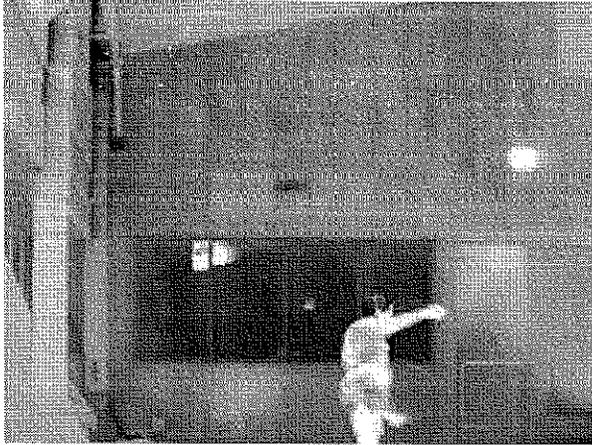


Figure 82. Infrared showing air leakage at corner and wall mounted sensor

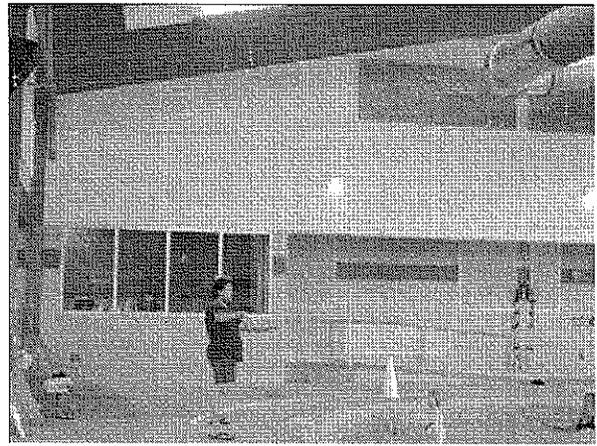
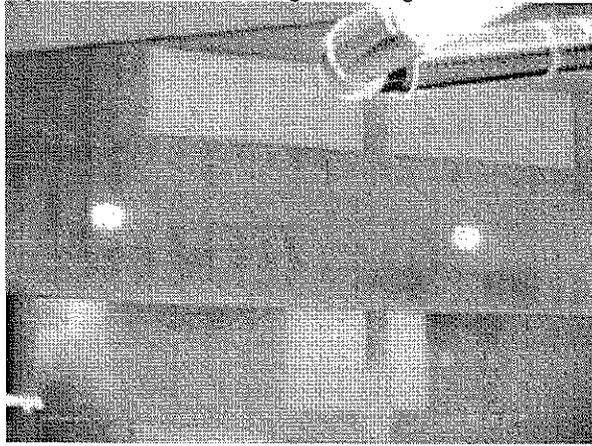


Figure 83. Infrared showing no apparent thermal anomalies

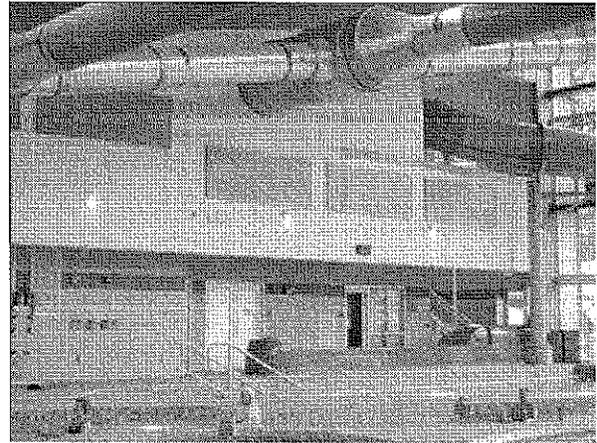
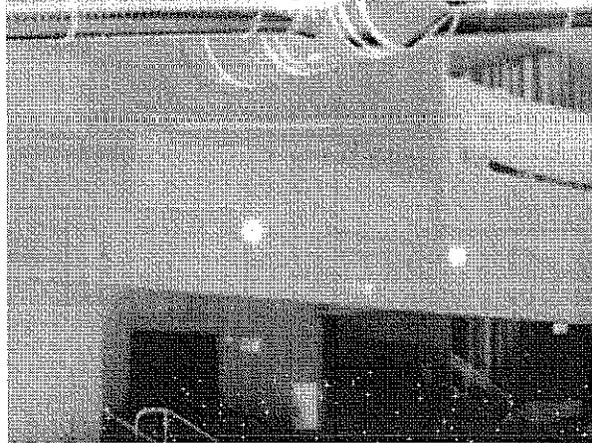


Figure 84. Infrared showing no apparent thermal anomalies

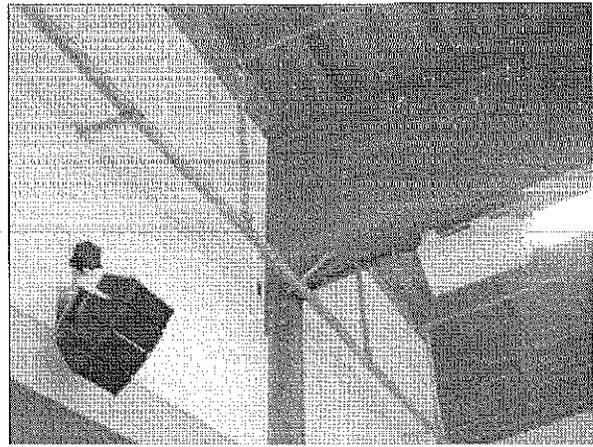
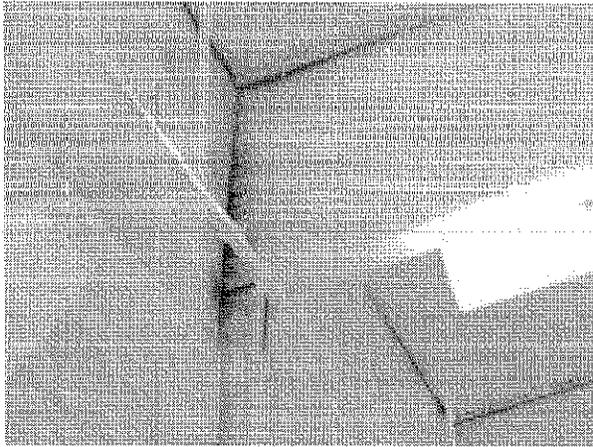


Figure 85. Infrared showing air leakage at wall to column/joist/ceiling interface

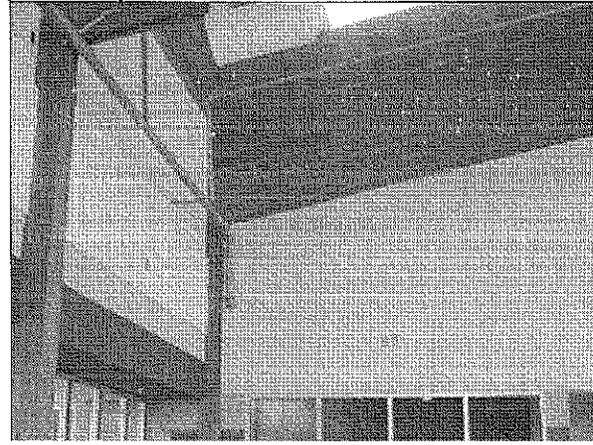
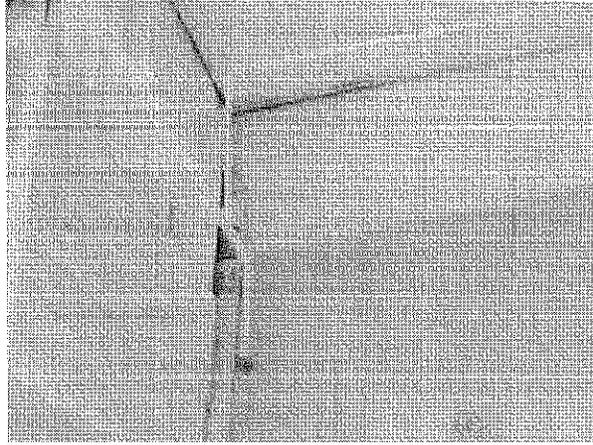


Figure 86. Infrared showing air leakage at wall to column/joist/ceiling interface

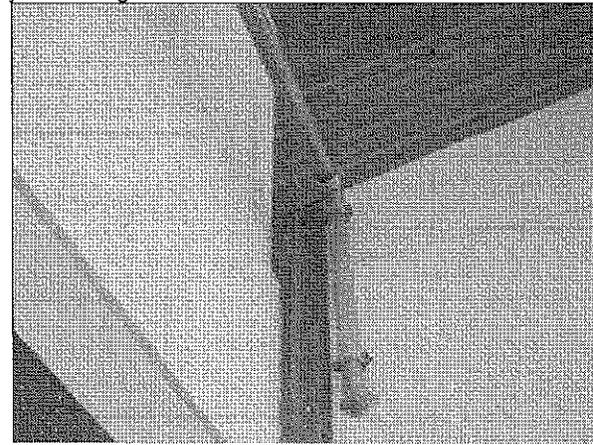
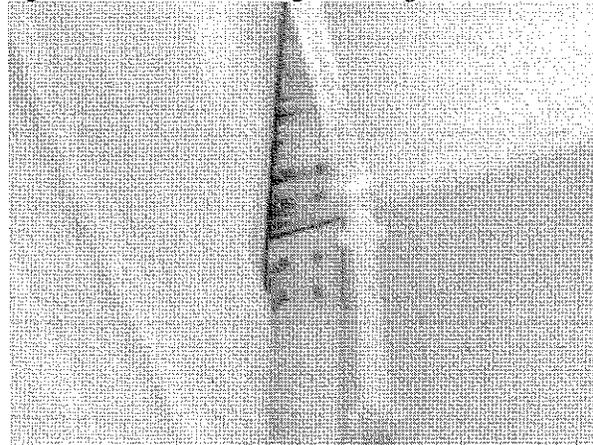


Figure 87. Infrared showing air leakage at wall to column/joist interface

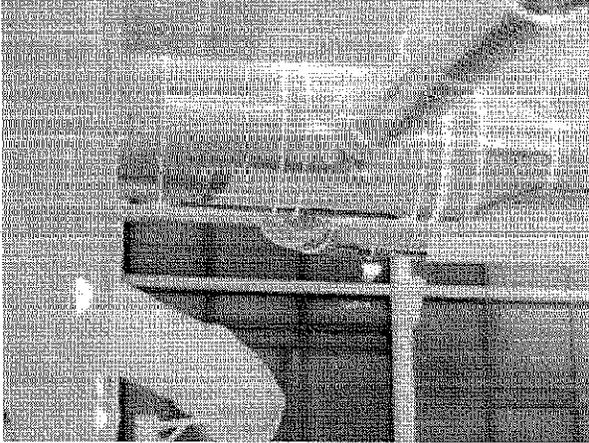


Figure 88. Infrared showing no apparent thermal anomalies

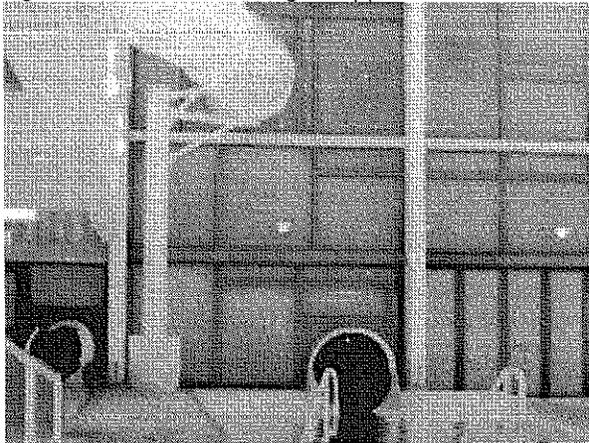
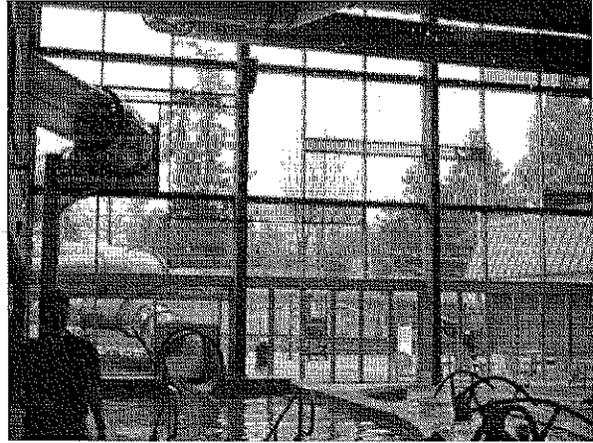


Figure 89. Infrared showing no apparent thermal anomalies

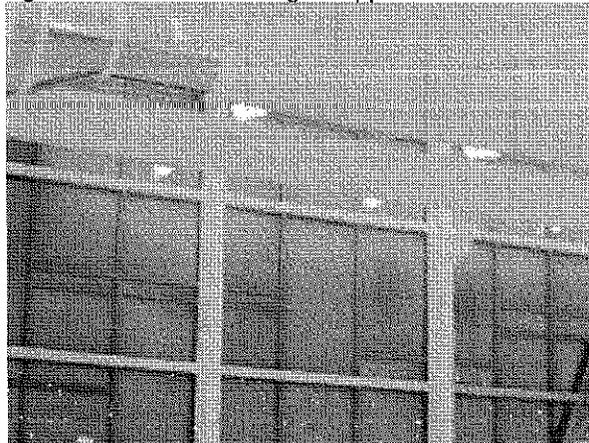
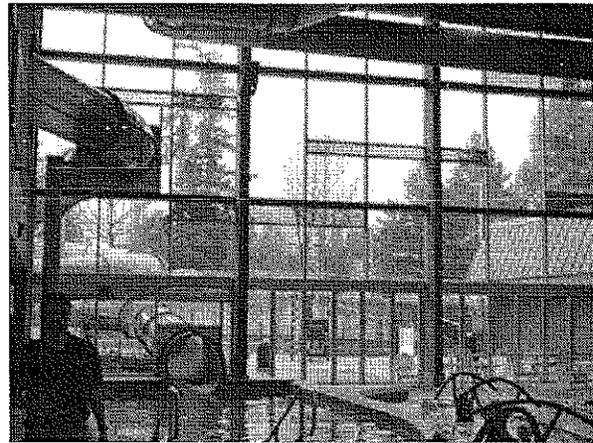
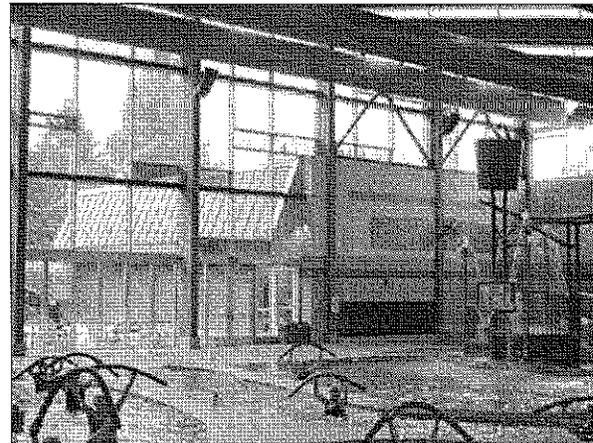


Figure 90. Infrared showing no apparent thermal anomalies



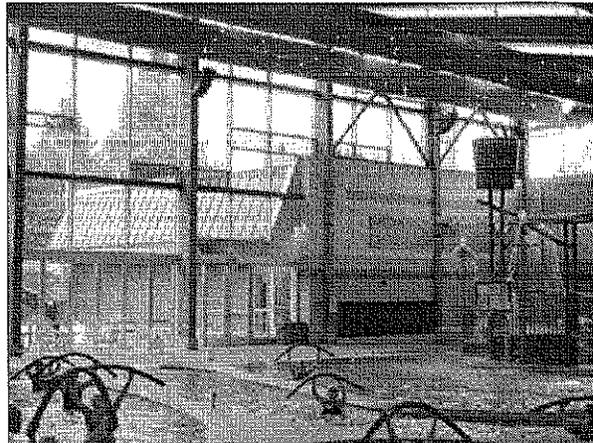
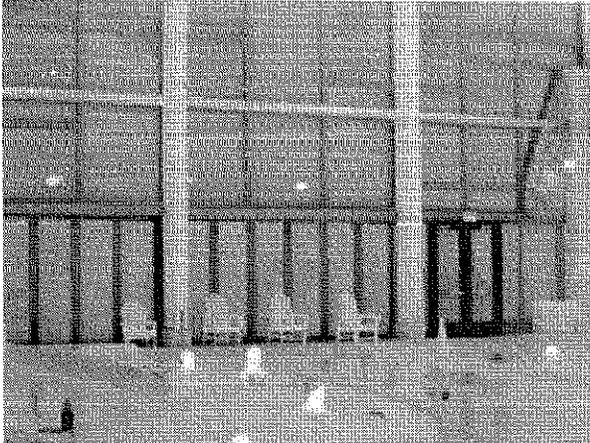


Figure 91. Infrared showing no apparent thermal anomalies

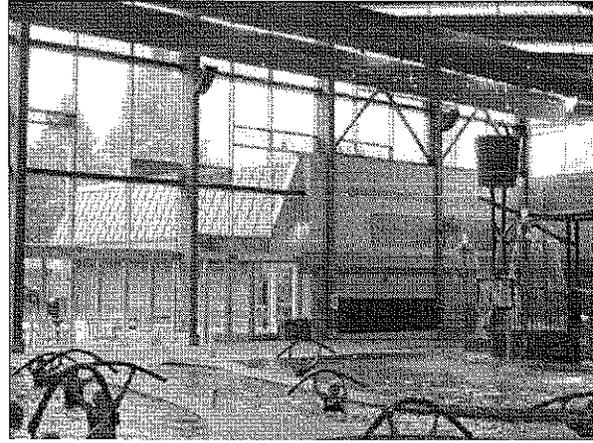
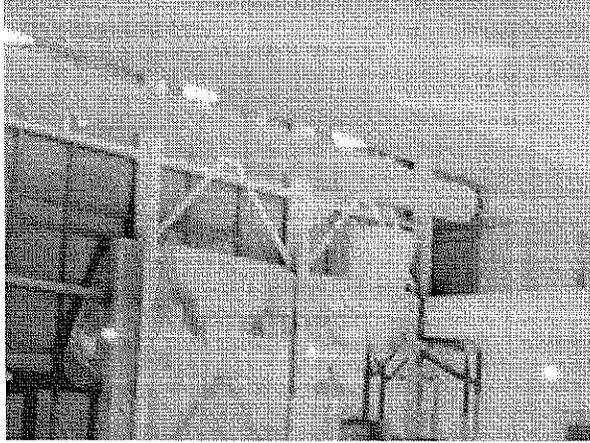


Figure 92. Infrared showing thermal bridging and air leakage in wall

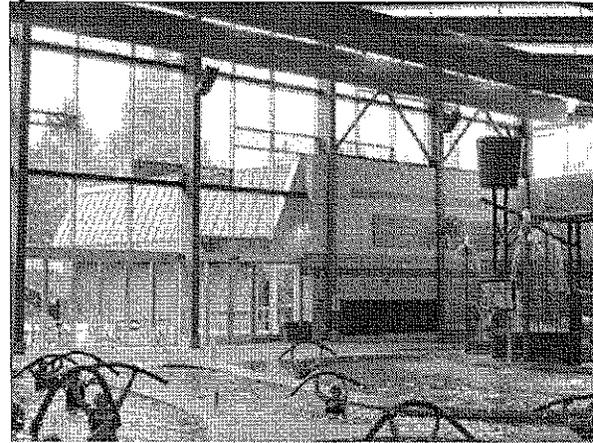
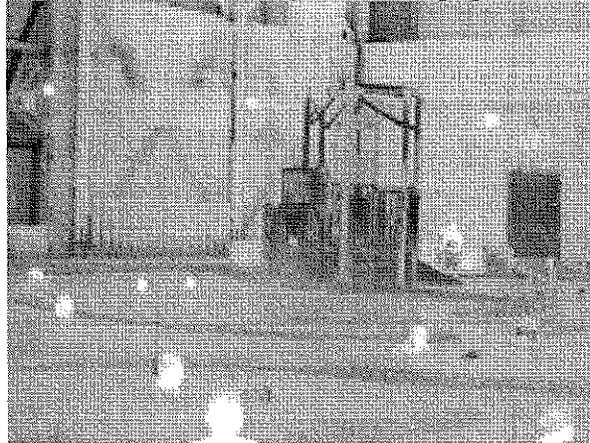


Figure 93. Infrared showing thermal bridging and air leakage in wall

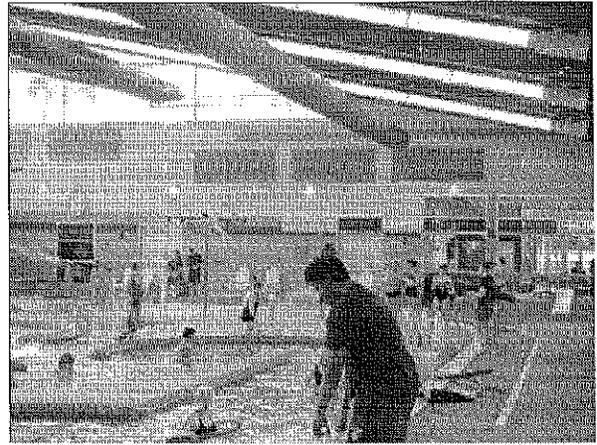
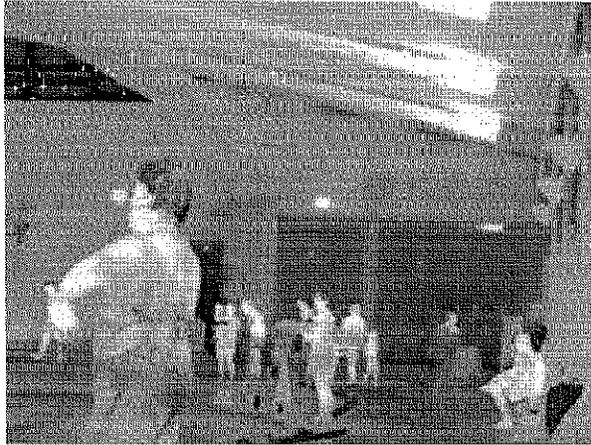


Figure 94. Infrared showing air leakage at wall to ceiling transition

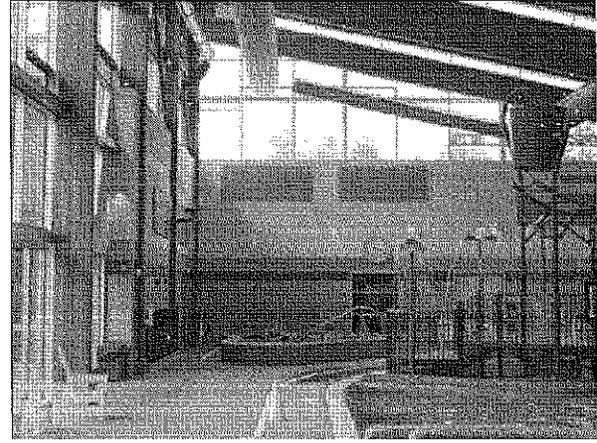


Figure 95. Infrared showing air leakage at windows and thermal bridging/possible moisture loading in the wall

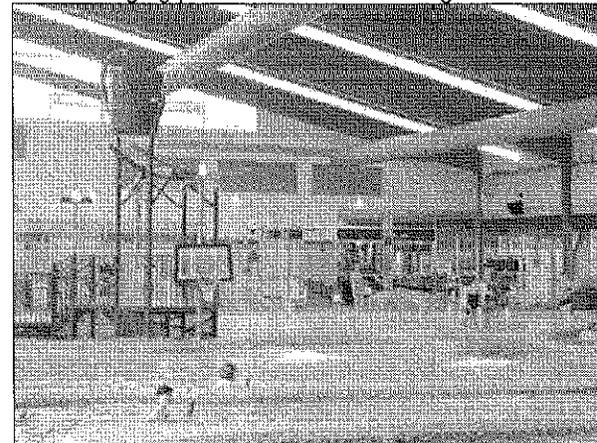


Figure 96. Infrared showing air leakage at windows and wall to ceiling transition as well as thermal bridging in the wall

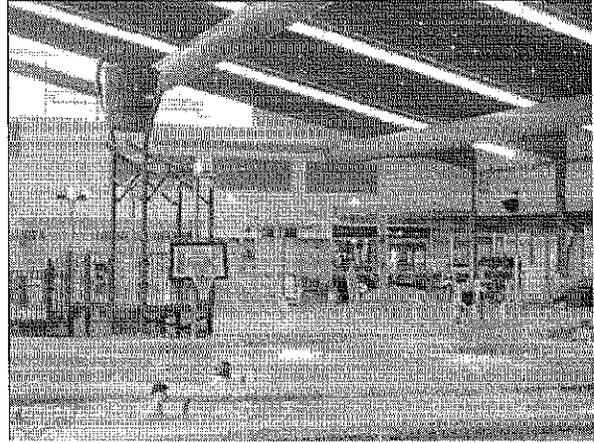
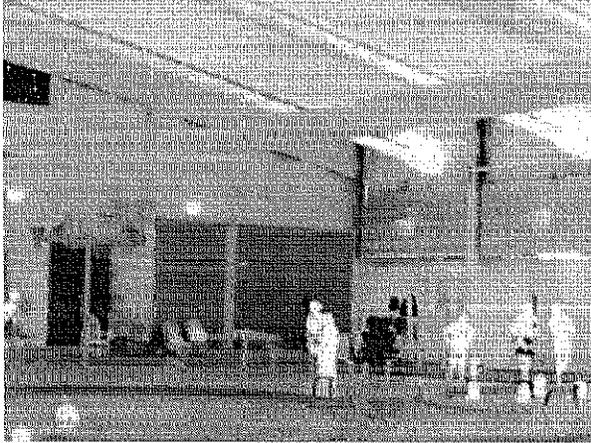


Figure 97. Infrared showing air leakage at columns, joists, wall to ceiling transitions, and windows

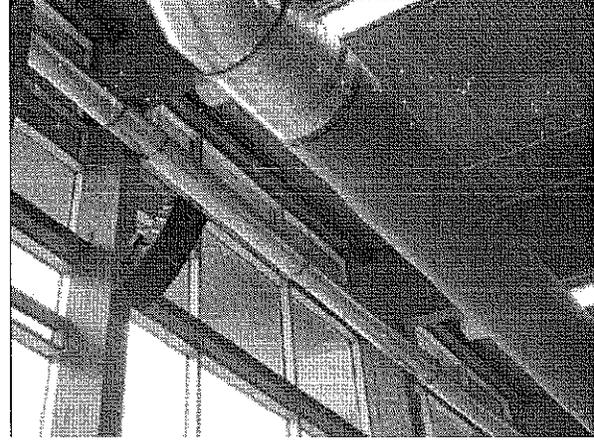


Figure 98. Infrared showing no apparent thermal anomalies

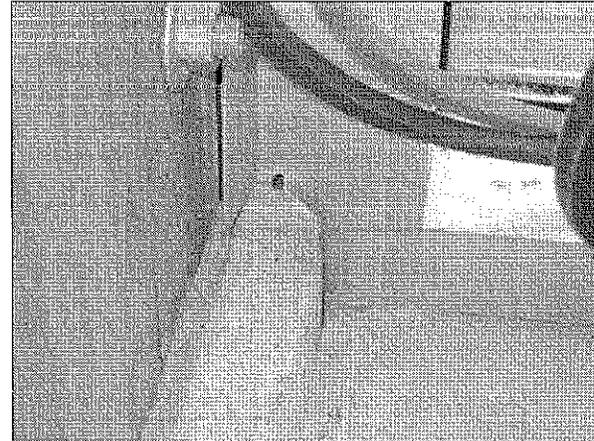
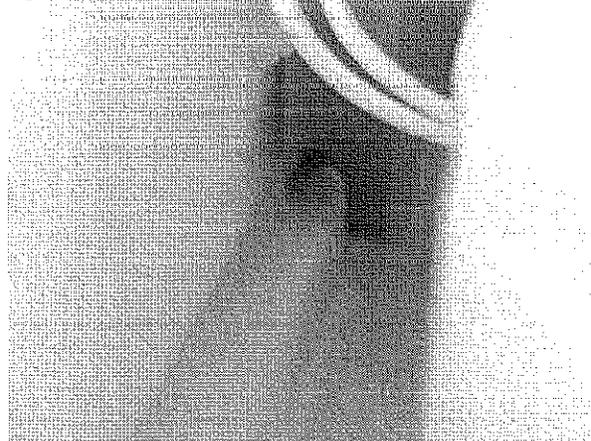


Figure 99. Infrared showing air leakage in corner

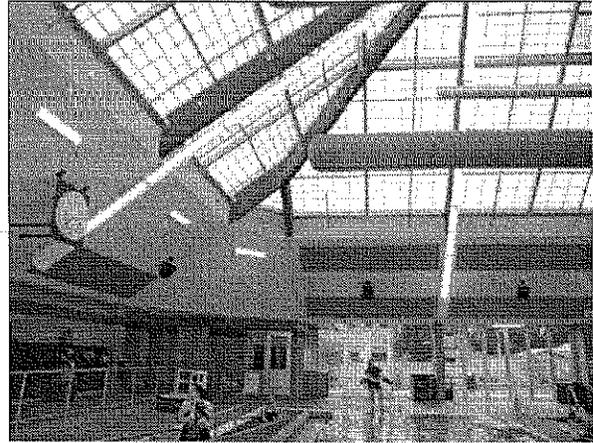


Figure 100. Infrared showing thermal bridging at translucent panel as well as moisture loading in wall below due to condensation from above

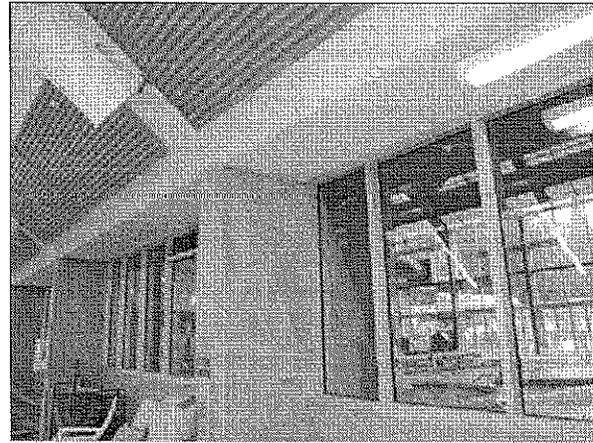
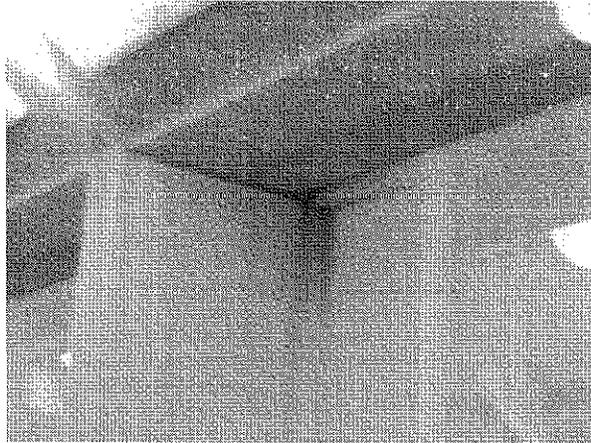


Figure 101. Infrared showing air leakage at column to ceiling/wall transition

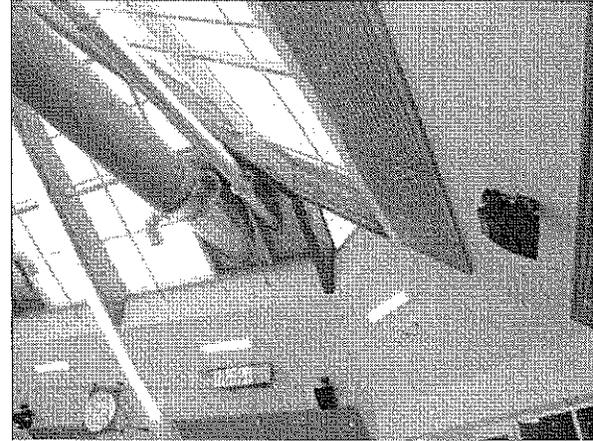
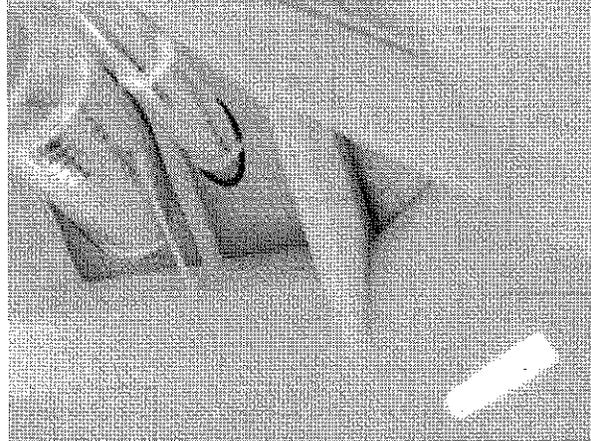


Figure 102. Infrared image showing thermal bridging



Figure 103. Infrared image showing thermal bridging

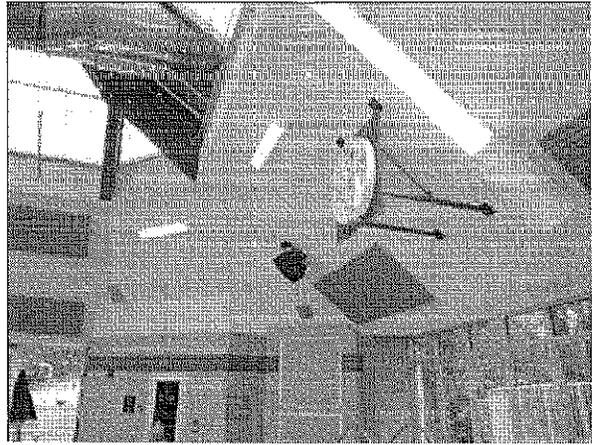


Figure 104. Infrared image showing no apparent thermal anomalies

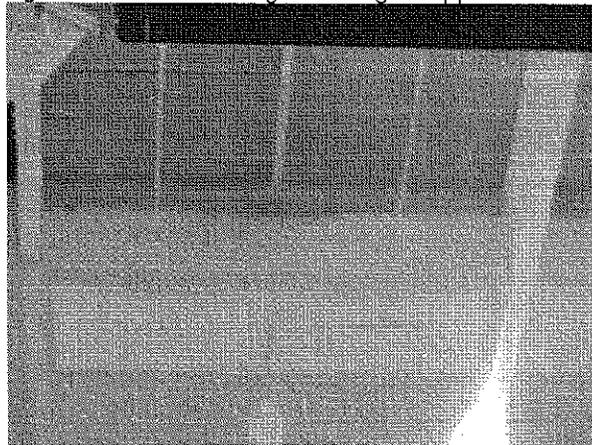
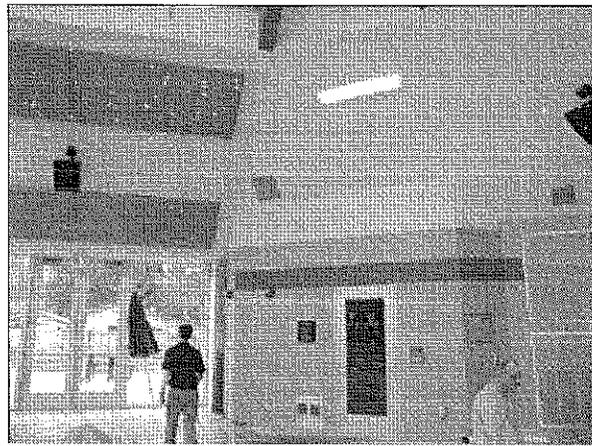


Figure 105. Infrared image showing no apparent thermal anomalies



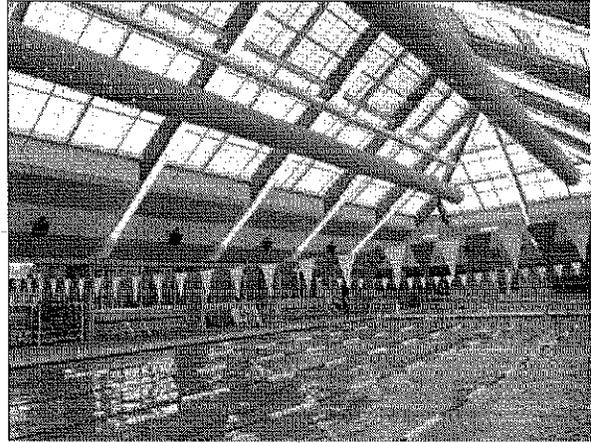
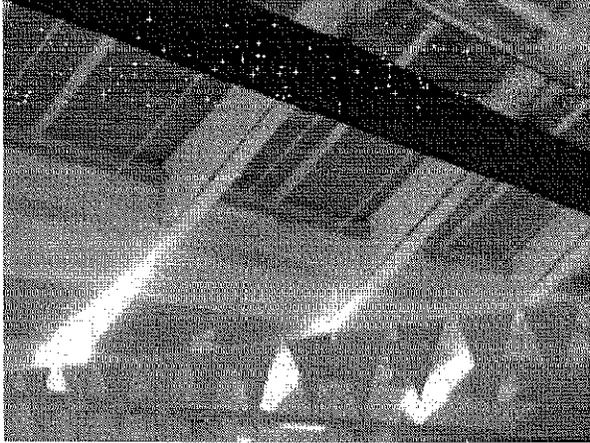


Figure 106. Infrared image showing no apparent thermal anomalies

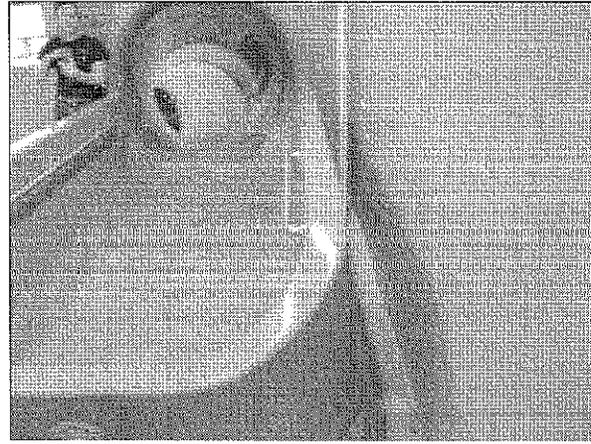


Figure 107. Infrared image showing thermal bridging in slide loading area

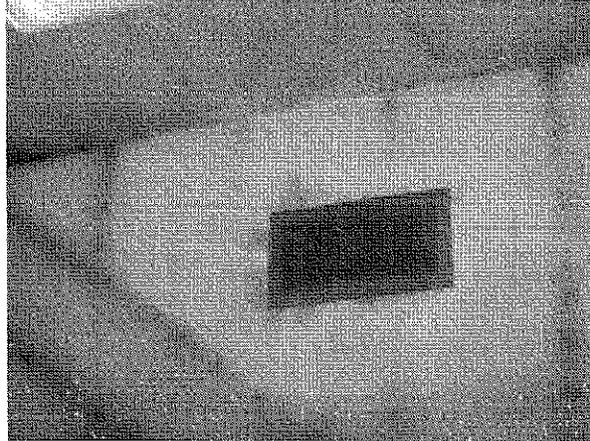


Figure 108. Infrared images showing thermal bridging and air leakage around vent in slide loading area

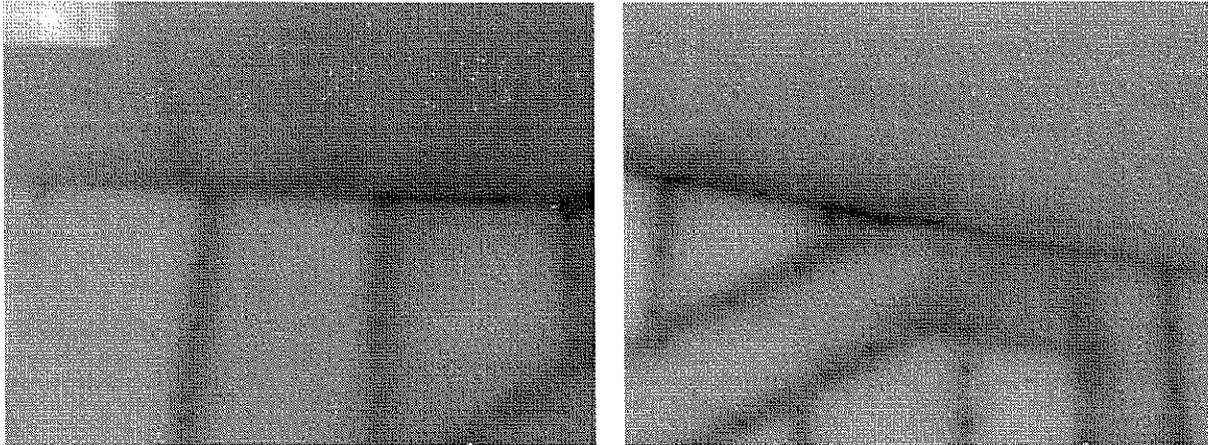


Figure 109. Infrared images showing thermal bridging and air leakage in wall in slide loading area

Discussion

The inspection of the interaction between the natatorium spaces and the surrounding building has concluded that repairs to the mechanical systems and addition of exhaust vents have reversed the pressure in the natatoriums. It is apparent that the natatoriums were previously operating at a positive pressure but little to no damage was observed in surrounding areas of the building as would have been expected if the building had continued to operate as it had for the last year. Despite the lack of observable damage, there are areas such as the wall to rafter connections that were inaccessible during the inspection and further invasive investigation is advised in a representative sampling to verify conditions. Air leakage through the natatorium walls and roof is extensive, which reduces energy efficiency of the mechanical and climate systems but given the negative pressure in the natatoriums no additional damage or degradation is expected to result. However, it is likely that some damage exists to materials in the walls that should be investigated to determine severity.

Despite the lack of damage found in the walls, it may be advisable to open a section of the corrugated metal wall paneling on the roof in an area where evidence of internal corrosion can be seen to verify that the internal wall components have not been compromised. Additionally, a section of brick wall should be removed from the exterior to assess possible damage to the brick ties.

Climatic data collection showed that the natatorium spaces are operating at similar temperatures with relative humidity levels in an acceptable range. It is understood that this was not the case prior to repair and additions to the mechanical systems.

The extensive moisture damage to the wall in the boiler room has several possible causes that were not fully investigated due to the limited scope of work. Work performed

by maintenance staff after the initial site visit may solve the issue by blocking water from the slide loading area. Damaged materials in the boiler room should be removed, replaced and observed to determine if the problem has been solved. If moisture continues to accumulate, investigation into other possible sources should be conducted. The leak observed in the staff training room appears to be the result of either a plumbing leak from the fire sprinkler pipe or the same moisture causing damage in the boiler room above. At the time of BCRA's second site visit, the affected ceiling tile had been replaced but the new tile was wet and will likely fail like its predecessor. The fact that the new tile is wet suggests that the training room leak and the boiler room damage are either unrelated (suggesting a plumbing issue) or the sealant applied next to the slide was ineffective.

Several small locations on the East wall of the Beach natatorium appeared to be holding moisture in the stucco as revealed with the Infrared. These locations also appeared to have "slumped" from the moisture but BCRA was unable to confirm their condition at the time of initial inspection. A contractor removed material from those locations and installed a plastic joint at the bottom of the stucco wall and found no damaged or corroded building materials. As such, it appears that the areas in question were not harboring moisture and were not damaged.

An aerial infrared roof survey was not performed during this stage of the investigation. A limited infrared inspection as performed from the roof level and no evidence of trapped moisture in the roof insulation was observed. It should be noted that inspection from the level of the roof is not ideal and it is possible to miss areas of concern that would be clearly seen during an aerial survey. An aerial infrared survey would be effective on approximately half of the roof surface and is the best way to confirm that no moisture was pushed into the roof insulation during the year of operating the natatoriums under a positive pressure.

Lastly, Hygrothermal analysis of the as-built exterior enclosure was performed on multiple wall types and no issues were found. However, the modeling does not account for the extent of previous air leakage and the addition of chlorine to the hot, humid air passage through the enclosure. As such, the results are being interpreted as indicating an adequate assembly under current, normal operation and do not indicate that no damage was caused under previous conditions.

Jack Pearson, CBST



Building Science Specialist

ADDENDUM 1

OVERVIEW

Purpose Of Investigation – Based on the outcome of the Phase 1 investigation, including visual, infrared, and climatic conditions assessment, BCRA was asked to proceed with a more in-depth investigation to determine level of damages to building materials.

Scope - The issues noted in this report address actual and potential areas of degraded building materials and trapped moisture in the building. Recommendations are offered to assist the City of Lynwood in maintenance and repair of the building due to poorly performing mechanical systems and interactions between the natatorium spaces and the rest of the building.

Investigation Limitations - The methods used in the investigation site visit included visual inspection, infrared thermography, photographic documentation, and climatic data collection. Limited intrusive openings were made into the building from the exterior or interior. Any comments or recommendations are based on areas observed and discussions with the client or building occupants.

Pictorial Documentation - Photographs and IR Thermograms are included as Appendix B of this Report.

FINDINGS

Exterior Brick Veneer Wall

During the initial walk-thru and investigation stage, BCRA observed erratic behavior of the brick veneer wall system that exists along the North and West portions of the natatorium. Observations included efflorescence staining of the bricks as well as walls actively weeping despite the wall having not had an environmental load of water for many days prior. This irregular leakage is most likely due to condensation being formed as vapor laden air escapes the building envelope and goes through a temperature shift, finding it's dew point. Often when natatoriums are involved the chemistry used to sanitize the pool releases chloramines into the air and if these chloramines are carried with the vapor laden air as it condenses; the chloramines and bulk water combine to form a highly corrosive solution. Knowing this, BCRA's first concern were the brick ties in the masonry system. To inspect the ties BCRA opened the brick in an area exhibiting the irregular weeping and was able to inspect multiple brick ties with a borescope. In the areas inspected, the brick ties showed no signs of abnormal corrosion. Additionally, the building wrap was dry to the touch even though weeping was occurring directly below the invasive opening. This brought BCRA to the conclusion that if/where condensation is occurring in the exterior wall system, it is within the framed cavity and not in the veneer drainage/air gap.

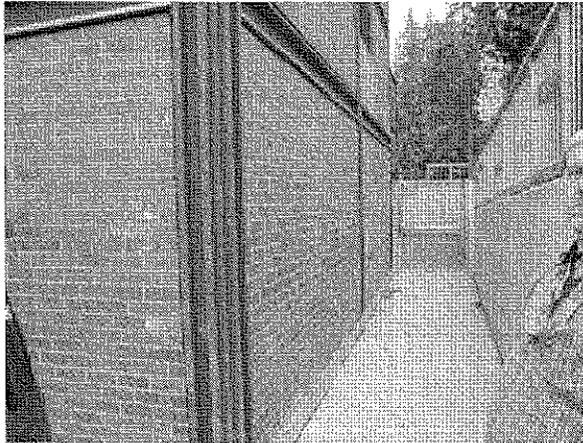


Figure 1. Efflorescence on exterior brick veneer wall



Figure 2. Moisture weeping from the base of the brick veneer system



Figure 3. Invasive opening created

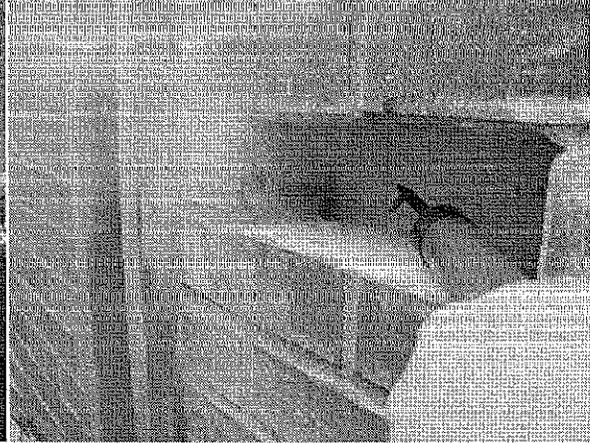


Figure 4. Brick cavity observed to be dry to the touch



Figure 5. Borescope used to inspect cavity hardware



Figure 6. Inspected brick tie showing no corrosion



Figure 7. Inspected brick tie showing no corrosion



Figure 8. Inspected brick tie showing no corrosion

Exterior Metal Panel Wall

During initial walk-thru and investigation stage BCRA observed the similar abnormal weeping stains at the base of the metal panel systems that run along the West wall of the natatorium, mainly at the walls spanning from low-sloped roof to wall. BCRA opened up multiple locations of metal paneling and found conditions similar to the brick veneer cavity. Although bulk water was weeping at the base of the system no moisture was noted on the exterior face of the weather barrier. The fasteners at these locations were noted to have corrosion on the portions that extend into the framed cavity suggesting moisture and possible chemical related corrosion occurring in the framed cavity. Additionally, the weather barrier was taped at some locations and not at others which would allow this material to act as a shingled water drainage plane but not as a continuous air barrier.

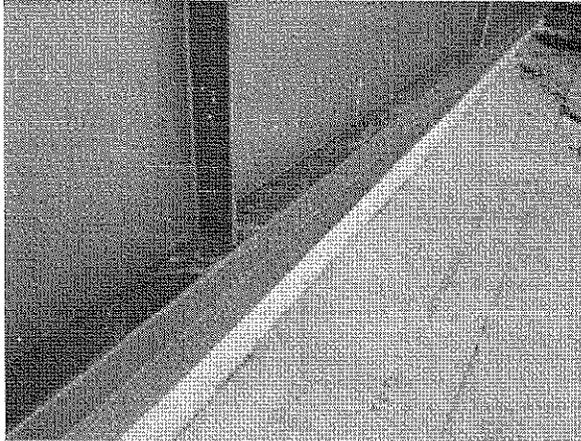


Figure 9. Evidence of past moisture weeping from the base of the metal panel system

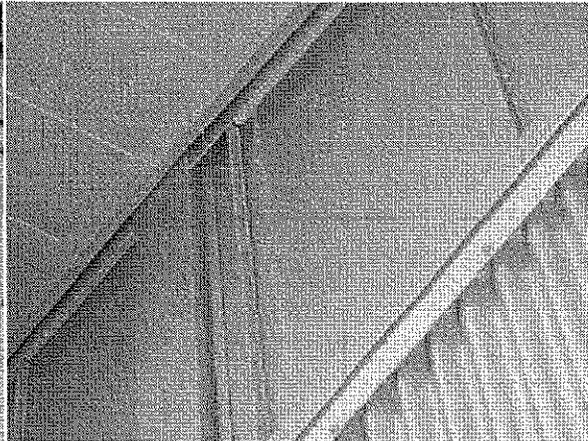


Figure 10. Evidence of past moisture weeping from the base of the metal panel system



Figure 11. Weather barrier materials behind metal panel system

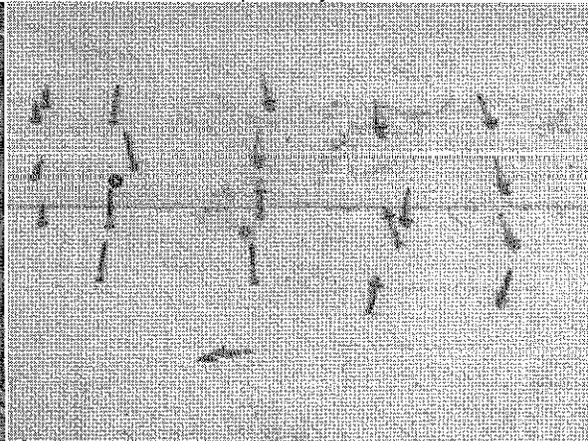


Figure 12. Removed fasteners exhibiting corrosion on threads which have been located in the framed cavity

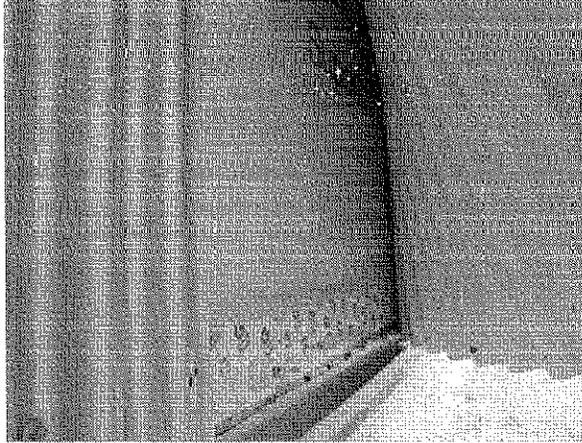


Figure 13. Panel rolled back to show weather barrier behind

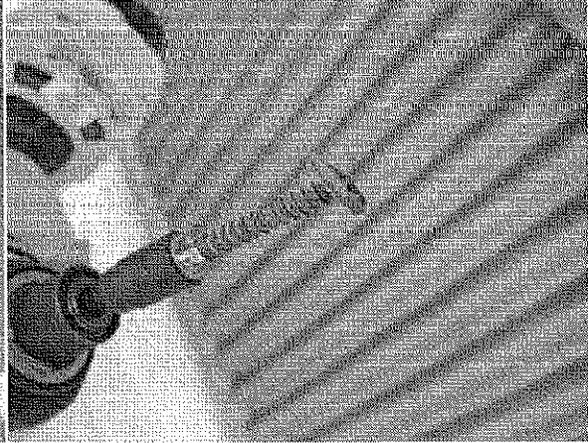


Figure 14. Corrosion on fastener threads

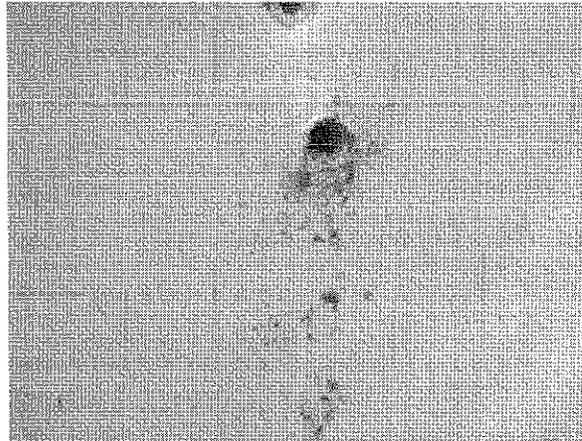


Figure 15. Corrosion at fastener penetration



Figure 16. Weather barrier not acting as a continuous air barrier as seams are not taped in locations observed

Framing Cavity Invasive Openings

Based on the evidence gained from the cladding systems inspection BCRA created multiple inspection openings to observe the conditions occurring within the framing cavity. These openings confirmed that the moisture load was and currently is being produced within the wall cavity. This is due to vapor laden air leakage over time caused by building pressurization and current complex air flow pathways within the framed cavity. In-wall condensation was present in all areas where openings were made. The highest load of in-wall condensation was found at areas where thermal bridges exist. Batt insulation materials ranged from completely saturated to moist to the touch. Minimal corrosion was noted in the framed wall. Corrosion was observed on fastener threads, cut ends of metal framing elements, and on heavy steel elements.

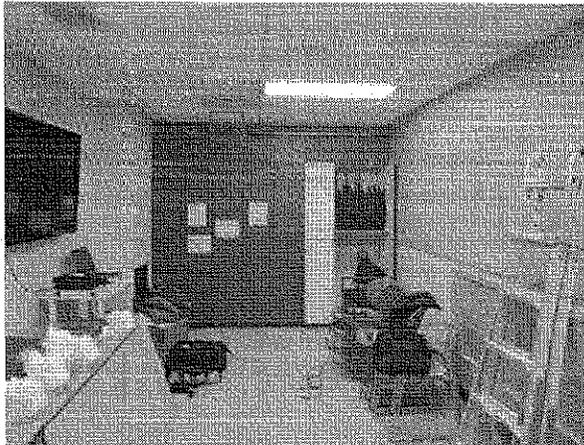


Figure 17. Training room- location of two invasive openings

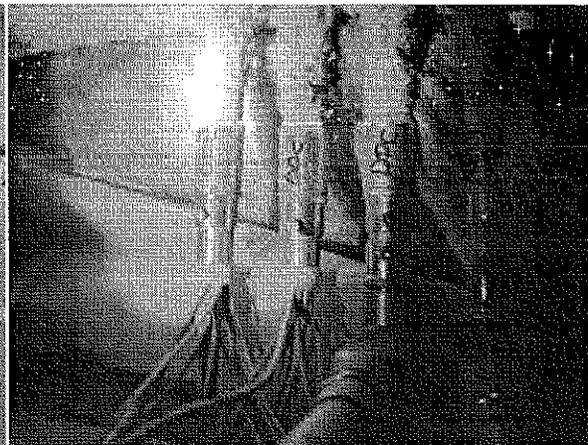


Figure 18. Above ceiling location showing slumped vapor barrier

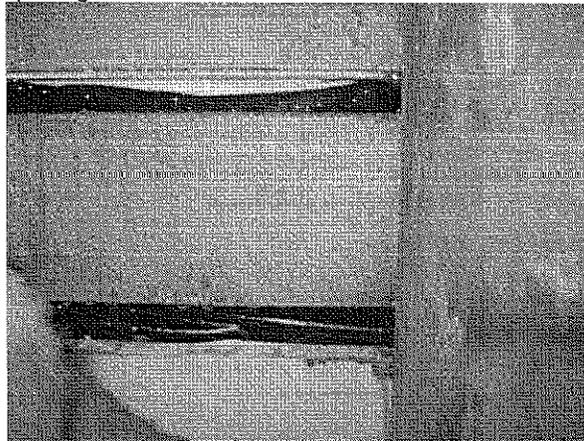


Figure 19. Condensation on the backside of a brick lintel – the thermal bridge exasperating the in wall problem

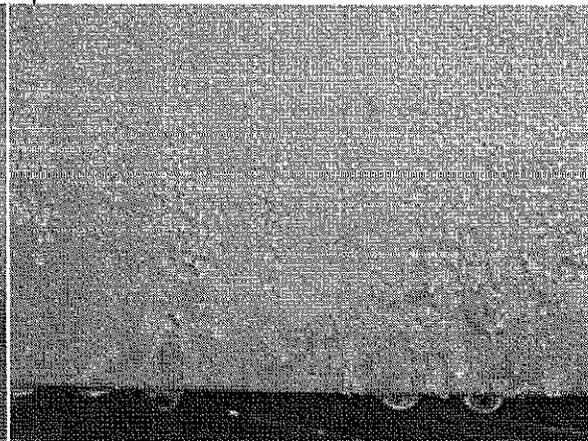


Figure 20. High level of condensation occurring on the interior side of the brick lintel

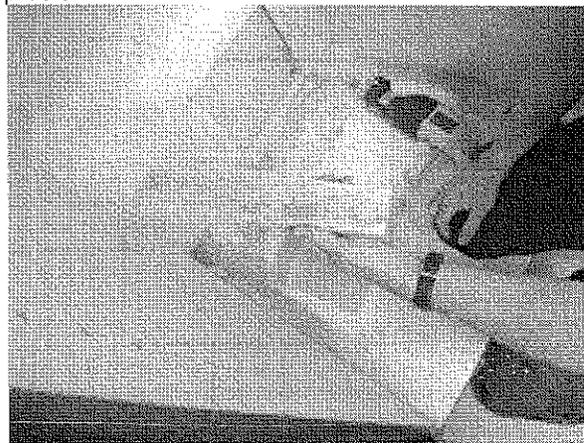


Figure 21. Microbial growth occurring on wood cabinetry that is tight against exterior wall

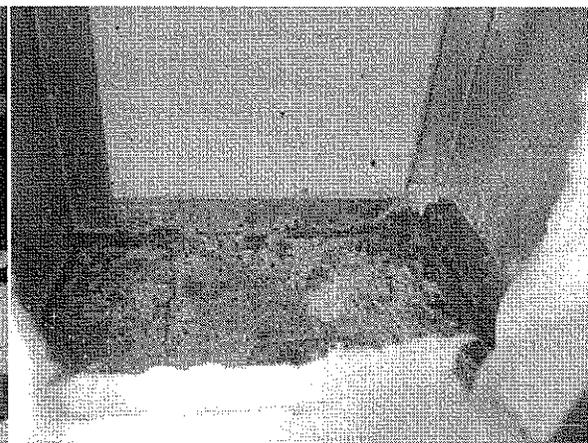


Figure 22. Interior of framed cavity showing 'wet' conditions and minor corrosion of framing elements

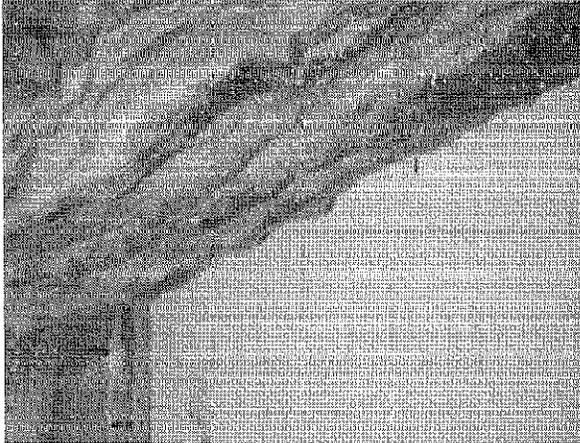


Figure 23. Saturated batt insulation and corrosion occurring on fasteners that penetrate into the framed cavity

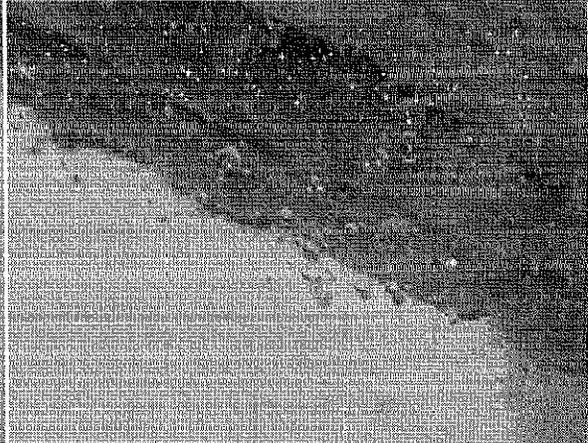


Figure 24. Condensation occurring within the batt insulation

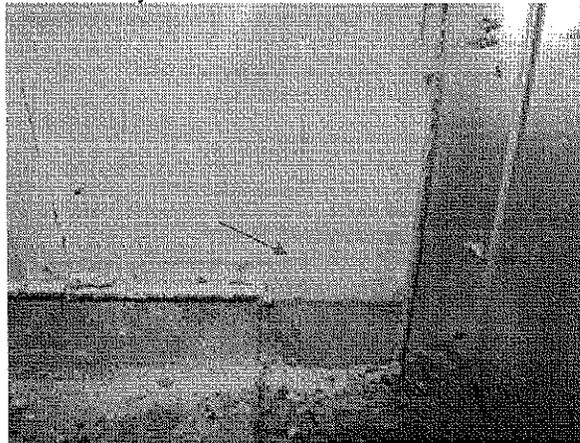


Figure 25. Vapor barrier located between gypsum wall board and framed cavity in place and showing possible condensation between gypsum and vapor barrier.



Figure 26. View looking up the framed cavity showing saturated insulation and corrosion on fasteners

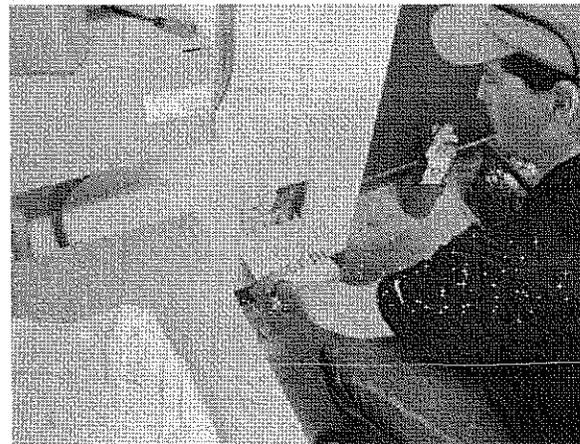


Figure 27. Opening on second floor in boiler room



Figure 28. Insulation moist to the touch and evidence of moisture in framed cavity

Low Sloped Roofing

BCRA was also asked to comment on the ponded water occurring at various locations on the single ply roofing membrane. The roofing was identified as a Firestone TPO product. BCRA was not involved in the specification or submittal process of the roof and does not know what, or if any warranties were associated with the warranties with this specific installation. However, the typical single ply roofing warranty offered by Firestone does not allow for water to collect on the surface for a period of longer than 48 hours following a rain event. Observed water on the single ply membrane systems at multiple locations would be in violation of this and possibly affect the warranty.

"Proper maintenance and good roofing practice requires that ponded water (defined as standing water on the roof forty-eight (48) hours after it stops raining) not be allowed on the roof. Roofs should have slope to drain and all drain areas must remain clean. Bag and remove all debris from the roof since such debris can be quickly swept into drains by rain. This will allow for proper water run-off and avoid overloading the roof with ponded water." – **Firestone Single Ply Roofing Membrane Limited Product Warranty.**

BCRA also reviewed the drawings pertaining to this issue. For the area over the racquetball courts where the largest area of ponded water is occurring the AOR called out for a single ply roofing membrane at a slope of 1/8th/1ft. As observed the current slope is not adequate to manage water as designed and constructed.

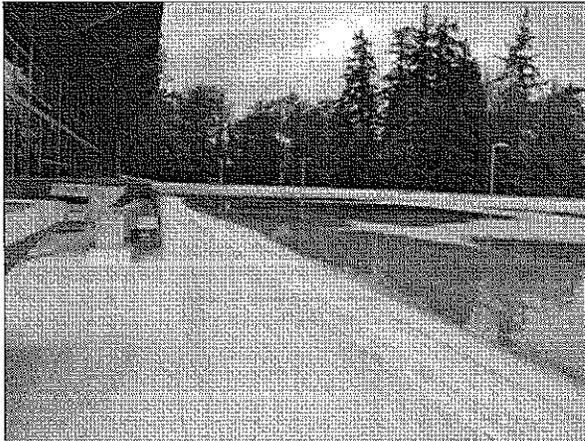


Figure 29. Area of ponded water over racquetball courts

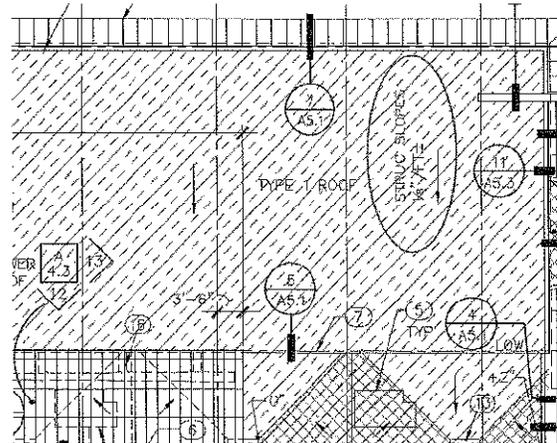


Figure 30. Call out of 1/8th/1ft. on drawings by AOR

Discussion

BCRA has conducted multiple site investigations and found that the building has Three major issues that need to be addressed:

Chemical Induced Corrosion

When BCRA was originally contacted regarding this investigation the issues of corrosion in the natatorium spaces had already been observed and lists of elements that were being impacted were shared with BCRA. This being the case the reason for the corrosion was not well understood. Simply put, the high levels of water vapor, or humidity in the air provided the mobile water for chloramines released by the pool to mix with creating a thin layer of a highly corrosive solution on metal surfaces. As witnessed certain metals reacted in this environment worse than others. Everything from handrails to the small metal electronic switches inside the desktop phones experienced corrosion. BCRA has created a matrix as Appendix A of this report that groups elements and materials together with recommended further actions for each. These elements are then prioritized based on level of severity of corrosion and importance. Newly provided fixtures, electronics, finishes, etc. are being negatively impacted. Additionally, fixtures, electronics, finishes that were in place prior to the renovation and have now been negatively impacted by the renovation. For example, the starting blocks on the lap pool have a stainless steel frame. Based on operator testimony, they have existed for years with only minor amounts of corrosion ever occurring on them. Once the renovation of the facility was complete, the starting blocks have experienced an accelerated corrosion and have required cleaning daily.

In Wall Condensation

As evidenced by the invasive openings a serious problems exists with in-wall condensation. Although a vapor barrier is in the proper position to defend against vapor diffusion, vapor laden air is gaining access to areas in the wall system that allow a dew point to be reached. This can only be occurring due to air leakage. The infrared survey of the building walls and roof surrounding the natatorium showed multiple areas of air leakage. Additionally, the wall designed and constructed has not addressed thermal bridging of the framing and structural elements which brings cold surfaces further inward in the wall system and allowing for numerous locations with condensation potential.

This condition most likely existed in a much worse condition when the natatorium space was pressurized which mechanically forced vapor laded air through the building envelope. The natatorium space pressurization was realized to be an error and was corrected and is now running negative which will certainly improve the condition. However, as witnessed with the recent invasive investigation, complex air flow pathways still exist that brings vapor laden air in contact with materials in the framed cavity allowing for condensation.

Knowing the current moisture load in the framed cavity and the fact that the current corrected operation of the natatorium HVAC system has not corrected in

whole the issue it is foreseen that this problem will be ongoing. Knowing this, it is BCRA's opinion that areas that separate the natatorium from the exterior should undergo a re-design and re-construction that takes into account barriers for Heat, Air, Moisture Liquid, and Moisture Vapor.

Ponding on Low-Sloped Roofing

Major issues of ponding exist on the newly constructed roof. An 1/8" slope was called out in the drawings and the manufacturer recommends a 1/4" slope minimum to provide drainage. Neither was met on the roof and large areas of ponded water exist. The worst of these occur over the racquetball court area. Even though the existing structure that the new roof was built on did not provide for the necessary slope, positive drainage could have been designed and constructed with tapered insulation ensuring a drained roof.

Report Addendum By:



J. Lee Durston
Building Science Director

Peer Review By:



Dave Seifert
Senior Building Science Specialist

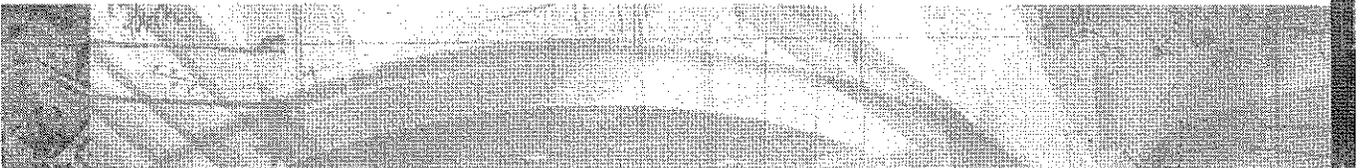
END OF REPORT

2106 Pacific Avenue, Suite 300
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APPENDIX A

BCRADESIGN.COM



BCRA Remediation Matrix

BCRA Project # 12110
 Project Name: Lynnwood Recreation Center

Document Date: 6/11/2012

ITEM	DESCRIPTION	PRIORITY	RECOMMENDATION
1	Corrosion of window hardware	3	Remove and replace as needed
2	Corrosion of speaker mounting brackets and fasteners	1	Remove and replace as needed
3	Corrosion of door hardware	2	Remove and replace as needed
4	Damage to interior GWB in boiler room	4	Remove damaged materials and replace once source of leak is positively identified and corrected
5	Ponding on Roof	3	Use rigid roof insulation to achieve proper slope or have maintenance staff clear ponds as they form, check roof drains for clogging regularly
6	In-wall condensation	1	Redesign wall system to perform correctly, expose wall system and re-construct to achieve performance
7	Damage to building materials in walls	1	Remove and replace as needed
8	Evidence of microbial growth	1	Assess any discovered locations of growth, remove growth, treat area and replace materials as needed
9	Corrosion of wall plates, outlets, thermostats, switches, etc.	2	Remove and replace as needed

10	Moisture damage to wall materials and base of sloped translucent panel roof in lap natatorium	3	Remove and replace as needed
11	Corrosion of handrails	2	Remove and replace as needed
12	Corrosion of HVAC hangers, cables, fasteners	1	Remove and replace as needed
13	Corrosion of structural fasteners	1	Remove and replace as needed
14	Corrosion of stair fasteners and hardware	1	Remove and replace as needed
15	Corrosion of chair fasteners	2	Remove and replace as needed
16	Corrosion of sink, hardware, plumbing in staff training room	3	Remove and replace as needed
17	Corrosion of fire sprinkler plumbing in natatorium	1	Remove and replace as needed
18	Efflorescence on exterior brick	2	Remove buildup and clean areas as needed
19	Corrosion of drinking fountains	4	Remove and replace as needed
20	Corrosion of slide fasteners (slide tubes and structural mounting)	1	Remove and replace as needed

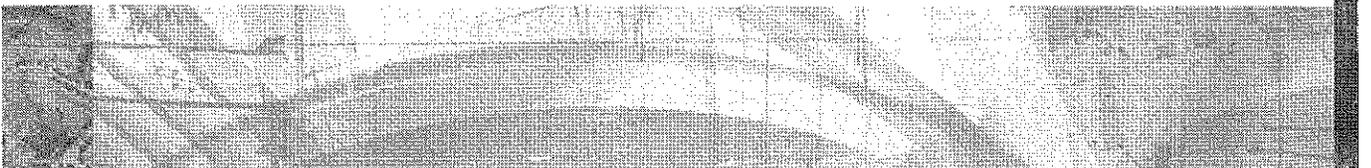
21	Corrosion of phone system, audio system, electronics	2	Remove and replace as needed
22	Corrosion of mounting brackets for slide Stop/GO lights	3	Remove and replace as needed
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 BCRA

APPENDIX B

BCRADESIGN.COM



cc: Lynn Sordal
Via Email
4/5/13

FILED

MAY 07 2013

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

CITY OF LYNNWOOD, a Washington
municipality,

Plaintiff,

vs.

NAC, INC., d/b/a NAC ARCHITECTURE,
a Washington corporation; L&S
ENGINEERING ASSOCIATES, INC., d/b/a
L&S ENGINEERING, a Washington
corporation; M.A. MORTENSON
COMPANY, a foreign corporation; and
DESERT AIRE, CORP. a foreign
corporation,

Defendants.

NO. 13-2-04404-6

AMENDED COMPLAINT

COMES NOW the City of Lynnwood by and through its attorney of record William
A. Linton and the law firm of Inslee, Best, Doezie & Ryder, P.S. and states for its
complaint as follows:

I. PARTIES.

1.1 The City of Lynnwood ("Lynnwood") is a Washington municipality fully
authorized to bring these claims.

1 1.2 NAC, INC., d/b/a NAC ARCHITECTURE (“NAC”) is a Washington
2 corporation doing business in Snohomish County, Washington.

3 1.3 L&S ENGINEERING ASSOCIATES, INC., d/b/a L&S ENGINEERING
4 (“L&S”) is a Washington corporation doing business in Snohomish County, Washington.

5 1.4 M.A. MORTENSON COMPANY (“Mortenson”) is a foreign corporation
6 incorporated in the State of Nebraska doing business in Snohomish County, Washington.

7 1.5 DESERT AIRE CORP. (“Desert Aire”) is a foreign corporation incorporated
8 in the State of Wisconsin doing business in Snohomish County, Washington.

9 **II. FACTUAL BACKGROUND.**

10 2.1 This dispute involves construction and equipment defects at the Lynnwood
11 Recreation Center Project (the “Project”).

12 2.2 On December 11, 2008 the City of Lynnwood executed a professional
13 services contract with NAC (“NAC Contract”) for design services related to the Project.
14 The Project consisted of a remodel and new construction of Lynnwood’s pool and recreation
15 facilities located at 18900 44th Avenue, Lynnwood Washington. The initial project budget
16 was over \$22 Million.

17 2.3 The NAC Contract provided that NAC would serve as architect on the
18 Project. The NAC Contract included the following duties as part of NAC’s scope of work:

- 19 a. NAC was Lynnwood’s representative during the Project;
- 20 b. NAC would provide contract administration services;
- 21 c. NAC would review and approve contractor submittals including shop
22 drawings, product data, and samples;

1 d. NAC would provide construction documents including drawings and
2 specifications that establish in detail the quality levels of materials and systems required for
3 the Project;

4 e. NAC agreed to review laws and regulations applicable to the project and
5 apply those requirements in the design of the Project.

6 2.4 The Project was to be LEED Silver compliant.

7 2.5 The NAC Contract provided that NAC would retain I&S as mechanical
8 engineer.

9 2.6 NAC provided project specifications and drawings for the Project.

10 2.7 The specifications included requirements for pool dehumidification units as
11 part of the ventilation system. The specifications listed three possible manufacturers for the
12 dehumidification units including Desert Aire.

13 2.8 The specifications further required that the dehumidification units must meet
14 “applicable requirements in ASHRAE/IESNA 90.1 Section 6, Heating, Ventilating, and Air-
15 Conditioning.”

16 2.9 The specifications also required submittals for the dehumidification units.

17 2.10 Mortenson was eventually selected as the general contractor/construction
18 manager (“GC/CM”) for the Project. Mortenson obtained shop drawings and product
19 information from Desert Aire as part of the submittal process.

20 2.11 Desert Aire created shop drawings and specific product information for the
21 Project and provided those documents to Mortenson for submittal to NAC and the City. The
22 Desert Aire submittals specifically identified the Project and listed Lynnwood as recipient of

1 the submittals. The Desert Aire submittals contained specific representations of the air
2 handling capacities of the units and specified the appropriate unit.

3 2.12 Mortenson submitted the Desert Aire submittals to NAC and L&S for
4 approval. NAC and L&S approved the submittals and the use of the Desert Aire
5 dehumidification units for the Project.

6 2.13 Lynnwood proceeded with construction of the Project. The Project was
7 substantially complete on February 24, 2011.

8 2.14 The City subsequently opened the Project for public use and the problems
9 with the air handling mechanical systems became immediately apparent. High humidity and
10 lack of negative air pressure were some of the observed symptoms.

11 2.15 The City engaged the assistance of its own building and engineering
12 consultants to evaluate these problems. Based upon those investigations, the City engaged
13 Mortenson to install additional ventilation fans at additional expense to the City in order to
14 augment the Desert Aire units.

15 2.16 The installation of additional ventilation fans helped but did not entirely fix
16 the ventilation problems. Additional investigation led the City to discover that in order to
17 achieve even marginally acceptable air conditions, the Desert Aire units needed to be
18 adjusted in such a manner as to close all external air dampers which resulted in excessive
19 condensation and additional energy use. The City also believes such radical adjustments and
20 augmentation of the Desert Aire units will result in shortened working life of the units and
21 increased power usage. The discovery of these defects and inadequacies could not be made
22 by the City until the units and the building were put into service.

1 3.2.2 The NAC Contract required NAC to draft contract specifications that
2 would establish in detail the quality levels of materials and systems required for the Project.
3 NAC failed to do so by specifying air handling units in the specifications that were
4 inappropriate for the Project and would not meet the industry or regulatory standards
5 required for the Project.

6 3.2.3 The NAC Contract required NAC to review and approve submittals
7 and to take appropriate action to ensure compliance with the Project design. NAC failed to
8 adequately review the submittals on the Desert Aire units. The Desert Aire units were not
9 appropriate for the Project and could not meet the design criteria to provide adequate
10 ventilation for this Project. NAC and L&S relied upon calculations and representations of
11 Desert Aire. Thus they failed to perform their contract duties to ensure compliance with the
12 Project design criteria.

13 3.3.4 NAC breached its contract to produce drawings and specifications that
14 would meet applicable laws and regulations concerning adequate lighting on the pool deck.

15 3.2.2 NAC has breached its duties under the NAC Contract thereby causing
16 damages to the City in the form of lost use, increased construction and equipment costs,
17 purchase of faulty and inadequate equipment, and property damage.

18 3.3 Negligence -- NAC.

19 3.3.1 NAC owed the City an independent duty to perform its professional
20 architectural and engineering services in a manner consistent with the reasonable care of a
21 professional architect and engineer under similar conditions.

1 3.3.2 NAC failed to exercise reasonable care by failing to evaluate whether
2 the Desert Aire units would meet the ventilation requirements required by applicable
3 industry standards, statutes, and regulations.

4 3.3.3 NAC failed to exercise reasonable care in approving submittals that the
5 Desert Aire units would meet the design requirements of the Project.

6 3.3.4 NAC failed to exercise reasonable care in developing drawings and
7 specifications that did not meet applicable laws and regulations concerning adequate lighting
8 on the pool deck.

9 3.3.5 NAC failed to exercise reasonable care by failing to properly calculate
10 the ventilation requirements and equipment capacities needed to adequately ventilate the
11 Project.

12 3.3.6 NAC failed to exercise reasonable care in failing to properly supervise
13 its consultant L&S in performing calculations and approving submittals concerning the
14 Project's ventilation and lighting systems.

15 3.3.7 Upon information and belief, NAC failed to exercise reasonable care
16 in developing the specification for pool dehumidification units by accepting the
17 computations, representations, and proposed specification language of Desert Aire as to the
18 suitability of the Desert Aire units without independently verifying and testing those
19 computations and representations.

20 3.3.7 NAC has breached its duties of reasonable care thereby causing
21 damages to Lynnwood in the form of lost use, increased construction and equipment costs,
22 purchase of faulty and inadequate equipment, and property damage.

1 3.4 Misrepresentation – NAC.

2 3.4.1 NAC owed Lynnwood a duty to disclose its failure to perform its
3 calculations of the necessary ventilation capacity and determination of appropriate design
4 criteria for the Project. Upon information and belief, NAC accepted the calculations and
5 representations of Desert Aire for the purpose of developing specifications that effectively
6 created a sole source specification. NAC and L&S negligently failed to verify Desert Aire’s
7 representations and calculations. In addition, NAC negligently represented in the
8 specifications and in approving the Desert Aire submittals that the Desert Aire units were
9 appropriate and suitable for the Project.

10 3.4.2 By failing to disclose its reliance upon Desert Aire’s representations
11 and calculations and by representing that the Desert Aire units were suitable for the Project,
12 NAC negligently misrepresented to Lynnwood that it had drafted the drawings and
13 specifications and had taken applicable laws and regulations into account in the design of the
14 Project. NAC also failed to disclose it was effectively creating a sole source specification.
15 Lynnwood relied upon NAC’s misrepresentations to its detriment. NAC’s negligent
16 misrepresentations have caused damages to Lynnwood in the form of lost use, increased
17 construction and equipment costs, purchase of faulty and inadequate equipment, and property
18 damage.

19 3.5 Contractual Indemnity – NAC and L&S.

20 3.5.1 The NAC Contract requires NAC and its consultants to indemnify and
21 defend Lynnwood from all claims and causes of action arising from their negligent acts. The
22 negligent acts of NAC and its consultants as stated herein have caused injury to the City’s

1 property including lost use, increased construction and equipment costs, purchase of faulty
2 and inadequate equipment, and property damage. The City has also paid significant
3 additional costs to correct and replace the Desert Aire Units and to repair and replace other
4 damaged property cause in whole or in part by the acts of NAC and L&S. The City has
5 made demand upon NAC and L&S to pay for those costs. NAC and L&S have breached
6 their contractual indemnity obligations to defend and indemnify the City for losses caused by
7 the acts of NAC and L&S thereby causing damages to Lynnwood.

8 3.6 Negligence – L&S.

9 3.6.1 L&S owed Lynnwood an independent duty to perform its professional
10 engineering services in a manner consistent with the reasonable care of a professional
11 engineer under similar conditions.

12 3.6.2 L&S failed to exercise reasonable care by failing to evaluate whether
13 the Desert Aire units would meet the ventilation requirements required by applicable statutes
14 and regulations.

15 3.6.3 L&S failed to exercise reasonable care in approving submittals that the
16 Desert Aire units would meet the design requirements of the Project.

17 3.6.4 L&S failed to exercise reasonable care in developing drawings and
18 specifications that did not meet applicable laws and regulations concerning adequate lighting
19 on the pool deck.

20 3.6.5 L&S failed to exercise reasonable care by failing to properly calculate
21 the ventilation requirements and equipment capacities needed to adequately ventilate the
22 Project.

1 3.6.7 Upon information and belief, L&S failed to exercise reasonable care in
2 developing the specification for pool dehumidification units by accepting the computations,
3 representations, and proposed specification language of Desert Aire as to the suitability of
4 the Desert Aire units without independently verifying and testing those computations and
5 representations.

6 3.6.8 L&S has breached its duties of reasonable care thereby causing
7 damages to Lynnwood in the form of lost use, increased construction and equipment costs,
8 purchase of faulty and inadequate equipment, and property damage.

9 3.7 Misrepresentation - L&S

10 3.7.1 L&S owed Lynnwood a duty to disclose its failure to perform
11 calculations of the necessary ventilation capacity and determination of appropriate design
12 criteria for the Project. L&S also owed Lynnwood a duty to disclose that it was effectively
13 creating a sole source specification for the Desert Aire units. L&S knew that Lynnwood
14 would rely upon L&S's representations. Upon information and belief, L&S accepted the
15 calculations and representations of Desert Aire for the purpose of developing specifications
16 that effectively created a sole source specification. L&S negligently failed to verify Desert
17 Aire's representations and calculations. In addition, L&S negligently represented in the
18 specifications and in approving the Desert Aire's submittals that the Desert Aire units were
19 appropriate and suitable for the Project.

20 3.7.2 By failing to disclose its reliance upon Desert Aire's representations
21 and calculations and by representing that the Desert Aire units were suitable for the Project,
22 L&S negligently misrepresented to Lynnwood that it had drafted the drawings and

1 specifications and had taken applicable laws and regulations into account in the design of the
2 Project. Lynnwood reasonably relied upon L&S's representations to its detriment. L&S's
3 negligent misrepresentations have caused damages to Lynnwood in the form of lost use,
4 increased construction and equipment costs, purchase of faulty and inadequate equipment,
5 and property damage.

6 3.8 Breach Of Express Warranties – Mortenson

7 3.8.1 The contract for construction requires that all work performed by
8 Mortenson will comply with the plans and specifications.

9 3.8.2 The specifications and the contract for construction require that the
10 pool dehumidification units shall meet the requirements of industry standards and applicable
11 laws and regulations.

12 3.8.3 By submitting Desert Aire product information in the form of a
13 contract submittal, Mortenson warranted that the Desert Aire units met the requirements of
14 the specifications.

15 3.8.4 The Desert Aire units do not meet the requirements of the
16 specifications. The failure to meet the specifications is a breach of express warranty that has
17 caused damages to Lynnwood in the form of lost use, increased construction and equipment
18 costs, purchase of faulty and inadequate equipment, and property damage.

19 3.9 Breach Of Contract – Mortenson

20 3.9.1 Investigation by Lynnwood's building experts has revealed
21 construction defects including air leakage and pooling water on the Project's roof. To the
22 extent these conditions are the result of faulty workmanship they are a breach of the

1 construction contract that have caused damages to Lynnwood in amounts to be proved at
2 trial.

3 3.10 Breach Of Express Warranties – Desert Aire

4 3.10.1 Desert Aire represented to Mortenson and to the City through its
5 communications with L&S and NAC, and in its submittal materials that the specified Desert
6 Aire units were suitable for the Project and met the requirements of the specifications and
7 the requirements of the Project.

8 3.10.2 At no time did Desert Aire disclaim or limit its express warranties.

9 3.10.2 The Desert Aire units installed on the Project are not suitable for the
10 Project. They lack the capacity to adequately ventilate and dehumidify the Project. They
11 also do not meet applicable laws and regulations. As a result, Lynnwood has expended
12 significant additional costs to augment and replace the Desert Aire units. The breach of
13 Desert Aire’s express warranties has caused Lynnwood damages in the form of lost use,
14 increased construction and equipment costs, purchase of faulty and inadequate equipment,
15 and property damage.

16 3.11 Implied Indemnity

17 3.11.1 The express warranties by Desert Aire and the damages created by the
18 breach of those warranties provides a basis for implied indemnity for the damages caused by
19 Desert Aire’s breach of warranty.

20 3.11.2 Desert Aire’s products did not perform as promised and represented.
21 The losses associated with that failure should be borne by Desert Aire rather than
22 Lynnwood.

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3.12 Attorney Fees And Costs

3.12.1 The NAC Contract provides for award of attorney fees and costs to the prevailing party.

3.12.2 RCW 39.04.240 provides for award of attorney fees and costs to the prevailing party in an public works contract.

3.12.3 Under both of these provisions and under the provisions of the indemnity agreement in the NAC Contract, Lynnwood is entitled to its attorney fees and costs.

3.13 Prejudgment Interest.

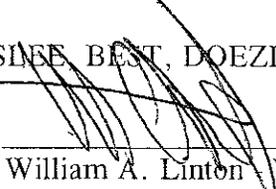
To the extent the damages due the City are liquidated in amount, the City is entitled to prejudgment interest at the highest statutory rate.

IV. PRAYER FOR RELIEF.

WHEREFORE having stated its claims, the City of Lynnwood prays for the following relief:

- 1. Judgment against NAC, Mor'tensen, L&S, and Desert Aire together with prejudgment interest and attorney fees and costs;
- 2. Leave to amend this complaint;
- 2. Such other and further relief as the court deems appropriate.

DATED this 6th day of May, 2013.

INSLEE BEST, DOEZIE & RYDER, P.S.
 By 
 William A. Linton W.S.B.A. #19975
 Attorneys for City of Lynnwood

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

CITY OF LYNNWOOD, a Washington
municipality;

Plaintiff,

v.

NAC, INC., d/b/a NAC ARCHITECTURE, a
Washington corporation; L&S ENGINEERING
ASSOCIATES, INC., d/b/a L&S
ENGINEERING, a Washington corporation;
M.A. MORTENSON COMPANY, a foreign
corporation; and DESERT AIRE, CORP., a
foreign corporation;

Defendants.

No. 13-2-04404-6

SUMMONS

M.A. MORTENSON COMPANY, a foreign
corporation,

Third-Party Plaintiff,

v.

HERMANSON COMPANY, LLP, a
Washington corporation,

Third-Party Defendant.

1 TO THIRD PARTY DEENDANT, HERMANSON COMPANY, LLP:

2 A lawsuit has been started against you in the above-entitled court by M.A. Mortenson
3 Company, Third Party Plaintiff above-named. Third Party Plaintiff's claim is stated in the written
4 M.A. Mortenson Company's Answer, Affirmative Defenses and Third Party Complaint, a copy of
5 which is served upon you with this Summons.

6 In order to defend against this lawsuit, you must respond to the Third Party Complaint by
7 stating your defense in writing, and serve a copy upon the undersigned attorney for the Third Party
8 Plaintiff;

9 (a) within twenty (20) days after the service of this Summons, excluding the day of
10 service, if served within the State of Washington;

11 (b) within sixty (60) days after the service of this Summons, excluding the day of
12 service, if served outside the State of Washington,

13 or a default judgment may be entered against you without notice. A default judgment is one where
14 Third Party Plaintiff is entitled to what it asks for because you have not responded. If you serve a
15 Notice of Appearance on the undersigned attorney, you are entitled to notice before a default judgment
16 may be entered.

17 You may demand that the Third Party Plaintiff file this lawsuit with the court. If you do so, the
18 demand must be in writing and must be served upon the Third Party Plaintiff. Within 14 days after you
19 serve the demand, the Third Party Plaintiff must file this lawsuit with the court or the service on you of
20 this Summons and Third Party Complaint will be void.

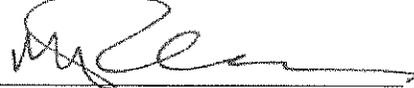
21 If you wish to seek the advice of an attorney in this matter, you should do so promptly so that
22 your written response, if any, may be served on time.
23
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26

1 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State
2 of Washington.

3 Dated this 15th day of July, 2013.

4 Respectfully submitted,

5 GROFF MURPHY, PLLC

6 

7 Michael P. Grace, WSBA # 26091
8 Meredith L. Thielbahr, WSBA #41746
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13 E. mgrace@groffmurphy.com

14 E. mthielbahr@groffmurphy.com

15 *Attorneys for Defendant/Third Party Plaintiff*
16 *M.A. Mortenson Company;*

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served on July 15, 2013, a true and correct copy of the foregoing document to the counsel of record listed below, via the method indicated:

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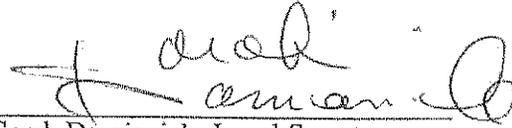
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1 *Counsel for NAC, Inc.,d/b/a NAC*
2 *Architecture*

3 DATED: July 15, 2013.

4 

5 Sarah Damianick, Legal Secretary
6 Groff Murphy, PLLC
7 E. sdamianick@groffmurphy.com

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

CITY OF LYNNWOOD, a Washington
municipality;

Plaintiff,

v.

NAC, INC., d/b/a NAC ARCHITECTURE, a
Washington corporation; L&S ENGINEERING
ASSOCIATES, INC., d/b/a L&S
ENGINEERING, a Washington corporation;
M.A. MORTENSON COMPANY, a foreign
corporation; and DESERT AIRE, CORP., a
foreign corporation;

Defendants.

M.A. MORTENSON COMPANY, a foreign
corporation,

Third-Party Plaintiff,

v.

HERMANSON COMPANY, LLP, a
Washington corporation,

Third-Party Defendant.

No. 13-2-04404-6

M.A. MORTENSON COMPANY'S
ANSWER, AFFIRMATIVE DEFENSES
AND THIRD-PARTY COMPLAINT

COMES NOW Defendant M.A. Mortenson Company ("Mortenson"), by and through its
attorneys of record, Groff Murphy, PLLC, and (1) answers the indicated paragraphs of Plaintiff

1 the City of Lynnwood's ("the City") Amended Complaint and Cross-Defendant Desert Aire,
2 Corp.'s ("Desert Aire") Cross-Claim; and (2) asserts a Third-Party Complaint against Hermanson
3 Company, LLP ("Hermanson").
4

5 I. ANSWER TO THE CITY'S COMPLAINT

6 1. Parties.

7 1.1 As to Paragraph 1.1, Mortenson admits that the City is a Washington municipality.
8 The remaining allegations are denied for lack of knowledge.

9 1.2 As to Paragraph 1.2, Mortenson admits the alleged party has done business in
10 Snohomish County, Washington. The remaining allegations are denied for lack of knowledge.

11 1.3 As to Paragraph 1.3, Mortenson admits the alleged party has done business in
12 Snohomish County, Washington. The remaining allegations are denied for lack of knowledge.

13 1.4 As to Paragraph 1.4, Mortenson denies in part. Mortenson is a Minnesota
14 corporation doing business in Snohomish County, Washington.

15 1.5 As to Paragraph 1.5, Mortenson admits the alleged party has done business in
16 Snohomish County, Washington. The remaining allegations are denied for lack of knowledge.

17 2. Factual Background.

18 2.1 As to Paragraph 2.1, Mortenson admits only that the City's allegations in this
19 action relate to the Lynnwood Recreation Center Project (the "Project") for which Mortenson was
20 the General Contractor/Construction Manager ("GC/CM"). As to the remainder of the allegations,
21 Mortenson denies.

22 2.2 As to Paragraph 2.2, Mortenson admits only that the City was the owner of the
23 Project and that NAC was the architect on the Project. The remaining allegations are denied for
24 lack of knowledge.

25 2.3 As to Paragraph 2.3(a), (b), (c), (d), and (e), Mortenson denies for lack of
26 knowledge. Mortenson acknowledges and relied upon the City's representation that NAC was
contracted to be the Designer of Record.

1 2.4 As to Paragraph 2.4, Mortenson admits only that the LEED goal for the Project was
2 USGBC LEED-NC (New Construction) Version 2.2 with a Silver certification.

3 2.5 As to Paragraph 2.5, Mortenson denies for lack of knowledge.

4 2.6 As to Paragraph 2.6, Mortenson admits.

5 2.7 As to Paragraph 2.7, Mortenson admits only that NAC's Project specifications
6 included Specification Section 15755, "POOL DEHUMIDIFICATION UNITS," and that the
7 Specification listed Desert Aire; SA Series as the Basis-of-Design Manufacturer, and Dectron
8 Internationale and PoolPak Technologies Corporation as Alternate Manufacturers, and that said
9 Specification speaks for itself.

10 2.8 As to Paragraph 2.8, Mortenson admits only that NAC's Project specifications
11 included Specification Section 15755, Part 1.04, "QUALITY ASSURANCE" stating:
12 "ASHRAE/IESNA 90.1 Compliance: Applicable requirements in ASHRAE/IESNA 90.1, Section
13 6, "Heating, Ventilating, and Air Conditioning," and that said Specification speaks for itself.

14 2.9 As to Paragraph 2.9, Mortenson admits.

15 2.10 As to Paragraph 2.10, Mortenson admits only that, at the conclusion of the
16 preconstruction services phase, it replaced the City's previously selected contractor as GC/CM for
17 the Project. Mortenson admits that Desert Aire provided shop drawings and product information
18 to Hermanson, which in turn provided the same to Mortenson. All other allegations are denied.

19 2.11 As to Paragraph 2.11, Mortenson admits only that Project Submittal Data was
20 provided to Mortenson by Hermanson pursuant to NAC's selection and specification of the
21 appropriate and requested unit. Hermanson's Submittal Data, including Desert Aire's SA Series
22 Dehumidifier Submittal, speaks for itself.

23 2.12 As to Paragraph 2.12, Mortenson admits only that Hermanson's Project Submittal
24 Data, including use of the Desert Aire SA Series Pool Dehumidification Units, were submitted to
25 NAC for approval and that Mortenson, subsequently, received such approval from NAC.

26 2.13 As to Paragraph 2.13, Mortenson admits.

1 2.14 As to Paragraph 2.14, Mortenson admits only that, in 2012, the City brought to
2 Mortenson's attention allegations that the City had discovered certain issues with respect to the
3 HVAC/mechanical systems.

4 2.15 As to Paragraph 2.15, Mortenson admits only that the City requested and engaged
5 Mortenson to perform extra services and work, including but not limited to, supplemental exhaust
6 fans to the pool dehumidification units. By way of further averment, Mortenson asserts that the
7 City has failed to pay Mortenson for the extra services and work it was authorized to perform.

8 2.16 As to Paragraph 2.16, Mortenson denies for lack of direct knowledge.

9 2.17 As to Paragraph 2.17, Mortenson denies for lack of knowledge.

10 2.18 As to Paragraph 2.18, Mortenson denies for lack of knowledge.

11 2.19 As to Paragraph 2.19, Mortenson admits only that the City has made requests to
12 defendant Mortenson to perform adjustments and repairs to the pool dehumidification units, and
13 that Mortenson has been responsive and cooperative in those requests, notwithstanding the fact
14 that Mortenson denies responsibility for any issues with the pool dehumidification units, and
15 notwithstanding the fact that the City has wrongfully refused to pay Mortenson amounts due and
16 owing. All other allegations are denied.

17 2.20 Paragraph 2.20 contains legal conclusions to which no response is required. To the
18 extent a response is required, Mortenson denies.

19 **3. Claims for Relief.**

20 3.1 As to Paragraph 3.1, Mortenson incorporates by reference its responses contained
21 in Paragraph 1.1 through 2.20 above as though fully set forth herein.

22 3.2 Breach of Contract – NAC.

23 The allegations in Paragraph 3.2 are not directed at answering defendant, so no answer is
24 required. To the extent any answer is required, the allegations are denied.

1 3.3. Negligence – NAC.

2 The allegations in Paragraph 3.3 are not directed at answering defendant, so no answer is
3 required. To the extent any answer is required, the allegations are denied.

4 3.4 Misrepresentation – NAC.

5 The allegations in Paragraph 3.4 are not directed at answering defendant, so no answer is
6 required. To the extent any answer is required, the allegations are denied.

7 3.5 Contractual Indemnity – NAC and L&S.

8 The allegations in Paragraph 3.5 are not directed at answering defendant, so no answer is
9 required. To the extent any answer is required, the allegations are denied.

10 3.6 Negligence – L&S.

11 The allegations in Paragraph 3.6 are not directed at answering defendant, so no answer is
12 required. To the extent any answer is required, the allegations are denied.

13 3.7 Misrepresentation – L&S.

14 The allegations in Paragraph 3.7 are not directed at answering defendant, so no answer is
15 required. To the extent any answer is required, the allegations are denied.

16 3.8 Breach of Express Warranties – Mortenson.

17 3.8.1 As to Paragraph 3.8.1, Mortenson admits only that Mortenson entered into a
18 GC/CM Contract with the City, and that said Contract evidences its own terms. Mortenson denies
19 the allegations in Paragraph 3.8.1 to the extent they are not consistent with the terms of the
20 Contract.

21 3.8.2 As to Paragraph 3.8.2, Mortenson admits only that the Contract and
22 specifications evidence their own terms. Mortenson denies the allegations in Paragraph 3.8.2 to
23 the extent they are not consistent with the terms of the Contract.

24 3.8.3 Paragraph 3.8.3 contains legal conclusions to which no response is required.
25 To the extent a response is required, Mortenson denies.

26 3.8.4 As to Paragraph 3.8.4, Mortenson denies.

1 3.9 Breach of Contract – Mortenson.

2 3.9.1 Paragraph 3.9.1 contains legal conclusions to which no response is required.
3 To the extent a response is required, Mortenson denies.

4 3.10 Breach of Express Warranties – Desert Aire.

5 The allegations in Paragraph 3.10 are not directed at answering defendant, so no answer is
6 required. To the extent any answer is required, the allegations are denied.

7 3.11 Implied Indemnity.

8 The allegations in Paragraph 3.11 are not directed at answering defendant, so no answer is
9 required. To the extent any answer is required, the allegations are denied.

10 3.12 Attorney Fees and Costs.

11 The allegations in Paragraph 3.12 are not directed at answering defendant, so no answer is
12 required. To the extent any answer is required, the allegations are denied.

13 3.13 Prejudgment Interest.

14 As to Paragraph 3.13, Mortenson denies.

15 **II. ANSWER TO DESERT AIRE’S CROSS-CLAIM**

16 1. The allegations in Paragraph 1 of Desert Aire’s Cross-Claim are not directed at
17 answering defendant, so no answer is required. To the extent any answer is required, the
18 allegations are denied.

19 2. As to Paragraph 2 of Desert Aire’s Cross-Claim, Mortenson denies.

20 **III. AFFIRMATIVE DEFENSES**

21 BY WAY OF FURTHER ANSWER to the City’s Amended Complaint and Desert Aire’s
22 Cross-Claim, Mortenson asserts the following affirmative defenses:

- 23 1. The City has failed to establish this Court’s jurisdiction.
- 24 2. The City has failed to establish that venue is proper in Snohomish County,
25 Washington.
- 26 3. The City has failed to state a claim upon which relief can be granted.

1 4. The City's claims, in whole or in part, were caused by its own negligence,
2 including but not limited to its failure to maintain.

3 5. To the extent that the City has suffered damages, the damages were caused, in
4 whole or in part, by the acts or omissions of third parties over whom Mortenson has no control
5 and for whose acts or omissions Mortenson is not legally liable, including but not limited to NAC
6 and L&S.

7 6. The City's claims are barred and/or waived for failure to comply with contractual
8 procedures and processes, including but not limited to contractual claim and dispute resolution
9 requirements.

10 7. The City has failed to mitigate its damages, if any.

11 8. The City's damages, if any, must be offset by amounts owed to Mortenson from
12 the City.

13 9. Estoppel.

14 10. Waiver.

15 11. As an additional affirmative defense to Desert Aire's Cross-Claim, Desert Aire is
16 not in privity of contract with Mortenson and its claims are barred by the economic loss rule
17 and/or independent duty doctrine.

18 12. Mortenson expressly reserves the right to allege additional affirmative defenses in
19 the event discovery or trial reveals facts upon which such defenses may be based.

20
21 **IV. THIRD-PARTY COMPLAINT AGAINST DEFENDANT HERMANSON
 COMPANY, LLP**

22 M.A. Mortenson Company ("Mortenson") hereby asserts the following Third-Party
23 Complaint against Hermanson Company, LLP ("Hermanson"):

24 **1. Parties.**

25 1.1 Mortenson is a Minnesota corporation conducting business in the State of
26 Washington, Snohomish County. Mortenson is a duly registered contractor in the State of

1 Washington, in good standing, and has complied with all statutory prerequisites to maintain this
2 action.

3 1.2 Hermanson is a Washington corporation conducting business as a mechanical
4 contractor in the State of Washington, Snohomish County. Hermanson was contracted by
5 Mortenson as the mechanical tradecontractor to install the pool dehumidification units
6 manufactured by Desert Air for the construction project at issue in this action.

7 **2. Jurisdiction and Venue.**

8 2.1 Mortenson re-alleges the allegations contained in Paragraphs 1.1 and 1.2 of its
9 Third-Party Complaint above as though fully set forth herein.

10 2.2 This Court has jurisdiction over the subject matter of this action and the parties are
11 subject to the personal jurisdiction of this Court. The construction project at issue is located in
12 Snohomish County and Third-Party Defendant Hermanson conducts business in Snohomish
13 County.

14 2.3 Venue is proper in Snohomish County because Third-Party Defendant Hermanson
15 conducts business in Snohomish County.

16 **3. Facts.**

17 3.1. Mortenson re-alleges the allegations contained in Paragraphs 1.1 through 2.3 of its
18 Third-Party Complaint above as though fully set forth herein.

19 3.2 This action involves the construction of the Lynnwood Recreation Center Project
20 (the "Project") in Snohomish County, Washington. The owner, the City of Lynwood ("the City"),
21 awarded Mortenson a written GC/CM Contract for the construction services phase of the Project.
22 Mortenson awarded a written mechanical subcontract to Hermanson to perform certain work on
23 the Project (the "Subcontract Agreement"), including but not limited to, selection and installation
24 of certain pool dehumidification units.

25 3.3 The City has brought the above-captioned lawsuit against Mortenson relating to
26 alleged defects that arise out of or result from Hermanson's work on the Project. To the extent

1 that the City's allegations against Mortenson are proven true, Hermanson is responsible to
2 Mortenson for the same.

3 3.4 Pursuant to the Article 17.1 of the Subcontract Agreement, Hermanson agreed to
4 "[d]efend and indemnify Mortenson . . . from and against any and all suits or claims alleging
5 damages, losses and expenses, including attorneys' fees, attributable to . . . damage to property
6 (including loss of use), arising out of or resulting from Subcontractor's Work . . . including all
7 suits and claims that arise during and after construction of the Project"

8 3.5 Mortenson tendered the City's claims to Hermanson. To date, Hermanson has
9 failed and/or refused to accept the tender.

10 **4. Causes of Action: Breach of Contract, Duty to Defend and Indemnify.**

11 4.1 Mortenson re-alleges the allegations contained in Paragraphs 1.1 through 3.5 of its
12 Third-Party Complaint above as though fully set forth herein.

13 4.2 Hermanson has breached its subcontract by failing to defend and indemnify
14 Mortenson from the City's claims. Mortenson is entitled to damages in an amount to proven at
15 time of trial.

16 **V. PRAYER FOR RELIEF**

17 WHEREFORE, having answered the City's Amended Complaint and having asserted its
18 Third-Party Complaint against Hermanson, Mortenson prays for the following relief:

- 19 1. For dismissal of the City's claims against Mortenson with prejudice.
20 2. For an award of attorneys' fees and costs incurred by Mortenson in this action.
21 3. Judgment against the City, including but not limited to costs, attorneys' fees, and
22 prejudgment interest.
23 4. In the event that the City obtains judgment against Mortenson, for judgment against
24 Hermanson for the full judgment amount, including but not limited to costs, attorneys' fees, and
25 prejudgment interest.
26

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served on July 15, 2013, a true and correct copy of the foregoing document to the counsel of record listed below, via the method indicated:

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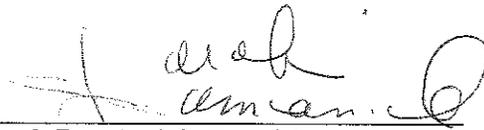
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1 *Counsel for NAC, Inc.,d/b/a NAC*
2 *Architecture*

3 DATED: July 15, 2013.

4 
5 Sarah Damianick, Legal Secretary
6 Groff Murphy, PLLC
7 E. sdamianick@groffmurphy.com

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SUPERIOR COURT OF WASHINGTON IN AND FOR SNOHOMISH COUNTY

CITY OF LYNNWOOD, a Washington municipality,

Plaintiff,

v.

NAC, INC., d/b/a NAC ARCHITECTURE, a Washington corporation; L&S ENGINEERING ASSOCIATES, INC., d/b/a L&S ENGINEERING, a Washington corporation; M.A. MORTENSON COMPANY, a foreign corporation; and DESERT AIRE CORP., a foreign corporation,

Defendants.

NO. 13-2-04404-6

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant L&S Engineering Associates, Inc. ("L&S"), answers Plaintiff City of Lynnwood's ("City") Complaint as follows:

I. PARTIES

1.1 L&S lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 1.1, and therefore denies the same.

1.2 L&S admits the allegations contained in paragraph 1.2.

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES: 1

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Fax: (509) 747-2323

1 3.2.1 In response to the allegations contained in the first sentence of paragraph 3.2.1,
2 L&S admits that the terms of the contract speak for themselves and all inconsistent allegations
3 are denied. In response to the allegations contained in the second sentence of paragraph 3.2.1,
4 L&S denies the same.

5 3.2.2 In response to the allegations contained in the first sentence of paragraph 3.2.2,
6 L&S admits that the terms of the contract speak for themselves and all inconsistent allegations
7 are denied. In response to the allegations contained in the second sentence of paragraph 3.2.2,
8 L&S denies the same.

9 3.2.3 L&S lacks knowledge or information sufficient to form a belief about the truth
10 of the allegations contained in paragraph 3.2.3, and therefore denies the same.

11 3.2.4 L&S lacks knowledge or information sufficient to form a belief about the truth
12 of the allegations contained in paragraph 3.2.4, which is misnumbered as 3.3.4 in the Amended
13 Complaint, and therefore denies the same.

14 3.2.5 L&S lacks knowledge or information sufficient to form a belief about the truth
15 of the allegations contained in paragraph 3.2.5, which is misnumbered as a second 3.2.2 in the
16 Amended Complaint, and therefore denies the same.

17 3.3.1 The allegations contained in paragraph 3.3.1 are legal propositions to which
18 L&S is not required to respond.

19 3.3.2 L&S lacks knowledge or information sufficient to form a belief about the truth
20 of the allegations contained in paragraph 3.3.2, and therefore denies the same.

21 3.3.3 L&S lacks knowledge or information sufficient to form a belief about the truth
22 of the allegations contained in paragraph 3.3.3, and therefore denies the same.

23 3.3.4 L&S lacks knowledge or information sufficient to form a belief about the truth
24 of the allegations contained in paragraph 3.3.4, and therefore denies the same.

25

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 4

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1 3.3.5 L&S lacks knowledge or information sufficient to form a belief about the truth
2 of the allegations contained in paragraph 3.3.5, and therefore denies the same.

3 3.3.6 L&S lacks knowledge or information sufficient to form a belief about the truth
4 of the allegations contained in paragraph 3.3.6, and therefore denies the same.

5 3.3.7 L&S lacks knowledge or information sufficient to form a belief about the truth
6 of the allegations contained in paragraph 3.3.7, and therefore denies the same.

7 3.3.8 L&S denies the allegations contained in paragraph 3.3.8, which is misnumbered
8 as a second paragraph 3.3.7 in the Amended Complaint.

9 3.4.1 L&S denies the allegations contained in paragraph 3.4.1.

10 3.4.2 L&S denies the allegations contained in paragraph 3.4.2.

11 3.5.1 In response to the allegations contained in the first sentence of paragraph 3.5.1,
12 L&S admits that the terms of the contract speak for themselves and denies any inconsistent
13 allegations. L&S denies all other allegations in paragraph 3.5.1.

14 3.6.1 The allegations contained in paragraph 3.6.1 are legal propositions to which
15 L&S is not required to respond.

16 3.6.2 L&S denies the allegations contained in paragraph 3.6.2.

17 3.6.3 L&S denies the allegations contained in paragraph 3.6.3.

18 3.6.4 L&S denies the allegations contained in paragraph 3.6.4.

19 3.6.5 L&S denies the allegations contained in paragraph 3.6.5.

20 3.6.7 L&S denies the allegations contained in paragraph 3.6.7. L&S notes that this
21 paragraph and paragraph 3.6.8 are misnumbered because the City of Lynnwood skipped
22 paragraph 3.6.6.

23 3.6.8 L&S denies the allegations contained in paragraph 3.6.8.

24 3.7.1 L&S denies the allegations contained in paragraph 3.7.1.

25 3.7.2 L&S denies the allegations contained in paragraph 3.7.2.

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 5

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1 3.8.1 In answering paragraph 3.8.1, L&S admits that the terms of the contract and/or
2 specifications speak for themselves. Further, paragraph 3.8.1 is not directed at L&S.

3 3.8.2 In answering paragraph 3.8.2, L&S admits that terms of the contract,
4 regulations, and/or specifications speak for themselves. Further, paragraph 3.8.2 is not directed
5 at L&S.

6 3.8.3 Paragraph 3.8.3 is not directed at L&S and therefore L&S denies the same.

7 3.8.4 Paragraph 3.8.4 is not directed at L&S and therefore L&S denies the same.

8 3.9.1 Paragraph 3.9.1 is not directed at L&S and therefore L&S denies the same.

9 3.10.1 Paragraph 3.10.1 is not directed at L&S and therefore L&S denies the same.

10 3.10.2 Paragraph 3.10.2 is not directed at L&S and therefore L&S denies the same.

11 3.10.3 Paragraph 3.10.3, which is misnumbered as a second paragraph 3.10.2, is not
12 directed at L&S and therefore L&S denies the same.

13 3.11.1 Paragraph 3.11.1 is not directed at L&S and therefore L&S denies the same.

14 3.11.2 Paragraph 3.11.2 is not directed at L&S and therefore L&S denies the same.

15 3.12.1 In answering paragraph 3.12.1, L&S admits that the terms of the contract speak
16 for themselves.

17 3.12.2 In answering paragraph 3.12.2, L&S admits that the terms of the statute speak
18 for themselves.

19 3.12.3 L&S denies the allegations contained in paragraph 3.12.3.

20 3.13 L&S denies the allegations contained in paragraph 3.13.

21 3.2 L&S denies all other allegations contained in the City's Complaint.

22 **IV. AFFIRMATIVE DEFENSES**

23 By way of further answer, L&S asserts the following affirmative defenses:

24 4.1 The City fails to state a claim upon which relief can be granted.

25 4.2 The City failed to follow statutory and/or contractual conditions precedent.

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 6

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2013, I caused to be served a true and correct copy of the foregoing document to the following:

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JANET MacFARLANE, Paralegal

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 8

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SUPERIOR COURT OF WASHINGTON IN AND FOR SNOHOMISH COUNTY

CITY OF LYNNWOOD, a Washington municipality,

Plaintiff,

v.

NAC, INC., d/b/a NAC ARCHITECTURE, a Washington corporation; L&S ENGINEERING ASSOCIATES, INC., d/b/a L&S ENGINEERING, a Washington corporation; M.A. MORTENSON COMPANY, a foreign corporation; and DESERT AIRE CORP., a foreign corporation,

Defendants.

NO. 13-2-04404-6

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant L&S Engineering Associates, Inc. ("L&S"), answers Plaintiff City of Lynnwood's ("City") Complaint as follows:

I. PARTIES

1.1 L&S lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 1.1, and therefore denies the same.

1.2 L&S admits the allegations contained in paragraph 1.2.

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES: 1

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1 1.3 L&S admits the allegations contained in paragraph 1.3.

2 1.4 L&S lacks knowledge or information sufficient to form a belief about the truth
3 of the allegations contained in paragraph 1.4, and therefore denies the same.

4 1.5 L&S lacks knowledge or information sufficient to form a belief about the truth
5 of the allegations contained in paragraph 1.5, and therefore denies the same.

6 **II. FACTUAL BACKGROUND**

7 2.1 L&S denies the allegations contained in paragraph 2.1.

8 2.2 L&S lacks knowledge or information sufficient to form a belief about the truth
9 of the allegations contained in paragraph 2.2, and therefore denies the same.

10 2.3 In answering paragraph 2.3, L&S admits that terms of the contract, statute,
11 and/or specifications speak for themselves.

12 2.4 L&S lacks knowledge or information sufficient to form a belief about the truth
13 of the allegations contained in paragraph 2.4, and therefore denies the same.

14 2.5 In answering paragraph 2.5, L&S admits that terms of the contract, statute,
15 and/or specifications speak for themselves.

16 2.6 L&S admits the allegations contained in paragraph 2.6.

17 2.7 L&S admits the allegations contained in paragraph 2.7.

18 2.8 In answering paragraph 2.8, L&S admits that terms of the specifications speak
19 for themselves and include the language quoted by the City of Lynnwood.

20 2.9 In answering paragraph 2.9, L&S admits that terms of the specifications speak
21 for themselves, including but not limited to any submittal requirements.

22 2.10 L&S lacks knowledge or information sufficient to form a belief about the truth
23 of the allegations contained in paragraph 2.10, and therefore denies the same.

24 2.11 L&S lacks knowledge or information sufficient to form a belief about the truth
25 of the allegations contained in paragraph 2.11, and therefore denies the same.

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 2

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1 3.2.1 In response to the allegations contained in the first sentence of paragraph 3.2.1,
2 L&S admits that the terms of the contract speak for themselves and all inconsistent allegations
3 are denied. In response to the allegations contained in the second sentence of paragraph 3.2.1,
4 L&S denies the same.

5 3.2.2 In response to the allegations contained in the first sentence of paragraph 3.2.2,
6 L&S admits that the terms of the contract speak for themselves and all inconsistent allegations
7 are denied. In response to the allegations contained in the second sentence of paragraph 3.2.2,
8 L&S denies the same.

9 3.2.3 L&S lacks knowledge or information sufficient to form a belief about the truth
10 of the allegations contained in paragraph 3.2.3, and therefore denies the same.

11 3.2.4 L&S lacks knowledge or information sufficient to form a belief about the truth
12 of the allegations contained in paragraph 3.2.4, which is misnumbered as 3.3.4 in the Amended
13 Complaint, and therefore denies the same.

14 3.2.5 L&S lacks knowledge or information sufficient to form a belief about the truth
15 of the allegations contained in paragraph 3.2.5, which is misnumbered as a second 3.2.2 in the
16 Amended Complaint, and therefore denies the same.

17 3.3.1 The allegations contained in paragraph 3.3.1 are legal propositions to which
18 L&S is not required to respond.

19 3.3.2 L&S lacks knowledge or information sufficient to form a belief about the truth
20 of the allegations contained in paragraph 3.3.2, and therefore denies the same.

21 3.3.3 L&S lacks knowledge or information sufficient to form a belief about the truth
22 of the allegations contained in paragraph 3.3.3, and therefore denies the same.

23 3.3.4 L&S lacks knowledge or information sufficient to form a belief about the truth
24 of the allegations contained in paragraph 3.3.4, and therefore denies the same.
25

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 4

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1 3.3.5 L&S lacks knowledge or information sufficient to form a belief about the truth
2 of the allegations contained in paragraph 3.3.5, and therefore denies the same.

3 3.3.6 L&S lacks knowledge or information sufficient to form a belief about the truth
4 of the allegations contained in paragraph 3.3.6, and therefore denies the same.

5 3.3.7 L&S lacks knowledge or information sufficient to form a belief about the truth
6 of the allegations contained in paragraph 3.3.7, and therefore denies the same.

7 3.3.8 L&S denies the allegations contained in paragraph 3.3.8, which is misnumbered
8 as a second paragraph 3.3.7 in the Amended Complaint.

9 3.4.1 L&S denies the allegations contained in paragraph 3.4.1.

10 3.4.2 L&S denies the allegations contained in paragraph 3.4.2.

11 3.5.1 In response to the allegations contained in the first sentence of paragraph 3.5.1,
12 L&S admits that the terms of the contract speak for themselves and denies any inconsistent
13 allegations. L&S denies all other allegations in paragraph 3.5.1.

14 3.6.1 The allegations contained in paragraph 3.6.1 are legal propositions to which
15 L&S is not required to respond.

16 3.6.2 L&S denies the allegations contained in paragraph 3.6.2.

17 3.6.3 L&S denies the allegations contained in paragraph 3.6.3.

18 3.6.4 L&S denies the allegations contained in paragraph 3.6.4.

19 3.6.5 L&S denies the allegations contained in paragraph 3.6.5.

20 3.6.7 L&S denies the allegations contained in paragraph 3.6.7. L&S notes that this
21 paragraph and paragraph 3.6.8 are misnumbered because the City of Lynnwood skipped
22 paragraph 3.6.6.

23 3.6.8 L&S denies the allegations contained in paragraph 3.6.8.

24 3.7.1 L&S denies the allegations contained in paragraph 3.7.1.

25 3.7.2 L&S denies the allegations contained in paragraph 3.7.2.

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 5

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1 3.8.1 In answering paragraph 3.8.1, L&S admits that the terms of the contract and/or
2 specifications speak for themselves. Further, paragraph 3.8.1 is not directed at L&S.

3 3.8.2 In answering paragraph 3.8.2, L&S admits that terms of the contract,
4 regulations, and/or specifications speak for themselves. Further, paragraph 3.8.2 is not directed
5 at L&S.

6 3.8.3 Paragraph 3.8.3 is not directed at L&S and therefore L&S denies the same.

7 3.8.4 Paragraph 3.8.4 is not directed at L&S and therefore L&S denies the same.

8 3.9.1 Paragraph 3.9.1 is not directed at L&S and therefore L&S denies the same.

9 3.10.1 Paragraph 3.10.1 is not directed at L&S and therefore L&S denies the same.

10 3.10.2 Paragraph 3.10.2 is not directed at L&S and therefore L&S denies the same.

11 3.10.3 Paragraph 3.10.3, which is misnumbered as a second paragraph 3.10.2, is not
12 directed at L&S and therefore L&S denies the same.

13 3.11.1 Paragraph 3.11.1 is not directed at L&S and therefore L&S denies the same.

14 3.11.2 Paragraph 3.11.2 is not directed at L&S and therefore L&S denies the same.

15 3.12.1 In answering paragraph 3.12.1, L&S admits that the terms of the contract speak
16 for themselves.

17 3.12.2 In answering paragraph 3.12.2, L&S admits that the terms of the statute speak
18 for themselves.

19 3.12.3 L&S denies the allegations contained in paragraph 3.12.3.

20 3.13 L&S denies the allegations contained in paragraph 3.13.

21 3.2 L&S denies all other allegations contained in the City's Complaint.

22 IV. AFFIRMATIVE DEFENSES

23 By way of further answer, L&S asserts the following affirmative defenses:

24 4.1 The City fails to state a claim upon which relief can be granted.

25 4.2 The City failed to follow statutory and/or contractual conditions precedent.

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 6

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2013, I caused to be served a true and correct copy of the foregoing document to the following:

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Attorneys for Defendant Desert Aire Corp.

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JANET MacFARLANE, Paralegal

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 8

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INSLEE, BEST, ET AL.

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SUPERIOR COURT OF WASHINGTON IN AND FOR SNOHOMISH COUNTY

CITY OF LYNNWOOD, a Washington
municipality,

Plaintiff,

v.

NAC, INC., d/b/a NAC ARCHITECTURE, a
Washington corporation; L&S
ENGINEERING ASSOCIATES, INC., d/b/a
L&S ENGINEERING, a Washington
corporation; M.A. MORTENSON
COMPANY, a foreign corporation; and
DESERT AIRE CORP., a foreign corporation,

Defendants.

NO. 13-2-04404-6

L&S ENGINEERING ASSOCIATES,
INC.'S ANSWER AND AFFIRMATIVE
DEFENSES

Defendant L&S Engineering Associates, Inc. ("L&S"), answers Plaintiff City of
Lynnwood's ("City") Complaint as follows:

I. PARTIES

1.1 L&S lacks knowledge or information sufficient to form a belief about the truth
of the allegations contained in paragraph 1.1, and therefore denies the same.

1.2 L&S admits the allegations contained in paragraph 1.2.

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 1

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1 1.3 L&S admits the allegations contained in paragraph 1.3.

2 1.4 L&S lacks knowledge or information sufficient to form a belief about the truth
3 of the allegations contained in paragraph 1.4, and therefore denies the same.

4 1.5 L&S lacks knowledge or information sufficient to form a belief about the truth
5 of the allegations contained in paragraph 1.5, and therefore denies the same.

6 **II. FACTUAL BACKGROUND**

7 2.1 L&S denies the allegations contained in paragraph 2.1.

8 2.2 L&S lacks knowledge or information sufficient to form a belief about the truth
9 of the allegations contained in paragraph 2.2, and therefore denies the same.

10 2.3 In answering paragraph 2.3, L&S admits that terms of the contract, statute,
11 and/or specifications speak for themselves.

12 2.4 L&S lacks knowledge or information sufficient to form a belief about the truth
13 of the allegations contained in paragraph 2.4, and therefore denies the same.

14 2.5 In answering paragraph 2.5, L&S admits that terms of the contract, statute,
15 and/or specifications speak for themselves.

16 2.6 L&S admits the allegations contained in paragraph 2.6.

17 2.7 L&S admits the allegations contained in paragraph 2.7.

18 2.8 In answering paragraph 2.8, L&S admits that terms of the specifications speak
19 for themselves and include the language quoted by the City of Lynnwood.

20 2.9 In answering paragraph 2.9, L&S admits that terms of the specifications speak
21 for themselves, including but not limited to any submittal requirements.

22 2.10 L&S lacks knowledge or information sufficient to form a belief about the truth
23 of the allegations contained in paragraph 2.10, and therefore denies the same.

24 2.11 L&S lacks knowledge or information sufficient to form a belief about the truth
25 of the allegations contained in paragraph 2.11, and therefore denies the same.

**L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 2**

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1 3.2.1 In response to the allegations contained in the first sentence of paragraph 3.2.1,
2 L&S admits that the terms of the contract speak for themselves and all inconsistent allegations
3 are denied. In response to the allegations contained in the second sentence of paragraph 3.2.1,
4 L&S denies the same.

5 3.2.2 In response to the allegations contained in the first sentence of paragraph 3.2.2,
6 L&S admits that the terms of the contract speak for themselves and all inconsistent allegations
7 are denied. In response to the allegations contained in the second sentence of paragraph 3.2.2,
8 L&S denies the same.

9 3.2.3 L&S lacks knowledge or information sufficient to form a belief about the truth
10 of the allegations contained in paragraph 3.2.3, and therefore denies the same.

11 3.2.4 L&S lacks knowledge or information sufficient to form a belief about the truth
12 of the allegations contained in paragraph 3.2.4, which is misnumbered as 3.3.4 in the Amended
13 Complaint, and therefore denies the same.

14 3.2.5 L&S lacks knowledge or information sufficient to form a belief about the truth
15 of the allegations contained in paragraph 3.2.5, which is misnumbered as a second 3.2.2 in the
16 Amended Complaint, and therefore denies the same.

17 3.3.1 The allegations contained in paragraph 3.3.1 are legal propositions to which
18 L&S is not required to respond.

19 3.3.2 L&S lacks knowledge or information sufficient to form a belief about the truth
20 of the allegations contained in paragraph 3.3.2, and therefore denies the same.

21 3.3.3 L&S lacks knowledge or information sufficient to form a belief about the truth
22 of the allegations contained in paragraph 3.3.3, and therefore denies the same.

23 3.3.4 L&S lacks knowledge or information sufficient to form a belief about the truth
24 of the allegations contained in paragraph 3.3.4, and therefore denies the same.

25
**L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 4**

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
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Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 3.3.5 L&S lacks knowledge or information sufficient to form a belief about the truth
2 of the allegations contained in paragraph 3.3.5, and therefore denies the same.

3 3.3.6 L&S lacks knowledge or information sufficient to form a belief about the truth
4 of the allegations contained in paragraph 3.3.6, and therefore denies the same.

5 3.3.7 L&S lacks knowledge or information sufficient to form a belief about the truth
6 of the allegations contained in paragraph 3.3.7, and therefore denies the same.

7 3.3.8 L&S denies the allegations contained in paragraph 3.3.8, which is misnumbered
8 as a second paragraph 3.3.7 in the Amended Complaint.

9 3.4.1 L&S denies the allegations contained in paragraph 3.4.1.

10 3.4.2 L&S denies the allegations contained in paragraph 3.4.2.

11 3.5.1 In response to the allegations contained in the first sentence of paragraph 3.5.1,
12 L&S admits that the terms of the contract speak for themselves and denies any inconsistent
13 allegations. L&S denies all other allegations in paragraph 3.5.1.

14 3.6.1 The allegations contained in paragraph 3.6.1 are legal propositions to which
15 L&S is not required to respond.

16 3.6.2 L&S denies the allegations contained in paragraph 3.6.2.

17 3.6.3 L&S denies the allegations contained in paragraph 3.6.3.

18 3.6.4 L&S denies the allegations contained in paragraph 3.6.4.

19 3.6.5 L&S denies the allegations contained in paragraph 3.6.5.

20 3.6.7 L&S denies the allegations contained in paragraph 3.6.7. L&S notes that this
21 paragraph and paragraph 3.6.8 are misnumbered because the City of Lynnwood skipped
22 paragraph 3.6.6.

23 3.6.8 L&S denies the allegations contained in paragraph 3.6.8.

24 3.7.1 L&S denies the allegations contained in paragraph 3.7.1.

25 3.7.2 L&S denies the allegations contained in paragraph 3.7.2.

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 5

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1 3.8.1 In answering paragraph 3.8.1, L&S admits that the terms of the contract and/or
2 specifications speak for themselves. Further, paragraph 3.8.1 is not directed at L&S.

3 3.8.2 In answering paragraph 3.8.2, L&S admits that terms of the contract,
4 regulations, and/or specifications speak for themselves. Further, paragraph 3.8.2 is not directed
5 at L&S.

6 3.8.3 Paragraph 3.8.3 is not directed at L&S and therefore L&S denies the same.

7 3.8.4 Paragraph 3.8.4 is not directed at L&S and therefore L&S denies the same.

8 3.9.1 Paragraph 3.9.1 is not directed at L&S and therefore L&S denies the same.

9 3.10.1 Paragraph 3.10.1 is not directed at L&S and therefore L&S denies the same.

10 3.10.2 Paragraph 3.10.2 is not directed at L&S and therefore L&S denies the same.

11 3.10.3 Paragraph 3.10.3, which is misnumbered as a second paragraph 3.10.2, is not
12 directed at L&S and therefore L&S denies the same.

13 3.11.1 Paragraph 3.11.1 is not directed at L&S and therefore L&S denies the same.

14 3.11.2 Paragraph 3.11.2 is not directed at L&S and therefore L&S denies the same.

15 3.12.1 In answering paragraph 3.12.1, L&S admits that the terms of the contract speak
16 for themselves.

17 3.12.2 In answering paragraph 3.12.2, L&S admits that the terms of the statute speak
18 for themselves.

19 3.12.3 L&S denies the allegations contained in paragraph 3.12.3.

20 3.13 L&S denies the allegations contained in paragraph 3.13.

21 3.2 L&S denies all other allegations contained in the City's Complaint.

22 **IV. AFFIRMATIVE DEFENSES**

23 By way of further answer, L&S asserts the following affirmative defenses:

24 4.1 The City fails to state a claim upon which relief can be granted.

25 4.2 The City failed to follow statutory and/or contractual conditions precedent.

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 6

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2013, I caused to be served a true and correct copy of the foregoing document to the following:

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Attorneys for Defendant Desert Aire Corp.

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- VIA HAND DELIVERY
- VIA FACSIMILE
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JANET MacFARLANE, Paralegal

L&S ENGINEERING ASSOCIATES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES: 8

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JUL 10 2013

INSLEE, BEST, ET AL.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

CITY OF LYNNWOOD, a Washington municipality,

Plaintiff,

v.

NAC, INC., d/b/a NAC ARCHITECTURE, a Washington corporation; L&S ENGINEERING ASSOCIATES, INC., d/b/a L&S ENGINEERING, a Washington corporation; M.A. MORTENSON COMPANY, a foreign corporation; and DESERT AIRE CORP., a foreign corporation,

Defendant.

NO. 13-2-04404-6

**NAC'S ANSWER AND
COUNTERCLAIM**

FOR ITS ANSWER to the Amended Complaint herein, defendant NAC, Inc. admits, denies and alleges as follows:

- 1.1** Paragraph 1.1 is admitted.
- 1.2** Paragraph 1.2 is admitted.
- 1.3** Paragraph 1.3 is admitted.
- 1.4** Paragraph 1.4 is denied for lack of knowledge.
- 1.5** Paragraph 1.5 is denied for lack of knowledge.

1 **2.1** Paragraph 2.1 is admitted.

2 **2.2** Paragraph 2.2 is admitted.

3 **2.3** In response to Paragraph 2.3, it is alleged that the terms of the NAC Contract
4 speak for themselves. All inconsistent allegations are denied.

5 **2.4** In response to Paragraph 2.4, it is admitted that LEED Silver certification was
6 a goal.

7 **2.5** Paragraph 2.5 is admitted.

8 **2.6** Paragraph 2.6 is admitted.

9 **2.7** Paragraph 2.7 is admitted.

10 **2.8** Paragraph 2.8 is admitted.

11 **2.9** Paragraph 2.9 is admitted.

12 **2.10** The first sentence in Paragraph 2.10 is admitted. The second sentence is
13 denied for lack of knowledge.
14

15 **2.11** The first sentence in Paragraph 2.11 is denied for lack of knowledge. The
16 second sentence is admitted.
17

18 **2.12** In response to the first sentence in Paragraph 2.12, it is admitted that NAC
19 and L&S received copies of Desert Aire submittals. It is denied that NAC or L&S approved
20 the submittals.

21 **2.13** Paragraph 2.13 is admitted.

22 **2.14** In response to Paragraph 2.14, it is admitted that the City opened the
23 project. The remaining allegations are denied for lack of knowledge.

24 **2.15** Paragraph 2.15 is denied for lack of knowledge.
25

1 **2.16** Paragraph 2.16 is denied for lack of knowledge.

2 **2.17** Paragraph 2.17 is denied for lack of knowledge.

3 **2.18** Paragraph 2.18 is denied for lack of knowledge.

4 **2.19** Paragraph 2.19 is denied as to NAC.

5 **2.20** Paragraph 2.20 is denied as to NAC.

6 **3.1** In response to Paragraph 3.1, NAC incorporates all of its foregoing
7 responses to Paragraphs 1.1 through 2.20 as if fully restated here.

8 **3.2.1** In response to the first sentence in Paragraph 3.2.1, it is alleged that the
9 terms of the NAC Contract speak for themselves; and all inconsistent allegations are
10 denied. In response to the second sentence, it is denied that NAC or its consultants failed
11 to comply with applicable requirements.

12 **3.2.2** In response to the first sentence in the first Paragraph 3.2.2, it is alleged that
13 the terms of the NAC Contract speak for themselves; and all inconsistent allegations are
14 denied. The second sentence is denied.

15 **3.2.3** In response to the first sentence in Paragraph 3.2.3, it is alleged that the
16 terms of the NAC Contract speak for themselves; and all inconsistent allegations are
17 denied. The second and fifth sentences are denied. The third sentence is denied for lack
18 of knowledge. The fourth sentence is admitted.

19 **3.2.4** The first Paragraph 3.3.4 is denied.

20 **3.2.5** The second Paragraph 3.2.2 is denied.

21 **3.3.1** Paragraph 3.3.1 is a proposition of law, and not an averment of fact, to
22 which no response is required.
23
24
25

1 **3.3.2** Paragraph 3.3.2 is denied.

2 **3.3.3** In response to Paragraph 3.3.3, it is denied that NAC failed to exercise
3 reasonable care with respect to the submittals on Desert Aire equipment.

4 **3.3.4** The second Paragraph 3.3.4 is denied.

5 **3.3.5** Paragraph 3.3.5 is denied.

6 **3.3.6** Paragraph 3.3.6 is denied.

7 **3.3.7** The first Paragraph 3.3.7 is denied.

8 **3.3.8** The second Paragraph 3.3.7 is denied.

9 **3.4.1** Paragraph 3.4.1 is denied.

10 **3.4.2** Paragraph 3.4.2 is denied.

11 **3.5.1** In response to the first sentence in Paragraph 3.5.1, it is alleged that the
12 terms of the NAC Contract speak for themselves; and all inconsistent allegations are
13 denied. The remaining sentences in Paragraph 3.5.1 are denied.

14 **3.6.1** Paragraph 3.6.1 is a proposition of law and not an averment of fact.

15 **3.6.2** Paragraph 3.6.2 is denied.

16 **3.6.3** Paragraph 3.6.3 is denied.

17 **3.6.4** Paragraph 3.6.4 is denied.

18 **3.6.5** Paragraph 3.6.5 is denied.

19 **3.6.6** There is no Paragraph 3.6.6 in the Amended Complaint.

20 **3.6.7** Paragraph 3.6.7 is denied.

21 **3.6.8** Paragraph 3.6.8 is denied.

22 **3.7.1** Paragraph 3.7.1 is denied.

1 **3.7.2** Paragraph 3.7.2 is denied.

2 **3.8** Paragraph 3.8 is not directed toward NAC.

3 **3.9** Paragraph 3.9 is not directed toward NAC.

4 **3.10** Paragraph 3.10 is not directed toward NAC.

5 **3.11** Paragraph 3.11 is not directed toward NAC.

6 **3.12.1** Paragraph 3.12.1 is admitted.

7 **3.12.2** In response to Paragraph 3.12.2, it is admitted that RCW 39.04.240 provides
8 for an award of attorney fees to the prevailing party under some circumstances.

9 **3.12.3** Paragraph 3.12.3 is denied.

10 **3.13** In response to Paragraph 3.13, it is denied that the City is entitled to a
11 judgment or to prejudgment interest against NAC.

12 **FOR ITS AFFIRMATIVE DEFENSES:**

13 **4.1** The plaintiff has failed to mitigate its damages, if any.

14 **4.2** The plaintiff has caused or contributed to its own damages, if any.

15 **4.3** The plaintiff's damages, if any, were caused by, or contributed to by,
16 persons or entities for whom or for which this defendant is not legally responsible.

17 **FOR ITS COUNTERCLAIM** against the City of Lynnwood, NAC alleges as follows:
18

19 **5.** NAC has done all things required in order to bring this Counterclaim.

20 **6.** This Court has jurisdiction of the parties and of the subject matter of this
21 Counterclaim.
22

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the United States and the State of Washington that on this date I sent for service a true and correct copy of the foregoing document on the following:

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Michael D. Grace, Esq., WSBA #26091 Via Hand Delivery
GROFF MURPHY PLLC
300 East Pine Street
Seattle, Washington 98122
Attorneys for M.A. Mortenson Company

DATED this 9th day of July, 2013, at Seattle, Washington.

Handwritten signature of Carol L. Macrae

CAROL L. MACRAE

\\GYSERVER\USERSHARES\CAROLMACRAE\CLMDJG\1388000\NAC\PI\1388173 05.13 ANSWER.DOCX

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INSLEE, BEST, ET AL.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

CITY OF LYNNWOOD,

Plaintiff,

v.

NAC, INC., d/b/a NAC
ARCHITECTURE, L&S ENGINEERING
ASSOCIATES, INC., d/b/a L&S
ENGINEERING, M.A. MORTENSON
COMPANY, and DESERT AIRE
CORP.

Defendants.

NO. 13-2-04404-6

ANSWER AND CROSS CLAIM
OF DEFENDANT DESERT
AIRE CORP.

I. PARTIES

1.1 Answering number 1.1 of Amended Complaint, the answering Defendant lacks sufficient information and knowledge to form a belief as to the truth or falsity of the allegations, and therefore, denies the same.

1.2 Answering number 1.2 of Amended Complaint, the answering Defendant lacks sufficient information and knowledge to form a belief as to the truth or falsity of the allegations, and therefore, denies the same.

ANSWER AND CROSS CLAIM OF DEFENDANT
DESERT AIRE CORP -I-

MURRAY, DUNHAM & MURRAY
ATTORNEYS AT LAW
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Seattle, Washington 98109-0844
(206) 622-2655, (FAX) 684-6924

1 b. Answering number 2.3(b) of the Amended Complaint, the
2 answering Defendant lacks sufficient information and knowledge to
3 form a belief as to the truth or falsity of the allegations, and therefore,
4 denies the same.

5 c. Answering number 2.3(c) of the Amended Complaint, the
6 answering Defendant lacks sufficient information and knowledge to
7 form a belief as to the truth or falsity of the allegations, and therefore,
8 denies the same.

9 d. Answering number 2.3(d) of the Amended Complaint, the
10 answering Defendant lacks sufficient information and knowledge to
11 form a belief as to the truth or falsity of the allegations, and therefore,
12 denies the same.

13 e. Answering number 2.3(e) of the Amended Complaint, the
14 answering Defendant lacks sufficient information and knowledge to
15 form a belief as to the truth or falsity of the allegations, and therefore,
16 denies the same.

17 2.4 Answering number 2.4 of Amended Complaint, the answering
18 Defendant lacks sufficient information and knowledge to form a belief as to the truth
19 or falsity of the allegations, and therefore, denies the same.

20 2.5 Answering number 2.5 of Amended Complaint, the answering
21 Defendant lacks sufficient information and knowledge to form a belief as to the truth
22 or falsity of the allegations, and therefore, denies the same. The answering defendant
23 affirmatively alleges that the Contract speaks for itself.

24 2.6 Answering number 2.6 of Amended Complaint, the answering
25 Defendant lacks sufficient information and knowledge to form a belief as to the truth
26 or falsity of the allegations, and therefore, denies the same.

1 2.7 Answering number 2.7 of Amended Complaint, the answering
2 Defendant lacks sufficient information and knowledge to form a belief as to the truth
3 or falsity of the allegations, and therefore, denies the same. The answering defendant
4 affirmatively alleges that the Contract speaks for itself.

5 2.8 Answering number 2.8 of Amended Complaint, the answering
6 Defendant lacks sufficient information and knowledge to form a belief as to the truth
7 or falsity of the allegations, and therefore, denies the same. The answering defendant
8 affirmatively alleges that the Contract speaks for itself.

9 2.9 Answering number 2.9 of Amended Complaint, the answering
10 Defendant lacks sufficient information and knowledge to form a belief as to the truth
11 or falsity of the allegations, and therefore, denies the same. The answering defendant
12 affirmatively alleges that the Contract speaks for itself.

13 2.10 Answering number 2.10 of Amended Complaint, the answering
14 Defendant admits that Desert Aire provided shop drawing and product information,
15 however, the answering Defendant denies that this information was provided directly
16 from Desert Aire to Mortenson. Further, as to the remaining allegations the
17 answering Defendant lacks sufficient information and knowledge to form a belief as
18 to the truth or falsity of the allegations, and therefore, denies the same.

19 2.11 Answering number 2.11 of Amended Complaint, the answering
20 Defendant denies the allegation as the characterization is incomplete and/or
21 inaccurate. The answering defendant admits that it submitted shop drawings and
22 specific product information based on the specifications set forth by Mortenson. The
23 answering defendant denies that the submittals were provided directly from Desert
24 Aire to Mortenson. As to the remaining allegations, the answering Defendant
25 affirmatively alleges that the documents speak for themselves, and therefore, no
26

ANSWER AND CROSS CLAIM OF DEFENDANT
DESERT AIRE CORP -4-

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ATTORNEYS AT LAW
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Seattle, Washington 98109-0844
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1 further response is required. The answering Defendant further alleges that the
2 contents of the submittals were drafted to meet the specifications and needs for the
3 Project as represented by Mortenson.

4 2.12 Answering number 2.12 of Amended Complaint, the answering
5 Defendant lacks sufficient information and knowledge to form a belief as to the truth
6 or falsity of the allegations, and therefore, denies the same.

7 2.13 Answering number 2.13 of Amended Complaint, the answering
8 Defendant lacks sufficient information and knowledge to form a belief as to the truth
9 or falsity of the allegations, and therefore, denies the same.

10 2.14 Answering number 2.14 of Amended Complaint, the answering
11 Defendant lacks sufficient information and knowledge to form a belief as to the truth
12 or falsity of the allegations, and therefore, denies the same.

13 2.15 Answering number 2.15 of Amended Complaint, the answering
14 Defendant lacks sufficient information and knowledge to form a belief as to the truth
15 or falsity of the allegations, and therefore, denies the same.

16 2.16 Answering number 2.16 of Amended Complaint, the answering
17 Defendant lacks sufficient information and knowledge to form a belief as to the truth
18 or falsity of the allegations, and therefore, denies the same.

19 2.17 Answering number 2.17 of Amended Complaint, the answering
20 Defendant lacks sufficient information and knowledge to form a belief as to the truth
21 or falsity of the allegations, and therefore, denies the same.

22 2.18 Answering number 2.18 of Amended Complaint, the answering
23 Defendant lacks sufficient information and knowledge to form a belief as to the truth
24 or falsity of the allegations, and therefore, denies the same.

25 2.19 Answering number 2.19 of Amended Complaint, the answering
26 Defendant lacks information as to the term "repeated" as the term is vague and

1 ambiguous, and therefore, Defendant denies any and all allegations related thereto.
2 As to the remaining allegations, answering Defendant lacks sufficient information
3 and knowledge to form a belief as to the truth or falsity of these allegations, and
4 therefore, denies the same.

5 2.20 Answering number 2.20 of Amended Complaint, the answering
6 Defendant states that said paragraph may call for a legal conclusion to which no
7 response is required. To the extent a response is required, the answering Defendant
8 denies.

9 **III. CLAIMS FOR RELIEF**

10 3.1 Answering number 3.1 of Amended Complaint, the answering
11 Defendant incorporates, as if fully set forth herein, it's answer to Paragraphs 1.1
12 through 2.20.

13 3.2 Breach of Contract – NAC.

14 3.2.1 Answering number 3.2.1 of Amended Complaint, the answering
15 Defendant states that said paragraph may call for a legal conclusion to which no
16 response is required. To the extent a response is required; answering defendant lacks
17 sufficient information and knowledge to form a belief as to the truth or falsity of the
18 allegations, and therefore, denies the same.

19 3.2.2 Answering number 3.2.2 of Amended Complaint, the answering
20 Defendant lacks sufficient information and knowledge to form a belief as to the truth
21 or falsity of the allegations, and therefore, denies the same. Further, the answering
22 defendant affirmatively alleges that the Contract speaks for itself.

23 3.2.3 Answering number 3.2.3 of Amended Complaint, the answering
24 Defendant states that said paragraph may call for a legal conclusion to which no
25 response is required. To the extent a response is required the answering defendant
26

1 denies as the characterization of the allegation is incomplete and inaccurate. The
2 answering defendant affirmatively alleges that the Contract speaks for itself. Further,
3 the answering defendant affirmatively alleges that the units provided by Desert Aire
4 satisfied the specifications set forth by Mortenson.

5 3.2.4 Answering number 3.3.4 of Amended Complaint, the answering
6 Defendant states that said paragraph may call for a legal conclusion to which no
7 response is required. To the extent a response is required; answering defendant lacks
8 sufficient information and knowledge to form a belief as to the truth or falsity of the
9 allegations, and therefore, denies the same.

10 3.2.2 Answering number 3.2.2 of Amended Complaint, the answering
11 Defendant states that said paragraph may call for a legal conclusion to which no
12 response is required. To the extent a response is required; answering defendant lacks
13 sufficient information and knowledge to form a belief as to the truth or falsity of the
14 allegations, and therefore, denies the same.

15 3.3 Negligence – NAC

16 3.3.1 Answering number 3.3.1 of Amended Complaint, the answering
17 Defendant states that said paragraph may call for a legal conclusion to which no
18 response is required. To the extent a response is required; answering defendant lacks
19 sufficient information and knowledge to form a belief as to the truth or falsity of the
20 allegations, and therefore, denies the same.

21 3.3.2 Answering number 3.3.2 of Amended Complaint, the answering
22 Defendant states that said paragraph may call for a legal conclusion to which no
23 response is required. To the extent a response is required; answering defendant lacks
24 sufficient information and knowledge to form a belief as to the truth or falsity of the
25 allegations, and therefore, denies the same. Further, the answering defendant
26 affirmatively alleges that the units provided by Desert Aire satisfied the

1 specifications set forth by Mortenson.

2 3.3.3 Answering number 3.3.3 of Amended Complaint, the answering
3 Defendant states that said paragraph may call for a legal conclusion to which no
4 response is required. To the extent a response is required; answering defendant lacks
5 sufficient information and knowledge to form a belief as to the truth or falsity of the
6 allegations, and therefore, denies the same. Further, the answering defendant
7 affirmatively alleges that the units provided by Desert Aire satisfied the
8 specifications set forth by Mortenson.

9 3.3.4 Answering number 3.3.4 of Amended Complaint, the answering
10 Defendant states that said paragraph may call for a legal conclusion to which no
11 response is required. To the extent a response is required; answering defendant lacks
12 sufficient information and knowledge to form a belief as to the truth or falsity of the
13 allegations, and therefore, denies the same.

14 3.3.5 Answering number 3.3.5 of Amended Complaint, the answering
15 Defendant states that said paragraph may call for a legal conclusion to which no
16 response is required. To the extent a response is required; answering defendant lacks
17 sufficient information and knowledge to form a belief as to the truth or falsity of the
18 allegations, and therefore, denies the same. Further, the answering defendant
19 affirmatively alleges that the units provided by Desert Aire satisfied the
20 specifications set forth by Mortenson.

21 3.3.6 Answering number 3.3.6 of Amended Complaint, the answering
22 Defendant states that said paragraph may call for a legal conclusion to which no
23 response is required. To the extent a response is required; answering defendant lacks
24 sufficient information and knowledge to form a belief as to the truth or falsity of the
25 allegations, and therefore, denies the same. Further, the answering defendant
26 affirmatively alleges that the units provided by Desert Aire satisfied the

1 specifications set forth by Mortenson.

2 3.3.7 Answering number 3.3.7 of Amended Complaint, the answering
3 Defendant states that said paragraph may call for a legal conclusion to which no
4 response is required. To the extent a response is required, answering Defendant
5 denies as the characterization of the allegation is incomplete or inaccurate. Further,
6 the answering defendant affirmatively alleges that the units provided by Desert Aire
7 satisfied the specifications set forth by Mortenson.

8 3.3.7 Answering number 3.3.7 of Amended Complaint, the answering
9 Defendant states that said paragraph may call for a legal conclusion to which no
10 response is required. To the extent a response is required; answering defendant lacks
11 sufficient information and knowledge to form a belief as to the truth or falsity of the
12 allegations, and therefore, denies the same.

13 3.4 Misrepresentation – NAC

14 3.4.1 Answering number 3.4.1 of Amended Complaint, the answering
15 Defendant states that said paragraph may call for a legal conclusion to which no
16 response is required. To the extent a response is required, denies as the
17 characterization of the allegation is incomplete and inaccurate. Further, the
18 answering defendant affirmatively alleges that the units provided by Desert Aire
19 satisfied the specifications set forth by Mortenson.

20 3.4.2 Answering number 3.4.2 of Amended Complaint, the answering
21 Defendant states that said paragraph may call for a legal conclusion to which no
22 response is required. To the extent a response is required, the answering defendant
23 lacks sufficient information and knowledge to form a belief as to the truth or falsity
24 of the allegations, and therefore, denies the same. Further, the answering defendant
25 affirmatively alleges that the units provided by Desert Aire satisfied the
26 specifications set forth by Mortenson.

ANSWER AND CROSS CLAIM OF DEFENDANT
DESERT AIRE CORP -9-

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1 3.5 Contractual Indemnity – NAC and L&S

2 3.5.1 Answering number 3.5.1 of Amended Complaint, the answering
3 Defendant states that said paragraph may call for a legal conclusion to which no
4 response is required. To the extent a response is required; answering defendant lacks
5 sufficient information and knowledge to form a belief as to the truth or falsity of the
6 allegations, and therefore, denies the same. Further, the answering defendant
7 affirmatively alleges that the Contract speaks for itself.

8 3.6 Negligence—L&S.

9 3.6.1 Answering number 3.6.1 of Amended Complaint, the answering
10 Defendant states that said paragraph may call for a legal conclusion to which no
11 response is required. To the extent a response is required; answering defendant lacks
12 sufficient information and knowledge to form a belief as to the truth or falsity of the
13 allegations, and therefore, denies the same.

14 3.6.2 Answering number 3.6.2 of Amended Complaint, the answering
15 Defendant states that said paragraph may call for a legal conclusion to which no
16 response is required. To the extent a response is required; answering defendant lacks
17 sufficient information and knowledge to form a belief as to the truth or falsity of the
18 allegations, and therefore, denies the same. Further, the answering defendant
19 affirmatively alleges that the units provided by Desert Aire satisfied the
20 specifications set forth by Mortenson.

21 3.6.3 Answering number 3.6.3 of Amended Complaint, the answering
22 Defendant states that said paragraph may call for a legal conclusion to which no
23 response is required. To the extent a response is required; answering defendant lacks
24 sufficient information and knowledge to form a belief as to the truth or falsity of the
25 allegations, and therefore, denies the same. Further, the answering defendant
26 affirmatively alleges that the units provided by Desert Aire satisfied the

1 specifications set forth by Mortenson.

2 3.6.4 Answering number 3.6.4 of Amended Complaint, the answering
3 Defendant states that said paragraph may call for a legal conclusion to which no
4 response is required. To the extent a response is required; answering defendant lacks
5 sufficient information and knowledge to form a belief as to the truth or falsity of the
6 allegations, and therefore, denies the same.

7 3.6.5 Answering number 3.6.5 of Amended Complaint, the answering
8 Defendant states that said paragraph may call for a legal conclusion to which no
9 response is required. To the extent a response is required; answering defendant lacks
10 sufficient information and knowledge to form a belief as to the truth or falsity of the
11 allegations, and therefore, denies the same.

12 3.6.7 Answering number 3.6.7 of Amended Complaint, the answering
13 Defendant states that said paragraph may call for a legal conclusion to which no
14 response is required. To the extent a response is required, the answering defendant
15 denies as the characterization of the allegation is incomplete and inaccurate. Further,
16 the answering defendant affirmatively alleges that the units provided by Desert Aire
17 satisfied the specifications set forth by Mortenson.

18 3.6.8 Answering number 3.6.8 of Amended Complaint, the answering
19 Defendant states that said paragraph may call for a legal conclusion to which no
20 response is required. To the extent a response is required; answering defendant lacks
21 sufficient information and knowledge to form a belief as to the truth or falsity of the
22 allegations, and therefore, denies the same.

23 3.7 Misrepresentation – L&S

24 3.7.1 Answering number 3.7.1 of Amended Complaint, the answering
25 Defendant states that said paragraph may call for a legal conclusion to which no
26

1 response is required. To the extent a response is required, the answering defendant
2 denies as the characterization of the allegation is incomplete and inaccurate. Further,
3 the answering defendant affirmatively alleges that the units provided by Desert Aire
4 satisfied the specifications set forth by Mortenson.

5 3.7.2 Answering number 3.7.2 of Amended Complaint, the answering
6 Defendant states that said paragraph may call for a legal conclusion to which no
7 response is required. To the extent a response is required, the answering defendant
8 denies as the characterization of the allegation is incomplete and inaccurate. Further,
9 the answering defendant affirmatively alleges that the units provided by Desert Aire
10 satisfied the specifications set forth by Mortenson.

11 3.8 Breach of Express Warranties – Mortenson

12 3.8.1 Answering number 3.8.1 of Amended Complaint, the answering
13 Defendant states that said paragraph may call for a legal conclusion to which no
14 response is required. To the extent a response is required; answering defendant lacks
15 sufficient information and knowledge to form a belief as to the truth or falsity of the
16 allegations, and therefore, denies the same. The answering Defendant affirmatively
17 alleges that the contract speaks for itself.

18 3.8.2 Answering number 3.8.2 of Amended Complaint, the answering
19 Defendant states that said paragraph may call for a legal conclusion to which no
20 response is required. To the extent a response is required; answering defendant lacks
21 sufficient information and knowledge to form a belief as to the truth or falsity of the
22 allegations, and therefore, denies the same. The answering Defendant affirmatively
23 alleges that the contract speaks for itself.

24 3.8.3 Answering number 3.8.3 of Amended Complaint, the answering
25 Defendant states that said paragraph may call for a legal conclusion to which no
26 response is required. To the extent a response is required; answering defendant lacks

1 sufficient information and knowledge to form a belief as to the truth or falsity of the
2 allegations, and therefore, denies the same. The answering defendant affirmatively
3 alleges that the units provided by Desert Aire satisfied the specifications set forth by
4 Mortenson.

5 3.8.4 Answering number 3.8.4 of Amended Complaint, the answering
6 Defendant states that said paragraph may call for a legal conclusion to which no
7 response is required. To the extent a response is required, the answering defendant
8 denies.

9 3.9 Breach of Contract – Mortenson

10 3.9.1 Answering number 3.9.1 of Amended Complaint, the answering
11 Defendant states that said paragraph may call for a legal conclusion to which no
12 response is required. To the extent a response is required; answering defendant lacks
13 sufficient information and knowledge to form a belief as to the truth or falsity of the
14 allegations, and therefore, denies the same.

15 3.10 Breach of Express Warranties – Desert Aire

16 3.10.1 Answering number 3.10.1 of Amended Complaint, the
17 answering Defendant denies as the characterization of the allegation is incomplete
18 and inaccurate. Further, the answering defendant affirmatively alleges that the units
19 provided by Desert Aire met the specifications set forth by L&S.

20 3.10.2 Answering number 3.10.2 of Amended Complaint, the
21 answering Defendant states that said paragraph may call for a legal conclusion to
22 which no response is required. To the extent a response is required, the answering
23 Defendant denies as the characterization of the allegation incomplete and inaccurate.
24 The answering defendant affirmatively alleges that the units provided by Desert Aire
25 satisfied the specifications set forth by Mortenson.
26

1 3.10.2 Answering number 3.10.2 of Amended Complaint, the
2 answering Defendant states that said paragraph may call for a legal conclusion to
3 which no response is required. To the extent a response is required, the answering
4 Defendant denies. Further, the answering defendant affirmatively alleges that the
5 units provided by Desert Aire satisfied the specifications set forth by Mortenson.

6 3.11 Implied Indemnity

7 3.11.1 Answering number 3.11.1 of Amended Complaint, the
8 answering Defendant states that said paragraph may call for a legal conclusion to
9 which no response is required. To the extent a response is required, the answering
10 Defendant denies.

11 3.11.2 Answering number 3.11.2 of Amended Complaint, the
12 answering Defendant denies. The answering defendant affirmatively alleges that the
13 units provided by Desert Aire satisfied the specifications set forth by Mortenson.

14 3.12 Attorney Fees and Costs

15 3.12.1 Answering number 3.12.1 of Amended Complaint, the
16 answering Defendant lacks information or knowledge sufficient to form a belief as to
17 the truth or falsity of the allegations, and therefore, denies the same. Answering
18 Defendant affirmatively alleges that the Contract speaks for itself.

19 3.12.2 Answering number 3.12.2 of Amended Complaint, the
20 answering Defendant states that said paragraph may call for a legal conclusion to
21 which no response is required. To the extent a response is required, the answering
22 Defendant denies.

23 3.13.3 Answering number 3.12.3 of Amended Complaint, the
24 answering Defendant states that said paragraph may call for a legal conclusion to
25 which no response is required. To the extent a response is required, the answering
26 Defendant denies. Answering Defendant affirmatively alleges that the Contract

1 speaks for itself.

2 3.13 Prejudgment Interest

3 Answering number 3.13.3 of Amended Complaint, the answering Defendant
4 states that said paragraph may call for a legal conclusion to which no response is
5 required. To the extent a response is required, the answering Defendant denies.

6 AFFIRMATIVE DEFENSES

7 As and for affirmative defenses, the answering defendant alleges and shows to
8 the Court as follows:

9 1. The plaintiff has failed to state a claim upon which relief may be
10 granted.

11 2. The plaintiff has failed to mitigate damages, if any were sustained.

12 3. The plaintiff's claims should be dismissed on the basis of the doctrine
13 of laches, estoppel and/or waiver.

14 4. The plaintiff's claims should be dismissed because the plaintiff's
15 damages, if any were sustained, may have been caused by the negligence of the
16 plaintiff or other defendants.

17 5. The plaintiff's claims should be dismissed on the basis that they are
18 barred by the applicable statute of limitations.

19 6. The plaintiff's claims should be dismissed because the units provided
20 by the Defendant, Desert Aire, satisfied the specifications and needs set forth by
21 Mortenson.

22 7. The responding defendant alleges and preserves all Affirmative
23 Defenses otherwise deemed waived, if not plead, in order to conduct discovery.

24 8. The responding defendant reserves the right to amend and supplement
25 this list of Affirmative Defenses as necessary through ongoing discovery.
26

1 CROSS-CLAIM

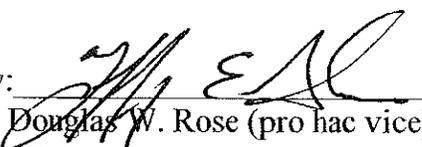
2 1. The defendant, Desert Aire Corp., hereby restates and incorporates
3 herein by reference as if fully set forth its answer and affirmative defenses to the
4 amended complaint.

5 2. If the defendant is liable to the plaintiff in any respect, such liability
6 will have been caused directly, proximately and entirely by the breaches of the other
7 defendants, in their performance of their contracts or other duties owed the plaintiff's
8 and/or one of the other defendants with regard to the matters referred to in the
9 amended complaint. Desert Aire Corp. may be entitled to contribution,
10 indemnification or judgment for any damages it sustains as a result of such breach by
11 any of the other defendants.

12 **WHEREFORE**, the responding defendants pray for judgment dismissing the
13 Complaint, with prejudice and on the merits, for attorneys' fees and costs, and such
14 other and further relief as the Court deems just and equitable.

15 Date this 8 day of July, 2013.

16 Attorneys for the Defendant,
17 Desert Aire Corp.

18
19 By: 
20 Douglas W. Rose (pro hac vice)
21 WI State Bar No. 1017205
22 Jeff Adams
23 WA State Bar No. 9663

22 **P.O. ADDRESS:**
23 161 South First Street, Suite 400
24 Milwaukee, WI 53204
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ANSWER AND CROSS CLAIM OF DEFENDANT
DESERT AIRE CORP -16-

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July 8, 2013

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Mr. Michael P. Grace
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300 East Pine Street
Seattle, WA 98122

**Defendant L&S Engineering Assoc.,
Inc. d/b/a L&S Engineering**

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Defendant Desert Aire Corp. - Pro Hac Vice

Mr. Douglas W. Rose
Rose & deJong, S.C.
161 S. First Street, Ste 400
Milwaukee, WI 53204

Re: City of Lynnwood v. Desert Aire Corp., et al.

Dear Counsel:

Enclosed is a copy of Defendant Desert Aire Corp.'s Answer and Cross Claim in the above-referenced matter.

If you have any questions, please do not hesitate to contact our office.

Yours truly,



Tammy L. Bolte
Paralegal to Jeff Adams

/tlb
Enclosure

RECEIVED

JUL 10 2013

INSLEE, BEST ET AL
Exhibit C - 65 of 65