

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true copy of the foregoing **Notice of Appearance** was served via regular U.S. Mail, postage prepaid, on this 26th day of March 2014, to the following:

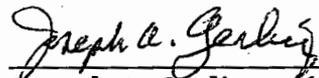
David A. Beals
Jerry K. Kasai
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, Ohio 43215
Counsel for Plaintiffs

Hartford Fire Insurance Company
c/o Schiff, Kreidler-Shell, Inc.
1 West Fourth Street, Suite 1300
Cincinnati, Ohio 45202

Buehrer Group Architecture & Engineering
c/o Fan Zhang, Statutory Agent
7445 Airport Highway
Holland, Ohio 43528

Merchants Bonding Company
Dawson Insurance, Inc.
1340 Depot Street
Cleveland, Ohio 44116

McMillan Construction Limited
aka McMillan Construction Company
c/o David O. McMillan
26457 State Route 58
Wellington, Ohio 44090



Joseph A. Gerling (0022054)
Scott A. Fenton (0068097)

5. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of Plaintiffs' Complaint; and therefore, denies the same.

6. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of Plaintiffs' Complaint; and therefore, denies the same.

7. Merchants admits the allegations set forth in paragraph 7 of Plaintiffs' Complaint.

8. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of Plaintiffs' Complaint; and therefore, denies the same.

9. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of Plaintiffs' Complaint; and therefore, denies the same.

10. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of Plaintiffs' Complaint; and therefore, denies the same.

11. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of Plaintiffs' Complaint; and therefore, denies the same.

12. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of Plaintiffs' Complaint; and therefore, denies the same.

13. In response to paragraph 13 of Plaintiff's Complaint, Merchants admits only that McMillan was an Ohio corporation and that the Ohio Secretary of State's records show a dissolution was filed in 2007. Merchant's is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore, denies the same.

14. In response to the allegations in paragraph 14 of Plaintiffs' Complaint, Merchants admits only that McMillan entered into a contract relating to the Project. Answering further, Merchants states that the terms and scope of work of that contract speak for themselves. .

15. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of Plaintiffs' Complaint; and therefore, denies the same.

16. Merchants admits the allegations set forth in paragraph 16 of Plaintiffs' Complaint.

17. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of Plaintiffs' Complaint; and therefore, denies the same.

18. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of Plaintiffs' Complaint; and therefore, denies the same.

19. To the extent that paragraph 19 of Plaintiffs' Complaint alleges that Defendant McMillan and/or Merchants failed to perform and otherwise breached certain terms of their respective contracts, breached expressed and implied warranties, failed to correct defective materials and installations, breached their respective standards of care, failed to perform in a workmanlike manner, and/or otherwise failed to comply with the requirements of the Contract

Documents, and such alleged failures proximately caused the Owners to incur additional costs and damages, Merchants denies the allegations set forth in paragraph 19 of Plaintiffs' Complaint. Further answering, Merchants is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 19 of Plaintiffs' Complaint; and therefore, denies the same.

20. Merchants admits only that a surety bond existed between Merchants and Defendant McMillan, but denies that Defendant McMillan proximately caused any damage so as to hold Merchants jointly and severally liable. Further answering, Merchants is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 20 of Plaintiffs' Complaint; and therefore, denies the same.

21. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of Plaintiffs' Complaint; and therefore, denies the same.

22. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 22 of Plaintiffs' Complaint; and therefore, denies the same.

23. Merchants incorporates by reference its responses to paragraphs 1–22 of Plaintiffs' Complaint as if fully restated herein.

24. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24 of Plaintiffs' Complaint; and therefore, denies the same.

25. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 of Plaintiffs' Complaint; and therefore, denies the same.

26. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of Plaintiffs' Complaint; and therefore, denies the same.

27. Merchants incorporates by reference its responses to paragraphs 1–26 of Plaintiffs' Complaint as if fully restated herein.

28. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 of Plaintiffs' Complaint; and therefore, denies the same.

29. Merchants denies the allegations set forth in paragraph 29 of Plaintiffs' Complaint.

30. Merchants denies the allegations set forth in paragraph 30 of Plaintiffs' Complaint.

31. Merchants incorporates by reference its responses to paragraphs 1–30 of Plaintiffs' Complaint as if fully restated herein.

32. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 32 of Plaintiffs' Complaint; and therefore, denies the same.

33. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33 of Plaintiffs' Complaint; and therefore, denies the same.

34. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34 of Plaintiffs' Complaint; and therefore, denies the same.

35. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 35 of Plaintiffs' Complaint; and therefore, denies the same.

36. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 36 of Plaintiffs' Complaint; and therefore, denies the same.

37. Merchants incorporates by reference its responses to paragraphs 1-36 of Plaintiffs' Complaint as if fully restated herein.

38. Merchants denies the allegations set forth in paragraph 38 of Plaintiffs' Complaint.

39. Merchants denies the allegations set forth in paragraph 39 of Plaintiffs' Complaint.

40. Merchants denies the allegations set forth in paragraph 40 of Plaintiffs' Complaint.

41. Merchants denies the allegations set forth in paragraph 41 of Plaintiffs' Complaint.

42. Merchants denies the allegations set forth in paragraph 42 of Plaintiffs' Complaint.

43. Merchants incorporates by reference its responses to paragraphs 1-42 of Plaintiffs' Complaint as if fully restated herein.

44. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 44 of Plaintiffs' Complaint; and therefore, denies the same.

45. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 45 of Plaintiffs' Complaint; and therefore, denies the same.

46. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 46 of Plaintiffs' Complaint; and therefore, denies the same.

47. Merchants incorporates by reference its responses to paragraphs 1–46 of Plaintiffs' Complaint as if fully restated herein.

48. In response to the allegations set forth in paragraph 48 of Plaintiffs' Complaint, Merchants admits only that it provided a bond related to the Project. Merchants states the terms of the bond speak for itself but denies it has any obligation to Plaintiffs related to the Project.

49. Merchants denies the allegations set forth in paragraph 49 of Plaintiffs' Complaint.

50. Merchants denies the allegations set forth in paragraph 50 of Plaintiffs' Complaint.

51. Merchants incorporates by reference its responses to paragraphs 1–50 of Plaintiffs' Complaint as if fully restated herein.

52. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52 of Plaintiffs' Complaint; and therefore, denies the same.

53. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 53 of Plaintiffs' Complaint; and therefore, denies the same.

54. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 54 of Plaintiffs' Complaint; and therefore, denies the same.

55. Merchants incorporates by reference its responses to paragraphs 1–54 of Plaintiffs' Complaint as if fully restated herein.

56. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 56 of Plaintiffs' Complaint; and therefore, denies the same.

57. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 57 of Plaintiffs' Complaint; and therefore, denies the same.

58. Merchants incorporates by reference its responses to paragraphs 1–57 of Plaintiffs' Complaint as if fully restated herein.

59. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 59 of Plaintiffs' Complaint; and therefore, denies the same.

60. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 60 of Plaintiffs' Complaint; and therefore, denies the same.

61. Merchants incorporates by reference its responses to paragraphs 1–60 of Plaintiffs’ Complaint as if fully restated herein.

62. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 62 of Plaintiffs’ Complaint; and therefore, denies the same.

63. Merchants is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 63 of Plaintiffs’ Complaint; and therefore, denies the same.

64. Merchants denies each and every allegation not specifically admitted as true herein.

FIRST AFFIRMATIVE DEFENSE

65. Plaintiffs have failed to state a claim upon which relief can be granted against the principal, Defendant McMillan, and, in turn, has failed to state a claim upon which relief can be granted against Merchants.

SECOND AFFIRMATIVE DEFENSE

66. Plaintiffs’ claims are barred by the doctrines of laches, waiver, and/or estoppel.

THIRD AFFIRMATIVE DEFENSE

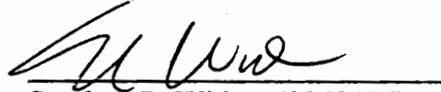
67. Merchants, through its surety bond, is entitled to assert any and all such defenses as would be available to Defendant McMillan and reserves the right to assert such defenses at a later date.

FOURTH AFFIRMATIVE DEFENSE

68. Merchants reserves the right to assert such other defenses that may become apparent through discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Merchants respectfully requests that Plaintiffs' claims be dismissed with prejudice at Plaintiffs' cost.

Respectfully submitted,



Stephen P. Withee (0069176)

Ashley L. Oliker (0085628)

FROST BROWN TODD LLC

10 West Broad Street, Suite 2300

Columbus, Ohio 43215

Tel: (614) 464-1211

Fax: (614) 464-1737

Email: swithee@fbtlaw.com

aoliker@fbtlaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing *Answer* was served this 9th day of April, 2014, by regular U.S. Mail, postage prepaid on the following:

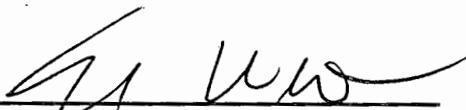
David A. Beals
Jerry K. Kasai
Assistant Attorneys General
Court of Claims Defense
150 E. Gay Street, 18th Floor
Columbus, OH 43215
Counsel for Plaintiffs

Joseph Gerling
Scott Fenton
Lane Alton Horst
Two Miranova Place, Ste. 500
Columbus, OH 43215
Counsel for Defendant Jack Gibson Construction Co.

Brian Buzby
Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, OH 43215
Counsel for Defendant Hartford First Insurance Co.

Buehrer Group Architecture & Engineering, Inc.
c/o Fan Zahng, Statutory Agent
7445 Airport Highway
Holland, OH 43528

McMillan Construction Ltd, a/ka/ McMillan Construction Co.
c/o David O. McMillan
26457 State Route 58
Wellington, OH 44090



Stephen P. Withee (0069176)

RECEIVED APR 11

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO
CIVIL DIVISION

GRAND VALLEY LOCAL SCHOOL)
DISTRICT BOARD OF)
EDUCATION, *et al.*)

Plaintiffs,)

v.)

BUEHRER GROUP)
ARCHITECTURE &)
ENGINEERING, INC., *et al.*)

Defendants.)

CASE NO. 2014 CV 00161

JUDGE GARY YOST

STIPULATED MOTION FOR
EXTENSION OF TIME TO FILE
ANSWER TO COMPLAINT

Defendant, Buehrer Group Architecture & Engineering, Inc. ("Buehrer"), by and through undersigned counsel, and pursuant to Ashtabula County Local Civil Rule 4(A), hereby requests an additional thirty (30) days leave to move or plead to Plaintiffs' Complaint up to and including, May 12, 2014. Plaintiffs' counsel and counsel for Co-Defendant Jack Gibson Construction, Co., the only parties who have appearances of counsel, have stipulated to this extension. A proposed Order is attached for this Court's convenience.

Respectfully submitted,

/s/ David Beals (per email consent)

James E. Rook (0061671)
David A. Beals (0038495)
Assistant Attorneys General
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, OH 43215
614.466.7447
F: 614.644.9185
James.rook@ohioattorneygeneral.gov
David.beals@ohioattorneygeneral.gov

Counsel for Plaintiffs


BRIAN C. LEE (0081675)
JASON D. WINTER (0076191)
RIANNON A. ZIEGLER (0090807)
REMINGER CO., L.P.A.
101 W. Prospect Avenue, Suite 1400
Cleveland, Ohio 44115
216.687.1311
F: 216.687.1841
blee@reminger.com
jwinter@reminger.com
rzeigler@reminger.com

Counsel for Defendant Buehrer Group Architecture & Engineering, Inc.

/s/ Joseph Gerling (per telephone consent)

Joseph A. Gerling (0022054)

Lane, Alton & Horst

Two Miranova Place

Suite 500

Columbus, Ohio 43215-7032

614.228.6885

F: 614.228.1046

jgerling@lanealton.com

Counsel for Defendant Jack Gibson Construction Co.

CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the following by regular U.S. mail/and or electronic mail this 9th day of April 2014:

James E. Rook
David A. Beals
Assistant Attorneys General
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, OH 43215
Attorneys for Plaintiffs

Joseph A. Gerling
Lane, Alton & Horst
Two Miranova Place
Suite 500
Columbus, Ohio 43215-7032
Counsel for Defendant Jack Gibson Construction Co.

McMillan Construction Limited
Aka McMillan Construction Co.
c/o David O. McMillan
26457 State Route 58
Wellington, Ohio 44090
Co-defendant

Hartford Fire Insurance Company
10507 Timberwood Circle, Suite 208
Louisville, KY 40223
c/o agent: Schiff, Kreidler-Shell, Inc.
1 West Fourth Street, Suite 1300
Cincinnati, Ohio 45202
Co-defendant

Merchants Bonding Company
2100 Fleur Drive
Des Moines, Iowa 50321
c/o Agent: Dawson Insurance, Inc.
1340 Depot Street
Cleveland, Ohio 44116
Co-defendant



BRIAN C. LEE (0081675)
JASON D. WINTER (0076191)
RIANNON A. ZIEGLER (0090807)
REMINER CO., L.P.A.

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO
CIVIL DIVISION

GRAND VALLEY LOCAL SCHOOL)
DISTRICT BOARD OF)
EDUCATION, *et al.*)

Plaintiffs,)

v.)

BUEHRER GROUP)
ARCHITECTURE &)
ENGINEERING, INC., *et al.*)

Defendants.)

CASE NO. 2014 CV 00161

JUDGE GARY YOST

ORDER GRANTING MOTION FOR
EXTENSION OF TIME FOR
DEFENDANTS TO FILE THEIR
ANSWER TO PLAINTIFFS
COMPLAINT

Upon consideration of the motion of Defendant for an extension of time to file a response to Plaintiff's Complaint, this Court finds the same is well-taken and hereby GRANTED. Defendant shall file their response on or before May 12, 2014.

IT IS SO ORDERED.

JUDGE GARY YOST

DATE

COPY

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

Grand Valley Local School
District Board of Education, et al.,

Plaintiffs,

-vs-

Buehrer Group
Architecture & Engineering, Inc., et
al.,

Defendants.

Case No. 2014CV0161

Judge Gary L. Yost

FILED
2014 APR 14 A 11:26
TAMI PENTER
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO OH

**STIPULATION FOR EXTENSION OF TIME FOR DEFENDANT JACK
GIBSON CONSTRUCTION COMPANY TO MOVE OR PLEAD TO
PLAINTIFFS' COMPLAINT**

Pursuant to Ashtabula Local Rule 4(A), Plaintiffs have agreed to grant Defendant Jack Gibson Construction Company a thirty (30) day extension of time, from the current answer date, to move or plead to the Complaint filed in this case.

David A. Beals (per J. Gerling)
By JAG, per email authority 4/4/14
David A. Beals (0038495)
Jerry K. Kasai (0067795)
Assistant Attorneys General
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, Ohio 43215
P: (614) 466-7447
F: (614) 644-9185
E: david.beals@ohioattorneygeneral.gov
jerry.kasai@ohioattorneygeneral.gov
**Counsel for Plaintiffs Grand Valley
Local School District Board of
Education Ohio School Facilities
Commission and State of Ohio
Through the Ohio School Facilities
Commission**

Joseph A. Gerling
Joseph A. Gerling (0022054)
Scott A. Fenton (0068097)
LANE ALTON & HORST, LLC
Two Miranova Place, Suite 500
Columbus, Ohio 43215
P: 614.228.6885
F: 614.228.0146
E: jgerling@lanealton.com
sfenton@lanealton.com
**Counsel for Defendant Jack Gibson
Construction Company**

The Clerk is directed to serve
copies of this Judgment and its
date of entry upon all parties or
their counsel of record

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true copy of the foregoing **Stipulation** was served via regular U.S. Mail, postage prepaid, on this 4th day of April 2014, to the following:

David A. Beals
Jerry K. Kasai
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, Ohio 43215

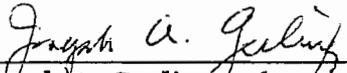
Counsel for Plaintiffs

Buehrer Group Architecture & Engineering
c/o Fan Zhang, Statutory Agent
7445 Airport Highway
Holland, Ohio 43528

McMillan Construction Limited
aka McMillan Construction Company
c/o David O. McMillan
26457 State Route 58
Wellington, Ohio 44090

Hartford Fire Insurance Company
c/o Schiff, Kreidler-Shell, Inc.
1 West Fourth Street, Suite 1300
Cincinnati, Ohio 45202

Merchants Bonding Company
Dawson Insurance, Inc.
1340 Depot Street
Cleveland, Ohio 44116



Joseph A. Gerling (0022054)
Scott A. Fenton (0068097)

IN THE ASHTABULA COUNTY COMMON PLEAS COURT

Grand Valley Local School :
District Board of Education, *et al.*, :
 :
Plaintiffs, :
 :

vs. :

Case No: 2014 CV 0161
Judge Gary L. Yost

Buehrer Group Architecture & :
Engineering, Inc., *et al.*, :
 :
Defendants. :

**STIPULATION FOR EXTENSION OF TIME
FOR DEFENDANT, HARTFORD FIRE INSURANCE COMPANY,
TO MOVE OR PLEAD TO PLAINTIFFS' COMPLAINT**

Pursuant to Local rule 4(A), Plaintiffs have agreed to grant Defendant, Hartford Fire Insurance Company, a thirty (30) day extension of time, from the current answer date, to move or plead to the Complaint filed here in this case.

David A. Beals by Brian L. Buzby
By JAG, per email authority 4/4/14 *with permission granted on 4-4-14*
David A. Beals (0038495)
Assistant Attorney General
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7447
Facsimile: (614) 644-9185
david.beals@ohioattorneygeneral.gov

Counsel for Plaintiffs Grand Valley Local
School District Board of Education Ohio
School Facilities Commission and State
Of Ohio Through the Ohio School Facilities

Brian L. Buzby

Brian L. Buzby (0023124)
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215
Telephone: (614) 227-1995
Facsimile: (614) 227-2100
bbuzby@porterwright.com

Attorneys for Defendant,
Hartford Fire Insurance Company

CERTIFICATE OF SERVICE

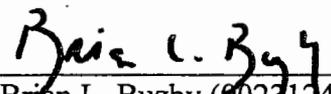
The undersigned hereby certifies that a true and accurate copy of the foregoing Stipulation for Extension of Time was served by regular U.S. mail, postage prepaid, on this 4th day of April, 2014, on the following persons:

Joseph A. Gerling, Esq.
Lane Alton & Horst, LLC
Two Miranova Place – St. 500
Columbus, Ohio 43215
Attorneys for Defendant,
Jack Gibson Construction Company

Buehrer Group Architecture & Engineering, Inc.
c/o Fan Zhang, Statutory Agent
7445 Airport Highway
Holland, Ohio 43528

McMillan Construction Limited
Aka McMillan Construction Company
c/o David O. McMillan
26457 State Route 58
Wellington, Ohio 44090

Merchants Bonding Company
2100 Fleur Drive
Des Moines, Iowa 50321
c/o Agent: Dawson Insurance, Inc.
1340 Depot Street
Cleveland, Ohio 44116



Brian L. Buzby (6027124)

6

RECEIVED APR 21

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO
CIVIL DIVISION

GRAND VALLEY LOCAL SCHOOL
DISTRICT BOARD OF
EDUCATION, *et al.*

Plaintiffs.

v.

BUEHRER GROUP
ARCHITECTURE &
ENGINEERING, INC., *et al.*

Defendants.

CASE NO. 2014 CV 00161

JUDGE GARY YOST

ORDER GRANTING MOTION FOR
EXTENSION OF TIME FOR
DEFENDANTS TO FILE THEIR
ANSWER TO PLAINTIFFS
COMPLAINT

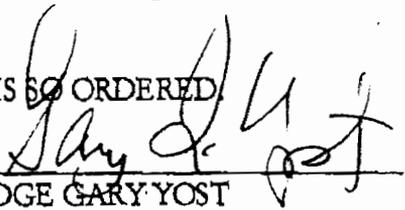
FILED
2014 APR 15 A 9:08
COURT CLERK

Upon consideration of the motion of Defendant for an extension of time to file a response to Plaintiff's Complaint, this Court finds the same is well-taken and hereby GRANTED. Defendant shall file their response on or before May 12, 2014.

The Clerk is directed to serve copies of this Judgment and its date of entry upon all parties or their counsel of record

IT IS SO ORDERED

JUDGE GARY YOST



DATE

RECEIVED APR 17

COPY

IN THE ASHTABULA COUNTY COMMON PLEAS COURT

FILED

Grand Valley Local School :
District Board of Education, *et al.*, :

2014 APR 15 A 9:09

Plaintiffs, :

vs. :

TAKE THE
CLERK OF COURT

Case No: 2014 CV 0161

Judge Gary L. Yost

Buehrer Group Architecture & :
Engineering, Inc., *et al.*, :

Defendants. :

**EXTENSION OF TIME
FOR DEFENDANT, HARTFORD FIRE INSURANCE COMPANY,
TO MOVE OR PLEAD TO PLAINTIFFS' COMPLAINT**

Pursuant to Local rule 4(A), Plaintiffs have agreed to grant Defendant, Hartford Fire Insurance Company, a thirty (30) day extension of time, from the current answer date, to move or plead to the Complaint filed here in this case.

David A. Beals by Brian L. Buzby
By JAG, per email authority 4/4/14 with permission granted on 4-4-14
David A. Beals (0038495)
Assistant Attorney General
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7447
Facsimile: (614) 644-9185
david.beals@ohioattorneygeneral.gov

Brian L. Buzby
Brian L. Buzby (0023124)
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215
Telephone: (614) 227-1995
Facsimile: (614) 227-2100
bbuzby@porterwright.com

Attorneys for Defendant,
Hartford Fire Insurance Company

Counsel for Plaintiffs Grand Valley Local
School District Board of Education Ohio
School Facilities Commission and State
Of Ohio Through the Ohio School Facilities

Judge Gary L. Yost
GARY L. YOST, JUDGE

CERTIFICATE OF SERVICE

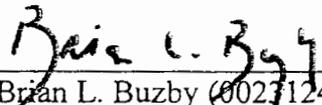
The undersigned hereby certifies that a true and accurate copy of the foregoing Stipulation for Extension of Time was served by regular U.S. mail, postage prepaid, on this 4th day of April, 2014, on the following persons:

Joseph A. Gerling, Esq.
Lane Alton & Horst, LLC
Two Miranova Place – St. 500
Columbus, Ohio 43215
Attorneys for Defendant,
Jack Gibson Construction Company

Buehrer Group Architecture & Engineering, Inc.
c/o Fan Zhang, Statutory Agent
7445 Airport Highway
Holland, Ohio 43528

McMillan Construction Limited
Aka McMillan Construction Company
c/o David O. McMillan
26457 State Route 58
Wellington, Ohio 44090

Merchants Bonding Company
2100 Fleur Drive
Des Moines, Iowa 50321
c/o Agent: Dawson Insurance, Inc.
1340 Depot Street
Cleveland, Ohio 44116



Brian L. Buzby (0027124)

8. JGCC denies for lack of knowledge the allegations contained in paragraph 8 of the complaint.

9. JGCC admits that Buehrer Group Architecture & Engineering, Inc. ("Buehrer") served as the architect and engineer of record during the project but denies for lack of knowledge the remaining allegations contained paragraph 9 of the complaint.

10. JGCC admits that Grand Valley entered into a contract with Buehrer to serve as the architect and engineer for the project and admits the remaining allegations contained in paragraph 10 of the complaint to the extent they are consistent with the plain language of Buehrer's contract, attached thereto as Exhibit A.

11. JGCC admits the allegations contained paragraph 11 of the complaint.

12. JGCC admits the allegations contained paragraph 12 of the complaint to the extent that they are consistent with Exhibit B attached thereto, which speaks for itself.

13. JGCC denies for lack of knowledge the allegations contained in paragraph 13 of the complaint.

14. JGCC admits that McMillan Construction Limited (McMillan") entered into a contract with plaintiffs to perform site work for the project and states that Exhibit C attached to the complaint speaks for itself but denies for lack of knowledge the remaining allegations contained in paragraph 14 of the complaint.

15. JGCC admits the allegations contained paragraph 15 of the complaint and states that Exhibit D attached thereto speaks for itself.

16. JGCC denies for lack of knowledge the allegations contained in paragraph 16 of the complaint and states that Exhibit E attached thereto speaks for itself.

17. JGCC denies for lack of knowledge the allegations contained in paragraph 17 of the complaint.

18. JGCC states that the "contract documents" referenced in paragraph 18 of the complaint speak for themselves and admits the remaining allegations to the extent that they are consistent with the provisions of the "contract documents" referenced in this paragraph.

19. JGCC substantially performed its contractual duties at issue in this case and, therefore, denies the allegations contained in paragraph 19 of the complaint as they pertain to JGCC; JGCC denies for lack of knowledge the remaining allegations contained in paragraph 19 of the complaint.

20. JGCC denies for lack of knowledge the allegations contained in paragraph 20 of the complaint.

21. In response to paragraph 21 of the complaint, JGCC admits that for all times relevant to this case, the parties were doing business and/or domiciled in the State of Ohio but denies that this Court should have subject matter and personal jurisdiction in this case because JGCC's counterclaim seeks monetary damages from plaintiffs, thereby requiring that this case be removed to the Court of Claims.

22. Because of JGCC's counterclaim against plaintiffs, JGCC denies that venue is proper in Ashtabula County as alleged in paragraph 22 of the complaint.

23. JGCC reincorporates its answers to paragraphs 1-22 of the complaint as if fully rewritten herein.

24. JGCC denies the allegations contained in paragraph 24 of the complaint.

25. JGCC denies the allegations contained in paragraph 25 of the complaint.

26. JGCC denies the allegations contained in paragraph 26 of the complaint.

27. JGCC reincorporates its answers to paragraphs 1-26 of the complaint as if fully rewritten herein.

28. JGCC denies for lack of knowledge the allegations contained in paragraph 28 of the complaint.

29. JGCC denies for lack of knowledge the allegations contained in paragraph 29 of the complaint.

30. JGCC denies for lack of knowledge the allegations contained in paragraph 30 of the complaint.

31. JGCC reincorporates its answers to paragraphs 1-30 of the complaint as if fully rewritten herein.

32. JGCC admits that it performed services in accordance with its contract during the project but denies the remaining allegations contained in paragraph 32 of the complaint to the extent they allege duties outside of JGCC's contract.

33. JGCC admits that certain express warranties exist under the plain language of its contract and that Ohio law imposes the duty to exercise ordinary care or perform in a workmanlike manner but JGCC denies the remaining allegations contained in paragraph 33 of the complaint.

34. JGCC denies the allegations contained in paragraph 34 of the complaint.

35. JGCC denies the allegations contained in paragraph 35 of the complaint.

36. JGCC denies the allegations contained in paragraph 36 of the complaint

37. JGCC reincorporates its answers to paragraphs 1-36 of the complaint as if fully rewritten herein.

38. JGCC admits that McMillan performed site work during the project but denies for lack of knowledge the remaining allegations contained in paragraph 38 of the complaint.

39. JGCC denies for lack of knowledge the allegations contained in paragraph 39 of the complaint.

40. JGCC denies for lack of knowledge the allegations contained in paragraph 40 of the complaint.

41. JGCC denies for lack of knowledge the allegations contained in paragraph 41 of the complaint.

42. JGCC denies for lack of knowledge the allegations contained in paragraph 42 of the complaint.

43. JGCC reincorporates its answers to paragraphs 1-42 of the complaint as if fully rewritten herein.

44. JGCC states that R.C. 153.54 speaks for itself; JGCC denies for lack of knowledge the remaining allegations contained in paragraph 44 of the complaint.

45. JGCC denies that it has breached its contract or caused damages to plaintiffs; JGCC denies for lack of knowledge the remaining allegations contained in paragraph 45 of the complaint.

46. JGCC denies that it is liable to plaintiffs; JGCC denies for lack of knowledge the allegations contained in paragraph 46 of the complaint.

47. JGCC reincorporates its answers to paragraphs 1-46 of the complaint as if fully rewritten herein.

48. JGCC states that R.C. 153.54 speaks for itself but denies for lack of knowledge the remaining allegations contained in paragraph 48 of the complaint.

49. JGCC denies for lack of knowledge the allegations contained in paragraph 49 of the complaint.

50. JGCC denies for lack of knowledge the allegations contained in paragraph 50 of the complaint.

51. JGCC reincorporates its answers to paragraphs 1-50 of the complaint as if fully rewritten herein.

52. JGCC denies for lack of knowledge the allegations contained in paragraph 52 of the complaint.

53. JGCC denies for lack of knowledge the allegations contained in paragraph 53 of the complaint.

54. JGCC denies for lack of knowledge the allegations contained in paragraph 54 of the complaint.

55. JGCC reincorporates its answers to paragraphs 1-54 of the complaint as if fully rewritten herein.

56. JGCC denies for lack of knowledge the allegations contained in paragraph 56 of the complaint.

57. JGCC denies for lack of knowledge the allegations contained in paragraph 57 of the complaint.

58. JGCC reincorporates its answers to paragraphs 1-57 of the complaint as if fully rewritten herein.

59. JGCC denies for lack of knowledge the allegations contained in paragraph 59 of the complaint.

60. JGCC denies for lack of knowledge the allegations contained in paragraph 60 of the complaint.

61. JGCC reincorporates its answers to paragraphs 1-60 of the complaint as if fully rewritten herein.

62. In response to paragraph 62, JGCC admits that plaintiffs have alleged a claim for declaratory relief under R.C. Chapter 2721 but denies that JGCC breached its agreement or that plaintiffs are entitled to any of the relief requested in their complaint against JGCC.

63. JGCC denies for lack of knowledge the allegations contained in paragraph 63 of the complaint.

64. JGCC denies that plaintiffs are entitled to any of the relief requested against JGCC in plaintiffs' prayer for relief.

65. JGCC denies all allegations contained in plaintiffs' complaint not specifically admitted herein.

SECOND DEFENSE

66. Plaintiffs' complaint against JGCC fails to state a claim upon which relief may be granted.

THIRD DEFENSE

67. Plaintiffs' claims against JGCC are barred in whole or in part by the doctrines of equitable and/or promissory estoppel, waiver, release and laches.

FOURTH DEFENSE

68. Plaintiffs' claims are barred in whole or in part by their breach of the original contract and breach of their subsequent agreement to compensate JGCC for performing remedial repairs outside the scope of its original contract and which the parties agreed constituted "betterment" to the Project.

FIFTH DEFENSE

69. Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

SIXTH DEFENSE

70. Plaintiffs' claims are barred in whole or in part by the doctrine of set-off.

SEVENTH DEFENSE

71. Plaintiffs have or may have failed to join necessary or indispensable parties as required by the Civil Rules.

EIGHTH DEFENSE

72. If plaintiffs have suffered any damages (which has been and is denied), the acts of other parties hired by plaintiffs for whom JGCC has no responsibility or control caused any such damages alleged in the complaint.

NINTH DEFENSE

73. Plaintiffs' claims are barred by any applicable statutes of limitations.

TENTH DEFENSE

74. Plaintiffs' claims are barred or reduced by their failure to mitigate or minimize their damages.

ELEVENTH DEFENSE

75. Plaintiffs may have been negligent in their maintenance, operation and repair of the subject property, and as a result of that negligence, plaintiffs' claims are barred or reduced in whole or in part.

WHEREFORE, having fully answered plaintiffs' complaint, JGCC demands that the claims alleged against it in the complaint be dismissed and that it recover its expenses and costs herein, including its reasonable attorney's fees, and for such other and for any further relief deemed justified by the Court.

COUNTERCLAIM AGAINST PLAINTIFFS

For its counterclaim against plaintiffs, Grand Valley and OSFC, JGCC alleges as follows:

Claim I: Breach of Memorandum of Understanding Agreement

1. JGCC reincorporates by reference its prior answers and allegations contained in its answer to plaintiffs' complaint.
2. JGCC was awarded a contract with plaintiffs to perform general trades work including masonry, roofing and installation of asphalt at the new K-12 School (the "Project").

3. Plaintiffs entered into a direct contract with Buehrer to design the Project including the preparation of plans and specifications used by JGCC to perform its scope of work on the Project.

4. Plaintiffs also entered into direct contract with McMillian Excavating to prepare the site for the Project which included site clearing, grading, soil compaction and drainage below the asphalt.

5. Plaintiffs were dissatisfied with certain aspects of the Project which included the design and construction of the masonry, roofing and asphalt.

6. JGCC was not responsible for the errors or omissions in the design of the Project or any other construction defects alleged by plaintiffs.

7. OSFC on behalf of Grand Valley prepared a Memorandum of Understanding agreement ("MOU") and demanded that JGCC agree to its terms. The MOU required JGCC to perform certain remedial work and other repairs to the masonry, roofing and asphalt.

8. In July of 2013, the MOU was signed by JGCC and OSFC on behalf of Grand Valley. Exhibit 1.

9. The MOU states that many of the repairs that JGCC agreed to perform were caused by errors and omissions in Buehrer's design and/or defects in construction performed plaintiffs' other prime contractors and, therefore, outside of JGCC's scope of work contained in its contract. The MOU also states that certain aspects of the remedial work to be performed by JGCC was "betterment" which is also outside JGCC's contractual scope of work."

10. Plaintiffs agreed to pay JGCC for the value of the remedial work outside of JGCC's scope of work and for all improvements classified as "betterment."

11. The value of the work JGCC performed that the plaintiffs agreed was "betterment" was at least \$54,476.66.

12. The value of the work JGCC performed which plaintiffs agreed was not the responsibility of JGCC or its subcontractors was at least \$101,799.47.

13. Under the MOU, plaintiffs agreed to pay JGCC the total sum of \$156,276.13 for "betterment" and/or remedial work that were not the responsibility of JGCC or its subcontractors.

14. JGCC fully performed all of its duties under the MOU agreement, which included performing \$101,799.47 in additional repairs that plaintiffs' attributed to JGCC's masonry subcontractor.

15. After JGCC performed the remedial work, Plaintiffs made a partial payment in the amount of \$17,487.00 to JGCC, leaving a balance due and owing JGCC of \$138,789.13.

16. Plaintiffs breached the MOU agreement by refusing to pay JGCC the \$138,789.13 balance for the remedial work it performed which plaintiffs agreed was "betterment" and for remedial work plaintiffs agreed was outside JGCC's scope of work.

17. As a direct and proximate result of plaintiffs' breach of the MOU agreement, JGCC has suffered damages in an amount in excess of \$138,789.13., plus pre-judgment and post-judgment interest and other costs and expenses to be proven at trial.

Claim II: Declaratory Judgment, Chapter 2721, Ohio Revised Code

18. JGCC reincorporates its answers to paragraphs 1-17 of its counterclaim as if fully rewritten herein.

19. A real controversy exists between the parties which justifies speedy, declaratory relief to preserve the rights of JGCC.

20. Pursuant to the MOU attached here as Exhibit 1, plaintiffs minimally agreed to pay JGCC the sum of \$156,276.13 for performing the remedial work which plaintiffs agreed is "betterment" and not the responsibility of JGCC or its subcontractors.

21. After JGCC fully performed all of the remedial work and repairs required under the MOU, plaintiffs made a partial payment to JGCC of \$17,487 but then refused to pay the \$138,789.13 balance due and owing JGCC.

22. Plaintiffs breached the MOU by refusing to pay JGCC for the \$138,789.13 for remedial work that plaintiffs agreed was "betterment" or not the responsibility of JGCC or its subcontractors.

23. Plaintiffs further breached the MOU by filing this action against JGCC and alleging that JGCC bears responsibility for work that plaintiffs previously agreed was "betterment" or not the responsibility of JGCC or its subcontractors.

24. As a proximate result of plaintiffs' breach of the MOU, JGCC has been damaged in an amount in excess of \$138,789.13 and has expended substantial resources to defend against this action.

25. Pursuant to R.C. Chapter 2721, JGCC requests that the Court issue an order in its favor declaring that:

A. the MOU signed by the parties, attached as Exhibit 1, is a valid and enforceable contract;

B. JGCC substantially performed all work under the MOU which included performing \$101,799.47 in repairs for work plaintiffs attributed to JGCC's masonry subcontractor that did not meet the plaintiffs' expectations;

C. the value of the remedial work performed by JGCC that plaintiffs agreed was "betterment" or not the responsibility of JGCC's or its subcontractors is at least \$156,276.13;

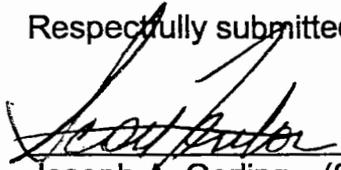
D. plaintiffs' breached the MOU and by refusing to pay the \$138,789.13 balance due and owing JGCC for the work it performed under the MOU that plaintiffs agreed was "betterment" or for remedial work that was not the responsibility of JGCC or its subcontractors;

E. plaintiffs be ordered, pursuant to R.C. 2721.11, to reimburse JGCC for its reasonable expenses and costs incurred to enforce the MOU.

WHEREFORE, Defendant Jack Gibson Construction Company demands judgment as follows:

- **Judgment on Claim I:** recovery against plaintiffs of an amount in excess of \$138,789.13, plus pre-judgment and post-judgment interest, costs, expenses and any other amounts to be proven at trial.
- **Judgment on Claim II:** That the Court issue a declaratory judgment in its favor against plaintiffs as specified in Paragraphs 25(A)-(F) above.

Respectfully submitted,



Joseph A. Gerling (0022054)

Scott A. Fenton (0068097)

LANE ALTON & HORST, LLC

Two Miranova Place, Suite 500

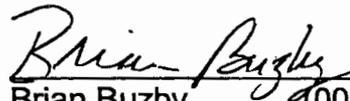
Columbus, Ohio 43215

P: 614.228.6885

F: 614.228.0146

E: jgerling@lanealton.com

sfenton@lanealton.com



Brian Buzby (0023124) by SF Per Check

PORTER, WRIGHT, MORRIS & ARTHUR LLP

41 South High Street

Columbus, Ohio 43215

P: 614.227.1995

F: 614.227.2100

E: bbuzby@porterwright.com

Counsel for Jack Gibson Construction Co.

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true copy of the foregoing **Answer and Counterclaim** was served via regular U.S. Mail, postage prepaid, on this 5th day of May 2014, to the following:

David A. Beals
Jerry K. Kasai
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, Ohio 43215
Counsel for Plaintiffs

Brian Buzby
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
Counsel for Hartford Fire Insurance Company

Brian C. Lee
Reminger Co., LPA
101 W. Prospect Avenue, Suite 1400
Cleveland, Ohio 44115-1093
Counsel for Buehrer Group Architecture & Engineering

Stephen P. Withee
Ashley L. Oliker
Frost Brown Todd LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215-3484
Counsel for Merchants Bonding Company

McMillan Construction Limited
aka McMillan Construction Company
c/o David O. McMillan
26457 State Route 58
Wellington, Ohio 44090



Joseph A. Gerling (0022054)
Scott A. Fenton (0068097)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Agreement") is entered into between the Ohio School Facilities Commission (OSFC) on behalf of the Grand Valley Local School District (collectively "Owners") and Jack Gibson Construction Company (Gibson) (collectively the "Parties") concerning issues surrounding work performed by subcontractors of Gibson at the Grand Valley Local School District (GVLSD).

WHEREAS, Gibson was awarded a contract with GVLSD to perform General Trades Work including masonry at the new K-12 School (the "Project"); and

WHEREAS, The Buehrer Group contracted with GVLSD for the design of the Project; and

WHEREAS, certain aspects of the design and workmanship related to the masonry have not met the Owners expectations and the OSFC alleges that Gibson's masonry subcontractor did not perform in a workmanlike manner, i.e. in accordance with the plans and specifications, and/or the plans and specifications were deficient in design, and that they have incurred substantial damage as a result of improper design by The Buehrer Group or improper workmanship by Gibson's masonry subcontractor; and

WHEREAS, the Owners have also determined that certain roof and asphalt deficiencies exist but have not determined responsibility for such defects; and

WHEREAS, Gibson denies that its work on the Project was deficient in any manner but agrees to work with the Owners to attempt to address any of their concerns related to the Project; and

WHEREAS, Gibson without admitting to any liability to the Owners, has agreed to work with the Owners to attempt to settle and compromise all claims related to or arising out of the Project; and

WHEREAS, Gibson has agreed to work with the Owners to identify and correct certain masonry and other work ("remedial work") that does not meet the Owners' expectations and the Owners have agreed that certain aspects of the remedial work will include betterment, and that reasonable compensation will be due Gibson for such items and will need to be evaluated prior to and/or as work progresses, with payment after satisfactory completion of said work; and

WHEREAS, the Owners have also identified certain remedial work that is not the responsibility of Gibson or its subcontractors and Gibson has agreed to correct this work; and

EXHIBIT

1

WHEREAS, it is the intent of the Owners to provide reasonable compensation for remedial work that is not attributed to Gibson or its subcontractors as agreed by the Parties; and

WHEREAS, Gibson and the Owners have retained consultants to determine the items of remedial work referenced herein, and the consultants have agreed as set forth in Attachments A and B to the approximate scope of the work; and

WHEREAS, the Owners will provide the design, specifications and scope for the remedial work; and

WHEREAS, it is understood by the Parties that additional remedial work may be discovered throughout the remediation process and all such work shall be performed in accordance with the previous recitals as to assigning responsibility therefor, and the need for reasonable compensation from the Owners to Gibson; and

WHEREAS, the Owners intend to replace the roof and Gibson will need to coordinate the remedial work so as to minimize damage and allow the roof work to integrate with the remedial work; and

WHEREAS, the Owners wish to have the remedial work observed by a building envelope consultant and Gibson wishes to have the control joints inspected, once they are opened, to determine whether further work is necessary, and to the extent the remedial work occurs while the Owners have a consultant on site to observe the roof, the Owners will absorb the cost of the observation and inspection; and

WHEREAS, upon Gibson's completion of any remedial work pursuant to this MOU, the Owners will release Gibson from any and all claims related to or addressed by the remedial work undertaken by Gibson on the Project, but reserving any claims for the remedial work itself; and

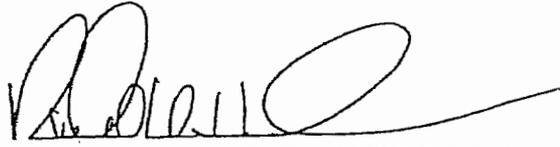
WHEREAS, the Parties desire to attempt to resolve the aforementioned issues in a good faith manner,

NOW THEREFORE, the Parties agree to proceed as follows:

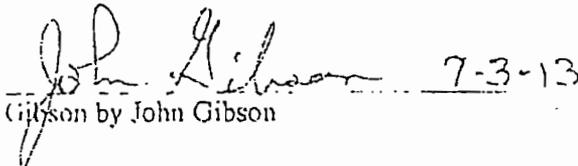
- 1) The Parties agree to move forward in a good faith manner to resolve and/or clarify any issues as set forth in the attached documents or otherwise discovered during the remediation process regarding Gibson's subcontractor's work on the Project, or other issues not attributable to Gibson or its subcontractors. Good faith is construed to signify that discussions and negotiations are ongoing.
- 2) Gibson agrees that it will enter into mediation within 60 days of a request to do so to resolve any dispute arising under this Agreement.

- 3) The OSFC agrees that as long as Gibson is involved in good faith negotiations with the OSFC on the dispute, that this matter will not be used by the OSFC in any determination by the OSFC that Gibson is not a responsible bidder.

Agreed to by the Parties this 3rd day of July, 2013.

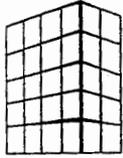


Owners by Richard Hickman



Gibson by John Gibson

EXHIBIT A



RUDICK FORENSIC ENGINEERING INC
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



GRAND VALLEY SCHOOL

BRICK EN. INSP.

8/15/2012

File No. _____

Date

6/25/12

Pg 1

of _____

A24, H

(1a) 3/8" offset corner 1 brch = 1 1/2"
joint open = missing, w/ convex sealant (D & M)

A24, G

(1b) @ 1SC corner, 1/2" - 5/8", only Aillet joint covering marker - NO EN.

(1c) 3/8" wide, no visible movement (NVM) = no convexity or compression
No joint below lower split face = ~~missing~~

(1d) 3/8" wide, NVM
DO

A24, H

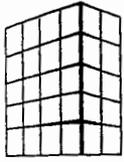
(2) 3/8", offset @ corner 12", D & M
below bottom split face band, cohesion tears.

(3) 1/4", D & M (Down joint = DS)

(4/5) Gable bumps

(6) 1/4", D & M (DS)

(7/8) Gable bumps?



RUDICK FORENSIC ENGINEERING INC
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 2 of _____

⑨ 3/8", Ø 4M (DS)

⑩ 2nd story, inaccessible

A 22, A

⑪ O.S. corner, obtuse \angle , mortar joint w/ surfaces only sealant joint cracked & open

⑫/⑬ proposed to be added

⑭ O.S. corner, obtuse \angle , mortar joint w/o sealant joint cracked & open

15, 16, 17, 18, 19, 20, 2nd story, inaccessible

A 22, B

⑰ 2nd story

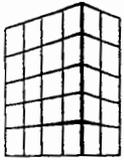
⑱ MISSING

⑳/㉔ Gable bump

㉕ 1/4", Ø 4M

- EJ DOES exist from bottom band to ground (S&H says to ADD)

- EJ continues full hgt. in BRICK, but is NOT continuous thru upper 3 split-face bands.



RUDICK FORENSIC ENGINEERING INC
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 3 of _____

26/27 Crabb's bump

(28) $1/4" - 3/8"$, O & M (DS)

(29) corner offset; $3/8"$ O & M

- corner moving $1/4"$ laterally, to east

A23, C

(30) lower $10'$, $1/4"$ O & M to 2nd hand

upper = $3/8" - 1/2"$, NVM

(31) DO

32/33 I.S.C, mortar joints cracked

(32A) $1/4" - 3/8"$ O & M ; ~~SSA~~ DO

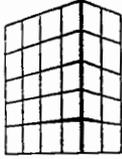
(34) (35) DO (30, 31)

A23, D

(36) offset corner ed; $1/4"$ lateral ^{west} movement, similar to 29
 $3/8"$, NVM

(37) $1/4"$, O & M

38/39 hilt bump



RUDICK FORENSIC ENGINEERING ^{INC}
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 4 of _____

(40) $1/4" - 3/8"$, O & M (DS)

NO Ed. below bottom lead

4/42 Hall bump

(43) $1/4" - 3/8"$, O & M (DS)

(44) D.S. above corner, mortar filled w/ surface sealant covering
(not E.D.)

corners rotting out on both sides on brick in wa. laterally

A23, E

(45) Proposed Add

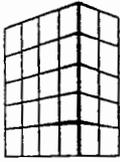
(46) only short distances, no Ed shown or installed
- no distance in print = OK

A26, Joint

(47) ISC, only short distances, no Ed shown or installed

⁴⁵
(48) 2nd story, no access

(49A) O & M, $1/4" - 3/8"$



RUDICK FORENSIC ENGINEERING
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 5 of _____

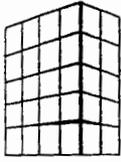
A25, '1'

- (49) 2nd story, no access
- (50) 1-5C, 1/4" OMM
- (51)  1/4" - 3/8", OMM
- (52)  getting tight
@ lower 1/2
- (53) " "
- (54) " "
- (55) 3/8" - 1/2", min. movement only
- (56)  1/4" - 3/8", OMM
- (57)  TIGHT
lower 1/2
- (58) 3/8", OMM
- (59) 3/8", NYM, window head limited locked by bed joint = cascaded

A25, J

- (60) 1/4" - 3/8" OMM (DS)
- (61) " (DS)
- (62) " (DS)
- (63) " (DS)
- (64) 3/8", OMM

1st story 2nd story



RUDICK FORENSIC ENGINEERING ^{LLC}
 DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
 1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 6 of _____

69 3/8", 0 #M (DS)

70 1/4" - 3/8", 0 #M (DS)

A24, K (cont)

71 corner of joint 1/4", 1/8" west lateral movement
 3/8" NVM

72 3/8", lower 10', NVM
 upper 20', 0 #M

73 lower 8', 3/8", NVM
 upper to roof, 1/8" - 1/4" 0 #M

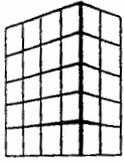
@ OAD control; RT. bearing ind, locked by bed joint, severe cracking

74 below 10' band, 3/8", NVM
 upper to roof, 1/4" - 3/8", 0 #M

75 " " "

76 1/4", 0 #M

77 SAW CUT; 1/8" w/ sealant compression



RUDICK FORENSIC ENGINEERING ^{INC}
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 7 of _____

(78) 1/4", O & M

(79) " "

(80) MISSING

(81) Above door head, 1/4" O & M
(door w/ lintel head locked by lead joint)

(82) MISSING

A24, K

(83) ISC, mortared only

(86) ISC, mortared only, large window under canopy, no stress = OIL

(85) no access, upper

A25, J

(84) @ canopy, E.J. above canopy lintel, 3/8", O & M
below canopy = offset 2 1/2" to window

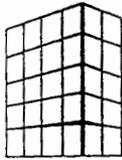
A30, J cont.

(87) 3/8" O & M

(88) ISC, under canopy, mortar corner, no E.J.

(89) canopy, 3/8", very minor corner

(90) ISC, canopy, mortared, no E.J.



RUDICK FORENSIC ENGINEERING INC
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
 1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 8 of _____

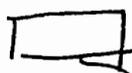
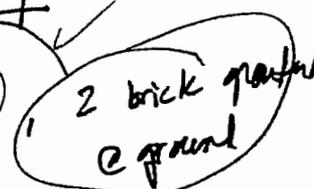
A29, N

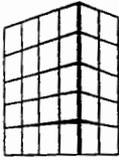
- (91) 3/8" O+M
- (92) ISC, under canopy, measured, NO E.I.
- (93) OSC, no F.I.
- (94) canopy offset (DS), 3/8", min. movement
- (95) 3/8", NVM (DS)
- (96) corner offset, 1/4", NVM

A30, J cont.

- (97) 3/8", min. movement (DS)
- (98) 3/8", O+M (DS)
- (99) OSC

A30, J

- (99) OSC
- (100) 14" corner offset, SAW CUT, 1/4" - 3/8", NVM
- (101) 3/8", O+M 
- (102) " " (DS) 



RUDICK FORENSIC ENGINEERING INC
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 9 of _____

A30, R cont.

- (102) MISSING
- (103) 32" off ISC, 3/8" O&M (DS)
- (103a) ISC mortared, w/ fillet cracks, no E!

A30, J cont.

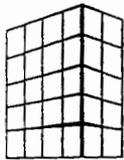
- (103a) ISC
- (104) MISSING
- (105) 1/4" O&M, heavy extension
- (106) MISSING

A30, J

- (107) 1/4", O&M, heavy extension (DS)
- (108) MISSING
- (109) 1/4", O&M, heavy extension
- (110) ISC, mortared w/ fillet, no E!

A29, O

- (110) ISC
- (111) 3/8", 1/4" O&M (DS)
- (112) corner offset 1/4", NVM



RUDICK FORENSIC ENGINEERING ^{INC}
 DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
 1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



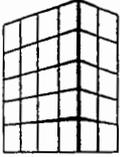
File No. _____ Date _____ Pg 10 of _____

A30, J

- (12) osc (offset) saw cut, 1/4" NVB
- (113) 3/8", NYM
- (114) INSULATION
- (115) Proposed New Ed
- (116) INSULATION
- (117) 5/8", NYM

A29, Q

- (118) corner offset, 3/8" OSM
- (119) 1/4", OSM, (DS)
- (120) 1/4" - 3/8" OSM
- (121) Below bottom band, 1/4", heavy extension, OSM
 Above, 3/8", NYM
- (122) 5/8", min. movement, (DS offset)
- (123) Saw cut, 1/16", extended
- (124) 1/4" - 3/8", OSM, heavy extension; cracking in joints station 7/12/12, PS-15
- (125) Below band 1/4", heavy extension (DS)
 Above, 3/8", NYM
- (126) Below band 1/4" OSM, heavy extension; ABOVE 3/8", NYM, single brick in-situ



RUDICK FORENSIC ENGINEERING INC.
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 11 of _____

(127) 3/8", NYM (DS)

(128) offset corner 1/4",
above band 3/8" OSM
below band 1/2" NYM

1/8" - 1/4" lateral movement @ corner

A28, M cont.

CORNER: vertical cracking, 9" below band

lateral movement, 1/8" - 1/4"

(129) 3/8" - 1/2" NYM

(130) " " "

CORNER 1/8" - 1/4" lateral movement

A29, O

(131) corner offset 1/4", 3/8" - 1/2" NYM

(132) 1/4" OSM, heavy abrasion, DS offset 2"

(133) 5/8" - 1/2", NYM

(134) " " ; 1 spalled brick @ grade

(135) ISC, mortared, fillet crack, no E.V.



RUDICK FORENSIC ENGINEERING INC
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 12 of _____

A28, R cont.

- (136) $3/8" - 1/2"$, NYM
- (137) SAW CUT, does not extend above upper band.
below lower band, $1/2"$, extended
above lower band $1/8"$, NYM

A28, M

- (138) $1/4"$, OAM, heavy extension, DS
- (139) SAW CUT, below band OAM
above band, NYM
- (140) below $8"$, NYM
above $8"$, $3/8"$, OAM, heavy extension
- (141) 156 marked, fillet center, no band

A30, R cont.

- (142) $3/8"$, NYM, DS
- (143) MISSING
- (144) below lower band, $3/8"$ OAM CAPAC * blow at, 1 hr. @ 90°
above lower band, $3/8" - 1/2"$, NYM
- (145) $3/8"$, OAM, DS
- (146) MISSING
- (147) $1/4"$, OAM, heavy extension
- (148) $1/4"$ OAM, heavy extension
- (149) $1/4"$ OAM, heavy extension
- (150) $1/4"$ OAM, heavy extension
- (151) $1/4"$ OAM, heavy extension
- (152) $1/4"$ OAM, heavy extension
- (153) $1/4"$ OAM, heavy extension
- (154) $1/4"$ OAM, heavy extension
- (155) $1/4"$ OAM, heavy extension
- (156) $1/4"$ OAM, heavy extension
- (157) $1/4"$ OAM, heavy extension
- (158) $1/4"$ OAM, heavy extension
- (159) $1/4"$ OAM, heavy extension
- (160) $1/4"$ OAM, heavy extension
- (161) $1/4"$ OAM, heavy extension
- (162) $1/4"$ OAM, heavy extension
- (163) $1/4"$ OAM, heavy extension
- (164) $1/4"$ OAM, heavy extension
- (165) $1/4"$ OAM, heavy extension
- (166) $1/4"$ OAM, heavy extension
- (167) $1/4"$ OAM, heavy extension
- (168) $1/4"$ OAM, heavy extension
- (169) $1/4"$ OAM, heavy extension
- (170) $1/4"$ OAM, heavy extension
- (171) $1/4"$ OAM, heavy extension
- (172) $1/4"$ OAM, heavy extension
- (173) $1/4"$ OAM, heavy extension
- (174) $1/4"$ OAM, heavy extension
- (175) $1/4"$ OAM, heavy extension
- (176) $1/4"$ OAM, heavy extension
- (177) $1/4"$ OAM, heavy extension
- (178) $1/4"$ OAM, heavy extension
- (179) $1/4"$ OAM, heavy extension
- (180) $1/4"$ OAM, heavy extension
- (181) $1/4"$ OAM, heavy extension
- (182) $1/4"$ OAM, heavy extension
- (183) $1/4"$ OAM, heavy extension
- (184) $1/4"$ OAM, heavy extension
- (185) $1/4"$ OAM, heavy extension
- (186) $1/4"$ OAM, heavy extension
- (187) $1/4"$ OAM, heavy extension
- (188) $1/4"$ OAM, heavy extension
- (189) $1/4"$ OAM, heavy extension
- (190) $1/4"$ OAM, heavy extension
- (191) $1/4"$ OAM, heavy extension
- (192) $1/4"$ OAM, heavy extension
- (193) $1/4"$ OAM, heavy extension
- (194) $1/4"$ OAM, heavy extension
- (195) $1/4"$ OAM, heavy extension
- (196) $1/4"$ OAM, heavy extension
- (197) $1/4"$ OAM, heavy extension
- (198) $1/4"$ OAM, heavy extension
- (199) $1/4"$ OAM, heavy extension
- (200) $1/4"$ OAM, heavy extension



RUDICK FORENSIC ENGINEERING INC
 DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
 1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 13 of _____

A28, M

(148) OSC

(149) 3/8", intermittent involvement & fixed

(150) MISSING

(151) MISSING

(152) 3/8", NYM DS

A29, N cont.

(153) 14" corner offset, 3/8", NYM ~~AN~~ WT

(154) below 8', 3/8" NYM DS
 above 8', 3/8" OSC

(155) 3/8" NYM

(156) 1/4", OSC, heavy extension, DS

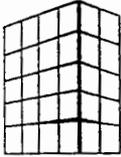
(157) OSC, offset 2', 3/8", minor involvement DS

(158) (under canopy) 3/8" - 1/2" NYM

A28, M

(159) CANOPY, 3/8" - 1/2", NYM

✓159A ISC notched



RUDICK FORENSIC ENGINEERING INC
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 14 of _____

A27, L cont (6YM)

Also A-15C, mortared & filled

(160) corner offset 1/4", 3/8" - 1/2" NYM

(161) 3/8", NYM

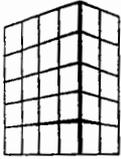
(162) 1/4" - 3/8" OSM

located back @ 7' atig. (section cut-out & replaced, test cut)

(163) 3/8" NYM,
except for = 3' through lower bond, 1/4" of extension

(164) lower 1/2, 1/4" OSM
upper 1/2, 3/8" NYM

(165) 3' offset OSC, 1/4" OSM



RUDICK FORENSIC ENGINEERING INC.
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



GRAND VALLEY SCHOOL

MARSDEN E.V. EVALUATION

File No. _____

Date 7/18/12 Pg 1 of _____

A27, L

(166) ISC ² $\frac{1}{2}$ " O&M, above door

(167) ISC, under canopy, marked, no EI

(168/169) above door head to canopy support

(170) above canopy to lower roof, $\frac{3}{8}$ " NVM

SEE WEST FLEV. SKETCH

(171) $\frac{1}{2}$ " NVM

(172) SAW CUT, $\frac{1}{4}$ " NVM

A27, L

(173) above door head to lower roof, $\frac{3}{8}$ " O&M

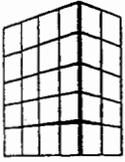
(174) ISC, $1\frac{1}{4}$ - $\frac{3}{8}$ ", O&M

A26, K

(175) ISC, above lower head $\frac{1}{4}$ ", O&M

below lower head $\frac{3}{8}$ " - $\frac{1}{2}$ " NVM

(176) $\frac{3}{8}$ ", O&M (distinct movement of front wall $\frac{1}{4}$ ")



RUDICK FORENSIC ENGINEERING INC
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg. 2 of _____

A27, L

No EJ along front edge of second floor

Rt: 1/4" lateral movement @ west corner to west

Lt: 1/8" lateral movement @ east corner to east

Adding 4 E.J. proposed

A26, I

(177) 1/4", O&M, (1/8", lateral movement front wall)

(178) 1/4", O&M, heavy extrusion

A25, I cont.

OSC - MISSISSAUGA

(179) 1/4", O&M, heavy extrusion (DS)

(180) 3/8" above door head, heavy extrusion

3/8" below door head, NVM

brick flew out photos # 48-50; cracking bottom 2
brick, w/mortar ~~behind~~

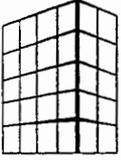
(181) 1/4", O&M, heavy extrusion behind sealant

(182) " " " (DS)

(183) " " " "

(184) bottom 2/3, 1/4" " " "

top 1/3 3/8" NVM



RUDICK FORENSIC ENGINEERING^{INC}
DAMAGE CONSULTANTS

855 Tod Avenue • Youngstown, OH 44502-1383
1-800-966-5392 • (330) 744-5392 • FAX (330) 744-7174



File No. _____ Date _____ Pg 4 of _____

A24, G OEC, $1/8$ " - $1/4$ " lateral movement to west

(199) $3/8$ " NVM

(200) $1/4$ " NVM

(201) 15C, rusted joint, Allset cracks, no F.J.

A24, F

(202) corner offset, $1/4$ " - $3/8$ " , min. movement

EXHIBIT B

Cleveland

Minneapolis

Raleigh



**BUILDING ENVELOPE
CONSULTING GROUP**

1100 CAMPUS DRIVE, SUITE 200
STOW, OH 44224-1756
330.923.5560

January 11, 2013

Mr. William Nye, Superintendent
Grand Valley School District
111 Grand Valley Ave. West
Orwell, Ohio 44076

RE: January 9, 2013 meeting to discuss brick veneer issues, and subsequent review of Rudick Forensic Engineering (RFE) survey/assessment of vertical expansion joints at brick veneer

Mr. Nye,

On behalf of Grand Valley School District (GVSD), Wheaton & Sprague (WS) attended a meeting in Cleveland on January 9, 2013 with representatives of Gibson and the co-owners for discussions relative to the above captioned matters.

In August 2012, WS accompanied Mr. Michael Fitzpatrick, Esq. (Cincinnati Insurance) and Mr. Lorey Caldwell, PE, RA (RFE) on a ground based walking tour around the building exterior to visually observe the vertical expansion joints at brick veneer walls. Prior to that August field observation, RFE had prepared a survey, and we used a copy of that survey while making our observations.

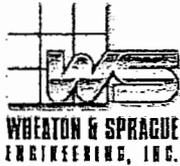
The purpose of the 01/09/13 meeting was to discuss the August 2012 RFE survey, and for the Gibson team to gather insight as to the extent of repairs that might be acceptable to the co-owners.

WS explained that our previous expectation (prior to the 01/09/13 meeting) was that a revised or reconciled version of the RFE survey was to have been provided subsequent to the August 2012 site observation wherein WS made comments on some control joints that were thought by Gibson to be OK (marked as such on the RFE survey).

A copy of a revised RFE survey was provided to WS and Mr. Matt Westerman (representing co-owners) during the 01/09/13 meeting in Cleveland. WS agreed to compare the revised survey with the WS field notes made in August 2012, and WS provided a tentative schedule for returning comments within (2) weeks.

During the meeting, WS pointed out that:

- A1. A number of vertical expansion joints have become tightly closed in a manner that the weather sealant within the expansion joint has been crushed, extruded outward and damaged in a manner that weather sealant service life has ended. All tight joints exhibiting compacted weather sealant would need to be widened, and new weather sealant applied afterward – all repair work to be designed by a responsible design entity.
- A2. A number of vertical expansion joints exhibit signs of movement capacity for a portion of distance in height, yet also exhibit no signs of movement capacity for some distance in the same run of expansion joint. Expansion joint areas that have not exhibited visible evidence of



**BUILDING ENVELOPE
CONSULTING GROUP**

1100 CAMPUS DRIVE, SUITE 200
STOW, OH 44224-1756
330.923.5560

movement will need to be explored for potential obstructions, and repaired as designed by a responsible design entity.

- A3. A number of vertical expansion joints exhibit no signs of movement for the entire height of the expansion joint. Expansion joints that have not exhibited visible evidence of movement capacity will need to be repaired as designed by a responsible design entity.
- A4. A number of vertical expansion joints exhibit signs of movement capacity for the entire height of the expansion joint, and when not coupled with other defects (cracked brick, blowouts, ruptured sealant, etc.), those expansion joints could probably remain as they are.
- A5. All expansion joint related work will need to be executed in a manner to be in conformance to a repair designed by a responsible design entity.

During the meeting, it was also agreed that:

- B1. The two areas that have had veneer wall dislocations (blowouts) will need to be repaired in a manner to be in conformance to a repair designed by a responsible design entity.
- B2. Partial brick veneer facings will need to be replaced and expansion joints will need to be added at the "bump out" areas that have cracked. These "bump out" areas will need to be repaired in a manner to be in conformance to a repair designed by a responsible design entity.
- B3. Localized cracking, fracturing and dislocation of brick is noted on the RFE survey, will need to be repaired in a manner to be in conformance to a repair designed by a responsible design entity.
- B4. A brick veneer column enclosure and brick veneer façade directly above the column enclosure will need to be repaired in a manner to be in conformance to a repair designed by a responsible design entity.
- B5. Through wall flashings have been determined to be deficient, and will need to be repaired in a manner to be in conformance to a repair designed by a responsible design entity.
- B6. The issue with the insulation or lack thereof in certain places was discussed and Gibson acknowledged this issue.
- B7. The problem with the two dormer type windows was discussed and the need for a redesign and the accompanying masonry work.

Subsequent to the meeting, WS reviewed the revised survey from RFE. WS and suggests the following additions be considered:

- C1. Joints 1c & 1d – Need to be extended to the bottom of the wall.



**BUILDING ENVELOPE
CONSULTING GROUP**

1100 CAMPUS DRIVE, SUITE 200
STOW, OH 44224-1756
330.923.5560

- C2. Joint 3 – Too tight, and needs to be addressed as outlined at item A1 (above).
- C3. Joints 51 thru 54 - Too tight @ bottom half, and needs to be addressed as outlined at item A1 (above).
- C4. Joints 56 and 57 - Too tight @ bottom half, and needs to be addressed as outlined at item A1 (above).
- C5. Joint 73 - Too tight @ upper half, and needs to be addressed as outlined at item A1 (above).
- C6. Joints 76 thru 79 - Too tight, and needs to be addressed as outlined at item A1 (above).
- C7. Missing joints should be added if required by the responsible design entity engaged for the design of repairs.
- C8. Existing saw cut joints (particularly those that are narrow in width) should be modified if required by the responsible design entity engaged for the design of repairs.

An estimated quantity of expansion joints to be repaired and/or addressed was discussed at the meeting, and the approximate number of sixty-two was offered by Messer's Fitzpatrick and Caldwell. It would appear that the joints listed above in C1 thru C8, plus any subsequent potential discoveries (see paragraph below) will increase that estimate.

The survey from RFE appears to be reasonably accurate, however; the survey was conducted from the ground level (as was our field observation). Closer observations will be made above ground during the repair phase, and so; we would expect that some discoveries of defects not currently noted may be made, and that the contractor would address any of those discovered defects in a manner consistent with the repair design.

This concludes our narrative report. Please call me with any questions, comments or concerns.

Best regards,
WS, Inc. – Building Envelope Consulting Division

Mark Coulis

Mark Coulis
Vice President & Senior Design Consultant

Cc: D. Riley
M. Westerman
File

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

Grand Valley Local School
District Board of Education, et al.,

Plaintiffs,

-vs-

Buehrer Group
Architecture & Engineering, Inc., et al.,

Defendants,

Jack Gibson Construction Co.
c/o John C. Gibson, Sr. Statutory Agent
2460 Parkman Road, N.W.
Warren, Ohio 44485,

Defendants/Third-party Plaintiff,

-vs-

Boak & Sons, Inc.
c/o Samuel G. Boak, statutory agent
75 Victoria Road
Youngstown, Ohio 44515,

and

J. William Pustelak d/b/a
Pustelak, Inc.
9070 Peach Street
Waterford, PA 16441,

and

Velotta Asphalt
Paving Company, Inc.
P.O. Box 1930
4964 Campbell Road
Willoughby, Ohio 44096,

Third-Party Defendants.

Case No. 2014CV0161

Judge Gary L. Yost

THIRD PARTY COMPLAINT

Defendant, Jack Gibson Construction Co., ("JGCC") for its third-party complaint against Boak & Sons, Inc. ("Boak"), J. William Pustelak, Inc. d/b/a Pustelak, Inc. ("Pustelak") and Velotta Asphalt Paving Company, Inc. d/b/a Velotta Paving Company ("Velotta"), alleges as follows:

FACTS COMMON TO ALL CLAIMS

1. The Third-Party Plaintiff, JGCC, is a for-profit corporation organized and existing under the laws of the State of Ohio with its principal place of business located in Trumbull, County, Ohio.

2. Boak is a for-profit corporation organized and existing under the laws of the State of Ohio with its principal place of business located in Youngstown, Ohio.

3. Pustelak is or was a for-profit corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business located in Waterford, Pennsylvania.

4. Velotta was a for-profit corporation that was organized and existing under the laws of the State of Ohio with its principal place of business located in Lake County, Ohio.

5. Plaintiffs entered into a contract with Buehrer Group Architecture & Engineering, Inc. ("Buehrer") who agreed to provide all engineering and architectural design services to construct a new K-12 Grand Valley Local School ("the Project"). A copy of Buehrer's contract is attached as Exhibit A to plaintiffs' complaint.

6. On October 14, 2003, plaintiffs, Grand Valley Local School District Board of Education ("Grand Valley"), and the Ohio School Facilities Commission ("OSFC"),

entered into a contract with JGCC for general trades work for the Project. A copy of the contract is attached as Exhibit B to plaintiffs' complaint.

7. On October 23, 2003, JGCC entered into a subcontract with Pustelak to furnish materials and labor necessary to perform the masonry work during the Project in strict accordance with the contract documents prepared by Buehrer. A copy of Pustelak's contract is attached hereto as Exhibit 1.

8. On December 23, 2003, JGCC entered into a subcontract with Boak to furnish materials and labor necessary to perform roofing work during the Project in strict accordance with the contract documents prepared by Buehrer. A copy of Boak's contract is attached hereto as Exhibit 2.

9. On July 25, 2005, JGCC entered into a subcontract with Velotta to furnish materials and labor necessary to perform the asphalt paving work during the Project in strict accordance with the contract documents prepared by Buehrer. A copy of Velotta's contract is attached hereto as Exhibit 3.

10. On February 25, 2014, plaintiffs filed an action in the Court of Common Pleas of Ashtabula County, Ohio captioned *Grand Valley Local School District Board of Education, et al., v. Buehrer Group, et al.*, Case No. 2014-CV-161, in which they allege claims including breach of contract for failing to perform in a workmanlike manner, and breach of express and implied warranties against JGCC related to the work performed by the third-party defendants. A copy of plaintiffs' complaint and exhibits are attached hereto as Exhibit 4.

11. Upon information and belief, plaintiffs' claims include claims for defects in the construction of the asphalt paving, masonry and roofing work performed by the third-party defendants.

12. The general terms and conditions common to all of the subcontracts require each third-party defendant to:

a. Bind itself to JGCC in the same manner as JGCC was bound under the general contract to the owner.

b. Provide materials and perform work in strict accordance with the contract documents and in a workmanlike manner.

c. Perform work in accordance with all applicable federal, state, and local laws, ordinances, and regulations.

d. Name JGCC as an additional insured on their respective liability insurance policies executed in connection with the projects. Copies of the insurance certificates naming JGCC as an additional insured on the third-party defendants' policies are attached hereto as Exhibits 5, 6 and 7, and

e. Warrant work against all deficiencies and defects in materials and/or workmanship.

13. Plaintiffs' complaint alleges that the third-party defendants identified above failed to perform their duties as required by Ohio law and the contract documents, and consequently are or may be liable to JGCC for any and all damages that JGCC may be obligated to pay arising from this lawsuit.

14. For the sole purpose of providing the factual basis underlying this third-party complaint and denying the truth of the allegations contained in plaintiffs'

complaint (to the extent they were denied in JGCC's answer to plaintiffs' complaint) the allegations contained in plaintiffs' complaint are incorporated by reference as if specifically restated herein.

CLAIM ONE

(Breach of Contract)

15. JGCC incorporates herein by reference each and every allegation set forth above.

16. JGCC performed all of its contractual obligations owed to the third-party defendants under their respective subcontracts.

17. The third-party defendants were required by their respective subcontracts to perform their duties in a workmanlike manner and in strict accordance with the contract documents governing each project.

18. JGCC denies any liability owing to any party in this action. However, to the extent that any of the work performed by the third-party defendants is deemed to be defective, faulty or deficient in any respect, then the responsible third-party defendants breached their respective subcontracts by, among other things, failing to perform in a workmanlike manner and in strict accordance with the contract documents governing each project.

19. JGCC denies any liability to any party in this action. However, to the extent that any of the work performed by the third-party defendants is deemed to be defective, faulty or deficient in any respect, thus allowing any party to recover against JGCC in this action, then JGCC will be damaged by the third-party defendants' breach of their contractual obligations and will be entitled to recover from the third-party defendants any and all amounts that it is obligated to pay. These

amounts would include, but are not limited to, the costs of repair and replacement of defective work and defective or damaged construction materials.

CLAIM TWO

(Negligence)

20. JGCC incorporates herein by reference each and every allegation set forth above.

21. Each third-party defendant had a duty to perform its work in a workmanlike manner and in strict accordance with the contract documents.

22. JGCC denies any liability to any party in this action. However, to the extent that any of the work performed by the third-party defendants is deemed to be have been performed in an unworkmanlike manner, thus allowing any party to recover against JGCC in this action, then JGCC will be damaged by the third-party defendants' negligence and will be entitled to recover from the third-party defendants any and all amounts that it is obligated to pay. These amounts would include, but are not limited to, the costs of repair and replacement of defective work and defective or damaged construction materials.

CLAIM THREE

(Indemnity)

23. JGCC incorporates herein by reference each and every allegation set forth above.

24. In accordance with the terms of the subcontract agreements, the third-party defendants agreed to defend, indemnify, and hold JGCC harmless from and against all claims, damages, loss, and expenses, including but not limited to attorney's fees, arising out of or resulting from defective work.

25. To the extent that JGCC is found liable in this action for any deficiencies in the work performed under the subcontracts, JGCC's liability is secondary to the primary liability of the third-party defendants and, therefore, JGCC is entitled to contractual and common law indemnity from and against the third-party defendants in the amount of any adverse judgment against JGCC in this action, along with the recovery of reasonable attorneys' fees incurred defending this action.

CLAIM FOUR

(Contribution)

26. JGCC incorporates herein by reference each and every allegation set forth above.

27. Plaintiff alleges damages against JGCC, which if later proven, are proximately caused by the third-party defendants' failure to exercise reasonable care in the performance of their duties under their respective subcontracts and Ohio law.

28. JGCC is entitled to contribution from the third-party defendants to the extent that any adverse judgment against JGCC is in excess of its proportionate share of liability to another party.

CLAIM FIVE

(Breach of Express and Implied Warranties)

29. JGCC incorporates by reference each and every allegation set forth above.

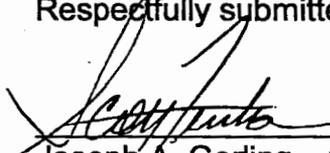
30. Pursuant to their subcontracts with JGCC, each third-party defendant warranted its work against all deficiencies and defects in materials and/or workmanship.

31. JGCC denies any and all liability to any party in connection with the Project. However, to the extent that any of the work performed by any of the third-party defendants is deemed defective, faulty, or deficient, the third-party defendant responsible for the work is in breach of its contractual warranty obligations and any other warranty obligations implied by law.

32. Additionally, to the extent that any of the work performed by any of the third-party defendants is deemed defective, faulty or deficient, the third-party defendant responsible for the work is in breach of its implied warranty of good workmanship.

WHEREFORE, JGCC demands judgment against each of the third-party defendants in an amount in excess of \$25,000, plus recovery of expenses, costs, and reasonable attorney's fees, as provided for by the subcontracts.

Respectfully submitted,



Joseph A. Gerling (0022054)

Scott A. Fenton (0068097)

LANE ALTON & HORST, LLC

Two Miranova Place, Suite 500

Columbus, Ohio 43215

P: 614.228.6885

F: 614.228.0146

E: jgerling@lanealton.com

sfenton@lanealton.com

Counsel for Jack Gibson Construction Co.