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OF OHIO

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IN THE COURT OF CLAIMS OF OHIO

GRAND VALLEY LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al.,	)	
Plaintiffs,	)	
vs.	)	Case No. 2014-00469-PR
BUEHRER GROUP ARCHITECTURE & ENGINEERING. INC. et al.	)	Judge Patrick M. McGrath
Defendants,	)	

MOTION FOR LEAVE OF PLAINTIFFS/COUNTERCLAIM DEFENDANTS OHIO SCHOOL FACILITIES COMMISSION AND GRAND VALLEY LOCAL SCHOOL DISTRICT BOARD OF EDUCATION TO FILE A FIRST AMENDED COMPLAINT

Now comes the Plaintiffs/Counterclaim Defendants, the Ohio School Facilities Commission ("OSFC") and the Grand Valley Local School District Board of Education ("Grand Valley" or "School District") by and through counsel, and respectfully requests this Court grant its Motion for Leave to File a First Amended Complaint, attached to this Motion pursuant to Ohio Rule of Civil Procedure 15(A). The reasons supporting this motion are more fully explained in the accompanying Memorandum.

Respectfully submitted,

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Ohio Attorney General

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MEMORANDUM IN SUPPORT

I. Introduction

This matter is an action by the State and the School District to recover the cost to fix numerous construction and design defects in a new Kindergarten through 12 School Facility ("Project") constructed and designed by the Defendants in this case for benefit of the School District. This matter was originally filed in February of 2014, in the Ashtabula County Common Pleas Court against: Buehrer Group Architecture & Engineering ("Buehrer"), the architect for the Project; Jack Gibson Construction Company ("Gibson"), the general trades prime contractor on the Project; McMillan Construction Company ("McMillan"), the paving and site prime contractor; along with Hartford Insurance Company and Merchants Bonding Company, the respective sureties for Gibson and McMillan.

Since completion, the Project had experienced water infiltration and roof problems, with the anticipated cost for remediation of the problems exceeding $6 million. The Project has also

had issues with distressed pavement in the parking lots of the Project, which will also require replacement. The Co-owners were not aware that these problems could be related to design errors or omissions until informed by consultant reports, one dated June 13, 2011, and the other dated October 17, 2011. The June 2011 report addressed the roads and parking lot issues and found that design omissions were one of the causes of the distressed pavement in the roads and parking lots. *See,* Exhibit 4 attached to Plaintiffs' Memorandum Contra Defendant Buehrer's Motion for Judgment on the Pleadings. The October 2011 report addressed exterior envelope issues with the Project and found numerous errors or omissions in the design of the exterior envelope. *Id.* at Ex. 3.

Plaintiffs are requesting leave to amend the Complaint to add two new allegations in the Amended Complaint. The two allegations would be a new paragraph 57 and a new paragraph 58.[1] All prior paragraphs of the Amended Complaint would remain the same, with all prior succeeding paragraph the same, except for being renumbered. The two new paragraphs in the First Amended Complaint would state as follows:

> 57. Plaintiffs neither possessed reasonable notice, nor had they discovered, the design deficiency of Buehrer with respect to the Project's roads and parking lots, until receiving a consultant's report in June of 2011, setting forth deficiencies in the roads and parking lots design.
>
> 58. Plaintiffs neither possessed reasonable notice, nor had they discovered, the design deficiencies of Buehrer with respect to the Project's exterior envelope, until receiving a consultant's report in October of 2011, setting forth a number of deficiencies in the exterior envelope design.

A draft of the Amended Complaint is attached to this Motion in track change version for review.

[1] The Amended Complaint would also specifically list counsel for Grand Valley

II. Law and Argument

Ohio Rule of Civil Procedure 15(A) provides:

> **(A) Amendments.** A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty-eight days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party. Leave of court shall be freely given when justice so requires.

Civ.R. 15(A) provides that leave to file an amended pleading "shall be freely given when justice so requires." The decision "to allow a party leave to amend a complaint is within the discretion of the trial court and the ruling should not be disturbed on appeal absent an affirmative showing of an abuse of discretion." *Schweizer v. Riverside Methodist Hosps.* , 108 Ohio App.3d 539, 545, 671 N.E.2d 312 (1996), citing *Edmondson v. Steelman* , 87 Ohio App.3d 455, 457, 622 N.E.2d 661 (1992). Though Civ.R. 15(A) encourages liberal amendment, such motions will be denied if made in bad faith, with undue delay, or undue prejudice to the opposing party. *Turner v. Cent. Local School Dist.*, 85 Ohio St.3d 95, 706 N.E.2d 1261 (1999). The primary consideration is whether there is actual prejudice to the opposing party because of the delay. *Schweizer,* supra. Relevant to this case is *State ex rel. Hanson v, Guernsey Cty. Bd. Of Commrs. (1992), 65 Ohio St. 3d 545, 549, 605 N.E. 2d 378,* quoting McCormac, Ohio Civil Rules of Practice (2 Ed. 1992) 150, Section 6.20:

> The standard of review for a Civ.R. 12(B)(6) motion is consistent with Civ.R. 15(A), which allows a pleader to rectify a poorly pleaded complaint. If a motion for failure to state a claim is sustained, "leave to amend the pleading should be granted unless the court determines that allegations of other statements or facts consistent with the challenged pleading could not possibly cure the defect."

See also, Jordan v. Cuyahoga Cty. Hous. Auth., 161 Ohio App. 3d 216, 2005-Ohio-2443, 829 N.E. 2d 123.

Granting leave to add two new allegations to the Complaint will not prejudice any party to this proceeding. The allegations do not add anything substantive to the actual claim, other than to clarify the point in time when the Plaintiffs had a reasonable basis to know that they may possess a claim for malpractice against Defendant Buehrer. The case is currently at the point where only answers have been filed and discovery is beginning. There have been no depositions as of yet. Further, the trial date has not yet been set by the Court. As is apparent from the current situation, no prejudice would result to any of the parties as a result of granting the Motion for Leave. In fact, granting the Motion for Leave will make moot Defendant Buehrer's current Motion for Judgment on the Pleadings, and allow the merits of the claims to be heard. Clearly, justice requires that the Motion for Leave be granted.

III. Conclusion

For the above stated reasons, Plaintiffs' Moton for Leave to Amend the Complaint is appropriate and should be granted by the Court. Justice requires such, and no other party to this matter will be prejudiced.

Respectfully submitted,
MIKE DeWINE
Ohio Attorney General

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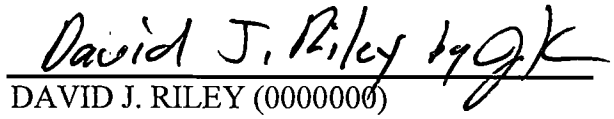

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School District Board of Education

CERTIFICATE OF SERVICE

A copy of the foregoing Memo in Opposition to Motion for Judgment on the Pleadings was sent via regular U.S. Mail and email, to the following counsel this 16th day of June 2014:

Joseph A. Gerling (0022054) Scott A. Fenton (0068097) Lane Alton & Horst LLC Two Miranova Place, Ste 500 Columbus, OH 43215 jgerling@lanealton.com sfenton@lanealton.com Counsel for Gibson	Brian C. Lee, Esq. Jason D. Winter Riannon A. Ziegler Reminger Co., LPA 101 W. Prospect Ave, Ste 1400 Cleveland, OH 44115 Phone: 216-430-2287 Fax: 216-687-1841 blee@reminger.com jwinter@reminger.com rziegler@reminger.com Counsel for Buehrer
Stephen P. Withee (0069176) Ashley L. Oliker (0085628) Frost Brown Todd LLC 10 West Broad Street, Ste 2300 Columbus, OH 43215 swithee@fbtlaw.com aoliker@fbtlaw.com Counsel for Merchants	Patrick F. Roche Davis & Young 1200 Fifth Third Center 600 Superior Avenue East Cleveland, OH 44114 Phone (216) 348-1700 proche@davisyoung.com Counsel for Boak
Brian L. Buzby (0023124) Porter Wright Morris & Arthur LLP 41 S. High Street Columbus, OH 43215 bbuzby@porterwright.com Counsel for Hartford	Brian McMillan McMillan Construction 26457 State Route 58 Wellington, OH 44090

DAVID A. BEALS (0038495)

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

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GRAND VALLEY LOCAL SCHOOL DISTRICT BOARD OF EDUCATION 111 Grand Valley Ave. West Suite A Orwell Ohio 44076,	:	Case No. 2014-00469-PR JUDGE
and	:	
OHIO SCHOOL FACILITIES COMMISSION, 30 West Spring Street, 4th Floor Columbus, Ohio 43215,	:	AMENDED COMPLAINT WITH JURY DEMAND ENDORSED HEREON
and	:	
STATE OF OHIO, Through the Ohio School Facilities Commission, 30 West Spring Street, 4th Floor Columbus, Ohio 43215,	:	
Plaintiffs,	:	
v.	:	
BUEHRER GROUP ARCHITECTURE & ENGINEERING, INC. c/o Fan Zhang, Statutory Agent 7445 Airport Highway Holland, Ohio 43528,	:	
and	:	
JACK GIBSON CONSTRUCTION CO. c/o John C. Gibson, Sr., Statutory Agent 2460 Parkman Road, NW Warren, Ohio 44485,	:	
and	:	
MCMILLAN CONSTRUCTION LIMITED aka MCMILLAN CONSTRUCTION COMPANY c/o David O. McMillan	:	

and :

HARTFORD FIRE INSURANCE COMPANY :
10507 Timberwood Circle, Suite 208
Louisville, Kentucky 40223 :
c/o Agent: Schiff, Kreidler-Shell, Inc.
1 West Fourth Street, Suite 1300 :
Cincinnati, Ohio 45202
:
and
:
MERCHANTS BONDING COMPANY
2100 Fleur Drive :
Des Moines, Iowa 50321
c/o Agent: Dawson Insurance, Inc. :
1340 Depot Street
Cleveland, Ohio 44116, :

and :

JOHN DOE CORPORATIONS ONE (1) :
THROUGH TEN (10)
(Names and Addresses Unknown) :

and :

JOHN DOE BUSINESS ENTITIES :
ONE (1) THROUGH TEN (10)
(Names and Addresses Unknown) :

and :

JOHN DOE INDIVIDUALS :
ONE (1) THROUGH FIFTY (50)
(Names and Addresses Unknown) :

Defendants. :

INTRODUCTION, JURISDICTION & VENUE

1. This is an action for money damages and declaratory relief.

2. Plaintiff, Ohio School Facilities Commission ("OSFC"), is an agency of the state of Ohio, organized and existing pursuant to R.C. Chapter 3318, with specific authority to administer and enforce R.C. Chapter 3318 for and on behalf of the state of Ohio, and has the right to sue in its own name.

3. OSFC was formed by the Ohio General Assembly to facilitate the construction and reconstruction of educational buildings throughout the State of Ohio, and its headquarters are located at 30 West Spring Street, 4th Floor, Columbus, Franklin County, Ohio 43215.

4. As part of the OSFC program, school districts are identified to partner with OSFC in the financing and construction of school facilities throughout the State of Ohio.

5. Plaintiff, Grand Valley Local School District Board of Education ("Grand Valley") is a duly constituted Ohio political subdivision, which secured a favorable vote of electors of the Grand Valley Local School District to fund the local share of the school building project with OSFC, which is the subject of this litigation. (OSFC and Grand Valley are collectively referred to as the "Owners").

6. The events that give rise to this action occurred in connection with the design and construction for Grand Valley of the new PK-12 School Building located at 111 Grand Valley Ave. West, Orwell Ohio 44076 (the "Project") which occurred between 2001 and 2005.

7. The Project included among other things the design, engineering, construction, manufacturing, assembly, delivery, and installation of structural steel, roof, flashing, wall, windows, doors, insulation, and masonry systems, site development of storm sewer systems as well as site development, excavation, and preparation of the building identified in the preceding paragraph.

8. Defendant, Buehrer Group Architecture & Engineering, Inc. ("Buehrer"), is, upon information and belief, an Ohio Professional Corporation licensed to do business in Ohio and was

previously engaged in providing architectural and design services. Its agent for service of process is Fan Zhang, 7445 Airport Highway, Holland, Ohio 43528.

9. Buehrer was the Architect and Engineer of record for the Project, performing, designing, and supervising the architectural, engineering, and construction aspects of the Project before, during, and after construction. The acts performed by agents and employees of this Defendant concerning the Project were in connection with their duties with said Defendant, and they were acting in and about the discharge of those duties and within the scope of their employment and/or agency.

10. On or about April 22, 2002, Grand Valley entered into a contract with Buehrer to serve as the Architect and Engineer of record for the Project (the "Buehrer Contract"). Plaintiff OSFC is specifically identified in the Buehrer Contract as an intended third-party beneficiary so as to permit OSFC to obtain full performance of Buehrer's obligations, and thus Grand Valley and OSFC are real parties in interest to the Buehrer Contract. A true and accurate copy of the Buehrer Contract is attached hereto as *Exhibit A* and incorporated by reference as if fully rewritten herein.

11. At all times relevant herein, and upon information and belief, Defendant Jack Gibson Construction Limited, aka Jack Gibson Construction Company ("Gibson") was an Ohio corporation licensed to do and conducting business in the state of Ohio, with its principal place of business located at 2460 Parkman Road, NW, Warren, Ohio 44485, and was a General Trades contractor for the Project. The acts performed by agents and employees of Defendant Gibson concerning the Project were in connection with their duties with said Defendant, and they were acting in and about the discharge of those duties and within the scope of their employment.

12. On or about October 14, 2003, the State of Ohio, through the President and Treasurer of Grand Valley, entered into a contract with Gibson to serve as the General Trades contractor for the

Project (the "Gibson General Trades Contract"), and thus the State of Ohio, through the OSFC and Grand Valley, is the real party in interest to the Gibson General Trades Contract. A true and accurate copy of the Gibson General Trades Contract is attached hereto as *Exhibits B*, and is incorporated by reference as if fully rewritten herein.

13. At all times relevant herein, and upon information and belief, Defendant McMillan Construction Limited (hereinafter "McMillan") was an Ohio corporation licensed to do and conducting business in the state of Ohio, with its principal place of business located at 26457 St Route 58, Wellington, Ohio 44090, and was the early site contractor for the Project. McMillan filed its dissolution on or about October 15, 2007 with the Ohio Secretary of State by David O. McMillan, its authorized representative and its Agent for Service of Process. David O. McMillan's address is 26457 State Route 58, Wellington, Ohio 44090. The acts performed by agents and employees of this Defendant concerning the Project were in connection with their duties with said Defendant, and they were acting in and about the discharge of those duties and within the scope of their employment.

14. On or around May 28, 2003, the State of Ohio, through the President and Treasurer of Grand Valley, entered into a contract with McMillan to serve as the early site contractor for the Project (the "McMillan Contract"). The State of Ohio, through the OSFC and Grand Valley is the real party in interest to the McMillan Contract. A true and accurate copy of the McMillan Contract is attached hereto as *Exhibits C*, and is incorporated by reference as if fully rewritten herein.

15. Defendant Hartford Fire Insurance Company (hereinafter "Hartford Fire") is a corporation licensed to issue insurance, including surety bonds, with its principal place of business being 10507 Timberwood Circle, Suite 208, Louisville, Kentucky. Its duly authorized agent is Schiff, Kreidler-Shell, Inc., 1 West Fourth Street, Suite 1300, Cincinnati, Ohio 45202. Hartford Fire issued the

surety bond for Defendant Gibson on its contract as set forth above, a copy of which is incorporated by reference and attached as *Exhibit B*; the surety bond for Defendant Jack Gibson Construction Company on its contract, a copy of which is incorporated by reference and attached as *Exhibit D*.

16. Defendant Merchants Bonding Company (hereinafter "Merchants") is a corporation licensed to issue insurance, including surety bonds, with its principal place of business being 2100 Fleur Drive, Des Moines, Iowa 50321. Its duly authorized agent is Dawson Insurance, Inc., 1340 Depot Street, Cleveland, Ohio 44116. Merchants issued the surety bond for Defendant McMillan on its contract as set forth above, a copy of which is incorporated by reference and attached as *Exhibit C*; the surety bond for Defendant McMillan on its contract, a copy of which is incorporated by reference and attached as *Exhibit E*.

17. At all times relevant herein, Defendants John Doe Corporations One (1) through Ten (10), and/or John Doe Business Entities One (1) through Ten (10), and/or John Doe Individuals One (1) through Fifty (50), whose identities are currently unknown to the Plaintiffs because they could not discover their names, executed pay applications and/or are legally responsible for the damages alleged hereinafter and/or are the individuals who are officers, directors, principals, and/or employees of Defendants, and conducted and/or are responsible for the activities as set forth in this Complaint.

18. Each of the aforementioned contracts, *Exhibits A-C*, incorporates by reference additional documents, including without limitation the Ohio School Design Manual, General Conditions and Specifications, Plans and Specifications, Special Conditions, manufacturers' specifications and installation guidelines, applicable building codes, later written and executed amendments, and the like (collectively, the "Contract Documents"). These additional documents are part of the

aforementioned contracts, but are not attached as they are voluminous and each Defendant should have them in its possession; regardless, the additional documents will be produced upon request.

19. Among other things, Defendants failed to perform and otherwise breached certain terms under 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 their failures have directly and proximately caused the Owners to incur additional costs and damages, including without limitation repairing and replacing defective work and products, placing the buildings in the condition contemplated by the parties, and diminution in the fair market value of the buildings for the remaining conditions which are not susceptible to repair without economic waste. The Plaintiffs are currently in the process of repairing and replacing the defective and non-complying work, and the amount of damages are not therefore final, but are in excess of $6,000,000.00.

20. Defendant Hartford Fire under the terms and conditions of its surety bond is jointly and severely responsible for the damage proximately caused by Defendant Gibson, and Defendant Merchants under the terms and conditions of its surety bond is jointly and severely responsible for the damage proximately caused by Defendant McMillan, as herein set forth.

21. This Court has subject matter and personal jurisdiction of this action because, at all times relevant herein, the parties were doing business and/or domiciled in the State of Ohio.

22. Pursuant to Civ.R. 3(B), venue is proper in Ashtabula County, Ohio because the actions and omissions that give rise to Plaintiffs' claims occurred in Ashtabula County and the real property at issue is located in said county.

FIRST CLAIM FOR RELIEF:
BREACH OF CONTRACTS BY GIBSON

23. Plaintiffs incorporate paragraphs 1-22 above as if fully rewritten herein.

24. Plaintiffs performed all of their obligations under the Gibson General Trades Contract and all conditions precedent to bringing this action.

25. Defendant Gibson is liable to Plaintiffs for breach of the Gibson General Trades Contract by, among other things, failing to construct the Project in compliance with the Contract Documents, including without limitation the plans and specifications; failing to perform under and otherwise comply with the terms and conditions in the Gibson General Trades Contract; failing to correct defective materials and installations; failing to correctly perform repairs and remediation; and otherwise failing to perform in a workmanlike manner.

26. As a direct and proximate result of Gibson's breaches of its contracts, Plaintiffs have incurred and will incur additional costs and damages to repair and replace defective and non-complying work and materials in an amount in excess of $25,000.00, plus pre-judgment interest other compensatory and consequential damages, to be proven at trial.

SECOND CLAIM FOR RELIEF:
BREACH OF CONTRACT BY MCMILLAN

27. Plaintiffs incorporate paragraphs 1-26 above as if fully rewritten herein.

28. Plaintiffs performed all of their obligations under the McMillan Contract and all conditions precedent to bringing this action.

29. Defendant McMillan is liable to Plaintiffs for breach of the McMillan Contract by, among other things, failing to construct the Project in compliance with the Contract Documents, including without limitation the plans and specifications; failing to perform under and otherwise comply with the terms and conditions in the McMillan Contract; failing to correct defective materials and

installations; failing to correctly perform repairs and remediation; and otherwise failing to perform in a workmanlike manner.

30. As a direct and proximate result of McMillan's breaches of its contract, Plaintiffs have incurred and will incur additional costs and damages to repair and replace defective and non-complying work and materials in an amount in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

THIRD CLAIM FOR RELIEF:
BREACH OF EXPRESS & IMPLIED WARRANTIES BY GIBSON

31. Plaintiffs incorporate paragraphs 1-30 above as if fully rewritten herein.

32. At all times relevant herein, Defendant Gibson was engaged in the design, formulation, production, creation, construction, assembly, sale, distribution, supplying, preparation, labeling, installation, repair, and/or maintenance of the general trades scope of work and materials related to the Project.

33. Defendant Gibson expressly and impliedly warranted that its work and materials were free from defect in material or workmanship and were otherwise of good and merchantable quality and fitness for their intended uses.

34. Plaintiffs and/or their agents timely notified Defendant Gibson of defects in the materials and workmanship and that the same were otherwise not fit for their intended use, but Defendant Gibson has refused to honor its express and implied warranties.

35. Defendant Gibson breached the express and implied warranties by failing, among other things, to provide workmanship and materials of good and merchantable quality and fitness for their intended uses.

36. As a direct and proximate result of Defendant Gibson's breach of express and implied warranties, Plaintiffs have incurred additional costs and damages to repair and replace defective and

non-complying work and materials in an amount in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

FOURTH CLAIM FOR RELIEF:
BREACH OF EXPRESS & IMPLIED WARRANTIES BY MCMILLAN

37. Plaintiffs incorporate paragraphs 1-36 above as if fully rewritten herein.

38. At all times relevant herein, Defendant McMillan was engaged in the design, formulation, production, creation, construction, assembly, sale, distribution, supplying, preparation, labeling, installation, repair, and/or maintenance of the parking lots and materials related to the Project.

39. Defendant McMillan expressly and impliedly warranted that its work and materials were free from defect in material or workmanship and were otherwise of good and merchantable quality and fitness for their intended uses.

40. Plaintiffs and/or their agents timely notified Defendant McMillan of defects in the materials and workmanship and that the same were otherwise not of good and merchantable quality and fitness for their intended uses, but Defendant McMillan has refused to honor its express and implied warranties.

41. Defendant McMillan breached its express and implied warranties by failing, among other things, to provide workmanship and materials of good and merchantable quality and fitness for their intended uses.

42. As a direct and proximate result of Defendant McMillan's breach of express and implied warranties, Plaintiffs have incurred additional costs and damages to repair and replace defective and non-complying work and materials in an amount in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

FIFTH CLAIM FOR RELIEF:
SURETY BOND CLAIMS AGAINST HARTFORD FIRE

43. Plaintiffs incorporate the allegations set forth in Paragraphs 1-42 above as if fully rewritten herein.

44. Pursuant to R.C. 153.54, Defendant Hartford Fire submitted bond (*Exhibits D*), which obligated Defendant Hartford Fire to indemnify Plaintiffs OSFC and Grand Valley up to the limits of the contract between Plaintiffs and Gibson for all damages incurred by Plaintiffs as a result of failure on the part of Gibson to perform its General Trades Contract according to the provisions therein and in accordance with the plans, details, specifications and bills of materials as set forth in the Contract Documents concerning the Project.

45. Pursuant to Ohio law and the bond issued by it, Defendant Hartford Fire is required to indemnify Plaintiffs, and is therefore jointly and severally liable for damages incurred by Plaintiffs as a proximate result of the breaches by Gibson as herein set forth.

46. Defendant Hartford Fire, as a result of the liability of Defendants Gibson to Plaintiffs for damages as set forth in this Complaint, is liable to the Plaintiffs for all damages incurred by Plaintiffs up to the full amounts of the bond.

SIXTH CLAIM FOR RELIEF:
SURETY BOND CLAIMS AGAINST MERCHANTS

47. Plaintiffs incorporate the allegations set forth in Paragraphs 1-46 above as if fully rewritten herein.

48. Pursuant to R.C. 153.54, Defendant Merchants submitted bond (*Exhibits E*), which obligated Defendant Merechants to indemnify Plaintiffs OSFC and Grand Valley up to the limits of the contract between Plaintiffs and McMillan for all damages incurred by Plaintiffs as a result of failure on the part of McMillan to perform its McMillan Contract according to the provisions therein and in

accordance with the plans, details, specifications and bills of materials as set forth in the Contract Documents concerning the Project.

49. Pursuant to Ohio law and the bond issued by it, Defendant Merchants is required to indemnify Plaintiffs, and is therefore jointly and severally liable for damages incurred by Plaintiffs as a proximate result of the breaches by McMillan as herein set forth.

50. Defendant Merchants, as a result of the liability of Defendant McMillan to Plaintiffs for damages as set forth in this Complaint, is liable to the Plaintiffs for all damages incurred by Plaintiffs up to the full amounts of the bond.

SEVENTH CLAIM FOR RELIEF:
BREACH OF CONTRACT BY BUEHRER

51. Plaintiffs incorporate paragraphs 1-50 above as if fully rewritten herein.

52. Plaintiffs performed all of their obligations under the Buehrer Contract and all conditions precedent to bringing this action.

53. Defendant Buehrer is liable to Plaintiffs for breach of the Buehrer Contract by, among other things, failing to properly design the Project; failing to perform its obligation in compliance with the Contract Documents; failing to perform under and otherwise comply with the terms and conditions in the Buehrer Contract; failing to observe, detect, correct, and protect the Owners from defective designs, materials, and installations; and failing to meet the standard of care as the Architect and Engineer of Record on the Project.

54. As a direct and proximate result of Buehrer's breach of contract, Plaintiffs have incurred and will incur additional costs and damages to repair and replace defective and non-complying designs, workmanship and materials in an amount in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

EIGHTH CLAIM FOR RELIEF:
NEGLIGENCE OF BUEHRER

55. Plaintiffs incorporate paragraphs 1-54 above as if fully rewritten herein.

56. Defendant Buehrer was negligent in its performance concerning the Project, and otherwise failed to properly perform its duties as Architect and Engineer of Record within the professional standard of care.

57. Plaintiffs neither possessed reasonable notice, nor had they discovered, the design deficiency of Buehrer with respect to the Project's roads and parking lots, until receiving a consultant's report in June of 2011, setting forth deficiencies in the roads and parking lots design.

58. Plaintiffs neither possessed reasonable notice, nor had they discovered, the design deficiencies of Buehrer with respect to the Project's exterior envelope, until receiving a consultant's report in October of 2011, setting forth a number of deficiencies in the exterior envelope design.

59~~7~~. As a direct and proximate result of the negligence of Defendant Buehrer, Plaintiffs have incurred and will incur additional costs and damages to repair and replace defective and non-complying designs, work and materials in an amount in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

NINTH CLAIM FOR RELIEF:
LIABILITY OF JOHN DOE CORPORATIONS ONE (1) THROUGH TEN (10)

60~~58~~. Plaintiffs incorporate paragraphs 1-59~~7~~ above as if fully rewritten herein.

61~~59~~. At all times relevant herein, Defendants John Doe Corporations One (1) through Ten (10), and/or John Doe Business Entities One (1) through Ten (10), and/or John Doe Individuals One (1) through Fifty (50), whose identities are currently unknown to Plaintiffs because they could not

discover their names, may have breached contracts and/or express and implied warranties, may have been negligent, may have made negligent misrepresentations, and/or may be legally responsible for the damages incurred by Plaintiffs, and/or are the individuals who are officers, directors, principals, and/or employees of Defendants who may be individually and personally responsible for the activities as set forth in this Complaint, and thus may be liable to Plaintiffs for the damages incurred by Plaintiffs.

62~~0~~. As a direct and proximate result of the actions of these as yet unidentified Defendants, Plaintiffs have incurred and will incur additional costs and damages in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

TENTH CLAIM FOR RELIEF:
DECLARATORY RELIEF

63~~1~~. Plaintiffs incorporate paragraphs 1-62~~0~~ above as if fully rewritten herein.

64~~2~~. This is a claim for declaratory judgment pursuant to Ohio Revised Code Chapter 2721 to determine the rights and duties of the parties to the Buehrer Contract, Gibson General Trades Contract, McMillan Contract, and the Surety Bonds issued by Hartford Fire and Merchants, attached hereto as *Exhibits A-E*, respectively.

65~~3~~. There are genuine, material disputes as to the terms and conditions and rights, duties, and responsibilities under each of the aforementioned contracts for which Plaintiffs are entitled to declaratory judgment as to each.

WHEREFORE, Plaintiffs respectfully request this Court to enter judgment in their favor and against Defendants as follows:

1. Upon Plaintiffs' First Claim for Relief against Defendant Gibson for all damages incurred in an amount in excess of $25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

2. Upon Plaintiffs' Second Claim for Relief against Defendant McMillan for all damages incurred in an amount in excess of $25,000.00, plus interests, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

3. Upon Plaintiffs' Third Claim for Relief against Defendant Gibson for all damages incurred in an amount in excess of $25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

4. Upon Plaintiffs' Fourth Claim for Relief against Defendant McMillan for all damages incurred in an amount in excess of $25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

5. Upon Plaintiffs' Fifth Claim for Relief against Defendant Hartford Fire jointly and severely for all damages and costs awarded against Defendant Gibson upon Plaintiffs' First and Third Claims for Relief.

6. Upon Plaintiffs' Sixth Claim for Relief against Defendant Merchants jointly and severely for all damages and costs awarded against Defendant McMillan upon Plaintiffs' Second and Fourth Claims for Relief.

7. Upon Plaintiffs' Seventh Claim for Relief against Defendant Buehrer for all damages incurred in an amount in excess of $25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

8. Upon Plaintiffs' Eighth Claim for Relief against Defendant Buehrer for all damages incurred in an amount in excess of $25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

9. Upon Plaintiffs' Ninth Claim for Relief against each John Doe Defendant individually and jointly and severally for all damages incurred in an amount in excess of

$25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

10. Upon Plaintiffs' Tenth Claim for Relief for declaratory judgment declaring the rights and responsibilities of Plaintiffs and Defendants under the Buehrer Contract, the Gibson General Trades Contract, the McMillan Contract, and the Surety Bonds issued by Hartford Fire and Merchants.

11. Upon all Claims for Relief for all costs and fees incurred and such other relief as is necessary to provide Plaintiffs complete relief.

Respectfully submitted,

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JURY DEMAND

Now comes Plaintiffs, by and through their attorneys, and demand a jury of eight (8) persons to hear the within cause.

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