

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS  
CIVIL DIVISION

FILED  
FT. SMITH DIST.  
2026 MAY -1 P 2: 58  
Clerk S. Rice  
CIR. CLERK SEB. CO.  
PLAINTIFF

FORT SMITH PUBLIC SCHOOLS

vs.

CASE NO. 66FCV-26-768 V

TURN KEY CONSTRUCTION MANAGEMENT, INC.

DEFENDANT

COMPLAINT

Plaintiff, Fort Smith Public Schools (“**Plaintiff**” and/or the “**District**”), by and through its attorneys, and for its Complaint against Defendant, Turn Key Construction Management, Inc. (referred to herein as “**Defendant**” or “**Turn Key**”), states as follows:

**I. PARTIES**

1. Plaintiff is a subdivision of the State of Arkansas organized under Arkansas law, with its principal administrative offices located in Fort Smith, Sebastian County, Arkansas.

2. Defendant Turn Key Construction Management, Inc. is an Arkansas for-profit corporation doing business in Arkansas as a commercial general contractor and upon information and belief, is a “contractor” as defined by Ark. Code Ann. § 17-25-101. Turn Key Construction Management, Inc. may be served with process by serving its president and registered agent for service of process, Sandy Dixon, at 501 SW B Street, Bentonville, Arkansas 72712. *Plaintiff requests that citation be issued so that service may be made by private process.*

**II. JURISDICTION AND VENUE**

3. This Court has subject-matter jurisdiction over this civil action. ARK. CODE ANN. § 16-13-201.

4. Venue is appropriate in Sebastian County, Arkansas because a substantial part of the events and omissions giving rise to the claims occurred in Sebastian County and the real

property which is the subject of this suit is located in Sebastian County, Arkansas. ARK. CODE ANN. § 16-60-101.

5. Plaintiff seeks damages within the jurisdictional limits of this Court.
6. Plaintiff's claims are timely under Arkansas limitations and repose statutes, including ARK. CODE ANN. § 16-56-111 and ARK. CODE ANN. § 16-56-112.
7. Arkansas is a fact-pleading state. This Complaint states facts showing entitlement to relief as required by ARK. R. CIV. P. 8(a)(1).

### **III. FACTUAL ALLEGATIONS**

#### ***The Project in Question***

8. This lawsuit is an action for property damage caused by defects and deficiencies in the construction of the Peak Innovation Center building located at 5900 Painter Lane, Fort Smith, Sebastian County, Arkansas (hereinafter referred to as the "**Project in Question**").

9. The Project in Question is a career and technology education center and was intended to be safe, durable, code-compliant and otherwise free from defects, and fit for its intended public educational use, including as to the following components and systems: exterior walls of frame construction on concrete foundation, adhered masonry veneer, EIFS wall cladding system, windows and fenestrations flashing systems, fireproofing of the primary structural frame, secondary emergency roof drain system, paving, flatwork, site grading, roof drainage system, and stormwater conveyance piping and inlets systems.

#### ***The Project in Question and Contractual Framework***

10. The District and Turn Key entered into four primary written contracts regarding Turn Key's actual construction of the Peak Innovation Center, along with various amendments,

change orders, and/or construction change directives, including, but not limited to, the following documents:

- a. an AIA Document A133-2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as to the scope of work regarding the interior and sitework package (*see Exhibit A*, a true and correct copy of the fully executed AIA Document A133-2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price);
- b. an AIA Document A201-2017 General Conditions of the Contract for Construction, as to the scope of work regarding the interior and sitework package (*see Exhibit B*, a true and correct copy of the fully executed AIA Document A201-2017 General Conditions of the Contract for Construction);
- c. a Guaranteed Maximum Price Amendment Number 1 to that Certain Agreement AIA/A133-2009 Between Fort Smith Public Schools and Turn Key Construction Management, Inc. (*see Exhibit C*, a true and correct copy of the fully executed Guaranteed Maximum Price Amendment Number 1);
- d. a Guaranteed Maximum Price Amendment Number 2 to that Certain Agreement AIA/A133-2009 Between Fort Smith Public Schools and Turn Key Construction Management, Inc. (*see Exhibit D*, a true and correct copy of the fully executed Guaranteed Maximum Price Amendment Number 2);

- e. a Guaranteed Maximum Price Amendment Number 3 to that Certain Agreement AIA/A133-2009 Between Fort Smith Public Schools and Turn Key Construction Management, Inc. (*see Exhibit E*, a true and correct copy of the fully executed Guaranteed Maximum Price Amendment Number 3);
- f. a Guaranteed Maximum Price Amendment Number 4 to that Certain Agreement AIA/A133-2009 Between Fort Smith Public Schools and Turn Key Construction Management, Inc. (*see Exhibit F*, a true and correct copy of the fully executed Guaranteed Maximum Price Amendment Number 4);
- g. an AIA Document A101-2017 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is a Stipulated Sum, as to the scope of work regarding envelope/exterior (*see Exhibit G*, a true and correct copy of the fully executed AIA Document A101-2017 Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum); and
- h. an AIA Document A201-2017 General Conditions of the Contract for Construction, as to the scope of work regarding envelope/exterior (*see Exhibit H*, a true and correct copy of the fully executed AIA Document A201-2017 General Conditions of the Contract for Construction).

On information and belief, the District and Turn Key entered additional change orders, construction directives, and/or other contract documents, but the documents attached as Exhibits A-H are the fully executed contract documents which Plaintiff currently has been able to locate after performing a good faith search of its business records. As to any other contract documents between the District and Turn Key, as a party to the contracts, Turn Key already has, or should

have, access to any such additional contract documents. Hereinafter, the District collectively refers to the foregoing contract documents as the “**Construction Contracts**”.

11. The Construction Contracts required Defendant Turn Key to provide all materials, equipment, labor, and other items necessary to construct the Property in Question free from defects and able to serve its intended purpose for its intended service life.

12. In that regard, the Construction Contracts included, among other provisions, an express written warranty providing as follows:

The Contractor warrants to the Owner that the Work will be performed in a good and workmanlike manner and that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work that the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, may be considered defective. ... The warranties set out in this subsection are in addition to and not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or the contractor’s obligations under the corrective period set out in Article 12 below.

*See Exs. B & H, at p. 11, § 3.5.1.*

13. In addition, Turn Key expressly made the following representations, warranties, and undertook the following contractual duties as to the Project in Question:

- a. in the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor must provide the greater quality or quantity of work and comply with the more stringent requirement unless Contractor first notified Owner of the inconsistency and obtained Owner’s consent to the lesser quality or quantity and/or less stringent work (*see Ex. B, at p.4, § 1.2.1 & Ex. H, at p.4, § 1.2.1*);

- b. that the construction in question would be performed in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards for construction of projects similar to the Project in Question, using qualified, careful, and efficient workers and in conformity with the contract provisions and all other contract documents (*see* Ex. B, at p. 8, § 3.1.2 & Ex. H, at p. 8, § 3.1.2);
- c. that Turn Key would inspect those portions of construction work already performed to determine that such portions were in proper condition to receive subsequent portions of construction work (*see* Ex. B, at p. 10, § 3.3.3 & Ex. H, at p. 10, § 3.3.3);
- d. that Turn Key would supervise and direct the construction work using its best skill and attention and consistent with the prevailing construction industry performance standards for similar projects in the area and such other performance standards expressly required by the contract documents *See* Ex. B, at pp. 9-10, § 3.3.1 & Ex. H, at p. 9, § 3.3.1);
- e. that Turn Key would be solely responsible for, and have control over, the construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work comprising Turn Key's scope of work (*see* Ex. B, at pp. 9-10, § 3.3.1 & Ex. H, at p. 9, § 3.3.1);
- f. that Turn Key would be responsible for all acts and omissions of Turn Key's employees, subcontractors, and all others performing Turn Key's scope of work for, or on behalf of, Turn Key and/or any of its subcontractors (*see* Ex. B, at p. 10, § 3.3.2 & Ex. H, at p. 10, § 3.3.2);

- g. that Turn Key would, provide all equipment, materials, and labor necessary to fully and properly complete Turn Key's scope of work (*see* Ex. B, at p. 10, § 3.4.1 & Ex. H, at at p. 10, § 3.4.1);
- h. to the extent that Turn Key performed its scope of work knowing, or in the exercise of reasonable caution and care should have known, was contrary to the applicable law, that Turn Key would bear all costs attributable to correct all such defective work (*see* Ex. B, at p. 12, § 3.7.3 & Ex. H, at p. 12, § 3.7.3); and
- i. to the extent that Turn Key deviated from the plans and specifications for the Project in question without first obtaining written approval from both Corgan and the District that Turn Key would be responsible for all such deviations and would bear the costs of bringing all such non-compliant work into compliance with the requirements of the applicable law and the contract documents (*see* Ex. B, at p. 12, § 3.7.3 & Ex. H, at p. 12, § 3.7.3).

14. The District relied on the Defendant's expertise in the selection, integration, construction materials, means and methodology of construction installation work of the various components and systems comprising the building at issue, including as to grading/drainage, wall assemblies, cladding, fenestration, and fireproofing.

15. Under Ark. Code Ann. § 4-2-314 and § 4-2-315 (as adopted in Arkansas and applied by analogy to construction contracts), implied warranties of merchantability and fitness attach to construction services.

***Substantial Completion, Acceptance, and Discovery***

16. Turn Key represented that its Work was substantially completed on or about February 25, 2022, and the District subsequently took possession of, and began occupying, the

Property in Question. Classes were first held in the Project in Question on or about March 28, 2022.

17. Significant rainfall events that occurred on or about June 7, 2022, March 24, 2023, and July 13, 2023, resulted in significant flooding of the Project in Question, including water infiltration into the interior of the Peak Innovation Center building. After occupancy and use and following significant rainfall events, the District, over time, observed the following issues at and around the Peak Innovation Center building: ponding water; differential movement; cracking of materials finishes; water staining; joint separations; and water intrusions.

18. In addition to the issues detailed in paragraph 20, the District discovered defects regarding the required fireproofing of the Peak Innovation Center building. Prior to the 2024-2025 school year, the District engaged MAHG Architects to design an art wing consisting of studio space, classrooms, and storage at the second floor of the building. While performing its design work and services, MAHG Architects notified the District that certain additional fireproofing would need to be installed in order for the second-floor area in question to be code-compliant and safe for occupancy and use by students, staff and other community members. Such additional fireproofing was part of Turn Key's contractual scope of work, but Turn Key failed to install it, in violation of the Construction Contracts and in violation of its representations and warranties that it would perform all work required by the contract documents, including all referenced codes, ordinances, regulations, and manufacturers' guidelines and instructions.

19. Due to the expense needed to install the missing, additional code-compliant fireproofing, Plaintiff was forced to construct the art wing in an area of the Peak Innovation Center building's first floor (which had proper fireproofing already installed), and the entire second floor of the building remains defective and unusable.

20. Given all of the foregoing issues, the District hired construction experts to evaluate the Defendant's entire scope of work for additional defects and deficiencies. The District's retained experts found that the Project in Question suffers from widespread and varied defects and deficiencies, including, without limitation: a defectively designed roof drainage system; defectively constructed grading and surface/subsurface drainage systems; defectively constructed concrete flatwork; defectively constructed asphalt pavement; defectively constructed masonry assemblies; defectively constructed EIFS assemblies; defectively constructed and/or missing isolation joints; defectively constructed window installations and flashings; and defective fireproofing at certain areas of the building at which it was omitted.

21. The defects and deficiencies at issue have caused, and will continue to cause, water intrusions, moisture migration, premature degradation and deterioration of materials, loss of use, and loss of intended service life, requiring intrusive investigations as well as reasonable and necessary repairs of the defects and deficiencies and corresponding damages.

22. At the time of filing this Complaint, the District had reasonably and properly notified Defendant of the observed conditions discussed above and had requested investigation and correction, as required by applicable Arkansas law and the contract documents. Further, the District has met all notice requirements pursuant to applicable Arkansas statutes, including, but not limited to, providing proper notice of all warranty claims.

23. Defendant has failed, and/or refused, to fully and completely remediate and/or repair the defects and deficiencies at issue and all corresponding damages.

#### **IV. DEFECTIVE CONDITIONS**

24. Plaintiff incorporates the following defect allegations as examples of the level of detail anticipated to be proven through forensic investigations, document review, and

analysis/mental impressions/opinions of Plaintiff's retained and/or non-retained testifying experts. As discovery for this case proceeds, Plaintiff reserves the right to supplement these assertions and any other Complaint assertions as may be necessary and appropriate.

**A. *Defectively Constructed Grading and Surface/Subsurface Drainage System and Resulting Conditions***

25. The contract documents at issue and the applicable industry standards of care generally require the site grading and surface/subsurface drainage systems—including subgrade preparation, slopes, inlets, piping, underdrains, roof drainage systems, and discharge points—to direct water away from the Project in Question and reduce risk of accumulation against the building and pavements.

26. The District notified Defendant Turn Key of grading and surface/subsurface drainage issues beginning on or about June 8, 2022, and repeatedly thereafter, including written notices sent by the District's legal counsel on March 17, 2025, and February 25, 2026.

27. Defendant Turn Key has failed, and/or refused, to fully and completely remediate and/or repair the grading and surface/subsurface drainage defects and deficiencies at issue and all corresponding damages. Consequently, the failures and defects caused by Defendant Turn Key persist, creating safety hazards (slip/trip risk and vehicle hydroplaning), potential operational disruption to school activities, moisture intrusions into the building, and progressive degradation and deterioration of site improvements and building components and systems. Observed conditions have included, without limitation:

- a. Persistent ponding in low areas of the parking lot and adjacent to the curbs and sidewalks;
- b. Insufficient drainage away from the building, including negatively sloped grading and poorly sloped concrete flatwork adjacent to the building;

- c. Water intrusion as a result of buried roof line drain backing up;
- d. Poor workmanship including but not limited to failure to remove plywood forms from the South stormwater collection box at Southeast corner of the building and from the reinforced concrete pipes in the same area, poorly consolidated concrete obstructing flow lines, and open pipes that were not grouted;
- e. Differential movements in areas subject to repeated saturation, consistent with inadequate subgrade preparation, improper compaction, and/or failure to provide positive drainage; and
- f. Defectively constructed and/or missing tie-ins between the roof downspouts and the underground drainage system resulting in moisture discharged next to the building.

28. The various components of the site and the surface/subsurface drainage systems are not constructed in accordance with the contract documents and the applicable industry standards of care, including, but not limited to, the project plans and specifications, change orders, and applicable building codes and other industry standards.

29. The site and surface/subsurface drainage systems as constructed do not comply with the requirements of the contract documents and applicable industry standards of care. Rather than providing positive drainage away from the building, the grading and drainage features concentrate runoff at building perimeters and pedestrian routes.

***B. Defectively Constructed Masonry and Resulting Conditions***

30. Masonry assemblies were required to consist of stone units set in a mortar bed over Portland cement plaster, metal lath, drainage mat, and fluid-applied air/water barrier on exterior

sheathing, per the construction plans and specifications and industry standards referenced in the specifications.

31. The District observed defects in the construction and installation of the adhered masonry veneer system at the Project in Question. The defects were widespread over the front and sides of the Project in Question. The observed conditions included, without limitation:

- a. Absence of flashing and weep mechanisms;
- b. Absence of metal lath and drainage mat; and
- c. Non-compliant backing consisting of masonry veneer improperly and insufficiently adhered to cement roof boards, with cement roof boards not allowed or appropriate for exterior wall systems.

32. The adhered masonry veneer system as constructed does not comply with the requirements of the contract documents and applicable industry standards, fails to protect other building components from the elements, and has progressive degradation and deterioration of building components and systems.

33. The District notified Defendant Turn Key of these adhered masonry veneer system failures and defects beginning on or about February 25, 2026, in a written notice sent by the District's legal counsel.

34. Defendant Turn Key has failed, and/or refused, to fully and completely remediate and/or repair the defects and deficiencies at issue and all corresponding damages. Consequently, the adhered masonry veneer system's failures and defects caused by Defendant Turn Key persist, creating safety hazards (chance of falling masonry veneer components), elevated moisture in the wall assemblies, and progressive degradation and deterioration of building components.

***C. Defectively Constructed EIFS (including non-compliant drainage) and Resulting Conditions***

35. The contract documents required the Exterior Insulation and Finish System (“EIFS”) wall system to be installed in strict compliance with all manufacturer requirements, specifications, and details, in order to provide continuous water management, drainage, and sealed transitions.

36. The observed conditions include, without limitation:

- a. Blocked drainage channels;
- b. Sealed flashings; and
- c. Water damage to gypsum board sheathing.

37. The non-compliant EIFS system as constructed does not perform as represented in the Contract Documents, fails to protect other building components from the elements and has prematurely failed.

38. The District notified Defendant Turn Key of these EIFS system failures and defects beginning on or about February 25, 2026, in a written notice sent by the District’s legal counsel.

39. Defendant Turn Key has failed, and/or refused, to fully and completely remediate and/or repair the defects and deficiencies at issue and all corresponding damages. Consequently, the EIFS system defects persist, creating ongoing and progressive deterioration of other building components, including, but not necessarily limited to, deteriorated gypsum board sheathing and corroded fasteners.

***D. Defectively Constructed Isolation Joints of the Building at Issue and Resulting Conditions***

40. The contract document required isolation joints and control joints at slab-to-wall interfaces and dissimilar materials.

41. The observed conditions include, without limitation, absence of backer rods and sealant, resulting in cracks and additional water intrusion into the sheathing.

42. The defective isolation joints were not constructed in compliance with the requirements of the contract documents and the applicable industry standards, fail to protect other building components from the elements, and already have failed.

43. The District notified Defendant Turn Key of these isolation joint failures and defects beginning on or about February 25, 2026, in a written notice sent by the District's legal counsel.

44. Defendant Turn Key has failed, and/or refused, to fully and completely remediate and/or repair the defects and deficiencies at issue and all corresponding damages. Consequently, the isolation joint defects persist, creating progressive degradation and deterioration of building components.

***E. Window Sill Flashing Defects and Resulting Conditions***

45. The Contract Documents required and illustrated the windows to be installed with sill flashing systems that slope down and away from the windows, in order to shed water away from the building envelope.

46. The observed conditions include, without limitation, water infiltrations at window sills and water intrusions into the building, due to the flashing funneling water into the wall rather than draining it out.

47. The District notified Defendant Turn Key of these window sill flashing failures and defects beginning on or about February 25, 2026, in a written notice sent by the District's legal counsel.

48. Defendant Turn Key has failed, and/or refused, to fully and completely remediate and/or repair the defects and deficiencies at issue and all corresponding damages. Consequently, the non-compliant window sill flashing defects are causing ongoing water intrusions and premature degradation and deterioration of concealed framing and sheathing.

***F. Fireproofing Defects and Resulting Conditions***

49. Pursuant to the contract documents and applicable code requirements, fireproofing systems were required to meet specified fire-resistance ratings and be applied to various building elements, including the primary structural frame.

50. The observed conditions of the primary structural frame include, without limitation, failure to install fireproofing at the horizontal girders with direct connections to the columns.

51. These conditions create potential life safety risks and are non-compliant with the code and require corrective work. In addition, these conditions have rendered the second-floor area with defective fireproofing unable to be used by the District for its intended purposes.

52. The District notified Defendant Turn Key of these fireproofing failures and defects beginning on or about February 25, 2026, in a written notice sent by the District's legal counsel.

53. Defendant Turn Key has failed, and/or refused, to fully and completely remediate and/or repair the defects and deficiencies at issue and all corresponding damages. Consequently, the entire 2<sup>nd</sup> floor of the Project in Question is unusable due to potential life-safety risks and code-compliance risks.

**G. *Concrete Flatwork and Asphalt Pavement Defects and Resulting Conditions***

54. Pursuant to the contract documents and the applicable industry standards, concrete flatwork and asphalt pavement systems were required to slope to drain away from the building and toward stormwater collection systems.

55. The observed conditions in the concrete flatwork include, without limitation:

- a. Differential movement and cracking throughout the concrete flatwork at the Project in Question;
- b. Unsealed control joints;
- c. Missing exterior landings at exterior doors; and
- d. Non-compliant slope of concrete adjacent to the building.

56. The observed conditions in the asphalt pavement include, without limitation:

- a. A sinkhole at the South parking lot; and
- b. Differential movement resulting in ponding water throughout the property.

57. These conditions create safety and code-compliance risks, increased wetting around the building, and ponding water.

58. The District notified Defendant Turn Key of these flatwork and pavement failures and defects beginning on or about June 8, 2022, and repeatedly thereafter, including written notices sent by the District's legal counsel on February 25, 2026.

59. Defendant Turn Key has failed, and/or refused, to fully and completely remediate and/or repair the defects and deficiencies at issue and all corresponding damages. Consequently, the District was forced to expend significant monies to make emergency and/or interim repairs to remedy conditions necessitated by Defendant's poor construction. Furthermore, defects and deficiencies in the concrete flatwork and asphalt pavement systems persist and are causing

ongoing drainage issues, ongoing safety risks, and premature deterioration of the site improvements.

**V. NOTICE, OPPORTUNITY TO CURE, AND CONDITIONS PRECEDENT**

60. Prior to filing suit, the District provided timely written notice to Defendant of the defects and deficiencies at issue and requested investigation and correction by Defendant.

61. Furthermore, prior to filing suit, the District complied with all applicable contractual claims/notice provisions to the extent required by the contract documents, or pleading further and in the alternative such requirements were waived, excused, rendered futile, or otherwise satisfied by Defendant's conduct, including Defendant's prior material breaches of the contracts at issue, Defendant's misrepresentations of the defects and deficiencies, and Defendant's refusal to fully and completely correct and repair the defects and deficiencies at issue and all corresponding damages.

**VI. PLAINTIFF'S CAUSES OF ACTION**

**COUNT I – BREACH OF CONTRACT AGAINST TURN KEY**

62. The District adopts and incorporates by reference Paragraphs 1-61 above as if fully pleaded herein.

63. The Construction Contracts by and between Forth Smith and Turn Key consists of valid, enforceable written contracts.

64. The District performed its obligations under the Construction Contracts, including payment of approved applications for payment subject to lawful retainage and contractual rights.

65. Turn Key materially breached the Construction Contracts by, among other things:

- a. Failing to perform its scope of work in accordance with duties and obligations owed under the contract documents and as required by both the contract documents and all applicable industry standards of care;
- b. Failing to construct and deliver the Project in Question without defects and deficiencies; and
- c. Failing to timely correct and repair all of the defects and deficiencies at issue as well as all corresponding damages.

66. Turn Key's breaches include, without limitation, those described in Section IV above.

67. As a result of Turn Key's breaches of contract, Plaintiff has sustained financial losses and other damages, including those described in Section IV above. Plaintiff seeks all damages available to it under the applicable law for the breaches of contract committed by Turn Key.

68. This action is timely under Ark. Code Ann. § 16-56-111 and § 16-56-112(a), to the extent applicable.

#### **COUNT II – BREACH OF EXPRESS WARRANTY AGAINST TURN KEY**

69. Plaintiff adopts and incorporates by reference Paragraphs 1-61 above as if fully pleaded herein.

70. Turn Key made express representations and warranties through the Construction Contracts, the contract documents, submittals, product data, commissioning/closeout documents, and/or written communications, including that:

- a. That the construction in question would be performed in a good and workmanlike manner, continuously and diligently in accordance with generally

accepted standards for construction of projects similar to the Project in Question, using qualified, careful, and efficient workers and in conformity with the contract provisions and all other contract documents;

- b. That Turn Key would inspect those portions of construction work already performed to determine that such portions were in proper condition to receive subsequent portions of construction work;
- c. That Turn Key would supervise and direct the construction work using its best skill and attention and consistent with the prevailing construction industry performance standards for similar projects in the area and such other performance standards expressly required by the contract documents;
- d. That Turn Key would be solely responsible for, and have control over, the construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work comprising Turn Key's scope of work;
- e. That Turn Key would be responsible for all acts and omissions of Turn Key's employees, subcontractors, and all others performing Turn Key's scope of work for, or on behalf of, Turn Key and/or any of its subcontractors;
- f. That Turn Key would provide all equipment, materials, and labor necessary to fully and properly complete Turn Key's scope of work; and
- g. To the extent that Turn Key performed its scope of work knowing, or in the exercise of reasonable caution and care should have known, was contrary to the applicable law, that Turn Key would bear all costs attributable to correct all such defective work; and

h. To the extent that Turn Key deviated from the plans and specifications for the Project in question without first obtaining written approval from both Corgan and the District that Turn Key would be responsible for all such deviations and would bear the costs of bringing all such non-compliant work into compliance with the requirements of the applicable law and the contract documents.

71. The District further alleges that each and every one of the representations and warranties given and made by Turn Key concerned material facts. Furthermore, Turn Key's representations and warranties were relied upon by the District to the District's substantial injury and damage. The District further asserts that Turn Key purported to, and did, have superior knowledge concerning the subject matter of the transaction described above, and Forth Smith justifiably relied upon such superior knowledge. Turn Key breached its express representations and warranties by delivering defective and nonconforming work, including the defects described in Section IV above.

72. The District relied on Turn Key's express representations and warranties and has been damaged thereby as described in Section IV. Plaintiff seeks all damages available to it under the applicable law for the breaches of express warranties committed by Turn Key.

**COUNT III – BREACH OF IMPLIED WARRANTY AGAINST TURN KEY**

73. Pleading further and in the alternative, Plaintiff asserts breach of implied warranty claims against Defendant Turn Key, and in support of same, Plaintiff adopts and incorporates by reference Paragraphs 1-61 above as if fully pleaded herein.

74. Turn Key, as builder/contractor, impliedly warranted that the work would be performed in a good and workmanlike manner and that the Project in Question would be constructed reasonably fit for its intended purpose as a public-school facility, unless properly and

conspicuously disclaimed. *See Carroll-Boone Water Dist. V. M. & P. Equipment Co.*, 280 Ark. 560, 575 (Ark. 1983).

75. Turn Key's breaches of the implied warranties of performing its construction in a good and workmanlike manner and so that the Property in Question would be reasonably fit for its intended purpose are detailed in Section IV above.

76. The District has sustained property damage, financial losses, and other damages as a result of Turn Key's breaches of the implied warranties, including those described in Section IV above. Plaintiff seeks all damages available to it under the applicable law for the breaches of implied warranties committed by Turn Key.

#### **COUNT IV – NEGLIGENCE/PROFESSIONAL NEGLIGENCE AGAINST TURN KEY**

77. Pleading further and in the alternative, Plaintiff asserts negligence claims against Defendant Turn Key, and in support of same, the District adopts and incorporates by reference Paragraphs 1-61 above as if fully plead herein.

78. As the general contractor for the Project in Question, Turn Key owed the District a common law duty to perform construction with skill and reasonable care and in accordance with the requirements of the contract documents and all applicable industry standards of care, as well as a common law duty to perform to the standard of care of a reasonably prudent person. The foregoing duty owed by Turn Key included, among other things, provision of proper supervision and all materials, labor, and workmanship necessary to construct a defect-free building and other improvements comprising the Project in Question.

79. As is detailed in Paragraphs 1-61 above, Defendant breached its duties of care through acts and omissions in constructing the following components and systems of the Project in Question:

- a. Grading and surface/subsurface drainage system;
- b. Masonry;
- c. EIFS (including non-compliant drainage);
- d. Isolation joints;
- e. Window sill flashing;
- f. Fireproofing; and
- g. Concrete flatwork and asphalt pavement work.

80. Defendant's negligent acts and/or omissions were a proximate cause of the District's damages as described in Section IV above.

#### **DAMAGES**

81. As a direct and proximate result of Defendant's breaches of the contracts at issue, breaches of warranties, and negligent acts and omissions, the District has incurred, and will incur, damages, including:

- a. Costs of investigation, evaluation, analysis, and opinions of the District's experts retained to identify the defects and deficiencies at issue as well as the reasonable and necessary scopes and costs of repairs of such defects and deficiencies and corresponding damages;
- b. Costs for the reasonable and necessary repairs of the defects and deficiencies at issue, including all emergency, interim repairs, as well as permanent repairs required to fully and completely repair the problems and/or defects of the Project in Question, as well as any incidental costs or expenses incurred as a result of the required repairs;

- c. Costs for the reasonable and necessary repair and replacement of all and other property damage caused by the defects and deficiencies at issue;
- d. Costs of increased maintenance and of reduced service life of building components and site improvements;
- e. Loss of use, disruption to school operations, and phasing/temporary facilities costs;
- f. Reasonable and necessary attorneys' fees and litigation costs and expenses as permitted by contract and by applicable law; and
- g. Pre- and post-judgment interest as allowed by applicable law.

82. The District seeks damages in an amount to be proven at trial. The damages sought are within the jurisdictional limits of this Court and exceed the amount required for federal diversity jurisdiction.

#### **RESERVATION OF RIGHTS**

As discovery and investigation of the facts at issue proceed during this lawsuit, Plaintiff reserves the right to amend this Complaint as may be necessary and appropriate.

#### **DEMAND FOR JURY TRIAL**

The District hereby respectfully demands that all issues and claims herein be tried to and determined by a jury. Along with the filing of this Complaint, the District tendered the requisite jury fee to the Clerk of the Court.

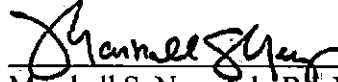
#### **PRAYER FOR RELIEF**

Plaintiff Fort Smith Public Schools respectfully prays and requests that, upon trial of this matter, the Court enter judgment in its favor of Plaintiff and against Defendant, and grant judgment

against Defendant for actual damages, as set forth herein, in an amount in excess of the minimum jurisdictional limits of this Honorable Court, to include:

- a. Compensatory damages against Defendant in an amount to be proven at trial, including all costs of investigation, testing, remediation, repairs, and replacement work that are reasonably and necessarily required by the defects and deficiencies at issue and by the corresponding damages to the building's other components and systems because of such defects and deficiencies;
- b. Consequential damages, including loss of use and operational disruption damages to the extent recoverable;
- c. Pre-judgment and post-judgment interest as allowed by law;
- d. Reasonable and necessary attorneys' fees and expenses through trial, entry of judgment, and all levels of appeal, as may be necessary;
- e. Costs of court; and
- f. All such other and further relief, at law or in equity, to which Plaintiff shows itself to be entitled, and this Court deems just and proper.

Respectfully submitted,



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