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4 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
5 **FOR THE COUNTY OF WASHINGTON**
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7 KING CITY CIVIC ASSOCIATION, INC., an) Case No. 20CV07044
8 Oregon non-profit corporation,)
9 Plaintiff,) **FIRST AMENDED COMPLAINT**
10 v.) Negligence, Negligence *Per Se*, Breach of
11 KKLA CONTRACTORS LLC, an Oregon) Contract, Breach of Warranty
12 limited liability company, and MFIA INC.)
13 DBA MFIA INC. CONSULTING) Not Subject to Mandatory Arbitration
14 ENGINEERS, an Oregon corporation,) Jury Trial Requested
15 Defendants.) Prayer in the amount of \$1,025,000
16) Fee Authority: ORS 21.160(1)(d)
17

KKLA CONTRACTORS LLC, an Oregon)
18 limited liability company,)
19 Third-Party Plaintiff,)
20 v.)
21 DM STONE CONSTRUCTION, INC., an)
22 Oregon corporation; DML CONSTRUCTION,)
23 LLC, an Oregon limited liability company;)
24 G.W. PAULSON CO. DBA PAULSON'S)
25 FLOOR COVERINGS, an Oregon)
26 corporation; JC & SONS CONSTRUCTION,)
27 INC., an Oregon corporation; JET)
28 INDUSTRIES, INC., an Oregon corporation;)
MFIA, INC. DBA MFIA INC. CONSULTING)
ENGINEERS, an Oregon corporation; ML)
FRAMING, LLC, an Oregon limited liability)
company; PERFEXION CONSTRUCTION)
INC., an Oregon corporation,)
 Third-Party Defendants.)

1 G.W. PAULSON CO. DBA PAULSON'S)
 FLOOR COVERINGS, an Oregon corporation,)
 2)
 Fourth-Party Plaintiff,)
 3)
 v.)
 4)
 UNIVERSAL CONSTRUCTION SERVICES,)
 5 LLC, a Washington limited liability company,)
 6)
 Fourth-Party Defendant.)
 7)

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 9
 10 Plaintiff King City Civic Association, Inc. ("Plaintiff" or "Association") hereby alleges
 11 as follows:

12 **GENERAL ALLEGATIONS**

13 **1.**

14 King City Community ("Community") is a planned community subject to the provisions
 15 of the Oregon Planned Community Act, ORS 94.550 *et. seq.*, located in Washington County,
 16 Oregon. The Planned Community consists of sub-associations, homes, a golf course, and
 17 common facilities. The Association is now and, at all material times herein, has been an Oregon
 18 non-profit corporation established and organized for the mutual benefit of the owners.

19
 20 **2.**

21 The Planned Community and Association are governed by the Restated Declaration of
 22 Covenants, Conditions, and Restrictions of King City Civic Association, recorded December 14,
 23 2001, as Document No. 2001-130532 in the records of Washington County, Oregon, and all
 24 amendments thereto ("Declaration"). The Association is also governed by the Restated Bylaws
 25 of the King City Civic Association ("Bylaws").

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3.

Under the Declaration, the Board has the duty to manage, improve, maintain, repair and replace all of the improvements located on Association Property or subject to the control of the Board, including personal property. The property is owned, managed and maintained by the Association for the use and benefit of the Members and their guests.

4.

In 2017, the Association hired KKLA Contractors LLC (“KKLA”) to renovate the Crown Center Pool Enclosure (aka natatorium) and construct a new Lap Pool (“Project”) on Association-owned property. The property and improvements are owned by the Association.

5.

In 2017, the Association hired MFIA Inc. DBA MFIA Inc. Consulting Engineers (“MFIA”), to provide design and mechanical engineering services associated with the Project.

6.

At all material times herein, KKLA was an Oregon limited liability company and an Oregon licensed contractor. KKLA performed the construction work on the Project and/or hired and supervised subcontractors to construct the Project.

7.

At all material times herein, MFIA was an Oregon corporation and an Oregon licensed engineering firm. MFIA performed the design and mechanical engineering work on the Project and/or hired and supervised engineers and consultants performing design and engineering services on the Project, including, without limitation, the following:

1. Designing the plumbing system, including, without limitation, the domestic water system; and sanitary waste and vent system;

2. Designing the mechanical system, including, without limitation, the natural gas piping system; heating, cooling, and ventilation systems; natatorium dehumidification system; and locker room exhaust system;

3. Designing the electrical system, including, without limitation, the power systems;

1 4. Providing final reproducible drawings and technical specifications to be used in
2 the construction work on the Project; and

3 5. Interacting with the contractors on questions, substitution requests, and plan
4 review comments.

5 8.

6 The Project suffers from the following non-exhaustive list of items of faulty design,
7 faulty engineering, workmanship, improper or defective materials, improper construction and/or
8 noncompliance with industry, state and local building standards or manufacturer installation
9 instructions:

10 1. Interior walls subject to water do not possess any waterproofing or other
11 protection at the base-of-wall;

12 2. Mechanical equipment is not functioning properly, including, without limitation,
13 the Senesco dehumidifier that is constantly inoperable, causing excessive
14 humidity within the building and damaging many interior elements by allowing
15 moisture in the air to accumulate on the windows and wall, condensing onto the
16 surface and causing damage;

17 3. The exterior brick wainscoting was not constructed per the plans and lacks code-
18 required weep provision;

19 4. The ventilation exhaust system lacks an airtight seal between the pool area and
20 the other areas of the pool building, which allows air from the pool area to
21 migrate to the locker rooms and other areas of the pool building. By not
22 designing a system that maintains negative pressurization in the pool area as
23 compared to adjacent spaces, moisture and trichloramine are allowed to migrate
24 throughout the rest of the building, damaging the structure and components of the
25 building;

26 5. The roof does not possess adequate ventilation because the intake blocks are not
27 equal to those specified in the plans;
28

- 1 6. Interior concrete lacks design plan-required reinforcement. Concrete cracks are
- 2 numerous;
- 3 7. Concrete slab floors do not meet Oregon Health Authority requirements. Concrete
- 4 slab floors do not drain properly. Several drains are installed too high, resulting in
- 5 standing water and damage to interior wood doors;
- 6 8. Standing water from the single showers runs under the interior walls and into
- 7 adjacent rooms;
- 8 9. Pool coping was not installed with enough slope, allowing water to pool on the
- 9 coping;
- 10 10. Slot drains around the pool and spa were not installed correctly;
- 11 11. Tile work inside the two bathroom areas was not installed in a workmanlike
- 12 manner. Cracked and damaged tile and grout has resulted;
- 13 12. The concrete floor slabs were not constructed per the plans, which has resulted in
- 14 cracking and damage;
- 15 13. The Seresco dehumidifier included a recirculation pump (heat exchange pump)
- 16 that has not been installed;
- 17 14. The building suffers from humidity problems;
- 18 15. Building was not constructed per the design drawings;
- 19 16. ADA shower bench was not adequately attached to blocking in the wall and has
- 20 come loose;
- 21 17. Deep tooled joints adjacent to pool deck drains do not allow standing water to
- 22 drain, creating a serviceability issue;
- 23 18. The wall moldings in the lobby were poorly applied and require correction. On
- 24 one wall, the molding was applied over a bubble;
- 25 19. No floor moldings were applied in one of the closets in the pool area. There is no
- 26 grout sealer or wall moldings, so when the decks are cleaned, water can
- 27 potentially get up the interior wall;
- 28

- 1 20. One wall in the men’s bathroom was constructed crooked;
- 2 21. The supply air registers do not perform correctly because their style and location
- 3 cannot prevent condensation buildup on the windows, window sills, and walls of
- 4 the natatorium, causing water to accumulate on the windows and walls and
- 5 damage building envelope surfaces such as the windowsills;
- 6 22. None of the supply air registers serving the pool area deliver the volume of air
- 7 necessary to meet industry standards;
- 8 23. The interior wall sheetrock in the pool area and other areas of the building (except
- 9 the shower area) is not moisture resistant wallboard; and
- 10 24. The gas-fired instantaneous domestic water heaters are not vented per
- 11 manufacturers recommendations, namely:
- 12 a. The common vented heaters lack the required Non-Return Valve p/n
- 13 100113130;
- 14 b. The horizontal vent heater does not appear to be sloped at 1/3 inch per
- 15 foot;
- 16 c. There is no condensate drain in the exhaust vent run;
- 17 d. The common vent diameter should be 6 inches, but is undersized;
- 18 e. Reducing wyes were not used to connect heater vent to the trunk line; and
- 19 f. Venting error code is still occurring.

20 In this and subsequent paragraphs of this Complaint, the faulty design, faulty

21 workmanship, improper or defective materials, improper construction, and/or noncompliance

22 with local and state building code standards and industry standards are referred to separately and

23 collectively as “construction defects.”

24 **9.**

25 Despite being provided with notice and opportunity to cure, Defendant KKLA has failed

26 to repair and correct, or cause to be repaired and corrected, the list of construction defects and

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1 problems at the Project, as provided by Plaintiff, including, but not limited to, the construction
2 defects listed in paragraph 8 above.

3 **10.**

4 The design and construction defects have caused and will cause loss of use and/or
5 diminished value of the Association Property. Such loss of use of the Association Property has
6 resulted or will result from a nuisance or defect or damage to the Association Property, or will
7 result from requirements to facilitate repairs to the Association Property.

8 **11.**

9 Unless the problems and deficiencies set forth in paragraphs **8-10** and elsewhere herein
10 are corrected, there is a real and substantial risk that the Association may be liable for (1)
11 additional repairs and replacement of property damage; (2) repairs and replacement of property
12 damage to the units and personal property within the Project; (3) personal and physical injuries
13 to residents or guests; and (4) consequential damages to the Project.

14
15 **FIRST CLAIM FOR RELIEF**

16 **Count One**
17 **(Negligence)**

18 **12.**

19 Plaintiff re-alleges paragraphs **1-11** and incorporates them by reference herein.

20 **13.**

21 KKLA performed construction work on the Project; selected subcontractors; supervised
22 the construction work at the Project; and inspected the construction progress and quality
23 compliance with local and state building code standards and building product manufacturer
24 specifications.

25 **14.**

26 As a result of its intimate association with, participation in, and oversight of the
27 construction, construction supervision, selection of subcontractors, inspection of construction
28

1 progress, quality and compliance with the building codes, and manufacturers' specifications,
2 KKLA, in the exercise of reasonable care, should have:

3 a) identified that the construction defects described in paragraphs **8-10** above, and
4 elsewhere herein, existed;

5 b) realized that there was a substantial, unreasonable, and foreseeable risk that the
6 Project had or, in the near future, would suffer consequential damages described in paragraphs **8-**
7 **10** above, and elsewhere herein;

8 c) realized that a failure to address and repair the construction defects and damages
9 during the activities in which they were engaged would result in water damage, structural
10 damage, and consequential damage, or posed an unreasonable risk of resulting therein;

11 d) expected that the construction defects, damage, and risks would remain
12 undetected by the Association and its owner-members for a substantial period of time, thereby
13 increasing the damage and cost of repairing or remedying them, or that there was a substantial
14 and unreasonable risk that such would occur; and

15 e) expected that the Association would incur costs and expenses as a result of
16 KKLA's failure to properly construct and/or address problems at the Project, including
17 inspection, repair costs, and legal fees.

18 **15.**

19 Notwithstanding what it, in the exercise of reasonable care, should have done, KKLA
20 failed to address and repair the water intrusion, water damage, construction defects, and risks
21 described in paragraphs **8-10**, above, during their activities at the Project, and failed to disclose
22 and/or concealed the water intrusion, water damage, construction defects, and/or risks thereof to
23 Plaintiff.

24 **16.**

25 As a direct and proximate result of KKLA's negligence, Plaintiff has suffered damages as
26 follows:

27 a) in an amount to be proved at trial, but not less than \$525,000.00, plus pre-
28 judgment interest, for the cost to repair the property damage to the Project;

1 b) in an amount to be proved at trial, but not less than \$525,000.00, plus pre-
2 judgment interest, for the loss of value to the Project, which amount will increase as time passes.

3
4 **Count Two**

5 **(Negligence *per se*)**

6 **17.**

7 The Oregon Building Code governs the construction, re-construction, alteration and
8 repair of buildings in Oregon. In addition, manufacturers of various building components
9 publish instructions governing the installation of the manufacturer's products, including
10 integration of the product with surrounding building components. Lastly, various construction
11 industry organizations publish installation guidelines for particular building components, and
12 those publications constitute industry standards. The building code, manufacturers' instructions,
13 and published industry standards establish uniform performance standards to protect the health,
14 safety, welfare, comfort and security of Oregon residents.

15 **18.**

16 KKLA was required to follow the Oregon Building Code. This duty exists independently
17 of other duties owed to Plaintiff. KKLA had additional unconditional duties to perform its work
18 in accordance with all relevant manufacturers' installation instructions and published
19 construction industry standards.

20 **19.**

21 KKLA was negligent *per se* because they violated the Oregon Building Code, and failed
22 to follow manufacturer installation instructions and published construction industry standards by
23 renovating the Project with the construction defects described in paragraphs **8-10**, above, and
24 elsewhere herein.

25 **20.**

26 As a result of KKLA's negligence *per se*, Plaintiff has been damaged as set forth in
27 paragraph **16**, above.

1 **SECOND CLAIM FOR RELIEF**

2 **Count One**

3 **(Breach of Contract)**

4 **21.**

5 Plaintiff re-alleges paragraphs **1-20** and incorporates them by reference herein.

6 **22.**

7 KKLA performed the work described in paragraphs **4** and **6** and elsewhere herein
8 pursuant to its contract with the Association.

9 **23.**

10 The contract required that KKLA's work at the Project be completed in a good and
11 workmanlike manner constituent with the construction standards and practices of other
12 experienced contractors performing work on similar projects in the area where the project is
13 located, and according to the drawings, specifications, and federal, state, local laws, statutes,
14 ordinances, rules, codes, inspections and regulations, and industry standards.

15 **24.**

16 Defendant KKLA materially breached the terms of its contract with Plaintiff by failing to
17 complete the work outlined in paragraphs **4** and **6** and elsewhere herein in a good and
18 workmanlike manner, free from defects in materials and workmanship, free from violations of
19 the Oregon Building Code, and according to the drawings and specifications. There were and
20 are serious construction defects, building code violations, and resulting consequential damage as
21 more particularly set forth in paragraphs **8-10**, above.

22 **25.**

23 As a result of Defendant KKLA's breach of contract, Plaintiff has been damaged as set
24 forth in paragraph **16**, above.

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1 **Count Two**
2 **(Breach of Warranty)**

3 **26.**

4 Plaintiff re-alleges paragraphs **1-25** and incorporates them by reference herein.

5 KKLA performed the work described in paragraphs **4** and **6** and elsewhere herein
6 pursuant to its contract with the Association.

7 **28.**

8 In the contract, KKLA warranted that the materials and equipment furnished under the
9 contract would be new, and that the Work would conform with the requirements of the contract
10 documents and would be free from defects.

11 **29.**

12 The Association has demanded that KKLA repair the construction defects as alleged in
13 paragraphs **8-10** and elsewhere herein under its warranty. Despite demand, KKLA has refused to
14 make repairs pursuant to its warranty.

15 **30.**

16 KKLA materially breached its warranty to Plaintiff by failing to correct the construction
17 defects in paragraphs **8-10** and elsewhere herein. There were and are serious construction
18 defects, building code violations, and resulting consequential damage as more particularly set
19 forth in paragraphs **8-10**, above.

20 **31.**

21 As a result of Defendant KKLA's breach of warranty, Plaintiff has been damaged as set
22 forth in paragraph **16**, above.

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1 **THIRD CLAIM FOR RELIEF**

2 **Count One**

3 **(Negligence)**

4 **32.**

5 Plaintiff re-alleges paragraphs **1-31**, and incorporates them by reference herein.

6 **33.**

7 MFIA performed design and mechanical engineering work on the Project; prepared
8 drawings, plans, and material specifications; selected consultants; communicated and answered
9 questions from contractors and subcontractors; supervised the construction work of their design
10 and mechanical engineering work at the Project; and inspected the construction progress and
11 quality compliance with local and state building code standards and building product
12 manufacturer specifications.

13 **34.**

14 As a result of its intimate association with, participation in, and oversight of the design,
15 engineering, selection of consultants, communication with contractors and subcontractors,
16 supervision of the construction in relation to their design and mechanical engineering work, and
17 inspection of construction progress, quality and compliance with the building codes, and
18 manufacturers' specifications, MFIA, in the exercise of reasonable care, should have:

19 a) identified that the design defects described in paragraphs **8-10** above, and
20 elsewhere herein, existed;

21 b) realized that there was a substantial, unreasonable, and foreseeable risk that the
22 Project had or, in the near future, would suffer consequential damages described in paragraphs **8-**
23 **10** above, and elsewhere herein;

24 c) realized that a failure to address and repair the design defects and consequential
25 damages during the activities in which they were engaged would result in water damage,
26 structural damage, and consequential damage, or posed an unreasonable risk of resulting therein;

27 d) expected that the construction defects, damage, and risks would remain
28 undetected by the Association and its owner-members for a substantial period of time, thereby

1 increasing the damage and cost of repairing or remedying them, or that there was a substantial
2 and unreasonable risk that such would occur; and

3 e) expected that the Association would incur costs and expenses as a result of
4 Defendant MFIA's failure to properly design and/or engineer, and/or address problems at the
5 Project, including inspection, repair costs, and legal fees.

6 **35.**

7 Notwithstanding what it, in the exercise of reasonable care, should have done, MFIA
8 failed to address and repair the water intrusion, water damage, design and engineering defects,
9 and risks described in paragraphs **8-10**, above, during their activities at the Project, and failed to
10 disclose and/or concealed the water intrusion, water damage, design and engineering defects,
11 and/or risks thereof to Plaintiff.

12 **36.**

13 As a direct and proximate result of MFIA's negligence, Plaintiff has suffered damages as
14 follows:

15 a) in an amount to be proven at trial, but not less than \$500,000.00, plus pre-
16 judgment interest, for the cost to repair the property damage to the Project;

17 b) in an amount to be proved at trial, but not less than \$500,000.00, plus pre-
18 judgment interest, for the loss of value to the Project, which amount will increase as time passes.

19
20 **Count Two**

21 **(Negligence *per se*)**

22 **37.**

23 The Oregon Building Code and the specialty Oregon Mechanical Building Code governs
24 the design, installation, alteration, and inspection of mechanical systems, as well as the
25 construction, re-construction, alteration and repair of buildings in Oregon. In addition,
26 manufacturers of various building components publish instructions governing the installation of
27 the manufacturer's products, including integration of the product with surrounding building
28 components. Lastly, various construction industry organizations publish installation guidelines

1 for particular building components and locations in buildings, and those publications constitute
2 industry standards. The building code, manufacturers' instructions, and published industry
3 standards establish uniform performance standards to protect the health, safety, welfare, comfort
4 and security of Oregon residents.

5 **38.**

6 MFIA was required to follow the Oregon Building Code and the Oregon Mechanical
7 Building Code. This duty exists independently of other duties owed to Plaintiff. MFIA had
8 additional unconditional duties to perform its work in accordance with all relevant
9 manufacturers' installation instructions and published construction industry standards.

10 **39.**

11 MFIA was negligent *per se* because it violated the Oregon Building Code and Oregon
12 Mechanical Building Code, and failed to follow manufacturer installation instructions and
13 published construction industry standards by designing and providing mechanical engineering
14 services at the Project with the design and engineering defects described in paragraphs **8-10**,
15 above, and elsewhere herein.

16 **40.**

17 As a result of MFIA's negligence *per se*, Plaintiff has been damaged as set forth in
18 paragraph **36**, above.

19
20 **FOURTH CLAIM FOR RELIEF**

21 **Count One**

22 **(Breach of Contract)**

23 **41.**

24 Plaintiff re-alleges paragraphs **1-11**, **33-36**, and **37-39**, and incorporates them by
25 reference herein.

26 **42.**

27 MFIA performed the work described in paragraphs **5** and **7** and elsewhere herein
28 pursuant to its contract with the Association.

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43.

The contract required that MFIA's work at the Project be completed in a good and workmanlike manner constituent with the engineering standards and practices of other experienced mechanical engineers performing work on similar projects in the area where the project is located, and according to the drawings, specifications, and federal, state, local laws, statutes, ordinances, rules, codes, inspections and regulations.

44.

MFIA materially breached the terms of its contract with Plaintiff by failing to complete the work outlined in paragraphs 5 and 7 and elsewhere herein in a good and workmanlike manner, free from defects in design and engineering workmanship, free from violations of the Oregon Building Code, Oregon Mechanical Building Code, the drawings and specifications, manufacturers guidelines and installation instructions, and industry standards. There were and are serious design and engineering defects, building code violations, manufacturer guideline and installation instruction violations, and violations of industry standards resulting in consequential damage as more particularly set forth in paragraphs 8-10, above.

45.

As a result of Defendant MFIA's breach of contract, Plaintiff has been damaged as set forth in paragraph 36, above.

WHEREFORE, Plaintiff prays for judgment as follows:

1. On Plaintiff's First Claim for Relief against Defendant KKLA, Count 1, damages as set forth in paragraph 16 above;
2. On Plaintiff's First Claim for Relief against Defendant KKLA, Count 2, damages as set forth in paragraph 16 above;
3. On Plaintiff's Second Claim for Relief against Defendant KKLA, Count 1, damages as set forth in paragraph 16 above, plus Plaintiff's reasonable attorney fees;

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(b) MFIA, Inc.’s conduct was a cause of the claimed damages, losses or other harm.

VIAL FOTHERINGHAM LLP

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