

RESOLUTION NO. 53-97  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER J.V. STONE ON THE 18<sup>th</sup>  
DAY OF AUGUST, 1997.

A RESOLUTION RATIFYING THE ACTION TAKEN BY  
THE CITY MANAGER TO EXECUTE AN AGREEMENT  
OF RELEASE BETWEEN THE CITY OF CENTERVILLE,  
ARCHITECTS ASSOCIATES, INC. AND BARGE,  
WAGGONER, SUMNER & CANNON ENGINEERS,  
ARCHITECTS & PLANNERS.

WHEREAS, The City of Centerville entered into an agreement with  
Architects Associates, Inc. for the necessary architectural services to design and build the  
clubhouse at The Golf Club at Yankee Trace, and

WHEREAS, Barge, Waggoner, Sumner & Cannon Engineers, Architects &  
Planners was engaged by Architects Associates, Inc. as a subcontractor for the project,  
and

WHEREAS, Certain differences arose among the parties concerning  
defects in workmanship and/or design and financial obligations relating thereto, and

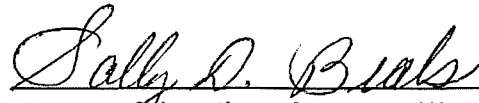
WHEREAS, The parties wish to resolve said differences by the execution  
of a Mutual Full and Final Release.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE  
HEREBY RESOLVES:

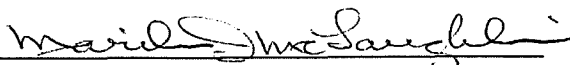
SECTION 1. That the Council of the City of Centerville hereby ratifies the  
action taken by the City Manager in executing a Mutual Full and Final Release  
Agreement between the City of Centerville, Architects Associates, Inc. and Barge,  
Waggoner, Sumner & Cannon in order to resolve differences and financial obligations  
relating to the design and construction of the clubhouse at The Golf Club at Yankee  
Trace, a copy of said Agreement which is attached hereto, marked "Exhibit A", and  
incorporated herein.

SECTION 2. That this Resolution shall become effective at the earliest date allowed by law.

PASSED this 18<sup>th</sup> day of AUGUST, 1997.

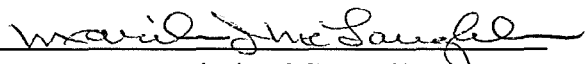
  
\_\_\_\_\_  
Mayor of the City of Centerville, Ohio

ATTEST:

  
\_\_\_\_\_  
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio hereby certifies that the foregoing is a true and correct copy of Resolution Number 53-97, passed by the Council of the City of Centerville, Ohio on the 18<sup>th</sup> day of AUGUST, 1997.

  
\_\_\_\_\_  
Clerk of Council

Approved as to form, consistency  
with the Charter and Constitutional Provisions.

Department of Law  
Robert N. Farquhar  
Municipal Attorney

## MUTUAL FULL AND FINAL RELEASE

**THIS AGREEMENT OF RELEASE**, executed at Centerville, Ohio this 12<sup>th</sup> day of August, 1997, by and among the City of Centerville, Ohio, an Ohio municipal corporation (hereinafter "City"), Architects Associates, Inc., an Ohio corporation (hereinafter "Architects") and Barge, Waggoner, Sumner & Cannon, Engineers, Architects & Planners (hereinafter "Barge, Waggoner").

**WHEREAS**, on the 15th day of April, 1992 the City and Architects entered into an agreement for the necessary architectural services in order to design and build the golf club house at Yankee Trace Golf Course (hereinafter "the Project"); and

**WHEREAS**, Barge, Waggoner was engaged by Architects as a subcontractor for the Project; and

**WHEREAS**, certain differences have arisen among the parties as to responsibility for certain alleged defects in workmanship and/or design and the financial obligations relating thereto; and

**WHEREAS**, the parties wish to resolve said differences with the understanding that by the execution of this MUTUAL FULL AND FINAL RELEASE no party is admitting responsibility for any said alleged defect and, in fact, each party denies any such responsibility and agrees that this agreement is being executed solely to compromise any and all financial claims among the parties for the payment for past work performed; PROVIDED, FURTHER, that this agreement is not meant to compromise or settle any future claims the City may have for future warranty claims which are unknown at the time of execution of this MUTUAL FULL AND FINAL RELEASE;

**NOW THEREFORE**, in consideration of the foregoing recitations and the benefits to them mutually accruing, the parties hereby agree as follows:

Section 1. Immediately upon execution hereof, the City shall pay to Architects the sum of TWENTY THOUSAND DOLLARS (\$20,000.00); to Architects and Barge, Waggoner jointly the sum of TEN THOUSAND DOLLARS (\$10,000.00) and to Barge, Waggoner the sum of TEN THOUSAND DOLLARS (\$10,000.00).

Section 2. By their acceptance of the payments provided for in Section 1 above, Architects and Barge, Waggoner jointly and severally hereby release and hold harmless the City from any further claims for payment for services performed on the Project up to the date of execution of this agreement. At the time of the receipt of the joint payment of TEN THOUSAND DOLLARS (\$10,000.00) to Architects and Barge, Waggoner as provided in Section 1, Architects shall endorse the payment check to Barge, Waggoner. This payment by Architects to Barge, Waggoner and the acceptance by Barge, Waggoner shall constitute a mutual, full and final release by said parties of all financial claims each may have against the other arising out of work, material or services performed on the Project.



1700 ONE DAYTON CENTRE  
ONE SOUTH MAIN STREET  
DAYTON, OHIO 45402

Section 3. Architects and Barge, Waggoner jointly and severally warrant to the City that there are no outstanding claims for payments due to subcontractors, laborers or materialmen engaged by either or both of them for work, material, equipment or services for the Project and agree to indemnify and hold harmless the City for any such claims.

Section 4. By the execution of this agreement and payment pursuant thereto, the City expressly does not release any claim for any warranty for work performed on the Project by Architects and/or Barge, Waggoner arising after the execution of this agreement, the existence or potential of which is unknown at this time.

Section 5. This agreement represents the entire understanding among the parties and no modification or amendment shall be effective unless in writing signed by all parties. This agreement shall be governed by the laws of the State of Ohio.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement on the date first above written.

WITNESS:

CITY OF CENTERVILLE

Linda L. Schmitt  
Grace L. Averitt

By Gregory B. Horn  
Gregory B. Horn, City Manager

ARCHITECTS ASSOCIATED, INC.

By Bryan Choi  
Bryan Choi, President

BARGE, WAGGONER, SUMNER  
AND CANNON

By David W. ...  
Its President SENIOR V.P.

FISCAL OFFICERS CERTIFICATE



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08/08/97