

RESOLUTION NO. 55-96  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER C. MARK KINGSEED ON THE  
18th DAY OF NOVEMBER, 1996.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER, ON BEHALF OF THE CITY OF CENTERVILLE, TO ENTER INTO AN AGREEMENT WITH JOE BECKS & ASSOCIATES, INC. TO SETTLE ALL CLAIMS BETWEEN PARTIES IN CONNECTION WITH THE CONSTRUCTION OF THE CENTERVILLE YANKEE TRACE CLUBHOUSE AND PROVIDING FOR PAYMENTS THERETO.

WHEREAS, on April 13, 1994, a contract was executed between the City of Centerville and Joe Becks & Associates, Inc. for the substantial construction of the Clubhouse at Yankee Trace, and

WHEREAS, the possession of the Clubhouse at Yankee Trace was delivered to the City of Centerville on June 23, 1995 by Joe Becks & Associates, Inc.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. The City Manager is hereby authorized and directed to enter into an Agreement with Joe Becks & Associates, Inc. to settle all claims between parties in connection with the construction of the Clubhouse at Yankee Trace under the provisions of the contract executed April 13, 1994, unless otherwise excepted in the Settlement Agreement and Release, a copy of which is attached hereto, marked Exhibit "A" and incorporated herein.

Section 2. This Resolution shall become effective at the earliest date allowed by law.

PASSED this 18th day of NOVEMBER, 1996.

Sally D. Beals  
Mayor of the City of Centerville, Ohio

ATTEST:

Maureen J. Saughlin  
Clerk of Council, City of Centerville, Ohio

**CERTIFICATE**

The undersigned, Clerk of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution Number 55-96, passed by the Council of the City of Centerville, Ohio. on the 18th day of NOVEMBER, 1996.

Maureen J. Saughlin  
Clerk of Council

Approved as to form, consistency with existing ordinances, the charter and constitutional provisions.  
Department of Law  
Robert N. Farquhar  
Municipal Attorney

**SETTLEMENT AGREEMENT AND RELEASE**

DRAFT

JOE BECKS & ASSOCIATES, INC., an Ohio corporation, ("JBA"), for itself, its officers, directors, employees, agents, representatives, successors and assigns and the CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation ("the City"), its managers, representatives, employees, agents, successors and assigns agree as follows:

1. This Agreement is intended to settle all claims between the parties in connection with the construction of the Centerville Yankee Trace Clubhouse ("the Clubhouse") under the provisions of a contract, dated April 13, 1994 ("Yankee Trace Contract"), unless otherwise excepted herein, the possession of which Clubhouse was delivered to the City on June 23, 1995.

2. The parties agree that the work of JBA under the Yankee Trace Contract shall be considered completed as of June 23, 1995 for purposes of this Agreement; that the City owes JBA the sum of TWO HUNDRED SIXTY-THREE THOUSAND FOUR HUNDRED NINETY-SIX AND 80/100 DOLLARS (\$263,496.80) under the Yankee Trace Contract, together with the sum of FOUR THOUSAND TWO HUNDRED FORTY AND 67/100 DOLLARS (\$4,240.67) on an additional claim for overtime, or a total payment of TWO HUNDRED SIXTY-SEVEN THOUSAND SEVEN HUNDRED THIRTY-SEVEN AND 47/100 DOLLARS (\$267,737.47), which amounts are to be paid in the manner designated in Section 3 herein; and that JBA has no further obligations under the Yankee Trace Contract, unless otherwise specifically stated herein.

3. The parties further agree that the payment of TWO HUNDRED SIXTY-SEVEN THOUSAND SEVEN HUNDRED THIRTY-SEVEN AND 47/100 DOLLARS (\$267,737.47) shall be made as follows:

a. ONE HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED EIGHTY-SEVEN AND 55/100 DOLLARS (\$176,387.55) shall be paid to the subcontractors and suppliers listed on Exhibit "A" in the amounts shown thereon. The City will issue checks in the joint name of JBA and the subcontractor or supplier and JBA shall obtain for the express benefit of the City before any payment is delivered to the subcontractor or supplier, an affidavit by the subcontractor or supplier, which states that the City is released from any claims associated with the Clubhouse or the Yankee Trace Contract (Exhibit "B.")

b. THIRTY THOUSAND DOLLARS (\$30,000.00) shall be retained permanently by the City in accordance with the terms of this Agreement, as an adjustment to the Yankee Trace Contract in consideration of the release by the City of JBA from any further liabilities, except as provided herein.

c. The balance of SIXTY-ONE THOUSAND THREE HUNDRED FORTY-NINE AND 92/100 DOLLARS (\$61,349.92) shall be paid to JBA upon the receipt of an affidavit from JBA, which states that the City is released from all further claims relating to the Yankee Trace Contract.

4. The City and JBA each release the other from any and all claims, demands, costs, payments, damages, losses, liabilities, actions or causes of action, known or unknown, foreseen or unforeseen, accrued or unaccrued, arising out of or associated with the

Yankee Trace Contract, except that the City shall retain the benefit of any warranties associated with the construction of the Clubhouse, including but not limited to, any warranty relating to the performance of work or quality of materials furnished, which warranties date from the possession of the Clubhouse by the City.

5. The parties enter into and sign this Agreement freely and voluntarily with the advice and consent of independent counsel and after full consultation with such counsel.

6. It is understood and agreed that this Agreement is intended to compromise doubtful and disputed claims, and is not to be construed an admission of liability on the part of any party, each of whom expressly denies all such liability, and each of whom executes this Agreement to avoid future arbitration or litigation.

7. The parties agree that, except as required by governmental authorities, they will not disclose the terms or the facts of this Agreement to any person.

8. This Agreement shall be construed under the laws of the State of Ohio.

9. Each of the parties hereto shall each bear its own costs and expenses incurred in connection with this matter and in connection with negotiating, preparing and signing this Settlement Agreement and Release.

10. Each of the parties hereto shall perform and any all further acts and execute and deliver any and all further documents which may be reasonably necessary to carry out the intent of this Agreement.

11. This Agreement constitutes the final, complete and exclusive agreement and understanding between the parties hereto, and supersedes all prior or contemporaneous written or oral agreements. The parties each acknowledge there are no representations, warranties, agreements, arrangements, or understandings between the parties relating to the subject matter hereof, other than as expressly contained in this Agreement and that each party has the authority to execute this Agreement.

12. This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Release on the date set forth under their respective signatures.

CITY OF CENTERVILLE

\_\_\_\_\_  
Gregory B. Horn, City Manager

Date: \_\_\_\_\_

JOE BECKS & ASSOCIATES, INC.

\_\_\_\_\_  
Donna J. Matheney, Vice President

Date: \_\_\_\_\_

## EXHIBIT "A"

## PAYMENTS DUE TO SUBCONTRACTORS AND SUPPLIERS

<u>Name</u>	<u>Amount</u>
Advanced Fixture & Supply	\$14,000.00
Automated Building Components	\$ 1,637.50
Black Electric Co.	\$30,991.26
Oral T. Carter & Assoc.	\$ 875.00
Wayne Dalton	\$ 102.00
Dover Elevator	\$ 1,000.00
Enterprise Roofing & SM	\$ 5,295.30
FED CON, INC.	\$ 9,051.80
Gambill's Erectors Inc.	\$ 3,091.50
Glawe Awning	\$ 490.00
R.B. Jergens, Inc.	\$ 8,000.00
Landscapes by Bill Atkins	\$ 376.53
M.C. Grout, Inc.	\$ 6,000.00
Mechanical Systems of Dayton	\$50,000.00
Miami Valley Masonry	\$16,730.20
OK Interiors Corp.	\$ 3,790.00
Oren Assoc., Inc.	\$ 3,370.00
Quality Caulking	\$ 530.50
Evan Ragouzis Company	\$ 265.70
Robinson Insulation Co.	\$ 1,286.50
Sam K. Painting	\$ 1,932.50
A-1 Sprinkler	\$ 5,068.40
Stockelman Plastering	\$ 1,150.00
Waiffenbach Marble & Tile	\$ 7,752.86
West Carrollton Concrete	<u>\$ 3,600.00</u>
	<u>\$176,387.55</u>

Affidavit of Subcontractor

(Name/Address)

GENERAL CONTRACTOR

JOE BECKS & ASSOCIATES, INC.  
P.O. Box 1192  
Dayton, Ohio 45401-1192  
1-513-254-9983, FAX 1-513-254-1320

"AFFIDAVIT FOR SUBCONTRACTOR"

RE: SUBCONTRACT NO. \_\_\_\_\_

NAME OF SUBCONTRACTOR: \_\_\_\_\_

DATE OF SUBCONTRACT: \_\_\_\_\_

NAME OF OWNER UNDER  
GENERAL CONTRACT:

CITY OF CENTERVILLE  
YANKEE TRACE CLUBHOUSE JBA #2229

WHEREAS, the above-named Subcontractor entered into the above-referenced Subcontract with General Contractor for performance by Subcontractor of the work described in the Subcontract ("Sublet Work"); and

WHEREAS, under the Subcontract certain monies are not due and payable unto Subcontractor until all bills for labor, material and other charges arising in the performance of the Sublet Work have been fully paid by the Subcontractor;

NOW, THEREFORE, for the purpose of inducing General Contractor to pay over such monies unto the Subcontractor, the Subcontractor does hereby:

Warrant and represent to General Contractor and owner that all bills for labor, material, subcontractor work, equipment rental, taxes, insurance and all other charges arising in connection with the performance of the Sublet Work have been fully paid by or for the Subcontractor, except as listed below;

Agree to indemnify and hold harmless General Contractor and Owner from all liens, claims, demands, penalties, losses, costs, damages and liability in any manner arising out of or in connection with any claim by any person, entity or agency for payment for work or labor performed or material furnished pursuant to or in connection with the Subcontract;

Release, relieve and discharge General Contractor and Owner from all claims for payment (other than unpaid retainage, if any) for work performed under or in connection with the Subcontractor or any change order or other modification thereto, except as listed below.

EXCEPTIONS

\_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_ Name: \_\_\_\_\_

FOR SUBCONTRACTOR

STATE OF \_\_\_\_\_ :

COUNTY OF \_\_\_\_\_ :

SS:

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
NOTARY PUBLIC