

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") between the Dayton City School District Board of Education (the "Board"), the Ohio Facilities Construction Commission (f/k/a the Ohio Schools Facilities Commission) (the "Commission") (the Commission and Board, collectively, the "Owners"), and DNK Architects, Inc. ("DNK") (collectively referred to as the "Parties").

RECITALS

WHEREAS, the Board is a political subdivision organized under the laws of the State of Ohio; and

WHEREAS, the Commission is an agency of the State of Ohio; and

WHEREAS, DNK is a corporation licensed to transact business in the State of Ohio; and

WHEREAS, on or about October 17, 2002, the Owners entered into a contract with DNK to serve as the Architect and Engineer of Record for the construction of the Wogaman Elementary School Facility located at 920 McArthur Avenue, Dayton, Ohio, for the Owners in Dayton, Ohio ("Wogaman Project"); and

WHEREAS, on April 5, 2005, the Owners entered into a contract with DNK to serve as the Architect and Engineer of Record for the construction of the Louise Troy Elementary School Building located at 1630 Miami Chapel Road, Dayton, Ohio for the Owners in Dayton, Ohio ("Louise Troy Project") (the Wogaman and Louise Troy Projects are collectively referred to herein as the "Projects").

WHEREAS, a dispute has arisen between the Parties regarding the professional design services provided DNK on the Projects, which the Owners allege was defective (the "Design Dispute"), and which allegation DNK denies; and

WHEREAS, the Owners have initiated litigation against DNK in the Montgomery County Common Pleas Court over the Design Dispute including claims of negligent design, breach of contract, and breach of express and implied warranties in a case captioned *Dayton City School District Board of Education, et al. v. DNK Architects, Inc., et al* Case No. 2015 CV 00620 ("the Lawsuit"); and

WHEREAS, the Parties wish to resolve the Design Dispute without any party admitting fault, liability or responsibility and dismiss DNK from the Lawsuit.

NOW, THEREFORE, the Parties agree as follows:

1. **Settlement Amount.** The Owners have agreed to compromise and settle the Design Dispute for the consideration of payment by DNK in the total amount of \$1,000,000.00 for the

Wogaman Project and \$595,000.00 for the Louise Troy Project (collectively referred to as the “Settlement Amount”).

2. **Settlement Amount Payment.** DNK shall pay the Settlement Amount to the Board for the benefit of the Owners. Payment by DNK of the Settlement Amount shall be made within 30 days after written notice of the approval of this Agreement by both the Board and Commission (expected by April 26, 2018).

The Payment shall be delivered to the Board, 115 South Ludlow St., Dayton, OH 45402, Attn: Legal Department. In the event the Settlement Amount is not received by the Board on or before the date required in this Agreement, DNK shall be in default of this Agreement.

3. **Board and Commission Release.** In consideration of the mutual covenants in this agreement and receipt of the Settlement Amount, the Owners shall release and discharge DNK, including its officers, directors, shareholders, partners, parents, subsidiaries, affiliates, predecessors, successors, sureties, contractors, subcontractors, suppliers, and assigns, and past and present insurers from any and all claims, demands, warranties, and disputes relating to the Design Dispute (“Released Work”) that were or could have been discovered or could have been asserted in the Lawsuit, including any and all claims for attorneys’ fees, expert fees, and litigation costs. Subject to the claims reserved herein, an entry of dismissal in the form attached as “Exhibit A” will be filed with the Court within fifteen (15) days of the Board’s receipt of the Settlement Amount Payment, and the clearing of the Settlement Amount Payment funds in the Board’s financial banking institution. The claims related to the Released Work will be dismissed with prejudice, with each of the Parties to bear their own costs, including without limitation attorney fees, expert witness fees, and other litigation expenses. No Release or Discharge shall be effective against DNK until the full Settlement Amount is received by the Board.

It is expressly understood and agreed that the release provided by the Owners is not intended to and will not be construed as a release of (1) claims against any other contractors, architects, construction managers or entities who provided defective work or design on or in conjunction with the Projects unrelated to the Released Work; and (2) claims that are latent design defects unrelated to the Released Work that are discovered after execution of the Agreement subject to DNK’s right to cure or to raise any of its other legal defenses, including the applicable statutes of limitations or repose, which are expressly reserved by the Owners under this Agreement. The Parties agree that the Court will retain jurisdiction over this action until the full Settlement Amount is paid.

4. **DNK Release.** In consideration of the mutual covenants in this Agreement, DNK does hereby release and discharge the Owners, including their officers, directors, partners, board members, predecessors, successors, assigns, and agents from any and all claims, demands, and disputes relating to the Design Dispute (“Released Work”) that were or could have been asserted in the Lawsuit, including any and all claims for attorneys’ fees, expert fees, and litigation costs.

5. **No Admission of Liability.** Neither the fact nor terms of this Agreement shall be deemed to be an admission of liability or responsibility by any of the Parties, and shall not be construed as such.
6. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the Dispute and the Lawsuit and supersedes all prior and contemporaneous agreements, communications and negotiations with respect to such subject matter. No party relies or has relied on any statement, representation, omission or promise of any other party (or of any officer, agent, employee, representative or attorney for any other party or their affiliate) in executing this Agreement, or in making this settlement provided for herein, except as expressly stated in this Agreement. Further, no person has authority to modify the terms of this Agreement, except by a written modification properly approved by the Parties whose rights are modified. This Settlement Agreement is binding upon the Parties hereto and their respective agents, employees, representatives, officers, directors, shareholders, subsidiaries, affiliates, assigns, heirs and successors in interest. The Parties agree that this Agreement is intended to benefit only the Parties, and they do not intend to create any third party beneficiary status in any other person.
7. **Construction.** This Agreement is a negotiated document. Each party has cooperated in the preparation of this Agreement, and the Agreement shall not be construed for or against any of the Parties. The invalidity, in whole or in part, of any term of this Agreement does not affect the validity of the remainder of this Settlement Agreement.
8. **Approvals.** This Agreement is contingent on and not effective or binding until the appropriate approvals are obtained by vote of the School District Board and the Commission, and signed by all the Parties.
9. **Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties acknowledge that this Agreement may be executed by facsimile and/or PDF Format, and that execution of signatures in such format shall be considered to be made as an original. The Agreement may be delivered by facsimile or via electronic mail.
10. **Governing Law; Dispute.** The validity, construction and interpretation of this Agreement shall be governed by the laws of the State of Ohio (without regard to conflict of law principles). Any litigation arising out of or related to this Agreement shall be brought in the Montgomery County, Ohio Court of Common Pleas.
11. **Authority.** The persons signing this Agreement on behalf of the respective Parties represent and warrant that he/she has the authority to enter into this Agreement. This Settlement Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties acknowledge that this Settlement Agreement may be executed by facsimile and/or PDF Format, and that execution of signatures in such format shall be considered to be made as an original.

12. **Consideration.** The Parties acknowledge good and valuable consideration in the terms of this Settlement Agreement.

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IN WITNESS WHEREOF, the Parties to this Agreement have caused their properly authorized representatives to read and sign this Agreement.

Dayton City School District Board of
Education

Ohio Facilities Construction Commission

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

DNK Architects, Inc.

By: _____

Its: _____

Date: _____

IN WITNESS WHEREOF, the Parties to this Agreement have caused their properly authorized representatives to read and sign this Agreement.

Dayton City School District Board of
Education

Ohio Facilities Construction Commission

By: _____

By: _____

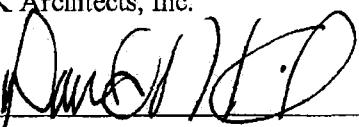
Its: _____

Its: _____

Date: _____

Date: _____

DNK Architects, Inc.

By: 
Its: PRESIDENT/CEO
Date: April 12, 2016

“EXHIBIT A”

**IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO**

**DAYTON CITY SCHOOL DISTRICT
BOARD OF EDUCATION, *et al.***

Case No. 2015 CV 00620

Plaintiffs

Judge Mary Wiseman

v.

DNK ARCHITECTS, INC., *et al.*

Defendants.

AGREED ENTRY OF DISMISSAL

Upon being advised by the parties that all claims in this matter against Defendant DNK Architects, Inc. (“DNK”) have been settled, the Court hereby ORDERS that Plaintiffs’ claims against DNK are hereby dismissed and all claims that are fully waived and released in the applicable Settlement Agreement and Release are DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that the Court hereby retains jurisdiction to enforce the Settlement Agreement and Release entered into by and between Plaintiffs and DNK.

SO ORDERED:

JUDGE MARY WISEMAN

AGREED BY:

/s/ David A. Beals

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