STATE OF OHIO STATE BOARD OF EXAMINERS OF ARCHITECTS
77 South High Street, 16th Floor Columbus, OH 43266-0303 614/466-2316 Fax: 614-644-9048

IN THE MATTER OF:	:	File No. 99-17
	:	
	:	
Robert M. McGaw, Cert. No. 8549	:	
D. A. McGaw Architects, Inc.	:	
5783 Darrow Road	:	July 21, 1999
Hudson, Ohio 44236	:	

Settlement Agreement

This settlement agreement (hereinafter "Agreement") is made and entered into by and between the STATE BOARD OF EXAMINERS OF ARCHITECTS, (hereinafter the "**BOARD**"), located at 77 South High Street, 16th Floor, Columbus, Ohio 43266, a state agency charged with enforcing Ohio Revised Code Chapter 4703, and ROBERT M. MCGAW, Cert. No. 8549, of D. A. McGaw Architects, Inc. (hereinafter "**RESPONDENT**"), whose mailing address is 5783 Darrow Road, Hudson, Ohio 44236.

WHEREAS, a disagreement has arisen between **RESPONDENT** and the **BOARD** regarding **RESPONDENT's** alleged violation(s) of Ohio Revised Code sections 4703.15(D) and 4703.151; arising out of **RESPONDENT's** involvement in using two (2) sheets of design documents originally designed and belonging to another Ohio architect, where **RESPONDENT** was without prior written consent of the architect originating the design used in the plans. The design documents involved an addition to the "Mentor Church of God" located at 8250 Garfield Road, Mentor, Ohio on or about 1997. Architect Richard A. Beck designed the original plans for the first phase in 1986.

WHEREAS, the **BOARD**, pursuant to O.R.C. 4703.03 (A), has initiated an investigation of the alleged violation(s) by **RESPONDENT**; and

WHEREAS, at all times pertinent hereto, **RESPONDENT** was duly registered in the State of Ohio, having been issued certificate number #8549, by the **BOARD**. **REPONDENT'S** registration is in good standing; and

WHEREAS, the **BOARD** and **RESPONDENT** desire to resolve the above-mentioned disagreement without formal legal proceedings.

Richard H. Kaplan, Cleveland • Merle M. Myers, Medina • Harold Rasmussen, Akron
John W. Spencer, Columbus • Joseph E. Vetter, Toledo

NOW THEREFORE, in consideration of the various promises and mutual covenants contained herein, the **BOARD** and **RESPONDENT** agree as follows:

1. **RESPONDENT** hereby stipulates that the conduct recited above constitutes a violation of Ohio Revised Code sections 4703.15(D) and 4703.151.

2. **RESPONDENT** waives his right to a hearing, pursuant to Ohio Revised Code section 119.07 and any and all claims or causes of action he may have, including but not limited to, appeal from this agreement, or any order derived herefrom, or attorney fees, against the State of Ohio, the **BOARD** and its members, officers, employees and/or agents, arising out of matters which are subject of this agreement.

3. **RESPONDENT** shall immediately cease and desist from using construction drawings, designs, specifications or the work product of an architect without first obtaining prior written consent of the architect originating the design or work product.

4. With respect to the charges alleging that **RESPONDENT** utilized a portion of construction documents belonging to another architect where **RESPONDENT** was without prior written consent of the architect originating the design, **RESPONDENT** will accept a *Letter of Reprimand* attached as Exhibit A hereto.

5. The **BOARD** will notify *NCARB* of the discipline accepted by **RESPONDENT**;

6. The **BOARD** will publish the discipline accepted by **RESPONDENT** in the *OHIO ARCHITECT* newsletter.

7. **RESPONDENT** shall obey all federal, state and local laws, and all laws and administrative rules governing the practice of architecture in the state of Ohio and any United States jurisdiction where the **RESPONDENT** may hold a license to practice architecture. If **RESPONDENT** is arrested or charged with any violation of law, other than minor misdemeanor traffic violations, he shall report those facts and circumstances in writing to the Board within thirty (30) days from the arrest, citation or charge.

8. Should **RESPONDENT** fail to comply fully with the terms of this agreement, the **BOARD** reserves the right to institute formal legal proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this agreement;

9. If the **BOARD** determines, in or at its discretion, that **RESPONDENT** has violated any terms of this agreement, the Board may impose any penalty provided for in Ohio Revised Code section 4703.151.

10. This agreement constitutes a compromise and settlement of a disputed matter between the parties, which is referenced in the second recital paragraph, and operates as a release of all claims of **RESPONDENT** against the **BOARD**, its members, employees, agents and any agency, instrumentality or political subdivision of the State of Ohio, known or unknown, that participated in the above referenced investigation of this dispute giving rise to the alleged liability of **RESPONDENT** for the alleged violation(s) herein; and

11. The **BOARD** and **RESPONDENT** agree that the terms of this agreement bind the parties hereto, their successors, assigns and the like; and

This agreement:

a. contains the entire agreement between the parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either expressed or implied, other than set forth, shall be binding on any of the parties;

b. shall be governed by the laws, rules, and courts of the State of Ohio.

12. This agreement may not be modified without the written approval of both parties.

13. This agreement is severable. If any provision of this agreement is declared void or invalid by any court, all other provisions of this agreement remain binding.

14. This provision is separable from all other provisions of the Agreement and is binding on **RESPONDENT** notwithstanding the provisions in paragraph (17) below. This Agreement is executed by the **RESPONDENT** for the purpose of avoiding further administrative action with respect to this case.

In this regard, **RESPONDENT** initiated settlement negotiations in order to attempt to resolve the disciplinary action filed against him. **RESPONDENT** authorized the **BOARD** to review and examine all investigative file material concerning this case prior to or in conjunction with consideration of this Agreement or counter-proposal by the **BOARD**.

Furthermore, should this Agreement not be accepted by the **BOARD**, it is agreed that presentation to and consideration of this Agreement, counter-proposal, or other documents and matters by the **BOARD,** shall not unfairly constitute or illegally prejudice the **BOARD** or any of its members from further participation, consideration, adjudication or resolution of these proceedings and in conjunction herewith **RESPONDENT** hereby waives any such defense or claim.

15. The **BOARD** and **RESPONDENT** agree that this is a final resolution of all charges, actions, claims or defenses of any kind whatsoever between the two parties, whether administrative, civil or criminal, related to the allegations brought by the BOARD against **RESPONDENT** pertaining to **RESPONDENT's** work to date; and

16. This Agreement shall be considered a public record in accordance with O.R.C. 149.43.

17. It is hereby understood that except for paragraph (14) above, which is binding on **RESPONDENT** by his signature alone, this Agreement shall not be binding on any of the parties unless it has been signed and executed by the parties below. If the parties are unable to reach an Agreement on the terms herein, or the Agreement is rejected by the **BOARD**, this Agreement shall become null and void without any force or effect. The Board's approval shall be designated by a majority vote of the **BOARD** at a Board meeting at which this Agreement is considered.

18. **RESPONDENT** acknowledges that he has read this Settlement Agreement, that he has had an opportunity to discuss it with his attorney(s), that he fully understands this agreement, and that he is voluntarily signing this agreement.

RESPONDENT

BY: Robert M. McGaw
Robert M. McGaw
Cert. No. 8549

DATE: 8/19/99

THIS SETTLEMENT AGREEMENT IS APPROVED IN FULL:

DATED THIS 24th DAY OF August, 1999.

STATE OF OHIO
STATE BOARD OF EXAMINERS OF ARCHITECTS

WILLIAM N. WILCOX
EXECUTIVE DIRECTOR