

U.S. 300-100

M & M CONCRETE, INC. -vs- THE ELDER-BERMAN STORES CORP.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**M & M CONCRETE, INC.**

Contractor,

vs.

**THE ELDER-BEERMAN STORES CORP.**

Tenant,

**THE ELDER-BEERMAN STORES CORP.**

Tenant,

vs.

**M & M CONCRETE, INC.**

Contractor.

CIVIL DIVISION

CASE NUMBER: 01-360-CD

TYPE OF PLEADING:

Stipulation/No-Lien Agreement

FILED ON BEHALF OF:

The Elder-Beerman Stores Corp.

COUNSEL OR RECORD FOR  
THIS PARTY:

Bryan D. Kocher, Esq.

Pa. I.D. No. 56755

Jones, Day, Reavis & Pogue

500 Grant Street, 31<sup>st</sup> Fl.

Pittsburgh, PA 15219

(412) 394-7918

**CERTIFICATE OF LOCATION:**

I hereby certify that the real property subject to  
this agreement is located in the Township of Sandy,  
Clearfield County, Pennsylvania as more fully described  
in Exhibit A attached hereto.

Bryan D. Kocher

**FILED**

MAR 12 2001

William A. Shaw  
Prothonotary

## **NO LIEN AGREEMENT AND WAIVER OF LIENS**

**M & M CONCRETE, INC.** ("Contractor") and **THE ELDER-BEERMAN STORES CORP.** ("Tenant") have entered into a construction contract dated as of March 12, 2001 (the "Contract"), pursuant to which Contractor will engage in various concrete, footing and foundation wall work upon property situate in Sandy Township, Clearfield County, Pennsylvania, more particularly described on Exhibit A attached hereto (the "Property") and owned by **DUBOIS REALTY PARTNERS, L.P.**, a Pennsylvania limited partnership ("Owner").

Tenant, for itself and on behalf of Owner, has requested Contractor, for itself and any and all subcontractors, materialmen and parties acting for, through and under Contractor, to waive and relinquish the right to have, file or maintain any mechanics' liens or claims against the Property or buildings or other improvements.

NOW, THEREFORE, Contractor, intending to be legally bound hereby and incorporating the foregoing recital by reference, in consideration of Ten Dollars (\$10.00) and the mutual promises set forth in the Contract, the receipt and sufficiency of which are hereby acknowledged, as well as for and in consideration of the entry by Tenant into the Contract, and intending to be legally bound hereby, does hereby, for Contractor and any and all subcontractors, materialmen and parties acting for, through and under Contractor, covenant and agree with Tenant that no mechanics' liens or claims shall be filed or maintained by Contractor or any subcontractor, materialmen or other party acting for or through Contractor, against the Property or the buildings or other improvements erected or to be erected thereon, or the estate (including a leasehold estate), interest or title thereto of Tenant, for or on account of any work done or materials furnished under the Contract or under any supplemental contract, verbal or written, or contract for extra work relating to the construction and completion of said buildings or other improvements; and Contractor, for Contractor and any and all subcontractors, materialmen and parties acting through or under Contractor, hereby expressly waives and relinquishes the right to have, file or maintain any mechanics' liens or claims against the Property or buildings or other improvements.

Contractor hereby covenants, promises and agrees that all subcontractors, material suppliers, and laborers on the work shall look to and hold Contractor personally liable for all subcontracts, materials furnished and work and labor done, so that there shall not be any legal or lawful claim of any kind whatever against Tenant, Owner, or any other person with an estate (including a leasehold estate) in the Property, for any work done or labor or materials furnished under the Contract or otherwise.

This agreement waiving the right of lien shall be an independent covenant and shall operate and be effective to any work and labor done and materials furnished under the Contract as well as in respect to work done and materials furnished under any supplemental contract for extra work in the construction and completion of the said buildings and other improvements.

Contractor hereby represents and warrants that prior to the date hereof no work has been done and no materials have been furnished with regard to the construction which is the subject of the Contract or with regard to any supplemental contract, verbal or written, or contract for extra work in or about the construction and completion of any buildings or other improvements on the Property.

In order to give Tenant, Owner and any other person having an estate in the Property (including a leasehold estate), full power and authority to protect itself and themselves, the Property, the buildings or other improvements to be constructed thereon, and the curtilages appurtenant thereto, against any and all liens or claims filed by the Contractor or anyone acting under or through it in violation of the aforesaid covenant by Contractor, **THE CONTRACTOR HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF COMMON PLEAS OF THE COMMONWEALTH OF PENNSYLVANIA, TO APPEAR AS ATTORNEY FOR IT, THEM, OR ANY OF THEM, IN ANY SUCH COURT, AND IN ITS OR THEIR NAME OR NAMES, (1) TO THE EXTENT PERMITTED BY THE LAW, TO MARK SATISFIED OF RECORD AT THE COST AND EXPENSE OF CONTRACTOR OR ANY SUBCONTRACTOR, LABORER OR MATERIAL SUPPLIER, ANY AND ALL CLAIMS OR LIENS FILED IN VIOLATION OF THE FOREGOING WAIVER AND COVENANT, OR (2) TO CAUSE TO BE FILED AND SERVED IN CONNECTION WITH SUCH CLAIMS OR LIENS (IN THE NAME OF CONTRACTOR OR ANY SUBCONTRACTOR, LABORER OR MATERIAL SUPPLIER, OR ANYONE ELSE ACTING UNDER OR THROUGH IT) ANY PLEADING OR INSTRUMENT, OR ANY AMENDMENT TO ANY PLEADING OR INSTRUMENT PREVIOUSLY FILED BY IT OR THEM, TO INCORPORATE THEREIN, AS PART OF THE RECORD THE WAIVER CONTAINED IN THIS INSTRUMENT, AND FOR SUCH ACT OR ACTS THIS INSTRUMENT SHALL BE GOOD AND SUFFICIENT WARRANT AND AUTHORITY, AND A REFERENCE TO THE COURT, TERM AND NUMBER IN WHICH AND WHERE THIS WAIVER OF LIENS SHALL HAVE BEEN FILED SHALL BE A SUFFICIENT EXHIBIT OF THE AUTHORITY HEREIN CONTAINED TO WARRANT SUCH ACTION, AND THE CONTRACTOR FOR ITSELF AND FOR THEM DOES HEREBY REMISE, RELEASE AND QUIT-CLAIM ALL RIGHTS AND ALL MANNER OF ERRORS, DEFECTS AND IMPERFECTIONS WHATSOEVER IN ENTERING SUCH SATISFACTION OR IN FILING SUCH PLEADING, INSTRUMENT OR AMENDMENT, OR IN ANY WAY CONCERNING THEM.**

This No Lien Agreement and Waiver of Liens shall be filed with the Prothonotary of the Court of Common Pleas of the County of Clearfield, Pennsylvania prior to the commencement of any work by Contractor.

IN WITNESS WHEREOF, Contractor has signed and sealed these presents  
this 8th day of March, 2001.

ATTEST:

M & M CONCRETE, INC.

Debra A. Stanek

[SEAL]

By: Michael R. Zeanchock  
Title: Sec - Treasurer

ACKNOWLEDGMENT

STATE OF PENNA )  
COUNTY OF Cambria ) SS:

On this 8th day of March, 2001 before me, the undersigned  
officer, personally appeared MICHAEL R. ZEANCHOCK, who acknowledged  
himself/herself to be the SEC/TRES of M & M CONCRETE, INC. a  
corporation existing under the laws of the STATE of PA, and that he/she as  
SEC/TRES, executed the foregoing No Lien Agreement and Waiver of Liens and  
acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal

Debra A. Stanek  
Notary Public

My Commission Expires:

Notarial Seal  
Debra A. Stanek, Notary Public  
Northern Cambria Boro, Cambria County  
My Commission Expires Mar. 22, 2002  
Member, Pennsylvania Association of Notaries

## **EXHIBIT A**

### **DESCRIPTION OF PROPERTY**

All that certain piece, parcel or lot of land situate in the Township of Sandy, Clearfield County, Pennsylvania, and being bounded and described as follows, to wit:

BEGINNING at a ¾" rebar at the southwest corner of a parcel of land conveyed by Nedza Real Estate Development Corporation to DuBois Realty Partners, L.P. on the northern line of a 16 foot unopened alley as shown on the Harriet Bogle Plan of Lots and surveyed by George Kirk, C.E. in 1916; said rebar being North 74° 15' 46" West, 694.45 feet from a ¾" rebar set at the intersection of the rights-of-way of said unopened alley and Shaffer Road:

Thence by the northern line of the 16 foot unopened alley North 74° 15' 46" West, 1021.21 feet to a ¾" rebar set at the southeast corner of land of Ida Mae Lockhart and Alberta G. Larson;

Thence by the line of lands of Lockhart and Larson the following courses and distances:

North 15° 44' 14" East, 150.00 feet to a 1" rebar;

North 74° 15' 29" West, 200.00 feet to a 1" rebar;

South 15° 44' 14" West, 150.00 feet to a ¾" rebar set on the northern line of an unopened 16 foot alley;

Thence by the northern line of the 16 foot unopened alley North 74° 15' 46" West 124.17 feet to a ¾" rebar set at the southwest corner of this parcel;

Thence by a line through lands of the Nedza Real Estate Development Corporation North 16° 05' 56" East, 758.96 feet to a ¾" iron pin;

Thence continuing by a line through land of the Nedza Real Estate Development Corporation and Catherine Nedza North 74° 21' 30" East, 1365.50 feet to a ¾" rebar at the northeast corner of this parcel and at the northwest corner of a parcel conveyed by the Nedza Real Estate Development Corporation to DuBois Realty Partners, L.P., as straw party;

Thence by the easterly line of this parcel and the western line of the parcel of land conveyed by the Nedza Real Estate Development Corporation the following courses and distances:

South 16° 04' 09" West, 406.81 feet to a point;

South 54° 25' 38" West, 33.03 feet to a point;

South 16° 04' 09" West, 328.66 feet to a ¾" rebar set on the northern line of a 16 foot unopened alley and the place of beginning.

Said parcel of land containing 22.94 acres of land.

BEING all of the land conveyed by Nedza Real Estate Development Corporation to DuBois Realty Partners, L.P. by Deed dated October 28, 1999, recorded in the Clearfield County Recorder's Office as Instrument No. 199918025.

TOGETHER WITH the free and common use, right, liberty and privilege of a perpetual easement for ingress and egress over lands of DuBois Realty Partners, L.P., Nedza Real Estate Development Corporation and Developac, Inc. pursuant to and as set forth and more particularly described in (a) that certain Industrial Drive Easement among DuBois Realty Partners, L.P., Nedza Real Estate Development Corporation and Developac, Inc. dated of even date herewith and recorded in the office of the Recorder of Deeds of Clearfield County as Instrument No. 199918027 and (b) that certain Agreement dated March 27, 1992 between David C. Dubois and Nedza Real Estate Corporation recorded in the office of the Recorder of Deeds of Clearfield County in Volume 1451, Page 426, as modified by that certain Modification of Easement date of even date herewith and recorded in the office of the Recorder of Deeds of Clearfield County as Instrument No. 199918024.

FILED

MAR 12 2001

William A. Shaw  
Prothonotary

Atty Kachur pd.

20.00

1 cc Atty  
g