

02-1659-CD
CUN REAL ESTATE vs. RONALD BERGER, et al.

CONTRACTOR'S WAIVER OF LIENS

THIS AGREEMENT, made and entered into this 22nd day of October, 2002, by and between **CJN REAL ESTATE**, a Pennsylvania General Partnership, 943 Windfall Road, St. Marys, Pennsylvania, hereinafter "Owner" and **RONALD BERGER and ELIZABETH BERGER, husband and wife**, of RR #3 Box 178, Punxsutawney, Pennsylvania 15767, hereinafter "Contractor",

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND HEREBY, the parties do agree as follows:

1. The Contractor for himself and anyone else acting or claiming through or under him, intending to be legally bound hereby, does hereby waive and relinquish all right to file a mechanic's lien, claim or notice of intention to file any lien or claim, and does hereby covenant, promise and agree that no mechanics' lien or claim or other lien or claim of any kind whatsoever shall be filed or maintained against the improvements or the estate or the title of the Owner in the Property or the curtilage or curtilages appurtenant thereto, by or in the name of the Contractor or any subcontractor, materialmen or laborers for work done or materials furnished under the Contract or by any other party acting through or under them or any of them for and about the improvements or the Property or any part thereof, or on credit thereof, and that all subcontractors, materialmen and laborers on the works shall look to and hold Contractor personally liable for all subcontractors, materials furnished and work and labor done, so that there shall not be any legal or lawful claim of any kind whatever against Owner for any work done or labor or materials furnished under the Contract for and about the erection, construction and completion of the improvements or under any contract for extra work, or for work supplemental thereto, or otherwise.

2. The Contractor does hereby remise, release and waive for himself, subcontractor and materialmen the right under the Act of Assembly entitled the Mechanics's Lien Act of 1963 to file or enter on record any Mechanic's Lien or Liens against ALL that certain tract of land designated as 190 – 192 West Park Avenue, DuBois, Pennsylvania. See Exhibit "A-1" and "A-2".

3. This Agreement waiving the right of lien shall be an independent covenant and shall operate and be effective as well with respect to work done and materials furnished under any supplemental contract for extra work in the erection, construction and completion of the improvements as to any work and labor done and materials furnished under the Contract.

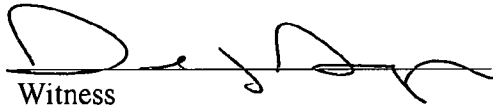
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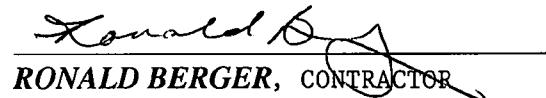
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William A. Shaw
Prothonotary

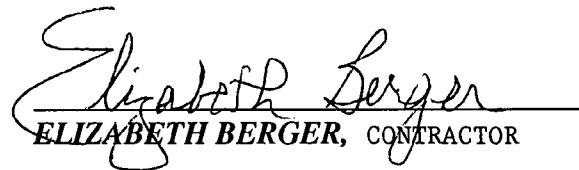
4. In the event Contractor consists of more than one person, firm or corporation, the undertakings hereunder of each of such persons, firms or corporations shall be joint and several, and the word "Contractor" shall mean all or some or any of them. For purposes of this Agreement, the singular shall be deemed to include the plural, and the neuter shall be deemed to include the masculine and feminine, as the context may require. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators and assigns.

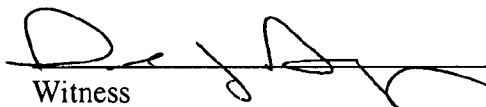
IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby do execute this Agreement the day and year first above written.


Witness


RONALD BERGER, CONTRACTOR


Witness


ELIZABETH BERGER, CONTRACTOR


Witness


**CJN REAL ESTATE,
DR. NATHANIEL W. COLE, PARTNER
OWNER**

EXHIBIT "A-1"

ALL that certain piece or parcel of land situate in the Second Ward of the City of DuBois, County of Clearfield, and Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at an angle iron, a corner in the North line of West Park Avenue and 11.4 feet Easterly from the East abutment of a bridge across Pentz Run; thence by the north line of West Park Avenue, South 60° 48' East 100 feet to an angle bar corner; thence by land now or formerly of Miles & Company, of which this is a part, North 29° 12' East 77.6 feet to an angle bar corner; thence North 84° 00' West 85.15 feet to an angle bar corner; thence by the East bank of Pentz Run, South 55° 52' West 49 feet to the place of beginning. Containing 5,214.4 square feet, as surveyed by J. E. Fry, January 1, 1941.

BEING the same premises conveyed to Thomas K. Scott, Jr., single by a deed dated December 18, 1996 from Thomas Scott and Jean D. Scott, husband and wife said deed recorded December 20, 1996 in Deed and Record Book 1810, page 557.

EXHIBIT "A-2"

ALL those three certain pieces or parcels of land situate, lying and being in the Second Ward of the City of DuBois, Clearfield County, Pennsylvania, bounded and described as follows, to-wit:

THE FIRST THEREOF:

BEGINNING at an iron pipe in the Northerly line of West park Avenue, said pipe being South 60 degrees 48 minutes East, 111.4 feet from the intersection of the Northerly line of West Park Avenue and the Easterly face of the Pentz Run bridge, and being the Southeast corner of lands conveyed to R. D. Emerick by Dicks and Miles Co.; thence by land now or formerly of R. D. Emerick, North 29 degrees 20 minutes East 77.6 feet to an angle iron in the Southerly right of way line of the B&O Railroad siding; thence by said Southerly right of way line South 84 degrees East 18.45 feet to an iron pipe; thence crossing said siding North 6 degrees East 30 feet to an iron pipe in the Northerly right of way line of said siding; thence following said right of way line North 84 degrees West 68.4

feet to an iron pipe in the Southerly line of Pentz Run; thence by the line of Pentz Run North 55 degrees 52 minutes East 196.5 feet to an iron pipe at the intersection of the Southerly line of Pentz Run and the Westerly line of Sandy Lick Creek; thence by the line of Sandy Lick Creek, South 38 degrees 44 minutes East 97 feet to an iron pipe in the Westerly line of the Pennsylvania Railroad; thence by a curve to the left of 589.4 feet radius a distance of 278.8 feet to an iron pipe in the original North line of West park Avenue; thence by said line and by the current Northerly line of West Park Avenue, North 60 degrees 48 minutes West 281.9 feet to an iron pipe and the place of beginning.

Excepting and Reserving, nevertheless, from the premised described in the above identified deed the land conveyed by Miles & Company, Inc., to Forrest G. Dunham and Elsie L. Dunham, his wife, by deed dated May 15, 1941, recorded at Clearfield, Pennsylvania, in Deed book Vol. 336, page 494.

Subject also, to the grant from Dicks and Miles company to Buffalo, Rochester & Pittsburgh Railway Company, dated September 1, 1915, recorded at Clearfield, Pennsylvania, in Deed Book Volume 211, page 241, but with any reversionary rights, if any, which the grantor may have under and by virtue of said deed.

Together with the Grantor's transferable interest in the railroad sidings serving the premises described above, with the buildings thereon erected, with the fixtures attached to the said buildings, and with all appurtenances and rights incidental to said premises; subject, nevertheless, to all utilities, railroad and municipal easements, rights of way, electric, gas, water, sewer, telephone and telegraph lines affecting said premises.

Being the same premises conveyed to Penn Traffic Company, a corporation, by deed of Cameron Distribution Co., Inc., a corporation, dated January 2, 1975, and recorded in the Office of the Recorder of Clearfield County in Volume 730, page 029.

Being known as Tax Map # 7.1-006-000-01557.

Excepting and reserving therefrom the following described parcel:

Beginning at an iron pipe in the North line of West Park avenue, said iron pipe also being in the Westerly line of land formerly of the Pennsylvania Railroad, now the DuBois parking Authority; thence by the Northerly line of West Park Avenue North 60 degrees 48 minutes West 58 feet, more or less, to a point in the line of other lands of the Grantor; thence by other lands of the Grantor in a Northeasterly direction 49 feet, more or less, to a point in the Westerly line of land formerly of the Pennsylvania Railroad, now the DuBois Parking Authority; thence by a curve to the left having a radius of 589.4 feet, a distance of 69 feet more or less to an iron pipe and the place of beginning. Containing 1,360 square feet, more or less.

Subject to the grant from Dicks and Miles Company to Buffalo, Rochester and

Pittsburgh Railroad Company dated September 1, 1915, recorded at Clearfield. Pennsylvania, in Deed Book Volume 211, page 241, with any reversionary rights, if any, which the Grantor may have under and by virtue of said deed.

Being a portion of the same premises which were conveyed to Penn Traffic Company by Cameron Distribution Company, Inc., dated January 2, 1975, and recorded in the Office of the Recorder of Clearfield county in Volume 730, page 29.

THE SECOND THEREOF:

BEGINNING at a point in the permanent easement lines of the DuBois Flood Protection Project Sandy Lick Creek, being also the Easterly line of land of Penn Traffic Company (formerly Miles and Co., Inc.); thence by the permanent easement line of the DuBois Flood Protection Project Sandy Lick Creek Southeasterly 84 feet, more or less; thence by the Easterly line of land now or formerly of The DuBois Parking Authority, by a curve to the left having a radius of 549.4 feet a distance of 64 feet, more or less, to a point; thence by other lands now or formerly of DuBois Parking Authority Southwesterly 52 feet, more or less, to a point in the Easterly line of land of Penn Traffic Co. (formerly Miles and Co., Inc.); thence by a curve to the right having a radius of 589.4 feet a distance of 179 feet, more or less, to a point and the place of beginning. Containing 4,840 square feet, more or less.

Subject to a right of way agreement with Pennsylvania Electric Company for pole, anchor and wire located on property described herein.

Excepting therefrom all coal, oil and gas and other minerals beneath the surface of said land which was excepted or reserved in previous deeds of records and subject to mining rights.

BEING the same premises conveyed to Penn Traffic Company, a corporation, by deed of The DuBois Parking Authority, a Municipal Authority, dated December 27, 1978, and recorded in the Office of the Recorder of Clearfield County in Volume 796, page 484.

Being known as Tax Parcel # 7.1-006-000-01507-B.

THE THIRD THEREOF:

BEGINNING at a point in the permanent easement line of the DuBois Flood Protection Project Sandy Lick Creek, said point being also in the Easterly line of land now or formerly of the DuBois Parking Authority; thence by the permanent easement line of the DuBois Flood Protection Project Southeasterly 48 feet, more or less, to a point; thence by other lands now or formerly of the City of DuBois, Southwesterly 30 feet, more or less, to a point in the Easterly line of land now or formerly of the DuBois Parking Authority; thence

by the easterly line of land now or formerly of the DuBois Parking Authority by a curve to the right having a radius of 549.4 feet, a distance of 64 feet to a point and the place of beginning. Containing 740 square feet, more or less.

Excepting therefrom all coal, oil and gas and other minerals beneath the surface of said land which was excepted or reserved in previous deeds of record and subject to mining rights.

Being the same premises conveyed to Penn Traffic Company, a corporation, by the City of DuBois, a Municipal Corporation of the Third Class, by deed dated December 27, 1978, and recorded in the Office of the Recorder of Clearfield County in Volume 796, page 488.

Being known as Tax Parcel # 7.1-006-000-01561.

The above described parcels are subject to the following two easements:

The First Thereof:

Beginning at an iron pin and plug at a common corner between The Penn Traffic Co. and The Senior Citizen Community Center lands, said iron pin and plug being also in the permanent Easement of The DuBois Flood Protection project Sandy Lick Creek;

Thence along the property line between Penn Traffic Co., and The Senior Citizen Community Center Plot, South 39 degrees 12 minutes 40 seconds West, one hundred three and fifty-four hundredths (103.54) feet to a point;

Thence, through lands of The Penn Traffic Co. the following bearings and distances; North 22 degrees 00 minutes 11 seconds East twenty-three and sixty-six hundredths (23.66) feet to a point; thence North 39 degrees 12 minutes 40 seconds East seventy and ninety-three hundredths (70.93) feet to a point; thence North 50 degrees 47 minutes 10 seconds West eight (8.00) feet to a point; thence North 39 degrees 12 minutes 40 seconds East fourteen and thirty-one hundredths (14.31) feet to a point in the eastern property line of Penn Traffic and The Easement of The DuBois Flood Protection project; thence along said property line and easement South 34 degrees 45 minutes 33 seconds East fifteen and sixty-one hundredths (15.61) feet to an iron pin and plug and the place of beginning. Containing 758 square feet, more or less.

Being the same Deed of Easement conveyed to The City of DuBois, by The Penn Traffic Company dated January 13, 1997, and recorded in the Office of the Recorder of Clearfield County in Volume _____, page _____.

The Second Thereof:

Beginning at an iron pin and plug at a common corner between The Penn Traffic Co. and The Senior Citizen Community Center lands, said iron pin and plug being also in the permanent Easement of The DuBois Flood Protection Project Sandy Lick Creek; Thence along the property line between Penn Traffic Co., and The Senior Citizen Community Center Plot, South 39 degrees 12 minutes 40 seconds West one hundred three and fifty-four hundredths feet (103.54) to a point; thence through lands of The Penn Traffic Co. the following bearings and distances:

- (1) North, 22 degrees 00 minutes 11 seconds East twenty-three and sixty-six hundredths feet (23.66) to a point; thence;
- (2) North 32 degrees 48 minutes 55 seconds East seventy-one and thirty-eight hundredths feet (71.38) to a point; thence;
- (3) North 39 degrees 12 minutes 40 seconds East fourteen and thirty-one hundredths feet (14.31) to a point in the eastern property line of Penn Traffic and The Easement of The DuBois Flood Protection Project.;

Thence along said property line and easement South 34 degrees 45 minutes 33 seconds East fifteen and sixty-one hundredths feet (15.61) to an iron pin and plug and the place of beginning. Containing 1,042 square feet, more or less.

Being the same Deed of Easement conveyed to The City of DuBois by The Penn Traffic Company dated June 2, 1998, and recorded in the Office of the Recorder of Clearfield County in ~~Volume XXXXXX, page XXXXXX~~ Instrument No. 1999-04079

SUBJECT to all exceptions, reservations, conditions, restrictions, rights-of-way and easements as fully and to the same extent as the same are contained in all prior deeds or instruments, or writings, or in any other manner touching or affecting the premises hereby conveyed.

FILED 16 CC
013:25401 Atty Hopkins
OCT 22 2002 pd. 20.00

William A. Shaw
Prothonotary