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Return: *Chas Stone*
A 5535 Broadway, Merrillville, Ind 46450

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BUILDING CONTRACT

THIS AGREEMENT made and entered into this 19th day of November, 1980, by and between DAVID E. MCDANIEL COMPANY, INC., an Indiana corporation (hereinafter referred to as "Contractor"), and LAKE COUNTY TRUST COMPANY, AS TRUSTEE UNDER TRUST NO. 1125 (hereinafter referred to as "Owner"),

W I T N E S S E T H:

The Contractor and Owner, for consideration hereinafter named, mutually covenant and agree as follows:

I

The Contractor shall furnish all the materials and perform all the General Architectural Work required by the following, which are hereinafter collectively referred to as Contract Documents:

- A. This Contract;
- B. Plans for the remodeling and addition to the Wiseway Center, Hobart, Indiana, prepared by David J. Katz & Associates, Inc., dated October 1, 1980;
- C. Specifications for the Addition and Remodeling of the Wiseway Shopping Center prepared by David J. Katz & Associates, Inc., consisting of a title page, table of contents and pages 1 through 41; and
- D. The General Conditions of the Contract for Construction published by the American Institute of Architects, Form A-201, dated August, 1976.

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WILLIAM W. LESKI
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In the event of a conflict between the provisions of this Contract and any of the other aforementioned Contract Documents, this Contract shall govern.

II

Owner shall pay to the Contractor for the performance of this Contract, subject to the additions and deductions as hereinafter provided, the sum of Fifty-Five Thousand Dollars (\$55,000.00), which amount includes all taxes, including Indiana Retail Sales Tax.

The above described contract sum was arrived at as follows:

- A. An original bid of \$55,430.00 was made by the Contractor.
- B. \$430.00 reduction for deleting performance bond requirement.

III

In accordance with the Specifications, the Owner has or will let the following separate contracts: General Architectural,

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Electrical, Plumbing & Building Sewers, and HVAC. Contractor shall so coordinate its work so as not to interfere with or impede the work of the other contractors. In addition, Contractor has been advised that the building contract executed for the General Architectural Work provides that the General Contractor agrees to schedule and oversee the work of the other prime contractors employed by the Owner, including this Contractor, and shall approve all applications for payment made by the other contractors. It is further understood that said contract for General Architectural Work provides that the Owner shall disburse all payments to the other contractors through the General Contractor, who shall have full authority to withhold such payments for delivery to the other prime contractors, including this Contractor, if, within the reasonable exercise of discretion, the General Contractor considers the same necessary to maintain the building schedules. This Contractor hereby agrees to be governed by the schedules as established by the General Contractor for the coordination and performance of all of the work, and this Contractor further expressly authorizes the General Contractor, pursuant to the aforementioned provision in the General Contractor's building contract, to withhold payments to this Contractor if, within the reasonable exercise of discretion by General Contractor, it considers the same necessary to maintain such building schedules.

The Architect, David J. Katz & Associates, Inc., shall supervise the Contractor's work and the Contractor shall furnish to Architect notice whenever the work of the other prime contractors employed by the Owner occasions delays in the work to be performed by this Contractor; however, such delays, if any, shall be certified to by the Architect.

IV

Based upon applications for payment submitted to the Architect by the Contractor and certificates for payment issued by the Architect, the Owner shall make progress payments as follows:

- A. On or about the 15th day of each month, ninety percent (90%) of the proportion of the contract sum properly allowable to labor, materials and equipment incorporated in the work up to the first day of that month, less the aggregate of previous payments in each case; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to ninety percent (90%) of the contract sum, less such retainages as the Architect shall determine for all incomplete work and unsettled claims.
- B. All requests for payment are to be made no later than the fifth (5th) day of each month.
- C. Notwithstanding the foregoing, the total amount of progress payments to be made during the period of construction shall be limited to eight (8) payments.
- D. The Owner shall make final payment thirty (30) days after completion of all the Contractor's work and the issuance of the Architect's final certificate.
- E. All applications for payment shall be submitted on the Contractor's Sworn Affidavit for Payment on form customarily used

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by Chicago Title Insurance Company or the Gary National Bank, and all disbursements shall be made pursuant to sufficient partial and final Waivers of Mechanics Lien notwithstanding the no lien contract provision hereinafter set forth. All requests for payment (draws) shall be approved by the Architect and Marvin Weiss or Arthur Weiss, acting for and on behalf of the Owner, and also shall be made in accordance with the aforementioned General Conditions, AIA Form A-201 (August, 1976).

V

The Contractor shall use its best efforts to complete its work on or before September 10, 1981. Substantial Completion, as that term is used in this Contract, shall mean that stage of the construction when the Owner is able to open the entire premises for business subject only to minor odds and ends, adjustments and finishing that would not unreasonably interfere with the conduct of business. The Owner and the Contractor shall cooperate with each other in every possible way to allow for the installation of store fixtures as soon as the improvements are completed to such a stage as to enable such installation, and as soon as possible so as not to interfere with the work of the Contractor. Any delays or unfinished work of the other contractors certified to by the Architect shall not affect the substantial completion of the work to be performed by the Contractor.

VI

The Contractor and all of his subcontractors shall, during the progress of the work, employ only Union labor. Non-compliance with this provision shall be considered by the Owner as a substantial breach of this Contract.

VII

The Contractor shall provide any and all temporary heat required in the performance of its work; provided that, as the building is able to receive the permanent heating units, the heating contractor shall provide the units and adequate supervising personnel to operate such permanent heating units.

VIII

The Owner shall procure and pay for all necessary comprehensive builders risk insurance sufficient to insure the obligations of the Owner and the Contractor for the performance of the work described in the Plans and Specifications, and shall cause the Contractor to be named as a party to said insurance policies to the extent of its interest therein. Copies of such policies shall be furnished to the Contractor before commencement of the work. The Owner does hereby waive any requirements stated in the General Conditions of the Specifications for the furnishing of a performance bond by the Contractor.

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IX

No claim for payment for extras shall be due and payable unless the same is performed or furnished pursuant to a written Change Order Agreement executed by the Owner and the Owner's Architect and the Contractor. The cost of extras shall be computed according to the following formula: Actual out-of-pocket costs, plus 8% for overhead and profit, plus taxes and insurance, if any.

X

The Contractor shall maintain such insurance as will protect it and the Owner from claims under workmen's compensation actions. Contractor shall also maintain liability insurance, protecting Contractor and Owner from claims for damages because of bodily injury, including death and property damage, which may arise from and during operation under this Contract, until final payment of the Contract Price, with limits of liability in the amount of \$500,000 per person and \$1,000,000 per accident, and \$100,000 for property damage, whether such operations be by itself or by any subcontractor or anyone directly or indirectly employed by either of them, and deliver a copy of endorsement of said insurance policy to the Owner before commencing work, pursuant to this Contract, with Owner to be added to the liability policy as a named insured. Contractor shall save Owner free and harmless and indemnify against any loss, cost or expense, whether from personal injury, death or property damage, tort or contract claims arising from and during operations under this Contract.

XI

Notwithstanding anything herein to the contrary, Contractor shall commence construction only after this Contract is recorded in the Office of the Recorder of Lake County, Indiana.

XII

Should either party hereto bring suit in court, or by way of arbitration, to enforce the terms or breach hereof, it is agreed that the losing party shall pay the successful party his costs and reasonable attorney fees.

XIII

No periodic or final certificate issued, nor any periodic or final payment made to the Contractor, nor partial or entire use or occupancy of the work by the Owner, shall be an acceptance of any work or materials not in accordance with this Contract. The making and acceptance of the final payment (retainage) shall not constitute a waiver of any claims by the Owner, including those arising from unsettled liens, from faulty work or material appearing after latent defects are reasonably discoverable, and from deviations from the Plans and Specifications.

XIV

The Owner's tenant of the premises and its agents shall be permitted to store and thereafter install its equipment and fixtures, and some merchandise, in the premises prior to final completion at such times as the Architect shall determine such action shall not unreasonably interfere with the work of Contractor. Contractor shall keep the building secure and properly closed in for such purposes. Except for Contractor's negligence, Contractor shall not be liable for loss or damage to tenant's personalty.

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XV

Neither the final certificate of the Architect nor the final payment by Owner to Contractor, nor any provision contained in this Contract, nor any statement contained in any of the loan or other closing documents, shall relieve Contractor of the responsibility for faulty materials, workmanship or the failure of any portion of the work to perform and/or operate as intended by the Plans and Specifications; and the Contractor does now hereby expressly guarantee to Owner all materials and workmanship incorporated in its execution of this Contract, which guarantee shall remain in full force and effect for a period of one (1) year from the date that Contractor receives its final payment from Owner. During this period of one year, Contractor shall furnish to Owner prompt free maintenance, inspection and adjusting service to Owner for all mechanical equipment included in the Work. In the event that the Plans and Specifications call for a guarantee, warranty or servicing for a period of more than one (1) year, or in the event parts of the work or material are guaranteed for a period of more than one (1) year to Contractor by a subcontractor, manufacturer or supplier, such as is sometimes the case for roofing, air conditioner compressors and other installations, supplies, material or equipment, then the guarantee of Contractor to Owner shall be for the length of period of time set forth in the Plans or Specifications or as set forth in the guarantee of such installer, equipper or manufacturer to Contractor. During such period of guarantee, warranty or servicing, the Contractor hereby expressly undertakes and agrees to speedily repair and/or replace, without charge to Owner for either labor or material, any and all faulty or defective matters and to pay for any damage to other work resulting therefrom. Upon failure of Contractor to correct, repair or replace within a reasonable time after notice, Owner may have the work done by others and Contractor shall be liable for the amounts expended by Owner, together with reasonable attorney fees. Notwithstanding the foregoing time limitations, if Contractor has substantially deviated from the requirements of the Plans and/or Specifications, and if the deviations are not reasonably discoverable by Owner within the one (1) year following final payments, then upon notice of such deviation, the Contractor shall promptly repair, replace or correct any and all such faulty or defective matters and pay for any damage to other work resulting therefrom.

XVI

Within a reasonable time after the completion of the work, Contractor shall furnish Owner with a set of drawings showing "As Built" conditions noted thereon.

XVII

Contractor agrees that no lien shall attach to the real estate, buildings, structures or any other improvement of the Owner by the Contractor for the performance of his work or by any subcontractor, mechanic, journeyman, laborer or person performing labor upon or furnishing materials or machinery for the within property and/or improvements; and further agrees that this Contract shall be acknowledged as provided in case of deeds and filed and recorded in the Office of the Recorder of Lake County, Indiana. Contractor further represents and warrants that as of the date of this Contract, no labor, material or machinery has been supplied for the within property and/or improvements. This Contract shall hereafter be known as a "No Lien Contract." The Contractor agrees to furnish the Owner with partial and final waiver of liens for all work paid for as it progresses together with a verified Contractor's affidavit of all costs

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in spite of the "no lien" provision of this Contract; and further agrees to execute and deliver to the Owner sufficient evidence of payment and release of claims and/or choses in action, full or partial in form, to be provided by the Architect.

XVIII

Upon completion of the work and prior to final payment, the Contractor shall furnish to the Owner a location survey prepared by an Indiana Registered Surveyor, showing all improvements constructed by this Contractor properly situated on the premises in conformance with all state and local building codes and permits.

XIX

If Contractor fails to prosecute the work required hereunder diligently, or abandons or ceases work for a period of five (5) or more days, or fails to pay laborers, mechanics, materialmen and suppliers when due (and if such failure to pay is not caused by Owner's failure to make payments to Contractor in accordance with this Contract), or shall become insolvent, or shall make an assignment for the benefit of creditors, or shall commence any proceeding in bankruptcy, or if any such proceedings are commenced against it (and are not discharged within ten days), Owner shall have the right, if it so elects and without prejudice to any other rights it may have, by giving forty-eight (48) hours' written notice of its election to Contractor to take over all work, or any part thereof, and all tools, equipment and supplies and finish the work, by whatever method it deems expedient. In such event, Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds Owner's expense of completion of the work, such excess shall be paid to Contractor. If such expense exceeds the unpaid balance, Contractor shall promptly pay the difference to the Owner on demand. Owner's expense of completion shall be established as the actual cost of construction plus ten percent (10%) additional for overhead and supervision.

XX

Contractor shall not assign this Contract or any amount payable hereunder without the prior written consent of Owner. Contractor shall, upon request of Owner, disclose to Owner the names of all subcontractors or other persons with whom it contracts or intends to contract with or hereafter contracts with in connection with the performance of this Contract.

XXI

During the course of construction, Contractor shall provide reasonable entrances and exits for deliveries being made to the existing businesses being operated at the project location, and Contractor shall perform all of its work in such a way so as to cause a minimum amount of disruption to said existing businesses.

XXII

The Owner hereby represents that available funds have been committed by the Gary National Bank of Gary, Indiana, sufficient to cover the entire cost of this project. Owner further represents that the financing is to be done by the issuance of Economic Development Bonds by the City of Hobart. On November 6, 1980, the Hobart Economic Development Commission adopted an Inducement Resolution approving such financing. On November 19, 1980, the Hobart Common

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Council adopted an inducement resolution approving such financing and authorizing the Owner to proceed with the project. The Owner hereby further represents that the funds committed by the Gary National Bank will be available for financing during the period of construction and that the Gary National Bank will be the purchaser of the Economic Development bonds.

XXIII

It is expressly understood and agreed by and between the parties hereto that, anything herein to the contrary notwithstanding, each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee, while in form purporting to be the representations, covenants, undertakings and agreements of the Trustee, are nevertheless each and every one of them made and intended not as personal representations, covenants, undertakings and agreements by the Trustee, or for the purpose or with the intention of binding said Trustee personally, but are made and intended for the purpose of binding only that portion of the Trust Property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee because of this instrument or because of any representation, covenant, undertaking or agreement of said Trustee in this instrument, either express or implied, all such personal liability, if any, being expressly waived and released.

XXIV

The terms, covenants and conditions herein contained shall be binding alike upon the parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals the day and year first above written.

CONTRACTOR:

DAVID E. McDANIEL COMPANY, INC.,
an Indiana corporation,

BY: 

Dennis D. Rowlett, Asst. Vice Pres.

OWNER:

LAKE COUNTY TRUST COMPANY, AS
TRUSTEE UNDER TRUST NO. 1125,

BY: 

Joanne J. Forrester, as Trust Officer

ATTEST:

By: 

Dorothy Horst as Assistant-Secretary

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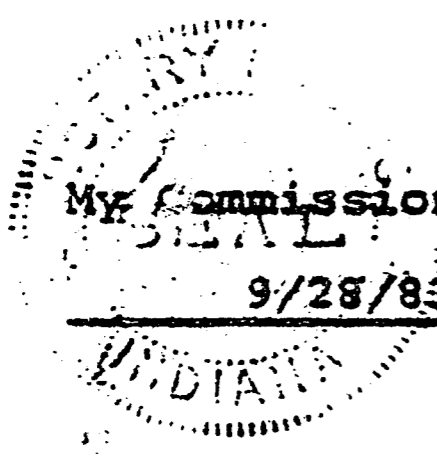
STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, the undersigned Notary Public, personally appeared Dennis D. Rowlett, as Asst. Vice President and duly authorized agent of David E. McDaniel Company, Inc., and acknowledged the execution of the above and foregoing to be his voluntary act and deed this 20th day of November, 1980.

Charles A. Stoner

Charles A. Stoner, Notary Public
Resident of Lake County, Indiana

My Commission Expires:
9/25/83



STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

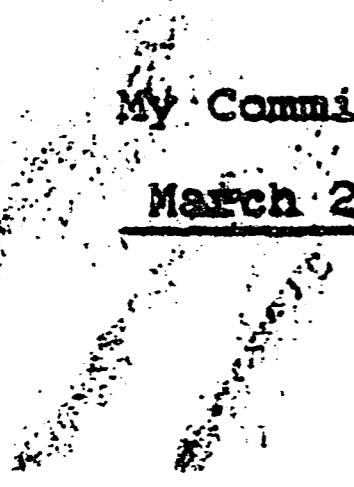
Before me, the undersigned Notary Public, personally appeared the within named Joanne J. Forrester, as Trust Officer, and Dorathy Horst, as Assistant-Secretary, of the Lake County Trust Company, who acknowledged the execution of the foregoing instrument as the free and voluntary act of said corporation, and as their free and voluntary act, acting for such corporation, as Trustee.

Witness my hand and seal this 19th day of NOVEMBER, 1980.

Ruth E. Carlson

Ruth E. Carlson, Notary Public
Resident of Lake County, Indiana

My Commission Expires:
March 22nd, 1982



This instrument prepared by Nick Katich, Attorney at Law, 8585 Broadway, Suite 780, Merrillville, Indiana 46410.

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999 West Ridge Road, Hobart, Indiana

PARCEL I: Lots 1 and 2 in Homewood Sub-division, in the City of Hobart, as per plat thereof, recorded in Plat Book 21, page 12, in the Office of the Recorder of Lake County, Indiana.

PARCEL II: Part of the Southwest $\frac{1}{4}$ of Section 30, Township 36 North, Range 7 West of the 2nd Principal Meridian described as follows: Beginning at a point on the center line of Ridge Road and 40.05 feet Northwesterly from the point of intersection of the center lines of Ridge Road and Virginia Street; thence Northwesterly along the center line of Ridge Road 15.38 feet to the Easterly line of Lot 1, Homewood Subdivision, produced; thence Southwesterly and at right angles, along the Easterly line of said Lot 1 produced and the Easterly line of said Lot 1, a distance of 155 feet to the Southeast corner of said Lot 1; thence Southeasterly, parallel to the center line of Ridge Road, a distance of 15.38 feet; thence Northeasterly, parallel to the Easterly line of said Lot 1, a distance of 155 feet to the point of beginning; in the City of Hobart, Lake County, Indiana.

PARCEL III:

That part of the Southwest $\frac{1}{4}$ of Section 30, Township 36 North, Range 7, West of the 2nd Principal Meridian described as follows: Beginning at the intersection of the South line of Ridge Road and the West line of California Street, thence North $80^{\circ} 32' 00''$ West along the South line of Ridge Road 349.45 feet to a point 15.38 feet Southeasterly of the Northeast corner of Lot 1, Homewood Subdivision, thence South $09^{\circ} 28' 00''$ West parallel to the Easterly line of said Lot 1, a distance of 125 feet, thence North $80^{\circ} 32' 00''$ West 15.38 feet, thence South $09^{\circ} 28' 00''$ West 16 feet, thence North $80^{\circ} 32' 00''$ West 68.62 feet, thence South $0^{\circ} 00' 00''$ West and parallel to the East line of Delaware Street 276.77 feet, thence South $88^{\circ} 12' 00''$ East and parallel to the North line of Home Avenue 325.96 feet, thence North $0^{\circ} 00' 00''$ East and parallel with the West line of California Street 232.88 feet, thence South $80^{\circ} 32' 00''$ East 126.66 feet to the West line of California Street, thence North $0^{\circ} 00' 00''$ East along the West line of California Street 142.75 feet to the place of beginning in the City of Hobart, Lake County, Indiana, and commonly known as 999 West Ridge Road.

PARCEL IV:

Part of the West $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 30, Township 36 North, Range 7 West of the 2 P.M., more particularly described as follows:

Commencing at a point 171 feet North and 30 feet West of the South east corner of the West $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section, thence West 125 feet parallel to the South line of the West $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section, thence North 260 feet parallel to the East line of the West $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section, thence Southeasterly 126.66 to a point 221.96 feet North of the point of beginning, thence South 221.96 feet parallel to the East line of said West $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section to the point of beginning, in the City of Hobart, Lake County, Indiana.