

04-481-CD
SHAWN SMELTZER, et al. vs. E.M. BROWN INCORPORATED.

Shawn Smeltzer et al vs. E.M. Brown Inc.
2004-481-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

SHAWN SMELTZER, CHARLES M.
COLONY, DOROTHY I. COLONY, and
ERIC E. EMINHIZER, Partners, t/d/b/a
ECS PARTNERSHIP
Plaintiffs

v.

E. M. BROWN INCORPORATED,
Defendant

2004-481-CD
Civil Action No. _____ of 2004

EQUITY

NOTICE TO CLAIM AND DEFEND RIGHTS

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defense or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOU LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

David S. Meholick, Court Administrator
Clearfield County Court Administration
230 East Market Street
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

FILED

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William A. Shaw
Prothonotary/Clerk of Courts
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY, and	:	Civil Action No. _____ of 2004
ERIC E. EMINHIZER, Partners, t/d/b/a	:	
ECS PARTNERSHIP	:	
Plaintiffs	:	
	:	
v.	:	EQUITY
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

COMPLAINT- SPECIFIC PERFORMANCE

Plaintiffs Shawn Smeltzer, Charles M. Colony, Dorothy Colony, and Eric Eminhizer, partners, trading and doing business as ECS Partnership, respectfully ask this Court to order Defendant to specifically perform that certain contract for the sale of real property between the parties, and in support thereof state:

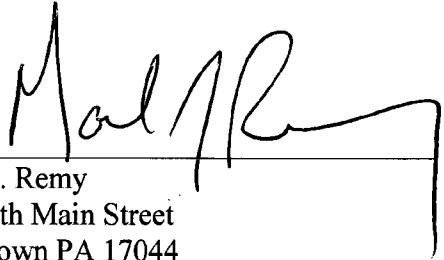
1. Plaintiffs are Shawn Smeltzer, Charles M. Colony, Dorothy Colony, and Eric Eminhizer, partners, trading and doing business as ECS Partnership, a partnership organized under the laws of the Commonwealth of Pennsylvania, with a mailing address of 501 Electric Avenue, Lewistown, Pennsylvania 17044, ("ECS Partnership").
2. Defendant, E. M. Brown Incorporated, is a Pennsylvania corporation with a registered address of 329 Mt. Joy Road, PO Box 767, Clearfield, Pennsylvania 16830.
3. At all times mentioned herein, Defendant was and still is the owner of real property located in Cooper Township, Clearfield County, Pennsylvania, identified as tax ~~parcels~~ ^{maps} T-9, T-8, T-7, U-4 and U-5.

4. ECS Partnership and defendant entered into a written agreement signed and delivered by defendant to plaintiffs, for the sale of the premises by defendant to plaintiff for the sum of Two Million Four Hundred Thousand Dollars (\$2,400,000.00). A copy of the agreement of sale is attached hereto, marked Exhibit A and made a part hereof.
5. Pursuant to Paragraph 3(D) of the agreement, settlement was to occur 90 days after Cooper Township approved item 27(B)(3) of the agreement (which provides that "The buyers will be able to sell the tracts as enumerated by separate tax numbers without subdivision.") after January 12, 2004.
6. Since the execution of the agreement of sale, Plaintiffs ECS Partnership have always been, and now are, ready and willing to comply with all and singular the clauses in the agreement of sale on their part to be kept and performed.
7. Defendant has wholly failed to keep or perform his part of the agreement of sale.
8. Defendant repudiated the contract by contacting ECS Partnership, through counsel, by letter dated March 25, 2004, informing ECS Partnership that Defendant believed the contract had expired, and indicating that Defendant will not perform the contract by selling the property. A copy of said letter is attached hereto, marked Exhibit B and made a part hereof.
9. The parties are still within the time for performance as set forth in Paragraph 3(D) of the agreement.
10. Defendant's repudiation of the contract negates the need for tender of payment by ECS Partnership, although ECS Partnership remains ready to perform.

WHEREFORE, Plaintiffs Shawn Smeltzer, Charles M. Colony, Dorothy Colony, and Eric Eminhizer, partners, trading and doing business as ECS Partnership, pray that Defendant, E. M. Brown Incorporated, be ordered to specifically perform the agreement of sale and by good and sufficient deed convey the premises and every part thereof with marketable title and free of all encumbrances to the Plaintiffs, Shawn Smeltzer, Charles M. Colony, Dorothy Colony, and Eric Eminhizer, partners, trading and doing business as ECS Partnership, in fee simple and legally sign, seal, acknowledge and deliver the deed

to Plaintiffs in proper legal form, and accept in consideration thereof the agreed purchase price, which Plaintiffs now here offer, along with such other general relief as may be just and proper.

SEARER, SCHRUM AND SEARER

By: 

Mark J. Remy
12 South Main Street
Lewistown PA 17044
(717) 242-5250
Attorneys for Plaintiffs

STANDARD AGREEMENT FOR THE SALE OF VACANT LAND

A/S-VL

This form recommended and improved for, but not restricted to use by, members of the Pennsylvania Association of REALTORS® (PAR)

SELLER'S BUSINESS RELATIONSHIP WITH PA LICENSED BROKER

BROKER (Company) _____ PHONE _____
 ADDRESS _____ FAX _____
 BROKER IS THE AGENT FOR SELLER. Designated Agent(s) for Seller, if applicable: _____
 OR
 Broker is NOT the Agent for Seller and is a/an: ☐ AGENT FOR BUYER ☐ TRANSACTION LICENSEE

BUYER'S BUSINESS RELATIONSHIP WITH PA LICENSED BROKER

BROKER (Company) Howard Hanna Laurel Realty PHONE 814-849-3636
 ADDRESS 130 Pickering Street, Brookville, PA 15825 FAX 814-938-9335
 BROKER IS THE AGENT FOR BUYER. Designated Agent(s) for Buyer, if applicable: _____
 OR
 Broker is NOT the Agent for Buyer and is a/an: ☐ AGENT FOR SELLER ☐ SUBAGENT FOR SELLER ☐ TRANSACTION LICENSEE

When the same Broker is Agent for Seller and Agent for Buyer, Broker is a Dual Agent. All of Broker's licensees are also Dual Agents UNLESS there are separate Designated Agents for Buyer and Seller. If the same Licensee is designated for Seller and Buyer, the Licensee is a Dual Agent.

1. This Agreement, dated August 28, 2003, is between SELLER(S)

E.M. Brown Inc.

called "Seller," and BUYER(S)

E.C.S. Partnership Ltd.

called "Buyer."

2. PROPERTY (1-98) Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase:
 ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as:
 All parcels owned in fee by seller on tax map T-9, T-8, T-7, U-4, U-5 including any contiguous parcels located or assessed in Centre County.

in the Township _____ of Cooper _____,
 County of Clearfield in the Commonwealth of Pennsylvania, Zip Code _____
 Identification (e.g., Tax ID #; Parcel #; Lot, Block, Deed Book, Page, Recording Date)
 Tax maps T-9, T-8, T-7, U-4, & U-5

3. TERMS (7-01)

(A) Purchase Price \$2,400,000.00 Two Million Four Hundred Thousand U.S. Dollars

which will be paid to Seller by Buyer as follows:

1. Cash or check at signing this Agreement:	\$	<u>50,000.00</u>
2. Cash or check within _____ days of the execution of this Agreement:	\$	_____
3. _____	\$	_____
4. Cash, cashier's or certified check at time of settlement:	\$	<u>2,350,000.00</u>
TOTAL \$		<u>2,400,000.00</u>

(B) Deposits paid on account of purchase price to be held by Broker for Seller, unless otherwise stated here:
Deposit to be held in escrow by Peter F. Smith (seller's attorney).

(C) Seller's written approval to be on or before: September 08, 2003

(D) Settlement to be on 90 days after Township approval of item 27B3 after Jan 12/04 or before if Buyer and Seller agree.

(E) Conveyance from Seller will be by fee simple deed of special warranty unless otherwise stated here: REB PRES.
 SPECIAL WARRANTY

(F) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here:

(G) At time of settlement, the following will be adjusted pro-rata on a daily basis between Buyer and Seller, reimbursing where applicable: taxes (see Notices and Information Regarding Tax Proration); rents; interest on mortgage assumptions; condominium fees and homeowner association fees, if any; water and/or sewer fees, if any, together with any other lienable municipal services. The charges are to be pro-rated

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Buyer(s) REB

Exhibit A

for the period(s) covered: Seller will pay up to and including the date of settlement; Buyer will pay for all days following settlement, unless otherwise stated here:

4. **FIXTURES AND PERSONAL PROPERTY (1-00)**

(A) INCLUDED in this sale and purchase price are all existing items permanently installed in the Property, free of liens. Also included:

(B) LEASED items (not owned by Seller):

(C) EXCLUDED:

5. **DATES/TIME IS OF THE ESSENCE (6-02)**

(A) The said date for settlement and all other dates and times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be of the essence of this Agreement and are binding.

(B) For the purposes of this Agreement, number of days will be counted from the date of execution, by excluding the day this Agreement was executed and including the last day of the time period.

(C) The date of settlement is not extended by any other provision of this Agreement and may only be extended by mutual written agreement of the parties.

(D) Certain time periods are pre-printed in this Agreement as a convenience to the Buyer and Seller. Any pre-printed time periods are negotiable and may be changed by striking out the pre-printed text and inserting a different time period acceptable to all parties.

6. **FINANCING CONTINGENCY (6-02)**

☒ **WAIVED.** This sale is NOT contingent on financing.

☐ **ELECTED**

(A) This sale is contingent upon Buyer obtaining financing as follows:

1. Amount of loan \$ _____

2. Minimum Term _____ years

3. Type: ☐ Land Acquisition Only
☐ Land Acquisition and Construction
☐ Other _____

4. Interest rate _____ %; however, Buyer agrees to accept the interest rate as may be committed by the lender, not to exceed a maximum interest rate of _____ %.

5. Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the loan (excluding any insurance premiums and VA funding fee) not to exceed _____ % (0% if not specified) of the loan.

The interest rate and fees provisions required by Buyer are satisfied if a lender makes available to Buyer the right to guarantee an interest rate at or below the Maximum Interest Rate specified herein with the percentage fees at or below the amount specified herein. Buyer gives Seller the right, at Seller's sole option and as permitted by the lending institution and applicable laws, to contribute financially, without promise of reimbursement, to the Buyer and/or lender to make the above terms available to Buyer.

(B) Within 10 days of the execution of this Agreement, Buyer will make a completed, written financing application to a responsible lender according to the terms above. The Broker for Buyer, if any, otherwise the Broker for Seller is authorized to communicate with the lender for the purposes of assisting in the loan process.

(C) 1. **Financing commitment date** _____. If a written commitment is not received by Seller by the above date, Buyer and Seller agree to extend the commitment date until Seller terminates this Agreement in writing by notice to Buyer.

2. Upon receipt of a financing commitment, Buyer will promptly deliver a copy of the commitment to Seller.

3. Seller has the option to terminate this Agreement in writing, on or after the financing commitment date, if the financing commitment:

a. Is not valid until the date of settlement, OR

b. Is conditioned upon the sale and settlement of any other property, OR

c. Contains any other condition not specified in this Agreement.

4. If this Agreement is terminated as specified in paragraphs 6 (C) (1) or (3), or financing is not received for settlement, all deposit monies paid on account of purchase price will be returned to Buyer. Buyer will be responsible for any premiums for mechanics' lien insurance, and/or title search, or fee for cancellation of same, if any; AND/OR any premiums for flood insurance, mine subsidence insurance, and/or fire insurance with extended coverage or cancellation fee, if any; AND/OR any appraisal fees and charges paid in advance to the lender.

(D) **Seller Assist**

☐ NOT APPLICABLE

☐ APPLICABLE. Seller will pay:

☐ \$ _____ maximum, toward Buyer's closing costs as permitted by the lender.

☐

7. **INSPECTIONS (6-02)**

(A) Seller hereby agrees to permit inspections by authorized appraisers, reputable certifiers, insurer's representatives, surveyors, municipal officials and/or Buyer as may be required by the lending institutions, if any, or insuring agencies. Seller further agrees to permit any other inspections required by or provided for in the terms of this Agreement. Buyer has the right to attend all inspections.

(B) Buyer agrees that Buyer, or anyone on the Property at Buyer's direction or on Buyer's behalf, will leave the Property in its same condition. In the case of damage, Buyer will bear the risk of restoring the Property or of reimbursing Seller for any loss of value.

(C) Buyer reserves the right to make a pre-settlement inspection of the Property. Buyer's right to make this inspection is not waived by any

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Buyer(s) AB

other provision of this Agreement.

8. STATUS OF WATER (7-01)

(A) An off-Property source of water

☒ is not available for the Property.

☐ is available for the Property through (Name of Service Provider) _____

CONNECTION TO OFF-PROPERTY WATER SOURCE CONTINGENCY

☒ WAIVED. Buyer acknowledges that Buyer has the option to make this Agreement contingent on determining that the terms of connecting the Property to an off-Property water source are acceptable to Buyer. Buyer WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ ELECTED. Buyer will, within _____ days of the execution of this Agreement and at Buyer's expense, determine the terms of connecting the Property to the water source. If the terms of connection are not acceptable to Buyer, Buyer will:

1. Accept the Property as is and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
2. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(B) ☐ Seller represents that the Property is served by an on-site water source.

ON-SITE WATER SERVICE INSPECTION CONTINGENCY

☒ WAIVED. Buyer acknowledges that Buyer has the option to request an on-site water service inspection of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ ELECTED

1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Seller a written inspection report by a qualified, professional water testing company of the quality and/or quantity of the on-site water service.
2. Seller agrees to locate and provide access to the on-site (or individual) water system, if applicable, at Seller's expense, if required by the inspection company. Seller also agrees to restore the Property, at Seller's expense, prior to settlement.
3. If the report reveals that the water service does not meet the minimum standards of any applicable governmental authority and/or fails to satisfy the requirements for quality and/or quantity as set by the lender, if any, then Seller will, within _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:
 - a. Upgrade the water service to the minimum acceptable levels, before settlement, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement, OR
 - b. Not upgrade the water service.
4. If Seller chooses not to upgrade the service to minimum acceptable levels, or fails to respond within the time given, Buyer will, within _____ days, either:
 - a. Accept the Property and the water service and, if required by the lender, if any, and/or any governmental authority, upgrade the water service before settlement or within the time required by the lender, if any, and/or any governmental authority, at Buyer's expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 23 of this Agreement. If Seller denies Buyer permission to upgrade the water service, Buyer may, within 5 days of Seller's denial, terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
 - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(C) ☐ Buyer is aware that there is no developed water source for the Property.

ON-SITE WATER SERVICE APPROVAL CONTINGENCY

☒ WAIVED. Buyer acknowledges that Buyer has the option to make this Agreement contingent on receiving municipal approval for the installation of a well. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ ELECTED. Within 10 days of the execution of this Agreement, Buyer will make a completed, written application for the municipal approval for the installation of a well. This sale is contingent upon Buyer obtaining, within _____ days of the execution of this Agreement, municipal approval for the installation of a well. Buyer will pay all costs associated with the application for approval, including but not limited to, any municipal fees and test expenses. In the event Buyer is unable to secure approval for well installation, Buyer will either:

1. Accept the Property as is and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
2. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

9. STATUS OF SEWER (6-02)

(A) Seller represents that Property is served by:

- ☐ Off-Property Sewage Disposal System
- ☐ Individual On-Lot Sewage Disposal System (See Sewage Notice 1)
- ☐ Individual On-Lot Sewage Disposal System in Proximity to Well (See Sewage Notice 1; see Sewage Notice 4, if applicable)
- ☐ Ten-acre Permit Exemption (See Sewage Notice 2)
- ☐ Holding Tank (See Sewage Notice 3)
- ☒ None (See Sewage Notice 1)
- ☐ None Available (See Sewage Notice 5 or Sewage Notice 6, as applicable)

(B) Connection to an off-Property sewage disposal system

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- ☐ is not available for the Property.
☐ is available for the Property through (Name of Service Provider) _____

PUBLIC SYSTEM CONTINGENCY

- ☒ **WAIVED.** Buyer acknowledges that Buyer has the option to make this Agreement contingent on receiving municipal approval for the connection of the Property to a sewage disposal system. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.
- ☐ **ELECTED.** Within 10 days of the execution of this Agreement, Buyer will make a completed, written application for the municipal approval for the connection of the Property to a sewage disposal system. This sale is contingent upon Buyer obtaining, within _____ days of the execution of this Agreement, municipal approval for the connection of the Property to a sewage disposal system. Buyer will pay all costs associated with the application for approval, including but not limited to, any municipal fees and test expenses. In the event Buyer is unable to secure approval for sewer connection, Buyer will either:
1. Accept the Property as is and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
 2. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(C) INDIVIDUAL ON-LOT SEWAGE DISPOSAL INSTALLATION CONTINGENCY

- ☒ **WAIVED.** Buyer acknowledges that Buyer has the option to make this Agreement contingent on receiving all applicable government approval for the installation of an individual sewage system. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.
- ☐ **ELECTED.** Within _____ days of the execution of this Agreement,
- ☐ Buyer
☐ Seller
- will make a completed, written application to all appropriate authorities for the installation of an on-lot sewage disposal system, and will pay all costs associated with the application for approval, including but not limited to, any fees and percolation test expenses. This sale is contingent upon the receipt of all applicable government approval for the installation of an individual sewage system within _____ days of the execution of this Agreement. In the event test results are unacceptable to Buyer or approval for an individual sewage system is unable to be secured, Buyer will either:
1. Accept the Property as is and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
 2. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID. Buyer will promptly deliver all information and test results acquired through the approval process to Seller.

(D) INDIVIDUAL ON-LOT SEWAGE DISPOSAL INSPECTION CONTINGENCY

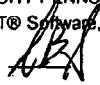
- ☒ **WAIVED.** Buyer acknowledges that Buyer has the option to request an individual on-lot sewage disposal inspection of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.
- ☐ **ELECTED**
1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Seller a written inspection report by a qualified, professional inspector of the individual on-lot sewage disposal system.
 2. Seller, at Seller's expense, agrees, if and as required by the inspection company, to locate, provide access to and empty the individual on-lot sewage disposal system. Seller also agrees to restore the Property, at Seller's expense, prior to settlement.
 3. If the report reveals defects that do not require expansion or replacement of the existing sewage disposal system, Seller will, within _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:
 - a. Correct the defects before settlement, including retests, at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement, OR
 - b. Not correct the defects.
 4. If Seller chooses not to correct the defects, or if Seller fails to respond within the time given, Buyer will, within _____ days, either:
 - a. Accept the Property and the system and, if required by the lender, if any, and/or any governmental authority, correct the defects before settlement or within the time required by the lender, if any, and/or any governmental authority, at Buyer's sole expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 23 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of Seller's denial, terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
 - b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.
 5. If the report reveals the need to expand or replace the existing individual on-lot sewage disposal system, Seller may, within _____ days of receipt of the report, submit a corrective proposal to Buyer. The corrective proposal will include, but not be limited to, the name of the remediation company; provisions for payment, including retests; and a projected completion date for corrective measures. Within 5 days of receiving Seller's corrective proposal, or if no corrective proposal is received within the time given, Buyer will:
 - a. Agree to the terms of the corrective proposal, if any, in writing, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement, OR
 - b. Accept the Property and the system and, if required by the lender, if any, and/or any governmental authority, correct the defects before settlement or within the time required by the lender, if any, and/or any governmental authority, at Buyer's sole expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 23 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of Seller's denial, terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and

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 Seller(s) _____

- this Agreement will be VOID, OR
- c. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

10. ENVIRONMENTAL AUDIT & PROPERTY INSPECTIONS (1-98)

(A) Seller represents and warrants that Seller has no knowledge, except as listed below, of whether:

1. The Property has been contaminated by any substance in any manner which requires remediation;
2. The Property contains any wetlands, flood plains, or any other environmentally sensitive areas, development of which is limited or precluded by law;
3. The Property contains any substance, the removal or disposal of which is subject to any law or regulation;
4. Any law has been violated in the handling or disposing of any material waste or the discharge of any material into the soil, air, surface water, or ground water;
5. The Property contains underground fuel or liquid storage tanks.

EXCEPTIONS:

1. No known hazardous waste generation, disposal and or mismanagement has occurred on the premises.
2. No known underground storage tanks on the premises.
3. Acid mine drainage seeps in flood plain areas have caused stressed vegetative conditions on the premises.
4. It appears that all the watershed with the exception of Crawford Run have been degraded to some degree by prior mining activities. Such conditions including areas of unreclaimed strip mines, drainage and acid mine and flows, are considered not to be the responsibility of E.M. Brown Inc. to manage or reradiate under present law, regulation and policy because they are preexisting conditions. E.M. Brown Inc. Cooper # 1 waste water treatment facility must be continued by E.M. Brown Inc. until subsequent order of D.E.P.

(B) Seller and Buyer acknowledge that Broker:

1. Is a licensed real estate broker;
2. Is not an expert in construction, engineering, or environmental matters; and
3. Has not made and will not make any representations or warranties nor conduct investigations of the environmental condition or suitability of the Property, or any adjacent property.

(C) ENVIRONMENTAL AUDIT/INSPECTION CONTINGENCY

☒ **WAIVED.** Buyer understands that Buyer has the option to request audits and inspections of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement. Buyer reserves the right to make a pre-settlement inspection of the Property.

☐ **ELECTED.** Within _____ days of the execution of this Agreement, Buyer has the option, at Buyer's expense, to have the following audits or inspections completed by a licensed or otherwise qualified professional (check the inspections that Buyer will order):

- ☐ Environmental Hazards
- ☐ Underground Storage Tanks
- ☐ Property Boundary/Square Footage Verification/Delineation
- ☐ Flood Plain Verification/Delineation
- ☐ Wetlands Verification/Delineation
- ☐ Specific Property Inspection limited to _____

If Buyer is not satisfied with any condition as stated in any written report Buyer receives pursuant to the audits or inspections obtained under this provision, Buyer will, within the time allotted for obtaining such audits or inspections:

1. Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
2. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

11. NOTICES & ASSESSMENTS (6-02)

(A) Seller represents as of Seller's execution of this Agreement, that no public improvement and/or homeowner association assessments have been made against the Property which remain unpaid and that no notice by any government or public authority has been served upon Seller or anyone on Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances which remain uncorrected, and that Seller knows of no condition that would constitute violation of any such ordinances which remain uncorrected, unless otherwise specified here:

(B) Seller knows of no other potential notices (including violations) and assessments except as follows:

(C) In the event any notices (including violations) and assessments are received after execution of this Agreement and before settlement, Seller will notify Buyer in writing, within 5 days of receiving the notice or assessment, that Seller will:

1. Comply with notices and assessments at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement, OR
2. NOT comply with notices and assessments at Seller's expense.
3. If Seller chooses not to comply with notices and assessments, or fails within the time given to notify Buyer if Seller will comply, Buyer will notify Seller within 5 days in writing that Buyer will:

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Buyer(s) *BA*

- a. Comply with the notices and assessments at Buyer's expense and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
 - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.
- If Buyer fails to notify Seller within the time given, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

(D) Buyer is advised that access to a public road may require issuance of a highway occupancy permit from the Pennsylvania Department of Transportation.

12. TITLE, SURVEYS, & COSTS (6-02)

- (A) The Property is to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER the following: existing deed restrictions, historic preservation restrictions or ordinances, building restrictions, ordinances, easements of roads, easements visible upon the ground, easements of record, privileges or rights of public service companies, if any; otherwise the title to the above described real estate will be good and marketable and such as will be insured by a reputable Title Insurance Company at the regular rates.
- (B) Buyer will pay for the following: (1) Title search, title insurance and/or mechanics lien insurance or fee for cancellation of same, if any; (2) Flood insurance, fire insurance with extended coverage, mine subsidence insurance, and cancellation fees, if any; (3) Appraisal fees and charges paid in advance to lender, if any; (4) Buyer's customary settlement costs and accruals.
- (C) Any survey or surveys which may be required by the Title Insurance Company or the abstracting attorney for the preparation of an adequate legal description of the Property (or the correction thereof), will be secured and paid for by Seller. However, any survey or surveys desired by Buyer or required by lender will be secured and paid for by Buyer.
- (D) In the event Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Company at the regular rates, as specified in paragraph 12(A), Buyer will have the option of: (1) taking such title as Seller can give with no change to the purchase price; or (2) being repaid all monies paid by Buyer to Seller on account of the purchase price and being reimbursed by Seller for any costs incurred by Buyer for any inspections or certifications obtained according to the terms of the Agreement, those items specified in paragraph 12(C) and in paragraph 12(B) items (1), (2), (3); and in the latter event there will be no further liability or obligation on either of the parties hereto and this Agreement will become VOID.

13. ZONING CLASSIFICATION (1-98)

- (A) Failure of this Agreement to contain the zoning classification (except in cases where the property {and each parcel thereof, if subdividable} is zoned solely or primarily to permit single-family dwellings) shall render this Agreement voidable at the option of the Buyer, and, if voided, any deposits tendered by the Buyer will be returned to the Buyer without any requirement for court action.

Zoning Classification: None

(B) ZONING APPROVAL CONTINGENCY

☐ NOT APPLICABLE

☒ WAIVED. Buyer acknowledges that Buyer has the option to make this Agreement contingent on receiving municipal approval for the intended use of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ ELECTED

1. This sale is contingent on Buyer receiving zoning approval, or variance, or special exception from _____ (proposed use). (municipality) to use the Property as a _____
2. Application for the approval (or variance/special exception) will be made within _____ days of the execution of this Agreement. Buyer will pay for applications, legal representation, and any other costs associated with obtaining approval.
3. If the municipality requires the application to be signed by the current owner, Seller agrees to do so.
4. If final, unappealable approval is not obtained by _____, this Agreement will be VOID, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer.

14. LAND USE RESTRICTIONS OTHER THAN ZONING (7-01)

(A) ☒ None Known

(B) ☐ The Property, or a portion of it, is preferentially assessed for tax purposes under the following Acts (See Land Use Restrictions Notices):

☐ Farmland and Forest Land Assessment Act (Clean and Green Program)

☐ Open Space Act (an Act enabling certain counties of the Commonwealth to covenant with land owners for preservation of land in farm, forest, water supply, or open space uses)

☐ Agricultural Area Security Law (Development Rights)

☐ Other _____

☐ Buyer and Seller have determined the consequences that may result from the sale or a change in the use of the Property, or any portion of it.

(C) ☐ Seller has no knowledge of any covenants, subdivision restrictions or other restrictions affecting the Property unless otherwise stated here: _____

(D) ☐ Seller has no knowledge of any rights to timber, crops or minerals, except coal, that do not transfer with the Property unless otherwise stated here: _____

(E) ☐ Buyer acknowledges that any land use restrictions associated with the Property's enrollment in the Clean and Green Program or under the Open Space Act or any other program identified in this paragraph 14, are encumbrances upon the Property. Buyer agrees that delivery of title subject to these encumbrances will not violate Seller's duty under paragraph 12(A) of this Agreement.

15. COAL NOTICE

☐ NOT APPLICABLE

☒ APPLICABLE

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Buyer(s) 

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Seller(s) _____

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHTS OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.) "Buyer acknowledges that he may not be obtaining the right of protection against subsidence resulting from coal mining operations, and that the property described herein may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. This acknowledgment is made for the purpose of complying with the provisions of Section 14 of the Bituminous Mine Subsidence and the Land Conservation Act of April 27, 1966." Buyer agrees to sign the deed from Seller which deed will contain the aforesaid provision.

16. POSSESSION (7-01)

(A) Possession is to be delivered by deed, keys and:

1. Physical possession to vacant Property free of debris, with all structures broom-clean, at day and time of settlement, AND/OR
2. Assignment of existing lease(s), together with any security deposits and interest, at time of settlement, if Property is leased at the execution of this Agreement or unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of execution of this Agreement.

(B) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases for the Property without the written consent of Buyer.

17. RECORDING (3-85) This Agreement will not be recorded in the Office for the Recording of Deeds or in any other office or place of public record and if Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a breach of this Agreement.

18. ASSIGNMENT (3-85) This Agreement will be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that Buyer will not transfer or assign this Agreement without the written consent of Seller.

19. DEPOSIT & RECOVERY FUND (6-02)

(A) Deposits paid by Buyer within 30 days of settlement will be by cash, cashier's or certified check. Deposits, regardless of the form of payment and the person designated as payee will be paid in U.S. Dollars, and will be paid to Broker or party identified in paragraph 3(B), who will retain them in an escrow account until consummation or termination of this Agreement in conformity with all applicable laws and regulations. Any uncashed check tendered as deposit may be held pending the acceptance of this offer.

(B) Upon termination of this Agreement, the Broker holding the deposit monies will release the deposit monies in accordance with the terms of a fully executed written agreement between Buyer and Seller.

(C) In the event of a dispute over entitlement to deposit monies, a broker holding the deposit is required by the Rules and Regulations of the State Real Estate Commission (49 Pa. Code §35.327) to retain the monies in escrow until the dispute is resolved. In the event of litigation for the return of deposit monies, a broker will distribute the monies as directed by a final order of court or the written Agreement of the parties. Buyer and Seller agree that, in the event any broker or affiliated licensee is joined in litigation for the return of deposit monies, the attorneys' fees and costs of the broker(s) and licensee(s) will be paid by the party joining them.

(D) A Real Estate Recovery Fund exists to reimburse any persons who have obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who have been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658, or 1-800-822-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).

20. PLANNED COMMUNITY (HOMEOWNER ASSOCIATION) NOTICE FOR PURPOSES OF RESALE ONLY (7-01)

- ☒ NOT APPLICABLE
☐ APPLICABLE

(A) Buyer acknowledges that the Property is part of a planned community as defined by the Uniform Planned Community Act. (See Definition of Planned Community Notice for the definition contained in the Act.)

(B) §5407(a) of the Act requires Seller to furnish Buyer with a copy of the Declaration (other than plats and plans), the bylaws, the rules and regulations of the association, and a Certificate containing the provisions set forth in §5407(a) of the Act.

(C) Within _____ days of the execution of this Agreement, Seller will submit a request to the association for a Certificate and the documents necessary to enable Seller to comply with the Act. The Act provides that the association is required to provide these documents within 10 days of Seller's request.

(D) Under the Act, Seller is not liable to Buyer for the failure or delay of the association to provide the Certificate in a timely manner, nor is Seller liable to Buyer for any erroneous information provided by the Association and included in the Certificate.

(E) Buyer may declare the Agreement VOID at any time before Buyer's receipt of the association documents and for 5 days thereafter, OR until settlement, whichever occurs first. Buyer's notice declaring the Agreement void must be in writing; thereafter all deposit monies will be returned to Buyer.

(F) In the event the association has the right to buy the Property (right of first refusal), and the association exercises that right, Seller will reimburse Buyer for all monies paid by Buyer on account of purchase price and for any costs incurred by Buyer for: (1) Title search, title insurance and/or mechanics lien insurance or fee for cancellation of same, if any; (2) Flood insurance, fire insurance with extended coverage, mine subsidence insurance, and cancellation fees, if any; (3) Appraisal fees and charges paid in advance to lender, if any; (4) Buyer's customary settlement costs and accruals.

21. MAINTENANCE & RISK OF LOSS (6-02)

(A) Seller will maintain the Property, grounds, fixtures, and any personal property specifically scheduled herein in its present condition, normal wear and tear excepted.

(B) In the event any system or appliance included in the sale of the Property fails and Seller does not repair or replace the item, Seller will promptly notify Buyer in writing of Seller's choice to:

1. Repair or replace the failed system or appliance before settlement, or credit Buyer at settlement for the fair market value of the failed system or appliance (this option must be acceptable to the lender, if any). In each case, Buyer accepts the Property and agrees to the

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 Seller(s) _____

- RELEASE set forth in paragraph 23 of this Agreement, OR
2. Not repair or replace the failed system or appliance and not credit Buyer at settlement for the fair market value of the failed system or appliance. If Seller does not repair, replace or offer a credit for the failed system or appliance, Buyer will notify Seller in writing within 5 days or before settlement, whichever is sooner, that Buyer will:
 - a. Accept the Property and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
 - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.
- (C) Seller will bear risk of loss from fire or other casualties until time of settlement. In the event of damage by fire or other casualties to any property included in this sale that is not repaired or replaced prior to settlement, Buyer will have the option of rescinding this Agreement and promptly receiving all monies paid on account of purchase price or of accepting the Property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that Buyer may insure Buyer's equitable interest in this Property as of the time of execution of this Agreement.
12. **WAIVER OF CONTINGENCIES (1-00)**
In the event this Agreement is contingent on Buyer's right to inspect and/or repair the Property, Buyer's failure to exercise any of Buyer's options within the time limits specified in the contingency provision(s) will constitute a WAIVER of that contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement.
23. **RELEASE (1-00)** Buyer hereby releases, quit claims and forever discharges SELLER, ALL BROKERS, their LICENSEES, EMPLOYEES, and any OFFICER or PARTNER of any one of them and any other PERSON, FIRM, or CORPORATION who may be liable by or through them, from any and all claims, losses or demands, including, but not limited to, personal injuries and property damage and all of the consequences thereof, whether now known or not, which may arise from the presence of environmental hazards, any deficiencies in the on-site water service system, or any defects or conditions on the Property. This release will survive settlement.
24. **REPRESENTATIONS (1-00)**
(A) Buyer understands that any representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller, Brokers, their licensees, employees, officers, or partners are not a part of this Agreement, unless expressly incorporated or stated in this Agreement. It is further understood that this Agreement contains the whole agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this Agreement will not be altered, amended, changed, or modified except in writing executed by the parties.
(B) It is understood that Buyer has inspected the Property before signing this Agreement (including fixtures and any personal property specifically scheduled herein), or has waived the right to do so, and has agreed to purchase it in its present condition unless otherwise stated in this Agreement. Buyer acknowledges that Brokers, their licensees, employees, officers, or partners have not made an independent examination or determination of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, or of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the systems contained therein.
(C) Broker(s) may perform services to assist unrepresented parties in complying with the terms of this Agreement.
(D) The headings, captions, and the numbers in this Agreement are meant only to make it easier to find the paragraphs.
25. **DEFAULT (6-02)**
(A) Seller has the option of retaining all sums paid by Buyer, including the deposit monies, should Buyer:
 1. Fail to make any additional payments as specified in paragraph 3; OR
 2. Furnish false or incomplete information to Seller, Broker(s), or the lender, if any, concerning Buyer's legal or financial status, or fail to cooperate in the processing of the financing application, which acts would result in the failure to obtain the approval of a financing commitment; OR
 3. Violate or fail to fulfill and perform any other terms or conditions of this Agreement.
- (B) Unless otherwise checked in paragraph 25 (C), Seller may elect to retain those sums paid by Buyer, including deposit monies, in one of the following manners:
 1. On account of purchase price; OR
 2. As monies to be applied to Seller's damages; OR
 3. As liquidated damages for such breach.
- (C) ☒ Seller is limited to retaining sums paid by Buyer, including deposit monies, as liquidated damages.
(D) If Seller retains all sums paid by Buyer, including deposit monies, as liquidated damages pursuant to paragraph 25 (B) or (C), Buyer and Seller will be released from further liability or obligation and this Agreement will be VOID.
26. **MEDIATION (7-96)**
☐ NOT AVAILABLE
☒ WAIVED. Buyer and Seller understand that they may choose to mediate at a later date, should a dispute arise, but that there will be no obligation on the part of any party to do so.
☐ ELECTED
(A) Buyer and Seller will try to resolve any dispute or claim that may arise from this Agreement through mediation, in accordance with the Rules and Procedures of the Home Sellers/Home Buyers Dispute Resolution System. Any agreement reached through a mediation conference and signed by the parties will be binding.
(B) Buyer and Seller acknowledge that they have received, read, and understand the Rules and Procedures of the Home Sellers/Home Buyers Dispute Resolution System. (See Mediation Notice).
(C) This agreement to mediate disputes arising from this Agreement will survive settlement.
27. **SPECIAL CLAUSES (1-02)**
(A) The following are part of this Agreement if checked:

☐ Sale & Settlement of Other Property

☐ Settlement of Other Property Contingency Addendum (PAR Form SOP)

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Seller(s) _____

Buyer(s) 

- ☐ Contingency Addendum (PAR Form SSP)
☐ Sale & Settlement of Other Property Contingency
with Right to Continue Marketing Addendum
(PAR Form SSP-CM)

- ☐ Tenant-Occupied Property Addendum (PAR Form TOP)
☐
☐
☐

(B)

1. Gas and oil rights will remain with E.M. Brown Inc.
2. All timber and mineral rights will be transferred to buyers.
3. The buyers will be able to sell the tracts as enumerated by separate tax numbers without subdivision.
4. The acreage south of Interstate 80 does not have a right of way. The right of way may require more than the 90 day time limit. A deeded right of way to this property must be provided, whether by use of railroad grade or by other approved road prior to closing. If right of way can not be obtained in 90 days, the portion of the property north of I-80 will be transferred to the buyers within the 90 days and the portion of land below I-80 will transfer to the buyers after the right of way is obtained. Acreage is to be prorated per tax map records.
5. Buyers require a separate deed for each parcel of land that can be separated without subdivision at time of closing.
6. E.C.S. Partnership Ltd. will keep all information, documents and other materials supplied or communicated by E.M. Brown Inc. in complete confidence. If buyer does not purchase this property, all documents together with any copies including but not limited to, the complete timber appraisal done by E.C.S. Partnership Ltd. and any other documents or studies pertaining to said tract of land will be remitted to the sellers.
7. E.C.S. Partnership Ltd. will pay their attorney fees for title search, survey, engineering work and other work associated with this purchase. E.C.S. Partnership Ltd. will warrant that it will indemnify and hold E.M. Brown Inc. harmless from any claims by broker or agents.
8. The information on the three structures on the property will be provided upon the execution of this sales agreement.
9. Buyer and seller agree that neither party will record, a memorandum of it, or affidavit effecting E. M. Brown Inc. title to the premises.
10. Buyers promises to indemnify and hold E.M. Brown Inc., its successors and assigns, harmless from any damage arising by its partners, its agents or employees present on these premises.
11. Upon execution of this agreement, all timber harvesting will be stopped.
12. Upon execution of this agreement, all listings and or marketing of the property will stop.
13. The amount of stripped land and appropriate maps will be provided to buyers upon execution of this agreement.

See Addendum 1 - 14 (B)

Buyer and Seller acknowledge receiving a copy of this Agreement at the time of signing.

NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT. Return by facsimile transmission (FAX) of this Agreement, and all addenda, bearing the signatures of all parties, constitutes acceptance of this Agreement. Parties to this transaction are advised to consult an attorney before signing if they desire legal advice.

- ☐ Buyer has received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.
☐ Buyer has received a statement of Buyer's estimated closing costs before signing this Agreement.
☐ Buyer has read and understands the notices and explanatory information set forth in this Agreement.
☐ Buyer has received the Deposit Money Notice (for cooperative sales when Broker for Seller is holding deposit money) before signing this Agreement.

BUYER'S MAILING ADDRESS: _____

BUYER'S CONTACT NUMBER(S): _____

WITNESS

John Buffa

BUYER

John B. Buffa
E.C.S. Partnership Ltd.

DATE

9/18/03

501 Electric Ave., Lewistown, PA 17044

Seller hereby approves the above contract this (date) _____

And in consideration of the services rendered in procuring the Buyer, Seller agrees to pay the named Broker for Seller a fee of _____ off/from the herein specified sale price. In the event Buyer defaults hereunder, any monies paid on account will be divided _____, Seller, _____

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ker for Seller, but in no event will the sum paid to the Broker for Seller be in excess of the above specified Broker's fee.

Seller has received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.

Seller has received a statement of Seller's estimated closing costs before signing this Agreement.

Seller has read and understands the notices and explanatory information set forth in this Agreement.

LLER'S MAILING ADDRESS: _____

LLER'S CONTACT NUMBER(S): _____

ITNESS

William M. Brown

SELLER

Robert E. Brown

DATE

Sept 17th 03

E.M. Brown Inc.

The undersigned ☐ Broker for Seller ☐ Broker for Buyer agree to submit to mediation in accordance with paragraph 26 of this Agreement.

BROKER FOR SELLER (Company Name) _____

DATE _____

ACCEPTED BY _____

BROKER FOR BUYER (Company Name) _____

DATE _____

ACCEPTED BY _____

NOTICES AND INFORMATION

INFORMATION REGARDING TAX PRORATION

For purposes of prorating real estate taxes, the "periods covered" by the tax bills are as follows: for all counties and municipalities in Pennsylvania, and for the Philadelphia, Pittsburgh, and Scranton school districts, the tax bills are for the period January 1 to December 31. For all other school districts, the period covered by the tax bill is July 1 to June 30.

NOTICE TO BUYERS SEEKING FINANCING

The appraised value of the Property is used in determining the maximum amount of the loan and may be different from the purchase price and/or market value.

NOTICES AND INFORMATION ON PROPERTY CONDITION INSPECTIONS

PROPERTY INSPECTION NOTICES

Flood Plains: If the Property is located in a flood plain, Buyer may be required to carry additional insurance.

Property Boundary / Square Footage: Buyer is advised that Seller has not had the Property surveyed and that any fences, hedges, walls and other natural or constructed barriers may or may not represent the true boundary lines of the Property. Buyer is also advised that any numerical representations of square footage of the structure(s) and/or lot size are approximations only and may be inaccurate. Buyer is advised to engage a professional surveyor or obtain an independent measurement of the structure(s) and/or lot size if Buyer wishes to make this sale contingent on Buyer's approval of the Property's boundaries or square footage.

Water (On-site Service): If the Property is not serviced by public water, Buyer may elect to have the on-site water system inspected by a professional water testing company. In addition, on-site water service systems may have to meet certain quality and/or quantity requirements set by the municipality or the lender.

ENVIRONMENTAL NOTICES

Environmental Hazards: The U.S. Environmental Protection Agency has a list of hazardous substances, the use and disposal of which are restricted by law. Generally, if hazardous substances are found on a property, it is the property owner's responsibility to dispose of them properly. For more information and a list of hazardous substances, contact U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460, (202) 260-2090.

Wetlands: Wetlands are protected by both the federal and state government. Buyer may wish to have the Property inspected for wetlands by an environmental engineer to determine if permits for plans to build, improve, or develop the property would be affected or denied because of wetlands.

SEWAGE NOTICES

NOTICES PURSUANT TO THE PENNSYLVANIA SEWAGE FACILITIES ACT

NOTICE 1: THERE IS NO CURRENTLY EXISTING COMMUNITY SEWAGE SYSTEM AVAILABLE FOR THE SUBJECT PROPERTY. Section 7 of the Pennsylvania Sewage Facilities Act provides that no person shall install, construct, request bid proposals for construction, alter, repair or occupy any building or structure for which an individual sewage system is to be installed, without first obtaining a permit. Buyer is advised by this notice that, before signing this Agreement of Sale, Buyer should contact the local agency charged with administering the Act to determine the procedure and requirements for obtaining a permit for an individual sewage system. The local agency charged with administering the Act will be the municipality where the Property is located or that municipality working cooperatively with others.

NOTICE 2: THIS PROPERTY IS SERVICED BY AN INDIVIDUAL SEWAGE SYSTEM INSTALLED UNDER THE TEN-ACRE PERMIT EXEMPTION PROVISIONS OF SECTION 7 OF THE PENNSYLVANIA SEWAGE FACILITIES ACT. (Section 7 provides that a permit may not be required before installing, constructing, awarding a contract for construction, altering, repairing or connecting to an individual sewage system where a ten-acre parcel or lot is subdivided from a parent tract after January 10, 1987.) Buyer is advised that soils and site testing were not conducted and that, should the system malfunction, the owner of the Property or properties serviced by the system at the time of a malfunction may be held liable for any contamination, pollution, public health hazard or nuisance which occurs as a result.

NOTICE 3: THIS PROPERTY IS SERVICED BY A HOLDING TANK (PERMANENT OR TEMPORARY) TO WHICH SEWAGE IS CONVEYED BY A WATER CARRYING SYSTEM AND WHICH IS DESIGNED AND CONSTRUCTED TO FACILITATE ULTIMATE DISPOSAL OF THE SEWAGE AT ANOTHER SITE. Pursuant to the Pennsylvania Sewage Facilities Act, Seller must provide a history of the annual cost of maintaining the tank from the date of its installation or December 14, 1995, whichever is later.

NOTICE 4: AN INDIVIDUAL SEWAGE SYSTEM HAS BEEN INSTALLED AT AN ISOLATION DISTANCE FROM A WELL

THAT IS LESS THAN THE DISTANCE SPECIFIED BY REGULATION. The regulations at 25 Pa. Code §73.13 pertaining to minimum horizontal isolation distances provide guidance. Subsection (b) of §73.13 states that the minimum horizontal isolation distance between an individual water supply or water supply system suction line and treatment tanks shall be 50 feet. Subsection (c) of §73.13 states that the horizontal isolation distance between the individual water supply or water supply system suction line and the perimeter of the absorption area shall be 100 feet.

NOTICE 5: THIS LOT IS WITHIN AN AREA IN WHICH PERMIT LIMITATIONS ARE IN EFFECT AND IS SUBJECT TO THOSE LIMITATIONS. SEWAGE FACILITIES ARE NOT AVAILABLE FOR THIS LOT AND CONSTRUCTION OF A STRUCTURE TO BE SERVED BY SEWAGE FACILITIES MAY NOT BEGIN UNTIL THE MUNICIPALITY COMPLETES A MAJOR PLANNING REQUIREMENT PURSUANT TO THE PENNSYLVANIA SEWAGE FACILITIES ACT AND REGULATIONS PROMULGATED THEREUNDER.

NOTICE 6: A REQUIRED REVISION FOR NEW LAND DEVELOPMENT, OR AN EXCEPTION TO THE REQUIREMENT TO REVISE, OR A REQUIRED SUPPLEMENT HAS NOT BEEN APPROVED FOR THIS LOT. SEWAGE FACILITIES ARE NOT AVAILABLE FOR THIS LOT AND SEWAGE FACILITIES WILL NOT BE AVAILABLE, NOR MAY CONSTRUCTION BEGIN UNTIL SEWAGE FACILITIES PLANNING HAS BEEN APPROVED PURSUANT TO THE PENNSYLVANIA SEWAGE FACILITIES ACT AND REGULATIONS PROMULGATED THEREUNDER.

LAND USE RESTRICTIONS NOTICES

FARMLAND AND FOREST LAND ASSESSMENT ACT (CLEAN AND GREEN PROGRAM): Properties enrolled in the Clean and Green Program receive preferential tax assessment.

Notices Required by Seller: A Seller of Property enrolled in the Clean and Green Program must submit notice of the sale and any proposed changes in the use of Seller's remaining enrolled Property to the County Assessor 30 days before the transfer of title to Buyer.

Notices Required by Buyer: A Buyer of Property enrolled in the Clean and Green Program must submit notice of any proposed changes Buyer intends to make in the use of the Property being purchased to the County Assessor at least 30 days prior to undertaking any changes.

Loss of Preferential Tax Assessment: The sale of Property enrolled in the Clean and Green Program may result in the loss of program enrollment and the loss of preferential tax assessment for the Property and/or the land of which it is a part and from which it is being separated. Removal from enrollment in the Clean and Green Program may result in the charge of roll-back taxes and interest. A roll-back tax is the difference in the amount of taxes paid under the program and the taxes that would have been paid in the absence of Clean and Green enrollment. The roll-back taxes are charged for each year that the Property was enrolled in the program, limited to the past 7 years.

Buyer and Seller have been advised of the need to determine the tax implications that will or may result from the sale of the Property to Buyer or that may result in the future as a result in any change in use of the Property or the land from which it is being separated by contacting the County Tax Assessment Office before the execution of this Agreement of Sale.

OPEN SPACE ACT (Official name: An act enabling certain counties of the Commonwealth to covenant with land owners for preservation of land in farm, forest, water supply, or open space uses (1966, Jan. 13 P.L. (1965) 1292). This Act enables counties to enter into covenants with owners of land designated as farm, forest, water supply, or open space land on an adopted municipal, county, or regional plan for the purpose of preserving the land as open space. A covenant between the owner and county is binding upon any Buyer of the Property during the period of time that the covenant is in effect (5 or 10 years). Covenants automatically renew at the end of the covenant period unless specific termination notice procedures are followed.

Buyer acknowledges that the purchase of Property for which there is a covenant, will not extinguish the covenant and that a change in the use of the land to any other use other than that designated in the covenant will constitute a breach. When a breach of the covenant occurs, the then-owner is required to pay roll-back taxes and interest. A roll-back tax is the difference in the amount of taxes paid and the taxes that would have been paid in the absence of the covenant. The roll-back taxes are charged for each year that the Property was subject to the covenant, limited to the past 5 years.

Buyer has been advised of the need to determine the restrictions that will apply from the sale of the Property to Buyer and the tax implications that will or may result from a change in use of the Property, or any portion of it. Buyer is further advised to determine the term of any covenant now in effect.

DEFINITION OF A PLANNED COMMUNITY

The Uniform Planned Community Act defines "planned community" as real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. The term excludes a cooperative and a condominium, but a cooperative or condominium may be part of a planned community. For the purposes of this definition, "ownership" includes holding a leasehold interest of more than 20 years, including renewal options, in real estate. The term includes non-residential campground communities.

Exemptions from the Uniform Planned Community Act - When a Certificate of Resale Is Not Required

The owner of a property located within a planned community is not required to furnish the buyer with a certificate of resale under the following circumstances:

- A. The Planned Community contains no more than 12 units, provided there is no possibility of adding real estate or subdividing units to increase the size of the planned community.
- B. The Planned Community is one in which all of the units are restricted exclusively to nonresidential use, unless the declaration provides that the resale provisions are nevertheless to be followed.
- C. The Planned Community or units are located outside the Commonwealth of Pennsylvania.
- D. The transfer of the unit is a gratuitous transfer.
- E. The transfer of the unit is required by court order.
- F. The transfer of the unit is by the government or a governmental agency.
- G. The transfer of the unit is the result of foreclosure or in lieu of foreclosure.

Notices Regarding Public Offering Statements and Right to Rescission

If Seller is a Declarant of the condominium or planned community, Seller is required to furnish Buyer with a copy of the Public Offering Statement and its amendments. For condominiums, the delivery of the Public Offering Statement must be made no later than the date the buyer executes this Agreement. Buyer may cancel this Agreement within 15 days after receiving the Public Offering Statement and any amendments that materially and adversely affects Buyer. For planned communities, the Declarant must provide the Buyer with a copy of the Public Offering Statement and its amendments no later than the date the Buyer executes this Agreement. Buyer may cancel this Agreement within 7 days after receiving the Public Offering Statement and any amendments that materially and adversely affect Buyer.

EXECUTION DATE

All changes to the Agreement should be initialed and dated. The date of execution is the date when Buyer and Seller have indicated full acceptance of this Agreement by signing and/or initialing it.

COMMUNICATIONS WITH BUYER AND/OR SELLER

Whenever this Agreement contains a provision that requires or allows communication/delivery to a Buyer, said provision shall be satisfied by communication/delivery to the Agent for Buyer, if any. If there is no Agent for Buyer, all such provisions may be satisfied only by communication/delivery being made directly to the Buyer, unless otherwise agreed to by the parties.

Wherever this Agreement contains a provision that requires or allows communication/delivery to a Seller, said provision shall be satisfied by communication/delivery to the Agent for Seller, if any. If there is no Agent for Seller, all such provisions may be satisfied only by communication/delivery being made directly to the Seller, unless otherwise agreed to by the parties.

MEDIATION

DISPUTE RESOLUTION SYSTEM RULES AND PROCEDURES

1. **Agreement of Parties** The Rules and Procedures of the Dispute Resolution System (DRS) apply when the parties have agreed in writing to mediate under DRS. The written agreement can be achieved by a standard clause in an agreement of sale, an addendum to an agreement of sale, or through a separate written agreement.
2. **Initiation of Mediation** If a dispute exists, any party may start the mediation process by submitting a completed Request to Initiate Mediation DRS Transmittal Form (Transmittal Form) to the local Association of REALTORS® (hereafter "Administrator"). The Transmittal Form should be available through the Administrator's office. The initiating party should try to include the following information when sending the completed Transmittal Form to the Administrator:
 - a. A copy of the written agreement to mediate if there is one, OR a request by the initiating party to have the Administrator contact the other parties to the dispute to invite them to join the mediation process.
 - b. The names, addresses and telephone numbers of the parties involved in the dispute, including the name of every insurance company known to have received notice of the dispute or claim and the corresponding file or claim number.
 - c. A brief statement of the facts of the dispute and the damages or relief sought.
3. **Selection of Mediator** Within five days of receiving the completed Transmittal Form, the Administrator will send each party to the dispute a copy of the Transmittal Form and a list of qualified mediators and their fee schedules. Each party then has ten days to review the list of mediators, cross off the name of any mediator to whom the party objects, and return the list to the Administrator. The Administrator will appoint the first available mediator who is acceptable to all parties involved.

A mediator who has any financial or personal interest in the dispute or the results of the mediation cannot serve as mediator to that dispute, unless all parties are informed and give their written consent.
4. **Mediation Fees** Mediation fees will be divided equally among the parties and will be paid *before* the mediation conference. The parties will follow the payment terms contained in the mediator's fee schedule.
5. **Time and Place of Mediation Conference** Within ten days of being appointed to the dispute, the mediator will contact the parties and set the date, time and place of the mediation conference. The mediator must give at least twenty days' advance notice to all parties. The mediation conference should not be more than sixty days from the mediator's appointment to the dispute.

PREPARED BY AGENT: William Allemang,

A/S-VL, Standard Agreement For The Sale Of Vacant Land, 6/02, Pennsylvania Association of REALTORS®

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09/02/03 10:34:07

Buyer(s) 

Conduct of Mediation Conference The parties attending the mediation conference will be expected to:

- a. Have the authority to enter into and sign a binding settlement to the dispute.
- b. Produce all information required for the mediator to understand the issues of the dispute. The information may include relevant written materials, descriptions of witnesses and the content of their testimony. The mediator can require the parties to deliver written materials and information before the date of the mediation conference.

The mediator presiding over the conference:

- a. Will impartially conduct an orderly settlement negotiation.
- b. Will help the parties define the matters in dispute and reach a mutually agreeable solution.
- c. Will have no authority to render an opinion, to bind the parties to his or her decision, or to force the parties to reach a settlement.

Formal rules of evidence will not apply to the mediation conference.

Representation by Counsel Any party who intends to be accompanied to the mediation conference by legal counsel will notify the mediator and the other parties of the intent at least ten days before the conference.

- i. **Confidentiality** No aspect of the mediation can be relied up or introduced as evidence in any arbitration, judicial or other proceeding. This includes, but is not limited to, any opinions or suggestions made by any party regarding a possible settlement; any admissions made during the course of the mediation; any proposals or opinions expressed by the mediator; and any responses given by any party to opinions, suggestions, or proposals.

No privilege will be affected by disclosures made in the course of the mediation.

Transcripts or recordings of the mediation will not be allowed without the prior, written consent of all parties and the mediator.

Records, reports, and other documents received or prepared by the mediator or Administrator cannot be compelled by an arbitration, judicial, or other proceeding, with the exception of an agreement that was reached in the course of mediation and signed by all the parties.

Neither the mediator nor the Administrator can be compelled to testify in any proceeding regarding information given or representations made either in the course of the mediation or in any confidential communication.

9. **Mediated Settlement** When a dispute is resolved through mediation, the mediator will put the complete agreement in writing and all parties will sign the written agreement within ten days of the conclusion of the mediation conference. Every reasonable effort will be made to sign the written agreement at the end of the conference.

10. **Judicial Proceedings and Immunity** NEITHER THE ADMINISTRATOR, THE MEDIATOR, THE NATIONAL ASSOCIATION OF REALTORS®, THE PENNSYLVANIA ASSOCIATION OF REALTORS®, NOR ANY OF ITS MEMBER BOARDS, WILL BE DEEMED NECESSARY OR INDISPENSABLE PARTIES IN ANY JUDICIAL PROCEEDINGS RELATING TO MEDIATION UNDER THESE RULES AND PROCEDURES, NOR WILL ANY OF THEM SERVING UNDER THESE PROCEDURES BE LIABLE TO ANY PARTY FOR ANY ACT, ERROR OR OMISSION IN CONNECTION WITH ANY SERVICE OR THE OPERATION OF THE HOME SELLERS/HOME BUYERS DISPUTE RESOLUTION SYSTEM.

PREPARED BY AGENT: William Allemang,

A/S-VL, Standard Agreement For The Sale Of Vacant Land, 6/02. Pennsylvania Association of REALTORS®

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09/02/03 10:34:07

Page 14 of 14
Seller(s) _____

Buyer(s) 

Addendum 1-14 (B)

Any tract that is identified as a separate tax number is to be considered an existing lot and can be conveyed without subdivision approval.

BS

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-5595
FAX (814) 765-6662

E-mail
pfsatty@uplink.net

March 25, 2004

Daniel Zinn Searer, Esquire
Searer, Schrum and Searer
12 South Main Street
Lewistown, PA 17044

Re: E. M. Brown - ECS Partnership

Dear Mr. Searer:

Please forgive my delay in responding to your telephone call last Wednesday, but I needed direction from my client.

E. M. Brown, Inc. has decided not to extend the sales agreement. We believe that it expired according to its own terms because it was not closed in a timely fashion.

My client has also requested that I call your attention to paragraph 27 (B) 7 which requires ECS to return to or provide to E. M. Brown, Inc. all documents, appraisals or other materials pertaining to the subject real estate.

Please let me know when your client is ready to deliver those materials. E. M. Brown, Inc. would also be happy to pick them up at a reasonable location.

Sincerely,



Peter F. Smith

PFS/hab

cc: E. M. Brown, Inc.

SHAWN SMELTZER, CHARLES M. :
COLONY, DOROTHY I. COLONY, and : Civil Action No. _____ of 2004
ERIC E. EMINHIZER, Partners, t/d/b/a :
ECS PARTNERSHIP :
Plaintiffs :
 :
v. : EQUITY
 :
E. M. BROWN INCORPORATED, :
Defendant :

Date: 4/6/04

Chm. Ch

				<p>SEARER, SCHIRUM & SEARER ATTORNEYS AT LAW 12 SOUTH MAIN STREET LEWISTOWN, PA 17044 (717) 242-6250</p>
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APR 07 2004

RECEIVED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

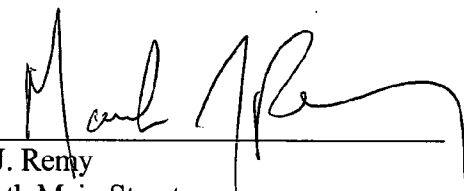
SHAWN SMELTZER, CHARLES M.	:	2004-481-CD
COLONY, DOROTHY I. COLONY, and	:	Civil Action No. _____ of 2004
ERIC E. EMINHIZER, Partners, t/d/b/a	:	
ECS PARTNERSHIP	:	
Plaintiffs	:	
	:	
v.	:	EQUITY
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

PRAECIPE FOR LIS PENDENS

To the Prothonotary:


Please index the above-captioned equitable action for specific performance of a contract for the sale of real property as a lis pendens against the real property of E. M. Brown Incorporated, Defendant, located in Cooper Township, Clearfield County, Pennsylvania, identified as tax ~~parcels~~ ^{maps} T-9, T-8, T-7, U-4 and U-5.

SEARER, SCHRUM AND SEARER

By: 
Mark J. Remy
12 South Main Street
Lewistown PA 17044
(717) 242-5250
Attorneys for Plaintiffs

Dated: 4-7-04

FILED

APR 07 2004 
01/12/201
William A. Shaw
Prothonotary/Clerk of Courts
5 ckr to Hrr

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SHAWN SMELTZER, CHARLES M.
COLONY, DOROTHY I. COLONY and
ERIC E. EMINHIZER, Partners t/d/b/a
ECS PARTNERSHIP,
Plaintiffs

vs.

E. M. BROWN INCORPORATED,
Defendant

No. 2004-481-CD

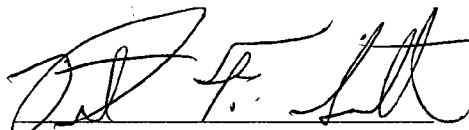
PRAECIPE ENTERING APPEARANCE

To: William A. Shaw, Prothonotary of Clearfield County

Dear Sir :

Please enter my appearance as counsel for the Defendant in the above-captioned matter.

Respectfully submitted



Peter F. Smith, Esquire
Attorney for Defendant

Dated: May 5, 2004

FILED

MAY 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION


SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY and	:	No. 2004-481-CD
ERIC E. EMINHIZER, Partners t/d/b/a	:	
ECS PARTNERSHIP,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Defendant in the above-captioned matter, certify that I sent a true and correct copy of a **PRAECIPE ENTERING APPEARANCE** and the Defendant's **PRELIMINARY OBJECTIONS** by U.S. First Class Mail to the attorney for the Plaintiffs at the following address:

Mark J. Remy, Esquire
Searer, Schrum and Searer
12 South Main Street
Lewistown, PA 17044

Date: May 5, 2004


Peter F. Smith, Attorney for Defendant

FILED

MAY 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

SMELTZER, SHAWN al

Sheriff Docket #

15394

VS.

04-481-CD

E.M. BROWN INCORPORATED

PRAECIPE FOR LIS PENDENS & COMPLAINT-SPECIFIC PERFOR

SHERIFF RETURNS

NOW APRIL 15, 2004 AT 8:42 AM SERVED THE WITHIN PRAECIPE FOR LIS PENDENS & COMPLAINT-SPECIFIC PERFORMANCE (EQUITY) ON E.M. BROWN INCORPORATED, DEFENDANT AT EMPLOYMENT, 329 MT. JOY ROAD, PO BOX 767, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JENNIFER KOBE, OFFICE MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE FOR LIS PENDENS & COMPLAINT-SPECIFIC PERFORMANCE (EQUITY) AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

Return Costs

Cost	Description
20.37	SHERIFF HAWKINS PAID BY: PLFF. CK# 1693
10.00	SURCHARGE PAID BY: ATTY CK# 7114

Sworn to Before Me This

So Answers,

17 Day Of May 2004
William A. Shaw

Chester A. Hawkins
by Marilyn Hamr
Chester A. Hawkins
Sheriff

FILED

0 1:30 PM

MAY 17 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ECS PARTNERSHIP, LTD., a	:	
Pennsylvania Limited Liability Company,	:	
SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY, and	:	No. 2004-481-CD
ERIC E. EMINHIZER, Formerly	:	
Partners, t/d/b/a ECS PARTNERSHIP,	:	
Plaintiffs	:	
	:	
v.	:	EQUITY
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

NOTICE TO CLAIM AND DEFEND RIGHTS

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defense or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOU LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

David S. Meholick, Court Administrator
Clearfield County Court Administration
230 East Market Street
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

FILED

MAY 17 2004
0/1:50/1w
William A. Shaw
Prothonotary/Clerk of Courts
1 cent to ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ECS PARTNERSHIP, LTD., a	:	
Pennsylvania Limited Liability Company,	:	
SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY, and	:	No. 2004-481-CD
ERIC E. EMINHIZER, Formerly	:	
Partners, t/d/b/a ECS PARTNERSHIP,	:	
Plaintiffs	:	
	:	
v.	:	EQUITY
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

AMENDED COMPLAINT- SPECIFIC PERFORMANCE

ECS PARTNERSHIP, LTD., respectfully asks this Court to order Defendant to specifically perform that certain contract for the sale of real property between the parties, and in support thereof states:

1. Plaintiff ECS PARTNERSHIP, LTD. is a Pennsylvania Limited Liability Company, with a registered address of 501 Electric Avenue, Lewistown, Pennsylvania 17044.
2. Plaintiffs Shawn Smeltzer, Charles M. Colony, Dorothy Colony, and Eric Eminhizer formerly traded as ECS Partnership, a partnership organized under the laws of the Commonwealth of Pennsylvania, with a mailing address of 501 Electric Avenue, Lewistown, Pennsylvania 17044.
3. ECS PARTNERSHIP, LTD. is the successor in interest to ECS Partnership.
4. Defendant, E. M. Brown Incorporated, is a Pennsylvania corporation with a registered address of 329 Mt. Joy Road, PO Box 767, Clearfield, Pennsylvania 16830.
5. At all times mentioned herein, Defendant was and still is the owner of real property located in Cooper Township, Clearfield County, Pennsylvania, identified as tax parcels T-9, T-8, T-7, U-4 and U-5.

6. ECS PARTNERSHIP, LTD. and Defendant entered into a written agreement signed and delivered by defendant to plaintiffs, for the sale of the premises by Defendant to ECS PARTNERSHIP, LTD. for the sum of Two Million Four Hundred Thousand Dollars (\$2,400,000.00). A copy of the agreement of sale is attached hereto, marked Exhibit A and made a part hereof.
7. Pursuant to Paragraph 3(D) of the agreement, settlement was to occur 90 days after Cooper Township approved item 27(B)(3) of the agreement (which provides that "The buyers will be able to sell the tracts as enumerated by separate tax numbers without subdivision.") after January 12, 2004.
8. Since the execution of the agreement of sale, ECS PARTNERSHIP, LTD. has always been, and is, ready and willing to comply with all and singular the clauses in the agreement of sale on their part to be kept and performed.
9. Defendant has wholly failed to keep or perform its part of the agreement of sale.
10. Defendant repudiated the contract by contacting ECS PARTNERSHIP, LTD., through counsel, by letter dated March 25, 2004, and informing ECS PARTNERSHIP, LTD. that Defendant believed the contract had expired, and indicating that Defendant will not perform the contract by selling the property. A copy of said letter is attached hereto, marked Exhibit B and made a part hereof.
11. Defendant's repudiation of the contract negates the need for tender of payment by ECS PARTNERSHIP, LTD., although ECS PARTNERSHIP, LTD. remains ready to perform.

WHEREFORE, ECS PARTNERSHIP, LTD., prays that Defendant, E. M. Brown Incorporated, be ordered to specifically perform the agreement of sale and by good and sufficient deed convey the premises and every part thereof with marketable title and free of all encumbrances to ECS PARTNERSHIP, LTD., in fee simple and legally sign, seal, acknowledge and deliver the deed to ECS PARTNERSHIP, LTD. in proper

legal form, and accept in consideration thereof the agreed purchase price, which ECS PARTNERSHIP, LTD. now here offers, along with such other general relief as may be just and proper.

SEARER, SCHRUM AND SEARER

By: 

Mark J. Remy
12 South Main Street
Lewistown PA 17044
(717) 242-5250
Attorneys for Plaintiffs

STANDARD AGREEMENT FOR THE SALE OF VACANT LAND

A/S-VL

This form recommended and improved for, but not restricted to use by, members of the Pennsylvania Association of REALTORS® (PAR)

SELLER'S BUSINESS RELATIONSHIP WITH PA LICENSED BROKER

BROKER (Company) _____ PHONE _____
 ADDRESS _____ FAX _____
 BROKER IS THE AGENT FOR SELLER. Designated Agent(s) for Seller, if applicable: _____
 OR
 Broker is NOT the Agent for Seller and is a/an: ☐ AGENT FOR BUYER ☐ TRANSACTION LICENSEE

BUYER'S BUSINESS RELATIONSHIP WITH PA LICENSED BROKER

BROKER (Company) Howard Hanna Laurel Realty PHONE 814-849-3636
 ADDRESS 130 Pickering Street, Brookville, PA 15825 FAX 814-938-9335
 BROKER IS THE AGENT FOR BUYER. Designated Agent(s) for Buyer, if applicable: _____
 OR
 Broker is NOT the Agent for Buyer and is a/an: ☐ AGENT FOR SELLER ☐ SUBAGENT FOR SELLER ☐ TRANSACTION LICENSEE

When the same Broker is Agent for Seller and Agent for Buyer, Broker is a Dual Agent. All of Broker's licensees are also Dual Agents UNLESS there are separate Designated Agents for Buyer and Seller. If the same Licensee is designated for Seller and Buyer, the Licensee is a Dual Agent.

1. This Agreement, dated August 28, 2003, is between SELLER(S)

E.M. Brown Inc.

called "Seller," and BUYER(S)

E.C.S. Partnership Ltd.

called "Buyer."

2. PROPERTY (1-98) Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase:
 ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as:
 All parcels owned in fee by seller on tax map T-9, T-8, T-7, U-4, U-5 including any contiguous parcels located or assessed in Centre County.

in the Township _____ of Cooper _____,
 County of Clearfield in the Commonwealth of Pennsylvania, Zip Code _____
 Identification (e.g., Tax ID #; Parcel #; Lot, Block, Deed Book, Page, Recording Date)
 Tax maps T-9, T-8, T-7, U-4, & U-5

3. TERMS (7-01)

(A) Purchase Price \$2,400,000.00 Two Million Four Hundred Thousand U.S. Dollars

which will be paid to Seller by Buyer as follows:

- | | | |
|--|----|------------------------|
| 1. Cash or check at signing this Agreement: | \$ | <u>50,000.00</u> |
| 2. Cash or check within _____ days of the execution of this Agreement: | \$ | _____ |
| 3. _____ | \$ | _____ |
| 4. Cash, cashier's or certified check at time of settlement: | \$ | <u>2,350,000.00</u> |
| TOTAL | | \$ <u>2,400,000.00</u> |

(B) Deposits paid on account of purchase price to be held by Broker for Seller, unless otherwise stated here:

Deposit to be held in escrow by Peter F. Smith (seller's attorney)

(C) Seller's written approval to be on or before: September 08, 2003

(D) Settlement to be on 90 days after Township approval of item 27B3 after Jan 12/04 or before if Buyer and Seller agree.

(E) Conveyance from Seller will be by fee simple deed of special warranty unless otherwise stated here: REB Pres.
 SPECIAL WARRANTY

(F) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here:

(G) At time of settlement, the following will be adjusted pro-rata on a daily basis between Buyer and Seller, reimbursing where applicable: taxes (see Notices and Information Regarding Tax Proration); rents; interest on mortgage assumptions; condominium fees and homeowner association fees, if any; water and/or sewer fees, if any, together with any other lienable municipal services. The charges are to be pro-rated

PREPARED BY AGENT: William Allemang,

A/S-VL, Standard Agreement For The Sale Of Vacant Land, 6/02, Pennsylvania Association of REALTORS®

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Buyer(s) REB

Exhibit A

for the period(s) covered: Seller will pay up to and including the date of settlement; Buyer will pay for all days following settlement, unless otherwise stated here:

4. **FIXTURES AND PERSONAL PROPERTY (1-00)**

(A) INCLUDED in this sale and purchase price are all existing items permanently installed in the Property, free of liens. Also included:

(B) LEASED items (not owned by Seller):

(C) EXCLUDED:

5. **DATES/TIME IS OF THE ESSENCE (6-02)**

(A) The said date for settlement and all other dates and times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be of the essence of this Agreement and are binding.

(B) For the purposes of this Agreement, number of days will be counted from the date of execution, by excluding the day this Agreement was executed and including the last day of the time period.

(C) The date of settlement is not extended by any other provision of this Agreement and may only be extended by mutual written agreement of the parties.

(D) Certain time periods are pre-printed in this Agreement as a convenience to the Buyer and Seller. Any pre-printed time periods are negotiable and may be changed by striking out the pre-printed text and inserting a different time period acceptable to all parties.

6. **FINANCING CONTINGENCY (6-02)**

☒ WAIVED. This sale is NOT contingent on financing.

☐ ELECTED

(A) This sale is contingent upon Buyer obtaining financing as follows:

1. Amount of loan \$ _____

2. Minimum Term _____ years

3. Type: ☐ Land Acquisition Only
☐ Land Acquisition and Construction
☐ Other _____

4. Interest rate _____ %; however, Buyer agrees to accept the interest rate as may be committed by the lender, not to exceed a maximum interest rate of _____ %.

5. Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the loan (excluding any insurance premiums and VA funding fee) not to exceed _____ % (0% if not specified) of the loan.

The interest rate and fees provisions required by Buyer are satisfied if a lender makes available to Buyer the right to guarantee an interest rate at or below the Maximum Interest Rate specified herein with the percentage fees at or below the amount specified herein. Buyer gives Seller the right, at Seller's sole option and as permitted by the lending institution and applicable laws, to contribute financially, without promise of reimbursement, to the Buyer and/or lender to make the above terms available to Buyer.

(B) Within 10 days of the execution of this Agreement, Buyer will make a completed, written financing application to a responsible lender according to the terms above. The Broker for Buyer, if any, otherwise the Broker for Seller is authorized to communicate with the lender for the purposes of assisting in the loan process.

(C) 1. Financing commitment date _____. If a written commitment is not received by Seller by the above date, Buyer and Seller agree to extend the commitment date until Seller terminates this Agreement in writing by notice to Buyer.

2. Upon receipt of a financing commitment, Buyer will promptly deliver a copy of the commitment to Seller.

3. Seller has the option to terminate this Agreement in writing, on or after the financing commitment date, if the financing commitment:

- Is not valid until the date of settlement, OR
- Is conditioned upon the sale and settlement of any other property, OR
- Contains any other condition not specified in this Agreement.

4. If this Agreement is terminated as specified in paragraphs 6 (C) (1) or (3), or financing is not received for settlement, all deposit monies paid on account of purchase price will be returned to Buyer. Buyer will be responsible for any premiums for mechanics' lien insurance and/or title search, or fee for cancellation of same, if any; AND/OR any premiums for flood insurance, mine subsidence insurance, and/or fire insurance with extended coverage or cancellation fee, if any; AND/OR any appraisal fees and charges paid in advance to the lender.

(D) Seller Assist

☐ NOT APPLICABLE

☐ APPLICABLE. Seller will pay:

☐ \$ _____ maximum, toward Buyer's closing costs as permitted by the lender.
☐ _____

7. **INSPECTIONS (6-02)**

(A) Seller hereby agrees to permit inspections by authorized appraisers, reputable certifiers, insurer's representatives, surveyors, municipal officials and/or Buyer as may be required by the lending institutions, if any, or insuring agencies. Seller further agrees to permit any other inspections required by or provided for in the terms of this Agreement. Buyer has the right to attend all inspections.

(B) Buyer agrees that Buyer, or anyone on the Property at Buyer's direction or on Buyer's behalf, will leave the Property in its same condition. In the case of damage, Buyer will bear the risk of restoring the Property or of reimbursing Seller for any loss of value.

(C) Buyer reserves the right to make a pre-settlement inspection of the Property. Buyer's right to make this inspection is not waived by any

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other provision of this Agreement.

8. STATUS OF WATER (7-01)

(A) An off-Property source of water

☒ is not available for the Property.

☐ is available for the Property through (Name of Service Provider) _____

CONNECTION TO OFF-PROPERTY WATER SOURCE CONTINGENCY

☒ WAIVED. Buyer acknowledges that Buyer has the option to make this Agreement contingent on determining that the terms of connecting the Property to an off-Property water source are acceptable to Buyer. Buyer WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ ELECTED. Buyer will, within _____ days of the execution of this Agreement and at Buyer's expense, determine the terms of connecting the Property to the water source. If the terms of connection are not acceptable to Buyer, Buyer will:

1. Accept the Property as is and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR

2. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(B) ☐ Seller represents that the Property is served by an on-site water source.

ON-SITE WATER SERVICE INSPECTION CONTINGENCY

☒ WAIVED. Buyer acknowledges that Buyer has the option to request an on-site water service inspection of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ ELECTED

1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Seller a written inspection report by a qualified, professional water testing company of the quality and/or quantity of the on-site water service.

2. Seller agrees to locate and provide access to the on-site (or individual) water system, if applicable, at Seller's expense, if required by the inspection company. Seller also agrees to restore the Property, at Seller's expense, prior to settlement.

3. If the report reveals that the water service does not meet the minimum standards of any applicable governmental authority and/or fails to satisfy the requirements for quality and/or quantity as set by the lender, if any, then Seller will, within _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:

a. Upgrade the water service to the minimum acceptable levels, before settlement, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement, OR

b. Not upgrade the water service.

4. If Seller chooses not to upgrade the service to minimum acceptable levels, or fails to respond within the time given, Buyer will, within _____ days, either:

a. Accept the Property and the water service and, if required by the lender, if any, and/or any governmental authority, upgrade the water service before settlement or within the time required by the lender, if any, and/or any governmental authority, at Buyer's expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 23 of this Agreement. If Seller denies Buyer permission to upgrade the water service, Buyer may, within 5 days of Seller's denial, terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR

b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(C) ☐ Buyer is aware that there is no developed water source for the Property.

ON-SITE WATER SERVICE APPROVAL CONTINGENCY

☒ WAIVED. Buyer acknowledges that Buyer has the option to make this Agreement contingent on receiving municipal approval for the installation of a well. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ ELECTED. Within 10 days of the execution of this Agreement, Buyer will make a completed, written application for the municipal approval for the installation of a well. This sale is contingent upon Buyer obtaining, within _____ days of the execution of this Agreement, municipal approval for the installation of a well. Buyer will pay all costs associated with the application for approval, including but not limited to, any municipal fees and test expenses. In the event Buyer is unable to secure approval for well installation, Buyer will either:

1. Accept the Property as is and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR

2. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

9. STATUS OF SEWER (6-02)

(A) Seller represents that Property is served by:

☐ Off-Property Sewage Disposal System

☐ Individual On-Lot Sewage Disposal System (See Sewage Notice 1)

☐ Individual On-Lot Sewage Disposal System in Proximity to Well (See Sewage Notice 1; see Sewage Notice 4, if applicable)

☐ Ten-acre Permit Exemption (See Sewage Notice 2)

☐ Holding Tank (See Sewage Notice 3)

☒ None (See Sewage Notice 1)

☐ None Available (See Sewage Notice 5 or Sewage Notice 6, as applicable)

(B) Connection to an off-Property sewage disposal system

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☐ is not available for the Property.

☐ is available for the Property through (Name of Service Provider) _____

PUBLIC SYSTEM CONTINGENCY

☒ **WAIVED.** Buyer acknowledges that Buyer has the option to make this Agreement contingent on receiving municipal approval for the connection of the Property to a sewage disposal system. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ **ELECTED.** Within 10 days of the execution of this Agreement, Buyer will make a completed, written application for the municipal approval for the connection of the Property to a sewage disposal system. This sale is contingent upon Buyer obtaining, within _____ days of the execution of this Agreement, municipal approval for the connection of the Property to a sewage disposal system. Buyer will pay all costs associated with the application for approval, including but not limited to, any municipal fees and test expenses. In the event Buyer is unable to secure approval for sewer connection, Buyer will either:

1. Accept the Property as is and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
2. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(C) INDIVIDUAL ON-LOT SEWAGE DISPOSAL INSTALLATION CONTINGENCY

☒ **WAIVED.** Buyer acknowledges that Buyer has the option to make this Agreement contingent on receiving all applicable government approval for the installation of an individual sewage system. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ **ELECTED.** Within _____ days of the execution of this Agreement,

☐ Buyer

☐ Seller

will make a completed, written application to all appropriate authorities for the installation of an on-lot sewage disposal system, and will pay all costs associated with the application for approval, including but not limited to, any fees and percolation test expenses. This sale is contingent upon the receipt of all applicable government approval for the installation of an individual sewage system within _____ days of the execution of this Agreement. In the event test results are unacceptable to Buyer or approval for an individual sewage system is unable to be secured, Buyer will either:

1. Accept the Property as is and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
2. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID. Buyer will promptly deliver all information and test results acquired through the approval process to Seller.

(D) INDIVIDUAL ON-LOT SEWAGE DISPOSAL INSPECTION CONTINGENCY

☒ **WAIVED.** Buyer acknowledges that Buyer has the option to request an individual on-lot sewage disposal inspection of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ **ELECTED**

1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Seller a written inspection report by a qualified, professional inspector of the individual on-lot sewage disposal system.

2. Seller, at Seller's expense, agrees, if and as required by the inspection company, to locate, provide access to and empty the individual on-lot sewage disposal system. Seller also agrees to restore the Property, at Seller's expense, prior to settlement.

3. If the report reveals defects that do not require expansion or replacement of the existing sewage disposal system, Seller will, within _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:

- a. Correct the defects before settlement, including retests, at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement, OR
- b. Not correct the defects.

4. If Seller chooses not to correct the defects, or if Seller fails to respond within the time given, Buyer will, within _____ days, either:

- a. Accept the Property and the system and, if required by the lender, if any, and/or any governmental authority, correct the defects before settlement or within the time required by the lender, if any, and/or any governmental authority, at Buyer's sole expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 23 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of Seller's denial, terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
- b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

5. If the report reveals the need to expand or replace the existing individual on-lot sewage disposal system, Seller may, within _____ days of receipt of the report, submit a corrective proposal to Buyer. The corrective proposal will include, but not be limited to, the name of the remediation company; provisions for payment, including retests; and a projected completion date for corrective measures. Within 5 days of receiving Seller's corrective proposal, or if no corrective proposal is received within the time given, Buyer will:

- a. Agree to the terms of the corrective proposal, if any, in writing, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement, OR
- b. Accept the Property and the system and, if required by the lender, if any, and/or any governmental authority, correct the defects before settlement or within the time required by the lender, if any, and/or any governmental authority, at Buyer's sole expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 23 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of Seller's denial, terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and

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Buyer(s) 

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Seller(s) _____

this Agreement will be VOID, OR

- c. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

10. ENVIRONMENTAL AUDIT & PROPERTY INSPECTIONS (1-98)

(A) Seller represents and warrants that Seller has no knowledge, except as listed below, of whether:

1. The Property has been contaminated by any substance in any manner which requires remediation;
2. The Property contains any wetlands, flood plains, or any other environmentally sensitive areas, development of which is limited or precluded by law;
3. The Property contains any substance, the removal or disposal of which is subject to any law or regulation;
4. Any law has been violated in the handling or disposing of any material waste or the discharge of any material into the soil, air, surface water, or ground water;
5. The Property contains underground fuel or liquid storage tanks.

EXCEPTIONS:

1. No known hazardous waste generation, disposal and or mismanagement has occurred on the premises.
2. No known underground storage tanks on the premises.
3. Acid mine drainage seeps in flood plain areas have caused stressed vegetative conditions on the premises.
4. It appears that all the watershed with the exception of Crawford Run have been degraded to some degree by prior mining activities. Such conditions including areas of unreclaimed strip mines, drainage and acid mine and flows, are considered not to be the responsibility of E.M. Brown Inc. to manage or reradiate under present law, regulation and policy because they are preexisting conditions. E.M. Brown Inc. Cooper # 1 waste water treatment facility must be continued by E.M. Brown Inc. until subsequent order of D.E.P.

(B) Seller and Buyer acknowledge that Broker:

1. Is a licensed real estate broker;
2. Is not an expert in construction, engineering, or environmental matters; and
3. Has not made and will not make any representations or warranties nor conduct investigations of the environmental condition or suitability of the Property, or any adjacent property.

(C) ENVIRONMENTAL AUDIT/INSPECTION CONTINGENCY

☒ **WAIVED.** Buyer understands that Buyer has the option to request audits and inspections of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement. Buyer reserves the right to make a pre-settlement inspection of the Property.

☐ **ELECTED.** Within _____ days of the execution of this Agreement, Buyer has the option, at Buyer's expense, to have the following audits or inspections completed by a licensed or otherwise qualified professional (check the inspections that Buyer will order):

- ☐ Environmental Hazards
- ☐ Underground Storage Tanks
- ☐ Property Boundary/Square Footage Verification/Delineation
- ☐ Flood Plain Verification/Delineation
- ☐ Wetlands Verification/Delineation
- ☐ Specific Property Inspection limited to _____

If Buyer is not satisfied with any condition as stated in any written report Buyer receives pursuant to the audits or inspections obtained under this provision, Buyer will, within the time allotted for obtaining such audits or inspections:

1. Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
2. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

11. NOTICES & ASSESSMENTS (6-02)

(A) Seller represents as of Seller's execution of this Agreement, that no public improvement and/or homeowner association assessments have been made against the Property which remain unpaid and that no notice by any government or public authority has been served upon Seller or anyone on Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances which remain uncorrected, and that Seller knows of no condition that would constitute violation of any such ordinances which remain uncorrected, unless otherwise specified here:

(B) Seller knows of no other potential notices (including violations) and assessments except as follows:

(C) In the event any notices (including violations) and assessments are received after execution of this Agreement and before settlement, Seller will notify Buyer in writing, within 5 days of receiving the notice or assessment, that Seller will:

1. Comply with notices and assessments at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement, OR
2. NOT comply with notices and assessments at Seller's expense.
3. If Seller chooses not to comply with notices and assessments, or fails within the time given to notify Buyer if Seller will comply, Buyer will notify Seller within 5 days in writing that Buyer will:

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Buyer(s) *BA*

- a. Comply with the notices and assessments at Buyer's expense and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
 - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.
- If Buyer fails to notify Seller within the time given, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

(D) Buyer is advised that access to a public road may require issuance of a highway occupancy permit from the Pennsylvania Department of Transportation.

12. TITLE, SURVEYS, & COSTS (6-02)

- (A) The Property is to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER the following: existing deed restrictions, historic preservation restrictions or ordinances, building restrictions, ordinances, easements of roads, easements visible upon the ground, easements of record, privileges or rights of public service companies, if any; otherwise the title to the above described real estate will be good and marketable and such as will be insured by a reputable Title Insurance Company at the regular rates.
- (B) Buyer will pay for the following: (1) Title search, title insurance and/or mechanics lien insurance or fee for cancellation of same, if any; (2) Flood insurance, fire insurance with extended coverage, mine subsidence insurance, and cancellation fees, if any; (3) Appraisal fees and charges paid in advance to lender, if any; (4) Buyer's customary settlement costs and accruals.
- (C) Any survey or surveys which may be required by the Title Insurance Company or the abstracting attorney for the preparation of an adequate legal description of the Property (or the correction thereof), will be secured and paid for by Seller. However, any survey or surveys desired by Buyer or required by lender will be secured and paid for by Buyer.
- (D) In the event Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Company at the regular rates, as specified in paragraph 12(A), Buyer will have the option of: (1) taking such title as Seller can give with no change to the purchase price; or (2) being repaid all monies paid by Buyer to Seller on account of the purchase price and being reimbursed by Seller for any costs incurred by Buyer for any inspections or certifications obtained according to the terms of the Agreement, those items specified in paragraph 12(C) and in paragraph 12(B) items (1), (2), (3); and in the latter event there will be no further liability or obligation on either of the parties hereto and this Agreement will become VOID.

13. ZONING CLASSIFICATION (1-98)

- (A) Failure of this Agreement to contain the zoning classification (except in cases where the property (and each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings) shall render this Agreement voidable at the option of the Buyer, and, if voided, any deposits tendered by the Buyer will be returned to the Buyer without any requirement for court action.

Zoning Classification: None

(B) ZONING APPROVAL CONTINGENCY

☐ NOT APPLICABLE

☒ WAIVED. Buyer acknowledges that Buyer has the option to make this Agreement contingent on receiving municipal approval for the intended use of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 23 of this Agreement.

☐ ELECTED

1. This sale is contingent on Buyer receiving zoning approval, or variance, or special exception from _____ (municipality) to use the Property as a _____ (proposed use).
2. Application for the approval (or variance/special exception) will be made within _____ days of the execution of this Agreement. Buyer will pay for applications, legal representation, and any other costs associated with obtaining approval.
3. If the municipality requires the application to be signed by the current owner, Seller agrees to do so.
4. If final, unappealable approval is not obtained by _____, this Agreement will be VOID, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer.

14. LAND USE RESTRICTIONS OTHER THAN ZONING (7-01)

(A) ☒ None Known

(B) ☐ The Property, or a portion of it, is preferentially assessed for tax purposes under the following Acts (See Land Use Restrictions Notices):

☐ Farmland and Forest Land Assessment Act (Clean and Green Program)

☐ Open Space Act (an Act enabling certain counties of the Commonwealth to covenant with land owners for preservation of land in farm, forest, water supply, or open space uses)

☐ Agricultural Area Security Law (Development Rights) _____

☐ Other _____

☐ Buyer and Seller have determined the consequences that may result from the sale or a change in the use of the Property, or any portion of it.

(C) ☐ Seller has no knowledge of any covenants, subdivision restrictions or other restrictions affecting the Property unless otherwise stated here: _____

(D) ☐ Seller has no knowledge of any rights to timber, crops or minerals, except coal, that do not transfer with the Property unless otherwise stated here: _____

(E) ☐ Buyer acknowledges that any land use restrictions associated with the Property's enrollment in the Clean and Green Program or under the Open Space Act or any other program identified in this paragraph 14, are encumbrances upon the Property. Buyer agrees that delivery of title subject to these encumbrances will not violate Seller's duty under paragraph 12(A) of this Agreement.

15. COAL NOTICE

☐ NOT APPLICABLE

☒ APPLICABLE

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Buyer(s) AB

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Seller(s) _____

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHTS OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.) "Buyer acknowledges that he may not be obtaining the right of protection against subsidence resulting from coal mining operations, and that the property described herein may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. This acknowledgment is made for the purpose of complying with the provisions of Section 14 of the Bituminous Mine Subsidence and the Land Conservation Act of April 27, 1966." Buyer agrees to sign the deed from Seller which deed will contain the aforesaid provision.

16. POSSESSION (7-01)

(A) Possession is to be delivered by deed, keys and:

1. Physical possession to vacant Property free of debris, with all structures broom-clean, at day and time of settlement, AND/OR
2. Assignment of existing lease(s), together with any security deposits and interest, at time of settlement, if Property is leased at the execution of this Agreement or unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of execution of this Agreement.

(B) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases for the Property without the written consent of Buyer.

17. RECORDING (3-85) This Agreement will not be recorded in the Office for the Recording of Deeds or in any other office or place of public record and if Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a breach of this Agreement.

18. ASSIGNMENT (3-85) This Agreement will be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that Buyer will not transfer or assign this Agreement without the written consent of Seller.

19. DEPOSIT & RECOVERY FUND (6-02)

(A) Deposits paid by Buyer within 30 days of settlement will be by cash, cashier's or certified check. Deposits, regardless of the form of payment and the person designated as payee will be paid in U.S. Dollars, and will be paid to Broker or party identified in paragraph 3(B), who will retain them in an escrow account until consummation or termination of this Agreement in conformity with all applicable laws and regulations. Any uncashed check tendered as deposit may be held pending the acceptance of this offer.

(B) Upon termination of this Agreement, the Broker holding the deposit monies will release the deposit monies in accordance with the terms of a fully executed written agreement between Buyer and Seller.

(C) In the event of a dispute over entitlement to deposit monies, a broker holding the deposit is required by the Rules and Regulations of the State Real Estate Commission (49 Pa. Code §35.327) to retain the monies in escrow until the dispute is resolved. In the event of litigation for the return of deposit monies, a broker will distribute the monies as directed by a final order of court or the written Agreement of the parties. Buyer and Seller agree that, in the event any broker or affiliated licensee is joined in litigation for the return of deposit monies, the attorneys' fees and costs of the broker(s) and licensee(s) will be paid by the party joining them.

(D) A Real Estate Recovery Fund exists to reimburse any persons who have obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who have been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658, or 1-800-822-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).

20. PLANNED COMMUNITY (HOMEOWNER ASSOCIATION) NOTICE FOR PURPOSES OF RESALE ONLY (7-01)

☒ NOT APPLICABLE

☐ APPLICABLE

(A) Buyer acknowledges that the Property is part of a planned community as defined by the Uniform Planned Community Act. (See Definition of Planned Community Notice for the definition contained in the Act.)

(B) §5407(a) of the Act requires Seller to furnish Buyer with a copy of the Declaration (other than plats and plans), the bylaws, the rules and regulations of the association, and a Certificate containing the provisions set forth in §5407(a) of the Act.

(C) Within _____ days of the execution of this Agreement, Seller will submit a request to the association for a Certificate and the documents necessary to enable Seller to comply with the Act. The Act provides that the association is required to provide these documents within 10 days of Seller's request.

(D) Under the Act, Seller is not liable to Buyer for the failure or delay of the association to provide the Certificate in a timely manner, nor is Seller liable to Buyer for any erroneous information provided by the Association and included in the Certificate.

(E) Buyer may declare the Agreement VOID at any time before Buyer's receipt of the association documents and for 5 days thereafter, OR until settlement, whichever occurs first. Buyer's notice declaring the Agreement void must be in writing; thereafter all deposit monies will be returned to Buyer.

(F) In the event the association has the right to buy the Property (right of first refusal), and the association exercises that right, Seller will reimburse Buyer for all monies paid by Buyer on account of purchase price and for any costs incurred by Buyer for: (1) Title search, title insurance and/or mechanics lien insurance or fee for cancellation of same, if any; (2) Flood insurance, fire insurance with extended coverage, mine subsidence insurance, and cancellation fees, if any; (3) Appraisal fees and charges paid in advance to lender, if any; (4) Buyer's customary settlement costs and accruals.

21. MAINTENANCE & RISK OF LOSS (6-02)

(A) Seller will maintain the Property, grounds, fixtures, and any personal property specifically scheduled herein in its present condition, normal wear and tear excepted.

(B) In the event any system or appliance included in the sale of the Property fails and Seller does not repair or replace the item, Seller will promptly notify Buyer in writing of Seller's choice to:

1. Repair or replace the failed system or appliance before settlement, or credit Buyer at settlement for the fair market value of the failed system or appliance (this option must be acceptable to the lender, if any). In each case, Buyer accepts the Property and agrees to the

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Buyer(s) 

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Seller(s) _____

- RELEASE set forth in paragraph 23 of this Agreement, OR
2. Not repair or replace the failed system or appliance and not credit Buyer at settlement for the fair market value of the failed system or appliance. If Seller does not repair, replace or offer a credit for the failed system or appliance, Buyer will notify Seller, in writing within 5 days or before settlement, whichever is sooner, that Buyer will:
 - a. Accept the Property and agree to the RELEASE set forth in paragraph 23 of this Agreement, OR
 - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.
- (C) Seller will bear risk of loss from fire or other casualties until time of settlement. In the event of damage by fire or other casualties to any property included in this sale that is not repaired or replaced prior to settlement, Buyer will have the option of rescinding this Agreement and promptly receiving all monies paid on account of purchase price or of accepting the Property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that Buyer may insure Buyer's equitable interest in this Property as of the time of execution of this Agreement.
22. **WAIVER OF CONTINGENCIES (1-00)**
In the event this Agreement is contingent on Buyer's right to inspect and/or repair the Property, Buyer's failure to exercise any of Buyer's options within the time limits specified in the contingency provision(s) will constitute a WAIVER of that contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 23 of this Agreement.
23. **RELEASE (1-00)** Buyer hereby releases, quit claims and forever discharges SELLER, ALL BROKERS, their LICENSEES, EMPLOYEES, and any OFFICER or PARTNER of any one of them and any other PERSON, FIRM, or CORPORATION who may be liable by or through them, from any and all claims, losses or demands, including, but not limited to, personal injuries and property damage and all of the consequences thereof, whether now known or not, which may arise from the presence of environmental hazards, any deficiencies in the on-site water service system, or any defects or conditions on the Property. This release will survive settlement.
24. **REPRESENTATIONS (1-00)**
(A) Buyer understands that any representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller, Brokers, their licensees, employees, officers, or partners are not a part of this Agreement, unless expressly incorporated or stated in this Agreement. It is further understood that this Agreement contains the whole agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this Agreement will not be altered, amended, changed, or modified except in writing executed by the parties.
(B) It is understood that Buyer has inspected the Property before signing this Agreement (including fixtures and any personal property specifically scheduled herein), or has waived the right to do so, and has agreed to purchase it in its present condition unless otherwise stated in this Agreement. Buyer acknowledges that Brokers, their licensees, employees, officers, or partners have not made an independent examination or determination of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, or of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the systems contained therein.
(C) Broker(s) may perform services to assist unrepresented parties in complying with the terms of this Agreement.
(D) The headings, captions, and the numbers in this Agreement are meant only to make it easier to find the paragraphs.
25. **DEFAULT (6-02)**
(A) Seller has the option of retaining all sums paid by Buyer, including the deposit monies, should Buyer:
 1. Fail to make any additional payments as specified in paragraph 3; OR
 2. Furnish false or incomplete information to Seller, Broker(s), or the lender, if any, concerning Buyer's legal or financial status, or fail to cooperate in the processing of the financing application, which acts would result in the failure to obtain the approval of a financing commitment; OR
 3. Violate or fail to fulfill and perform any other terms or conditions of this Agreement.
- (B) Unless otherwise checked in paragraph 25 (C), Seller may elect to retain those sums paid by Buyer, including deposit monies, in one of the following manners:
 1. On account of purchase price; OR
 2. As monies to be applied to Seller's damages; OR
 3. As liquidated damages for such breach.
- (C) ☒ Seller is limited to retaining sums paid by Buyer, including deposit monies, as liquidated damages.
(D) If Seller retains all sums paid by Buyer, including deposit monies, as liquidated damages pursuant to paragraph 25 (B) or (C), Buyer and Seller will be released from further liability or obligation and this Agreement will be VOID.
26. **MEDIATION (7-96)**
☐ NOT AVAILABLE
☒ WAIVED. Buyer and Seller understand that they may choose to mediate at a later date, should a dispute arise, but that there will be no obligation on the part of any party to do so.
☐ ELECTED
(A) Buyer and Seller will try to resolve any dispute or claim that may arise from this Agreement through mediation, in accordance with the Rules and Procedures of the Home Sellers/Home Buyers Dispute Resolution System. Any agreement reached through a mediation conference and signed by the parties will be binding.
(B) Buyer and Seller acknowledge that they have received, read, and understand the Rules and Procedures of the Home Sellers/Home Buyers Dispute Resolution System. (See Mediation Notice).
(C) This agreement to mediate disputes arising from this Agreement will survive settlement.
27. **SPECIAL CLAUSES (1-02)**
(A) The following are part of this Agreement if checked:

☐ Sale & Settlement of Other Property

☐ Settlement of Other Property Contingency Addendum (PAR Form SOP)

- ☐ Contingency Addendum (PAR Form SSP)
☐ Sale & Settlement of Other Property Contingency
with Right to Continue Marketing Addendum
(PAR Form SSP-CM)

- ☐ Tenant-Occupied Property Addendum (PAR Form TOP)
☐
☐
☐

(B)

1. Gas and oil rights will remain with E.M. Brown Inc.
2. All timber and mineral rights will be transferred to buyers.
3. The buyers will be able to sell the tracts as enumerated by separate tax numbers without subdivision.
4. The acreage south of Interstate 80 does not have a right of way. The right of way may require more than the 90 day time limit. A deeded right of way to this property must be provided, whether by use of railroad grade or by other approved road prior to closing. If right of way can not be obtained in 90 days, the portion of the property north of I-80 will be transferred to the buyers within the 90 days and the portion of land below I-80 will transfer to the buyers after the right of way is obtained. Acreage is to be prorated per tax map records.
5. Buyers require a separate deed for each parcel of land that can be separated without subdivision at time of closing.
6. E.C.S. Partnership Ltd. will keep all information, documents and other materials supplied or communicated by E.M. Brown Inc. in complete confidence. If buyer does not purchase this property, all documents together with any copies including but not limited to, the complete timber appraisal done by E.C.S. Partnership Ltd. and any other documents or studies pertaining to said tract of land will be remitted to the sellers.
7. E.C.S. Partnership Ltd. will pay their attorney fees for title search, survey, engineering work and other work associated with this purchase. E.C.S. Partnership Ltd. will warrant that it will indemnify and hold E.M. Brown Inc. harmless from any claims by broker or agents.
8. The information on the three structures on the property will be provided upon the execution of this sales agreement.
9. Buyer and seller agree that neither party will record, a memorandum of it, or affidavit effecting E. M. Brown Inc. title to the premises.
10. Buyers promises to indemnify and hold E.M. Brown Inc., its successors and assigns, harmless from any damage arising by its partners, its agents or employees present on these premises.
11. Upon execution of this agreement, all timber harvesting will be stopped.
12. Upon execution of this agreement, all listings and or marketing of the property will stop.
13. The amount of stripped land and appropriate maps will be provided to buyers upon execution of this agreement.

See Addendum 1 - 14 (B)

Buyer and Seller acknowledge receiving a copy of this Agreement at the time of signing.

NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT. Return by facsimile transmission (FAX) of this Agreement, and all addenda, bearing the signatures of all parties, constitutes acceptance of this Agreement. Parties to this transaction are advised to consult an attorney before signing if they desire legal advice.

- ☐ Buyer has received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.
☐ Buyer has received a statement of Buyer's estimated closing costs before signing this Agreement.
☐ Buyer has read and understands the notices and explanatory information set forth in this Agreement.
☐ Buyer has received the Deposit Money Notice (for cooperative sales when Broker for Seller is holding deposit money) before signing this Agreement.

BUYER'S MAILING ADDRESS: _____

BUYER'S CONTACT NUMBER(S): _____

WITNESS

John Buffa

BUYER

John B. Buffa

DATE

9/18/03

E.C.S. Partnership Ltd.

501 Electric Ave., Lewistown, PA 17044

Seller hereby approves the above contract this (date) _____

And in consideration of the services rendered in procuring the Buyer, Seller agrees to pay the named Broker for Seller a fee of _____ off/from the herein specified sale price. In the event Buyer defaults hereunder, any monies paid on account will be divided _____, Seller, _____

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er for Seller, but in no event will the sum paid to the Broker for Seller be in excess of the above specified Broker's fee.

Seller has received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.
Seller has received a statement of Seller's estimated closing costs before signing this Agreement.
Seller has read and understands the notices and explanatory information set forth in this Agreement.

LLER'S MAILING ADDRESS: _____

LLER'S CONTACT NUMBER(S): _____

TNESS

Robert E Brown

SELLER

E.M. Brown Inc.

Robert E Brown

DATE

Sept 17th 03

he undersigned ☐ Broker for Seller ☐ Broker for Buyer agree to submit to mediation in accordance with paragraph 26 of this Agreement.

BROKER FOR SELLER (Company Name) _____

DATE _____

ACCEPTED BY _____

BROKER FOR BUYER (Company Name) _____

DATE _____

ACCEPTED BY _____

NOTICES AND INFORMATION

INFORMATION REGARDING TAX PRORATION

For purposes of prorating real estate taxes, the "periods covered" by the tax bills are as follows: for all counties and municipalities in Pennsylvania, except for the Philadelphia, Pittsburgh, and Scranton school districts, the tax bills are for the period January 1 to December 31. For all other school districts, the period covered by the tax bill is July 1 to June 30.

NOTICE TO BUYERS SEEKING FINANCING

The appraised value of the Property is used in determining the maximum amount of the loan and may be different from the purchase price and/or market value.

NOTICES AND INFORMATION ON PROPERTY CONDITION INSPECTIONS

PROPERTY INSPECTION NOTICES

Flood Plains: If the Property is located in a flood plain, Buyer may be required to carry additional insurance.

Property Boundary / Square Footage: Buyer is advised that Seller has not had the Property surveyed and that any fences, hedges, walls and other natural or constructed barriers may or may not represent the true boundary lines of the Property. Buyer is also advised that any numerical representations of square footage of the structure(s) and/or lot size are approximations only and may be inaccurate. Buyer is advised to engage a professional surveyor or obtain an independent measurement of the structure(s) and/or lot size if Buyer wishes to make this sale contingent on Buyer's approval of the Property's boundaries or square footage.

Water (On-site Service): If the Property is not serviced by public water, Buyer may elect to have the on-site water system inspected by a professional water testing company. In addition, on-site water service systems may have to meet certain quality and/or quantity requirements set by the municipality or the lender.

ENVIRONMENTAL NOTICES

Environmental Hazards: The U.S. Environmental Protection Agency has a list of hazardous substances, the use and disposal of which are restricted by law. Generally, if hazardous substances are found on a property, it is the property owner's responsibility to dispose of them properly. For more information and a list of hazardous substances, contact U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460, (202) 260-2090.

Wetlands: Wetlands are protected by both the federal and state government. Buyer may wish to have the Property inspected for wetlands by an environmental engineer to determine if permits for plans to build, improve, or develop the property would be affected or denied because of wetlands.

SEWAGE NOTICES

NOTICES PURSUANT TO THE PENNSYLVANIA SEWAGE FACILITIES ACT

- NOTICE 1:** THERE IS NO CURRENTLY EXISTING COMMUNITY SEWAGE SYSTEM AVAILABLE FOR THE SUBJECT PROPERTY. Section 7 of the Pennsylvania Sewage Facilities Act provides that no person shall install, construct, request bid proposals for construction, alter, repair or occupy any building or structure for which an individual sewage system is to be installed, without first obtaining a permit. Buyer is advised by this notice that, before signing this Agreement of Sale, Buyer should contact the local agency charged with administering the Act to determine the procedure and requirements for obtaining a permit for an individual sewage system. The local agency charged with administering the Act will be the municipality where the Property is located or that municipality working cooperatively with others.
- NOTICE 2:** THIS PROPERTY IS SERVICED BY AN INDIVIDUAL SEWAGE SYSTEM INSTALLED UNDER THE TEN-ACRE PERMIT EXEMPTION PROVISIONS OF SECTION 7 OF THE PENNSYLVANIA SEWAGE FACILITIES ACT. (Section 7 provides that a permit may not be required before installing, constructing, awarding a contract for construction, altering, repairing or connecting to an individual sewage system where a ten-acre parcel or lot is subdivided from a parent tract after January 10, 1987.) Buyer is advised that soils and site testing were not conducted and that, should the system malfunction, the owner of the Property or properties serviced by the system at the time of a malfunction may be held liable for any contamination, pollution, public health hazard or nuisance which occurs as a result.
- NOTICE 3:** THIS PROPERTY IS SERVICED BY A HOLDING TANK (PERMANENT OR TEMPORARY) TO WHICH SEWAGE IS CONVEYED BY A WATER CARRYING SYSTEM AND WHICH IS DESIGNED AND CONSTRUCTED TO FACILITATE ULTIMATE DISPOSAL OF THE SEWAGE AT ANOTHER SITE. Pursuant to the Pennsylvania Sewage Facilities Act, Seller must provide a history of the annual cost of maintaining the tank from the date of its installation or December 14, 1995, whichever is later.
- NOTICE 4:** AN INDIVIDUAL SEWAGE SYSTEM HAS BEEN INSTALLED AT AN ISOLATION DISTANCE FROM A WELL

THAT IS LESS THAN THE DISTANCE SPECIFIED BY REGULATION. The regulations at 25 Pa. Code §73.13 pertaining to minimum horizontal isolation distances provide guidance. Subsection (b) of §73.13 states that the minimum horizontal isolation distance between an individual water supply or water supply system suction line and treatment tanks shall be 50 feet. Subsection (c) of §73.13 states that the horizontal isolation distance between the individual water supply or water supply system suction line and the perimeter of the absorption area shall be 100 feet.

NOTICE 5:

THIS LOT IS WITHIN AN AREA IN WHICH PERMIT LIMITATIONS ARE IN EFFECT AND IS SUBJECT TO THOSE LIMITATIONS. SEWAGE FACILITIES ARE NOT AVAILABLE FOR THIS LOT AND CONSTRUCTION OF A STRUCTURE TO BE SERVED BY SEWAGE FACILITIES MAY NOT BEGIN UNTIL THE MUNICIPALITY COMPLETES A MAJOR PLANNING REQUIREMENT PURSUANT TO THE PENNSYLVANIA SEWAGE FACILITIES ACT AND REGULATIONS PROMULGATED THEREUNDER.

NOTICE 6:

A REQUIRED REVISION FOR NEW LAND DEVELOPMENT, OR AN EXCEPTION TO THE REQUIREMENT TO REVISE, OR A REQUIRED SUPPLEMENT HAS NOT BEEN APPROVED FOR THIS LOT. SEWAGE FACILITIES ARE NOT AVAILABLE FOR THIS LOT AND SEWAGE FACILITIES WILL NOT BE AVAILABLE, NOR MAY CONSTRUCTION BEGIN UNTIL SEWAGE FACILITIES PLANNING HAS BEEN APPROVED PURSUANT TO THE PENNSYLVANIA SEWAGE FACILITIES ACT AND REGULATIONS PROMULGATED THEREUNDER.

LAND USE RESTRICTIONS NOTICES

FARMLAND AND FOREST LAND ASSESSMENT ACT (CLEAN AND GREEN PROGRAM): Properties enrolled in the Clean and Green Program receive preferential tax assessment.

Notices Required by Seller: A Seller of Property enrolled in the Clean and Green Program must submit notice of the sale and any proposed changes in the use of Seller's remaining enrolled Property to the County Assessor 30 days before the transfer of title to Buyer.

Notices Required by Buyer: A Buyer of Property enrolled in the Clean and Green Program must submit notice of any proposed changes Buyer intends to make in the use of the Property being purchased to the County Assessor at least 30 days prior to undertaking any changes.

Loss of Preferential Tax Assessment: The sale of Property enrolled in the Clean and Green Program may result in the loss of program enrollment and the loss of preferential tax assessment for the Property and/or the land of which it is a part and from which it is being separated. Removal from enrollment in the Clean and Green Program may result in the charge of roll-back taxes and interest. A roll-back tax is the difference in the amount of taxes paid under the program and the taxes that would have been paid in the absence of Clean and Green enrollment. The roll-back taxes are charged for each year that the Property was enrolled in the program, limited to the past 7 years.

Buyer and Seller have been advised of the need to determine the tax implications that will or may result from the sale of the Property to Buyer or that may result in the future as a result in any change in use of the Property or the land from which it is being separated by contacting the County Tax Assessment Office before the execution of this Agreement of Sale.

OPEN SPACE ACT (Official name: An act enabling certain counties of the Commonwealth to covenant with land owners for preservation of land in farm, forest, water supply, or open space uses (1966, Jan. 13 P.L. (1965) 1292). This Act enables counties to enter into covenants with owners of land designated as farm, forest, water supply, or open space land on an adopted municipal, county, or regional plan for the purpose of preserving the land as open space. A covenant between the owner and county is binding upon any Buyer of the Property during the period of time that the covenant is in effect (5 or 10 years). Covenants automatically renew at the end of the covenant period unless specific termination notice procedures are followed.

Buyer acknowledges that the purchase of Property for which there is a covenant, will not extinguish the covenant and that a change in the use of the land to any other use other than that designated in the covenant will constitute a breach. When a breach of the covenant occurs, the then-owner is required to pay roll-back taxes and interest. A roll-back tax is the difference in the amount of taxes paid and the taxes that would have been paid in the absence of the covenant. The roll-back taxes are charged for each year that the Property was subject to the covenant, limited to the past 5 years.

Buyer has been advised of the need to determine the restrictions that will apply from the sale of the Property to Buyer and the tax implications that will or may result from a change in use of the Property, or any portion of it. Buyer is further advised to determine the term of any covenant now in effect.

DEFINITION OF A PLANNED COMMUNITY

The Uniform Planned Community Act defines "planned community" as real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. The term excludes a cooperative and a condominium, but a cooperative or condominium may be part of a planned community. For the purposes of this definition, "ownership" includes holding a leasehold interest of more than 20 years, including renewal options, in real estate. The term includes non-residential campground communities.

Exemptions from the Uniform Planned Community Act - When a Certificate of Resale Is Not Required

The owner of a property located within a planned community is not required to furnish the buyer with a certificate of resale under the following circumstances:

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Seller(s) _____

- A. The Planned Community contains no more than 12 units, provided there is no possibility of adding real estate or subdividing units to increase the size of the planned community.
- B. The Planned Community is one in which all of the units are restricted exclusively to nonresidential use, unless the declaration provides that the resale provisions are nevertheless to be followed.
- C. The Planned Community or units are located outside the Commonwealth of Pennsylvania.
- D. The transfer of the unit is a gratuitous transfer.
- E. The transfer of the unit is required by court order.
- F. The transfer of the unit is by the government or a governmental agency.
- G. The transfer of the unit is the result of foreclosure or in lieu of foreclosure.

Notices Regarding Public Offering Statements and Right to Rescission

If Seller is a Declarant of the condominium or planned community, Seller is required to furnish Buyer with a copy of the Public Offering Statement and its amendments. For condominiums, the delivery of the Public Offering Statement must be made no later than the date the buyer executes this Agreement. Buyer may cancel this Agreement within 15 days after receiving the Public Offering Statement and any amendments that materially and adversely affects Buyer. For planned communities, the Declarant must provide the Buyer with a copy of the Public Offering Statement and its amendments no later than the date the Buyer executes this Agreement. Buyer may cancel this Agreement within 7 days after receiving the Public Offering Statement and any amendments that materially and adversely affect Buyer.

EXECUTION DATE

All changes to the Agreement should be initialed and dated. The date of execution is the date when Buyer and Seller have indicated full acceptance of this Agreement by signing and/or initialing it.

COMMUNICATIONS WITH BUYER AND/OR SELLER

Whenever this Agreement contains a provision that requires or allows communication/delivery to a Buyer, said provision shall be satisfied by communication/delivery to the Agent for Buyer, if any. If there is no Agent for Buyer, all such provisions may be satisfied only by communication/delivery being made directly to the Buyer, unless otherwise agreed to by the parties.

Wherever this Agreement contains a provision that requires or allows communication/delivery to a Seller, said provision shall be satisfied by communication/delivery to the Agent for Seller, if any. If there is no Agent for Seller, all such provisions may be satisfied only by communication/delivery being made directly to the Seller, unless otherwise agreed to by the parties.

MEDIATION

DISPUTE RESOLUTION SYSTEM RULES AND PROCEDURES

1. **Agreement of Parties** The Rules and Procedures of the Dispute Resolution System (DRS) apply when the parties have agreed in writing to mediate under DRS. The written agreement can be achieved by a standard clause in an agreement of sale, an addendum to an agreement of sale, or through a separate written agreement.
2. **Initiation of Mediation** If a dispute exists, any party may start the mediation process by submitting a completed Request to Initiate Mediation DRS Transmittal Form (Transmittal Form) to the local Association of REALTORS® (hereafter "Administrator"). The Transmittal Form should be available through the Administrator's office. The initiating party should try to include the following information when sending the completed Transmittal Form to the Administrator:
 - a. A copy of the written agreement to mediate if there is one, OR a request by the initiating party to have the Administrator contact the other parties to the dispute to invite them to join the mediation process.
 - b. The names, addresses and telephone numbers of the parties involved in the dispute, including the name of every insurance company known to have received notice of the dispute or claim and the corresponding file or claim number.
 - c. A brief statement of the facts of the dispute and the damages or relief sought.
3. **Selection of Mediator** Within five days of receiving the completed Transmittal Form, the Administrator will send each party to the dispute a copy of the Transmittal Form and a list of qualified mediators and their fee schedules. Each party then has ten days to review the list of mediators, cross off the name of any mediator to whom the party objects, and return the list to the Administrator. The Administrator will appoint the first available mediator who is acceptable to all parties involved.

A mediator who has any financial or personal interest in the dispute or the results of the mediation cannot serve as mediator to that dispute, unless all parties are informed and give their written consent.
4. **Mediation Fees** Mediation fees will be divided equally among the parties and will be paid *before* the mediation conference. The parties will follow the payment terms contained in the mediator's fee schedule.
5. **Time and Place of Mediation Conference** Within ten days of being appointed to the dispute, the mediator will contact the parties and set the date, time and place of the mediation conference. The mediator must give at least twenty days' advance notice to all parties. The mediation conference should not be more than sixty days from the mediator's appointment to the dispute.

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Conduct of Mediation Conference The parties attending the mediation conference will be expected to:

- a. Have the authority to enter into and sign a binding settlement to the dispute.
- b. Produce all information required for the mediator to understand the issues of the dispute. The information may include relevant written materials, descriptions of witnesses and the content of their testimony. The mediator can require the parties to deliver written materials and information before the date of the mediation conference.

The mediator presiding over the conference:

- a. Will impartially conduct an orderly settlement negotiation.
- b. Will help the parties define the matters in dispute and reach a mutually agreeable solution.
- c. Will have no authority to render an opinion, to bind the parties to his or her decision, or to force the parties to reach a settlement.

Formal rules of evidence will not apply to the mediation conference.

Representation by Counsel Any party who intends to be accompanied to the mediation conference by legal counsel will notify the mediator and the other parties of the intent at least ten days before the conference.

Confidentiality No aspect of the mediation can be relied up or introduced as evidence in any arbitration, judicial or other proceeding. This includes, but is not limited to, any opinions or suggestions made by any party regarding a possible settlement; any admissions made during the course of the mediation; any proposals or opinions expressed by the mediator; and any responses given by any party to opinions, suggestions, or proposals.

No privilege will be affected by disclosures made in the course of the mediation.

Transcripts or recordings of the mediation will not be allowed without the prior, written consent of all parties and the mediator.

Records, reports, and other documents received or prepared by the mediator or Administrator cannot be compelled by an arbitration, judicial, or other proceeding, with the exception of an agreement that was reached in the course of mediation and signed by all the parties.

Neither the mediator nor the Administrator can be compelled to testify in any proceeding regarding information given or representations made either in the course of the mediation or in any confidential communication.

9. **Mediated Settlement** When a dispute is resolved through mediation, the mediator will put the complete agreement in writing and all parties will sign the written agreement within ten days of the conclusion of the mediation conference. Every reasonable effort will be made to sign the written agreement at the end of the conference.

10. **Judicial Proceedings and Immunity** NEITHER THE ADMINISTRATOR, THE MEDIATOR, THE NATIONAL ASSOCIATION OF REALTORS®, THE PENNSYLVANIA ASSOCIATION OF REALTORS®, NOR ANY OF ITS MEMBER BOARDS, WILL BE DEEMED NECESSARY OR INDISPENSABLE PARTIES IN ANY JUDICIAL PROCEEDINGS RELATING TO MEDIATION UNDER THESE RULES AND PROCEDURES, NOR WILL ANY OF THEM SERVING UNDER THESE PROCEDURES BE LIABLE TO ANY PARTY FOR ANY ACT, ERROR OR OMISSION IN CONNECTION WITH ANY SERVICE OR THE OPERATION OF THE HOME SELLERS/HOME BUYERS DISPUTE RESOLUTION SYSTEM.

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Buyer(s) 

Addendum 1-14 (B)

Any tract that is identified as a separate tax number is to be considered an existing lot and can be conveyed without subdivision approval.

BS

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-5595
FAX (814) 765-6662

E-mail
pfsatty@uplink.net

March 25, 2004

Daniel Zinn Searer, Esquire
Searer, Schrum and Searer
12 South Main Street
Lewistown, PA 17044

Re: E. M. Brown - ECS Partnership

Dear Mr. Searer:

Please forgive my delay in responding to your telephone call last Wednesday, but I needed direction from my client.

E. M. Brown, Inc. has decided not to extend the sales agreement. We believe that it expired according to its own terms because it was not closed in a timely fashion.

My client has also requested that I call your attention to paragraph 27 (B) 7 which requires ECS to return to or provide to E. M. Brown, Inc. all documents, appraisals or other materials pertaining to the subject real estate.

Please let me know when your client is ready to deliver those materials. E. M. Brown, Inc. would also be happy to pick them up at a reasonable location.

Sincerely,



Peter F. Smith

PFS/hab

cc: E. M. Brown, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ECS PARTNERSHIP, LTD., a	:	
Pennsylvania Limited Liability Company,	:	
SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY, and	:	No. 2004-481-CD
ERIC E. EMINHIZER, Formerly	:	
Partners, t/d/b/a ECS PARTNERSHIP,	:	
Plaintiffs	:	
	:	
v.	:	EQUITY
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

I verify that the statements made in this Complaint are true and correct. I
understand that false statements herein are made subject to the penalties of 18 Pa. Cons.
Stat. Ann. § 4904, relating to unsworn falsification to authorities.

Date: 5/14/04

Chris M. Cory

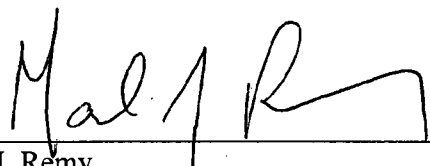
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY, and	:	Civil Action No. _____ of 2004
ERIC E. EMINHIZER, Partners, t/d/b/a	:	
ECS PARTNERSHIP	:	
Plaintiffs	:	
	:	
v.	:	EQUITY
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

I hereby certify that service of the foregoing amended complaint was made upon all parties by mailing a true copy to the office each party's attorney of record addressed as follows:

Peter F. Smith, Esquire
30 South Second Street
PO Box 130
Clearfield, PA 16830

SEARER, SCHRUM AND SEARER

By: 
Mark J. Remy
12 South Main Street
Lewistown PA 17044
(717) 242-5250

Dated: 5-14-04

SEARER, SCHRUM & SEARER ATTORNEYS AT LAW 12 SOUTH MAIN STREET LEWISTOWN, PA 17044 (717) 242-5250				
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FILED

MAY 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SHAWN SMELTZER, CHARLES M.
COLONY, DOROTHY I. COLONY and
ERIC E. EMINHIZER, Partners t/d/b/a
ECS PARTNERSHIP,
Plaintiffs

vs.

E. M. BROWN INCORPORATED,
Defendant

No. 2004-481-CD

TYPE OF CASE:
Civil

TYPE OF PLEADING:
Preliminary Objections

FILED ON BEHALF OF:
Defendant

Counsel of Record for this Party:
Peter F. Smith
Supreme Court ID #34291
30 South Second Street
P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Counsel of Record for Plaintiff:
Mark J. Remy
12 South Main Street
Lewistown, PA 17044
(717) 242-5250

FILED

MAY 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY and	:	No. 2004-481-CD
ERIC E. EMINHIZER, Partners t/d/b/a	:	
ECS PARTNERSHIP,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

PRELIMINARY OBJECTIONS

COMES NOW, E. M. Brown, Inc., by its attorney Peter F. Smith, who submits the following preliminary objections to the complaint:

1. Plaintiffs have instituted suit seeking specific enforcement of an alleged real estate sales contract.
2. The alleged contract is attached to the complaint as Exhibit A.
3. That contract identifies the buyer as "E.C.S. Partnership Ltd."
4. However, suit has been instituted in the names of three individuals who purport to do business as "ECS Partnership." Specifically, the Plaintiffs do not designate themselves as a limited partnership.
5. A search of the Pennsylvania Department of State's website will show that no such entity calling itself "E.C.S. Partnership Ltd." has been registered to do business in the Commonwealth of Pennsylvania.

6. Department of State records do indicate that an "ECS Partnership" and an "ECS Partnership, Ltd." have been registered. However, the complaint fails to establish the relationship either by assignment or other affiliation between these various entities and the entity that purportedly contracted with E. M. Brown, Inc.

7. Pennsylvania's Fictitious Name Act at 54 Pa.C.S.A § 331 prohibits an entity to maintain any action in any tribunal of the Commonwealth until such entity has complied with the provisions of the Act. This section also imposes a \$500.00 civil penalty for failure to comply.

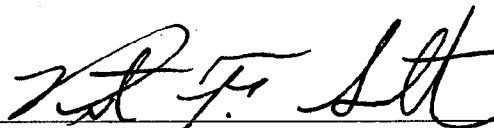
8. The complaint is therefore factually and legally insufficient and should be dismissed pursuant to Pa.R.C.P. 1028(a)(3) & (4).

WHEREFORE, the Defendant requests that the complaint be dismissed.

Respectfully submitted,

Date:

5/5/04


Peter F. Smith, Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ECS PARTNERSHIP, LTD., a
Pennsylvania Limited Liability Company,
SHAWN SMELTZER, CHARLES M.
COLONY, DOROTHY I. COLONY and
ERIC E. EMINHIZER, Formerly Partners
t/d/b/a ECS PARTNERSHIP,
Plaintiffs

vs.

E. M. BROWN INCORPORATED,
Defendant

No. 2004-481-CD

TYPE OF CASE:
Equity

TYPE OF PLEADING:
**Answer to Amended Complaint,
New Matter and Counterclaim**

FILED ON BEHALF OF:
Defendant

Counsel of Record for Defendant:
Peter F. Smith
Supreme Court ID #34291
30 South Second Street
P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Counsel of Record for Plaintiff:
Mark J. Remy
12 South Main Street
Lewistown, PA 17044
(717) 242-5250

FILED

JUN 04 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ECS PARTNERSHIP, LTD., a	:	
Pennsylvania Limited Liability Company,	:	
SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY and	:	No. 2004-481-CD
ERIC E. EMINHIZER, Formerly Partners	:	
t/d/b/a ECS PARTNERSHIP,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

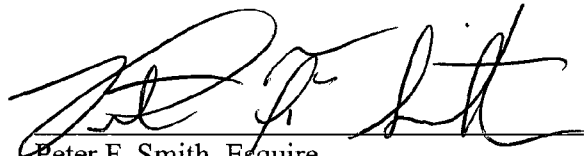
NOTICE TO DEFEND

To: Shawn Smeltzer
Charles M. Colony
Dorothy I. Colony
Eric E. Eminhizer
t/d/b/a ECS Partnership

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim within twenty (20) days from the service hereof or a judgment may be entered against you.

Date:

6/4/04



Peter F. Smith, Esquire
Attorney for Defendant, E. M. Brown, Inc.
P. O. Box 130
30 South Second Street
Clearfield, PA 16830
(814) 765-5595

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ECS PARTNERSHIP, LTD., a	:	
Pennsylvania Limited Liability Company,	:	
SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY and	:	No. 2004-481-CD
ERIC E. EMINHIZER, Formerly Partners	:	
t/d/b/a ECS PARTNERSHIP,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

**ANSWER TO AMENDED COMPLAINT,
NEW MATTER AND COUNTERCLAIM**

COMES NOW, E. M. Brown, Inc., by its attorney Peter F. Smith, who answers the complaint as follows:

1. Denied. The members of ECS Partnership were never introduced or identified to E. M. Brown, Inc., and strict proof is demanded at trial that these individuals are indeed whom they purport to be and entitled to bring this action.

Further denied that the Plaintiff "ECS Partnership, Ltd." has standing to bring this action because the alleged contract which is attached to the complaint as Exhibit A identifies the buyer as "E.C.S. Partnership Ltd." The grammatical differences between the two names indicate two distinct entities.

2. Admitted.

3. Admitted.

4. The existence of the document referred to in paragraph 4 of the complaint is admitted, but it is denied that that document constitutes a legally binding “agreement” or contract for the reasons stated in paragraphs 6 and 8 and as raised by Defendant’s new matter. In the alternative, if the document is found to constitute a contract, Defendant avers that it has expired according to its own terms since the alleged transaction was to be closed within 90 days after the occurrence of certain contingencies which have not and, in fact, cannot occur ~~or~~ no later than 90 days after January 12, 2004. That deadline occurred April 11, 2004.

5. Denied for the reasons set forth in paragraph 4 above.

6. Denied. The alleged Plaintiffs have never advised E. M. Brown, Inc. that they were ready to close the alleged transaction. To the contrary, counsel for the alleged Plaintiffs contacted E. M. Brown’s counsel on March 12, 2004 and requested that an addendum be executed to the alleged agreement which was tantamount to a request for an extension of the deadline to close this transaction. A true and correct copy of counsel’s letter and proposed addendum are attached hereto and incorporated herein by reference as Defendant’s Exhibits 1 and 2.

7. Denied. E. M. Brown, Inc. was completely within its rights to refuse to execute the addendum and extend the deadline for closing the alleged sale.

8. Denied as stated. E. M. Brown, Inc.’s counsel did advise counsel for the ECS Partnership that E. M. Brown would not agree to the addendum and thereby extend closing. However, any implication or conclusion that this decision by E. M. Brown was improper or illegal or constitutes a breach of the alleged agreement is denied.

9. Denied for the reasons stated in paragraphs 4 and 6 above.

10. Denied that E. M. Brown repudiated the alleged contract or otherwise committed a breach, but it is agreed that since ECS Partnership has no legally enforceable right to purchase the properties, E. M. Brown, Inc. is not obliged to tender payment.

WHEREFORE, Defendant prays that the complaint be dismissed.

NEW MATTER

11. Paragraphs 1- 10 of the foregoing answer are incorporated herein by reference as those set forth in full.

12. The alleged real estate sales contract, assuming it was a legally enforceable agreement which is denied, has expired according to its own terms because:

- a. Cooper Township did not grant its approval permitting sale of the parcels by separate tax map numbers without compliance with the subdivision ordinance;
- b. The transaction was not closed within 90 days of January 12, 2004 which was April 11, 2004;
- c. Plaintiffs have breached paragraph 25 of the alleged agreement;
- d. If the alleged agreement is found to have been valid and enforceable, it has expired and Plaintiff has released E. M. Brown, Inc. from any further liability pursuant to subparagraph 25(D).
- e. Plaintiffs or their agents breached subparagraph 27(B)6 by disclosing information, documents and/or other materials supplied to them by E. M.

Brown, Inc. in conjunction with the alleged transaction to representatives of the Pennsylvania Game Commission.

13. The alleged agreement as interpreted by Plaintiffs would constitute an option of infinite or indefinite duration, and in this event, would be unenforceable as an illusory contract. The alleged agreement imposes no obligation upon E. M. Brown, Inc. to extend closing indefinitely.

14. The alleged agreement imposes no obligation upon E. M. Brown, Inc. to extend closing beyond April 11, 2004 as specified in paragraph 3 of the alleged agreement.

15. The alleged agreement imposes no obligation upon E. M. Brown, Inc. to consent to amendments or addenda.

16. The Plaintiffs' request for the equitable relief of specific performance should be denied on the basis of "unclean hands." The Plaintiffs seek to enforce an illusory contract and have filed a *Lis Pendens* which prevents E. M. Brown, Inc. from the full use, benefit and enjoyment from it ownership of the subject properties. The Plaintiffs seek to use what amounts to an option of indefinite duration as a speculative tool which would enable them to hold the property without paying the full purchase price until such time or opportunity arises that would enable them to resell it at substantial profit and at no risk to themselves.

WHEREFORE, Defendant prays that the complaint be dismissed.

COUNTERCLAIM

17. Paragraphs 1-16 are incorporated herein by reference as those set forth in full.

18. The pendency of this action and the *Lis Pendens* filed by Plaintiffs prevent E. M.

Brown, Inc. from the full use, enjoyment and profit to be derived from its ownership of the subject real estate.

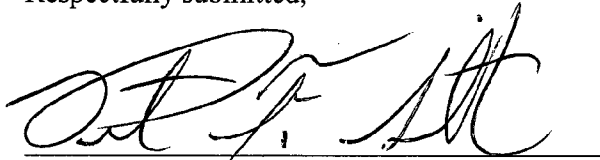
19. This suit and the *Lis Pendens* place a substantial cloud upon E. M. Brown, Inc.'s title to the subject real estate.

20. This cloud on E. M. Brown Inc.'s title will prevent it from deriving future profit from the subject property through a coal lease, gas lease or other sales or uses.

21. E. M. Brown, Inc. believes and therefore avers that the economic opportunities it will lose because of the pendency of this action will exceed \$25,000.00.

WHEREFORE, Defendant prays this Honorable Court to enter judgment in its favor and against the Plaintiffs in an amount exceeding \$25,000.00 together with interest and costs.

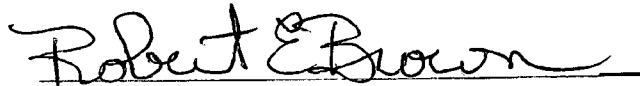
Respectfully submitted,


Peter F. Smith, Attorney for Defendant

Date: June 4, 2004

VERIFICATION

I verify that the statements made in this Answer, New Matter and Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Dated: 6/12/04

Robert E. Brown, President
E. M. Brown, Inc.

LAW OFFICES
SEARER, SCHRUM AND SEARER

Francis A. Searer
Nancy Schrum Searer
Daniel Zinn Searer
Mark J. Remy

12 South Main Street
Lewistown, PA 17044

Telephone
(717) 242-5250
Fax 247-8180

March 12, 2004

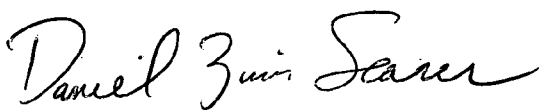
Peter F. Smith, Esq.
P.O. Box 130
Clearfield PA 16830 *ALSO VIA Fax 814-765-6662*

Dear Attorney Smith:

I am in receipt of your letter dated February 19, 2004. In that letter you asked that it be made absolutely clear that paragraph 12 C supercedes the special clause in paragraph 27.B.8. I just wanted to clarify that, it seems to me that you may have meant 27.B.7 in your letter. I think you are referring to a copy of the sales agreement that was dated June 23, 2003, but was replaced by the August 28, 2003 Sales agreement. That would mean that we are to pay for the survey. In anticipation that I am correct as aforesaid, I have revised the addendum and am sending it along herewith. If it is satisfactory, please let me know.

My client is willing to pay to have the surveys and legal descriptions prepared; we would provide them to you so that you may prepare the deeds. If you give me your approval of the wording of the revised agreement that I am sending you today, I will have it executed by my clients and sent to you for execution by your clients. Thereafter we will undertake the title search as soon as possible and proceed to closing.

Sincerely,



Daniel Zinn Searer, Esq.
Attorney at law

**FIRST ADDENDUM TO STANDARD AGREEMENT FOR THE SALE OF
VACANT LAND**

This addendum (hereinafter "First Addendum") is to the agreement dated August 28, 2003 by and between E.M. Brown, Inc. ("Seller") and E.C.S. Partnership, Ltd. ("Buyer").

WHEREAS, paragraphs 3(D) and 27(B)(3) of the agreement set forth that settlement should be held within 90 days of Cooper Township's interpreting their subdivision ordinance to allow that the separate tax parcels could be conveyed individually without requiring subdivision approval.

WHEREAS, the Seller has made repeated attempts to meet with township officials with regard to this matter and has had the meetings repeatedly cancelled or postponed.

WHEREAS, the Seller and Buyer wish to remove the contingency provided for in paragraphs 3(D) and 27(B)(3), and also to set a timeframe for settlement.

NOW THEREFORE, the Seller and Buyer agree as follows:

1. Paragraph 3(D) of the agreement is changed "Settlement to be on or before 90 days from the execution by Seller of the First Addendum to this agreement.
2. Paragraph 27(B)(3) is deleted from the agreement.
3. Paragraph 27(B)(7) supercedes paragraph 12(c).

In witness whereof, the parties hereto have set their hands this _____ day of _____, 2004.

ECS Partnership, Ltd by

E.M. Brown, Inc. by

COMMERCIAL PRINTING CO., OLEANSFIELD, PA.

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

4
William A. Shaw
Prothonotary/Clerk of Courts

FILED
JUN 04 2004
DEC
02:45 PM
PATRICK P. Smith
William A. Smith

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

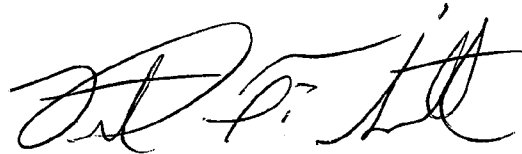
ECS PARTNERSHIP, LTD., a	:	
Pennsylvania Limited Liability Company,	:	
SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY and	:	No. 2004-481-CD
ERIC E. EMINHIZER, Formerly Partners	:	
t/d/b/a ECS PARTNERSHIP,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Defendant in the above-captioned matter, certify that I sent a true and correct copy of the **ANSWER TO AMENDED COMPLAINT, NEW MATTER AND COUNTERCLAIM** by U.S. First Class Mail to the attorney for the Plaintiffs at the following address:

Mark J. Remy, Esquire
Searer, Schrum and Searer
12 South Main Street
Lewistown, PA 17044

Date: June 4, 2004



Peter F. Smith, Attorney for Defendant

FILED

JUN 04 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ECS PARTNERSHIP, LTD., a	:	
Pennsylvania Limited Liability Company,	:	
SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY, and	:	No. 2004-481-CD
ERIC E. EMINHIZER, Formerly	:	
Partners, t/d/b/a ECS PARTNERSHIP,	:	
Plaintiffs	:	
	:	
v.	:	EQUITY
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

FILED

JUN 23 2004

William A. Shaw
Prothonotary

ANSWER TO NEW MATTER AND COUNTERCLAIM

AND NOW, come ECS PARTNERSHIP, LTD., SHAWN SMELTZER, CHARLES M. COLONY, DOROTHY I. COLONY and ERIC E. EMINHIZER, Plaintiffs, who answer the New Matter and Counterclaim filed by E. M. Brown Incorporated, as follows:

ANSWER TO NEW MATTER

11. The allegations of Plaintiffs contained in Paragraphs 1 through 10 are incorporated herein by reference as if fully set forth.

12. Denied. The allegation that the contract at issue has expired according to its own terms is denied for the following reasons:

a. Denied, as after reasonable investigation Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of this averment. Any inference that the failure of Cooper Township to grant approval permitting sale of the parcels by separate tax numbers resulted in the contract at issue expiring according to its own terms is denied as a conclusion of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same is therefore denied.

b. Admitted in part, denied in part. It is admitted that this transaction did not closed within 90 days of January 12, 2004. Any inference that this resulted in the contract at issue expiring according to its own terms is denied as a conclusion of law to

which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same is therefore denied. By way of further answer, this action was instituted prior to April 11, 2004.

c. Denied. The allegations contained in subparagraph 12(c) are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same are therefore denied.

d. Denied. The allegations contained in subparagraph 12(d) are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same are therefore denied.

e. Denied. To the contrary, neither Plaintiffs nor their agents provided information, documents and/or other materials supplied to them by Defendant to the Pennsylvania Game Commission. Any inference that the alleged disclosure resulted in the contract at issue expiring according to its own terms is denied as a conclusion of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same is therefore denied.

13. Denied. The allegations contained in subparagraph 13 are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same are therefore denied.

14. Denied. The allegations contained in subparagraph 14 are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same are therefore denied.

15. Denied. The allegations contained in subparagraph 15 are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same are therefore denied.

16. Denied. The allegations contained in subparagraph 16 are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same are therefore denied.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant.

ANSWER TO COUNTERCLAIM

17. The allegations and answers of Plaintiffs contained in Paragraphs 1 through 16 are incorporated herein by reference as if fully set forth.

18. Denied, as after reasonable investigation Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of this averment.

19. Denied. The allegations contained in subparagraph 19 are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same are therefore denied.

20. Denied, as after reasonable investigation Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of this averment.

21. Denied, as after reasonable investigation Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of this averment.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant.

SEARER, SCHRUM AND SEARER

By: 

Mark J. Remy
12 South Main Street
Lewistown PA 17044
(717) 242-5250
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ECS PARTNERSHIP, LTD., a
Pennsylvania Limited Liability Company,
SHAWN SMELTZER, CHARLES M.
COLONY, DOROTHY I. COLONY, and
ERIC E. EMINHIZER, Formerly
Partners, v/d/b/a ECS PARTNERSHIP,
Plaintiffs

No. 2004-481-CD

v.

EQUITY

E. M. BROWN INCORPORATED,
Defendant

I verify that the statements made in this answer are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904, relating to unsworn falsification to authorities.

Date:

6/21/04

Chs M. Coy

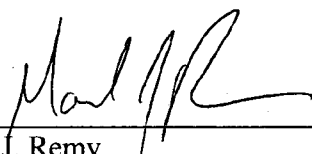
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

SHAWN SMELTZER, CHARLES M.	:	
COLONY, DOROTHY I. COLONY, and	:	No. 2004-481-CD
ERIC E. EMINHIZER, Partners, t/d/b/a	:	
ECS PARTNERSHIP	:	
Plaintiffs	:	
	:	
v.	:	EQUITY
	:	
E. M. BROWN INCORPORATED,	:	
Defendant	:	

I hereby certify that service of the foregoing answer was made upon all parties by mailing a true copy to the office each party's attorney of record addressed as follows:

Peter F. Smith, Esquire
30 South Second Street
PO Box 130
Clearfield, PA 16830

SEARER, SCHRUM AND SEARER

By: 

Mark J. Remy
12 South Main Street
Lewistown PA 17044
(717) 242-5250

Dated: 6-22-04

SEARER, SCHRUM & SEARER ATTORNEYS AT LAW 12 SOUTH MAIN STREET LEWISTOWN, PA 17044 (717) 242-5250				
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FILED

JUN 23 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ECS PARTNERSHIP, LTD., a :
Pennsylvania Limited Liability Company, :
SHAWN SMELTZER, CHARLES M. :
COLONY, DOROTHY I. COLONY, and : No. 2004-481-CD
ERIC E. EMINHIZER, Formerly :
Partners, t/d/b/a ECS PARTNERSHIP, :
Plaintiffs :


v. : EQUITY
:

E. M. BROWN INCORPORATED, :
Defendant :

TO THE PROTHONOTARY:

Please **ENTER** my appearance on behalf of ECS PARTNERSHIP, LTD., Shawn Smeltzer, Charles M. Colony, Dorothy Colony, and Eric Eminhizer.

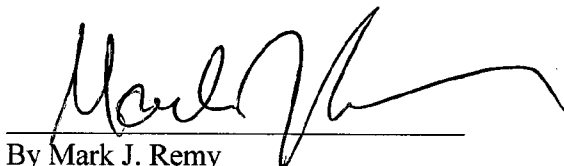
SEARER, SCHRUM & SEARER



By Daniel Z. Searer
12 South Main Street
Lewistown, PA 17044
(717) 242-5250
Attorney ID No. 75918

Please **WITHDRAW** my appearance on behalf of ECS PARTNERSHIP, LTD., Shawn Smeltzer, Charles M. Colony, Dorothy Colony, and Eric Eminhizer.

SEARER, SCHRUM & SEARER



By Mark J. Remy
12 South Main Street
Lewistown, PA 17044
(717) 242-5250
Attorney ID No. 65599

FILED
m/12:46/1
FEB 01 2006

NO cc
copy to CIA

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ECS PARTNERSHIP, LTD., a :
Pennsylvania Limited Liability Company, :
SHAWN SMELTZER, CHARLES M. :
COLONY, DOROTHY I. COLONY, and : No. 2004-481-CD
ERIC E. EMINHIZER, Formerly :
Partners, t/d/b/a ECS PARTNERSHIP, :
Plaintiffs :

v. : EQUITY
:

E. M. BROWN INCORPORATED, :
Defendant :

I hereby certify that service of the foregoing praecipe was made upon all parties
by mailing a true copy to the office each party's attorney of record addressed as follows:

Peter F. Smith, Esquire
30 South Second Street
PO Box 130
Clearfield, PA 16830

SEARER, SCHRUM AND SEARER

By: 

Mark J. Remy
12 South Main Street
Lewistown PA 17044
(717) 242-5250

Dated: 1-30-06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

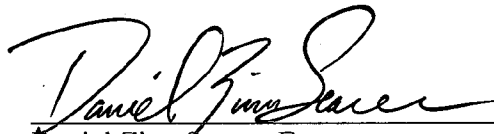
ECS PARTNERSHIP, LTD., et. al.	:	No. 2004-481-CD
Plaintiff	:	
v.	:	Equity
	:	
E.M. BROWN INCORPORATED,	:	
Defendant	:	

PRAECIPE TO SETTLE, DISCONTINUE, SATISFY, AND STRIKE

To the Prothonotary:

Kindly mark the Lis Pendens in the above captioned case, as settled, discontinued, satisfied and stricken upon payment of your costs only.

Date: 11-9-2006


Daniel Zinn Searer, Esq.
Counsel for Plaintiffs

FILED *Att. pd. 7.00*
012:41/101
NOV 14 2006 *Certificate to Att.*
William A. Shaw
Prothonotary/Clerk of Courts
(GK)

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CC-4

CERTIFICATE OF SATISFACTION OF JUDGMENT

No.: 2004-00481-CD

Shawn Smeltzer
Charles M. Colony
Dorothy I Colony
Eric E. Eminhizer
ECS Partnership

Vs.

Debt/Judgment: Lis Pendens

Atty's Comm.:

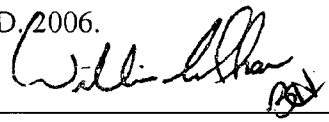
E.M. Brown Incorporated

Interest From:

Cost: \$7.00

NOW, Tuesday, November 14, 2006, directions for satisfaction having been received,
and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 14th day of November, A.D. 2006.



Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

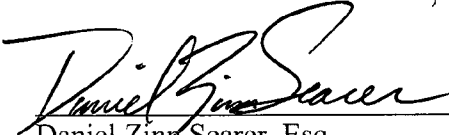
ECS PARTNERSHIP, LTD., et. al.	:	No. 2004-481-CD
Plaintiff	:	
v.	:	Equity
	:	
E.M. BROWN INCORPORATED,	:	
Defendant	:	


PRAECIPE TO SETTLE, DISCONTINUE AND END

To the Prothonotary:

Kindly mark the above captioned case, including plaintiff's claim against defendant and defendant's counterclaim against plaintiff, settled, discontinued and ended upon payment of your costs only.

Date: 11/13/06


Daniel Zinn Searer, Esq.
Counsel for Plaintiffs


Peter F. Smith, Esq.
Counsel for Defendants

FILED 1 Certificate
012:41/201 to Amy
NOV 14 2006 Copy to
CIA
William A. Shaw
Prothonotary/Clerk of Courts
(CR)

FILED

NOV 14 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF THE COMMON PLEAS OF HARRIS COUNTY
RECEIVED

10/10/06

10/10/06

10/10/06

10/10/06

10/10/06

10/10/06

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Shawn Smeltzer
Charles M. Colony
Dorothy I Colony
Eric E. Eminhizer
ECS Partnership

Vs.
E.M. Brown Incorporated

No. 2004-00481-CD

CERTIFICATE OF DISCONTINUATION

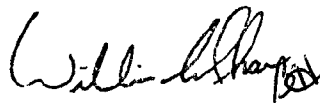
Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on November 14, 2006, marked:

Settled, Discontinued and Ended, including plaintiff's claim against defendant and defendant's counterclaim against plaintiff

Record costs in the sum of \$85.00 have been paid by ECS Ltd. and costs in the sum of \$7.00 have been paid by Peter F. Smith, Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of November A.D. 2006.



William A. Shaw, Prothonotary