

Richard Fullington v. Fullington Bus et al
2005-565-CD

05-565-CD
J. Fullington Jr. vs. Fullington et al

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Civil Other

Date		Judge
04/20/2005	New Case Filed.	No Judge
	X Filing: Civil Complaint Paid by: Keith M. Pemrick Receipt number: 1899818 Dated: 04/20/2005 Amount: \$85.00 (Check) 6 Cert. to Sheriff	No Judge
05/05/2005	X Sheriff Return, April 21, 2005 Complaint served upon Fullington Auto Bus Co. April 21, 2005 Complaint served upon Fullington GMC Sales, Inc. April 21, 2005 Complaint served upon Fullington Real Estate Co. April 27, 2005 Complaint served upon J. Richard Fullington, Sr. April 27, 2005 Complaint served upon Michael L. Fullington. April 21, 2005 Complaint served upon Aerial Fullington Weisman. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm.	No Judge
05/17/2005	X Praecept For Entry of Appearance, filed on behalf of J. Richard Fullington, Sr. Filed by s/ Timothy E. Durant, Esquire. 3CC Atty. Durant	No Judge
07/26/2005	X Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar Conveyance of Property, filed by s/Paul H. Titus Four CC Attorney	No Judge
	X Praecept for Expedited Disposition, filed by s/Paul H. Titus Four CC Attorney Titus	No Judge
07/28/2005	X Order, AND NOW, this 27th day of July, 2005, upon consideration of Defendant's Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar Conveyance of Property, Order that argument has been scheduled for the 3rd day of August, 2005, at 1:00 p.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. Five CC Atty Titus with memo re: service (handed to J. Zimmer for Fullington's)	Fredric Joseph Ammerman
07/29/2005	X Affidavit of Service, Order of July 27, 2005 and Emergency Motion and Memorandum of Law, filed by s/Judith F. Olson No CC	Fredric Joseph Ammerman
08/05/2005	X Order, this 4th day of August, 2005, Ordered that the parties be present at 9:00 a.m. on Tuesday, August 23, 2005, Courtroom No. 1, to present evidence and testimony relative the Defendant's Emergency Motion to Strike Portions of Prayer for Relief and to Bar Conveyance of Property. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Durant, Pemrick, and Titus	Fredric Joseph Ammerman
08/19/2005	X Motion For Continuance, filed by Atty. Pemrick no cert. copies.	Fredric Joseph Ammerman
08/22/2005	X Order, NOW, this 19th day of August, 2005, upon the Court's review of Plaintiff's Motion for Continuance, it is the Order of this Court that said request by Plaintiff for a continuance be and is hereby Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty Pemrick, Titus, Durant	Fredric Joseph Ammerman
08/25/2005	X Order, this 23rd day of August, 2005, it is the Order of this Court that counsel for the Defendant have no more than 7 days from this date in which to supply the court with appropriate brief and that the Plaintiffs will have no more than 15 days from this date in which to supply the Court with appropriate brief. By The Court, /s/ Fredric J. Ammerman, President Judge 1CC to Attys: Pemrick, Titus, Durant	Fredric Joseph Ammerman

Joyce M. Meckley, Ronald C. Meckley vs. Otolaryngology Group of Central Pennsylvania, Inc., Steven Y. Kim MD,
Clearfield Hospital

Civil Other

Date		Judge
11/18/2004	Certificate of Service, filed by Atty. Slimak Served copy of Defendant Otolaryngology Group Answers to Plaintiffs' 2nd set of interrogatories to Schwarzwaelder and Sosnowski.	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Slimak Served copy of Defendant Otolaryngology Group Answer to Plaintiffs 3rd set of Interrogatories on Schwarzwaelder and Sosnowski.	Fredric Joseph Ammerman
12/03/2004	Notice of Service of Answers to Plaintiffs' Second Set of Interrogatories Directed to Defendant Clearfield Hospital, filed on behalf of Defendant Clearfield Hospital, on the 2nd day of December, 2004, mailed to Arthur L. Schwarzwaelder, Esquire. Filed by s/ Michael A. Sosnowski, Esquire. No CC	Fredric Joseph Ammerman
01/11/2005	Order, NOW, this 4th day of Jan., 2005, upon request of counsel for all parties, it is the ORDER of this Court that the matter be and is hereby continued until the Spring Term of Court. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Schwarzwaelder, Blasko, Slimak, Hartye	Fredric Joseph Ammerman
01/12/2005	Notice of Service, Plaintiffs' Supplemental Response to Defendant Dr. Kim's Request for Production (set two) served on Jan. 10th 2005 upon defendant's counsel of record. filed by s/ Arthur L. Schwarzwaelder, Esquire. No CC	Fredric Joseph Ammerman
01/28/2005	Notice of Service of Expert Reports, upon Darryl R. Slimak, esquire, and Michael A. Sosnowski, Esquire on Jan. 26, 2005. Filed by s/ Arthur L. Schwarzwaelder, Esquire No CC	Fredric Joseph Ammerman
03/03/2005	Motion for Court Order Adopting Stipulation of Counsel Concerning Dismissal of Plaintiffs' Informed Consent Claim as to Defendant Steven Y. Kim, M.D. No CC	Fredric Joseph Ammerman
03/08/2005	Order, AND NOW, this 7th day of March, 2005, the Stipulation of Counsel dated Feb. 14, 2005, is hereby ADOPTED. It is further ordered that pursuant to said Stipulation, plaintiffs' informed consent claim as to Defendant Steven Y. Kim, M.D., and found at Count II of the Complaint is hereby Dismissed. BY THE COURT: /s/ Fredric J. Ammerman, Judge. 1CC Atty Smith.	Fredric Joseph Ammerman
03/21/2005	Stipulation, as to Discontinuance of Civil Action Against Clearfield Hospital and Amendment of Caption filed by Arthur L. Schwarzwaelder, Esquire. No CC	Fredric Joseph Ammerman
04/14/2005	Certificate of Service, Plaintiff's Brief In Support of Motion in Limine was sent on the 13th of April, 2005 to: Clfd. Co. Court Administrator; William A. Shaw, Prothonotary; and Darryl Slimak, Esquire. Filed by s/ Arthur L. Schwarzwaelder, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, Points for Charge and Points for Binding Instructions on Behalf of Plaintiffs Joyce and Ronald Meckley was sent on the 13th of April, 2005 to: Clfd. Co. Court Administrator; William A. Shaw, Prothonotary; and Darryl Slimak, Esquire. Filed by s/ Arthur L. Schwarzwaelder, Esquire. No CC	Fredric Joseph Ammerman
	Plaintiff's Motion in Limine, filed by s/ Arthur L. Schwarzwaelder, Esquire. no cc	Fredric Joseph Ammerman

Civil Other

Date	Selected Items	Judge
09/09/2005	✓ X Order, NOW, this 7th day of Sept. 2005, upon consideration of the Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar Conveyance of Property and following evidentiary hearing thereon, it is Ordered that said Motion is GRANTED. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Titus, Durant.	Fredric Joseph Ammerman
10/20/2005	✓ X Motion To Withdraw as Counsel, filed by s/ Keith M. Pemrick, Esquire. No CC	Fredric Joseph Ammerman
10/21/2005	✓ X Order AND NOW, October 21, 2005 upon consideration fo the within Motion and the Plaintiff's consent thereto, it is HEREBY ORDERED that: 1. The Motion is granted. and 2. The appearances of Keith M. Pemrick Esquire and the Dale Woodard Law Firm as counsel of the plaintiff are withdrawn. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC atty Pemrick	Fredric Joseph Ammerman
10/31/2005	✓ X Praeipce to Withdrawal Appearance, filed. Per the Order entered in this case on October 21, 2005, please withdraw the appearance of the undersigned as counsel for J. Richard Fullington Jr., in the above captioned action, filed by s/ Keith M. Pemrick Esq. No CC and copy to C/A.	Fredric Joseph Ammerman
12/22/2005	Transcript of Proceedings, Defendant's Emergency Motion to Strike Portions of Prayer For Relief And to Bar Conveyance of Property, held before Fredric J. Ammerman, Pres. Judge, on Tuesday August 23, 2005, filed.	Fredric Joseph Ammerman
02/09/2006	✓ X Answer, New Matter and Counterclaims, filed by s/ Judith F. Olson, Esquire. 2CC to Atty	Fredric Joseph Ammerman
02/17/2006	✓ X Proof of Service, filed by s. Judith F. Olson Esq. 1CC Atty Olson.	Fredric Joseph Ammerman
03/02/2006	✓ X Praeipce for Appearance, filed. Kindly enter the appearance of MERCHANT, MOORHEAD & KAY, LLC. and WILLIAM J. MOORHEAD, Esquire, in the above-captioned matter on behalf of Plaintiff, filed by s/ William J. Moorhead Esq. No CC., copy to C/A.	Fredric Joseph Ammerman
03/17/2006	✓ X Preliminary Objections to Defendant's New Matter And Counterclaim, filed by s/ William J. Moorhead, Esquire No CC	Fredric Joseph Ammerman
	✓ X Praeipce For Argument Date, filed by s/ William J. Moorhead, Esquire. No CC	Fredric Joseph Ammerman
03/20/2006	✓ X Scheduling Order, NOW, this 17th day of March, 2006, Ordered that Defendants shall respond to plaintiff's Preliminary Objection within 20 days of the date of this Order. Argument shall be held on April 18, 2006 in Courtroom No. 1 @ 1:30 p.m. Notice of the entry of this Order shall be provided to all parties by Plaintiff. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 6CC Atty. Moorhead	Fredric Joseph Ammerman
04/05/2006	✓ X Answer to Preliminary Objections to Defendants' New Matter and Counterclaims, filed by s/ Judith F. Olson Esq. 2CC Atty Olson.	Fredric Joseph Ammerman
	Memorandum of Law in Opposition to Preliminary Objections to Defendants' New Matter and Counterclaims, filed by Judith F. Olson Esq. 2CC Atty Olson.	Fredric Joseph Ammerman
	✓ X Motion to Reschedule Argument on Preliminary Objections to Defendants' New Matter and Counterclaim, filed by s/ Judith F. Olson Esq. 2CC Atty Olson.	Fredric Joseph Ammerman

not in file as of 4-20-06

THE HONORABLE FREDRIC J. AMMERMAN, PRESIDING

FRIDAY, AUGUST 5, 2005:

9:00	IN RE: ESTATE OF JANE ANN WILFONG OC No. 1705-0131 Petition for Distribution of a Small Estate	Benjamin S. Blakley, Esquire
9:30	PETITION TO CONFIRM CONSENT TO ADOPTION & PETITION FOR ADOPTION OC No. 2940	Ann B. Wood, Esquire
10:00	IN RE: PARKER JUSTUS HAYES OC No. Petition for Appointment of Plenary Guardian	S. Casey Bowers, Esquire
10:30	MICHAEL A. MUNCHAK vs. LISA D. MUNCHAK Plaintiff's Petition for Special Relief 05-846-CD	John R. Ryan, Esquire Toni M. Cherry, Esquire

Cont.

Date: 04/20/2006

Clearfield County Court of Common Pleas

User: LMILLER

Time: 11:51 AM

ROA Report

Page 2 of 2

Case: 2005-00565-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Selected Items	Judge
04/07/2006	<p>X Order AND NOW, to-wit, this 5th day of April 2006, upon consideration of the Motion to Reschedule Argument on Preliminary Objections to Defendants' New Matter and Counterclaim, is is hereby ORDERED, ADJUDGED AND DECREED that said Motion be and hereby is GRANTED. The argument on the Preliminary Objections shall be held on April 26, 2006 at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty Olson.</p>	Fredric Joseph Ammerman

THE HONORABLE FREDRIC J. AMMERMAN, PRESIDING

FRIDAY, AUGUST 5, 2005 CONT.:

1:30 DENNIS PRINGLE, al Douglas L. Price, Esquire
vs.
DUBOIS REGIONAL MEDICAL David J. Johnson, Esquire
CENTER, al
No. 03-624-CD
Defendant's Motion to Compel Production of Expert Reports

2:00 GENERAL MOTORS ACCEPTANCE CORPORATION Russell R. Sander, Esquire
vs.
RANDALL C. DaNIELL
No. 05-948-CD
Plaintiff's Motion for Writ of Seizure and Petition for Examination

2:30 IN RE: BOBBI JO FLECK David R. Thompson, Esquire
OC No. 1991-0388
Petition for the Transfer and Appointment of a Guardian

Civil Other

Date	Selected Items	Judge
4/28/2006	<p>✓ Order, NOW, this 27th day of April, 2006, the Court notes that the Memorandum of law in Opposition to Preliminary Objections to Defendants Matter and Counterclaim was filed in error on April 5, 2006. The Prothonotary is directed to remove the said Memorandum from the record of this case. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys. Moorehead, Titus & Durant. Note: Transferred Memorandum to C/A 4-28-06</p>	Fredric Joseph Ammerman
	<p>✓ Order, NOW, this 27th day of April, 2006, following argument on plaintiff's Preliminary Objections to Defendants' New Matter and Counterclaim, it is the Order of this Court that the Plaintiff's Preliminary Objections are Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys Moorehead, Titus, Durant</p>	Fredric Joseph Ammerman
5/19/2006	<p>✓ Reply to New Matter, Answer to Counterclaims and New Matter, filed by s/ William J. Moorhead Esq. No CC.</p>	Fredric Joseph Ammerman
6/7/2006	<p>✓ Reply to New Matter, filed by Atty. Titus 3 cert. to Atty.</p>	Fredric Joseph Ammerman
6/29/2006	<p>✓ Defendants' Motion for Protective Order RE: Deposition Notice Driected to J. Richard Fullington, Sr., filed by Atty. Titus 3 Cert. to Atty.</p>	Fredric Joseph Ammerman
	<p>Order, filed, 3 Cert. to Atty. for Service ✓ NOW, this 29th day of June, 2006, No Deposition of J. Richard Fullington, Sr. shall be taken in this matter until guradianship proceedings pending at Orphan's Court are concluded, thereafter subject to further order of this Court.</p>	Fredric Joseph Ammerman
6/30/2006	<p>✓ Certificate of Service, on June 28, 2006, the following court papers were served upon Timothy Durant, Esquire via 1st Class Mail: 1. Preliminary Objections to Def.'s New Matter and Counterclaim 2. Answer to Counterclaim and New Matter 3. Petition to Open Confessed Judgment Case No. 2002-650-cd 4. Petition to Open Confessed Judgment of Case No. 2002-648-cd 5. Plaintiff's First Request for Production of Documents; 6. Plaintiff's First Set of Interrogatories; and 7. Certificate of Service indication service of same was made upon you via regular mail. Filed by s/ William J. Moorhead, Esquire No Cc</p>	Fredric Joseph Ammerman
9/5/2006	<p>✓ Plaintiff's Motion For Leave To Take Deposition of J. Richard Fullington, Sr., filed by s/ William J. Moorhead, Esquire. No CC</p>	Fredric Joseph Ammerman
9/6/2006	<p>✓ Order, NOW, this 5th day of Sept., 2006, Plaintiff's Motion for Leave to Take Deposition of J. Richard Fullington, Sr. is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Moorehead</p>	Fredric Joseph Ammerman
1-8-07 1/11/2007	<p><i>Motion to schedule Status Conference</i> ✓ Order, NOW, this 10th day of Jan., 2007, upon consideration of Defendants' Motion to Schedule a Status Conference, it is Ordered that said Motion is Granted. It is further Ordered that a Status Conference will be held on the 30th day of Jan., 2007 at 9:30 a.m. By The Court, /s/ Fredric J. Ammerman. 2CC Atty. Titus</p>	Fredric Joseph Ammerman

J. RICHARD FULLINGTON, JR.,

Plaintiff,

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

) IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA

)
)
) Civil Action – Law

)
) Number 05 – 565 C.D.

)
) Type of Pleading:
) Complaint

)
) Filed on Behalf of:
) Plaintiff

)
) Counsel of Record for this Party:
) Keith M. Pemrick
) Supreme Court I.D. No. 30322

)
) DALE WOODARD LAW FIRM
) 1030 Liberty Street
) Franklin, Pennsylvania 16323
) Telephone: (814) 432-2181
) Facsimile: (814) 437-3212

EW

FILED *Atty pd 85.00*
m/2:36/51
APR 20 2005 *6ccshff*

William A. Shaw
Prothonotary/Clerk of Courts

J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	

NOTICE

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 defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR 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 Courthouse
230 East Market Street
Clearfield, PA 16830

(814) 765-2641, Ext. 5982
Telephone: (800) 692-7375

J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	

COMPLAINT

NOW comes the plaintiff, through his undersigned counsel, and files this Complaint against the defendants, and in support thereof states as follows:

1. The plaintiff:
 - (a) is an adult citizen of the Commonwealth of Pennsylvania, who resides at 504 Sabula Outing Club Road, DuBois, Clearfield County, Pennsylvania 15801;
 - (b) is the former president and owner of a majority of the voting shares of Fullington GMC Sales, Inc. (“the dealership”);
 - (c) is the president of, and the sole shareholder in, Fullington Chevrolet, Inc.;
and
 - (d) is the president of, and the sole shareholder in, Arrowhead Restaurant, Inc.

2. Fullington Chevrolet, Inc. ("Fullington Chevrolet"), at all times material hereto:
 - (a) was a Pennsylvania corporation with its principal place of business in Elk County, Pennsylvania; and
 - (b) operated an automobile dealership in St. Mary's, Pennsylvania.
3. Fullington Auto Bus Company ("the bus company"):
 - (a) is a Pennsylvania corporation with an office and principal place of business at 316 East Cherry Street, Clearfield, Clearfield County, Pennsylvania; and
 - (b) is in the business, inter alia, of providing bus service to school districts and for motor coach charters.
4. Fullington GMC Sales, Inc.:
 - (a) is a Pennsylvania corporation with its principal place of business at 316 East Cherry Street, Clearfield, Clearfield County, Pennsylvania; and
 - (b) at all times material hereto operated an automobile dealership in Clearfield, Pennsylvania.
5. Fullington Real Estate Company ("Fullington Real Estate"):
 - (a) is a Pennsylvania corporation with an office and principal place of business at 316 East Cherry Street, Clearfield, Clearfield County, Pennsylvania; and
 - (b) is in the business, inter alia, of owning and leasing real estate.

6. J. Richard Fullington, Sr.:
 - (a) is an adult citizen of the Commonwealth of Pennsylvania, residing in Clearfield County, Pennsylvania; and
 - (b) is the plaintiff's father.
7. Michael L. Fullington:
 - (a) is an adult citizen of the Commonwealth of Pennsylvania, residing in Centre County, Pennsylvania;
 - (b) is the plaintiff's brother;
 - (c) has been a vice president of the bus company since the 1970's; and
 - (d) is a shareholder and/or officer and director of Fullington Real Estate.
8. Aerial Fullington Weisman:
 - (a) is an adult citizen of the Commonwealth of Pennsylvania, residing in Clearfield County, Pennsylvania;
 - (b) is the plaintiff's sister;
 - (c) has been president of the bus company since April or May, 2003; and
 - (d) is a shareholder and/or officer and director of Fullington Real Estate.
9. The Arrowhead Restaurant, Inc. ("Arrowhead Restaurant"):
 - (a) is a Pennsylvania corporation with its principal place of business at 322 East Goldenrod Farms, Clearfield, Clearfield County, Pennsylvania 16830; and
 - (b) at all times material hereto operated a restaurant at the aforesaid address.

10. The plaintiff began working for the dealership in 1975 as a salesman and bookkeeper, and became president in 1978.

11. In 1978, the plaintiff was the President of, and a 33 1/3 % shareholder in, the dealership. He became the owner of a majority of the voting shares of the dealership in June, 1994.

12. The plaintiff worked for the bus company from 1975 to 2001 as a vice president, and at the conclusion of his employment was the general manager of the business. The plaintiff has never been a shareholder in the bus company.

13. The dealership and the bus company are closely held corporations in which, at the times material hereto, members of the Fullington family, including the plaintiff, his father, J. Richard Fullington, Sr., and his deceased mother, Mildred Fullington, held various ownership interests.

14. During the period of time relevant hereto, the dealership and the bus company routinely and frequently collaborated on business matters and were treated by the Fullington family as inter-related or affiliated companies

15. As part of its business plan, the Fullington family financed the purchase of school buses, motor coaches, limousines (hereinafter collectively "the vehicles") and real estate through the dealership, and then leased the vehicles and real estate to the bus company at cost.

16. In order for the dealership to obtain financing for the vehicles and real estate so that it could, in turn, lease them to the bus company, the plaintiff and his wife, Loretta P. Fullington, were required to, and did, individually guaranty a Master Lease entered into by the dealership, and a Line of Credit extended to the dealership.

17. In addition, the plaintiff and his wife co-signed loans for working capital for both the dealership and the bus company as part of the business plan of the Fullington family,

18. As of August, 2001, the dealership was the titled owner of at least one hundred forty-eight (148) vehicles which were leased to the bus company at less than fair market rental for use in its business.

19. As of December, 2001, the dealership was the record owner of ten (10) properties located in Blair, Centre, Clearfield and Indiana Counties, which were leased to the bus company at less than fair market rental for use in its business.

20. As a result of the course of dealings between the dealership and the bus company, and in furtherance of the business plan of the Fullington family, the dealership accumulated significant debt, while the bus company was able to generate significant revenue while incurring little or no debt.

21. Because of the family nature of the business and the inter-related relationship between the bus company and the dealership, no written leases were executed by the dealership and the bus company relative to the vehicles and real estate leased by the dealership to the bus company, despite the fact that millions of dollars in assets were involved.

COUNT ONE

J. Richard Fullington, Jr.

v.

Fullington Auto Bus Company

22. The allegations of paragraphs 1 through 21 of this Complaint are now by reference incorporated herein as though fully set forth at length.

23. In 2000, the plaintiff began discussing a buyout of his shares of stock in the dealership with his father, his brother, and his sister.

24. Beginning in late 2000 or early 2001, the plaintiff's father, brother and sister began pressuring him to exchange his shares of stock in the dealership for shares in a new corporation (hereinafter "Fullington Buick") which was to be formed, and in which the plaintiff would be the sole shareholder and director.

25. In or about April, 2001, the plaintiff's father, brother and sister presented an Agreement for Corporate Separation (the "Agreement") to him. A true and correct copy of the Agreement is attached hereto and now by reference incorporated herein as Exhibit 1.

26. For a period of approximately nine months, the plaintiff refused to sign the Agreement and continued to negotiate the terms of the purchase of his shares of stock in the dealership with his father, brother and sister.

27. On or about January 24, 2002, the plaintiff reached an agreement with his father, brother and sister regarding the surrender of his shares of stock in the dealership, and on January 24, 2002, a one-page agreement ("the Supplemental Agreement") was signed by the plaintiff, as President of the dealership, and by J. Richard Fullington, Sr., as President of the bus company. A true and correct copy of the Supplemental Agreement is attached hereto and now by reference incorporated herein as Exhibit 2.

28. Contemporaneously with, or immediately after, the signing of the Supplemental Agreement, the plaintiff signed the Agreement, which had previously been signed by J. Richard Fullington, Sr.

29. As of January 24, 2002:

(a) J. Richard Fullington, Jr., owned fifty-one (51%) percent of the voting shares of stock in the dealership, and J. Richard Fullington, Sr., owned forty-nine (49%) percent of the voting shares of stock of the dealership; and

(b) J. Richard Fullington, Jr., was the sole director of the dealership.

30. As of January 24, 2002, J. Richard Fullington, Sr., was the president of, and owned sixty-one and 3/10 (61.3%) percent of the shares of stock in the bus company. The remaining shares of stock in the bus company were owned by relatives of J. Richard Fullington, Sr., who did not participate in the management or direction of the business.

31. As of January 24, 2002, decisions regarding the operation and management of the bus company were not made by the bus company's Board of Directors, but rather all decisions affecting the business of the corporation were made or approved by J. Richard Fullington, Sr.

32. The plaintiff was induced to sign the Agreement and the Supplemental Agreement by his father, brother and sister, who represented and promised that:

(a) the bus company could not obtain needed financing so long as he was employed by the bus company and so long as he was a shareholder in the dealership;

(b) he would receive \$308,000.00 in cash to form Fullington Buick, consisting of a cash payment of \$237,000.00 on or before February 28, 2002, and an additional payment of \$71,000.00 to be paid over three (3) years;

- (c) the dealership's parts, tools, furnishings, inventory and promotional materials would be transferred to him for use in Fullington Buick; and
- (d) he would receive additional items of heavy duty equipment including, but not limited to, a tandem dump truck, a sheep's foot, a bulldozer, a scraper, a fuel truck and a skid steer and attachments.

33. In reliance on the terms of the Agreement and the Supplemental Agreement, and the representations made by his father, brother and sister:

- (a) the plaintiff resigned as an officer and director of the dealership;
- (b) the plaintiff surrendered his voting and non-voting shares in the dealership; and
- (c) J. Richard Fullington, Sr., became the sole shareholder of the dealership.

34. The bus company has breached the Supplemental Agreement in that:

- (a) it failed to forgive, write off or credit debts owed to it by Fullington Chevrolet, the dealership, the Arrowhead Restaurant and the plaintiff;
- (b) it failed to pay the plaintiff \$237,000.00 as promised in the third paragraph of the Supplemental Agreement;
- (c) it failed to credit and pay to the plaintiff the \$71,000.00 referred to in the fourth paragraph of the Supplemental Agreement; and
- (d) it failed to deliver to the plaintiff certain heavy duty equipment (referred to as "hd equipment" in the last paragraph of the Supplemental Agreement) including, but not limited to, a tandem dump truck, a sheep's foot, a bulldozer, a scraper, a fuel truck and a skid steer and attachments.

WHEREFORE, the plaintiff demands judgment against Fullington Auto Bus Company in an amount in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars, and the plaintiff avers that the amount claimed exceeds the arbitration limits of the Court of Common Pleas of Clearfield County, Pennsylvania. The plaintiff hereby demands a jury trial.

COUNT TWO

J. Richard Fullington, Jr.

v.

Fullington Auto Bus Company, Fullington GMC Sales, Inc.,
J. Richard Fullington, Sr., Michael L. Fullington and Aerial Fullington Weisman

35. The allegations of paragraphs 1 through 34 of this Complaint are now by reference incorporated herein as though fully set forth at length.

36. In April 2002, the plaintiff's father, brother and sister, individually and through the bus company and the dealership, requested that the plaintiff and his wife, Loretta Fullington, sign Promissory Notes ("the Notes") totaling \$1,442,674.00 in favor of the dealership and the bus company.

37. True and correct copies of the Notes are attached hereto and now by reference incorporated herein as Exhibits 3 and 4.

38. The plaintiff's father, brother and sister represented to the plaintiff and his wife that, although the Notes would be reduced to judgment, the judgments would not be enforced because their purpose was to protect the personal assets of the plaintiff and his wife against execution for sums due on the loans, leases and line of credit which the plaintiff and his wife had individually guaranteed for the dealership and the bus company.

39. In reliance on the representations made by the plaintiff's father, brother and sister as aforesaid, the plaintiff and his wife executed the Notes on or about April 19, 2002. The plaintiff and his wife did not incur any additional debt to the dealership or the bus company between the execution on January 24, 2002, of the Agreement and Supplemental Agreement, and the execution of the Notes on April 19, 2002.

40. In March and April of 2003, the dealership failed to make timely payments under the Master Lease which had been guaranteed by the plaintiff and his wife, and as a result of the dealership's default, PNC cross-defaulted a loan taken out by the plaintiff and his wife which secured property they owned at RR#2, Box 242, Clearfield, Pa. ("the property").

41. At the time the dealership defaulted on its obligations to PNC Bank, the plaintiff and his wife were current on the payments of their loan with PNC Bank.

42. As a result of the dealership default, the plaintiff and his wife were required to sign a Forbearance Agreement, a true and correct copy of which is attached hereto and now by reference incorporated herein as Exhibit 5.

43. Due to personal circumstances, the plaintiff and his wife were unable to make the August and September, 2003, payments on their loan, and as a result, PNC Bank declared that loan to be in default.

44. On November 12, 2003, the dealership, the bus company, the plaintiff and his wife, and J. Richard Fullington, Sr., executed a First Amendment to Forbearance Agreement ("the First Amendment"), a true and correct copy of which is attached hereto and now by reference incorporated herein as Exhibit 6.

45. The First Amendment required the plaintiff and his wife to sell their property on or before April 15, 2004, and although the property was listed for sale following the execution of the amendment, no offers which the plaintiff considered acceptable were made for the property.

46. An offer of \$90,000.00 for the property was tendered in June, 2004, and although the plaintiff objected to the sale of the property at that price, PNC Bank enforced the terms of the First Amendment and the property was sold in September, 2004.

47. As a result of the sale of the home, approximately \$28,000.00 of the net proceeds of the sale were distributed to Michael L. Fullington and Aerial Fullington Weisman, allegedly for amounts due on the Notes identified in paragraphs 36 and 37 above.

48. The net proceeds of the sale of the home should have been distributed to the plaintiff and his wife, and should not have been applied to payment on the Notes.

49. If the dealership had not defaulted on its obligations to PNC Bank as averred in paragraph 41, the plaintiff and his wife would not have been required to sign the Forbearance Agreement and the First Amendment to Forbearance Agreement, and would not have been required to sell the property at a price which was approximately \$30,000.00 less than its fair market value.

50. The plaintiff is entitled to contribution or indemnity from the bus company and J. Richard Fullington, Sr., the other guarantors of the dealership's obligations, for any loss which he sustained as a result of the sale of the property.

WHEREFORE, the plaintiff demands judgment against Fullington Auto Bus Company, Fullington GMC Sales, Inc., J. Richard Fullington, Sr., Michael L. Fullington and Aerial Fullington Weisman in an amount in excess of Twenty-five Thousand and 00/100 (\$25,000.00)

Dollars, and the plaintiff avers that the amount claimed exceeds the arbitration limits of the Court of Common Pleas of Clearfield County, Pennsylvania. The plaintiff hereby demands a jury trial.

COUNT THREE

J. Richard Fullington, Jr.

v.

J. Richard Fullington, Sr., Fullington Auto Bus Company and
Fullington GMC Sales, Inc.

51. Plaintiff now by reference incorporates the allegations of paragraphs 1 through 50 of this Complaint as though fully set forth at length herein.

52. The bus company, through its then-president, Jr. Richard Fullington, Sr., and with the knowledge of Michael L. Fullington and Aerial Fullington Weisman, fraudulently induced the plaintiff to surrender his shares of stock in the dealership pursuant to the Agreement when it had no intention of honoring its obligations under the Agreement or the Supplemental Agreement.

53. In surrendering his shares of stock in the dealership, the plaintiff reasonably relied on the representations of J. Richard Fullington, Sr., the president of the bus company, Michael L. Fullington, vice president of the bus company, and other Fullington family members, including Aerial Fullington Weisman, Milton Weisman and Lori Fullington, that the bus company would honor its obligations under the terms of the Agreement and the Supplemental Agreement.

54. The plaintiff was fraudulently induced to enter into the Agreement, and as a result the Agreement is void and should be rescinded, and the plaintiff is entitled to receive the value of the shares of stock in the dealership.

WHEREFORE, the plaintiff demands judgment against Fullington Auto Bus Company, Fullington GMC Sales, Inc., J. Richard Fullington, Sr., Michael L. Fullington and Aerial Fullington Weisman in an amount in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars, and the plaintiff avers that the amount claimed exceeds the arbitration limits of the Court of Common Pleas of Clearfield County, Pennsylvania. The plaintiff hereby demands a jury trial.

COUNT FOUR

J. Richard Fullington, Jr.

v.

Michael L. Fullington, Aerial Fullington Weisman
and Fullington Real Estate

55. Plaintiff now by reference incorporates the allegations of paragraphs 1 through 54 of this Complaint as though fully set forth at length herein.

56. On October 7, 2002, the plaintiff executed a Limited Power of Attorney (“the Power of Attorney”) in favor of his brother, Michael L. Fullington.

57. A true and correct of the Power of Attorney is attached hereto and now by reference incorporated herein as Exhibit 7.

58. Michael L. Fullington had a statutory and fiduciary duty to exercise the powers granted by the Power of Attorney only for the benefit of the plaintiff.

59. Michael L. Fullington and Aerial Fullington Weisman incorporated Fullington Real Estate on August 13, 2003, for the purpose of creating an entity into which title for real estate which was co-owned by the plaintiff and his wife (“the real estate”) could be transferred.

60. On August 26, 2003, the day before the Power of Attorney expired, Michael L. Fullington, with the knowledge of Aerial Fullington Weisman, executed two (2) deeds on behalf of the plaintiff, transferring title to real estate owned by the plaintiff and his wife to Fullington Real Estate.

61. Loretta Fullington is, and was at all times material hereto, employed by the bus company, and received health insurance benefits and a salary of approximately \$40,000.00 per year from the bus company.

62. Loretta Fullington signed the aforesaid deeds without questioning their purpose or the intent of Michael L. Fullington and Aerial Fullington Weisman.

63. True and correct copies of the aforesaid deeds are attached hereto and now by reference incorporated herein as Exhibits 8 and 9.

64. The aforesaid transfers of real estate were not made for the benefit of the plaintiff, but, to the contrary, they were made in furtherance of a conspiracy between the plaintiff's brother and sister to benefit their company, Fullington Real Estate.

65. It is believed, and therefore averred, that Fullington Real Estate subsequently sold a three acre parcel of the 37.3 acres identified on Exhibit 8 to First Commonwealth Bank for \$300,000.00.

66. It is believed, and therefore averred, that Fullington Real Estate subsequently sold the property identified on Exhibit 9 for \$52,000.00.

67. The plaintiff did not receive any portion of the proceeds of the sale of the real estate identified on Exhibits 8 and 9, nor was he credited with any portion of the sales prices against debt which he allegedly owed to the dealership or the bus company.

WHEREFORE, the plaintiff demands judgment against Michael L. Fullington, Aerial Fullington Weisman, and Fullington Real Estate in an amount in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars, and the plaintiff avers that the amount claimed exceeds the arbitration limits of the Court of Common Pleas of Clearfield County, Pennsylvania. The plaintiff hereby demands a jury trial.

COUNT FIVE

J. Richard Fullington, Jr.

v.

Michael L. Fullington, Aerial Fullington Weisman
and Fullington Real Estate

68. Plaintiff now by reference incorporates the allegations of paragraphs 1 through 67 of this Complaint as though fully set forth at length herein.

69. Outdoor advertising signs were located on the real estate identified in Exhibits 8 and 9. True and correct copies of Outdoor Advertising Leases for the said billboards are attached hereto and now by reference incorporated herein as Exhibits 10 and 11.

70. On August 26, 2003, Michael L. Fullington, with the knowledge of Aerial Fullington Weisman, used the Power of Attorney to execute an Assignment of Outdoor Advertising Lease No. 0-244-1 and an Assignment of Outdoor Advertising Lease No. 0-244-2, whereby all of the plaintiff's right, title and interest in the Leases was transferred to Fullington Real Estate. True and correct copies of the Assignments are attached hereto and now by reference incorporated herein as Exhibits 12 and 13.

71. The aforesaid Assignments were not made for the benefit of the plaintiff, but, to the contrary, they were made in furtherance of a conspiracy between the plaintiff's brother and sister to benefit their company, Fullington Real Estate.

72. It is believed, and therefore averred, that Fullington Real Estate received rental payments under the Outdoor Advertising Leases for the last two (2) years of the term of the Leases, said payments totaling \$39,258.62.

73. It is believed, and therefore averred, that the Lease attached as Exhibit 10 has been renewed, and that the plaintiff would have continued to receive rental for the sign which is the subject of that lease, had title to the property not been transferred improperly to Fullington Real Estate as set forth above.

WHEREFORE, the plaintiff demands judgment against Michael L. Fullington, Aerial Fullington Weisman and Fullington Real Estate in an amount in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars, and the plaintiff avers that the amount claimed exceeds the arbitration limits of the Court of Common Pleas of Clearfield County, Pennsylvania. The plaintiff hereby demands a jury trial.

COUNT SIX

J. Richard Fullington, Jr.

v.

Michael L. Fullington, Aerial Fullington Weisman
and Fullington Real Estate

74. Plaintiff now by reference incorporates the allegations of paragraphs 1 through 73 of this Complaint as though fully set forth at length herein.

75. Fullington Real Estate paid no consideration to the plaintiff for the properties which were transferred to it by the deeds attached hereto as Exhibits 7 and 8, or revenue from the outdoor advertising signs as set forth in Count Five.

76. Fullington Real Estate has held the properties, and the revenue from the outdoor advertising signs, as Constructive Trustee of the plaintiff, and it should be required:

- (a) to account to the plaintiff for the proceeds of the sale of the properties and the revenue it has received from the rental of the outdoor advertising signs; and
- (b) to convey title to the remaining properties to the plaintiff and Loretta Fullington.

WHEREFORE, the plaintiff demands that an Order be entered:

- (a) requiring Fullington Real Estate to render a complete accounting for the proceeds of the sale of the properties and the revenue received from the rental of the outdoor advertising signs; and
- (b) the entry of an Order requiring Fullington Real Estate to reconvey title to the remaining properties to the plaintiff and Loretta Fullington.

COUNT SEVEN

J. Richard Fullington, Jr.

v.

Michael L. Fullington and Aerial Fullington Weisman

77. Plaintiff now by reference incorporates the allegations of paragraphs 1 through 76 of this Complaint as though fully set forth at length herein.

78. Aerial Fullington Weisman and Michael L. Fullington incorporated Fullington Real Estate with the intent of using it as a vehicle to receive title to the real estate.

79. At the time they incorporated Fullington Real Estate, Michael L. Fullington and Aerial Fullington Weisman knew and agreed that Michael L. Fullington would use the power of attorney to transfer title to the real estate, and assign the revenue from the outdoor advertising signs, to Fullington Real Estate, and that such use of the power of attorney was a breach of Michael L. Fullington's statutory and fiduciary duties to the plaintiff.

80. The actions of Michael L. Fullington and Aerial Fullington Weisman, as aforesaid, were outrageous and were in reckless disregard of the rights and best interests of the plaintiff, and the plaintiff is entitled to an award of punitive damages and attorney's fees as a result.

WHEREFORE, the plaintiff demands judgment against Michael L. Fullington and Aerial Fullington Weisman for punitive damages, attorney's fees and costs of suit, and the plaintiff avers that the amount claimed exceeds the arbitration limits of the Court of Common Pleas of Clearfield County, Pennsylvania. The plaintiff hereby demands a jury trial.

DALE WOODARD LAW FIRM

By Keith M. Demich
Attorneys for Plaintiff

EXHIBIT 1

AGREEMENT FOR CORPORATE SEPARATION

THIS AGREEMENT FOR CORPORATE SEPARATION is made this 19 day of January, 2007, by and between J. RICHARD FULLINGTON, SR. ("Senior"), J. RICHARD FULLINGTON, JR. ("Junior"), both individuals, and FULLINGTON GMC SALES, INC. (the "Company"), a Pennsylvania corporation [Senior and Junior are sometimes referred to in this Agreement together as the "Shareholders"].

BACKGROUND

A. The Company has two (2) classes of authorized common stock, Class A Voting Common Stock, par value of \$10 per share, and Class B Nonvoting Common Stock, par value of \$10 per share.

B. The Shareholders own all of the issued and outstanding Class A Voting Common Stock and Class B Nonvoting Common Stock of the Company as follows:

<u>Shareholder</u>	<u>Class A Stock</u>	<u>Class B Stock</u>
Senior	550 shares	2,706 shares
Junior	575 shares	903 shares

C. For many years, the Company has conducted two distinct lines of business, namely, the ownership and operation of real estate which is leased to a sister company, Fullington Autobus Company, for various garages and bus terminals, and the ownership and operation of General Motors automobile and truck dealerships.

D. Junior has concentrated on managing the day to day affairs of the automobile and truck dealerships.

E. The Shareholders have had various differences concerning the business strategy for managing the Company's affairs and believe that greater success can be achieved by both lines of business of the Company if the two lines of business are managed separately.

F. The Shareholders believe that it will be in their mutual best interests to separate the risks and liabilities associated with the two lines of business conducted by the Company into separate corporate entities.

G. The Shareholders have agreed on a division of the businesses of the Company so that the business of owning and operating real estate (the "Real Estate Business") will continue to be owned and operated by the Company, but that the business of owning and operating an automobile and truck dealership (the "Dealership Business") will be owned in separate corporate form.

H. The Shareholders mutually desire to document the terms and conditions of their agreement in this Agreement for Corporate Separation.

NOW THEREFORE, the parties hereto, in consideration of the foregoing and intending to be legally bound, agree as follows:

Article 1

Tax Free Separation

Subject to the condition that the Plan of Corporate Separation (the "Plan"), as set forth in this Agreement, will qualify as a tax free corporate separation and exchange pursuant to applicable sections of the Internal Revenue Code, the Company will form a new wholly owned subsidiary corporation (the "New Corporation") to which the assets and liabilities of the Dealership Business will be contributed. Following the incorporation of the New Corporation, Junior will exchange his stock in the Company in the proportion and manner set forth herein for stock in the New Corporation, such that, following the transactions provided for herein, Junior will own all of the issued and outstanding stock of the New Corporation and may own _____ (___%) percent of the issued and outstanding Class A and Class B common stock of the Company as determined by valuation of the Company.

Article 2

Plan of Corporate Separation

The following Plan of Corporate Separation is hereby approved and adopted:

1. **Definitions.** As used in the Plan, the following terms shall have the following meanings:

a. The "Closing Balance Sheet" shall mean a balance sheet prepared as of the Date of Closing in the customary manner from the books and records of the Company, and certified by Johnston, Nelson & Shimmel, LLP, certified public accountants for the Company.

b. The "Company" shall mean Fullington GMC Sales, Inc., a Pennsylvania corporation.

c. The "Dealership Business" shall mean the line of business historically conducted by the Company which consists of the sale and servicing of new and used automobiles and trucks.

d. "Date of Closing" shall mean the date mutually agreed by the parties hereto for the Closing on the transactions provided for in this Agreement.

e. The "New Corporation" shall mean a Pennsylvania corporation to be incorporated by the Company pursuant to the terms of this Agreement.

f. The "Real Estate Business" shall mean the line of business historically conducted by the Company which consists of the ownership, operation and leasing of real estate.

2. **Organization of the New Corporation.** Prior to the Date of Closing, the Company shall cause to be organized, under the laws of the Commonwealth of Pennsylvania, a new corporation to be known as Fullington Buick, Oldsmobile, Cadillac and GMC Truck, Inc., with powers and capitalization as set forth in the Articles of Incorporation attached hereto as Exhibit "A". One (1) share of the authorized common stock of the New Corporation shall be issued to the Company.

3. **Transfer of Assets to the New Corporation.** In exchange for the shares of the New Corporation, the Company shall assign, transfer, convey, and deliver to the New Corporation the assets of the Dealership Business, subject to the liabilities of the Dealership

Business to be assumed by the New Corporation, all as such assets and liabilities appear on the Closing Balance Sheet, subject, however, to the following exceptions and adjustments:

[Specify any exceptions and adjustments here.]

4. Exchange of Shares. On the Date of Closing, Junior will exchange _____ Class A shares and _____ Class B shares of the common stock of the Company for the one (1) issued and outstanding share of the New Corporation.

5. Pension Plan.

6. Employee Benefit Plans.

7. Employees.

8. Real Estate; Lease Obligations.

9. Unknown Liabilities. The Company and the New Corporation hereby jointly and severally guarantee payment of all liabilities, obligations, debts and demands of the Company (including, without limitation, claims for taxes of all kind, penalties, and interest, and any liability for violation of law) not specifically embraced or provided for in the Closing Balance Sheet. To that end, the Company on the one hand, and the New Corporation, on the other hand, shall jointly and severally, upon demand of the other, pay one-half of all such liabilities, obligations, debts and demands, and one half of all expenses necessarily incurred in defending against, compromising, or adjusting the same as is certified in writing by Johnston, Nelson & Shimmel, LLP. The parties liable on this guarantee shall be consulted before any such obligation is finally certified as payable.

10. Closing. The Plan shall become operative as of the Date of Closing. At _____ .m., on such date, the transactions contemplated by the Plan and this Agreement shall be consummated at the offices of _____. The following documents and items will be executed and delivered:

a. By the Company. The Company shall execute and deliver the following items and documents:

i. Articles of Incorporation and other organizational documents for the New Corporation.

ii. Certificate #1 for one (1) share of the issued and outstanding common stock of the New Corporation endorsed in blank

iii. Certificate #2 for one (1) share of the common stock of New Corporation issued to Junior.

iv. Assignment of the Assets of the Dealership Business to the New Corporation.

v. Consent of General Motors Corporation to the transactions provided for in this Agreement for Corporate Separation.

b. By Senior. Senior shall execute and deliver his resignation as an officer and director of the New Corporation.

c. By Junior. Junior shall execute and deliver the following items and documents:

i. _____ shares of the Class A Voting Common stock of the Company endorsed in blank for transfer.

ii. _____ shares of the Class B Non-voting Common Stock of the Company endorsed in blank for transfer.

iii. Resignation of Junior as an officer and director of the Company.

d. By the New Corporation. The New Corporation shall execute and deliver an assumption of liabilities associated with the conduct of the Dealership Business.

11. Approval of the Plan. The Plan shall be submitted to a vote of the Company's Board of Directors and the Shareholders of the Company.

12. Abandonment of the Plan. Prior to the Date of Closing, the Company, by action of its Board of Directors, may abandon the transactions provided for herein.

Article 3

Miscellaneous

13. Binding Agreement. This Agreement shall be binding upon the successors, heirs, personal representatives and assigns of each party.

14. Notices. All notices, demands and other communications provided for hereunder shall be in writing, sent by express, registered or certified mail, return receipt requested, telecopy, courier service or personal delivery, addressed to the parties as follows:

If to Senior:

J. Richard Fullington, Sr.

If to Junior:

J. Richard Fullington, Jr.

If to Company:

Fullington GMC Sales, Inc.
316 East Cherry Street
Clearfield, PA 16830

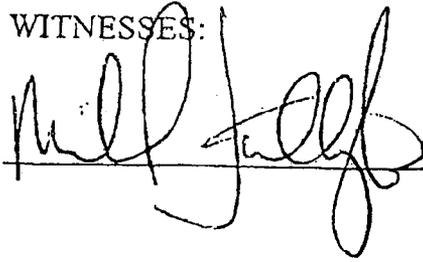
15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of such counterparts together shall constitute but one and the same Agreement.

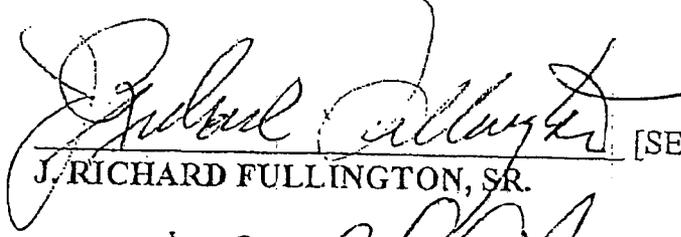
16. Pennsylvania Law to Apply. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

17. Headings. The headings used in this Agreement are inserted for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

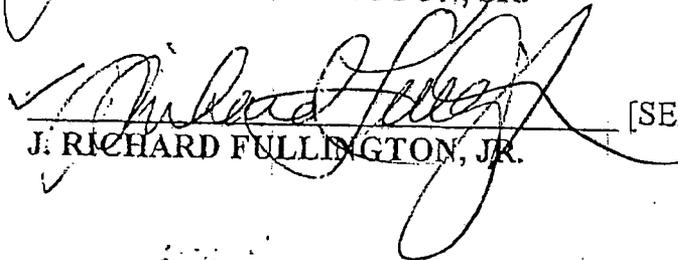
IN WITNESS WHEREOF, the parties hereto have executed this Agreement with the intent to be legally bound the day and year first above written.

WITNESSES:

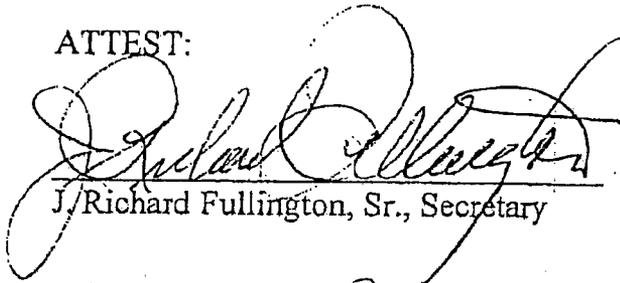


 [SEAL]
J. RICHARD FULLINGTON, SR.

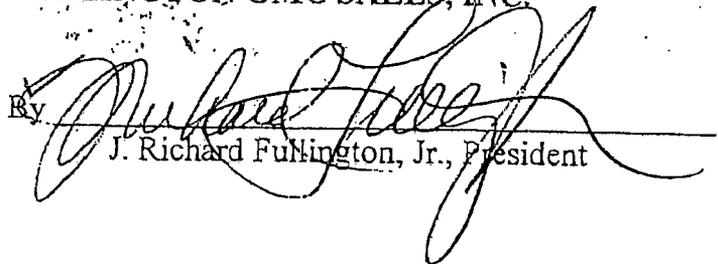
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 [SEAL]
J. RICHARD FULLINGTON, JR.

ATTEST:


J. Richard Fullington, Sr., Secretary

FULLINGTON GMC SALES, INC.

By 
J. Richard Fullington, Jr., President

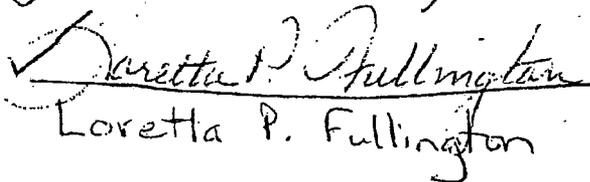
✓ 
Loretta P. Fullington

EXHIBIT A

Microfilm Number _____

Filed with the Department of State on _____

Entity Number _____

Secretary of the Commonwealth

ARTICLES OF INCORPORATION-FOR PROFIT

DSCB:15-1306/2102/2303/2702/2903/7102A (Rev 90)

Indicate type of domestic corporation (check one):

Business-stock (15 Pa.C.S. § 1306)

Business-nonstock (15 Pa.C.S. § 2102)

Business-statutory close (15 Pa.C.S. § 2303)

Management (15 Pa.C.S. § 2702)

Professional (15 Pa.C.S. § 2903)

Cooperative (15 Pa.C.S. § 7102A)

In compliance with the requirements of the applicable provisions of 15 Pa.C.S. (relating to corporation) the undersigned, desiring to incorporate a corporation for profit hereby states that:

1. The name of the corporation is: Fullington Buick, Oldsmobile, Cadillac and GMC Truck, Inc.
2. The address of this corporation's initial registered office in this Commonwealth:
Route 879, Clearfield, Pennsylvania 16830 (Clearfield County)
3. The corporation is incorporated under the provisions of the Business Corporation Law of 1988.
4. The aggregate number of shares authorized is: 10,000 Common Shares
5. The name and address, including street and number, if any, of each incorporator is:
Fullington GMC Sales, Inc.
Route 879
Clearfield, PA 16830
6. The specified effective date, if any, is: When Filed

IN TESTIMONY WHEREOF, the incorporator has signed these Articles of Incorporation th
____ day of _____, 2001.

FULLINGTON GMC SALES, INC., Incorporator

✓
By: _____

I, Richard Fullington, Jr., President

JOINT ACTION BY UNANIMOUS CONSENT IN WRITING IN LIEU OF
MEETINGS OF THE SHAREHOLDERS AND BOARD OF DIRECTORS OF
FULLINGTON GMC SALES, INC.

The undersigned, constituting all of the Shareholders and the Directors of Fullington GMC Sales, Inc. (the "Corporation") by unanimous consent in writing pursuant to the authority contained in Article B, Section 1766(a) and 1727(b) of the Business Corporation Law of 1988, without the formality of convening a meeting, do hereby consent to the following actions of the Corporation and adopt the same as though such resolutions had been adopted at a formal meeting of the Shareholders and Board of Directors of the Corporation:

WHEREAS, the Corporation is engaged in two distinct businesses, namely, the ownership and operation of real estate and the ownership and operation of the automobile and truck dealership (the "dealership").

WHEREAS, the Corporation and its Shareholders desire to position the Corporation so that the business of the dealership can be conducted separately and that management of the dealership may be compensated in part through the receipt of equity or equity based compensation, thus allowing the dealership to retain and recruit experienced and knowledgeable management personnel.

WHEREAS, the Board of Directors of the Corporation and the Corporation's Shareholders believe that greater value can be achieved in future business of the Corporation if the distinct businesses of the dealership and the Corporation are conducted separately.

WHEREAS, it is deemed to be in the best interests of this Corporation and its Shareholders that the Plan of Corporate Separation be adopted as hereinafter provided:

RESOLVED that the Shareholders and Board of Directors of the Corporation hereby determine that the formation of a new corporate entity, upon the terms and conditions set forth in the Plan of Corporate Separation, attached hereto as Exhibit A, is advisable and generally to the advantage and for the benefit of the Corporation and its Shareholders; and

FURTHER RESOLVED, that, upon the written approval of General Motors Corporation, the Plan of Corporate Separation and the transactions provided for therein, are hereby approved, and the execution of said Plan by the proper officers of the Corporation is hereby approved and authorized; and

FURTHER RESOLVED, that the officers of the Corporation are authorized to certify the fact of the adoption of the Plan of Corporate Separation by the Shareholders of this Corporation; provided, however, that, in accordance with the provisions of said Plan of Corporate Separation, the officers of the Corporation have the right to terminate the Plan of Corporate Separation and abandon the transactions therein provided for; and

FURTHER RESOLVED, that the officers of the Corporation are authorized and directed to execute, in the name and on behalf of the Corporation and to deliver any and all agreements, certificates, applications or other instruments and to take from time to time any and all such other action necessary or desirable to carry out the purposes of the foregoing resolutions.



J. RICHARD FULLINGTON, SR.
Shareholder and Director

✓

J. RICHARD FULLINGTON, JR.
Shareholder and Director

DATED: April 25, 2001

January 19, 2002

EXHIBIT 2

January 24, 2002

Attachment to Agreement to Sign Stock Over to J. Richard Fullington Sr.

In signing these papers, Fullington Auto Bus Company will forgive, write off, credit all debts owed by Fullington Chevrolet, Fullington GMC Sales, Inc., Arrowhead Restaurant, and J. Richard Fullington, Jr. as of the finalization of the transaction. ---

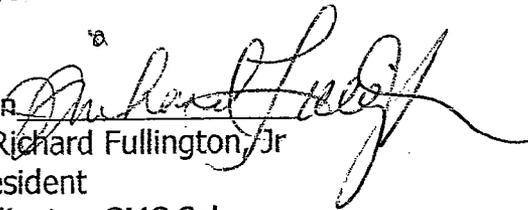
Fullington Auto Bus Company will pay off the line of credit of \$500,000 at M&T Bank that will release the collateral of 20 buses (school buses and motorcoaches), account receivable of Fullington Auto Bus Company and Fullington GMC Sales, Inc. and the tools, parts and inventory of Fullington GMC Sales, Inc.

J. Richard Fullington, Jr. will receive \$237,000 from the loan Fullington Auto Bus Company is obtaining when it comes through at Northwest Savings (or whatever institution Fullington Auto Bus Company chooses to use), hopefully no later than February 28, 2002.

The M&T loan of Fullington GMC Sales, Inc. that has a current payoff of \$71000 will be paid by Fullington GMC Sales, Inc. when the proceeds of \$237,000 are received. Fullington Auto Bus Company will then show the payoff amount as an account receivable to J. Richard Fullington, Jr. to be paid over three (3) years.

All current lawsuits against Fullington GMC Sales, Inc. and or J. Richard Fullington Jr. by J. Richard Fullington, Sr. and or Fullington Auto Bus Company now or in the future will be terminated and not reinitiated. There will be no future litigation against J. Richard Fullington, Jr. concerning any past action done on behalf of Fullington GMC Sales, Inc., except for the current case that involves the question of 80% stockholder agreement.

J. Richard Fullington Jr. will do his best to make sure the vehicles (the family knows which ones) are paid in full, the floor plan is paid off if possible. The hd equipment will be taken over by dick jr. This transaction will happen within 45 days.

Sign 
J. Richard Fullington, Jr.
President
Fullington GMC Sales

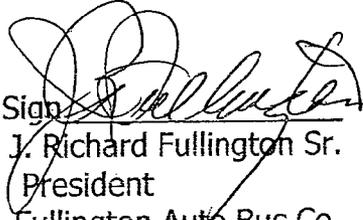
Sign 
J. Richard Fullington Sr.
President
Fullington Auto Bus Co.

EXHIBIT 3

PROMISSORY NOTE

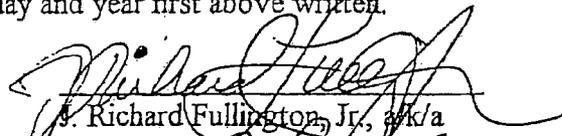
AMOUNT: \$244,180.00

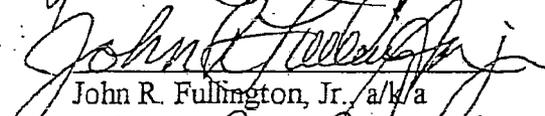
DATE: April 19, 2002

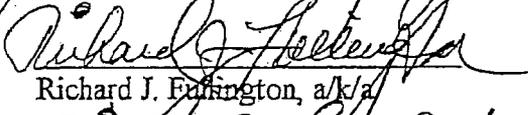
ONE DAY AFTER THIS DATE, THE UNDERSIGNED, JOINTLY AND SEVERALLY, DO PROMISE TO PAY TO THE ORDER OF **FULLINGTON AUTO BUS COMPANY**, OF 316 EAST CHERRY STREET, CLEARFIELD, PENNSYLVANIA 16830, WITHOUT OFFSET, FOR VALUE RECEIVED, THE SUM OF \$244,180.00 TOGETHER WITH INTEREST AT THE RATE OF FIFTEEN (15%) PERCENT PER ANNUM ON THE UNPAID BALANCE.

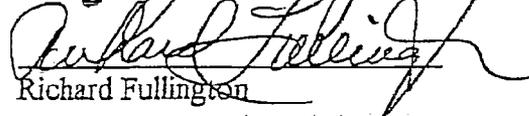
MAKERS IRREVOCABLY AUTHORIZE AND EMPOWER THE PROTHONOTARY, ANY ATTORNEY OR ANY CLERK OF ANY COURT OF RECORD, WITH OR WITHOUT DEFAULT, TO APPEAR FOR AND CONFESS **JUDGMENT** AGAINST MAKERS FOR SUCH SUMS AS ARE DUE AND/OR MAY BECOME DUE UNDER THIS NOTE, WITH COSTS OF SUIT, WITHOUT STAY OF EXECUTION AND WITH FIFTEEN PERCENT (15%) OF THE AMOUNT OF SUCH JUDGMENT, BUT NOT LESS THAN FIVE HUNDRED DOLLARS (\$500.00) ADDED FOR ATTORNEYS' COLLECTION FEES. TO THE EXTENT PERMITTED BY LAW, MAKERS RELEASE ALL ERRORS IN SUCH PROCEEDINGS. IF A COPY OF THIS NOTE, VERIFIED BY OR ON BEHALF OF THE HOLDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL NOTE AS A WARRANT OF ATTORNEY. THE AUTHORITY AND POWER TO APPEAR FOR AND CONFESS **JUDGMENT** AGAINST MAKERS SHALL NOT BE EXHAUSTED BY THE INITIAL EXERCISE THEREOF AND MAY BE EXERCISED AS OFTEN AS THE HOLDER SHALL FIND IT NECESSARY AND DESIRABLE AND THIS NOTE SHALL BE A SUFFICIENT WARRANT THEREFORE.

WITH INTENT TO BE LEGALLY BOUND, the undersigned do hereby execute the within instrument as of the day and year first above written.


Richard Fullington, Jr. a/k/a


John R. Fullington, Jr. a/k/a


Richard J. Fullington, a/k/a


Richard Fullington

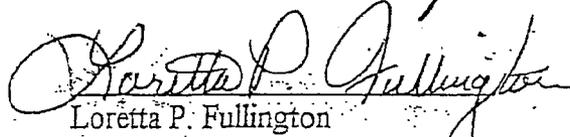

Loretta P. Fullington

EXHIBIT 4

PROMISSORY NOTE

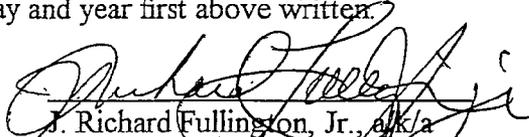
AMOUNT: \$1,198,494.00

DATE: April 19, 2002

ONE DAY AFTER THIS DATE, THE UNDERSIGNED, JOINTLY AND SEVERALLY, DO PROMISE TO PAY TO THE ORDER OF **FULLINGTON GMC SALES, INC.**, OF 316 EAST CHERRY STREET, CLEARFIELD, PENNSYLVANIA 16830, WITHOUT OFFSET, FOR VALUE RECEIVED, THE SUM OF \$1,198,494.00 TOGETHER WITH INTEREST AT THE RATE OF FIFTEEN (15%) PERCENT PER ANNUM ON THE UNPAID BALANCE.

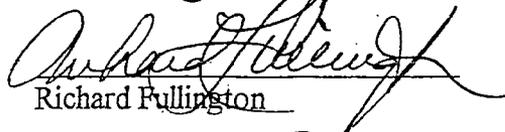
MAKERS IRREVOCABLY AUTHORIZE AND EMPOWER THE PROTHONOTARY, ANY ATTORNEY OR ANY CLERK OF ANY COURT OF RECORD, WITH OR WITHOUT DEFAULT, TO APPEAR FOR AND CONFESS **JUDGMENT** AGAINST MAKERS FOR SUCH SUMS AS ARE DUE AND/OR MAY BECOME DUE UNDER THIS NOTE, WITH COSTS OF SUIT, WITHOUT STAY OF EXECUTION AND WITH FIFTEEN PERCENT (15%) OF THE AMOUNT OF SUCH JUDGMENT; BUT NOT LESS THAN FIVE HUNDRED DOLLARS (\$500.00) ADDED FOR ATTORNEYS' COLLECTION FEES. TO THE EXTENT PERMITTED BY LAW, MAKERS RELEASE ALL ERRORS IN SUCH PROCEEDINGS. IF A COPY OF THIS NOTE, VERIFIED BY OR ON BEHALF OF THE HOLDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL NOTE AS A WARRANT OF ATTORNEY. THE AUTHORITY AND POWER TO APPEAR FOR AND CONFESS **JUDGMENT** AGAINST MAKERS SHALL NOT BE EXHAUSTED BY THE INITIAL EXERCISE THEREOF AND MAY BE EXERCISED AS OFTEN AS THE HOLDER SHALL FIND IT NECESSARY AND DESIRABLE AND THIS NOTE SHALL BE A SUFFICIENT WARRANT THEREFORE.

WITH INTENT TO BE LEGALLY BOUND, the undersigned do hereby execute the within instrument as of the day and year first above written.


J. Richard Fullington, Jr., a/k/a


John R. Fullington, Jr., a/k/a


Richard J. Fullington, a/k/a


Richard Fullington


Loretta P. Fullington

EXHIBIT 5

FORBEARANCE AGREEMENT

This Forbearance Agreement (the "**Agreement**") is made this ___ day of July 2003, by and among and Fullington GMC Sales, Inc. (the "**Borrower**"), a Pennsylvania corporation having an address of P.O. Box 211, Route 879 & I-80, Clearfield, Pennsylvania 16830, and Fullington Auto Bus Company ("**FABC**"), with an address of P.O. Box 211, Clearfield, Pennsylvania 16830, and Loretta P. Fullington and J. Richard Fullington, Jr. (the "**Fullingtons**") with an address of 969 S. Sixth Street, Clearfield, Pennsylvania 16830, and J. Richard Fullington, Sr. ("**JRF, Sr.**") with an address of 6 N.W. Fourth Avenue, Clearfield, Pennsylvania 16830 (the Fullingtons together with FABC, collectively the "**Guarantors**", and together with the Borrower, the "**Obligors**"), and PNC Bank, National Association (the "**Bank**"), a national banking association, with its principal business address at 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222-2707.

I. RECITALS

A. The Lease and Line of Credit Obligations

1. The Borrower and Capital Resource Group, L.L.C. ("**Capital Resource**") entered into that certain Master Lease Agreement No. 052898 ("**Master Lease**") dated May 28, 1998.

2. The Borrower executed that certain Assignment of Lease Agreement dated June 1, 1998, pursuant to which it assigned to Capital Resource, its successors and assigns, all of Borrower's interests and rights as Lessor in that certain Lease Agreement dated June 1, 1998 and executed by FABC as Lessee ("**Assignment of Lease**"; together with the Master Lease collectively, the "**Lease Documents**").

3. Capital Resource executed and delivered to the Bank that certain Promissory Note dated August 31, 1998 in the original principal amount of \$1,700,000 and that certain Security Agreement dated August 31, 1998 ("**Security Agreement**"), pursuant to which Capital Resource assigned and transferred to the Bank, and granted a security interest to the Bank, in all of Capital Resource's right, title and interest in the property subject to the Master Lease and all rental payments and other amounts payable to Capital Resource thereunder and all proceeds of any of the foregoing.

4. On September 6, 2001, the Borrower executed and delivered to the Bank that certain Business Banking Loan Application in the original principal amount of \$50,000 ("**Line of Credit**"), pursuant to which the Bank issued that certain Choice CreditsSM For Business Line of Credit Agreement dated September 14, 2001, which governed the terms and conditions of the Line of Credit (collectively the "**Line of Credit Note**").

5. On May 28, 1998, the Guarantors each executed those certain Lease Guaranty Agreements, whereby each Guarantor jointly and severally, absolutely and unconditionally, promised to perform all of the Borrower's Obligations owing to the Bank pursuant to the Lease Documents, whether then existing or thereafter arising (collectively, the "**Lease Guaranties**").

6. Pursuant to the Business Loan Application, J. Richard Fullington, Jr. and J. Richard Fullington, Sr. jointly and severally, absolutely and unconditionally, promised to perform all of the Borrower's obligations owing to the Bank ("**Line of Credit Guaranty**"; together with the Lease Guaranties collectively, the "**Guaranties**").

B. The Fullington Obligations.

1. The Fullingtons executed and delivered to the Bank that certain Promissory Note dated November 24, 1998 in the original amount of \$112,000, as modified by that certain Promissory Note dated May 3, 2002 in the principal amount of \$68,707.12 (the "**Fullington Note**").

2. The Fullingtons executed and delivered to the Bank that certain Mortgage dated November 24, 1998 ("**Mortgage**"), granting to the Bank a lien upon real property known as RR #2, Box 242, Clearfield, PA 16830 ("**Mortgaged Premises**"), to secure the amounts owing to the Bank pursuant to Note-3. The Bank perfected its interest in the Mortgaged Premises by recording the Mortgage on December 16, 1998 in the Recorder of Deeds Office of Clearfield County at Instrument No. 199801057.

C. Status; Definitions.

1. The Security Agreement and the Mortgage are collectively referred to herein as the "**Security Documents**". The property and assets of the Obligor in which the Bank has a lien or security interest by virtue of the Security Documents and pursuant to the grant of Collateral contained in this Agreement are referred to herein as the "**Collateral**". The Line of Credit Note, the Fullington Note, the Lease Documents, Guaranties, Security Documents, and any documents executed in connection therewith or pursuant thereto shall be referred to herein as the "**Transaction Documents**".

2. As of July 8, 2003 the amounts due and owing under the Transaction Documents was as follows:

INSTRUMENT	PRINCIPAL	INTEREST	LATE CHARGES	TOTAL	PER DIEM	BANK REF: INTERNAL USE
Lease	828,472.54	19,307.86	0	847,780.4	191.30	600342925
Line of Credit Note	43,063.17	15.54	286.24	43,364.95	5.98	602117747
Fullington Note	59,485.50	607.26	59.78	60,152.54	12.39	602117731
Totals	961,021.21	19,930.66	346.02	951,297.89	209.67	

plus accruing interest, attorneys' fees, costs and expenses of the Bank (the "**Bank Debt**").

3. The Obligor has defaulted under the Notes by, *inter alia*, failing to make payment when due under the Line of Credit Note and the Lease (the "**Defaults**").

4. Guarantor Mildred Fullington is deceased and Guarantor J. Richard Fullington, Jr. is incarcerated.

5. The Bank, pursuant to Demand Letters dated April 13, 2003 and May 13, 2003, made demand for payment on the Obligor under the Master Lease and the Line of Credit Note, respectively. The defaults entitle the Bank to declare the Fullington Note to be in default and immediately due and payable as well.

6. The Obligor has requested that the Bank: (i) forbear from exercising its rights and remedies against the Obligor as a result of the Defaults, and (ii) make certain credit and other accommodations to the Obligor in connection with the Transaction Documents. Provided that the Obligor strictly comply with the terms and conditions of this Agreement, any other documents executed in connection herewith, and all of the Transaction Documents, the Bank is willing to forbear from exercising its rights and remedies against the Obligor under the Transaction Documents.

II. AGREEMENT.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein, **intending to be legally bound hereby**, and intending this Agreement to constitute a contemporaneous exchange for new value, do by these presents agree as follows:

1. **Integration of Recitals.** All statements set forth in the Recitals are incorporated herein by reference and are made an integral part of this Agreement as if set forth herein at length.

2. **Representations and Warranties.** In addition to any covenants, representations and warranties contained in the Transaction Documents, as to each of them, the Obligors hereby represent, warrant and covenant to the Bank that:

2.1 **Authorization, Etc.** This Agreement has been duly and validly executed and delivered by each Obligor and constitutes a legal, valid, binding and voluntary agreement of each Obligor, enforceable in accordance with its terms and all other agreements, documents and instruments executed in connection herewith or therewith, and duly executed and delivered by the Obligors pursuant to the provisions hereof, and will constitute legal, valid and binding and voluntary obligations of the Obligors enforceable in accordance with the terms thereof. The Borrower has taken all necessary corporate action to authorize the execution of and compliance with this Agreement.

2.2 **Organization and Good Standing.** The Borrower and FABC are each a Pennsylvania corporation and each is duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and any other states in which it does business. The correct names for the Borrower and FABC are set forth in the recitals to this Agreement.

2.3 **Ownership of Properties and Assets.** Except for the liens granted to the Bank under this Agreement and the Transaction Documents, or for those liens or leases as set forth in the Schedule 2.3 attached hereto, the Obligors own all of their respective properties and assets free and clear of all liens and security interests and interests of any other third parties, and the Obligors have not executed any assignments, security agreements or financing statements relating to such properties. All of Obligors' properties are titled in Obligors' legal names.

2.4 **Correct Name.** The Obligors' correct legal names are the names reflected in this Agreement, and have not used any other name in the past five (5) years.

2.5 **No Bankruptcy Intent.** The Obligors, individually or jointly, have no present intent to (i) file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11 U.S.C., or in any manner seek relief, protection, reorganization, liquidation or dissolution, or similar relief for any debtors under any other state, local, federal or other insolvency laws, either at the present time, or at any time hereafter, or (ii) directly or indirectly cause any involuntary petition to be filed against any of the Obligors or directly or indirectly to cause any of the Obligors to become the subject of any proceedings pursuant to any other state, federal or other insolvency law providing for the relief of debtors, either at the present time, or at any time hereafter, or (iii) directly or indirectly to cause any assets, property or interest of any of the Obligors to become the property of any bankrupt estate or the subject of any state, federal or other bankruptcy, dissolution, liquidation or insolvency proceedings.

2.6 **Solvency.** Each Obligor (i) owns assets the value of which (both at fair market value and present fair saleable value) is, as of the date hereof, greater than the amount of their respective liabilities (including, without limitation, contingent and unliquidated liabilities), and (ii) has capital sufficient to carry on their present business and transactions and all business and transactions in which they intend to engage. As of the date of this Agreement, the value of the Collateral exceeds the amount of the obligations due under the Transaction Documents.

2.7 No Fraudulent Intent. Neither the execution and delivery of this Agreement nor the performance of any actions required hereunder or described herein is being consummated by the Obligors with or as a result of any actual intent by the Obligors to hinder, delay or defraud any entity to which the Obligors are now or will hereafter become indebted.

2.8 No Future Funding. The Obligors each hereby expressly acknowledge and agree that no obligation of any kind or nature whatsoever exists with respect to refinancing the Bank Debt or the funding of additional monies by the Bank to the Obligors; that no such funding obligation by the Bank shall, under any circumstances whatsoever, be deemed to exist in the future unless expressly agreed to in writing by the Bank; that the Obligors do not expect any refinancing or future funding by the Bank and the Obligors are not relying and shall not rely in any manner whatsoever on obtaining any such refinancing or future funding by the Bank in the taking or not taking of any action whatsoever.

2.9 Tax Returns. All tax returns, including informational returns, required to be filed by any of the Obligors in any jurisdiction have been filed, and all taxes, assessments, fees and other governmental charges upon the Obligors or upon any of their respective properties, income or franchises which are due and payable have been paid. There are no refunds due to any of the Obligors.

2.10 Litigation; Proceedings. There are no legal actions or proceedings (including those for unpaid taxes) pending or, to the knowledge of the Obligors, threatened against or affecting any of the Obligors before any court or any governmental department or agency which questions or adversely affects the capacity or authority of the Obligors or their respective ability to execute and deliver and perform the provisions of this Agreement or the result of which might substantially impair the financial condition of the Obligors or their respective ability to repay the Bank Debt.

2.11 Events of Default. Except for the Defaults, no event of default exists under the terms of any of the Transaction Documents, or any instruments evidencing the Bank Debt, nor does any event or occurrence exist, which with the passage of time and/or giving of notice would constitute an event of default under the terms of the Transaction Documents.

2.12 Representations and Warranties in Transaction Documents. Each and every representation and warranty of the Obligors set forth in the Transaction Documents are hereby ratified and confirmed by the Obligors; and such representations and warranties shall be deemed to have been made and undertaken by the Obligors for the benefit of the Bank as of the date of this Agreement, as well as at the time they were made.

3. Reaffirmation of Transaction Documents; Waiver of Defenses. In consideration of the Bank's agreements hereunder, the Obligors each hereby agree, acknowledge and reaffirm that the Transaction Documents constitute valid and legally binding obligations of the Obligors, and each of them, and that the Transaction Documents are enforceable against the Obligors, and each of them, in accordance with their terms; neither this Agreement nor any other documents described herein shall be deemed or construed to be a satisfaction, reinstatement, novation or release of the Bank Debt or Transaction Documents or a waiver by the Bank of any events of default or defaults or of the rights of the Bank under the Transaction Documents or at law or in equity; the Obligors have no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever with respect to the Bank Debt or the Transaction Documents, or with respect to any other documents or instruments now or heretofore evidencing, securing or in any way relating to the Bank Debt, or with respect to the administration or funding by the Bank of any loans or other transactions that gave rise to any of the Bank Debt, or any of the property of the Obligors, and the Obligors, jointly and individually, hereby expressly waive, release and relinquish any and all such defenses, setoffs, claims, counterclaims and causes of action existing as of the date of this Agreement. With respect to the Master Lease, the Obligors acknowledge and agree

that the Master Lease is a true lease and not a finance lease, that the Obligors are directly obligated to the Bank under the Lease Documents, and that the equipment leased thereunder is owned by the Bank.

THE OBLIGORS EACH HEREBY EXPRESSLY ACKNOWLEDGE THAT THE BANK DEBT WAS INCURRED FOR BUSINESS PURPOSES ONLY AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD USE AND THAT THE BANK DEBT AND THE TRANSACTION DOCUMENTS CONSTITUTE A COMMERCIAL TRANSACTION.

THE OBLIGORS EACH HEREBY FURTHER EXPRESSLY ACKNOWLEDGE AND AGREE THAT THEY KNOWINGLY AND VOLUNTARILY WAIVED THEIR RIGHT TO NOTICE AND A HEARING PRIOR TO ENTRY OF JUDGMENT AND THE OBLIGORS RATIFY AND CONFIRM THE VALIDITY OF THE CONFESSION OF JUDGMENT PROVISIONS IN THE TRANSACTION DOCUMENTS.

INITIALS:

OFFICER OF BORROWER
FOR BORROWER

OFFICER OF FABC

J. RICHARD FULLINGTON, JR.

LORETTA P. FULLINGTON

J. RICHARD FULLINGTON, SR.

4. **Forbearance Terms.**

4.1 **Termination Date.** For purposes of this Agreement, the "**Termination Date**" shall be (a) the earlier of (i) October 1, 2005, (ii) the repayment of the Bank Debt; or (iii) the termination of the Bank's obligation to forbear under this Agreement due to the occurrence of an Event of Default as defined herein, or (b) such other date as may be agreed to, in writing, by the Bank and the Obligors.

4.2 **Obligations of the Bank.** The Bank hereby covenants and agrees that, except as otherwise expressly provided in this Agreement, subject to the Obligors' complete compliance with the terms and conditions of this Agreement, and any other documents executed in connection with this Agreement, the Bank shall not, prior to the Termination Date, demand payment of the Bank Debt or commence or continue any litigation or other judicial or non-judicial proceedings against any of the Obligors, the Leased Equipment, or any collateral for collection of the Bank Debt due to any default or maturity which existed as of the date of this Agreement. The Obligors expressly acknowledge and agree that from and after the Termination Date or such earlier date upon which an Event of Default may occur, the Bank shall have the right, at any time and from time to time, to exercise any and all rights and remedies available against the Obligors, at law and in equity, to the same extent as the Bank would be entitled if the foregoing forbearance had never been part of this Agreement.

4.3 **Exercise of Rights By the Bank Prior to the Termination Date.** The Obligors each understand and agree that the forbearance by the Bank does not relate or extend to any actions that the Bank may take under the Transaction Documents or at law or in equity to preserve and protect the Collateral, now or hereafter, securing the Bank Debt and the interest of the Bank in such collateral, including, by way of example and not limitation, (i) filing actions against or defending or intervening in actions brought by third parties, or the Obligors relating to such collateral or the interests of the Bank therein, (ii) the sending of notices to any persons or entities concerning the existence of security

interests or liens in favor of the Bank or concerning any of the Collateral, or (iii) filing or recording financing statements, continuation statements, amendments, revivals or any other documents, or taking other actions to evidence, effectuate, establish, perfect, maintain or continue the Bank's security interests or liens in the Collateral.

The Bank at any time and from time to time, without notice to or the consent of the Guarantors, and without impairing or releasing, discharging or modifying the Guarantors' liabilities hereunder, may change the manner, place, time or terms of payment or performance of or interest rates on, or other terms relating to, any of the Bank Debt. The Bank, without notice to or the consent of the Obligors, and without impairing or releasing, discharging or modifying the Obligors' liabilities hereunder, may renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Bank Debt, any other guaranties, or any security for the Bank Debt or guaranties; (b) apply any and all payments by whomever paid or however realized including any proceeds of any collateral, to any Bank Debt of Obligors in such order, manner and amount as the Bank may determine in its sole discretion; (c) deal with any other person with respect to any Bank Debt in such manner as the Bank deems appropriate in its sole discretion; (d) substitute, exchange or release any security or guaranty; or (e) take such actions and exercise such remedies hereunder as provided herein.

4.4 **Forbearance Fee.** Contemporaneously with the execution of this Agreement, the Borrower shall pay the Bank a forbearance fee of \$3,000. This forbearance fee is fully earned upon the execution of this Agreement.

5. **Covenants and Obligations of the Obligors.**

5.1 **Affirmative Covenants.**

5.1.A **Compliance with Transaction Documents.** The Obligors shall comply with all of the provisions of the Transaction Documents, unless compliance is specifically excused, altered or waived hereunder.

5.1.B **Payment Terms**

a. **Payments Under the Transaction Documents.**

i. **Master Lease.** The payments due under the Master Lease for the period from May 2003 through August 2003 shall be deferred to the end of the Lease (as set forth hereinafter). The April 2003 payment due under the Master Lease was paid on June 26, 2003. Commencing September 2003 and until October 1, 2005 (the "Expiration Date"), Obligors shall pay to the Bank (a) the regular monthly scheduled payments of \$33,431.51 per month as required by the terms and provisions of the Master Lease, plus (b) all applicable sales and use taxes, plus (c) \$3,000.00 per month. The Net Purchase Price shall be adjusted to reflect the foregoing modifications and if no Event of Default has occurred under this Agreement, the Expiration Date of the Lease shall be October 1, 2005.

ii. **Line of Credit Note; Termination of Availability under Line of Credit.** The Borrower's right to borrow, repay and reborrow under the Line of Credit Note has terminated and the repayments thereunder shall not create borrowing availability thereunder. Commencing on July 31, 2003 and thereafter on the last day of each month through and including December 31, 2003, Obligors shall pay to the Bank \$750 per month plus interest on the Line of Credit Note. On December 31, 2003, the Obligors shall pay the Line of Credit Note in full.

iii. **Fullington Note.** The Fullingtons will make all scheduled payments due in accordance with the terms and provisions of the Fullington Note, and shall use best efforts to obtain refinancing for the Fullington Note and pay it in full on or before December 31, 2003.

5.1.C Security Interests.

a. Security Interests; Mortgages, Grant and Reaffirmation. In consideration of the Bank's agreements hereunder and to secure the **repayment of the Bank Debt** and all other obligations of the Obligors to the Bank, whether now existing or hereafter arising, including but not limited to the Obligors' obligations to the Bank under the Transaction Documents and this Agreement, and any obligations of the Obligors under any account agreement including any obligations attributable to overdrafts or charges thereon, the Obligors hereby reaffirm all prior grants of liens to the Bank on the Collateral, and each of the Obligors hereby grants to the Bank a lien on **all** personal property of a business nature of each of the Obligors. Terms used herein which are defined in the Uniform Commercial Code as adopted in Pennsylvania (the "UCC") and not otherwise defined herein shall have the respective meanings ascribed to such terms in the UCC. To the extent the definition of any category or type of collateral is modified by any amendment, modification or revision to the UCC, such modified definition will apply automatically as of the date of such amendment, modification or revision. The Obligors hereby agree and authorize the Bank to file an initial financing statement or amendments to existing financing statements to describe the collateral described above, and from time to time amend to add additional collateral, and the Obligors' execution hereof shall constitute authentication and authorization for purposes of the UCC, and constitutes the Obligors' authorization for the Bank to file financing statements or amendments covering the collateral described above.

b. New Mortgages. To secure the obligations under the Master Lease and the Line of Credit Note, the Borrower and FABC each hereby grant the Bank a mortgage lien upon their real property and to further evidence and perfect that lien, Borrower and FABC shall execute immediately and deliver to the Bank a mortgage or mortgages in recordable form, substantially in the form of Exhibit "A" hereto (the "New Mortgage").

5.1.D. Maintenance of Assets and Collateral. The Obligors shall maintain the Leased Equipment, and any other collateral in good order and will do all things necessary to cause Bank to obtain and maintain a perfected security interest in all of the Collateral.

5.1.E. Appraisals and Inspections. (a) Appraisals. The Obligors shall provide or cause to be provided access to the Collateral, to any designated agent of the Bank for purposes of conducting an inspection and/or appraisal of the property. The Obligors shall promptly reimburse the Bank for the cost of the Appraisal upon demand by the Bank; (b) Inspections. The Bank will be permitted to inspect the Collateral and the Obligors' books and records as frequently as the Bank in its discretion determines.

5.1.F. Financial Reporting; Accounting Records; Access to Records.

a. Financial Reporting. The Obligors shall continue to supply the Bank with all financial reports and other information required by the Transaction Documents. The Guarantor shall, promptly upon request of the Bank, supply the Bank with such information as the Bank shall request.

b. Maintain Records. The Obligors shall maintain proper books of record and account in accordance with sound accounting practices in which full, true and correct entries shall be made of all its properties and assets and its dealings and business affairs.

c. Access. The Obligors will permit the Bank to have access, at any time and from time to time, on reasonable notice and during normal business hours, to their books, records and contracts to the extent that the Bank shall reasonably request; and will permit the Bank to make copies of such books, records and contracts and to remove such copies from their offices to the extent that the Bank shall deem necessary.

d. Furnish Information. The Obligors shall furnish to the Bank such other information and reports regarding Obligors' financial condition and operations as the Bank may request from time to time.

5.1.G. Insurance. The Obligors (a) will maintain at all times adequate insurance to the satisfaction of the Bank with companies acceptable to the Bank against fire and such other risks of loss as are customarily insured against and in amounts customarily carried by persons owning, leasing or operating similar properties; (b) will be adequately insured at all times against liability on account of injury to persons or property and comply with the insurance provisions of all applicable workers compensation laws, and shall further name Bank as additional insured; (c) will effect all such insurance under valid and enforceable policies issued by insurers of recognized responsibility; (d) within 90 days of the close of each Fiscal Year, will deliver to the Bank a schedule indicating all insurance then in force; (e) will deliver to the Bank from time to time the policies or certificates of insurance in form satisfactory to Bank, including stipulations that coverage will not be cancelled or diminished without at least twenty (20) days prior written notice to the Bank; (f) will cause the Bank to be named Mortgagee and Lender loss payee respecting all policies of insurance covering assets which constitute collateral hereunder and will provide the Bank with proof which shall reflect the Bank's status as loss payee for the Collateral; and (g) upon request of the Bank, will provide reports on each existing policy of insurance including the name of the insurer, the risks insured, the amount of the policy, the properties insured, the then current property values upon which insurance has been obtained and the basis for those values, and the expiration date of each policy.

5.1.H. Further Documentation. The Obligors shall execute and deliver any and all documents, instruments or agreements that the Bank deems appropriate in order to (i) reflect the terms and conditions of this Agreement, and (ii) to perfect or to continue the perfection of the security interest, liens and encumbrances securing the Bank Debt to the Bank, contemporaneous with the execution of this Agreement. However, notwithstanding the foregoing, the Loan Documents shall be hereby deemed to be amended, modified and restated to include and incorporate by reference all of the terms and conditions of this Agreement, including but not limited to the modification of the payment terms of the loans, and no additional documents shall be necessary to implement the terms and conditions of this Agreement.

5.2 Negative Covenants. Without the prior written consent of the Bank:

5.2.A No Transfers Without Consideration. From the date hereof through the Termination Date, the Borrower shall not make any transfers of property, real or personal, including transfers in connection with the sale or purchase of assets or services (a) outside of the ordinary course of business and (b) for less than reasonably equivalent value and consideration; nor shall they transfer or convert any non-exempt assets to exempt assets, without the prior written consent of the Bank.

5.2.B Merger or Transfer of Assets. Except as contemplated by this Agreement and unless conducted in accordance with this Agreement, the Obligors, or any of them shall not merge or consolidate with or into any person, firm or corporation or lease, sell, transfer or otherwise dispose of all, or substantially all, of any of their respective property, assets and business whether now owned or hereafter acquired.

5.2.C Change in Business, Management or Ownership. The Obligors shall not make or permit any material change: (i) in the nature of the Borrower's business as carried on as of the date hereof; (ii) in the composition of the Borrower's current executive management; or (iii) in the Borrower's equity ownership.

5.2.D Pay Bonuses, Dividends. The Obligors shall not pay bonuses to any officer or director, nor shall the Borrower declare or pay any dividends on or make any distribution with respect to any class of its equity or ownership interest, or purchase, redeem, retire or otherwise acquire any of its equity.

5.2.E Negative Pledge. The Obligors shall not incur any new indebtedness secured by liens in the Borrower's assets without the prior written consent of the Bank.

6. Defaults. For purposes of this Agreement, each of the events described in this Section 6 inclusive shall constitute an "Event of Default":

6.1 Misrepresentation. Any representation of the Obligors in this Agreement or any financial or other statements provided to the Bank pursuant to this Agreement shall be untrue or inaccurate in any material respect.

6.2 Breach of Covenants. The Obligors shall breach, default under or fail to fully perform any of their respective agreements, obligations and covenants under this Agreement or the Transaction Documents (except as modified by this Agreement) or any agreements, documents or instruments executed in connection therewith and herewith.

6.3 Bankruptcy or Insolvency. The Obligors, or any of them, shall have entered against any or all of them, an Order For Relief under any Chapter of the Bankruptcy Code (Title 11, U.S.C.); or any receiver or trustee shall be appointed for all or any portion of the assets of any of the Obligors or the Obligors, or any of them, shall make any general assignment for the benefit of creditors, or shall file any petitions seeking reorganization, liquidation, dissolution or similarly under any present or future federal, state or local law or regulation relating to bankruptcy, insolvency, or other relief for debtors; or there shall be appointed, or any action or proceeding shall be initiated seeking the appointment of, a receiver, liquidator or custodian of all or any portion of the assets of any of the Obligors.

6.4 Judgments/Forfeitures/Repossession.

a. Execution is issued on any judgment rendered against any of the Obligors, on any property or against any bank account of any of the Obligors, and which execution remains unstayed or undissolved after ten (10) days after its issuance; or

b. Any action or proceeding is instituted by any governmental or police agency or authority for forfeiture of any assets of any of the Obligors or the Collateral.

c. Any of the Collateral is repossessed by a creditor of the Obligors, or any of them, whose security interest in the Collateral, or any portion of it, is superior to the Bank's security interest in the Collateral.

6.5 Suit By the Obligors. Any of the Obligors shall file or institute against the Bank or any of its officers, directors, employees, agents or attorneys any lawsuit, complaint, administrative claim, adversary proceeding or other legal action. Any of the Obligors, or any affiliate, officer, shareholder or director of any of the Obligors, shall file or institute against the Bank or any of its officers, directors, employees, agents or attorneys any lawsuit, complaint, administrative claim, adversary proceeding or other legal action related to this Agreement, the Bank Debt, the Transaction Documents or the Collateral.

6.6 Tax Liens. Any federal or state tax lien is filed against any of the Obligors which results in a lien on the Collateral, which lien(s) is/are or may become a prior lien as against any Collateral and which lien(s) is/are not satisfied within twenty (20) days after the recordation thereof.

6.7 Dissolution; Cessation of Business. The Borrower shall terminate its existence or cease to exist or permanently cease operations without payment in full of the Bank Debt.

6.8 Death; Incapacity; Indictment. Any Guarantor shall die, be adjudicated incapacitated or be indicted.

6.9 Material Adverse Change. A material adverse change occurs. For purposes of this Agreement, a "**Material Adverse Change**" shall mean any set of circumstances or events which (i) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Agreement or any of the Transaction Documents, (ii) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations or prospects of Obligors, (iii) impairs materially or could reasonably be expected to impair materially the ability of Obligors to duly and punctually pay the Bank Debt or perform the Obligations, or (iv) impairs materially or could reasonably be expected to impair materially the ability of the Bank, to the extent permitted, to enforce its legal remedies pursuant to this Agreement or any of the Transaction Documents.

7. Remedies.

7.1 Automatic Termination of Standstill. Upon the occurrence of an Event of Default under Section 6.3, 6.5, or 6.7 hereof, the obligation of the Bank to standstill pursuant to this Agreement, and any and all other obligations of the Bank pursuant to this Agreement shall immediately terminate and be without further force and effect, in the same manner and to the same extent as if the same had never been included in this Agreement, and the Bank shall immediately and without further notice be entitled to exercise any and all rights or remedies of the Bank (i) hereunder, or under the Transaction Documents, including any agreements, documents, judgments or instruments executed by any of the Obligors in connection with the Bank Debt, (ii) under the Uniform Commercial Code or (iii) under the laws applicable to this Agreement and the Bank Debt, including of the Commonwealth of Pennsylvania, whether at law or in equity without further notice or demand to the Obligors, including, inter alia, the Bank's right to obtain a judicial sale, either by foreclosure or execution proceeding, of any property subject to any mortgage or judgment, or the Bank's right to setoff the Bank Debt against any of the Obligors' funds in pledged accounts or accounts maintained at the Bank. In addition, upon the occurrence of any such Event of Default, the amounts due by Obligors to the Bank, and the Notes shall be deemed immediately due and payable without necessity of demand, presentation, protest, notice of dishonor or notice of default. No full or partial exercise of any right or remedy shall be deemed a waiver of any other right or remedy.

7.2 Termination of Standstill Upon Notice. Upon the occurrence of an Event of Default under Sections 6.1, 6.2, 6.4, 6.6, 6.8 or 6.9 hereof, the obligation of the Bank to standstill pursuant to this Agreement, and any and all other obligations of the Bank pursuant to this Agreement may be declared by the Bank to be terminated and be without further force and effect, upon written notice to the Obligors. In that event, the Bank may exercise any and all rights or remedies (i) hereunder, or under the Transaction Documents, including any agreements, documents, judgments or instruments executed by the Obligors in connection with the Bank Debt, (ii) under the Uniform Commercial Code, or (iii) under the laws applicable to this Agreement and the Bank Debt, including of the Commonwealth of Pennsylvania, whether at law or in equity without further notice or demand to the Obligors, including, inter alia, the Bank's right to obtain a judicial sale, either by foreclosure or execution proceeding, of any property subject to any mortgage or judgment. In addition, upon the giving of the aforesaid notice, the amounts due by any of the Obligors to the Bank, including all amounts due under the Notes, shall be deemed immediately due and payable without necessity of demand, presentation, protest, notice of dishonor or notice of default. No full or partial exercise of any right or remedy shall be deemed a waiver of any other right or remedy.

7.3 Set Off. In addition upon the occurrence of an Event of Default, whether or not the Bank terminates its obligations to forbear as set forth above, the Bank may, without notice to the Obligors, exercise its rights of

setoff of all or any portion of the Bank Debt against any of the Obligors' funds in pledged accounts or accounts or other property maintained at or in the possession of the Bank, including bank accounts, certificate deposit, checking accounts or any special purpose account.

8. **Release.** As a material inducement to the Bank to forbear, which the Obligors have each determined is to the direct advantage and benefit of the Obligors, the Obligors, on behalf of themselves and their successors and assigns, do hereby remise, release, acquit, satisfy and forever discharge the Bank, and all of the respective past, present and future officers, directors, employees, agents, attorneys (including, but not limited to, Bank's special counsel, Tucker Arensberg, P.C.), representatives, participants, heirs, successors and assigns of the Bank, from any and all manner of debts, accountings, bonds, warranties, representatives, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, claims, demands and causes of action of any nature whatsoever, arising out of or in any way related to the Bank Debt, whether at law or in equity, either now accrued or hereafter maturing, which the Obligors, now have or hereafter can, shall or may have by reason of any matter, cause or thing, from the beginning of the world to and including the date of this Agreement. The Obligors, and each of them, and each of their successors and assigns, hereby covenant and agree never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against the Bank or any subsidiaries or affiliates of the Bank, or any of their respective past, present or future officers, directors, employees, agents, attorneys, representatives, participants, heirs, successors or assigns, by reason of or in connection with any of the foregoing matters, claims or causes of action. This Release shall be effective upon execution of this Agreement by the Obligors and shall survive any termination of the Bank's obligations to forbear hereunder or any termination of this Agreement. **This is a General Release.**

9. **Indemnification.** The Obligors hereby agree to indemnify the Bank and its directors, officers, employees, attorneys, agents and affiliates against, and hold each of them harmless from, any loss liabilities, damages, claims, costs and expenses (including reasonable attorneys' fees and disbursements) suffered or incurred by any of them arising out of, resulting from, relating to, or in any manner connected with, the execution, delivery and performance of the Transaction Documents, this Agreement, and/or all transactions related to or consummated in connection with the Transaction Documents and this Agreement, including, inter alia, losses, liabilities, damages, claims, costs and expenses suffered or any of its directors, officers, employees, attorneys, agents and affiliates arising out of or related to investigating, preparing for, defendant against, or providing evidence, producing documents or taking any other action in respect of any commenced or threatened litigation, administrative proceeding or investigation under any law or governmental regulation, or court order of any jurisdiction. The indemnity set out in this section shall be in addition to any other indemnification obligations of the Obligors, or any of them, to the Bank, in a separate agreement, at common law, or otherwise. The provisions of this section shall survive the payment of the Bank Debt and the termination of this Agreement. Any Obligor may participate at its expense in the defense of any such action or claim.

10. **Miscellaneous**

10.1 **Fees and Expenses.** The Obligors shall promptly reimburse the Bank for all legal fees and other costs and expenses actually incurred by the Bank in connection with the negotiation, enforcement, defense or collection of the Bank Debt, the Transaction Documents and this Agreement, including any costs or fees for actions taken in connection herewith.

10.2 **No Waivers.** The terms and conditions of this Agreement, do not, except as specifically provided for herein, alter, waive or amend the provisions of the Transaction Documents and shall not constitute a waiver of any rights or remedies of the Bank under the Transaction Documents, or at law or in equity. No delay or failure of the Bank to exercise any right or remedy hereunder shall operate as a waiver thereof, and no single or partial exercise of any right or remedy thereunder or hereunder shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action or forbearance of the Bank contrary to the provisions hereof or of any of the Transaction

Documents shall be construed to constitute a waiver of any of the provisions hereof or the Transaction Documents. Nothing in this Agreement shall constitute an extension of any line of credit previously extended by the Bank to either of the Obligors, or any of them. Any party may, in writing, expressly waive any of such party's rights under this Agreement or under any of the other Transaction Documents without invalidating this Agreement or any of the Transaction Documents or any portions hereof or thereof. This Agreement does not waive any Event of Default or any failure of any of the Obligors to comply with any covenant to be or to have been performed or complied with by any of the Obligors under the Transaction Documents or any documents relating to the Bank Debt.

The Obligors further acknowledge and agree that this Agreement is a supplement and addition to the Transaction Documents executed in connection therewith and this is not in lieu thereof, nor shall this Agreement constitute a release, novation or accord and satisfaction of the Bank Debt or any obligations of any of the Obligors under any Transaction Documents pertaining to the Bank Debt. This Agreement, the Transaction Documents and any documents pertaining to the Bank Debt shall be read in conjunction with each other with any conflict in terms among the same to be resolved with this Agreement taking precedence. This Agreement, or any provision hereof, may only be changed, waived or terminated by a statement in writing signed by the parties hereto.

Any delay by the Bank in enforcing or failing to enforce any rights and remedies under any of the Transaction Documents shall not constitute a waiver by the Bank of such rights and remedies. The Obligors further acknowledge and agree that this Agreement does not constitute a waiver or cure of any defaults by the Obligors under any of the Transaction Documents, or a waiver of any rights and remedies of the Bank as a result of the defaults.

10.3 Governing Law/Severability. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. All disputes hereunder or under the any of the Transaction Documents shall be governed by the laws of the Commonwealth of Pennsylvania without giving effect to the principals of conflict of laws. If any provision of this Agreement or any of the Transaction Documents shall be found to be invalid and unenforceable, all of the other provisions shall nonetheless remain in full force and effect to the maximum extent permitted by law.

10.4 Headings. The headings of the sections, paragraphs and subparagraphs of this Agreement are for the convenience of reference only, are not to be considered a substantive part hereof, and shall not limit or otherwise affect any of the terms hereof.

10.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

10.6 Successors, Assigns. The rights of the Bank hereunder shall inure to the benefit of the Bank's successors and assigns and be binding upon the Obligors as well as their heirs, successors and assigns. None of the Obligors shall assign any interest under this Agreement without the prior written consent of the Bank. Any purported assignment inconsistent with this provision shall, at the option of the Bank in its sole and absolute discretion, be null and void.

10.7 Survival. All representations, warranties and covenants of the Obligors contained herein shall survive the execution and delivery of this Agreement and shall terminate only upon full payment and performance by the Obligors of the obligations hereunder in satisfaction of the Bank Debt, or upon subsequent agreement of the Bank and the Obligors.

10.8 Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent

by first-class mail, or sent by nationally recognized overnight courier service, to a party's address first set forth above or to such other address as any party may give to the other in writing for such purpose:

10.9 **Integration.** This Agreement is intended by the parties to be the final expression of their agreement with respect to the terms included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and no extrinsic evidence whatsoever may be introduced at any judicial proceeding involving this Agreement.

10.10 **Understanding of Agreement.** The Obligors hereby acknowledge and agree that they have read and understood this Agreement and are unaware of any factual or legal circumstances which may be construed as a defense against the enforcement or validity of this Agreement in any way whatsoever.

10.11 **Consent to Jurisdiction.** The Obligors agree that any action or proceeding arising out of or relating to this Agreement shall be commenced in the United States District Court for the Western District of Pennsylvania or in the Court of Common Pleas of Allegheny County, Pennsylvania, and the Obligors agree that a summons and complaint commencing an action or proceeding in either of such courts shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to the Obligors addresses on the records of the Bank, or as otherwise provided under the laws of the Commonwealth of Pennsylvania. **The Obligors each hereby waive any claim that either Pittsburgh, Pennsylvania, or the Western District of Pennsylvania is an inconvenient forum or that either of the aforementioned courts lacks proper venue for any action arising out of any transaction involving this Agreement.** Further, the Obligors hereby specifically consent to the personal jurisdiction of the United States District Court for the Western District of Pennsylvania or the Court of Common Pleas of Allegheny County, Pennsylvania, and waive and hereby acknowledge that the Obligors are estopped from raising any claim that either such court lacks personal jurisdiction over any of the Obligors so as to prohibit either such court from adjudicating any issues raised in a complaint filed with either such court against any of the Obligors by Bank concerning this Agreement or payment to Bank of the Bank Debt.

10.12 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HEREBY ACKNOWLEDGES THAT, IN ORDER TO EXPEDITE THE RESOLUTION OF DISPUTES WHICH MAY ARISE UNDER THIS AGREEMENT AND/OR THE TRANSACTION DOCUMENTS AND IN LIGHT OF THE COMPLEXITY OF THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT AND/OR THE TRANSACTION DOCUMENTS, THE PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT TO WHICH THEY MAY BE PARTIES, WHETHER ARISING OUT OF UNDER, OR BY REASON OF THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR OTHER TRANSACTIONS HEREUNDER OR BY REASON OF ANY OTHER CAUSE OR DISPUTE WHATSOEVER BETWEEN THEM OF ANY KIND OR NATURE, AND ACKNOWLEDGE THAT SUCH WAIVER HAS BEEN SPECIFICALLY NEGOTIATED AS PART OF THIS AGREEMENT.

11. **Conditions Precedent to Effectiveness.** As conditions precedent to the effectiveness of the Bank's obligations to Forbear under this Agreement, on or before July 18, 2003:

11.1 The Obligors and the Bank shall have executed at least one counterpart copy of this Agreement and the executed Agreement shall be delivered to the Bank;

11.2 The Borrower shall have delivered to the Bank certified copies of resolutions authorizing the Borrower to enter into and perform under this Agreement;

11.3 Borrower shall have executed and delivered to the Bank the New Mortgages substantially in the form of Exhibit "A" attached hereto;

11.4 The Borrower shall have reimbursed the Bank for \$5,850 for attorney fees and expenses pursuant to Section 10.1 hereof; and

11.5 The Borrower shall have paid the Three Thousand Dollar (\$3,000) Forbearance Fee required by Section 4.4 hereof.

WITNESS the due execution of this Agreement the day and the year first above written intending to be legally bound hereby.

OBLIGORS:

ATTEST:

FULLINGTON GMC SALES, INC.

By: _____
Name: _____
Title: _____

By: _____ (SEAL)
Name: _____
Title: _____

ATTEST:

FULLINGTON AUTO BUS COMPANY

By: _____
Name: _____
Title: _____

By: _____ (SEAL)
Name: _____
Title: _____

WITNESS:

By: _____
Name: _____

J. RICHARD FULLINGTON, SR. (SEAL)

WITNESS:

By: _____
Name: _____

J. RICHARD FULLINGTON, JR. (SEAL)

WITNESS:

By: _____
Name: _____

LORETTA P. FULLINGTON (SEAL)

PNC BANK, NATIONAL ASSOCIATION

By: _____
Name: ALLEN C. SCHWENK
Title: Vice President

EXHIBIT 6

FIRST AMENDMENT TO FORBEARANCE AGREEMENT

This First Amendment to Forbearance Agreement (the "Amendment") is made this 12 day of November 2003, to the Forbearance Agreement dated as of July 31, 2003 (the "Agreement") by and among Fullington GMC Sales, Inc. (the "Borrower"), a Fullington Auto Bus Company ("FABC"), and Loretta P. Fullington and J. Richard Fullington, Jr. (the "Fullingtons") and J. Richard Fullington, Sr. ("JRF, Sr.") (the Fullingtons together with FABC, collectively the "Guarantors", and together with the Borrower, the "Obligors"), and PNC Bank, National Association (the "Bank").

I. RECITALS

A. The Obligors and the Bank are parties to that certain Forbearance Agreement dated as of July 31, 2003 (the "Agreement").

B. The Fullingtons have defaulted under the Agreement by virtue of non payment of the monthly payments due under the Fullington Note and the Bank has given notice that it exercises its rights under the Agreement to take enforcement action it may deem necessary.

C. The Fullingtons have requested the Fullingtons be permitted to have until April 15, 2004 to sell the real property known as RR #2, Box 242, Clearfield, PA 16830 ("Mortgaged Premises"), that the Bank forbear from implementing the default rate and that the monthly payments on the Fullington Note be reduced to \$600 a month.

D. The Bank is willing to continue its forbearance upon strict compliance with the terms of this Agreement, as amended hereby.

II. AGREEMENT.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein, intending to be legally bound hereby, and intending this Agreement to constitute a contemporaneous exchange for new value, do by these presents agree as follows:

1. Defined Terms. Any capitalized term, which is not defined in this Amendment, shall have the definition that is contained in the Agreement.

2. Integration of Recitals. All statements set forth in the Recitals are incorporated herein by reference and are made an integral part of this Amendment as if set forth herein at length.

3. Representations and Warranties. The Obligors reaffirm to the Bank each representation and warranty made in the Agreement.

4. Amendment to Agreement. The Agreement is amended as follows:

(A) Amendment of Section 5.1.B (a) (iii). The provisions of Subsection 5.1.B (a)(iii) are deleted in their entirety and are amended and restated in its entirety as follows:

iii. Fullington Note.

Commencing November 1, 2003, and on the first day of each month thereafter, the Fullingtons will make a payment of \$600 per month on the Fullington Note which shall be applied first to accrued and unpaid interest and thereafter to principal. The Fullington Note shall be fully due and payable on April 15, 2004.

(B) Addition of Section 5.1.I Section 5 is amended to add a new Subsection 5.1.I, as follows:

5.1.I. Sale of Mortgaged Premises. The Fullingtons shall take such action as is necessary to market and sell the Mortgaged Premises (the "Sale"). The Fullingtons shall enter into a listing agreement for the property for a period through not later than the Termination Date, with a licensed or otherwise qualified broker (the "Broker"), such Broker to be acceptable to the Bank in its sole and absolute discretion, and the Fullingtons shall not terminate the listing agreement without the prior written consent of the Bank. The Bank shall be entitled to communicate with and obtain information from the Broker and the Fullingtons hereby authorize the Broker to provide to the Bank any information the Bank requests relating to the Sale or the Mortgaged Premises itself. The sale of the Mortgaged Premises shall be completed no later than the April 15, 2004.

(C) All terms, conditions, representations, warranties, covenants and agreements set forth in the Agreement, except as herein modified, are hereby confirmed and shall remain in full force and effect

5. Fees and Expenses. The Fullingtons shall promptly reimburse the Bank for all legal fees and other costs and expenses actually incurred by the Bank in connection with the negotiation, enforcement, defense or collection of the Bank Debt, the Transaction Documents, the Agreement, and this Amendment including any costs or fees for actions taken in connection herewith.

6. No Waivers. The terms and conditions of this Amendment, do not, except as specifically provided for herein, alter, waive or amend the provisions of the Transaction Documents and shall not constitute a waiver of any rights or remedies of the Bank under the Transaction Documents, or at law or in equity. No delay or failure of the Bank to exercise any right or remedy hereunder shall operate as a waiver thereof, and no single or partial exercise of any right or remedy thereunder or hereunder shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action or forbearance of the Bank contrary to the provisions hereof or of any of the Transaction Documents shall be construed to constitute a waiver of any of the provisions hereof or the Transaction Documents. Nothing in this Amendment shall constitute an extension of any line of credit previously extended by the Bank to either of the Obligors, or any of them. Any party may, in writing, expressly waive any of such party's rights under this Amendment or under any of the other Transaction Documents without invalidating this Amendment or any of the Transaction Documents or any portions hereof or thereof. This Amendment does not waive any Event of Default or any failure of any of the

Obligors to comply with any covenant to be or to have been performed or complied with by any of the Obligors under the Transaction Documents or any documents relating to the Bank Debt.

The Obligors further acknowledge and agree that this Amendment is a supplement and addition to the Transaction Documents executed in connection therewith and this is not in lieu thereof, nor shall this Amendment constitute a release, novation or accord and satisfaction of the Bank Debt or any obligations of any of the Obligors under any Transaction Documents pertaining to the Bank Debt. This Amendment, the Transaction Documents and any documents pertaining to the Bank Debt shall be read in conjunction with each other with any conflict in terms among the same to be resolved with this Amendment taking precedence. This Amendment, or any provision hereof, may only be changed, waived or terminated by a statement in writing signed by the parties hereto.

Any delay by the Bank in enforcing or failing to enforce any rights and remedies under any of the Transaction Documents shall not constitute a waiver by the Bank of such rights and remedies. The Obligors further acknowledge and agree that this Amendment does not constitute a waiver or cure of any defaults by the Obligors under any of the Transaction Documents, or a waiver of any rights and remedies of the Bank as a result of the defaults.

7. **Agreements Unaffected.** Subject to the provisions of the Agreement as amended hereby, each of the Transaction Documents remains in full force and effect including, without limitation, any and all provisions in the Agreement or in any Transaction Document relating to the waiver of jury trial, any release and any indemnification and the Obligors acknowledge their continuing obligation and liability under each Transaction Document executed by the Obligors.

8. **Governing Law/Severability.** This Amendment shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. All disputes hereunder or under the any of the Transaction Documents shall be governed by the laws of the Commonwealth of Pennsylvania without giving effect to the principals of conflict of laws. If any provision of this Amendment or any of the Transaction Documents shall be found to be invalid and unenforceable, all of the other provisions shall nonetheless remain in full force and effect to the maximum extent permitted by law.

9. **Headings.** The headings of the sections, paragraphs and subparagraphs of this Amendment are for the convenience of reference only, are not to be considered a substantive part hereof, and shall not limit or otherwise affect any of the terms hereof.

10. **Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

11. **Successors, Assigns.** The rights of the Bank hereunder shall inure to the benefit of the Bank's successors and assigns and be binding upon the Obligors as well as their heirs, successors and assigns. None of the Obligors shall assign any interest under this Amendment without the prior written consent of the Bank. Any purported assignment inconsistent with this provision shall, at the option of the Bank in its sole and absolute discretion, be null and void.

12. **Survival.** All representations, warranties and covenants of the Obligors contained herein shall survive the execution and delivery of this Amendment and shall terminate only upon full payment and performance by the Obligors of the obligations hereunder in satisfaction of the Bank Debt, or upon subsequent agreement of the Bank and the Obligors.

13. **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to a party's address first set forth above or to such other address as any party may give to the other in writing for such purpose:

14. **Integration.** This Amendment is intended by the parties to be the final expression of their agreement with respect to the terms included in this Amendment and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Amendment shall constitute the complete and exclusive statement of its terms and no extrinsic evidence whatsoever may be introduced at any judicial proceeding involving this Amendment.

15. **Understanding of Amendment.** The Obligors hereby acknowledge and agree that they have read and understood this Amendment and are unaware of any factual or legal circumstances which may be construed as a defense against the enforcement or validity of this Amendment in any way whatsoever.

16. **Consent to Jurisdiction.** The Obligors agree that any action or proceeding arising out of or relating to this Amendment shall be commenced in the United States District Court for the Western District of Pennsylvania or in the Court of Common Pleas of Allegheny County, Pennsylvania, and the Obligors agree that a summons and complaint commencing an action or proceeding in either of such courts shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to the Obligors addresses on the records of the Bank, or as otherwise provided under the laws of the Commonwealth of Pennsylvania. **The Obligors each hereby waive any claim that either Pittsburgh, Pennsylvania, or the Western District of Pennsylvania is an inconvenient forum or that either of the aforementioned courts lacks proper venue for any action arising out of any transaction involving this Agreement.** Further, the Obligors hereby specifically consent to the personal jurisdiction of the United States District Court for the Western District of Pennsylvania or the Court of Common Pleas of Allegheny County, Pennsylvania, and waive and hereby acknowledge that the Obligors are estopped from raising any claim that either such court lacks personal jurisdiction over any of the Obligors so as to prohibit either such court from adjudicating any issues raised in a complaint filed with either such court against any of the Obligors by Bank concerning this Amendment or payment to Bank of the Bank Debt.

17. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HEREBY ACKNOWLEDGES THAT, IN ORDER TO EXPEDITE THE RESOLUTION OF DISPUTES WHICH MAY ARISE UNDER THIS AMENDMENT AND/OR THE TRANSACTION DOCUMENTS AND IN LIGHT OF THE COMPLEXITY OF THE TRANSACTIONS CONTEMPLATED UNDER THIS AMENDMENT AND/OR THE TRANSACTION DOCUMENTS, THE PARTIES HERETO *WAIVE THE RIGHT TO TRIAL BY JURY* IN ANY ACTION, SUIT OR PROCEEDING OF ANY KIND OR

NATURE IN ANY COURT TO WHICH THEY MAY BE PARTIES, WHETHER ARISING OUT OF UNDER, OR BY REASON OF THIS AMENDMENT, THE TRANSACTION DOCUMENTS OR OTHER TRANSACTIONS HEREUNDER OR BY REASON OF ANY OTHER CAUSE OR DISPUTE WHATSOEVER BETWEEN THEM OF ANY KIND OR NATURE, AND ACKNOWLEDGE THAT SUCH WAIVER HAS BEEN SPECIFICALLY NEGOTIATED AS PART OF THIS AMENDMENT.

WITNESS the due execution of this Amendment the day and the year first above written intending to be legally bound hereby.

ATTEST:

By: _____
Name: _____
Title: _____

OBLIGORS:

FULLINGTON GMC SALES, INC.

By: Aerial Fullington Weisman (SEAL)
Name: Aerial Fullington Weisman
Title: Pres + CEO

ATTEST:

By: _____
Name: _____
Title: _____

FULLINGTON AUTO BUS COMPANY

By: Aerial Fullington Weisman (SEAL)
Name: Aerial Fullington Weisman
Title: President

WITNESS:

By: _____
(SEAL)
Name: _____

J. Richard Fullington, Sr.
J. RICHARD FULLINGTON, SR.

WITNESS:

By: _____
(SEAL)
Name: _____

Michael Fullington, Jr.
J. RICHARD FULLINGTON, JR.

WITNESS:

By: _____
(SEAL)
Name: _____

Loretta P. Fullington
LORETTA P. FULLINGTON

PNC BANK, NATIONAL ASSOCIATION

By: _____
Name: ALLEN C. SCHWENK
Title: Vice President

EXHIBIT 7

NOTICE

THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON YOU DESIGNATE (YOUR "ATTORNEY") BROAD POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU.

THIS POWER OF ATTORNEY DOES NOT IMPOSE A DUTY ON YOUR ATTORNEY TO EXERCISE GRANTED POWERS, BUT WHEN POWERS ARE EXERCISED, YOUR ATTORNEY MUST USE DUE CARE TO ACT FOR YOUR BENEFIT AND IN ACCORDANCE WITH THIS POWER OF ATTORNEY.

YOUR ATTORNEY MAY EXERCISE THE POWERS GIVEN HERE THROUGHOUT YOUR LIFETIME, EVEN AFTER YOU BECOME INCAPACITATED, UNLESS YOU EXPRESSLY LIMIT THE DURATION OF THESE POWERS OR YOU REVOKE THESE POWERS OR A COURT ACTING ON YOUR BEHALF TERMINATES YOUR ATTORNEY'S AUTHORITY.

YOUR ATTORNEY MUST KEEP YOUR FUNDS SEPARATE FROM YOUR ATTORNEY'S FUNDS.

A COURT CAN TAKE AWAY THE POWERS OF YOUR ATTORNEY IF IT FINDS YOUR ATTORNEY IS NOT ACTING PROPERLY.

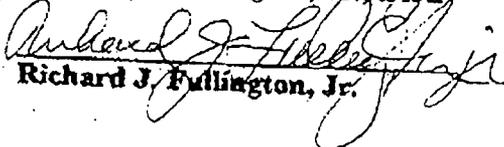
THE POWERS AND DUTIES OF AN ATTORNEY UNDER A POWER OF ATTORNEY ARE EXPLAINED MORE FULLY IN 20 PA.C.S. CH.56.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER OF YOUR OWN CHOOSING TO EXPLAIN IT TO YOU.

I HAVE READ OR HAD EXPLAINED TO ME THIS NOTICE AND I UNDERSTAND THE CONTENTS.


Richard Fullington, Jr., a/k/a

10-7-02 (Date)


Richard J. Fullington, Jr.

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That I, J. RICHARD FULLINGTON, JR., a/k/a RICHARD J. FULLINGTON, JR., of Clearfield, Pennsylvania, hereby revoke any general power of attorney that I have heretofore given any person and do hereby appoint my brother, MICHAEL L. FULLINGTON, of State College, Pennsylvania, (hereinafter "my Attorney") my true and lawful attorney for me and my behalf to perform all such acts as my Attorney, in my Attorney's absolute discretion, may deem advisable in respect to the following powers as fully as I could do if personally present.

DURABLE POWER.

Power Not Affected by Disability.

This power of attorney shall not be affected by my subsequent disability or incapacity.

GENERAL GRANT OF BROAD POWERS

My Attorney(s) is hereby given the fullest possible powers to act on my behalf in respect to the specific powers hereinafter set forth; to transact business, make, execute and acknowledge all agreements, contracts, orders, deeds, writings assurances and instruments for any matter, with the same powers and for all purposes with the same validity as I could, if personally present.

SPECIFIC POWERS INCLUDED IN GENERAL POWER

My Attorney shall have the following specific powers:

1. Banking and Financial Institutions: General Financial Powers.
 - (a) To deposit any funds received for me in my accounts in such bank or trust company or other depository as my Attorney may select, either in my name or my Attorney's name as attorney-in-fact.
 - (b) To withdraw from, and to draw any check or other draft against any monies held for me at any bank, saving institution or other place of deposit, whether such account was created by me or by my Attorney.
 - (c) To endorse notes, checks and other instruments which may require my endorsement.
 - (d) To pay all debts now or hereafter incurred by me.

- (e) To borrow money and to mortgage or pledge any property, real or personal, now or hereafter owned by me as security therefore, upon such terms as my Attorney shall deem advisable and to satisfy of record any indentures or mortgage now or hereafter standing in my name or acquired for my account.
- (f) To have access to any safe deposit box standing in my name or in my Attorney's name for me, and to add to or remove the contents of such box; provided, however, my Attorney shall not use such box as a place in which to keep any personal property of my Attorney.
- (g) Generally, to transact any business for me with any bank, trust company or other depository.

2. Stocks, Bonds, Securities and Investments

- (a) To sell, exchange, pledge, assign, transfer and deliver to any person, at my Attorney's discretion, all or any part of any stocks, bonds, notes, mortgages, interests in partnerships or other securities, and any and all personal property standing in my name or belonging to me, or over which I may have any power or control. To make, execute and deliver on my behalf all necessary deeds, assignments or transfers.
- (b) To register any or all of my securities in my Attorney's name as attorney-in-fact for me.
- (c) To vote my securities in person or by proxy.
- (d) To transact all business in relation to any stocks, bonds, securities, or other property in the nature thereof; to deposit the same under agreements of deposit; to participate in any plan of lease, mortgage, merger, consolidation, exchange, reorganization, recapitalization, liquidation, receivership, or foreclosure with respect thereto; to exercise any rights to subscribe to new issue thereof, and generally to exercise all rights of management and ownership with respect thereto.
- (e) To invest in any form of property, all funds and securities held or received for my account, keeping such cash reserves as, in my Attorney's absolute discretion, are necessary or desirable to meet conditions as they may exist from time to time. In the exercise of this power, my Attorney may invest in any variety of real and personal property as, in my Attorney's absolute discretion, appears to be prudent investments, and my Attorney shall not be liable to me for any error of judgment in the making or continuing of any investment.

3. Real Estate

- (a) To sell, exchange, pledge, assign, transfer and deliver to any person, at my Attorney's discretion, all or any part of my real property, standing in my name or belonging to me, or over which I have any power of control.
- (b) To make, execute and deliver on my behalf all necessary deeds, assignments or transfers.
- (c) To operate real property, separately or jointly with others.
- (d) To lease, as lessor or lessee, for any term, in any real property and to vary the terms, including rent payable, of any lease.
- (e) To alter, repair, improve, mortgage, divide, exchange, join in the partition of, or give options with respect to, real property.
- (f) To buy at any judicial sale any property on which I hold a mortgage.
- (g) Generally, to transact all business and to exercise all rights of management and ownership relating to real property.

4. Claims, Lawsuits, Compromise and Miscellaneous Powers

- (a) To demand, sue for, levy, collect and give proper receipts for all sums of money or property now or which may hereafter become due from any source whatsoever, including all estates or trusts, proceeds of insurance policies or other property of any kind whatsoever.
- (b) To join with other parties in the compromise or settlement of any claims.
- (c) To make, negotiate, sign and perform any and all agreements and contracts now in course of negotiation, execution and settlement by me, or which may hereafter, in the opinion of my Attorney, be to my interest or advantage; to effect, procure and continue insurance of any and every kind and description; and with full power and authority to manage any real and personal property and conduct my affairs generally.
- (d) To employ attorneys at law and such other agents, employees or representatives as my Attorney may think proper, and to pay any claims, fees, expenses, wages, demands or obligations for which I may now be, or may hereafter become, liable.

5. Tax Matters.

To prepare, execute and file, on my behalf and in my name, any and all income tax declarations and returns, and any other tax returns and reports (including, but not limited to protests, claims, elections, consents, closing agreements, waivers of statutes of limitations and extensions), and to represent me before the Internal Revenue Service or Treasury Department and any state or local taxing authority with respect to any claim or proceeding having to do with my tax liabilities, federal, state or local, for any and all years.

6. Power to Delegate.

To substitute one or more of my attorneys under my Attorney, to carry out any of the general or specific powers hereby granted.

7. Specific Personal and Medical Powers Defined by Statute.

The following powers are granted pursuant to Chapter 56 of the Pennsylvania Probate, Estates and Fiduciaries Code, as further defined therein:

- (a) To authorize my admission to a medical, nursing, residential or similar Facility and to enter into agreements for my care.
- (b) To authorize medical and surgical procedures.

DURATION OF POWER, RELIEF FROM LIABILITY, REVOCATION

1. This power shall ~~not~~ expire by reason of lapse of time. *Date of Expiration 8/27/03*
W.F. RYOKE 8/27/03 JAT
2. I hereby ratify and confirm all that my Attorney shall do or cause to be done under this Limited Power of Attorney. I specifically direct that such Attorney shall not be subject to any liability by reason of any of my Attorney's decisions, acts or failures to act, all of which shall be conclusive and binding upon me, my personal representatives, heirs and assigns. Furthermore, except in the case of malfeasance of office, I agree to indemnify my Attorney, and hold my Attorney harmless, from all claims that may be made against my Attorney as a result of my Attorney's service hereunder and I hereby agree to reimburse my Attorney in the amount of any damages, costs and expenses that may be incurred as a result of any such claim.

3. This power of attorney shall be revoked by my giving to my Attorney written notification of the revocation, which notice shall not be considered binding unless actually received.

I expressly direct that for all purposes, a photocopy of this Power of Attorney shall be deemed to be an original and that any person shall be authorized to act upon such a copy as if it were an original.

IN WITNESS WHEREOF, and intending to be legally bound, I have hereunto set my hand and seal this 7 day of October, 2002.

Signed, sealed and delivered
in the presence of:

[Signature]
Witness

Witness

[Signature]
J. Richard Fullington, Jr.
[Signature]
a/k/a Richard J. Fullington, Jr.

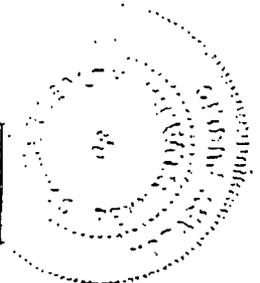
COMMONWEALTH OF PENNSYLVANIA :
:SS
COUNTY OF CLEARFIELD :

On the 7 day of October, 2002, before me, a Notary Public, personally appeared J. RICHARD FULLINGTON, JR., a/k/a RICHARD J. FULLINGTON, JR. and in due form of law acknowledged the foregoing Power of Attorney to be his/her act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal

[Signature]
Notary Public

NOTARIAL SEAL
LINDA S. LARATONDA, Notary Public
Blair Twp., Blair County
My Commission Expires Aug. 15, 2004



ACKNOWLEDGMENT OF AGENT

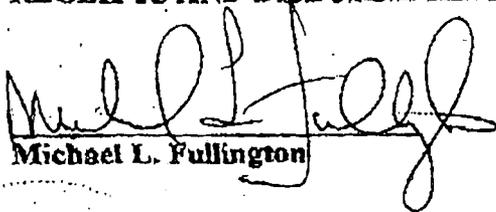
I, MICHAEL L. FULLINGTON, HAVE READ THE ATTACHED POWER OF ATTORNEY AND AM THE PERSON IDENTIFIED AS THE AGENT FOR THE PRINCIPAL. I HEREBY ACKNOWLEDGE THAT IN THE ABSENCE OF A SPECIFIC PROVISION TO THE CONTRARY IN THE POWER OF ATTORNEY ON IN 20 PA.C.S. WHEN I ACT AS AGENT:

I SHALL EXERCISE THE POWERS FOR THE BENEFIT OF THE PRINCIPAL.

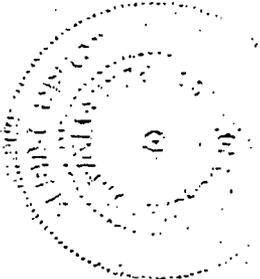
I SHALL KEEP THE ASSETS OF THE PRINCIPAL SEPARATE FROM MY ASSETS.

I SHALL EXERCISE REASONABLE CAUTION AND PRUDENCE.

I SHALL KEEP A FULL AND ACCURATE RECORD OF ALL ACTIONS, RECEIPTS AND DISBURSEMENTS ON BEHALF OF THE PRINCIPAL


Michael L. Fullington

Date: 10/7/02



NOTARIAL SEAL
LINDA S. LARATONDA, Notary Public
Blair Twp., Blair County
My Commission Expires Aug. 16, 2004

EXHIBIT 8

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200315359
RECORDED ON
AUG 26, 2003
2:36:33 PM
Total Pages: 5

RECORDING FEES - \$15.00
RECORDER
COUNTY IMPROVEMENT \$2.00
FUND
RECORDER IMPROVEMENT \$3.00
FUND
JCS/ACCESS TO \$10.00
JUSTICE
STATE WRIT TAX \$0.50
TOTAL \$30.50
CUSTOMER
AMHERMAN, DAVID

GENERAL WARRANTY DEED

To: Fullington Real Estate Company

From: J. Richard Fullington
and Loretta P. Fullington

After recording, mail to:

Karlowitz & Cromer, P.C.
1201 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219-1625

AFFIDAVIT No. 36780

THIS DEED

Made this 26 day of August, in the year 2003,

Between **J. Richard Fullington**, by his attorney-in-fact, Michael L. Fullington, specially constituted by Power of Attorney bearing date October 7, 2002 and recorded in the office for recording deeds in and for the County of Clearfield as Instrument No. 200309644, and **Loretta P. Fullington**, wife of J. Richard Fullington (hereinafter collectively "Grantor")

A
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Fullington Real Estate Company, of 316 East Cherry Street, Clearfield, Pennsylvania 16830 (hereinafter "Grantee").

Witnesseth, that the said Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, does hereby grant, bargain, sell and convey to the Grantee, their successors and assigns:

ALL THAT CERTAIN piece or parcel of land situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the centerline of Lawrence Township Route 603 and at the northwest corner of land now or formerly of David M. & Barbara J. Chnupa; said point also being North 64° 52' 21" West, 15 feet from a big white pine located on the north line of David & Barbara J. Chnupa; thence by a line running generally along Lawrence Township Route 603 and along a portion of the eastern line of land now or formerly of Walter P. and Jeannette S. Thorp North 8° 32' East, 1402.5 feet more or less to an existing mine rail at the northeast corner of Walter and Jeannette Thorp and on the southern line of land of Linglewood Lodge, Inc.; thence by southern line of Linglewood Lodge, Inc., and the southern line of Ralph C. Jr. and Rhonda K. Lingle South 81° 13' East 1988.82 feet more or less to a point in the centerline of the culvert bridge over an unnamed tributary to Wolf Run; said point being on the

northern line of land now or formerly of Nellie Pentz Heirs c/o Friendship Inns North 81° 13' West, 56.20 feet from the northeast corner of land of the Nellie Pentz Heirs c/o Friendship Inns; thence by the northern line of Nellie Pentz Heirs c/o Friendship Inns and generally by the centerline of an unnamed tributary to Wolf Run the following courses and distances; South 57° 06' West, 80.55 feet to a point; thence South 44° 02' West 77.13 feet to a point; thence South 73° 01' West, 158.79 feet to a point; thence North 65° 09' West, 268.18 feet to a point; thence South 23° 43' West, 91.55 feet to a point; thence North 88° 20' West, 60.46 feet to a point in the centerline of the unnamed tributary to Wolf Run and at the northeast corner of lands now or formerly of Harry K. and Emily Maney; thence by the northern line of Harry and Emily Maney and generally by the centerline of the unnamed tributary to Wolf Run the following courses and distance:

South 49° 13' West, 58.81 feet to a point; thence South 12° 40' West, 56.14 feet to a point; thence North 84° 26' West, 87.32 feet to a point; thence South 42° 31' West, 167.68 feet to a point; thence North 89° 08' West, 64.88 feet to a point; thence South 38° 20' West, 21.50 feet to a point in the approximate centerline of the unnamed tributary to Wolf Run and at the northwest corner of a parcel of land conveyed by Nellie Pentz to Harry Maney and recorded in Clearfield County Deed Book 1998, page 221; thence by the western line of the aforementioned parcel South 24° 35' East, 530 feet more or less to the northern right-of-way line of State Route 879; thence by the northern right-of-way line of State Route 879 and the arc of a 0° 44' 25" curve which bears to the left 193.96 feet to a 3/4" rebar set at the northeast corner of a parcel of land conveyed by the Nellie Pentz Estate to Sheetz, Inc. in 1997 and recorded in Clearfield County Deeds & Records Vol. 1892 at page 436; thence by the eastern line of Sheetz, Inc. North 30° 07' 12" West, 392.91 feet to a 3/4" rebar set at the northwest corner of Sheetz, Inc.; thence by the western line of Sheetz, Inc. South 75° 19' 14" West, 226.26 feet to a point in the centerline of an unnamed tributary to Wolf Run; thence by the western line of Sheetz, Inc. and generally by the centerline of the unnamed tributary to Wolf Run the following courses and distances:

South 51° 13' 27" West, 8.11 feet to a point; thence South 69° 22' 03" West, 9.24 feet to a point; thence North 52° 03' 54" West, 28.41 feet to a point; thence South 64° 14' 18" West, 12.37 feet to a point; thence South 33° 05' 20" West, 10.63 feet to a point; thence South 1° 3' 23" East, 37.37 feet to a point; thence South 27° 38' 15" West, 34.46 feet to a point; thence South 32° 02' 50" West, 49.27 feet to a point; thence South 2° 09' 23" East, 16.31 feet to a point; thence South 18° 50' 28" East, 41.75 feet to a point; thence South 49° 13' 41" West, 22.07 feet to a point; thence South 9° 33' 26" East, 18.97 feet to a point; thence South 3° 32' 21" West, 9.32 feet to a point in the centerline of an unnamed tributary to Wolf Run and the northwest corner of Keller and Wolfel, Inc.; thence along the western line of Keller and Wolfel, Inc. and generally by the centerline of an unnamed tributary to Wolf Run South 23° 59' 45" West, 238.88 feet to a point in the approximate centerline of said unnamed tributary to Wolf Run and at the northwest corner of land now or formerly of Harold E. Pentz; thence by the western line of lands now or formerly of Harold E. Pentz and generally

along the centerline of the aforementioned unnamed tributary to Wolf Run the following courses and distances:

South 36° 10' 40" West, 70.5 feet to a point; thence South 59° 31' 40" West, 47.3 feet to a point; thence South 73° 00' 40" West, 64.4 feet to a point; thence South 60° 07' 40" West, 63.7° feet to a point; thence South 43° 52' 40" West, 47.4 feet to a point; thence South 40° 00' 40" West, 71.2 feet to a point in the apparent centerline of said unnamed tributary to Wolf Run, said point also being the northwest corner of land of Helen C. Leigey and the northeast corner of David M. and Barbara J. Chnupa; thence by the northern line of David & Barbara Chnupa, North 64° 52' 21" West, 469.82 feet more or less to a point in the centerline of Lawrence Township Route 603 and the place of beginning. Said Parcel containing 37.3 acres more or less as determined from record plans and may be more or less than this amount when verified by an actual field survey.

BEING FURTHER IDENTIFIED with a corrected Clearfield County Tax Parcel Index No. 123-L07-31, as previously incorrectly stated by Deed dated August 13, 1999 and recorded in the Recorder of Deeds Office of Clearfield County at Instrument No. 199913676 as Clearfield Tax Parcel Index No. 126-L7-31.

EXCEPTING AND RESERVING, any acreage totals previously condemned or otherwise taken by the Pennsylvania Department of Transportation ("PennDOT") for the increased right of way width for Legislative Route 17052 (also known as State Route 879).

TOGETHER WITH any right, title and interest of the Grantor, her heirs, executors, successors and assigns relative to any reversion from the PennDOT of portions of the increased right of way width for Legislative Route 17052 (also known as State Route 879) between said PennDOT right of way and portions of the above-described property and any property currently owned by Grantees or entities in which Grantees have an interest.

BEING THE SAME PROPERTY which Thelma J. Pentz, Administrator d.b.n.c.t.a. of the Estate of Nellie V. Pentz, Deceased, by Deed dated August 17, 1999 and recorded in the Recorder of Deeds Office of Clearfield County at Instrument No. 199913675 granted and conveyed to J. Richard Fullington and Loretta P. Fullington, his wife, the Grantor herein.

Grantor states that the above property is not presently being used, nor to the best of their knowledge, information and belief, has it ever been used for the disposal of hazardous wastes. This statement is made in compliance with the Solid Waste Management Act No. 1980-97, Section 405.2.

with the appurtenances: To Have and To Hold the premises hereby granted, or mentioned, or intended so to be, or the appurtenances, unto the said Grantee, its successors and assigns, to the

only proper use of the said Grantee, its successors and assigns forever.

The Grantor warrants generally the property conveyed by this deed and covenants to the Grantee, its successors and assigns, that the Grantor, their heirs, personal representatives and assigns, will forever warrant and defend the property against the lawful claims and demands of all persons.

NOTICE - THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT 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 OF 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. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth pursuant to Act No. 255, approved September 10, 1965, as amended.]

Witness the hands and seals of the Grantor.

Witness:

Aerial Fullington Keiser By: Michael L. Fullington POA
J. Richard Fullington
Michael L. Fullington,
Attorney-in-Fact for J. Richard Fullington

Aerial Fullington Keiser Loretta P. Fullington
Loretta P. Fullington

NOTICE - I/WE, THE UNDERSIGNED GRANTEE, HEREBY CERTIFY THAT I/WE KNOW AND UNDERSTAND THAT I/WE MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED IN ACCORDANCE WITH THE PROVISIONS OF "THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966", AS AMENDED 1980, OCTOBER 10, P.L. 874, NO. 156 §1.

Witness:

[Signature] Aerial Fullington Keiser

Certificate of Residence

I, DAVID S. AMMERMAN, do hereby certify that Grantee's precise residence is 316 East Cherry Street, P.O. Box 211, Clearfield, Pennsylvania 16830.

Witness my hand this 26 day of August, 2003.



Acknowledgments

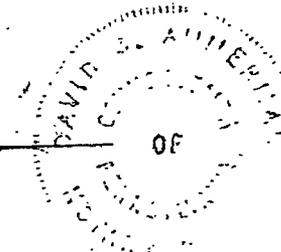
Commonwealth of Pennsylvania)
) ss:
County of Clearfield)

On this the 26 day of AUGUST, A.D. 2003, before me, a notary public in and for said County and Commonwealth, the undersigned officer, personally appeared **Michael L. Fullington**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument as attorney-in-fact for **J. Richard Fullington**, and acknowledged that he executed the same as the act of his principals for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

NOTARIAL SEAL
David S. Ammerman, Notary Public
Clearfield Borough, County of Clearfield
My Commission Expires Nov. 20, 2004


Notary Public



My commission expires:

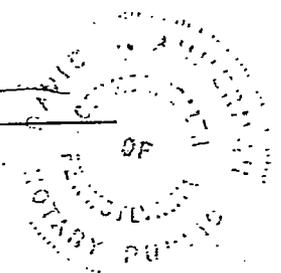
Commonwealth of Pennsylvania)
) ss:
County of Clearfield)

On this the 26 day of AUGUST, A.D. 2003, before me, a notary public in and for said County and Commonwealth, the undersigned officer, personally appeared **Loretta P. Fullington**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

NOTARIAL SEAL
David S. Ammerman, Notary Public
Clearfield Borough, County of Clearfield
My Commission Expires Nov. 20, 2004


Notary Public



My commission expires:

EXHIBIT 9

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200315357

RECORDED ON

AUG 26 2003
2:32:47 PM

Total Pages: 4

RECORDING FEES -	\$13.00
REORDER	
COUNTY IMPROVEMENT	\$2.00
FUND	
REORDER IMPROVEMENT	\$3.00
FUND	
JCS/ACCESS TO	\$10.00
JUSTICE	
STATE WRIT TAX	\$0.50
TOTAL	\$28.50
CUSTOMER	
AHNERMAN, DAVID	

GENERAL WARRANTY DEED

To: Fullington Real Estate Company

From: J. Richard Fullington
and Loretta P. Fullington

After recording, mail to:

Karlowitz & Cromer, P.C.
1201 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219-1625

AFFIDAVIT No. 36779

THIS DEED

Made this 26 day of August, in the year 2003,

Between J. Richard Fullington, by his attorney-in-fact, Michael L. Fullington, specially constituted by Power of Attorney bearing date October 7, 2002 and recorded in the office for recording deeds in and for the County of Clearfield as Instrument No. 200309644, and **Loretta P. Fullington**, wife of J. Richard Fullington (hereinafter collectively "Grantor")

A
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D

Fullington Real Estate Company, of 316 East Cherry Street, Clearfield, Pennsylvania 16830 (hereinafter "Grantee").

Witnesseth, that the said Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, does hereby grant, bargain, sell and convey to the Grantee, their successors and assigns:

ALL THAT CERTAIN piece or parcel of land situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an old iron axle, said iron axle being located on the northern side of Legislative Route 17052, and being the southwest corner of the lot now or formerly

owned by Lawrence Stevens; thence along the northern right-of-way of Legislative Route 17052, South 61° 03' West, 210.2 feet to a two-inch iron pipe; thence North 66° 54' West, 237.8 feet to a two-inch iron pipe, said two-inch iron pipe being located in the center of a small stream; thence along the center line of said stream in a northeasterly direction the several courses and distances as set forth in a previously recorded Survey Plot, which courses and distances are incorporated herein by reference and make a part hereof to an iron pin; thence along the Lawrence W. Stevens lot, South 32° 15' East, 241.83 feet to the old iron axle and place of beginning. Containing 1.42 acres.

BEING FURTHER IDENTIFIED with a corrected Clearfield County Tax Parcel Index No. 123-L07-31.2, as previously incorrectly stated by Deed dated August 13, 1999 and recorded in the Recorder of Deeds Office of Clearfield County at Instrument No. 199913676 as Clearfield Tax Parcel Index No. 126-L7-31.2.

EXCEPTING AND RESERVING any acreage totals previously condemned or otherwise taken by the Pennsylvania Department of Transportation ("PennDOT") for the increased right-of-way width for Legislative Route 17052 (also known as State Route 879). It is believed that after said condemnation or taking, the resultant acreage should approximate 1.28 acres.

TOGETHER WITH any right, title and interest of the Grantor, his heirs, executors, successors and assigns relative to any reversion from the PennDOT of portions of the increased right-of-way width for Legislative Route 17052 (also known as State Route 879) between said PennDOT right-of-way and portions of the above-described property and any property currently owned by Grantees or entities in which Grantees have an interest.

BEING THE SAME PROPERTY which Essington E. Sankey, Jr., Executor of the Estate of Harold E. Pentz, by its Deed dated August 13, 1999 and recorded in the Recorder of Deeds Office of Clearfield County at Instrument No. 199913676, granted and conveyed to J. Richard Fullington and Loretta P. Fullington, his wife, the Grantors herein.

with the appurtenances: To Have and To Hold the premises hereby granted, or mentioned, or intended so to be, or the appurtenances, unto the said Grantee, its successors and assigns, to the only proper use of the said Grantee, its successors and assigns forever.

The Grantor warrants generally the property conveyed by this deed and covenants to the Grantee, its successors and assigns, that the Grantor, their heirs, personal representatives and assigns, will forever warrant and defend the property against the lawful claims and demands of all persons.

NOTICE - THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT 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 OF 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. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth pursuant to Act No. 255, approved September 10, 1965, as amended.]

Witness the hands and seals of the Grantor.

Witness:

J. Richard Fullington

Aerial Fullington-Klein By: *Michael L. Fullington, POA*
Michael L. Fullington,
Attorney-in-Fact for J. Richard Fullington

Aerial Fullington-Klein *Loretta P. Fullington*
Loretta P. Fullington

NOTICE - I/WE, THE UNDERSIGNED GRANTEE, HEREBY CERTIFY THAT I/WE KNOW AND UNDERSTAND THAT I/WE MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED IN ACCORDANCE WITH THE PROVISIONS OF "THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966", AS AMENDED 1980, OCTOBER 10, P.L. 874, NO. 156 §1.

Witness:

[Signature] *Aerial Fullington-Klein*

EXHIBIT 10



MORGAN SIGNS, INC. 814-768-1001

Board # 6132 6134
6133 6135

RD 7 Box 947, Altoona, PA 16601 • 814-944-3951
800-494-0709 FAX 814-944-4872

Date November 1, 1999

WITNESSETH this lease by Richard, Jr. & Loratta Fullington
of Post Office Box 384, Clearfield, PA 16830
hereinafter to be known as the Lessor,
AND
MORGAN SIGNS, INC., hereinafter to be known as the Lessee.

The Lessor having the right to do so does hereby lease to the Lessee the exclusive right to erect sign(s) on land described as follows:

Space for four (4) 12' x 25' advertising panels located along Rt. 879 North of Clearfield.

* Lease Payment Schedule	
1999/2000	\$7,400.00
2000/2001	\$7,659.00
2001/2002	\$7,927.00
2002/2003	\$8,204.52
2003/2004	\$8,491.68

*** THERE WILL BE NO ADVERTISING OF AUTOMOTIVE RETAIL ON THESE PANELS. ***

For a term of five (5) years beginning Nov. 1, 1999 and ending Oct. 31, 2004
for the sum of \$ See * above per year, payable in advance.

The Lessor agrees to permit Lessee at all times to enter said premises and post, paint or remove said sign. This lease, at option of the Lessee, may be continued indefinitely from year to year, unless the Lessor gives Lessee at least thirty(30) days' notice in writing terminating the lease at the end of any such renewal.

The Lessor represents and warrants that they (is/are) the owners of the premises above described and has authority to make this lease and covenants. The Lessee shall have the first option to purchase the above-described property in the event the property is for sale. The consideration for this option is included in the above-mentioned lease cost.

It is expressly understood that neither the Lessor nor the Lessee is bound by any stipulation, representations or agreements, not printed or written in this lease. This lease shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. The Lessor covenants that he will not permit any other signs to be erected on the premises owned or controlled by him, that would obstruct or impair the vision from the street, road or public highways of any advertising display of the Lessee erected on the premises, or plot covered by this agreement, and Lessee is authorized to trim brush, bushes and vegetation which it deems necessary for an unobstructed view of the premises.

MORGAN SIGNS, INC.
By [Signature]
Lessee

Signed this 19 day of Dec 1999
[Signature] (SEAL)
Lessor
[Signature] (SEAL)
Lessor

WITNESS: _____

ATTEST: _____

Social Security No.: 196-44-9730

EXHIBIT 11



DEC 26 2000

Board # _____

MORGAN SIGNS, INC.

RD 7 Box 947, Altoona, PA 16601 • 814-944-3951
800-494-0709 FAX 814-944-4872

Date November 12, 1999

WITNESSETH this lease by Richard Fullington, Jr.

of Post Office Box 384, Clearfield, PA 16830
hereinafter to be known as the Lessor,

AND
MORGAN SIGNS, INC., hereinafter to be known as the Lessee.

*Penn DOT - Rent
Gary Bojalad
765-0447
- Overhang PennDot
- Michael Krat original*

The Lessor having the right to do so does hereby lease to the Lessee the exclusive right to erect sign(s) on land described as follows:

Space for one (1) 14' x 48' and two (2) 12' x 25' advertising panels located along Rt. 879 on the Fullington Buick Olds Cadillac property.

*# 260
up Pd Jan 23, 2002
5 months due
an old lease.
June 2002 new lease*

*** LEASE PAYMENT SCHEDULE: Annual 3.5% Increases**

1999/2000	\$10,000.00
2000/2001	\$10,350.00
2001/2002	\$10,712.25
2002/2003	\$11,087.18
2003/2004	\$11,475.24

*** THERE WILL BE NO ADVERTISING OF AUTOMOTIVE REPAIR ON THESE PANELS. ***

THIS LEASE VALID UPON RECEIPT OF ALL APPLICABLE PERMITS.

For a term of five (5) years beginning Jan. 1, 2000 and ending Dec. 31, 2004
for the sum of \$ see * above per year, payable in advance.

The Lessor agrees to permit Lessee at all times to enter said premises and post, paint or remove said sign. This lease, at option of the Lessee, may be continued indefinitely from year to year, unless the Lessor gives Lessee at least thirty(30) days' notice in writing terminating the lease at the end of any such renewal.

The Lessor represents and warrants that he (is/~~isn't~~) the owner of the premises above described and has authority to make this lease and covenants. The Lessee shall have the first option to purchase the above-described property in the event the property is for sale. The consideration for this option is included in the above-mentioned lease cost.

It is expressly understood that neither the Lessor nor the Lessee is bound by any stipulation, representations or agreements, not printed or written in this lease. This lease shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. The Lessor covenants that he will not permit any other signs to be erected on the premises owned or controlled by him, that would obstruct or impair the vision from the street, road or public highways of any advertising display of the Lessee erected on the premises, or plot covered by this agreement, and Lessee is authorized to trim brush, bushes and vegetation which it deems necessary for an unobstructed view of the premises.

MORGAN SIGNS, INC.
By Michael Fletcher
Lessee

Signed this 18 day of January 2000

[Signature] (SEAL)
Lessor

WITNESS: _____

[Signature] (SEAL)
Lessor

ATTEST: _____

Social Security No.: 196-44-9730

EXHIBIT 12

ASSIGNMENT OF OUTDOOR ADVERTISING LEASE NO. 01-0244-1

To: Fullington Real Estate Company

From: Richard J. Fullington, Jr.
and Loretta Fullington

After recording, mail to:

Karlowitz & Cromer, P.C.
1201 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219-1625

ASSIGNMENT OF OUTDOOR ADVERTISING LEASE NO. 01-0244-1

This Assignment of Outdoor Advertising Lease No. 01-0244-1 ("Assignment") made this 26 day of August, 2003, by and between **RICHARD J. FULLINGTON, JR.**, by his attorney-in-fact, **Michael L. Fullington**, and **LORETTA FULLINGTON**, wife of Richard J. Fullington, Jr., adult individuals having an address of P.O. Box 384, Clearfield, Pennsylvania 16830 (collectively "Assignor"),

A N D

FULLINGTON REAL ESTATE COMPANY, a Pennsylvania corporation with its principal place of business in the Borough of Clearfield, Clearfield County, Pennsylvania ("Assignee").

WITNESSETH

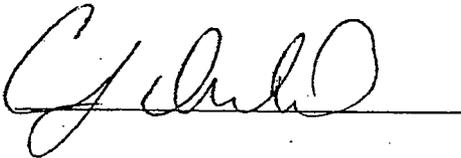
WHEREAS Assignor, on the 1st day of November, 1999, entered into an Outdoor Advertising Lease ("Lease") with Morgan Signs, Inc. ("Morgan") for the lease by Morgan of the space for four (4) 12' x 25' advertising panels located along Route 879 North of Clearfield as described in the

Lease.

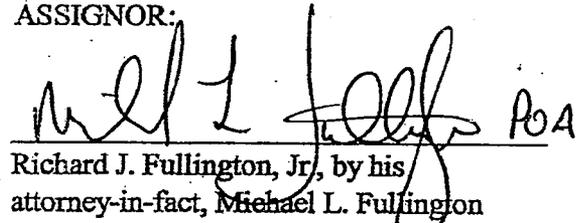
NOW THEREFORE, intending to be legally bound hereby, the Assignor, for and in consideration of the sum of One and 00/100 (\$1.00) Dollar and other good and valuable consideration, does hereby assign, transfer and set over to the Assignee, all of Assignor's right, title and interest in the aforesaid Lease, together with and under and subject to all of the terms and conditions of said Lease.

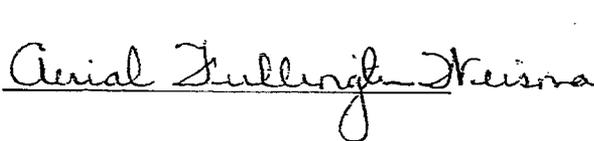
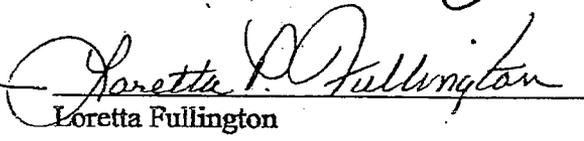
IN WITNESS WHEREOF, the Assignor has executed this Assignment on the date and year first written above.

WITNESS:



ASSIGNOR:


Richard J. Fullington, Jr., by his
attorney-in-fact, Michael L. Fullington

 Aerial Fullington-Keisner 
Loretta Fullington

Acknowledgments

Commonwealth of Pennsylvania)
) ss:
County of Clearfield)

On this the 26 day of August, A.D. 2003, before me, a notary public in and for said County and Commonwealth, the undersigned officer, personally appeared **Michael L. Fullington**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument as attorney-in-fact for **Richard J. Fullington, Jr.**, and acknowledged that he executed the same as the act of his principals for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Notarial Seal
Kenneth J. Cort, Notary Public
College Twp., Centre County
My Commission Expires Oct. 27, 2003

Kenneth J. Cort

Notary Public

My Commission Expires: Member, Pennsylvania Association of Notaries

Commonwealth of Pennsylvania)
) ss:
County of Clearfield)

On this the 26 day of August, A.D. 2003, before me, a notary public in and for said County and Commonwealth, the undersigned officer, personally appeared **Loretta Fullington**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Notarial Seal
Terry M. Welker, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires April 13, 2004
Member, Pennsylvania Association of Notaries

Terry M. Welker

Notary Public

My Commission Expires:

EXHIBIT 13

ASSIGNMENT OF OUTDOOR ADVERTISING LEASE NO. 01-0244-2

To: Fullington Real Estate Company

From: Richard J. Fullington, Jr.

After recording, mail to:

Kariowitz & Cromer, P.C.
1201 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219-1625

ASSIGNMENT OF OUTDOOR ADVERTISING LEASE NO. 01-0244-2

This Assignment of Outdoor Advertising Lease No. 01-0244-2 ("Assignment") made this 26 day of August, 2003, by and between **RICHARD J. FULLINGTON, JR.**, by his attorney-in-fact, **Michael L. Fullington**, an adult individual having an address of P.O. Box 384, Clearfield, Pennsylvania 16830 ("Assignor"),

A N D

FULLINGTON REAL ESTATE COMPANY, a Pennsylvania corporation with its principal place of business in the Borough of Clearfield, Clearfield County, Pennsylvania ("Assignee").

WITNESSETH

WHEREAS Assignor, on the 12th day of November, 1999, entered into an Outdoor Advertising Lease ("Lease") with Morgan Signs, Inc. ("Morgan") for a lease by Morgan of the space for one (1) 14' x 48' and two (2) 12' x 25' advertising panels located along Route 879 on the Fullington Buick Old Cadillac Property as described in the Lease.

NOW THEREFORE, intending to be legally bound hereby, the Assignor, for and in

consideration of the sum of One and 00/100 (\$1.00) Dollar and other good and valuable consideration, does hereby assign, transfer and set over to the Assignee, all of Assignor's right, title and interest in the aforesaid Lease, together with and under and subject to all of the terms and conditions of said Lease.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the date and year first written above.

WITNESS:

[Handwritten Signature]

ASSIGNOR:

[Handwritten Signature] POA
Richard J. Fullington, Jr., by his
attorney-in-fact, Michael L. Fullington

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF CLEARFIELD)

On this the 26 day of August, A.D. 2003, before me, a notary public in and for said County and Commonwealth, the undersigned officer, personally appeared **Michael L. Fullington**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument as attorney-in-fact for **Richard J. Fullington, Jr.**, and acknowledged that he executed the same as the act of his principals for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

[Handwritten Signature]
Notary Public

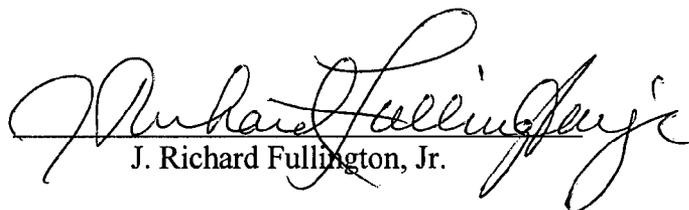
My Commission Expires:

Notarial Seal
Kenneth J. Cort, Notary Public
College Twp., Centre County
My Commission Expires Oct. 27, 2003

Member, Pennsylvania Association of Notaries

VERIFICATION

The undersigned, J. Richard Fullington, Jr., plaintiff in the foregoing action, states that the facts averred in the foregoing Complaint are true and correct to the best of his knowledge, information and belief. The undersigned further states that he understands that false statements therein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.


J. Richard Fullington, Jr.

Date: April 8, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100416
NO: 05-565-CD
SERVICE # 1 OF 6
COMPLAINT

PLAINTIFF: J. RICHARD FULLINGTON JR.
vs.
DEFENDANT: FULLINGTON AUTO BUS COMPANY al

SHERIFF RETURN

NOW, April 21, 2005 AT 3:30 PM SERVED THE WITHIN COMPLAINT ON FULLINGTON AUTO BUS COMPANY DEFENDANT AT SHFF. OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO AERIAL FULLINGTON WEISMAN, PRESIDENT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

of **FILED**
03:2784
MAY 05 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100416
NO: 05-565-CD
SERVICE # 2 OF 6
COMPLAINT

PLAINTIFF: J. RICHARD FULLINGTON JR.
vs.
DEFENDANT: FULLINGTON AUTO BUS COMPANY al

SHERIFF RETURN

NOW, April 21, 2005 AT 3:30 PM SERVED THE WITHIN COMPLAINT ON FULLINGTON GMC SALES INC. DEFENDANT AT SHFF. OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO AERIAL FULLINGTON WEISMAN, PRESIDENT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100416
NO: 05-565-CD
SERVICE # 3 OF 6
COMPLAINT

PLAINTIFF: J. RICHARD FULLINGTON JR.
vs.
DEFENDANT: FULLINGTON AUTO BUS COMPANY al

SHERIFF RETURN

NOW, April 21, 2005 AT 3:30 PM SERVED THE WITHIN COMPLAINT ON FULLINGTON REAL ESTATE COMPANY DEFENDANT AT SHFF. OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO AERIAL FULLINGTON WEISMAN, PRESIDENT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100416
NO: 05-565-CD
SERVICE # 4 OF 6
COMPLAINT

PLAINTIFF: J. RICHARD FULLINGTON JR.
vs.
DEFENDANT: FULLINGTON AUTO BUS COMPANY al

SHERIFF RETURN

NOW, April 27, 2005 AT 4:00 PM SERVED THE WITHIN COMPLAINT ON J. RICHARD FULLINGTON, SR. DEFENDANT AT Colonial Courtyard, Rm.311, 1300 Leonard St., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO J. RICHARD FULLINGTON SR., DEFENDANT (PRESENCE OF SUSAN SWALES, ADM. ASST.) A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100416
NO: 05-565-CD
SERVICE # 5 OF 6
COMPLAINT

PLAINTIFF: J. RICHARD FULLINGTON JR.
vs.
DEFENDANT: FULLINGTON AUTO BUS COMPANY al

SHERIFF RETURN

NOW, April 21, 2005, SHERIFF OF CENTRE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON MICHAEL L. FULLINGTON.

NOW, April 27, 2005 AT 11:10 AM SERVED THE WITHIN COMPLAINT ON MICHAEL L. FULLINGTON, DEFENDANT. THE RETURN OF CENTRE COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100416
NO: 05-565-CD
SERVICE # 6 OF 6
COMPLAINT

PLAINTIFF: J. RICHARD FULLINGTON JR.
vs.
DEFENDANT: FULLINGTON AUTO BUS COMPANY al

SHERIFF RETURN

NOW, April 21, 2005 AT 3:29 PM SERVED THE WITHIN COMPLAINT ON AERIAL FULLINGTON WEISMAN DEFENDANT AT SHFF. OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO AERIAL FULLINGTON WEISMAN, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100416
NO: 05-565-CD
SERVICES 6
COMPLAINT

PLAINTIFF: J. RICHARD FULLINGTON JR.
vs.
DEFENDANT: FULLINGTON AUTO BUS COMPANY et al

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	DALE	9474	60.00
SHERIFF HAWKINS	DALE	9474	64.00
CENTRE CO.	DALE	9471	28.90

Sworn to Before Me This

_____ Day of _____ 2005

So Answers,



Chester A. Hawkins
Sheriff

SHERIFF'S OFFICE CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

SHERIFF SERVICE PROCESS RECEIPT, AND AFFIDAVIT OF RETURN	INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. please type or print legibly. Do Not detach any copies.
---	--

1. Plaintiff(s) <u>J. Richard Fullington, Jr</u>	2. Case Number <u>05-565-CD</u>
---	------------------------------------

3. Defendant(s) <u>Fullington Auto Bus Co. and etal</u>	4. Type of Writ or Complaint: <u>Notice and Complaint</u>
--	--

SERVE → AT	5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold. <u>Michael L. Fullington</u>
	6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code) <u>2101 Alexander Drive, Bellefonte, PA</u>

7. Indicate unusual service: Reg Mail Certified Mail Deputize Post Other

Now, _____ 20____. I SHERIFF OF CENTRE COUNTY, PA., do hereby deputize the Sheriff of _____ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____
Sheriff of Centre County

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

9. Print/Type Name and Address of Attorney/Originator	10. Telephone Number	11. Date
	12. Signature	

SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above. } SIGNATURE of Authorized CCSD Deputy of Clerk and Title	14. Date Filed	15. Expiration/Hearing Date
---	----------------	-----------------------------

TO BE COMPLETED BY SHERIFF

16. Served and made known to Michael L. Fullington, on the 27th day of April, 20 05, at 11:10 o'clock, A m., at 2101 Alexander Drive, Bellefonte, County of Centre

- Commonwealth of Pennsylvania, in the manner described below:
- Defendant(s) personally served.
 - Adult family member with whom said Defendant(s) resides(s). Relationship is _____
 - Adult in charge of Defendant's residence.
 - Manager/Clerk of place of lodging in which Defendant(s) resides(s).
 - Agent or person in charge of Defendant's office or usual place of business.
 - _____ and officer of said Defendant company.
 - Other _____

On the _____ day of _____, 20____, at _____ o'clock, _____ M.

Defendant not found because:
 Moved Unknown No Answer Vacant Other _____

Remarks:

Advance Costs	Docket	Service	Sur Charge	Affidavit	Mileage	Postage	Misc.	Total Costs	Cents Due or Refund
<u>\$75.00</u>	<u>9.00</u>	<u>9.00</u>	<u>0</u>	<u>2.50</u>	<u>6.90</u>	<u>.50</u>	<u>1.00</u>	<u>28.90</u>	<u>46.10</u>

17. AFFIRMED and subscribed to before me this <u>2</u> day of <u>May</u> , 20 <u>05</u>	18. Signature of Dep. Sheriff <u>Douglas P. Kalmbach</u>
20. <u>Carinne Peters</u> Notary Public	19. Date <u>4/28/2005</u>
	21. Signature of Sheriff
	22. Date

Notarial Seal Corinne Peters, Notary Public My Commission Expires _____ Bellefonte Boro, Centre County	SHERIFF OF CENTRE COUNTY
	Amount Pd. _____ Page _____

24. I ACKNOWLEDGE RECEIPT OF THIS PROCESS RETURN SIGNATURE OF AUTHORIZED AUTHORITY AND TITLE Member, Pennsylvania Association of Notaries	25. Date Received
---	-------------------



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915
ROBERT SNYDER
CHIEF DEPUTY
MARILYN HAMM
DEPT. CLERK
CYNTHIA AUGHENBAUGH
OFFICE MANAGER
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 100416

TERM & NO. 05-565-CD

J. RICHARD FULLINGTON JR.

COMPLAINT

vs.

FULLINGTON AUTO BUS COMPANY et al

SERVE BY: 05/20/05

MAKE REFUND PAYABLE TO DALE WOODARD LAW FIRM

SERVE: MICHAEL L. FULLINGTON

ADDRESS: 124 SANDY RIDGE ROAD, STATE COLLEGE, PA

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF CENTRE COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, April 21, 2005.

*Plff stated this
would be easier
to serve at:*

*Fullington Garage
By Airport*

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

*pg 3072 AA
pd 75.00*

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

J. RICHARD FULLINGTON, JR., *
Plaintiff *

v. *

Civil Action - Law

FULLINGTON AUTO BUS COMPANY; *
FULLINGTON GMC SALES, INC.; *
FULLINGTON REAL ESTATE *
COMPANY; J. RICHARD *
FULLINGTON, SR.; *
MICHAEL L. FULLINGTON; and *
AERIAL FULLINGTON WEISMAN, *
Defendants

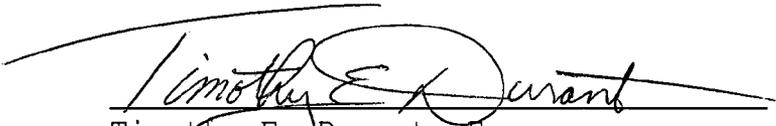
Number 2005-565-CD

To the Prothonotary:

PRAECIPE FOR ENTRY OF APPEARANCE

Kindly enter my appearance in the above captioned action on
behalf of defendant J. Richard Fullington, Sr.

May 17, 2005


Timothy E. Durant, Esq.
Pa I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
Telephone (814) 765-1711

FILED 3cc
01:22:34 Amy
MAY 17 2005 Durant
68

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

vs.

FULLINGTON AUTO BUS COMPANY,
et al.,

Defendants.

TYPE OF PLEADING:
**EMERGENCY MOTION TO
STRIKE PORTIONS OF
PRAYER FOR RELIEF FROM
COUNT SIX OF COMPLAINT
AND TO BAR CONVEYANCE
OF PROPERTY**

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: July 26, 2005

FILED 4CC
01/3/30/05
JUL 26 2005
William A. Shaw
Prothonotary/Clerk of Courts

2. On or about December 27, 2004, approximately 1½ years after title to Parcel 31 was transferred to Fullington Real Estate, the Fullington Companies entered into a Purchase and Sale Agreement (“Agreement”) with Aiello Land Company, LLC (“Aiello”) to sell Parcel 31 along with two (2) contiguous parcels of real property consisting of approximately 4.532 acres (“Related Parcels”) (collectively with Parcel 31, “the Property”). Attached hereto and marked as “Exhibit 1” is a true and correct copy of the Agreement.

3. Under the terms of a Joinder to the Agreement, FABCO agrees to indemnify, defend and hold Aiello harmless “from and against any and all liability, damage, loss, cost and expense . . . incurred . . . by reason of, related to or in connection with the involvement of [Fullington, Jr.] or . . . his spouse, in any portion of the Property or the chain of title thereto . . .”. See Agreement, p. 16.

4. Under the Agreement, Aiello is to pay the Fullington Companies One Million Three Hundred Thousand Dollars (\$1,300,000) to purchase the Property. Although the total purchase price is One Million Three Hundred Thousand Dollars (\$1,300,000), the portion of the purchase price being allocated to Parcel 31 is approximately Fifty Thousand Dollars (\$50,000).

5. On or about February 24, 2005, the Fullington Companies and Aiello entered into an Amendment to Purchase and Sale Agreement (“Amendment”) extending the time for Aiello to complete its due diligence and for the closing on the sale. Attached hereto and marked as “Exhibit 2” is a true and correct copy of the Amendment.

6. The sale of the Property is vital to the Fullington Companies and its affiliate, FABCO, as the proceeds from the sale are to be used to significantly reduce bank debt incurred by Fullington GMC and FABCO as a result of improper actions taken by Fullington, Jr. when he owned the majority interest in and ran Fullington GMC.

7. On or about April 20, 2005, months after the Agreement and Amendment were executed and while Aiello was proceeding with its due diligence and the parties to the Agreement were moving toward a closing on the sale of the Property, Plaintiff, Fullington, Jr., filed this action seeking damages for various alleged claims.

8. In this action, Fullington, Jr. asserts, *inter alia*, that Parcel 31 was previously owned by Fullington, Jr. and his then wife and that title to Parcel 31 was improperly transferred to Fullington Real Estate. *See* Count Four of Complaint, pp. 13-15. As a result of this alleged improper transfer, Fullington, Jr. seeks money damages. *See* Wherefore Clause to Count Four of Complaint, p. 15.

9. In Count Six of the Complaint, Fullington, Jr. alleges, *inter alia*, that Fullington Real Estate paid no consideration to Fullington, Jr. for the transfer of the properties, including Parcel 31. *See* Complaint, pp. 16-17.

10. Although Fullington, Jr.'s Complaint is captioned as a "Civil Action - Law", most of the claims for relief seek money damages, and Count Six expressly claims a legal cause of action (i.e., lack of consideration for the transfer of the property), the prayer for relief contained in Count Six seeks equitable relief in the form of an accounting and "the entry of an Order requiring Fullington Real Estate to reconvey title to the remaining properties" to Fullington, Jr. and his former wife. *Id.*, p. 17.

11. After receipt of the Complaint in this action, counsel for the Defendants met with Fullington, Jr.'s counsel to attempt to resolve the litigation. During the meeting, counsel for the Defendants provided Plaintiff's counsel with historical information and some key documents to review. Plaintiff's counsel agreed to an indefinite extension of time for the Defendants to plead to the Complaint while he reviewed the information provided and considered whether the matter

could be resolved. Attached hereto and marked as "Exhibit 3" is a true and correct copy of the May 20, 2005 letter from Plaintiff's counsel to defense counsel.

12. While Plaintiff's counsel was reviewing the materials provided to him and exploring the possibility of resolving this litigation, Aiello was proceeding with its due diligence with respect to the Agreement and purchase of the Property being sold by the Fullington Companies. In addition, Lawyers Title Insurance Corporation ("Lawyers Title") was reviewing the sale for purposes of placing title insurance.

13. In preparing its title commitment, Lawyers Title reviewed the record of this action. As a result of this lawsuit, Lawyers Title issued two (2) First Revised Commitments for Title Insurance, one with respect to Parcel 31 and one with respect to the Related Parcels, which provide, in pertinent part:

We find the following pending litigation in [sic] which must be settled and discontinued of record or the subject property must be released from the litigation:

Jr. Richard Fullington Jr. vs. Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, et al., filed at 05-565, filed on April 20, 2005.

Attached hereto and marked as "Exhibit 4" is a true and correct copy of the First Revised Commitments for Title Insurance with respect to Parcel 31 and the Related Parcels. *See* p. 3 of 8, ¶10 (as to Parcel 31) and p. 4 of 8, ¶ 18 (as to the Related Parcels) (Emphasis in original).

Thus, Lawyers Title indicated that it would not provide title insurance for the benefit of Aiello or its lender, First Commonwealth Bank, due to this cloud on the title unless i) the action commenced by the filing of this Complaint was settled and discontinued, or ii) the Property was released from the litigation.

14. In light of Lawyers Title's revised commitment, counsel for Aiello advised counsel for the Fullington Companies that Aiello could not proceed with the purchase of the Property under the Agreement and that the closing could not go forward without a termination of this action or a release of the Property from the lawsuit.

15. In an attempt to save the sale of the Property due to its vital importance to the Fullington Companies, FABCO and Aiello, counsel for the Fullington Companies spoke to Plaintiff's counsel on July 7, 2005 to see if Fullington, Jr. would be willing to dismiss with prejudice that portion of his prayer for relief as to Count Six seeking the reconveyance of Parcel 31 thereby removing the cloud from the title. Fullington, Jr. would still be entitled to seek legal remedies in the form of money damages for the alleged improper conveyance of Parcel 31 to Fullington Real Estate. Counsel for the Fullington Companies even offered to consider placing the portion of the proceeds from the sale of Parcel 31 (i.e., approximately Fifty Thousand Dollars (\$50,000)) in an escrow account as additional protection for Fullington, Jr. in the event that he was to succeed on his claim.

16. Notwithstanding the lack of harm that would befall Fullington, Jr. if his equitable prayer for relief were dismissed and the protection afforded to him by the offer to escrow sufficient funds to cover the value of Parcel 31, Fullington, Jr. refused to agree thereby preventing the sale of the Property.

17. Unless that portion of the prayer for equitable relief of Count Six seeking reconveyance of Parcel 31 is stricken and the Plaintiff is barred from seeking the conveyance of any of the Property to him or anyone else he designates or interfering in any way with the sale of the Property, the Fullington Companies and FABCO will suffer serious harm. The proceeds from the sale of the Property to Aiello are vital to pay down large bank debt incurred by

Fullington GMC and FABCO as a result of improper and illegal actions taken and loans obtained by Fullington, Jr. when he was the majority owner and President of Fullington GMC.

18. Due to improper and illegal actions taken by Fullington, Jr. while employed by Fullington GMC and FABCO, Fullington GMC and FABCO incurred millions of dollars worth of debt which FABCO has been struggling to pay-off while staying in business. It is vital to FABCO's ongoing business that it pay down this debt.

19. Aiello and the community will also suffer harm unless Fullington, Jr.'s demand for equitable relief is stricken thereby removing the cloud on the title of Parcel 31 and he is barred from seeking the conveyance of any of the Property or interfering in any way with the sale of the Property. Aiello is purchasing the Property for the purpose of opening a retail facility and has already obtained various tenants for the facility. Unless the Property is sold in the immediate future, Aiello will not be able to begin construction prior to the fall and winter when inclement weather will prevent such work. As a result, the construction will not be completed and the tenants will not be able to gain possession and begin their retail operations.

20. Under controlling law, Fullington, Jr. is not entitled to the equitable relief as set forth in his Complaint, nor is he entitled to have title in any of the Property conveyed to him or anyone else. Although Count Six of Fullington, Jr.'s Complaint seeks equitable relief, a review of the Complaint establishes that, even if he is successful in proving the facts alleged, he would only be entitled to recover money damages and would not be entitled to a conveyance of title in Parcel 31 or any of the Related Parcels.

21. Even if this portion of the prayer for relief as to Count Six is stricken and he is barred from seeking the conveyance of any of the Property or interfering with the sale of the Property to Aiello, Fullington, Jr. is protected. He may still proceed with his claim for damages

against the Defendants and, if successful, he will be adequately compensated for the loss of the Property.

22. If that portion of the prayer for relief as to Count Six which seeks the reconveyance of Parcel 31 is stricken and Fullington, Jr. is barred from seeking the conveyance of any of the Property or from interfering in the sale of the Property, the Fullington Companies and Aiello may proceed with the sale of the land as Aiello and its title company may rely upon the Court Order which would remove the cloud from the title of Parcel 31 and the Related Parcels.

WHEREFORE, Defendants Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman respectfully request that this Honorable Court grant their Emergency Motion to Strike Portions of Prayer for Relief as to Count Six of Complaint and to Bar Conveyance of Property and enter an Order striking with prejudice any claim for equitable relief seeking reconveyance of title in Parcel 31, barring Plaintiff from seeking conveyance of title in the Related Parcels, and barring Plaintiff from interfering in any way in the sale of the Property.

Date: July 26, 2005

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

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Counsel for Defendants, Fullington Auto Bus
Company, Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L. Fullington and
Aerial Fullington Weisman



RECYCLED

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT as of the 27 day of December, 2004, by and between FULLINGTON REAL ESTATE COMPANY and FULLINGTON GMC SALES, INC. (collectively, "Seller"), both Pennsylvania corporations, with an address at 316 East Cherry Street, Clearfield, PA 16830, and AIELLO LAND COMPANY ("Buyer"), a Pennsylvania limited liability company, with an address c/o James R. Aiello, Jr., 316 Lehigh Street, Pittsburgh, PA 15232.

WITNESSETH:

WHEREAS, Seller (a) owns fee simple title to a parcel of real property consisting of approximately 30.2 acres in Lawrence Township, Clearfield County, Pennsylvania, and designated as tax parcel 123-L7-31, and (b) has a contract (the "Seller Contract") to purchase two (2) additional parcels of real property consisting of a total of approximately 4.532 acres in such Township and designated as tax parcels 123-L7-68 and 123-L7-106;

WHEREAS, the property hereinabove described is hereinafter called the "Fee Simple Property," the portion of the Fee Simple Property described in clause (a) above is hereinafter called the "Seller-Owned Fee Simple Property," and the portion of the Fee Simple Property described in clause (b) above is hereinafter called the "Seller Contract Fee Simple Property";

WHEREAS, all easements and appurtenances benefiting any portion of the Fee Simple Property are hereinafter called the "Appurtenant Property," the portion of the Appurtenant Property benefiting the Seller-Owned Fee Simple Property is hereinafter called the "Seller-Owned Appurtenant Property," and the portion of the Appurtenant Property benefiting the Seller Contract Fee Simple Property is hereinafter called the "Seller Contract Appurtenant Property";

WHEREAS, the Seller-Owned Fee Simple Property and the Seller-Owned Appurtenant Property are hereinafter called the "Seller-Owned Property," the Seller Contract Fee Simple Property and the Seller Contract Appurtenant Property are hereinafter called the "Seller Contract Property," and the Seller-Owned Property and the Seller Contract Property are hereinafter called the "Property";

WHEREAS, Seller desires to sell and Buyer desires to purchase the Property, subject to and upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises, the covenants contained in this Agreement, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are acknowledged by the parties, Seller and Buyer, each intending to be legally bound hereby, covenant and agree as follows:

1. Agreement for Purchase and Sale.

Seller agrees to sell, transfer and convey to Buyer and Buyer agrees to purchase the Property from Seller, subject to and upon the terms and conditions set forth in this Agreement.

2. Purchase Price.

(A0166125.4)

(a) In consideration of the transfer and conveyance of the Property, Buyer agrees to pay at or before the Closing (as hereinafter defined) a purchase price (the "Purchase Price") equal to One Million Three Hundred Thousand Dollars (\$1,300,000). Buyer reserves the right to pay at the Closing (i) all real estate transfer taxes otherwise payable by Seller pursuant to this Agreement, and (ii) all or any part of any brokerage commissions otherwise payable by Seller in connection with the sale of the Property pursuant to this Agreement, in which event the Purchase Price shall be reduced by the amount of such payment. Promptly upon request by Buyer, Seller shall warrant to Buyer the amount of such commissions.

(b) Within ten (10) days after the date that both parties shall have executed this Agreement and an originally executed counterpart of this Agreement shall have been delivered to each party, Buyer shall deposit with a title insurance company selected by Buyer ("Title Company") the sum of Fifty Thousand Dollars (\$50,000), which sum shall be deposited by Title Company in an interest-bearing escrow account with a federally insured financial institution in the City of Pittsburgh (said sum, as such sum may be increased from time to time, together with all interest thereon, hereinafter called the "Deposit"). The Deposit shall be applied toward the Purchase Price at the Closing or otherwise applied as provided in this Agreement.

(c) The balance of the Purchase Price shall be paid by Buyer at the Closing by certified or cashier's check or by wire transfer of funds.

(d) A portion of the Purchase Price equal to the purchase price under the Seller Contract shall be allocated to the Seller Contract Property, and the balance of the Purchase Price shall be allocated to the Seller-Owned Property.

3. Title to and Extent of Property.

(a) Seller represents and warrants to Buyer that (i) Seller has good and marketable fee simple title, and such that is insurable by Title Company at regular rates, in and to the Seller-Owned Fee Simple Property, and that the Property is subject only to (A) liens and encumbrances, if any, duly recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, and (B) such matters existing as of the date of this Agreement as a current, accurate survey of the Property would disclose; (ii) the sellers under the Seller Contract (the "Contract Sellers") have good and marketable fee simple title, and such that is insurable by Title Company at regular rates, in and to the Seller Contract Fee Simple Property, and that the Property is subject only to (A) liens and encumbrances, if any, duly recorded in said Office, and (B) such matters existing as of the date of this Agreement as a current, accurate survey of the Property would disclose; (iii) there are no mortgages or other liens securing in the aggregate an amount in excess of the net proceeds of the sale of the Property otherwise to be received by Seller and the Contract Sellers at the Closing, and (iv) the Appurtenant Property includes all land in, on or over which any roads, lanes, driveways, parking and utility or other lines or facilities are used or are intended to be used in connection with the Fee Simple Property or any portion thereof.

(b) At the Closing, Seller shall convey or cause to be conveyed to Buyer all right, title and interest in and to the Fee Simple Property and all rights and interests currently appurtenant thereto in the Appurtenant Property, subject only to the matters referred to in

subsection (a) above, except that, at the Closing, Seller shall in all events be obligated to remove or cause to be removed from the title to the Fee Simple Property (and to subordinate in all respects regarding the Appurtenant Property) and remove from Buyer's title insurance policy any items appearing in Schedule B-I of Buyer's title insurance commitment (other than those, if any, pertaining solely to Buyer) and mortgages, assessments (other than real estate taxes assessed solely against the Fee Simple Property not due and payable as of the Closing Date (as hereinafter defined)), judgments and all other liens securing the payment of money or the payment or performance of any other obligation. The matters subject to which the Property shall be conveyed pursuant to this Section are hereinafter called the "Permitted Exceptions."

(c) Seller hereby assigns to Buyer all of Seller's right under the Seller Contract to acquire the Seller Contract Property, it being understood however that Buyer shall not have any obligation to perform any of the obligations of Seller under the Seller Contract, including the obligation to purchase the Seller Contract Property, except the obligation to Seller pursuant to this Agreement to purchase the Seller Contract Property in accordance with and subject to the terms of this Agreement. Seller shall comply with all terms of the Seller Contract and shall cooperate with Buyer in all respects in connection with the Seller Contract and the Seller Contract Property and the investigation thereof by Buyer. If permitted by the terms of the Seller Contract, the purchase of the Seller Contract Property shall occur simultaneously with the Closing. If the closing under the Seller Contract shall be scheduled to occur prior to the Closing Date, Seller shall use Seller's best efforts to cause the Contract Sellers to agree to postpone such closing in order to be simultaneous with the Closing Date. If the purchase of the Seller Contract Property from the Contract Sellers shall occur simultaneously with the Closing, then, unless Buyer shall otherwise elect, Seller shall cause the Contract Sellers to convey the Seller Contract Property directly to Buyer or its designee.

4. Due Diligence Period.

(a) Buyer and its agents, engineers and other representatives shall have the opportunity to go upon all portions of the Property as necessary or desirable to inspect, examine, test, survey and otherwise do whatever Buyer reasonably deems necessary or desirable (i) to determine the boundaries, condition and extent of the Property, its contiguity to other property, and the location of easements, rights of way and other matters affecting the Property, (ii) to conduct test borings and environmental audits on the Property or any portion thereof and to conduct other investigations of the Property, including the components of any improvements thereon, (iii) to review and examine the condition and status of title to the Property, including the Permitted Exceptions, and (iv) otherwise to plan for the acquisition of the Property. It is understood and acknowledged that any investigation or examination which may be conducted by Buyer or any of its representatives with respect to the Property or the title thereto or any other matter pertaining thereto is intended to be for the sole benefit and protection of Buyer, and such right of investigation or examination, including any information obtained in connection therewith, is not intended and shall not constitute a waiver, modification or other limitation on any of the covenants, warranties or representations of Seller contained in this Agreement or in any other agreement, document or instrument to be delivered by Seller pursuant to the terms of this Agreement. Promptly after the date of this Agreement, Seller shall disclose and deliver to Buyer all information and documentation in its possession or control relating to the Property or any portion thereof or the business conducted in connection therewith, and shall otherwise

cooperate in all reasonable respects in making all such items available for Buyer's inspection, including, without limitation, surveys, site plans, title reports, title insurance policies, copies of all documents relating to any liens or encumbrances, soil studies, engineering and environmental reports, and all plans, specifications and drawings relating to any improvements on the Property, and in assisting in Buyer's examination of all matters relating to the Property or any portion thereof. Buyer shall have the right, at Buyer's cost, to make copies of any and all items as it may deem appropriate. Buyer shall be responsible and liable for any damage to the Property caused by Buyer's negligent inspections, examinations, tests or surveys. Buyer shall also have the right to contact and make inquiries of any and all parties whatsoever as part of its investigation and examination of the Property and the business conducted in connection therewith.

(b) Buyer shall have the right to terminate this Agreement with or without cause, provided that Buyer shall have given Seller notice of such termination on or before the expiration of the Due Diligence Period (as hereinafter defined). If Buyer shall not elect to terminate this Agreement as provided in this subsection, Seller shall nevertheless be obligated to convey the Property as required by the other terms of this Agreement.

(c) Notwithstanding the other provisions of this Section, if Buyer shall not have elected to terminate this Agreement pursuant to subsection (b) above on or before forty-five (45) days after the date of this Agreement, then Seller, by notice to Buyer, shall have the right at any time thereafter to require Buyer to elect either to terminate this Agreement or to waive its right to terminate this Agreement pursuant to such subsection (other than the last sentence of such subsection). Such notice by Seller shall specifically refer to such right of Buyer to terminate this Agreement pursuant to this Section. If Buyer shall not have made such election by notice to Seller within ten (10) days after Buyer's receipt of such notice from Seller, Buyer will be deemed to have waived its right to terminate this Agreement pursuant to subsection (b) above. The period during which Buyer may terminate this Agreement pursuant to subsection (b) above is herein referred to as the "Due Diligence Period."

(d) Notwithstanding the expiration of Buyer's right of termination set forth above in this Section, Buyer shall also have the right to terminate this Agreement at any time (i) if there shall be any material and adverse change in any of the matters referred to in this Section, (ii) if any information concerning the Property received by Buyer from Seller shall prove to be inaccurate or incomplete in any material respect, (iii) if Seller or any of the Contract Sellers shall hereafter convey or encumber any portion of the Property, or agree to do so, without Buyer's consent, or (iv) if Seller shall fail to comply with any of the terms of this Agreement, or Seller or any of the Contract Sellers shall fail to comply with any of the terms of the Seller Contract.

(e) If Buyer shall elect to terminate this Agreement pursuant to this Section, then the Deposit shall immediately be returned to Buyer, and this Agreement shall terminate without liability of either party to this Agreement, except that any termination of this Agreement by Buyer shall not excuse any breach or anticipatory breach of this Agreement by Seller.

5. Representations and Warranties of Seller.

(a) Seller hereby represents and warrants to Buyer as follows:

(i) This Agreement has been properly executed by Seller and any and all actions which are or may be necessary to fully authorize Seller to enter into and perform this Agreement and the Seller Contract have been properly taken and no other consents, authorizations or approvals are necessary in connection therewith. Seller has full right, power and authority to consummate the transactions contemplated by this Agreement and the Seller Contract. This Agreement and the Seller Contract is, and each document to be delivered by Seller pursuant thereto will be, a valid, legal and binding obligation of Seller, enforceable in accordance with their respective terms;

(ii) The execution and delivery of this Agreement and the Seller Contract and the consummation of the transactions contemplated in this Agreement and the Seller Contract shall not constitute a violation, breach or default by Seller of any term or provision of any other agreement, document or instrument to which Seller is a party or to which Seller or any portion of the Property may be subject, and all consents or approvals which may be required in connection with Seller's execution or delivery of this Agreement or the consummation by Seller of the transactions contemplated by this Agreement have been obtained;

(iii) The Seller Contract, a true, correct and complete copy of which is attached hereto as Exhibit A, is in full force and effect and none of the terms thereof has been amended, supplemented or waived. Seller owns all right, title and interest of the "Buyer" under the Seller Contract, free and clear of all rights, claims, liens and encumbrances other than Permitted Exceptions, and all parties to the Seller Contract are in compliance with all provisions of the Seller Contract;

(iv) There are no leases, occupancy agreements, conditions, restrictions or other liens or encumbrances, other than Permitted Exceptions, affecting the Seller-Owned Property or any part thereof, nor are there any management, maintenance, brokerage, service or other contracts regarding the Property or any part thereof;

(v) There are no Hazardous Materials or above-ground or underground storage tanks in or on the Seller-Owned Property. "Hazardous Materials" shall mean asbestos, asbestos-containing materials, polychlorinated biphenyls, mercury, lead, lead-based paint, chlorofluorocarbons, petroleum-based products, petroleum byproducts, explosives and other substances regulated by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Resources Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or any other federal, state or local laws, rules, regulations or ordinances relating to the regulation of toxic or hazardous materials or otherwise to the environment, all as the same may have heretofore been or may hereafter be amended;

(vi) There are no pending or, to Seller's knowledge, threatened claims, actions or proceedings by any party that could adversely affect the use, occupancy

or value of the Property or any part thereof, that could adversely affect any of the transactions contemplated by this Agreement, or that could be binding upon Buyer or the Property or any part thereof from and after the Closing;

(vii) Seller has received no written notice from any insurance company or any Governmental Authority (as hereinafter defined) of any violation of applicable codes or other laws or of any change required by applicable law or recommended by any such party with respect to the Property that have not been corrected or made prior to the date of this Agreement. "Governmental Authority" means the United States, the Commonwealth of Pennsylvania and the municipal and county governments having jurisdiction over the Property, together with any other municipal, public or quasi-public authority, agency, department, commission, board, bureau or instrumentality or any of them having jurisdiction over the Property or Seller;

(viii) Seller has the full right, power and authority to convey the Seller-Owned Property without any further compliance with any subdivision or other laws, regulations or ordinances;

(ix) The Seller-Owned Property has the zoning classification of Rural/Agricultural under the zoning ordinance of the municipality in which the Seller-Owned Property is located, and the Seller-Owned Property and the current use thereof complies with such ordinance and any other applicable zoning ordinance of the county in which the Seller-Owned Property is located;

(x) There are no real estate tax appeals pending with respect to the Seller-Owned Property;

(xi) The Seller-Owned Property and each parcel thereof is serviced by a community sewage system;

(xii) The sale of the Seller-Owned Property (and the entire Property if Seller shall acquire the Seller Contract Property prior to the Closing) does not constitute a sale or disposition of all or substantially all of the assets of Seller, or a disposition of greater than 50% of any class of property owned by Seller within the Commonwealth of Pennsylvania within the meaning of 72 P.S. Sections 1403(a) or 7240;

(xiii) The public utilities, streets, roads, highways and avenues servicing, used for access to, in front of or adjoining any part of the Seller-Owned Property have been completed, dedicated and accepted by the appropriate Governmental Authority and such Governmental Authority has accepted such dedication;

(xiv) Seller is not a foreign person as defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and Seller shall deliver to Buyer at the Closing a Certificate of Non-Foreign Status, in a form to be reasonably designated his Buyer (the "FIRPTA Certificate"); and

(xv) To Seller's knowledge, all of the foregoing representations and warranties would be true if made by the Contract Sellers with respect to the Seller Contract and the Seller Contract Property.

(b) The representations and warranties of Seller contained in this Agreement shall be deemed to have been restated as of the Closing Date and shall survive the Closing. In addition, if Seller shall have acquired the Seller Contract Property prior to the Closing, all of such representations shall be deemed to have been revised as of the Closing to apply to the entire Property and shall be deemed to have been restated as of the Closing Date and shall survive the Closing. It shall also be a condition to Buyer's obligation to acquire the Property that all of such representations and warranties would be true if made, irrespective of knowledge, by the Contract Sellers at the Closing with respect to the Seller Contract and the Seller Contract Property.

6. Representations and Warranties of Buyer.

(a) Buyer hereby represents and warrants to Seller as follows:

(i) This Agreement has been properly executed by Buyer and any and all actions which are or may be necessary to fully authorize Buyer to enter into and perform this Agreement have been properly taken and no other consents, authorizations or approvals are necessary in connection therewith. Buyer has full right, power and authority to consummate the transactions contemplated by this Agreement. This Agreement is, and each document to be delivered at the Closing pursuant to this Agreement will be, a valid, legal and binding obligation of Buyer, enforceable in accordance with their respective terms;

(ii) The execution and delivery of this Agreement and the consummation of the transactions contemplated in this Agreement shall not constitute a violation, breach or default by Buyer of any term or provision of any other agreement, document or instrument to which Buyer is a party or to which Buyer may be subject, and all consents or approvals which may be required in connection with Buyer's execution or delivery of this Agreement or the consummation by Buyer of the transactions contemplated by this Agreement have been obtained.

(b) The foregoing representations and warranties shall be deemed to have been restated as of the Closing Date and shall survive the Closing.

7. Additional Covenants of Seller.

(a) Upon the request of Buyer, Seller will, and will cause its agents to, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered, to or at the direction of Buyer, all further acts, transfers, assignments, powers or other documents and instruments as may be reasonably requested to give effect to the transactions contemplated by this Agreement.

(b) Seller shall not, without the prior written consent of Buyer, (i) enter into or agree to enter into any leases or occupancy agreements, or transfer or agree to transfer the

Property or any interest therein or portion thereof, or create or suffer to exist any liens, encumbrances or other matters affecting title against the Property (other than Permitted Exceptions and monetary liens which exist as of the date of this Agreement and which secure only sums permitted to be paid in full at the Closing in a maximum amount not exceeding the net proceeds to be otherwise received by Seller from the sale of the Property pursuant to this Agreement), (ii) do anything to change the zoning, subdivision, tax assessment or other legal status of the Property, without the prior written consent of Buyer, or (iii) prior to the closing under the Seller Contract, consent to any of such matters with respect to the Seller Contract Property or amend or waive any provision of the Seller Contract or grant any consent not required to be given under the Seller Contract.

(c) Until the Closing, Seller shall (i) maintain the Seller-Owned Property in the same condition as that which exists as of the date of this Agreement, (ii) continue to operate the Seller-Owned Property as currently operated, (iii) promptly notify Buyer of any claims or proceedings which may hereafter be made, filed or threatened against Seller or the Seller-Owned Property or any portion thereof, and of any other matters which would make any of the representations or warranties contained in this Agreement untrue if the same were restated at any time after the date of this Agreement, (iv) cooperate with Buyer in all reasonable respects in connection with Buyer's examination and investigation of all aspects of the Property, including the fulfillment of conditions to any of Buyer's obligations under this Agreement, (v) comply in all respects with the Seller Contract, and (vi) promptly upon receipt or transmission to the Contract Sellers (or if already received or transmitted, then at the time of the execution of this Agreement), give Buyer complete and accurate copies of all communications and information received or given by Seller relating to the Seller Contract or the Seller Contract Property and notify Buyer in writing of any default by the Contract Sellers under the Seller Contract. In addition, if Seller shall have acquired the Seller Contract Property prior to the Closing, all of the foregoing obligations shall thereafter apply to the entire Property.

(d) Seller shall not, and shall not suffer or permit others to, (i) commit any waste with respect to the Seller-Owned Property, (ii) commit any act or omission which will prevent the performance of this Agreement in accordance with its terms, or (iii) violate the terms of any warranties, permits, licenses or approvals applicable to the Seller-Owned Property or any laws, codes and insurance requirements applicable to the Seller-Owned Property. In addition, if Seller shall have acquired the Seller Contract Property prior to the Closing, all of the foregoing obligations shall thereafter apply to the entire Property.

(e) Seller shall do all things necessary to cause the Property to be conveyed to Buyer and to be insured by Title Company as required by the terms of this Agreement, including without limitation the delivery of such documents and the execution of such certificates, affidavits and indemnities as may be required by Title Company in order to remove all items appearing on Schedule B-1 of Buyer's title insurance commitment (other than those, if any, pertaining solely to Buyer). In the event that Seller or any other party shall execute any such certificate, affidavit or indemnity, Seller shall provide a complete copy thereof to Buyer prior to the Closing. It is understood that Buyer has a substantial interest in understanding the means by which any exception or other matter may have been resolved or addressed by Title Company in connection with the issuance of title insurance to Buyer or its mortgagee.

(f) Seller agrees, at Buyer's reasonable expense, to cooperate in all respects which Buyer may reasonably require in connection with Buyer's efforts to obtain all permits, licenses and approvals, including any zoning changes and approvals, relating to the development, use or operation of the Property or the construction of improvements thereon.

8. Closing and Closing Date.

The consummation of the sale by Seller and purchase by Buyer of the Property (the "Closing") shall be held at the offices of Title Company on a date (the "Closing Date") which shall be a date to be designated by Buyer with reasonable promptness but in all events within thirty (30) days after Buyer shall have received such evidence as it may reasonably require to confirm the fulfillment of all of the conditions to Buyer's obligation to purchase the Property as set forth in this Agreement which shall not have been waived by Buyer in writing. Any election by Buyer to close the purchase of the Property prior to the fulfillment of the conditions applicable to its obligation to do so shall not constitute a waiver of any warranties, representations, covenants or other undertakings of Seller in this Agreement.

9. Conditions to Buyer's Obligations to Purchase.

(a) Buyer's obligation to purchase the Property shall be subject to Buyer's receipt of such evidence and assurances as Buyer may reasonably require that the following conditions, as well as any other conditions set forth in this Agreement, shall have been fulfilled on or before the Closing:

(i) All representations and warranties of Seller set forth in this Agreement and in all other certificates, instruments and documents to be delivered to Buyer as provided in this Agreement shall be true, accurate and complete as of the date made or deemed to have been made;

(ii) Seller shall have performed and observed all covenants and other undertakings of Seller under this Agreement;

(iii) Buyer shall have received, at Buyer's expense, an owner's title insurance policy (A.L.T.A. Form B 1970) insuring Buyer's right, title and interest in and to the Property as required by this Agreement, in the full amount of the Purchase Price (or, if applicable, the amount of any acquisition and development budget of Buyer for the Property), subject to no exceptions other than Permitted Exceptions;

(iv) There shall not have been any material adverse change in the Property or the condition or legal status thereof since the date of this Agreement; and

(v) Seller shall have either theretofore acquired the Seller Contract Property or the Seller Contract Property shall be conveyed to Buyer simultaneously with the conveyance of the Seller-Owned Property to Buyer.

(b) In the event that the foregoing conditions shall not have been fulfilled on or before ninety (90) days after the expiration of the Due Diligence Period, then Buyer shall have the right to terminate this Agreement and receive back the Deposit, in which event Buyer shall reassign to Seller all rights under the Seller Contract to acquire the Seller Contract Property and neither party shall have any further liability under this Agreement except if a party shall be in default under this Agreement. Nothing in this Section shall be construed to limit any rights of Buyer in the event of a default by Seller under this Agreement, including the right to terminate this Agreement within the times provided by other provisions of this Agreement.

10. Seller's Obligations at or Before the Closing.

Seller shall do or deliver the following:

(a) At least thirty (30) days prior to the Closing Date, deliver to Buyer and Title Company all documents as may be required by Buyer or Title Company (i) to confirm the due authorization of Seller to perform its obligations under this Agreement and (ii) to remove all matters not applicable solely to Buyer from Schedule B-I of Buyer's title insurance commitment and otherwise to cause the Title Company to insure title to the Property as required by this Agreement;

(b) If applicable to the sale of the Property, at least ten (10) days prior to the Closing Date, deliver all clearance certificates (the "Clearance Certificates"), dated not earlier than thirty (30) days prior to the Closing, which may be provided for by the laws of the Commonwealth of Pennsylvania, confirming that the Property may be conveyed without any rights or claims of the Commonwealth of Pennsylvania against Buyer or the Property for any taxes, wages or other obligations payable at any time by Seller, or any interest, penalties or other charges related thereto (the "Bulk Sale Liabilities"). If such certificate shall not be so delivered, Seller shall deliver to Buyer and Title Company at the Closing an unconditional indemnification agreement from a person or entity approved by Buyer and Title Company, in form and substance satisfactory to Buyer and Title Company, with respect to the Bulk Sale Liabilities and all costs that Buyer or Title Company may incur in connection therewith, including reasonable attorneys' fees, or at Buyer's option, Seller shall deposit with Title Company at the Closing such amount as Buyer may in good faith require to secure such indemnification obligation, with such escrowed sum to be released only at such time that such Clearance Certificates shall have been delivered to Buyer and Title Company. Buyer's obligation to Close is expressly conditioned upon the Title Company insuring title to the Property without exception for any Bulk Sale Liabilities;

(c) At the Closing, execute and deliver the following:

(i) its special warranty deed to Buyer, in recordable form and otherwise in a form satisfactory to Buyer and Title Company, conveying to Buyer good and marketable fee simple title in and to the Fee Simple Property, together with all rights of Buyer in and to the Appurtenant Property required by this Agreement, all free and clear of all liens, encumbrances, exceptions and other matters, except for the Permitted Exceptions, provided that, if Seller shall not have acquired the Seller Contract Property at or prior to the Closing, then Seller's deed shall be limited to the Seller-Owned Property and Buyer shall have the right

to require that the deed from the Contract Sellers be made directly to Buyer in a form meeting the foregoing requirements;

(ii) its certificate confirming as of the Closing the representations and warranties contained in this Agreement;

(iii) its FIRPTA Certificate (and, if Seller shall not have acquired the Seller Contract Property at or prior to the Closing, then unless the Contract Sellers shall not deliver such a certificate for Buyer's benefit, Seller shall indemnify Buyer against any liability, loss, cost or expense it may incur relating to the matters to which such certificate is designed to address; and

(iv) any and all other documents required by this Agreement or otherwise reasonably requested by Buyer or Title Company to transfer and convey the Property to Buyer and to insure Buyer's title to and rights in the Property as contemplated by this Agreement, including without limitation owner's affidavits, tax receipts and municipal lien letters;

(d) At the Closing, to the extent not theretofore delivered, deliver to Buyer all keys and other means of access, including passcodes, relating to any portion of the Property, and all manuals, instructions, maintenance or repair records and other documentation relating to any or all of the Property.

11. Prorations and Closing Expenses.

(a) Buyer and Seller shall each pay one-half (1/2) of all real estate conveyance or transfer tax due and payable in connection with the transactions contemplated by this Agreement, provided that if the Contract Seller Property shall be conveyed directly by the Contract Sellers to Buyer, Seller shall nevertheless be responsible to pay any transfer tax payable by the purchaser under the Seller Contract.

(b) Buyer shall pay the cost of recording the deed or deeds conveying the Property to Buyer.

(c) Seller shall be responsible for all utility service with respect to the Property prior to the Closing Date, and Buyer shall be responsible for such service from and after the Closing Date.

12. Possession.

Seller shall grant Buyer exclusive possession and right of possession of the Property at the Closing, subject only to the Permitted Exceptions.

13. Assignment.

Buyer may transfer or assign this Agreement without the consent of Seller, and upon the assumption of this Agreement by such assignee, Buyer shall be relieved of all obligations under this Agreement.

14. Defaults.

(a) If Seller shall fail to convey or cause to be conveyed the Property when required by this Agreement, then Buyer, as its sole remedy for such default except as hereinafter set forth, shall be entitled to seek either (i) an action for specific performance of this Agreement and the remedies related thereto, or (ii) the return of the Deposit and receipt of liquidated damages in the amount of the Deposit, it being acknowledged that a sum equal to the amount of the Deposit is a reasonable estimation of Buyer's damages as a result of any such failure. Notwithstanding the foregoing, Buyer's remedies shall not be so limited if (1) Seller shall cause or permit any waste to be caused to the Property, (2) Seller shall create or suffer to exist any liens or encumbrances upon the Property or any portion thereof which are not Permitted Exceptions, or (3) Seller shall take any other actions or fail to take any actions which would make specific performance of this Agreement an unavailable, incomplete or impracticable remedy.

(b) In the event Buyer shall fail to comply with or perform any of the material covenants, agreements or obligations to be performed by Buyer under the terms and provisions of this Agreement and such breach, default or failure shall not have been cured or remedied within fifteen (15) days after Buyer shall have received Seller's written notice specifying the nature of such failure, Seller shall be entitled, as its sole remedy, to retain the Deposit as liquidated damages, it being acknowledged that the Deposit is a reasonable estimation of Seller's damages as a result of any such failure.

(c) Formal tender of purchase money is hereby waived.

15. Brokers.

Each party represents and warrants that neither it nor any of its officers, directors, employees or agents, has dealt with, or incurred any liability to, any consultant or broker in connection with the transaction contemplated by this Agreement.

16. Risk of Loss; Condemnation.

(a) In the event of any casualty to the Property prior to the Closing, Buyer shall have the option to (i) terminate this Agreement by notice to Seller and receive back the Deposit, or (ii) acquire the Property pursuant to this Agreement in which event Seller shall assign to Buyer its right to all insurance proceeds payable as a result of such casualty. If Buyer shall elect the option set forth in clause (ii) above, the Purchase Price shall be reduced by the amount of the deductible applicable to Seller's casualty insurance policy and Seller shall cooperate in all respects with Buyer in Buyer's efforts to determine the extent of the recovery available from Seller's insurer. Seller shall keep all insurable improvements constituting a portion of the Property fully insured on a replacement cost basis with a reputable and financially creditworthy insurer licensed to insure such insurance in the Commonwealth of Pennsylvania. In the event of a casualty, Seller shall be obligated to diligently restore the Property to its condition prior to such casualty to the extent required by the terms of any of the leases of the Property or any portion thereof.

(b) In the event of the commencement of condemnation proceedings relating to all or any part of the Property prior to the Closing, Buyer shall have the option to (i) terminate

this Agreement by notice to Seller and receive back the Deposit, or (ii) acquire the Property pursuant to this Agreement in which event Buyer shall have the right to the entire condemnation award or payment in lieu thereof.

17. Notices.

Any notices or other communications which may be permitted or required under this Agreement shall be in writing and shall for all purposes of this Agreement be delivered by national overnight courier service, fax transmission or personal receipted delivery and shall be addressed to Seller and Buyer at their respective addresses set forth above in this Agreement or at such other addresses as either party hereto shall from time to time designate to the other party by notice in writing as provided in this Section. Notwithstanding the foregoing, any notice given by Buyer in the foregoing manner pursuant to Section 4 (Due Diligence Period) or Section 16 (Risk of Loss, Condemnation) shall be deemed to have been given when sent in such manner.

18. Modified Time of the Essence.

If the Closing shall not occur by the date otherwise required by the other terms of this Agreement, then either party shall have the right after such date to declare time to be of the essence of this Agreement by giving written notice to the other party. Such notice shall contain a declaration that time is of the essence and shall fix the time, date and place of final settlement. The date of final settlement may not be sooner than fifteen (15) days, nor later than thirty (30) days, following the effective date of the giving of such notice, and the place shall be in Pittsburgh, Pennsylvania, or if not in Pittsburgh, Pennsylvania, then in accordance with such reasonable escrow arrangements as Buyer and Title Company shall reasonably request.

19. No Waivers, Entire Agreement.

No failure of either party to exercise any power given under this Agreement or to insist upon strict compliance with any obligations specified in this Agreement, and no custom or practice at variance with the terms of this Agreement shall constitute a waiver of any party's right to demand said compliance with the terms of this Agreement.

20. Modifications; Successors and Assigns; Survival.

This Agreement cannot be changed, amended, modified or terminated orally or in any manner other than by a written agreement executed by both parties. This Agreement and each of its provisions shall inure to the benefit of and be binding upon the Seller and Buyer and their respective successors and assigns. The covenants, warranties and representations contained in this Agreement shall survive the Closing.

21. Controlling Law.

This Agreement and all rights and obligations of the parties under this Agreement shall be construed under and according to the laws of the jurisdiction in which the Property is located.

22. Merger.

Notwithstanding any presumption to the contrary, all covenants, conditions, representations and warranties contained in this Agreement shall survive the Closing. There shall be no merger of such matters by the acceptance of the deed and the settlement of the transactions contemplated in this Agreement at the Closing.

23. Attorneys' Fees, Etc.

Should a dispute between the parties arise in this transaction, all costs, including reasonable attorneys' fees, expended by the non-defaulting party incidental to the enforcement of this Agreement or the curing of any defaults hereunder by the other party shall be borne by the party so in default.

24. Multiple Parties.

If either Buyer or Seller shall consist of more than one party, then all references in this Agreement to Buyer or Seller, as applicable, shall apply to each party comprising Buyer or Seller, and the obligations of Buyer or Seller, as applicable, under this Agreement shall be the joint and several obligations of such parties.

25. Recordation.

At the request of Buyer, Seller shall execute such additional documents or instruments as Buyer may reasonably require in order that the same shall be recorded in the public real estate records of the County in which the Property is located, so as to provide public record notice of Buyer's rights under this Agreement.

26. No Presumption.

The parties acknowledge that this Agreement has been freely negotiated by commercially experienced parties and that any presumption against the preparer of this Agreement in connection with the interpretation or construction of this Agreement is inapplicable and is hereby waived by the parties.

27. Multiple Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

28. Headings.

The headings inserted at the beginning of each Section in this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of this Agreement.

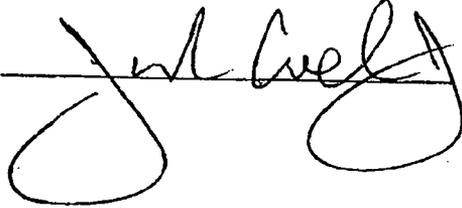
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first above written.

ATTEST/WITNESS:

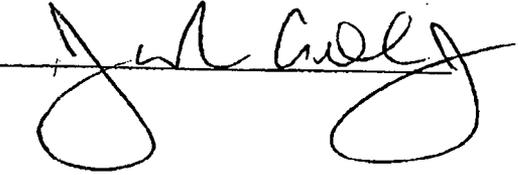
SELLER:

FULLINGTON REAL ESTATE
COMPANY



By: Aerial J. Keenan
Title:

FULLINGTON GMC SALES, INC.

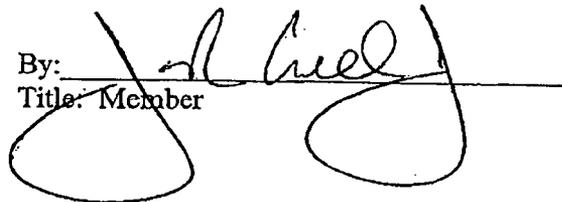


By: Aerial J. Keenan
Title:

BUYER:

AIELLO LAND COMPANY

Aerial J. Keenan

By: 
Title: Member

JOINDER

The undersigned, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, hereby agrees to indemnify, defend and hold Buyer and its affiliates and members (the "Indemnified Parties") harmless from and against any and all liability, damage, loss, cost and expense (including reasonable attorneys' fees incurred in connection with the enforcement of this Joinder or otherwise) incurred by any one or more of the Indemnified Parties by reason of, related to or in connection with the involvement of John Richard Fullington, Jr. or Loretta P. Fullington, his spouse ("Fullington"), in any portion of the Property or the chain of title thereto, including without limitation any claim, question or exception that may be made or raised as to any ongoing right, title or interest of Fullington in the Property or any portion thereof, whether or not true or accurate. The undersigned hereby warrants and represents to Buyer (i) that the foregoing Purchase and Sale Agreement has been duly and validly authorized, executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, (ii) Seller owns all right, title and interest of the "Buyer" under the Seller Contract, and (iii) that the Seller Contract, in the form referred to in the Purchase and Sale Agreement, is in full force and effect and none of the terms thereof has been amended, supplemented or waived.

THE FULLINGTON AUTO BUS
COMPANY, a Pennsylvania corporation

By Aerial J. Ikusni
Title:

Date: 12/27/04

EXHIBIT A

Seller Contract

(A0166125.4)



AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS AMENDMENT as of the 24th day of February, 2005, by and between FULLINGTON REAL ESTATE COMPANY and FULLINGTON GMC SALES, INC. (collectively, "Seller"), both Pennsylvania corporations, with an address at 316 East Cherry Street, Clearfield, PA 16830, and AIELLO LAND COMPANY ("Buyer"), a Pennsylvania limited liability company, with an address c/o James R. Aiello, Jr., 316 Lehigh Street, Pittsburgh, PA 15232.

WITNESSETH:

WHEREAS, Seller and Buyer entered into a Purchase and Sale Agreement (the "Agreement"), dated as of December 27, 2004, with respect to certain real property situate in Lawrence Township, Clearfield County, Pennsylvania;

WHEREAS, Seller and Buyer desire to amend the Agreement upon the terms and conditions set forth in this Agreement.

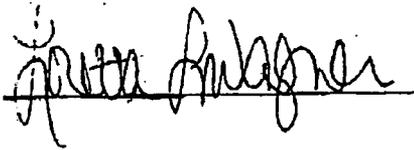
NOW, THEREFORE, for and in consideration of the premises, the covenants contained in this Agreement, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are acknowledged by the parties, Seller and Buyer, each intending to be legally bound hereby, covenant and agree as follows:

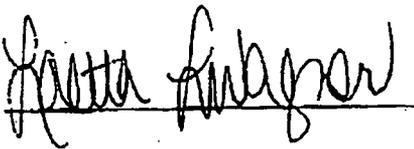
1. The expiration date of the forty-five (45)-day period referred to in Section 4(c) of the Agreement is hereby revised to be March 31, 2005, and the Closing Date, subject to the terms and conditions of the Agreement, shall be within forty-five (45) days after the expiration of the Due Diligence Period.
2. Except as amended hereby, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first above written.

[SIGNATURES ON FOLLOWING PAGE]

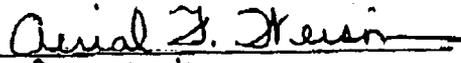
ATTEST/WITNESS:





SELLER:

FULLINGTON REAL ESTATE
COMPANY

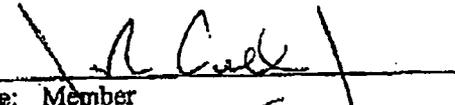
By: 
Title: President

FULLINGTON GMC SALES, INC.

By: 
Title: President

BUYER:

AIELLO LAND COMPANY

By: 
Title: Member

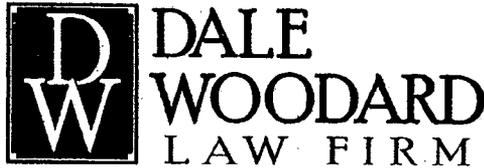



RECYCLED

James M. Greenfield
Keith M. Pemrick
Brian M. Spaid

Joseph H. Keebler, Jr.

Raymond S. Woodard
(Of Counsel)
Ralph L. Montgomery, Jr.
(Of Counsel)
Robert M. Dale
(1905-1983)



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website: www.dalewoodard.com

May 20, 2005

MAY 23 2005

Paul H. Titus, Esquire
Schnader Harrison Segal & Lewis, LLP
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

Re: *J. Richard Fullington, Jr., v. Fullington Auto Bus Company, et al.*
No. 05-565 C.D., Clearfield County

Dear Paul and Tim:

This will confirm that I have granted each of you an indefinite extension of time to plead to the Complaint filed in the above referenced matter. I will review the materials which Paul provided to me yesterday and, after doing so, I will give you my thoughts on how, or if, this matter can be resolved short of full-scale litigation.

I enjoyed meeting each of you, and I appreciate your willingness to work in a spirit of cooperation to see whether this matter can be resolved.

Sincerely yours,

DALE WOODARD LAW FIRM

KMP/cnb

By

A handwritten signature in black ink, appearing to read 'Keith M. Pemrick', is written over a horizontal line.
Keith M. Pemrick

RECYCLED



File No.: 410001487
Lender Ref: First Commonwealth Bank

**COMMITMENT FOR TITLE INSURANCE
SCHEDULE A**

- 1. **Effective Date:** June 29, 2005
Commitment No.: 410001487A - First Revised
- 2. **Policy or Policies to be Issued:**
ALTA Owner's Policy - 10/17/92
Proposed Insured: Aiello Land Company, L.P., a Pennsylvania limited partnership
Amount: \$2,650,000.00

ALTA Loan Policy - 10/17/92
Proposed Insured: First Commonwealth Bank, its successors and/or assigns
Amount: \$2,500,000.00
- 3. **Title to the Fee Simple or interest in the land described or referred to in this Commitment is at the effective date hereof vested in:**

Fullington Real Estate Company, a Pennsylvania corporation
- 4. **The land referred to in this Commitment is described in Schedule C:**

Attached hereto and made part hereof.

For Informational Purposes Only:

Lawrence
Clearfield County
Pennsylvania



Authorized Officer or Agent

Lawyers Title Insurance Corporation
One PPG Place
12th Floor ♦ Pittsburgh ♦ Pennsylvania ♦ 15222
Phone: 412-261-6410 ♦ Fax: 412-261-1160

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.
C-Commitment 1966 Revised 7/26/99

File No.: 410001487
Lender Ref: Alello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE B - SECTION I REQUIREMENTS

The following are the requirements to be complied with: Instrument(s) satisfactory to us, creating the estate or interest to be insured must be executed, delivered and filed for record:

1. Documents satisfactory to the Company creating the interest in the land and/or the mortgage to be insured must be signed, acknowledged, delivered and recorded:

DEED FROM Fullington Real Estate Company, a Pennsylvania corporation to Alello Land Company, L.P., a Pennsylvania limited partnership

MORTGAGE FROM Alello Land Company, L.P., a Pennsylvania limited partnership to First Commonwealth Bank
AMOUNT: \$2,500,000.00.

2. This Title Insurance Commitment (the "Commitment") is issued pursuant to the Agreement to Issue Policy contained on the American Land Title Insurance Commitment (1982) front cover form (the "Form") and is subject to the Conditions stated therein. Any title search and examination conducted by or for the Company in connection with the issuance of this Commitment is solely for the benefit of the Company. The sole liability of Company and its agent shall arise under and be governed by the Commitment and/or Policy subsequently issued. Neither the Company nor its Issuing agent shall be liable to the proposed insured(s) or any other party for any claim of alleged negligence, negligent representation, or any other cause of action in tort in connection with this Commitment. If this copy of the Commitment is not accompanied by the Form, a copy of the Form may be obtained from this Company upon request.
3. Satisfactory evidence should be provided that improvements and/or repairs or alterations thereto are completed; that contractor, sub-contractors, labor and materialmen are all paid; and have released of record all liens or notice of intent to perfect a lien for labor material.
4. Real estate tax receipts must be furnished for the prior three years.
5. Receipts must be furnished for sewer and water charges.
6. MORTGAGES:
 - a) Mortgage from Fullington Real Estate Company to Kishacoquillas Valley National Bank dated December 29, 2004 and recorded January 3, 2005 at Instrument No. 200500063 in the amount of \$1,085,000.00.
7. JUDGMENTS (which must be satisfied of record):
 - a) Household Bank, (SB) vs. Richard J. Fullington and Loretta P. Fullington, filed at 02-1911CD, judgment entered January 29, 2003 in the amount of \$14,251.90 vs. Loretta P. Fullington.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487
Lender Ref: Allelo Land Company, L.P., a Pennsylvania
limited partnership

- b) Citibank (South Dakota) NA vs. Loretta P. Fullington, 03-542-CD, judgment entered June 16, 2003 in the amount of \$16,513.05.
8. Letter must be furnished from the Municipality and/or Municipal Authority showing that there are no unfiled municipal liens or claims.
9. The following requirements apply to the grantor corporation:
- (a) A certificate of good standing for the grantor corporation must be submitted from the state in which it is incorporated.
 - (b) A certified copy of the resolution of the board of directors of the grantor corporation, authorizing the execution of the proposed deed, must be submitted.
 - (c) If the proposed conveyance constitutes a sale of a substantial portion of the assets of the grantor corporation, a certified copy of the resolution of the shareholders of the corporation, authorizing the proposed sale, must be submitted.
 - (d) Taxes settled by the Commonwealth of Pennsylvania against the grantor corporation, if any. A lien certificate will be ordered by our office from the Department of Revenue.
10. **We find the following pending litigation in which must be settled and discontinued of record or the subject property must be released from the litigation:**
- J. Richard Fullington Jr. vs. Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, et al., filed at 05-565, filed on April 20, 2005.**
11. The following requirements apply to the mortgagor limited partnership:
- (a) A copy of the limited partnership agreement and certificate of limited partnership, including any amendments thereto, must be submitted.
 - (b) Unless the limited partnership agreement provides otherwise, all general partners must execute the proposed mortgage.
 - (c) Proof of authority to execute the proposed mortgage must be submitted.

This Commitment is invalid unless the Insuring provisions and Schedules A and B are attached.

File No.: 410001487
Lender Ref: Alello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE B - SECTION II EXCEPTIONS

The policy or policies to be issued will contain exception to the following unless the same are disposed of to the satisfaction of the Company.

1. Unrecorded easements, discrepancies or conflicts in boundary lines, shortages in area and encroachments which an accurate and complete survey would disclose.
2. Rights or claims of parties other than the Insured in actual possession of any or all of the land.
3. Real estate taxes for the current and prior tax years which are hereafter assessed and are not yet due and payable.
4. Coal and mining rights and all rights and privileges incident to the mining of coal, heretofore conveyed or reserved by instruments of record; rights of surface, lateral or subjacent support; or any surface subsidence.

THIS DOCUMENT DOES NOT INCLUDE OR INSURE THE TITLE TO THE COAL AND THE RIGHT OF SUPPORT UNDERNEATH THE SURFACE OF THE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE AND LEGAL RIGHT TO REMOVE ALL OF 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. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

5. Right of way for utility easement north of S.R. 879 as granted in deed from Harold E. Pentz, et al, to Wal-Mart Stores, Inc., dated April 8, 1994 and recorded in Record Book 1599, page 156 (limited to Parcel 3).
6. The following matters shown on Alta/Acsm Land Title Survey, made by Curry & Associates, dated February 10, 2005, file No. 7804, made for Alello Land Company (The Survey):
 - (a) 50 foot wide electric and telephone line right of way.
 - (b) Boundary line conflict between Insured land (Parcel 3) and property now or formerly of MRAJ, Inc., as depicted on survey as "line established by Hess and Fisher."
7. Rights of the public in and to that portion of the land within the legal limits of Baney Road, Township Road 603, as shown on The Survey.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No. 410001487
Lender Ref: Alello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE "C"

All that certain piece or parcel of lands situated in Lawrence Township, Clearfield County, Pennsylvania, being more particularly bounded and described as follows:

Beginning at a point on the center line of Township Road T-603, said point being the northwest corner of David M. Chnupa as described in Instrument Number 200404017, said point being the southwest corner of the parcel herein conveyed and running;

1. thence along the center line of Township Road T-603 and along the eastern line of lands of Linglewood Lodge Inc. north 09 degrees 48 minutes 08 seconds east a distance of 1096.29 feet to a railroad rail (found), said rail being on the southern line of lands of of the Linglewood Lodge Inc.;

2. thence along the southern line of lands of Linglewood Lodge Inc. south 79 degrees 33 minutes 19 seconds east a distance of 2,009.09 feet to a 3/4" rebar (set), said rebar being near the centerline of an old access road over a culvert bridge over an unnamed tributary to Wolf Run, said rebar being the northwest corner of lands of MRAJ, Inc. as described in Instrument Number 199918743;

3. thence along the northwestern line of lands of MRAJ, Inc. the following courses and distances:

a) south 54 degrees 44 minutes 58 seconds west
a distance of 79.07 feet to a point;

b) south 45 degrees 37 minutes 10 seconds west
a distance of 77.13 feet to a point;

c) south 74 degrees 35 minutes 10 seconds west
a distance of 158.79 feet to a point;

d) north 63 degrees 34 minutes 50 seconds west
a distance of 263.18 feet to a point;

e) south 25 degrees 17 minutes 10 seconds west
a distance of 91.55 feet to a point;

f) north 86 degrees 45 minutes 50 seconds west
a distance of 60.40 feet to a point in the center line
of an unnamed tributary to Wolf Run;

4. thence along the western line of lands of MRAJ, Inc. south 22 degrees 27 minutes 44 seconds east a distance of 3.47 feet to a 3/4" rebar (found), said rebar being the northeast corner of Parcel 1 here above described;

5. thence along the northern line of Parcel 1 here above described the following courses and distances:

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487
Lender Ref: Allelo Land Company, L.P., a Pennsylvania
limited partnership

- a) south 50 degrees 47 minutes 07 seconds west
a distance of 58.81 feet to a point;
- b) south 11 degrees 05 minutes 53 seconds east
a distance of 56.14 feet to a point;
- c) north 82 degrees 51 minutes 53 seconds west
a distance of 87.32 feet to a point;
- d) south 47 degrees 38 minutes 52 seconds west
a distance of 157.70 feet to a point;

6. thence still along the northern line of Parcel 1 here above and along the northern line of lands of Parcel 2 here above described south 83 degrees 27 minutes 23 seconds west a distance of 64.88 feet to a point;

7. thence still along the northern line of Parcel 2 here above south 30 degrees 55 minutes 23 seconds west a distance of 21.50 feet to a point, said point being the northeast corner of lands of First Commonwealth Financial Company as described in Instrument Number 200321912;

8. thence along the northern line of lands of the First Commonwealth Financial Company and along the center line of the unnamed tributary to Wolf Run the following courses and distances:

- a) south 75 degrees 34 minutes 43 seconds west
a distance of 23.76 feet to a point;
- b) south 50 degrees 55 minutes 23 seconds west
a distance of 49.80 feet to a point;
- c) south 61 degrees 25 minutes 39 seconds west
a distance of 36.99 feet to a point;
- d) south 74 degrees 43 minutes 57 seconds west
a distance of 26.74 feet to a point;
- e) south 60 degrees 44 minutes 39 seconds west
a distance of 42.87 feet to a point;
- f) south 34 degrees 38 minutes 19 seconds west
a distance of 26.80 feet to a point;
- g) south 62 degrees 25 minutes 40 seconds west
a distance of 27.50 feet to a point;
- h) south 79 degrees 19 minutes 18 seconds west
a distance of 16.91 feet to a point;
- i) south 60 degrees 37 minutes 17 seconds west
a distance of 40.32 feet to a point;

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

- j) south 66 degrees 48 minutes 25 seconds west
a distance of 26.51 feet to a point;
- k) south 48 degrees 19 minutes 05 seconds west
a distance of 47.55 feet to a point;
- l) south 07 degrees 06 minutes 15 seconds west
a distance of 39.20 feet to a point;
- m) south 50 degrees 37 minutes 16 seconds west
a distance of 39.40 feet to a point;
- n) south 34 degrees 34 minutes 15 seconds west
a distance of 27.44 feet to a point;
- o) south 44 degrees 37 minutes 56 seconds west
a distance of 20.34 feet to a point, said point being
the northeast corner of lands of C.S.P. Investments,
Inc.;

9. thence along the northern line of lands of C.S.P. Investments and along the center line of an unnamed tributary to Wolf Run the following courses and distances:

- a) south 53 degrees 08 minutes 40 seconds west
a distance of 8.11 feet to a point;
- b) south 71 degrees 17 minutes 16 seconds west
a distance of 9.24 feet to a point;
- c) north 50 degrees 08 minutes 41 seconds west
a distance of 28.41 feet to a point;
- d) south 66 degrees 09 minutes 31 seconds west
a distance of 12.37 feet to a point;
- e) south 35 degrees 00 minutes 33 seconds west
a distance of 10.62 feet to a point;
- f) south 00 degrees 21 minutes 50 seconds west
a distance of 37.37 feet to a point;
- g) south 29 degrees 33 minutes 28 seconds west
a distance of 34.46 feet to a point;
- h) south 33 degrees 58 minutes 03 seconds west
a distance of 49.27 feet to a point;
- i) south 00 degrees 14 minutes 10 seconds east

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487
Lender Ref: Alallo Land Company, L.P., a Pennsylvania
limited partnership

a distance of 16.31 feet to a point;

j) south 16 degrees 55 minutes 15 seconds east
a distance of 41.75 feet to a point;

k) south 51 degrees 08 minutes 54 seconds west
a distance of 22.07 feet to a point;

l) south 07 degrees 38 minutes 13 seconds east
a distance of 18.97 feet to a point;

10. thence still along the northern line of lands of C.S.P. Investments, Inc. and also along the northern line of lands of Keller & Wolfel, Inc. as described in Deed Book 553 page 357 south 05 degrees 27 minutes 34 seconds west a distance of 9.32 feet to a point, said point being in the center line of an unnamed tributary to Wolf Run;

11. thence along the northern line of lands of Keller & Wolfel, Inc. along south 25 degrees 36 minutes 31 seconds west a distance of 236.29 feet to a point, said point being near the center line of Wolf Run, said point also being the northeast corner of lands of David M. Chnupa as described in Instrument Number 200404017;

12. thence along the northern line of lands of David M. Chnupa north 64 degrees 53 minutes 27 seconds west passing through a 5/8" rebar (found) at a distance of 19.86 feet and passing through another 5/8" rebar (found) at a distance of 750.24 feet and continuing on for a total distance of 733.33 feet to a point and place of beginning.

Containing 1,352,862.97 sq. ft. 31.057 acres as shown on plat map prepared by Curry & Associates dated February 3, 2005.

Being designated as tax parcel 123-L07-000-00031.

Being part of the property which J. Richard Fullington, et ux. conveyed to Fullington Real Estate Company by deed dated August 26, 2003 and recorded at Instrument No. 200315359.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.



File No.: 410001487B
Lender Ref: First Commonwealth Bank

**COMMITMENT FOR TITLE INSURANCE
SCHEDULE A**

- 1. **Effective Date:** June 29, 2005
Commitment No.: 410001487B - First Revised
- 2. **Policy or Policies to be Issued:**
ALTA Owner's Policy - 10/17/92
Proposed Insured: Aiello Land Company, L.P., a Pennsylvania limited partnership
Amount: \$2,650,000.00

ALTA Loan Policy - 10/17/92
Proposed Insured: First Commonwealth Bank, Its successors and/or assigns
Amount: \$2,500,000.00
- 3. **Title to the Fee Simple or Interest in the land described or referred to in this Commitment is at the effective date hereof vested in:**

Legal: Harry K. Maney and Emille D. Maney, a/k/a Emily D. Maney, formerly husband and wife

Equitable: Fullington GMC Sales, Inc., a Pennsylvania corporation
- 4. **The land referred to in this Commitment is described in Schedule C:**

Attached hereto and made part hereof.

For Informational Purposes Only:

Lawrence Township
Clearfield County
Pennsylvania



Authorized Officer or Agent

Lawyers Title Insurance Corporation
One PPG Place
12th Floor ♦ Pittsburgh ♦ Pennsylvania ♦ 15222
Phone: 412-261-6410 ♦ Fax: 412-261-1160

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.
C-Commitment 1966 Revised 7/26/99

File No.: 4100014878
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE B - SECTION I REQUIREMENTS

The following are the requirements to be complied with: Instrument(s) satisfactory to us, creating the estate or interest to be insured must be executed, delivered and filed for record:

1. Documents satisfactory to the Company creating the interest in the land and/or the mortgage to be insured must be signed, acknowledged, delivered and recorded:

DEED from Harry K. Maney and Emilie D. Maney aka Emily D. Maney and Fullington GMC Sales, Inc., a Pennsylvania corporation to Aiello Land Company, L.P., a Pennsylvania limited partnership.

MORTGAGE from Aiello Land Company, L.P., a Pennsylvania limited partnership to First Commonwealth Bank.

2. This Title Insurance Commitment (the "Commitment") is issued pursuant to the Agreement to Issue Policy contained on the American Land Title Insurance Commitment (1982) front cover form (the "Form") and is subject to the Conditions stated therein. Any title search and examination conducted by or for the Company in connection with the issuance of this Commitment is solely for the benefit of the Company. The sole liability of Company and its agent shall arise under and be governed by the Commitment and/or Policy subsequently issued. Neither the Company nor its issuing agent shall be liable to the proposed Insured(s) or any other party for any claim of alleged negligence, negligent representation, or any other cause of action in tort in connection with this Commitment. If this copy of the Commitment is not accompanied by the Form, a copy of the Form may be obtained from this Company upon request.
3. Satisfactory evidence should be provided that improvements and/or repairs or alterations thereto are completed; that contractor, sub-contractors, labor and materialmen are all paid; and have released of record all liens or notice of intent to perfect a lien for labor material.
4. Proof that all natural persons in this transaction are of full age and legally competent.
5. Proof of identity of parties as set forth in Recital.
6. Real estate tax receipts must be furnished for the prior three years.
7. Receipts must be furnished for sewer and water charges.
8. MORTGAGES:
 - a) Mortgage from Fullington Real Estate Company and Fullington GMC Sales, Inc. to Kishacoquillas Valley National Bank dated December 29, 2004 and recorded January 3, 2005 at Instrument No. 200500063 in the amount of \$1,085,000.00 (encumbers equitable title).
9. JUDGMENTS: NONE

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 4100014878
Lender Refi Aiello Land Company, L.P., a Pennsylvania
limited partnership

10. Letter must be furnished from the Municipality and/or Municipal Authority showing that there are no unfilled municipal liens or claims.
11. The following requirements apply to Fullington GMC Sales, Inc.:
 - (a) A certificate of good standing for the grantor corporation must be submitted from the state in which it is incorporated.
 - (b) A certified copy of the resolution of the board of directors of the grantor corporation, authorizing the execution of the proposed deed, must be submitted.
 - (c) If the proposed conveyance constitutes a sale of a substantial portion of the assets of the grantor corporation, a certified copy of the resolution of the shareholders of the corporation, authorizing the proposed sale, must be submitted.
 - (d) Taxes settled by the Commonwealth of Pennsylvania against the grantor corporation, if any. A lien certificate will be ordered by our office from the Department of Revenue.
12. **REISSUE RATE:** A purchaser or mortgagor of real estate or an assignee of a lease from one whose ownership or leasehold interest has been insured with ten (10) years immediately prior to the date of closing of the new transaction, shall be entitled to a reissue rate. **Proof of past insurance is required.**
13. Prior to settlement, search of statewide support lien system to be performed to determine the existence of support arrearages, if any. Company or its Agent to be provided with social security numbers of all natural persons that are a party to the transaction so that this search can be performed by the closing officer no more than 30 days in advance of closing.
14. **NOTICE TO SELLER(S):** You are required by law to provide Company with your correct taxpayer identification number. If you do not provide Company with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.
15. Shown for information:
 - (a) Memorandum of Agreement of Sale from Harry K. Maney and Emilie D. Maney, husband and wife, to Richard J. Fullington, Jr. dated February 21, 1995 and recorded in Deed Book Volume 1661, page 13; as assigned to Fullington - GMC Sales, Inc., by assignment recorded June 19, 2002 at instrument No. 200209725.
16. Shown for information:

Pending Action in divorce filed by Harry K. Maney vs. Emilie D. Maney, filed at 95-1072-CD.
17. The following requirements apply to the mortgagor limited partnership:
 - (a) A copy of the limited partnership agreement and certificate of limited partnership, including any amendments thereto, must be submitted.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487B
Lender Ref: Allelo Land Company, L.P., a Pennsylvania
limited partnership

(b) Unless the limited partnership agreement provides otherwise, all general partners must execute the proposed mortgage.

(c) Proof of authority to execute the proposed mortgage must be submitted.

18. We find the following pending litigation in which must be settled and discontinued of record or the subject property must be released from the litigation:

J. Richard Fullington Jr. vs. Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, et al., filed at 05-565, filed on April 20, 2005.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487B
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE B - SECTION II EXCEPTIONS

The policy or policies to be issued will contain exception to the following unless the same are disposed of to the satisfaction of the Company.

1. Unrecorded easements, discrepancies or conflicts in boundary lines, shortages in area and encroachments which an accurate and complete survey would disclose.
2. Rights or claims of parties other than the insured in actual possession of any or all of the land.
3. Real estate taxes for the current and prior tax years which are hereafter assessed and are not yet due and payable.
4. Coal and mining rights and all rights and privileges incident to the mining of coal, heretofore conveyed or reserved by instruments of record; rights of surface, lateral or subjacent support; or any surface subsidence.

THIS DOCUMENT DOES NOT INCLUDE OR INSURE THE TITLE TO THE COAL AND THE RIGHT OF SUPPORT UNDERNEATH THE SURFACE OF THE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE AND LEGAL RIGHT TO REMOVE ALL OF 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. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

Policy insures against future surface operations on the insured premises.

5. Grant of non-exclusive easement for ingress, egress, etc., over a 24 foot wide paved entrance and driveway set forth in deed from Clinton County Industrial Development Authority, et al. to Beard Oil Company, Inc. dated June 14, 1990 and recorded in Deed Book Volume 1350, page 249, as shown on Alta/Acsm Land Title Survey made by Curry & Associates, dated February 10, 2005, file no. 7804, made for Aiello Land Company (The Survey).
6. The following matters shown on The Survey:
 - (a) 50 foot wide electric and telephone line right of way.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487B
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE "C"

PARCEL ONE:

ALL that certain parcel of land situate in Lawrence Township, Clearfield County, Pennsylvania, more particularly described as follows:

Beginning at a 3/4" rebar set on the northern right of way line of Pennsylvania State Route SR-0879, said rebar being the southwest corner of lands of James A. and Debris M. Null as described in Deed Book 1893 page 536 the second thereof, said place of beginning being the southeast corner of the parcel herein conveyed and running;

1. thence along the northern right of way line of Pennsylvania State Route SE-0879 south 63 degrees 43 minutes 23 seconds west a distance of 214.61 feet to a point, said point being the point of curve to the state route;

2. thence along still along the northern right of way line SR-0879 along the arc of a circle 35.34 feet having a radius of 7739.44 feet, curving to the left, the chord of said arc running south 63 degrees 35 minutes 33 seconds west a distance of 35.34 feet to a point, said point being the southeast corner of other lands of the Grantors as described in Deed Book 1498 page 285;

3. thence along the eastern line of other lands of the Grantor north 22 degrees 45 minutes 13 seconds west passing through a 5/8" pin (found) at a distance of 514.67 feet and continuing on for a total distance of 520.70 feet to a point in the center line of an unnamed tributary to Wolf Run, said point being on the southern line of lands of the Fullington Real Estate Company as described in Instrument Number 200315359;

4. thence along the southern line of lands of the Fullington Real Estate Company the following courses and distances:

a) north 83 degrees 27 minutes 23 seconds east
a distance of 4.98 feet to a point;

b) north 47 degrees 38 minutes 52 seconds east
a distance of 157.70 feet to a point;

c) south 82 degrees 51 minutes 53 seconds east
a distance of 87.32 feet to a point;

d) north 11 degrees 05 minutes 53 seconds west
a distance of 56.14 feet to a point;

e) north 50 degrees 47 minutes 07 seconds east
a distance of 58.79 feet to a 3/4" rebar (found),
said rebar being on the western line of lands of
the MRAJ, Inc. as described in Instrument Number
199918743;

5. thence along the western line of lands of MRAJ, INC. south 22 degrees 27 minutes 44 seconds

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 4100014878

Lender Ref: Aiello Land Company, L.P., a Pennsylvania limited partnership

east a distance of 262.46 feet to a 3/4" rebar (found), said rebar being the northeast corner of lands of the aforementioned James A. and Debris M. Null as described in Deed Book 1893 page 536;

6. thence along the lands of James A. and Debris M. Null the following courses and distances:

a.) south 64 degrees 56 minutes 57 seconds west
a distance of 50.07 feet to a 3/4" rebar (set);

b) south 23 degrees 28 minutes 51 seconds east
a distance of 320.46 feet to a 3/4" rebar (set) and
place of beginning.

Containing 3.357 areas and shown on map prepared by Curry and Associates dated February 3, 2005. Bearing based on the northern line of lands of C.S.P. Investments, Inc. as recorded in Deed Book 1892 page 436.

Being designated as Tax Parcel 123-L07-000-00068.

Being the same property which Clinton County Industrial Development Authority and WTBH, Inc., conveyed to Harry K. Maney and Emilia D. Maney, husband and wife, by deed dated March 29, 1963 and recorded in Record Book 1517, page 103.

PARCEL TWO:

ALL that certain piece of parcel of land situate in Lawrence Township, Clearfield County, Pennsylvania, being more particularly bounded and described as follows:

Beginning at a point on the northern right of way of Pennsylvania State Route SR-0879, said point being the southwest corner of other lands of the Grantors as described in Deed Book 1661 page 13, Parcel 1, said place of beginning being the southeast corner of the parcel herein conveyed and running;

1. thence along the northern right of way line of Pennsylvania State Route SR-0879 along the arc of a circle 75.00 feet having a radius of 7,739.44 feet, curving to the left, the chord of said arc running south 63 degrees 11 minutes 03 seconds west a distance of 75.00 feet to a 3/4" rebar (set), said rebar being the southeast corner of lands of First Commonwealth Financial Corporation as described in Instrument Number 200321912;

2. thence along the eastern line of land of the First Commonwealth Financial Corporation north 22 degrees 45 minutes 26 seconds west passing through a 3/4" pipe (found) at a distance of 513.50 feet and continuing on for a total distance of 530.00 feet to a point in the center line of an unnamed tributary to Wolf Run, said point being on the southern line of lands of Fullington Real Estate Company as described in Instrument Number 200315359;

3. thence along the southern line of lands of the Fullington Real Estate Company and running near the center line of unnamed tributary to Wolf Run the following courses and distances:

a) north 30 degrees 55 minutes 23 seconds east
a distance of 21.50 feet to a point;

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 4100014878
Lender Ref: Allelo Land Company, L.P., a Pennsylvania
limited partnership

b.) North 83 degrees 27 minutes 23 seconds east
a distance of 59.90 feet to a point, said point being
the western line of other lands of the Grantors as
described in Deed Book 1661 page 13, Parcel 1;

4. thence along the other lands of the Grantor south 22 degrees 45 minutes 13 seconds east
passing through a 5/8" pin (found) at a distance of 6.03 feet and continuing on for a total distance
of 520.70 feet to a point and place of beginning.

Containing 0.914 acres as shown on plat map prepared by Curry & Associates dated February 3,
2005. Bearing based on the northern line of lands of C.S.P. Investments Inc. as recorded in Deed
Book 1892 page 436.

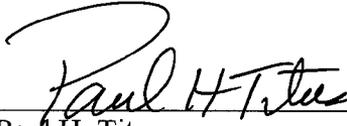
Being designated as tax parcel 123-L07-000-00106.

Being the same property which Harold E. Pentz, et al, conveyed to Harry K. Maney and Emily D.
Maney, husband and wife, by deed dated November 20, 1992 and recorded in Record Book Volume
1498, page 285.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

CERTIFICATION

In accordance with Rule 208.2(d) of the Clearfield County Rules of Civil Procedure, I hereby certify that concurrence in the Emergency Motion to Strike Portion of Prayer for Relief from Count Six of the Complaint and to Bar Conveyance of Property was sought from Keith M. Pemrick, counsel for the Plaintiff, and concurrence was denied.



Paul H. Titus

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Emergency Motion to Strike Portions of Prayer for Relief as to Count Six and to Bar Conveyance of Property was served upon the following counsel by facsimile and first-class mail this 25th day of July, 2005:

Keith M. Pemrick, Esquire
DALE WOODARD LAW FIRM
1030 Liberty Street
Franklin, PA 16323
(814) 437-3212 (Facsimile)

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(814) 765-9596 (Facsimile)



AK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

vs.

TYPE OF PLEADING:
**PRACIPE FOR EXPEDITED
DISPOSITION**

FULLINGTON AUTO BUS COMPANY,
et al.,

Defendants.

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: July 26, 2005

FILED ^{4cc}
13:30 *AK*
JUL 26 2005
Shaw
William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW**

J. RICHARD FULLINGTON, JR.,

Plaintiff,

vs.

FULLINGTON AUTO BUS COMPANY,

et al.,

Defendants.

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No. 05-565

**PRAECIPE FOR EXPEDITED DISPOSITION OF EMERGENCY MOTION
TO STRIKE PORTIONS OF PRAYER FOR RELIEF FROM COUNT SIX AND TO BAR
CONVEYANCE OF PROPERTY**

TO THE COURT ADMINISTRATOR:

Expedited disposition of the attached Emergency Motion to Strike Portions of Prayer for Relief From Count Six and to Bar Conveyance of Property is requested for the following reason:

1. Due to Plaintiff's prayer for relief contained in Count Six of the Complaint, a cloud has been placed on the title of property that Defendants, Fullington Real Estate Company ("Fullington Real Estate") and Fullington GMC Sales, Inc. ("Fullington GMC") are contractually obligated to sell to Aiello Land Company, LLC ("Aiello").
2. Fullington Real Estate, Fullington GMC and Aiello are scheduled to close on the property in the immediate future thereby rendering the removal of this cloud on the title an immediate necessity.
3. The company placing title insurance for the sale of the property will not issue title insurance for a portion of the property unless the cloud is removed. Aiello will not go forward with the sale unless the cloud is removed.

4. If the issue set forth in the Emergency Motion is not decided on an expedited basis, the sale of the property will not go forward which will significantly harm the parties to the sale agreement, and others.

Date: July 26, 2005

SCHNADER HARRISON SEGAL & LEWIS LLP

By Paul H. Titus
Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476

2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Counsel for Defendants, Fullington Auto Bus
Company, Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L. Fullington and
Aerial Fullington Weisman

FOR COURT ADMINISTRATOR ACTION ONLY

_____ MOTION ASSIGNED TO JUDGE

_____ COUNSEL FOR MOVING PARTY NOTIFIED OF JUDICIAL ASSIGNMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

vs.

FULLINGTON AUTO BUS COMPANY,
et al.,

Defendants.

TYPE OF PLEADING:
**EMERGENCY MOTION TO
STRIKE PORTIONS OF
PRAYER FOR RELIEF FROM
COUNT SIX OF COMPLAINT
AND TO BAR CONVEYANCE
OF PROPERTY**

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: July 26, 2005

2. On or about December 27, 2004, approximately 1½ years after title to Parcel 31 was transferred to Fullington Real Estate, the Fullington Companies entered into a Purchase and Sale Agreement (“Agreement”) with Aiello Land Company, LLC (“Aiello”) to sell Parcel 31 along with two (2) contiguous parcels of real property consisting of approximately 4.532 acres (“Related Parcels”) (collectively with Parcel 31, “the Property”). Attached hereto and marked as “Exhibit 1” is a true and correct copy of the Agreement.

3. Under the terms of a Joinder to the Agreement, FABCO agrees to indemnify, defend and hold Aiello harmless “from and against any and all liability, damage, loss, cost and expense . . . incurred . . . by reason of, related to or in connection with the involvement of [Fullington, Jr.] or . . . his spouse, in any portion of the Property or the chain of title thereto . . .”.
See Agreement, p. 16.

4. Under the Agreement, Aiello is to pay the Fullington Companies One Million Three Hundred Thousand Dollars (\$1,300,000) to purchase the Property. Although the total purchase price is One Million Three Hundred Thousand Dollars (\$1,300,000), the portion of the purchase price being allocated to Parcel 31 is approximately Fifty Thousand Dollars (\$50,000).

5. On or about February 24, 2005, the Fullington Companies and Aiello entered into an Amendment to Purchase and Sale Agreement (“Amendment”) extending the time for Aiello to complete its due diligence and for the closing on the sale. Attached hereto and marked as “Exhibit 2” is a true and correct copy of the Amendment.

6. The sale of the Property is vital to the Fullington Companies and its affiliate, FABCO, as the proceeds from the sale are to be used to significantly reduce bank debt incurred by Fullington GMC and FABCO as a result of improper actions taken by Fullington, Jr. when he owned the majority interest in and ran Fullington GMC.

7. On or about April 20, 2005, months after the Agreement and Amendment were executed and while Aiello was proceeding with its due diligence and the parties to the Agreement were moving toward a closing on the sale of the Property, Plaintiff, Fullington, Jr., filed this action seeking damages for various alleged claims.

8. In this action, Fullington, Jr. asserts, *inter alia*, that Parcel 31 was previously owned by Fullington, Jr. and his then wife and that title to Parcel 31 was improperly transferred to Fullington Real Estate. *See* Count Four of Complaint, pp. 13-15. As a result of this alleged improper transfer, Fullington, Jr. seeks money damages. *See* Wherefore Clause to Count Four of Complaint, p. 15.

9. In Count Six of the Complaint, Fullington, Jr. alleges, *inter alia*, that Fullington Real Estate paid no consideration to Fullington, Jr. for the transfer of the properties, including Parcel 31. *See* Complaint, pp. 16-17.

10. Although Fullington, Jr.'s Complaint is captioned as a "Civil Action - Law", most of the claims for relief seek money damages, and Count Six expressly claims a legal cause of action (i.e., lack of consideration for the transfer of the property), the prayer for relief contained in Count Six seeks equitable relief in the form of an accounting and "the entry of an Order requiring Fullington Real Estate to reconvey title to the remaining properties" to Fullington, Jr. and his former wife. *Id.*, p. 17.

11. After receipt of the Complaint in this action, counsel for the Defendants met with Fullington, Jr.'s counsel to attempt to resolve the litigation. During the meeting, counsel for the Defendants provided Plaintiff's counsel with historical information and some key documents to review. Plaintiff's counsel agreed to an indefinite extension of time for the Defendants to plead to the Complaint while he reviewed the information provided and considered whether the matter

could be resolved. Attached hereto and marked as "Exhibit 3" is a true and correct copy of the May 20, 2005 letter from Plaintiff's counsel to defense counsel.

12. While Plaintiff's counsel was reviewing the materials provided to him and exploring the possibility of resolving this litigation, Aiello was proceeding with its due diligence with respect to the Agreement and purchase of the Property being sold by the Fullington Companies. In addition, Lawyers Title Insurance Corporation ("Lawyers Title") was reviewing the sale for purposes of placing title insurance.

13. In preparing its title commitment, Lawyers Title reviewed the record of this action. As a result of this lawsuit, Lawyers Title issued two (2) First Revised Commitments for Title Insurance, one with respect to Parcel 31 and one with respect to the Related Parcels, which provide, in pertinent part:

We find the following pending litigation in [sic] which must be settled and discontinued of record or the subject property must be released from the litigation:

Jr. Richard Fullington Jr. vs. Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, et al., filed at 05-565, filed on April 20, 2005.

Attached hereto and marked as "Exhibit 4" is a true and correct copy of the First Revised Commitments for Title Insurance with respect to Parcel 31 and the Related Parcels. *See* p. 3 of 8, ¶10 (as to Parcel 31) and p. 4 of 8, ¶ 18 (as to the Related Parcels) (Emphasis in original). Thus, Lawyers Title indicated that it would not provide title insurance for the benefit of Aiello or its lender, First Commonwealth Bank, due to this cloud on the title unless i) the action commenced by the filing of this Complaint was settled and discontinued, or ii) the Property was released from the litigation.

14. In light of Lawyers Title's revised commitment, counsel for Aiello advised counsel for the Fullington Companies that Aiello could not proceed with the purchase of the Property under the Agreement and that the closing could not go forward without a termination of this action or a release of the Property from the lawsuit.

15. In an attempt to save the sale of the Property due to its vital importance to the Fullington Companies, FABCO and Aiello, counsel for the Fullington Companies spoke to Plaintiff's counsel on July 7, 2005 to see if Fullington, Jr. would be willing to dismiss with prejudice that portion of his prayer for relief as to Count Six seeking the reconveyance of Parcel 31 thereby removing the cloud from the title. Fullington, Jr. would still be entitled to seek legal remedies in the form of money damages for the alleged improper conveyance of Parcel 31 to Fullington Real Estate. Counsel for the Fullington Companies even offered to consider placing the portion of the proceeds from the sale of Parcel 31 (i.e., approximately Fifty Thousand Dollars (\$50,000)) in an escrow account as additional protection for Fullington, Jr. in the event that he was to succeed on his claim.

16. Notwithstanding the lack of harm that would befall Fullington, Jr. if his equitable prayer for relief were dismissed and the protection afforded to him by the offer to escrow sufficient funds to cover the value of Parcel 31, Fullington, Jr. refused to agree thereby preventing the sale of the Property.

17. Unless that portion of the prayer for equitable relief of Count Six seeking reconveyance of Parcel 31 is stricken and the Plaintiff is barred from seeking the conveyance of any of the Property to him or anyone else he designates or interfering in any way with the sale of the Property, the Fullington Companies and FABCO will suffer serious harm. The proceeds from the sale of the Property to Aiello are vital to pay down large bank debt incurred by

Fullington GMC and FABCO as a result of improper and illegal actions taken and loans obtained by Fullington, Jr. when he was the majority owner and President of Fullington GMC.

18. Due to improper and illegal actions taken by Fullington, Jr. while employed by Fullington GMC and FABCO, Fullington GMC and FABCO incurred millions of dollars worth of debt which FABCO has been struggling to pay-off while staying in business. It is vital to FABCO's ongoing business that it pay down this debt.

19. Aiello and the community will also suffer harm unless Fullington, Jr.'s demand for equitable relief is stricken thereby removing the cloud on the title of Parcel 31 and he is barred from seeking the conveyance of any of the Property or interfering in any way with the sale of the Property. Aiello is purchasing the Property for the purpose of opening a retail facility and has already obtained various tenants for the facility. Unless the Property is sold in the immediate future, Aiello will not be able to begin construction prior to the fall and winter when inclement weather will prevent such work. As a result, the construction will not be completed and the tenants will not be able to gain possession and begin their retail operations.

20. Under controlling law, Fullington, Jr. is not entitled to the equitable relief as set forth in his Complaint, nor is he entitled to have title in any of the Property conveyed to him or anyone else. Although Count Six of Fullington, Jr.'s Complaint seeks equitable relief, a review of the Complaint establishes that, even if he is successful in proving the facts alleged, he would only be entitled to recover money damages and would not be entitled to a conveyance of title in Parcel 31 or any of the Related Parcels.

21. Even if this portion of the prayer for relief as to Count Six is stricken and he is barred from seeking the conveyance of any of the Property or interfering with the sale of the Property to Aiello, Fullington, Jr. is protected. He may still proceed with his claim for damages

against the Defendants and, if successful, he will be adequately compensated for the loss of the Property.

22. If that portion of the prayer for relief as to Count Six which seeks the reconveyance of Parcel 31 is stricken and Fullington, Jr. is barred from seeking the conveyance of any of the Property or from interfering in the sale of the Property, the Fullington Companies and Aiello may proceed with the sale of the land as Aiello and its title company may rely upon the Court Order which would remove the cloud from the title of Parcel 31 and the Related Parcels.

WHEREFORE, Defendants Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman respectfully request that this Honorable Court grant their Emergency Motion to Strike Portions of Prayer for Relief as to Count Six of Complaint and to Bar Conveyance of Property and enter an Order striking with prejudice any claim for equitable relief seeking reconveyance of title in Parcel 31, barring Plaintiff from seeking conveyance of title in the Related Parcels, and barring Plaintiff from interfering in any way in the sale of the Property.

Date: July 26, 2005

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By 
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Pa. Id. No. 01399
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Counsel for Defendants, Fullington Auto Bus
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Real Estate Company, Michael L. Fullington and
Aerial Fullington Weisman



PURCHASE AND SALE AGREEMENT

THIS AGREEMENT as of the 27 day of December, 2004, by and between FULLINGTON REAL ESTATE COMPANY and FULLINGTON GMC SALES, INC. (collectively, "Seller"), both Pennsylvania corporations, with an address at 316 East Cherry Street, Clearfield, PA 16830, and AIELLO LAND COMPANY ("Buyer"), a Pennsylvania limited liability company, with an address c/o James R. Aiello, Jr., 316 Lehigh Street, Pittsburgh, PA 15232.

WITNESSETH:

WHEREAS, Seller (a) owns fee simple title to a parcel of real property consisting of approximately 30.2 acres in Lawrence Township, Clearfield County, Pennsylvania, and designated as tax parcel 123-L7-31, and (b) has a contract (the "Seller Contract") to purchase two (2) additional parcels of real property consisting of a total of approximately 4.532 acres in such Township and designated as tax parcels 123-L7-68 and 123-L7-106;

WHEREAS, the property hereinabove described is hereinafter called the "Fee Simple Property," the portion of the Fee Simple Property described in clause (a) above is hereinafter called the "Seller-Owned Fee Simple Property," and the portion of the Fee Simple Property described in clause (b) above is hereinafter called the "Seller Contract Fee Simple Property";

WHEREAS, all easements and appurtenances benefiting any portion of the Fee Simple Property are hereinafter called the "Appurtenant Property," the portion of the Appurtenant Property benefiting the Seller-Owned Fee Simple Property is hereinafter called the "Seller-Owned Appurtenant Property," and the portion of the Appurtenant Property benefiting the Seller Contract Fee Simple Property is hereinafter called the "Seller Contract Appurtenant Property";

WHEREAS, the Seller-Owned Fee Simple Property and the Seller-Owned Appurtenant Property are hereinafter called the "Seller-Owned Property," the Seller Contract Fee Simple Property and the Seller Contract Appurtenant Property are hereinafter called the "Seller Contract Property," and the Seller-Owned Property and the Seller Contract Property are hereinafter called the "Property";

WHEREAS, Seller desires to sell and Buyer desires to purchase the Property, subject to and upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises, the covenants contained in this Agreement, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are acknowledged by the parties, Seller and Buyer, each intending to be legally bound hereby, covenant and agree as follows:

1. Agreement for Purchase and Sale.

Seller agrees to sell, transfer and convey to Buyer and Buyer agrees to purchase the Property from Seller, subject to and upon the terms and conditions set forth in this Agreement.

2. Purchase Price.

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EXHIBIT 1

COPY TO HUBS 1-6-05

(a) In consideration of the transfer and conveyance of the Property, Buyer agrees to pay at or before the Closing (as hereinafter defined) a purchase price (the "Purchase Price") equal to One Million Three Hundred Thousand Dollars (\$1,300,000). Buyer reserves the right to pay at the Closing (i) all real estate transfer taxes otherwise payable by Seller pursuant to this Agreement, and (ii) all or any part of any brokerage commissions otherwise payable by Seller in connection with the sale of the Property pursuant to this Agreement, in which event the Purchase Price shall be reduced by the amount of such payment. Promptly upon request by Buyer, Seller shall warrant to Buyer the amount of such commissions.

(b) Within ten (10) days after the date that both parties shall have executed this Agreement and an originally executed counterpart of this Agreement shall have been delivered to each party, Buyer shall deposit with a title insurance company selected by Buyer ("Title Company") the sum of Fifty Thousand Dollars (\$50,000), which sum shall be deposited by Title Company in an interest-bearing escrow account with a federally insured financial institution in the City of Pittsburgh (said sum, as such sum may be increased from time to time, together with all interest thereon, hereinafter called the "Deposit"). The Deposit shall be applied toward the Purchase Price at the Closing or otherwise applied as provided in this Agreement.

(c) The balance of the Purchase Price shall be paid by Buyer at the Closing by certified or cashier's check or by wire transfer of funds.

(d) A portion of the Purchase Price equal to the purchase price under the Seller Contract shall be allocated to the Seller Contract Property, and the balance of the Purchase Price shall be allocated to the Seller-Owned Property.

3. Title to and Extent of Property.

(a) Seller represents and warrants to Buyer that (i) Seller has good and marketable fee simple title, and such that is insurable by Title Company at regular rates, in and to the Seller-Owned Fee Simple Property, and that the Property is subject only to (A) liens and encumbrances, if any, duly recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, and (B) such matters existing as of the date of this Agreement as a current, accurate survey of the Property would disclose; (ii) the sellers under the Seller Contract (the "Contract Sellers") have good and marketable fee simple title, and such that is insurable by Title Company at regular rates, in and to the Seller Contract Fee Simple Property, and that the Property is subject only to (A) liens and encumbrances, if any, duly recorded in said Office, and (B) such matters existing as of the date of this Agreement as a current, accurate survey of the Property would disclose; (iii) there are no mortgages or other liens securing in the aggregate an amount in excess of the net proceeds of the sale of the Property otherwise to be received by Seller and the Contract Sellers at the Closing, and (iv) the Appurtenant Property includes all land in, on or over which any roads, lanes, driveways, parking and utility or other lines or facilities are used or are intended to be used in connection with the Fee Simple Property or any portion thereof.

(b) At the Closing, Seller shall convey or cause to be conveyed to Buyer all right, title and interest in and to the Fee Simple Property and all rights and interests currently appurtenant thereto in the Appurtenant Property, subject only to the matters referred to in

subsection (a) above, except that, at the Closing, Seller shall in all events be obligated to remove or cause to be removed from the title to the Fee Simple Property (and to subordinate in all respects regarding the Appurtenant Property) and remove from Buyer's title insurance policy any items appearing in Schedule B-I of Buyer's title insurance commitment (other than those, if any, pertaining solely to Buyer) and mortgages, assessments (other than real estate taxes assessed solely against the Fee Simple Property not due and payable as of the Closing Date (as hereinafter defined)), judgments and all other liens securing the payment of money or the payment or performance of any other obligation. The matters subject to which the Property shall be conveyed pursuant to this Section are hereinafter called the "Permitted Exceptions."

(c) Seller hereby assigns to Buyer all of Seller's right under the Seller Contract to acquire the Seller Contract Property, it being understood however that Buyer shall not have any obligation to perform any of the obligations of Seller under the Seller Contract, including the obligation to purchase the Seller Contract Property, except the obligation to Seller pursuant to this Agreement to purchase the Seller Contract Property in accordance with and subject to the terms of this Agreement. Seller shall comply with all terms of the Seller Contract and shall cooperate with Buyer in all respects in connection with the Seller Contract and the Seller Contract Property and the investigation thereof by Buyer. If permitted by the terms of the Seller Contract, the purchase of the Seller Contract Property shall occur simultaneously with the Closing. If the closing under the Seller Contract shall be scheduled to occur prior to the Closing Date, Seller shall use Seller's best efforts to cause the Contract Sellers to agree to postpone such closing in order to be simultaneous with the Closing Date. If the purchase of the Seller Contract Property from the Contract Sellers shall occur simultaneously with the Closing, then, unless Buyer shall otherwise elect, Seller shall cause the Contract Sellers to convey the Seller Contract Property directly to Buyer or its designee.

4. Due Diligence Period.

(a) Buyer and its agents, engineers and other representatives shall have the opportunity to go upon all portions of the Property as necessary or desirable to inspect, examine, test, survey and otherwise do whatever Buyer reasonably deems necessary or desirable (i) to determine the boundaries, condition and extent of the Property, its contiguity to other property, and the location of easements, rights of way and other matters affecting the Property, (ii) to conduct test borings and environmental audits on the Property or any portion thereof and to conduct other investigations of the Property, including the components of any improvements thereon, (iii) to review and examine the condition and status of title to the Property, including the Permitted Exceptions, and (iv) otherwise to plan for the acquisition of the Property. It is understood and acknowledged that any investigation or examination which may be conducted by Buyer or any of its representatives with respect to the Property or the title thereto or any other matter pertaining thereto is intended to be for the sole benefit and protection of Buyer, and such right of investigation or examination, including any information obtained in connection therewith, is not intended and shall not constitute a waiver, modification or other limitation on any of the covenants, warranties or representations of Seller contained in this Agreement or in any other agreement, document or instrument to be delivered by Seller pursuant to the terms of this Agreement. Promptly after the date of this Agreement, Seller shall disclose and deliver to Buyer all information and documentation in its possession or control relating to the Property or any portion thereof or the business conducted in connection therewith, and shall otherwise

cooperate in all reasonable respects in making all such items available for Buyer's inspection, including, without limitation, surveys, site plans, title reports, title insurance policies, copies of all documents relating to any liens or encumbrances, soil studies, engineering and environmental reports, and all plans, specifications and drawings relating to any improvements on the Property, and in assisting in Buyer's examination of all matters relating to the Property or any portion thereof. Buyer shall have the right, at Buyer's cost, to make copies of any and all items as it may deem appropriate. Buyer shall be responsible and liable for any damage to the Property caused by Buyer's negligent inspections, examinations, tests or surveys. Buyer shall also have the right to contact and make inquiries of any and all parties whatsoever as part of its investigation and examination of the Property and the business conducted in connection therewith.

(b) Buyer shall have the right to terminate this Agreement with or without cause, provided that Buyer shall have given Seller notice of such termination on or before the expiration of the Due Diligence Period (as hereinafter defined). If Buyer shall not elect to terminate this Agreement as provided in this subsection, Seller shall nevertheless be obligated to convey the Property as required by the other terms of this Agreement.

(c) Notwithstanding the other provisions of this Section, if Buyer shall not have elected to terminate this Agreement pursuant to subsection (b) above on or before forty-five (45) days after the date of this Agreement, then Seller, by notice to Buyer, shall have the right at any time thereafter to require Buyer to elect either to terminate this Agreement or to waive its right to terminate this Agreement pursuant to such subsection (other than the last sentence of such subsection). Such notice by Seller shall specifically refer to such right of Buyer to terminate this Agreement pursuant to this Section. If Buyer shall not have made such election by notice to Seller within ten (10) days after Buyer's receipt of such notice from Seller, Buyer will be deemed to have waived its right to terminate this Agreement pursuant to subsection (b) above. The period during which Buyer may terminate this Agreement pursuant to subsection (b) above is herein referred to as the "Due Diligence Period."

(d) Notwithstanding the expiration of Buyer's right of termination set forth above in this Section, Buyer shall also have the right to terminate this Agreement at any time (i) if there shall be any material and adverse change in any of the matters referred to in this Section, (ii) if any information concerning the Property received by Buyer from Seller shall prove to be inaccurate or incomplete in any material respect, (iii) if Seller or any of the Contract Sellers shall hereafter convey or encumber any portion of the Property, or agree to do so, without Buyer's consent, or (iv) if Seller shall fail to comply with any of the terms of this Agreement, or Seller or any of the Contract Sellers shall fail to comply with any of the terms of the Seller Contract.

(e) If Buyer shall elect to terminate this Agreement pursuant to this Section, then the Deposit shall immediately be returned to Buyer, and this Agreement shall terminate without liability of either party to this Agreement, except that any termination of this Agreement by Buyer shall not excuse any breach or anticipatory breach of this Agreement by Seller.

5. Representations and Warranties of Seller.

(a) Seller hereby represents and warrants to Buyer as follows:

(i) This Agreement has been properly executed by Seller and any and all actions which are or may be necessary to fully authorize Seller to enter into and perform this Agreement and the Seller Contract have been properly taken and no other consents, authorizations or approvals are necessary in connection therewith. Seller has full right, power and authority to consummate the transactions contemplated by this Agreement and the Seller Contract. This Agreement and the Seller Contract is, and each document to be delivered by Seller pursuant thereto will be, a valid, legal and binding obligation of Seller, enforceable in accordance with their respective terms;

(ii) The execution and delivery of this Agreement and the Seller Contract and the consummation of the transactions contemplated in this Agreement and the Seller Contract shall not constitute a violation, breach or default by Seller of any term or provision of any other agreement, document or instrument to which Seller is a party or to which Seller or any portion of the Property may be subject, and all consents or approvals which may be required in connection with Seller's execution or delivery of this Agreement or the consummation by Seller of the transactions contemplated by this Agreement have been obtained;

(iii) The Seller Contract, a true, correct and complete copy of which is attached hereto as Exhibit A, is in full force and effect and none of the terms thereof has been amended, supplemented or waived. Seller owns all right, title and interest of the "Buyer" under the Seller Contract, free and clear of all rights, claims, liens and encumbrances other than Permitted Exceptions, and all parties to the Seller Contract are in compliance with all provisions of the Seller Contract;

(iv) There are no leases, occupancy agreements, conditions, restrictions or other liens or encumbrances, other than Permitted Exceptions, affecting the Seller-Owned Property or any part thereof, nor are there any management, maintenance, brokerage, service or other contracts regarding the Property or any part thereof;

(v) There are no Hazardous Materials or above-ground or underground storage tanks in or on the Seller-Owned Property. "Hazardous Materials" shall mean asbestos, asbestos-containing materials, polychlorinated biphenyls, mercury, lead, lead-based paint, chlorofluorocarbons, petroleum-based products, petroleum byproducts, explosives and other substances regulated by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Resources Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or any other federal, state or local laws, rules, regulations or ordinances relating to the regulation of toxic or hazardous materials or otherwise to the environment, all as the same may have heretofore been or may hereafter be amended;

(vi) There are no pending or, to Seller's knowledge, threatened claims, actions or proceedings by any party that could adversely affect the use, occupancy

or value of the Property or any part thereof, that could adversely affect any of the transactions contemplated by this Agreement, or that could be binding upon Buyer or the Property or any part thereof from and after the Closing;

(vii) Seller has received no written notice from any insurance company or any Governmental Authority (as hereinafter defined) of any violation of applicable codes or other laws or of any change required by applicable law or recommended by any such party with respect to the Property that have not been corrected or made prior to the date of this Agreement. "Governmental Authority" means the United States, the Commonwealth of Pennsylvania and the municipal and county governments having jurisdiction over the Property, together with any other municipal, public or quasi-public authority, agency, department, commission, board, bureau or instrumentality or any of them having jurisdiction over the Property or Seller;

(viii) Seller has the full right, power and authority to convey the Seller-Owned Property without any further compliance with any subdivision or other laws, regulations or ordinances;

(ix) The Seller-Owned Property has the zoning classification of Rural/Agricultural under the zoning ordinance of the municipality in which the Seller-Owned Property is located, and the Seller-Owned Property and the current use thereof complies with such ordinance and any other applicable zoning ordinance of the county in which the Seller-Owned Property is located;

(x) There are no real estate tax appeals pending with respect to the Seller-Owned Property;

(xi) The Seller-Owned Property and each parcel thereof is serviced by a community sewage system;

(xii) The sale of the Seller-Owned Property (and the entire Property if Seller shall acquire the Seller Contract Property prior to the Closing) does not constitute a sale or disposition of all or substantially all of the assets of Seller, or a disposition of greater than 50% of any class of property owned by Seller within the Commonwealth of Pennsylvania within the meaning of 72 P.S. Sections 1403(a) or 7240;

(xiii) The public utilities, streets, roads, highways and avenues servicing, used for access to, in front of or adjoining any part of the Seller-Owned Property have been completed, dedicated and accepted by the appropriate Governmental Authority and such Governmental Authority has accepted such dedication;

(xiv) Seller is not a foreign person as defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and Seller shall deliver to Buyer at the Closing a Certificate of Non-Foreign Status, in a form to be reasonably designated his Buyer (the "FIRPTA Certificate"); and

(xv) To Seller's knowledge, all of the foregoing representations and warranties would be true if made by the Contract Sellers with respect to the Seller Contract and the Seller Contract Property.

(b) The representations and warranties of Seller contained in this Agreement shall be deemed to have been restated as of the Closing Date and shall survive the Closing. In addition, if Seller shall have acquired the Seller Contract Property prior to the Closing, all of such representations shall be deemed to have been revised as of the Closing to apply to the entire Property and shall be deemed to have been restated as of the Closing Date and shall survive the Closing. It shall also be a condition to Buyer's obligation to acquire the Property that all of such representations and warranties would be true if made, irrespective of knowledge, by the Contract Sellers at the Closing with respect to the Seller Contract and the Seller Contract Property.

6. Representations and Warranties of Buyer.

(a) Buyer hereby represents and warrants to Seller as follows:

(i) This Agreement has been properly executed by Buyer and any and all actions which are or may be necessary to fully authorize Buyer to enter into and perform this Agreement have been properly taken and no other consents, authorizations or approvals are necessary in connection therewith. Buyer has full right, power and authority to consummate the transactions contemplated by this Agreement. This Agreement is, and each document to be delivered at the Closing pursuant to this Agreement will be, a valid, legal and binding obligation of Buyer, enforceable in accordance with their respective terms;

(ii) The execution and delivery of this Agreement and the consummation of the transactions contemplated in this Agreement shall not constitute a violation, breach or default by Buyer of any term or provision of any other agreement, document or instrument to which Buyer is a party or to which Buyer may be subject, and all consents or approvals which may be required in connection with Buyer's execution or delivery of this Agreement or the consummation by Buyer of the transactions contemplated by this Agreement have been obtained.

(b) The foregoing representations and warranties shall be deemed to have been restated as of the Closing Date and shall survive the Closing.

7. Additional Covenants of Seller.

(a) Upon the request of Buyer, Seller will, and will cause its agents to, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered, to or at the direction of Buyer, all further acts, transfers, assignments, powers or other documents and instruments as may be reasonably requested to give effect to the transactions contemplated by this Agreement.

(b) Seller shall not, without the prior written consent of Buyer, (i) enter into or agree to enter into any leases or occupancy agreements, or transfer or agree to transfer the

Property or any interest therein or portion thereof, or create or suffer to exist any liens, encumbrances or other matters affecting title against the Property (other than Permitted Exceptions and monetary liens which exist as of the date of this Agreement and which secure only sums permitted to be paid in full at the Closing in a maximum amount not exceeding the net proceeds to be otherwise received by Seller from the sale of the Property pursuant to this Agreement), (ii) do anything to change the zoning, subdivision, tax assessment or other legal status of the Property, without the prior written consent of Buyer, or (iii) prior to the closing under the Seller Contract, consent to any of such matters with respect to the Seller Contract Property or amend or waive any provision of the Seller Contract or grant any consent not required to be given under the Seller Contract.

(c) Until the Closing, Seller shall (i) maintain the Seller-Owned Property in the same condition as that which exists as of the date of this Agreement, (ii) continue to operate the Seller-Owned Property as currently operated, (iii) promptly notify Buyer of any claims or proceedings which may hereafter be made, filed or threatened against Seller or the Seller-Owned Property or any portion thereof, and of any other matters which would make any of the representations or warranties contained in this Agreement untrue if the same were restated at any time after the date of this Agreement, (iv) cooperate with Buyer in all reasonable respects in connection with Buyer's examination and investigation of all aspects of the Property, including the fulfillment of conditions to any of Buyer's obligations under this Agreement, (v) comply in all respects with the Seller Contract, and (vi) promptly upon receipt or transmission to the Contract Sellers (or if already received or transmitted, then at the time of the execution of this Agreement), give Buyer complete and accurate copies of all communications and information received or given by Seller relating to the Seller Contract or the Seller Contract Property and notify Buyer in writing of any default by the Contract Sellers under the Seller Contract. In addition, if Seller shall have acquired the Seller Contract Property prior to the Closing, all of the foregoing obligations shall thereafter apply to the entire Property.

(d) Seller shall not, and shall not suffer or permit others to, (i) commit any waste with respect to the Seller-Owned Property, (ii) commit any act or omission which will prevent the performance of this Agreement in accordance with its terms, or (iii) violate the terms of any warranties, permits, licenses or approvals applicable to the Seller-Owned Property or any laws, codes and insurance requirements applicable to the Seller-Owned Property. In addition, if Seller shall have acquired the Seller Contract Property prior to the Closing, all of the foregoing obligations shall thereafter apply to the entire Property.

(e) Seller shall do all things necessary to cause the Property to be conveyed to Buyer and to be insured by Title Company as required by the terms of this Agreement, including without limitation the delivery of such documents and the execution of such certificates, affidavits and indemnities as may be required by Title Company in order to remove all items appearing on Schedule B-1 of Buyer's title insurance commitment (other than those, if any, pertaining solely to Buyer). In the event that Seller or any other party shall execute any such certificate, affidavit or indemnity, Seller shall provide a complete copy thereof to Buyer prior to the Closing. It is understood that Buyer has a substantial interest in understanding the means by which any exception or other matter may have been resolved or addressed by Title Company in connection with the issuance of title insurance to Buyer or its mortgagee.

(f) Seller agrees, at Buyer's reasonable expense, to cooperate in all respects which Buyer may reasonably require in connection with Buyer's efforts to obtain all permits, licenses and approvals, including any zoning changes and approvals, relating to the development, use or operation of the Property or the construction of improvements thereon.

8. Closing and Closing Date.

The consummation of the sale by Seller and purchase by Buyer of the Property (the "Closing") shall be held at the offices of Title Company on a date (the "Closing Date") which shall be a date to be designated by Buyer with reasonable promptness but in all events within thirty (30) days after Buyer shall have received such evidence as it may reasonably require to confirm the fulfillment of all of the conditions to Buyer's obligation to purchase the Property as set forth in this Agreement which shall not have been waived by Buyer in writing. Any election by Buyer to close the purchase of the Property prior to the fulfillment of the conditions applicable to its obligation to do so shall not constitute a waiver of any warranties, representations, covenants or other undertakings of Seller in this Agreement.

9. Conditions to Buyer's Obligations to Purchase.

(a) Buyer's obligation to purchase the Property shall be subject to Buyer's receipt of such evidence and assurances as Buyer may reasonably require that the following conditions, as well as any other conditions set forth in this Agreement, shall have been fulfilled on or before the Closing:

(i) All representations and warranties of Seller set forth in this Agreement and in all other certificates, instruments and documents to be delivered to Buyer as provided in this Agreement shall be true, accurate and complete as of the date made or deemed to have been made;

(ii) Seller shall have performed and observed all covenants and other undertakings of Seller under this Agreement;

(iii) Buyer shall have received, at Buyer's expense, an owner's title insurance policy (A.L.T.A. Form B 1970) insuring Buyer's right, title and interest in and to the Property as required by this Agreement, in the full amount of the Purchase Price (or, if applicable, the amount of any acquisition and development budget of Buyer for the Property), subject to no exceptions other than Permitted Exceptions;

(iv) There shall not have been any material adverse change in the Property or the condition or legal status thereof since the date of this Agreement; and

(v) Seller shall have either theretofore acquired the Seller Contract Property or the Seller Contract Property shall be conveyed to Buyer simultaneously with the conveyance of the Seller-Owned Property to Buyer.

(b) In the event that the foregoing conditions shall not have been fulfilled on or before ninety (90) days after the expiration of the Due Diligence Period, then Buyer shall have the right to terminate this Agreement and receive back the Deposit, in which event Buyer shall reassign to Seller all rights under the Seller Contract to acquire the Seller Contract Property and neither party shall have any further liability under this Agreement except if a party shall be in default under this Agreement. Nothing in this Section shall be construed to limit any rights of Buyer in the event of a default by Seller under this Agreement, including the right to terminate this Agreement within the times provided by other provisions of this Agreement.

10. Seller's Obligations at or Before the Closing.

Seller shall do or deliver the following:

(a) At least thirty (30) days prior to the Closing Date, deliver to Buyer and Title Company all documents as may be required by Buyer or Title Company (i) to confirm the due authorization of Seller to perform its obligations under this Agreement and (ii) to remove all matters not applicable solely to Buyer from Schedule B-I of Buyer's title insurance commitment and otherwise to cause the Title Company to insure title to the Property as required by this Agreement;

(b) If applicable to the sale of the Property, at least ten (10) days prior to the Closing Date, deliver all clearance certificates (the "Clearance Certificates"), dated not earlier than thirty (30) days prior to the Closing, which may be provided for by the laws of the Commonwealth of Pennsylvania, confirming that the Property may be conveyed without any rights or claims of the Commonwealth of Pennsylvania against Buyer or the Property for any taxes, wages or other obligations payable at any time by Seller, or any interest, penalties or other charges related thereto (the "Bulk Sale Liabilities"). If such certificate shall not be so delivered, Seller shall deliver to Buyer and Title Company at the Closing an unconditional indemnification agreement from a person or entity approved by Buyer and Title Company, in form and substance satisfactory to Buyer and Title Company, with respect to the Bulk Sale Liabilities and all costs that Buyer or Title Company may incur in connection therewith, including reasonable attorneys' fees, or at Buyer's option, Seller shall deposit with Title Company at the Closing such amount as Buyer may in good faith require to secure such indemnification obligation, with such escrowed sum to be released only at such time that such Clearance Certificates shall have been delivered to Buyer and Title Company. Buyer's obligation to Close is expressly conditioned upon the Title Company insuring title to the Property without exception for any Bulk Sale Liabilities;

(c) At the Closing, execute and deliver the following:

(i) its special warranty deed to Buyer, in recordable form and otherwise in a form satisfactory to Buyer and Title Company, conveying to Buyer good and marketable fee simple title in and to the Fee Simple Property, together with all rights of Buyer in and to the Appurtenant Property required by this Agreement, all free and clear of all liens, encumbrances, exceptions and other matters, except for the Permitted Exceptions, provided that, if Seller shall not have acquired the Seller Contract Property at or prior to the Closing, then Seller's deed shall be limited to the Seller-Owned Property and Buyer shall have the right

to require that the deed from the Contract Sellers be made directly to Buyer in a form meeting the foregoing requirements;

(ii) its certificate confirming as of the Closing the representations and warranties contained in this Agreement;

(iii) its FIRPTA Certificate (and, if Seller shall not have acquired the Seller Contract Property at or prior to the Closing, then unless the Contract Sellers shall not deliver such a certificate for Buyer's benefit, Seller shall indemnify Buyer against any liability, loss, cost or expense it may incur relating to the matters to which such certificate is designed to address; and

(iv) any and all other documents required by this Agreement or otherwise reasonably requested by Buyer or Title Company to transfer and convey the Property to Buyer and to insure Buyer's title to and rights in the Property as contemplated by this Agreement, including without limitation owner's affidavits, tax receipts and municipal lien letters;

(d) At the Closing, to the extent not theretofore delivered, deliver to Buyer all keys and other means of access, including passcodes, relating to any portion of the Property, and all manuals, instructions, maintenance or repair records and other documentation relating to any or all of the Property.

11. Prorations and Closing Expenses.

(a) Buyer and Seller shall each pay one-half (1/2) of all real estate conveyance or transfer tax due and payable in connection with the transactions contemplated by this Agreement, provided that if the Contract Seller Property shall be conveyed directly by the Contract Sellers to Buyer, Seller shall nevertheless be responsible to pay any transfer tax payable by the purchaser under the Seller Contract.

(b) Buyer shall pay the cost of recording the deed or deeds conveying the Property to Buyer.

(c) Seller shall be responsible for all utility service with respect to the Property prior to the Closing Date, and Buyer shall be responsible for such service from and after the Closing Date.

12. Possession.

Seller shall grant Buyer exclusive possession and right of possession of the Property at the Closing, subject only to the Permitted Exceptions.

13. Assignment.

Buyer may transfer or assign this Agreement without the consent of Seller, and upon the assumption of this Agreement by such assignee, Buyer shall be relieved of all obligations under this Agreement.

14. Defaults.

(a) If Seller shall fail to convey or cause to be conveyed the Property when required by this Agreement, then Buyer, as its sole remedy for such default except as hereinafter set forth, shall be entitled to seek either (i) an action for specific performance of this Agreement and the remedies related thereto, or (ii) the return of the Deposit and receipt of liquidated damages in the amount of the Deposit, it being acknowledged that a sum equal to the amount of the Deposit is a reasonable estimation of Buyer's damages as a result of any such failure. Notwithstanding the foregoing, Buyer's remedies shall not be so limited if (1) Seller shall cause or permit any waste to be caused to the Property, (2) Seller shall create or suffer to exist any liens or encumbrances upon the Property or any portion thereof which are not Permitted Exceptions, or (3) Seller shall take any other actions or fail to take any actions which would make specific performance of this Agreement an unavailable, incomplete or impracticable remedy.

(b) In the event Buyer shall fail to comply with or perform any of the material covenants, agreements or obligations to be performed by Buyer under the terms and provisions of this Agreement and such breach, default or failure shall not have been cured or remedied within fifteen (15) days after Buyer shall have received Seller's written notice specifying the nature of such failure, Seller shall be entitled, as its sole remedy, to retain the Deposit as liquidated damages, it being acknowledged that the Deposit is a reasonable estimation of Seller's damages as a result of any such failure..

(c) Formal tender of purchase money is hereby waived.

15. Brokers.

Each party represents and warrants that neither it nor any of its officers, directors, employees or agents, has dealt with, or incurred any liability to, any consultant or broker in connection with the transaction contemplated by this Agreement.

16. Risk of Loss; Condemnation.

(a) In the event of any casualty to the Property prior to the Closing, Buyer shall have the option to (i) terminate this Agreement by notice to Seller and receive back the Deposit, or (ii) acquire the Property pursuant to this Agreement in which event Seller shall assign to Buyer its right to all insurance proceeds payable as a result of such casualty. If Buyer shall elect the option set forth in clause (ii) above, the Purchase Price shall be reduced by the amount of the deductible applicable to Seller's casualty insurance policy and Seller shall cooperate in all respects with Buyer in Buyer's efforts to determine the extent of the recovery available from Seller's insurer. Seller shall keep all insurable improvements constituting a portion of the Property fully insured on a replacement cost basis with a reputable and financially creditworthy insurer licensed to insure such insurance in the Commonwealth of Pennsylvania. In the event of a casualty, Seller shall be obligated to diligently restore the Property to its condition prior to such casualty to the extent required by the terms of any of the leases of the Property or any portion thereof.

(b) In the event of the commencement of condemnation proceedings relating to all or any part of the Property prior to the Closing, Buyer shall have the option to (i) terminate

this Agreement by notice to Seller and receive back the Deposit, or (ii) acquire the Property pursuant to this Agreement in which event Buyer shall have the right to the entire condemnation award or payment in lieu thereof.

17. Notices.

Any notices or other communications which may be permitted or required under this Agreement shall be in writing and shall for all purposes of this Agreement be delivered by national overnight courier service, fax transmission or personal receipted delivery and shall be addressed to Seller and Buyer at their respective addresses set forth above in this Agreement or at such other addresses as either party hereto shall from time to time designate to the other party by notice in writing as provided in this Section. Notwithstanding the foregoing, any notice given by Buyer in the foregoing manner pursuant to Section 4 (Due Diligence Period) or Section 16 (Risk of Loss, Condemnation) shall be deemed to have been given when sent in such manner.

18. Modified Time of the Essence.

If the Closing shall not occur by the date otherwise required by the other terms of this Agreement, then either party shall have the right after such date to declare time to be of the essence of this Agreement by giving written notice to the other party. Such notice shall contain a declaration that time is of the essence and shall fix the time, date and place of final settlement. The date of final settlement may not be sooner than fifteen (15) days, nor later than thirty (30) days, following the effective date of the giving of such notice, and the place shall be in Pittsburgh, Pennsylvania, or if not in Pittsburgh, Pennsylvania, then in accordance with such reasonable escrow arrangements as Buyer and Title Company shall reasonably request.

19. No Waivers, Entire Agreement.

No failure of either party to exercise any power given under this Agreement or to insist upon strict compliance with any obligations specified in this Agreement, and no custom or practice at variance with the terms of this Agreement shall constitute a waiver of any party's right to demand said compliance with the terms of this Agreement.

20. Modifications; Successors and Assigns; Survival.

This Agreement cannot be changed, amended, modified or terminated orally or in any manner other than by a written agreement executed by both parties. This Agreement and each of its provisions shall inure to the benefit of and be binding upon the Seller and Buyer and their respective successors and assigns. The covenants, warranties and representations contained in this Agreement shall survive the Closing.

21. Controlling Law.

This Agreement and all rights and obligations of the parties under this Agreement shall be construed under and according to the laws of the jurisdiction in which the Property is located.

22. Merger.

Notwithstanding any presumption to the contrary, all covenants, conditions, representations and warranties contained in this Agreement shall survive the Closing. There shall be no merger of such matters by the acceptance of the deed and the settlement of the transactions contemplated in this Agreement at the Closing.

23. Attorneys' Fees, Etc.

Should a dispute between the parties arise in this transaction, all costs, including reasonable attorneys' fees, expended by the non-defaulting party incidental to the enforcement of this Agreement or the curing of any defaults hereunder by the other party shall be borne by the party so in default.

24. Multiple Parties.

If either Buyer or Seller shall consist of more than one party, then all references in this Agreement to Buyer or Seller, as applicable, shall apply to each party comprising Buyer or Seller, and the obligations of Buyer or Seller, as applicable, under this Agreement shall be the joint and several obligations of such parties.

25. Recordation.

At the request of Buyer, Seller shall execute such additional documents or instruments as Buyer may reasonably require in order that the same shall be recorded in the public real estate records of the County in which the Property is located, so as to provide public record notice of Buyer's rights under this Agreement.

26. No Presumption.

The parties acknowledge that this Agreement has been freely negotiated by commercially experienced parties and that any presumption against the preparer of this Agreement in connection with the interpretation or construction of this Agreement is inapplicable and is hereby waived by the parties.

27. Multiple Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

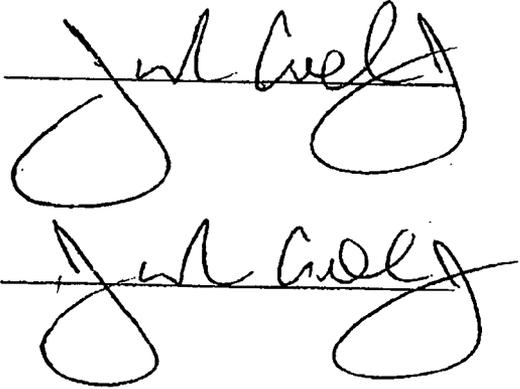
28. Headings.

The headings inserted at the beginning of each Section in this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first above written.

ATTEST/WITNESS:



Aerial F. Keenan

SELLER:

FULLINGTON REAL ESTATE
COMPANY

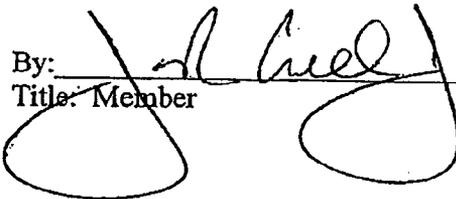
By: Aerial F. Keenan
Title:

FULLINGTON GMC SALES, INC.

By: Aerial F. Keenan
Title:

BUYER:

AIELLO LAND COMPANY

By: 
Title: Member

JOINDER

The undersigned, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, hereby agrees to indemnify, defend and hold Buyer and its affiliates and members (the "Indemnified Parties") harmless from and against any and all liability, damage, loss, cost and expense (including reasonable attorneys' fees incurred in connection with the enforcement of this Joinder or otherwise) incurred by any one or more of the Indemnified Parties by reason of, related to or in connection with the involvement of John Richard Fullington, Jr. or Loretta P. Fullington, his spouse ("Fullington"), in any portion of the Property or the chain of title thereto, including without limitation any claim, question or exception that may be made or raised as to any ongoing right, title or interest of Fullington in the Property or any portion thereof, whether or not true or accurate. The undersigned hereby warrants and represents to Buyer (i) that the foregoing Purchase and Sale Agreement has been duly and validly authorized, executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, (ii) Seller owns all right, title and interest of the "Buyer" under the Seller Contract, and (iii) that the Seller Contract, in the form referred to in the Purchase and Sale Agreement, is in full force and effect and none of the terms thereof has been amended, supplemented or waived.

THE FULLINGTON AUTO BUS
COMPANY, a Pennsylvania corporation

By Aerial J. Keiser
Title:

Date: 12/27/04

EXHIBIT A

Seller Contract

(A0166125.4)



AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS AMENDMENT as of the 24th day of February, 2005, by and between FULLINGTON REAL ESTATE COMPANY and FULLINGTON GMC SALES, INC. (collectively, "Seller"), both Pennsylvania corporations, with an address at 316 East Cherry Street, Clearfield, PA 16830, and AIELLO LAND COMPANY ("Buyer"), a Pennsylvania limited liability company, with an address c/o James R. Aiello, Jr., 316 Lehigh Street, Pittsburgh, PA 15232.

WITNESSETH:

WHEREAS, Seller and Buyer entered into a Purchase and Sale Agreement (the "Agreement"), dated as of December 27, 2004, with respect to certain real property situate in Lawrence Township, Clearfield County, Pennsylvania;

WHEREAS, Seller and Buyer desire to amend the Agreement upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises, the covenants contained in this Agreement, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are acknowledged by the parties, Seller and Buyer, each intending to be legally bound hereby, covenant and agree as follows:

1. The expiration date of the forty-five (45)-day period referred to in Section 4(c) of the Agreement is hereby revised to be March 31, 2005, and the Closing Date, subject to the terms and conditions of the Agreement, shall be within forty-five (45) days after the expiration of the Due Diligence Period.

2. Except as amended hereby, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first above written.

[SIGNATURES ON FOLLOWING PAGE]

ATTEST/WITNESS:

Karla Anderson

Karla Anderson

SELLER:

FULLINGTON REAL ESTATE
COMPANY

By: *Aerial J. Jensen*
Title: President

FULLINGTON GMC SALES, INC.

By: *Aerial J. Jensen*
Title: President

BUYER:

AIELLO LAND COMPANY

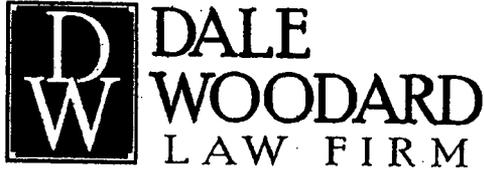
By: *J. A. Calk*
Title: Member



James M. Greenfield
Keith M. Pemrick
Brian M. Spaid

Joseph H. Keebler, Jr.

Raymond S. Woodard
(Of Counsel)
Ralph L. Montgomery, Jr.
(Of Counsel)
Robert M. Dale
(1905-1983)



1030 Liberty Street
Franklin, PA 16323-1298
814/432-2181
FAX 814/437-3212

email: pemricklaw@csonline.net
website: www.dalewoodard.com

May 20, 2005

MAY 23 2005

Paul H. Titus, Esquire
Schnader Harrison Segal & Lewis, LLP
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

Re: *J. Richard Fullington, Jr., v. Fullington Auto Bus Company, et al.*
No. 05-565 C.D., Clearfield County

Dear Paul and Tim:

This will confirm that I have granted each of you an indefinite extension of time to plead to the Complaint filed in the above referenced matter. I will review the materials which Paul provided to me yesterday and, after doing so, I will give you my thoughts on how, or if, this matter can be resolved short of full-scale litigation.

I enjoyed meeting each of you, and I appreciate your willingness to work in a spirit of cooperation to see whether this matter can be resolved.

Sincerely yours,

DALE WOODARD LAW FIRM

KMP/cnb

By

A handwritten signature in black ink, appearing to read 'Keith M. Pemrick', is written over a horizontal line. Below the line, the name 'Keith M. Pemrick' is printed in a standard font.





File No.: 410001487
Lender Ref: First Commonwealth Bank

**COMMITMENT FOR TITLE INSURANCE
SCHEDULE A**

- 1. **Effective Date:** June 29, 2005
Commitment No.: 410001487A - First Revised
- 2. **Policy or Policies to be Issued:**
ALTA Owner's Policy - 10/17/92
Proposed Insured: Aiello Land Company, L.P., a Pennsylvania limited partnership
Amount: \$2,650,000.00

ALTA Loan Policy - 10/17/92
Proposed Insured: First Commonwealth Bank, its successors and/or assigns
Amount: \$2,500,000.00
- 3. **Title to the Fee Simple or Interest in the land described or referred to in this Commitment is at the effective date hereof vested in:**
Fullington Real Estate Company, a Pennsylvania corporation
- 4. **The land referred to in this Commitment is described in Schedule C:**

Attached hereto and made part hereof.

For Informational Purposes Only:

Lawrence
Clearfield County
Pennsylvania



Authorized Officer or Agent

Lawyers Title Insurance Corporation
One PPG Place
12th Floor ♦ Pittsburgh ♦ Pennsylvania ♦ 15222
Phone: 412-261-6410 ♦ Fax: 412-261-1160

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.
C-Commitment 1966 Revised 7/26/99

File No.: 410001467
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE B - SECTION I REQUIREMENTS

The following are the requirements to be complied with: Instrument(s) satisfactory to us, creating the estate or interest to be insured must be executed, delivered and filed for record:

1. Documents satisfactory to the Company creating the interest in the land and/or the mortgage to be insured must be signed, acknowledged, delivered and recorded:

DEED FROM Fullington Real Estate Company, a Pennsylvania corporation to Aiello Land Company, L.P., a Pennsylvania limited partnership

MORTGAGE FROM Aiello Land Company, L.P., a Pennsylvania limited partnership to First Commonwealth Bank
AMOUNT: \$2,500,000.00.

2. This Title Insurance Commitment (the "Commitment") is issued pursuant to the Agreement to Issue Policy contained on the American Land Title Insurance Commitment (1982) front cover form (the "Form") and is subject to the conditions stated therein. Any title search and examination conducted by or for the Company in connection with the issuance of this Commitment is solely for the benefit of the Company. The sole liability of Company and its agent shall arise under and be governed by the Commitment and/or Policy subsequently issued. Neither the Company nor its issuing agent shall be liable to the proposed insured(s) or any other party for any claim of alleged negligence, negligent representation, or any other cause of action in tort in connection with this Commitment. If this copy of the Commitment is not accompanied by the Form, a copy of the Form may be obtained from this Company upon request.
3. Satisfactory evidence should be provided that improvements and/or repairs or alterations thereto are completed; that contractor, sub-contractors, labor and materialmen are all paid; and have released of record all liens or notice of intent to perfect a lien for labor material.
4. Real estate tax receipts must be furnished for the prior three years.
5. Receipts must be furnished for sewer and water charges.
6. MORTGAGES:
 - a) Mortgage from Fullington Real Estate Company to Kishacoquillas Valley National Bank dated December 29, 2004 and recorded January 3, 2005 at Instrument No. 200500063 in the amount of \$1,085,000.00.
7. JUDGMENTS (which must be satisfied of record):
 - a) Household Bank, (SB) vs. Richard J. Fullington and Loretta P. Fullington, filed at 02-1911CD, judgment entered January 29, 2003 in the amount of \$14,251.90 vs. Loretta P. Fullington.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487
Lender Ref: Alleto Land Company, L.P., a Pennsylvania
limited partnership

- b) Citibank (South Dakota) NA vs. Loretta P. Fullington, 03-542-CD, judgment entered June 16, 2003 in the amount of \$16,513.05.
8. Letter must be furnished from the Municipality and/or Municipal Authority showing that there are no unfiled municipal liens or claims.
9. The following requirements apply to the grantor corporation:
- (a) A certificate of good standing for the grantor corporation must be submitted from the state in which it is incorporated.
 - (b) A certified copy of the resolution of the board of directors of the grantor corporation, authorizing the execution of the proposed deed, must be submitted.
 - (c) If the proposed conveyance constitutes a sale of a substantial portion of the assets of the grantor corporation, a certified copy of the resolution of the shareholders of the corporation, authorizing the proposed sale, must be submitted.
 - (d) Taxes settled by the Commonwealth of Pennsylvania against the grantor corporation, if any. A lien certificate will be ordered by our office from the Department of Revenue.
10. **We find the following pending litigation in which must be settled and discontinued of record or the subject property must be released from the litigation:**
- J. Richard Fullington Jr. vs. Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, et al., filed at 05-565, filed on April 20, 2005.**
11. The following requirements apply to the mortgagor limited partnership:
- (a) A copy of the limited partnership agreement and certificate of limited partnership, including any amendments thereto, must be submitted.
 - (b) Unless the limited partnership agreement provides otherwise, all general partners must execute the proposed mortgage.
 - (c) Proof of authority to execute the proposed mortgage must be submitted.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE B - SECTION II EXCEPTIONS

The policy or policies to be issued will contain exception to the following unless the same are disposed of to the satisfaction of the Company.

1. Unrecorded easements, discrepancies or conflicts in boundary lines, shortages in area and encroachments which an accurate and complete survey would disclose.
2. Rights or claims of parties other than the insured in actual possession of any or all of the land.
3. Real estate taxes for the current and prior tax years which are hereafter assessed and are not yet due and payable.
4. Coal and mining rights and all rights and privileges incident to the mining of coal, heretofore conveyed or reserved by instruments of record; rights of surface, lateral or subjacent support; or any surface subsidence.

THIS DOCUMENT DOES NOT INCLUDE OR INSURE THE TITLE TO THE COAL AND THE RIGHT OF SUPPORT UNDERNEATH THE SURFACE OF THE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE AND LEGAL RIGHT TO REMOVE ALL OF 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. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

5. Right of way for utility easement north of S.R. 879 as granted in deed from Harold E. Pentz, et al, to Wal-Mart Stores, Inc., dated April 8, 1994 and recorded in Record Book 1599, page 156 (limited to Parcel 3).
6. The following matters shown on Alta/Acsm Land Title Survey, made by Curry & Associates, dated February 10, 2005, file No. 7804, made for Aiello Land Company (The Survey):
 - (a) 50 foot wide electric and telephone line right of way.
 - (b) Boundary line conflict between insured land (Parcel 3) and property now or formerly of MRAJ, Inc., as depicted on survey as "line established by Hess and Fisher."
7. Rights of the public in and to that portion of the land within the legal limits of Baney Road, Township Road 603, as shown on The Survey.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No. 410001487
Lender Ref: Allelo Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE "C"

All that certain piece or parcel of lands situated in Lawrence Township, Clearfield County, Pennsylvania, being more particularly bounded and described as follows:

Beginning at a point on the center line of Township Road T-603, said point being the northwest corner of David M. Chnupa as described in Instrument Number 200404017, said point being the southwest corner of the parcel herein conveyed and running;

1. thence along the center line of Township Road T-603 and along the eastern line of lands of Linglewood Lodge Inc. north 09 degrees 48 minutes 08 seconds east a distance of 1096.29 feet to a railroad rail (found), said rail being on the southern line of lands of of the Linglewood Lodge Inc.;

2. thence along the southern line of lands of Linglewood Lodge Inc. south 79 degrees 33 minutes 19 seconds east a distance of 2,009.09 feet to a 3/4" rebar (set), said rebar being near the centerline of an old access road over a culvert bridge over an unnamed tributary to Wolf Run, said rebar being the northwest corner of lands of MRAJ, Inc. as described in Instrument Number 199918743;

3. thence along the northwestern line of lands of MRAJ, Inc. the following courses and distances:

a) south 54 degrees 44 minutes 58 seconds west
a distance of 79.07 feet to a point;

b) south 45 degrees 37 minutes 10 seconds west
a distance of 77.13 feet to a point;

c) south 74 degrees 35 minutes 10 seconds west
a distance of 158.79 feet to a point;

d) north 63 degrees 34 minutes 50 seconds west
a distance of 263.18 feet to a point;

e) south 25 degrees 17 minutes 10 seconds west
a distance of 91.55 feet to a point;

f) north 86 degrees 45 minutes 50 seconds west
a distance of 60.40 feet to a point in the center line
of an unnamed tributary to Wolf Run;

4. thence along the western line of lands of MRAJ, Inc. south 22 degrees 27 minutes 44 seconds east a distance of 3.47 feet to a 3/4" rebar (found), said rebar being the northeast corner of Parcel 1 here above described;

5. thence along the northern line of Parcel 1 here above described the following courses and distances:

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487
Lender Refi Aiello Land Company, L.P., a Pennsylvania
limited partnership

- a) south 50 degrees 47 minutes 07 seconds west
a distance of 58.81 feet to a point;
 - b) south 11 degrees 05 minutes 53 seconds east
a distance of 56.14 feet to a point;
 - c) north 82 degrees 51 minutes 53 seconds west
a distance of 87.32 feet to a point;
 - d) south 47 degrees 38 minutes 52 seconds west
a distance of 157.70 feet to a point;
6. thence still along the northern line of Parcel 1 here above and along the northern line of lands of Parcel 2 here above described south 83 degrees 27 minutes 23 seconds west a distance of 64.88 feet to a point;
7. thence still along the northern line of Parcel 2 here above south 30 degrees 55 minutes 23 seconds west a distance of 21.50 feet to a point, said point being the northeast corner of lands of First Commonwealth Financial Company as described in Instrument Number 200321912;
8. thence along the northern line of lands of the First Commonwealth Financial Company and along the center line of the unnamed tributary to Wolf Run the following courses and distances:
- a) south 75 degrees 34 minutes 43 seconds west
a distance of 23.76 feet to a point;
 - b) south 50 degrees 55 minutes 23 seconds west
a distance of 49.80 feet to a point;
 - c) south 61 degrees 25 minutes 39 seconds west
a distance of 36.99 feet to a point;
 - d) south 74 degrees 43 minutes 57 seconds west
a distance of 26.74 feet to a point;
 - e) south 60 degrees 44 minutes 39 seconds west
a distance of 42.87 feet to a point;
 - f) south 34 degrees 38 minutes 19 seconds west
a distance of 26.80 feet to a point;
 - g) south 62 degrees 25 minutes 40 seconds west
a distance of 27.50 feet to a point;
 - h) south 79 degrees 19 minutes 18 seconds west
a distance of 16.91 feet to a point;
 - i) south 60 degrees 37 minutes 17 seconds west
a distance of 40.32 feet to a point;

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

- j) south 66 degrees 48 minutes 25 seconds west
a distance of 26.51 feet to a point;
- k) south 48 degrees 19 minutes 05 seconds west
a distance of 47.55 feet to a point;
- l) south 07 degrees 06 minutes 15 seconds west
a distance of 39.20 feet to a point;
- m) south 50 degrees 37 minutes 16 seconds west
a distance of 39.40 feet to a point;
- n) south 34 degrees 34 minutes 15 seconds west
a distance of 27.44 feet to a point;
- o) south 44 degrees 37 minutes 56 seconds west
a distance of 20.34 feet to a point, said point being
the northeast corner of lands of C.S.P. Investments,
Inc.;

9. thence along the northern line of lands of C.S.P. Investments and along the center line of an unnamed tributary to Wolf Run the following courses and distances:

- a) south 53 degrees 08 minutes 40 seconds west
a distance of 8.11 feet to a point;
- b) south 71 degrees 17 minutes 16 seconds west
a distance of 9.24 feet to a point;
- c) north 50 degrees 08 minutes 41 seconds west
a distance of 28.41 feet to a point;
- d) south 66 degrees 09 minutes 31 seconds west
a distance of 12.37 feet to a point;
- e) south 35 degrees 00 minutes 33 seconds west
a distance of 10.62 feet to a point;
- f) south 00 degrees 21 minutes 50 seconds west
a distance of 37.37 feet to a point;
- g) south 29 degrees 33 minutes 28 seconds west
a distance of 34.46 feet to a point;
- h) south 33 degrees 58 minutes 03 seconds west
a distance of 49.27 feet to a point;
- i) south 00 degrees 14 minutes 10 seconds east

This Commitment Is Invalid unless the Insuring provisions and Schedules A and B are attached.

File No.: 410001487

Lender Ref: Allelo Land Company, L.P., a Pennsylvania
limited partnership

a distance of 16.31 feet to a point;

j) south 16 degrees 55 minutes 15 seconds east
a distance of 41.75 feet to a point;

k) south 51 degrees 08 minutes 54 seconds west
a distance of 22.07 feet to a point;

l) south 07 degrees 38 minutes 13 seconds east
a distance of 18.97 feet to a point;

10. thence still along the northern line of lands of C.S.P. Investments, Inc. and also along the northern line of lands of Keller & Wolfel, Inc. as described in Deed Book 553 page 357 south 05 degrees 27 minutes 34 seconds west a distance of 9.32 feet to a point, said point being in the center line of an unnamed tributary to Wolf Run;

11. thence along the northern line of lands of Keller & Wolfel, Inc. along south 25 degrees 36 minutes 31 seconds west a distance of 236.29 feet to a point, said point being near the center line of Wolf Run, said point also being the northeast corner of lands of David M. Chnupa as described in Instrument Number 200404017;

12. thence along the northern line of lands of David M. Chnupa north 64 degrees 53 minutes 27 seconds west passing through a 5/8" rebar (found) at a distance of 19.86 feet and passing through another 5/8" rebar (found) at a distance of 750.24 feet and continuing on for a total distance of 733.33 feet to a point and place of beginning.

Containing 1,352,862.97 sq. ft. 31.057 acres as shown on plat map prepared by Curry & Associates dated February 3, 2005.

Being designated as tax parcel 123-L07-000-00031.

Being part of the property which J. Richard Fullington, et ux. conveyed to Fullington Real Estate Company by deed dated August 26, 2003 and recorded at Instrument No. 200315359.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.



File No.: 410001487B
Lender Ref: First Commonwealth Bank

**COMMITMENT FOR TITLE INSURANCE
SCHEDULE A**

- 1. **Effective Date:** June 29, 2005
Commitment No.: 410001487B - First Revised
- 2. **Policy or Policies to be Issued:**
ALTA Owner's Policy - 10/17/92
Proposed Insured: Aiello Land Company, L.P., a Pennsylvania limited partnership
Amount: \$2,650,000.00

ALTA Loan Policy - 10/17/92
Proposed Insured: First Commonwealth Bank, its successors and/or assigns
Amount: \$2,500,000.00
- 3. **Title to the Fee Simple or interest in the land described or referred to in this Commitment is at the effective date hereof vested in:**

Legal: Harry K. Maney and Emilie D. Maney, a/k/a Emily D. Maney, formerly husband and wife

Equitable: Fullington GMC Sales, Inc., a Pennsylvania corporation
- 4. **The land referred to in this Commitment is described in Schedule C:**

Attached hereto and made part hereof.

For Informational Purposes Only:

Lawrence Township
Clearfield County
Pennsylvania


Authorized Officer or Agent

Lawyers Title Insurance Corporation
One PPG Place
12th Floor • Pittsburgh • Pennsylvania • 15222
Phone: 412-261-6410 • Fax: 412-261-1160

This Commitment is invalid unless the Insuring provisions and Schedules A and B are attached.
C-Commitment 1966 Revised 7/26/99

File No.: 4100014878
Lender Refi Aiello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE B - SECTION I REQUIREMENTS

The following are the requirements to be complied with: Instrument(s) satisfactory to us, creating the estate or interest to be insured must be executed, delivered and filed for record:

1. Documents satisfactory to the Company creating the interest in the land and/or the mortgage to be insured must be signed, acknowledged, delivered and recorded:

DEED from Harry K. Maney and Emilie D. Maney aka Emily D. Maney and Fullington GMC Sales, Inc., a Pennsylvania corporation to Aiello Land Company, L.P., a Pennsylvania limited partnership.

MORTGAGE from Aiello Land Company, L.P., a Pennsylvania limited partnership to First Commonwealth Bank.
2. This Title Insurance Commitment (the "Commitment") is issued pursuant to the Agreement to Issue Policy contained on the American Land Title Insurance Commitment (1982) front cover form (the "Form") and is subject to the Conditions stated therein. Any title search and examination conducted by or for the Company in connection with the issuance of this Commitment is solely for the benefit of the Company. The sole liability of Company and its agent shall arise under and be governed by the Commitment and/or Policy subsequently issued. Neither the Company nor its issuing agent shall be liable to the proposed Insured(s) or any other party for any claim of alleged negligence, negligent representation, or any other cause of action in tort in connection with this Commitment. If this copy of the Commitment is not accompanied by the Form, a copy of the Form may be obtained from this Company upon request.
3. Satisfactory evidence should be provided that improvements and/or repairs or alterations thereto are completed; that contractor, sub-contractors, labor and materialmen are all paid; and have released of record all liens or notice of intent to perfect a lien for labor material.
4. Proof that all natural persons in this transaction are of full age and legally competent.
5. Proof of identity of parties as set forth in Recital.
6. Real estate tax receipts must be furnished for the prior three years.
7. Receipts must be furnished for sewer and water charges.
8. MORTGAGES:

a) Mortgage from Fullington Real Estate Company and Fullington GMC Sales, Inc. to Kishacoquillas Valley National Bank dated December 29, 2004 and recorded January 3, 2005 at Instrument No. 200500063 in the amount of \$1,085,000.00 (encumbers equitable title).
9. JUDGMENTS: NONE

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 4100014878
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

10. Letter must be furnished from the Municipality and/or Municipal Authority showing that there are no unfiled municipal liens or claims.
11. The following requirements apply to Fullington GMC Sales, Inc.:
 - (a) A certificate of good standing for the grantor corporation must be submitted from the state in which it is incorporated.
 - (b) A certified copy of the resolution of the board of directors of the grantor corporation, authorizing the execution of the proposed deed, must be submitted.
 - (c) If the proposed conveyance constitutes a sale of a substantial portion of the assets of the grantor corporation, a certified copy of the resolution of the shareholders of the corporation, authorizing the proposed sale, must be submitted.
 - (d) Taxes settled by the Commonwealth of Pennsylvania against the grantor corporation, if any. A lien certificate will be ordered by our office from the Department of Revenue.
12. **REISSUE RATE:** A purchaser or mortgagor of real estate or an assignee of a lease from one whose ownership or leasehold interest has been insured with ten (10) years immediately prior to the date of closing of the new transaction, shall be entitled to a reissue rate. **Proof of past insurance is required.**
13. Prior to settlement, search of statewide support lien system to be performed to determine the existence of support arrearages, if any. Company or its Agent to be provided with social security numbers of all natural persons that are a party to the transaction so that this search can be performed by the closing officer no more than 30 days in advance of closing.
14. **NOTICE TO SELLER(S):** You are required by law to provide Company with your correct taxpayer identification number. If you do not provide Company with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.
15. Shown for information:
 - (a) Memorandum of Agreement of Sale from Harry K. Maney and Emille D. Maney, husband and wife, to Richard J. Fullington, Jr. dated February 21, 1995 and recorded in Deed Book Volume 1661, page 13; as assigned to Fullington - GMC Sales, Inc., by assignment recorded June 19, 2002 at instrument No. 200209725.
16. Shown for information:

Pending Action in divorce filed by Harry K. Maney vs. Emille D. Maney, filed at 95-1072-CD.
17. The following requirements apply to the mortgagor limited partnership:
 - (a) A copy of the limited partnership agreement and certificate of limited partnership, including any amendments thereto, must be submitted.

This Commitment is invalid unless the Insuring provisions and Schedules A and B are attached.

File No.: 4100014876
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

(b) Unless the limited partnership agreement provides otherwise, all general partners must execute the proposed mortgage.

(c) Proof of authority to execute the proposed mortgage must be submitted.

18. We find the following pending litigation in which must be settled and discontinued of record or the subject property must be released from the litigation:

J. Richard Fullington Jr. vs. Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, et al., filed at 05-565, filed on April 20, 2005.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487B
Lender Refi Aiello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE B - SECTION II EXCEPTIONS

The policy or policies to be issued will contain exception to the following unless the same are disposed of to the satisfaction of the Company.

1. Unrecorded easements, discrepancies or conflicts in boundary lines, shortages in area and encroachments which an accurate and complete survey would disclose.
2. Rights or claims of parties other than the Insured in actual possession of any or all of the land.
3. Real estate taxes for the current and prior tax years which are hereafter assessed and are not yet due and payable.
4. Coal and mining rights and all rights and privileges incident to the mining of coal, heretofore conveyed or reserved by instruments of record; rights of surface, lateral or subjacent support; or any surface subsidence.

THIS DOCUMENT DOES NOT INCLUDE OR INSURE THE TITLE TO THE COAL AND THE RIGHT OF SUPPORT UNDERNEATH THE SURFACE OF THE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE AND LEGAL RIGHT TO REMOVE ALL OF 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. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

Policy insures against future surface operations on the insured premises.

5. Grant of non-exclusive easement for ingress, egress, etc., over a 24 foot wide paved entrance and driveway set forth in deed from Clinton County Industrial Development Authority, et al. to Beard Oil Company, Inc. dated June 14, 1990 and recorded in Deed Book Volume 1350, page 249, as shown on Alta/Acsm Land Title Survey made by Curry & Associates, dated February 10, 2005, file no. 7804, made for Aiello Land Company (The Survey).
6. The following matters shown on The Survey:
 - (a) 50 foot wide electric and telephone line right of way.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487B
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

SCHEDULE "C"

PARCEL ONE:

ALL that certain parcel of land situate in Lawrence Township, Clearfield County, Pennsylvania, more particularly described as follows:

Beginning at a 3/4" rebar set on the northern right of way line of Pennsylvania State Route SR-0879, said rebar being the southwest corner of lands of James A. and Debris M. Null as described in Deed Book 1893 page 536 the second thereof, said place of beginning being the southeast corner of the parcel herein conveyed and running;

1. thence along the northern right of way line of Pennsylvania State Route SE-0879 south 63 degrees 43 minutes 23 seconds west a distance of 214.61 feet to a point, said point being the point of curve to the state route;

2. thence along still along the northern right of way line SR-0879 along the arc or a circle 35.34 feet having a radius of 7739.44 feet, curving to the left, the chord of said arc running south 63 degrees 35 minutes 33 seconds west a distance of 35.34 feet to a point, said point being the southeast corner of other lands of the Grantors as described in Deed Book 1498 page 285;

3. thence along the eastern line of other lands of the Grantor north 22 degrees 45 minutes 13 seconds west passing through a 5/8" pin (found) at a distance of 514.67 feet and continuing on for a total distance of 520.70 feet to a point in the center line of an unnamed tributary to Wolf Run, said point being on the southern line of lands of the Fullington Real Estate Company as described in Instrument Number 200315359;

4. thence along the southern line of lands of the Fullington Real Estate Company the following courses and distances:

a) north 83 degrees 27 minutes 23 seconds east
a distance of 4.98 feet to a point;

b) north 47 degrees 38 minutes 52 seconds east
a distance of 157.70 feet to a point;

c) south 82 degrees 51 minutes 53 seconds east
a distance of 87.32 feet to a point;

d) north 11 degrees 05 minutes 53 seconds west
a distance of 56.14 feet to a point;

e) north 50 degrees 47 minutes 07 seconds east
a distance of 58.79 feet to a 3/4" rebar (found),
said rebar being on the western line of lands of
the MRAJ, Inc. as described in Instrument Number
199918743;

5. thence along the western line of lands of MRAJ, INC. south 22 degrees 27 minutes 44 seconds

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

File No.: 410001487B
Lender Ref: Aiello Land Company, L.P., a Pennsylvania
limited partnership

east a distance of 262.46 feet to a 3/4" rebar (found), said rebar being the northeast corner of lands of the aforementioned James A. and Debris M. Null as described in Deed Book 1893 page 536;

6. thence along the lands of James A. and Debris M. Null the following courses and distances:

a.) south 64 degrees 56 minutes 57 seconds west
a distance of 50.07 feet to a 3/4" rebar (set);

b) south 23 degrees 28 minutes 51 seconds east
a distance of 320.46 feet to a 3/4" rebar (set) and
place of beginning.

Containing 3.357 areas and shown on map prepared by Curry and Associates dated February 3, 2005. Bearing based on the northern line of lands of C.S.P. Investments, Inc. as recorded in Deed Book 1892 page 436.

Being designated as Tax Parcel 123-L07-000-00068.

Being the same property which Clinton County Industrial Development Authority and WTBH, Inc., conveyed to Harry K. Maney and Emille D. Maney, husband and wife, by deed dated March 29, 1963 and recorded in Record Book 1517, page 103.

PARCEL TWO:

ALL that certain piece of parcel of land situate in Lawrence Township, Clearfield County, Pennsylvania, being more particularly bounded and described as follows:

Beginning at a point on the northern right of way of Pennsylvania State Route SR-0879, said point being the southwest corner of other lands of the Grantors as described in Deed Book 1661 page 13, Parcel 1, said place of beginning being the southeast corner of the parcel herein conveyed and running;

1. thence along the northern right of way line of Pennsylvania State Route SR-0879 along the arc of a circle 75.00 feet having a radius of 7,739.44 feet, curving to the left, the chord of said arc running south 63 degrees 11 minutes 03 seconds west a distance of 75.00 feet to a 3/4" rebar (set), said rebar being the southeast corner of lands of First Commonwealth Financial Corporation as described in Instrument Number 200321912;

2. thence along the eastern line of land of the First Commonwealth Financial Corporation north 22 degrees 45 minutes 26 seconds west passing through a 3/4" pipe (found) at a distance of 513.50 feet and continuing on for a total distance of 530.00 feet to a point in the center line of an unnamed tributary to Wolf Run, said point being on the southern line of lands of Fullington Real Estate Company as described in Instrument Number 200315359;

3. thence along the southern line of lands of the Fullington Real Estate Company and running near the center line of unnamed tributary to Wolf Run the following courses and distances:

a) north 30 degrees 55 minutes 23 seconds east
a distance of 21.50 feet to a point;

This Commitment is invalid unless the Insuring provisions and Schedules A and B are attached.

File No.: 4100014878
Lender Ref: Allelo Land Company, L.P., a Pennsylvania
limited partnership

b.) North 83 degrees 27 minutes 23 seconds east
a distance of 59.90 feet to a point, said point being
the western line of other lands of the Grantors as
described in Deed Book 1661 page 13, Parcel 1;

4. thence along the other lands of the Grantor south 22 degrees 45 minutes 13 seconds east
passing through a 5/8" pin (found) at a distance of 6.03 feet and continuing on for a total distance
of 520.70 feet to a point and place of beginning.

Containing 0.914 acres as shown on plat map prepared by Curry & Associates dated February 3,
2005. Bearing based on the northern line of lands of C.S.P. Investments Inc. as recorded in Deed
Book 1892 page 436.

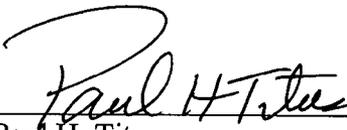
Being designated as tax parcel 123-L07-000-00106.

Being the same property which Harold E. Pentz, et al, conveyed to Harry K. Maney and Emily D.
Maney, husband and wife, by deed dated November 20, 1992 and recorded in Record Book Volume
1498, page 285.

This Commitment is invalid unless the insuring provisions and Schedules A and B are attached.

CERTIFICATION

In accordance with Rule 208.2(d) of the Clearfield County Rules of Civil Procedure, I hereby certify that concurrence in the Emergency Motion to Strike Portion of Prayer for Relief from Count Six of the Complaint and to Bar Conveyance of Property was sought from Keith M. Pemrick, counsel for the Plaintiff, and concurrence was denied.



Paul H. Titus

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Emergency Motion to Strike Portions of Prayer for Relief as to Count Six and to Bar Conveyance of Property was served upon the following counsel by facsimile and first-class mail this 25th day of July, 2005:

Keith M. Pemrick, Esquire
DALE WOODARD LAW FIRM
1030 Liberty Street
Franklin, PA 16323
(814) 437-3212 (Facsimile)

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(814) 765-9596 (Facsimile)



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praecipe for Expedited Disposition was served upon the following counsel by facsimile and first-class mail this 25th day of July, 2005:

Keith M. Pemrick, Esquire
DALE WOODARD LAW FIRM
1030 Liberty Street
Franklin, PA 16323
(814) 437-3212 (Facsimile)

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(814) 765-9596 (Facsimile)



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

J. RICHARD FULLINGTON, JR. :
 :
 vs. : No. 05-565-CD
 :
 FULLINGTON AUTO BUS :
 COMPANY, et al :
 :

ORDER

AND NOW, this 27th day of July, 2005, upon consideration of Defendants' Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar Conveyance of Property filed in the above matter, it is the Order of the Court that argument has been scheduled for the 3rd day of August, 2005, at 1:00 P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED 500 Atty
of 10:25 AM Titus
JUL 28 2005 w/ memo
Re: service

 William A. Shaw
Prothonotary/Clerk of Courts (handed to
J. Zimmer for
Fullington's)



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

PHONE: (814) 765-2641
FAX: 1-814-765-7649

DAVID S. MEHOLICK
COURT ADMINISTRATOR

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator,

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

vs.

TYPE OF PLEADING:
AFFIDAVIT OF SERVICE

FULLINGTON AUTO BUS COMPANY,
et al.,

Defendants.

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

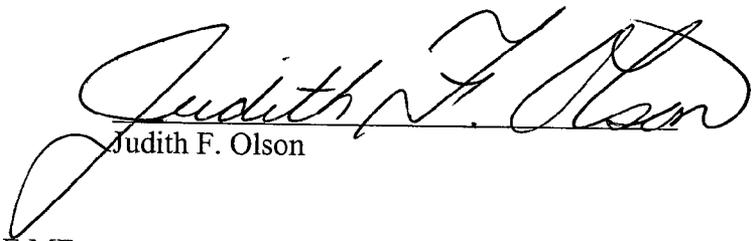
Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: July 29, 2005

FILED
m/11/05
JUL 29 2005
William A. Shaw
Prothonotary/Clerk of Courts

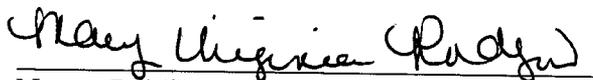
of the Motion and Memorandum of Law to Timothy Durant, Esquire via facsimile on July 25, 2005. Although we do not have a copy of the facsimile confirmation to Keith Pemrick, Esquire, I checked our facsimile records and have established that copies of the Motion and Memorandum of Law were also sent to Mr. Pemrick via facsimile on July 25, 2005. Attached hereto and marked as "Attachment 3" is a copy of the letter hand-delivered to the Court Administrator, along with the pleadings, on July 26, 2005. A copy of this letter, along with copies of the Motion and Memorandum of Law, were also sent to all counsel of record via U.S. mail on July 25, 2005.

FURTHER THE AFFIANT SAYETH NOT.


Judith F. Olson

SWORN TO AND SUBSCRIBED BEFORE ME

this 28th day of July, 2005.


Notary Public

My Commission expires Nov. 29, 2008

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Mary Virginia Rodgers, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Nov. 29, 2008
Member, Pennsylvania Association Of Notaries



July 28, 2005

Judith F. Olson
Direct Dial: (412) 577-5218
Direct Fax: (412) 765-3858
E-mail: jolson@schnader.com

VIA FACSIMILE/U.S. MAIL

Keith M. Pemrick, Esquire
Dale Woodard Law Firm
1030 Liberty Street
Franklin, Pennsylvania 16323

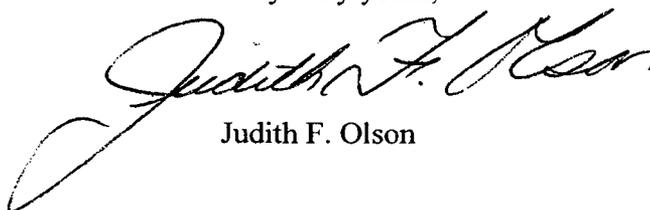
Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830

Re: J. Richard Fullington, Jr. v. Fullington Auto Bus Company, et al.

Dear Messrs. Pemrick and Durant:

Enclosed please find a copy of an Order entered by President Judge Ammerman on July 27, 2005 in which he schedules oral argument on Defendants' Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar Conveyance of Property for **August 3, 2005 at 1:00 p.m.** in Courtroom No. 1 of the Clearfield County Courthouse.

Very truly yours,



Judith F. Olson

JFO:gr

Enclosure

cc: David S. Meholick, Court Administrator (w/enc.) (via Facsimile/U.S. Mail)
Paul H. Titus, Esquire (w/enc.)

ATTACHMENT 1

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

J. RICHARD FULLINGTON, JR. :
: :
vs. : No. 05-565-CD
: :
FULLINGTON AUTO BUS :
COMPANY, et al :

ORDER

AND NOW, this 27th day of July, 2005, upon consideration of Defendants' Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar Conveyance of Property filed in the above matter, it is the Order of the Court that argument has been scheduled for the 3rd day of August, 2005, at 1:00 P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:
/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUL 28 2005

Attest.

William H. [Signature]
Prothonotary/
Clerk of Courts

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	4236	
CONNECTION TEL		18144373212
CONNECTION ID		
ST. TIME	07/28 11:27	
USAGE T	00'48	
PGS. SENT	3	
RESULT	OK	

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700 PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.765.3858 schnadbr.com

Judith F. Olson
412-577-5218
412-765-3858

TELECOPIER TRANSMISSION COVER SHEET

July 28, 2005

SEND TO: Keith M. Pemrick, Esquire
COMPANY: Dale Woodard Law Firm
FAX #: (814) 437-3212
PHONE #: (814) 437-2181

FROM: Judith F. Olson
CLIENT # 3006556.0001
ATTY#: 01320
RE: J. Richard Fullington, Jr. v. Fullington Auto Bus Company, et al.

NUMBER OF PAGES INCLUDING COVER PAGE: 3

COMMENTS:

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 4028
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CONNECTION ID
ST. TIME 07/28 11:26
USAGE T 00'50
PGS. SENT 3
RESULT OK

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700 PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.765.3858 BEHRNADER.COM

Judith F. Olson
412-577-5218
412-765-3858

TELECOPIER TRANSMISSION COVER SHEET

July 28, 2005

SEND TO: Timothy E. Durant, Esquire
COMPANY:
FAX #: (814) 765-9596
PHONE #: (814) 765-1711

FROM: Judith F. Olson, Esquire
CLIENT # 3006556.0001
ATTY#: 01289
RE: J. Richard Fullington, Jr. v. Fullington Auto Bus Company

NUMBER OF PAGES INCLUDING COVER PAGE: 3

COMMENTS:

*** TX REPORT ***

TRANSMISSION OK

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CONNECTION TEL 18147657649
CONNECTION ID
ST. TIME 07/28 11:29
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PGS. SENT 3
RESULT OK

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700, PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.765.3858 schnader.com

Judith F. Olson
412-577-5218
412-765-3858

TELECOPIER TRANSMISSION COVER SHEET

July 28, 2005

SEND TO: David S. Meholick, Court Administrator
Office of the Court Administrator
COMPANY: Forty-Sixth Judicial District of Pennsylvania
FAX #: (814) 765-7649
PHONE #:

FROM: Judith F. Olson
CLIENT # 3006556.0001
ATTY#: 01320
RE: J. Richard Fullington, Jr. v. Fullington Auto Bus
Company, et al.

NUMBER OF PAGES INCLUDING COVER PAGE: 3

COMMENTS:



*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 4224
CONNECTION TEL 18147659596
CONNECTION ID
ST. TIME 07/25 15:00
USAGE T 09'11
PGS. SENT 52
RESULT OK

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700 PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.765.3858 SCHNADER.COM

Paul H. Titus
412-577-5224
412-765-3858

TELECOPIER TRANSMISSION COVER SHEET

July 25, 2005

SEND TO: Timothy E. Durant
COMPANY:
FAX #: 814 765 9596
PHONE #: 814 765 1711

FROM: Paul H. Titus
CLIENT # 3006556-0001
ATTY#: 01282
RE: Motion in Pending Suit by Richard Fullington, Jr.

NUMBER OF PAGES INCLUDING COVER PAGE: 52

COMMENTS:

Tim: Enclosed for your information is a copy of a motion and supporting papers which we are filing seeking to strike portions of the complaint and to seek relief on an expedited basis to free the property being sold from any claim in the pending suit.

Regards, Paul



July 25, 2005

Paul H. Titus
Direct Dial 412-577-5224
Direct Fax 412-577-5194
E-mail: ptitus@schnader.com

Mr. David F. Meholick
Court Administrator
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, Pennsylvania 16830

Re: ***J. Richard Fullington, Jr.***
v. Fullington Auto Bus Company, et al.
No. 05-565, Civil Action - Law

Dear Mr. Meholick:

I'm having the following papers delivered to your office in the above-referenced case:

- (1) Emergency Motion to Strike Portions of Prayer for Relief From Count Six of Complaint and To Bar Conveyance of Property;
- (2) Memorandum of Law in Support of Emergency Motion to Strike Portions of Prayer For Relief From Count Six of Complaint and To Bar Conveyance of Property; and
- (3) Praecipe for Expedited Disposition.

I am also enclosing an extra courtesy set of these papers for the convenience of the Court. I previously conferred with Keith M. Pemrick by telephone and had requested that his client withdraw any claim to conveyance of the property and he informed me that his client would not consent to do so. I telephoned his office today to inform him of the presentation of the motion and left a message on his voicemail. I have not heard back from him as of the time that I am preparing this letter.

As I indicated in my telephone conversation with your office, I will be unavailable a substantial portion of tomorrow and the next day due to my required attendance in Federal Court. My partner, Judith Olson, whose telephone number is (412) 577-5218, is fully aware of these matters and can be consulted on any issue relating to these motions, including scheduling a telephonic conference with Court and counsel.

ATTACHMENT 3

Schnader Harrison Segal & Lewis LLP

NEW YORK PENNSYLVANIA CALIFORNIA WASHINGTON, DC NEW JERSEY

Mr. David F. Meholick

July 25, 2005

Page 2

The courtesies of your office are appreciated.

Very truly yours,



Paul H. Titus

PHT:at

Enclosures

cc: Keith M. Pemrick, Esq. (w/encls.)

Timothy E. Durant, Esq. (w/encls.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Affidavit of Service was served upon the following counsel by first-class mail this 28th day of July, 2005:

Keith M. Pemrick, Esquire
DALE WOODARD LAW FIRM
1030 Liberty Street
Franklin, PA 16323

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

A handwritten signature in black ink, appearing to read "Judith F. Mason". The signature is written in a cursive style with a large, sweeping initial "J" and a long, horizontal flourish extending to the right.

CA

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

J. RICHARD FULLINGTON, JR. :

-vs-

: No. 05-565-CD

FULLINGTON AUTO BUS COMPANY :

O R D E R

NOW, this 4th day of August, 2005, it is the ORDER of this Court that the parties be present at 9:00 a.m. on Tuesday, August 23, 2005, Courtroom No. 1, Clearfield County Courthouse, to present evidence and testimony relative the Defendant's Emergency Motion to Strike Portions of Prayer for Relief and to Bar Conveyance of Property. The Plaintiff shall be present at that time, along with counsel for both parties. The parties shall have available such witnesses and documents as they deem necessary to present to the Court.

BY THE COURT,

Judge J. Armentrout

President Judge

FILED
0110:116BN
AUG 05 2005

Attys: Dewart
Perrick
Titus

William A. Shaw
Prothonotary/Clerk of Courts

CA

J. RICHARD FULLINGTON, JR.,

Plaintiff,

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

) IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA

) Civil Action -- Law

) Number 05 - 565 C.D.

) Type of Pleading:
) Motion for Continuance

) Filed on Behalf of:
) Plaintiff

) Counsel of Record for this Party:
) Keith M. Pemrick
) Supreme Court I.D. No. 30322

) DALE WOODARD LAW FIRM
) 1030 Liberty Street
) Franklin, Pennsylvania 16323
) Telephone: (814) 432-2181
) Facsimile: (814) 437-3212

FILED

AUG 19 2005

01:11:50/2
William A. Shaw

Prothonotary/Clerk of Courts

no c/c

J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – 565 C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

MOTION FOR CONTINUANCE

NOW comes the plaintiff, through his undersigned counsel, and moves your Honorable Court to continue the hearing scheduled for August 23, 2005, and in support thereof states as follows:

1. On July 26, 2005, counsel for the plaintiff was served with defendants' Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar Conveyance of Property.
2. Neither plaintiff nor his counsel was aware, prior to receipt of defendants' Emergency Motion on July 26, 2005, that the defendants had entered into a Purchase and Sale Agreement for a parcel or parcels of property which are the subject of plaintiff's Complaint.
3. Thereafter, the Court scheduled argument on the Emergency Motion for August 3, 2005.

4. After entertaining argument and meeting with counsel on August 3, 2005, the Court scheduled an evidentiary hearing on defendants' Emergency Motion for August 23, 2005.

5. After learning that an evidentiary hearing on the Emergency Motion would be held, the plaintiff contacted several real estate appraisers in an attempt to have the property which is the subject of defendants' Emergency Motion appraised prior to the August 23 hearing.

6. The plaintiff was not able to find an appraiser who could appraise the property on such short notice, but has secured a commitment from Richard J. Provost to appraise the real estate within 45-60 days.

7. Attached hereto and now by reference incorporated herein as Exhibit 1 is an August 15, 2005, letter from Mr. Provost regarding appraisal of the subject property.

8. The plaintiff believes that evidence of the value of the subject real estate is relevant and important to the issue to be decided by the Court on August 23, and that his ability to present his case in opposition to the Emergency Motion will be prejudiced if he is unable to present expert testimony at that time.

9. The defendants have alleged in their Emergency Motion that they entered into a Purchase and Sale Agreement regarding the subject property on December 27, 2004, and that they entered into an Amendment to Purchase and Sale Agreement on or about February 24, 2005.

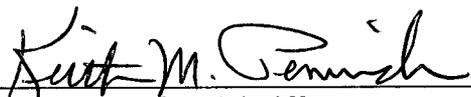
10. Exhibit 3 to the Emergency Motion is a copy of a Commitment for Title Insurance which has an effective date of June 29, 2005, which placed the defendants on notice that the property which is the subject of the defendants' Emergency Motion must be released from this litigation before a title commitment would be issued.

11. The plaintiff filed his Complaint on or about April 20, 2005, and it was served on Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company and Aerial Fullington Weisman on April 21, 2005.

12. The defendants' Emergency Motion was filed approximately 96 days after the plaintiff's Complaint was served on Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company and Aerial Fullington Weisman, and twenty-six (26) days after the effective date of the Commitment for Title Insurance which put the defendants on notice regarding the cloud on the title of the property which is the subject of their Emergency Motion.

WHEREFORE, the plaintiff moves your Honorable Court to continue the hearing from August 23, 2005, to a date which will permit his real estate appraiser to complete an appraisal of the subject property.

DALE WOODARD LAW FIRM

By 
Attorneys for Plaintiff

Provost Real Estate Appraisers

**Residential - Commercial - Industrial
State Certified General and Residential Appraisers
302 East Pine Street - Clearfield, Pa. 16830
(814) 765 5252 - Fax (814) 765 2425**

**Richard J. Provost, IFAS
General
Senior Certified Appraiser**

**Nancy M. Jacobson
General
Certified Appraiser**

**Sonya L. Flanagan
Residential
Certified Appraiser**

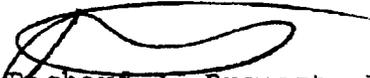
August 15, 2005

Richard Fullington
504 Sabula Outing Club Rd.
DuBois, PA 15801

Dear Mr. Fullington:

Please be advised, I can complete a real estate appraisal of approximately 32 acres of land in Lawrence Township, Clearfield County Pa in 45 to 60 days.

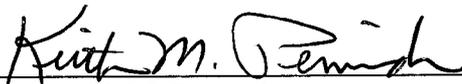
Thank you for the opportunity to be of service.


Richard J. Provost, IFAS

J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – 565 C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

CERTIFICATION

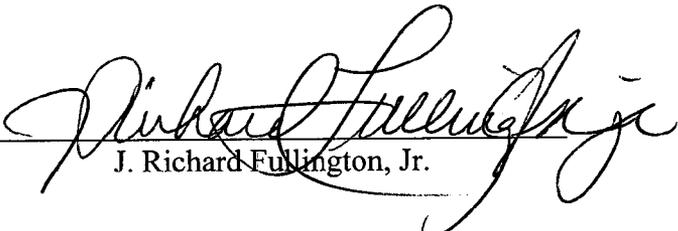
The undersigned, counsel for the plaintiff, certifies that concurrence in the within Motion for Continuance has been sought from counsel for the defendants. Counsel for J. Richard Fullington, Sr., has no objection to the requested continuance. Concurrence has been denied by counsel for the remaining defendants.



 Keith M. Pemrick

VERIFICATION

The undersigned, J. Richard Fullington, Jr., plaintiff in the foregoing action, states that the facts averred in the foregoing Motion for Continuance are true and correct to the best of his knowledge, information and belief. The undersigned further states that he understands that false statements therein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.


J. Richard Fullington, Jr.

Date: August 18, 2005

J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – 565 C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

ORDER

AND NOW, this _____ day of _____, _____, upon consideration of the foregoing motion, it is hereby ordered that:

- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
- (2) the respondent shall file an answer to the motion within _____ days of this date;
- (3) the motion shall be decided under Pa. R.C.P. 206.7;
- (4) depositions and all other discovery shall be completed within _____ days of this date;
- (5) an evidentiary hearing on disputed issues of material fact shall be held on _____, in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. _____;
- (6) argument shall be held on _____, in Courtroom No. _____ of the Clearfield County Courthouse; and
- (7) notice of the entry of this order shall be provided to all parties by the moving party.

BY THE COURT

J.

J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – 565 C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

ORDER

AND NOW, this _____ day of August, 2005, upon consideration of the within Motion for Continuance, it is ORDERED THAT the hearing scheduled for August 23, 2005, at 9:00 a.m., is continued to _____, 2005, at _____ m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT

J.

CERTIFICATE OF SERVICE

I, Keith M. Pemrick, Esquire, hereby certify that true and correct copies of the foregoing Motion for Continuance have been served via facsimile and U.S. first-class mail, postage prepaid, this 18th day of August, 2005, to counsel of record, as follows:

Paul H. Titus, Esquire
Judith Olsen, Esquire
Schnader Harrison Segal & Lewis, LLP
Fifth Avenue Place, Suite 2700
Pittsburgh, PA 15222-3001
Facsimile: (412) 765-3858

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Facsimile: (814) 765-9596

DALE WOODARD LAW FIRM

By Keith M. Pemrick
Attorneys for Plaintiff

CA

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

J. RICHARD FULLINGTON, JR.,
Plaintiff

vs.

NO. 05-565-CD

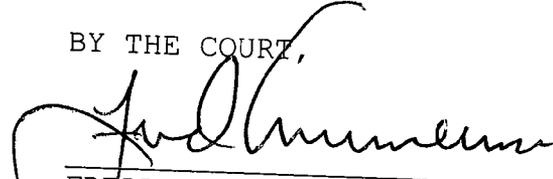
FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE COMPANY;
J. RICHARD FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,
Defendants

*
*
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*
*
*
*
*

ORDER

NOW, this 19th day of August, 2005, upon the Court's review of Plaintiff's Motion for Continuance, it is the ORDER of this Court that said request by Plaintiff for a continuance be and is hereby **DENIED**.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
0110:01:01
AUG 22 2005

@
icc
Amy Penrick
Titus
Darant

William A. Shaw
Prothonotary/Clerk of Courts

CA

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

J. RICHARD FULLINGTON, SR. :
VS. : NO. 05-565-CD
FULLINGTON AUTO BUS COMPANY :

ORDER

NOW, this 23rd day of August, 2005, following the conclusion of taking of testimony relative the Defendant's motion, it is the ORDER of this Court that counsel for the Defendant have no more than seven (7) days from this date in which to supply the Court with appropriate brief and that the Plaintiffs will have no more than fifteen (15) days from this date in which to supply the Court with appropriate brief.

BY THE COURT,

Frederick J. Cunningham

President Judge

FILED
DID:1581
AUG 25 2005
William A. Shaw
Prothonotary/Clerk of Courts
100 Atty: Pennick
Titus
Durant

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

J. RICHARD FULLINGTON, JR.
Plaintiff

vs.

FULLINGTON AUTO BUS COMPANY,
Defendant

*
*
*
*
*

NO. 05-565-CD

FILED
012:02/01
SEP 09 2005

William A. Shaw
Prothonotary/Clerk of Courts

Attys
Penrick
Titus
Durant
OK

ORDER

NOW, to-wit, this 7th day of September, 2005, upon consideration of the Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar Conveyance of Property and following evidentiary hearing thereon, it is hereby ORDERED, ADJUDGED and DECREED that said Motion be and is hereby GRANTED. It is further ORDERED as follows:

1) Subsection (b) to paragraph 76 of the Plaintiff's Complaint, and subsection (b) of the Wherefore Clause to Count Six are hereby STRICKEN WITH PREJUDICE;

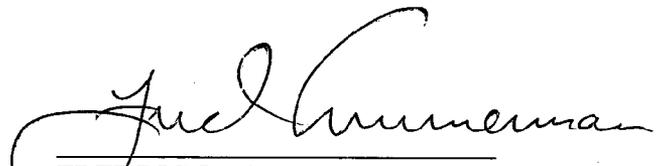
2) The Plaintiff is barred from seeking to have conveyed to him or anyone else any property being sold by Fullington Real Estate Company and Fullington GMC Sales, Inc. to Aiello Land Company, LLC pursuant to the Purchase and Sale Agreement of December 27, 2004, as amended on February 24, 2005; and

3) The Plaintiff is barred from interfering in any way in the sale of the property being sold by Fullington Real Estate Company and Fullington GMC Sales, Inc. to Aiello Land Company, LLC pursuant to the Purchase and Sale Agreement of December 27, 2004, as amended on February 24, 2005; and

4) The Defendants, through Defense Counsel, are directed to maintain in an escrow account the amount of \$145,000.00 from the proceeds to be obtained from the sale in question.

This amount equals the appraised value of the premises described as Parcel 31. The escrow funds shall not be released without order of the Court, and are being held relative any claim the Plaintiff may make for damages concerning the said Parcel 31.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – 565 C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

MOTION TO WITHDRAW AS COUNSEL

The undersigned, Keith M. Pemrick, Esquire, moves your Honorable Court for leave to withdraw as counsel for J. Richard Fullington, Jr., in the above captioned action, and in support thereof states as follows:

1. The undersigned is counsel of record for the plaintiff in the above captioned action.
2. Upon mutual agreement between the undersigned and the plaintiff, the undersigned desires to withdraw his appearance as counsel for the plaintiff.
3. Attached hereto is a Consent to the withdrawal of appearance signed by the plaintiff.

WHEREFORE, the undersigned moves your Honorable Court for leave to withdraw his appearance as counsel for the plaintiff in the above captioned action.

DALE WOODARD LAW FIRM

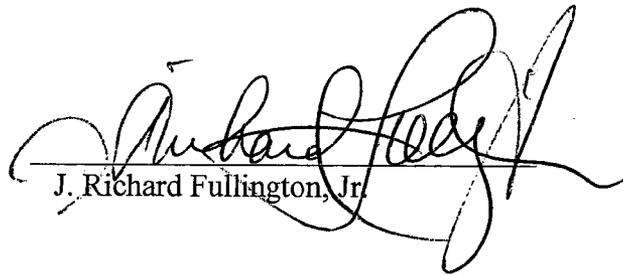
By 
Keith M. Pemrick

J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – 565 C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

CONSENT

The undersigned, the plaintiff in the above captioned action, hereby consents to the withdrawal of Keith M. Pemrick, Esquire, and the Dale Woodard Law Firm, as my counsel in this case.

Date: 10/5/, 2005


 J. Richard Fullington, Jr.

J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – 565 C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

ORDER

AND NOW, October 21, 2005, upon consideration of the within Motion and the Plaintiff's consent thereto, it is HEREBY ORDERED that:

1. The Motion is granted.
2. The appearances of Keith M. Pemrick, Esquire, and the Dale Woodard Law Firm as counsel for the plaintiff are withdrawn.

BY THE COURT

Fredric J. Ammerman

Fredric J. Ammerman
President Judge

FILED 2cc
013:51/AM Amy Pemrick
OCT 21 2005

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Keith M. Pemrick, Esquire, hereby certify that true and correct copies of the foregoing Motion to Withdraw Appearance have been served via U.S. first-class mail, postage prepaid, this 18th day of October, 2005, as follows:

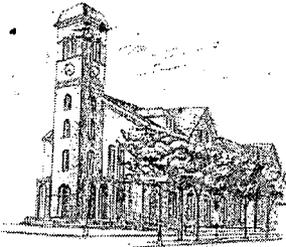
Paul H. Titus, Esquire
Judith Olson, Esquire
Schnader Harrison Segal & Lewis, LLP
Fifth Avenue Place, Suite 2700
Pittsburgh, PA 15222-3001

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

J. Richard Fullington, Jr.
504 Sabula Outing Club Road
DuBois, PA 15801



Keith M. Pemrick



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

J. RICHARD FULLINGTON, JR.,

Plaintiff,

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

) IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA

)
)
) Civil Action – Law

)
)
) Number 05 – 565 C.D.

)
)
) Type of Pleading:
) Praecipe to Withdraw Appearance

)
)
) Keith M. Pemrick
) Supreme Court I.D. No. 30322

)
)
) DALE WOODARD LAW FIRM
) 1030 Liberty Street
) Franklin, Pennsylvania 16323
) Telephone: (814) 432-2181
) Facsimile: (814) 437-3212

FILED No CC
m/4:00/BN Copy to CIA
OCT 31 2005

William A. Shaw
Prothonctary/Clerk of Courts

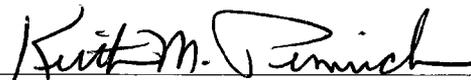
J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – 565 C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

PRAECIPE TO WITHDRAW APPEARANCE

To: William A. Shaw, S., Prothonotary

Per the Order entered in this case on October 21, 2005, please withdraw the appearance of the undersigned as counsel for J. Richard Fullington, Jr., in the above captioned action.

DALE WOODARD LAW FIRM



Keith M. Pemrick
 1030 Liberty Street
 Franklin, Pennsylvania 16323-1298
 Telephone: (814) 432-2181
 Facsimile: (814) 437-3212

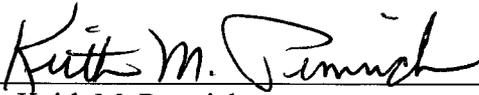
CERTIFICATE OF SERVICE

I, Keith M. Pemrick, Esquire, hereby certify that true and correct copies of the foregoing Praecepto to Withdraw Appearance have been served via U.S. first-class mail, postage prepaid, this 27th day of October, 2005, as follows:

J. Richard Fullington, Jr.
504 Sabula Outing Club Road
DuBois, PA 15801

Paul H. Titus, Esquire
Judith Olson, Esquire
Schnader Harrison Segal & Lewis, LLP
Fifth Avenue Place, Suite 2700
Pittsburgh, PA 15222-3001

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830



Keith M. Pemrick

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

v.

TYPE OF PLEADING:
ANSWER, NEW MATTER AND
COUNTERCLAIMS

FULLINGTON AUTO BUS COMPANY;
FULLINGTON TON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

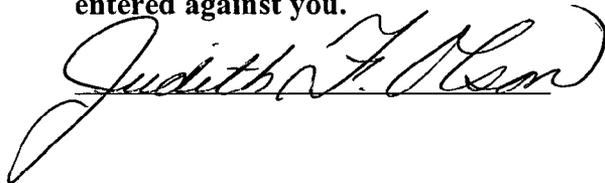
FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

NOTICE TO PLEAD

To Plaintiff:

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



Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: February 9, 2006

FILED

0 11:32 a.m. GK
FEB 09 2006

2 cc TO ATTY

William A. Shaw
Prothonotary/Clerk of Courts



F. Fullington, that General Motors Corporation (“GMC”) required him to hold the majority of the voting shares of GMC Sales, even though GMC had no such requirement and Plaintiff knew that GMC had no such requirement;

(c) Based upon information and belief, Defendants admit the averments contained in paragraph 1(c) of the Complaint;

(d) Based upon information and belief, Defendants admit the averments contained in paragraph 1(d) of the Complaint. By way of further response, Defendants state that the Arrowhead Restaurant building was purchased in or about 1994 through a loan obtained and paid for by GMC Sales based upon representations made by Plaintiff that the location was to be the site of GMC Sales’ future car dealership; however, it never became the site of the dealership.

2. Based upon information and belief, Defendants admit the averments contained in paragraph 2(a) and (b) of the Complaint.

3. Defendants admit the averments contained in paragraph 3(a) and (b) of the Complaint.

4. Defendants admit the averments contained in paragraph 4(a) and (b) of the Complaint except they deny that at all times material hereto, GMC Sales operated an automobile dealership in Clearfield, Pennsylvania. To the contrary, GMC Sales ceased to operate the automobile dealership in early 2002 as a result of Plaintiff’s illegal activities. In or about February 2002, the dealership franchise was sold to pay off some of the automobiles that were out of trust as a result of Plaintiff’s illegal activities and the remaining cars were repossessed by a creditor and the business ceased to operate in or about March 2002.

5.-6. Defendants admit the averments contained in paragraphs 5(a) and (b) and 6(a) and (b) of the Complaint.

7. Defendants admit the averments contained in paragraphs 7(a), (b) and (d) of the Complaint. Defendants deny as stated the averment contained in paragraph 7(c) of the Complaint that Michael Fullington has been a vice president of FABCO since the 1970's. To the contrary, Michael Fullington has not been a vice president of FABCO at all times since the 1970's.

8. Defendants admit the averments contained in paragraph 8(a)-(d) of the Complaint.

9. Based upon information and belief, Defendants admit the averments contained in paragraph 9(a)-(b) of the Complaint. By way of further response, Defendants state that the Arrowhead Restaurant building was purchased in or about 1994 through a loan obtained and paid for by GMC Sales' monies based upon representations made by Plaintiff that the location was to be the site of GMC Sales' future car dealership; however, the site never became the dealership.

10. Defendants admit the averments contained in paragraph 10 of the Complaint.

11. Defendants admit in part and deny in part the averments contained in paragraph 11 of the Complaint. Defendants admit that, in 1978, Plaintiff was the President of and a 33 1/3% shareholder in GMC Sales. Defendants deny that Plaintiff became the owner of a majority of the voting shares of GMC Sales in June 1994. To the contrary, an agreement between Plaintiff, his father, J. Richard Fullington, Sr., and his mother, Mildred F. Fullington, was executed on or about August 20, 1994 pursuant to which Plaintiff obtained a majority of the voting shares. By way of further response, Defendants state that Plaintiff fraudulently became the owner of a majority of the voting shares of GMC Sales as a result of intentional misrepresentations.

12. Defendants admit in part and deny in part the averments contained in paragraph 12 of the Complaint. Defendants admit that the Plaintiff worked for FABCO from 1975 to 2001

and held the title of vice president. By way of further response, Defendants state that, even though he did not have the official title of President of FABCO, Plaintiff acted as the President and was in charge of the day-to-day operations of FABCO until he was incarcerated for the second time in August 2002. Defendants further admit that the Plaintiff was never a shareholder of FABCO. Defendants deny that the Plaintiff was the general manager of FABCO at the conclusion of his employment. To the contrary, Plaintiff was never the general manager of FABCO.

13. Defendants admit the averments contained in paragraph 13 of the Complaint.

14. The Defendants deny in part and admit in part the averments contained in paragraph 14 of the Complaint. It is denied as stated that FABCO and GMC Sales routinely and frequently collaborated on business matters. To the contrary, each company operated separately although they did enter into inter-corporate transactions on different occasions. It is admitted that the Fullington family treated FABCO and GMC Sales as inter-related and affiliated companies.

15. Defendants admit in part and deny in part the averments contained in paragraph 15 of the Complaint. It is admitted that vehicles and real estate were purchased by GMC Sales and then leased to FABCO. It is denied that this was part of a business plan. It is further denied that the Fullington family financed the purchase of vehicles and real estate through GMC Sales. To the contrary, GMC Sales obtained loans to finance the purchase of vehicles and real estate. By way of further response, Defendants state that Plaintiff was the individual at GMC Sales who directed that the loans were to be obtained, often without the involvement of the other members of the Fullington family. It is further denied that the vehicles and real estate were leased to FABCO for no cost. To the contrary, although GMC Sales obtained the loans to purchase

vehicles and real estate that were later leased to FABCO, FABCO made the loan payments. By way of further response, Defendants state that FABCO, at the Plaintiff's direction, not only made the loan payments but it unknowingly paid more than the loan amounts. Unbeknownst to the Defendants, Plaintiff then took the difference between the amounts FABCO paid and the loan payment amounts for his own personal use.

16. Defendants admit in part and deny in part the averments contained in paragraph 16 of the Complaint. It is admitted that Plaintiff and Loretta P. Fullington individually guaranteed a Master Lease entered into by GMC Sales and a Line of Credit extended to GMC Sales. It is denied that Loretta P. Fullington is Plaintiff's wife. To the contrary, she is Plaintiff's former wife. By way of further response, Defendants state that Plaintiff was the individual who decided to enter into the various loans on behalf of GMC Sales which he agreed to personally guarantee. Additionally, various loans obtained by Plaintiff on behalf of GMC Sales were guaranteed by FABCO and Plaintiff's parents, J. Richard Fullington, Sr. and Mildred F. Fullington, at the insistence of Plaintiff. The loan payments were ultimately made by GMC Sales and/or FABCO and not Plaintiff.

17. Defendants admit in part and deny in part the averments contained in paragraph 17 of the Complaint. It is admitted that Plaintiff and his former wife co-signed loans for working capital for both GMC Sales and FABCO. It is denied that this was part of the business plan of the Fullington family. To the contrary, Plaintiff was the driving force behind the various loans that were obtained and he personally used some of the monies that were borrowed by the companies. By way of further response, Defendants state that FABCO and Plaintiff's parents, J. Richard Fullington, Sr. and Mildred F. Fullington, guaranteed various loans at the insistence of

Plaintiff. The loan payments were ultimately made by GMC Sales and/or FABCO, with FABCO monies, and not Plaintiff.

18. Defendants admit in part and deny in part the averments contained in paragraph 18 of the Complaint. Defendants admit that, as of August 2001, GMC Sales was the title owner of at least one hundred forty eight (148) vehicles. Defendants deny the averment that vehicles were leased to FABCO for less than fair market value. To the contrary, FABCO paid all loan payments in full that were used to obtain the vehicles.

19. Defendants admit in part and deny in part the averments contained in paragraph 19 of the Complaint. Defendants admit that, as of December 2001, GMC Sales was the record owner of ten (10) properties located in Blair, Centre, Clearfield and Indiana Counties. Defendants deny the averment that the properties were leased to FABCO for less than fair market value. To the contrary, FABCO paid the loans that were used to obtain the properties.

20. Defendants deny the averments contained in paragraph 20 of the Complaint. It is denied that anything was done by FABCO and/or GMC Sales in furtherance of the business plan of the Fullington family. To the contrary, the Fullington family had no business plan and much if not all of what was done as complained of by Plaintiff in the Complaint, was done entirely by Plaintiff in furtherance of his own personal gain. It is further denied that GMC Sales accumulated significant debt while FABCO was able to generate significant revenue while incurring little or no debt. To the contrary, as a result of Plaintiff's illegal and improper actions done for his own personal gain, both GMC Sales and FABCO incurred significant debt and were on the verge of bankruptcy. Defendants are still working to pay off debt incurred by Plaintiff through GMC Sales and FABCO.

21. Defendants admit the averments contained in paragraph 21 of the Complaint. By way of further response, Defendants state that Plaintiff, as President of GMC Sales and as acting president of FABCO, never submitted any formal lease agreements between GMC Sales and FABCO.

COUNT ONE

J. Richard Fullington, Jr. v. Fullington Auto Bus Company

22. The averments contained in paragraphs 1 through 21 of this Answer are hereby incorporated as if fully set forth herein.

23. Defendants deny as stated the averments contained in paragraph 23 of the Complaint. It is denied as stated that the Plaintiff, his father, his brother and his sister began discussing a buyout of his shares of stock in GMC Sales in 2000. To the contrary, a criminal complaint was filed against Plaintiff in July 2000 for numerous counts of criminal solicitation, forgery, tampering with public records and unsworn falsification to authorities as a result of illegal actions Plaintiff was taking at GMC Sales. As a result, GMC Sales creditors insisted that Plaintiff no longer have independent authority to act on behalf of GMC Sales and wanted some type of reorganization of the company to provide assurances that Plaintiff was no longer in control. As a result, reorganization of GMC Sales, including Plaintiff's divestiture of GMC Sales stock, was required.

24. Defendants deny the averments contained in paragraph 24 of the Complaint. It is denied as stated that Plaintiff's father, brother and sister began pressuring him to exchange his shares of stock in GMC Sales for shares in a new corporation. To the contrary, Plaintiff's father, brother and sister were required by GMC Sales and FABCO creditors to remove Plaintiff from GMC Sales in light of the criminal complaint filed against him by the Commonwealth of

Pennsylvania. As a result, the Defendants retained legal counsel to reorganize the company. As part of the proposed reorganization, a new company was to be formed in or about January 2001 as a subsidiary of GMC Sales and Plaintiff was to exchange his shares in GMC Sales for shares in the new company. Although Plaintiff signed a letter of intent to exchange his shares, he refused to cooperate with the preparation and execution of the documents needed to complete the reorganization.

25. Defendants deny as stated the averments contained in paragraph 25 of the Complaint. It is denied as stated that in or about April 2001, the Plaintiff's father, brother and sister presented an Agreement for Corporate Separation to him. To the contrary, counsel who was retained to reorganize the company in accordance with creditors' demands, provided the paperwork necessary to complete the reorganization to Plaintiff and his father. By way of further response, the Agreement for Corporate Separation provided to Plaintiff was in draft form and never finalized as Plaintiff failed to cooperate with corporate counsel and the Defendants to finalize the Agreement. It is admitted that Exhibit 1 to the Complaint is part of the draft documentation prepared by counsel and provided to Plaintiff and others.

26. Defendants admit in part and deny in part the averments contained in paragraph 26 of the Complaint. It is admitted that Plaintiff refused to sign the Agreement for several months. It is denied that Plaintiff continued to negotiate the terms of the purchase of his shares of stock in GMC Sales with his father, brother and sister. To the contrary, in the summer of 2001, Plaintiff pled guilty to the information filed by the Commonwealth of Pennsylvania and was sentenced to 6 months to 1 year in the Clearfield County Jail. Plaintiff's family members, along with creditors of GMC Sales, continued to be dissatisfied with Plaintiff's operation of the

business and continued to press for a reorganization of the company so as to remove Plaintiff from operation of the business and protect the business and its relationship with its creditors.

27. Defendants deny in part and admit in part the averments contained in paragraph 27 of the Complaint. It is denied that Plaintiff reached an agreement with his father, brother and sister regarding the surrender of his shares of stock in GMC Sales. To the contrary, Plaintiff wrote the document dated January 24, 2002 that is attached to the Complaint as Exhibit 2 (“Supplemental Agreement”) for his own benefit. It was written by Plaintiff, without the knowledge, consent or approval of his brother and sister. It is admitted that Plaintiff apparently signed the Supplemental Agreement as President of GMC Sales and that J. Richard Fullington, Sr. apparently signed the document as President of FABCO. By way of further response, Defendants state that Plaintiff induced his father to sign the Supplemental Agreement and the Agreement was never approved by his other family members.

28. After reasonable investigation, Defendants are without sufficient information to either admit or deny the averments contained in paragraph 28 of the Complaint. Strict proof of same is demanded.

29. Defendants admit the averments contained in paragraph 29(a) and (b) of the Complaint. By way of further response, Defendants state that Plaintiff fraudulently obtained fifty-one (51%) percent of the voting shares of stock in GMC Sales as a result of intentional misrepresentations made to his parents.

30. Defendants admit in part and deny in part the averments contained in paragraph 30 of the Complaint. It is admitted that, as of January 24, 2002, J. Richard Fullington, Sr. held the title of President of FABCO. It is denied that J. Richard Fullington, Sr. owned sixty-one and three-tenths (61.3%) percent of the FABCO shares. To the contrary, he owned fifty-nine (59%)

percent of the FABCO shares. It is admitted that the remainder of the FABCO shares were owned by other parties not involved in FABCO's operation.

31. Defendants deny the averments contained in paragraph 31 of the Complaint. It is denied that as of January 24, 2002 all decisions regarding the operation and management of FABCO were made by J. Richard Fullington, Sr. and did not include FABCO's Board of Directors. To the contrary, although J. Richard Fullington, Sr. had the official title of President and was the only member of the Board of Directors at that time, Plaintiff acted as president with control over the day-to-day operations of FABCO and was the person who made most of the decisions. Further, by way of response, Defendants state that Plaintiff was involved in and unilaterally made various decisions that impacted FABCO to its detriment.

32. Defendants deny the averments contained in paragraph 32(a)-(d) of the Complaint. It is denied that Plaintiff was induced to sign the Agreement and the Supplemental Agreement by his father, brother and sister. To the contrary, Plaintiff wrote the Supplemental Agreement and it was signed without the knowledge or consent of Plaintiff's brother and sister. By way of further response, Defendants state that Plaintiff induced his father to sign the Supplemental Agreement. It is further denied that Plaintiff's father, brother and sister represented and promised anything. To the contrary, the representations and promises contained in the Supplemental Agreement were written by Plaintiff and the Supplemental Agreement was signed without the knowledge or consent of Plaintiff's brother or sister.

33. Defendants deny the averments contained in paragraph 33(a)-(c) of the Complaint. It is denied that Plaintiff took any steps in reliance on the Agreement and the Supplemental Agreement and the representations made by his father, brother and sister. To the contrary, Plaintiff wrote the Supplemental Agreement to benefit himself. By way of further

response, Defendants state that Plaintiff knew he had to resign as an officer and director of GMC Sales and surrender his GMC Sales' stock as creditors were demanding his removal from the business because of his illegal and improper actions.

34. Defendants deny the averments contained in paragraph 34(a)-(d) of the Complaint. It is denied that FABCO breached the Supplemental Agreement in any way. The Supplemental Agreement was written by Plaintiff for his own benefit and he induced J. Richard Fullington, Sr. to sign it. By way of further response, Defendants state that Plaintiff has systematically taken steps to harm FABCO and, as a result of Plaintiff's actions, FABCO has been seriously injured financially.

WHEREFORE, Defendants respectfully request that this Honorable Court enter judgment in favor of Defendant, Fullington Auto Bus Company and against Plaintiff as to Count One of the Complaint and award Defendants attorneys' fees, costs and such other relief as this Court deems appropriate.

COUNT TWO

J. Richard Fullington, Jr.

v.

**Fullington Auto Bus Company, Fullington GMC Sales, Inc., J. Richard Fullington, Sr.,
Michael L. Fullington and Aerial Fullington Weisman**

35. The averments contained in paragraphs 1 through 34 of this Answer are hereby incorporated as if fully set forth herein.

36. Defendants deny as stated the averments contained in paragraph 36 of the Complaint. It is denied as stated that in April 2002 Plaintiff's father, brother and sister, individually and through GMC Sales and FABCO, requested that Plaintiff and his then wife sign Promissory Notes ("Notes") in favor of GMC Sales and FABCO. To the contrary, at that time, Plaintiff and his then wife owed well in excess of a million dollars to FABCO and GMC Sales

and the companies sought to protect their interests by having Plaintiff and his then wife execute the Notes. By way of further response, Defendants state that Plaintiff readily agreed to execute the Notes in favor of the companies.

37. Defendants admit the averments contained in paragraph 37 of the Complaint.

38. Defendants admit in part and deny in part the averments contained in paragraph 38 of the Complaint. It is admitted that Plaintiff and his wife were told that the Notes would be reduced to judgment and that this would protect their assets from being sold by others who had claims against them. It is denied as stated that Plaintiff was told that the judgments would not be enforced. To the contrary, Plaintiff's brother and sister informed Plaintiff and his then wife that they did expect him to repay the sums due to both companies and they did not agree that the Notes could not be enforced.

39. Defendants admit in part and deny in part the averments contained in paragraph 39 of the Complaint. It is admitted that the Notes were executed by Plaintiff and his then wife on or about April 19, 2002. It is denied that Plaintiff and his then wife did not incur any additional debt to FABCO or GMC Sales between January 24, 2002 and April 19, 2002. To the contrary, Plaintiff continued to systematically and routinely take funds from FABCO and GMC Sales during this time.

40. Defendants admit the averments contained in paragraph 40 of the Complaint. By way of further response, the Defendants state that GMC Sales was not able to make timely payments under the Master Lease because of illegal and improper actions taken by the Plaintiff. Because of illegal actions taken by Plaintiff, GMC Sales was forced to sell its GMC franchise so that the money could be used to pay off some of the cars that were out of trust. One of GMC Sales' creditors took possession of the remaining vehicles and GMC Sales closed in March 2002.

Hence, GMC Sales was out of business and unable to make payments on the various loans that it incurred at the direction and insistence of Plaintiff.

41. After reasonable investigation, Defendants are without sufficient information to either admit or deny the averments contained in paragraph 41 of the Complaint. Strict proof of same is demanded.

42. After reasonable investigation, Defendants are without sufficient information to either admit or deny the averment contained in paragraph 42 of the Complaint that the Plaintiff and this then wife were required to sign the Forbearance Agreement. Strict proof of same is demanded. Defendants note that the copy of the alleged Forbearance Agreement attached to the Complaint as Exhibit 5 is not executed. By way of further response, Defendants state that GMC Sales defaulted on its loan payments before it was put out of business and was significantly in debt due to the actions taken by Plaintiff.

43.-44. Defendants admit the averments contained in paragraphs 43 and 44 of the Complaint.

45. Defendants admit in part the averments contained in paragraph 45 of the Complaint. It is admitted that the First Amendment required the Plaintiff and his then wife to sell the property and that the property was listed for sale following the execution of the amendment. By way of further response, Defendants state that the First Amendment speaks for itself. After reasonable investigation, Defendants are without knowledge sufficient to admit or deny the averment that no offers which the Plaintiff considered acceptable were made for the property. Defendants demand strict proof of the same.

46. Defendants admit in part and deny in part the averments contained in paragraph 46 of the Complaint. Defendants admit that an offer was received for \$90,000. However, the

Plaintiff agreed to the sale and signed the deed by demanding that the bank and the Defendants permit him to keep part of the proceeds even though he was not legally entitled to do so.

Specifically, at the closing, Plaintiff refused to sign the papers if he did not receive a portion of the proceeds.

47. Defendants deny the averments contained in paragraph 47 of the Complaint. It is denied that approximately \$28,000 of the net proceeds of the sale of the home was paid to Michael Fullington and Aerial Fullington Weisman for amounts due on the Notes. To the contrary, the proceeds from the sale (minus six thousand eight hundred (\$6,800) dollars which Plaintiff insisted he be paid) were used to pay down debt that was incurred by FABCO and GMC Sales as a result of the actions taken by Plaintiff. The proceeds from the sale were reflected on the books of FABCO and/or GMC Sales as a reduction of the monies owed to the companies by the Plaintiff.

48. Defendants deny the averments contained in paragraph 48 of the Complaint. It is denied that the net proceeds of the sale of the home should have been distributed to the Plaintiff and his then wife and should not have been applied to payment on the Notes. To the contrary, the entire net proceeds of the sale should have been used to pay down debt which was incurred at the insistence and as a result of the actions taken by Plaintiff to the detriment of FABCO and GMC Sales. However, Plaintiff refused to sign the papers at the closing unless he personally received six thousand eight hundred (\$6,800) dollars.

49. After reasonable investigation, Defendants are without sufficient information to either admit or deny the averment contained in paragraph 49 of the Complaint that the Plaintiff and his then wife would not have been required to sign the Forbearance Agreement and the First Amendment to Forbearance Agreement if GMC Sales had not defaulted on the obligations to

PNC Bank. Strict proof of same is demanded. Defendants deny the averment that Plaintiff would not have been required to sell the property. To the contrary, the sale of the property was necessitated by Plaintiff's default on the loan and his breach of the loan covenants. By way of further response, the Defendants state that GMC Sales defaulted on its obligations to PNC Bank (obligations which were incurred as a result of Plaintiff's insistence), because it was forced to go out of business as a result of the illegal actions taken by Plaintiff. As a result of Plaintiff's illegal actions and improper actions taken by Plaintiff to benefit himself personally, GMC Sales was unable to make payments on the millions of dollars of debt incurred by Plaintiff while he was President of GMC Sales. After reasonable investigation, Defendants are without knowledge sufficient to admit or deny the averment that the sale price of the property was approximately \$30,000.00 less than its fair market value. Defendants demand strict proof of the same.

50. The Defendants deny the averments contained in paragraph 50 of the Complaint. It is denied that Plaintiff is entitled to indemnification or indemnity from FABCO, J. Richard Fullington, Sr., or the other guarantors of GMC Sales' obligations for any loss which he sustained as a result of the sale of the property. To the contrary, as set forth in the Counterclaims below, FABCO and GMC Sales have been damaged as a result of the illegal and improper actions taken by Plaintiff and they are entitled to an award from Plaintiff.

WHEREFORE, Defendants respectfully request that this Honorable Court enter judgment in favor of Defendants, Fullington Auto Bus Company, Fullington GMC Sales, Inc., Michael L. Fullington and Aerial Fullington Weisman and against Plaintiff as to Count Two of the Complaint and award Defendants attorneys' fees, costs and such other relief as this Court deems appropriate.

COUNT THREE

J. Richard Fullington, Jr.

v.

J. Richard Fullington, Sr., Fullington Auto Bus Company and Fullington GMC Sales, Inc.

51. The averments contained in paragraphs 1 through 50 of this Answer are hereby incorporated as if fully set forth herein.

52. Defendants deny the averments contained in paragraph 52 of the Complaint. It is denied that FABCO, through Plaintiff's father and with the knowledge of his brother and sister, fraudulently induced Plaintiff to surrender his shares of stock in GMC Sales pursuant to the Separation Agreement and Supplemental Agreement when it had no intention of honoring its obligations. To the contrary, the Separation Agreement was prepared by counsel because GMC Sales' creditors insisted that Plaintiff be removed from GMC Sales and that he no longer have any control over the company. As a result, GMC Sales had to be reorganized and the Separation Agreement was prepared to accomplish the reorganization and to give Plaintiff ownership interest in a new company. The Supplemental Agreement was prepared entirely by Plaintiff who induced his father to sign on behalf of FABCO and without the knowledge or consent of Plaintiff's brother or sister.

53. The Defendants deny the averments contained in paragraph 53 of the Complaint. It is denied that FABCO did not honor its obligations under the terms of the Separation Agreement. To the contrary, it has fulfilled its obligations. It is further denied that FABCO has obligations under the Supplemental Agreement. The Supplemental Agreement was written in its entirety by the Plaintiff who induced his father to sign on behalf of FABCO and without the knowledge or consent of his brother or sister.

54. The averments contained in paragraph 54 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, Defendants deny the averments. It is denied that Plaintiff was fraudulently induced to enter into the Agreement and that he is entitled to rescind the Agreement and receive the value of his shares of stock in GMC Sales. To the contrary, Plaintiff was not induced in any way (either fraudulently or otherwise) to enter into any agreement.

WHEREFORE, Defendants respectfully request that this Honorable Court enter judgment in favor of Defendants, Fullington Auto Bus Company and Fullington GMC Sales, Inc. and against Plaintiff as to Count Three of the Complaint and award Defendants attorneys' fees, costs and such other relief as this Court deems appropriate.

COUNT FOUR

J. Richard Fullington, Jr.

vs.

Michael L. Fullington, Aerial Fullington Weisman and Fullington Real Estate

55. The averments contained in paragraphs 1 through 54 of this Answer are hereby incorporated as if fully set forth herein.

56.-57. Defendants admit the averments contained in paragraphs 56 and 57 of the Complaint.

58. The averments contained in paragraph 58 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, Defendants state that Michael L. Fullington properly exercised his duties at all times.

59. Defendants admit in part and deny in part the averments contained in paragraph 59 of the Complaint. It is admitted that Fullington Real Estate was incorporated on or about August 13, 2003 and that the incorporators were Michael L. Fullington and Aerial Fullington

Weisman. It is denied that the purpose of the incorporation was to create an entity into which title for real estate co-owned by Plaintiff and his then wife could be transferred. To the contrary, Fullington Real Estate was created at the suggestion of FABCO's legal counsel to hold real estate that was owned by FABCO and GMC Sales.

60. Defendants admit in part and deny in part the averments contained in paragraph 60 of the Complaint. It is admitted that on or about August 26, 2003, two (2) deeds were executed by Michael Fullington, with the knowledge of Aerial Fullington Weisman, transferring two (2) parcels of real estate to Fullington Real Estate. It is denied that Plaintiff and his then wife owned the real estate. To the contrary, although the properties were titled in Plaintiff's name, the properties were purchased entirely by funds from FABCO and the properties belonged to FABCO. By way of further response, Defendants state that the transfer was made to protect FABCO and GMC Sales which were owed huge sums of money by Plaintiff.

61. Defendants admit the averments contained in paragraph 61 of the Complaint.

62. After reasonable investigation, Defendants are without knowledge sufficient to either admit or deny the averments contained in paragraph 62 of the Complaint. Defendants demand strict proof of same.

63. Defendants admit the averments contained in paragraph 63 of the Complaint.

64. Defendants deny the averments contained in paragraph 64 of the Complaint. It is denied that the transfers were made in furtherance of a conspiracy between Plaintiff's brother and sister to benefit their company, Fullington Real Estate. To the contrary, the transfer was made in an effort to save FABCO and GMC Sales which were in significant debt due to Plaintiff's actions and to which Plaintiff owed well in excess of \$1 million. By way of further response, Defendants state that the properties at issue were purchased by Plaintiff in his name

and the name of his then wife with monies from FABCO and/or GMC Sales and Plaintiff had no personal ownership interest in the properties.

65. Defendants deny the averments contained in paragraph 65 of the Complaint. It is denied that Fullington Real Estate sold a three acre parcel to First Commonwealth Bank for \$300,000. To the contrary, approximately 3 acres were sold to First Commonwealth Bank for \$271,250.

66. Defendants deny as stated the averments contained in paragraph 66 of the Complaint. It is denied as stated that Fullington Real Estate sold the property identified on Exhibit 9 for \$52,000. To the contrary, the sale price of the property was \$50,000 and the buyer paid an additional \$2,000 in closing costs.

67. Defendants admit in part and deny in part the averments contained in paragraph 67 of the Complaint. It is admitted that Plaintiff did not receive any portion of the proceeds of the sale of the real estate identified on Exhibits 8 and 9. By way of further response, Defendants state that Plaintiff was not entitled to receive any of the proceeds. Defendants deny as stated the averment that Plaintiff "allegedly" owed a debt to FABCO or GMC Sales. To the contrary, there is no question that Plaintiff owed and continues to owe significant monies to the companies. Defendants further deny that Plaintiff was not credited with any portion of the sales prices against debt which he owed to FABCO or GMC Sales. To the contrary, Plaintiff was unknowingly credited with the sales prices. The Defendants later discovered that the Plaintiff purchased the real estate at issue with funds from FABCO and/or GMC Sales; therefore, the real estate belonged to the companies.

WHEREFORE, Defendants respectfully request that this Honorable Court enter judgment in favor of Defendants, Michael L. Fullington, Aerial Fullington Weisman and Fullington Real

Estate Company and against Plaintiff as to Count Four of the Complaint and award Defendants attorneys' fees, costs and such other relief as this Court deems appropriate.

COUNT FIVE

J. Richard Fullington, Jr.

v.

Michael L. Fullington, Aerial Fullington Weisman and Fullington Real Estate

68. The averments contained in paragraphs 1 through 67 of this Answer are hereby incorporated as if fully set forth herein.

69. Defendants admit in part the averments contained in paragraph 69 of the Complaint. It is admitted that outdoor advertising signs were located on the real estate identified on Exhibits 8 and 9. After reasonable investigation, Defendants are without knowledge sufficient to either admit or deny the averment that true and correct copies of the Outdoor Advertising Leases for the said billboards are attached to the Complaint as Exhibits 10 and 11. Defendants demand strict proof thereof. By way of further response, Defendants state upon information and belief that the Plaintiff forged the signature of Loretta Fullington, his former wife, on these Leases.

70. Defendants admit the averments contained in paragraph 70 of the Complaint except they deny that Plaintiff had any rights, title or interest in the Leases. To the contrary, the properties on which the outdoor advertising signs were located belonged to FABCO and/or GMC Sales and any revenue from the Leases rightfully belonged to the companies.

71. Defendants deny the averments contained in paragraph 71 of the Complaint. It is denied that the assignments were made in furtherance of a conspiracy between Plaintiff's brother and sister to benefit their company, Fullington Real Estate. To the contrary, the assignments were made in an effort to save FABCO and GMC Sales which were in significant debt due to

Plaintiff's actions and to which Plaintiff owed well in excess of \$1 million. By way of further response, Defendants state that the properties at issue were purchased by Plaintiff in his name and the name of his then wife with monies from FABCO and/or GMC Sales and, therefore, he had no personal ownership interest in the properties. Any revenue generated from the outdoor advertising signs located on the property belonged to FABCO and/or GMC Sales.

72. Defendants deny the averments contained in paragraph 72 of the Complaint. It is denied that Fullington Real Estate received rental payments under the Outdoor Advertising Leases for the last two (2) years of the term of the Leases in an amount totaling \$39,258.62. To the contrary, FABCO received a payment for one Lease in the amount of \$10,500 and a payment on the other Lease in the amount of \$8,476.68.

73. Defendants deny the averments contained in paragraph 73 of the Complaint. It is denied that the Lease attached as Exhibit 10 was renewed. To the contrary, the Lease was assigned to the buyer of the property when the property was sold. It is further denied that Plaintiff was entitled to receive rental for the sign which is the subject of that lease. To the contrary, Plaintiff was not entitled to receive the rental payments for the signs as the properties on which the signs were located were purchased with funds from FABCO and/or GMC Sales and Plaintiff had no personal ownership interest in the properties. Any revenue generated from the outdoor advertising signs located on the property belonged to FABCO and/or GMC Sales.

WHEREFORE, Defendants respectfully request that this Honorable Court enter judgment in favor of Defendants, Michael L. Fullington, Aerial Fullington Weisman and Fullington Real Estate Company and against Plaintiff as to Count Five of the Complaint and award Defendants attorneys' fees, costs and such other relief as this Court deems appropriate.

COUNT SIX

J. Richard Fullington, Jr.

v.

Michael L. Fullington, Aerial Fullington Weisman and Fullington Real Estate

74. The averments contained in paragraphs 1 through 73 of this Answer are hereby incorporated as if fully set forth herein.

75. Defendants admit the averments contained in paragraph 75 of the Complaint. By way of further response, Defendants state that Plaintiff was not entitled to any consideration for the properties, nor was he entitled to the revenue from the outdoor advertising signs. The properties at issue were purchased with funds from FABCO and/or GMC Sales and Plaintiff had no personal ownership interest in the properties. Further, as he had no ownership interest in the properties, he did not have standing to enter into the outdoor advertising leases and was not entitled to any revenue generated under those leases. Any revenue generated from the outdoor advertising signs located on this property belonged to FABCO and/or GMC Sales.

76. The averments contained in paragraph 76 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, Defendants deny the averments. To the contrary, Plaintiff is not entitled to any relief.

WHEREFORE, Defendants respectfully request that this Honorable Court enter judgment in favor of Defendants, Michael L. Fullington, Aerial Fullington Weisman and Fullington Real Estate Company and against Plaintiff as to Count Six of the Complaint and award Defendants attorneys' fees, costs and such other relief as this Court deems appropriate.

COUNT SEVEN

J. Richard Fullington, Jr.

v.

Michael L. Fullington and Aerial Fullington Weisman

77. The averments contained in paragraphs 1 through 76 of this Answer are hereby incorporated as if fully set forth herein.

78. Defendants deny the averments contained in paragraph 78 of the Complaint. It is denied that Fullington Real Estate was incorporated with the intent of using it as a vehicle to receive title to the real estate. To the contrary, Fullington Real Estate was created at the suggestion of FABCO's legal counsel to hold real estate that was owned by FABCO and GMC Sales.

79. The averments contained in paragraph 79 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, Defendants deny the averments. To the contrary, Michael L. Fullington did not breach any duty to Plaintiff and the transfer of the properties and the assignment of the revenue from the advertising leases were proper.

80. Defendants deny the averments contained in paragraph 80 of the Complaint. It is denied that the actions of Michael L. Fullington and Aerial Fullington Weisman were outrageous and in reckless disregard of the rights and best interests of the Plaintiff. To the contrary, the actions of Michael L. Fullington and Aerial Fullington Weisman were proper at all times and done to protect and save FABCO and GMC Sales which were forced to the brink of bankruptcy because of the improper and illegal actions taken by Plaintiff.

WHEREFORE, Defendants respectfully request that this Honorable Court enter judgment in favor of Defendants, Michael L. Fullington and Aerial Fullington Weisman and against

Plaintiff as to Count Seven of the Complaint and award Defendants attorneys' fees, costs and such other relief as this Court deems appropriate.

NEW MATTER

81. Plaintiff has failed to state a claim upon which relief can be granted.
82. Plaintiff is equitably estopped from seeking relief against the Defendants.
83. Plaintiff's claims are barred due to Plaintiff's fraudulent and illegal actions.
84. Plaintiff's claims are barred by the doctrine of unclean hands.
85. Plaintiff's claims are barred by the doctrine of laches.
86. The Supplemental Agreement, attached to the Complaint as "Exhibit 2", is void or voidable.
87. The Supplemental Agreement is subject to rescission.
88. Plaintiff fraudulently induced the execution of the Supplemental Agreement.
89. The Supplemental Agreement fails for lack of consideration.
90. At all material times hereto, Plaintiff, who was in control of and operated FABCO and GMC Sales, used GMC Sales and FABCO as a source of funds for his own personal use and took steps which placed the companies in jeopardy while he benefited.
91. At Plaintiff's direction, GMC Sales and FABCO borrowed monies from various banks and lending companies. Many of these loans were collateralized by GMC Sales' and FABCO's assets. In addition, Plaintiff's parents, J. Richard Fullington, Sr. and Mildred F. Fullington, were required to give personal guarantees.
92. Although the borrowed funds were obtained by the companies and collateralized by company assets, Plaintiff used the monies borrowed for his own personal use and, on many occasions, never repaid the companies for these funds. In addition to merely taking cash,

Plaintiff used funds which he caused FABCO to borrow to purchase real estate that he titled in his own name, including the properties referenced in the deeds attached to Plaintiff's Complaint as "Exhibits 8 and 9". FABCO paid the loans that were used to buy these properties and Plaintiff never reimbursed FABCO.

93. Plaintiff frequently took money from the accounts of GMC Sales and/or FABCO and did not account for the monies, nor did he repay the amounts taken. For example, on one occasion, Plaintiff took approximately \$90,000.00 from FABCO. When the then accounting manager for FABCO asked Plaintiff to repay the funds, Plaintiff indicated that he would not do so. The funds were never repaid.

94. In addition to taking monies from FABCO, a number of withdrawals were made by Plaintiff from GMC Sales' account for his personal use. These frequent withdrawals were never accounted for, nor were they repaid.

95. In addition to taking funds directly from the bank accounts of FABCO and GMC Sales for his own personal use, Plaintiff employed other means to strip monies from the companies to their detriment and for his own benefit. For example, GMC Sales held title for a building known as the Heilig Meyers Building. This building was purchased with funds obtained from a loan from CSB Bank and the loan was guaranteed by FABCO. All payments on the loan came directly from funds due to FABCO from one of its school district busing contracts. Although the building was titled in the name of GMC Sales and the loan payments were made by FABCO, all rent from tenants of the Heilig Meyers Building went directly to Plaintiff for his personal use.

96. Plaintiff also used FABCO funds to pay a personal loan that he and his then wife obtained from his former in-laws.

97. Additionally, unbeknownst to the Defendants, Plaintiff inflated the monthly loan payments due to GMC Sales' various creditors by GMC Sales. FABCO paid the monthly loan payment amounts to Plaintiff who, in turn, personally profited from the difference between the inflated amount paid by FABCO and the actual amount of the loan payments due to the creditors.

98. As a result of the vast amounts of money that were taken from FABCO and GMC Sales by Plaintiff and the other actions taken by Plaintiff for his own benefit and to the detriment to the companies, FABCO and GMC Sales were in dire financial straights and teetered on the brink of bankruptcy.

99. In addition to taking monies directly from the companies, Plaintiff also committed illegal actions as the President of GMC Sales which resulted in the filing of criminal complaints by the Commonwealth of Pennsylvania.

100. The first criminal complaint was filed in or about July 2000 in which Plaintiff was charged with multiple counts of forgery, tampering with public records, and unsworn falsification to authorities. In light of these criminal charges, creditors demanded that Plaintiff no longer have check signing authority and that he no longer act on behalf of the companies without corporate counsel's involvement.

101. Because of the creditors' demands and in order to save GMC Sales and FABCO, corporate counsel suggested that GMC Sales be reorganized.

102. In February 2001, counsel for FABCO sent a letter to GMC in which permission from GMC to reorganize was sought. The proposed plan of reorganization included the incorporation of a wholly-owned subsidiary which would be formed to operate the dealership business. Following the incorporation of the new subsidiary, Plaintiff would exchange his stock

in GMC Sales for stock in the new subsidiary and Plaintiff would operate the new subsidiary as a new dealership business.

103. Although GMC seemed receptive to the plan of reorganization, Plaintiff refused to execute the documents that were necessary to complete the reorganization.

104. In June 2001, Plaintiff entered a guilty plea to the criminal complaint and was sentenced to a minimum of six (6) months in the Clearfield County Jail. In August 2001, Plaintiff reported to the jail; however, he was on work release and continued to operate GMC Sales and FABCO while serving his sentence.

105. Although he had already pled guilty to a criminal complaint filed against him and was serving a jail sentence, Plaintiff continued to conduct illegal activities while on work release.

106. As a result of these illegal activities, the GMC Sales dealership was sold in or about February 2002. Monies from the sale were used to pay off some of the cars that were out of trust as a result of Plaintiff's illegal actions.

107. By March 2002, the remaining cars and assets of GMC Sales were seized by one of GMC Sales' creditors and the dealership's on-going business was terminated.

108. By early 2002, in light of all that had transpired, Plaintiff knew that he had no choice but to agree to some form of separation from GMC Sales. He did not agree to sign the Agreement for Corporate Separation (a copy of which is attached to Plaintiff's Complaint as "Exhibit 1") until he drafted the "Attachment to Agreement to Sign Stock Over to J. Richard Fullington, Sr." (a copy of which is attached to Plaintiff's Complaint as "Exhibit 2"). Plaintiff induced his father to sign the Supplemental Agreement and it was signed without the knowledge or consent of Michael Fullington or Aerial Fullington Weisman.

109. In April 2002, Plaintiff and his then wife voluntarily signed two (2) promissory notes acknowledging some of the funds that were due and owing to FABCO and GMC Sales. The first note was to repay FABCO \$244,180 (plus interest) (a copy of which is attached to Plaintiff's Complaint as "Exhibit 3") and the second note was to repay GMC Sales \$1,198,494 (plus interest) (a copy of which is attached to Plaintiff's Complaint as "Exhibit 4"). These notes have been reduced to judgments. Plaintiff has never satisfied these judgments.

110. Throughout 2002, FABCO and GMC Sales negotiated forbearance agreements with the various creditors to whom monies were owed by FABCO and GMC Sales. These monies were owed on the various loans that were obtained by Plaintiff. Even though Plaintiff personally guaranteed some of these loans, the Defendants took steps to make arrangements to have the loans repaid by other means as opposed to having the creditors execute on Plaintiff's personal guarantees. These steps were taken by the Defendants to assist Plaintiff and his family.

111. In June 2002, a second criminal complaint was filed against Plaintiff for the illegal activities he conducted at GMC Sales while on work release from the Clearfield County Jail.

112. On June 25, 2002, Plaintiff entered into a plea agreement with respect to the second criminal complaint and he was sentenced to serve a minimum of one (1) year in a Pennsylvania State Correctional Facility. He began serving this sentence on August 27, 2002.

113. By late 2002 and early 2003, the financial situation of FABCO was desperate. FABCO continued to owe large sums of money to various creditors as a result of Plaintiff's actions and it was required to make payments on various loans obtained by Plaintiff for GMC Sales. As GMC Sales was no longer an operating business, FABCO was the only source of funds that could be used to make the payments.

114. By February 2003, FABCO had negative equity and its liabilities were significantly greater than its assets. The vast majority of its loans were in arrears and FABCO faced imminent bankruptcy.

115. The Defendants continued to work with the various creditors to avoid default and involuntary bankruptcy. Had FABCO been forced into bankruptcy, it never would have survived as many of FABCO's busing contracts provided that FABCO's bankruptcy would be a breach of the contracts and FABCO would have lost the contracts had it been forced into bankruptcy.

116. As part of the process to protect creditors and save FABCO and GMC Sales, Fullington Real Estate was formed to hold the real estate properties owned by FABCO and GMC Sales, including the properties that were purchased by loans obtained by FABCO but titled in Plaintiff's personal name. In August 2003, the properties purchased with loans obtained and paid by FABCO which are described in the deeds attached to Plaintiff's Complaint as "Exhibits 8 and 9" were transferred to Fullington Real Estate. These properties were purchased with loans that Plaintiff caused FABCO to obtain and FABCO and/or GMC Sales made all of the payments on these loans. Although Plaintiff did not use personal funds to pay for these properties, he had titled them in his own personal name. These properties were transferred into Fullington Real Estate (along with the leases for outdoor advertising) so as to protect them from Plaintiff who had no legal or equitable right to them.

117. As a result of the illegal and fraudulent actions taken by Plaintiff while he controlled FABCO and GMC Sales, the companies have been seriously harmed. GMC Sales is no longer an operating business and FABCO continues to struggle to be a viable business.

118. Plaintiff personally benefited by improperly, illegally and fraudulently taking money and assets from FABCO and GMC Sales. In turn, Plaintiff's father, brother and sister

have been harmed in that they have been required to provide personal guarantees to the companies' many creditors in order to continue to operate FABCO and they have been forced to take extraordinary steps to turn FABCO around.

WHEREFORE, Defendants respectfully request that this Honorable Court enter judgment in favor of Defendants and against Plaintiff as to the claims in the Complaint and award Defendants attorneys' fees, costs and such other relief as this Court deems appropriate.

COUNTERCLAIMS

COUNT I

Fullington Auto Bus Company and Fullington GMC, Sales, Inc.

v.

**J. Richard Fullington, Jr.
(Unjust Enrichment)**

119. The averments contained in paragraphs 1 through 118 of the Answer and New Matter are hereby incorporated as if fully set forth herein.

120. Plaintiff obtained funds directly from FABCO and GMC Sales for his own personal use.

121. Plaintiff was not entitled to these funds as they were monies that belonged to FABCO and GMC Sales.

122. In addition to using company funds, Plaintiff caused FABCO and GMC Sales to obtain bank loans that were collateralized, in part, by FABCO and/or GMC Sales assets. The funds from these loans were then used by Plaintiff for his personal use.

123. The funds obtained from these loans were also used to purchase real estate which Plaintiff titled in his own name.

124. Plaintiff personally collected the rents from tenants of the Heilig Meyers Building even though the building was titled in the name of GMC Sales and the loan used to buy the building was repaid by FABCO.

125. Payments on the various loans obtained by FABCO and GMC Sales at the direction of Plaintiff were made by FABCO and/or GMC Sales, not by Plaintiff.

126. Plaintiff also used funds from FABCO to repay a personal loan which he obtained from his former in-laws. These funds were never repaid to FABCO by Plaintiff.

127. Plaintiff also inflated the monthly payments due to GMC Sales' various creditors by GMC Sales. FABCO then unknowingly paid the monthly payment amounts to Plaintiff who, in turn, personally profited from the difference between the inflated amounts paid by FABCO and the actual amounts of the loan payments due to the creditors.

128. As a result of the above-referenced actions, Plaintiff benefited from and at the detriment of FABCO and GMC Sales by retaining monies and property that belonged to the companies and not to Plaintiff.

129. Plaintiff has been unjustly enriched as a result of his actions.

130. FABCO and GMC Sales are entitled to repayment for the monies and assets taken by Plaintiff for his own personal use.

131. As a result of Plaintiff's actions, FABCO and GMC Sales have been damaged in excess of Twenty-Five Thousand (\$25,000) Dollars.

WHEREFORE, Fullington Auto Bus Company and Fullington GMC Sales, Inc. respectfully request that this Honorable Court enter judgment in their favor as to Count I of the Counterclaims and against J. Richard Fullington, Jr., and that it award them damages, including attorneys' fees, costs and such other relief as this Court deems appropriate.

COUNT II

Fullington Auto Bus Company and Fullington GMC, Sales, Inc.

v.

J. Richard Fullington, Jr.

(Quantum Meruit)

132. The averments contained in paragraphs 1 through 131 of the Answer, New Matter and Counterclaims are hereby incorporated as if fully set forth herein.

133. Plaintiff took the funds and assets from FABCO and GMC Sales under circumstances making it inequitable for him to retain the benefits without restitution to FABCO and GMC Sales.

134. As a result of Plaintiff's inequitable conduct, FABCO and GMC Sales have been damaged in excess of Twenty-Five Thousand (\$25,000) Dollars.

WHEREFORE, Fullington Auto Bus Company and Fullington GMC Sales, Inc. respectfully request that this Honorable Court enter judgment in their favor as to Count II of the Counterclaims and against J. Richard Fullington, Jr., and that it award them damages, including attorneys' fees, costs and such other relief as this Court deems appropriate.

COUNT III

Fullington Auto Bus Company

v.

J. Richard Fullington, Jr.

(Intentional Interference with Business Relations)

135. The averments contained in paragraphs 1 through 134 of this Answer, New Matter and Counterclaims are hereby incorporated as if fully set forth herein.

136. In an effort to destroy FABCO and, in turn, his family, in early 2005 Plaintiff went to Cole Transportation, Inc. ("Cole"), a competitor of FABCO's, to meet with its owner and general manager.

137. During this meeting, Plaintiff offered to help Cole obtain busing contracts which were currently being serviced by FABCO.

138. Plaintiff intentionally offered to assist Cole obtain these contracts in an effort to harm FABCO's business.

139. On or about December 27, 2004, approximately one and a half years after the transfer of property described in paragraph 116 above, Fullington Real Estate and the other Fullington companies entered into a Purchase and Sale Agreement ("Sales Agreement") with Aiello Land Company LLC ("Aiello") to sell a parcel identified as Parcel 31, along with two contiguous parcels of real property consisting of approximately 4.532 acres.

140. Under the Sales Agreement, Aiello agreed to pay the Fullington companies \$1,300,000 to purchase the property.

141. The sale of the property to Aiello was vital to FABCO and its affiliates because the proceeds of the sale were to be used to repay debt incurred by Plaintiff for the purchase of the property (the debt was being repaid by FABCO) and to reduce the bank debt incurred as a result of improper actions taken by the Plaintiff when he controlled the operations of FABCO and GMC Sales.

142. Prior to the closing on the sale of the property, Lawyers' Title Company noted that the existence of this litigation constituted a cloud on the title of the property to be conveyed to Aiello. Thus, on July 7, 2005, FABCO and its affiliates requested, through the then counsel to Plaintiff, that the prayer for equitable relief in Count VI of Plaintiff's Complaint be dismissed and that Plaintiff agree to seek money damages only. FABCO offered to escrow funds from the sale of the property to fully protect the Plaintiff.

143. Plaintiff knew that these properties, although acquired in his name, had been purchased solely with funds provided by FABCO and that he had paid no money for these properties.

144. In an effort to interfere with this contract to sell the land to Aiello and to cause harm to FABCO and the other Defendants, the Plaintiff refused to agree to dismiss any claim to the reconveyance of the land, although he knew full well that he had no lawful claim to the land.

145. On August 18, 2005, Plaintiff caused his attorney to file a motion for continuance in proceedings commenced to seek relief to permit the conveyance of the property to Aiello. In that motion for continuance, Plaintiff falsely stated that he was not able to find any appraiser who could appraise the property involved on short notice and that it would require 45 to 60 days to complete an appraisal. In fact, the Plaintiff had never requested that the appraiser make an appraisal in time for the then scheduled hearing.

146. Plaintiff provided this false information with respect to the availability of the appraiser in an effort to delay, hinder, or interfere with the sale of the land to Aiello.

147. Plaintiff attempted to interfere with the sale, in part, in an effort to delay the financing that FABCO needed in order to be able to purchase new school buses which it was required to do under the various contracts it had with school districts. Had FABCO not purchased the new school buses it would have been in default of its school district contracts.

148. Plaintiff intentionally interfered with FABCO's business relations as set forth in paragraphs 136 through 147 of this Count without privilege or justification.

149. As a result of Plaintiff's actions, FABCO was delayed in closing on the sale of the property to Aiello and was required unnecessarily to spend significant funds and has, therefore, been damaged in excess of Twenty-Five Thousand (\$25,000) Dollars.

150. Plaintiff's conduct was done intentionally and maliciously with the sole intent of harming FABCO and, in turn, his family members. As a result of his egregious conduct, FABCO is entitled to punitive or exemplary damages.

WHEREFORE, Fullington Auto Bus Company respectfully requests that this Honorable Court enter judgment in its favor as to Count III of the Counterclaims and against J. Richard Fullington, Jr., and that it award it damages, including punitive damages, attorneys' fees, costs and such other relief as this Court deems appropriate.

COUNT IV

Fullington Auto Bus Company

v.

**J. Richard Fullington, Jr.
(Trade Disparagement)**

151. The averments contained in paragraphs 1 through 150 of this Answer, New Matter and Counterclaims are hereby incorporated as if fully set forth herein.

152. Upon information and belief, FABCO believes that Plaintiff has been and continues to make disparaging remarks about FABCO to persons in the community in an effort to destroy FABCO's reputation and, in turn, its business.

153. Plaintiff has been making these false and disparaging remarks about FABCO and his family members who are the current officers and directors of FABCO intentionally and maliciously solely to harm FABCO, even though he knows the statements to be false.

154. Such false and disparaging statements include FABCO's inability to perform its business properly and its inability to carry out its contracts.

155. As a result of Plaintiff's actions, FABCO has been damaged in excess of Twenty Five Thousand (\$25,000) Dollars.

156. Plaintiff's conduct was done intentionally and maliciously with the sole intent of harming FABCO and, in turn, his family members. As a result of his egregious conduct, FABCO is entitled to punitive or exemplary damages.

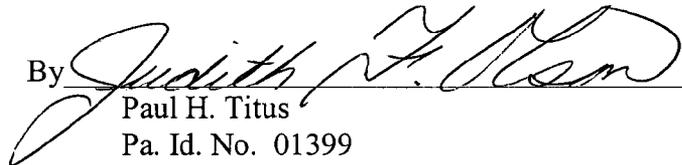
WHEREFORE, Fullington Auto Bus Company respectfully requests that this Honorable Court enter judgment in its favor as to Count IV of the Counterclaims and against J. Richard Fullington, Jr., and that it award it damages, including punitive damages, attorneys' fees, costs and such other relief as this Court deems appropriate.

Date: February 9, 2006

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By



Paul H. Titus

Pa. Id. No. 01399

Judith F. Olson

Pa. Id. No. 37476

2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Counsel for Defendants, Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman

VERIFICATION

I, Aerial Fullington Weisman, do hereby verify that I am President of Fullington Auto Bus Company, Fullington GMC Sales, Inc. and Fullington Real Estate Company and a named defendant in the above-referenced matter. I further verify that the facts contained in the foregoing Answer, New Matter and Counterclaims are true and correct to the best of my knowledge, information and belief.

This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 2/6/06

Aerial Fullington Weisman
Aerial Fullington Weisman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer, New Matter and Counterclaims was served upon the following individual by hand-delivery this 9th day of February, 2006:

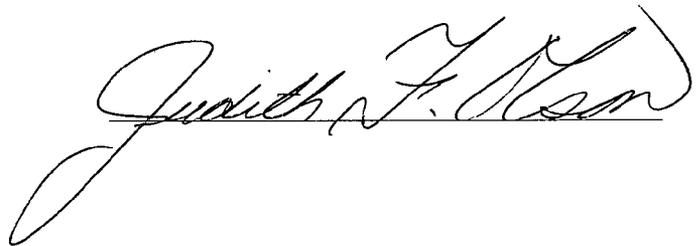
Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

Via Hand-Delivery

I hereby certify that a true and correct copy of the foregoing Answer, New Matter and Counterclaim will be served personally upon the following individual;

J. Richard Fullington, Jr.
c/o The Arrowhead Restaurant
Woodland-Clearfield Highway
Route 322
Clearfield, PA 16830

An Affidavit of Service will be filed thereafter.

A handwritten signature in cursive script, reading "Judith F. Mason", written over a horizontal line.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

v.

TYPE OF PLEADING:
PROOF OF SERVICE

FULLINGTON AUTO BUS COMPANY;
FULLINGTON TON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

FILED *icc AAAy*
0/11:48 am *Olson*
FEB 17 2006
UM
William A. Shaw
Prothonotary/Clerk of Courts

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: February 17, 2006

PROOF OF SERVICE

To whom it may concern:

Now be it known that I, Llyn A. Hartzfeld , one of the Constables within the Commonwealth of Pennsylvania, being duly sworn according to law, does hereby depose and say that on the 9th. day of February 2006 the original _____

Civil Action-Law NO. 05-565

was served upon (name) J. Richard Fullington, Jr.

address Arrowhead Restaurant Rt. 333 Clearfield, PA 16830

time 6:00 P.M

manner of service: Hand Delivered

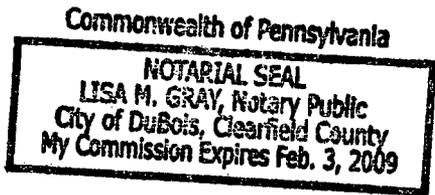
Llyn A. Hartzfeld
Pennsylvania State Constable

Sworn to and subscribed before me on this the

15 Day of February 2006

Lisa M Gray
Notary

(SEAL)



COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

v.

TYPE OF PLEADING:
ANSWER, NEW MATTER AND
COUNTERCLAIMS

FULLINGTON AUTO BUS COMPANY;
FULLINGTON TON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

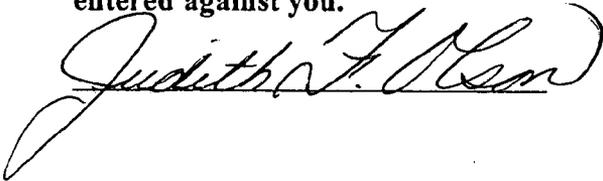
FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

NOTICE TO PLEAD

To Plaintiff:

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



Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: February 9, 2006

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

FEB 09 2006

Attest

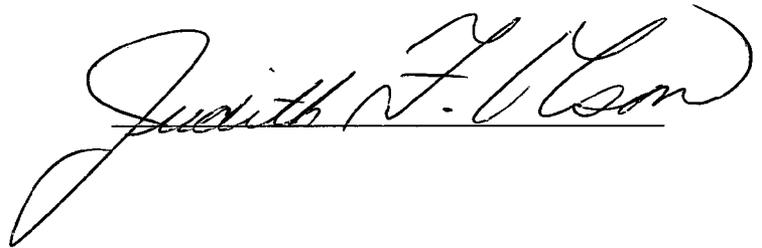

Prothonotary/
Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Proof of Service was served upon the following individuals by first-class mail, postage prepaid, this 17th day of February, 2006:

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

J. Richard Fullington, Jr.
c/o The Arrowhead Restaurant
Woodland-Clearfield Highway
Route 322
Clearfield, PA 16830

A handwritten signature in cursive script, reading "Judith F. Larson". The signature is written in black ink and is positioned to the right of the typed addresses. The name "Judith F. Larson" is clearly legible despite the cursive style.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

J. RICHARD FULLINGTON, JR.,

CIVIL ACTION - LAW

Plaintiff,

No. 05-565

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGOTN; and
AERIAL FULLINGTON WEISMAN,

PRAECIPE FOR APPEARANCE

Filed on Behalf of Plaintiff,
J. RICHARD FULLINGTON, JR.

Defendants.

Counsel of Record for this Party:

WILLIAM J. MOORHEAD, Esquire
PA I.D. #52761

MERCHANT, MOORHEAD & KAY, LLC
Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222
412-281-5630 (Phone)
412-281-5634 (Fax)

Firm #510

FILED ^{NO} ^{cc}
MAR 02 2008
William A. Shaw CIA
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

J. RICHARD FULLINGTON, JR.,)
) CIVIL ACTION - LAW
Plaintiff,)
)
v.) No. 05-605
)
FULLINGTON AUTO BUS COMPANY;)
FULLINGTON GMC SALES, INC.;)
FULLINGTON REAL ESTATE)
COMPANY; J. RICHARD)
FULLINGTON, SR.;)
MICHAEL L. FULLINGOTN; and)
AERIAL FULLINGTON WEISMAN,)
)
Defendants.)

PRAECIPE FOR APPEARANCE

To the Prothonotary:

Kindly enter the appearance of MERCHANT, MOORHEAD & KAY, LLC and
WILLIAM J. MOORHEAD, Esquire, in the above-captioned matter on behalf of Plaintiff.

MERCHANT, MOORHEAD & KAY, LLC.



William J. Moorhead, Esquire
PA I.D. #52761

Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222

(412) 281-5630

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of February, 2006, a true and correct copy of the within Praecipe For Appearance was served via United States Mail, First Class, Postage Prepaid to Defense Counsel as set forth below:

Paul H. Titus, Esquire
Judith F. Olson, Esquire
Schnader, Harrison, Segal & Lewis, LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

MERCHANT MOORHEAD & KAY, LLC



William J. Moorhead, Esquire
PA I.D. #52761
Attorney for Plaintiff, J. Richard Fullington, Jr.

Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222

(412) 281-5630

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

J. RICHARD FULLINGTON, JR.,

CIVIL ACTION - LAW

Plaintiff,

No. 05-565

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

**PRELIMINARY OBJECTIONS TO
TO DEFENDANT'S NEW MATTER
AND COUNTERCLAIM**

Filed on Behalf of Plaintiff,
J. RICHARD FULLINGTON, JR.

Defendants.

Counsel of Record for this Party:

WILLIAM J. MOORHEAD, Esquire
PA I.D. #52761

MERCHANT, MOORHEAD & KAY, LLC
Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222

412-281-5630 (Phone)
412-281-5634 (Fax)

Firm #510

Notice to Plead:

To: Defendants

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


William J. Moorhead, Esquire

FILED *no cc*
mj: 10/21
MAR 17 2006 *GD*

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

J. RICHARD FULLINGTON, JR.,)	
	)	CIVIL ACTION - LAW
Plaintiff,)	
)	
v.	)	No. 05-605
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD)	
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

**PRELIMINARY OBJECTIONS TO DEFENDANT'S
NEW MATTER AND COUNTERCLAIM**

AND NOW, comes Plaintiff, J. RICHARD FULLINGTON, JR., by his undersigned counsel, MERCHANT, MOORHEAD & KAY and WILLIAM J. MOORHEAD, Esquire and files the within Preliminary Objections to Defendant's New Matter and Counterclaim and in support thereof avers as follows:

1. Plaintiff initiated this lawsuit almost a year ago in April 2005 asserting claims *inter alia* of breach of contract, contribution and indemnity, fraud and equitable claims concerning property which he owned.

2. The dispute has its origins in the ownership and operation of the Fullington family businesses, Fullington Auto Bus Co. ("Fabco") and Fullington GMC Sales ("GMC Sales"). Plaintiff was an owner and officer of GMC sales, however, GMC Sales and Fabco were operated by the Fullington family as interrelated entities and collectively as a "family business".

3. Starting in or about 1999 the Fullington family business started to have cash liquidity problems as a result of the construction of two large projects, which had been agreed to be started by the family generally under GMC Sales. It was during this liquidity crisis when an employee responsible for doing the title work on vehicles sold by GMC Sales failed to timely process title work on several vehicles purchased at the dealership. In an attempt to keep the employee and GMC Sales out of trouble Plaintiff post dated the title work for the vehicles and transmitted it to the Pennsylvania Department of Transportation. Then in a misguided attempt to help GMC Sales and the Fullington family business generally, Plaintiff admitted to improperly financing seven (7) vehicles to obtain funds to pay operating costs and employee wages of GMC Sales. This is the sum and substance of the crimes to which Plaintiff plead guilty and for which he was punished by the Commonwealth. He did not personally profit at all from any of these actions, nor do the Defendants allege that he did.

4. In January 2002, after all parties were aware what Plaintiff had done, essentially trying to keep the Fullington family business alive, the parties entered into agreements attached to the Complaint and marked as Exhibit 1 and 2. The agreements were designed to remove Plaintiff from the ownership and management structure of the family business and remunerate him for his equity interest and years of service in the Fullington family businesses.

5. After these agreements were executed, however, Defendants Michael L. Fullington and Aerial Fullington Weisman, embarked on a campaign designed to take advantage of Plaintiff's vulnerability and to have all Defendants renege on the written agreements and to improperly strip Plaintiff of all of his assets and sources of income.

6. After exhausting every avenue to avoid litigation, and only as a last resort, Plaintiff brought the instant action to recover money and properties being improperly deprived to him by Michael Fullington and Aerial Fullington Weisman.

7. Almost ten (10) months later Defendants filed their New Matter and Counterclaim. The Defendants' New Matter and Counterclaim, however, are legally defective for several reasons.

Preliminary Objection 1

Motion to Strike Scandalous and Impertinent Matter

8. Paragraphs 1 through 7 are incorporated by reference as if set forth fully at length herein.

9. Defendants' New Matter and Counterclaim predictably but improperly attempt to make use of the fact of Plaintiff's guilty pleas and incarceration. Defendants, however, do not relate a single one of their claims to any crime for which Plaintiff was charged or to which he pled guilty. In fact, Defendants do not even allege what crimes Plaintiff did plead guilty to because this would not serve their improper purpose.

10. Instead, Defendants obviously hope that by including these irrelevant and unspecified averments they can improperly and unfairly prejudice Plaintiff.

11. The Pennsylvania Rules of Civil Procedure authorize Preliminary Objections to any pleading that includes "scandalous or impertinent matter". Scandalous and impertinent matter consists of allegations that are immaterial and inappropriate to proof of the cause of action. *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108 (Pa. Cmwlth. 1998) off'd 757A.2d 367 (Pa. 2000); *Commonwealth Department of Environmental Resources v. Peggs Run Coal Co.*, 423 A.2d 765 (Pa. Cmwlth 1980).

12. The criminal charges, guilty plea and prison sentence referred to in Defendants' New Matter and Counterclaim have nothing to do with the claims or defenses asserted by Defendants, and therefore, these allegations contained at paragraphs 23, 24 and 26 of Defendant's Answer and paragraphs 100, 104, 105, 111 and 112 of Defendant's New Matter and Counterclaim should be stricken, as they are solely alleged for their obvious prejudicial effect.

WHEREFORE, Plaintiff, J. Richard Fullington, respectfully requests that this Honorable Court grant its First Preliminary Objection and Motion to Strike Scandalous and Impertinent Matter contained at paragraphs 23, 24 and 26 of Defendant's Answer and paragraphs 100, 104, 105, 111 and 112 of Defendant's New Matter and Counterclaim.

Preliminary Objection 2

Motion For a More Specific Pleading

13. Paragraphs 1 through 12 are incorporated by reference as if set forth fully at length herein.

14. Pa.R.Civ.P. 1028(a)(3) authorizes Preliminary Objections for insufficient specificity in pleading.

15. As set forth above, Defendants did not specify in any manner whatsoever how the criminal charges to which Plaintiff plead guilty relate to Defendants' claims.

16. In the event that Defendants' allegations concerning Plaintiff's pleas and prison sentence are not stricken, in the alternative, Defendants must plead more specifically how these averments relate to Defendants' claims.

WHEREFORE, Plaintiff, J. Richard Fullington, Jr., respectfully requests, in the alternative, that this Honorable Court sustain its Preliminary Objection in the nature of a Motion

for a More Specific Pleading and order Defendants to plead with sufficient particularity as to how their allegations concerning Plaintiffs guilty plea and time in jail relate to its claims.

Preliminary Objection 3

Demurrer-Unjust Enrichment/Quantum Meruit

17. Paragraphs 1 through 16 are incorporated by reference as if set forth fully at length herein.

18. Over four (4) years after Plaintiff and Defendants executed the written Agreements removing Plaintiff from his ownership and management structure of the family business and remunerating Plaintiff for his equity and years of service, Defendants have filed counterclaims entitled unjust enrichment and quantum meruit alleging facts which all occurred before Defendants executed the written Agreements and of which Defendants' were obviously aware at the time the Agreements were executed. Defendants' counterclaim, however, has failed to plead facts necessary to support these implied contract causes of action and Counts I and II of the Counterclaim should be dismissed.

19. In order to sufficiently plead a cause of action for unjust enrichment/quantum meruit, the party must plead that: 1) Defendants conferred on Plaintiff benefit; 2) Plaintiff appreciated the receipt of such benefits; and 3) Plaintiff accepted the benefits and attention of their benefits under such circumstances that it would be inequitable for Plaintiff to retain the benefits without payment of their value. *Styer v. Hugo*, 619 A.2d 347 (Pa. Super 1993).

20. In their counterclaim Defendants have plead a garden variety conversion claim, which is barred by a two year statute of limitations contained at 42 Pa.C.S.A. §5542 and have simply called it an implied contract claim.

21. Pursuant to Pa.R.Civ.P. 1028(a)(4) the Court may grant a preliminary objection in the nature of a Demurrer when, if all well pleaded material facts of the Complaint are assumed to be correct, the law states there can be no recovery. *Mellon Bank v. Fabinyi*, 650 A.2d 895, 899 (Pa. Super. 1994).

22. Counts I and II of Defendants' Counterclaim do not plead prima facia implied contract claims of unjust enrichment or quantum meruit.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant its Preliminary Objection by way of a Demurrer and dismiss Defendant's unjust enrichment and quantum meruit claims against Plaintiff.

Respectfully submitted,

MERCHANT, MOORHEAD & KAY, LLC.



William J. Moorhead, Esquire
PA I.D. #52761

Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222

(412) 281-5630

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2006, a true and correct copy of the within Plaintiff's Preliminary Objections to Defendants' New Matter and Counterclaim was served via United States Mail, First Class, Postage Prepaid to Defense Counsel as set forth below:

Paul H. Titus, Esquire
Judith F. Olson, Esquire
Schnader, Harrison, Segal & Lewis, LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

MERCHANT MOORHEAD & KAY, LLC



William J. Moorhead, Esquire
PA I.D. #52761
Attorney for Plaintiff, J. Richard Fullington, Jr.

Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222

(412) 281-5630

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

J. RICHARD FULLINGTON, JR.,)	
	)	CIVIL ACTION - LAW
Plaintiff,)	
)	
v.	)	No. 05-605
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD)	
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2006, it is hereby ORDERED, ADJUDGED and DECREED that all averments contained in Defendants' Answer, New Matter and Counterclaim concerning Plaintiff's guilty pleas to criminal conduct or Plaintiff's incarceration, including those contained in paragraphs 23, 24 and 26 of Defendants' Answer and paragraphs 100, 104, 105, 111 and 112 of Defendants' New Matter and Counterclaim shall be stricken.

It is further ORDERED that Count I and Count II of Defendants' Counterclaim are dismissed.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

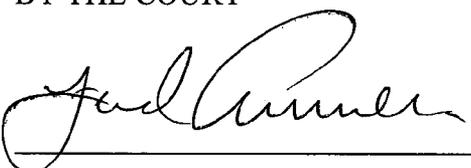
J. RICHARD FULLINGTON, JR.,)
) CIVIL ACTION - LAW
 Plaintiff,)
)
 v.) No. 05-⁵⁶⁵~~605~~
)
 FULLINGTON AUTO BUS COMPANY;)
 FULLINGTON GMC SALES, INC.;)
 FULLINGTON REAL ESTATE)
 COMPANY; J. RICHARD)
 FULLINGTON, SR.;)
 MICHAEL L. FULLINGTON; and)
 AERIAL FULLINGTON WEISMAN,)
)
 Defendants.)

SCHEDULING ORDER

AND NOW, to-wit, this 17th day of March, 2006,

it is hereby ORDERED, ADJUDGED and DECREED that:

- 1) Defendants shall respond to Plaintiff's Preliminary Objection within 20 days of the date of this ORDER.
- 2) Argument shall be held on April in Courtroom No. 1 of the Clearfield County Courthouse. 18, 2006 @ 1:30 p.m.
- 3) Notice of the entry of this Order shall be provided to all parties by Plaintiff.

BY THE COURT
 J.

FILED ^{lccc}
09:49 AM Atty Moorhead
MAR 20 2006 @R

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

J. RICHARD FULLINGTON, JR.,

CIVIL ACTION - LAW

Plaintiff,

No. 05-565

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

PRAECIPE FOR ARGUMENT DATE

Filed on Behalf of Plaintiff,
J. RICHARD FULLINGTON, JR.

Defendants.

Counsel of Record for this Party:

WILLIAM J. MOORHEAD, Esquire
PA I.D. #52761

MERCHANT, MOORHEAD & KAY, LLC
Arrott Building
401 Wood Street, Suite 400
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412-281-5630 (Phone)
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Firm #510

FILED NO CC
MJJ/06
MAR 17 2006 @

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

J. RICHARD FULLINGTON, JR.,)
) CIVIL ACTION - LAW
Plaintiff,)
)
v.) No. 05-605
)
FULLINGTON AUTO BUS COMPANY;)
FULLINGTON GMC SALES, INC.;)
FULLINGTON REAL ESTATE)
COMPANY; J. RICHARD)
FULLINGTON, SR.;)
MICHAEL L. FULLINGTON; and)
AERIAL FULLINGTON WEISMAN,)
)
Defendants.)

PRAECIPE FOR ARGUMENT DATE

TO: THE PROTHONOTARY

Pursuant to Local Rule 1028(c)(1) and 211, kindly schedule an argument date for the Court to consider Plaintiff's Preliminary Objections in connection with the above-captioned matter.

Respectfully submitted,

MERCHANT, MOORHEAD & KAY, LLC.



William J. Moorhead, Esquire
PA I.D. #52761

401 Wood Street, Suite 400
Pittsburgh, PA 15222
(412) 281-5630

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2006, a true and correct copy of the within Plaintiff's Praecipe for Argument Date was served via United States Mail, First Class, Postage Prepaid to Defense Counsel as set forth below:

Paul H. Titus, Esquire
Judith F. Olson, Esquire
Schnader, Harrison, Segal & Lewis, LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

MERCHANT MOORHEAD & KAY, LLC



William J. Moorhead, Esquire
PA I.D. #52761
Attorney for Plaintiff, J. Richard Fullington, Jr.

Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222

(412) 281-5630

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON TON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

TYPE OF PLEADING:
**ANSWER TO PRELIMINARY
OBJECTIONS TO DEFENDANTS'
NEW MATTER AND
COUNTERCLAIMS**

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

FILED

O/I: Olson

APR - 5 2006

2cc Atty Olson

Date: April 5, 2006

William A. Shaw
Prothonotary

companies. By way of further response, Defendants incorporate by reference the Answer, New Matter and Counterclaims. Defendants further state that the averments of fact set forth herein are not verified, as required by Pa. R. Civ. P. 1024(a) and, therefore, should be stricken.

3. Defendants deny the averments contained in paragraph 3 of the Preliminary Objections. It is denied that starting in 1999 the Fullington family business started to have cash liquidity problems as a result of the construction of two large projects, which had been agreed to be started by the family generally under GMC Sales. To the contrary, Plaintiff ran GMC Sales and made all decisions regarding the business. Additionally, FABCO and GMC Sales began to experience financial and cash liquidity problems because Plaintiff was using the monies from these businesses and leveraging the companies for his own personal use. The characterization of Plaintiff's crimes is also denied. The criminal complaints filed against Plaintiff and the subsequent court records speak for themselves. Further, Defendants incorporate herein the Answer, New Matter and Counterclaims. Defendants further state that the averments of fact set forth herein are not verified, as required by Pa. R. Civ. P. 1024(a) and, therefore, should be stricken.

4. Defendants deny the averments contained in paragraph 4 of the Preliminary Objections. The facts surrounding the execution of the agreements attached to the Complaint as Exhibits 1 and 2 are set forth in the Answer, New Matter and Counterclaims which is incorporated herein. Defendants further state that the averments of fact set forth herein are not verified, as required by Pa. R. Civ. P. 1024(a) and, therefore, should be stricken.

5. Defendants deny the averments contained in paragraph 5 of the Preliminary Objections. It is denied that Michael L. Fullington and Aerial Fullington Weisman embarked on a campaign to take advantage of Plaintiff and to have the Defendants renege on the written

agreements and to strip Plaintiff of all assets and sources of income. To the contrary, Michael L. Fullington and Aerial Fullington Weisman took proper, legal and appropriate steps to save FABCO and to protect FABCO from the Plaintiff who used the companies for his own personal gain. Further, Defendants incorporate herein the Answer, New Matter and Counterclaims. Defendants further state that the averments of fact set forth herein are not verified, as required by Pa. R. Civ. P. 1024(a) and, therefore, should be stricken.

6. Defendants deny the averments contained in paragraph 6 of the Preliminary Objections. It is denied that Plaintiff brought this action to recover monies and properties which belong to him. To the contrary, Plaintiff is not entitled to recover anything as set forth in the Answer, New Matter and Counterclaims which are incorporated herein. Defendants further state that the averments of fact set forth herein are not verified, as required by Pa. R. Civ. P. 1024(a) and, therefore, should be stricken.

7. Defendants admit in part and deny in part the averments contained in paragraph 7 of the Preliminary Objections. It is admitted that the New Matter and Counterclaims were filed almost ten (10) months after this action was commenced. By way of further response, Defendants state that the Answer, New Matter and Counterclaims were filed at that time as the former counsel for Plaintiff agreed to an indefinite extension of time to file a response to the Complaint to allow time to review the information provided to him by Defendants' counsel. Defendants deny that the New Matter and Counterclaim are legally defective. To the contrary, the New Matter and Counterclaims are proper and legally sufficient.

Preliminary Objection 1

Motion to Strike Scandalous and Impertinent Matter

8. Defendants incorporate herein by reference paragraphs 1 through 7 of this Answer to Preliminary Objections.

9. Defendants deny the averments contained in paragraph 9 of the Preliminary Objections. It is denied that the statements regarding Plaintiff's guilty pleas and incarceration were used improperly or were not necessary. To the contrary, these statements are clearly relevant and pertinent to the Defendants' defense and their Counterclaims against Plaintiff.

10. Defendants deny the averments contained in paragraph 10 of the Preliminary Objections. It is denied that the facts set forth in the New Matter and Counterclaims are irrelevant and unspecified. To the contrary, they are extremely relevant and very specific. It is further denied that Defendants hoped to improperly and unfairly prejudice Plaintiff. To the contrary, these relevant and detailed factual statements were provided as they serve a basis for the Defendants' defense to Plaintiff's claims and for the Counterclaims.

11. The averments contained in paragraph 11 of the Preliminary Objections contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments are denied.

12. Defendants deny the averments contained in paragraph 12 of the Preliminary Objections. It is denied that the statements referenced in Defendants' New Matter and Counterclaims were solely alleged for their prejudicial effect. To the contrary, the statements of fact contained in these referenced paragraphs are clearly relevant, pertinent and supportive of Defendants' defenses to Plaintiff's claims and the Counterclaims.

WHEREFORE, Defendants Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman respectfully request that this Honorable Court overrule Plaintiff's First Preliminary Objection.

Preliminary Objection 2

Motion for a More Specific Pleading

13. Defendants incorporate herein by reference paragraphs 1 through 12 of this Answer to Preliminary Objections.

14. The averments contained in paragraph 14 of the Preliminary Objections contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments are denied.

15. Defendants deny the averments contained in paragraph 15 of the Preliminary Objections. It is denied that the Defendants did not specify how Plaintiff's criminal charges and guilty pleas relate to Defendants' claims. To the contrary, the Defendants stated with detailed specificity that, because of the Plaintiff's criminal convictions and incarcerations, the Defendants were forced by creditors to remove Plaintiff from the businesses and reorganize in order to save the companies. Defendants incorporate herein the Answer, New Matter and Counterclaims.

16. Defendants deny the averments contained in paragraph 16 of the Preliminary Objections. It is denied that Defendants must plead more specifically how these averments relate to Defendants' claims. To the contrary, the statements contained in the New Matter and Counterclaims are sufficient.

WHEREFORE, Defendants Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman respectfully request that this Honorable Court overrule Plaintiff's Second Preliminary Objection.

Preliminary Objection 3

Demurrer - Unjust Enrichment/Quantum Meruit

17. Defendants incorporate herein by reference paragraphs 1 through 16 of this Answer to Preliminary Objections.

18. Defendants deny the averments contained in paragraph 18 of the Preliminary Objections. It is denied that Plaintiff and the Defendants executed the written agreements to remunerate Plaintiff for his equity and years of service. To the contrary, the Plaintiff induced his father to sign these documents, as set forth in detail in the Answer, New Matter and Counterclaims. To the extent the remaining averments contain conclusions of law, no response is required.

19.-22. The averments contained in paragraphs 19 through 22 of the Preliminary Objections contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments are denied.

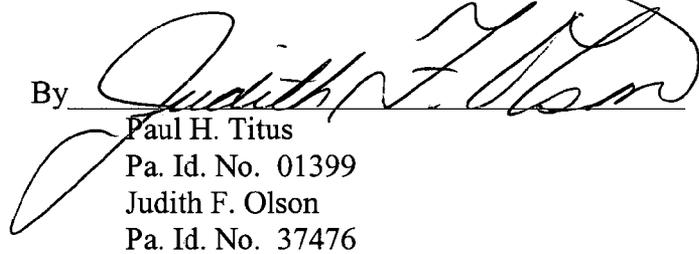
WHEREFORE, Defendants Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman respectfully request that this Honorable Court overrule Plaintiff's Third Preliminary Objection

Date: April 5, 2006

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By



Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476

2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Counsel for Defendants, Fullington Auto Bus
Company, Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L. Fullington and
Aerial Fullington Weisman

VERIFICATION

Aerial Fullington Weisman hereby states that she is President, Chief Executive Officer and majority shareholder of The Fullington Auto Bus Company, and Acting President, Chief Executive Officer and majority shareholder of Fullington GMC Sales, Inc., and a Defendant in this action, and that the statements of fact made in the foregoing **Answer to Preliminary Objections to Defendants' New Matter and Counterclaims** are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Con. Stat. §4904 relating to unsworn falsification to authorities.

Date: April 5, 2006

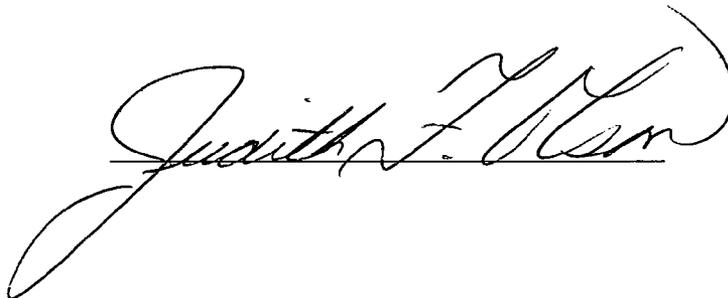
Aerial Fullington Weisman
Aerial Fullington Weisman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Answer to Preliminary Objections to Defendants' New Matter and Counterclaims** was served upon the following individual by hand-delivery this 5th day of April, 2006:

William J. Moorhead, Esquire
Merchant, Moorhead & Kay, LLC
Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

A handwritten signature in cursive script, appearing to read "Judith F. Moran", is written over a horizontal line. The signature is fluid and extends above and below the line.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON TON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

TYPE OF PLEADING:
**MEMORANDUM OF LAW IN
OPPOSITION TO PRELIMINARY
OBJECTIONS TO DEFENDANTS'
NEW MATTER AND
COUNTERCLAIMS**

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: April 5, 2006

RECEIVED

APR 5 2006

COURT ADMINISTRATION
OFFICE

~~FILED~~

~~Olson~~

APR 5 2006

~~William A. Shaw
Prothonotary~~

SECURITY OLSON

(u)

WAS

I. The Factual Statements Set Forth in the Answer, New Matter and Counterclaims are Not Scandalous or Impertinent and, Therefore, Should Not be Stricken.

In his first Preliminary Objection, Plaintiff files a Motion to Strike Scandalous and Impertinent Matter from the Defendants' Answer, New Matter and Counterclaims. Specifically, Plaintiff seeks an order striking paragraphs 23, 24 and 26 of Defendants' Answer and paragraphs 100, 104, 105, 111 and 112 of Defendants' New Matter and Counterclaims on the basis that the allegations contained therein regarding Plaintiff's criminal charges, guilty pleas and prison sentences "have nothing to do with the claims or defenses asserted by Defendants". See Preliminary Objections, ¶ 12.

"The test of whether material is scandalous or impertinent is whether the allegations are immaterial and inappropriate to the proof of the cause of action." *Standard Pennsylvania Practice*, 2d §25:60 (2001). See also *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108, 115 (Pa. Cmwlth. 1998), *aff'd* 562 Pa. 632, 757 A.2d 367 (2000) ("To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action.") Scandalous matter "consists of any unnecessary allegation which bears cruelly upon the moral character of an individual or states anything which is contrary to good manners, or anything which is unbecoming to the dignity of the court to hear, or which charges some person with a crime not necessary to be shown." *Universal Film Exchanges, Inc. v. Budco, Inc.*, 44 Pa. D & C 2d 695, 713 (Bucks Cty. 1968). Even if the allegations are deemed to be "offensive", they are not scandalous if material and necessary to the case. *DeMeo v. Bullock*, 55 Pa. D & C 2d 789, 792 (Delaware Cty. 1972). Impertinent matter is matter that is irrelevant to the material issues of the case. *Universal Film Exchanges*, 44 Pa. D & C 2d at 713. If the facts averred are legally relevant or "have any influence in leading to the result", they are not impertinent. (Emphasis supplied.) *Jeffries v. Hoffman*, 417 Pa. 1, 207 A.2d 774, 775 (1965).

The right of a court to strike impertinent or scandalous material “should be sparingly exercised and only when a party can affirmatively show prejudice.” *Commonwealth v. Hartford Accident and Indemnity Co.*, 40 Pa. Commw. 133, 396 A.2d 885, 888 (1979).

In this case, a review of the Defendants’ Answer, New Matter and Counterclaims reveals that the factual statements contained within the relevant paragraphs are very pertinent and highly relevant to the Defendants’ defense to Plaintiff’s claims and to their Counterclaims. Therefore, they are not immaterial and inappropriate to this matter.

In these paragraphs, Defendants set forth the verified facts (not only verified in accordance with Pa. R. Civ. P. 1024(a) but also supported by the evidence that was introduced in this case during the hearing on Defendants’ Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar Conveyance of Property that took place before this Court on August 23, 2005) regarding the criminal complaints filed against Plaintiff and his subsequent guilty pleas. As set forth in the Answer, New Matter and Counterclaims (and as was established during the hearing on August 23, 2005) it was in large measure *because of Plaintiff’s conduct as established by the criminal convictions and because of the fact of his convictions and incarcerations* that Fullington Auto Bus Company (“FABCO”) and Fullington GMC Sales, Inc. (“GMC Sales”) were in dire straights and required by their creditors to remove Plaintiff from the businesses and reorganize. The actions taken by the Defendants were done, not to harm Plaintiff as alleged in Plaintiff’s Complaint, but to protect the businesses. It is clearly set forth in the Answer, New Matter and Counterclaims that, among other things, (i) in light of the criminal charges filed against Plaintiff, creditors of FABCO and GMC Sales were demanding that Plaintiff no longer have authority to act on behalf of the businesses (Answer, New Matter and Counterclaims, ¶ 100); (ii) because of the creditors’ demands and in order to save GMC Sales

The right of a court to strike impertinent or scandalous material “should be sparingly exercised and only when a party can affirmatively show prejudice.” *Commonwealth v. Hartford Accident and Indemnity Co.*, 40 Pa. Commw. 133, 396 A.2d 885, 888 (1979).

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and FABCO, GMC Sales was to be reorganized (*id.*, ¶ 101); (iii) documents were drafted to reorganize GMC Sales in light of the creditors' demands, however, Plaintiff refused to execute them (*id.*, ¶¶ 102-103); (iv) although Plaintiff pled guilty to the first criminal complaint and was incarcerated in the County Jail with work release, he continued to conduct illegal activities that ultimately required GMC Sales to sell the car dealership (*id.*, ¶¶ 104-106); (v) as a result of all of these actions, Plaintiff knew he had to agree to some form of separation from GMC Sales, however, he did not agree to sign the Agreement for Corporate Separation (Exhibit 1 to Complaint) until after he drafted the "Attachment to Agreement to Sign Over Stock" (Exhibit 2 to Complaint) (*id.*, ¶ 108); and, (vi) by the time the second criminal complaint was filed against Plaintiff and he was incarcerated for the second time, the financial condition of FABCO was so desperate that actions had to be taken to protect the company, including reorganization and formation of Fullington Real Estate Company (*id.*, ¶¶ 111-116). Plaintiff's illegal activities, criminal convictions and incarcerations were some of the main reasons FABCO and GMC Sales were on the verge of extinction and the Defendants had to take actions to save the businesses. These verified and established facts support the actions taken by the Defendants which serve as their defense to Plaintiff's claims and serve as the basis for the affirmative claims against Plaintiff in the Counterclaims.²

Additionally, Plaintiff cannot show any prejudice as a result of these factual statements. Plaintiff's guilty pleas and incarcerations are matters of public record and known in the community. The factual statements contained in the Answer, New Matter and Counterclaims

² These averments of fact also support the Defendants' affirmative defense that the Plaintiff's equitable claims are barred by the doctrine of unclean hands. *See* Answer, New Matter and Counterclaims, ¶ 84.

regarding the same are not something that will prejudice Plaintiff at this time. As such, they should not be stricken.

II. The Statements of Fact Contained in the Answer, New Matter and Counterclaims are Specific.

In his second Preliminary Objection, Plaintiff seeks an Order directing Defendants to file a more specific pleading specifying how the criminal charges to which Plaintiff pled guilty relate to the Defendants' claims. As set forth above, the Plaintiff's wrongful conduct and his convictions and incarcerations were the key reasons the Defendants had to take steps to reorganize and save FABCO and GMC Sales. Contrary to the allegations contained in Plaintiff's Complaint, the Defendants did not take these actions to harm Plaintiff, nor did their actions breach any contract allegedly entered by Plaintiff. Instead, as set forth in great detail in the Answer, New Matter and Counterclaims, the actions taken by the Defendants were proper, appropriate and done to save the companies. Further, the actions of Plaintiff, as set forth again in detail, support the Counterclaims which seek damages from Plaintiff for the harm he caused to the companies.

It is well established under the Pennsylvania Rules of Civil Procedure that a pleader "must disclose the 'material facts' sufficient to enable the adverse party to prepare his case." *Landau v. Western Pa. National Bank*, 445 Pa. 217, 282 A.2d 335, 339 (1971). Hence "[p]reliminary objections in the nature of a motion for a more specific pleading . . . raise *the sole question* of whether the pleading is sufficiently clear to enable the [opposing party] to prepare a defense." (Emphasis supplied.) *Paz v. Commonwealth*, 135 Pa. Commw. 162, 580 A.2d 452, 456 (1990), *appeal denied* 532 Pa. 652, 615 A.2d 341 (1992). The purpose of such a motion is to make sure that a party's right and ability to answer and defend will not be unduly impaired by vagueness in stating the grounds for the causes of action. *Local No. 163 v. Watkins*, 417 Pa. 120,

207 A.2d 776, 778 (1965). Thus, the rules of pleading “are satisfied if a [moving party] pleads facts sufficient to permit [the opposing party] to prepare a defense.” *Foster v. Peat Marwick Main & Co.*, 138 Pa. Commw. 147, 587 A.2d 382, 387 (1991).

In the instant action, the Defendants have clearly, specifically and adequately set forth the material facts that support their defenses and their Counterclaims such that the Plaintiff is able to prepare a response accordingly. There is nothing vague about the Defendants’ Answer, New Matter and Counterclaims and Plaintiff will not be impaired in his ability to file an adequate response to the factual statements and causes of action set forth therein. Accordingly, the Defendants respectfully request that Plaintiff’s second Preliminary Objection in the form of a Motion for a More Specific Pleading be overruled.

III. Defendants’ Counterclaims Adequately Plead Causes of Action for Unjust Enrichment and Quantum Meruit.

In this third Preliminary Objection in the Nature of a Demurrer, Plaintiff seeks the dismissal of Counts I (Unjust Enrichment) and II (Quantum Meruit) of the Defendants’ Counterclaims on the basis that the Defendants failed to plead prima facie claims. Again, a review of the Counterclaims reveals that Plaintiff’s preliminary objection lacks merit and, therefore, must be overruled.

In deciding a preliminary objection in the nature of a demurrer, the Court must accept as true all well pleaded facts in the Counterclaims and all inferences reasonably deducible therefrom. *General State Auth. v. Coleman Cable & Wire Co.*, 27 Pa. Commw. 385, 365 A.2d 1347, 1350 (1976). Hence, a preliminary objection seeking dismissal of a claim should be sustained only in cases that are clear and free from doubt. *League of Women Voters of Pa. v. Commonwealth*, 692 A.2d 263 (Pa. Cmwlth. 1997) “The test is whether it is clear from all of the

facts pleaded that the pleader will be unable to prove facts legally sufficient to establish his or her right to relief.” *Common Cause/Pennsylvania*, 710 A.2d at 114.

In Count I of their Counterclaims, Defendants, FABCO and GMC Sales, allege that they were harmed as a result of Plaintiff’s unjust enrichment done at the expense of the companies. Under Pennsylvania law, the elements for a claim for unjust enrichment “are ‘benefits conferred on defendant by plaintiff, appreciation of such benefits by the defendant, and the acceptance and retention of such benefits as it would be inequitable for the defendant to retain the benefit without payment of value.’” *Blackmon v. Iverson*, 324 F. Supp. 2d 602, 612-13 (E.D. Pa. 2003), quoting *Wiernik v. PHH U.S. Mortgage Corp.*, 1999 Pa. Super. 193, 205, 736 A.2d 616 (1999). “Unjust enrichment occurs when a person has and retains money or benefits, which in justice and equity belong to another.” *Burrell v. Worker’s Compensation Appeal Board*, 849 A.2d 1282, 1288 (Pa. Cmwlth. 2004). Thus, a cause of action for unjust enrichment arises when a benefit is conferred on one party to the detriment of another party without any corresponding exchange of value. *Villoresi v. Femminella*, 2004 PA Super 256, 856 A.2d 78, 84 (2004)

FABCO and GMC Sales specifically allege in Count I that i) Plaintiff obtained funds directly from FABCO and GMC Sales for his own personal use (Answer, New Matter and Counterclaims, ¶ 120); ii) Plaintiff was not entitled to these funds as the money did not belong to him (*id.*, ¶ 121); iii) in addition to taking funds not belonging to him, Plaintiff caused loans to be obtained by the companies which were collateralized by company assets and Plaintiff used those loan proceeds for his own personal use (*id.*, ¶ 122); iv) Plaintiff used other company assets for this own personal use (*id.*, ¶¶ 123-127); v) as a result of these actions, Plaintiff benefited from and at the detriment of FABCO and GMC Sales (*id.*, ¶ 128); vi) Plaintiff was unjustly

enriched as a result of these actions (*id.*, ¶ 129); and, vii) FABCO and GMC Sales were harmed (*id.*, ¶ 130). These averments clearly set forth the elements for a claim asserting unjust enrichment. Benefits were conferred on Plaintiff by FABCO and GMC Sales, Plaintiff appreciated and received personal gain from those benefits, and it would be inequitable and harmful to FABCO and GMC Sales for the Plaintiff to retain those benefits without compensating the companies. Further, Plaintiff took money and other valuable assets from FABCO and GMC Sales which in justice and equity belong to the companies. Hence, FABCO and GMC Sales are entitled to seek compensation from Plaintiff under a claim for unjust enrichment.

In Count II of the Counterclaims, FABCO and GMC Sales seek relief from Plaintiff under a claim for quantum meruit. “Quantum meruit is a cause of action in quasi-contract which seeks a form of restitution where one person has been unjustly enriched at the expense of another.” *Mill Run Assoc. v. Locke Property Co.*, 282 F. Supp. 2d 278, 292-93 (E.D. Pa. 2003), *citing Mitchell v. Moore*, 1999 PA Super 77, 729 A.2d 1200, 1202, n. 2 (1999). Thus, “a claim for quantum meruit raises the issue of whether a party has been unjustly enriched, which requires proof of the elements of unjust enrichment.” *Id.*, 282 F. Supp. 2d at 293.

In their claim for quantum meruit, FABCO and GMC Sales incorporate by reference the allegations set forth in Count I of the Counterclaims (unjust enrichment) and further allege that “Plaintiff took the funds and assets from FABCO and GMC Sales under circumstances making it inequitable for him to retain the benefits without restitution to FABCO and GMC Sales.” Answer, New Matter and Counterclaims, ¶¶ 132-133. Such allegations set forth a *prima facie* claim for quantum meruit.

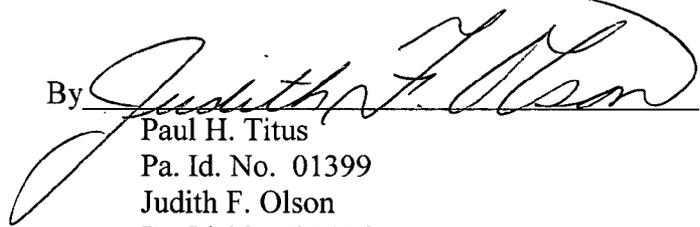
Since the Defendants have adequately pled the elements necessary for relief under claims for unjust enrichment and quantum meruit in Counts I and II of the Counterclaims, Plaintiff's third Preliminary Objection in the nature of a demurrer should be overruled.

Date: April 5, 2006

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By



Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476

2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
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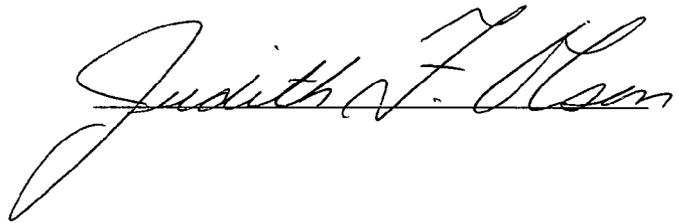
Counsel for Defendants, Fullington Auto Bus
Company, Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L. Fullington and
Aerial Fullington Weisman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Memorandum of Law in Opposition to Preliminary Objections to Defendants' New Matter and Counterclaims** was served upon the following individual by hand-delivery this 5th day of April, 2006:

William J. Moorhead, Esquire
Merchant, Moorhead & Kay, LLC
Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

A handwritten signature in cursive script, appearing to read "Judith F. Ham". The signature is written in black ink and is positioned in the lower right quadrant of the page.

CA

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

J. RICHARD FULLINGTON, JR.,
Plaintiff

vs.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE COMPANY;
J. RICHARD FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,
Defendants

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NO. 05-565-CD

ORDER

NOW, this 27th day of April, 2006, the Court notes that the Memorandum of Law in Opposition to Preliminary Objections to Defendants' New Matter and Counterclaim was filed in error on April 5, 2006. The Prothonotary is hereby directed to remove the said Memorandum from the record of this case.

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

APR 28 2006

Attest.

William L. [Signature]
Prothonotary/
Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON TON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

TYPE OF PLEADING:
**MOTION TO RESCHEDULE
ARGUMENT ON PRELIMINARY
OBJECTIONS TO DEFENDANTS'
NEW MATTER AND
COUNTERCLAIM**

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

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Date: April 5, 2006

William A. Shaw
Prothonotary

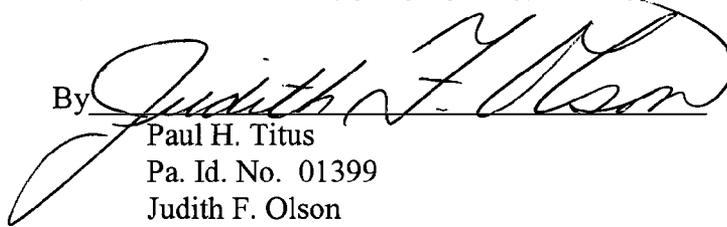
WHEREFORE, the Defendants Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman respectfully request that this Honorable Court grant the Motion to Reschedule Argument on Preliminary Objections to Defendants' New Matter and Counterclaim.

Date: April 5, 2006

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By


Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476

2700 Fifth Avenue Place
120 Fifth Avenue
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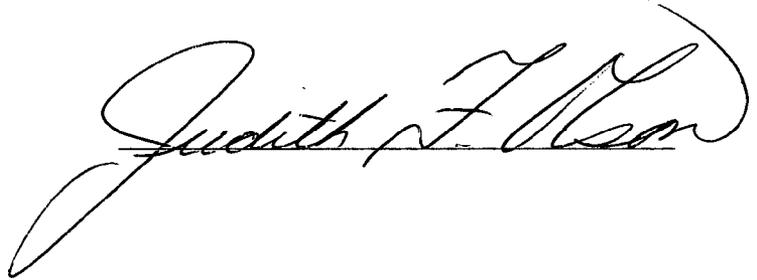
Counsel for Defendants, Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman

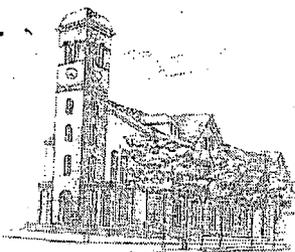
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion to Reschedule Argument on Preliminary Objections to Defendants' New Matter and Counterclaims** was served upon the following individual by hand-delivery this 5th day of April, 2006:

William J. Moorhead, Esquire
Merchant, Moorhead & Kay, LLC
Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

A handwritten signature in cursive script, appearing to read "Judith F. Moran", written over a horizontal line.



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,


William A. Shaw
Prothonotary

DATE: Apr. 17, 2006

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

J. RICHARD FULLINGTON, JR.,
Plaintiff

vs.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE COMPANY;
J. RICHARD FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,
Defendants

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NO. 05-565-CD

ORDER

NOW, this 27th day of April, 2006, the Court notes that the Memorandum of Law in Opposition to Preliminary Objections to Defendants' New Matter and Counterclaim was filed in error on April 5, 2006. The Prothonotary is hereby directed to remove the said Memorandum from the record of this case.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

APR 28 2006

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William A. Shaw
Prothonotary/Clerk of Courts

CERT. ATTY MORRISHEAD
TITUS, &
DURHAM.

NOTE: TRANSMITTED MEMORANDUM TO
C/A. 4-28-06 way

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

J. RICHARD FULLINGTON, JR.,
Plaintiff

vs.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE COMPANY;
J. RICHARD FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,
Defendants

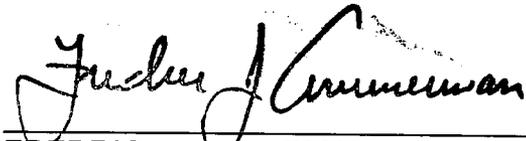
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NO. 05-565-CD

ORDER

NOW, this 27th day of April, 2006, following argument on Plaintiff's Preliminary Objections to Defendants' New Matter and Counterclaim, it is the ORDER of this Court that the Plaintiff's Preliminary Objections be and are hereby DENIED.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

APR 28 2006

019335/w (64)

William A. Shaw
Prothonotary/Clerk of Courts

SENT TO ATTORNEY MOOREHEAD, W
TITUS, P
DUNN, T.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

J. RICHARD FULLINGTON, JR.,

CIVIL ACTION - LAW

Plaintiff,

No. 05-565

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

**REPLY TO NEW MATTER,
ANSWER TO COUNTERCLAIMS
AND NEW MATTER**

Filed on Behalf of Plaintiff,
J. Richard Fullington, Jr.

Defendants.

Counsel of Record for this Party:

WILLIAM J. MOORHEAD, Esquire
PA I.D. #52761

MERCHANT, MOORHEAD & KAY, LLC
603 Washington Rd.
Suite 500
Pittsburgh, PA 15228

412-942-0770 (Phone)

412-942-0774 (Fax)

Firm #510

FILED *no cc*
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William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

J. RICHARD FULLINGTON, JR.,)	
	)	CIVIL ACTION - LAW
Plaintiff,)	
)	
v.	)	No. 05-605
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD)	
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

**REPLY TO NEW MATTER,
ANSWER TO COUNTERCLAIMS AND NEW MATTER**

AND NOW, comes Plaintiff, J. RICHARD FULLINGTON, JR., by his undersigned counsel, MERCHANT, MOORHEAD & KAY and WILLIAM J. MOORHEAD, Esquire and files the within Reply to New Matter, Answer to Counterclaims and New Matter as follows:

REPLY TO NEW MATTER

81. This paragraph of Defendants' New Matter sets forth a conclusion of law to which no response is required. To the extent a response is deemed necessary, the averments of this paragraph are denied. To the contrary, the averments of Plaintiff's Complaint are incorporated by reference.

82. This paragraph of Defendants' New Matter sets forth conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments of this paragraph are denied. To the contrary, Plaintiff is not equitably stopped from seeking relief from Defendants.

83. This paragraph of Defendants' New Matter sets forth conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments of this paragraph are denied. To the contrary, Plaintiff's claims are not barred for any reason whatsoever.

84. This paragraph of Defendants' New Matter sets forth conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments of this paragraph are denied. To the contrary, Plaintiff's claims are not barred by the doctrine of unclean hands.

85. This paragraph of Defendants' New Matter sets forth conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments of this paragraph are denied. To the contrary, Plaintiff's claims are not barred by the doctrine of laches.

86. This paragraph of Defendants' New Matter sets forth conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments of this paragraph are denied. To the contrary, the supplemental agreement attached to the Complaint as Exhibit 2 is not void or voidable and is fully enforceable according to its terms.

87. This paragraph of Defendants' New Matter sets forth conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments of this paragraph are denied. To the contrary the supplemental agreement is not subject to rescission and is fully enforceable according to its terms.

88. This paragraph of Defendants' New Matter sets forth conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments of this paragraph are denied. To the contrary, the execution of the supplemental agreement was not fraudulently induced and it is fully enforceable according to its terms.

89. This paragraph of Defendants' New Matter sets forth conclusions of law to which no response is required. To the extent a response is deemed necessary, the averments of this paragraph are denied. To the contrary, the supplemental agreement is fully supported by consideration and is enforceable according to its terms.

90. The averments of this paragraph are denied. To the contrary, Plaintiff was not "in control" of or "operated" FABCO and GMC Sales, but rather was one of several owners and officers which included Defendants who were in control and operated FABCO and GMC Sales. It is further denied that Plaintiff used GMC Sales and FABCO improperly as a source of funds for his own personal use or took steps which placed the companies in jeopardy while he benefited. To the contrary, Plaintiff did not improperly use GMC Sales and FABCO as a source of funds for his own personal use, nor did he place the companies in jeopardy while he improperly benefited. But rather acted in GMC Sales, FABCO's and the family business' best interest at all times relevant hereto. Further, the family business was structured and business decisions were made to solely benefit FABCO to the detriment of GMC Sales.

91. The averments of this paragraph are admitted in part and denied in part. It is admitted that GMC Sales and FABCO borrowed monies from various banks and lending companies. It is further admitted that many of the loans were collateralized by GMC Sales' and FABCO's assets. It is still further admitted that Plaintiff's parents, J. Richard Fullington, Sr. and Mildred F. Fullington were required to give personal guarantees in connection with some of the loans. By way of further answer, Plaintiff was required to give personal guarantees in connection with some of the loans. To the extent that this paragraph infers or implies that loans obtained by GMC Sales or FABCO were acquired solely at the direction of Plaintiff, it is denied. To the contrary, the loans were obtained with knowledge of Defendants for proper business

purposes.

92. The averments of this paragraph are denied. To the contrary, Plaintiff did not use the borrowed monies for his own personal use, but rather only for legitimate business purposes with knowledge of Defendants. It is denied that FABCO made loan payments, rather with the knowledge, consent and direction of the Defendant's FABCO made lease payments to the record owner.

93. The averments of this paragraph are denied. To the contrary, Plaintiff did not improperly take money from the accounts of GMC Sales and/or FABCO. To the contrary, the only money removed from any account was removed in the ordinary course of business for proper business purposes with the knowledge of the Defendants and for the best interest of the family business.

94. The averments of this paragraph are denied. To the contrary, Plaintiff incorporates the averments of paragraphs 90, 91, 92 and 93 of this Reply to New Matter and Answer to Counterclaim.

95. The averments of this paragraph are denied. To the contrary, Plaintiff did not improperly strip monies from the companies as set forth in paragraph 95 of Defendants' New Matter. Rather, the companies operated for years under a complex method of ownership and remuneration of which the Defendants were well aware and from which they personally benefited. Plaintiff incorporates paragraphs 90, 91, 92 and 93 of this Reply to New Matter and Answer to Counterclaim.

96. The averments of this paragraph are denied. To the contrary, Plaintiff did not use any funds to which he was not entitled to pay personal debts. By way of further answer, Defendant's have agreed to pay for the referenced loan.

97. The averments of this paragraph denied. To the contrary, Plaintiff did not inflate the monthly loan payments due to GMC Sales various creditors, rather Defendants were aware of the loan amounts and willingly paid the loan amounts. By way off further response, it is denied that Plaintiff personally profited as a result of payments made to GMC Sales' various creditors. To the contrary, Plaintiff did not personally benefit.

98. The averments of this paragraph are admitted in part and denied in part. It is admitted that FABCO and GMC Sales ultimately landed in dire financial straits and eventually teetered on the brink of bankruptcy. It is denied that FABCO and GMC Sales' dire financial condition was caused as a result of Plaintiff improperly taking money from FABCO and GMC Sales or any actions taken by Plaintiff for his own benefit. To the contrary, Plaintiff did not improperly take money from FABCO and GMC Sales nor did he take other actions for his own benefit, rather he acted in the interest of the family business at all times relevant hereto. By way of further answer, it is believed and therefore averred that the dire financial condition of FABCO and GMC Sales were caused by ordinary business set backs and/or the improper conduct of Defendants.

99. The averments of this paragraph are denied as stated. It is denied that Plaintiff improperly took money from the "companies". To the contrary the averments of paragraphs 92, 93, 95, 96 and 97 of Plaintiff's Reply to New Matter are incorporated by reference. It is admitted that Plaintiff committed certain illegal actions to which he plead guilty. By way of further answer, the illegal actions, were done in an effort to save the family business from financial ruin. Still further, Plaintiff's guilty plea was entered to save other family members from the embarrassment of further prosecution.

100. Admitted in part and denied in part. It is admitted that the first criminal complaint was filed in or about July 2000. By way of further answer, the averments of Paragraph 99 of this Reply to New Matter are incorporated by reference. Still further, after reasonable investigation, Plaintiff is without information sufficient to form a belief concerning the remaining averments of this paragraph.

101. After reasonable investigation, Plaintiff is without knowledge sufficient to form a belief as to the truth of the averments of this paragraph and they are therefore denied. By way of further answer, it is believed that discussions concerning reorganization of GMC Sales were raised well prior to July 2000.

102. After reasonable investigation, Plaintiff is without knowledge sufficient to form a belief as to the truth of the averments of this paragraph and they are therefore denied.

103. Plaintiff is without knowledge sufficient to form a belief as to the truth of the averment that "GMC seemed receptive to the plan of reorganization" as Plaintiff was not privy to Defendants' communications with GMC, which all occurred behind Plaintiff's back. By way of further answer, Plaintiff refused to "execute the documents" to complete Defendants' scheme because they were unfair, improper and commercially unreasonable as proposed.

104. Admitted in part and denied in part. By way of further answer, the misdemeanors to which Plaintiff plead guilty were in the nature of improper record keeping actions, which were done in an effort to save the companies of which Defendants were aware, which they condoned and which it is believed Defendants' themselves engaged. It is denied that Plaintiff operated FABCO. To the contrary, FABCO was operated as a family business by Defendants and Plaintiff.

105. Denied as stated. In an effort to keep the dealership operational, Plaintiff took actions regarding financing approximately seven (7) vehicles, which were illegal. Plaintiff did not personally benefit from these actions.

106. Admitted in part and denied in part. It is admitted that GMC Sales was sold in about February 2002. It is denied that GMC Sales was sold as a result of any illegal activities of Plaintiff.

107. Admitted in part and denied in part. It is admitted that GMC Sales ceased operation as a GMC franchise in March 2002. Plaintiff notified the creditors that GMC Sales ceased sales operations. It is denied that GMC Sales is out of business. To the contrary, it is believed and therefore averred that GMC Sales is an active corporation with substantial assets.

108. Denied. The Attachment to Agreement to Sign Stock Over to Richard Fullington, Sr. ("Attachment to Agreement") was negotiated and signed by Richard Fullington Sr. with the knowledge of all Defendants. Further, the Attachment to Agreement was negotiated and executed as the primary inducement for Plaintiff to sign Agreement for Corporate Separation, which Plaintiff would not have signed in the absence of the executed Attachment to Agreement.

109. Denied as stated. To the contrary, the Fullington family's counsel devised a plan to protect personal assets from garnishment by various banks by the filing of the liens. Part of the plan was that Defendants would not execute upon the liens. Defendants were all aware that the Notes did not represent bona fide debts of Plaintiff but rather made up corporate counsel to defeat the claims of various creditors and in fact have admitted this fact.

110. Plaintiff is without knowledge concerning the alleged forbearance agreement negotiations between FABCO, GMC Sales and various creditors or whether the subject loans were obtained while Plaintiff was involved in the family business. It is admitted that Plaintiff

had executed personal guarantees to obtain loans for FABCO and GMC Sales in his effort to save these businesses and Defendants were aware of these loans and personal guarantees at the time they were made. By way of further answer, Defendants had agreed to pay these loans by other means without resort to execution of Plaintiff's personal guarantees as part of the Separation Agreement. It is denied that Defendants did this to "assist" Plaintiff and his family. To the contrary, this was done as part of the Separation Agreement.

111. Admitted. By way of further answer, the criminal complaint involved actions taken by Plaintiff in an attempt to keep GMC Sales operational for the benefit of the family business of which Defendants were aware, which they condoned and which it is believed Defendants themselves engaged in.

112. Admitted. By way of further answer, the plea agreement involved actions taken by Plaintiff in an attempt to keep GMC Sales operational for the benefit of the family business of which Defendants were aware, which they condoned and which it is believed Defendants themselves engaged in.

113. After reasonable investigation, Plaintiff is without knowledge sufficient to form a belief as to the truth of the averments of this paragraph. It is denied that FABCO owed large sums of money as a result of any improper actions of Plaintiff.

114. After reasonable investigation, Plaintiff is without knowledge sufficient to form a belief as to the truth of the averments of this paragraph. By way of further answer, it was not unusual for FABCO to have "negative equity" or to have loans in arrears.

115. After reasonable investigation, Plaintiff is without knowledge sufficient to form a belief as to the truth of the averments of this paragraph.

116. It is denied that Defendants formed Fullington Real Estate to "protect creditors"

or "save FABCO and GMC Sales". To the contrary, it is believed and therefore averred that Fullington Real Estate was formed to improperly enrich Michael Fullington and Aerial Fullington Weisman at the expense of Plaintiff, the family business and Richard Fullington, Sr. It is admitted that Defendants Michael Fullington and Aerial Fullington Weisman at the expense of Plaintiff, the family business and Richard Fullington, Sr., improperly transferred the referenced properties into the name of Fullington Real Estate the day before the powers of attorney they used were set to expire and without notice to Plaintiff. It is denied that this was done for proper purposes. To the contrary, it was done to improperly enrich Michael Fullington and Aerial Fullington Weisman at the expense of Plaintiff, Richard Fullington, Sr. and the family businesses. It is denied that Plaintiff acquired their properties improperly. To the contrary, Plaintiff acquired the properties properly with knowledge of the Defendants with Defendants' approval. The remaining averments of this paragraph are legal conclusions to which no response is necessary. To the extent a response is required, these averments are denied.

117. The averments of paragraph 117 of Defendants' Counterclaim constitute conclusions of law to which no response is necessary. To the extent a response is required, these averments are denied. To the contrary, it is denied that any actions taken by Plaintiff seriously harmed FABCO and GMC Sales. To the contrary, Plaintiff acted in the best interest of the family business with knowledge of Defendants at all times.

118. It is denied that Plaintiff personally benefited by any improper illegal or fraudulent conduct whatsoever or that Plaintiff improperly took money or assets from FABCO and GMC Sales. It is further denied that Defendants suffered any harm as a result of actions taken by Plaintiff while working for GMC Sales or FABCO. It is further denied that Defendants suffered any harm as a result of any actions taken by Plaintiff. To the contrary, any harm

suffered by Defendants was a result of their own improper actions and Plaintiff acted in the best interest of the family business with knowledge of Defendants at all times.

WHEREFORE, Plaintiff requests this Court to enter judgment in favor of Plaintiff and against Defendants as to the claims and the counterclaim and award Plaintiff such other relief as the Court deems appropriate.

ANSWER TO COUNTERCLAIM

COUNT I

119. The averments contained in Plaintiff's Complaint in paragraphs 81 through 118 of this Reply to New Matter and Answer to Counterclaim are incorporated by reference as if fully set forth herein.

120. The averments of paragraph 120 of Defendants' Counterclaim are denied. To the contrary, Plaintiff did not improperly obtain funds directly from FABCO and GMC Sales for his own personal use. Further, Defendants were aware of and condoned the actions taken on behalf of FABCO and GMC Sales.

121. The averments of paragraph 121 are denied. To the contrary, the averments of paragraph 120 of this Answer to Counterclaim are incorporated by reference.

122. The averments of paragraph 122 are denied. To the contrary, Plaintiff did not cause FABCO and GMC Sales to obtain bank loans that were collateralized in part by FABCO and/or GMC Sales assets for his own personal use. Further, the averments of paragraph 120 of this Answer to Counterclaim are incorporated by reference.

123. The averments of paragraph 123 are denied. To the contrary, at all times relevant hereto Plaintiff acted in the best interest of the family business. Further, the averments of paragraph 120 of this Answer to Counterclaim are incorporated by reference.

124. The averments of paragraph 124 are denied. To the contrary, the rents were deposited into the accounts of GMC Sales. Further, the averments of paragraph 120 of this Answer to Counterclaim are incorporated by reference.

125. The averments of paragraph 125 are denied. To the contrary, all loans were paid by the appropriate entity with the knowledge and consent of all parties involved in the family business.

126. The averments of paragraph 126 are denied. To the contrary, Plaintiff was not involved with agreeing to repay the loan obtained by his in-laws, rather that decision was made by Defendants while Defendants were in control of the family business

127. The averments of paragraph 127 are denied. To the contrary, Plaintiff did not inflate the monthly payments due to GMC Sales various creditors. By way of further answer, Defendants were well aware of all business expenses and made payments with full knowledge of the actual facts. It is further denied that Plaintiff personally profited in any manner as alleged in paragraph 127 of Defendants' counterclaim. To the contrary, Plaintiff acted at all times in the best interest of the family business.

129. The averments of paragraph 129 constitute legal conclusions to which no response is necessary. To the extent a response is required, the averments of paragraph 129 of Defendants' counterclaim are denied. To the contrary, Plaintiff was not unjustly enriched as a result of his actions, and to the contrary, acted in the best interest of the family business at all times relevant hereto.

130. The averments of paragraph 130 constitute legal conclusions to which no response is necessary. To the extent a response is required, it is denied that Plaintiff improperly received any monies or assets from FABCO or GMC Sales, and therefore FABCO and GMC

Sales are not entitled to repayment from Plaintiff.

131. The averments of paragraph 131 constitute legal conclusions to which no response is necessary. To the extent a response is required, it is denied that FABCO and/or GMC Sales had been damaged in any manner by the actions taken by Plaintiff. To the contrary, if FABCO and GMC Sales had been damaged in any manner, it is as a result of the actions taken by Michael Fullington and Aerial Fullington Weisman.

WHEREFORE, Plaintiff requests this Court to enter judgment in favor of Plaintiff and against Defendants as to the claims and the counterclaim and award Plaintiff such other relief as the Court deems appropriate.

COUNT II

132. The averments contained in Plaintiff's Complaint in paragraphs 81 through 131 of this Reply to New Matter and Answer to Counterclaim are incorporated by reference as if fully set forth herein.

133. The averments of paragraph 133 of the Defendants' counterclaim are denied. It is denied that Plaintiff improperly took any funds or assets from FABCO and/or GMC Sales. To the contrary, any funds received from FABCO or GMC Sales were properly payable to Plaintiff with the knowledge of Defendants, and under the circumstances no restitution would be equitable.

134. The averments of paragraph 134 of Defendants' counterclaim constitute conclusions of law to which no response is necessary. To the extent a response is required, the averments of paragraph 134 are denied. To the contrary, no conduct of Plaintiff has caused any damage to FABCO or GMC Sales. To the extent that FABCO and/or GMC Sales have been damaged, they have been damaged by the conduct of Michael Fullington and Aerial Fullington

Weisman.

WHEREFORE, Plaintiff requests this Court to enter judgment in favor of Plaintiff and against Defendants as to the claims and the counterclaim and award Plaintiff such other relief as the Court deems appropriate.

COUNT III

135. The averments contained in Plaintiff's Complaint in paragraphs 81 through 134 of this Reply to New Matter and Answer to Counterclaim are incorporated by reference as if fully set forth herein.

136. The averments of paragraph 136 of Defendants' counterclaim are denied. After Michael Fullington and Aerial Fullington Weisman saw to it that all Defendants breached the agreements with Plaintiff, leaving him essentially penniless and had improperly and illegally taken almost all of Plaintiffs' property; Plaintiff had an approximately 20 minute conversation with the owner of Cole Transportation to explore the possibility of employment. It is denied that Plaintiff sought to destroy FABCO or that the even had the ability to do so. To the contrary, Plaintiff was exploring an employment possibility to support himself and his children after Michael Fullington and Aerial Fullington Weisman had taken improper and illegal actions to deprive Plaintiff of his property and his livelihood.

137. The averments of paragraph 137 of Defendants' counterclaim are denied. To the contrary, Plaintiff was merely exploring an employment possibility. By way of further answer, Plaintiff did not offer to do anything improper whatsoever, nor did he have the power to "help Cole obtain business contracts which were currently being served by FABCO". To the contrary, he was exploring an employment possibility to help support himself and his children after

Michael Fullington and Aerial Fullington Weisman had taken improper and illegal actions to deprive Plaintiff of his property and his livelihood.

138. The averments of paragraph 138 of Defendants' counterclaim are denied. To the contrary, Plaintiff did nothing to intentionally harm FABCO's business, despite the fact that Michael Fullington and Aerial Fullington Weisman's improper and illegal course of conduct designed to destroy Plaintiff personally and financially.

139. After reasonable investigation, Plaintiff is without sufficient knowledge to form a belief as to the truth of the averments of this paragraph, and they are, therefore, denied.

140. After reasonable investigation, Plaintiff is without sufficient knowledge to form a belief as to the truth of the averments of this paragraph, and they are, therefore, denied.

141. After reasonable investigation, Plaintiff is without knowledge concerning Defendants' perception of why the sale was "vital" and therefore, this averment is denied. It is further denied that the proceeds of the sale were needed to reduce any debt improperly incurred while Plaintiff was involved in the family business. To the contrary, Plaintiff did not improperly incur debt on behalf of the family business.

142. After reasonable investigation, Plaintiff is without sufficient knowledge to form a belief as to the truth of the averments of this paragraph, and they are, therefore, denied.

143. The averments of paragraph 143 of Defendants' Counterclaim are denied. To the contrary, the properties were not "purchased solely with funds provided by FABCO" and were purchased with the knowledge and consent of Defendants.

144. The averments of paragraph 144 of Defendants' counterclaim are denied. To the contrary, any and all actions taken by Plaintiff in this or any other action were taken to protect his legitimate rights against the improper and illegal actions of Defendants Michael Fullington

and Aerial Fullington Weisman and the other Defendants. It is further denied that Plaintiff "knew full well he had no lawful claim to the land". To the contrary, Plaintiff firmly believed that he has a bona fide legal and equitable interest concerning the land.

145. Admitted in part and denied in part. It is admitted that prior counsel for Plaintiff filed a Motion for Continuance in Proceedings. The remainder of the averments of paragraph 145 are denied as stated. To the contrary, there was a serious miscommunication between Plaintiff and his previous counsel concerning what was expected of Plaintiff concerning the appraisal and the timing requirements of same.

146. The averments of paragraph 146 of Defendants' counterclaim are denied. To the contrary, Plaintiff merely sought to protect his legal and equitable claims concerning the land at all times relevant hereto.

147. The averments of paragraph 147 of Defendants' counterclaim are denied. To the contrary, all actions taken by the Plaintiff in this lawsuit and with respect to the land were taken to protect his bona fide and legal equitable rights. With regard to the specific averments contained in paragraph 147, after reasonable investigation, Plaintiff is without knowledge sufficient to form a belief as to the truth of these averments, and they are therefore denied.

148. The averments of paragraph 148 of Defendants' counterclaim constitute legal conclusions to which no response is necessary.

149. The averments of paragraph 149 of Defendants' counterclaim are denied. To the contrary, Defendants have not been damaged in any manner by Plaintiff's actions, and all alleged damages or loss suffered by Defendants were suffered as a result of Defendants' actions or inactions.

150. The averments of paragraph 150 of Defendants' counterclaim are denied. To the

contrary, Plaintiff has merely sought to protect his bona fide legal and equitable interests in this action.

WHEREFORE, Plaintiff requests this Court to enter judgment in favor of Plaintiff and against Defendants as to the claims and the counterclaim and award Plaintiff such other relief as the Court deems appropriate.

COUNT IV

151. The averments contained in Plaintiff's Complaint in paragraphs 81 through 151 of this Reply to New Matter and Answer to Counterclaim are incorporated by reference as if fully set forth herein.

152. The averments of paragraph 152 of Defendants' counterclaim are denied. To the contrary, Plaintiff did not make disparaging remarks about FABCO to persons in the community in an effort to destroy FABCO's reputation and in turn its business.

153. The averments of paragraph 153 of Defendants' counterclaim are denied. To the contrary, Plaintiff has not made any false and discouraging remarks about FABCO and his family members who are current officers and directors of FABCO intentionally and maliciously solely to harm FABCO.

154. The averments of paragraph 154 of Defendants' counterclaim are denied. To the contrary, Plaintiff has made no false and discouraging statements concerning FABCO including but not limited to FABCO's inability to perform its business properly and its inability to carry out its contract.

155. The averments of paragraph 155 of Defendants' counterclaim are denied. To the contrary, Defendants have not been damaged by any action or inaction of Plaintiff.

156. The averments of paragraph 156 of Defendants' counterclaim are denied. To the

contrary, Plaintiff has merely sought to protect his bona fide legal and equitable interests in this action.

WHEREFORE, Plaintiff requests this Court to enter judgment in favor of Plaintiff and against Defendants as to the claims and the counterclaim and award Plaintiff such other relief as the Court deems appropriate.

NEW MATTER

157. Plaintiff incorporates the averments of its Complaint, Reply to New Matter and Answer to Counterclaim as if set forth fully herein.

158. Defendants have failed to state a claim upon which relief can be granted.

159. Defendants claims are barred by the applicable statute of limitations and repose.

160. Defendants' claims are barred or limited by the doctrine of accord and satisfaction.

161. Defendants' claims are barred or limited by the doctrine of consent.

162. Defendants' claims are barred or limited by the doctrines of estoppel and waiver.

163. Defendants' claims are barred or affected by Defendants' fraud and illegal actions.

164. Defendants' claims are barred or limited by the doctrine of laches.

165. Defendants' claims are barred or limited by the doctrine of unclean hands.

166. Any injury, damage or loss allegedly suffered by Defendants was proximately caused or contributed to by a superseding and intervening or causes other than any act or omission on the part of the Plaintiff.

167. Defendants' claims are barred or affected by the fact that statements made by Plaintiff, if any, are the truth.

168. Throughout Plaintiff's involvement in the family business all parties involved in the family business including Michael Fullington and Aerial Fullington Weisman were aware of and approved how the business was operated generally and of the actions taken by Plaintiff in particular.

169. It is believed, and therefore, averred, that for years Defendants, Michael Fullington and Aerial Fullington Weisman improperly took money from the family businesses, including GMC Sales and FABCO.

170. It is believed, and therefore, averred, that since the time that Defendants Michael Fullington and Aerial Fullington Weisman took over control of the family business they have engaged in improper and illegal conduct to the detriment of the family business.

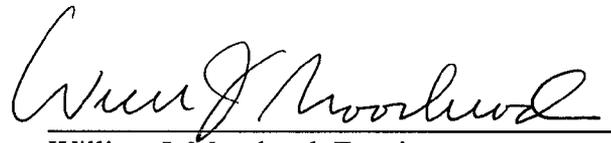
171. Prior to serving his sentence for the actions that he took attempting to save GMC Sales, Defendant Michael Fullington convinced Plaintiff to give Michael Fullington his power of attorney. Defendant, Michael Fullington, promised to "look out for" Plaintiff and his family and to use the power of attorney only for Plaintiff and Plaintiff's family's best interest.

172. Instead, Defendant, Michael Fullington, in conspiracy with Defendant Aerial Fullington Weisman, took the despicable action using the powers of attorney the day before they were to expire to improperly and illegally strip Plaintiff of nearly all of his property.

WHEREFORE, Plaintiff requests this Court to enter judgment in favor of Plaintiff and against Defendants as to the claims and the counterclaim and award Plaintiff such other relief as the Court deems appropriate.

Respectfully submitted,

MERCHANT, MOORHEAD & KAY, LLC.

A handwritten signature in cursive script, appearing to read "William J. Moorhead", written over a horizontal line.

William J. Moorhead, Esquire

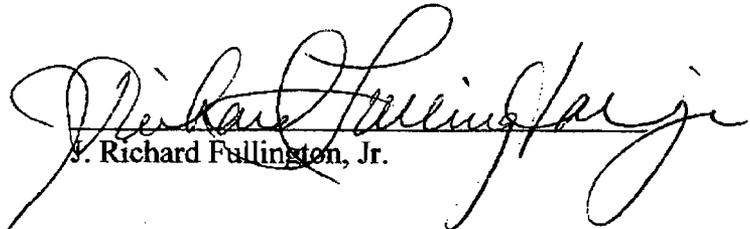
PA I.D. #52761

Attorney for Plaintiff, J. Richard Fullington

VERIFICATION

I, J. RICHARD FULLINGTON, JR, have read the foregoing Reply to New Matter, Answer to Counterclaims and New Matter and verify that the statements therein are correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



J. Richard Fullington, Jr.

Dated: 5/10/04

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2006, a true and correct copy of the within Reply to New Matter, Answer to Counterclaims and New Matter was served via United States Mail, First Class, Postage Prepaid to Defense Counsel as set forth below:

Paul H. Titus, Esquire
Judith F. Olson, Esquire
Schnader, Harrison, Segal & Lewis, LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

MERCHANT MOORHEAD & KAY, LLC



William J. Moorhead, Esquire
PA I.D. #52761
Attorney for Plaintiff, J. Richard Fullington, Jr.

603 Washington Rd.
Suite 500
Pittsburgh, PA 15228
(412) 942-0770

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

TYPE OF PLEADING:

REPLY TO NEW MATTER

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON TON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

FILED ON BEHALF OF:

Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: June 7, 2006

FILED ^{EW}

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William A. Shaw
Prothonotary/Clerk of Courts

3 CENT TO DEPT.

necessary, Defendants deny that their claims are barred in any way. To the contrary, the Defendants Counterclaims are proper.

4. Defendants deny the averments contained in paragraph 168 of Plaintiff's New Matter. It is denied that all parties involved in the family business were aware of and approved how the business was operated generally and of the actions taken by Plaintiff in particular. To the contrary, Plaintiff ran the businesses with little or no involvement of other family members and took actions that Michael Fullington and Aerial Fullington Weisman knew nothing about.

5. Defendants deny the averments contained in paragraph 169 of Plaintiff's New Matter. It is denied that Michael Fullington and Aerial Fullington Weisman improperly took money from the family businesses, including GMC Sales and FABCO. To the contrary, neither Michael Fullington nor Aerial Fullington Weisman improperly took money from any of the family businesses.

6. Defendants deny the averments contained in paragraph 170 of Plaintiff's New Matter. It is denied that Michael Fullington and Aerial Fullington Weisman have engaged in improper and illegal conduct to the detriment of the family business. To the contrary, Michael Fullington and Aerial Fullington Weisman have not engaged in improper or illegal conduct and, in fact, have worked diligently to save the family business.

7. Defendants deny the averments contained in paragraph 171 of Plaintiff's New Matter. It is denied that Plaintiff served sentences for actions that he took to save GMC Sales. To the contrary, Plaintiff's actions harmed GMC Sales. It is further denied that Michael Fullington convinced Plaintiff to give Michael his power of attorney. To the contrary, Plaintiff willingly and without any need for convincing granted Michael his power of attorney. It is further denied as stated that Michael Fullington promised to "look out for" Plaintiff and his

family and to use the power of attorney only for Plaintiff and Plaintiff's family's best interest. To the contrary, Michael Fullington agreed to use Plaintiff's power of attorney properly and, in fact, did so.

8. Defendants deny the averments contained in paragraph 172 of Plaintiff's New Matter. It is denied that Michael Fullington, in conspiracy with Aerial Fullington Weisman, took the action of using the power of attorney the day before it was to expire to improperly and illegally strip Plaintiff of nearly all of his property. To the contrary, Michael Fullington properly and legally exercised the power of attorney to make sure that property that belonged to the family business, and not to Plaintiff, was protected from further misuse and harm by Plaintiff.

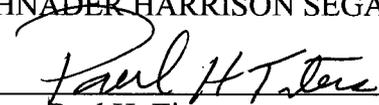
WHEREFORE, Defendants Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman respectfully request that this Honorable Court enter judgment in their favor and against Plaintiff as to Defendants' Counterclaims.

Date: June 7, 2006

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By


Paul H. Titus

Pa. Id. No. 01399

Judith F. Olson

Pa. Id. No. 37476

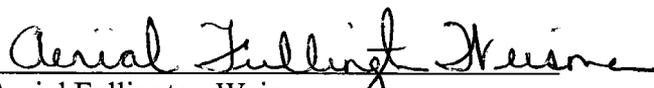
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Counsel for Defendants, Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman

VERIFICATION

Aerial Fullington Weisman hereby states that she is President, Chief Executive Officer and majority shareholder of The Fullington Auto Bus Company, and Acting President, Chief Executive Officer and majority shareholder of Fullington GMC Sales, Inc., and a Defendant in this action, and that the statements of fact made in the foregoing **Reply to New Matter** are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Con. Stat. §4904 relating to unsworn falsification to authorities.

Date: June 7, 2006


Aerial Fullington Weisman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Reply to New Matter** was served upon the following counsel of record by hand delivery this 7th day of June, 2006:

William J. Moorhead, Esquire
Merchant, Moorhead & Kay, LLC
Arrott Building
401 Wood Street, Suite 400
Pittsburgh, PA 15222

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

TYPE OF PLEADING:

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON TON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

**DEFENDANTS' MOTION FOR
PROTECTIVE ORDER RE
DEPOSITION NOTICE DIRECTED
TO J. RICHARD FULLINGTON, SR.**

Defendants.

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
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LEWIS LLP
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(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: June 28, 2006

FILED

JUN 29 2006

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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
CIVIL ACTION - LAW**

J. RICHARD FULLINGTON, JR.,)	
)	
Plaintiff,)	
)	
v.	)	No. 05-565
)	
FULLINGTON AUTO BUS COMPANY)	
et al.,)	
)	
Defendants.)	

**DEFENDANTS' MOTION FOR PROTECTIVE ORDER RE DEPOSITION
NOTICE DIRECTED TO J. RICHARD FULLINGTON, SR.**

Defendants Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael Fullington, and Aerial Fullington Weisman, by the undersigned counsel, hereby moves, pursuant to Rule 4012 Pa.R.C.P. for a protective order directing that the deposition scheduled in the attached Notice of Deposition (attached hereto as Exhibit C) be prohibited pending the decision in this Court in the guardianship proceedings pending at No. 1706-0340, Orphan's Court Division. In support of this Motion, the parties state:

1. This Court has full authority to "make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden, or expense" in connection with any requested discovery. Rule 4012(a).
2. On June 23, 2006, Plaintiff J. Richard Fullington, through his counsel, served a Notice of Deposition to take the deposition of J. Richard Fullington, Sr. on July 7, 2006 (attached hereto as Exhibit A).
3. In response to that Notice, the undersigned counsel sent a letter to Mr. Moorhead requesting that any deposition be delayed until after July 19, 2006 when a hearing is scheduled

before the Court in the guardianship proceeding pending at No. 1706-0340 (attached hereto as Exhibit B).

4. On June 27, 2006, counsel for Plaintiff and the undersigned counsel conferred by telephone with respect to the scheduling of a deposition of Mr. Fullington, Sr. Counsel for Plaintiff indicated that he would consider the request of undersigned counsel that any deposition be held after the conclusion of the hearing in the guardianship matter but that, after consultation with his client, he might serve a new notice to take the deposition at the office of counsel for Mr. Fullington, Sr.

5. The Notice of Deposition attached hereto as Exhibit C has been received today continuing to schedule a deposition for July 7, 2006.

6. Undersigned counsel has conferred with Timothy Durant, Esquire, attorney for J. Richard Fullington, Sr., and he has indicated that he has no objection to the request for the continuance of any decision with respect to a notice of deposition until the conclusion of the pending guardianship proceedings.

7. Undersigned counsel respectfully requests that this Court enter an Order prohibiting any deposition pending the conclusion of the pending guardianship proceedings.

WHEREFORE, it is respectfully requested that the relief sought in this Motion be granted.

June, 28, 2006

Respectfully submitted,



Paul H. Titus (Pa. I.D. No. 01399)
Judith F. Olson (Pa. I.D. No. 37476)

Schnader Harrison Segal & Lewis LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Filed on behalf of Defendants
Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

J. RICHARD FULLINGTON, JR.,

Plaintiff,

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

CIVIL ACTION - LAW

No. 05-565

**PLAINTIFF'S NOTICE OF DEPOSITION
OF DEFENDANT, J. RICHARD
FULLINGTON, SR.**

Filed on Behalf of Plaintiff,
J. RICHARD FULLINGTON, JR.

Counsel of Record for this Party:

WILLIAM J. MOORHEAD, Esquire
PA I.D. #52761

MERCHANT, MOORHEAD & KAY, LLC
603 Washington Rd.
Suite 500
Pittsburgh, PA 15228

412-942-0770 (Phone)
412-942-0774 (Fax)

Firm #510

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

J. RICHARD FULLINGTON, JR.,)	
	)	CIVIL ACTION - LAW
Plaintiff,)	
)	
v.	)	No. 05-605
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD)	
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

NOTICE OF DEPOSITION

TO: Paul H. Titus, Esquire
Schnader, Harrison, Segal & Lewis, LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

TAKE NOTICE that Plaintiff, J. Richard Fullington, Jr., will take the deposition upon oral examination of Defendant, J. Richard Fullington, Sr., pursuant to the provisions of Pennsylvania Rule of Civil Procedure 4007.1 on **Friday, July 7, 2006, at 10:00 a.m.**

The deposition will be taken. at 1300 Leonard Street, Colonial Courtyard, Clearfield, Pennsylvania 16830, at which time and place you are invited to appear and take part as shall be fitting and proper.

Respectfully submitted,

MERCHANT, MOORHEAD & KAY



William J. Moorhead, Esquire, PA I.D. #52761
Attorney for Plaintiff, J. Richard Fullington, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2006, the within
Notice of Deposition was served on Defendant via United States Mail, First Class, Postage
Prepaid as set forth below:

Paul H. Titus, Esquire
Schnader, Harrison, Segal & Lewis, LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

MERCHANT, MOORHEAD & KAY, LLC



William J. Moorhead, Esquire
PA I.D. #52761
Attorney for Plaintiff,
J. Richard Fullington, Jr.

603 Washington Rd.
Suite 500
Pittsburgh, PA 15228

(412) 942-0770

June 26, 2006

Paul H. Titus
Direct Dial 412-577-5224
Direct Fax 412-577-5194
E-mail: ptitus@schnader.com

William J. Moorhead, Esquire
Merchant, Moorhead & Kay, LLC
603 Washington Road, Suite 500
Pittsburgh, Pennsylvania 15228

Re: *J. Richard Fullington, Jr.*
v. Fullington Auto Bus Co., et al.
No. 05-565

Dear Bill:

I'm writing in response to your letter of June 23, 2006 with the enclosed Notice of Deposition of Defendant J. Richard Fullington, Sr. I would recommend that any deposition be postponed until after July 19. Enclosed herewith please find a copy of a letter from Carl Belin, Jr., which was forwarded to me by Aerial Fullington Weisman with two Orders of the Court of Common Pleas of Clearfield County. As you can see from these Orders, a renewed hearing in the guardianship matter for Mr. Fullington will be held on July 19. I think that it would be appropriate to wait until we know the outcome of that proceeding. I am also sending a copy of your letter and notice, together with the enclosed materials, to Timothy Durant, Esquire, who is, as far as I know, still representing Mr. Fullington as Defendant in the above-referenced lawsuit.

Please let me know if you see any problem with waiting until the court has concluded its hearing in the guardianship matter.

Best regards.

Sincerely,



Paul H. Titus

PHT:at
Enclosures
cc: Timothy E. Durant, Esq. (w/encs.)

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

J. RICHARD FULLINGTON, JR.,

CIVIL ACTION - JAW

Plaintiff,

No. 05-565

v.

**PLAINTIFF'S AMENDED NOTICE
OF DEPOSITION OF DEFENDANT
J. RICHARD FULLINGTON, SR.**

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Filed on Behalf of Plaintiff,
J. RICHARD FULLINGTON, JR.

Defendants.

Counsel of Record for this Party:

WILLIAM J. MOORHEAD, Esquire
PA I.D. #52761

MERCIANT, MOORHEAD & KAY, LLC
603 Washington Rd.
Suite 500
Pittsburgh, PA 15228

412-942-0770 (Phone)
412-942-0774 (Fax)

Firm #510

05-605

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

J. RICHARD FULLINGTON, JR.,)	
	)	CIVIL ACTION - LAW
Plaintiff,)	
)	
v.	)	No. 05-605
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD)	
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

AMENDED NOTICE OF DEPOSITION

TO: Timothy Durant, Esquire
201 North 2d Street
Clearfield, PA 16830

TAKE NOTICE that Plaintiff, J. Richard Fullington, Sr., will take the deposition upon oral examination of Defendant, J. Richard Fullington, Sr., pursuant to the provisions of Pennsylvania Rule of Civil Procedure 4007.1 on **Friday, July 7, 2006, at 1:30 p.m.**

The deposition will be taken. at the offices of Timothy Durant, Esquire at 201 North 2d St., Clearfield, PA 16830, at which time and place you are invited to appear and take part as shall be fitting and proper.

Respectfully submitted,

MERCHANT, MOORHEAD & KAY



William J. Moorhead, Esquire, PA I.D. #52761
Attorney for Plaintiff, J. Richard Fullington, Jr.

05-605

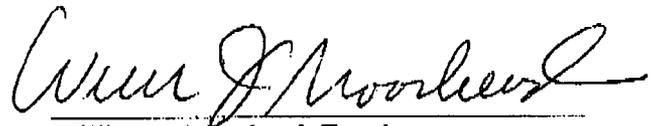
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2006, the within Amended Notice of Deposition was served on Defendant via United States Mail, First Class, Postage Prepaid as set forth below:

Paul H. Titus, Esquire
Schnader, Harrison, Segal & Lewis, LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Timothy Durant, Esquire
201 North Second St.
Clearfield, PA 16830

MERCHANT, MOORHEAD & KAY, LLC



William J. Moorhead, Esquire
PA I.D. #52761
Attorney for Plaintiff,
J. Richard Fullington, Jr.

603 Washington Rd.
Suite 500
Pittsburgh, PA 15228

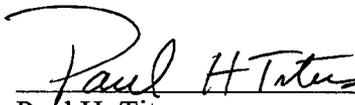
(412) 942-0770

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DEFENDANTS' MOTION FOR PROTECTIVE ORDER RE NOTICE OF DEPOSITION DIRECTED TO J. RICHARD FULLINGTON, SR.** was served upon the following counsel of record by facsimile and first-class mail, postage prepaid, this 29th day of June, 2006:

William J. Moorhead, Esquire
Merchant, Moorhead & Kay, LLC
603 Washington Road
Pittsburgh, PA 15228
Fax: 412-942-0774

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Fax: 814-765-9596



Paul H. Titus

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

J. RICHARD FULLINGTON, JR.,
Plaintiff

*
*
*
*
*
*
*

vs.

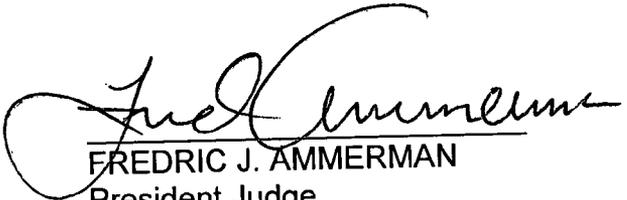
NO. 05-565-CD

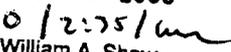
FULLINGTON AUTO BUS COMPANY, et al.,
Defendants

ORDER

NOW, this 29th day of June, 2006, the Motion for Protective Order sought by counsel for Defendants Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman is **GRANTED**. No deposition of J. Richard Fullington, Sr. shall be taken in this matter until the conclusion of the guardianship proceedings pending at No. 1706-0340, Orphan's Court Division, and thereafter the taking of any deposition of Mr. J. Richard Fullington, Sr. shall be subject to further order of this Court.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 
JUN 29 2006
0 / 2:35 / 
William A. Shaw
Prothonotary/Clerk of Courts
3 CERT. TO DEPT.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

TYPE OF PLEADING:

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

**PRAECIPE TO THE COURT
ADMINISTRATOR**

Defendants.

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

Date: June 29, 2006

FOR COURT ADMINISTRATOR ACTION ONLY

_____ MOTION OR PETITION ASSIGNED TO JUDGE

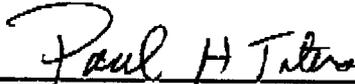
_____ COUNSEL FOR MOVING PARTY NOTIFIED OF JUDICIAL ASSIGNMENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PRAECIPE TO THE COURT ADMINISTRATOR** was served upon the following counsel of record by facsimile and first-class mail, postage prepaid, this 29th day of June, 2006:

William J. Moorhead, Esquire
Merchant, Moorhead & Kay, LLC
603 Washington Road
Pittsburgh, PA 15228
Fax: 412-942-0774

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Fax: 814-765-9596



Paul H. Titus

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

J. RICHARD FULLINGTON, JR.,

Plaintiff,

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

CIVIL ACTION - LAW

No. 05-565

CERTIFICATE OF SERVICE

Filed on Behalf of Plaintiff,
J. RICHARD FULLINGTON, JR.

Counsel of Record for this Party:

WILLIAM J. MOORHEAD, Esquire
PA I.D. #52761

MERCHANT, MOORHEAD & KAY, LLC
603 Washington Rd.
Suite 500
Pittsburgh, PA 15228

412-942-0770 (Phone)
412-942-0774 (Fax)

Firm #510

FILED

JUN 30 2006
m/12:30
William A. Shaw
Prothonotary/Clerk of Courts
wa c/c (6R)

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

J. RICHARD FULLINGTON, JR.,)	
	)	CIVIL ACTION - LAW
Plaintiff,)	
)	
v.	)	No. 05-605
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD)	
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2006, the following court papers were served upon Timothy Durant, counsel for J. Richard Fullington, Sr. at 201 North Second Street, Clearfield, PA 16830 via United States Mail, First Class, Postage Prepaid:

1. Preliminary Objections to Defendant's New Matter and Counterclaim;
2. Answer to Counterclaim and New Matter;
3. Petition to Open Confessed Judgment Case No.: 2002-00650-CD;
4. Petition to Open Confessed Judgment Case No.: 2002-00648-CD;
5. Plaintiff's First Request for Production of Documents;
6. Plaintiff's First Set of Interrogatories; and
7. Certificate of Service indicating service of same was made upon you via regular mail.

Respectfully submitted,

MERCHANT, MOORHEAD & KAY



William J. Moorhead, Esquire, PA I.D. #52761
Attorney for Plaintiff, J. Richard Fullington, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 2006, the within Certificate of Service was served on Defendant via United States Mail, First Class, Postage Prepaid as set forth below:

Paul H. Titus, Esquire
Schnader, Harrison, Segal & Lewis, LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Timothy Durant, Esquire
201 North Second St.
Clearfield, PA 16830

MERCHANT, MOORHEAD & KAY, LLC



William J. Moorhead, Esquire
PA I.D. #52761
Attorney for Plaintiff,
J. Richard Fullington, Jr.

603 Washington Rd.
Suite 500
Pittsburgh, PA 15228

(412) 942-0770

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

J. RICHARD FULLINGTON, JR.,

CIVIL ACTION - LAW

Plaintiff,

No. 05-565

v.

**PLAINTIFF'S MOTION FOR LEAVE
TO TAKE DEPOSITION OF
J. RICHARD FULLINGTON, SR.**

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Filed on Behalf of Plaintiff,
J. RICHARD FULLINGTON, JR.

Defendants.

Counsel of Record for this Party:

WILLIAM J. MOORHEAD, Esquire
PA I.D. #52761

MERCHANT, MOORHEAD & KAY, LLC
603 Washington Rd.
Suite 500
Pittsburgh, PA 15228

412-942-0770 (Phone)
412-942-0774 (Fax)

Firm #510

FILED

SEP 05 2006
mf 8:30/w
William A. Shaw
Prothonotary/Clerk of Courts
w/c

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

J. RICHARD FULLINGTON, JR.,)	
	)	CIVIL ACTION - LAW
Plaintiff,)	
)	
v.	)	No. 05-605
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD)	
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

**PLAINTIFF'S MOTION FOR LEAVE TO
TAKE DEPOSITION OF J. RICHARD FULLINGTON, SR.**

AND NOW, comes the Plaintiff J. Richard Fullington, Jr. by and through his undersigned counsel, Merchant, Moorhead & Kay, LLC and William J. Moorhead, Esquire and files the following Motion for Leave to Take Deposition of J. Richard Fullington, Sr. as follows:

1. Movant is J. Richard Fullington, Jr., Plaintiff in the above-captioned matter.
2. Respondents are Fullington Auto Bus Co., Fullington GMC Sales, Inc., Fullington Real Estate Co., J. Richard Fullington, Sr., Michael L. Fullington and Aerial Fullington Weisman, Defendants in the above-captioned matter.
3. The instant action was initiated by J. Richard Fullington Jr. in an effort to have Defendants abide a written agreement compensating Plaintiff for his ownership interest in the Fullington family businesses.

4. Within a matter of days of discovering that their father's truthful testimony would support Plaintiff in this lawsuit, Defendants Michael Fullington and Aerial Fullington Weisman filed a Petition for "Emergency" Guardian seeking to have their father declared incapacitated. Of course, the only "emergency" for Michael Fullington and Aerial Fullington Weisman was that Mr. Fullington, Sr.'s truthful testimony would support Plaintiff's claims in this case.

5. On June 23, 2006, Plaintiff served a Notice of Deposition to take the deposition of J. Richard Fullington, Sr.

6. Mr. Fullington's attorney, Timothy Durant, did not object to the deposition going forward and, in fact, made arrangements for the deposition to take place at his office. Counsel for Michael L. Fullington and Aerial Fullington, however, on June 28, 2006, filed a Motion for Protective Order citing the guardianship proceedings as the reason to preclude Plaintiff from obtaining J. Richard Fullington Sr.'s honest testimony at a deposition.

7. On June 29, 2006, Honorable Court granted the Motion to Quash without providing Plaintiff with an opportunity to respond to the Motion for a Protective Order. Plaintiff believes the Petition for Emergency Guardianship was motivated by Michael Fullington and Aerial Fullington Weisman's desire to stop J. Richard Fullington Sr. from testifying because such testimony would be helpful to Plaintiff's case.

8. There was no legitimate basis to further preclude the deposition of J. Richard Fullington, Sr. even in light of the guardianship proceedings, as there is no allegation even in the guardianship proceedings that J. Richard Fullington, Sr. is incompetent to testify.

9. The inability to depose J. Richard Fullington, Sr. is severely prejudicing Plaintiff's case and will make it impossible for Plaintiff to have a fair trial in this matter.

10. J. Richard Fullington, Sr. has never objected to his deposition being taken and the other Defendants certainly will not be prejudiced by his deposition occurring.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter an Order allowing the deposition of J. Richard Fullington, Sr. at the earliest possible time.

Respectfully submitted,

MERCHANT, MOORHEAD & KAY, LLC



William J. Moorhead, Esquire
PA I.D. #52761
Attorney for Plaintiff,
J. Richard Fullington, Jr.

603 Washington Rd.
Suite 500
Pittsburgh, PA 15228

(412) 942-0770

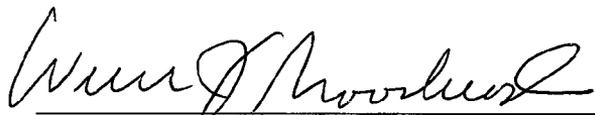
CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2006, the
within Notice of Deposition was served on Defendant via United States Mail, First Class,
Postage Prepaid as set forth below:

Paul H. Titus, Esquire
Schnader, Harrison, Segal & Lewis, LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Timothy Durant, Esquire
201 North Second St.
Clearfield, PA 16830

MERCHANT, MOORHEAD & KAY, LLC



William J. Moorhead, Esquire
PA I.D. #52761
Attorney for Plaintiff,
J. Richard Fullington, Jr.

603 Washington Rd.
Suite 500
Pittsburgh, PA 15228

(412) 942-0770

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

J. RICHARD FULLINGTON, JR.,)	
	)	CIVIL ACTION - LAW
Plaintiff,)	
)	
v.	)	No. 05-605
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD)	
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2006, it is hereby ORDERED, ADJUDGED and DECREED that J. Richard Fullington, Sr.'s deposition shall take place at a time mutually convenient with the parties, but in no event, later than September 15, 2006.

BY THE COURT

J.

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

J. RICHARD FULLINGTON, JR.,

Plaintiff

vs.

FULLINGTON AUTO BUS COMPANY;

FULLINGTON GMC SALES, INC.;

FULLINGTON REAL ESTATE COMPANY;

J. RICHARD FULLINGTON, SR.;

MICHAEL L. FULLINGTON; and

AERIAL FULLINGTON WEISMAN,

Defendants

NO. 05-565-CD

ORDER

NOW, this 5th day of September, 2006, the Court being in receipt of Plaintiff's

Motion for Leave to Take Deposition of J. Richard Fullington, Sr.; this Court noting that

by Order dated this date filed with the Clearfield County Orphans' Court to No. 1706-

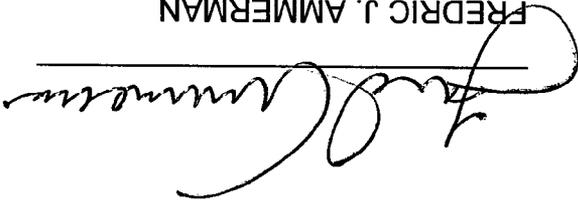
0340 that the said J. Richard Fullington, Sr. has been declared an incapacitated

individual and as such is not competent to give deposition testimony. Accordingly it is

the ORDER of this Court that the Plaintiff's Motion for Leave to Take Deposition of

J. Richard Fullington, Sr. be and is hereby DENIED.

BY THE COURT,



FREDRIC J. AMMERMAN

President Judge

FILED

SEP 06 2006

William A. Shaw
Prothonotary/Clerk of Courts

013:0013cc att. Monahan

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

TYPE OF PLEADING:

**MOTION TO SCHEDULE STATUS
CONFERENCE**

FILED ON BEHALF OF:

Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington
Real Estate Company, Michael L.
Fullington and Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

FILED

JAN 08 2007

W 2:00
William A. Shaw
Prothonotary/Clerk of Courts

1 CENT TO ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,)
)
 Plaintiff,)
)
 v.) No. 05-565
)
 FULLINGTON AUTO BUS COMPANY)
 et al.,)
)
 Defendants.)

MOTION TO SCHEDULE STATUS CONFERENCE

1. Plaintiff filed a Complaint on April 20, 2005.
2. Defendants filed an Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar Conveyance of Property which this Honorable Court heard on August 23, 2005 and granted the requested relief on September 9, 2005.
3. Defendants filed an Answer, New Matter, and Counterclaims on February 9, 2005.
4. Plaintiff filed Preliminary Objections to Defendants' New Matter and Counter Claims which this Honorable Court denied on April 27, 2006, thereby closing the pleadings.
5. Plaintiff has served interrogatories and requests for production of documents on Defendants. Defendants have answered the interrogatories and produced all documents requested by Plaintiff.
6. Defendants do not require any discovery.
7. Therefore, Defendants' respectfully request that this Honorable Court schedule a Status Conference in order to establish dates so that this case can be ready for trial during the next term of the Court.

WHEREFORE, Defendants respectfully request that this Honorable Court schedule a Status Conference at the convenience of the Court.

January 5, 2007

Respectfully submitted,



Paul H. Titus (Pa. I.D. No. 01399)

Judith F. Olson (Pa. I.D. No. 37476)

Schnader Harrison Segal & Lewis LLP

2700 Fifth Avenue Place

120 Fifth Avenue

Pittsburgh, PA 15222

(412) 577-5200 (Telephone)

(412) 765-3858 (Facsimile)

Filed on behalf of Defendants

Fullington Auto Bus Company,

Fullington GMC Sales, Inc., Fullington

Real Estate Company, Michael L.

Fullington and Aerial Fullington Weisman

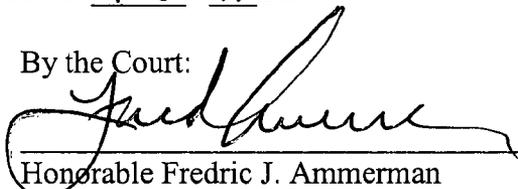
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,)
)
 Plaintiff,)
)
 v.) No. 05-565
)
 FULLINGTON AUTO BUS COMPANY)
 et al.,)
)
 Defendants.)

ORDER

AND NOW, this 10 day of JAN, 2007, upon consideration of Defendants' Motion to Schedule a Status Conference, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED. It is further ORDERED that a Status Conference will be held on 30th day of January, 2007 at 9:30 A.M.

By the Court:


Honorable Fredric J. Ammerman

FILED acc Atty
01/2:15 cm Titus
JAN 11 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1-11-07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED

JAN 11 2007

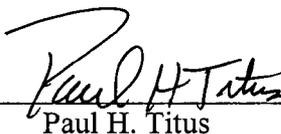
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **MOTION TO SCHEDULE STATUS CONFERENCE** was served upon the following counsel of record by facsimile and first-class mail, postage prepaid, this 5th day of January, 2007:

William J. Moorhead, Esquire
Merchant, Moorhead & Kay, LLC
603 Washington Road
Pittsburgh, PA 15228
Fax: 412-942-0774

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Fax: 814-765-9596



Paul H. Titus

James M. Greenfield
Keith M. Pemrick
Brian M. Spaid
Joseph H. Keebler, Jr.



1030 Liberty Street
Franklin, PA 16323-1298
814/432-2181
FAX 814/437-3212

Raymond S. Woodard
(Of Counsel)
Ralph L. Montgomery, Jr.
(Of Counsel)
Robert M. Dale
(1905-1983)

email: pemricklaw@csonline.net
website: www.dalewoodard.com

September 6, 2005

William A. Shaw, Sr., Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RECEIVED
SEP 08 2005
COURT ADMINISTRATOR'S
OFFICE

Re: *J. Richard Fullington, Jr. v. Fullington Auto Bus Company, et al.*
Clearfield County No. 05-565 C.D.

Dear Mr. Shaw:

Enclosed please find Plaintiff's Memorandum of Law in Opposition to Emergency Motion for filing in the above referenced matter. I have also enclosed an extra copy of the cover sheet for the Memorandum. Please fill the time and date of filing on the extra copy of the cover sheet and return it to me in the envelope I have enclosed for your convenience.

Sincerely yours,

DALE WOODARD LAW FIRM

By *Keith Pemrick*
Keith M. Pemrick

KMP/cnb
Enclosure: Memorandum

cc (w. enclosure):
Paul H. Titus, Esq.
Timothy E. Durant, Esq.
David S. Meholick, Court Admin. (via Facsimile)
(814) 765-7649

J. RICHARD FULLINGTON, JR.,

Plaintiff,

v.

FULLINGTON AUTO BUS COMPANY;
FULLINGTON GMC SALES, INC.;
FULLINGTON REAL ESTATE
COMPANY; J. RICHARD
FULLINGTON, SR.;
MICHAEL L. FULLINGTON; and
AERIAL FULLINGTON WEISMAN,

Defendants.

) IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA

)
)
) Civil Action -- Law

)
) Number 05 -- 565 C.D.

)
) Type of Pleading:
) Plaintiff's Memorandum of Law
) in Opposition to Emergency Motion

)
) Filed on Behalf of:
) Plaintiff

)
) Counsel of Record for this Party:
) Keith M. Pemrick
) Supreme Court I.D. No. 30322

)
) DALE WOODARD LAW FIRM
) 1030 Liberty Street
) Franklin, Pennsylvania 16323
) Telephone: (814) 432-2181
) Facsimile: (814) 437-3212

RECEIVED

SEP 08 2005

**COURT ADMINISTRATOR'S
OFFICE**

J. RICHARD FULLINGTON, JR.,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,)	
)	
v.	)	Civil Action – Law
)	
FULLINGTON AUTO BUS COMPANY;)	
FULLINGTON GMC SALES, INC.;)	
FULLINGTON REAL ESTATE)	
COMPANY; J. RICHARD	)	Number 05 – 565 C.D.
FULLINGTON, SR.;)	
MICHAEL L. FULLINGTON; and)	
AERIAL FULLINGTON WEISMAN,)	
)	
Defendants.)	

**PLAINTIFF’S MEMORANDUM OF LAW
IN OPPOSITION TO EMERGENCY MOTION**

1. Facts

Defendants’ Emergency Motion to Strike Portions of Prayer for Relief from Count Six of Complaint and to Bar conveyance of Property (“Emergency Motion”) essentially seeks to have the Court strike Count Six of plaintiff’s Complaint. In Count Four of his Complaint (the allegations of which are incorporated by reference in Count Six), the plaintiff alleged, inter alia, that:

- On October 7, 2002, the plaintiff executed a Limited Power of Attorney (“the Power of Attorney”) in favor of his brother, Michael L. Fullington.
- Michael L. Fullington had a statutory and fiduciary duty to exercise the powers granted by the Power of Attorney only for the benefit of the plaintiff.

- Michael L. Fullington and Aerial Fullington Weisman incorporated Fullington Real Estate on August 13, 2003, for the purpose of creating an entity into which title for real estate which was co-owned by the plaintiff and his wife (“the real estate”) could be transferred.

- On August 26, 2003, the day before the Power of Attorney expired, Michael L. Fullington, with the knowledge of Aerial Fullington Weisman, executed two (2) deeds on behalf of the plaintiff, transferring title to real estate owned by the plaintiff and his wife to Fullington Real Estate.

- Loretta Fullington signed the aforesaid deeds without questioning their purpose or the intent of Michael L. Fullington and Aerial Fullington Weisman.

- The transfers of real estate were not made for the benefit of the plaintiff, but, to the contrary, they were made in furtherance of a conspiracy between the plaintiff’s brother and sister to benefit their company, Fullington Real Estate.

- Fullington Real Estate subsequently sold a three acre parcel of what is known as the Pentz property for \$300,000.00.

- Fullington Real Estate subsequently sold the other parcel for \$52,000.00.

- The plaintiff did not receive any portion of the proceeds of the sale of the real estate, nor was he credited with any portion of the sales prices against debt which he allegedly owes to Fullington GMC Sales, Inc. or Fullington Auto Bus Company.

In Count Six, the plaintiff alleged that Fullington Real Estate paid no consideration to him for the properties which were transferred, and he seeks an accounting for the proceeds of the

sale of the property, and the entry of an Order requiring Fullington Real Estate to reconvey title to the unsold properties to himself and Loretta Fullington.

Evidence produced at the hearing on defendants' Emergency Motion included the following:

- On October 7, 2002, the plaintiff executed a Power of Attorney in favor of his brother, Michael L. Fullington.
- The Power of Attorney was executed so that Michael L. Fullington would have the ability to manage and safeguard the plaintiff's financial interests while he was personally unable to do so.
- Although the Power of Attorney was initially drafted to be of indefinite duration, the plaintiff modified it so that it would expire on August 27, 2003.
- Fullington Real Estate Company was created by Michael L. Fullington and Aerial Fullington Weisman as a "shell company" into which real estate could be transferred.
- During the relevant period of time, neither Michael L. Fullington nor Aerial Fullington Weisman were shareholders in Fullington Auto Bus Company or Fullington GMC Sales, Inc.
- On August 26, 2003, the day before the Power of Attorney expired, Michael L. Fullington used the Power of Attorney to transfer the plaintiff's interest in several parcels of real estate, including a 37 acre tract known as the "Pentz property".
- A portion of the Pentz property was subsequently sold by Fullington Real Estate for \$271,250.00.

- Michael L. Fullington used the Power of Attorney without the plaintiff's knowledge, and the plaintiff would not have consented to the transfer of the real estate if he had known it was occurring.

- The plaintiff did not receive any portion of the proceeds of sale, and was not credited with any portion of the proceeds against debt he allegedly owes to Fullington Auto Bus Company.

- The remaining Pentz property acreage is worth \$145,000.00-\$185,500.00

2. Argument

The Power of Attorney is subject to 20 Pa. C.S.A. 5601 which provides, inter alia, that:

- (e) Fiduciary relationship.— An agent acting under a power of attorney has a fiduciary relationship with the principal. In the absence of a specific provision to the contrary in the power of attorney, the fiduciary relationship includes the duty to:
 - (1) Exercise the powers for the benefit of the principal.
 - (2) Keep separate the assets of the principal from those of an agent.
 - (3) Exercise reasonable caution and prudence.
 - (4) Keep a full and accurate record of all actions, receipts and disbursements on behalf of the principal.

20 Pa. C.S.A. 5601(e).

In addition, it has been noted that:

As an attorney-in-fact, a person is the principal's agent. As an agent, such person is a fiduciary with respect to the principal. The duty of an agent to the principal is one of loyalty in all matters affecting the subject of the agency, and the agent must act with the

utmost good faith in the furtherance and advancement of the interests of the principal.

29 Standard Pennsylvania Practice 2d §143:6.

Regardless of the defendants' allegations regarding the plaintiff's allegedly improper conduct, the plaintiff has pled a viable claim in Count Six of his Complaint. Michael L. Fullington breached his statutory and fiduciary duties to use the Power of Attorney solely for the benefit of the plaintiff. To the contrary, Michael L. Fullington used the Power of Attorney to benefit Fullington Real Estate, and the defendants now proposed to sell the Pentz properties in order to benefit Fullington Auto Bus Company. Clearly, the conveyance of the properties did not benefit the plaintiff, and he is entitled to an accounting of the proceeds of the sale (and/or the prospective sale), and either a reconveyance of the property or money damages to compensate him for his loss.

3. Conclusion

For the reasons hereinbefore set forth and for the reasons set forth in plaintiff's Memorandum in Opposition to Emergency Motion to Strike filed on or about August 2, 2005, it is respectfully submitted that the Court should deny the relief requested in defendants' Emergency Motion. In the alternative, it is respectfully submitted that the Court should enter an Order requiring the defendants to escrow funds from the proceeds of sale of the property in an amount at least equal to the value of the remaining Pentz properties as opined by their expert.

DALE WOODARD LAW FIRM

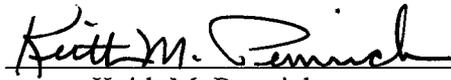
By Keith M. Penrich
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Keith M. Pemrick, Esquire, hereby certify that true and correct copies of the foregoing Memorandum of Law in Opposition to Emergency Motion have been served via facsimile and U.S. first-class mail, postage prepaid, this 6th day of September, 2005, to counsel of record, as follows:

Paul H. Titus, Esquire
Schnader Harrison Segal & Lewis, LLP
Fifth Avenue Place, Suite 2700
Pittsburgh, PA 15222-3001
(412) 765-3858 (Facsimile)

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(814) 765-9596 (Facsimile)



Keith M. Pemrick

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

J. RICHARD FULLINGTON, JR.,

No. 05-565

Plaintiff,

vs.

FULLINGTON AUTO BUS
COMPANY, et al.,

Defendants.

TYPE OF PLEADING:
**MOTION TO RELEASE FUNDS FROM
ESCROW PURSUANT TO
SETTLEMENT**

FILED ON BEHALF OF:
Defendants, Fullington Auto Bus Company,
Fullington GMC Sales, Inc., Fullington Real
Estate Company, Michael L. Fullington, and
Aerial Fullington Weisman

COUNSEL OF RECORD FOR THESE
PARTIES:

Paul H. Titus
Pa. Id. No. 01399
Judith F. Olson
Pa. Id. No. 37476
SCHNADER HARRISON SEGAL &
LEWIS LLP
2700 Fifth Avenue Place, 120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

February 12, 2007

FILED *no cc*
01/26/07
FEB 13 2007

W.A. Shaw
William A. Shaw
Prothonotary/Clerk of Courts

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

J. RICHARD FULLINGTON, JR.,)	
)	
Plaintiff,)	
)	
vs.	)	No. 05-565-CD
)	
FULLINGTON AUTO BUS COMPANY,)	
et al.,)	
Defendants.)	

**MOTION TO RELEASE FUNDS FROM ESCROW PURSUANT TO
SETTLEMENT**

NOW COME the Defendants, Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman, by and through their undersigned counsel, and hereby file this Motion to Release Funds From Escrow Pursuant to Settlement, and in support thereof, state as follows:

1. On September 7, 2005, this Honorable Court entered an Order following an evidentiary hearing on Defendants' Emergency Motion to Strike Portions of Prayer for Relief from Count VI of Complaint and to Bar Conveyance of Property, in which the Court ruled, *inter alia*:

The Defendants, through Defense Counsel, are directed to maintain in an escrow the amount of \$145,000.00 from the proceeds to be obtained from the sale in question. This amount equals the appraised value of the premises described as Parcel 31. The escrow funds shall not be released without order of the Court, and are being held relative [to] any claim the Plaintiff may make for damages concerning the said Parcel 31.

See Order of September 7, 2005, ¶ 4.

2. In accordance with the Court's Order, the Defendants placed \$145,000.00 in an escrow account which has been continuously maintained since September 2005.

3. All parties to this action have now reached an agreement to settle this case in its entirety. Pursuant to a Settlement Agreement to be executed by the parties, this action (including the Counterclaims filed by the Defendants) will be settled and discontinued with prejudice once the Agreement is executed.

4. In light of the settlement of this case, the Defendants respectfully request that this Honorable Court enter an Order releasing the funds currently held in escrow pursuant to this Court's September 7, 2005 Order.

5. Plaintiff's counsel has been consulted about this Motion and he consents to the entry of the proposed Order attached hereto.

WHEREFORE, Defendants, Fullington Auto Bus Company, Fullington GMC Sales, Inc., Fullington Real Estate Company, Michael L. Fullington and Aerial Fullington Weisman respectfully request that this Honorable Court grant their Motion to Release Funds Pursuant to Settlement and enter an Order directing that the funds in the amount of \$145,000.00 currently held in an escrow account by the Defendants pursuant to this Court's September 7, 2005 Order be released.

Date: February 12, 2007

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By Paul H. Titus

Paul H. Titus

Pa. Id. No. 01399

Judith F. Olson

Pa. Id. No. 37476

2700 Fifth Avenue Place

120 Fifth Avenue

Pittsburgh, PA 15222

(412) 577-5200 (Telephone)

(412) 765-3858 (Facsimile)

*Counsel for Defendants, Fullington Auto Bus
Company, Fullington GMC Sales Inc., Fullington
Real Estate Company, Michael L. Fullington and
Aerial Fullington Weisman*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Release Funds From Escrow Pursuant to Settlement was served upon the following counsel of record by electronic mail this 12th day of February, 2007:

William J. Moorhead, Esquire
MERCHANT MOORHEAD & KAY
603 Washington Road, Suite 500
Pittsburgh, PA 15228

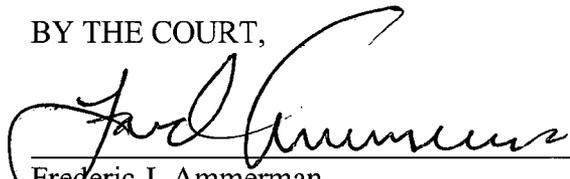


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

J. RICHARD FULLINGTON, JR.,)	
)	
Plaintiff,)	
)	
vs.	)	No. 05-565-CD
)	
FULLINGTON AUTO BUS COMPANY,)	
et al.,)	
Defendants.)	

ORDER OF COURT

AND NOW, to-wit, this 14 day of February, 2007, upon consideration of the Motion to Release Funds From Escrow Pursuant to Settlement, it is hereby ORDERED, ADJUDGED and DECREED that said Motion be and hereby is GRANTED. It is further ORDERED that the funds in the amount of \$145,000.00 currently held in an escrow account by the Defendants pursuant to this Court's Order of September 7, 2005 shall be released forthwith by the bank holding said funds.

BY THE COURT,

Frederic J. Ammerman
President Judge

FILED 
FEB 14 2007
0/11:15/ 
William A. Shaw
Prothonotary/Clerk of Courts
2 CENT TO
ATTY T.T.WJ

FILED

FEB 14 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2-14-07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

- Plaintiff(s) Plaintiff(s)/Attorney Other
- Defendant(s) Defendant(s)/Attorney
- Special Instructions:

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

J. RICHARD FULLINGTON, JR.,)
)
Plaintiff,)
)
vs.) No. 05-565-CD
)
FULLINGTON AUTO BUS COMPANY,)
et al.,)
Defendants.)

PRAECIPE TO SETTLE AND DISCONTINUE ACTION

TO: Prothonotary of the Court of Common Pleas of Clearfield County,
Pennsylvania

Kindly mark the above-captioned case, including all counterclaims, settled and
discontinued with prejudice.

MERCHANT MOORHEAD & KAY

SCHNADER HARRISON SEGAL &
LEWIS LLP

By William J. Moorhead By Paul H. Titus
William J. Moorhead Paul H. Titus
Pa. Id. No. 52761 Pa. Id. No. 01399

603 Washington Road, Suite 500
Pittsburgh, PA 15228
(412) 942-0770 (Telephone)
(412) 942-0774 (Facsimile)

2700 Fifth Avenue Place, 120 Fifth Avenue
Pittsburgh, PA 15229
(412) 577-5200 (Telephone)
(412) 765-3858 (Facsimile)

*Counsel for Plaintiff,
J. Richard Fullington, Jr.*

*Counsel for Defendants,
Fullington Auto Bus Company, Fullington
GMC Sales, Inc., Fullington Real Estate
Company, Michael L. Fullington, Aerial
Fullington Weisman*

FILED 3cc + 1CA
0/230m of disc issued
FEB 14 2007 to Moorhead + Titus
William A. Shaw *Copy to CIA*
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

J. Richard Fullington Jr.

Vs.

No. 2005-00565-CD

**Fullington Auto Bus Company
Fullington GMC Sales, Inc.
Fullington Real Estate Company
J. Richard Fullington Sr.
Michael L. Fullington
Aerial Fullington Weisman**

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 February 14, 2007, marked:

Settled and discontinued with prejudice

Record costs in the sum of \$85.00 have been paid in full by Keith M. Pemrick .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of February A.D. 2007.



William A. Shaw, Prothonotary