

05-1026-CD

Joseph Fontana vs. Harold Leach et al

2005-1026-CD

Joseph Fontana v Harold Leach et al

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

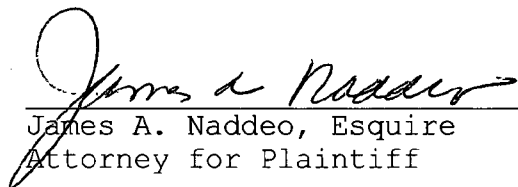
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No. 05 - - CD

**PRAECIPE TO ISSUE WRIT OF SUMMONS**

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Please issue a writ of summons against Harold N. Leach  
and Harold N. Leach, t/d/b/a Harold N. Leach Excavating and  
Grading Company, R. R. 1, Box 119, DuBois, Pennsylvania.

  
James A. Naddeo, Esquire  
Attorney for Plaintiff

Dated: July 14, 2005

**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY PENNSYLVANIA  
CIVIL ACTION**

**SUMMONS**

**Joseph H. Fontana**

**Vs.**

**NO.: 2005-01026-CD**

**Harold N. Leach and Harold N. Leach t/d/b/a  
Harold N. Leach Excavating and Grading Company**

**TO: HAROLD N. LEACH  
HAROLD N. LEACH EXCAVATING AND GRADING COMPANY**

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 7/14/2005

---

William A. Shaw  
Prothonotary

Issuing Attorney:

James A. Naddeo  
P.O. Box 552  
Clearfield, PA 16830

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

No. 05 - 1026 - CD

Type of Pleading:

**PRAECIPE FOR LIS PENDENS**

Filed on behalf of:  
Plaintiff

Counsel of Record for  
this party:  
James A. Naddeo  
Supreme Court ID#: 06820

207 East Market Street  
P. O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

FILED *no cc*

*pl 4:00 PM*  
JUL 14 2005

*Any pd. 20.00*

*WAS*  
William A. Shaw  
Prothonotary/Clerk of Courts

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

JOSEPH H. FONTANA,  
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Defendant.

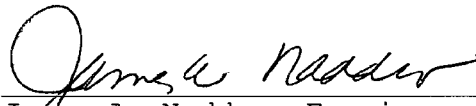
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No. 05 - - CD

**PRAECIPE FOR LIS PENDENS**

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Please index the above-captioned action as a lis pendens against the following real property located in Sandy Township, Clearfield County, Pennsylvania: See copies of deeds attached hereto collectively as Exhibit "A". I hereby certify that this action affects title to or other interest in the above-described real property.

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Plaintiff

Dated: July 14, 2005

Form. Warranty Deed, Short Form No. 39  
Baltimore Office Supply Co.

# This Deed,

Made the 31st day of December in the year  
of our Lord one thousand nine hundred seventy-four

Between ALBERT L. GOOD and HARRIETT F. GOOD, husband and wife, of the City  
of DuBois, Clearfield County, Pennsylvania

Grantors ,

and HAROLD N. LEACH, of Sandy Township, Clearfield County, Pennsylvania

Grantee :

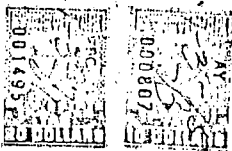
Witnesseth, that in consideration of Three Thousand (\$3,000.00)

*Dollars,*  
in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby  
grant and convey to the said grantee , ALL those certain pieces or parcels of land situate,  
lying and being in Sandy Township, Clearfield County, Pennsylvania, and being bounded  
and described as follows, to wit:

THE FIRST THEREOF: BEGINNING at an iron pipe, said iron pipe being in the  
southerly line of Wood Street and being also easterly 330 feet from the intersection  
of the southerly line of Wood Street and the easterly line of Fourteenth Street;  
thence by the southerly line of Wood Street in an easterly direction 150 feet to a  
point the northwest corner of Lot of Cryster; thence by Cryster lot in a southerly  
direction 150 feet to a point in the northerly line of an alley; thence by the  
northerly line of said alley 150 feet to an iron pipe the southeast corner of Mc-  
Cracken lot; thence by the easterly line of McCracken lot 150 feet to an iron pipe  
and the place of beginning.

THE SECOND THEREOF: BEGINNING at a point, said point being at the inter-  
section of the southerly line of Wood Street and the easterly line of Fourteenth  
Street; thence by the southerly line of Wood Street in an easterly direction 230  
feet to an iron pipe the northwest corner of lot of McCracken; thence by the  
westerly line of McCracken lot in a southerly direction 150 feet to an iron pipe  
in the northerly line of an alley; thence by said alley in a westerly direction 230  
feet to a point in the easterly line of Fourteenth Street; thence by the easterly  
line of Fourteenth Street in a northerly direction 150 feet to a point and the  
place of beginning.

THE THIRD THEREOF: BEGINNING at a point, said point being at the inter-  
section of the northerly line of Wood Street and the easterly line of Fourteenth  
Street; thence by the easterly line of Fourteenth Street northerly 100 feet to a  
point; thence in an easterly direction 50 feet to a point; thence in a northerly



direction 50 feet to a point in the southerly line of an alley; thence by the southerly line of said alley in an easterly direction 575 feet, more or less, to a point in the westerly line of Old Airport Road; thence by the westerly line of said road in a southeasterly direction 185 feet, more or less, to a point in the northerly line of Wood Street; thence by the northerly line of Wood Street in a westerly direction 725 feet, more or less, to a point and the place of beginning.

THE FOURTH THEREOF: BEGINNING at a point, said point being in the southerly line of Pennsylvania Legislative Route No. 17030 and being also 125 feet easterly from the intersection of the easterly line of Fourteenth Street and the southerly line of Maple Avenue; thence by the southerly line of Pennsylvania Legislative Route No. 17030 easterly 100 feet, more or less, to the northwest corner of lot of Hand; thence by the westerly line of lot of Hand in a southerly direction 158 feet, more or less, to a point in the northerly line of an alley; thence by said alley line westerly 100 feet, more or less, to a point the southeast corner of lot of Christian; thence by the easterly line of lot of Christian northerly 158 feet, more or less, to a point and the place of beginning.

Being part of the premises conveyed by Cornelia E. Lowe Taylor, single, to Albert L. Good and Harriett F. Good, his wife, by deed dated December 6, 1966, recorded at Clearfield, Pennsylvania on December 20, 1966 in Deed Book 526, page 521.

EXCEPTING AND RESERVING, nevertheless, all of the coal and mining rights as reserved in prior deeds of conveyance.

ALSO, EXCEPTING AND RESERVING all of the oil and gas in and under the above described premises together with all of the grantors' right, title, royalty and other interests in and under any lease or leases pertaining to the same, including, without limiting the generality hereof, the oil and gas lease from Albert L. Good and Harriett F. Good, his wife, to Consolidated Gas Supply Corporation dated December 9, 1969.



And the said grantors, do hereby covenant that they will WARRANT generally the property hereby conveyed.

NOTICE—THIS DOCUMENT MAY NOT BELL 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 THIS LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.)

In Witness Whereof, said grantors have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered  
in the Presence of

Albert L. Good  
(Albert L. Good)

Harriett F. Good  
(Harriett F. Good)

SEAL

SEAL

SEAL

SEAL

DuBOIS AREA AREA SCHOOL DISTRICT  
1% REALTY TRANSFER TAX

AMOUNT \$ 3.14

PAID 1-5-75

Date

Agent

Charles E. Barn

State of PENNSYLVANIA

County of CLEARFIELD

ss.

On this, the 31st day of December 19 74, before me,

the undersigned officer, personally appeared ALBERT L. GOOD and HARRIETT F. GOOD, his wife,

known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Betty J. Chauncey  
BETTY J. CHAUNCEY, Notary Public

Notary Public for the State of Pennsylvania

My Commission Expires August 29, 1975

Title of Officer.

SEAL

State of

County of

ss.

On this, the day of 19 , before me,

the undersigned officer, personally appeared

**NOTICE** THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, 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 HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966.

WITNESS:

Harold N. Leach  
(Harold N. Leach)

State of \_\_\_\_\_ } ss.  
County of \_\_\_\_\_

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me,

the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name \_\_\_\_\_ subscribed to  
the within instrument, and acknowledged that he executed the same for the purposes therein  
contained.

In witness whereof, I hereunto set my hand and official seal.



Title of Officer.

CERTIFICATE OF RESIDENCE

\_\_\_\_\_ do hereby certify that the precise residence of the within named grantee is

R. D. #3, DuBois, Pennsylvania 15801

January 3 1975

*E. J. J. J.*

Attorney for \_\_\_\_\_ Grantors

Entered of Record Jan 3 1975, 2:11 Cecil A. Burns Recorder

*State D. 30.0  
DuBois Sch. D. 30.0*

DEED

WARRANTY

CLEARFIELD CO., SS  
ENTERED OF RECORD

Time 2:11 pm 1-3-75  
By *[Signature]*  
Fees 2.43  
Cecil A. Burns, Recorder

LAW OFFICES  
MAINE AND FENNELL  
278 DUBOIS DEPOSIT NATIONAL BANK BUILDING  
DUBOIS, PENNSYLVANIA  
15801

COMMONWEALTH OF PENNSYLVANIA, }

County of \_\_\_\_\_ } ss.

RECORDED on this \_\_\_\_\_ day of \_\_\_\_\_

A. D. 19\_\_\_\_, in the Recorder's office of said County, in Deed Book

Vol. \_\_\_\_\_, Page \_\_\_\_\_

Given under my hand and the seal of the said office, the date above written.

\_\_\_\_\_, Recorder.

# This Indenture,



Made the 6<sup>th</sup> day of April  
in the year nineteen hundred and Sixty-Four (1964).

Between CORNELIA ELIZABETH LOWE TAYLOR, Single, of the City of Los Angeles, Los Angeles County and State of California, Grantor, party of the first part;

A  
N  
D

HAROLD N. LEACH EXCAVATING AND GRADING COMPANY, of Sandy Township, Clearfield County, Pennsylvania, Grantee, party



of the second part, ~~Witnesseth~~, That the said party of the first part, for and in consideration of the sum of Five Thousand (\$5,000.00)

Dollars, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, intitled, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, intitle, release, convey and confirm unto the said party of the second part, his heirs and assigns.

All those three certain pieces or parcels of land situate, lying and being in the Township of Sandy, Clearfield County, Pennsylvania, and being bounded and described as follows, to wit:

THE FIRST THEREOF: BEGINNING at a point along old airport road, said point being in the easterly line of old airport road and being in a southeasterly direction 450 Feet, more or less, from the intersection of the southerly line of Maple Avenue Extension on Pennsylvania Legislative Route No. 17030 and the easterly line of old airport road; thence South 87° 07' East 305.0 Feet, more or less, to an iron pipe; thence by line of land of Spider Lake Corporation South 87° 53' West 277.25 Feet to an iron pipe; thence still by same South 22° 55' West 150 Feet, more or less to a point in the easterly line of old airport road; thence by the easterly line of old airport road in a northwesterly direction 450.0 Feet, more or less to a point and the place of beginning.

THE SECOND THEREOF: BEGINNING at a point said point being South 16° 08' West 150 feet more or less from the intersection of the southerly line of Wood Street and the easterly line of Fourteenth Street; thence by the southerly line of an unnamed Alley South 73° 51' East 580.0 Feet, more or less, to a point; thence by the easterly line of the Cryster Lot North 16° 08' East 150.0 feet to a point

in the southerly line of Wood Street; thence by the southerly line of Wood Street 73° 51' East 175 feet, more or less, to the westerly line of the old Airport Road; thence by the westerly line of Old Airport Road in a southerly direction 300 feet, more or less, to a point in the northerly line of land of Spider Lake Corporation; thence by land of Spider Lake Corporation the following courses and distances: South 58° 46' West 500.0 feet, more or less, to an iron pipe; North 19° 15' West 496.25 feet to an iron pipe; thence North 83° 12' West 300.55 feet to an iron pipe; thence South 81° 26' West 45.0 feet, more or less, to a point in the easterly line of Fourteenth Street; thence by the easterly line of Fourteenth Street North 16° 09' East 300.0 feet more or less, to the place of beginning.

Covering Section No's. 22 and 23 on the County Assessment Map No. C-4, Enlargement No. 650.

EXCEPTING AND RESERVING from the above mentioned unnamed Alley as laid out in the C. Luther Lowe Plan of Lots and as shown on the Clearfield County Assessment Map No. C-4, Enlargement No. 650.

THE THIRD THEREOF: BEGINNING at a point said point being South 16° 09' West 135 Feet from the intersection of the southerly line of Chestnut Avenue and the easterly line of Thirteenth Street; thence by the northerly line of an unnamed Alley South 73° 51' East 400.0 feet to a point; thence North 16° 09' East 135.0 feet to a point in the southerly line of Chestnut Avenue; thence by the southerly line of Chestnut Avenue South 73° 51' East 100 feet, more or less, to a point in the westerly line of Fourteenth Street; thence by the westerly line of Fourteenth Street South 16° 09' West 490.0 feet, more or less, to a point in the northerly line of land of Spider Lake Corporation; thence by land of Spider Lake Corporation South 81° 26' West 260.0 feet, more or less to an iron pipe in the northerly line of Hillcrest Avenue; thence by the northerly line of Hillcrest Avenue North 73° 51' West 60.0 feet, more or less, to a point; thence North 16° 09' East 286.0 feet, more or less to a point; thence North 73° 51' West 250.0 feet, more or less, to a point in the easterly line of Thirteenth Street; thence by the Easterly line of Thirteenth Street North 16° 09' East 190.0 Feet, more or less to a point and place of beginning.

EXCEPTING AND RESERVING from this conveyance, the above mentioned unnamed Alleys and Avenues as laid out in the C. Luther Lowe Plan of Lots and shown on the Clearfield County Assessment Map No. C-4, Enlargement No. 422.

BEING a portion of the same premises which were conveyed to the Grantor herein by deed of C. Luther Lowe, dated February 6, 1933 and recorded at Clearfield, Pennsylvania, in Deed Book No. 301, page 73.

#### NOTICE

To comply with the Act of July 17, 1957 (52 P.S. Supp. Sec. 1551-1554) notice is hereby given as follows:

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.

Together with all and singular the tenements, hereditaments and appurtenances to the same belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; And also all the estate, right, title, interest, property, claim and demand whatsoever, both in law and equity, of the said part of the first part, of, in, to or out of the said premises, and every part and parcel thereof,

To have and to hold the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to and for the only proper use and behoof of said party of the second part, his heirs and assigns forever.

And the said party of the first part, his


heirs, executors, and administrators, do by these presents, covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that he the said party of the first part, his

heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances unto the said party of the second part, his heirs and assigns, against the said party of the first part and his heirs, and against all and every other person or persons, whomsoever, lawfully claiming or to claim the same or any part thereof,

shall and will, by these presents, Warrant and GENERALLY forever defend.

In witness whereof, the said party of the first part has heretofore set his hand and seal, the day and year first written above.

Signed, Sealed and Delivered in the Presence of

*Cornelia Elizabeth Lowe Taylor*   
  
  
  


#### Certificate of Residence

I, hereby certify that the present residence of the grantee herein is as follows:  
 DuBois R. D. #3, Pennsylvania.

*State of California*  
*County of Los Angeles*

County of LOS ANGELES

and:

*Thason & Cherry*  
 Attorney or Agent for Grantee

On this, the 6th day of April 1964 before me a Notary Public, the undersigned officer, personally appeared CORNELIA ELIZABETH LOWE TAYLOR, Single, 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 purpose therein contained.

IN WITNESS WHEREOF, I have heretofore set my hand and notarial seal.

*Thason & Cherry*

My Commission Expires 1/20/66

Notary Public

MARTIN L. BECK  
 My Commission Expires January 20, 1966

ENTERED OF RECORD April 13, 1964, 2:28 PM DICK REED, RECORDER

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

DOCKET # 100646  
NO: 05-1026-CD  
SERVICE # 1 OF 2  
SUMMONS

PLAINTIFF: JOSEPH H. FONTANA

vs.

DEFENDANT: HAROLD N. LEACH and HAROLD N. LEACH t/d/b/a HAROLD N. LEACH EXCAVATING and  
GRADING COMPANY

**SHERIFF RETURN**

---

NOW, August 02, 2005 AT 1:00 PM SERVED THE WITHIN SUMMONS ON HAROLD N. LEACH DEFENDANT AT  
Meeting Place: W. LONG AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO HAROLD  
LEACH, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN THE  
CONTENTS THEREOF.

SERVED BY: COUDRIET /

**FILED**

01/4:00 PM  
DEC 02 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

DOCKET # 100646  
NO: 05-1026-CD  
SERVICE # 2 OF 2  
SUMMONS

PLAINTIFF: JOSEPH H. FONTANA

vs.

DEFENDANT: HAROLD N. LEACH and HAROLD N. LEACH t/d/b/a HAROLD N. LEACH EXCAVATING and  
GRADING COMPANY

**SHERIFF RETURN**

---

NOW, August 02, 2005 AT 1:00 PM SERVED THE WITHIN SUMMONS ON HAROLD N. LEACH tdba HAROLD N. LEACH EXCAVATING AND GRADING COMPANY DEFENDANT AT Meeting Place: W. LONG AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO HAROLD LEACH, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100646  
NO: 05-1026-CD  
SERVICES 2  
SUMMONS

PLAINTIFF: JOSEPH H. FONTANA

vs.

DEFENDANT: HAROLD N. LEACH and HAROLD N. LEACH t/d/b/a HAROLD N. LEACH EXCAVATING and GRADING COMPANY

SHERIFF RETURN

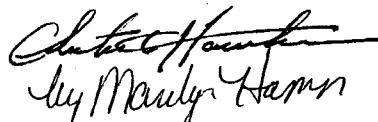
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NADDEO	10330	20.00
SHERIFF HAWKINS	NADDEO	10330	55.15

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2005

So Answers,



Chester A. Hawkins  
Sheriff



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

JOSEPH H. FONTANA,

Plaintiff,

vs.

HAROLD N. LEACH and HAROLD N.  
LEACH, t/d/b/a HAROLD N. LEACH  
EXCAVATING AND GRADING  
COMPANY,

Defendants.

) NO. 2005-1026-C.D.  
)  
) Type of Case: CIVIL ACTION  
)  
) Type of Pleading:  
) PRAECIPE FOR RULE  
)  
) Filed on Behalf of:  
) Defendants  
)  
) Counsel of Record:  
)  
) BENJAMIN S. BLAKLEY, III  
) Supreme Court No. 26331  
)  
) LEANNE NEDZA  
) Supreme Court No. 89383  
)  
) BLAKLEY & JONES  
) 90 Beaver Drive, Box 6  
) DuBois PA 15801  
) (814) 371-2730

**FILED**

OCT 26 2011

William A. Shaw  
Prothonotary/Clerk of Courts

3cc w/rule to  
file complaint  
to Atty Blakley

6K

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

JOSEPH H. FONTANA,	) NO. 2005-1026-C.D.
	)
Plaintiff,	)
	)
vs.	)
	)
HAROLD N. LEACH and HAROLD N.	)
LEACH, t/d/b/a HAROLD N. LEACH	)
EXCAVATING AND GRADING	)
COMPANY,	)
	)
Defendants.	)

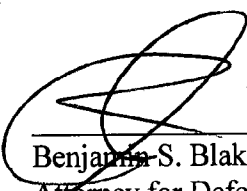
**PRAECIPE FOR RULE**

**TO WILLIAM A. SHAW, SR., PROTHONOTARY:**

Please issue a Rule upon Plaintiff, **JOSEPH H. FONTANA**, to file a Complaint in the  
above-captioned matter within twenty (20) days or suffer non pros.

Respectfully submitted,

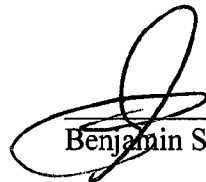
Dated: 10/24/11

  
Benjamin S. Blakley, III  
Attorney for Defendants

**CERTIFICATE OF SERVICE**

This will certify that the undersigned served a copy of the foregoing Praeceptum for Rule in the above-captioned matter on the following parties at the addresses shown below by first-class U.S. Mail on the 26<sup>th</sup> day of October, 2011:

James A. Naddeo, Esquire  
207 East Market Street  
P O Box 552  
Clearfield PA 16830

  
Benjamin S. Blakley, III

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

Joseph H. Fontana

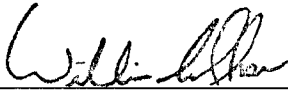
Vs.  
Harold N. Leach  
Harold N. Leach Excavating and Grading Company

Case No. 2005-01026-CD

RULE TO FILE COMPLAINT

TO: Joseph H. Fontana, Plaintiff

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

  
\_\_\_\_\_  
William A. Shaw, Prothonotary

Dated: October 26, 2011

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

JOSEPH H. FONTANA,

Plaintiff,

vs.

HAROLD N. LEACH and HAROLD N.  
LEACH, t/d/b/a HAROLD N. LEACH  
EXCAVATING AND GRADING  
COMPANY,

Defendants.

) NO. 2005-1026-C.D.  
)  
) Type of Case: CIVIL ACTION  
)  
) Type of Pleading:  
) CERTIFICATE OF SERVICE  
)  
) Filed on Behalf of:  
) Defendants  
)  
) Counsel of Record:  
)  
) BENJAMIN S. BLAKLEY, III  
) Supreme Court No. 26331  
)  
) LEANNE NEDZA  
) Supreme Court No. 89383  
)  
) BLAKLEY & JONES  
) 90 Beaver Drive, Box 6  
) DuBois PA 15801  
) (814) 371-2730

FILED 1CCAH  
m/10:52am Blakley  
OCT 27 2011

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOSEPH H. FONTANA,	)	NO. 2005-1026-C.D.
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
HAROLD N. LEACH and HAROLD N.	)	
LEACH, t/d/b/a HAROLD N. LEACH	)	
EXCAVATING AND GRADING	)	
COMPANY,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

This will certify that the undersigned served a copy of the foregoing Praecipe for Rule and a Rule to File Complaint in the above-captioned matter on the following parties at the addresses shown below by first-class U.S. Mail on the 26<sup>th</sup> day of October, 2011:

James A. Naddeo, Esquire  
207 East Market Street  
P O Box 552  
Clearfield PA 16830

  
\_\_\_\_\_  
Benjamin S. Blakley, III

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

No. 05 - 1026 - CD

Type of Pleading:

**COMPLAINT**

Filed on behalf of:  
Plaintiff

Counsel of Record for  
this party:  
James A. Naddeo  
Supreme Court ID#: 06820  
207 East Market Street  
P. O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

**FILED** ICC Atty  
01/10/47m Naddeo  
NOV 16 2011  
612

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

\*  
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\*

No. 05 - 1026 - CD

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.

Court Administrator  
Clearfield County Courthouse  
Market and Second Streets  
Clearfield, PA 16830  
(814) 765-2641, ext. 5982



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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

\*  
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No. 05 - 1026 - CD

COMPLAINT

NOW COMES the Plaintiff, Joseph H. Fontana, and by his attorney sets forth the following:

1. That the Plaintiff is Joseph H. Fontana, an adult individual, who resides at Box 414 Donohoe Road, Greensburg, Pennsylvania 15601.

2. That the Defendant is Harold N. Leach, an adult individual, whose last known address is RR1 Box 119, DuBois, Clearfield County, Pennsylvania 15801.

COUNT I - SPECIFIC PERFORMANCE

3. That on or about October 22, 2000 the parties entered into an Agreement providing for the sale of Defendant's property consisting of 15 acres of vacant ground situate in Sandy Township, Clearfield County, Pennsylvania, upon the terms and conditions contained in said Agreement. A copy of the Sales Agreement is attached hereto as Exhibit "A".

4. That the Agreement attached hereto speaks for itself but in essence provided that Plaintiff was to pay to Defendant the sum of \$300,000.00 for the subject property payment for which was to be made by Plaintiff to Defendant from the sale of certain townhouses to be constructed on Defendant's property at the rate of \$2,500.00 per unit during the construction and \$2,500.00 upon the actual sale of a unit.

5. That Plaintiff obtained two construction loan commitments from the bank for the purpose of constructing townhouses upon Defendant's property as contemplated by the Agreement.

6. That Plaintiff was unable to obtain a sewage permit for the construction of the townhouses upon Defendant's property because of a dispute between Sandy Township and the City of DuBois concerning the capacity of the public sewage system servicing Defendant's property.

7. That Plaintiff incurred expenses toward the construction of the townhouses contemplated by the parties' Sales Agreement in the amount of \$63,286.33 as appears from the spreadsheet attached hereto as Exhibit "B".

8. That Defendant threatened to sell the subject property to a third party which prompted Plaintiff to file a suit against Defendant and to enter Lis Pendons to the above-captioned term and number.

9. That subsequently Defendant refused to comply with the terms of the contract attached hereto as Exhibit "A".

10. That the property of the Defendant is unique.

11. That Plaintiff seeks enforcement of the terms of the Contract attached hereto as Exhibit "A".

12. That Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully prays that:

A. The Court Order specific performance of the parties' Agreement dated October 22, 2000.

B. The Court award damages to the Plaintiff as allowable by law.

C. The Court grant any and all remedies that it deems to be proper under the circumstances.

COUNT II - BREACH OF CONTRACT

13. Plaintiff incorporates Paragraphs 1 through 12 of the first count of his Complaint by reference and makes them a part hereof.

14. That Plaintiff expended the sum of \$63,286.33 toward his performance under the parties Sales Agreement which Agreement is attached hereto as Exhibit "A".

15. That Plaintiff has demanded that Defendant reimburse him for the costs and expenses referred to in Paragraphs 7 and 14 of this Complaint which are incorporated herein by reference but Defendant has failed and/or refused to do so.

WHEREFORE, Plaintiff claims damage from the Defendant in the amount of \$63,286.33 with interest from the date of breach.

COUNT III - BREACH OF CONTRACT

16. Plaintiff incorporates Paragraphs 1 through 15 of his Complaint by reference and makes them a part hereof.

17. That subsequent to the date upon which Plaintiff filed suit to the above-captioned case Plaintiff authorized his attorney to offer Defendant a settlement proposal providing Defendant with two options to settle the pending litigation. A copy of the settlement proposal dated August 11, 2005 is attached hereto as Exhibit "C".

18. That Defendant elected option B of Plaintiff's settlement proposal and reached an agreement with a third party to sell that party the property from which Plaintiff would be reimbursed for his expenses in the amount of \$63,286.33.

19. That Defendant's Agreement for the sale of said property did not close as anticipated.

20. That Defendant subsequently agreed to list the subject property for sale with Plaintiff to receive a portion of the proceeds from the sale sufficient to reimburse Plaintiff for his out-of-pocket expenses in the amount of \$63,286.33. A copy of the listing contract signed by Defendant is attached hereto as Exhibit "D".

21. That it is believed and therefore averred that Defendant has entered into a Sales Agreement for all or part of the subject property.

22. That the parties' settlement agreement requires that Plaintiff be reimbursed for his out-of-pocket expenses in the amount of \$63,286.33 from the proceeds of said sale.

WHEREFORE, Plaintiff prays that:

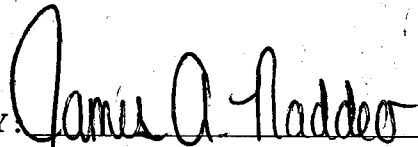
A. The Court direct Defendant to sell the subject property to Defendant's buyer.

B. That the sum of \$63,286.33 be disbursed to Plaintiff from the proceeds of sale with interest as required by law.

C. The Court grant any and all remedies that the Court deems to be proper under the circumstances.

NADDEO & LEWIS, LLC

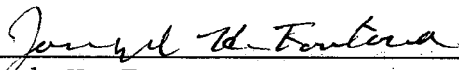
BY:

A handwritten signature in dark ink, appearing to read "James A. Naddeo", written over a horizontal line.

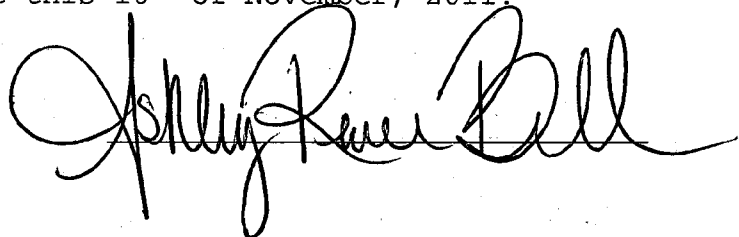
James A. Naddeo  
Attorney for Plaintiff

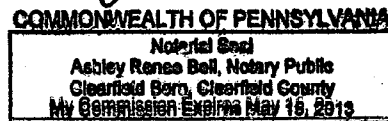
COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF CLEARFIELD ) SS.

Before me, the undersigned officer, personally appeared JOSEPH H. FONTANA, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Joseph H. Fontana

SWORN and SUBSCRIBED before me this 10<sup>th</sup> of November, 2011.





## AGREEMENT OF SALE

THIS AGREEMENT OF SALE entered into by and between: HARROLD LEACH of RR1 Box 119, DuBois, County of Clearfield Commonwealth of Pennsylvania, hereinafter referred to as "Seller"

AND

JOSEPH H. FONTANA of 645 West Pittsburgh, Greensburg, County of Westmoreland and Commonwealth of Pennsylvania, hereinafter referred to as "Buyer";

### WITNESSETH THAT:

**WHEREAS**, the Buyer desires to purchase certain real estate from Seller, and Seller desires to sell certain real estate to the Buyer;

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained, other good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Covenant to Sell. Seller shall, on the date hereinafter specified, by deed of general warranty, well and sufficient grant and convey unto Buyer, in fee simple, clear of all liens and encumbrances, except as hereinafter set forth, good and marketable title (and such as will be insurable by any responsible title insurance company at regular rates) to the real estate hereinafter described (hereinafter referred to as "the Property").

2. Description. ALL THAT CERTAIN piece or parcel of ground situate in Sandy Township, Clearfield County and Commonwealth of Pennsylvania being approximately fifteen acres of vacant ground.

3. Title Reference Deed Book Volume \_\_\_\_\_, page \_\_\_\_\_.

5. Consideration. Buyer will purchase the property for the total sum of three hundred thousand dollars (\$300,000.00) payable as the parcel is developed into townhouses. The Buyer shall pay the Seller the sum of two thousand five hundred dollars (\$2,500.00) during the construction of each unit. The Buyer shall pay the Seller the sum of two thousand five hundred dollars (\$2,500.00) during the closing of each unit. The total price of each unit paid towards the purchase price of the land shall be five thousand dollars (\$5,000.00). Upon the completion and sale of sixty (60) units the Seller shall have been paid in full. The Buyer reserves the right to pay the Seller in full at any time. The Seller shall record a mortgage for three hundred thousand dollars (\$300,000.00) for the protection of his monies. Said mortgage shall be subordinated to any construction loans the Buyer obtains from a financial institution.

6. Settlement. Unless otherwise agreed, settlement shall be within thirty days (30) of the Buyer's commitment for construction financing of the project.

7. Pro-ration Items. Real estate taxes shall be pro-rated as of closing. Real estate taxes

Exhibit "A"

shall be pro-rated for the calendar year of settlement based upon real estate taxes levied or estimated to be levied in that year by each taxing body (without regard to the date of the levy or the fiscal year of the taxing body).

The cost of real estate transfer taxes shall be borne equally between Seller and Buyer.

8. Eminent Domain. If the Property or any part thereof is taken by eminent domain prior to settlement, Buyer shall have the option to: (a) void this Agreement, whereupon all monies paid on account hereof shall forthwith be paid to buyer and upon such payment all parties shall be relieved of liability hereunder, or (b) elect to proceed with this Agreement and pay the full consideration, in which event Seller shall assign to Buyer all damages to which Seller may be entitled and which may be assigned by Seller pursuant to the Pennsylvania Eminent Domain Code. Within five (5) days after notification of any such taking, but in no event later than the settlement, Seller shall notify Buyer thereof.

9. Seller's Expense. Seller shall be responsible for cost of deed preparation and all matters of title clearance and a reasonable charge for making disbursements on behalf of Seller.

10. Municipal Improvements. Seller shall pay for all work and improvements for which a municipal claim may be filed against the Property where an ordinance or resolution authorizing such work or improvement is adopted prior to the date of this Agreement. Buyer shall pay for all work and improvements for which such a claim may be filed where an ordinance or resolution authorizing such work or improvement is adopted on or after the date of this Agreement.

11. Default. In the event of default:

(A) By Buyer: Seller may, at Seller's option, elect to: (1) retain the earnest money and all monies paid on account of the purchase price as liquidated damages, in which event this Agreement shall become null and void and both parties thereupon be released of all further liability hereunder. It is hereby agreed that, without resale, Seller's damages will be difficult to ascertain and that the earnest money and all monies paid on account of the purchase price constitute a reasonable liquidation thereof and not a penalty, or (2) apply said monies toward Seller's damages, including but not limited to, loss of bargain, consequential damages and attorney's fees, provided, however, that no such election of (A)(2) hereof shall be final or exclusive until full satisfaction shall have been received.

(B) By Seller: Buyer may, at Buyer's option, elect to: (1) waive any claim for loss of bargain, in which event Seller hereby agrees to repay to Buyer the earnest money and all monies paid on account and, in addition, reimburse Buyer for all direct, out-of-pocket costs and expenses including, but not limited to, title examination, pest inspection, survey and attorney's fees.

In lieu thereof, however, Buyer may elect either or both of the following remedies: (2) an action for specific performance; (3) an action at law for damages including, but not limited to the items in subparagraph (B)(1) hereof, consequential damages, loss of bargain and attorney's fees, provided, however, that no such election of (B)(2) or (3) hereof shall be final or exclusive until full satisfaction shall have been received.

13. Modified Time of Essence. If full performance of this Agreement is not completed by



the date set forth in paragraph 6, either party shall have the right after that 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, which date may not be sooner than fifteen (15) days nor later than thirty (30) days following the effective date of giving such notice.

14. Under and Subject. Buyer shall take title to the Property SUBJECT to the following: (a) building and use restrictions of record; (b) vehicular or pedestrian easements of record affecting the Property and being contiguous to the front, rear or side lot lines; (c) water, sewer, gas, electric, cable television, and telephone lines or easements therefor of record or as presently installed, provided, however, that said lines or easements shall not adversely affect the use of the Property for residential purposes or at any time require the removal or alteration of the presently existing dwelling(s), or appurtenant structures thereon; (d) prior grants, reservations or leases of coal, oil, gas, or other minerals as shown by instruments of record; and (e) easements apparent upon inspection of the Property.

15. Inspection of Property. It is hereby understood between the parties hereto that the Property has been inspected by Buyer or his agent, that the same is being purchased solely in reliance upon such inspection and that there have not been and are no representations or warranties, expressed or implied, with respect to the physical condition of the Property, made by Seller or Seller's agent.

16. Disclaimer. This Agreement of Sale is entered into with Buyer's full knowledge as to the value of the Property, and not upon any representations as to the value, character, quality or condition thereof, other than as may be expressly provided herein. Buyer hereby acknowledges that Buyer has inspected the Property and agrees to accept them in "AS IS" condition. Seller makes no representations regarding same and Buyer's acceptance of the deed is acceptance of the Property "AS IS".

17. Zoning and Other Ordinances. Seller warrants that the Property has the following Zoning Classification: Multiple family that the present use is in compliance therewith, and that there exists no notice of any uncorrected violations of housing, building, safety or fire ordinances. (For closing, obtain statements as to compliance and non-violation, if required.)

18. Sewage Facility. The Pennsylvania Sewage Facilities Act of January 24, 1966, No. 537, P.L. 1535, as amended, requires that there be a statement regarding the availability of a community sewage system. The Property **IS NOT** serviced by a community sewage system.

19. Settlement as Final. Buyer represents to Seller and Broker(s) that delivery of the deed at the settlement and acceptance thereof by Buyer shall constitute a representation and acknowledgment by Buyer that Property was in a condition then acceptable to Buyer, that neither Seller nor Broker(s) shall have any liability with respect thereto, and that neither Seller nor Broker(s) have made any representations or inducements with respect thereto that have caused Buyer to consummate the transaction contemplated by this Agreement, except those as are set forth in this Agreement. If no such representations or inducements are set forth, there shall be conclusively presumed to have been none. The provisions of this contingency to the Agreement

shall survive the settlement.

20. Waiver of Tender; Notices. Formal tender of deed and of purchase price are hereby waived. Any notices between the parties hereto shall be in writing and may be served in the manner provided by law for the service of process in equity or may be mailed by certified or registered mail to either party at the respective addresses above set forth. If mailed, such notice shall be deemed effectively given as of the second business day after the date of posting.

21. Entire Contract; Amendments; Interpretation. This Agreement constitute the entire contract between the parties hereto and there are no other understandings, oral or written, relating to the subject matter hereof. This Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by all parties.

Whenever used in this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Paragraph headings are inserted for convenience only and shall not form part to the text of this Agreement.

22. Binding Effect. This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors and assigns.

23. Coal Notice. 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 in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.)

Unless the foregoing notice is stricken, the deed shall contain the notice as above set forth and shall also contain, and Buyer shall sign, the notice specified in the Bituminous Mine Subsidence and Land Conservation Act of 1966

24. No Brokerage Fees. Seller represents, warrants and covenants with Buyer, and Buyer represents, warrants and covenants with Seller, that no brokerage fees or commissions or finders' fees have been incurred by any of them or are payable, to the best of their respective knowledge, in connection with the transactions contemplated by this Agreement.

WITNESS the due execution hereof this 22 day of 10/22/00  
2000.

WITNESS:

Betty Heller

BUYER:

Joseph H. Fontana  
JOSEPH H. FONTANA

SELLER:

Betty Heller

Harold Leach  
HARROLD LEACH

## Summary of expenses incurred for the Harold Leach Property

### Exhibit A

David J. Hopkins Esquire

Legal work done on vacating existing roadways. \$2750.00

36 hours meetings with attorney and residents. \$900.00

### Exhibit B

North Surveying \$5531.60

Engineering work, original property survey.

40 hours meetings with Mr. North \$1000.00

### Exhibit C

Harold Leach \$2000.00

Agreement for property.

40 hours Meetings with Mr. Leach \$1000.00

### Exhibit D

Blakley Jones & Mahoney \$220.00

Legal work on the agreement

20 hours Meetings with Attorney & Mr. Leach \$500.00

### Exhibit E

Provost Real Estate Appraisers \$2500.00

Feasibility Study

### Exhibit F

Fotorecord \$221.66

Blueprint copies

Exhibit "B"

Exhibit G	
Sandy Township	\$200.00
Zoning Meetings	
30 hours for zoning meetings	\$750.00
Exhibit H	
Lee Simpson and Associates	\$42,963.07
Storm water Management Plan	
Field Survey of Property Boundaries with Final Plat	
Field jurisdictional delineation of wetlands and survey of test pits and wetland boundaries.	
Water and sanitary sewer system capacity study	
Traffic study.	
General permits for roadway crossing of wetlands	
Water and sanitary sewer system design	
Erosion and sediment control plan	
50 hours meetings with Scott Kuselman	\$1250.00
James A Naddeo	\$1500.00
Total	\$63,286.33

**JAMES A. NADDEO**  
ATTORNEY AT LAW  
207 EAST MARKET STREET  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

ASSOCIATE  
LINDA C. LEWIS

(814) 765-1601  
FAX: (814) 765-8142  
naddeolaw@atlanticbbn.net

August 11, 2005

Benjamin S. Blakley, III, Esquire  
90 Beaver Drive, Box 6  
DuBois, PA 15801

RE: Fontana v. Leach, et al  
No. 2005-1026-CD

Dear Ben:

My client entered into a Sales Agreement to purchase land from Mr. Leach located in Sandy Township, Clearfield County, Pennsylvania. Under the terms of the Agreement, which appears to have been prepared by you, Buyer was to develop townhouses on the Leach property and pay Mr. Leach part of the selling price as the units were sold. This project has been delayed for various reasons the most prevalent of which is the dispute between the City of DuBois and Sandy Township pertaining to sewage service. In the meantime, Mr. Fontana incurred substantial expense for engineering, etc. on the project.

I have been informed by Mr. Fontana that Mr. Leach threatened a sale of the property subject to the agreement of October 22, 2000 to a third party. Mr. Fontana's suit was filed to act as a lis pendens to forestall a breach of the sales agreement. It is my intention to file a complaint to enjoin your client from selling the property to a third party and/or to recover the development costs expenses by Mr. Fontana.

I suggest that we resolve any issues between our clients as follows:

A. Continue to develop the property as contemplated by the Sales Agreement of October 22, 2000.

Exhibit "C"

Benjamin S. Blakley, III, Esquire  
August 11, 2005  
Page 2

B. Release the property for sale to the third party and reimburse my client for the development costs from the proceeds of sale.

If either of the foregoing suggestions are attractive to your client, please confirm. I will recommend settlement and obtain authority from Mr. Fontana.

Sincerely,

James A. Naddeo

JAN/lcl

Cc: Joseph H. Fontana

# **LISTING CONTRACT** **EXCLUSIVE RIGHT TO SELL REAL ESTATE**

XLS

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

**BROKER(Company)** HOWARD HANNA LAUREL REALTY

**LICENSEE(S)** TERESA BALL, BROKER ASSOC.

**SELLER**

HAROLD LEACH

**Does Seller have a Listing Contract with another Broker?** ☐ Yes ☒ No

**If yes, explain:**

**JOE FONTANA HAS AN INTEREST IN THE PROPERTY, REPRESENTED BY JIM NADDEO AS ATTORNEY OF LAW**

**TWO DEEDS TO THE PROPERTY, HAROLD N. LEACH EXCAVATION AND GRADING COMPANY, DEED BOOK 507 PAGE 268**

**SECOND DEED: HAROLD N. LEACH, BOOK 694 PAGE PG356**

## **1. PROPERTY**

**Address** corner of Schaffer road and Maple Ave.

**LISTED PRICE \$** 420,000.00

**Municipality (city, borough, township)** SANDY

**County** CLEARFIELD

**Zoning** COMMERCIAL/RESIDENTIAL

**School District** DUBOIS

**Identification (Tax ID #; Parcel #; Lot, Block; Deed Book, Page, Recording Date)**

**Present Use** COMMERCIAL

694-356, 507-268

## **2. STARTING & ENDING DATES OF LISTING CONTRACT (ALSO CALLED "TERM")**

**A** No Association of REALTORS® has set or recommended the term of this contract. By law, the length or term of a listing contract may not exceed one year. Broker and Seller have discussed and agreed upon the length or term of this contract.

**B** Starting Date: This Contract starts when signed by Broker and Seller, unless otherwise stated here:

**C** Ending Date: This Contract ends on October 30, 2008

## **3. DUAL AGENCY** Seller agrees that Broker may also represent the buyer(s) of the Property. The Broker is a DUAL AGENT when representing both Seller and the buyer in the sale of a property.

## **4. DESIGNATED AGENCY**

☒ **Not Applicable.**

☐ **Applicable.** Broker may designate licensees to represent the separate interests of Seller and the buyer. Licensee (identified above) is the Designated Agent, who will act exclusively as the Seller Agent. If Property is introduced to the buyer by a licensee in the Company who is not representing the buyer, then that licensee is authorized to work on behalf of Seller. If Licensee is also the Buyer's Agent, then Licensee is a DUAL AGENT.

## **5. BROKERS FEE** No Association of REALTORS® has set or recommended the Broker's Fee. Broker and Seller have negotiated the fee that Seller will pay Broker. Broker's Fee is 10 % of the sales price AND \$ 250, paid by Seller.

## **6. COOPERATION WITH OTHER BROKERS**

Licensee has explained Broker's company policies about cooperating with other brokers. Broker and Seller agree that Broker will pay from Broker's Fee a fee to another broker who procures the buyer, is a member of a Multiple Listing Service (MLS), and who:

**A** ☐ **represents Seller (SUBAGENT).** Broker will pay \_\_\_\_\_ off from the sale price.

**B** ☒ **represents the buyer (BUYER'S AGENT).** Broker will pay 4 % off from the sale price.

**A Buyer's Agent, even if compensated by Broker for Seller, will represent the interests of the buyer.**

**C** ☐ **does not represent either Seller or a buyer (TRANSACTION LICENSEE).**

Broker will pay \_\_\_\_\_ off from the sale price.

## **7. PAYMENT OF BROKER'S FEE**

**A** Seller will pay Broker's Fee if Property, or any ownership interest in it, is sold or exchanged during the term of this Contract by Broker, Broker's salespersons, Seller, or by any other person or broker, at the listed price or any price acceptable to Seller.

**B** Seller will pay Broker's Fee if a ready, willing, and able buyer is found by Broker or by anyone, including Seller. A willing buyer is one who will pay the listed price or more for the Property, or one who has submitted an offer accepted by Seller.

**C** Seller will pay Broker's Fee if negotiations that are pending at the Ending Date of this Contract result in a sale.

**D** Seller will pay Broker's Fee for a sale that occurs after the Ending Date of this Contract IF:

(1) The sale occurs within 360 of the Ending Date, AND

(2) The buyer was shown or negotiated to buy the Property during the term of this contract, AND

PREPARED BY: Teresa M. Ball, Associate Broker GRI

XLS, Listing Contract Exclusive Right To Sell Real Estate, 11/03, Pennsylvania Association of REALTORS®

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RealFAST® Software © 2008, Version 6.16. Software Registered to: William Allemang, Howard Hanna Laurel Realty

Broker/Licensee

06/18/08 09:58:32

Exhibit "D"

*[Handwritten signature]*

Page 1 of 4  
Seller(s) \_\_\_\_\_



- (3) The Property is not listed as an "exclusive right to sell contract" with another broker at the time of the sale.
- E. If a buyer signs an agreement of sale then refuses to buy the Property, or if a buyer is unable to buy the Property because of failing to do all the things required of the buyer in the agreement of sale (buyer default), Seller will pay Broker HALF off from buyer's deposit monies, OR the Broker's Fee in Paragraph 5, whichever is less.
- F. If the Property or any part of it is taken by any government for public use (Eminent Domain), Seller will pay Broker's fee from any money paid by the government.
- G. If a sale occurs, Broker's Fee will be paid upon delivery of the deed or other evidence of transfer of title or interest. If the Property is transferred by an installment contract, Broker's Fee will be paid upon the execution of the installment contract.

## 8. DUTIES OF BROKER AND SELLER

- A. Broker is acting as a Seller's Agent, as described in the Consumer Notice, to market the Property and to negotiate with potential buyers. Broker will use reasonable efforts to find a buyer for the Property.
- B. Seller will cooperate with Broker and assist in the sale of the Property as asked by Broker.
- C. All showings, negotiations and discussions about the sale of the Property will be done by Broker on Seller's behalf. All written or oral inquiries that Seller receives or learns about regarding the Property, regardless of the source, will be referred to Broker.
- D. If the Property, or any part of it, is rented, Seller will give any leases to Broker before signing this Contract. If any leases are oral, Seller will provide a written summary of the terms, including amount of rent, ending date, and Tenant's responsibilities.
- E. Seller will not enter into or renew any leases during the term of this Contract without first giving notice to Broker.

## 9. BROKER'S SERVICE TO BUYER

Broker may provide services to a buyer for which Broker may accept a fee. Such services may include, but are not limited to, deed/document preparation; ordering certifications required for closing; financial services; title transfer and preparation services; ordering insurance, construction, repair, or inspection services. Broker will disclose to Seller if any fees are to be paid by Buyer.

## 10. BROKER NOT RESPONSIBLE FOR DAMAGES

Seller agrees that Broker and Broker's salespersons are not responsible for any damage to the Property or any loss or theft of personal goods from the Property unless such damage, loss or theft is directly caused by Broker or Broker's salespersons.

## 11. DEPOSIT MONEY

- A. Broker, or any person Seller and the buyer name in the agreement of sale, will keep all deposit monies paid by or for the buyer in an escrow account until the sale is completed or the agreement of sale is terminated. If held by Broker, this escrow account will be held as required by real estate licensing laws and regulations. Seller agrees that the person keeping the deposit monies may wait to deposit any uncashed check that is received as deposit money until Seller has accepted an offer.
- B. If Seller joins Broker or Licensee in a lawsuit for the return of deposit monies, Seller will pay Broker's and Licensee's attorneys' fees and costs.

## 12. OTHER PROPERTIES

Seller agrees that Broker may list other properties for sale and that Broker may show other properties to prospective buyers.

## 13. CONFLICT OF INTEREST

A conflict of interest is when Broker or Licensee has a financial or personal interest where Broker or Licensee cannot put Seller's interests before any other. If Broker, Licensee, or any of Broker's salespeople has a conflict of interest, Broker will notify Seller in a timely manner.

## 14. PUBLICATION OF SALE PRICE

Seller is aware that the Multiple Listing Service (MLS), newspapers, and other media may publish the final sale price of the Property after settlement.

## 15. SELLER WILL REVEAL DEFECTS & ENVIRONMENTAL HAZARDS

- A. Seller (including Sellers exempt from the Real Estate Seller Disclosure Law) will disclose all known material defects and/or environmental hazards on a separate disclosure statement. A material defect is a problem or condition that:
- (1) is a possible danger to those living on the Property, or
  - (2) has a significant, adverse effect on the value of the Property.
- The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a structural element system or subsystem is not by itself a material defect.
- B. If Seller fails to disclose known material defects and/or environmental hazards;
- (1) Seller will not hold Broker or Licensee responsible in any way;
  - (2) Seller will protect Broker and Licensee from any claims, lawsuits, and actions that result;
  - (3) Seller will pay all of Broker's and Licensee's costs that result. This includes attorneys' fees and court-ordered payments or settlements (money Broker or Licensee pays to end a lawsuit or claim).

## 16. IF PROPERTY WAS BUILT BEFORE 1978

The Residential Lead-Based Paint Hazard Reduction Act says that any seller of property built before 1978 must give the buyer an EPA pamphlet titled *Protect Your Family From Lead in Your Home*. The seller also must tell the buyer and the Broker what the seller knows about lead-based paint and lead-based paint hazards that are in or on the property being sold. Seller must tell the buyer how the seller knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the condition of the painted surfaces, and any other information seller knows about lead-based paint.

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Seller(s)

and lead-based paint hazards on property. Any seller of a pre-1978 structure r. also give the buyer any records and reports that the seller has or can get about lead-based paint or lead-based paint hazards in or around the property being sold, the common areas, or other dwellings in multi-family housing. According to the Act, a seller must give a buyer 10 days (unless seller and the buyer agree to a different period of time) from the time an agreement of sale is signed to have a "risk assessment" or inspection for possible lead-based paint hazards done on the property. Buyers may choose not to have the risk assessment or inspection for lead paint hazards done. If the buyer chooses not to have the assessment or inspection, the buyer must inform the seller in writing of the choice. The Act does not require the seller to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

#### 17. RECOVERY FUND

Pennsylvania has a Real Estate Recovery Fund (the Fund) to repay any person who has received a final court ruling (civil judgment) against a Pennsylvania real estate licensee because of fraud, misrepresentation, or deceit in a real estate transaction. The Fund repays persons who have not been able to collect the judgment after trying all lawful ways to do so. For complete details about the Fund, call (717) 783-3658, or (800) 822-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).

#### 18. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN PENNSYLVANIA

Federal and state laws make it illegal for a seller, a broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years of age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OF RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposit amounts, or as reasons for any decision relating to the sale of property.

#### 19. ADDITIONAL OFFERS

If asked by a buyer or cooperating broker, Broker shall reveal the existence of offers on the Property, unless prohibited by Seller. ONCE SELLER ENTERS INTO AN AGREEMENT OF SALE, BROKER IS NOT REQUIRED TO PRESENT OTHER OFFERS.

#### 20. TRANSFER OF THIS CONTRACT

A. Broker will notify Seller immediately in writing if Broker transfers this Contract to another broker when:

- (1) Broker stops doing business, OR
- (2) Broker forms a new real estate business, OR
- (3) Broker joins his business with another.

Seller agrees that Broker may transfer this Contract to another broker. Broker will notify Seller immediately in writing when a transfer occurs or Broker will lose the right to transfer this Contract. Seller will follow all requirements of this Contract with the new broker.

B. Should Seller give or transfer the Property, or an ownership interest in it, to anyone during the term of this Contract, all owners will follow the requirements of this Contract.

#### 21. NO OTHER CONTRACTS

Seller will not enter into another listing agreement with another broker that begins before the Ending Date of this Contract.

#### 22. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Seller. Any verbal or written agreements that were made before are not part of this contract.

#### 23. CHANGES TO THIS CONTRACT

All changes to this contract must be in writing and signed by Broker and Seller.

#### 24. SPECIAL INSTRUCTIONS

The Office of the Attorney General has not pre-approved any special conditions or additional terms added by any parties. Any special conditions or additional terms in the Contract must comply with the Pennsylvania Plain Language Consumer Contract Act.

#### 25. MARKETING OF PROPERTY

A. Where permitted, Broker, at Broker's option, may use: ☒ For sale sign ☒ Sold sign ☐ Key in office ☐ Lock box ☒ Print/electronic advertising, including photographs ☐ Property address in print/electronic advertising.

B. Broker ☒ will / ☐ will not use a Multiple Listing Service (MLS) to advertise the Property to other real estate brokers and sales persons.

Seller agrees that Broker, Licensee, and the MLS are not responsible for mistakes in the MLS and/or advertising of the Property.

#### 26. ITEMS INCLUDED/NOT INCLUDED IN THE PRICE OF THE PROPERTY

A. Included in the sale and purchase price are all existing items permanently installed in the Property, free of liens, including plumbing; heating; lighting fixtures (including chandeliers and ceiling fans); water treatment systems; pool and spa equipment; garage door openers and transmitters; television antennas; shrubbery, plantings, and unpotted trees; any remaining heating and cooking fuels stored on the Property at the time settlement; wall to wall carpeting; window covering hardware, shades, and blinds; built-in air conditioners; built-in appliances, and the range/oven, unless otherwise stated. Also included:

SURVEY

B. The following items are NOT included in the purchase and price of the Property:

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C. Items leased by the Seller:

# **TITLE & POSSESSION**

## **ADDITIONAL INFORMATION (OPTIONAL)**

- A. Seller will give possession of Property to a buyer at settlement, or on \_\_\_\_\_  
 B. At settlement, Seller will give full rights of ownership (fee simple) to a buyer except as follows:  
 (1) Mineral Rights Agreements: \_\_\_\_\_  
 (2) Other: \_\_\_\_\_

C. Seller has:

☐ Mortgage with: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_ Amount of balance \$ \_\_\_\_\_

☐ Equity Loan with: \_\_\_\_\_ Acct. #: \_\_\_\_\_

Address: \_\_\_\_\_ Amount of balance \$ \_\_\_\_\_

☐ Seller authorizes Broker to receive mortgage payoff and/or equity loan payoff information from lender(s).  
 Phone: \_\_\_\_\_ Acct. #: \_\_\_\_\_

D. Seller has: ☐ Judgments ☐ Municipal Assessment ☐ Past Due Taxes ☐ Other: \_\_\_\_\_  
 \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

E. If Seller, at any time on or since January 1998, has been obligated to pay support under an order that is on record in any Pennsylvania county, list the county and the Domestic Relations Number or Docket Number: \_\_\_\_\_

## **TAXES, UTILITIES, & ASSOCIATION FEES**

A. At settlement, Seller will pay one-half of the total Real Estate Transfer Taxes, unless otherwise stated here:

B. Real Estate Property Tax Assessment \$ \_\_\_\_\_ Yearly Taxes \$ \_\_\_\_\_

Wage/Income Tax \$ \_\_\_\_\_ Per Capita Tax \$ \_\_\_\_\_

C. Estimated Utilities (trash, water, sewer, electric, gas, oil, etc.): \_\_\_\_\_

D. Association Fees \$ \_\_\_\_\_ Include: \_\_\_\_\_

## **BUYER FINANCING**

Seller will accept the following arrangements for buyer to pay for the Property:

☒ Cash ☒ Conventional mortgage ☐ FHA mortgage ☐ VA mortgage

☐ Seller's help to buyer (if any): \_\_\_\_\_

Seller has read the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.  
 Seller gives permission for Broker or Landlord to send information about this transaction to the fax number(s) and/or email address(es) listed below.

Seller has read the entire of Contract before signing. All Sellers must sign this Contract. Return by facsimile (FAX) constitutes acceptance of this agreement.

**NOTICE BEFORE SIGNING: IF SELLER HAS LEGAL QUESTIONS, SELLER IS ADVISED TO CONSULT AN ATTORNEY.**

SELLER

HAROLD LEACH

DATE

6-18-08

E-MAIL: TBALL@PENN.COM

BROKER(CompanyName)

Howard Hanna Laurel Realty

31 N Brady

Dubois, PA 15801

Phone: 814-375-0722,

Fax: 814-375-4101

By:

Signature

Teresa M. Ball

Date

PREPARED BY: Teresa M. Ball, Associate Broker GRI

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

\*  
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No. 05 - 1026 - CD

CERTIFICATE OF SERVICE

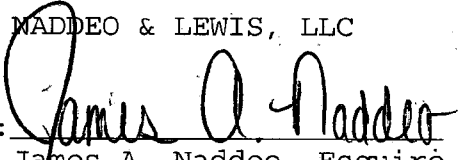
I, James A. Naddeo, Esquire, do hereby certify that a  
certified copy of Complaint was served on the following and in the  
following manner on the 16<sup>th</sup> day of November, 2011:

First-Class Mail, Postage Prepaid

Benjamin S. Blakley, III, Esquire  
90 Beaver Drive, Box 6  
DuBois, PA 15801

NADDEO & LEWIS, LLC

BY:

  
James A. Naddeo, Esquire  
Attorney for Plaintiff

CA  
FILED

§ DEC 02 2011

m/10/10/11  
William A. Shaw  
Prothonotary/Clerk of Courts

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

1 cent to App

JOSEPH H. FONTANA,

Plaintiff,

vs.

HAROLD N. LEACH and HAROLD N.  
LEACH, t/d/b/a HAROLD N. LEACH  
EXCAVATING AND GRADING  
COMPANY,

Defendants.

) NO. 2005-1026-C.D.  
)  
) Type of Case: CIVIL ACTION  
)  
) Type of Pleading:  
) PRELIMINARY OBJECTIONS  
)  
) Filed on Behalf of:  
) Defendants  
)  
) Counsel of Record:  
)  
) BENJAMIN S. BLAKLEY, III  
) Supreme Court No. 26331  
)  
) LEANNE NEDZA  
) Supreme Court No. 89383  
)  
) BLAKLEY & JONES  
) 90 Beaver Drive, Box 6  
) DuBois PA 15801  
) (814) 371-2730

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

JOSEPH H. FONTANA,	)	NO. 2005-1026-C.D.
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
HAROLD N. LEACH and HAROLD N.	)	
LEACH, t/d/b/a HAROLD N. LEACH	)	
EXCAVATING AND GRADING	)	
COMPANY,	)	
	)	
Defendants.	)	

**PRELIMINARY OBJECTIONS**

AND NOW come Defendants, **HAROLD N. LEACH and HAROLD N. LEACH,**  
**t/d/b/a HAROLD N. LEACH EXCAVATING AND GRADING COMPANY,** by and through  
their attorneys, **BLAKLEY & JONES,** and files the following Preliminary Objections to  
Plaintiff's Complaint in the above-captioned matter:

**I. PRELIMINARY OBJECTIONS FOR LEGAL INSUFFICIENCY OF THE  
PLEADINGS (DEMURRER)**

1. Plaintiff and Defendants were parties to an Agreement of Sale concerning real  
property situate in Sandy Township, Clearfield County, Pennsylvania, and dated October 22,  
2000. A copy of said Agreement of Sale is attached hereto and marked Defendants' Exhibit A.

2. Because of the inability of the Plaintiff to secure financing for the development of  
the subject property, Plaintiff was unable to purchase the subject property from the Defendants as  
called for in the said Agreement of Sale.

3. In anticipation of the purchase of the aforesaid property, Plaintiff incurred certain expenses toward the construction of townhouses which were to be built upon the subject property, should the Plaintiff be successful in purchasing the property from the Defendants.

4. In his Complaint filed on November 16, 2011, Plaintiff seeks to recover the sum of \$63,286.33 in expenses incurred by the Plaintiff in anticipation of his performance under the parties' Agreement of Sale and alleges that the Defendants are in breach of the said Agreement of Sale in failing to reimburse Plaintiff for said sums, in spite of the fact that Plaintiff was able to consummate the sale of the aforesaid property.

5. The aforesaid Agreement of Sale which was attached to the Plaintiff's Complaint as Exhibit A is devoid of any language obligating the Defendants to reimburse the Plaintiff for any expenses incurred by the Plaintiff should the Plaintiff be unable to purchase the property which is the subject of the parties' Agreement of Sale of October 22, 2000.

6. Plaintiff has failed to allege that the Defendant, in any manner, breached the parties' contract of October 22, 2000, in his Complaint; therefore, the Defendants demur to Count II of Plaintiff's Complaint, as the Plaintiff has failed to allege a cause of action for which he may recover from the Defendants.

WHEREFORE, Defendants respectfully request that this Honorable Court grant their preliminary objection in the form of a demurrer and dismiss Count II of Plaintiff's Complaint.

## **II. PRELIMINARY OBJECTIONS FOR LEGAL INSUFFICIENCY OF THE PLEADINGS (DEMURRER)**

7. Defendants hereby incorporate by reference all of the averments contained in Paragraph 1 through 6 above as if the same were fully set forth herein.

8. In Count III of his Complaint, Plaintiff alleges various settlement proposals providing for the Plaintiff's recoupment of his expenses incurred as set forth above. Specifically, Plaintiff has alleged that the parties agreed to list the subject property for sale under a Listing Agreement dated June 18, 2008, as set forth in Plaintiff's Exhibit D attached to his Complaint, with said Listing Agreement being attached hereto and marked as Defendants' Exhibit B.

9. By the terms of said Listing Agreement, the Agreement ended on October 30, 2008, and the Plaintiff has failed to allege or to otherwise plead any further agreements between the parties calling for the Plaintiff to reimburse his out-of-pocket expenses.

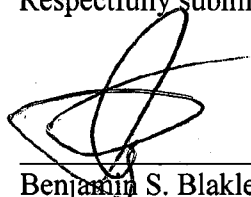
10. Plaintiff has failed to plead or to allege any existing contract obligating the Defendants to reimburse the Plaintiff for any out-of-pocket expenses incurred by the Plaintiff.

11. The allegations contained within Plaintiff's Complaint do not set forth a cause of action which the Plaintiff may have against the Defendants; therefore, the Defendants demur to the same.

WHEREFORE, Defendants respectfully request that this Honorable Court grant their preliminary objection in the form of a demurrer and dismiss Count III of Plaintiff's Complaint.

Respectfully submitted,

Dated: 12-1-11




Benjamin S. Blakley, III  
Attorney for Defendants



**CERTIFICATE OF SERVICE**

This will certify that the undersigned served a copy of the foregoing Praeceptum for Rule in the above-captioned matter on the following parties at the addresses shown below by first-class U.S. Mail on the 1<sup>st</sup> day of December, 2011:

James A. Naddeo, Esquire  
207 East Market Street  
P O Box 552  
Clearfield PA 16830

---

Benjamin S. Blakley, III

## AGREEMENT OF SALE

THIS AGREEMENT OF SALE entered into by and between: HARROLD LEACH of RR1 Box 119, DuBois, County of Clearfield Commonwealth of Pennsylvania, hereinafter referred to as "Seller"

AND

JOSEPH H. FONTANA of 645 West Pittsburgh, Greensburg, County of Westmoreland and Commonwealth of Pennsylvania, hereinafter referred to as "Buyer";

### WITNESSETH THAT:

WHEREAS, the Buyer desires to purchase certain real estate from Seller, and Seller desires to sell certain real estate to the Buyer;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, other good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Covenant to Sell. Seller shall, on the date hereinafter specified, by deed of general warranty, well and sufficient grant and convey unto Buyer, in fee simple, clear of all liens and encumbrances, except as hereinafter set forth, good and marketable title (and such as will be insurable by any responsible title insurance company at regular rates) to the real estate hereinafter described (hereinafter referred to as "the Property").

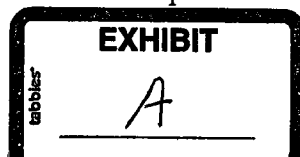
2. Description. ALL THAT CERTAIN piece or parcel of ground situate in Sandy Township, Clearfield County and Commonwealth of Pennsylvania being approximately fifteen acres of vacant ground.

3. Title Reference Deed Book Volume \_\_\_\_\_, page \_\_\_\_\_.

5. Consideration. Buyer will purchase the property for the total sum of three hundred thousand dollars (\$300,000.00) payable as the parcel is developed into townhouses. The Buyer shall pay the Seller the sum of two thousand five hundred dollars (\$2,500.00) during the construction of each unit. The Buyer shall pay the Seller the sum of two thousand five hundred dollars (\$2,500.00) during the closing of each unit. The total price of each unit paid towards the purchase price of the land shall be five thousand dollars (\$5,000.00). Upon the completion and sale of sixty (60) units the Seller shall have been paid in full. The Buyer reserves the right to pay the Seller in full at any time. The Seller shall record a mortgage for three hundred thousand dollars (\$300,000.00) for the protection of his monies. Said mortgage shall be subordinated to any construction loans the Buyer obtains from a financial institution.

6. Settlement. Unless otherwise agreed, settlement shall be within thirty days (30) of the Buyer's commitment for construction financing of the project.

7. Pro-ration Items. Real estate taxes shall be pro-rated as of closing. Real estate taxes



shall be pro-rated for the calendar year of settlement based upon real estate taxes levied or estimated to be levied in that year by each taxing body (without regard to the date of the levy or the fiscal year of the taxing body).

The cost of real estate transfer taxes shall be borne equally between Seller and Buyer.

8. Eminent Domain. If the Property or any part thereof is taken by eminent domain prior to settlement, Buyer shall have the option to: (a) void this Agreement, whereupon all monies paid on account hereof shall forthwith be paid to buyer and upon such payment all parties shall be relieved of liability hereunder, or (b) elect to proceed with this Agreement and pay the full consideration, in which event Seller shall assign to Buyer all damages to which Seller may be entitled and which may be assigned by Seller pursuant to the Pennsylvania Eminent Domain Code. Within five (5) days after notification of any such taking, but in no event later than the settlement, Seller shall notify Buyer thereof.

9. Seller's Expense. Seller shall be responsible for cost of deed preparation and all matters of title clearance and a reasonable charge for making disbursements on behalf of Seller.

10. Municipal Improvements. Seller shall pay for all work and improvements for which a municipal claim may be filed against the Property where an ordinance or resolution authorizing such work or improvement is adopted prior to the date of this Agreement. Buyer shall pay for all work and improvements for which such a claim may be filed where an ordinance or resolution authorizing such work or improvement is adopted on or after the date of this Agreement.

11. Default. In the event of default:

(A) By Buyer: Seller may, at Seller's option, elect to: (1) retain the earnest money and all monies paid on account of the purchase price as liquidated damages, in which event this Agreement shall become null and void and both parties thereupon be released of all further liability hereunder. It is hereby agreed that, without resale, Seller's damages will be difficult to ascertain and that the earnest money and all monies paid on account of the purchase price constitute a reasonable liquidation thereof and not a penalty, or (2) apply said monies toward Seller's damages, including but not limited to, loss of bargain, consequential damages and attorney's fees, provided, however, that no such election of (A)(2) hereof shall be final or exclusive until full satisfaction shall have been received.

(B) By Seller: Buyer may, at Buyer's option, elect to: (1) waive any claim for loss of bargain, in which event Seller hereby agrees to repay to Buyer the earnest money and all monies paid on account and, in addition, reimburse Buyer for all direct, out-of-pocket costs and expenses including, but not limited to, title examination, pest inspection, survey and attorney's fees.

In lieu thereof, however, Buyer may elect either or both of the following remedies: (2) an action for specific performance; (3) an action at law for damages including, but not limited to the items in subparagraph (B)(1) hereof, consequential damages, loss of bargain and attorney's fees, provided, however, that no such election of (B)(2) or (3) hereof shall be final or exclusive until full satisfaction shall have been received.

13. Modified Time of Essence. If full performance of this Agreement is not completed by

the date set forth in paragraph 6, either party shall have the right after that 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, which date may not be sooner than fifteen (15) days nor later than thirty (30) days following the effective date of giving such notice.

14. Under and Subject. Buyer shall take title to the Property SUBJECT to the following: (a) building and use restrictions of record; (b) vehicular or pedestrian easements of record affecting the Property and being contiguous to the front, rear or side lot lines; (c) water, sewer, gas, electric, cable television, and telephone lines or easements therefor of record or as presently installed, provided, however, that said lines or easements shall not adversely affect the use of the Property for residential purposes or at any time require the removal or alteration of the presently existing dwelling(s), or appurtenant structures thereon; (d) prior grants, reservations or leases of coal, oil, gas, or other minerals as shown by instruments of record; and (e) easements apparent upon inspection of the Property.

15. Inspection of Property. It is hereby understood between the parties hereto that the Property has been inspected by Buyer or his agent, that the same is being purchased solely in reliance upon such inspection and that there have not been and are no representations or warranties, expressed or implied, with respect to the physical condition of the Property, made by Seller or Seller's agent.

16. Disclaimer. This Agreement of Sale is entered into with Buyer's full knowledge as to the value of the Property, and not upon any representations as to the value, character, quality or condition thereof, other than as may be expressly provided herein. Buyer hereby acknowledges that Buyer has inspected the Property and agrees to accept them in "AS IS" condition. Seller makes no representations regarding same and Buyer's acceptance of the deed is acceptance of the Property "AS IS".

17. Zoning and Other Ordinances. Seller warrants that the Property has the following Zoning Classification: Multiple family that the present use is in compliance therewith, and that there exists no notice of any uncorrected violations of housing, building, safety or fire ordinances. (For closing, obtain statements as to compliance and non-violation, if required.)

18. Sewage Facility. The Pennsylvania Sewage Facilities Act of January 24, 1966, No. 537, P.L. 1535, as amended, requires that there be a statement regarding the availability of a community sewage system. The Property IS NOT serviced by a community sewage system.

19. Settlement as Final. Buyer represents to Seller and Broker(s) that delivery of the deed at the settlement and acceptance thereof by Buyer shall constitute a representation and acknowledgment by Buyer that Property was in a condition then acceptable to Buyer, that neither Seller nor Broker(s) shall have any liability with respect thereto, and that neither Seller nor Broker(s) have made any representations or inducements with respect thereto that have caused Buyer to consummate the transaction contemplated by this Agreement, except those as are set forth in this Agreement. If no such representations or inducements are set forth, there shall be conclusively presumed to have been none. The provisions of this contingency to the Agreement

shall survive the settlement.

20. Waiver of Tender; Notices. Formal tender of deed and of purchase price are hereby waived. Any notices between the parties hereto shall be in writing and may be served in the manner provided by law for the service of process in equity or may be mailed by certified or registered mail to either party at the respective addresses above set forth. If mailed, such notice shall be deemed effectively given as of the second business day after the date of posting.

21. Entire Contract; Amendments; Interpretation. This Agreement constitute the entire contract between the parties hereto and there are no other understandings, oral or written, relating to the subject matter hereof. This Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by all parties.

Whenever used in this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Paragraph headings are inserted for convenience only and shall not form part to the text of this Agreement.

22. Binding Effect. This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors and assigns.

23. Coal Notice. 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 in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.)

Unless the foregoing notice is stricken, the deed shall contain the notice as above set forth and shall also contain, and Buyer shall sign, the notice specified in the Bituminous Mine Subsidence and Land Conservation Act of 1966

24. No Brokerage Fees. Seller represents, warrants and covenants with Buyer, and Buyer represents, warrants and covenants with Seller, that no brokerage fees or commissions or finders' fees have been incurred by any of them or are payable, to the best of their respective knowledge, in connection with the transactions contemplated by this Agreement.

WITNESS the due execution hereof this 22 day of 10/22/00  
2000.

WITNESS:

Betty Heller

BUYER:

Joseph H. Fontana  
JOSEPH H. FONTANA

SELLER:

Betty Heller

Harold Leach  
HARROLD LEACH

# **LISTING CONTRACT** **EXCLUSIVE RIGHT TO SELL REAL ESTATE**

XLS

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

1 **BROKER(Company)** HOWARD HANNA LAUREL REALTY  
 2 **LICENSEE(S)** TERESA BALL, BROKER ASSOC.  
 3 **SELLER**

HAROLD LEACH

4 Does Seller have a Listing Contract with another Broker? ☐ Yes ☒ No  
 5 If yes, explain:

6 JOE FONTANA HAS AN INTEREST IN THE PROPERTY, REPRESENTED BY JIM NADDEO AS ATTORNEY OF LAW  
TWO DEEDS TO THE PROPERTY, HAROLD N. LEACH EXCAVATION AND GRADING COMPANY, DEED BOOK 507 PAGE 268  
SECOND DEED: HAROLD N. LEACH, BOOK 694 PAGE PG356

## 1. **PROPERTY**

Address corner of Schaffer road and Maple Ave.

LISTED PRICE \$ 420,000.00

Municipality (city, borough, township) SANDY

County CLEARFIELD

Zoning COMMERCIAL/RESIDENTIAL

School District DUBOIS

Identification (Tax ID #: Parcel #: Lot, Block; Deed Book, Page, Recording Date)  
694-356, 507-268

Present Use COMMERCIAL

## 2. **STARTING & ENDING DATES OF LISTING CONTRACT (ALSO CALLED "TERM")**

- A No Association of REALTORS® has set or recommended the term of this contract. By law, the length or term of a listing contract may not exceed one year. Broker and Seller have discussed and agreed upon the length or term of this contract.  
 B. Starting Date: This Contract starts when signed by Broker and Seller, unless otherwise stated here:  
 C. Ending Date: This Contract ends on October 30, 2008

## 3. **DUAL AGENCY** Seller agrees that Broker may also represent the buyer(s) of the Property. The Broker is a DUAL AGENT when representing both Seller and the buyer in the sale of a property.

## 4. **DESIGNATED AGENCY**

☒ Not Applicable.

☐ Applicable. Broker may designate licensees to represent the separate interests of Seller and the buyer. Licensee (identified above) is the Designated Agent, who will act exclusively as the Seller Agent. If Property is introduced to the buyer by a licensee in the Company who is not representing the buyer, then that licensee is authorized to work on behalf of Seller. If Licensee is also the Buyer's Agent, then Licensee is a DUAL AGENT.

## 5. **BROKERS FEE** No Association of REALTORS® has set or recommended the Broker's Fee. Broker and Seller have negotiated the fee that Seller will pay Broker. Broker's Fee is 10 % of the sales price AND \$ 250, paid by Seller.

## 6. **COOPERATION WITH OTHER BROKERS**

Licensee has explained Broker's company policies about cooperating with other brokers. Broker and Seller agree that Broker will pay from Broker's Fee a fee to another broker who procures the buyer, is a member of a Multiple Listing Service (MLS), and who:

- A. ☐ represents Seller (SUBAGENT). Broker will pay \_\_\_\_\_ off/from the sale price.  
 B. ☒ represents the buyer (BUYER'S AGENT). Broker will pay 4 off/from the sale price.  
 A Buyer's Agent, even if compensated by Broker for Seller, will represent the interests of the buyer.  
 C. ☐ does not represent either Seller or a buyer (TRANSACTION LICENSEE).  
 Broker will pay \_\_\_\_\_ off/from the sale price.

## 7. **PAYMENT OF BROKER'S FEE**

- A. Seller will pay Broker's Fee if Property, or any ownership interest in it, is sold or exchanged during the term of this Contract by Broker, Broker's salespersons, Seller, or by any other person or broker, at the listed price or any price acceptable to Seller.  
 B. Seller will pay Broker's Fee if a ready, willing, and able buyer is found by Broker or by anyone, including Seller. A willing buyer is one who will pay the listed price or more for the Property, or one who has submitted an offer accepted by Seller.  
 C. Seller will pay Broker's Fee if negotiations that are pending at the Ending Date of this Contract result in a sale.  
 D. Seller will pay Broker's Fee for a sale that occurs after the Ending Date of this Contract IF:  
 (1) The sale occurs within 360 of the Ending Date, AND  
 (2) The buyer was shown or negotiated to buy the Property during the term of this contract, AND

PREPARED BY: Teresa M. Ball, Associate Broker GRI

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Broker/Licensee

**EXHIBIT**

B

Page 1 of 4  
 Seller(s) \_\_\_\_\_

- (3) The Property is not listed with an "exclusive right to sell contract" with another broker at the time of the sale.
- E. If a buyer signs an agreement of sale then refuses to buy the Property, or if a buyer is unable to buy the Property because of failing to do all the things required of the buyer in the agreement of sale (buyer default), Seller will pay Broker HALF off from buyer's deposit monies, OR the Broker's Fee in Paragraph 5, whichever is less.
- F. If the Property or any part of it is taken by any government for public use (Eminent Domain), Seller will pay Broker's fee from any money paid by the government.
- G. If a sale occurs, Broker's Fee will be paid upon delivery of the deed or other evidence of transfer of title or interest. If the Property is transferred by an installment contract, Broker's Fee will be paid upon the execution of the installment contract.

## 8. DUTIES OF BROKER AND SELLER

- A. Broker is acting as a Seller's Agent, as described in the Consumer Notice, to market the Property and to negotiate with potential buyers. Broker will use reasonable efforts to find a buyer for the Property.
- B. Seller will cooperate with Broker and assist in the sale of the Property as asked by Broker.
- C. All showings, negotiations and discussions about the sale of the Property will be done by Broker on Seller's behalf. All written or oral inquiries that Seller receives or learns about regarding the Property, regardless of the source, will be referred to Broker.
- D. If the Property, or any part of it, is rented, Seller will give any leases to Broker before signing this Contract. If any leases are oral, Seller will provide a written summary of the terms, including amount of rent, ending date, and Tenant's responsibilities.
- E. Seller will not enter into or renew any leases during the term of this Contract without first giving notice to Broker.

## 9. BROKER'S SERVICE TO BUYER

Broker may provide services to a buyer for which Broker may accept a fee. Such services may include, but are not limited to, deed/document preparation; ordering certifications required for closing; financial services; title transfer and preparation services; ordering insurance, construction, repair, or inspection services. Broker will disclose to Seller if any fees are to be paid by Buyer.

## 10. BROKER NOT RESPONSIBLE FOR DAMAGES

Seller agrees that Broker and Broker's salespersons are not responsible for any damage to the Property or any loss or theft of personal goods from the Property unless such damage, loss or theft is directly caused by Broker or Broker's salespersons.

## 11. DEPOSIT MONEY

- A. Broker, or any person Seller and the buyer name in the agreement of sale, will keep all deposit monies paid by or for the buyer in an escrow account until the sale is completed or the agreement of sale is terminated. If held by Broker, this escrow account will be held as required by real estate licensing laws and regulations. Seller agrees that the person keeping the deposit monies may wait to deposit any uncashed check that is received as deposit money until Seller has accepted an offer.
- B. If Seller joins Broker or Licensee in a lawsuit for the return of deposit monies, Seller will pay Broker's and Licensee's attorneys' fees and costs.

## 12. OTHER PROPERTIES

Seller agrees that Broker may list other properties for sale and that Broker may show other properties to prospective buyers.

## 13. CONFLICT OF INTEREST

A conflict of interest is when Broker or Licensee has a financial or personal interest where Broker or Licensee cannot put Seller's interests before any other. If Broker, Licensee, or any of Broker's salespeople has a conflict of interest, Broker will notify Seller in a timely manner.

## 14. PUBLICATION OF SALE PRICE

Seller is aware that the Multiple Listing Service (MLS), newspapers, and other media may publish the final sale price of the Property after settlement.

## 15. SELLER WILL REVEAL DEFECTS & ENVIRONMENTAL HAZARDS

- A. Seller (including Sellers exempt from the Real Estate Seller Disclosure Law) will disclose all known material defects and/or environmental hazards on a separate disclosure statement. A material defect is a problem or condition that:
- (1) is a possible danger to those living on the Property, or
  - (2) has a significant, adverse effect on the value of the Property.
- The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a structural element system or subsystem is not by itself a material defect.
- B. If Seller fails to disclose known material defects and/or environmental hazards;
- (1) Seller will not hold Broker or Licensee responsible in any way;
  - (2) Seller will protect Broker and Licensee from any claims, lawsuits, and actions that result;
  - (3) Seller will pay all of Broker's and Licensee's costs that result. This includes attorneys' fees and court-ordered payments or settlements (money Broker or Licensee pays to end a lawsuit or claim).

## 16. IF PROPERTY WAS BUILT BEFORE 1978

The Residential Lead-Based Paint Hazard Reduction Act says that any seller of property built before 1978 must give the buyer an EPA pamphlet titled *Protect Your Family From Lead in Your Home*. The seller also must tell the buyer and the Broker what the seller knows about lead-based paint and lead-based paint hazards that are in or on the property being sold. Seller must tell the buyer how the seller knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the condition of the painted surfaces, and any other information seller knows about lead-based paint.

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Broker/Licensee

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Page 2 of 4  
Seller(s)



and lead-based paint hazards on property. Any seller of a pre-1978 structure must also give the buyer any records and reports that the seller has or can get about lead-based paint or lead-based paint hazards in or around the property being sold, the common areas, or other dwellings in multi-family housing. According to the Act, a seller must give a buyer 10 days (unless seller and the buyer agree to a different period of time) from the time an agreement of sale is signed to have a "risk assessment" or inspection for possible lead-based paint hazards done on the property. Buyers may choose not to have the risk assessment or inspection for lead paint hazards done. If the buyer chooses not to have the assessment or inspection, the buyer must inform the seller in writing of the choice. The Act does not require the seller to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

# 17. RECOVERY FUND

Pennsylvania has a Real Estate Recovery Fund (the Fund) to repay any person who has received a final court ruling (civil judgment) against a Pennsylvania real estate licensee because of fraud, misrepresentation, or deceit in a real estate transaction. The Fund repays persons who have not been able to collect the judgment after trying all lawful ways to do so. For complete details about the Fund, call (717) 783-3658, or (800) 822-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).

# 18. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN PENNSYLVANIA

Federal and state laws make it illegal for a seller, a broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years of age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OF RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposit amounts, or as reasons for any decision relating to the sale of property.

# 19. ADDITIONAL OFFERS

If asked by a buyer or cooperating broker, Broker shall reveal the existence of offers on the Property, unless prohibited by Seller. ONCE SELLER ENTERS INTO AN AGREEMENT OF SALE, BROKER IS NOT REQUIRED TO PRESENT OTHER OFFERS.

# 20. TRANSFER OF THIS CONTRACT

A. Broker will notify Seller immediately in writing if Broker transfers this Contract to another broker when:

- (1) Broker stops doing business, OR
- (2) Broker forms a new real estate business, OR
- (3) Broker joins his business with another.

Seller agrees that Broker may transfer this Contract to another broker. Broker will notify Seller immediately in writing when a transfer occurs or Broker will lose the right to transfer this Contract. Seller will follow all requirements of this Contract with the new broker.

B. Should Seller give or transfer the Property, or an ownership interest in it, to anyone during the term of this Contract, all owners will follow the requirements of this Contract.

# 21. NO OTHER CONTRACTS

Seller will not enter into another listing agreement with another broker that begins before the Ending Date of this Contract.

# 22. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Seller. Any verbal or written agreements that were made before are not part of this contract.

# 23. CHANGES TO THIS CONTRACT

All changes to this contract must be in writing and signed by Broker and Seller.

# 24. SPECIAL INSTRUCTIONS

The Office of the Attorney General has not pre-approved any special conditions or additional terms added by any parties. Any special conditions or additional terms in the Contract must comply with the Pennsylvania Plain Language Consumer Contract Act.

# 25. MARKETING OF PROPERTY

A. Where permitted, Broker, at Broker's option, may use: ☒ For sale sign ☒ Sold sign ☐ Key in office ☐ Lock box ☒ Print/electronic advertising, including photographs ☐ Property address in print/electronic advertising.

B. Broker ☒ will / ☐ will not use a Multiple Listing Service (MLS) to advertise the Property to other real estate brokers and sales persons.

Seller agrees that Broker, Licensee, and the MLS are not responsible for mistakes in the MLS and/or advertising of the Property.

# 26. ITEMS INCLUDED/NOT INCLUDED IN THE PRICE OF THE PROPERTY

A. Included in the sale and purchase price are all existing items permanently installed in the Property, free of liens, including plumbing; heating; lighting fixtures (including chandeliers and ceiling fans); water treatment systems; pool and spa equipment; garage door openers and transmitters; television antennas; shrubbery, plantings, and unpotted trees; any remaining heating and cooking fuels stored on the Property at the time settlement; wall to wall carpeting; window covering hardware, shades, and blinds; built-in air conditioners; built-in appliances, and the range/oven, unless otherwise stated. Also included:

B. The following items are NOT included in the purchase and price of the Property:

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Broker/Licensee

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C. Items leased by the Seller:

## TITLE &amp; POSSESSION

## ADDITIONAL INFORMATION (OPTIONAL)

- A. Seller will give possession of Property to a buyer at settlement, or on \_\_\_\_\_  
 B. At settlement, Seller will give full rights of ownership (fee simple) to a buyer except as follows:  
 (1) Mineral Rights Agreements: \_\_\_\_\_  
 (2) Other: \_\_\_\_\_

C. Seller has:

☐ Mortgage with: \_\_\_\_\_

Address: \_\_\_\_\_

☐ Equity Loan with: \_\_\_\_\_

Address: \_\_\_\_\_

☐ Seller authorizes Broker to receive mortgage payoff and/or equity loan payoff information from lender(s).D. Seller has: ☐ Judgments ☐ Municipal Assessment ☐ Past Due Taxes ☐ Other: \_\_\_\_\_

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

E. If Seller, at any time on or since January 1998, has been obligated to pay support under an order that is on record in any

Pennsylvania county, list the county and the Domestic Relations Number or Docket Number: \_\_\_\_\_

## TAXES, UTILITIES, &amp; ASSOCIATION FEES

A. At settlement, Seller will pay one-half of the total Real Estate Transfer Taxes, unless otherwise stated here:

B. Real Estate Property Tax Assessment \$ \_\_\_\_\_

Wage/Income Tax \$ \_\_\_\_\_

C. Estimated Utilities (trash, water, sewer, electric, gas, oil, etc.): \_\_\_\_\_

D. Association Fees \$ \_\_\_\_\_

Include: \_\_\_\_\_

## BUYER FINANCING

Seller will accept the following arrangements for buyer to pay for the Property:

☒ Cash ☒ Conventional mortgage ☐ FHA mortgage ☐ VA mortgage☐ Seller's help to buyer (if any): \_\_\_\_\_

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

Seller gives permission for Broker or Landlord to send information about this transaction to the fax number(s) and/or email address(es) listed below.

Seller has read the entire of Contract before signing. All Sellers must sign this Contract. Return by facsimile (FAX) constitutes acceptance of this agreement.

NOTICE BEFORE SIGNING: IF SELLER HAS LEGAL QUESTIONS, SELLER IS ADVISED TO CONSULT AN ATTORNEY.

SELLER

HAROLD LEACH

DATE

6-18-08

E-MAIL: TBALL@PENN.COM

BROKER(CompanyName)

Howard Hanna Laurel Realty

31 N Brady

Dubois, PA 15801

Phone: 814-375-0722,

Fax: 814-375-4101

By: \_\_\_\_\_

Signature

Teresa M. Ball

Date

PREPARED BY: Teresa M. Ball, Associate Broker GRI

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Broker/Licensee

06/16/08 09:58:32

CA

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

JOSEPH H. FONTANA

Plaintiff,

vs.

NO. 2005-1026-C.D.

HAROLD N. LEACH and HAROLD N.  
LEACH, t/d/b/a HAROLD N. LEACH  
EXCAVATING AND GRADING COMPANY  
Defendant,

**FILED**

DEC 06 2011

William A. Shaw  
Prothonotary/Clerk of Courts


3 Cmt P Att

**ORDER**

NOW, this 5<sup>th</sup> day of December, 2011, upon consideration of Defendant's Preliminary Objections to the complaint in the above captioned case, it is the ORDER of this Court that argument on the petition is scheduled for the **18<sup>th</sup> day of January, 2012 at 2:30 PM** in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830.

One half hour has been allotted for this hearing.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

DATE: \_\_\_\_\_

☒ 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**

DEC 06 2011

William A. Shaw  
Prothonotary/Clerk of Court

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

No. 05 - 1026 - CD

Type of Pleading:

**MOTION FOR ARGUMENT**

Filed on behalf of:  
Plaintiff

Counsel of Record for  
this party:  
James A. Naddeo  
Supreme Court ID#: 06820

207 East Market Street  
P. O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

**FILED**

DEC 08 2011

William A. Shaw  
Prothonotary/Clerk of Courts

GK

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

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No. 05 - 1026 - CD

**MOTION FOR ARGUMENT**

TO THE HONORABLE JUDGE OF THE COURT

NOW COMES the Plaintiff, Joseph H. Fontana, and by his attorney, James A. Naddeo, hereby moves the Court to set a date for Argument and sets forth the following:

1. That on or about October 26, 2011 Counsel for Defendant filed a rule to file a Complaint.

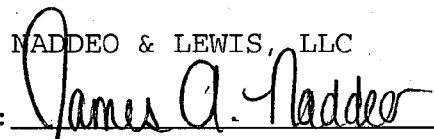
2. That on November 16, 2011 Counsel for Plaintiff filed a Complaint.

3. That on December 2, 2011 Plaintiff's Counsel received Preliminary Objections.

WHEREFORE, counsel for Plaintiff respectfully requests that the Court set a date for argument of the matter as stated herein.

NADDEO & LEWIS, LLC

BY:

  
James A. Naddeo, Esquire  
Attorney for Plaintiff

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

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No. 05 - 1026 - CD

CERTIFICATE OF SERVICE

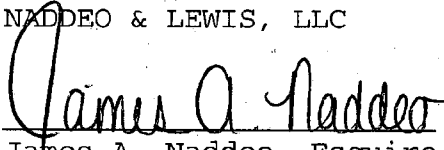
I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Motion for Argument was served on the following and in the following manner on the 8<sup>th</sup> day of December, 2011:

First-Class Mail, Postage Prepaid

Benjamin S. Blakley, III, Esquire  
90 Beaver Drive, Box 6  
DuBois, PA 15801

NADDEO & LEWIS, LLC

BY:

  
James A. Naddeo, Esquire  
Attorney for Plaintiff

**FILED**

**DEC 08 2011**

**William A. Shaw**  
Prothonotary/Clerk of Courts



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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

No. 05 - 1026 - CD

ORDER

AND NOW, this 12 day of December, 2011, upon  
consideration of the foregoing Motion for Argument filed by James  
A. Naddeo, attorney of record for Plaintiff, it is hereby ordered  
that an Argument be scheduled before this Court for the 18<sup>th</sup> day  
of January, 2012 at 2:30 p.m. in Courtroom No. 1 Clearfield  
County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

  
Judge

FILED 1cc

DEC 12 2011

William A. Shaw  
Prothonotary/Clerk of Courts

Atty Naddeo

FILED

DEC 12 2011

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 12/12/11

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following:

☐ (s)(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) Attorney ☐ Other

☐ Actual Locations:

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

JOSEPH H. FONTANA, an individual,  
Plaintiff

vs.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING and  
GRADING COMPANY,  
Defendant

NO. 2005-1026-CD

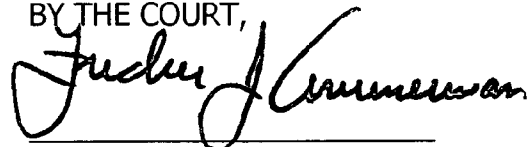
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**ORDER**

NOW, this 18<sup>th</sup> day of January, 2012, following argument on the Defendant's Preliminary Objections; it is the ORDER of this Court as follows:

1. The Defendant has withdrawn Count I of the Preliminary Objections; and
2. Count II of the Preliminary Objections is hereby DISMISSED.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

**FILED**

5

0140030  
JAN 19 2012

William A. Shaw  
Prothonotary/Clerk of Courts

icc Atty's:

Naddes

Brakley

64

FILED

JAN 19 2012

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 1/19/12

☐ You are responsible for serving all appropriate parties  
☒ The Prothonotary's Office has provided notification  
☐ Plaintiff's Attorney  
☒ Defendant's Attorney  
☐ Other

FILED

FEB 06 2012

m/s:30/6

William A. Shaw  
Prothonotary/Clerk of Courts

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

1 SENT TO  
ATTY

OK

JOSEPH H. FONTANA,

Plaintiff,

vs.

HAROLD N. LEACH and HAROLD N.  
LEACH, t/d/b/a HAROLD N. LEACH  
EXCAVATING AND GRADING  
COMPANY,

Defendants.

) NO. 2005-1026-C.D.  
)  
) Type of Case: CIVIL ACTION  
)  
) Type of Pleading:  
) ANSWER  
)  
) Filed on Behalf of:  
) Defendants  
)  
) Counsel of Record:  
)  
) BENJAMIN S. BLAKLEY, III  
) Supreme Court No. 26331  
)  
) LEANNE NEDZA  
) Supreme Court No. 89383  
)  
) BLAKLEY & JONES  
) 90 Beaver Drive, Box 6  
) DuBois PA 15801  
) (814) 371-2730

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

JOSEPH H. FONTANA, ) NO. 2005-1026-C.D.  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HAROLD N. LEACH and HAROLD N. )  
LEACH, t/d/b/a HAROLD N. LEACH )  
EXCAVATING AND GRADING )  
COMPANY, )  
 )  
Defendants. )

**ANSWER**

NOW COMES the Defendant, **HAROLD N. LEACH and HAROLD N. LEACH,**  
**t/d/b/a HAROLD N. LEACH EXCAVATING AND GRADING COMPANY,** by and  
through their undersigned attorneys, **BLAKLEY & JONES,** and answers Plaintiff's Complaint  
in the above matter as follows:

1. Admitted.
2. It is admitted that the Defendant is Harold N. Leach; however, it is denied that his  
address is RR 1, Box 119, DuBois, Clearfield County, Pennsylvania, 15801. On the contrary, it  
is averred that his present address is c/o Elaine Knarr, 149 Kiwanis Trail, DuBois, Clearfield  
County, Pennsylvania, 15801.

**COUNT I - SPECIFIC PERFORMANCE**

3. Admitted.
4. Admitted.
5. After reasonable investigation, the Defendant is unable to determine the truth or  
falsity of the averments contained within Paragraph 5 of the Plaintiff's Complaint, and therefore  
denied the same and demands strict proof thereof at trial.

6. It is denied that Plaintiff was unable to obtain a sewage permit for the construction of the townhouses upon Defendant's property, and on the contrary, it is averred that a sewage permit was granted to the Plaintiff for the proposed construction.

7. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained with Paragraph 7 of Plaintiff's Complaint, therefore the same is denied and Defendant demands strict proof thereof at trial.

8. It is admitted that Defendant threatened to sell the subject property to a third party as Plaintiff was unable to proceed with the purchase of the property as contemplated by the parties, after informing the Defendant that he had been denied financing for the townhouse construction as had been contemplated by the said agreement. It is denied, however, that under the circumstances, the Plaintiff had reasonable grounds to file suit against the Defendant and to enter a *lis pendens* to the above captioned term and number.

9. It is denied that the Defendant ever refused to comply with the terms of the contract. It is further averred that it was the Plaintiff who was unable to comply with the terms of the contract because of his inability to obtain financing for his proposed construction.

10. Admitted.

11. Requires no answer.

12. The allegations contained within Paragraph 12 of Plaintiff's Complaint set forth a conclusion of law, for which no answer is required.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss Plaintiff's Complaint and enter judgment in favor of Defendant.

## **COUNT II - BREACH OF CONTRACT**

13. Requires no answer.

14. After reasonable investigation, the Defendant is unable to determine the truth or falsity of the averments contained within Paragraph 14 of the Plaintiff's Complaint, and therefore denies the same and demands strict proof thereof at trial.

15. It is admitted that the Plaintiff has demanded that Defendant reimburse him for the costs and expenses allegedly incurred by the Plaintiff; however, it is denied that the Defendant was contractually obligated to do so under the parties' Agreement of Sale as set forth in Exhibit A of Plaintiff's Complaint.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss Plaintiff's Complaint and enter judgment in favor of Defendant.

## **COUNT III - BREACH OF CONTRACT**

16. Requires no answer.

17. It is admitted that the Plaintiff offered to settle his groundless litigation with the Defendant and that the offer is set forth in Plaintiff's Exhibit C.

18. It is further averred that the proposed sale of the subject property did not occur and, therefore, the basis of the settlement agreement failed. It is admitted that the Defendant offered to resolve the differences between the Plaintiff and the Defendant for a sum of money; however, it is denied that the Defendant ever agreed to pay to the Plaintiff the amount of \$62,286.33, and on the contrary, it is averred that the parties agreed to settle for the sum of \$35,000.00 pursuant to correspondence dated May 9, 2006, and May 30, 2006, which Defendant's attorney received from Plaintiff's attorney. A copy of said correspondence is attached hereto and marked Exhibits A and B, respectively.

19. Admitted.



20. It is admitted that the Defendant subsequently listed the property for sale with Howard Hanna Laurel Realty for a period of time ending on October 30, 2008, and that if the property would sell within the listing period; however, it is denied that the Defendant agreed to reimburse the Plaintiff his out-of-pocket expenses in the amount of \$63,286.33. On the contrary, it is averred that Defendant agreed to reimburse the Plaintiff the sum of \$35,000.00 so that the subject property could be sold pursuant to the listing agreement set forth in Plaintiff's Exhibit D, which expired October 30, 2008.

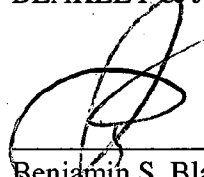
21. It is admitted that the Defendant has entered into a Sales Agreement for a portion of the subject property; however, such Sales Agreement was not reached pursuant to any listing contract, nor any other contract contemplated by the parties, nor under any agreement whereby the Defendant agreed to pay the Plaintiff any sum of money whatsoever.

22. Denied, and on the contrary, it is averred that the parties' settlement agreement only required that the Defendant reimburse the Plaintiff for the sum of \$35,000.00 should the subject property be sold pursuant to the listing agreement as set forth in Exhibit D of Plaintiff's Complaint, and not under any other circumstances.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss Plaintiff's Complaint and enter judgment in favor of Defendant.

Respectfully submitted,

BLAKLEY & JONES

A handwritten signature in black ink, appearing to be 'B. Blakley, III', written over a horizontal line.

Benjamin S. Blakley, III  
Attorney for Defendant

**VERIFICATION**

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

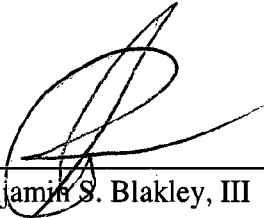
DATE: 2/3/12

  
HAROLD N. LEACH

**CERTIFICATE OF SERVICE**

This will certify that the undersigned served a copy of the foregoing Praecipe for Rule in the above-captioned matter on the following parties at the addresses shown below by first-class U.S. Mail on the 3<sup>rd</sup> day of February , 2012:

James A. Naddeo, Esquire  
207 East Market Street  
P O Box 552  
Clearfield PA 16830

  
\_\_\_\_\_  
Benjamin S. Blakley, III

**FILED**  
FEB 06 2012  
William A. Shaw  
Prothonotary/Clerk of Court

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

No. 05 - 1026 - CD

Type of Pleading:

**CERTIFICATE OF SERVICE**

Filed on behalf of:  
Plaintiff

Counsel of Record for  
this party:  
James A. Naddeo  
Supreme Court ID#: 06820

207 East Market Street  
P. O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

**FILED** No CC.  
01/31/12  
FEB 24 2012

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

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No. 05 - 1026 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a  
Notice of Taking Deposition of Harold N. Leach was served on the  
following and in the following manner on the 24<sup>th</sup> day of February,  
2012:

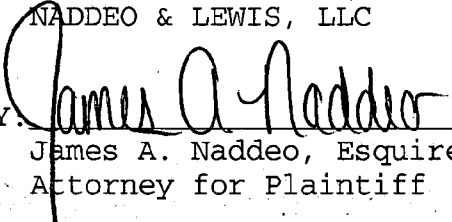
First-Class Mail, Postage Prepaid

Benjamin S. Blakley, III, Esquire  
90 Beaver Drive, Box 6  
DuBois, PA 15801

LOVE Court Reporting  
2002 Sproul Road, Suite 100  
Broomall, PA 19008

NADDEO & LEWIS, LLC

BY:

  
James A. Naddeo, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
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JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

No. 05 - 1026 - CD

Type of Pleading:

**PRAECIPE TO SETTLE  
& DISCONTINUE WITH  
PREJUDICE**

Filed on behalf of:  
Plaintiff

Counsel of Record for  
this party:  
James A. Naddeo  
Supreme Court ID#: 06820

207 East Market Street  
P. O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

**FILED**

SEP 10 2012

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOSEPH H. FONTANA,  
an individual,  
Plaintiff

v.

HAROLD N. LEACH and  
HAROLD N. LEACH, t/d/b/a  
HAROLD N. LEACH EXCAVATING AND  
GRADING COMPANY,  
Defendant.

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No. 05 - 1026 - CD

**PRAECIPE TO SETTLE AND DISCONTINUE WITH PREJUDICE**

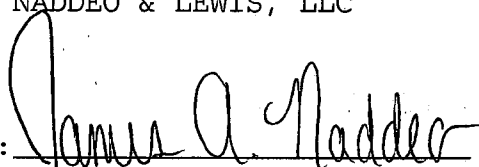
TO THE PROTHONOTARY:

Dear Sir:

Please mark the above-captioned case settled and  
discontinued with prejudice.

NADDEO & LEWIS, LLC

BY:

  
James A. Naddeo, Esquire  
Attorney for Plaintiff



**FILED**

**SEP 10 2012**

William A. Shaw  
Prothonotary/Clerk of Courts