

ORIGINAL

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FEE RECEIVED

OCT - 4 2004

**SURFACE
TRANSPORTATION BOARD**



212138

BY HAND

ENTERED
Office of Proceedings

October 4, 2004

OCT - 4 2004

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

Part of
Public Record

FILED

OCT - 4 2004

**SURFACE
TRANSPORTATION BOARD**

RE: Mississippi Tennessee Holdings, LLC
Abandonment Exemption - In Union,
Pontotoc and Chickasaw Counties, MS
Docket No. AB 868X

Dear Mr. Williams:

On behalf of Hust Brothers, Inc., I am filing an original and ten copies of a Request To Set Terms And Conditions Pursuant To 49 U.S.C. 10904(c) and 49 CFR 1152.27(g).

I am also enclosing one check payable to the Board for \$16,800 to cover the applicable filing fee and a computer disk formatted in WordPerfect 8.0 containing this filing.

Please date stamp and return one copy of this filing for our records.

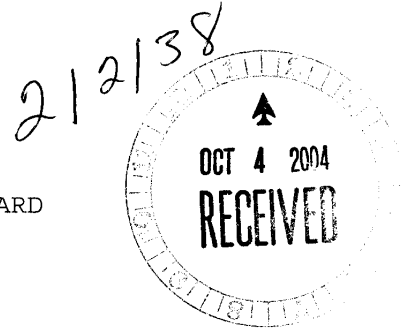
Sincerely yours,

John D. Heffner
John D. Heffner

Enclosures

cc: Mr. Thomas F. McFarland, P.C.

BEFORE THE
SURFACE TRANSPORTATION BOARD



MISSISSIPPI TENNESSEE HOLDINGS, LLC)
ABANDONMENT EXEMPTION - IN)
UNION, PONTOTOC AND CHICKASAW) DOCKET NO. AB 868X
COUNTIES, MS)
)

REQUEST TO SET TERMS AND CONDITIONS
PURSUANT TO 49 U.S.C. 10904(c) and
49 CFR 1152.27(g)

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SURFACE
TRANSPORTATION BOARD

HUST BROTHERS, INC.
710 Third Street
P.O. Box 591
Marysville, CA 95901

Offeror

JOHN D. HEFFNER
JOHN D. HEFFNER, PLLC
1920 N St., N.W.
Suite 800
Washington, DC 20036
(202) 263-4180

Attorney for Offeror

DATE FILED: October 4, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

MISSISSIPPI TENNESSEE HOLDINGS, LLC)
ABANDONMENT EXEMPTION - IN)
UNION, PONTOTOC AND CHICKASAW) DOCKET NO. AB 868X
COUNTIES, MS)
)

REQUEST TO SET TERMS AND CONDITIONS
PURSUANT TO 49 U.S.C. 10904(c) and
CFR 1152.27(g)

INTRODUCTION

Pursuant to 49 U.S.C. § 10904(c) and 49 C.F.R.
§1152.27(g), and in accordance with the Board's decision in
this proceeding served August 20, 2004, HUST BROTHERS, INC.
(hereafter "Hust" or "Hust") hereby files its Request
to Set Terms and Conditions for purchase of the entire rail
line ("the Line") involved in the above-captioned
abandonment proceeding: between Milepost 324.2 near New
Albany and the southern end of the line at Milepost 281.0
near Houston, MS, a distance of 43.2 miles in Union,

Pontotoc and Chickasaw Counties, MS. Hust offers to pay \$1,327,069.27, for the rail line.

BACKGROUND

By decision served July 26, 2004, the Board exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment of a 43.2 mile line of railroad (hereinafter the "Line") owned by Mississippi Tennessee Holdings, LLC, and operated by its affiliate Mississippi and Tennessee Railroad (collectively "the Petitioners"). The Line extends from MP 324.2 near New Albany, MS, to its southern terminus at MP 281.0 near Houston, in Union, Pontotoc, and Chickasaw Counties, MS.

Hust filed a timely offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c) on August 5, 2004, to purchase the Line for \$1,252,232. Subsequently, by decision served August 9, 2004, the Board found Hust financially responsible and its offer reasonable for the purpose of initiating negotiations. The Board also postponed the effective date of the abandonment to permit negotiations to proceed. On August 20, 2004, the Board served another decision giving the parties until October 4, 2004, to reach an agreement on the amount and other terms of the purchase or to file a request with the Board to establish the conditions and the amount of compensation.

The parties have exchanged purchase proposals by telephone and email transmission during the intervening weeks but have been unable to reach a mutually satisfactory deal. Accordingly, pursuant to the August 9 decision, Hust now requests that the Board set the purchase price and other conditions for its acquisition.

STATUS OF NEGOTIATIONS

Under the applicable regulations at 49 CFR 1152.27(h)(3), a party asking the Board to set terms and conditions "must provide with its request a narrative indicating the status of negotiations between the parties and the likelihood of voluntary settlement prior to the issuance of a [Board] decision setting the terms. The party filing the request must also, within the period set forth in paragraph (h)(4) of this section, provide reasons why its estimates are correct and the other negotiating party's estimates are incorrect; points of agreement and disagreement between the negotiating parties; and evidence substantiating these allegations."

After Hust filed its OFA, Petitioners' counsel presented counsel for Hust with a proposed sale price for both the Line and an adjoining segment of railroad owned and operated by Petitioners and outside the scope of this

abandonment proceeding. After giving that proposal careful consideration, Hust rejected that offer.

ARGUMENT

Proceedings to set conditions and compensation are governed by 49 U.S.C. 10904(d)-(f). Under those provisions the Board may not set a price that is below the line's fair market value. In Chicago and North Western Transp. Co.-- Abandonment, 363 I.C.C. 956 (1981), aff'd sub nom. Chicago and North Western Transp. Co. v. United States, 678 F.2d 665 (7th Cir. 1982) (hereafter cited as Lake Geneva), the former Interstate Commerce Commission held that, in the absence of a higher going concern value for continued rail use, the proper valuation standard in proceedings under section 10905 [now section 10502] is the net liquidation value ("NLV") of the rail properties for their highest and best nonrail use. The NLV includes the value of the real estate plus the gross salvage value of track and materials, less removal costs.

Petitioners have represented to the Board that the net liquidation value of the Line is approximately \$3,600,000.00 including a land value of \$1,800,000.00 and track materials of \$1,793,865.00. In support of its valuation, Petitioners present a real estate appraisal prepared by Kenneth Young & Associates (Young) and rely on

a now out of date (and therefore void) purchase offer from Progress Rail Services for \$1,793,865.00. In addition, Petitioners had included in their abandonment petition as Exhibit E a valuation of track materials dated March 15, 2004.

Hust supports its offer with a real estate appraisal prepared by Paul A. Heath of Mississippi Appraisal Services, Ltd. (hereafter "the Hust Appraisal"), and an inventory and appraisal of track materials prepared by Landreth Engineering, LLC ("the Landreth Report"). Offeror submits these documents as Exhibits A and B.

Land Values

Petitioners' real estate appraiser concluded that the real estate comprising the right of way was worth \$1,800,000 by 1) breaking the Line into 27 separate parcels totaling 553.13 acres, 2) performing an "Across the Fence" (ATF) analysis based upon the value of adjoining parcels, 3) determining the value of those parcels based upon the sales prices of 40 "comparable" real estate sales taking place between 1996 and 2004, 4) and, where appropriate, adjusting the value of the parcels for shape, fill, and width. Appraiser Young also further adjusted the \$2,300,000 gross value of the 27 parcels by assuming annual sales expenses of 1.5 to 5% (averaging 3%) and a discounted

cash flow of 12%. He also assumed that the right of way would take from 2 to 4 years to sell with an average sell off period of 3.47 years, rounded down to 3 years. As a result of these adjustments, Mr. Young computed the right of way value at \$1,800,000.

Mr. Young's work is deficient in the following respects. First, Board and ICC precedent have consistently held that real estate parcels must be owned in fee ("marketable title") in order to have any value for the purpose of an offer of financial assistance proceeding under 49 U.S.C. 10904. Lake Geneva, supra at 959. Petitioners' appraisal is suspect because the reader cannot determine with any certainty which of the 27 parcels comprising the subject right of way are owned in fee. Rather than state the number or percent of real estate owned in fee or identify the specific parcels owned in fee, Petitioners merely state "[w]e have not investigated the title to or any liabilities against the subject property." Transmittal letter dated September 10, 2004, from Kenneth Young to Mr. Randy Cundiff. In the body of the report, Petitioners' appraiser states "[w]ith the exception of current zoning restrictions, deed restrictions, (if any) and easements of record, the fee title is *assumed* [emphasis supplied] to be free and clear of all other liens,

encumbrances, restrictions and/or defects of title. Appraisal at 5. Later the report states that "Our value estimates under this NLV scenario *assumes* [emphasis supplied] good and marketable title for all other (sic) where noted on the valuation maps. Otherwise no consideration was given, nor did we check for title defects, easements, or license agreements. Appraisal at 27.

Rather than rely on assumptions as to the quality of title, Offeror's appraiser carefully reviewed local real estate records and consulted with a real estate attorney. Hust submits as Exhibits C and D, respectively, four sample deeds located during the appraiser's research as well as a legal opinion from the law firm of Van Cott, Bagley, Cornwall & McCarthy.

By examining the deeds comprising the right of way, Hust's appraiser determined that the real estate interest acquired by Mississippi Tennessee Holdings' predecessors-in-interest was in 56% of the transfers that of a right of way, rather than a fee. Hust Appraisal at 15. Moreover, Hust asked the Van Cott law firm to review the meaning of the term "right of way" used in each of the four conveyances depicted in Exhibit C. Van Cott concluded in the Memorandum submitted here as Exhibit D that

"[w]here the instrument specifically conveys a right of way, then the deed will be construed as intending to convey only an easement..."

The Van Cott firm also concluded that where the conveyance instrument was ambiguous any such ambiguity would be construed against the drafter of the document.

Accordingly, Hust's real estate values reflect the fact that only 44% of those parcels are held in fee. Consistent with agency precedent, no value was assigned to the acreage not held in fee.

Agency precedent requires the right of way valuation to be based upon an "across the fence" (ATF) appraisal of comparable parcels. Lake Geneva, supra at 959. By examining the sale of nearby parcels, one can determine a value for the adjoining railroad right of way. Petitioners' ATF appraisal is faulty in a second respect because of the absence of recent transactions. Exhibit A of Mr. Young's report identifies 40 land sales of nearby real estate parcels. Amazingly, only 5 of these sales took place in the year 2004 and 11 took place in 2003. The remaining 24 transactions occurred between 1996 and 2002, with many of the more expensive transactions taking place in 1999. Petitioners rely on "stale" evidence.

By comparison, Offeror's appraiser who is locally based examined local real estate records including tax assessor records and visually inspected the right of way. He looked at comparable sales in each of the three counties, including commercial properties inside city limits, residential properties inside city limits, residential properties in rural areas, and agricultural properties in rural areas. By reviewing illustrative sales and making appropriate adjustments for location, size, and utility, he calculated the values for each of these four categories of property.¹ To arrive at his final land value of \$385,000, Hust's appraisal added the land values for Chicasaw County (\$116,920), Pontotoc County (\$313,250), and Union County (\$446,000) and multiplied the total (\$876,120) by 44% reflecting parcels held in fee and resulting in a value of \$385,515 or \$385,000.

Third, Petitioners' appraisal is suspect because of the lack of or inappropriateness of adjustments made. For example, each of the parcels described in the "parcel value sheets" contains a description of such matters as zoning, access, shape, topography, utilities, abutting use, and marketability. Mr. Young fails to define what he means by

¹ Because of the rural character of Chicasaw County, there were no values for either the commercial in city limits or residential in city limits categories of property.

the term "marketability" but proceeds to classify it as "fair" in 21 cases, "poor" in 3, and only "good" in 3 without making any adjustments to value. Similarly he describes access as either "fair" or "poor" for all but 5 of the parcels but fails to make any adjustment for these deficiencies. Finally, 14 of the parcel value sheets indicate that the right of way topography is other than level, in some cases modest and in other cases more severe. See, photographs of parcels 10 and 15. Yet the cut/fill adjustments are very modest, ranging from as little as 5-10% to 25% for parcels 10 and 15 and never exceeding 30% (parcel 9). In the case of parcels 10 and 15, a topography adjustment of 30-50% would be appropriate, cutting the values to \$191,680 and \$72,600, respectively, or a decrease in value of \$71,880. Mr. Young's appraisal notes that the right of way traverses wetland at MP 322.72 and MP 324.0 but he adjusts the value by only 10%. A discount of 50% would be more in line with Board precedent, cutting the value of this segment from \$11,167 to \$5,583.50. STB Docket No. AB-565 (sub. 3X), New York Central Lines, LLC-Abandonment Exemption-In Berkshire County, MA at 7 (slip op., served April 19, 2002).

Regarding sales expenses, Petitioner provides no basis for its annual average sales expense of 3%. Hust

understands that real estate sales expenses in the range of 10% for matters such as real estate commissions and advertising expenses can be expected. In fact, the Board has previously accepted 10% as an appropriate estimate of expenses in the absence of evidence to the contrary. STB Docket No. AB-492 (Sub. 2X), Fillmore Western Railway Company-Abandonment Exemption-In Fillmore County, NE at 9 (slip op., served Oct. 31, 2001). Taking the sales expenses into account results in a final land value of \$346,500.

Track Materials

For the value of the track Petitioner relies on an inventory and valuation of material submitted as Exhibit E to its Petition for Exemption along with a now expired offer dated July 27, 2004, from Progress Rail Services.² Exhibit E dated as of March 15, 2004, represents the value of the materials including ties, ballast, and bridge materials less salvage costs to be \$2,714,688. Progress Rail bid \$1,793,865.00 for rail and OTM. It assumes the cross ties will be plowed over and the road crossings and bridges left in place. There is no indication that Progress Rail prepared its offer after inspecting the Line.

² Attached as Exhibit E.

Offeror's track expert Landreth conducted a thorough high rail inspection of the Line in September 2004 and has just completed his report.

Accordingly, Hust believes that the Landreth Report is more thorough and realistic than the information submitted by Petitioners. Offeror submits the track materials have a net liquidated value of \$980,569.27.

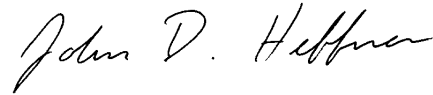
CONCLUSION AND REQUESTED RELIEF

Wherefore, Hust Brothers, Inc., requests that the Board set terms and conditions for closing with a purchase price of \$1,327,069.27, representing a real estate value of \$346,500 and track materials less salvage costs of \$980,569.27.

Respectfully submitted,

HUST BROTHERS, INC.
710 Third Street
P.O. Box 591
Marysville, CA 95901

Offeror



JOHN D. HEFFNER
JOHN D. HEFFNER, PLLC
1920 N St., N.W.
Suite 800
Washington, DC 20036
(202) 263-4180

Attorney for Offeror

Date Filed: October 4, 2004

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify this 4th day of October, 2004, that a copy of the foregoing Petition To Set Terms and Conditions of Hust Brothers, Inc. was sent by Federal Express, next day delivery to the following party:

Thomas F. McFarland, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 606044-1112

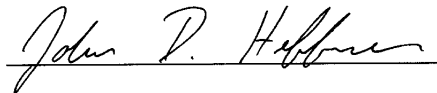


EXHIBIT A

Complete Appraisal Summary Report

Of

611.13 +/- Acres

Chickasaw
Pontotoc
&
Union Counties
Mississippi

As Of:

September 7, 2004

Prepared For:

Hust Brothers, Inc.
1505 South Redwood Road
Salt Lake City, Utah 84104

Prepared By:

Paul A. Heath
State Certified Real Estate Appraiser RA 669
Mississippi Appraisal Services, Ltd.
49 South Main Street
Pontotoc, Mississippi 38863

Mississippi Appraisal Services,
Ltd.

49 South Main Street
P. O. Box 625
Pontotoc, MS 38863
Office 662.489.2848
Fax 662.489.1417
jsavely@pontotoc.net
www.mississippiappraisal.com

Hust Brothers, Inc
1505 South Redwood Road
Salt Lake City, Utah

RE: Appraisal Report of a proposed construction of 611.13 +/- acres with commercial improvements, located at CHICKASAW, PONTOTOC, & UNION COUNTIES, MS.

Dear Sirs,

Pursuant to your request, I have personally inspected and appraised the Indicated Market value of the real property and proposed improvements located at CHICKASAW, PONTOTOC, & UNION COUNTIES, MS.

The purpose of this appraisal is to estimate the market value of the fee simple interest in the properties based upon market conditions prevailing on September 7, 2004. Your attention is directed to the "General Assumptions and Limiting Conditions" which are part of this report. I suggest that you thoroughly read and familiarize yourself with these, since the appraisal is based upon these assumptions.

I, the undersigned, do hereby certify that to the best of my knowledge and belief that the statements contained in this report, upon which the analyses, opinions and conclusions expressed herein are based, are true and correct; also, this report sets forth all of the limiting conditions and is my personal unbiased, professional analyses and opinions; also, this report has been made in conformity with and is subject to the requirements of the Code of Ethics and Standards of Professional Conduct of the Appraisal Foundation.

I further certify that I have no present or contemplated future interest in the property appraised, and that I have no personal interest or bias with respect to the subject matter or the parties involved in the appraisal; and that the fee charged for making this appraisal is in no way contingent upon the value estimate. No one other than the undersigned prepared the analyses, conclusions and opinions concerning the real estate that are set forth in this appraisal report.

I do not authorize the out-of-context quoting from or partial reprinting of this appraisal report. Further, neither all nor any part of this appraisal report shall be disseminated to the general public by the use of media for public communication without the prior written consent of the appraiser signing this report.

Based upon the results of my investigation analyses, it is my opinion that the market value of the Fee Simple Interest as follows:

\$385,000.00 (THREE HUNDRED EIGHTY FIVE THOUSAND DOLLARS)
--

Appraisers are required to be licensed or certified and are regulated by the Mississippi Appraisal Board, P. O. Box 12685, Jackson, Mississippi 39236. Paul A. Heath is a Certified Residential Real Estate Appraiser.

Please refer to the attached appraisal report, plus exhibits, for documentation of these value estimates contained herein. If any additional information is needed, please advise.

Respectfully submitted,

Paul A. Heath
State Certified Real Estate Appraiser RA # 669
Expiration: 10/31/2005

Jack Savely
State Certified General Appraiser GA # 158
Expiration: 12/31/2005

Certification

I certify to the best of my knowledge and belief...

- v ☐ The statements of fact contained in this report are true and correct.
- v ☐ The reported analyses, opinions and conclusions are limited only by the reported General Assumptions and Limiting Conditions and where applicable, the Special Assumptions, and are my personal, unbiased professional analyses, opinions and conclusions.
- v ☐ I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
- v ☐ My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- v ☐ My analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute. This appraisal report was also prepared in compliance with the appraisal guidelines as set forth by Hust Brothers, Inc.
- v ☐ This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.
- v ☐ The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- v ☐ I have made a personal inspection of the property that is the subject of the report.
- v ☐ No one provided significant professional assistance to the person(s) signing this report.
- v ☐ I have complied with the Appraisal Standards of The Appraisal Institute in conducting the research and analysis, and in formulating the value conclusion(s) contained in this report.
- v ☐ I, Paul A. Heath, have completed the continuing education requirements set forth with the State of Mississippi.
- v ☐ I am in compliance with the Competency Provision in the USPAP as adopted in FIRREA 1989 and have sufficient education and experience to perform the appraisal of the subject property.

Respectfully submitted,

Paul A. Heath
State Certified Real Estate Appraiser RA # 669
Expiration: 10/31/2005

Jack Savely
State Certified General Appraiser GA # 158
Expiration: 12/31/2005

General Assumptions & Limiting Conditions

I suggest that anyone using this appraisal read the following limiting conditions and assumptions thoroughly. The acceptance and/or use of the appraisal report constitutes acceptance of the following conditions.

In rendering my opinions, I have made certain assumptions and my opinions are conditioned upon and are subject to certain qualifications including, but not limited to, the following:

Information Used

No responsibility is assumed for accuracy of information furnished by others or from others, including the client, its officers and employees, or public records. I am not liable for such information or for the work of contractors, subcontractors and engineers. The comparable data relied upon in this appraisal has been confirmed with one or more parties familiar with the transaction unless otherwise noted; all are considered appropriate for inclusion to the best of my factual judgment and knowledge.

Research staff working with the appraiser may have gathered certain information upon which the opinions and values are based. Names, professional qualifications and extent of their participation can be furnished to the client upon request.

Legal, Engineering, Financial, Structural or Mechanical Nature, Hidden Components, Soil

No responsibility is assumed for matters legal in character or nature, nor matters of survey, nor of any architectural, structural, mechanical or engineering nature. No opinion is rendered as to the legal nature or condition of the title to the property, which is presumed to be good and marketable. The property is appraised assuming it is free and clear of all mortgages, liens or encumbrances, unless otherwise stated in particular parts of this report.

The legal description is presumed to be correct, but I have not confirmed it by survey or otherwise. I assume no responsibility for the survey, any encroachments or overlapping or other discrepancies that might be revealed thereby.

I have inspected, as far as possible by observation, the land and improvements thereon; however, it was not possible to personally observe conditions beneath the soil or hidden structural, or other components, or any mechanical components within the improvement; as a result, no representation is made herein as to such matters unless otherwise specifically stated. The estimated market value assumes that no such conditions exist that would cause a loss of value. I do not warrant against the occurrence of problems arising from any of these conditions.

It is assumed that there are no hidden or unapparent conditions to the property, soil, subsoil or structures, which would render them more or less valuable. No responsibility is assumed for any such conditions or for any expense or engineering to discover them. All mechanical components are assumed to be in operating condition standard for the properties of the subject's type. The condition of the heating, cooling, ventilation, electric and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements, unless otherwise stated. No judgment is made as to the adequacy of insulation, engineering or energy efficiency of the improvements or equipment.

Information relating to the location or existence of public utilities has been obtained through verbal inquiry to the appropriate utility authority, or has been ascertained from visual evidence. No warranty has been made regarding the exact location or capacities of public utility systems. Subsurface oil, gas or mineral rights were not considered in this report unless otherwise stated.

Legality of Use

The appraisal is based on the premise that there is or will be full compliance with all applicable Federal, State and local environmental regulations and laws, unless otherwise stated in the report; and that all appropriate zoning, building and use regulations and restrictions of all types have been or will be complied with, unless otherwise stated in the report. It is assumed that all require licenses, consent, permits or other legislative or administrative authority, whether local, State, Federal and/or private, have been or can be obtained or renewed for the use intended and considered in the value estimate.

Component Values

The distribution of the total valuation of this report between land and improvements applies only under the proposed program of utilization. The separate valuations of land and buildings must not be used in conjunction with any other appraisal, and are invalid if so used.

A report related to an estate that is less than the whole fee simple estate applies only to the fractional interest involved. The value of this fractional interest, plus the value of all other fractional interests, may or may not equal the value of the entire fee simple estate considered as a whole.

A report relating to the geographic portion of a larger property applies only to such geographic portion and should not be considered as applying with equal validity to other portions of the larger property or tract. The value for such geographic portions, plus the value of all other geographic portions, may or may not equal the value of the entire property or tract considered as a single entity. All valuations in the report are applicable only under the estimated program of the highest and best use and are not necessarily appropriate under other programs of use.

Auxiliary and Related Studies

No environmental or impact studies, special market study or analysis, highest and best use analysis study or feasibility study has been requested or made by us unless otherwise specified in this report or in my agreement for services. I reserve the unlimited right to alter, amend, revise or rescind any of these statements, findings, opinions, values, estimates or conclusions upon any subsequent study or analysis or previous study or analysis that subsequently becomes available to us.

Dollar Values, Purchasing Power

The value estimates and the costs used herein are as of the date of the estimate of value. All dollar amounts are based on the purchasing power and price of the United States dollar as of the date of value estimate.

Inclusions

Furnishings and equipment or business operations, except as otherwise specifically indicated, have been disregarded, with only the real estate being considered.

Proposed Improvements Conditioned Value

For the purpose of this appraisal, on- or off-site improvements proposed, if any, as well as any repairs required, are considered to be completed in a good and workmanlike manner according to information submitted and/or considered by us. In cases of proposed construction, the report is subject to change upon inspection of the property after construction is complete. The estimate of value, as proposed, is as of the date shown, as if completed and operating at levels shown and projected.

Value Change, Dynamic Market Influences

The estimated value is subject to change with market changes over time. Value is highly related to interest rates, exposure, time, promotional effort, supply and demand, terms of sale, motivation and conditions surrounding the offering. The value estimate considers the productivity and relative attractiveness of the property both physically and economically in the marketplace.

The estimate of value in this report is not based in whole or in part upon race, color or national origin of the present owners or occupants of the properties in the vicinity of the property appraised.

In the event this appraisal includes the capitalization of income, the estimate of value is a reflection of such benefits and my interpretation of income and yields and other factors that were derived from general and specific market information. Such estimates are made as of the date of the estimate of value. As a result, they are subject to change, as the market is dynamic and may naturally change over time. The date upon which the value estimate applies is only as of the date of valuation, as stated in the letter of transmittal. The appraisal assumes no responsibility for economic or physical factors occurring at some later date that may affect the opinion stated herein.

An appraisal is the product of a professionally trained person, but nevertheless is an opinion only, and not a provable fact. As a personal opinion, a valuation may vary between appraisers based upon the same facts. Thus, the appraiser warrants only that the value conclusions are his best estimate as of the date of valuation. There are no guaranties, either written or implied, that the property would sell for the expressed estimate of value.

Sales History

Unless otherwise stated, the appraiser has not reviewed an abstract of title relating to the subject property. No title search has been made, and the reader should consult an attorney or title company for information and data relative to the property ownership and legal description. It is assumed that the subject title is marketable, but legal counsel should review the title. Any information given by the appraiser as to a sales history is information that the appraiser has researched; to the best of my knowledge, this information is accurate, but not warranted.

Management of the Property

It is assumed that the property that is the subject of this report will be under prudent and competent ownership and management over the entire life of the property. If prudent and competent management and ownership were not provided, this would have an adverse effect upon the value of the property appraised.

Confidentiality

I am not entitled to divulge the material (evaluation or valuation) content of this report and analytical findings or conclusions, or give a copy of this report to anyone other than the client or his designee, as specified in writing, except as may be required by the Appraisal Institute, as they may request in confidence for ethic enforcement, or by a court of law with the power of subpoena.

The appraisers whose signatures appear prepare all conclusions and opinions concerning the analyses as set forth herein. No change of any item in the report shall be made by anyone other than the appraiser, and the firm shall have no responsibility if any such unauthorized change is made.

Whenever my opinion herein with respect to the existence or absence of fact is qualified by the phrase or phrases "to the best of my knowledge", "it appears" or "indicated", it is intended to

indicate that, during the course of my review and investigation of the property, no information has come to my attention which would give us actual knowledge of the existence or absence of such facts.

The client shall notify the appraiser of any error, omission or invalid data herein within 10 days of receipt and return the report, along with all copies, to the appraiser for corrections prior to any use whatsoever. Neither my name nor this report may be used in connection with any financing plans that would be classified as a public offering under State or Federal Security Laws.

Copies, Publication, Distribution, Use of Report

Possession of this report, or any copy thereof, does not carry with it the right of publication, nor may it be used for other than its intended use. The physical report remains the property of the firm for the use of the client, with the fee being for the analytical services only. ***Any person or corporation other than the client or the party to whom the report is addressed may not use this report for any purpose.*** Additional copies may not be made without the written consent of an officer of the firm, and then only in its entirety.

Neither all nor any part of the contents of this report shall be conveyed to the public through advertising, public relations effort, news, sales or other media without my prior written consent and approval of the client.

It has been assumed that the client or representative thereof, if soliciting funds for his project, has furnished to the user of this report complete plans, specifications, surveys and photographs of land and improvements, along with all other information which might be deemed necessary to correctly analyze and appraise the subject property.

Trade Secrets

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Testimony, Consultation, Completion of Contract for Appraisal Services

A contract for appraisal, consultation or analytical services is fulfilled and the total fee payable upon completion of the report. The appraisers or those assisting in the preparation of the report will not be asked or required to give testimony in court or hearing because of having made the appraisal in full or in part, nor will they be asked or required to engage in post appraisal consultation with client or third parties except under separate and special arrangement and at an additional fee.

Any subsequent copies of this appraisal report will be furnished on a cost plus expenses basis, to be negotiated at the time of request.

Limit of Liability

Liability of the firm and the associates is limited to the fee collected for preparation of the appraisal. There is no accountability or liability to any third party.

Fee

The fee for this appraisal or study is for the service rendered, and not for time spent on the physical report. The acceptance of the report by the client takes with it the agreement and acknowledgement that the client will pay the negotiated fee, whether said agreement was verbal or written. The fee is in no way contingent on the value estimated.

Overview of the Assignment

Purpose of Appraisal

The purpose of this appraisal was to estimate the "As Proposed" Market value of the subject property proposed improvements as of the effective date of appraisal.

Appraisal Type and Report Format:

This is a complete appraisal reported in summary format as outlined in "The Uniform Standards of Professional Appraisal Practice", 2003 Edition.

Function of Appraisal

Competency of Appraisers

The appraisers' specific qualifications are included within this report. These qualifications serve as evidence of their competence for the completion of this appraisal assignment in compliance with the competency provision contained within the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation. The appraisers' knowledge and experience, combined with their professional qualifications, are commensurate with the complexity of this assignment based on the following:

PAUL A. HEATH
STATE CERTIFIED REAL ESTATE APPRAISER RA-#669

EXPERIENCE:

Appraiser of income, commercial, industrial, and residential properties in Northeast Mississippi since 2000.

EDUCATION:

Mississippi Realtor Institute – Principles of Real Estate, Real Estate Law, and Real Estate Finance. MRI I, MRI II, MRI III, & MRI IV.

Itawamba Community College – Real Estate Appraisal I & II.

Mississippi Realtor Institute – Uniform Standards of Professional Appraisal Practice.

State of Mississippi Tax Commission – Certified Tax Appraiser Education.

DESIGNATIONS AND MEMBERSHIPS:

State Certified Real Estate Appraiser RA - 669 – State of Mississippi.

Real Estate Salesperson #S-27582.

Certified Tax Appraiser – State of Mississippi.

APPROVED APPRAISER FOR:

Peoples Bank & Trust Co., First National Bank of Pontotoc, Bancorp South Bank, New South Federal Bank, Merchants & Farmers Bank, Chase Mortgage, Wells Fargo Home Mortgage.

**JACK T. SAVELY, MSA, CREA
STATE CERTIFIED GENERAL REAL ESTATE APPRAISER GA#158**

EXPERIENCE:

Appraiser of income, commercial, industrial and residential properties for Pontotoc and North Mississippi since 1981.

EDUCATION:

Itawamba Community College - Principles of Real Estate, Real Estate Law, Real Estate Finance, Real Estate Appraisal, and Real Estate Appraisal II.

Lincoln Graduate Center - Principles of Real Estate Appraisal, Practice of Real Estate Appraisal, Writing the Narrative Appraisal Report, Farm & Land Appraisal, Commercial - Investment Appraisal, Advanced Commercial Appraisal, Environmental Site Assessment, Effective Court Testimony, Principles of Appraisal Review.

DESIGNATIONS AND MEMBERSHIPS:

Master Senior Appraiser - National Association of Master Appraisers

Certified Real Estate Appraiser - National Association of Real Estate Appraisers

State Certified General Real Estate Appraiser GA#158 - State of Mississippi

Real Estate Broker #9557 - State of Mississippi

Licensed Insurance Agent #776052 - State of Mississippi

Certified Senior Inspector - National Association of Home Inspectors

Certified Environmental Inspector - Lincoln Graduate Center

Qualified as expert witness in Real Estate Values and have testified in the following Courts in Mississippi:

Chancery Court
Circuit Court
Federal Bankruptcy Court

APPROVED APPRAISER FOR:

Peoples Bank and Trust Company, First National Bank of Pontotoc, BanCorp South, Federal Land Bank of Mississippi, Small Business Administration, Three Rivers Planning and Development District, Internal Revenue Service, Union Planters National Bank, Employee Relocation Council, Farmers Home Administration, Cities of Pontotoc, Iuka, Shannon, Ripley, Ecu, Houlka, Nettleton, State of Mississippi, Tax Commission.

PROFESSIONAL MEMBERSHIPS AND LICENSES:

State Certified General Appraiser GA# 158
National Association of Master Appraisers
Master Senior Appraiser (MSA)
Certified Real Estate Appraiser (CREA)
Certified Appraiser – Mississippi State Tax Commission
International Association of Assessing Officers
Board Certified in Real Estate Litigation Management
Certified Environmental Inspector (CEI)
Licensed Real Estate Broker
Licensed Insurance Agent
Pontotoc County Chamber of Commerce

Scope of the Appraisal

The scope of this appraisal assignment involves the completion of several steps performed within the guidelines of commonly accepted appraisal procedures. These include a thorough inspection of the subject and surrounding neighborhood, and the gathering of comparable sales and other useful market data. We have formulated opinions and judgments based on this data, including supply and demand factors, and property specific information, such as highest and best use; and, finally, we have analyzed this data to form sound valuation judgments based on the appropriate valuation methods. **Deeds provided are per Appraiser research only, and cannot be guaranteed to be all transfers associated with the subject of this report. Appraiser is not qualified as a professional Abstractor. Total site area and acreage breakdown is an estimate only, based on data obtained from Counties' Tax Assessor's Offices, and cannot be guaranteed. It is quite possible that there is a variance between Chancery Clerks' records and records on file with The Tax Assessor's Offices of counties included. The estimated value in this opinion is based on the assumption that the portion of the subject property that is less than Fee Ownership is of no value to the client stated in this report. The portion of the subject property that represents less than Fee Ownership is 56% (or an estimated 342.24 Acres), therefore the remaining 44% (or an estimated 269 Acres) represents the portion that is Fee Ownership. The estimated value indicated in this report is based on the 44% (or 269 Acres). This site area is a generalization based on research per plat maps and data on File in the Tax Assessors' Offices for the counties included and cannot be guaranteed.**

Interest Appraised:

Fee Simple.

Definitions

Market Value

The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions under which: (a) buyer and seller are typically motivated; (b) both parties are well informed or well advised, and each acting in what he considers his own best interests; (c) a reasonable time is allowed for exposure in the open market; (d) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (e) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Fee Simple Interest

Absolute ownership unencumbered by any other interest or estate; subject only to the limitations of eminent domain, escheat, police power, and taxation.

Highest and Best Use

Highest and best use is defined as: (1) the reasonable and probable use that supports the highest present value of vacant land or improved property, as defined, as of the date of the appraisal; (2) the reasonably probable and legal use of land or sites as though vacant, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value; and (3) the most profitable use.

Implied in these definitions is that the determination of highest and best use takes into account the contribution of a specific use to the community and community development goals as well as the benefits of that use to individual property owners. Hence, in certain situations the highest and best use of land may be for parks, greenbelts, preservation, conservation, wildlife habitats, and the like.

Site Description

Site plan

The following site information is based on my physical viewing of the property at CHICKASAW, PONTOTOC, & UNION COUNTIES, MS, , and subsequent discussions with the property owner.

General Site Information

Address	CHICKASAW, PONTOTOC, & UNION COUNTIES, MS.
Current Owner	According to the Chickasaw, Pontotoc, & Union Countys' Property Assessor's Office, the current owner is Mississippi/Tennessee Holdings, LLC.
5 Year Sales History	There appears to have been a transfer during 6/2003 – sale price not available.
Assessors Parcel Number	See Property Record Cards Provided
Assessed Value	See Attached County Tax Assessors' Records.
Taxable Value	See Attached County Tax Assessors' Records
Millage	See Attached County Tax Assessors' Records

Physical Characteristics of the Site

Subject Address:	CHICKASAW, PONTOTOC, & UNION COUNTIES, MS,
General Location:	See Maps Provided
Site Dimensions:	611.13 +/- acres.
Frontage:	Indeterminable.
Total Site Area:	611.13 +/- acres.
Usable Land Area	611.13 +/- acres.
Excess Land Area	N/A.
Shape of Tract:	Irregular.
Topography:	Rolling.
Access:	The subject has public access.
Corner Influence:	No.
Easements:	Typical utility easements. Access Easement.

Encroachments:	None noted.
Parking:	N/A.
Site Lighting:	N/A.
Walks and Landscaping:	N/A.
Utilities to Site:	N/A
Curbs and Gutters:	None.
Sidewalks:	None.
Flood Designation:	N/A.
Surface Drainage:	Appears good.
Subsurface Conditions:	Not accessible.

Highest and Best Use

Highest and best use is defined in the Dictionary of Real Estate Appraisal (10th Edition) as:

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.

The fair market value of property is not necessarily limited to what an owner actually uses it for. The use to which an owner may realistically and legally put the property is one of the first things to consider in arriving at its value. In arriving at the property's fair market value, the appraiser had to consider the "highest and best" use to which the property can be put. In other words, to determine fair market value requires consideration of the use, which would prompt a buyer to pay as much as the owner might reasonably expect to receive from selling the property.

Zoning, planning, and building laws and regulations limit the way property may be used. If, for example, the zoning laws permit only one-family houses, then an industrial or commercial use could not be considered as the highest or best use of the property even though there might be widespread demand for such other uses.

To estimate the highest and best use for the subject, we have considered those uses that are legally permissible, physically possible, economically feasible, reasonably probable which will result in the highest return to the land. Consideration was given to the individual features of the land, such as size, shape, location, access to roadways and the availability of utilities. Consideration was also given to the surrounding land uses and the demand for property in the current real estate market. Economic considerations such as supply and demand are especially important. Each of the factors considered are discussed below. This analysis is directed first to the site as vacant, and then to the property as improved.

Legally Permissible

The subject site is in areas that are zoned, and areas that are not zoned.

Physically Possible

The size, shape, and terrain of the appraised site are conducive for various types of development. The utilities serving the subject site are adequate for most uses, and the property is visible from Industrial Drive, and the accessibility to the residential building market.

Financially Feasible

Financially feasible refers to legal uses that are physically possible and have a sufficient demand to produce a positive return. Once the physically possible and legally permissible potential land uses have been determined, the next step in estimating the highest and best use is to determine which uses are economically feasible.

The feasibility of agricultural uses is evidenced by the growth of the community in counties listed.

Summary

The subject neighborhood is within listed counties.

There are no improvements on the site.

Considering these factors, the highest and best use of the subject is residential / agricultural use.

Valuation of the Subject Property

Appraisal Process

Traditionally, three approaches are used in the valuation of real property: the Cost Approach, the Income Approach, and the Market Approach.

The **Cost Approach** is based on the principle of substitution, which states that no rational person would pay more for a property than the amount for which he can obtain, by purchase of a site and construction of improvements without undue delay, a property of equal desirability and utility. The basic steps of the Cost Approach are to estimate land value as if vacant, to estimate the replacement or reproduction cost new of the basic improvements and minor structures (excluding any that were included as part of the land value), and then to estimate, in dollar amounts, the accrued depreciation caused by the physical deterioration, functional deficiencies, super adequacies, or any adverse economic influences. The next step is to deduct the accrued depreciation from the improvement's estimated replacement or reproduction cost new to arrive at a present depreciated cost estimate. Then, by adding the land value estimate, the result is an indicated value for the property by the Cost Approach.

The **Income Approach** concerns the present value of any future benefits of property ownership. Future benefits are generally indicated by the amount of net income the property will produce during its remaining useful life. After comparison of interest yields and characteristics of risk for investments of similar types and classes of property, this net income is then capitalized into an estimate of value. The value indicated by the Income Approach is usually the most indicative value for properties, which are generally held for income production, or investment type properties in general.

The **Market Approach** is based on the proposition that an informed purchaser would pay no more for a property than the cost of acquiring an equally desirable substitute property with the same or similar utility. This approach is applicable when an active market provides sufficient quantities of reliable data, which can be verified from authoritative sources. The Market Approach is relatively unreliable in an inactive market or in an estimate of value related to properties for which no real comparable sales are available. This approach to value is also somewhat questionable when sales data cannot be verified with the principals in the transaction.

The final step in the appraisal process is the reconciliation of the indicated value resulting from each of the approaches utilized. Consideration is given to the relative applicability of each of the approaches prior to concluding with the final value estimate.

The present appraisal situation deals with the valuation of existing residential buildings and barn. The subject property is located on CHICKASAW, PONTOTOC, & UNION COUNTIES, MS in areas of commercial, and rural/residential development. The subject is being appraised on the basis of its value "As Proposed" subject to normal construction techniques in the area. Therefore, the appraiser has relied upon comparables sale to deliver a value.

COST APPROACH

**THE COST APPROACH WAS CONSIDERED, BUT NOT USED IN THIS
OPINION.**

INCOME APPROACH

THE INCOME APPROACH WAS CONSIDERED, BUT NOT USED IN THIS
OPINION.

Market Approach to Value

The Market Approach is an appraisal technique, which measures the reaction of buyers and sellers in the marketplace through the analysis of recent transactions that are considered to be similar to the property appraised. The appraiser has researched the subject market area in an effort to locate sales considered to be comparable to the subject.

The subject property constitutes 611.13 +/- acres. The following steps describe the applied process of the Sales Comparison Approach.

1. The market in which the subject property competes is investigated; comparable sales, contracts for sale and current offerings are reviewed.
2. The most pertinent data is further analyzed and the quality of the transaction is determined.
3. The most meaningful unit of value for the subject property is determined.
4. Each comparable sale is analyzed and where appropriate, adjusted to equate with the subject property.
5. The value indication of each comparable sale is analyzed and the data reconciled for a final indication of value via the Sales Comparison Approach.

We have researched and analyzed the following land comparables to analyze in this approach, detailed on the following analysis grid.

Market Approach to Value
Unimproved Land Sales

Chickasaw County, Ms.

Comparable #1:

S-26, T-15S, R-03
McCain to Hill
01/05/2001
39.5 Acres
\$29,625.00
\$ 750.00 per acre
Rolling/Cutover
DB 234/60-64

Comparable #2:

S-12, T-16, R-03
Johnson to Holmes
05/11/2001
50 Acres
\$40,000.00
\$800.00 per acre
Rolling
DB 230/520

Comparable #3:

S-36,T-15, R-03
Hodge to Allday
05/11/2001
60 Acres
\$50,000.00
\$833.33 per acre
Rolling
Instrument # 20033369

CHICKASAW COUNTY ACREAGE BREAKDOWN

Chickasaw County Coverage Breakdown:

Commercial in City Limits – N/A Acres.	Estimated Value = \$ 0
Residential in City Limits – N/A Acres.	Estimated Value = \$ 0
Residential in Rural Areas – 6 Acres.	Estimated Value = \$ 25,000.00
Agricultural in Rural Areas – 114.90 Acres.	Estimated Value = \$ 91,920.00

Total Acres= 120.90 +/- Acres.

Estimated Value Total Acreage Chickasaw County, Ms. = \$116,920.00

Acreage breakdown is an estimate only and cannot be guaranteed.

The necessary adjustments were made to location, size, and utility.

Pontotoc County, Ms.

Comparable #1:

S-32,T-08,R-03
Hale to Arter
10/28/2003
50.98 Acres
\$76,500.00
\$1,500.00 per acre
Mostly level in cultivation
Inst. #20035878

Comparable #2:

S-31, T-09, R-03
Hester to M & H Properties
01/22/03
.85 Acres
\$11,000.00
\$12,941.17 per Acre
Level / Commercial
Instrument #20040408

Comparable #3:

S-06,T-10,R-03
Kidd to Washington,Stegall,Washington, & Taylor
05/02/2002
29.48 Acres
\$130,000.00
\$4,409.76 per acre
Level
DB 817/914

Comparable #4:

S-07,T-11,R-03
Seller – Hobson
07/2001
20 Acres
\$30,000.00
\$1,500.00 per Acre
Rolling Cutover
Wallfield Road

Comparable #5:

S-07, T-11, R-03
Foster/Bridgman, Inc. to Marshall Box
02/06/2004
22.87 Acres
\$25,000.00
\$1,093.13 per acre
Rolling

Pontotoc County Coverage Breakdown:

Commercial in City Limits –	6.5	Acres. Estimated Value =	\$ 32,500.00
Residential in City Limits –	20.15	Acres. Estimated Value =	\$100,750.00
Residential in Rural Areas –	14.0	Acres. Estimated Value =	\$ 70,000.00
Agricultural in Rural Areas –	110.0	Acres. Estimated Value =	\$110,000.00

Total Acres = 150.65 +/- Acres.

Estimated Value Total Acreage Pontotoc County, Ms. = \$313,250.00

The necessary adjustments were made to location, size, and utility.

Acreage breakdown is an estimate only and cannot be guaranteed.

Union County, Ms.

Comparable #1:

S-10, T-8, R-04
Roberts Estate to Kelly
04/17/2002
71 Acres
\$60,000.00
\$845.07 per acre

Comparable #2:

Hwy 178 East, New Albany, Ms.
Langford to Richey
09/11/03
19 Acres
\$38,000.00
\$ 2,000.00 per acre

Comparable #3:

Serenity Lane, New Albany, Ms.
Source: Crye Leike Realty
08/18/03
3 Acres
\$24,999.00
\$ 8,333.33 per acre

Union County Coverage Breakdown:

Commercial in City Limits –	12.00	Acres.	Estimated Value = \$	76,000.00
Residential in City Limits –	39.96	Acres.	Estimated Value = \$	120,000.00
Residential in Rural Areas –	20.00	Acres.	Estimated Value = \$	75,000.00
Agricultural in Rural Areas –	267.00	Acres.	Estimated Value = \$	175,000.00

Total Acres = 338.96 +/- Acres.

Estimated Value Total Acreage Union County, Ms. = \$446,000.00

The necessary adjustments were made to location, size, and utility.

Acreage breakdown is an estimate only and cannot be guaranteed.

Market Approach Value
Unimproved Land Sales
\$385,000.00
(THREE HUNDRED EIGHTY FIVE THOUSAND DOLLARS)

Analysis Grid

The sales mapped above have been analyzed and compared with the subject property. We have considered adjustments in the areas of:

- v ☐ Property Rights Sold
- v ☐ Financing
- v ☐ Conditions of Sale
- v ☐ Economic Trends (time)
- v ☐ Location
- v ☐ Physical Characteristics

Adjustment Notes

The comparables have received adjustments for various characteristics that influence value. Downward, or negative adjustments have been made when a comparable possesses a superior characteristic, while upward, or positive adjustments have been for inferior characteristics. The intent of this process is to bring the comparables to approximate parity with the subject.

Sales Comparison Approach Conclusion

Based on the above analysis, we have reconciled to a land value of \$385,000.00 as of September 7, 2004, and subject to the Limiting Conditions and Assumptions of this appraisal.

INDICATED VALUE USING MARKET ANALYSIS APPROACH
\$385,000.00
(THREE HUNDRED EIGHTY FIVE THOUSAND DOLLARS)

Reconciliation of Values

The approaches used to estimate the "As Proposed" Market value of the subject property include the cost approach, the income approach and the market approach. The value indicated by each approach and the final estimate of market value is as follows:

Cost Approach	N/A
Income Approach	N/A
Market Approach (Land)	\$385,000.00

The Cost Approach is based upon the principle of substitution, which states that a prudent purchaser would not pay more for a property than the amount required to purchase a similar site and construct similar improvements without undue delay, producing a property of equal desirability and utility. The land value is based upon sales of similar properties in the subject market area. Costs were estimated using Marshall & Swift Valuation Service

The Income Approach compared rentals of other Retail building facilities to the subject. The derived market rental rates were capitalized at a rate which considered available market financing and investor equity return requirements. In the analysis of income-producing property such as the subject, the Income Approach is typically given greater emphasis than the Market Approach; however, due to the lack of market-derived capitalization rates, this approach was considered to be similar in reliability to the Market Approach due to the abundance of market data available.

The Market Approach referenced sales of Retail building properties located in competitive areas along in the researched subject Market area. Since properties of identical characteristics are uncommon, any reliance placed on the Market Approach could be lessened due to required adjustments to the comparable sales. However, the range of value indicated by the sales after adjustments was considered to be a reliable indicator of value for the subject property due to the nature of the warehouse market. No current sales could be located that were of similar configuration to that of the subject which is quite unique.

The subject is being appraised on the basis of its value "As Proposed". therefore, the appraiser has relied upon the all approaches to estimate market data. **Appraiser estimates that cost of sale to client @ 10%.**

Therefore, with a weighted average reliance placed on the market approach, it is the appraiser's opinion that the "As Proposed" Market value of the subject property, as of was:

\$385,000.00 (THREE HUNDRED EIGHTY FIVE THOUSAND DOLLARS)
--

EXHIBIT B



Landreth Engineering, LLC

P. O. Box 92156 --- Albuquerque, New Mexico 87199
Cellular: 505 - 239 - 9915 --- Email: EWLandreth@aol.com

September 30, 2004

Hurst Brothers, Inc.
P. O. Box 591
Marysville, CA 95901

Project: Liquidation Value Mississippi Tennessee Railroad, LLC

New Albany to Houston (MP 324.2 to MP 281.4) 42.8 Miles

115# Main Line = 0.1 Miles
90# Main Line = 42.7 Miles
85# Side Tracks = 1.1 Miles

Value Rail & OTM				Tons	\$/Ton	Salvage Value
				% Loss		
85# Rail	Miles	1.1	5	156.3	185	\$28,921.42
Tie Plates	Miles	1.1	5	21.7	145	\$3,151.72
Angle Bars	Miles	1.1	5	54.3	145	\$7,879.30
Spikes	Miles	1.1	5	5.7	145	\$821.27
Bolts	Miles	1.1	5	1.1	145	\$166.68
Anchors	Miles	1.1	10	3.1	145	\$445.01
90# Rail	Miles	37.18	5	5594.8	190	\$1,063,020.82
4° Curve	Miles	1.52	9	219.1	185	\$40,533.29
3° Curve	Miles	0.5	8	72.9	185	\$13,479.84
2° Curve	Miles	2.6	7	383.0	185	\$70,857.07
1° Curve	Miles	0.9	6	134.0	185	\$24,791.18
Tie Plates	Miles	42.7	5	843.8	150	\$126,562.80
Angle Bars	Miles	42.7	5	210.9	150	\$31,640.70
Spikes	Miles	42.7	5	219.9	145	\$31,880.03
Bolts	Miles	42.7	5	44.6	145	\$6,470.12
Anchors	Miles	42.7	10	119.1	145	\$17,274.29
115# Rail	Miles	0.1	3	19.6	190	\$3,730.23
Tie Plates	Miles	0.1	5	2.0	150	\$296.40
Angle Bars	Miles	0.1	5	0.5	150	\$74.10
Spikes	Miles	0.1	5	0.5	145	\$77.83
Bolts	Miles	0.1	5	0.2	145	\$23.42
Anchors	Miles	0.1	10	0.3	145	\$40.46
Rail/TO	Ea	38	3	41.9	185	\$7,746.50
OTM/TO	Ea	38	5	122.7	145	\$17,797.30
Removal Cost Rail & OTM				8272.1	-35	-\$289,524.10
Transportation Cost Rail & OTM (\$2/Truck Mile*200miles)						-\$132,353.87



Landreth Engineering, LLC

P. O. Box 92156 --- Albuquerque, New Mexico 87199
Cellular: 505 - 239 - 9915 --- Email: EWLandreth@aol.com

September 30, 2004

Notes & Observations

Mississippi Tennessee Railroad -Field Reconnaissance -- New Albany to Houston

September 21, 2004 to September 22, 2004

Engineering

The line is constructed in a north to south alignment starting along the east side of the Tallahatchie River floodplain at New Albany (MP 324.2) and threads along the upper reaches of drainage divides between westward and eastward flowing streams to MP 314.5 (ECRU). Between ECRU (MP 314.5) and the line summit at Pontotoc (MP 308) the line is build adjacent to Lappatuatubba Creek. Between Pontotoc (MP 308) and Houston (MP 281.4) the line once again threads along the upper reaches of the drainage divides between westward and eastward flowing streams to the end of line at Houston.

The grade line undulates and is moderately ascending between New Albany and Pontotoc and descending between Pontotoc and Houston. The profile on the track chart shows approximately .8 miles of grade in excess of 1%, 4.55 miles of total grade 1% or greater, 11.15 miles of total grade .8% or greater and 19.1 miles of total grade .5% or greater. The southward ruling grade of 1.2% begins at MP 285 and the northward ruling grade of 1.2% begins at MP 307. The line ascents between New Albany and Pontotoc at an average rate of 7.6 feet per mile and then descents between Pontotoc and Houston at an average rate of 5.9 feet per mile.

The line segment contains 28 curves with 25 of the curves in the first half of the line segment between MP 324.2 and MP 302.8 and an 18-mile tangent in the second half of the line between MP 302.8 and Houston. The line segment contains 1.5 miles of 4° curve, .5 miles of 3° curve and 2.6 miles of 2° curve and .9 miles of 1° curve for a total of 5.52 miles of curved track in the 42.8-mile line segment. No short tangents were utilized between curves in the same direction or in reverse directions.

The track chart shows 40 bridges in the line segment with 27 bridges in the first half of the line segment between MP 324.2 and MP 302.8 and 13 bridges in the second half of the line segment between MP 302.8 and Houston.

Land

The right of way for the Mississippi Tennessee Railroad consists primarily of a 100' wide right of way with additional right of way at stations along the line.

No evidence was observed of any leases on the property or encroachments other than power line or pipeline crossings. No parallel encroachments other than public roadways were observed on the right of way. No evidence of a railroad telegraph line was observed or noted.

Grading

The rail line is constructed on side hill and side barrow fill. The rail line embankment appears to have originally been constructed with a 10' to 12' crown section verses the 22' to 28' crown section used today on new construction. The current embankment section is inadequate and needs the embankment shoulders build up to support and contain the ballast section.

The embankment section between MP 309 and 310 has eroded and slumped into the adjacent Lappatuatubba Creek up to the end of ties in several locations and these locations require that the embankment section be restored prior to resuming unprotected train operations pass these locations.

Bridges

MP	YR	ODPT	BDPT	TPG	I-BEAM	CONC	RCP	C BOX	CMP
281.6	47		124						
282.0	41			64					SH 8 UP
283.1	49						72"X72'		
284.5	51		156						
285.7	53		268						
286.3	55		254						
286.4	55		148						
290.6	61		156						
292.5	55							91"X91"X60'	
298.2	49						72"X75'		
298.4	49								
300.6	62		100					96"X92'	
301.5	51							120"X70'	
303.4	62		114						
303.8	63		100						
305.4	52							(2)120"X134'	
305.5	58					(3)-46'			SH 15 UP
306.2	53							(2)78"X108'	
306.4	55		48		21.6				SH 6 UP
307.6	36			58					
310.3	56		48		94				

MP	YR	ODPT	BDPT	TPG	I-BEAM	CONC	RCP	C BOX	CMP
310.5	52		86						
310.9	60		44						
311.4	60		72						
312.1	60		44						
312.6	60		30						
313.5	60		72						
313.7	66		72						
313.9	54		58		35				
314.1	61		72						
314.7	53							(2)77"X44'	
315.2	53							(2)102"X116'	
315.3	26		82		27				SH 15 UP
317.3	50		184						
317.5	51	84		60					
317.6	50		100						
317.8	50		184						
318.7	51		128						
322.2	48		213		29				
322.4	52						80"X80"X61'	42"X48'	
		84	2957	182	206.6	138	3567.6		

The open deck pile trestles (ODPT) and ballast deck pile trestles (BDPT) are shown on the track chart to be, on the average, 49 years old with the oldest bridge being 78 years old and the newest bridges being 42 years old. Bridges in this climate may have an average service life of 75 years and the bridges on this line segment are approaching the last 1/3 of their service life due to deferred bridge renewal and maintenance programs.

Assuming a service life of 75 years the open deck pile trestles and ballast deck pile trestles on this line segment need to be replaced at a minimum rate of 148 LF per year.

The bridges will need to be monitored for the cumulative and repetitive effects of increased railroad loadings. The lowered FRA Class 1 maximum speed of 10 MPH across the bridges will mitigate the dynamic loading and extend their service life.

The ballast curbs for bridge 317.8 last renewed in 1950 presently need replaced due to wet rot.

The estimated cost of required bridge repair submitted by current owner of the railroad was utilized in the Financial Assistance Offer as the best estimate that is available for required bridge maintenance expense.

The bridge removal expense utilized in the Net Liquidation estimate is based on my experience and current contractor equipment and labor rates.

Ties

The rail line is constructed with 8' track ties with an average count of 23 ties per 39' rail or 3100 ties per mile. Current Class I practice is to support the rail with 24 ties per 39' rail or 3250 ties per mile.

Spot counts of the failed ties ranged from 8 failed ties to as many as 17 failed ties per 39' rail length. Due to the climate, I would suspect ties appearing serviceable might also suffer from "wet rot."

The ties were perpendicular to the track and no evidence of skewing was observed that would be related to the seasonal temperature fluctuations causing expansion and contraction of the rail.

FRA Class 1 maintenance standards require 8 sound ties per rail length with 1 of the 8 sound ties supporting the rail joint. The Financial Assistance offer provides a tie renewal program to satisfy the FRA Class 1 maintenance standard.

Rail

The rail line was constructed with 90-lb/yd rail between New Albany and Houston (42.8 miles) with 115-lb/yd rail in the state grade crossing renewal program.

The rail on the line was 9020 Tennessee with the following mill dates, 1927, 1939-1950.

Inspection of the 2° curve at Pontotoc between MP 305.9 and MP 306.7 showed the outside (high) rail had been transposed and would now classify as scrap rail and the low rail had been replaced and would classify as reroll.

Much of the rail has incurred base corrosion and will not qualify as No. 1 relay. Broken joint bars were noticed at several spot inspections and a value extrapolated from the spot inspections to provide a budget for replacement rail and broken joint bars in the Financial Assistance Offer.

OTM

The predominate 39 foot 90 lb/yd rail lengths are jointed with 4 hole – 24" joint bars and supported on 4 – hole tie plates (8 - ½" x 7 - ½ ") with 2 spikes per tie plate and 10 rail anchors per rail.

Ballast

The line was originally constructed with a ballast track section. The ballast section is fouled and needs to be undercut. The track section has been filled above the top of ties in locations to stabilize the track due to poor tie conditions. The ballast section has been top dressed with a 4" aggregate scattered along the line.

The ballast has no value in the Net Liquidation estimate due to the expense of recovery of the fouled ballast and the large 4" aggregate scattered along the line.

Track Laying and Surfacing

The line appears to have good line and surface despite the fact that the tie condition is deteriorating. Tie renewals will require a skin lift in locations to properly seat the replacement ties.

Right of Way Fences

The line is predominately constructed through adjacent farmland and the right of way is predominately fenced.

Crossings

Grade crossing warning devices were installed at the following crossings:

<u>Location</u>	<u>Road Surface</u>	<u>Crossing Surface</u>	<u>Crossing Warning Devices</u>	<u>DOT NO.</u>
Pitsboro Ave - Houston	Asphalt	Asphalt*	2 - CFLS**	ICG 304-634W
Franklin Drive - Houston	Asphalt	Conc. Panel	2 - MMFLS/G	ICG 304-636C
SR 32 - Houlika	Asphalt	Conc. Panel	2 - MMFLS	ICG 304-648W

Note:

* With Flange Guard Rails in Crossing

** Obsolete CFLS

The grade crossings along the line segment were primarily asphalt crossings in need of repair. The estimated cost of grade crossing submitted by the current owner of the line was utilized in the Financial Assistance Offer, as the current owner should be more attune to the local crossing repair requirements.

Station & Office Buildings

No Station or office buildings exist on the line segment.

Roadway Buildings

No Roadway Buildings were observed along the rail line:

Vegetation

The line segment is located in a climate favorable to rapid vegetation growth. The right of way is overgrown with timber (Pine and brush) between the right of way fences and the ballast section. Kudzu has overtaken the entire line except within the ballast section where weed spray has been applied and where the station grounds have been mowed. On the end of line at Houston, where equipment flats have been in long-term storage, kudzu has enveloped the rail cars.

Environmental

No environmental concerns were observed or noted.

Miscellaneous

Steel Prices at Birmingham, AL on 9/30/04
Heavy No. 1 Scrap - \$145 per Ton
Railroad Heavy No. 1 Scrap - \$185 per Ton
Railroad Reroll – \$ 190 per Ton

RESUME FOR ED LANDRETH
September 2004

PERSONAL:

Name: Edward W. Landreth
Address: P. O. Box 92156
Albuquerque, NM 87199-2156

Telephone: 505-239-9915

Email: EWLandreth@aol.com

ACADEMIC EDUCATION:

Bachelor of Science in Civil Engineering, May 31, 1970
University of Missouri-Rolla
Rolla, Missouri 65401

MILITARY SERVICE:

U. S. Army Reserve
Honorable Discharge at rank of Captain, May 1978
Graduate U. S. Army Transportation Officers Basic Course May 1971

CERTIFICATIONS (Current)

Registered Professional Engineer, State Of New Mexico PE 5801

PREVIOUS CERTIFICATIONS (Not Current)

Registered Professional Engineer, State Of Colorado PE 12637
Registered Professional Engineer, State Of Texas PE 40023
Registered Public Surveyor, State of Texas LS 2841
Licensed Private Pilot - Instrument Rated

BUSINESS RELATIONSHIPS

Material Services, Inc. (NM) – June 2000 to Present
Trec Consultants, Inc. (FL) – April 1997 to Present
Arkansas - Oklahoma Railroad Company (OK) - March 1996 to Present
Landreth Engineering, LLC (NM) - February 1994 to Present (Incorporated 1997)

RESUME for EDWARD W. LANDRETH

Page 2 of 2

PROFESSIONAL EXPERIENCE:

Senior Engineer (Part Time) - August 1999 to August 2000
Community Sciences Corporation
P. O. Box 1328
Corrales, NM 87048

Temporary Faculty - August 1999 to December 1999
Department of Mathematics
University of New Mexico
Albuquerque, NM

Landreth Engineering, LLC - February 1994 to Present (Incorporated 1997)
Landreth Railroad Services - February 1994 to Present

The Atchison, Topeka and Santa Fe Railway Company
1700 East Golf Road
Schaumburg, IL 60173 - 5860

Director Asset Management - January 1992 to February 1994
Manager Asset Management - September 1990 to December 1991
Manager System Construction - May 1988 to August 1990
Project Engineer Western Region - September 1987 to May 1988
Construction Engineer Western Lines - August 1985 to September 1987
Public Projects Engineer Western Lines - July 1981 to August 1985
Assistant Engineer Western Lines - November 1979 to July 1981
Construction Engineer Star Lake Railway - July 1978 to November 1979
Assistant Office Engineer Western Lines - May 1976 to July 1978
Assistant Engineer Western Lines - July 1973 to May 1976
Transitman Western Lines - July 1972 to June 1973

Jefferson County Colorado
Department of Planning
Golden, Colorado 80401

Assistant Planning Engineer - September 1971 to July 1972

TYPICAL ASSIGNMENTS RELATED TO RESUME

August 1999 to August 2000
Community Sciences Corporation
P. O. Box 1328
Corrales, NM 87048

Part time employment at a local land planning, engineering and surveying firm. Prepared site grading, street, water, sewer, and drainage plans for residential development in the Albuquerque area.

Temporary Faculty August 1999 to December 1999
Department of Mathematics
University of New Mexico
Albuquerque, NM

Part time instructor Math Department. Taught intermediate Algebra (64 students) during the 1999 Fall Semester.

Director Asset Management
Manager Asset Management
September 1990 to February 1994
The Atchison, Topeka and Santa Fe Railway Company
Topeka, Kansas

Department Head responsible for the management of the real estate, property sales, leases and contracts for the Santa Fe Railway Company.

Represented the Santa Fe real estate and contract department in the negotiations and sale of approximately 380 miles of rail corridor and passenger commuter rights to Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties in Southern California.

Represented the Santa Fe real estate and contract department in the sale of approximately 4,000 miles of branch line to Short Line Railroads.

Manager System Construction
May 1988 to August 1990
The Atchison, Topeka and Santa Fe Railway Company
Albuquerque, New Mexico

Department Head for System Construction. Prepared design plans, engineering cost estimates, contract plans and specifications, solicited proposals, awarded bids, and provided owner inspection, payment, and acceptance of completed projects for the expansion of the Denver Auto Facility, and Houston Trailers on Flat Cars (TOFC) Facility.

Represented the Engineering and Maintenance Department in the Santa Fe rationalization program with estimates of net line liquidation value and branch line rehabilitation expenses.

Designed and expanded Chicago TOFC facility and provided design and estimates for the rehabilitation and expansion of TOFC and auto facilities across the system.

Project Engineer

September 1987 to May 1988

The Atchison, Topeka and Santa Fe Railway Company
Los Angeles, California

Provided final review and approval of plans submitted for new track construction, responsible for the sale of surplus track material, provided track maintenance studies, responsible for review of mainline curves and establishing main line curve elevations.

Prepared proposals, solicited bids, prepared and administered contracts for the demolition and removal of improvements on railway property and abandoned rail lines.

Construction Engineer

August 1985 to September 1987

The Atchison, Topeka and Santa Fe Railway Company
Amarillo, Texas

Head of the Western Regional Construction Office. Prepared plans, specifications, bid proposal, solicitation of proposals, award of project, field engineering, project management, for the relocation of 6 Miles of railroad main line due to Bureau of Reclamation project for the Construction of Brantley Dam north of Carlsbad, New Mexico. Project included approximately 1 million cubic yards of embankment, 200,000 cubic yards of cut, 2,000 linear feet of concrete bridge construction, involving the driving of 2 miles of H-section piling to support concrete footings. Project was completed 2 months ahead of schedule and under budget.

Designed, and build connecting tracks for the proposed Santa Fe - Southern Pacific merger at Dallas, Midlothian, Wallis, Wharton, and El Paso, Texas.

Designed and build Fort Worth, Texas TOFC facility and supervised field forces and construction. Expanded Dallas and Houston TOFC facility and provided rehabilitation of existing facilities.

Rehabilitated and expanded existing auto unloading facilities at Amarillo, Houston, and Albuquerque.

EXHIBIT C

W. H. Bolton
To Grant of Right of Way

County of Pontotoc
State of Mississippi

New Orleans M. M. R. Co.

Know all men by these pre-
sents, that whereas the New Orleans
and Mississippi Midland Rail Road
Company of Louisiana and of Mississippi

Corporations formed under the laws of said States respectively
for the purpose of locating and constructing a rail road from
New Orleans La. in the Parish of Orleans northwards to the
town of Pontotoc Pontotoc County Mississippi and are desirous
of locating and constructing said road through or upon the
lands of the undersigned W. H. Bolton in the County of Pontotoc
State of Mississippi and for such purpose are desirous of obtain-
ing the right of way in, through and upon said lands and
premises in the County of Pontotoc and State of Mississippi said
lands being described as follows to wit: A lot containing 10
acres in the W. H. 1/4 of Sec. 9 T. 10 R. 3 E. and lot # 46 supplemen-
tal Plan of Pontotoc containing 21.75 acres (also 5 acres
adjoining said lot # 46. Now therefore the said W. H. Bolton
for and in consideration of the location of said rail road through
and upon said lands and of the benefits that may accrue to
him therefrom and the further consideration of One (\$1.00) dollar
in hand paid the receipt whereof is hereby acknowledged, doth
hereby for himself, his heirs representatives or assigns, give
grant sell, and convey unto the New Orleans and Mississippi
Midland Rail Road Company of Mississippi and its successors
successors and assigns, for the purposes of said Rail Road and
the construction of all proper work in connection therewith
the absolute right of way over and upon said lands; the
said right of way to be One Hundred (100) feet in width, being
fifty (50) feet on each side from the center of said rail road
track, as located and constructed and with the further priv-
ilege of cutting all leaning trees on either side of said right
of way, if within twenty five (25) feet of the said right of way.
Also the right to take and use any water from stream
upon said land and to conduct and carry water by pipe
or otherwise, over, through or under same. It is also under-
stood and agreed that should said rail road not be
constructed over or through said lands, then and in that
case this grant and conveyance is null and void.

In Witness whereof the said grantee doth
execute at his House and seal this the 14th day of
January A.D. 1902.
W. H. Bolton

State of Mississippi Personally appeared before me
County of Pontotoc J. M. Misset Clerk of the Chancery
Court of said County of Pontotoc the within
named W. H. Bolton and acknowledge that he

signed and delivered the within Grant of Right of Way on the day and
year therein mentioned. Given under my hand and seal of office at
Pontotoc on this the 14 day of January 1902. J. M. Miskit Clerk
By R. D. Anderson D.C.

State of Mississippi
County of Pontotoc. I, J. M. Miskit Clerk of the Chancery Court of
said County of Pontotoc do hereby Certify that the
Grant of Right of Way of which the next foregoing is a true copy
was filed for records at 10 o'clock A.M. on the 14th day of
January 1902 and is duly recorded this the 15th day of January
1902 J. M. Miskit Clerk

17-11-3
Fee

B.F. Eddington & wife } County of Pontotoc }
To } Grant of Right of Way } State of Mississippi }
New Orleans, M.M.R.R. Co. }
Now all men by these presents, That whereas the New Orleans and Mississippi Midland Railroad Company, of Louisiana and of Mississippi, corporations formed under the laws of said states respectively, for the purpose of locating and constructing a railroad from New Orleans, La., in the Parish of Orleans, northward, to the town of Pontotoc, Pontotoc County, Mississippi, and are desirous of locating and constructing said road through or upon the lands of the undersigned B.F. Eddington and Arabella, his wife in the County of Pontotoc State of Mississippi and for such purpose are desirous of obtaining the right of way in, through and upon said lands and premises in the County of Pontotoc and state of Mississippi, said lands being described as follows, to-wit:
All that tract of land lying in Section 17, Township 11, R. 2, E., conveyed to the said B.F. Eddington by J.W. and J.T. Longest by deed recorded in the Chancery Court Clerk's office of Pontotoc County in D.C. 64, page 219, to which deed reference is here made for description.
Now therefore, the said B.F. Eddington and Arabella, his wife, for and in consideration of the location of said railroad, through and upon said lands, and of the benefits that may accrue to them therefrom and the further consideration of one (\$1.00) dollar in hand paid, the receipt of which is hereby acknowledged, do hereby for themselves their heirs, representatives or assigns, give grant sell and convey unto the New Orleans and Mississippi Midland

71 @ 295 + 296

Railroad Company of Mississippi, and its successor, successors and assigns, for the purposes of said Railroad and the construction of all proper work in connection therewith, the absolute right of way over and upon said lands; the said right of way to be one hundred (100) feet in width, being fifty (50) feet on each side from the center of said railroad tracks, and necessary grounds for depot + side tracks if desired, as located and constructed, and with the further privilege of cutting all leaning trees on either side of said right of way.

Also the right to take and use any water from streams upon said land, and to conduct and carry water by pipes or otherwise, over, through or under same.

It is also understood and agreed that should said railroad not be constructed over or through said lands then and in that case this grant and conveyance is null and void.

In witness whereof, the said Grantee doth hereunto set their hands and seals this the 6th day of January A.D. 1902.

Witnesses: —
Lewis E. Brittain

B. F. Eddington (Seal)
Mrs. A. B. Eddington (Seal)

State of Mississippi }
County of Pontotoc }

Personally appeared before me, J. M. Nisbet, Clerk of the Chancery Court of the said County of Pontotoc; the within named B. F. Eddington and Prabella his wife, who acknowledged that they signed and delivered the within Grant of Right of way on the day and year therein mentioned.

Given under my hand and seal of office at Pontotoc on this the 8th day of January 1902.

J. M. Nisbet Clerk
By B. D. Anderson D. C.

State of Mississippi }
County of Pontotoc }

I, J. M. Nisbet, Clerk of the Chancery Court of said County of Pontotoc do hereby certify that the Grant of Right of Way of which the next foregoing is a true copy was filed for record at 9 o'clock A. M. on the 13th day of January 1902 and duly recorded on this 15th day of January, 1902.

J. M. Nisbet Clerk.

7-10-3

State of Mississippi
 Pontotoc County. ^{Fee} In Consideration ^{and to remove curb on}
 north side of Railroad track and ^{One Dollar}
 We Convey and Warrant to the Gulf and Chicago
 Railway Company the land described as follows
 to wit: The strip one hundred feet wide being
 fifty feet on each side of the center line of ~~the~~
^{the} railroad of said Company as the same is
 surveyed and to be located across the following
 lands situated in Pontotoc County to wit:
The North half (N $\frac{1}{2}$) of East half (E $\frac{1}{2}$) of the North
East Quarter (N.E. $\frac{1}{4}$) of Section seven (7) in Township
Ten (10) of Range Three (3) East Reference being
 hereby especially made to the said survey of said
 railroad for a more accurate description of the
 land hereby conveyed with the right to cut down
 all trees which might fall upon said road and
 the further right to do all necessary things for the
 adequate and proper drainage of said road.

Given under our hands this 29th day of December 1903

Attest:
 J.M. Nisbet
 C.F. Walker

State of Mississippi,
 Pontotoc County.

Personally appeared
 before me J.M. Nisbet

Chancery Clerk the within named C.F. Walker
 who acknowledged that she signed and delivered
 the foregoing instrument on the day and year
 therein mentioned.

Given under my hand this the 29th day of Dec. 1903
 J.M. Nisbet Clerk

The Deed of which the next foregoing is a
 true copy was filed for record Dec 31st 1903
 and the same has this day been duly recorded
 Given under my hand and seal of office this
 the 1st day of Jan. 1904.

J.M. Nisbet
 Chan. Clerk

78 @ 146

WARRANTY DEED.

Fouts & Lurie Co., Printers & Binders, Atlanta, Ga. 30308

Sarah F. Bell & Jess Bell to New Orleans, Mobile & Chicago Railroad
 IN CONSIDERATION OF (One Hundred and Fifty Dollars
 \$150.00)

I convey and warrant to the New Orleans, Mobile & Chicago Railroad Company, a strip of land one hundred feet wide, bearing fifty feet on each side of the center line of the railroad of said Company, as the same is surveyed and located upon and across the land described as forty four hundred one half acres on the East side of the North West Quarter of Section Eight in Township 40 N. Range 3 East, situated in Pontotoc County, State of Mississippi, reference being hereby officially made to the deed bearing of said railroad, or to any accurate description of the said strip, conveyed with the right to cut across said farm, which might fall upon said railroad, and the further right to all necessary ways for the adequate and proper drainage of said railroad.

WITNESS my signature, the 12th day of December, 1907

Signed, Sealed and Delivered in presence of us:

Sarah F. Bell (SEAL.)
 Jess Bell (SEAL.)
 J. (SEAL.)
 (SEAL.)

THE STATE OF MISSISSIPPI, PONTOTOC COUNTY.

Personally appeared before me I. V. T. Furr, Chancery Clerk of the County of Pontotoc, the within named Sarah F. Bell and Jess Bell who acknowledged that they signed and delivered the foregoing instrument on the day and year therein mentioned.

Given under my hand and seal of said Court, this 14 day of Dec. 1907
 I. V. T. Furr Clerk.

THE STATE OF MISSISSIPPI, PONTOTOC COUNTY.

I, W. T. Furr, clerk of the Chancery Court of said County, do hereby certify that the within Warranty Deed was filed for record in my office, on the 18 day of Dec. 1907 at 10 o'clock and minutes A. M., and that the same, together with the certificate and acknowledgment, is now duly recorded in Book 100 page 180 of the Record of Deeds in my office.

Given under my hand and official seal of office, in the Town of Pontotoc, this the 24 day of Dec. 1907
 W. T. Furr Clerk.

By D. C.

100 @ 180

EXHIBIT D



THE LAW OFFICES OF
VAN COTT, BAGLEY, CORNWALL & MCGARTHEY

MEMORANDUM

Client/Matter #:

TO: George Ross
FROM: Ruth Hawe
DATE: September 28, 2004
RE: Railroad Deed 623:298976v1 in Mississippi

This memo is in response to your request for information about whether Mississippi law would construe a grant of land to a railroad to be an easement or fee. The Mississippi Supreme Court has apparently addressed this issue several times, with each case being very focused on the wording in the granting document. The short answer to your questions is that I believe the document from W. W. Guinn to the Gulf and Ship Island Railroad Company would be construed as a conveyance of an easement only, and the 100 foot-wide strip of property would revert to the owner of the land.

If you are interested, following is a brief description of the case which I believe is on point.

In 1992, the Supreme Court of Mississippi was called upon to analyze two conveyances of 100 foot-wide strips of land to a railroad (dated 1883 and 1887). *Crum v. Butler*, 601 So.2d 834 (Miss. 1992). To determine whether a deed conveys an easement or fee, the court first set out the following general rules:

Where the instrument specifically conveys a right of way, then the deed will be construed as intending to convey only an easement.... Instruments that specifically refer to a strip, parcel, or tract of land have been held to convey a fee. ... The difficulty comes when a deed contains a mixture of both ideas, where it mentions both a piece, a parcel, or a strip of land and a right of way. It is here that the instrument becomes unclear and leans toward ambiguity.

Id. at 837-38.

The court then went on to draw an increasingly sharper line in this type of deed construction. The court said that, where the conveyance was for "a strip of land for a right of way," the proper construction of the language was an actual sale of the land. But, in the two deeds being construed, the court said that because the deeds also contained language that "clearly point out that the conveyances were for the purpose of constructing and operating a railroad on

the right of way", then the deeds were ambiguous, and must be interpreted against the party that wrote the deeds. Since the railroad had prepared the deeds, they would be construed against the railroad, and interpreted as conveyance of a right of way.

The language in the conveyance you provided says that it is for "a **strip of land** one hundred feet wide ... the same being for **the right of way**, switches, tracks depot grounds, and other **railroad purposes**." (We cannot know for certain who prepared the conveyance from Mr. Guinn, which is at issue for you, but I believe it is virtually certain that the railroad did so.) Thus, I believe that it is probable that, if called upon to interpret this conveyance, a Mississippi court would construe the deed against the railroad company, and find that the conveyance was for an easement.

If you have any questions, please let me know.

EXHIBIT E



July 27, 2004

Mr. Randy Cundiff
Vice President
Iron Horse Resources
P.O. Box 99
O'Fallon, IL 62269

Dear Mr. Cundiff:

Thank you for the opportunity to bid on the "removal of approximately 42.6 track miles of railroad on the Mississippi and Tennessee Railroad from New Albany to Houston, MS at MP 281.6 to MP 324.2.

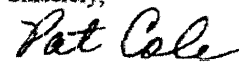
Progress Rail Services Corporation (PRSC) wishes to bid a lump sum price of \$1,793,865.00 for the sale and removal of all rail and OTM. The crossties will be plowed over and the road crossings and bridges will be left in place.

PRS agrees to provide all labor, supervision and appurtenance and to complete all work in a workman like manner and to leave the right-of-way in orderly fashion agreeable to Iron Hors Resources.

This offer will be valid for 30 days from the date of submittal and will be void and null after such time.

Again, thank you for the opportunity to bid on this project and I look forward to working with you should PRSC become the successful bidder.

Sincerely,

A handwritten signature in cursive script that reads 'Pat Cole'.

Pat Cole
Operation Manager