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BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1001 (Sub-No. 0X)



CHILLICOTHE-BRUNSWICK RAIL MAINTENANCE AUTHORITY

-DISCONTINUANCE EXEMPTION-

IN LIVINGSTON, LINN and CHARITON COUNTIES, MISSOURI

STATEMENT TO CORRECT THE RECORD
and
MOTION TO WITHDRAW NOTICE OF INTENT TO FILE O.F.A

Daniel A. LaKemper, Esq.
Attorney for
Vandalia Railroad Company
1318 S. Johanson Road
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Dated: June 5, 2007.

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**STATEMENT TO CORRECT THE RECORD
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On or about May 25, 2007, Mr. Charles Montange, representing the Chillicothe-Brunswick Rail Maintenance Authority ("CBRA") and the City of Chillicothe, Missouri, continued his attempt to mislead this Board by filing a "Response to Motion to Strike and Motion for Sanctions." In said filing, Mr. Montange falsely states that a 1993 settlement agreement, which Mr. Montange conveniently did not attach, and to which neither the City of Chillicothe nor Vandalia Railroad Company (which was not a subsidiary of Pioneer Railcorp at the time¹) were parties, somehow bars Vandalia Railroad Company ("Vandalia" or "VRCC") from making an Offer of Financial Assistance ("OFA"). A simple reading of that agreement clearly shows that Mr. Montange's assertion is without merit. Either Mr. Montange failed to read it or he is intentionally trying to mislead this Board. Regardless, the agreement does not bar Vandalia from making an OFA in the event the line is abandoned or service discontinued.

¹ VRRC was incorporated in 1983, but did not become a subsidiary of Pioneer Railcorp until Pioneer purchased its stock in October, 1994

the Agreement specifically prohibited assignment. absent the "written consent of the other parties" (see Section 18). Pioneer has never given its consent to the assignment of the Agreement to the City of Chillicothe and thus Mr. Montange's statement that "City is a beneficiary of that agreement" is without any basis whatsoever.

It should also be noted that Sections 13 and 14 acknowledge that Wabash had common carrier authority and that said authority was never terminated. In the context of this proceeding, it could be argued that Mr. Montange's clients have an obligation to obtain adverse discontinuance authority for Wabash.

Mr. Montange also states, without any documentary evidence, that Mr Rupp's lawsuit was "dismissed". That may be true, but the most recent story available on the internet (attached hereto as "Exhibit B") is headlined "Court grants extension to restraining order".

Frankly, as he has done in other cases, Mr. Montange has once again abused this Board's good faith by filing misleading information and doing so outside of the Board's established procedures. VRRC filed its Notice of Intent to File an OFA for the legitimate purpose of investigating the possibility of preserving competitive rail service on a line it knew to be viable in the past. Since the filing of its Notice, rather than working with VRRC to attempt to maintain rail service, VRRC has been barraged by false accusations and had its motives impugned. Yet, VRCC's motives are clear: maintaining viable rail service for the Chillicothe area. The City's motives are likewise clear: discontinue rail service so that the line can be transformed into yet another trail. VRCC would proffer that its motives, not Chillicothe's, are consistent with this agency's charge as set forth in the National Transportation Policy.

VRCC acknowledges that past precedent has prohibited the filing of an OFA for purchase in

a discontinuance case, but that is the Board's interpretation of the OFA statute. The statute itself makes no such distinction between purchase OFA's in abandonment cases versus discontinuance cases and, in fact, specifically provides for the filing of OFA's in discontinuance cases. VRRRC continues to believe the statute grants the Board authority to authorize a purchase OFA under the circumstances of this case and that there are compelling arguments for the modification of past Board interpretations of the OFA statute in this case so as to allow it. .

Notwithstanding its views of the legal authority of this agency with respect to OFA's in discontinuance cases, VRRRC is informed and believes that the rail line, already suffering from neglect, has endured another major flood. This has likely made the line uneconomical for continued rail use. VRRRC therefore, has no alternative but to, regrettably, move to withdraw its Notice of Intent to File an OFA.

WHEREFORE, VRRRC respectfully requests that the Board reject the misrepresentations of Mr. Montague, note the correction of the record set forth herein, but nonetheless no longer proceed with VRRRC's OFA request, which is hereby withdrawn.

Respectfully submitted,



Daniel A. LaKemper, Esq.
Attorney for
Vandalia Railroad Company
1318 S. Johanson Road
Peoria, Illinois 61607
Tel.: (309) 697-1400

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served by next day air courier this 5th day of June, 2007 upon all parties of record as disclosed by the filings of record herein.



VERIFICATION

I, Daniel A. LaKemper, declare under the penalty of perjury that to the best of my knowledge the facts stated in the foregoing filing are true and correct. Further, I certify that I am qualified to file this Verified Statement. Executed this 5th day of June, 2007.



Daniel A. LaKemper

EXHIBIT A^u

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES AND UNDERTAKINGS CONTAINED HEREIN, THIS SETTLEMENT AGREEMENT is entered into by and among GREEN HILLS RURAL DEVELOPMENT, INC. (herein also "Green Hills"), WABASH & GRAND RIVER RAILWAY CO. (herein also "Wabash"), PIONEER RAILCORP (herein also "Pioneer"), MICHAEL JOHNS (herein also "Johns") and PIONEER RAILROAD EQUIPMENT CO., LTD. (herein also "PREL"); WITNESSETH THAT:

WHEREAS Green Hills, Wabash, Pioneer and Johns are currently engaged in litigation in the Circuit Court of Grundy County, Missouri (Case No. CV1-93-88CC, styled Wabash & Grand River Railway Co., et. al. v. Michael Johns, et. al.) and the United States District Court for the Western District of Missouri (Case No. 93-6094-CV-SJ-6, styled Green Hills Rural Development, Inc, v. Wabash & Grand River Railway Co., et. al.), hereinafter collectively "the Lawsuits"; and

WHEREAS the rail line leased by Wabash from Green Hills between Chillicothe and Kelly Junction, Missouri (herein the "Rail Line") has been severely damaged by flooding and is currently embargoed due to said damage; and

WHEREAS Green Hills, as owner of the Rail Line, desires to terminate and buy out Wabash's lease, assume direct control of the Rail Line, and sever all business relationships with Wabash and PREL;

IT IS HEREBY MUTUALLY AGREED:

1. Agreement A Compromise. The parties hereto have compromised and resolved their several claims in accordance with the terms and conditions hereof, and this shall be construed as a compromise and full settlement, and not as an admission of any liability by any party, all of whom deny liability.

2. Disclaimer of Lease. At Closing Wabash and Pioneer will disclaim any interest in the Lease Agreement between Wabash and Green Hills dated February 23, 1990 (the "Lease"), and will transfer all right, title and interest in any and all subleases, licenses, easements and agreements which pertain to the Rail Line and all collateral properties of Green Hills which are in existence at the time of the execution of this Settlement Agreement. Wabash agrees to provide to Green Hills, all original executed documents which are the subject matter of this Section.

3. Payment. Green Hills shall tender a certified check to Wabash at closing for \$25,000.00.

4. Release by Wabash. WABASH & GRAND RIVER RAILWAY CO. ("Wabash"), PIONEER RAILCORP ("Pioneer"), and PIONEER RAILROAD EQUIPMENT CO., LTD. ("PREL"), for themselves and the officers, directors, employees, agents, representatives, insurers, attorneys, heirs, executors, administrators, personal representatives, successors and assigns of each of them (hereinafter collectively "WGRY"), hereby remise, give up, quit-claim, settle, compromise, fully release and forever discharge GREEN HILLS RURAL DEVELOPMENT, INC. ("Green Hills"), and MR. MICHAEL JOHNS, and the officers, directors, employees, agents, representatives, insurers, attorneys, shareholders, parents, subsidiaries, affiliates, successors and assigns of each of them (hereinafter collectively "Released Parties"), of and from all manner of actions, causes of action, suits, demands, claims, liabilities, debts, promises, accounts, controversies, covenants, contracts, leases, agreements, promises, penalties, judgments, damages, costs, and expenses, whether statutory, at law, or in equity (hereinafter "Claims"), whether or not well founded in fact or law, which WGRY has or might have, or hereafter may have, arising out of, by reason of, or in any way connected with the Lease between Green Hills and Wabash; the operation, use or possession of the railroad between Chillicothe and Brunswick, Missouri; Claims which were asserted in the Lawsuits, or could or would have been asserted therein by amendment, or in any other proceeding or forum; or any other Claims which WGRY may have against the Released Parties based upon any theory, from the beginning of the world to the date of Closing. This release is intended to cover and does cover any Claims which may be unknown or undiscovered, or which may hereafter develop, and the Parties acknowledge that the facts upon which they are relying in entering into this Settlement may later prove to be incomplete or different than currently believed, and the Parties expressly assume that risk.

5. Release by Green Hills. GREEN HILLS RURAL DEVELOPMENT, INC. ("Green Hills") and MR. MICHAEL JOHNS, for themselves and the officers, directors, employees, agents, representatives, insurers, attorneys, heirs, executors, administrators, personal representatives, successors and assigns of each of them (hereinafter collectively "Releasing Parties"), hereby remise, give up, quit-claim, settle, compromise, fully release and forever discharge WABASH & GRAND RIVER RAILWAY CO. ("Wabash"), PIONEER RAILCORP ("Pioneer"), and PIONEER RAILROAD EQUIPMENT CO., LTD. ("PREL"), and the officers, directors, employees, agents, representatives, insurers, attorneys, shareholders, parents, subsidiaries, affiliates, successors and assigns of each of them (hereinafter collectively "WGRY"), of and from all manner of actions, causes of action, suits, demands, claims, liabilities,

debts, promises, accounts, controversies, covenants, contracts, leases, agreements, promises, penalties, judgments, damages, costs, and expenses, whether statutory, at law, or in equity (hereinafter "Claims"), whether or not well founded in fact or law, which Releasing Parties have or might have, or hereafter may have, arising out of, by reason of, or in any way connected with the Lease between Green Hills and Wabash; the operation, use or possession of the railroad between Chillicothe and Brunswick, Missouri; Claims which were asserted in the Lawsuits, or could or would have been asserted therein by amendment, or in any other proceeding or forum; or any other Claims which Releasing Parties may have against WGRY based upon any theory, from the beginning of the world to the date of Closing, This release is intended to cover and does cover any Claims which may be unknown or undiscovered, or which may hereafter develop, and the Parties acknowledge that the facts upon which they are relying in entering into this Settlement may later prove to be incomplete or different than currently believed, and the Parties expressly assume that risk.

6. Other Releases and Disclaimers. The parties have agreed that there will be no proration, or later claims made between the parties, for any costs, expenses or revenues connected with the Rail Line or the Lease. Green Hills and Wabash acknowledge that the property taxes have been paid through December 31, 1992, and that Green Hills will make no claim on Wabash for any portion or proration of said taxes. Wabash and Green Hills acknowledge that Wabash has collected sub-lease, license, and other revenues, and that amounts paid prior to Closing will be retained by Wabash, and Green Hills will make no claim for any proration, and Green Hills will have the right to collect any charges still unpaid at Closing; Provided, however that Green Hills shall advise Ray Carroll Grain Growers to pay Wabash the \$1,200., which fell due on or about June 1, 1993, and, notwithstanding any other provision in this Settlement Agreement, Wabash shall be entitled to that money. The parties further acknowledge that the Rail Line was substantially damaged by the disastrous floods which occurred in the last several months. Neither Wabash, Pioneer, nor PREL make any representation or warranty with respect to the condition, usefulness, or fitness for any purpose whatsoever, of the Rail Line, or any property, structure, fixture, or part thereof or thereon, and Green Hills and Johns agree to accept such AS IS, WHERE IS.

7. Dismissal of Lawsuits. Green Hills, Wabash, Pioneer and Johns shall execute at Closing Stipulations for the immediate dismissal, with prejudice, of the Lawsuits, and shall file such papers promptly after Closing and shall take all such actions as may be necessary or appropriate to effect such dismissal. Each of the parties shall bear their own costs and attorney fees for the Lawsuits and the dismissals thereof.

8. Joint Statements. Green Hills and Wabash shall issue a joint letter to the customers on the Rail Line and a joint press release, at the time of the Closing, in the forms attached hereto as Exhibits A and B; and Green Hills, Wabash, Pioneer and Johns agree that they shall refrain from further comment to such customers, news media, or other third parties regarding the contents of this Settlement Agreement, the Lawsuits, any other matter pertaining to the disputes settled by virtue of this Settlement Agreement, or any other aspect of the conduct or business of either of the other parties to the Lawsuits.

9. Chillicothe Freight House, Kavanaugh and CMU Switches and Appurtenances. At Closing, PREL shall disclaim its leasehold interest in the former freight house in Chillicothe, Missouri (the "Freight House"), and Green Hills shall tender a certified check to PREL for \$6,500.00; and shall purchase the building from Wabash for the sum of \$1.00. In addition, Wabash and Pioneer will transfer all right, title and interest they may have in the rail switch, and all appurtenances thereto, which is presently located near the former Kavanaugh Salvage location in Chillicothe, Missouri (the "Kavanaugh Switch"). Wabash shall tender a Bill of Sale to Green Hills at Closing for the freight house and the Switch, upon payment of the consideration recited hereinabove. Wabash and Pioneer affirm that they claim no interest in the rail switch which is presently located near the Chillicothe Municipal Utilities power plant in Chillicothe, Missouri (the "CMU Switch"), and understand that said switch is the property of Green Hills. Green Hills hereby accepts the Freight House, the Kavanaugh Switch, the CMU Switch, and all other buildings, switches and appurtenances AS IS, WHERE IS. Neither Wabash, Pioneer, nor PREL make any representation or warranty, express or implied, as to the condition, usefulness, or fitness for any purpose whatsoever, of the Freight House, the Kavanaugh Switch, the CMU Switch, or any other building, switch, or appurtenance being transferred or disclaimed in this Settlement.

10. Other Litigation. Wabash, Pioneer and PREL represent that as of the date hereof, which representation shall be also effective as of the time of Closing, there is no litigation, legal or administrative proceedings or other action of any nature pending (other than the Lawsuits) to the knowledge of Wabash, Pioneer or PREL, which involves the possibility of a judgment, lien or liability which may materially adversely affect any of the Rail Line assets, and Wabash, Pioneer and PREL further represent that, to the best of their knowledge, no judgment, lien or other encumbrance exists upon the railroad property, other than easements, licenses, and similar rights that have no material adverse effect on the Rail Line assets. In the event that any such judgment, lien or liability shall exist at Closing, as a result of any action or inaction of Wabash, Pioneer or PREL, such responsible party shall cause the same to be discharged of record, and hold Green Hills harmless therefrom.

11. Entry on Property. Green Hills shall not be permitted to enter upon the property, or authorize the entry of any other party, until after Closing. Green Hills hereby agrees to indemnify and hold harmless Wabash, its officers, directors, employees, agents, insurers, attorneys, affiliates, parents, subsidiaries, successors, and assigns from and against any claim, demand, loss, action, cause of action, expense, or liability, (including, but not limited to, court costs and attorney fees), in any way resulting from or growing out of any entry onto the property, or the Rail Line, prior to Closing by Green Hills, Johns, and/or any other party authorized by Green Hills and/or Johns.

12. Railcars remaining at Closing. Green Hills agrees that any railcars leased or operated by Wabash ("Railcars"), which are still on the Rail Line at Closing shall be permitted to remain, at no cost, until Green Hills can interchange them to any other Class I carrier, and that Green Hills, or its lessee or agent, will interchange them, without any switch fee or other charge, as soon as practical after the Rail Line is reopened, and in the meantime will not use such Railcars for any purpose. A list identifying such Railcars is attached hereto as "Exhibit C".

Provided, however, that in the event any such Railcar(s) is not interchangeable, Green Hills shall permit GE, Wabash and/or PREL, or any agent thereof, to repair such cars at their own expense, so that such Railcar(s) is acceptable for interchange, further provided, that Green Hills shall grant access to GE, Wabash and/or PREL to remove such Railcars by truck or otherwise, at any time prior to interchange, they so elect. In the event GE, Wabash and/or PREL elect to remove such Railcar(s) by truck or other method requiring access to the property, Green Hills shall be permitted to require proof of insurance (in an amount of up to \$1 million), and that Green Hills be a named insured on such policy(ies).

13. ICC Authority. The parties acknowledge that railroads are subject to regulation by the Interstate Commerce Commission ("ICC") Green Hills hereby represents and warrants that it has obtained, or will cause to be obtained (or have its lessee or agent obtain), ICC Common Carrier Authority prior to Closing, and that there will not be any interruption in status of the Rail Line as a common carrier railroad. The parties are informed and believe that Wabash is not required to file an Abandonment petition before the ICC. In the event an Abandonment proceeding is required, the cost of such proceeding (including filing fees, expenses, and attorney fees) will be paid by Green Hills. In addition, in the event an application to the ICC for a change of operators on the Rail Line is required, Wabash and Green Hills shall cooperate with each other in preparing and filing such application, at the sole cost and expense of Green Hills.

14. Other Interests. The parties have no knowledge of any third party claim or interest in the Lease, and Wabash and Pioneer respectively have full corporate power and authority to disclaim any interests which either may have in the Lease and to terminate their respective interests in the Lease, except as to the authority of the ICC in regard to the Lease and interests, if any, arising from the Lease.

15. Closing and Possession. Closing shall take place on Friday November 5, 1993, at the offices Citizens Bank & Trust in Chillicothe, Missouri. Green Hills and Johns shall deliver a fully executed copy(ies) of this Settlement Agreement, and a certified check for \$25,000, payable to "Wabash & Grand River Railway Co."; a certified check for \$6,500. payable to "Pioneer Railroad Equipment Co., Ltd.", and a check (that need not be certified) for \$1.00, payable to Wabash, in accordance with Sections 3 and 9 above (Green Hills acknowledges that a certified check is of the essence and that no other form of check will be accepted). Wabash, Pioneer and PREL shall deliver a fully executed copy of this Settlement Agreement; and, upon confirmation of the delivery by Green Hills and Johns of executed Settlement Agreements and checks, Wabash shall forward by United Parcel Service ("UPS", ground delivery), the original documents described in Section 2, along with the key to the former passenger depot in Chillicothe, Missouri, and a Bill of Sale (pursuant to Section 9). Both parties shall then execute the stipulations for dismissal of the Lawsuits. Green Hills shall take possession of the Rail Line immediately after Closing.

Green Hills and Johns also agree to release, hold harmless and indemnify Wabash, Pioneer, PREL, and the officers, directors, employees, agents, attorneys, insurers, affiliates, successors and assigns of each of them from any loss, liability, cost, expense, claim, or demand, whatsoever, arising out of or in any way connected with any loss, destruction, or damage to the documents identified above which are being forwarded by UPS, that may occur at any time after said documents have been placed in the hands of UPS, regardless of fault, theory of law or liability, or otherwise. Green Hills and Johns acknowledge that they are aware of the importance, fragility and uniqueness of these documents, and have been offered the opportunity to receive and inspect them in person, and that they have voluntarily chosen to assume the risks of shipping and having said documents in the hands of UPS, the Bank, and/or other third parties prior to delivery to them.

16. Construction. This Settlement Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, oral and written. No waiver, modification or amendment of this Settlement Agreement shall have any force or effect unless it is made in writing and signed by the parties, and specifies with particularity the nature and extent of such waiver, modification or amendment. Section headings used herein are for ease of reference

only and shall not be deemed to be a part of this Settlement Agreement for any purpose. Unless expressly provided or the context requires otherwise, words importing the singular meaning shall mean and include the plural number, and vice versa. The parties stipulate to the fairness and adequacy of the consideration for this Settlement Agreement and acknowledge that the terms have been fully understood and voluntarily accepted for the purposes stated herein.

17. Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall be deemed to be one and the same instrument.

18. Binding Effect. This Settlement Agreement constitutes the entire agreement between the parties and it shall be binding upon and inure to the benefit of the parties, and their respective officers, directors, agents, employees, attorneys, insurers, successors and assigns, provided, however, that none of the parties may assign any right or obligation hereunder except with the written consent of the other parties.

IN WITNESS WHEREOF the parties hereto have caused this Settlement Agreement to be executed as this 5th day of November, 1993.

WABASH & GRAND RIVER RAILWAY CO.

By: _____
Name:
Title:

PIONEER RAILCORP

By: _____
Name:
Title:

PIONEER RAILROAD EQUIPMENT CO., LTD

By: _____
Name:
Title:

GREEN HILLS RURAL DEVELOPMENT, INC.

By: Ronald G. Glidewell
Name: **RONALD G. Glidewell**
Title: **PRESIDENT**

MICHAEL JOHNS

By: Michael R. Johns

CERTIFICATE OF EXECUTION

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

Before me the undersigned Notary Public personally appeared _____, being personally well known to me, and under oath he stated that he is the duly authorized _____ of Wabash & Grand River Railway Co. ("Company") and that, with full authority so to do, he executed the foregoing Settlement Agreement by and on behalf of the Company.

Notary Public

CERTIFICATE OF EXECUTION

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

Before me the undersigned Notary Public personally appeared _____, being personally well known to me, and under oath he stated that he is the duly authorized _____ of Pioneer Railcorp ("Company") and that, with full authority so to do, he executed the foregoing Settlement Agreement by and on behalf of the Company.

Notary Public

CERTIFICATE OF EXECUTION

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

Before me the undersigned Notary Public personally appeared _____, being personally well known to me, and under oath he stated that he is the duly authorized _____ of Pioneer Railroad Equipment Co., Ltd. ("Company") and that, with full authority so to do, he executed the foregoing Settlement Agreement by and on behalf of the Company.

Notary Public

CERTIFICATE OF EXECUTION

STATE OF MISSOURI)
) SS
COUNTY OF Livingston)

Before me the undersigned Notary Public personally appeared Ronald G. Glidewell, being personally well known to me, and under oath he stated that he is the duly authorized President of Green Hills Rural Development, Inc. ("Corporation") and that, with full authority so to do, he executed the foregoing Settlement Agreement by and on behalf of the Corporation.



Notary Public Jo Ann Boyer

My Commission Expires: January 22, 1994

CERTIFICATE OF EXECUTION

STATE OF MISSOURI)
) SS
COUNTY OF Livingston)

Before me the undersigned Notary Public personally appeared Michael Johns, being personally well known to me, and under oath he stated that he executed the foregoing Settlement Agreement voluntarily on behalf of himself individually.



Notary Public Jo Ann Boyer

My Commission Expires: January 22, 1994

EXHIBIT A

RELEASE TO NEWS MEDIA:

FOR IMMEDIATE RELEASE

Wabash & Grand River Railway Co., Pioneer Railcorp, Green Hills Rural Development, Inc. and Mr. Michael Johns agreed today to the dismissal of the lawsuits pending between them in the United States District Court in St. Joseph and the Grundy County Circuit Court in Trenton. The Wabash will cease operating the rail line between Chillicothe and Brunswick, which was heavily damaged by recent floods. In a letter to customers the Company explained that Green Hills was in a better position to pursue the grants needed to repair the damage the line has suffered. No date has been set as yet to resume operation, however Green Hills, which leased the line to Wabash in April, 1990, intends to rebuild the line with that flood relief assistance, and then return the line to service.

EXHIBIT B

LETTER TO CUSTOMERS:

Dear Shippers:

As you know, the Wabash & Grand River Railway has been out of service since this summer's devastating floods, and the Wabash and Green Hills have recently become involved in litigation concerning the railroad. Wabash and Green Hills are pleased to announce that they have reached a Settlement Agreement resolving all pending litigation. Green Hills will be assuming operation of the railroad on November 2. The Wabash appreciates your past patronage and regrets having to make this decision. The flood damage, however, is far greater than a small operator can manage, and Green Hills is in a better position to pursue the flood relief and rebuilding grants which will be needed to restore the line to service. Green Hills intends to make every effort to resume service as soon as possible, and asks for your continued patience during this period.

**WABASH & GRAND RIVER RAILWAY CO.
GREEN HILLS RURAL DEVELOPMENT, INC.**

EXHIBIT C

RAILCARS THAT MAY BE REMAINING ON THE PROPERTY AT CLOSING:

<u>TYPE</u>	<u>MARKED</u>	<u>CAR OWNER</u>	<u>LESSEE</u>	<u>LOCATION</u>
CVD HOPPER	MSDR #63842	GE	WGRY	TRIPLETT
CVD HOPPER	MSDR #30124	GE	WGRY	TRIPLETT
CVD HOPPER	MSDR #63926	GE	WGRY	TRIPLETT
CVD HOPPER	MSDR #30125	GE	WGRY	TRIPLETT
CVD HOPPER	WGRY #606601	PREL	WGRY	TRIPLETT
CVD HOPPER	WGRY #246955	PREL	WGRY	TRIPLETT
CVD HOPPER	WGRY #246180	PREL	WGRY	TRIPLETT
CVD HOPPER	MSDR #30127	GE	WGRY	SUMNER
CVD HOPPER	MSDR #63803	GE	WGRY	SUMNER
CVD HOPPER	MSDR #63847	GE	WGRY	SUMNER
CVD HOPPER	MSDR #30128	GE	WGRY	SUMNER
CVD HOPPER	MSDR #63877	GE	WGRY	SUMNER
CVD HOPPER	MSDR #64180	GE	WGRY	SUMNER
CVD HOPPER	MSDR #63958	GE	WGRY	CHILLICOTHE
CVD HOPPER	MSDR #30126	GE	WGRY	CHILLICOTHE
CVD HOPPER	MSDR #63271	GE	WGRY	CHILLICOTHE
GONDOLA	MSDR #51654	GE	WGRY	CHILLICOTHE
GONDOLA	MSDR #51657	GE	WGRY	CHILLICOTHE
GONDOLA	ALAB #1001	PREL	ALAB	CHILLICOTHE

END

EXHIBIT A

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Constitution-Tribune



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THURSDAY MAY 24, 2007 Last modified Wednesday April 25, 2007 3:18 PM CDT

Court grants extension to restraining order

By CATHERINE STORTZ RIPLEY, C-T News Editor

A temporary restraining order has been extended to keep the city of Chillicothe from taking any further action regarding the agreement it has with Montoff Transportation, LLC, for the sale of the city-owned railroad.

Circuit Court Judge Stephen K. Griffin granted a 15-day extension to the current temporary restraining order after hearing all hours of testimony at the Livingston County courthouse on Tuesday.

Testimony came from John Rupp Jr., who filed the petition against the city of Chillicothe, City Clerk Rozanne Frampton, Mayor Todd Rodenberg, and Michael J. Van Wagenen, vice president and general counsel for A&K Railroad Materials, Inc.

Several individuals were subpoenaed but not called to the witness stand. They included all members of the former city council and the city administrator.

After all testimony and the closing arguments were heard, the judge told both parties that he planned to issue a ruling soon.

Rupp filed the petition for a temporary restraining order last month and later posted a \$25,000 bond as required by the court to grant the restraining order. In the petition, Rupp alleges that the sale of the city-owned railroad last year for \$976,000 was improper and failed to comply with city ordinances.

Chillicothe City Council members unanimously voted Oct. 9, 2006, to offer a contract for the sale of some 30 miles of railroad to Montoff Transportation Company. The ordinance authorizing the execution of a real estate agreement with Montoff was signed by Mayor Rodenberg on Nov. 20, 2006. The notice of intent to sell real estate was posted at City Hall on Nov. 17 and published Nov. 20, 2006, in the Constitution-Tribune. The notice stated that any comments regarding the sale would need to be filed with the clerk by Nov. 22, 2006. Montoff signed and returned the contract in early December.

A&K Railroad Materials, Inc., since alleged that the city sold the railroad "substantially below fair market value" to Montoff Transportation Company and thus offered to buy the materials for \$1,250,000. Rupp filed his petition after the city received the offer.

Rupp says that the purchase agreement should be voided. He said that his rights as a resident taxpayer and citizen of the city and the rights of all other resident taxpayers and citizens are subject to "irreparable harm for which there is no adequate remedy" at which time the city is allowed to consummate the transaction and sell property substantially less than might be obtained through a competitive bidding process.

For more of this story and local news, read today's edition of the Constitution-Tribune. To subscribe, call 660-646-2411.

Close Window

EXHIBIT B