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**VILLAGE OF TOLONO**  
**RESOLUTION NUMBER 98- 5**

A RESOLUTION AUTHORIZING THE SETTLEMENT OF  
A RAIL CONNECTION DISPUTE BETWEEN THE VILLAGE  
OF TOLONO AND NORFOLK SOUTHERN

ADOPTED AND PUBLISHED IN PAMPHLET FORM  
THIS 1<sup>st</sup> DAY OF DECEMBER, 1998

**VILLAGE OF TOLONO**  
**RESOLUTION NUMBER 98-\_\_\_\_\_**

A RESOLUTION AUTHORIZING THE SETTLEMENT OF  
A RAIL CONNECTION DISPUTE BETWEEN THE VILLAGE  
OF TOLONO AND NORFOLK SOUTHERN

WHEREAS: The Village of Tolono Board of Trustees is charged with the health, safety and welfare of its citizens; and

WHEREAS: The Board of Trustees determined that certain safety issues warranted the authorization of litigation on behalf of the Village and against Norfolk Southern Railway Company under its various designations; and

WHEREAS: The parties have reached a settlement as further outlined in a settlement document attached hereto and by reference incorporated herein which the Board of Trustees has determined satisfies its concerns to the benefit of the public.

**BE IT ORDAINED AND HEREBY RESOLVED** by the President and Board of Trustees of the Village of Tolono, Champaign County, Illinois, that the Board of Trustees hereby approves of the terms contained in the aforementioned settlement agreement and directs its attorneys, Miller & Hendren, by Marc R. Miller to execute same on behalf of Village and otherwise carry out the terms of said agreement. It is further resolved that Marc R. Miller may designate such other attorneys to execute such other documents on behalf of Village as he determines appropriate and necessary to carry out the terms of said agreement.

**PASSED, APPROVED, ADOPTED AND OTHERWISE RESOLVED** by the President of said Board of Trustees said 1st day of December, 1998 and effective this date.

**RECORDED** by the Village Clerk this 1st day of December, 1998.

APPROVED:

\_\_\_\_\_  
President, Board of Trustees

ATTEST:

\_\_\_\_\_  
Village Clerk

Effective this date and published in pamphlet form in accordance with Illinois Law.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
CHAMPAIGN COUNTY, ILLINOIS

Village of Tolono, an Illinois )  
Municipal Corporation, )  
Plaintiff, )  
vs ) Case No. 98-CH-212  
Norfolk Southern Railway Company )  
Defendant )

**SETTLEMENT AGREEMENT**

NOW COMES the Village of Tolono, Plaintiff and Norfolk Southern Railway Company, Defendant by their respective attorneys who hereby enter into the following agreement:

1. Plaintiff stipulates and agrees that Defendant is not obligated to undertake the platting requirements set forth in Plaintiff's Petition on file in the above matter. Plaintiff further stipulates and agrees that the connection track work referenced in said Petition may be constructed by Defendant concurrent with execution of this Agreement. Defendant does not concede the applicability of the Plat Act to said work.
2. Except for Plaintiff's negligence, Defendant agrees that as part of said construction it will assume all responsibility for repairing, at its cost, any utilities damaged as a result of its said construction at this site. Defendant reserves the right to proceed against any entity other than Plaintiff that may be liable for damage.
3. Defendant agrees to construct all improvements consistent with the plans presented to the Village of Tolono identified as TD 98-0088, dated September 1, 1998, and identified as Version R-3. The parties recognize that said plans do not disclose elevations for drainage and other purposes, and the parties stipulate and agree that Defendant shall construct such improvements to the reasonable satisfaction of the Plaintiff's engineer, Daily & Associates, consistent with applicable drainage requirements and with customary engineering practices for East Central Illinois.
4. As part of the construction of the subject connection track and prior to using the connection track, Defendant agrees to install lubricating devices, a/k/a "oilers", for purposes of reducing wheel noise.
5. The parties recognize that during construction Defendant shall disturb the road bed of Benham Street situated in Tolono, Illinois and shall be permitted to fill in such disturbed portions with a rock surface consistent with area practice and then repave such surface on or before April 1, 1999 or as soon thereafter as weather permits.

6. For those portions of the improvements which constitute ditches, Defendant agrees to seed and mulch same in a customary manner consistent with reasonable requirements of said Plaintiff's engineer. All such work shall be performed on or before April 1, 1999.
7. Defendant represents its current plan is not to stop trains on the connection track, except for emergencies, mechanical difficulties or other circumstances beyond the control of Defendant. This shall likewise not constitute a waiver by Plaintiff of any right or claim that it may have under applicable law to enforce agreements and/or other restrictions which may otherwise apply to said connection track and its use and operation.
8. Defendant agrees to verify the Bourne Street and Elizabeth Street crossings within the Village of Tolono, Illinois are in normal working condition and shall make all necessary repairs to effectuate same. All work shall be performed in a workmanlike manner consistent with customary practice for improving crossing grades at rail intersections by May 1, 1999.
9. Defendant agrees by April 1, 1999 to install 30 Honey Locust trees each being 2-3" in diameter situated approximately 20 feet apart along the road side adjacent to said connection track per plans. Defendant will retain its one year warranty provided by its contractor for the said trees and enforce the same for any trees about which Defendant becomes aware which require replacement. During said period, Plaintiff agrees to notify Defendant of such trees as Plaintiff becomes aware of which require replacement. After one year after installation Village agrees to assume responsibility for maintenance of said Honey Locust trees for the duration of this agreement. In the event that any of said trees die, is damaged or otherwise needs to be replaced, the Village shall be responsible for replacement at its election. Railroad shall pay village \$1,500.00 for such services on or before April 1, 1999.
10. The parties stipulate and agree that this Agreement shall be incorporated as part of an order by the Court in the foregoing matter. It is further agreed that to the extent that it is necessary to enforce this Agreement by either party, that the Agreement shall be enforceable in a Court of Competent Jurisdiction situated in Champaign County, Illinois.

Entered into the 30<sup>th</sup> day of November, 1998.

Village of Tolono  
By: Miller & Hendren Law, Attorneys

Norfolk Southern Railway Company  
By: Hatch & McPheters, Attorneys

By: \_\_\_\_\_  
Marc R. Miller

By: Brian L. McPheters  
Brian McPheters

Prepared By:  
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