

AGREEMENT

This Agreement is entered into by and between the State of Ohio, Department of Natural Resources pursuant to section 1501.01 of the Revised Code and Betty Pugh Berry.

Whereas, pursuant to section 9.20 of the Revised Code, the family of Jim Pugh donated a set of train bells to the Department of Natural Resources; and

Whereas, the Department of Natural Resources no longer has a need for the entire set and Betty Pugh Berry has requested that one of the bells be returned to the family.

Now therefore, in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration the receipt of which is hereby acknowledged by the Department of Natural Resources, the parties hereto agree to the following.

1. With the approval of the Department of Natural Resources, Betty Pugh Berry shall receive a bell to retain, which bell shall be that one mutually agreed to between the parties hereto.
2. Louie Andres, Manager of Malabar Farm State Park, shall be the contact person for the Department of Natural Resources and Betty Pugh Berry shall coordinate with him in order to achieve the purposes for which this agreement is entered.
3. Obligations of the state are subject to the provisions of section 126.07 of the Revised Code.
4. Nothing contained in this Agreement shall be construed to obligate the State to provide any other individual with a bell.

In Witness Whereof, the parties hereto have set their hands as of the dates indicated herein below.

Betty Pugh Berry
 Betty Pugh Berry
6/2/94
 Date

Dan West for GDA
 Chief, Division of Parks and Recreation
6/13/94
 Date

Approved:

Lee Fisher
 Attorney General of Ohio

By: John C. Miller
 Assistant Attorney General

Date: 6-14-94

Donald O. Anderson for
 Director, Ohio Department of Natural Resources

6/15/94
 Date
George V. Voinovich
 George V. Voinovich, Governor
6/21/94
 Date

**LEASE AGREEMENT FOR TRAIN BELL
BETWEEN
ROBERT BERRY
AND THE
OHIO DEPARTMENT OF NATURAL RESOURCES
DRAFT**

This Lease Agreement for a Train Bell (“Agreement”) constitutes the agreement between Bob Berry and _____, Husband & Wife whose residence address is _____ (“Lessee”) and the State of Ohio, Department of Natural Resources, Division of Parks, 2045 Morse Road, C-4, Columbus, Ohio 43229-6605 (“Lessor”).

WHEREAS, the family of Mr. James Pugh, Dec’d., sold a set of train bells to Lessor at the time that the Lessor acquired the fee interest in and to the lands, structures and personal property located at the site now known as the Malabar Farm State Park, all as evidenced by the purchase documents set forth at Volume 13, Page 557 of the Richland County Records, a copy of which is attached as Exhibit “A”; and

WHEREAS, the Malabar Farm facilities and personal property are public service facilities journalized by the Ohio Department of Natural Resources pursuant to Ohio Revised Code Chapter 1501; and

WHEREAS, Lessee, Mr. Robert Berry, an heir and descendant of James Pugh, has requested that one of the train bells the full collection of which was acquired by the Lessor when it acquired the Malabar Farm State Park be leased to Lessee; and

WHEREAS, the Director of the Ohio Department of Natural Resources is authorized to enter into a lease for personal property pursuant to Ohio Revised Code Section 1501.01 (G) and

WHEREAS, Lessor is willing to lease one of the train bells to Borrower under certain advantageous terms and conditions that recognize and memorialize the nature of the Lessor’s property interest in the Bell;

NOW THEREFORE, in consideration of the mutual promises herein made, the parties agree and the Lessee does hereby covenant, for himself and his heirs, successors and assigns as follows:

1. SUBJECT MATTER OF LEASE

The train bell described below (the “Bell”) is received by the Lessee for the exclusive purpose of exhibition as an heirloom only at the Lessee’s residence. The train bell received by the Borrower is described as follows: *[insert detailed description consistent with the details provided in the Pennsylvania Ry. Co. description dated 1/19/1985]*. The bell leased hereunder is illustrated in the photograph attached to this Lease as Exhibit “B”.

2. DURATION OF LEASE AND ASSIGNMENT

The Lessor shall allow the Bell to remain in the possession of the Borrower for a period of twenty-five years from the date of this Agreement. The Bell shall be subject to return to Lessor at any time upon Lessor’s request, which request shall not be unreasonably made. The Bell may not be transferred, assigned or in any other way removed from the Lessee’s possession without the express and prior written consent of Lessor.

At the conclusion of the Lease period, the Lessee shall return the Bell to Lessor within five (5) business days at the return address listed above in as good a condition as that in which the Lessee received it.

This Lease may be renewed for additional time as may be mutually agreed by the parties.

3. RENTAL PAYMENT DUE

The Lessee shall pay to the Lessor the sum of twenty five dollars (\$1.00) per year for the privilege of being able to exhibit the Bell.

3. CARE AND PRESERVATION

The Lessee will give to the Bell the same care as he does to comparable property of his own. The Bell will be protected from fire, theft, mishandling, dirt and insects, and extremes of light, temperature and humidity while in the Lessee's custody, subject to the limitations stated in Section 4 (Insurance) below.

Evidence of damage not described in Lessor's condition report and illustrated in Exhibit "B" at the time of receipt or while in the Lessee's custody will be reported immediately to Lessor.

Since the Bell is an historical artifact, the Lessee shall not alter the object without the express and prior written consent of Lessor.

4. INSURANCE

The Bell will be insured by the Lessee in the amount of \$500. The Lessee shall name Lessor as an additional insured on the policy. Prior to execution of this Lease Agreement, the Lessee shall provide Lessor with a certificate of insurance evidencing such insurance coverage.

5. The Manager of Malabar Farm State Park shall be the contact person for the Lessor and Lessee shall coordinate with the manager, presently Mr. Korre Boyer, in order to achieve the purposes for which this Lease Agreement is entered.

5. CHANGE IN ADDRESS

It is the responsibility of Lessee to notify Lessor promptly in writing if there is a change in Lessee's address.

6. RETURN OF LEASED PERSONAL PROPERTY

When the Bell is returned by the Lessee, the Lessor shall have thirty (30) days to examine its condition and make any claims for damages.

7. APPLICABLE LAW

This Agreement shall be constructed in accordance with the laws of the State of Ohio and any claims or disputes concerning the Bell shall be heard in the courts of Franklin County, Ohio.

8. DEFAULT

Failure by Borrower or ODNR to comply with any term or condition of this Agreement shall entitle the other party to give the party in default written notice requiring it to make good such default. If the party in default has not cured such default within thirty (30) days after receipt of such notice, the notifying party shall be entitled, in addition to any other rights it may have under this Agreement or otherwise by law, to terminate this Agreement, or portion thereof, by giving notice to take effect immediately. No party

shall be deemed in default of its obligations to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God and strikes or other labor disturbances.

9. **SEVERABILITY**

If any of the provisions of this Agreement are declared to be invalid, such provisions shall be severed from this Agreement and the other provisions hereof shall remain in full force and effect.

10. **NON-WAIVER**

No term or provisions hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach of the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

11. **SECTION TITLES**

Titles to the sections of this Agreement are solely for the convenience of the parties and do not explain, modify, interpret, or expand the provisions herein.

LESSEE

LESSOR

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

EXHIBIT A – PURCHASE DOCUMENTS

EXHIBIT B - PICTURE