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May 24, 2005

**VIA E-MAIL, FACSIMILE,
AND FIRST-CLASS MAIL**

Bernadette R. Juarez, Esq.
Office of the General Counsel
United States Department of Agriculture
1400 Independence Avenue, S.W.
Room 2331A
Washington, D.C. 20250-1417

Re: The Elephant Sanctuary in Tennessee and the Remaining
Twelve Hawthorn Corporation Elephants

Dear Ms. Juarez:

Carol Buckley of the Elephant Sanctuary has asked me to respond on behalf of the Sanctuary to your letter to Ms. Buckley dated May 19, 2005, which you wrote in response to Ms. Buckley's email to you of May 18, 2005. A copy of Ms. Buckley's email is attached hereto as Attachment 1, and a copy of your May 19th letter is attached hereto as Attachment 2. In particular, Ms. Buckley has requested that I respond to your statements in the third paragraph of your May 19th letter.

The third paragraph begins, "Second, it is my understanding that the Elephant Sanctuary has declined to accept any more of the Hawthorn elephants." (See Att. 2 at p. 1.) It is absolutely not true that the Sanctuary has declined to accept any more elephants, and Ms. Buckley and I are baffled at how you reached that understanding. The Sanctuary repeatedly has stated its desire to receive the remaining Hawthorn elephants. On November 30, 2004, I wrote to Derek Shaffer (counsel for Hawthorn) with a copy to you and expressed the Sanctuary's interest in transferring the remaining elephants from Hawthorn to the Sanctuary. A copy of that letter is attached hereto as Attachment 3. In February and early March of this

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year, you, Mr. Shaffer, and I communicated several times, both separately and as a group and both orally and in writing, regarding the potential transfer of some or all of the Hawthorn elephants to the Sanctuary. At no time during these discussions did the Sanctuary “decline[] to accept any more of the Hawthorn elephants.” (See Att. 2 at p. 1.) The Sanctuary did, in fact, decline to accept Nicholas, one of the Hawthorn elephants, because he is a bull elephant, the Sanctuary currently houses only female elephants, and there are numerous issues raised by introducing a male into a herd of females. The Sanctuary made known its decision regarding Nicholas in my letter dated February 15, 2005, to you and Mr. Shaffer, a copy of which is attached hereto as Attachment 4. (See Att. 4 at p. 2.) In that same letter, the Sanctuary stated “that it can, and is willing to, take Joy,” the only African female, and that it “is willing to take all of the ten Asian female elephants.” (See Att. 4 at p. 2.) Thus, the Sanctuary has stated unequivocally that it will take eleven of the twelve remaining Hawthorn elephants.

The next sentence of your letter states, “Neither you nor the Elephant Sanctuary has ever conveyed to me that the Elephant Sanctuary was able or willing to ‘take all of the female [elephants]’ unconditionally.” (See Att. 2 at p. 1 (*quoting* Att. 1 at p. 1).) You are correct in that the Sanctuary has never stated it will take the elephants **unconditionally**. Neither has the USDA or Hawthorn offered the elephants **unconditionally**. During the numerous communications between the USDA, Hawthorn, and the Sanctuary, I was under the impression that the three parties were engaged in good faith **negotiations** regarding the possible transfer of the elephants from Hawthorn to the Sanctuary. I do not recall the USDA or Hawthorn ever stating that the elephants were offered to the Sanctuary unconditionally, and would have not expected either the USDA or Hawthorn to take that approach. If in fact it was the USDA’s intent for the Sanctuary to accept the elephants unconditionally, or for that matter, even with nonnegotiable conditions, why was it suggested that the Sanctuary and not the USDA prepare the list of issues contained in my February 15th letter? During February of this year, the three parties had reached a common goal: the USDA wanted the elephants removed from Hawthorn’s ownership, Hawthorn was amenable to sending its remaining elephants to the Sanctuary, and the Sanctuary agreed to take eleven of the twelve Hawthorn elephants. On March 3rd, the date of my last letter to you and Mr. Shaffer, we had just begun the negotiations over the parameters of that transfer.

The third sentence of your third paragraph states, “On February 15, 2005, the Elephant Sanctuary, through its counsel, represented to APHIS and to counsel for Hawthorn that it had identified ‘major issues’ that prevented the Elephant Sanctuary from agreeing to be a donee for Hawthorn elephants.” (See Att. 2 at p. 1 (*quoting* Att. 4 at p. 2).) That is not an accurate statement or a fair reading of my

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May 24, 2005
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February 15th letter. In context, I used the phrase “major issues” as follows: “The Sanctuary is very excited about the possibility of receiving additional Hawthorn elephants. Following are some major issues the Sanctuary has identified, and its thoughts or suggestions about some of them, in no particular order.” (See Att. 4 at p. 2.) There is nothing in those two sentences that even hints that the Sanctuary was declining to be a donee. If that were the case, I would not have written two-and-one-half pages regarding issues that the Sanctuary wanted to address in upcoming discussions and negotiations. In fact, I wrote the February 15th letter as a result of communications among you, Mr. Shaffer, and me, during which we decided that the Sanctuary should attempt to make a list of issues on which the USDA, Hawthorn, and the Sanctuary needed to reach agreement before the elephants were transferred. As further evidence that my February 15th letter was anything but a statement that the Sanctuary could not or would not be a donee, I concluded that letter with the following statement: “There are undoubtedly other details that must be negotiated before the transfer of the eleven elephants from Hawthorn to the Sanctuary, but the items set forth above should serve as a starting point for negotiations. I look forward to speaking with both of you again soon.” (See Att. 4 at p. 5.) The “major issues” (See Att. 4 at p. 2.) were in fact a “starting point for negotiations” (See Att. 4 at p. 5.), not reasons that prevented the Sanctuary from taking the elephants. Again, my letter of February 15th speaks for itself with regard to the Sanctuary’s intent.

The fourth sentence of your third paragraph refers to some of the “major issues” (See Att. 4 at p. 2.): “Among other things, the Elephant Sanctuary would not agree to accept any elephants until September 2005, when its new barn was built, would not undertake the ‘care, feeding, [and] veterinary inspection’ of the Hawthorn elephants in the interim, and would not accept elephants absent Hawthorn’s agreement to provide ‘financial assistance’ for their future care.” (See Att. 2 at p. 1 (quoting Att. 4 at pp. 3 & 4).) I will address the three contentions in this sentence individually in the following three paragraphs.

It is essentially true that the Sanctuary “would not agree to accept any elephants until September 2005.” (See Att. 2 at p. 1.) As explained in detail in my letter to you and Mr. Shaffer dated March 3rd, a copy of which is attached hereto as Attachment 5, it is more accurate to state that the Sanctuary **could not** accept the elephants until September 2005. As you know, the Sanctuary is building a new barn and will be capable of housing all eleven remaining Hawthorn females upon completion of that barn. The Sanctuary simply has no place to keep eleven elephants until that barn is finished. But even if the Sanctuary was able to house them in temporary facilities, the State of Tennessee will not allow the Sanctuary to keep elephants in temporary facilities. The Sanctuary wishes the barn was

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completed today, but the practical reality is that the barn will not be completed until September. As you may recall, it is this issue and this issue alone that stopped negotiations on March 3rd.

With respect to the “care, feeding, [and] veterinary inspection” (*See* Att. 2 at p. 1 (*quoting* Att. 4 at p. 3.)), it is true that the Sanctuary expressed its desire that as long as Hawthorn owned and possessed the eleven elephants, Hawthorn would be responsible for their care. Given Hawthorn’s reluctance (if not outright refusal, although this issue had yet to be negotiated) to allow Sanctuary personnel on Hawthorn’s Richmond, Illinois grounds, and given that none of the three parties was interested in expending large sums of money for the transfer of the elephants to an interim third-party facility, this proposal seemed reasonable then, and seems just as reasonable today. Again, however, this item was simply one of many items on the Sanctuary’s list that it viewed as the “starting point for negotiations.” (*See* Att. 4 at p. 5.)

Regarding your statement that the Sanctuary “would not accept elephants absent Hawthorn’s agreement to provide ‘financial assistance’ for their future care,” I am again at a loss. (*See* Att. 2 at p. 1 (*quoting* Att. 4 at p. 4.)) In my February 15th letter, I wrote, “The Sanctuary proposes that Hawthorn provide some financial assistance for the future care of the eleven elephants.” (*See* Att. 4 at p. 4.) The Sanctuary did not demand financial assistance, did not state that the lack of financial assistance was a deal breaker, and did not cease communications, discussions, or negotiations with the USDA and Hawthorn, even in the face of Hawthorn’s repeated clear, unequivocal statements that Hawthorn was not willing to provide any financial assistance for the care of the elephants. If this was a deal breaker for the Sanctuary, the Sanctuary would have terminated discussions after Mr. Shaffer’s clear statements that financial assistance from Hawthorn would not be forthcoming. The reality is, the parties never “negotiated” financial assistance in the sense that one party put a number on the table, the other countered, and so forth. Mr. Shaffer was clear that Hawthorn’s position was that it would provide no financial assistance for the care of the Hawthorn elephants. He never waived on this point. He did offer, however, to convey any substantive proposals regarding financial assistance, including dollar amounts, mechanisms, transfer dates, etc., to his client for its consideration. However, the parties never reached that point. The Sanctuary “proposed” financial assistance, Hawthorn responded “no,” but we never “negotiated” anything with respect to financial matters. As you may recall, all discussion between the three parties ceased on March 3rd, when the USDA refused to agree to the transfer of the eleven elephants in September 2005. Had the USDA not terminated negotiations on March 3rd, I have no doubt the Sanctuary would have provided Mr. Shaffer with a concrete dollar proposal and ideas for funding

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mechanisms, but it never had the opportunity. At any rate, the Sanctuary never conveyed to the USDA or Hawthorn that it would not take the Hawthorn elephants without financial assistance as you allege.

Finally, the next-to-last sentence in the third paragraph of your letter states, "To my knowledge, the Elephant Sanctuary's position has not changed with respect to these or the other items in its February 15 letter." (See Att. 2 at p. 1.) That is true, with the following caveats. First, the items set forth in my February 15th letter were, once again, a "starting point for negotiations" (See Att. 4 at p. 5.) that I set forth after you, Mr. Shaffer, and I concluded we needed a list of items that, from the Sanctuary's point of view, needed to be addressed in negotiations for the transfer of the elephants. These items and statements contained therein were not couched as demands, but rather reflected a list of topics and the Sanctuary's "thought or suggestions about some of them." (See Att. 4 at p. 2.) Second, the communications, discussions, and negotiations between the USDA, Hawthorn, and the Sanctuary that ceased on March 3, 2005, did not end because of any failure to reach agreement on most of the twelve bullet point items set forth in my February 15th letter, but because the USDA refused to consider the fourth bullet point in my February 15th letter, which is the transfer of the elephants in September 2005.

Hawthorn responded to my February 15th letter with a letter from Mr. Shaffer on February 21, 2005. As you may recall, the Sanctuary responded to Hawthorn's February 21st letter with a letter from me on March 3rd. In the letter, I express the Sanctuary's view that of all of the issues on the table for discussion at that time, the "threshold issue" was "timing of the transfer." (See Att. 5 at p. 3.) In that letter, I explained the Sanctuary's conclusion and supporting rationale that it was physically impossible for the Sanctuary to take the elephants before September 1, 2005, when the new barn is completed. In addition, and of great consequence given the statements in your letter of May 19th, I stated, **"The Sanctuary hopes discussions can continue with both Hawthorn and the USDA, and again, it is amenable to exploring creative solutions to most other issues arising from the transfer of the Hawthorn herd to the Sanctuary."** After sending my letter to you and Mr. Shaffer on March 3rd, I do not believe I have heard anything directly from the USDA again. Neither I nor Ms. Buckley have received any written response from the USDA, and I have no notes, records, or recollection of telephone conferences with you or anyone else at the USDA following my March 3rd letter. I do recall, and have notes of, a telephone conference with Mr. Shaffer that occurred on March 3rd during which he told me that the two of you had discussed my March 3rd letter that day, that the USDA was not willing to wait until September to place these elephants, and that the USDA and Hawthorn would pursue other potential donees. The bottom line is that the only reason discussions and negotiations ended

Letter to B. Juarez
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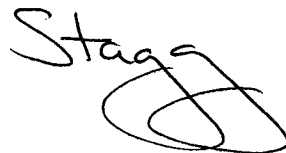
on March 3rd, 2005, is that the USDA refused to consider or discuss further the Sanctuary's position that it could not take the remaining elephants before September 2005.

You finish your May 19th letter with the conclusion that the Sanctuary "has determined that the better course is to allow all twelve of the Hawthorn elephants to remain in Illinois for the indefinite future." (See Att. 2 at pp. 1-2.) This is not an accurate summary of the Sanctuary's view and nowhere has the Sanctuary ever stated that it is. As the Sanctuary made clear in my March 3rd letter, the Sanctuary proposes it take possession of the Hawthorn elephants in September of this year. There is nothing "indefinite" about the Sanctuary's March 3rd proposal. Almost three months have now passed since the USDA terminated our discussions, September is a short three months away, and the Hawthorn herd remains in Illinois, with no prospects of finding another home together, other than the Sanctuary. I continue to be baffled by the fact that the USDA, Hawthorn, and the Sanctuary all have the same goal—the transfer of the remaining elephants from the Hawthorn facility—and yet we cannot get past the issue of date of transfer and on to a serious discussion and negotiation of the details. The Sanctuary not only remains open to, but encourages, further discussion among the USDA, Hawthorn, and the Sanctuary regarding the transfer of the remaining eleven female elephants from Hawthorn to the Sanctuary.

Let there be no doubt: The Sanctuary wants all of the remaining eleven female elephants from the Hawthorn herd!

I look forward to speaking with you again soon.

Very truly yours,

Michael K. Stagg

Michael K. Stagg

MKS/bmc

cc: Carol Buckley, Executive Director, The Elephant Sanctuary in Tennessee
Derek L. Shaffer, Esq., Counsel for the Hawthorn Corporation
Dr. Chester A. Gipson, Deputy Administrator, USDA, APHIS
Dr. Betty Goldentyer, Eastern Regional Director, USDA, APHIS
Dr. Denise Sofranko, USDA, APHIS

ATTACHMENT

1

May 18, 2005

Via e-mail

Hello Bernadette,

I read on Peta's web site that the USDA plans to allow the Carson and Barnes Circus to receive some of the Hawthorn elephants. I am contacting you to determine if this information is correct and if Carson and Barnes plans to accept all of the Hawthorn elephants. If the allegations of this placement are true I am disappointed that USDA would allow an organization with a documented history of elephant abuse to receive any of these elephants, as if they have not already suffered enough.

As you are aware our position is that we will take all of the females. It would be unethical for us to assist the separation of the herd by agreeing to take less than all.

I am also writing to repeat some information for the record. The Elephant Sanctuary never entered into negotiations with the Hawthorn Corporation regarding funding for the Hawthorn elephants. Although we were honest with Hawthorn's council about the cost associated with taking over the herd, neither Hawthorn's council nor John Cuneo himself ever engaged us in any discussions regarding funding.

Thank you for any information you are prepared to provide,
Carol

ATTACHMENT

2



United States
Department of
Agriculture

Office of the
General
Counsel

Washington,
D.C.
20250-1400

May 19, 2005

BY FACSIMILE, ELECTRONIC MAIL & REGULAR MAIL

Carol Buckley
The Elephant Sanctuary in Tennessee
Post Office Box 393
Hohenwald, Tennessee 38462

Dear Ms. Buckley:

I write in response to your email concerning the donation of elephants by John F. Cuneo, Jr., and The Hawthorn Corporation ("Hawthorn") pursuant to the Consent Decision and Order issued in connection with Animal Welfare Docket No. 03-0023. Specifically, you asked me to confirm whether certain information contained in PETA's press release is correct. (I note that The Elephant Sanctuary has already reprinted that press release on its own website.) You ask whether it is true that "Carson and Barnes plans to accept all of the Hawthorn elephants," and state that the Elephant Sanctuary "will take all of the female [elephants]."

First, I cannot speak for Carson & Barnes. I can tell you APHIS has approved the placement of three members of the Hawthorn herd at the Endangered Ark Foundation because it has both demonstrated the ability to care for the Hawthorn elephants in accordance with the Animal Welfare Act and the regulations issued thereunder and agreed that the elephants will not travel or be in contact with the public. I am sorry that you are disappointed with that approval.

Second, it is my understanding that the Elephant Sanctuary has declined to accept any more of the Hawthorn elephants. Neither you nor the Elephant Sanctuary has ever conveyed to me that the Elephant Sanctuary was able or willing to "take all of the female [elephants]" unconditionally. On February 15, 2005, the Elephant Sanctuary, through its counsel, represented to APHIS and to counsel for Hawthorn that it had identified "major issues" that prevented the Elephant Sanctuary from agreeing to be a donee for Hawthorn elephants. Among other things, the Elephant Sanctuary would not agree to accept any elephants until September 2005, when its new barn was built, would not undertake the "care, feeding, [and] veterinary inspection" of the Hawthorn elephants in the interim, and would not accept elephants absent Hawthorn's agreement to provide "financial assistance" for their future care. To my knowledge, the Elephant Sanctuary's position has not changed with respect to these or the other items in its February 15 letter. If I am mistaken, I trust that you have so advised counsel for Mr. Cuneo and Hawthorn.

Finally, I am dismayed that the Elephant Sanctuary believes it to be "unethical . . . to assist the separation of the herd by agreeing to take less than all" of the elephants and on that basis has determined that the better course is to allow all twelve of the Hawthorn elephants to

remain in Illinois for the indefinite future. Moreover, this view appears to be inconsistent with the Elephant Sanctuary's previous unconditional acceptance of Delhi, Lota and Misty.

Regards,



Bernadette R. Juarez

cc: Dr. Gipson, Dr. Goldentyer, Derek Shaffer, Esq.

ATTACHMENT

3

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November 30, 2004

VIA FIRST-CLASS MAIL

Derek Shaffer, Esq.
Cooper & Kirk, PLLC
1500 K Street, N.W.
Suite 200
Washington, DC 20005

Re: Remaining Hawthorn Elephants

Dear Derek:

Misty and Lota are thriving in their new home. They have settled in with no apparent difficulties and have adapted well to their new surroundings and caregivers. Treatment for their tuberculosis should begin soon.

Carol Buckley forwarded to me an article that appeared in the *Northwest Herald* of November 29, 2004, regarding the Hawthorn Elephants, a copy of which is attached. The article states that Ms. Buckley has not expressed to you her desire that all of the remaining Hawthorn Elephants be transferred to The Elephant Sanctuary in Tennessee. For the record, the Sanctuary, Carol Buckley, and Scott Blais all hope that the remaining Hawthorn Elephants will someday soon be reunited with Misty and Lota at the Sanctuary. If Mr. Cuneo has any doubt about the Sanctuary's desire or ability to provide a great home for his remaining elephants, please share this letter with him.

I hope that you and I will have the opportunity to discuss the possibility of transferring the remaining Hawthorn Elephants to Tennessee. I believe that such a transfer would be in the best interests of the Hawthorn elephants and could have obvious benefits for each of our respective clients. As you may know, the Sanctuary will be constructing two new Asian Elephant barns

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November 30, 2004

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during the upcoming year, which coupled with the 2700 acres of land at the Sanctuary, will provide more than adequate living space for the remaining Hawthorn Elephants. It would be a grand gesture by Mr. Cuneo to provide these elephants that have served him so well with such an excellent place to spend the remainder of their days.

Please feel free to contact me at any time if you would like to discuss the possibility of transferring the remaining Hawthorn Elephants to the Sanctuary.

Very truly yours,



Michael K. Stagg

MKS/bmc

Enclosure

cc: Carol Buckley, The Elephant Sanctuary in Tennessee
Bernadette R. Juarez, Office of the General Counsel,
United States Department of Agriculture

Central HealthSys

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Local elephants in need of home

Publication Northwest Herald
Date November 29, 2004
Section(s) Local News
Page

By JEFF GARD

jgard@nwherald.com

RICHMOND - Two Hawthorn Corp. elephants that tested positive for tuberculosis arrived at The Elephant Sanctuary in Hohenwald, Tenn., three months after their owner was ordered to find them new homes.

John Cuneo, who owns a circus animal training facility near Richmond, agreed to move the elephants, Misty and Lota, to the sanctuary as part of a March court settlement with the U.S. Department of Agriculture.

Misty and Lota tested positive for a human form of tuberculosis and were part of a herd of 16 elephants that belonged to Cuneo. The other 14 elephants were exposed but did not test positive for the disease.

In the settlement, Cuneo admitted to 19 violations of the animal-rights code, paid a \$200,000 fine, and agreed to find all 16 elephants new homes by Aug. 15 or lose his exhibitor's license.

Cuneo's lawyer, Derek Shaffer, said the August deadline has been suspended indefinitely while the company works with the USDA to find homes for its remaining 12 elephants.

Shaffer said the corporation gave one elephant to a private owner, and an elephant named Tess recently died.

"We want to keep this herd intact to the best extent possible," Shaffer said. The transfer of Misty and Lota was delayed by the Tennessee state veterinarian, Shaffer said.

Carol Buckley, founder and executive director of the sanctuary, said the veterinarian stopped the original importation of the elephants so he could research the risk of tuberculosis spreading to white-tailed deer and cattle.

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Buckley said the veterinarian submitted his findings to the sanctuary in early October, and the importation permit was issued Nov. 5.

Employees from the sanctuary then drove to Richmond to pick up the elephants Nov. 15, Buckley said.

"Even though it was in the contract for Hawthorn to deliver the elephants, they were making every sort of excuse not to do it," Buckley said.

Shaffer said the corporation was happy that the elephants were at the sanctuary now.

"Mr. Cuneo has always wanted to comply with his commitment to the USDA to donate his elephants as quickly as possible," Shaffer said.

Buckley said Misty had diseased nails and an injured elbow and shoulder; Lota looked painfully thin.

"You look at Misty, she should be in her prime, but she looks totally used up," Buckley said. "The good news is Lota is eating ravenously. She loves the food here, so she is eating very well."

Buckley said she would like the rest of the elephants to come to the sanctuary.

"We want to get them all and reunite them all," Buckley said.

Shaffer said Buckley did not express this desire to him, and the corporation still is searching for homes for the remaining elephants.

"It's not an easy task to find outstanding homes for 12 elephants," he said.



ATTACHMENT

4

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February 15, 2005

VIA EMAIL AND FIRST CLASS MAIL

Bernadette Juarez
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Washington, D.C. 20250-1417

Derek Shaffer
Cooper & Kirk, PLLC
1500 K Street, N.W.
Suite 200
Washington, D.C. 20005

Re: The Elephant Sanctuary in Tennessee and the Remaining
Twelve Hawthorn Corporation Elephants

Dear Ms. Juarez and Mr. Shaffer:

As we have discussed, I write regarding the possibility that some or all of the remaining twelve elephants at the Hawthorn Corporation's Richmond, Illinois facility might be transferred to The Elephant Sanctuary at Hohenwald, Tennessee. Specifically, I believe we are discussing the following twelve elephants:

Nicholas (Asian male)

Joy (African female)

Billy (Asian female)

Debbie (Asian female)

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Freida (Asian female)

Gyp (Asian female)

Liz (Asian female)

Lottie (Asian female)

Minnie (Asian female)

Queenie (Asian female)

Ronnie (Asian female)

Sue (Asian female)

The Sanctuary is very excited about the possibility of receiving additional Hawthorn elephants. Following are some major issues the Sanctuary has identified, and its thoughts or suggestions about some of them, in no particular order.

- Nicholas: After much deliberation, the Sanctuary has decided that it cannot take ownership or possession of Nicholas. I understand that both of you are aware of the issues involved with introducing a bull elephant into the Sanctuary. The Sanctuary understands that the Performing Animal Welfare Society (PAWS) likely is willing to take Nicholas, and the Sanctuary supports this.
- Joy: The Sanctuary management and staff have also discussed Joy, the only African female in the remaining Hawthorn twelve elephants, and the practical aspects of introducing her into the Sanctuary herd. After careful consideration, the Sanctuary has decided that it can, and is willing to, take Joy.
- The ten Asian females: The Sanctuary is willing to take all of the ten Asian female elephants.
- Timing: The Sanctuary is constrained by the construction schedule for its new barn. The contractor originally estimated six-to-twelve months, but at the insistence of the Sanctuary, has now committed to six months. The new barn should be ready for occupancy by September 1, 2005. The Sanctuary

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proposes legal transfer and delivery of the eleven female elephants from Hawthorn to the Sanctuary on or about that date.

- **Transfer of Ownership:** The Sanctuary proposes that Hawthorn retain legal ownership of the eleven elephants until Hawthorn delivers the elephants to the Sanctuary.
- **Contract for Transfer:** The Sanctuary believes a contract establishing the terms and timing for the transfer of the eleven Hawthorn elephants can be signed before March 1.
- **Interim Care (March through August):** Hawthorn will be responsible for the care, feeding, veterinary inspection, and any other matters to ensure the health and welfare of the elephants at the Hawthorn facility in Richmond during this period.
- **Interim Tuberculosis Testing (March through August):**
 1. **Trunk Washes:** Hawthorn will continue to obtain trunk washes from the eleven female elephants and report the results to the Sanctuary during this period.
 2. **Fecal tests:** Hawthorn will conduct fecal tests on the eleven elephants on or about June 1 and August 1.
 3. **CBC's:** Hawthorn will conduct CBC tests on the eleven elephants on or about June 1 and August 1.
 4. Hawthorn will provide copies of all records and results of interim testing to the Sanctuary and USDA immediately after receipt.
- **Records:** The Sanctuary would like copies of the following records at Hawthorn's earliest convenience:
 1. All trunk wash and other tuberculosis testing records for each elephant. The Sanctuary understands that all twelve of the Hawthorn elephants have tested negative for tuberculosis for at least the immediate past year.
 2. All veterinary records for each elephant.
 3. All behavioral profiles for each elephant.
 4. All personality profiles for each elephant.

Letter to Bernadette Juarez and Derek Shaffer

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5. All other relevant documents regarding each elephant.
- **Importation Permits:** The Sanctuary will be responsible for obtaining all importation permits and regulatory approvals for transfer of the elephants from Richmond to Hohenwald. Hawthorn will provide any necessary information and assistance to the Sanctuary as needed to obtain all regulatory approvals.
 - **Familiarization Procedures:** The Sanctuary proposes that certain members of its staff be allowed to visit the elephants at Hawthorn's Richmond facility during the six months of the interim period to begin to learn the needs, routines, and behaviors of the elephants. In addition, a Sanctuary veterinarian should be allowed to examine the elephants during the six months prior to transfer to the Sanctuary.
 - **Financial Assistance for Future Care of the Elephants:** The Sanctuary proposes that Hawthorn provide some financial assistance for the future care of the eleven elephants. Based on the Sanctuary's 2004 operating budget, it costs the Sanctuary \$125,000 per elephant per year to house, feed, and care for its elephants. This number does not include capital expenses, such as the cost of land, constructing the barns and required fencing, and other items. As the following table demonstrates, based on a life expectancy of sixty years per elephant, the Hawthorn elephants conservatively will cost the Sanctuary \$27 million over the life of these eleven elephants.

ELEPHANT	CURRENT AGE	YEARS TO LIVE
Joy	25	35
Billy	52	8
Debbie	34	26
Freida	39	21
Gyp	40	20
Liz	48	12
Lottie	42	18
Minnie	39	21
Queenie	46	14
Ronnie	39	21
Sue	40	20
TOTAL YEARS		216

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There are undoubtedly other details that must be negotiated before transfer of the eleven elephants from Hawthorn to the Sanctuary, but the items set forth above should serve as a starting point for negotiations. I look forward to speaking with both of you again soon.

Very truly yours,


Michael K. Stagg

cc: Carol Buckley, Executive Director, The Elephant Sanctuary in Tennessee

ATTACHMENT

5

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March 3, 2005

VIA E-MAIL
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Re: **The Elephant Sanctuary in Tennessee and the Remaining
Twelve Hawthorn Corporation Elephants**

Dear Mr. Shaffer and Ms. Juarez:

I write in response to Mr. Shaffer's letter of February 21, 2005. I have consulted extensively with Carol Buckley regarding the Sanctuary's response to your letter, and while the Sanctuary is open to discussing and perhaps moving to some middle ground on almost all issues raised recently by either the Sanctuary, Hawthorn, or the USDA, there is one issue on which the Sanctuary has no flexibility: the barn that would house the remaining Hawthorn elephants will not be finished until approximately September 1, 2005. Until that barn is constructed, the Sanctuary simply cannot take ownership or possession of the remaining Hawthorn elephants.

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The Sanctuary understands that it is the USDA's position that any elephants moved from the Hawthorn facility in Illinois to any other facility, whether the Sanctuary or some place else, must be quarantined for approximately one year. The Sanctuary understands that the USDA wants the Hawthorn elephants to undergo sampling and laboratory analyses to ensure the remaining elephants are not tuberculosis-positive, even though the elephants have tested negative for well over one year. Thus, the Sanctuary assumes the USDA views the remaining Hawthorn herd as TB-exposed Group C elephants. The Sanctuary's existing quarantine barn and yard will not hold even one-third of the remaining Hawthorn herd. Thus, moving the Hawthorn herd to the Sanctuary's existing quarantine barn is not an option.

During our recent discussions, Hawthorn and the USDA have raised the possibility of "temporary" housing for the elephants. Although at first blush, temporary housing may sound like an option, the legal and practical realities preclude consideration of keeping these elephants in anything temporary. First, the Sanctuary entered into an agreement with the Tennessee Wildlife Resources Agency (TWRA) during its negotiations over the importation permit for Misty and Lota. The Sanctuary agreed not to import more TB-exposed (Group C) or TB-positive (Group D) elephants until the Sanctuary had the barn capacity to take them. This condition is reflected in the TWRA's letter incorporated by reference to the importation permit for Misty and Lota.¹ If the Sanctuary sought importation permits for the remaining Hawthorn elephants, TWRA almost certainly would deny the importation permit until the new barn is constructed.

Second, elephants are strong enough to cause physical damage even to permanent barns made of steel and concrete; temporary facilities (wood, canvas, wire, etc.) would create potential liability for the Sanctuary as well as fail to meet the State's guidelines for housing for elephants. Third, the only conceivable way these elephants could be restrained enough to live in temporary housing would be to chain the elephants in order to severely limit their range of motion, and the Sanctuary's management protocols preclude it from chaining elephants, certainly for six months. Fourth, electric fencing or hotwire is not an option. Tennessee law

¹ "This is a permit for the importation of two elephants, Lota and Misty, from the Hawthorn facility. In discussions with personnel from TES, we were advised they have plans to develop an improved quarantine setting by moving the non-quarantine animals to new facilities at another location on the area. Any future requests to import other Group C or D animals will likely be disapproved until these improved facilities are developed." Attachment to Letter dated October 29, 2004, from Ron Fox, TWRA, to Carol Buckley. The letter and the attachment were incorporated by reference to the TWRA's November 1, 2004 importation permit for Misty and Lota.

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does not provide for the use of hotwire as a means to restrain elephants.² Fifth, the money and time required to construct temporary facilities will be better used in constructing the new permanent barn. The Sanctuary has limited personnel and funds, and it makes no sense to divert either from the immediate goal of constructing the new barn as expeditiously as possible.

For these reasons, the Sanctuary cannot take delivery of the Hawthorn herd until approximately September 1, 2005. The Sanctuary hopes discussions can continue with both Hawthorn and the USDA, and again, it is amenable to exploring creative solutions to most other issues arising from the transfer of the Hawthorn herd to the Sanctuary. However, until the threshold issue of timing of the transfer is resolved, the Sanctuary sees no benefit in responding to other aspects of Mr. Shaffer's February 21, 2005 letter or discussing further other issues raised by the three parties.

I look forward to speaking with both of you again soon.

Very truly yours,


Michael K. Stagg

MKS/bmc

cc: Carol Buckley, Executive Director, The Elephant Sanctuary in Tennessee

² See Tenn. Code Ann. § 70-4-405(g)(7) & (8).