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DEPT. OF WATER RESOURCES
EASTERN REGION

TBI DEVELOPMENT EASEMENT EXCHANGE AGREEMENT

This TBI Development Property Exchange Agreement (this "Agreement") is made and entered into this 27 day of DECEMBER, 2024 by and among the **CITY OF IDAHO FALLS, IDAHO**, a municipal corporation of the State of Idaho (the "City") whose current address is P.O. Box 50220, Idaho Falls, ID 83402, **TBI SUPERVISION, LLC**, an Idaho limited liability company ("TBI"), whose address is 1070 Riverwalk Drive Suite 200, Idaho Falls, ID 83402, **TAYLOR CROSSING ON THE RIVER, L.L.C.**, an Idaho limited liability company ("Taylor Crossing"), whose address is 1070 Riverwalk Drive Suite 200, Idaho Falls, ID 83402, **IF SPRING L.L.C.**, a Utah limited liability company ("IF Spring"), whose address is 2733 East Parleys Way, Suite 300, Salt Lake City, Utah 84109, and **BIENVENIDOS L.L.C.**, a Utah limited liability company ("Bienvenidos" and together with TBI, Taylor Crossing, IF Spring, and the City, the "Parties"), whose address is 2733 East Parleys Way, Suite 300, Salt Lake City, Utah 84109.

1. Background and Identification of Property Owned by Parties.

1.1 **City Real Property.** The City is the owner of the real property, which consists of various parcels that span along the west bank of the Snake River within the City's limits (the "City Property"). The City utilizes the City Property to provide pedestrian transportation corridors, scenery, and recreation, by means of a walking path and various landscaping, for its citizens. The City Property is shown on the maps below (see Exhibits "A" and "B").

1.2 Real Property and Railroad License.

1.2.1 **TBI Property.** TBI owns parcels immediately adjacent to the City Property as depicted in Exhibit "A".

1.2.2 **Leased Property** Bienvenidos and IF Spring have certain rights arising from a 99-year lease agreement between Bienvenidos and Eastern Idaho Railroad, Inc. (the "Railroad Lease") to lease property that is owned by the railroad (the "Railroad Property"). The Railroad Property is shown in a map below (see Exhibit "B"). Prior to Bienvenidos obtaining the lease of the Railroad Property, the City had obtained an easement on the eastern portion of the Railroad Property that permitted the City to construct and maintain a walking path that runs beneath the railroad (see Exhibit "D"). That easement was not modified by Bienvenidos' lease of the Railroad Property and continues.

1.2.3 **Pancheri Drive Property.** Taylor Crossing owns property immediately adjacent to Pancheri Drive and South Utah Avenue in Idaho Falls (the "Pancheri Property"). The Pancheri Property is depicted in Exhibit "C". The City currently has a Public Utility Easement ("PUE") upon the Pancheri Property that runs along the southern and western borders of the property (see Exhibit "C" and Exhibit "E"). These portions of the Pancheri Property are immediately adjacent to Pancheri Drive and South Utah Avenue.

1.3 Purposes of Exchange Agreement and Consideration.

1.3.1 Purposes. The purposes of this Agreement are to facilitate the exchange of easements and licenses between the Parties. TBI seeks to have an underground easement through a portion of City Property in order to pump water from the Snake River and bring it to its adjacent property for aesthetic purposes. TBI seeks an additional easement to allow the underground pumped water to flow above ground, back across the City Property, and spill back into the Snake River.

The City seeks to have a license on the Railroad Property that allows the City to construct a walkway for pedestrian traffic that would come from the edge of its City Property and go as far as the parking lot within the Railroad Property. Additionally, the City seeks to modify its current PUE within the Pancheri Property to also include a sidewalk/pedestrian easement.

1.3.2 Consideration. Consideration between the Parties for this Agreement includes (i) the City granting to TBI its desired underground and above-ground easements, (ii) Bienvenidos and IF Spring granting a license upon the Railroad Property and (iii) Taylor Crossing allowing the PUE on the Pancheri Property to also include a sidewalk/pedestrian easement.

1.4 Easement Provisions and Conditions.

1.4.1 The respective owners agree to convey the following easements or licenses to the respective Parties and for the aforementioned good and valuable consideration, as follows:

1.4.1.1 The map contained within **Exhibit "A"** to this Agreement depicts the City and TBI's respective properties and the proposed above and underground water easements, as it relates to TBI's desired easements (the "TBI Easements") on the City Property. Exhibit "A" is for illustrative purposes only and may not be completely accurate to what the actual recorded easement will be, but currently depicts the proposed TBI Easements being contained within the blue border in the City Property. The following provisions and conditions for the TBI Easements apply:

1.4.1.1.1 TBI shall be responsible for obtaining all permits necessary for drawing water from the Snake River.

1.4.1.1.2 TBI shall be responsible for all construction, construction materials, and construction costs as they relate to the underground and above ground easements.

1.4.1.1.3 The pump TBI uses to draw water from the Snake River shall be placed within TBI's property and not within the City Property.

1.4.1.1.4 Both the underground and above-ground easements shall consist of a fifteen (15) wide permanent easement, with an additional ten (10) feet of temporary easement directly adjacent to one side of the permanent easement for purposes of construction and maintenance. Upon completion of construction and episodes of maintenance, the temporary easements will not be available again unless and until further maintenance is required.

1.4.1.1.5 The portions of City Property affected by the TBI Easements, along with

the walking path that runs along the City Property, shall be restored to its previous state. The above ground easement being granted for purposes of an aesthetic water flow back to the Snake River shall be diverted under the walking path in a manner agreeable to TBI and the City.

1.4.1.1.6 During construction and/or maintenance of the landscaping and placement of pipe for the easement, if such blocks the current pedestrian pathway on the City Property, TBI shall provide a detour path that leads pedestrian traffic around the construction/maintenance site. Such construction impeding pedestrian traffic from the original pathway will not surpass two (2) weeks.

1.4.1.2 The map contained within **Exhibit "B"** to this Agreement depicts a portion of the Railroad Property and the proposed license to the City on the Railroad Property (the "Railroad License"). This depiction is for illustrative purposes only and may not be completely accurate to what the actual recorded license will be. The following provisions and conditions for the Railroad License apply:

1.4.1.2.1 The City shall be responsible for all construction, construction materials, and construction costs as they relate to putting in the pathway from its property and leading up to the parking lot within the Railroad Property.

1.4.1.2.2 This Agreement shall not supersede or modify the current easement right held by the City which allowed the City to originally build a walking path beneath the railroad on the Railroad Property. All license area provided to the City within the Railroad License will be null and void as to the existing easement owned by the City.

1.4.1.2.3 The Railroad License shall not supersede or modify the current rights held by Bienvenidos or IF Spring, shall be subject at all times to the Railroad Lease and any related agreements pertaining to the Railroad Lease or Railroad Property, and shall be terminated when Bienvenidos or IF Spring no longer hold such rights to the Railroad Property.

1.4.1.3 The map contained within **Exhibit "C"** to this Agreement depicts the Pancheri Property and the City's current PUE within that property. The PUE shall be amended to also include a sidewalk/pedestrian easement ("Pancheri Easement"). The following provisions and conditions for the Pancheri Easements apply:

1.4.1.3.1 The City shall be responsible for all construction, construction materials, and construction costs as they relate to adding a right turn bay to Pancheri Drive, tapering the current sidewalk into the Pancheri Easement, and the construction of a sidewalk within the Pancheri Easement.

1.4.1.3.2 The City shall have an additional ten (10) foot temporary easement, as needed, for tapering the current sidewalk into the Pancheri Easement and the construction of the permanent sidewalk within the Pancheri Easement.

2 General Provisions.

- 2.1. **Good faith.** All Parties to this Agreement hereby pledge to act in good faith, mutual cooperation, and within a reasonable time to execute all necessary legal documents and processes to effectuate the agreed upon easement and license exchanges and to adjust this Agreement, if necessary, to accommodate State, County, or other entities whose permission may be necessary to effectuate the easement and license exchanges described in this Agreement.
- 2.2. **Attorney Fees and Costs.** If a suit, action, or other proceeding arising out of or related to this Agreement is instituted by any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and costs (i) incurred in any settlement negotiation or (ii) incurred in preparing for, prosecuting or defending any suit, action, or other proceeding in enforcing this Agreement. For the purpose of this section "attorneys' fees" means and includes (i) attorneys' fees and (ii) paralegals' fees. This section shall survive and remain enforceable notwithstanding any rescission of this Agreement or a determination by a court of competent jurisdiction that all or any portion of the remainder of this Agreement is void, illegal, or against public policy.
- 2.3. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction and agree that Bonneville County is the proper venue for any action.
- 2.4. **Time of the Essence.** Time is of the essence with respect to the obligations to be performed under this Agreement.
- 2.5. **Contingency.** This Agreement is contingent upon TBI obtaining water rights to divert water from the Snake River for purposes of the TBI Easements.
- 2.6. **Liability.** Each Party shall maintain liability for claims from third parties arising from use of their respective properties and/or easements.
- 2.7. **Rights Cumulative.** Except as expressly provided in this Agreement, and to the extent permitted by law, any remedies described in this Agreement are cumulative and not alternative to any other remedies available at law or in equity.
- 2.8. **Nonwaiver of Remedies.** The failure or neglect of a party to enforce any remedy available by reason of the failure of the other party to observe or perform a term or condition set forth in this Agreement shall not constitute a waiver of such term or condition. A waiver by a party (i) shall not affect any term or condition other than the one specified in such waiver, and (ii) shall waive a specified term or condition only for the time and in a manner specifically stated in the waiver.
- 2.9. **Successors and Assigns.** Subject to any express provisions in this Agreement regarding restrictions on transfers or assignments, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, heirs, personal representatives, purchasers, or transferees of any kind, as applicable. The Parties agree that this Agreement shall run with the land.

2.10 Entire Agreement. All Exhibits to this Agreement constitute a part of this Agreement and are incorporated herein by this reference. This Agreement, together with the accompanying Exhibits, constitutes the entire agreement among the parties and supersedes all prior memoranda, correspondence, conversations and negotiations pertaining to the subject matter of this Agreement.

(Signatures on following pages)

CITY OF IDAHO FALLS, IDAHO

Chris Canfield

CHRIS CANFIELD, P.E. for
CHRIS H. FREDERICKSEN, P.E.
Director of Public Works

STATE OF Idaho)
County of Bonneville) ss.

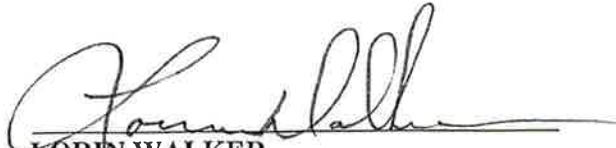
On the 27 day of December, 2024, before me, the undersigned, a Notary Public, in and for the State of Idaho personally appeared **Chris Canfield**, known or identified to me to be the Assistant Director of the Public Works Department for the City of Idaho Falls, Idaho, the municipal corporation that executed the foregoing document, and acknowledged to me that they are authorized to execute the same on behalf of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Rachael Huntsman
Notary Public for: State of Idaho
Residing at: Idaho Falls, Bonneville
My Commission Expires: August 22, 2025


TBI SUPERVISION, LLC


LORIN WALKER
Owner

STATE OF IDAHO)
) ss.
County of BONNEVILLE)

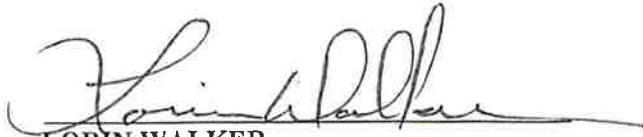
On the 27 day of DECEMBER, 2024, before me, the undersigned, a Notary Public, in and for the State of IDAHO personally appeared **Lorin Walker**, known or identified to me to be the person whose name is subscribed to the within instrument as an owner of TBI SUPERVISION, LLC and acknowledged to me that he executed the same as said manager.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.


Notary Public for: STATE OF IDAHO
Residing at: IDAHO FALLS, BONNEVILLE
My Commission Expires: 04/27/2027



TAYLOR CROSSING ON THE RIVER, L.L.C.


LORIN WALKER
Owner

STATE OF IDAHO)
) ss.
County of BONNEVILLE)

On the 27 day of DECEMBER, 2024, before me, the undersigned, a Notary Public, in and for the State of IDAHO personally appeared **Lorin Walker**, known or identified to me to be the person whose name is subscribed to the within instrument as an owner of **TAYLOR CROSSING ON THE RIVER, L.L.C.** and acknowledged to me that he executed the same as said manager.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Notary Public for: STATE OF IDAHO

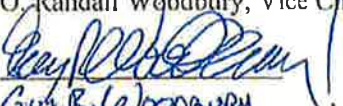
Residing at: IDAHO FALLS, BONNEVILLE
My Commission Expires: 01/27/2027



BIENVENIDOS L.L.C.

By: WOODBURY CORPORATION, Its Manager

By: 
O. Randall Woodbury, Vice Chairman

By:  SVP

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 27th day of December, 2024, before me personally appeared O. Randall Woodbury, to me personally known, who being by me duly sworn did say that he is the Vice chairman of WOODBURY CORPORATION, a Utah corporation, known to be the Manager of BIENVENIDOS L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named.

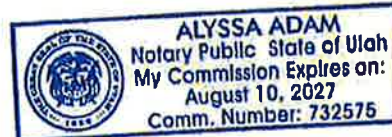

Notary Public



STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 27th day of December, 2024, before me personally appeared Guy R. Woodbury, to me personally known, who being by me duly sworn did say that he is the SVP of WOODBURY CORPORATION, a Utah corporation, known to be the Manager of BIENVENIDOS L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named.


Notary Public





IF SPRING L.L.C.

By: WOODBURY CAPITAL II, I.P, Its Manager

By: WOOD BOROUGH L.L.C., Its General Partner

By: WOODBURY CORPORATION, Its Manager

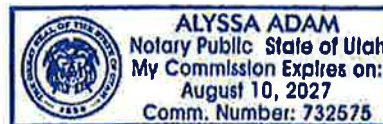
By: *O Randall Woodbury*
O Randall Woodbury, Vice Chairman

By: *Guy R. Woodbury*
Guy R. Woodbury, SVP

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 27th day of December, 2024, before me personally appeared O. Randall Woodbury, to me personally known, who being by me duly sworn did say that he is the Vice Chairman of WOODBURY CORPORATION, a Utah corporation, known to be the Manager of WOOD BOROUGH L.L.C., a Delaware limited liability company, as General Partner of WOODBURY CAPITAL II, I.P, a Delaware limited partnership, Manager of IF SPRING L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named.

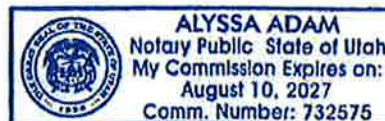
Alyssa Adam
Notary Public



STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 27th day of December, 2024, before me personally appeared Guy R. Woodbury, to me personally known, who being by me duly sworn did say that he is the SVP of WOODBURY CORPORATION, a Utah corporation, known to be the Manager of WOOD BOROUGH L.L.C., a Delaware limited liability company, as General Partner of WOODBURY CAPITAL II, LP, a Delaware limited partnership, Manager of IF SPRING L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named.

Alyssa Adam
Notary Public



(Handwritten mark)

Exhibit "A"



Key:

Green Border -

Red Border -

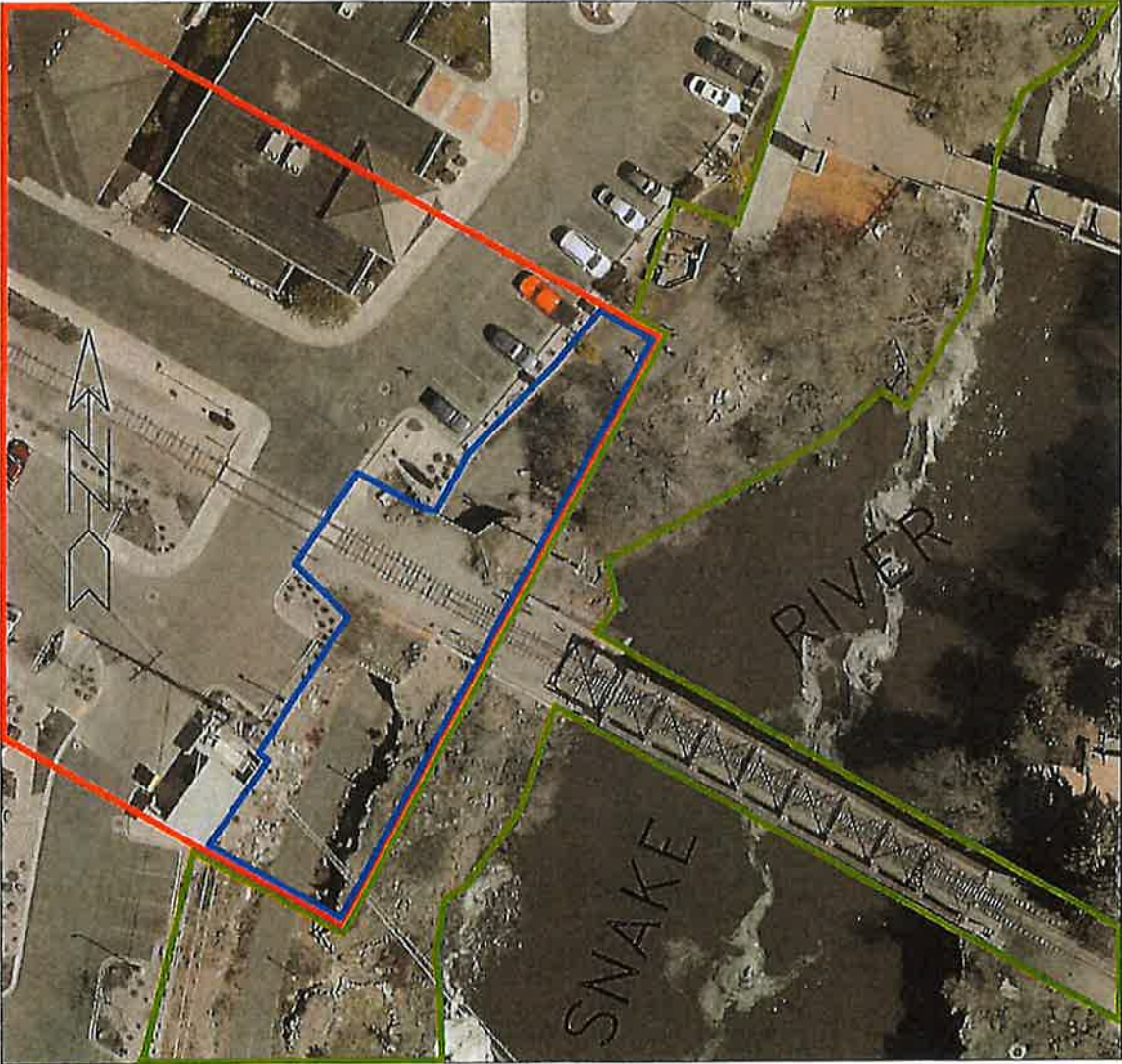
Blue Border -

Property owned by the City of Idaho Falls

Property owned by TBI, LLC

Area of proposed placement of TBI Easements

Exhibit "B"



Key:
Green Border - Property owned by the City of Idaho Falls
Red Border- Property leased by Bienvenidos, LLC and IF Spring, LLC
Blue Border- Area of proposed placement of Railroad Easement

Exhibit "C"



Key:
Red Border-
Green Border-

Property owned by Taylor Crossing on the River, LLC
Current Utility Easement granted to the City of Idaho Falls

Exhibit "D"

UNDERGROUND PEDESTRIAN CROSSING AGREEMENT

AGREEMENT NUMBER 7016

ARTICLES OF AGREEMENT

Mile Post 184.27 (Main Line) Old Butte (at) (Near) Idaho Falls,
Idaho simple pipeline crossing.

THIS AGREEMENT is made and entered into as of the 12th day of May, 1998, by and between EASTERN IDAHO RAILROAD, (hereinafter the licensor) and City of Idaho Falls, to be addressed at City of Idaho Falls; Public Works/Engineering; 380 Constitution Way; P.O. Box 50220; Idaho Falls, ID 83405-0220 (hereinafter the Licensee).

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSE FEE.

Upon the execution of this Agreement, the Licensee shall pay to the Licensor a one-time license fee of twenty thousand dollars (\$20,000).

Article 2. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate underground pedestrian crossing(s) (hereinafter [collectively] the underground pedestrian crossing) in the location shown and in conformity with the dimensions and specifications indicated on the attached print 184.27, marked Exhibit A.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations, and covenants set forth herein and in Exhibit B, hereto attached.

Article 4. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If the contractor is to do any work performed on the underground pedestrian crossing (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the railroad's form contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of contractors Right of Entry

agreement and understanding of its terms, provisions and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto licensor's premises without first executing the contractor's Right of Entry Agreement.

Article 5. INSURANCE.

A. The Licensee, at its expense, shall obtain the insurance described in Exhibit B-1, hereto attached. The Licensee will also provide to the Licensor a Certificate of Insurance issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

EASTERN IDAHO RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the underground walkway located on Railroad right of way at Mile Post 184.27 at or near Idaho Falls, Idaho, on the Old Butte Main.

B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit B-1 shall be the limits the Licensee then has in effect or which is required by applicable current or self-insured with the consent and approval of the Licensor.

C. All insurance correspondence shall be directed to: EASTERN IDAHO RAILROAD COMPANY CONTRACTS AND REAL ESTATE DEPARTMENT, MANAGER OF TRACK, 618 SHOSHONE STREET WEST, TWIN FALLS, IDAHO 83301.

Article 6. TERM.

This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

Article 7. SPECIAL PROVISIONS.

The Eastern Idaho Railroad agrees that the City of Idaho Falls will pay a one-time fee of \$20,000 for the walkway crossing construction at MP 184.27 on the Old Butte Main branch. Eastern Idaho Railroad in turn agrees to use a portion of those funds for the purchase of concrete planking to rehabilitate as many crossings as possible within the City of Idaho Falls, with the amount of funds available.

Additionally, the City will be required to install and maintain adequate fencing to insure pedestrian safety by eliminating them from encroaching upon railroad Right-of-Way.

Article 8. INDEMNITY

The City of Idaho Falls, to be addressed at P.O. Box 50220; Idaho Falls, ID 83405-0220, hereby assumes the risk of and shall indemnify and hold harmless the Eastern Idaho Railroad, their officers, agents, and employees; against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorneys' fees, fines, penalties, and expenses of whatsoever nature (hereinafter "Loss") which may result from (1) injury to or death of persons whomsoever, (including officers, agents and employees of the RAILROAD and any contractor, as well as other persons); (2) loss of or damage to property of or in the custody of, and/or its contractor and damage to the roadbed, tracks, equipment or other property of or in the custody of the RAILROAD, as well as other property).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

Witness

Ron Johnson

EASTERN IDAHO RAILROAD COMPANY

by John T. B.
VP/Gen. Mgr

Witness

Rosemarie Anderson

CITY OF IDAHO FALLS

by Linda Mifflin
Title Mayor



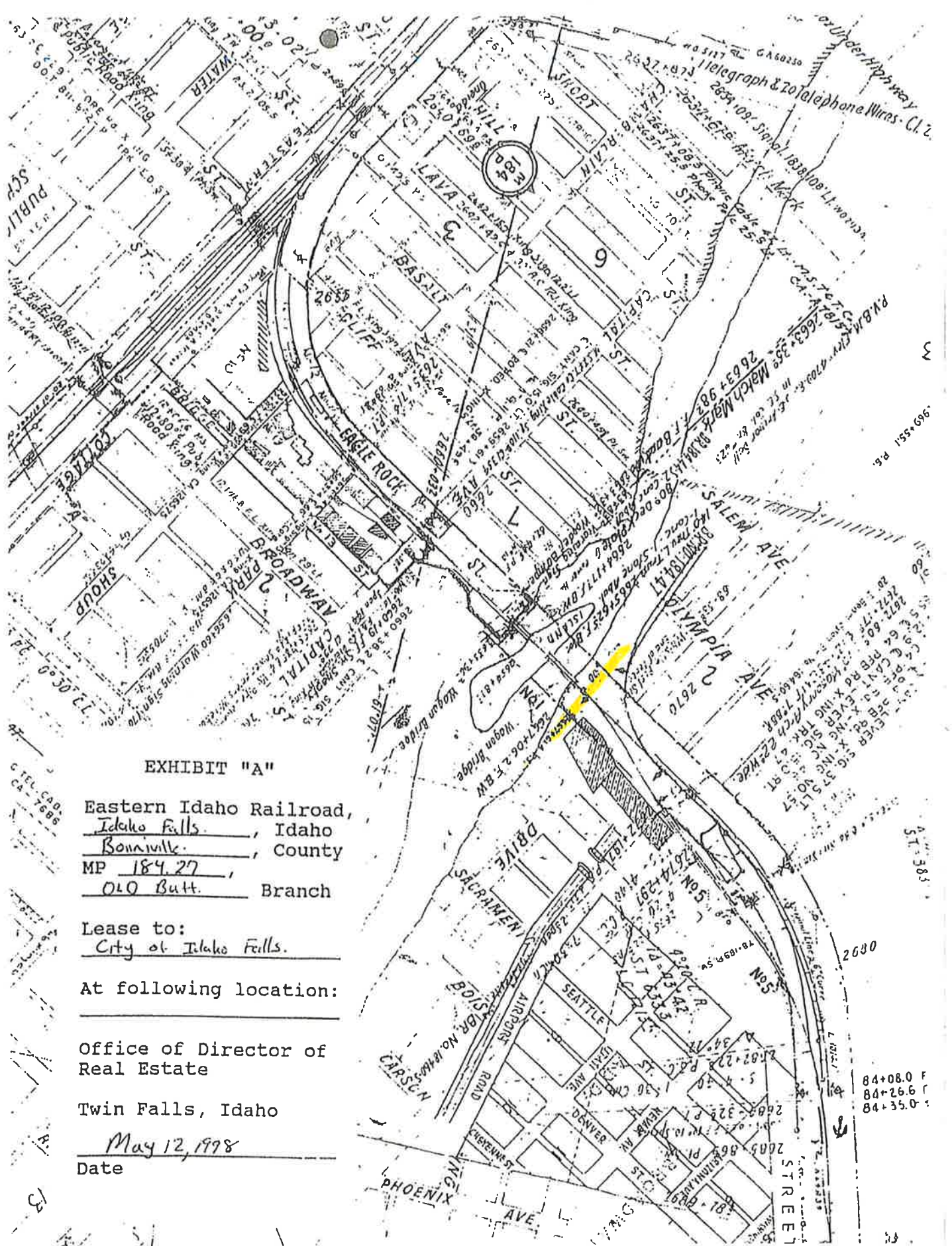


EXHIBIT "A"

Eastern Idaho Railroad,
Idaho Falls, Idaho
Bonnaville, County
 MP 184.27,
OLO Butt. Branch

Lease to:
City of Idaho Falls.

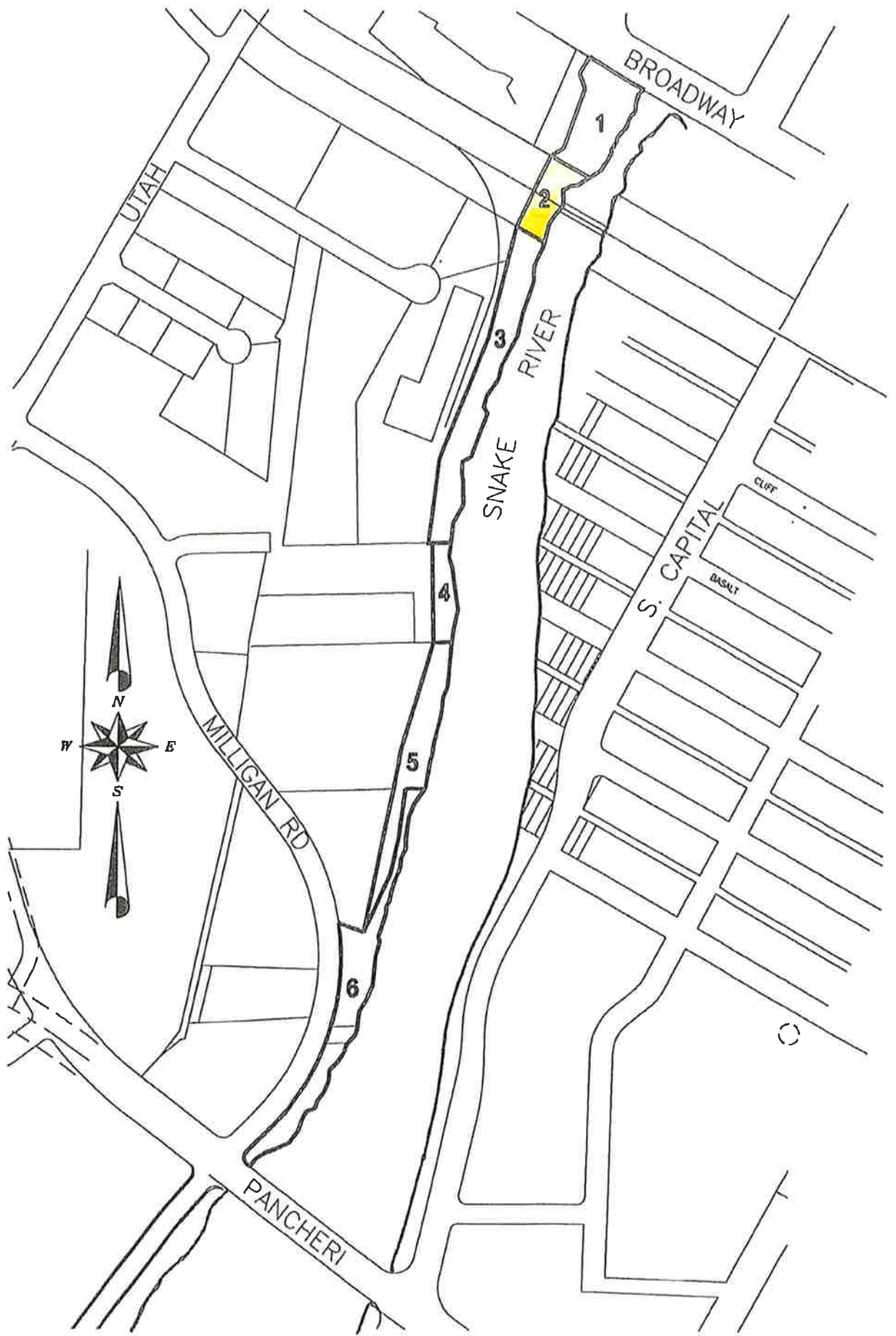
At following location:

Office of Director of
 Real Estate

Twin Falls, Idaho

May 12, 1978
 Date

84+08.0 F
 84+26.6 F
 84+35.0 F



BROADWAY

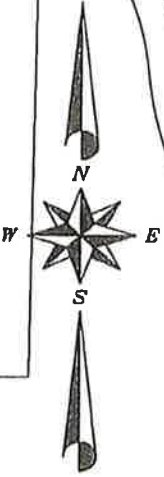
UTAH

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1
SNAKE RIVER

S. CAPITAL

CLIFF

BASALT



MILLIGAN RD

4
5

6

PANCHERI





0005630851



STATE OF IDAHO
 Office of the secretary of state, Phil McGrane
ANNUAL REPORT
 Idaho Secretary of State
 PO Box 83720
 Boise, ID 83720-0080
 (208) 334-2301
 Filing Fee: \$0.00

For Office Use Only
-FILED-
 File #: 0005630851
 Date Filed: 3/4/2024 11:31:49 AM

B0887-4239 03/04/2024 11:31 AM Received by Office of the Idaho Secretary of State

Entity Name and Mailing Address:											
Entity Name:	MCNEIL DEVELOPMENT, L.L.C.										
The file number of this entity on the records of the Idaho Secretary of State is:	0000023774										
Address	1070 RIVERWALK DR STE 200 IDAHO FALLS, ID 83402-3345										
Entity Details:											
Entity Status	Active-Existing										
This entity is organized under the laws of:	IDAHO										
If applicable, the old file number of this entity on the records of the Idaho Secretary of State was:	W3920										
The registered agent on record is:											
Registered Agent	PETER D CHRISTOFFERSON ESQ Registered Agent Physical Address 1000 RIVERWALK DR STE 200 IDAHO FALLS, ID 83402 Mailing Address										
Limited Liability Company Managers and Members											
<table border="1"> <thead> <tr> <th>Name</th> <th>Title</th> <th>Business Address</th> </tr> </thead> <tbody> <tr> <td>Roland N Walker</td> <td>Manager</td> <td>1070 RIVERWALK DR SUITE 200 IDAHO FALLS, ID 83402</td> </tr> <tr> <td>Lorin V Walker</td> <td>Member</td> <td>1070 RIVERWALK DR SUITE 200 IDAHO FALLS, ID 83402</td> </tr> </tbody> </table>			Name	Title	Business Address	Roland N Walker	Manager	1070 RIVERWALK DR SUITE 200 IDAHO FALLS, ID 83402	Lorin V Walker	Member	1070 RIVERWALK DR SUITE 200 IDAHO FALLS, ID 83402
Name	Title	Business Address									
Roland N Walker	Manager	1070 RIVERWALK DR SUITE 200 IDAHO FALLS, ID 83402									
Lorin V Walker	Member	1070 RIVERWALK DR SUITE 200 IDAHO FALLS, ID 83402									
The annual report must be signed by an authorized signer of the entity.											
Job Title: Accounting Clerk											
<i>Alison Corbit</i>	<i>03/04/2024</i>										
Sign Here	Date										