

CONTROLLER OFFICE  
MEMORANDUM  
STATE OF IDAHO

DATE: February 5, 2020  
TO: Jackie McCleve  
Office of the State Controller  
FROM: Richard Brien, PMP  
Statewide Leasing Manager  
Division of Public Works  
SUBJECT: Request for Recognition of Assignment

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Enclosed for the Board of Examiners' Subcommittee upcoming meeting is the following Request for Recognition of Assignment:

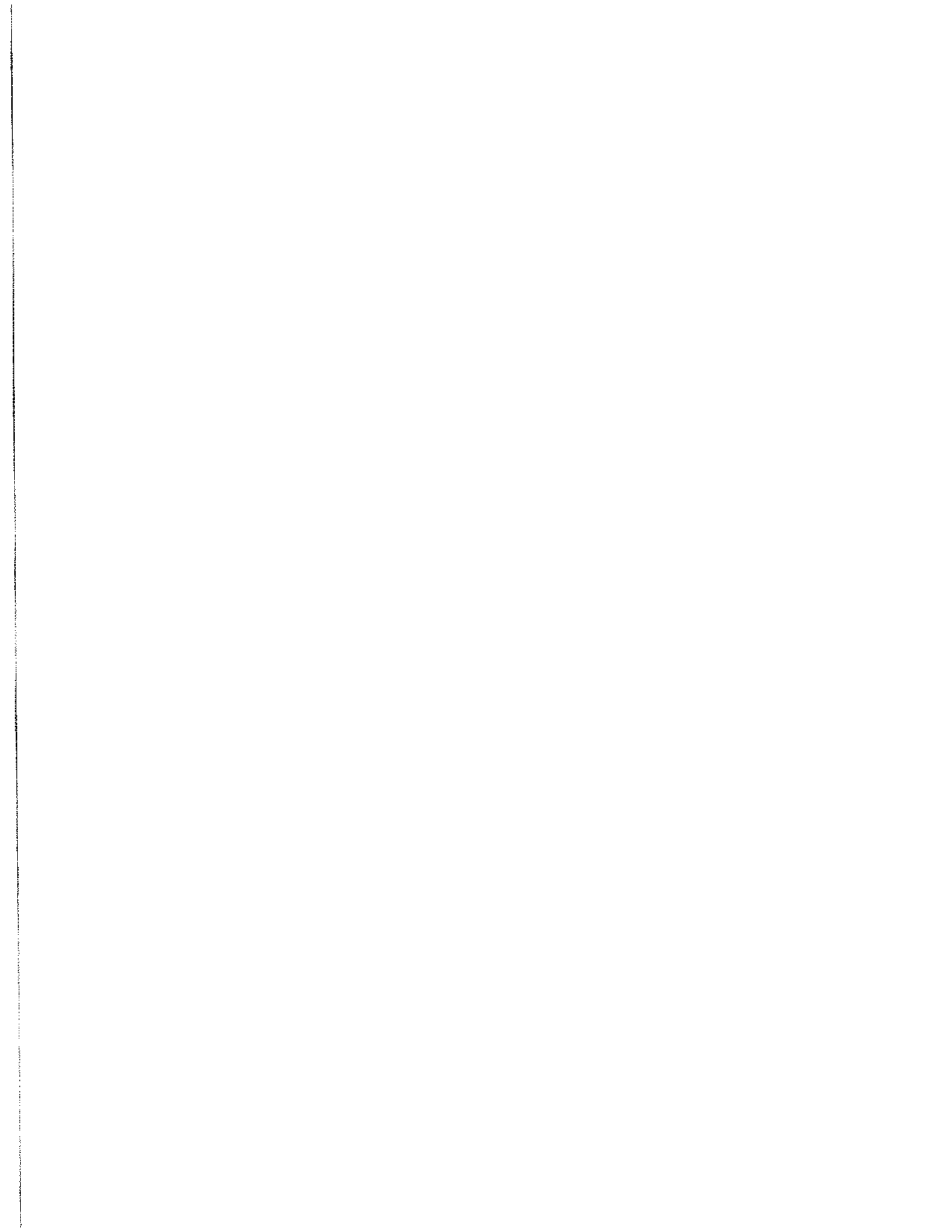
**From KDS Landing, LLC to 3900 Overland, LLC**

**A transfer of interest in the real property lease of the State of Idaho, by and through the Idaho Educational Services for the Deaf and the Blind, as "Lessee" and Lessee's occupancy of 4121 Lake Avenue, Caldwell, Idaho.**

A copy of the Lease Agreement is also enclosed for your information. References provided by the new owner were found to be satisfactory. The Department of Administration, Division of Public Works, requests that the Board approve the proposed Assignment at its next meeting.

If you have any questions or require further documentation, please contact me at 208-332-1929. Thank you in advance for your assistance.

Cc: Bonnie Marshall, IESDB  
Lease File



**STATE BOARD OF EXAMINERS**  
**Request for Recognition of Assignment Agreement**

2020 FEB -5 PM 3:03  
STATE OF IDAHO

"Assignor" as used herein is: KDS Landing, LLC  
4481 North Dresden Place  
Garden City, Idaho 83714

"Assignee" as used herein is: 3900 Overland, LLC  
c/o Colliers International  
755 West Front Street, Suite 300  
Boise, Idaho 83702

"Board" as used herein is the State Board of Examiners, State of Idaho.

"Controller" as used herein is the Idaho State Controller and Secretary to the Board.

WHEREAS, the State of Idaho is or may be obligated to make payments to Assignor pursuant to its contractual or other obligations, more particularly described as follows:

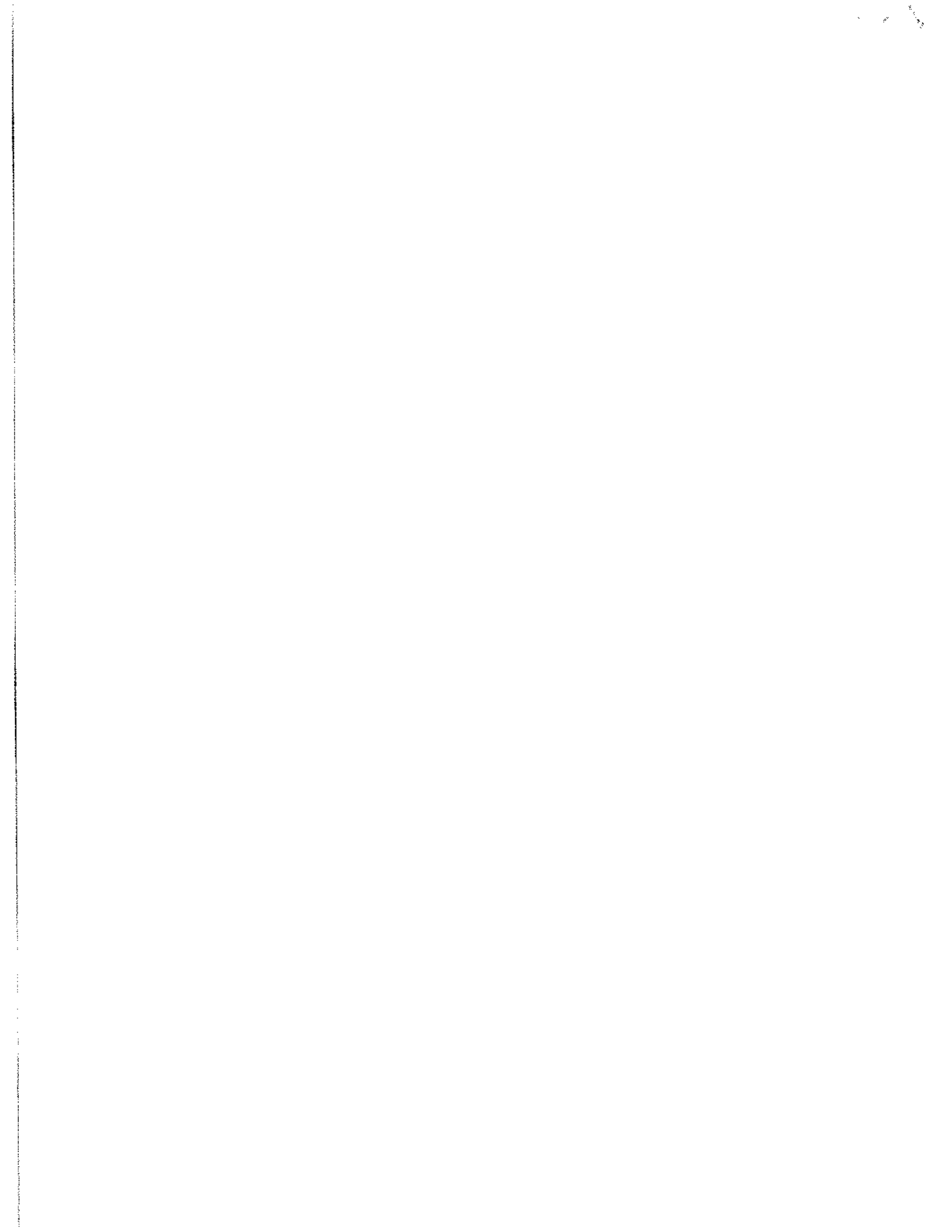
Real property leases regarding the STATE OF IDAHO:

By and through the Idaho State Liquor Division as "Lessee" and Lessee's  
occupancy of **4121 Lake Avenue, Caldwell, Idaho;**

WHEREAS, the Assignor has agreed with Assignee to assign all rights of payment for the above obligations to Assignee. **The parties hereby agree the effective date of the transfer of real property occurred on \_\_\_\_\_, and that payment shall be made to Assignee beginning on this date. The parties furthermore agree that no payments will be made to Assignee until this Assignment is approved by and through the State Board of Examiners as reflected by the attached Lease Agreement; and**

NOW THEREFORE, pursuant to I.C. Sec. 67-1027, Assignee requests the Board to specially approve assignment of the above obligations on the conditions below:

- (1) Assignee agrees that its rights shall be subordinate to any claims the State of Idaho or any of its agencies or instrumentalities have or may have against Assignor now or in the future. These claims include, but are not limited to, contracts, tort claims, taxes, fines or penalties of any sort.
- (2) If the State receives more than one claim against the amounts owed to Assignor, Assignee shall pay the State the total cost of evaluating such claims. These costs include, but are not limited to reasonable attorney's fees for the evaluation of the conflicting claims and any expenses necessary for such evaluation, including but not limited to, photocopying, transcript costs or any travel costs as necessary. It is intended that the State of Idaho be made whole in the event that there is any dispute over the sums involved.
- (3) As to any payments made by the State to Assignee on the above referenced obligations, Assignee agrees to defend, indemnify and hold harmless the State of Idaho for any claims made against the State resulting from such payments to Assignee. It is intended that the State of Idaho be made whole in any dispute involving payments made to Assignee.



The undersigned certifies that he/she is duly authorized by Assignee to execute this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ASSIGNOR: KDS Landing, LLC

ASSIGNEE: 3900 Overland, LLC

Signature: [Handwritten Signature]  
Name: C. Fred Cordeiro  
Title: Managing Member

Signature: [Handwritten Signature]  
Name: DAVID CAOWEN  
Title: Member

STATE OF IDAHO )  
COUNTY OF ADA : ss.

On this 4<sup>th</sup> day of February, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared C. Fred Cordeiro, known to me to be the ASSIGNOR whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he/she executed the same.

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



[Handwritten Signature]  
Notary Public

Residing at Nampa, Idaho My commission expires 9/25/2020

STATE OF IDAHO )  
COUNTY OF Ada : ss.

On this 5 day of February, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared David Cadwell, known to me to be the ASSIGNEE whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he/she executed the same.

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



[Handwritten Signature]  
Notary Public

Residing at Basement, Idaho My commission expires 9/18/2024

The Board having duly considered the above request pursuant to I.C. Sec. 67-1027, specially approved the above request on \_\_\_\_\_, 2020. This assignment shall be effective seven (7) days after its approval by the State Board of Examiners.

\_\_\_\_\_  
Brandon Woolf  
State Board of Examiners and State Controller

After the State Board of Examiners approves the Assignment, the Assignee and Assignor will receive an executed copy.



**STATE BOARD OF EXAMINERS**  
**Request for Recognition of Assignment Agreement**

CONTROLLER OFFICE  
2020 FEB -5 PM 3:03  
STATE OF IDAHO

"Assignor" as used herein is: KDS Landing, LLC  
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c/o Colliers International  
755 West Front Street, Suite 300  
Boise, Idaho 83702

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"Controller" as used herein is the Idaho State Controller and Secretary to the Board.

WHEREAS, the State of Idaho is or may be obligated to make payments to Assignor pursuant to its contractual or other obligations, more particularly described as follows:

Real property leases regarding the STATE OF IDAHO:

By and through the Idaho State Liquor Division as "Lessee" and Lessee's  
occupancy of **4121 Lake Avenue, Caldwell, Idaho;**

WHEREAS, the Assignor has agreed with Assignee to assign all rights of payment for the above obligations to Assignee. The parties hereby agree the effective date of the transfer of real property occurred on \_\_\_\_\_, and that payment shall be made to Assignee beginning on this date. The parties furthermore agree that no payments will be made to Assignee until this Assignment is approved by and through the State Board of Examiners as reflected by the attached Lease Agreement; and

NOW THEREFORE, pursuant to I.C. Sec. 67-1027, Assignee requests the Board to specially approve assignment of the above obligations on the conditions below:

- (1) Assignee agrees that its rights shall be subordinate to any claims the State of Idaho or any of its agencies or instrumentalities have or may have against Assignor now or in the future. These claims include, but are not limited to, contracts, tort claims, taxes, fines or penalties of any sort.
- (2) If the State receives more than one claim against the amounts owed to Assignor, Assignee shall pay the State the total cost of evaluating such claims. These costs include, but are not limited to reasonable attorney's fees for the evaluation of the conflicting claims and any expenses necessary for such evaluation, including but not limited to, photocopying, transcript costs or any travel costs as necessary. It is intended that the State of Idaho be made whole in the event that there is any dispute over the sums involved.
- (3) As to any payments made by the State to Assignee on the above referenced obligations, Assignee agrees to defend, indemnify and hold harmless the State of Idaho for any claims made against the State resulting from such payments to Assignee. It is intended that the State of Idaho be made whole in any dispute involving payments made to Assignee.

2

The undersigned certifies that he/she is duly authorized by Assignee to execute this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ASSIGNOR: KDS Landing, LLC

ASSIGNEE: 3900 Overland, LLC

Signature

Signature

Name:

Name:

Title:

Title:

STATE OF IDAHO )

COUNTY OF Ada )

: ss.

On this 4<sup>th</sup> day of February, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared C. Fred Confortz, known to me to be the ASSIGNOR whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he/she executed the same.

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



Vickie Ensley  
Notary Public

Residing at Dampa, Idaho

My commission expires 9/25/2020

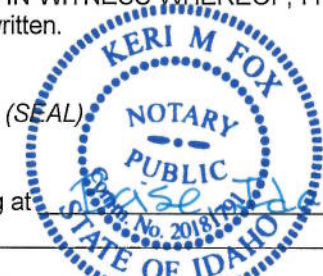
STATE OF IDAHO )

COUNTY OF Ada )

: ss.

On this 5 day of February, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared David Cadwell, known to me to be the ASSIGNEE whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he/she executed the same.

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



Keri M Fox  
Notary Public

Residing at Boise, Idaho

My commission expires 9/18/2024

The Board, having duly considered the above request pursuant to I.C. Sec. 67-1027, specially approved the above request on \_\_\_\_\_, 2020. This assignment shall be effective seven (7) days after its approval by the State Board of Examiners.

\_\_\_\_\_  
Brandon Woolf  
State Board of Examiners and State Controller

After the State Board of Examiners approves the Assignment, the Assignee and Assignor will receive an executed copy.

4



LEASE AGREEMENT FOR SPACE

THIS LEASE AGREEMENT FOR SPACE ("Lease Agreement") is entered effective upon the date of the last required signature (the "Effective Date"), by and between KDS Landing, LLC, 4481 N. Dresden Place, Garden City, Idaho 83714 (the "Lessor"), and the STATE OF IDAHO, by and through the Idaho Educational Services for the Deaf and the Blind, 1450 Main Street, Gooding, Idaho 83330 (the "Lessee"), for the leasing of that real property described below and referred to as the "Premises." The Lessor and the Lessee may be referred to collectively as the "Parties." The Parties specifically agree and acknowledge that the approval signature of the Leasing Manager, Division of Public Works, Department of Administration, is a required signature.

## WITNESSETH

WHEREFORE, in consideration of the mutual covenants, agreements, and conditions contained in this Lease Agreement, the Parties agree as follows.

1. **LEASE OF PREMISES.** The Lessor does hereby demise and lease to the Lessee the Premises situated in the City of Caldwell, County of Canyon, State of Idaho, known and described as follows: 4121 Lake Avenue, Caldwell, Idaho. The lease of the Premises includes the right, together with other tenants of the Building and their employees and business invitees, to use the common public areas of the Building for their intended use and subject to the other provisions of this Lease Agreement but includes no other rights not specifically set forth herein.
2. **TERM.** The term of this Lease Agreement is 60 Months. As time is of the essence, the term of this Lease Agreement shall begin on July 1, 2018, and shall end at midnight on June 30, 2023. The Parties agree that this Lease Agreement is subject to the termination, expiration and renewal rights set forth in this Lease Agreement. The Lessee may, at the expiration of the term of this Lease Agreement and without the necessity of renewing said Lease Agreement, continue in its occupancy of the Premises on a month to month basis upon the terms and conditions set forth in this Lease Agreement for a period not to exceed one (1) year. The Lessor may terminate the Lessee's month to month occupancy upon ninety (90) days' prior written notice to the Lessee.
3. **PAYMENT.** The Lessee shall pay to Lessor a fixed payment for the term of this Lease Agreement in monthly installments of \$2,009.74 each. The lease payment shall be computed at a rate of \$11.79 per square foot, per year. The total square footage of the Premises is 2,046, subject to measurement using BOMA standard. The total yearly lease payment is \$24,116.88. Upon election by the Lessee to pay in advance  quarterly,  semi-annually, or  annually, the Lessor shall allow Lessee a discount of Two (2) Percent. The lease payments shall be paid pursuant to the Lessor's timely submission of invoices for payment. Any payment that is made no later than sixty (60) days after it is actually due shall not be considered an event of default. Lessee shall use its best efforts to expedite payment. It is expressly covenanted and agreed that any prepayment of rent made by the Lessee under the terms of this Lease Agreement shall be considered as an advance payment of rent only and no part thereof shall be considered as a security or cash deposit.
4. **ACCEPTANCE OF PREMISES.** Lessor shall deliver the Premises to Lessee in accordance with floor plans and specifications attached to this Lease Agreement as Exhibit A, and incorporated herein by reference. Prior to or at occupancy, Lessee shall provide Lessor with a written statement acknowledging inspection and acceptance of the Premises. Lessee's obligations under this Lease Agreement shall not commence until Lessee's acceptance of the Premises. Lessee's inspection and acceptance of the Premises are based upon what may be reasonably observed by one untrained or unfamiliar with building inspections. At Lessee's discretion, Lessee may have particular conditions or parts of the Premises inspected by one trained or familiar with building inspections. In no event shall Lessee's inspection, or inspection by any agent of Lessee, be deemed a waiver of any defects in the Premises.
5. **NO WASTE; REPAIRS.** Lessee will not commit waste on the Premises, nor will it disfigure or deface any part of the Building, grounds, or any other part of the Premises, including fixtures. Lessee further covenants that upon return, the Premises will be in the same condition as originally received, reasonable wear and tear excepted. Repairs, except those actually necessitated by Lessee's waste, disfigurement or defacement, and except for repairs required by the removal of Trade Fixtures as provided for in Paragraph 12 of this Lease Agreement, shall be made solely at the Lessor's expense. Any repairs shall be done in a workmanlike manner and must comply with all applicable codes, ordinances, rules and regulations.

6. **SERVICES AND PARKING.** The Lessor covenants that it will provide, perform, and pay for the services, maintenance and parking as follows:

A. Utilities:

- 1) Domestic water and sewer;
- 2) Electricity;
- 3) Natural gas; and
- 4) Irrigation.

B. Facility Repair and Maintenance:

- 1) General building structure and related equipment (interior and exterior);
- 2) Heating system and related equipment;
- 3) Cooling and air handling system and related equipment;
- 4) Electrical system and related equipment;
- 5) Sewer and plumbing systems and related equipment;
- 6) Exterior lighting, including landscaped areas, parking area and walkway;
- 7) Cleaning ground and parking area of debris:  weekly,  monthly, or  other;
- 8) At such time, the Building is leased to multiple tenants, a low environmental impact janitorial service for the common areas of the Building on the lower level:  daily (excluding weekends and holidays) or  other;
- 9) Trash removal from property:  weekly or  other;
- 10) Furnishing of all washroom materials, including paper products, soap, cleaning supplies and equipment;
- 11) Light bulb and fluorescent tube replacement;
- 12) Outside ground maintenance shall be provided on an "as needed" basis. Snow removal shall include removal of snow from parking lots and walkways. Removal shall be performed weekdays prior to 8:00 a.m. and on an "as needed" basis throughout the day. Priority shall first be given to keeping handicapped spaces clear and to ingress, egress, and fire lanes, secondly to customer and employee parking areas, and lastly to overflow parking areas. An area shall be designated for snow storage. Areas subject to ice accumulation shall be treated with de-icing agents as necessary;
- 13) Directory sign with Lessee name;
- 14) Door sign with Lessee name; and
- 15) Lawn and shrubbery care weekly during season.

C. Parking. A total of Ten (10) lighted and paved automotive parking spaces, none of which will be secured or reserved, will be maintained with adequate ingress and egress available. Handicapped spaces will be provided equal to the requirements of the Americans with Disabilities Act (ADA).

7. **SPECIAL PROVISIONS.**

A. Taxes. Lessor shall pay and discharge all taxes and assessments whatsoever charged against the Premises whether charged by federal, state, county, city or other public authority.

B. Conference Room Use. Lessee shall be permitted to use the conference room and existing conference room furniture for up to one time per week until the conference room is leased to another tenant, or the building is sold to another Lessor. At that time, the Lessee may negotiate a periodic use of the conference room with either the other tenant or the new Lessor.

C. Increases in the Lease Payment. The lease payment shall increase according to the following schedule:

Period			Rent/Month	Rent/Year	Rent/Sq. Ft.
7/1/2019	to	6/30/2020	\$ 2,070.03	\$ 24,840.40	\$ 12.14
7/1/2020	to	6/30/2021	\$ 2,132.13	\$ 25,585.61	\$ 12.51
7/1/2021	to	6/30/2022	\$ 2,174.78	\$ 26,097.32	\$ 12.88
7/1/2022	to	6/30/2023	\$ 2,240.02	\$ 26,880.24	\$ 13.27

D. Carpet. Lessor agrees to replace the carpeting within the Premises prior to the commencement date of this Lease Agreement, with Lessor bearing up to \$2,000.00 of the cost to replace the carpet and the Lessee shall reimburse Lessor of all costs over \$2,000.00, upon receipt of invoice from Lessor.

E. Other Special Provisions. No other special provisions exist.

8. **FAILURE TO REPAIR, MAINTAIN OR SERVICE.** In the event that the Lessor shall fail or refuse to make such repairs, perform such maintenance, provide such services, or to take any other action required of the Lessor pursuant to this Lease Agreement, Lessee shall give Lessor reasonable notice and time to cure and, failing such cure, Lessee may, at its option, make such repairs, perform such maintenance, provide such services, or take any such action, and deduct such sums expended doing so from the lease payments due to the Lessor. In the event that such failure or refusal prevents Lessee from occupying any or all of the Premises, Lessee may deduct a pro rata sum from its lease payments equal to the greater of the monthly cost per square foot of those Premises not acceptable for occupancy or the actual cost incurred by the Lessee to secure and occupy alternate premises. Lessee's decision to exercise this remedy shall not be deemed to limit its exercise of any other remedy available under this Lease Agreement, at law or in equity.

9. **INDEMNIFICATION.** Lessor hereby agrees to defend, indemnify and save Lessee harmless from and against any and all liability, loss, damage, cost, and expense, including court costs and attorneys' fees of whatever nature or type, whether or not litigation is commenced, that the Lessee may incur, by reason of any act or omission of the Lessor, its employees or agents or any breach or default of the Lessor in the performance of its obligations under this Lease Agreement. The foregoing indemnity shall not apply to any injury, damage or other claim resulting solely from the act or omission of the Lessee. Nothing contained herein shall be deemed a waiver of Lessee's sovereign immunity, which is hereby expressly retained.

10. **USE OF PREMISES.** Lessee shall use the Premises for the following purposes: to conduct the business of the State of Idaho. Lessor warrants that, upon delivery, the Premises will be in good, clean condition and will comply with all laws, regulations or ordinances of any applicable municipal, county, state, federal or other public authority respecting such use as specified above, including but not limited to health, safety and building codes specified in Paragraph 26 of this Lease Agreement. Lack of compliance shall be an event of default and shall be grounds for termination of this Lease Agreement.

11. **FIRE OR DAMAGE.**

A. Damage or Destruction Renders Premises Unfit for Occupancy. If, during the term of this Lease Agreement, the Premises, or any portion thereof, shall be destroyed or damaged by fire, water, wind or any other cause not the fault of Lessee so as to render the Premises unfit for occupancy by Lessee, this Lease Agreement shall be automatically terminated and at an end. Lessee shall immediately surrender the Premises to Lessor and shall pay rent only to the time of such surrender. If comparable and acceptable office space can be provided by the Lessor within thirty (30) days of the date of destruction or damage, the Lessee may elect, at its sole option, to relocate to such substitute office space and all relocation costs shall be at the sole expense of the Lessor. Rents will be continued upon occupancy at the lesser of: (i) the current lease rate; or (ii) the market rate for the substitute space. Such relocation shall be for the remainder of this Lease Agreement or any extension.

B. Some Portion Fit for Occupancy.

- 1) Notwithstanding any other provision of this Lease Agreement, if less than fifty percent (50%) of the Premises are destroyed or damaged, and if that portion of the Premises may be restored within ninety (90) days to as good a condition as originally received, the Lessee may elect to continue this Lease Agreement and Lessor shall have the option to restore the Premises. Lessee shall give written notice of its intention to continue this Lease Agreement within thirty (30) days after such damage or destruction occurs. If Lessor does not elect to restore the Premises, the Lessor shall provide the Lessee with written notice of that fact and this Lease Agreement shall automatically terminate effective as of the date of destruction or damage.
- 2) If the Lessor elects to restore or rebuild pursuant to the option provided in paragraph 11.B.1), the rents otherwise due Lessor by Lessee shall be abated equal to the monthly cost per square foot of the unoccupied Premises for that period of time during which restoration or rebuilding of the Premises occurs. If the Lessee is unable to occupy all or part of the Premises during the restoration, then, at the option of the Lessee, the Lessee may be relocated to comparable and acceptable office space and all relocation costs shall be at the

sole expense of the Lessor. If such restoration or rebuilding exceeds ninety (90) days beyond the date of the destruction or damage to the Premises, Lessee may terminate this Lease Agreement without liability of any kind save payment for actual occupancy of the Premises prior to termination.

C. **Prepaid Rent.** In the event that this Lease Agreement is terminated as the result of damage or destruction to the Premises during any period of its term for which the Lessee has prepaid rent, the Lessor shall, within ten (10) days from the date of notification of termination by the Lessee, refund the full amount of any prepaid rent not then applied to a period of the Lessee's actual occupancy of the Premises. In the event that the Lessor does not timely remit the full amount of any prepaid rent to the Lessee, the Lessee shall be entitled to collect the full amount of its prepaid rent from insurance proceeds in the manner set forth in this Lease Agreement.

12. **ALTERATIONS.** Except as otherwise agreed, subsequent to the Effective Date and during the term of this Lease Agreement and any extension, neither Lessor nor Lessee shall make any alterations, additions or improvements to the Premises without the prior written consent of the other. Any and all alterations and improvements made by Lessee shall be made at Lessee's sole expense and, subject to the exception for Trade Fixtures provided below, shall, upon termination of this Lease Agreement, and without disturbance or injury, become the property of the Lessor, and shall remain in and be surrendered with the Premises. Any such alterations, whether performed by Lessor or Lessee, must be made in a workmanlike manner and must comply with all applicable codes, ordinances, rules and regulations. Notwithstanding any other provision of this Lease Agreement, Trade Fixtures, as defined in this Lease Agreement, installed by Lessee shall, at the option of the Lessee, not become the property of the Lessor and, upon the termination of this Lease Agreement, the Lessee may remove such Trade Fixtures and return the Premises in as close to original condition as possible, reasonable wear and tear excepted. For purposes of this Lease Agreement, a Trade Fixture is defined as personal property used by the Lessee in the conduct of its business and includes items such as, but not limited to, shelves and reception counters.

13. **DEFAULT.** In the event that either party shall default in the performance of any material term, covenant, or condition of this Lease Agreement, the party not in default may at its option terminate this Lease Agreement. The party alleging default must provide written notice of said default, specifying the alleged default, and the receiving party shall have five (5) business days to cure or shall immediately provide written documentation that it is proceeding to cure the default in an expedited manner (e.g., working overtime, express delivery, etc.). Should Lessee be in default by surrendering occupancy of the Premises in some manner violative of the terms of the Lease Agreement, Lessor may reenter the Premises without affecting its right of recovery of accrued rent therefore; provided, however, the Lessor shall exercise due diligence to mitigate any and all future losses of rent or damages that may result due to the failure of the Lessee to occupy the Premises.

14. **SUFFICIENT APPROPRIATION BY LEGISLATURE REQUIRED.** It is understood and agreed that the Lessee is a governmental entity, and this Lease Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State legislature as may exist from time to time. The Lessee reserves the right to terminate this Lease Agreement in whole or in part if, in its judgment, the legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for Lessee to continue such lease payments, or requires any return or "give-back" of funds required for the Lessee to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending. All affected future rights and liabilities of the Parties shall thereupon cease within ninety (90) days after the notice to the Lessor. It is understood and agreed that the lease payments provided for in this Lease Agreement shall be paid from State legislative appropriations.

15. **RIGHT TO TERMINATE LEASE AGREEMENT AT DIRECTION OF IDAHO DEPARTMENT OF ADMINISTRATION.** The parties to this Lease Agreement recognize and agree that Lessee, as an agency of the State of Idaho, is subject to the direction of the Idaho Department of Administration pursuant to Title 67, Chapter 57, Idaho Code, and, specifically, the right of that Department to direct and require Lessee to remove its operations from the Premises and relocate to other facilities owned or leased by the State of Idaho. Accordingly, it is agreed that, upon the occurrence of such event, Lessee may terminate this Lease Agreement at any time after a one (1) year period from the date of the commencement of the Lease Agreement as determined under Paragraph 2, provided that Lessor is notified in writing ninety (90) days prior to the date such termination is to be effective. Such action on the part of the Lessee will relieve the Lessee and the State of Idaho of liability for any rental payments for periods after the specified date of termination or the actual date of surrender of the Premises, if later.

16. **OFFICIALS, AGENTS AND EMPLOYEES OF LESSEE NOT PERSONALLY LIABLE.** It is agreed by and

between the Parties that in no event shall any official, officer, employee or agent of the State of Idaho be in any way liable or responsible for any covenant or agreement contained in this Lease Agreement, express or implied, nor for any statement, representation or warranty made in or in any way connected with this Lease Agreement or the Premises. In particular, and without limitation of the foregoing, no full-time or part-time agent or employee of the State of Idaho shall have any personal liability or responsibility under this Lease Agreement, and the sole responsibility and liability for the performance of this Lease Agreement and all of the provisions and covenants contained in this Lease Agreement shall rest in and be vested with the State of Idaho.

17. **RELATION OF PARTIES.** The Parties agree and acknowledge that neither shall be considered the employer, agent, representative, or contractor of the other by reason of this Lease Agreement.

18. **NOTICES.** Any notice required to be served in accordance with the terms of this Lease Agreement shall be sent by registered or certified mail. Any notice required to be sent by the Lessee shall be sent to the Lessor's last known address at 4481 N. Dresden Place, Garden City, Idaho 83714 and any notice required to be sent by the Lessor shall be sent to the address of the Premises and to the Lessee's address at: 1450 Main Street, Gooding, Idaho 83330. A copy of any such notice shall also be sent to the Department of Administration, Division of Public Works, Attn: Statewide Leasing Manager, Post Office Box 83720, Boise, ID 83720-0072. In the event of a change of address by either Lessor or Lessee, the Parties agree to notify each other in writing within ten (10) days of the date of any such change.

19. **INSURANCE.** The Lessor shall maintain an insurance policy (or policies) for the purpose of insuring any property and liability risks regarding the Premises. Any such policy obtained by the Lessor shall be at its sole and absolute expense, and Lessee shall have no obligation to obtain or pay for such insurance. The Lessor shall provide the Lessee with a certificate of insurance or a copy of its insurance policy on or before the term this Lease Agreement commences and shall provide annual confirmation of coverage prior to the renewal date of the policy (or policies). Should any of Lessor's policy (or policies) be cancelled before its expiration date, the Lessor shall immediately notify the Lessee and provide evidence of a replacement policy.

In the event that the Lessee shall prepay rent in the manner set forth in this Lease Agreement, the insurance policy (or policies) obtained and maintained by the Lessor shall include Business Income Coverage (loss of rental income). The policy (or policies) shall identify the Lessee as an additional loss payee and shall furthermore require the issuing insurer to notify the Lessee of any policy cancellation. The Lessee shall be entitled to receive insurance proceeds in the full amount of any prepaid rent prior to any distribution of insurance proceeds to the Lessor or any other third party not having an insurable interest in the Premises.

The Lessee acknowledges that its Trade Fixtures are subject to coverage in accordance with state law. Evidence of financial responsibility of Lessee will be provided to Lessor upon request, and will consist of a Certificate of Financial Responsibility.

20. **ASSIGNMENTS.** Lessor shall not assign this Lease Agreement without the written consent of the Lessee. If approved, the assignment is not effective unless it is also approved by the State Board of Examiners in accordance with Idaho Code § 67-1027. An assignment shall not in any way act as a release of any claim by Lessee as against the original Lessor nor shall it act as a waiver of any default under this Lease Agreement existing at the time of such sale or conveyance and assignment to the extent that any such default continues and remains uncured after such sale and assignment. The provisions of the Lease Agreement will continue in full force and effect upon such assignment by Lessee.

21. **NON-WAIVER.** The failure of the Lessor or Lessee to insist upon strict performance of any of the covenants and agreements of this Lease Agreement or to exercise any option contained in this Lease Agreement shall not be construed as a waiver or relinquishment of any such covenant or agreement, but the same shall be and will remain in full force and effect unless such waiver is evidenced by the prior written consent of authorized representatives of the Lessor and Lessee.

22. **MODIFICATION.** This Lease Agreement may be modified in any particular only by the prior written consent of authorized representatives of the Lessor and Lessee. **Anything else contained herein notwithstanding, modifications to this Lease Agreement shall be of no force and effect until approved in writing by the Department of Administration, Division of Public Works.**

23. **RENEWAL.** This Lease Agreement may be renewed by the written consent of the Lessor and Lessee provided such consent is rendered sixty (60) days in advance of the expiration of the term of this Lease Agreement. Notice of Lessor's

offer to renew shall be given by the Lessor one hundred twenty (120) days prior to the expiration of this Lease Agreement, including any extension. Lessee will have thirty (30) days to respond to Lessor's offer. If agreement is not reached by sixty (60) days prior to the expiration of the Lease Agreement, Lessor may lease the Premises to another party, but not on more favorable terms than offered to Lessee, without first giving Lessee ninety (90) days to accept or reject those new terms.

**24. ASBESTOS AND HEALTH HAZARDS.** Lessor agrees to comply promptly with all requirements of any legally constituted public authority made necessary by any unknown or existing health hazard including, but not limited to, such hazards which may exist due to the use or suspected use of asbestos or asbestos products in the Premises. The Lessor warrants that it has inspected the Premises for health hazards, specifically for the presence of asbestos, and the inspection has not detected asbestos, or if Lessor's inspection has revealed asbestos, then Lessor warrants that it has been removed or been encapsulated in accordance with current law and regulations. In the event that asbestos or another health hazard is discovered on the Premises, the Lessor agrees to protect the Lessee and its employees and to take immediate corrective action to cure the problem. It is agreed that, in the event the Lessee is unable to continue occupancy of the Premises due to the presence of asbestos or any other health hazard, or because of any governmental, legislative, judicial or administrative act, rule, decision or regulation, the Lease Agreement may be terminated by the Lessee upon ten (10) days' written notice to the Lessor. Any asbestos abatement costs, and any other repair or renovation costs associated with asbestos or other health hazard, as well as moving costs and consequential damages, will be at the sole expense of the Lessor.

**25. NON-DISCRIMINATION.** The Lessor hereby agrees to provide all services funded through or affected by this Lease Agreement without discrimination on the basis of race, color, national origin, religion, sex, age, physical/mental impairment, and to comply with all relevant sections of: Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and The Age Discrimination Act of 1975; and to comply with pertinent amendments to these acts made during the term of this Lease Agreement. The Lessor further agrees to comply with all pertinent parts of federal rules and regulations implementing these acts. The Lessor hereby agrees to provide equal employment opportunity and take affirmative action in employment on the basis of race, color, national origin, religion, sex, age, physical/mental impairment, and covered veteran status to the extent required by: Executive Order 11246; Section 503 of the Rehabilitation Act of 1973, as amended; and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974; and to comply with all amendments to these acts and pertinent federal rules and regulation regarding these acts during the term of the Lease Agreement.

**26. HANDICAP ACCESSIBILITY.** Space leased by the State of Idaho will meet or exceed standards for handicap accessibility as set out in the American National Standards Institute (ANSI A117-1); Americans with Disabilities Act, Americans with Disabilities Accessibility Guidelines (ADAAG) and applicable regulations; the International Building Code; all state-adopted codes and standards; and such federal regulations as may be applicable to the occupying agency.

**27. CONSTRUCTION OR RENOVATION OF BUILDINGS.** All buildings owned or maintained by any State government agency or entity, or which are constructed or renovated specifically for use or occupancy by any such agency or entity shall conform to all existing state codes, including but not restricted to, the Idaho General Safety and Health Standards, the International Building Code, the International Mechanical Code and the International Fire Code. If any conflict arises between applicable codes, the more stringent code shall take precedence. Prior to construction or remodeling of such buildings, where appropriate, construction plans shall be reviewed and approved by the Division of Building Safety, the State Fire Marshal's Office and the Permanent Building Fund Advisory Council.

**28. LONG TERM ENERGY COSTS.** Long-term energy costs, including seasonal and peaking demands upon the suppliers of energy, are to be a major consideration in the construction of all State buildings and the execution of lease agreements. Special attention shall include energy conservation considerations including: (i) Chapter 13 of the International Building Code, 2000 Edition; (ii) use of alternative energy sources; (iii) energy management systems and controls to include effective means to monitor and maintain systems at optimal operations; and (iv) "state-of-the-art" systems and equipment to conserve energy economically.

**29. NON-SMOKING BUILDINGS.** All State-owned or State-leased buildings, facilities or area occupied by State employees shall be designated as "non-smoking" except for custodial care and full-time residential facilities. The policy governing custodial care and full-time residential facilities may be determined by the directors of such facilities.

**30. UTILITY INFORMATION.** State agencies are required to develop an inventory of greenhouse gas emissions and to implement strategies to reduce greenhouse gases. The Lessor agrees to provide Lessee with ongoing permission to

access the utility information of the Building to determine the amount of electricity and heating fuel consumed within the Premises. If Lessee is not able to access this information directly from the utility companies, Lessor agrees to furnish said information to Lessee on a calendar year basis.

**31. INDOOR AIR QUALITY.** Lessor agrees to develop and maintain an indoor air quality management program and to maintain it in conjunction with all construction projects in the Building as well as on all ongoing maintenance and repairs of the Building and the Premises. Said program shall optimize and document the use of air quality compliant materials inside the Building to reduce the emissions from materials used in the Building. Ongoing indoor air quality requires the use of low or no VOC paints, solvents, adhesives, furniture and fabrics. VOC and chemical component limits shall not exceed Green Seal's Standard GS-11 requirements. Paints used on site shall be low VOC and are to be brush-applied only, spray painting is not allowed on the interior of the Building. Carpet must meet the requirements of the CRI Green Label Plus Carpet Testing Program. Carpet cushion must meet the requirements of the CRI Green Label Testing Program. Composite panels and agrifiber products must not contain added urea-formaldehyde resins. Laminate adhesives used to fabricate on-site and shop applied assemblies containing these laminate adhesives must contain no urea-formaldehyde.

**32. MATERIAL REPRESENTATIONS.** The Parties agree and acknowledge that the representations and acknowledgments made in this Lease Agreement are material and the Parties have relied upon them in entering this Lease Agreement.

**33. SEVERABILITY.** If any term or provision of this Lease Agreement is held by the courts to be illegal or in conflict with any existing law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be continued and enforced as if the invalid term or provision were not contained in this Lease Agreement.

**34. LESSOR'S RIGHT TO LEASE.** The Lessor warrants that it is lawfully possessed of the Premises and has good, right and lawful authority to enter into this Lease Agreement and that the Lessor shall put the Lessee into actual possession of the Premises at the commencement of the term of this Lease Agreement and shall ensure to the Lessee the sole, peaceable, and uninterrupted use and occupancy of the Premises during the full term of this Lease Agreement and any extension.

**35. MORTGAGES BY LESSOR.** Lessee recognizes that Lessor may encumber the Premises by a mortgage(s) or other instrument securing Lessor's obligations to a lender. In such event, the following provisions apply as to the holder of any such mortgage or security instrument and to any person or entity acquiring an interest in the Premises through such mortgage or security interest:

A. In the event of a foreclosure or acquisition by the holder of such mortgage or security instrument (or by a third party at a foreclosure sale), this Lease Agreement shall continue in full force and effect and the holder or other acquiring party shall be entitled to the benefits of the Lessee's performance under this Lease Agreement and shall have such remedies as are available to the Lessor under this Lease Agreement with respect to any default by the Lessee then existing or thereafter occurring.

B. Upon written notification to Lessee of a completed foreclosure or other acquisition by the holder or third party purchaser at a foreclosure sale, Lessee will attorn to the acquiring party and shall thereafter perform.

C. In the event of a foreclosure or acquisition by the holder of such mortgage or other security instrument (or by a third party purchaser at a foreclosure sale), claims by Lessee against the Lessor arising prior to acquisition by the holder or third party purchaser shall not apply to such holder or third party purchaser; provided, however, that this shall not act as a waiver of any rights of Lessee by reason of default under this Lease Agreement existing at the time of such foreclosure sale or other acquisition or thereafter arising, to the extent that such default is not cured under the provisions of this Lease Agreement.

**36. ESTOPPEL CERTIFICATE.** Lessee agrees, upon reasonable written request, and from time to time, to provide to Lessor an Estoppel Certificate in the form attached hereto as Exhibit B.

**37. COMPLETE STATEMENT OF TERMS.** No other understanding, whether oral or written, whether made prior to or contemporaneously with this Lease Agreement, shall be deemed to enlarge, limit or otherwise affect the operation of this Lease Agreement.

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement as set forth above.

LESSOR: KDS Landing, LLC

C. Fred Cornforth

STATE OF IDAHO )  
COUNTY OF ADA )ss.

On this 11<sup>th</sup> day of June, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared C. Fred Cornforth, known or identified to me to be the person whose name is subscribed to the foregoing instrument on behalf of KDS Landing, LLC, as Lessor, and acknowledged to me that he/she executed the same on behalf of the Lessor.

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

VICKIE ENSLEY  
NOTARY PUBLIC  
STATE OF IDAHO

Vickie Ensley  
Notary Public

Commission expires on 9/25/20 Residing at \_\_\_\_\_

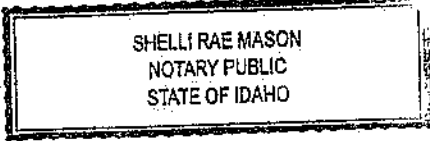
LESSEE: Idaho Educational Services for the Deaf and the Blind

*[Handwritten Signature]*

STATE OF Idaho )  
COUNTY OF Booding )ss.

On this 19 day of June, 20 18 before me, the undersigned, a Notary Public in and for said State, personally appeared Brian G Darcy, known or identified to me to be the person whose name is subscribed to the foregoing instrument on behalf of Idaho Educational Services for the Deaf and the Blind, as Lessee, and acknowledged to me that he/she executed the same on behalf of the Lessee.

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



Shelli Rae Mason  
Notary Public

Commission expires on 6/24/2023 Residing at Gooding, Idaho

APPROVED BY:

[Signature]  
Linda S. Miller, Statewide Leasing Manager  
Division of Public Works, Department of Administration

6/20/2018  
Date

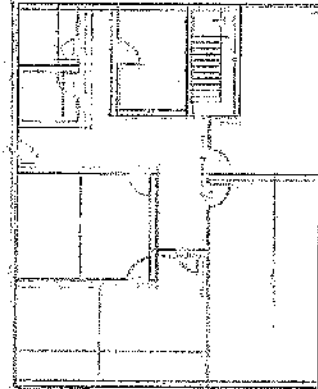
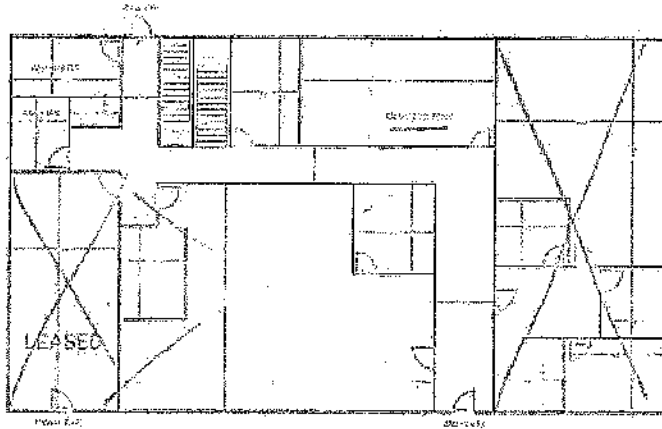
EXHIBIT A TO THE LEASE AGREEMENT  
THE PREMISES

4121 Lake Avenue, Caldwell, Idaho 83843

**KD'S LANDING**

4121 LAKE AVENUE | CALDWELL, ID

Lower Level



Upper Level

**EXHIBIT B TO THE LEASE AGREEMENT**  
**ESTOPPEL CERTIFICATE**

This Estoppel Certificate is made by \_\_\_\_\_, (hereinafter "Lessee") the lessee of those certain premises located at \_\_\_\_\_, Idaho, and described as \_\_\_\_\_, and leased by Lessee from \_\_\_\_\_ (hereinafter "Lessor").

NOW THEREFORE, Lessee certifies and represents to Lessor and its successors, mortgagees and assigns and their attorneys, representatives, with respect to the above described lease as follows:

1. The true, correct and complete copy of the lease, including all amendments or addendum thereto (hereinafter collectively referred to as the "Lease") is attached hereto.
2. The Lease contains the entire agreement between Lessor and Lessee, and to the best of Lessee's knowledge, as of the date hereof, Lessor is not in default in the performance of the terms and provisions of the Lease.
3. The Lease is for approximately \_\_\_\_\_ square feet. The Lease began on \_\_\_\_\_ and will end on \_\_\_\_\_.
4. Lessee has paid all rents due under the Lease for the period through and including \_\_\_\_\_, and Lessee has paid no other rent or compensation in lieu of rent in advance beyond such date. As of the date hereof, rent due from Lessee to Lessor is in the amount of \$ \_\_\_\_\_ per month plus such additional rent as called for in the Lease.

DATE: \_\_\_\_\_

LESSEE:  
  
\_\_\_\_\_

