

Instrument # 999361
Bonner County, Sandpoint, Idaho
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Michael W. Rosedale Fee: \$0.00
Ex-Officio Recorder Deputy
Index to: CONDITIONS COVENANTS & RESTRICTIONS

City of Sandpoint, Bonner County, Idaho

AGREEMENT FOR TRANSFER OF RESTRICTIVE COVENANT

Between:

BNSF Railway Company
City of Sandpoint
Allen G. Cox Family, LLC

Property Reference:

A parcel of land being a portion of Government Lot 2, Section 23, Township 57 North, Range 2
West, B.M., City of Sandpoint, Bonner County, Idaho,
more particularly described within the document that is the subject of this recording.

January 21, 2022

Recording requested by:
City of Sandpoint, Idaho
1123 Lake Street
Sandpoint, Idaho 83864

AGREEMENT FOR TRANSFER OF RESTRICTIVE COVENANT

This Agreement is made and entered into this 10th day of December, 2021, by and between the following: BNSF RAILWAY COMPANY, a Delaware corporation, of 2500 Lou Menk Drive, Fort Worth, Texas, 86131 (BNSF); THE CITY OF SANDPOINT, a political subdivision of the State of Idaho, of 1123 Lake Street, Sandpoint, Idaho 83864 (the CITY); and the ALLEN G. COX FAMILY, LLC, an Idaho Limited Liability Company, of 210 East Superior Street, Sandpoint, Idaho 83864. BNSF, the CITY and COX are sometimes referred to herein as a “party”, or “parties.”

WHEREAS, on or about June 27, 1922, Northern Pacific Railway Company, predecessor to BNSF, conveyed certain real property to the CITY, which included the following described parcel, located in Sandpoint, Bonner County, Idaho, more particularly described as follows:

A parcel of land being a portion of Government Lot 2, Section 23, Township 57 North, Range 2 West, B.M., City of Sandpoint, Bonner County, Idaho, and being more particularly described as follows:

COMMENCING at the northwest corner of said Section 23, which falls in a building per CP&F filed September 25, 1984;

Thence along the North line of said Section 23, North 89°30'59"

East, 130.95 feet to an intersection with the original East right-of-way of the Burlington Northern-Santa Fe Railroad;

Thence along said original right-of-way, South $10^{\circ}11'59''$ East, 1813.24 feet to an intersection with the southerly edge of an existing sidewalk and the **TRUE POINT OF BEGINNING**;

Thence along the East line of that parcel described in Warranty Deed, Instrument No. 927848, records of Bonner County, Idaho, South $10^{\circ}11'51''$ East, 523.65 feet to an intersection with the northerly edge of an existing sidewalk;

Thence along said northerly edge, the following two (2) courses:

1. South $82^{\circ}00'54''$ East, 29.35 feet;
2. South $83^{\circ}00'47''$ East, 104.59 feet to the westerly edge of an existing sidewalk;

Thence along said westerly edge, the following three (3) courses:

1. North $10^{\circ}33'50''$ West, 491.72 feet;
2. Thence along a non-tangent curve to the right, having a delta angle of $38^{\circ}42'41''$, a radius of 45.28 feet, an arc length of 30.59 feet, and a chord bearing of North $10^{\circ}28'20''$ East, 30.01 feet;
3. Thence with a reverse curve to the left, having a delta angle of $126^{\circ}54'43''$, a radius of 1.91 feet, an arc length of 4.23 feet, and a chord bearing of North $23^{\circ}34'09''$ West, 3.42 feet to said southerly edge of an existing sidewalk;

Thence along said southerly edge, the following six (6) courses:

1. North $80^{\circ}28'31''$ West, 21.78 feet;
2. Thence North $81^{\circ}57'44''$ West, 39.62 feet;
3. Thence North $84^{\circ}03'18''$ West, 29.25 feet;
4. Thence along a non-tangent curve to the right, having a delta angle of $35^{\circ}43'09''$, a radius of 29.43 feet, an arc length of 18.35 feet, and a chord bearing of North $73^{\circ}36'18''$ West, 18.05 feet;

5. Thence with a reverse curve to the left having a delta angle of $64^{\circ}09'14''$, a radius of 7.58 feet, an arc length of 8.49 feet, and a chord bearing of North $76^{\circ}04'58''$ West, 8.05 feet;
6. Thence South $69^{\circ}03'09''$ West, 5.76 feet;
7. Thence along a non-tangent curve to the right having a delta angle of $40^{\circ}08'13''$, a radius of 28.06 feet, an arc length of 19.66 feet, and a chord bearing of South $87^{\circ}02'58''$ West, 19.26 feet to said parcel described in Warranty Deed, Instrument No. 927848, and the **TRUE POINT OF BEGINNING**, encompassing an area of 1.53 acres.

(the "City Beach Property"); said conveyance was made by Grant Deed, recorded in Book 38 of Deeds, Page 257, records of Bonner County, Idaho: and

WHEREAS, on or about June 12, 1975, Burlington Northern, Inc., successor to Northern Pacific Railway Company, and predecessor to BNSF; recorded a Correction and Confirmation Deed, which corrected the legal description of the real property previously conveyed to the CITY by Northern Pacific Railway Company, recorded as Instrument No. 166663, records of Bonner County, Idaho; and

WHEREAS, both the Grant Deed memorializing the conveyance from Northern Pacific Railway Company, and the Correction and Confirmation Deed memorializing the conveyance from Burlington Northern, Inc., contain a covenant, which provides:

TO HAVE AND TO HOLD, unto the grantee (City of Sandpoint) only so long as the premises are used for park purposes, and upon the express condition that there shall be no grade crossings now or hereafter opened across the grantor's tracks, and the grantor shall be exempt from any assessment for the improvement or maintenance of the park and also from any expense for opening, constructing or maintaining undercrossings on the grantor's railroad right of way. Should the premises cease to be used for park purposes, or should the grantee fail to observe any of the conditions of this grant, this instrument shall become null and void, and the premises immediately revert to the grantor, who may forthwith resume possession.

(the "Restrictive Covenant"); and

WHEREAS, on or about November 18, 2020, the CITY and COX agreed to exchange real property pursuant to Idaho Code Section 50-1401 and 1402, said exchange confirmed by Resolution of the Sandpoint City Council, December 16, 2021, with COX to receive the City Beach Property, and the CITY to receive the following described real property, located in Sandpoint, Bonner County, Idaho, more particularly described as follows:

A parcel of land being a portion of Government Lot 2 and a portion of the Northwest quarter of the Southwest quarter (NW/4-SW/4) located in Section 23, Township 57 North, Range 2 West, B.M., City of Sandpoint, Bonner County, Idaho, and being more particularly described as follows:

COMMENCING at the Northwest corner of said Section 23, which falls in a building per CP&F filed September 25, 1984;

Thence along the North line of said Section 23, North 89°30'59" East, 130.95 feet to the intersection with the original East right-of-way of the Burlington Northern-Santa Fe Railroad;

Thence along said original right-of-way, South 10°11'51" East, 1813.24 feet to an intersection with the southerly edge of an existing sidewalk;

Thence along the East line of that parcel described in Warranty Deed Instrument No. 927848, records of Bonner County, Idaho, South 10°11'51" East, 523.65 feet to an intersection with the northerly edge of an existing sidewalk;

Thence leaving said edge of sidewalk and continuing along said East line, South 10°11'51" East, 62.88 feet to the intersection with the Southerly right of way line of "Bridge Street", a 60 foot-wide public right of way per Correction and Confirmation Deed Instrument No. 166663, and being the **TRUE POINT OF BEGINNING**;

Thence continuing along said East line the following three (3) courses:

1. South 10°11'51" East, 122.04 feet to a point of spiral curvature;
2. Thence along said spiral curve, who has a chord bearing and distance of South 10°59'58" East, 156.35 feet to a point of curvature to the left;

3. Thence along said curve to the left, which is concave to the Northeast having a central angle of $012^{\circ}29'43''$, a radius of 1710.73 feet, an arc distance of 373.09 feet and a chord bearing and distance of South $18^{\circ}55'08''$ East, 372.35 feet, to the intersection with the North bank of the original channel of "Sand Creek", as stated in said Warranty Deed Instrument No. 927848;

Thence leaving said East line and along the said original North bank of "Sand Creek", South $84^{\circ}34'45''$ West, 158.55 feet to a point of non-tangent curvature to the right and being on the existing Easterly right of way of the Burlington Northern-Santa Fe (B.N.S.F.) Railroad;

Thence leaving said original North bank and along said B.N.S.F. Railroad existing Easterly right of way the following three (3) courses:

1. Along a non-tangent curve to the right which has a delta angle of $010^{\circ}50'45''$, a radius of 1860.73 feet, an arc length of 352.23 feet, and a chord bearing of North $18^{\circ}05'39''$ West, 351.70 feet, to a point of spiral curvature;
2. Thence along said spiral curve, a chord bearing and distance of North $11^{\circ}01'00''$ West, 162.83 feet to a point of tangency;
3. Thence North $10^{\circ}11'51''$ West, 157.62 feet to the intersection with the said Southerly right of way line of "Bridge Street", per said Correction and Confirmation Deed Instrument No. 166663;

Thence leaving said Easterly right of way line and along said Southerly right of way line for "Bridge Street" the following two (2) courses:

1. North $81^{\circ}36'31''$ East, 40.61 feet to an angle point on said right of way line;
2. Thence, South $82^{\circ}47'40''$ East, 114.66 feet to the **TRUE POINT OF BEGINNING**, encompassing an area of 2.29 acres.

(the "Cox Property"); and

WHEREAS, the parties agree that it is in their best interests to transfer the Restrictive Covenant which currently affects the City Beach Property to the Cox Property, prior to its conveyance to the CITY, so that the Restrictive Covenant will continue to affect the CITY'S real property located within and around the real property acquired as part of the above described conveyance.

NOW THEREFORE, for good and valuable consideration received and for mutual covenants herein made the parties hereby agree as follows:

1. BNSF hereby relinquishes its Restrictive Covenant affecting the City Beach Property, originally executed June 27, 1922, which is of no further force and effect on said property, only as to the property being conveyed to COX, the Restrictive Covenant will remain in place on the remaining property originally affected by the Restrictive Covenant.

2. The CITY shall convey the City Beach Property to COX, by Warranty Deed, which shall contain language regarding BNSF'S release of the Restrictive Covenant on the City Beach Property.

3. BNSF shall be entitled to a restrictive covenant on the Cox Property, identical to that originally affecting the City Beach Property.

4. COX shall convey the Cox Property to the CITY, by Warranty Deed, which shall contain a restrictive covenant identical to the one in place on the City Beach Property, which shall reference BNSF's right to place the restrictive covenant on that property as part of this Agreement, and which shall be stated as follows:

TO HAVE AND TO HOLD, unto the grantee (City of Sandpoint) only so long as the premises are used for park purposes, and upon the express condition that there shall be no grade crossings now or hereafter opened across the grantor's tracks, and the grantor shall be exempt from any assessment for the improvement or maintenance of the park and also from any expense for opening, constructing or maintaining undercrossings on the grantor's railroad right of way. Should the premises cease to be used for park purposes, or should the grantee (City of Sandpoint) fail to observe any of the conditions of this grant, this instrument shall become null and void, and the premises immediately revert to BNSF Railway Company, who may forthwith resume possession.

5. The partial release of BNSF'S Restrictive Covenant on the City Beach

Property, and its right to place a restrictive covenant on Cox Property to be conveyed to the CITY, shall be appurtenant to and shall run with the land, and shall bind, burden and benefit each party's respective heirs, successors, and assigns.

6. Nothing contained in this Agreement is intended to remove the Restrictive Covenant from the remaining real property conveyed to it in the Grant Deed from Northern Pacific Railway Company, and the Correction and Confirmation Deed from Burlington Northern, Inc., referenced herein.

7. This Agreement, and all terms and conditions contained therein, shall be governed and construed according to the laws of the State of Idaho.

8. By their endorsements hereon, each of the parties agree to the terms and conditions to be performed by them as part of this Agreement.

IN WITNESS WHEREOF, the parties hereto grant said easements and agree as set forth above.

BNSF RAILWAY COMPANY



By Blaine Bilderback, its Director Real Estate



0004549255



STATE OF IDAHO
 Office of the secretary of state, Lawrence Denney
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 #: 0004549255
 Date Filed: 1/3/2022 11:32:33 AM

Entity Name and Mailing Address:

Entity Name: ALLEN G. COX FAMILY, LLC

The file number of this entity on the records of the Idaho Secretary of State is: 0000046984

Address: 210 E SUPERIOR ST
SANDPOINT, ID 83864-1272

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: W10862

The registered agent on record is:

Registered Agent: ADRIAN A COX
Registered Agent
Physical Address
210 E SUPERIOR
SANDPOINT, ID 83864
Mailing Address

Limited Liability Company Managers and Members

Name	Title	Business Address
ADRIAN A COX	Manager	PO BOX 128 SANDPOINT, ID 83864

The annual report must be signed by an authorized signer of the entity.

Job Title: controller

kyle jefferson _____ 01/03/2022
 Sign Here Date

DUPLICATE RECEIVED BY ID SECRETARLY OF STATE LAWRENCE DENNEY

Unofficial Document



December 13, 2021

Title & Escrow Services/USA

Main Office 4200 Buckingham Road, Suite 110
Fort Worth, Texas 76155-2685

O 817 230 2612/M 469 346 1194/F 312 470 5311
E-mail: rhonda.burton@am.jll.com

VIA FedEx Priority Overnight
Trk# 7754 7423 0800

CITY OF SANDPOINT
Attn: Jennifer Stapleton, City Administrator
1123 Lake Street
Sandpoint, ID 83864
P: 208.265.1483 M: 208.329.6078
jstapleton@sandpointidaho.gov

RE: Property: **Sandpoint, Bonner County, Idaho**
Transfer: **BNSF/City/Cox**

Dear Jennifer:

Congratulations! As promised, please find attached the following BNSF Delivery for your further handling:

- Agreement for Transfer of Restrictive Covenant ("Agreement") – please secure balance of signatures before you submit for recording in Bonner County, ID
 - NOTE: please return a copy of the fully executed Agreement to the undersigned. And follow with recording of same when available to complete this closing.

After recording, please provide me with a copy via mail; e-mail at rhonda.burton@am.jll.com OR fax by dialing (312)-470-5311 to finalize the closing and assist in updating Seller's Property Inventory Management System and mapping records.

Please call me if you have any questions or concerns or need anything further. JLL is acting as representative for BNSF Railway Company – we appreciate your business.

Very truly yours,

Rhonda Burton

Rhonda Burton
Director, Specialist Advisory

Enclosure

cc: adorman@lclattorneys.com
adrian@sandida.com
tim.sharman@am.jll.com