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RICHARD T. CIOTTONE

February 16, 2005

FILED

FEB 16 2005

**Missouri Public
Service Commission**

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

RE: *The Empire District Electric Company and White River Valley Electric
Cooperative, Case No. EO-96-176*

Dear Mr. Roberts:

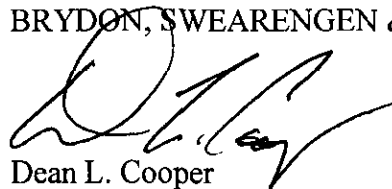
Enclosed for filing in the above-referenced matter, please find the original and eight (8) copies of the Joint Motion for Approval of First Addendum. A copy of the foregoing Joint Motion has been hand-delivered or mailed this date to all parties of record.

If you have any questions, then please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Dean L. Cooper

DLC/jar
Enclosures

cc: Dan Joyce
Office of the Public Counsel

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of The)
Empire District Electric Company and)
White River Valley Electric Cooperative)
for Approval of a First Addendum to)
the Parties' Second Territorial)
Agreement Designating Service for a)
New Structure Located in Branson, Missouri)

Case No. EO-96-176

FILED

FEB 16 2005

**Missouri Public
Service Commission**

JOINT MOTION FOR APPROVAL OF FIRST ADDENDUM

COME NOW The Empire District Electric Company ("Empire") and White River Valley Electric Cooperative ("White River"), hereinafter referred to collectively as "Movants," by and through their respective counsel, and for their Joint Motion to the Missouri Public Service Commission ("Commission"), pursuant to the terms of the Second Territorial Agreement, for an order approving Movants' First Addendum to Second Territorial Agreement ("First Addendum" or "Addendum"), respectfully state as follows:

1. **The Movants** - Empire is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri 64801. Empire is engaged in the business of providing electrical and water utility services in Missouri to customers in its service areas and has a certificate of service authority to provide certain telecommunications services. Empire is an "electrical corporation," a "water corporation," a "telecommunications company" and a "public utility" as those terms are defined in § 386.020 RSMo. 2000, and is subject to the jurisdiction and supervision of the Commission as provided by law. Empire has no pending or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or its rates, which have occurred within the three years immediately

preceding the filing of this Motion. Empire has no overdue Commission annual reports or assessment fees. Empire's documents of incorporation have been previously filed with the Commission in Case No. EF-94-39 and said documents are incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G). A Certificate of Authority from the Missouri Secretary of State to the effect that Empire, a foreign corporation, is duly authorized to do business in the State of Missouri was filed with the Commission in Case No. EM-2000-369 and is incorporated herein by reference.

2. White River is a rural electric cooperative organized and existing under the laws of Missouri and has its principal office on East Highway 76, Branson, Missouri. It is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members within certain Missouri Counties. White River has no pending or final judgments or decisions against it from any state or federal agency or court which involve its customer service or rates within the three years immediately preceding the filing of this Joint Motion. A copy of a Certificate of Good Standing from the Office of the Missouri Secretary of State for White River was filed with the Commission in Case No. EO-2004-0246 and is incorporated herein by reference.

3. **Correspondence and Communication** - Correspondence, communications, and orders in regard to this Motion should be directed to

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Brydon, Swearengen & England, P.C.
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
573-635-7166 (telephone)
573-635-3847 (fax)

dcooper@brydonlaw.com

Christaan D. Horton
Neale & Newman, LLP
1949 E. Sunshine, Suite 1-130
Springfield, MO 65808-0327
417-882-9090 ext. 3036
417-882-2529 (fax)
chorton@nnlaw.com

4. **The Territorial Agreement** - Subject to the terms and conditions of an Agreement, known as the "Second Territorial Agreement" between Empire and White River, Movants have specifically designated the boundaries of two exclusive electric service areas within Taney County, Missouri, which Agreement was executed by the parties hereto on April 11, 1995, and was approved by the Commission on March 19, 1996. Movants have attached a copy of the Second Territorial Agreement, in its form as approved by the Commission, to this Motion as **Appendix A**, which is incorporated by reference and made a part hereof for all purposes.

5. **Boundary Structures** - Paragraph 5C of the Agreement (p. 4) addresses agreements to vary the boundaries of the Territorial Agreement on a cases by case basis for "boundary structures." This Motion is filed in accordance with that provision.

5. **Addendum** - Attached to this Motion is a copy of the First Addendum to the Second Territorial Agreement. The Addendum is marked **Appendix B** and is incorporated by reference and made a part hereof for all purposes. A map showing the new structure subject to the Addendum was made a part of the Addendum.

6. **Customer Statement** - In compliance with the provisions of the Second Territorial Agreement relating hereto, the parties have further attached as **Appendix C** the

Affidavit of Mr. Chris A. Lucchi, Managing Member of Morris Group II Investments, L.L.C., owner of the new structure with which this Motion is concerned. For the reasons set forth therein and below, the parties' First Addendum proposes to establish Empire as the exclusive provider of electrical service to a new structure to be known as the Belair Theater, located at 1600 West State Highway 76, Branson, Missouri 65616 ("Theater" or "new structure" hereafter), despite said new structure being located within the service territory of White River as defined within the Second Territorial Agreement.

7. **No Change of Suppliers** - The proposed First Addendum does not require transfer of any facilities or customers between the Movants, so no list of persons whose utility service would be changed by the Addendum is included.

8. **Authority** -- Empire already has a certificate of public convenience and necessity to provide utility service in this portion of Taney County, Missouri. As a result, Empire has not included with this Motion an "illustrative tariff" reflecting proposed changes to its certification.

9. **Other Electric Suppliers** – To Movants' knowledge and belief there are no other electric suppliers serving in the area in which the new structure is located.

10. **Addendum is in the Public Interest** - The Theater is situated in White River's service Territory. However, because the Theater will adjoin an existing structure already being served by Empire within its service territory, it is in the public interest to avoid having two different suppliers providing electrical service to the adjoining structures, and the parties agree that allowing Empire to serve both adjoining structures would be the safest and most efficient means of providing service to the Theater, despite its location within White River's service

territory¹. The serving of both structures by one provider is, in fact, necessary in order to avoid endangering the public in case of fire hazard. Fire departments must have electric service disconnected prior to fighting fires, if these connected buildings were to be served by two utilities, that would increase the time to disconnect electric service. Finally, the establishment of Empire as the exclusive service provider for the Theater will prevent future duplication of electric service facilities and will also allow this new electric service customer to know with certainty the supplier of its electric service.

11. **Service Responsibilities** - Each Applicant will continue to have service responsibilities beyond the terms of the First Addendum unaffected thereby.

12. **Application Fee** - Pursuant to the terms of the Second Territorial Agreement, as approved by the Commission, there is no filing fee required for submission of this Joint Motion.

WHEREFORE, Movants respectfully request that the Commission issue its order:

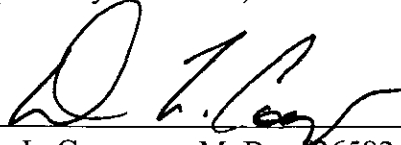
(a) Finding that the exclusive provision of electric service by Empire to the Belair Theater, a new structure, is not detrimental to the public interest and approving the Movants' First Addendum to Second Territorial Agreement; and

(b) Authorizing Movants to perform in accordance with the terms and conditions of the

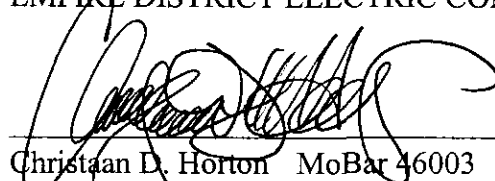
¹Empire has confirmed that the National Electric Safety Code (NESC) does authorize for two separate service locations for the two adjoining structures described in this Motion.

First Addendum.

Respectfully submitted,



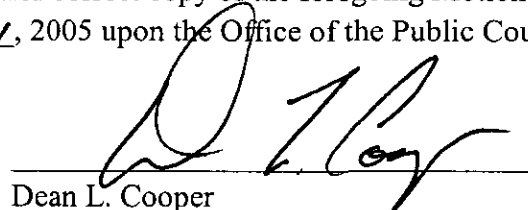
Dean L. Cooper MoBar #36592
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ATTORNEYS FOR THE
EMPIRE DISTRICT ELECTRIC COMPANY



Christaan D. Horton MoBar 46003
Neale & Newman, LLP
1949 E. Sunshine, Suite 1-130
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417-882-9090 ext. 3036
417-882-2529 (fax)
chorton@nnlaw.com
ATTORNEYS FOR WHITE RIVER VALLEY
ELECTRIC COOPERATIVE

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Motion was served by hand delivery this 16th day of February, 2005 upon the Office of the Public Counsel and the Office of the General Counsel.



Dean L. Cooper

VERIFICATION

STATE OF MISSOURI)
)ss
COUNTY OF _____)

I, Michael Palmer, state that I am employed by The Empire District Electric Company ("Empire") as Vice President - Commercial Operations; that I have read the above and foregoing document; that the statements contained therein are true and correct to the best of my information, knowledge and belief; and, that I am authorized to make this statement on behalf of Empire.

Michael E Palmer

Subscribed and sworn to before me this 15th day of FEBRUARY, 2005.

Dean L. Cooper
Dean L. Cooper, Notary Public



DEAN L. COOPER
Cole County
My Commission Expires
November 13, 2006

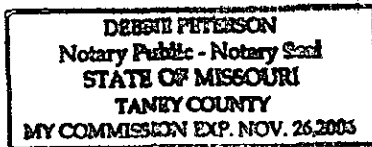
VERIFICATION

STATE OF MISSOURI)
)ss
COUNTY OF Taney)

I, Christopher Hamon, state that I am employed by White River Valley Electric Cooperative ("White River") as General Manager; that I have read the above and foregoing document; that the statements contained therein are true and correct to the best of my information, knowledge and belief; and, that I am authorized to make this statement on behalf of White River.

Christopher J. Hamon

Subscribed and sworn to before me this 7th day of February, 2005.



Debbie Peterson
Debbie Peterson, Notary Public

SECOND TERRITORIAL AGREEMENT

THIS AGREEMENT, made and entered into this 11th day of April 1995, by and between The Empire District Electric Company, a Kansas corporation, with its principal office located in Joplin, Missouri ("Empire") and White River Valley Electric Cooperative, a Missouri co-operative pursuant to Chapter 394, RSMo, with its offices located on East Highway 76, Branson, Missouri ("White River").

WITNESSETH:

WHEREAS, Empire and White River are authorized by law to provide electric service within certain areas of Missouri, including Taney County, Missouri; and

WHEREAS, Section 394.312, RSMo., provides that competition to provide retail electrical service as between rural electric cooperatives such as White River and electrical corporations such as Empire may be displaced by written territorial agreements; and

WHEREAS, Empire and White River entered into a Territorial Agreement dated February 19, 1993, involving a subdivision in Taney County known as "The Falls", which was approved by the Missouri Public Service Commission by order dated June 11, 1993; and

WHEREAS, Empire and White River desire 1) to promote the orderly development of retail electrical service within another portion of Taney County, Missouri, 2) to avoid unnecessary duplication of electrical facilities therein; and 3) to assist in minimizing territorial disputes;

NOW, THEREFORE, Empire and White River, in consideration of the mutual covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. Description of Territory Affected. This Agreement pertains only to the following tracts and subdivisions in Taney County, Missouri, and shall have no effect whatsoever upon service by White River or Empire in any other area:

A. A parcel identified for purposes of this agreement as the "Dr. Schmoll Property", which is more particularly described in Appendix A hereto.

B. A portion of the "Commerce Park South" subdivision which is more particularly described in Appendix B hereto.

C. "The Woods" subdivision which is more particularly

described in Appendix C hereto.

D. "Lake Taneycomo Acres" subdivision which is more particularly described in Appendix D hereto.

E. "The Mill and the Meadows" subdivision which is more particularly described in Appendix E hereto.

F. "Table Rock Terrace" subdivision which is more particularly described in Appendix F hereto.

G. A parcel identified for purposes of this agreement as the "Lynn and Janet Robinson Property," which is more particularly described in Appendix G hereto.

H. A parcel in Section 14, Township 22 North, Range 22 West, identified for purposes of this agreement as the "Branson Group Property," which is more particularly described in Appendix H hereto.

I. Lot 5A in Commerce Park West subdivision, which is more particularly described in Appendix I hereto.

2. Division of Territory

A. For purposes of this Agreement, the references to "structure" have the same meaning as the statutory definition of the term "structure" found in Sections 393.106 and 394.315 RSMo in effect at the relevant time. In the event no such statutory definitions exist or are not otherwise applicable, the term shall be construed to give effect to the intent of this agreement which is to designate an exclusive provider, as between the parties hereto, of retail electric service for anything using or designed to use electricity that is located within the respective service areas described herein.

B. Except as otherwise provided in this Second Territorial Agreement, Empire shall have the right to serve all structures located within its service area, White River shall have the right to serve all structures within its service area, White River shall not serve any structures within the Empire service area, and Empire shall not serve any structures within the White River service area.

C. **Empire Service Area:** The service area for Empire under this Second Territorial Agreement, as shown in the respective Appendices to this Agreement, shall consist of:

i. all of lots 48, 49, 53, 65, 66, 67, 68, 70, 152, 153 and 154 in Lake Taneycomo Acres subdivision as depicted in Appendix D;

ii. all of the land in The Mill and the Meadows

subdivision as depicted in Appendix E;
iii. all of the land in Table Rock Terrace
subdivision as depicted in Appendix F;
iv. the Branson Group property as depicted in
Appendix I.

D. **White River Service Area:** The service area for White River under this Second Territorial Agreement, as shown in the respective Appendices to this Agreement, shall consist of:

- i. all of the "Dr. Schmoll Property" as depicted in Appendix A;
- ii. all of lot Numbers 32, 33, 34, 35, 36, 37, 38, 39, 40, and 41 in Commerce Park South subdivision as depicted in Appendix B;
- iii. all of The Woods subdivision as depicted in Appendix C;
- iv. all of the lots in Lake Taneycomo Acres subdivision except lots 48, 49, 43, 65, 66, 67, 68, 70, 152, 153 and 154 as depicted in Appendix D;
- v. all of the "Lynn and Janet Robinson Property," as depicted in Appendix G;
- vi. all of lot 5A in Commerce Park West subdivision, as depicted in Appendix J.

3. Condition Precedent - Regulatory Approvals

This Agreement is conditioned upon receipt of approval by the Missouri Public Service Commission ("PSC"), with such approval being satisfactory in form and content to Empire and White River. If neither party notifies the other in writing within thirty (30) days after the effective date of a final order of the PSC approving this Agreement, it shall be presumed that the approval is satisfactory in form and content to both parties.

4. Service to Structures Receiving Service as of the Date of this Agreement. There are numerous structures located within the respective Service Areas on the date of this agreement which are being, or have been, served with electricity by White River or Empire ("existing structures"). It is the understanding of the parties that retail electric service to all existing structures is in accordance with the exclusive Service Areas established herein so that no customer at an existing structure will be required to change suppliers to be in compliance with this Agreement.

5. New Structures After Approval of this Agreement

A. After the date of approval of this Agreement by the PSC, White River shall have the exclusive right to serve all structures ("new structures") constructed within the White River Service Area. Empire shall not serve any new structures within the White River Service Area.

B. After the date of approval of this Agreement by the PSC, Empire shall have the exclusive right to serve all structures

("new structures") constructed within the Empire Service Area. White River shall not serve any new structures within the Empire Service Area.

C. Boundary Structures. Empire and White River may subsequently agree in writing, on a case by case basis, to allow any structure to receive service from the other party even though the structure is served, or required to be served, by the other party to this Agreement, when the interests of both parties and the owner of the structure are advanced thereby. Such situations shall be dealt with on a case by case basis, and shall not be deemed to be precedent for any future situations even if the facts may be similar.

i. Each such agreement shall be treated as an Addendum to this Agreement and the Addendum shall be filed, under the same case number as was assigned to the docket for approval of this document, with the Executive Secretary of the PSC in the same manner as a motion or other pleading, with a copy submitted to the Office of the Public Counsel.

ii. There will be no filing fee for the submission of such Addendums.

iii. The Addendums subject to this process apply to New Structures only, and not to structures receiving service on the effective date of the PSC's order approving the Agreement.

iv. Each Addendum shall be accompanied by a notarized statement indicating that the two affected electric service providers support the Addendum.

v. Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the PSC, and shall indicate the customer's consent to be served by the service provider contemplated by the Addendum.

vi. Each Addendum shall include, or be accompanied by an explanation of the justification that electric service should be provided in the agreed manner.

vii. If the Staff of the PSC, or the Office of the Public Counsel, or the PSC on its own motion, does not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Staff shall on the fiftieth (50th) day after receipt of the Addendum file a recommendation with the PSC that an order be promptly issued approving the Addendum. If such a pleading is filed, then the PSC shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved.

viii. Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in section 393.106 RSMo., until the PSC approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an Addendum until the effective date of a final and non-appealable order of the PSC or a court regarding the removal of same.

D. During the interim period between the date of execution of this Agreement and the date it is approved by the PSC

pursuant to Section 394.312, RSMo, the parties shall not be bound by the territorial division provisions of this Agreement and may provide service to any customer seeking service if the supplier can lawfully provide such service in the particular location. Pending the issuance of a decision either approving or denying approval of this agreement by the PSC, however, neither White River nor Empire shall construct primary or secondary electric facilities within the territory assigned exclusively to the other pursuant to this Agreement, unless ordered to do so by the PSC or a court of competent jurisdiction. If in the interim before this Agreement is approved by the PSC a new customer should locate on one side of the proposed boundary and request service from the party on the opposite side of the boundary, and the party has the existing right to provide such service, the parties agree to submit the matter to the PSC for determination in the docket set up for approval of this Agreement. The parties agree to propose to the PSC in such case that the party which will have the exclusive right to serve the customer if this Agreement is approved by the PSC should have the exclusive right and obligation to serve the customer in the interim.

6. Indirect Provision of Service to Structures Not Permitted. The intent of this Agreement is to designate an exclusive provider of electric service for structures or anything else using or designed to use electricity to be located within the described area. Neither party shall furnish, make available, assist in providing, render or extend electric service to a structure, which that party would not be permitted to serve directly pursuant to this Agreement, by indirect means such as through a subsidiary corporation, through another entity, or by metering service outside of the area for delivery within the area. This shall not be construed to otherwise prohibit sales of electric power and energy between the parties to this Agreement.

7. Term. The initial term of this Agreement shall be thirty-five (35) years from and after the effective date of an order of the PSC approving this Agreement ("initial term"). Thereafter, this Agreement shall be renewed for successive five (5) year terms ("renewal terms") unless either party hereto shall notify the other party in writing of its intent to terminate this Agreement at least one (1) year in advance of any such renewal date. The parties agree that a copy of any notice of termination of this Agreement shall be simultaneously served upon the Executive Secretary of the PSC and the Office of the Public Counsel. Termination of this Agreement shall eliminate the exclusive service territories provided for herein, but shall not entitle a party to provide service to a structure lawfully being served by the other party, or allow a change of suppliers to any structure in the other's service area hereunder, unless such a change is otherwise permitted by law.

8. Cooperation. Empire and White River agree to undertake

all actions reasonably necessary to implement this Agreement. Empire and White River will cooperate in presenting a joint application to the PSC demonstrating that this Agreement is in the public interest. Empire and White River shall share equally in the costs assessed by the PSC for seeking administrative approval of this Agreement. All other costs will be borne by the respective party incurring the costs.

9. General Terms

A. Land Descriptions: The surveys in the Appendices to this Agreement are assumed by the parties to be accurate and reliable and to match the plats; however, where there are maps and the map does not correspond with the metes and bounds description, the map shall be controlling.

B. No Constructive Waiver: No failure of Empire or White River to enforce any provision hereof shall be deemed to be a waiver.

C. Modifications: Neither the boundaries described in this Agreement nor any provision of this Agreement may be modified or repealed except by a signed writing of the parties which is approved by all applicable regulatory authorities.

D. Survival: This Agreement shall inure to the benefit and be binding upon the parties, their respective successors and assigns.

E. Lack of Approval or Termination: If the PSC or any other regulatory authority having jurisdiction does not approve this Agreement, or if the Condition Precedent is not fulfilled, or if this Agreement is terminated pursuant to its terms, this Agreement shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a court or agency of competent jurisdiction, then the parties shall replace such provision as similarly as possible to the provision which was declared invalid or void so as to return each of them, as much as practical, to the status quo prior to the declaration.

F. This Agreement shall not be construed to prevent either party from obtaining easements or right of way through or in any part of the Service Area of the other if the acquisition of such easement or right of way is reasonably necessary to or desirable for the performance of the party's duties to provide electric service to its customers in other areas.

G. The subsequent platting, replatting, subdividing, resubdividing, or renaming of any parcel or subdivision covered by this Agreement shall not affect the respective rights of Empire or White River established by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement
this 11th day of April, 1995.

THE EMPIRE DISTRICT
ELECTRIC COMPANY

WHITE RIVER VALLEY
ELECTRIC COOPERATIVE

By: Myron A. McK...

Attest: [Signature]

(seal)

By: [Signature]

Attest: [Signature]

(seal)

(Appendices A through I)

(Appendices A through I are not shown because they are voluminous. Appendices A through I are in the Commission's official Exhibit File and are hereby incorporated by reference.)

FIRST ADDENDUM TO SECOND TERRITORIAL AGREEMENT

THIS FIRST ADDENDUM TO SECOND TERRITORIAL AGREEMENT ("First Addendum") is made and entered into by and between The Empire District Electric Company, a Kansas corporation, with its principal office located at 602 Joplin Street, Joplin, Missouri ("Empire") and White River Valley Electric Cooperative, a Missouri rural electric co-operative organized and existing pursuant to Chapter 394, RSMo, with its offices located on East Highway 76, Branson, Missouri ("White River"), concerning the SECOND TERRITORIAL AGREEMENT which was executed by the parties hereto on April 11, 1995, and which was approved by the Missouri Public Service Commission ("Commission") on March 19, 1996.

WITNESSETH:

WHEREAS, Empire and White River are authorized by law to provide electric service within certain areas of Missouri, including portions of Taney County; and

WHEREAS, Section 394.312, RSMo. 2000, provides that competition to provide retail electrical service as between rural electric cooperatives such as White River and electrical corporations such as Empire may be displaced by written territorial agreements; and

WHEREAS, Empire and White River entered into a Second Territorial Agreement dated April 11, 1995, involving the provision of retail electrical service to customers within certain tracts and subdivisions in Taney County, Missouri; and

WHEREAS, the provisions of said Second Territorial Agreement authorize Empire and White River to subsequently agree in writing, on a case by case basis, to allow any structure to receive service from the other party even though the structure is served or required to be served by the other party; and

WHEREAS, the provisions of said Second Territorial Agreement are incorporated by reference within this First Addendum thereto; and

WHEREAS, this First Addendum does not require any customer of either Empire or White River to change its supplier;

NOW, THEREFORE, Empire and White River, in consideration of the mutual covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. Description of Structure Affected.

A. This Addendum pertains only to one new structure located in Taney County, Missouri, which shall be known as the "Belair Theater" located at 1600 West State Highway 76, Branson, Missouri 65616 ("Theater" hereafter).

B. Although said Theater will be located within the service territory of White River, as defined within the Second Territorial Agreement, said Theater will, upon completion of construction, physically adjoin a structure known as the California Bar and Grill, located at 1580 West State Highway 76, Branson, Missouri 65616 ("Bar and Grill" hereafter).

C. Because said Bar and Grill is within Empire's service territory, as defined within the Second Territorial Agreement; because said Bar and Grill is currently being served by Empire; and, because, upon completion of construction, said Theater will physically adjoin said Bar and Grill, the parties hereto desire that Empire be allowed to provide permanent electrical service to said Theater, notwithstanding that said Theater will be located within the service territory of White River as defined within the Second Territorial Agreement.

D. Empire and White River agree that this First Addendum is necessary in order to promote the safe and efficient provision of electrical service to Theater and to Bar and Grill, in that the provision of service by different providers to these adjoining structures could result in unnecessary danger to the public and to patrons of these structures.

E. A copy of a map showing the relative location of Theater and Bar and Grill is attached as **Exhibit A**.

F. This First Addendum shall have no effect whatsoever upon service by White River or Empire to any structure other than said Theater.

G. Said Theater is located within the corporate limits of the City of Branson, Missouri, and thus is not a "rural area" as defined by Section 394.020(3) RSMo 2000.

2. Condition Precedent - Regulatory Approvals.

A. This First Addendum is conditioned upon receipt of approval of it by the Commission with no changes, or those changes which have been expressly agreed to by Empire and White River. Either party may file an application for rehearing or other document with the Commission prior to the effective date of a Commission order approving this First Addendum if the party objects to the form or content of the Commission's order approving the First Addendum. If neither party files such an application for rehearing or document prior to the effective date of the Commission order approving this First Addendum, it shall be presumed that the approval is satisfactory in form and content to both parties.

B. Empire and White River agree that they shall submit this First Addendum to the Commission for its approval, and shall submit therewith the notarized statements and justification as required by the terms of the Second Territorial Agreement.

C. Empire and White River agree that Empire is authorized to commence providing electrical service to Theater at any time on a temporary basis, pending approval by the Commission of this First Addendum, pursuant to the terms of the Second Territorial Agreement. Nothing in this provision shall be deemed to limit Empire's ability to provide electrical service to Theater on a permanent basis following the Commission's approval of this First Addendum.

3. Term. The term of this First Addendum shall be the same as that of the Second Territorial Agreement to which this First Addendum relates. Nothing contained herein shall be construed to terminate this First Addendum prior to expiration or termination of the Second Territorial Agreement, or to extend the provisions hereof beyond expiration or termination of the Second Territorial Agreement.

4. Cooperation. Empire and White River agree to undertake all actions reasonably necessary to implement this First Addendum. Empire and White River will cooperate in presenting a joint application to the Commission demonstrating that this First Addendum is in the public interest. Empire shall pay any costs assessed by the Commission for seeking administrative approval of this First Addendum. All other costs, including but not limited to the attorneys fees of each party, will be borne by the respective party incurring the costs.

5. General Terms

A. Structure Descriptions: The descriptions of structures utilized in this First Addendum are assumed by the parties to be accurate and reliable and to match the maps being submitted; however, where there are maps and the map does not correspond with the given street address, the map shall be controlling.

B. No Constructive Waiver: No failure of Empire or White River to enforce any provision hereof shall be deemed to be a waiver.

C. Modifications: Neither the provisions regarding service to the specific structures described in this First Addendum nor any other provision of this First Addendum may be modified or repealed except by a signed writing of the parties which is approved by all applicable regulatory authorities.

D. Survival: This First Addendum shall inure to the benefit and be binding upon the parties, their respective successors and assigns.

E. Lack of Approval or Termination: If the Commission or any other regulatory authority having jurisdiction does not approve this First Addendum, or if the Condition Precedent

is not fulfilled, this First Addendum shall be nullified and of no legal effect between the parties, except as to providing authority for any temporary provision of electrical service undertaken by Empire during the period in which Commission approval was pending. If this First Addendum is terminated pursuant to its terms, it shall thereafter be nullified and of no further legal effect except as may be necessary to govern disputes concerning situations existing prior to such termination. Further, if any part of this First Addendum is declared invalid or void by a court or agency of competent jurisdiction, then the parties shall replace such provision as similarly as possible to the provision which was declared invalid or void so as to return each of them, as much as practical, to the status quo prior to the declaration.


F. This First Addendum may be terminated by either party in the manner set forth in the Second Territorial Agreement for termination of the Second Territorial Agreement.

G. The subsequent re-naming of any structure covered by this First Addendum shall not affect the respective rights of Empire or White River established by this First Addendum.

IN WITNESS WHEREOF, the parties have executed this First Addendum.

THE EMPIRE DISTRICT
ELECTRIC COMPANY

By:



Michael Palmer, Vice President -
Commercial Operations

Dated

2/15/05

WHITE RIVER
ELECTRIC COOPERATIVE

By:


Christopher Hamon, General Manager

Dated

2/7/05

EXHIBIT.

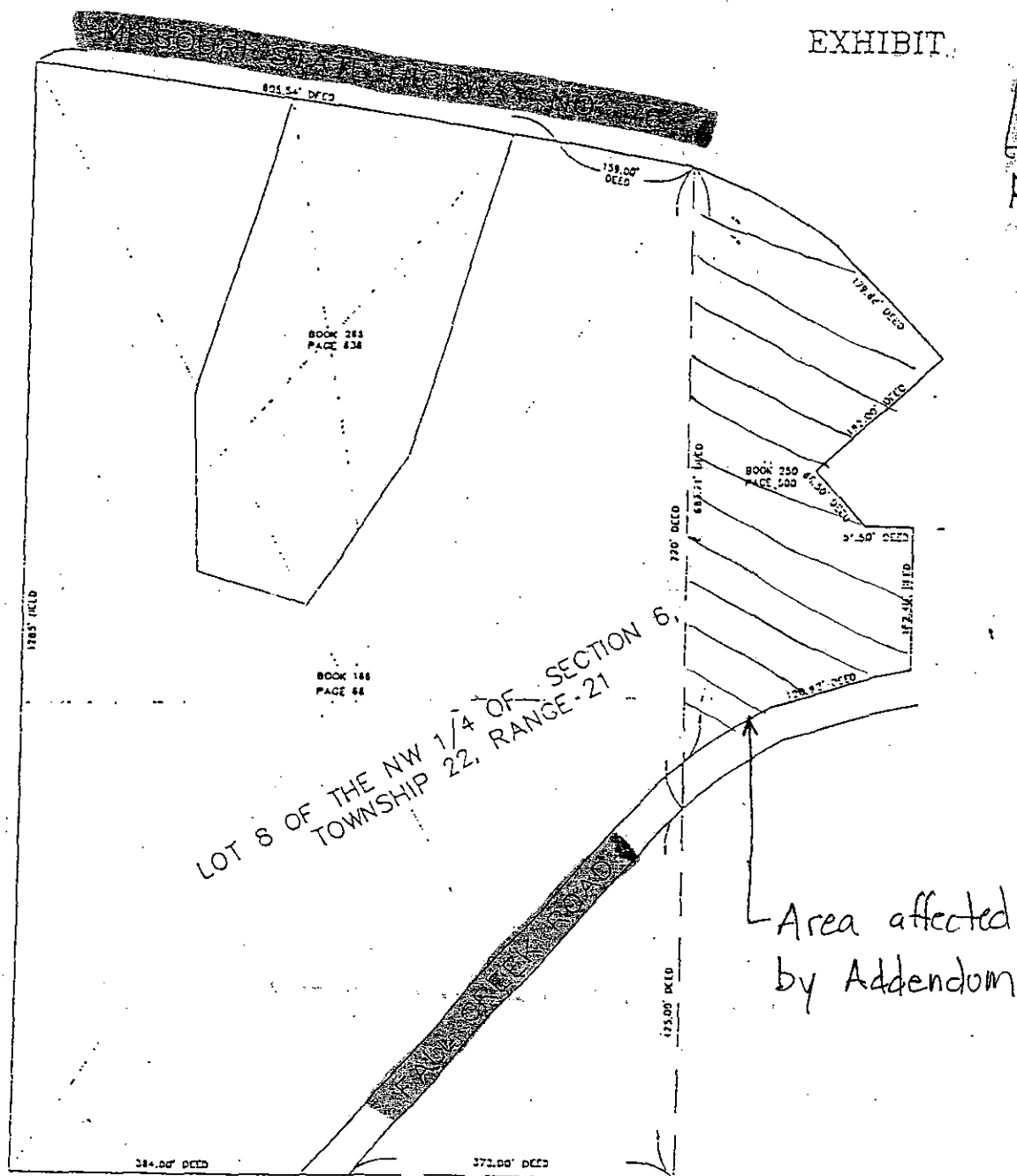


EXHIBIT A

AFFIDAVIT

COMES NOW Chris A. Lucchi, Affiant, and states as follows:

1. My name is Chris A. Lucchi. I am over eighteen (18) years of age and am competent to make this Affidavit.

2. I am presently the Managing Member of Morris Group II Investments, L.L.C., a limited liability company organized under the laws of the state of Missouri ("Morris"). Morris is a company that plans, funds, and oversees commercial development projects. My duties include being Vice President.

3. I am familiar with all development projects undertaken by Morris and with all matters involving utility service to businesses owned by Morris. Morris is presently nearing completion of construction of a new entertainment theater located in Branson, Missouri, which will be known as the Belair Theater, located at 1600 West State Highway 76, Branson, Missouri, 65616. Morris will operate the Theater upon its completion. This Theater will physically adjoin another business already owned and operated by Morris, known as the California Bar and Grill, located at 1580 West State Highway 76, Branson, Missouri, 65616.

4. The California Bar and Grill is presently being provided with electrical service by The Empire District Electric Company ("Empire"). I understand that the Bar and Grill receives service from Empire due to the terms of a territorial agreement previously reached between Empire and White River Valley Electric Cooperative ("White River"), and that this agreement was approved by the Missouri Public Service Commission. I also understand that, due to the terms of the territorial agreement between Empire and White River, the Belair Theater would be located within White River's service territory.

5. Being the owner of the Belair Theater, it is request of Morris that Empire be established as the sole provider of electrical service to the Belair Theater. I understand that this request represents an exception to the service boundaries previously agreed to between Empire

and White River. However, based on considerations of efficiency and safety, I believe that it is in the best interest of the Belair Theater, its customers, and the general public, for both the California Bar and Grill and the Belair Theater to receive electrical service from the same provider.

6. For the reasons set forth above, Morris consents to Empire being granted authority to become the exclusive provider of electrical service to the Belair Theater, as an exception to the service territory boundaries previously agreed to between Empire and White River. Morris further consents to Empire providing electrical service to the Belair Theater on a temporary basis, pending regulatory approval to become the permanent provider of service to the Theater.

FURTHER AFFIANT SAYETH NOT.

/s/ 
CHRIS A. LUCCHI

STATE OF Missouri)
) ss.
COUNTY OF Taney)

I, the undersigned, an officer authorized to administer oaths, certify that Chris A. Lucchi, having appeared before me and having been first duly sworn, declared to me that he signed and executed this affidavit; that he willingly signed and executed it as his free and voluntary act for the purposes therein expressed; that the statements contained therein are true and correct to the best of his information, knowledge and belief; and, that he was authorized to make this statement on behalf of Morris Group II Investments, L.L.C.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this 26 day of January, 2005.

John J. Monteleon
Notary Public

My Commission Expires:

2/4/07

