

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Eric Williams, Natural Resources Planner

SUBJECT: West Papio Trail License Agreement

DATE: February 29, 2016

The District acquired abandoned railroad right of way from Union Pacific along the West Papio Creek as a corridor to be used to complete the West Papio Trail. A portion of this ROW adjacent to Harry Andersen Ave and Q Street is being requested for use by a neighboring property owner, in conjunction with design and construction of the trail in that area.

This former rail corridor is protected under the Trails Act for the purpose of constructing a trail for public use. The District cannot sell this ROW to a private party, but through legal review it has been determined that use of a portion of the land for other private purposes is allowable as long as the primary purpose of the trail is achieved. The District will continue to maintain full responsibility for the corridor, while allowing a license for the Quest Properties to construct a parking lot and access to Harry Andersen Ave.

The License Agreement allows for private use across the District ROW, while requiring a portion of the land to be used for the primary purpose of constructing the trail. Staff from the District and the City of Omaha Parks Department have reviewed preliminary site plans, and the trail design seems to meet guidelines and expectations from both agencies. The License Agreement requires that the District have full review and approval on both preliminary and final plans. A construction timeline for the trail in this section is also included in the License Agreement.

- **It is recommended that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the License Agreement with Quest Properties, LLC for use of District right of way along Harry Andersen Ave at Q Street, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.**

## TRAIL LICENSE AGREEMENT

This Trail License Agreement (the “**Agreement**”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (the “**Effective Date**”), by and between the Papio-Missouri River Natural Resources District (“**Licensor**”), and Quest Property LLC, a Nebraska limited liability company (the “**Licensee**”). Licensor and Licensee may each hereinafter be referred to as a “**Party**” and collectively as the “**Parties**.”

### PRELIMINARY STATEMENTS

A. Pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (the “**Trails Act**”), the Surface Transportation Board (“**STB**”) Decision in STB Docket No. AB-33 (Sub-No. 260X) (the “**Trails Use Decision**”) and that certain Purchase and Sale Agreement (the “**Trails Use Agreement**”) dated October 20, 2010 by and between Union Pacific Railroad Company (“**UPRC**”) and Licensor, Licensor acquired UPRC’s interest in and to the right-of-way in Douglas and Sarpy Counties, Nebraska, extending from Milepost 19.4 to Milepost 22.1 on UPRC’s Industrial Lead (the “**Right-of-Way**”) and became the Trails Act “trail sponsor” of the Right-of-Way. The Right-of-Way is generally located southwest of the intersection of Q Street and Harry Andersen Avenue, Omaha, Nebraska.

B. Licensor desires to construct, maintain and operate and/or to have constructed, maintained and operated a thirty (30) foot wide trail on and along the entire Right-of-Way (the “**Trail**”) for use by the general public, which Trail will be integrated with the City of Omaha trail system. Portions of the Trail may be located within areas of public right-of-way in coordination with the City of Omaha, as depicted on **Exhibits B-1** and **B-2**, attached hereto and incorporated herein as conceptual designs for the Trail and Parking Lot (as defined below).

C. Licensee is the owner of the property adjacent to a portion of the Right-of-Way (the “**Licensee Property**”). The address of the Licensee Property is 13125 “Q” Street, Omaha, Nebraska 68137. The legal description of the Licensee Property is as follows:

Lot 2, except the North 149.9 feet thereof, Renfro Addition, an addition of Douglas County, Nebraska.

D. Licensee wishes to license that portion of the Right-of-Way that is adjacent to the Licensee Property depicted and more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Licensed Premises**”) to construct, maintain and operate a shared-use parking lot on that portion of the Licensed Premises in two phases as depicted on the conceptual designs labeled **Exhibit B-1**, as Phase 1, and **Exhibit B-2**, as Phase 2, attached hereto and incorporated herein by reference (either or both phases are referred to herein as the “**Parking Lot**”), and to otherwise use the Licensed Premises for such other purposes and subject to the terms and conditions described and set forth in this Agreement, and Licensor wishes to grant such use to Licensee subject to the terms and conditions described and set forth in this Agreement.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## ARTICLE 1

### GRANT

**1.1 License.** In consideration for Licensee constructing, operating and maintaining the Trail, Parking Lot, landscaping and other covenants of Licensee set forth herein, Licensor hereby grants a license to Licensee for the Term and authorizes Licensee to:

- (a) Enter upon and exit from the Licensed Premises to construct, operate and maintain that portion of the Trail that is on the Licensed Premises as depicted and more particularly described on **Exhibit A** attached hereto and incorporated herein by reference;
- (b) Enter upon and exit from the Licensed Premises to construct, operate and maintain the Parking Lot;
- (c) Provide, on a non-exclusive basis, parking and pedestrian and vehicular access and parking on the Parking Lot for the business Licensee operates on the Licensee Property and, at Licensee's discretion, for adjacent businesses, during normal business hours. For the avoidance of doubt, the Parking Lot shall also remain open and able to be used for parking and pedestrian and vehicular access by the general public to, among other things, gain access to the Trail;
- (d) Enter upon and exit from the Licensed Premises to install and maintain landscaping (the "**Landscaping**").

**1.2 Rights Retained by Licensor.** Licensor hereby reserves the following rights with respect to the Licensed Premises: (a) to oversee the ultimate operation, maintenance and management of the Right-of-Way and Trail, including that portion of the Trail that is on the Licensed Premises to ensure that the Trail is being operated and maintained as a public use trail to Licensor's satisfaction; (b) to oversee the ultimate maintenance and management of the Landscaping to ensure that the Landscaping is being properly maintained to Licensor's satisfaction. Notwithstanding anything to the contrary, to preserve the Right-of-Way for interim trail use/rail banking under the Trails Act, Licensor shall retain ultimate control and responsibility over the Right-of-Way, including, but not limited to: (x) managing the Right-of-Way, (y) any legal liability arising out of the transfer or use of the Right-of-Way from UPRC to Licensor (unless Licensor is immune from liability, in which case Licensor shall retain ultimate responsibility for potential liability arising out of such transfer or use) and (z) the payment of any and all taxes that may be levied or assessed against the Right-of-Way. For the avoidance of doubt, Licensee shall remain liable for any and all taxes related to the Licensee's business and activities on the Licensee Property and Licensed Premises. Licensor and Licensee hereby understand, acknowledge and agree that use of the Right-of-Way, or any part thereof, including, but not limited to, the Licensed Premises, is subject to the possible future reconstruction and reactivation of the Right-of-Way for rail service.

**1.3 Services.** Subject to Section 1.2 of this Agreement, Licensee shall, at no cost to Licensor: (a) install, construct, operate and maintain that portion of the Trail that is on the Licensed Premises in a reasonable manner mutually satisfactory to the Parties; (b) construct, operate and maintain the shared-use Parking Lot in a reasonable manner mutually satisfactory to the Parties; and, (c) install and maintain the Landscaping in a reasonable manner mutually satisfactory to the Parties. It is the intention of the Parties that the portion of the Trail constructed by the Licensee shall be consistent and uniform, in all aspects, with the adjacent portions of the Trail constructed by the Licensor. Notwithstanding anything to the contrary in this Agreement, Licensee is not responsible for snow removal on the Trail that is part of the Licensed Premises. Licensee shall cause to be completed the installation and/or construction of the

Trail that is on the Licensed Premises and a sufficient portion of the Parking Lot to serve as a trailhead for the Trail on or before the date on which Licensor completes the installation and/or construction of those portions of the Trail immediately adjacent to that portion of the Trail that is on the Licensed Premises. Licensor shall provide Licensee with reasonable notice of the date(s) on which the request for proposal(s) relating to the installation and/or construction of those portions of the Trail immediately adjacent to that portion of the Trail that is on the Licensed Premises is issued. The Parking Lot and Trail shall be constructed and maintained pursuant to industry standards and applicable laws for pedestrian trails, including but not limited to the guidelines published by the American Association of State Highway and Transportation Officials (“AASHTO”) and the Omaha trail guidelines, as each may be amended from time to time. For the avoidance of any doubt, the Parking Lot shall be constructed and maintained in a manner such that it is sufficient to serve as a trailhead for the Trail, including a sufficient number of ADA compliant parking stalls.

**1.4 Approvals.** Licensee’s installation, construction, or alteration of the Trail, Landscaping, and the Parking Lot, shall require Licensor’s express, written approval, which shall not be unreasonably withheld, conditioned or delayed, before such installation, construction, or alteration may occur. Licensor’s approval for the installation, construction, or alteration of the Trail, Landscaping, and the Parking Lot shall require a two-step process; a preliminary approval and a final approval. Initially, Licensee shall submit a preliminary design to the Licensor for Licensee’s proposed construction or alteration. Within thirty (30) days, following Licensee’s submission of all information necessary for Licensor’s consideration, Licensor shall inform Licensee whether the preliminary design is approved. Thereafter, if Licensee’s preliminary design is approved by Licensor, Licensee shall submit a final, detailed design to Licensor. Within thirty (30) days following Licensee’s submission of all information necessary for Licensor’s consideration, Licensor shall inform Licensee whether the final design is approved. Should Licensee elect to construct any portion of the project in phases, Licensee shall submit the necessary information and plans to the Licensor in advance of the construction of each individual phase of the Parking Lot.

## ARTICLE 2

### TERM

**2.1 Term.** The term of this Agreement shall begin as of the Effective Date and shall continue until the Ninety Ninth (99<sup>th</sup>) year anniversary of the Effective Date. Notwithstanding anything to the contrary, this Agreement shall:

- (a) Terminate automatically and without the need for any further action by any Party or other party if rail service on the Right-of-Way is reactivated pursuant to the Trails Act.
- (b) Be deemed an absolute nullity and void *ab initio* in the event any Governmental Body with appropriate authority and jurisdiction deems this Agreement to violate the Trails Act in a manner that would cause the Licensor to lose its interest in all or any part of the Right-of-Way and/or for the Right-of-Way to be abandoned.

## ARTICLE 3

### FEE

**3.1 License Fee.** In lieu of a cash payment, the Parties agree that the consideration is the Parties’ agreement to comply with the terms hereof.

## ARTICLE 4

### TAXES

**4.1 Personal Property Taxes.** The Parties shall cooperate in the filing of personal property tax returns and payment of all taxes, charges, and other governmental impositions assessed against, or levied upon, Licensee's trade fixtures, furnishings, equipment, and other personal property, if any (collectively, "**Licensee's Personal Property**"), located upon the Licensed Premises. Notwithstanding the preceding sentence, the party that is the owner of record of Licensee's Personal Property shall pay, prior to delinquency, all aforementioned taxes, charges and other governmental impositions assessed against Licensee's Personal Property. Notwithstanding the foregoing, in accordance with the Trails Act, Licensor shall remain ultimately responsible for the payment of any and all taxes that may be levied or assessed against the Right-of-Way.

## ARTICLE 5

### USE

**5.1 Use.** Licensee shall occupy and use the Licensed Premises only for the purposes set forth in Section 1.1 of this Agreement (the "**Permitted Use**"). Licensee shall provide and maintain all necessary licenses and permits legally necessary to carry out and/or engage in the Permitted Use.

**5.2 Use by Public.** Subject to Licensor's rules and regulations, the general public shall have access to and be permitted to use all areas of the Licensed Premises, including but not limited to the Parking Lot and Trail.

## ARTICLE 6

### INSURANCE

**6.1 Compliance with Insurance Requirements.** Licensee shall obey and fully comply with all requirements and provisions of any and all insurance policies that Licensor maintains, if any, and shall not make or permit any use of the Licensed Premises, or permit to be done anything in or upon the Licensed Premises, or bring or keep anything in the Licensed Premises that may invalidate or increase the rate of insurance on the Licensed Premises, its appurtenances, and/or operations, if any.

## ARTICLE 7

### LIMITATION OF LIABILITY

**7.1 Limitation of Remedies.** Notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Licensor and Licensor's officers, directors, managers, employees and other agents to Licensee and anyone claiming by, through, or under Licensee for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Agreement from any cause or causes (hereafter "**Licensee's Claims**"), shall not exceed the total insurance proceeds paid on behalf of or to Licensor by Licensor's insurers in settlement or satisfaction of Licensee's Claims under the terms and conditions of Licensor's insurance policies applicable thereto.

**7.2 Limitation of Responsibility.** Notwithstanding any other provision of this Agreement to the contrary, in no event shall either Party be liable to the other Party or any other party for any consequential, incidental, punitive, exemplary, treble, special or indirect damages of any kind, including

any loss of future revenue, income, or profits, diminution of value or multiples of earnings, arising out of or related to this Agreement, in each case, whether arising in contract, warranty, tort, strict liability, by operation of law, or otherwise.

## ARTICLE 8

### CONDITION OF LICENSED PREMISES

**8.1 AS-IS.** Licensor's agreement to allow Licensee to use the Licensed Premises is on an "as-is" basis. Licensee has inspected and agreed to use the Licensed Premises in the condition it is in at the commencement of this Agreement and acknowledges and agrees that Licensor has made no representations or warranties in connection therewith including, without limitation, any representation or warranty of merchantability or fitness for a particular purpose.

**8.2 Requirements.** Licensee agrees that each replacement, alteration, improvement or addition to or removal from the Licensed Premises (collectively an "**alteration**") shall be performed in a good and workmanlike manner, and shall meet or exceed the standards for construction and quality of materials established by Licensor. In addition, each alteration shall be performed in compliance with all Applicable Law, including but not limited to Licensor's rules and regulations applicable to its pedestrian trails which are available on Licensor's website ([www.papionrd.org](http://www.papionrd.org)), as they may be amended from time to time. Each alteration, including but not limited to the Parking Lot and Trail, whether temporary or permanent in character, made by Licensor or Licensee in or upon the Licensed Premises shall become Licensor's property and shall remain upon the Licensed Premises at the expiration or termination of this Agreement without compensation to Licensee. Licensee shall not be obligated to remove such alterations at the end of the Term. Licensee shall not make any material alteration(s) without the express, written consent of Licensor, as detailed above in § 1.4.

**8.3 Signage.** Any and all signage shall be done in a professional and good and workmanlike manner with Licensor's prior written consent, which shall not be unreasonably withheld, at the sole cost of Licensee and in accordance with all Applicable Law and with any and all necessary governmental approvals and consents. At its sole cost and expense, Licensor shall be permitted to erect and emplace signage in the Right-of-Way that is consistent with Omaha trail guidelines, as such guidelines may be amended from time to time, provided Licensor gives Licensee at least ten (10) days prior written notice of such signage and its intended location. Licensee shall not erect or emplace any signage on the Licensed Premises or Licensee Property that in any way restricts the general public's use of the Parking Lot or Trail.

**8.4 Covenant Against Liens.** Licensee shall not cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Licensee, operation of law or otherwise, to attach to or be placed upon Licensor's title or interest in the Licensed Premises, and any and all liens and encumbrances created by Licensee shall attach to Licensee's interest only. Licensee covenants and agrees not to suffer or permit any liens to be placed against the Licensed Premises as a result of work performed or materials supplied by or on behalf of Licensee and in case of any such lien attaching or claim thereof being asserted, Licensee covenants and agrees no later than thirty (30) days from notice to Licensee of the filing thereof to (a) cause it to be released and removed of record, (b) deliver to Licensor a surety bond in an amount sufficient to discharge the lien or (c) provide Licensor with endorsements (satisfactory to Licensor) to Licensor's title insurance policy insuring against the existence of or attempted enforcement of such lien. In the event that such lien is not released, removed, or bonded or insured over within said thirty (30) day period, Licensor, at its sole option, may take all action necessary to release and remove such lien (without any duty to investigate the validity thereof) and Licensee shall, within ten (10) days following notice, either before or after such release and removal, pay or reimburse Licensor for all sums,

costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) incurred by Licensor in connection with removal of such lien.

## ARTICLE 9

### DAMAGE OR DESTRUCTION

Immediately upon the occurrence of any damage or destruction to the Licensed Premises by fire or other casualty, Licensee shall immediately give notice of such damage or destruction to Licensor. Under no circumstances, regardless of the extent of the damage or destruction, shall Licensor have any obligation to repair or restore the Licensed Premises. No damage or destruction shall permit Licensee to surrender this Agreement or shall relieve Licensee from its compliance, observation or performance of its covenants, obligations, terms, or conditions under this Agreement. Licensee shall have no claim against Licensor for any damage suffered by reason of any such damage or destruction.

## ARTICLE 10

### DEFAULT

**10.1 Licensee's Default.** The occurrence of any of the following shall constitute a default (a "Default") by Licensee under this Agreement: (a) Licensee effects or attempts to effect a transfer of any type (including, but not limited to, a sublicense), all or any part of the Licensed Premises, without the prior written consent of Licensor (b) Licensee fails to perform any provision of this Agreement and such failure is not cured within thirty (30) days after written notice thereof is given to Licensee (or immediately if the failure involves a hazardous or dangerous condition that may present immediate danger as determined by Licensor in Licensor's sole discretion), (c) any action or inaction that is a default and/or violation under (i) the Trails Use Decision, (ii) the Trails Use Agreement and/or (iii) the Trails Act, (d) any voluntary or involuntary proceedings are filed by or against Licensee under any bankruptcy, insolvency or similar laws and, in the case of any involuntary proceedings, are not dismissed within sixty (60) days after filing, (e) Licensee's failure, for any reason, and such failure is not cured within thirty (30) days after written notice thereof is given to Licensee, to construct and/or cause to be constructed that portion of the Trail shown in Exhibits B-1 and B-2, or as otherwise amended and agreed to by the Parties, which is located on public right-of-way adjacent to the Licensed Premises.

**10.2 Licensor's Remedies.** In the event of a Default, Licensee agrees that Licensor shall be entitled to all remedies available at law or in equity as a result thereof including, without limitation, the right to dispossess Licensee from the Licensed Premises or, to the extent permitted by law, without the power of law. In the event of a Default pursuant to Section 10.1(c), this Agreement shall be deemed to have been an absolute nullity and void *ab initio*.

## ARTICLE 11

### SUCCESSORS AND ASSIGNS

**11.1 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and, except as provided herein, their respective successors and assigns. Licensee may not assign this Agreement or any rights or obligations hereunder (by operation of Law or otherwise) without the prior written consent of Licensor, which may be withheld in Licensor's sole and absolute discretion, and any attempted assignment without such consent shall be void *ab initio* and of no legal effect. In the event Licensee seeks to sell, transfer or otherwise convey the Licensee Property to any other Person, Licensee and its successors and assigns shall, as a condition to the effectiveness of such sale, transfer or

other conveyance, require that such other Person enter into a Trail License Agreement with Licensor on substantially the same terms contained in this Agreement unless Licensor waives such requirement in a signed writing. Upon any permitted assignment under this **Article 11** hereunder, references in this Agreement to such assigning party hereto shall also apply to any such assignee unless the context otherwise requires.

## ARTICLE 12

### GENERAL PROVISIONS

**12.1 Notices.** All consents, notices, requests, agreements or other communications under this Agreement must be in writing to be effective and shall take effect (or shall be deemed to have been given or delivered, as the case may be): (a) on the business day sent, when delivered by hand, or by facsimile transmission (with receipt of confirmation), during the normal business hours of the recipient and (b) on the business day following the business day of sending, if delivered by an internationally recognized overnight courier, in each case, to such Party at its address (or number) set forth below or such other address (or number) as the Party may specify by notice.

If to Licensor: Papiro-Missouri Natural Resources District  
Attn: John Winkler, General Manager  
8901 S. 154<sup>th</sup> Street  
Omaha, NE 68138-6222

With a copy to (which shall not constitute notice):

Husch Blackwell LLP  
Attn: David Newman  
13330 California Street, Suite 200  
Omaha, NE 68138

If to Licensee: Mike Sharif  
4501 L Street  
Omaha, NE 68117

With copies to (which shall not constitute notice):

Laughlin, Peterson & Lang  
Attn: Jim Lang  
11718 Nicholas St. #101  
Omaha, NE 68154

**12.2 No Real Property Interest.** Licensee acknowledges and agrees that this Agreement conveys no real property interest in or to the Licensed Premises or any other portion of Licensor's property and shall not be recorded in the public records in any manner.

**12.3 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska without regard to the laws of the State of Nebraska or any other



jurisdiction that would call for the application of the substantive laws of any jurisdiction other than the State of Nebraska.

(b) The Parties agree that the appropriate, exclusive and convenient forum (the “**Forum**”) for any disputes between the Parties arising out of or related to this Agreement or the transactions contemplated hereby shall be in Douglas County, Nebraska. The Parties irrevocably submit to the jurisdiction of such courts solely in respect of any disputes arising out of or related to this Agreement or the transactions contemplated hereby.

(c) Nothing in this Agreement or in any other agreement between the Parties shall be construed as a waiver of all or any part of, or as in any way limiting, the sovereign immunity afforded to Licensor pursuant to Applicable Law.

**12.4 Entire Agreement; Amendment.** This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated herein, supersedes all prior contracts and negotiations, if any, and this Agreement may not be amended, supplemented or discharged except by the written consent of each Party.

**12.5 Waiver.** The terms and provisions of this Agreement may be waived, or consent for the departure therefrom may be granted, only by a written document executed by the Party granting such waiver or giving such consent. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given or granted, and shall not constitute a continuing waiver or consent. No failure or delay by a Party to exercise any right, power or remedy under this Agreement, and no course of dealing between the Parties, shall operate as a waiver of any such right, power or remedy of the Party. No single or partial exercise by a Party of any right, power or remedy under this Agreement, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, shall preclude such Party from any other or further exercise thereof or the exercise of any other right, power or remedy under this Agreement. The election of any remedy by a Party shall not constitute a waiver of the right of such Party to pursue other available remedies. No notice to or demand on a Party not expressly required under this Agreement shall entitle the Party receiving the notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Party giving the notice or demand to any other or further action in any circumstances without the notice or demand.

**12.6 Counterparts.** This Agreement may be executed in counterparts, both of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature delivered by facsimile or other similar electronic transmission (including email) shall be considered an original signature. Any Person may rely on a copy or reproduction of this Agreement, and an original shall be made available upon a reasonable request.

**12.7 Further Assurances.** From time to time, at the reasonable request of either Party and without further consideration, the other Party shall execute and deliver such reasonable additional documents and take all such further action as may be necessary or appropriate to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement or to carry out the terms of this Agreement.

**12.8 Severability.** Each provision of this Agreement shall be considered severable, and if for any reason any provision of this Agreement is determined to be illegal, invalid or unenforceable or contrary to any existing or future Law, the illegality, invalidity or unenforceability shall not impair the

operation of or affect those portions of this Agreement that are valid. In lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provisions as may be possible and be legal, valid and enforceable.

**12.9 No Third Party Beneficiaries.** Nothing contained in this Agreement shall create or be deemed to create any rights or benefits in any third parties.

**12.10 Interpretation.** The Parties acknowledge and agree that: (a) each Party and its counsel has reviewed, or has had the opportunity to review, the terms and provisions of this Agreement; (b) any rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be used to interpret this Agreement; and (c) the terms and provisions of this Agreement shall be construed fairly as to both Parties and not in favor of or against either Party, regardless of which Party was generally responsible for the preparation of this Agreement. The words “include,” “includes” and “including” in this Agreement mean “include/includes/including without limitation” and its correlative usages. The use of “or” is not intended to be exclusive unless expressly indicated otherwise. The use of “good faith” is not intended to require the Party subject to such efforts to pay any amount of money or incur any economic detriment. Unless expressly indicated otherwise, (i) the word “day” means a calendar day and not a business day; (ii) the word “month” means a calendar month; and (iii) the word “year” means a calendar year. All references to \$, currency and monetary values mean U.S. dollars. When either Party may take any permissive action, including the granting of a consent, the exercise of any voting right, the waiver of any provision of this Agreement or otherwise, whether to take such action is in its sole and absolute discretion. The use of the masculine, feminine or neuter gender or the singular or plural form of words shall not limit any provisions of this Agreement. A statement that an item is listed, disclosed or described means that it is correctly listed, disclosed or described, and a statement that a copy of an item has been delivered means a true and correct copy of the item has been delivered. When calculating the period of time before which, within which or following which, any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-business day, the period in question shall end on the next succeeding business day.

**12.11 Headings and Captions.** The headings and captions of the various articles and sections of this Agreement are for convenience of reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions of this Agreement.

**12.12 Expenses.** Except as otherwise specifically set forth in this Agreement, each Party shall pay its respective fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by the Party) in connection with the preparation or enforcement of, or of any requests for consents under, this Agreement, including any amendments or waivers to this Agreement.

**12.13 Non-Discrimination.** Licensee and its agents shall not discriminate against any employee or applicant for employment, to be employed in the performance any work related to the Permitted Use, with respect to his/her hire, tenure, terms, conditions, or privileges of employment, because of his or her race, color, religion, sex, disability, or national origin.

**12.14 Employee Verification.** Licensee shall use a federal immigration verification system to determine the work eligibility status of new employees or subcontractors physically performing construction and/or maintenance with respect to the Trail, Parking Lot, Landscaping and/or any other services to be provided under and/or pursuant to this Agreement. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify

Program, or equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of newly hired employees.

**12.15 Public Records.** Licensee understands, acknowledges and agrees that all information and data furnished to Licensor in connection herewith is subject to the Nebraska public records statutes, Neb. Rev. Stat. § 84-712, *et seq.*

## ARTICLE 13

### DEFINITIONS

The following words and phrases shall have the meanings specified in this **Article 15**:

“**Agreement**” has the meaning set forth in the Preamble.

“**Alteration**” has the meaning set forth in **Section 8.2**.

“**Applicable Law**” means, for any Person, any Law to which such Person or any of its business or assets is subject.

“**Default**” has the meaning set forth in **Section 10.1**.

“**Forum**” has the meaning set forth in **Section 12.3(b)**.

“**Governmental Body**” means any foreign, federal, state or local government or governmental or regulatory body thereof, or political subdivision thereof, or governmental, judicial, legislative, executive, administrative or regulatory authority, agency, commission, tribunal or body.

“**Landscaping**” has the meaning set forth in **Section 1.1(d)**.

“**Law**” means any foreign or U.S., federal, state or local law (including common law), treaty, statute, code, Order, ordinance, application, registration, approval, authorization, consent, license, identification number, franchise, permit, certificate, variance, notice of intent, exemption, rule, regulation, guidance document or other requirement.

“**Licensed Premises**” has the meaning set forth in the Preliminary Statements.

“**Licensee**” has the meaning set forth in the Preamble.

“**Licensee Parties**” means Licensee and/or any of its affiliates, partners, shareholders, members, managers directors, officers, employees and/or other agents.

“**Licensee’s Personal Property**” has the meaning set forth in **Section 4.1**.

“**Licensor**” has the meaning set forth in the Preamble.

“**Order**” means any order, injunction, judgment, decree, ruling, writ, consent, agreement, assessment or arbitration award.

“**Licensee Property**” has the meaning set forth in the Preliminary Statements.

“**Parking Lot**” has the meaning set forth in the Preliminary Statements.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Permitted Use**” has the meaning set forth in **Section 5.1**.

“**Person**” means any individual, corporation, limited partnership, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“**Licensed Premises**” has the meaning set forth in the Preliminary Statements.

“**Right-of-Way**” has the meaning set forth in the Preliminary Statements.

“**STB**” has the meaning set forth in the Preliminary Statements.

“**Term**” means the time period beginning on the date hereof and ending per termination or expiration of this Agreement pursuant to **Article 2**.

“**Trails Act**” has the meaning set forth in the Preliminary Statements.

“**Trails Use Agreement**” has the meaning set forth in the Preliminary Statements.

“**Trails Use Decision**” has the meaning set forth in the Preliminary Statements.

“**UPRC**” has the meaning set forth in the Preliminary Statements.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**LICENSEE:**

QUEST PROPERTY LLC,  
a Nebraska limited liability company

By: \_\_\_\_\_  
Name: Mike Sharif  
Title:

**LICENSOR:**

PAPIO-MISSOURI RIVER NATURAL RESOURCES  
DISTRICT

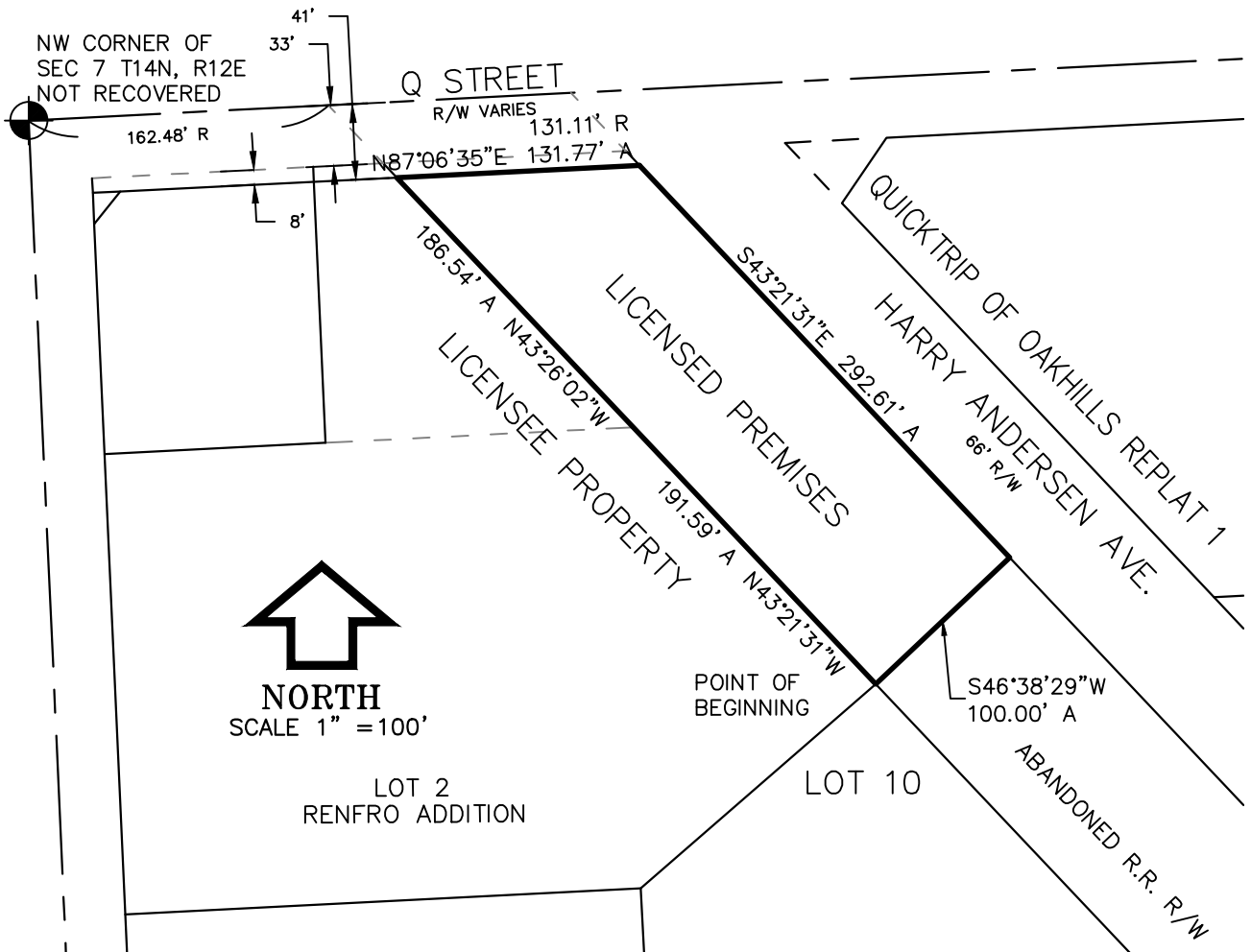
By: \_\_\_\_\_  
Name: John Winkler  
Title: General Manager

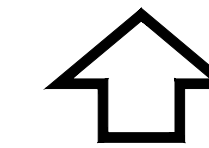
# DESCRIPTION & SKETCH

LEGAL DESCRIPTION: LICENSED PREMISES

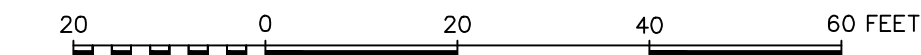
A PORTION OF THE ABANDONED UNION PACIFIC RAIL ROAD RIGHT-OF-WAY LYING IN THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE EASTERMOST CORNER OF LOT 2, RENFRO ADDITION LYING ON THE WEST RIGHT-OF-WAY LINE OF THE AFORESAID ABANDONED RAIL ROAD RIGHT-OF-WAY; THENCE NORTH 43°21'31" WEST ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 191.59 FEET; THENCE NORTH 43°26'02" WEST ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 186.54 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF "Q" STREET; THENCE NORTH 87°05'23" EAST ON SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 131.77 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF THE AFORESAID ABANDONED RAIL ROAD RIGHT-OF-WAY ALSO BEING THE WEST RIGHT-OF-WAY LINE OF HARRY ANDERSEN AVENUE; THENCE SOUTH 43°21'31" EAST ALONG SAID EAST RAIL ROAD RIGHT-OF-WAY LINE, A DISTANCE OF 292.61 FEET; THENCE SOUTH 46°38'29" WEST, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING. CONTAINING 33,549 SQUARE FEET (0.7702 ACRES), MORE OR LESS.





NORTH  
SCALE 1" = 20'



**NOTE:**  
UNDERGROUND UTILITY LOCATIONS SHOWN ARE FROM INFORMATION PROVIDED TO US FROM UTILITY COMPANIES. UTILITY COMPANIES MAKE NO WARRANTIES OR GUARANTEES REGARDING THE ACCURACY OF THE INFORMATION CONTAINED IN THEIR DOCUMENTS AND PROVIDES IT ONLY AS GENERAL INFORMATION TO THE RECEIVER, FOR SPECIFIC LOCATIONS DURING CONSTRUCTION CALL "DIGGERS HOTLINE" 1-800-331-5666 (STATEWIDE) PRIOR TO DIGGING.

**LEGEND**

- PROPERTY LINE
- [Pattern] PROPOSED 7" P.C.C. PAVEMENT
- [Pattern] PROPOSED 6" P.C.C. SIDEWALK / TRAIL

PROJECT NO.  
EGA151224

REVISIONS	NO.	DESCRIPTION	DATE	BY

**EHRHART  
GRIFFIN &  
ASSOCIATES**

3552 Farnam Street  
Omaha, Nebraska 68131  
402 / 551-0631

- ENGINEERING
- PLANNING
- LAND SURVEYING

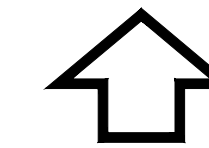
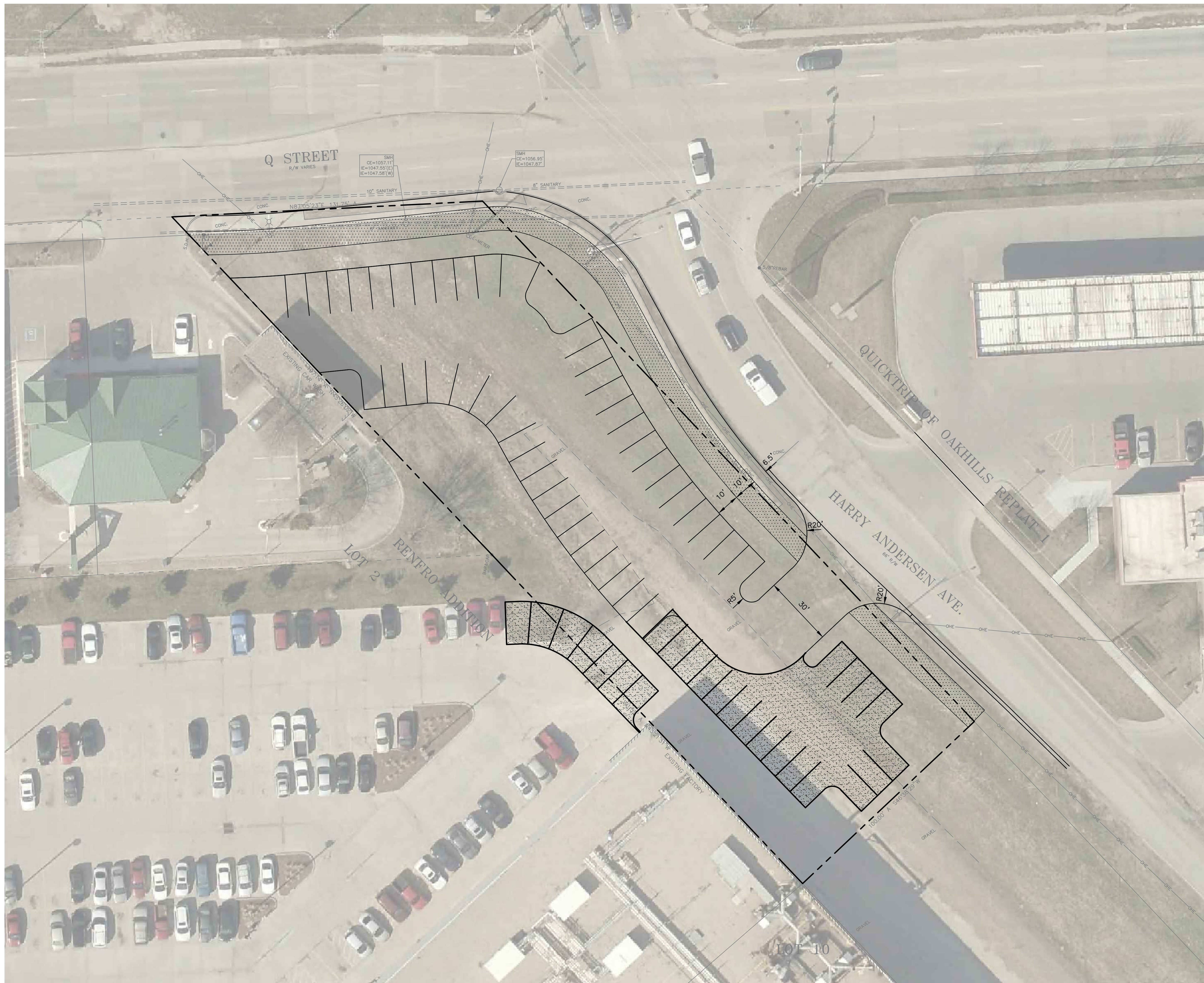
**PHASE 1  
CONCEPTUAL SITE LAYOUT PLAN  
QUEST PROPERTIES  
SW CORNER OF HARRY ANDERSON AVE. AND Q STREET  
OMAHA, NEBRASKA**

DATE: 12/17/2015  
DESIGNED BY: TJC  
DRAWN BY: SMW  
CHECKED BY: TJC  
CREW: EGA

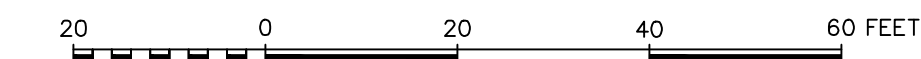
SHEET NO.  
**C1.1A**

**EXHIBIT B-1**

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NORTH  
SCALE 1" = 20'



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**LEGEND**

- PROPERTY LINE
- [Pattern] PROPOSED 7" P.C.C. PAVEMENT
- [Pattern] PROPOSED 6" P.C.C. SIDEWALK / TRAIL

PROJECT NO.  
EGA151224

REVISIONS	NO.	DESCRIPTION	DATE	BY

**EHRHART  
GRIFFIN &  
ASSOCIATES**

3552 Farnam Street  
Omaha, Nebraska 68131  
402 / 551-0631

- ENGINEERING
- PLANNING
- LAND SURVEYING

**PHASE 2  
CONCEPTUAL SITE LAYOUT PLAN  
QUEST PROPERTIES  
SW CORNER OF HARRY ANDERSON AVE. AND Q STREET  
OMAHA, NEBRASKA**

DATE: 12/17/2015  
DESIGNED BY: TJC  
DRAWN BY: SMW  
CHECKED BY: TJC  
CREW: EGA

**EXHIBIT B-2**

SHEET NO.  
**C1.1B**