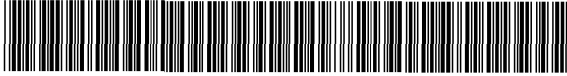




MISC 2011035941



APR 26 2011 09:19 P 11

Fee amount: 63.50
FB: 25-14120
COMP: SB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
04/26/2011 09:19:05.00



2011035941

filed as received

ROADWAY LICENSE AGREEMENT

This Roadway License Agreement (the "License") is entered into by and between Riverview Properties, LLC, a Nebraska Limited Liability Company, (hereinafter known as "Riverview"), the City of Omaha, Nebraska, a municipal corporation, (hereinafter known to as the "City") and Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska (hereinafter known as the "District").

RECITALS

WHEREAS, Riverview has entered into that certain Lease Agreement with the District dated January 11, 2007 (the "Riverview Lease"), for the lease of certain property which is legally described in Exhibit "A" (the "Leased Property"), a portion of which is the subject of this License;

WHEREAS, the initial term of the Riverview Lease expires on January 31, 2012, but such lease automatically renews for five (5) additional five-year terms unless either party terminates the Riverview Lease as contemplated therein; and,

WHEREAS, City and Riverview are entering into a series of agreements in regards to the City's acquisition of property from Riverview; and,

WHEREAS, in consideration of Riverview using City right-of-way, Riverview desires to license a portion of the Leased Property to the City as an alternate access road for the benefit of itself, the City, the District and the general public; and,

WHEREAS, Riverview will grade the licensed property to be used as a twenty-five foot wide rock/asphalt grindings access road which is intended for purposes of vehicular access for and by both parties and for the benefit of the general public; and,

WHEREAS, City and Riverview understand that this License shall immediately terminate upon the expiration or termination of the Riverview Lease between the District and Riverview.

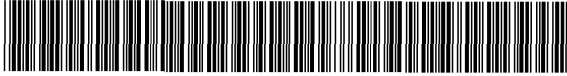
NOW THEREFORE, in consideration of the above, the parties agree as follows:

1. In consideration of one dollar (\$1.00) and other good and valuable consideration, including the City's lease of property to Riverview, Riverview agrees to license to the City that portion of its Leased Property as is specifically described in Exhibit "B" attached hereto and incorporated herein by this reference (the "Licensed Property"), for an access road for the benefit of the City, Riverview, the District and the general public.

2. The above-mentioned access road shall be constructed by Riverview, which road shall be constructed in a manner reasonably acceptable to the City. The road may be constructed using crushed rock and/or asphalt grindings or other comparable materials at the discretion of Riverview. If asphalt grindings are used, the City shall provide asphalt grindings in a quantity



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sufficient to allow completion of the access road. To the extent that construction of the access road requires relocation of any utilities including, but not limited to, a water line owned and operated by the Metropolitan Utilities District ("MUD"), Riverview shall be responsible for insuring that it occurs and all costs associated with such relocations. Notwithstanding the foregoing, the City agrees to pay half of the cost of relocating MUD's water line, with such payment by the City not to exceed \$15,000.00. The City shall periodically provide crushed rock and/or asphalt grindings as the parties mutually agree is necessary for the general maintenance and upkeep of said access road. Notwithstanding anything set forth herein to the contrary, Riverview and the City acknowledge and agree that the District has facilities located on or near the Licensed Property and that they, jointly and severally, agree to pay any and all costs associated with relocating such transmission lines in the event that any material harm to such lines or the District's ability to utilize or maintain such lines, in the District's sole discretion, is caused by or attributable to the construction, maintenance or use of the access road.

3. Subject to the City providing crushed rock and/or asphalt grindings, Riverview shall be responsible for general maintenance, grading, repair and upkeep of the access road. As part of this responsibility, Riverview agrees to spread and fill areas with the crushed rock and/or asphalt when and where necessary.

4. This License shall be binding and inure to the benefit of the parties hereto, their heirs, successors and assigns. Such License may be terminated under the following conditions:

- a. Mutual agreement of the parties.
- b. Upon termination or expiration of the Riverview Lease.
- c. Any party hereto may terminate this License if another party materially breaches any term or condition of this License and such breaching party fails to remedy such breach within thirty (30) days after receipt of written notice of such breach.

5. The parties agree that upon termination of this License, the City will quietly and peaceably yield possession of the Licensed Property to Riverview. Except as otherwise expressly set forth herein, the City shall not be liable for costs incurred in the installation, maintenance and removal of Riverview's improvements and equipment on the Licensed Property.

6. Riverview covenants and agrees to indemnify and hold harmless the City, its officers, agents and employees, their successors and assigns individually or collectively from all liability for any claims, suits, fines, demands, damages, actions, or causes of action of any kind and nature for personal injury or death or property damage in any way arising out of or resulting from any activity or operation of Riverview on the Licensed Property, the Leased Property or in connection with its use of the Licensed Property; and Riverview further agrees to pay all expenses in defending it against any such claims made against the City. Riverview and City shall give prompt and timely notice to the other of any claim made or suit instituted which in any way directly or indirectly, contingently or otherwise affects or might affect either party.

7. The City covenants and agrees to indemnify and hold harmless Riverview, its officers, agents and employees, their successors and assigns, individually or collectively from all liability for any fines, claims, suits, demands, damages, actions, or causes of action of any kind and nature for personal injury or death or property damage in any way arising out of or resulting from any activity or operation of the City on the Licensed Property or in connection with its use of the Licensed Property; and the City further agrees to pay all expenses in defending against such claims made against Riverview. Riverview and the City shall give prompt and timely notice to the other of any claim made or suit instituted which in any way directly or indirectly, contingently or otherwise, affects or might affect either party.

8. Riverview and the City, jointly and severally, covenant and agree to indemnify and hold harmless the District, its officers, agents and employees, their successors and assigns individually or collectively from all liability and expense (including but not limited to attorney or representation fees and litigation costs) for any claims, suits, fines, demands, damages, actions, or causes of action of any kind and nature for (i) either of their breach of this License, or (ii) personal injury or death or property damage in any way arising out of or resulting from the acts or omissions of Riverview and/or the City, or either of their employees, agents, subcontractors or contractors, in connection with this License, the Licensed Property, or any improvements made upon the Licensed Property. Riverview, the City and the District shall give the others prompt and timely notice of any claim made or suit instituted which in any way directly or indirectly, contingently or otherwise affects or might affect either party under this indemnity obligation.

9. Riverview and City agree to comply with all laws of the State of Nebraska and Ordinances of the City of Omaha in connection with and regards to their respective use of the Licensed Property including, but not limited to, the construction, maintenance and operation of the access road described herein. All the covenants and agreements herein contained shall be binding upon their respective heirs, executors and administrators of Riverview and the City.

10. Each party shall be solely responsible for and will indemnify, defend and hold harmless the other party, its agents and employees from and against any and all claims, costs and liabilities, including reasonable attorneys fees and costs arising out of or in connection with the cleanup, removal or restoration associated with the identifying parties' use of hazardous materials on or adjacent to the Licensed Property.

11. The grading limits of the proposed access road shall not come within 20 feet of OPPD's transmission lattice tower and will have a grade of no steeper than a 2:1 slope. There is a transmission lattice tower that the road will be fairly close to.


[Signature Pages Follow]

On this 14th day of April, 2011.

CITY OF OMAHA

 4/14/11
JIM SUTTLE, MAYOR Date

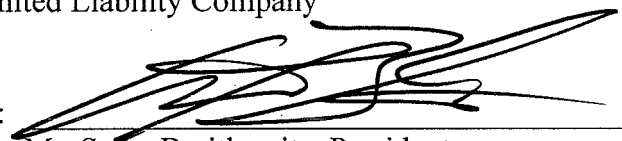
ATTEST:

 4/14/11
CITY CLERK OF THE CITY OF OMAHA Date

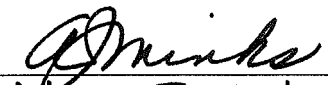
APPROVED AS TO FORM:

 4/13/11
ASSISTANT CITY ATTORNEY Date

RIVERVIEW PROPERTIES, LLC, a Nebraska
Limited Liability Company

By: 
Mr. Steve Braithwaite, ~~President~~
Date: 4-13-11 Maurying When Lee

OMAHA PUBLIC POWER DISTRICT

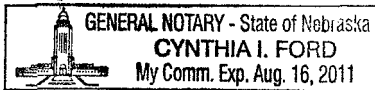
By: 
Name: Adrian J. Minks
Title: Vice President
Date: 4-20-11

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 14th day of April, 2011, before me, a Notary Public in and for said County, personally came Jim Suttle, Mayor of the City of Omaha, Nebraska, a Municipal Corporation, to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as Mayor and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

[Seal]



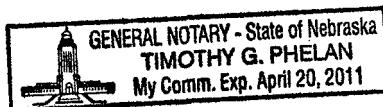
Cynthia I. Ford
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 13th day of April, 2011, before me, a Notary Public, in and for said County, personally came the above named, Steve Braithwaite who is personally known to me to be the identical person whose name is affixed to the above instrument and acknowledged the instrument to be his voluntary act and deed for the purpose therein stated.

WITNESS my hand and Notarial Seal the day and year last above written.

[Seal]



Timothy G. Phelan
Notary Public

filed as is

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On the 20th day of April, 2011, before me, a Notary Public, in and for said County, personally appeared Adrian J. Minks, the Vice President of OMAHA PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska, to me known to be the identical person who executed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed and the voluntary act and deed of said company.

[Seal]



My Comm. Expires May 5, 2015

Larry J. Hagan
Notary Public

582691.01

EXHIBIT A

Legal Description of the Property

(25-08180)

A parcel of land located in Lot Four (4) and Lot Five (5) of Block One (1), Credit Foncier Addition, in Douglas County, Nebraska, in Credit Foncier Addition Lot Five (5) Block 1, and part of vacated Poppleton Avenue, vacated alley adjacent, and fifteen (15) foot strip adjacent on South, and fifteen (15) foot vacated Third (3) Street, and the West fifty (50) feet, Lots Four (4) and Five (5) of Block One (1), in Credit Foncier Addition.

(25-08180)

Parcels of land being Lots Three (3), Lot Four (4), Lot Five (5) and Lot Six (6) of Block Eighteen (18), Credit Foncier Addition, in Douglas County, Nebraska, along with a fifteen (15) foot of vacated William Street adjacent on North; fifteen (15) foot strip vacated Third (3) Street adjacent on West; a triangular piece along the Southwest corner Lots Three (3) and Four (4) of Block Eighteen (18); and a piece of land along the Northeast part Lot Five (5) of Block Eighteen (18); and the Southwest part Lot Six (6) of Block Eighteen (18); minus the following;

Tract I: Commencing at the Northeast corner of Lot Three (3) of Block Eighteen (18), Credit Foncier Addition, in Douglas County, Nebraska, as surveyed, platted and recorded, running North Fifteen feet (15); thence West Sixty-Six feet (66); thence South Fifteen feet (15); thence East Sixty-Six feet (66) to the place of beginning, in Credit Foncier Addition.

Tract II: Commencing at the Northeast corner of Lot Three (3) in Block Eighteen (18), as surveyed, platted and recorded, running West Sixty-Six feet (66) to a point; thence S 6 degrees 19 minutes E One-Hundred and Thirty-Two and Eight Tenths feet (132.8), more or less, to the South line of Lot Three (3); thence, E 83 degrees 41 minutes Fifty-One and Four Tenths feet (51.4), more or less, to the Southeast corner of Lot Three (3); thence North One-Hundred Thirty-Two feet (132) to the place of beginning, in Credit Foncier Addition.

Tract III: Commencing at the Southeast corner of Lot Six (6) in Block Eighteen (18), as surveyed, platted and recorded, running NW 20 degrees 0 minutes One-Hundred Forty and Five Tenths feet (140.5), more or less, to the North line of Lot Six (6); thence E 110 degrees 0 minutes Forty-Eight and Five Hundredths feet (48.05), more or less, to the Northeast corner of Lot Six (6); thence South One-Hundred Thirty-Two feet (132), more or less, to the place of beginning.

Parcels of land being Lot One (1), Lot Two (2), Lot Three (3), Lot Seven (7) and Lot Eight (8) Block Nineteen (19), Credit Foncier Addition, in Douglas County, Nebraska, as surveyed, platted and recorded, in Credit Foncier Addition also a parcel of land Fifteen foot (15) adjacent on South and North; less rail road right-of-way.

(25-08180)

A parcel of land located in Lots Eleven (11) and Twelve (12) and West one-third (1/3) of Lot Thirteen (13) in Block Four-Hundred Forty-Three (443) in Grand View Addition, in Douglas County, Nebraska, and the following described parcel of ground bounded as follows, to wit:

(25-14120)

Sub Lot One (1) of Tax Lot One (1) and strip adjoining on South and all Tax Lot 44 in SE ¼ of NW ¼ Section 26-15-13, and a strip adjoining on the North of points of Lots Twelve (12) and Thirteen (13), Block Four-Hundred Forty-Three (443) in Grand View Addition; Commencing at a point Thirty-Three feet (33) East of the West line of Second Street, where said line intersects the south line of Woolworth Avenue, in the city of Omaha; thence South three-hundred forty-nine and four tenths (349.4) feet; thence East Sixty-Eight and Three Tenths feet (68.3); thence North Sixty-Five and Four Tenths feet

(01-60000)

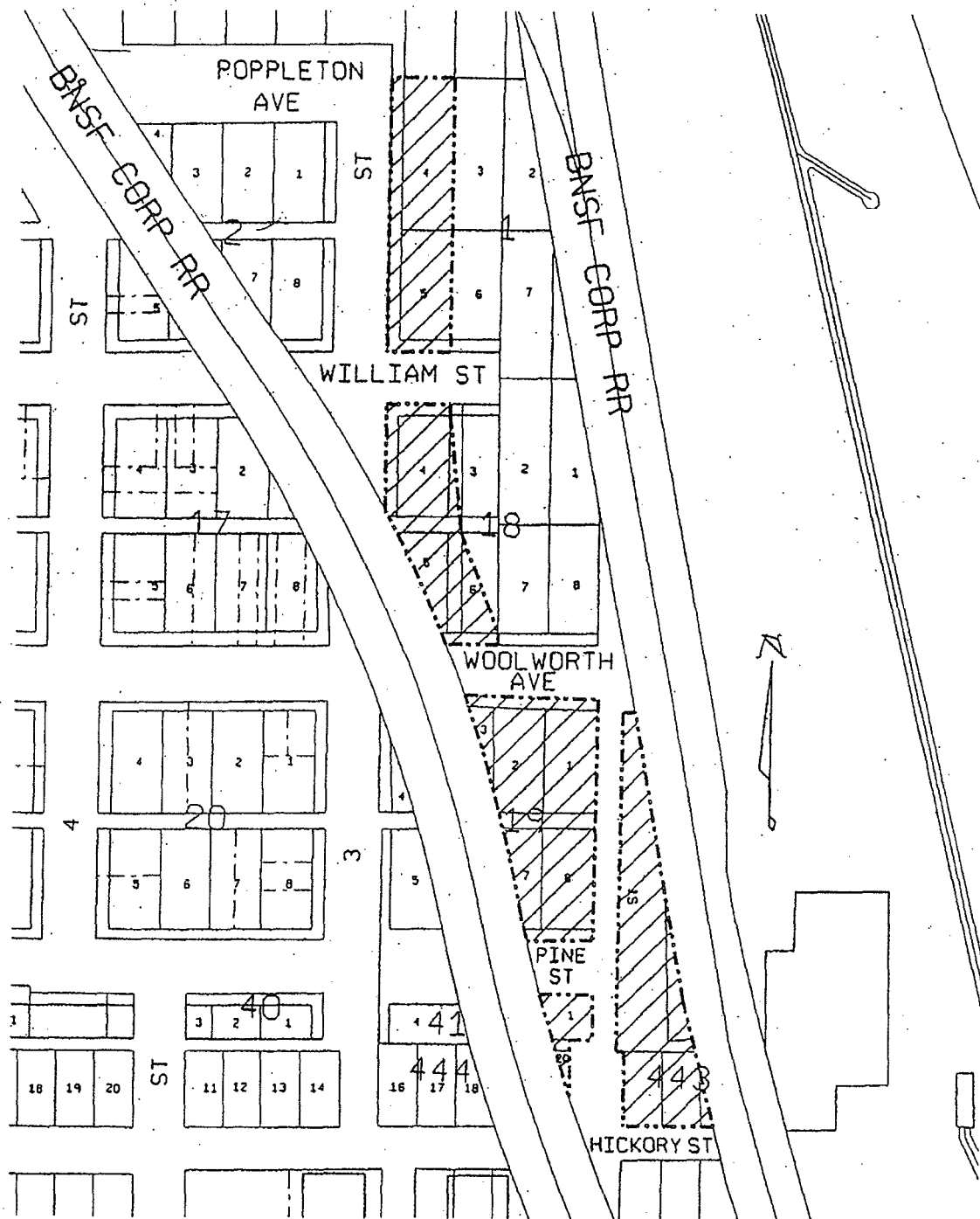
(25-14120)

(65.4); thence Northwesterly along the right-of-way of the Omaha and Southwestern Railway Two-Hundred Eighty-Four feet (284), more or less, to a point due East of the place of beginning; thence West Seven feet (7) to the place of beginning; also beginning on the West line of the Omaha and Southwestern Railway Company's right-of-way, where it intersects the South line of the alley in Block Four-Hundred Forty-Three (443) in Grand View Addition, in Douglas County, Nebraska, running thence West to the East line of Second Street; thence North along the East line of Second street to the point where it intersects the West right-of-way line of the Omaha and Southwestern Railway Company; thence South-easterly along said right-of-way line to the place of beginning.

A parcel of land located in Lot One (1) Block Forty-One (41), Credit Foncier Addition, in Douglas County, Nebraska, lying east of the right-of-way of the Omaha Southwestern Railway Company, now the Chicago, Burlington, and Quincy Railway Company, in Credit Foncier Addition; a Fifteen-foot strip adjacent on North and One-Half (1/2) vacated alley adjacent to Lot One (1) Block Forty-One (41); and also the northeast corner of Lot Twenty (20) Block Four-Hundred Forty-Four (444), in Grand View Addition, in Douglas County, Nebraska.

(25-08180)

(25-14120)



Lease Area Shown

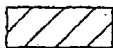


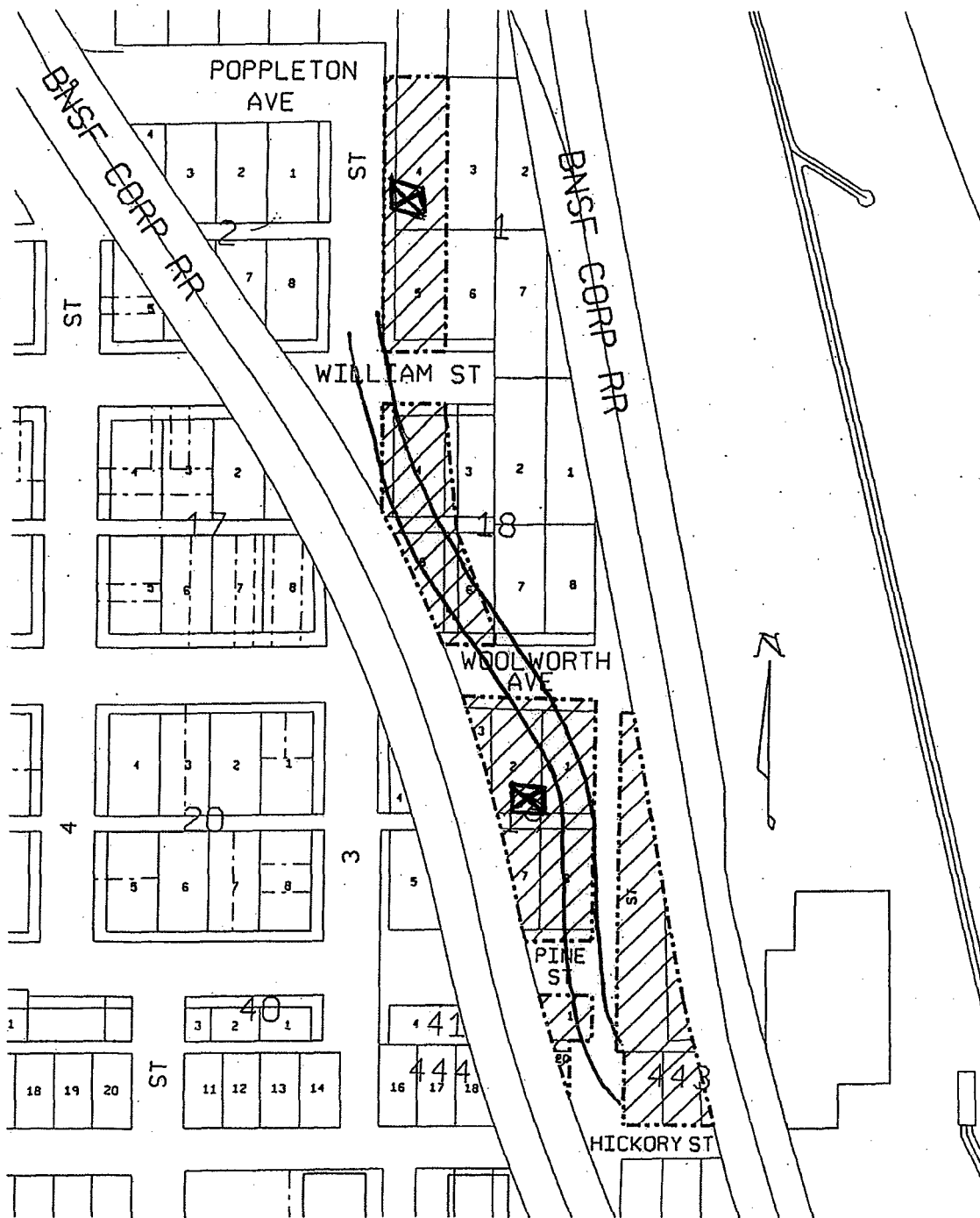
Exhibit "A"

Lease With

RIVERVIEW PROPERTIES LLC

Omaha, Nebraska

OPPO



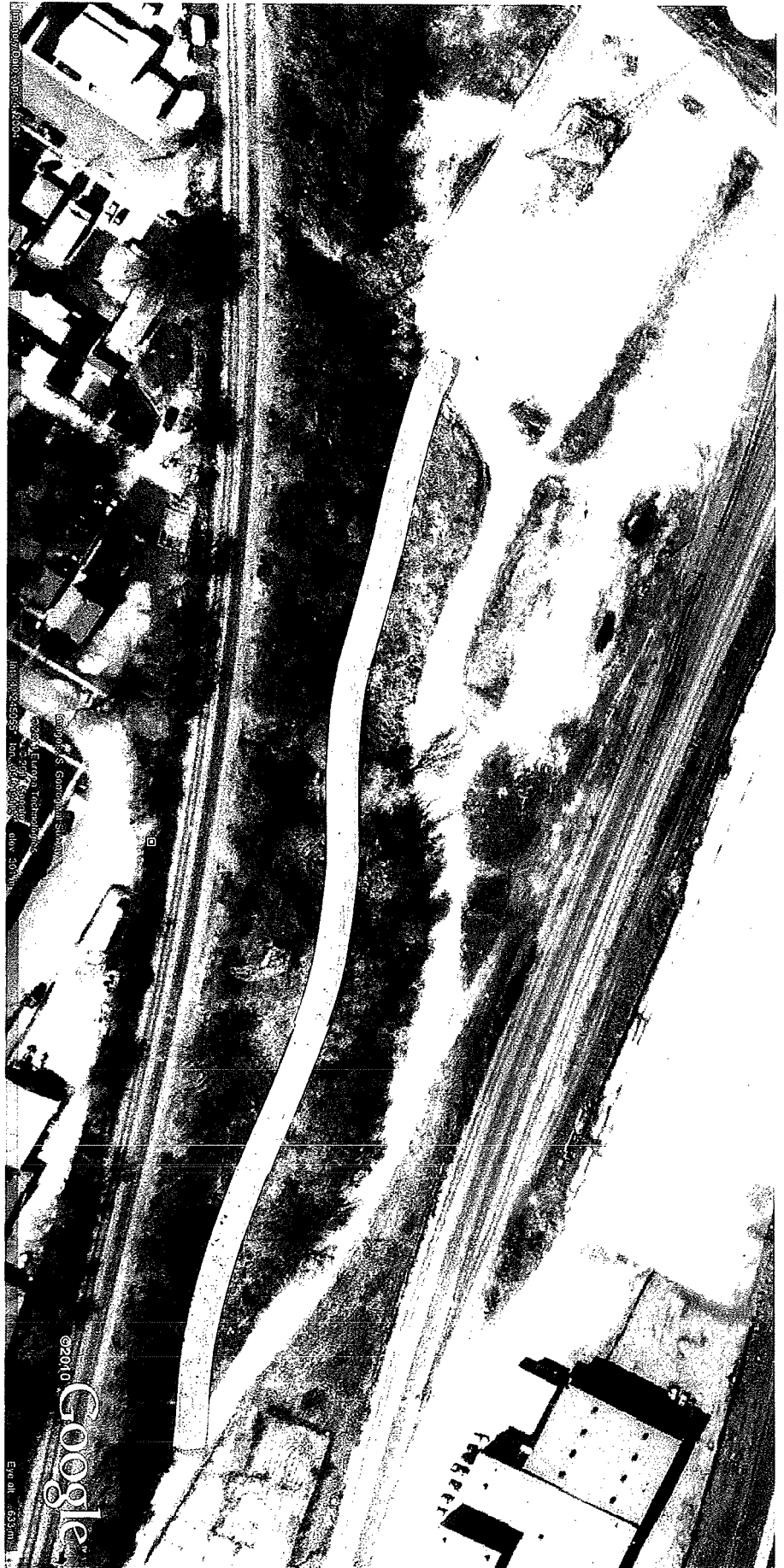
Lease Area Shown



Exhibit "B"
Lease With

RIVERVIEW PROPERTIES LLC
Omaha, Nebraska

OPPD



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