



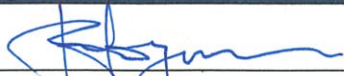
CONDITIONAL USE PERMIT APPLICATION

TOWN OF MINTURN PLANNING AND ZONING DEPARTMENT

P.O. Box 309 - 302 Pine Street- Minturn, Colorado 81649-0309

Phone: 970-827-5645

Email: planner@minturn.org

Project Name: Minturn North - Temporary Construction Management Office and Storage			
Project Location Street Address: A .66-acre portion of parcel 2103-262-00-019 Refer to Attached Vicinity Map			
Legal Description (Lot, Block, Subdivision): See above		Parcel Number(s): See Above	
Application Request: Refer to attached Letter of Intent regarding use of Property			
Applicant: Name: Minturn North Construction Company			
Mailing Address: PO Box 2633 Edwards, CO 81632			
Phone: 970.688.1062		Email: RickH@ResortConceptsCO.	
Property Owner: Name: Union Pacific Railroad Co.			
Mailing Address: 1400 Douglas ST Stop 1640 Omaha, NE 68179			
Phone: 402.544.2255		Email: JAGates@UP.com	
Required Information:			
Lot Size: .66-acres	Type of Residence (Single Family, ADU, Duplex) N/A	# of Bedrooms N/A	# On-site Parking Spaces 24
# of Stories: 1	Snow storage sq ft: 5,000	Building Footprint sq ft: 1928	Total sq ft Impervious Surface: 1928
Signature: 			
\$800+Costs attributable to the review by consultant time are billed at actual hourly rates. Cost assessed after first hour.			
Fee Paid: _____ Date Received: _____ Planner: _____			

CONDITIONAL USE PERMIT APPLICATION

SUBMITTAL CHECKLIST REQUIREMENTS (TO BE INCLUDED WITH APPLICATION)

Applicant Staff

 Application Form (Please fill out the Form and Return with the Packet)

 Letter of Intent (As Detailed as Possible)
-- What is the purpose of the project including;

- Relevant Background
- Current Status of the Site
- All Proposed Uses and Structures
- How the Proposal Differs from what already exists
- Information regarding Easements or Dedicated Tracts, etc.

 Vicinity Map
-- Directional Map indicating how to get to the Property involved in the request.

 Improvement Location Certificate of Survey (ILC or ILS), as appropriate

 Site Plan showing Precise Nature of the Proposed Use

- Topography
- Building Location
- Parking Plan
- Traffic Circulation
 - Location and Width of Existing and Proposed Access Points
 - Location of Existing Driveways and Intersections
- Useable Open Space
- Landscaped Area – Plan
- Approximate Location of Existing Wooded Areas and Rock Outcrops
- Location and Type of Existing and Proposed Easements
- Utility Easements
- Drainage Features

 Elements needed on the Site Plan

- Scale
- North Arrow
- Date Prepared
- Lot Dimensions, Area, Entire Site Acreage

 Description of precise nature of the proposed use and its operating characteristics and measures proposed to make the use compatible with other properties in vicinity.



MINTURN NORTH

WHERE *adventure* BEGINS

March 18, 2024

To: Town of Minturn Planning Department
Re: Conditional Use Permit Letter of Intent
Temporary Construction Management Office and Storage
0.66-Acre UPRR Property (Portion of Parcel 2103-262-00-019)
CC: Madison Harris
Scot Hunn

Please accept this Conditional Use Permit Application on behalf of Minturn North Construction Company, LLC. The information contained herein is intended to explain the purpose of the request and provide information in satisfaction of the application requirements.

Relevant Background: The Minturn North PUD was approved by the Town of Minturn on December November 15th, 2023 and recorded on March 4, 2024. Pursuant to Section 6.0, page 15, the Minturn North PUD states the following:

"During construction, all Planning Areas may be used for temporary uses including, but not limited to, construction offices, unpaved parking, construction material and equipment storage, waste collection, restrooms, and sales offices. All such uses may be approved during the building permit review process as determined by the Town of Minturn Town Manager or assigns."

Due to the amount of construction that will be ongoing throughout the site, we believe the construction management office, unpaved parking, construction material and equipment storage and associated restroom facilities are better located on an adjacent 0.66-acre Union Pacific Railroad property across from Fourth Street. This location will have less impact on Taylor Avenue residents and Owners within the Minturn North PUD. By placing a management office at this location, we can see who is entering and exiting the construction site and it gives the sub-contractors a good place to check-in with added parking when needed. The more efficient we can be, the less impact there will be on existing surrounding land uses. Union Pacific Railroad and Minturn North Construction Company have prepared a DRAFT lease agreement for this property which is attached as **Exhibit 'A'**. A Site Plan identifying the precise nature of the Proposed Use is attached as **'Exhibit B'**.

Current Status of the Site: The site is currently devoid of landscaping and has been used by Union Pacific Railroad as an access point and parking area for railroad maintenance. Please refer to attached **'Exhibit C'** for site photos and a google earth image of the existing conditions.

Proposed Uses and Structures: As shown on **Exhibit 'B'**, the proposed uses of the property are temporary and include a construction management office, trash containers, lockable storage containers, and a construction material laydown area. The perimeter of the property will be fenced and gated with a 6' windscreen fence. A gravel track pad will be installed at the entry/exit location onto Minturn Road. Images of the proposed structures and fencing are attached as **Exhibit 'D'**.

Existing Use vs. Proposed Use: The property is currently located within the Game Creek Character Area – PUD Holding Zone and is undeveloped (Refer to **Exhibit 'E'**). Existing access to the property is from Minturn Road across from Fourth Street. The Conditional Use Permit proposes to use the existing access from Minturn Road as the point of entry into the gated and fenced temporary use area.

Easements, Dedicated Tracts and Utilities: There are no easements proposed within the Conditional Use Permit area. The 0.66-acre property identified on Exhibit 'B' is within Parcel 2103-262-00-019. Electric lines are adjacent to the property along the western edge of Minturn Road. The construction management office will include a transformer and be connected to the existing electrical lines at the north end of the property.

Site Plan - Additional Salient Information:

1. The site is gently sloping downward from Minturn Road through the subject property.
2. The structures have been located along the eastern border of the property adjacent to the fencing to minimize visual impact.
3. Parking is permitted as shown on **'Exhibit B'**.
4. The existing access from Minturn Road will be used. This access will be maintained at a minimum 20' width.
5. Due to the nature of the use, and location of the property, no landscaping is anticipated.
6. There are no distinguishable existing landscape features on the proposed property.
7. No easements are required as a part of this Conditional Use Permit Application.
8. There is an existing drainage beyond the south edge of the subject property and a minor (15" CMP) drainage outflow approximately 85' from the south end of the property under Minturn Road.
9. Dust mitigation and Minturn Road cleaning will be maintained by Minturn North Construction Company.

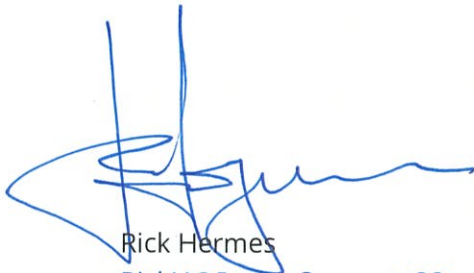
Restrictions and Conditions: The following restrictions and conditions shall apply to the subject property.

1. No vehicle entering the property shall exceed 40'-2" in length. This restriction does not apply to the installation of the construction management office and storage containers that may be used for storage of materials and equipment associated with or incidental to the business operations approved under this CUP. Such container(s) must be maintained in an orderly manner; must be screened to the greatest extent possible with fencing and green mesh screening materials.

2. No storage of campers, ATV's, dirt bikes, snowmobiles, pop-ups, conversion vans, camper trailers, or similar camping related vehicles or personal use vehicles are permitted.
3. No inoperable or unlicensed vehicles are to be kept on the property for longer than five (5) days. (Pursuant to Section 7-2-70 Minturn Municipal Code).
4. The CUP property is to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended.
5. Minturn North Construction Company is to maintain and conduct business within the CUP area associated with the approved and valid CUP only.
6. Violations. The following schedule of fines shall be enforced for violations not remedied within thirty (30) days:
 - a. The first violation will be fined \$100.00
 - b. The second violation will be fined \$250.00
 - c. The third and subsequent violations will be fined \$500.00
7. The CUP will be subject to an annual review by the Town of Minturn Planning Staff with regard to compliance with the terms of use and conditions of approval associated with the CUP. The Town Staff shall provide a report to the Town Council following such annual review. The report shall, in a general manner, provide updates on the following:
 - a. Any violations or other incidences requiring Staff response and Town resources out of the ordinary course of Town business and services. A violation will only be counted if the infraction has not been corrected within thirty (30) days of notice being sent to the CUP holder.
 - b. Compliance with the overall terms of use permitted by the CUP as well as observations regarding the condition of the CUP area.
 - c. Any changes in i). Lessee/Sub-Lessee; and ii). Uses within the CUP area.
 - d. At Staff's discretion, a recommendation may be made to Council to revoke the CUP having accumulated three violations in a calendar year (January 1 to December 31).
8. The CUP is valid for three (3) years. Applicant may request an extension of the CUP every year thereafter following a review with the Minturn Town Council. The review shall include but not limited to inspections by the Town Staff and the following reporting:
 - a. Report from a Code Compliance Officer.
 - b. Report from Planning Department
9. Working hours within the permitted area will coincide with the Minturn North PUD. Exterior hours may occur between the hours of 7:00 am MST and 6:00 pm MST Monday – Saturday. Interior hours may occur between the hours of 7:00 am MST and 6:00 pm MST Monday – Sunday.
10. Uses must be in compliance with the applicable laws, including Minturn Municipal Code, state and federal law. A violation of any law within the permitted premises shall be considered a violation of the CUP.
11. All uses associated with activities approved by the CUP shall adhere at all times with the noise and vibration standards of the Town (pursuant to Section 16-18-30, Minturn Municipal Code).
12. The CUP boundary must be gated, fenced and screened (green mesh screening materials).

13. Supplies, parking, vehicles, storage containers, structures, and equipment must be placed within the CUP boundary.
14. No fuel containment shall be permitted within the CUP boundary.
15. All overnight parking must be done within the approved and fenced CUP boundary.
16. No chemical storage is permitted within the approved CUP boundary.
17. A 20' ingress/egress access shall be maintained.
18. Proper snow storage areas must be maintained and sufficient for snow removal within the approved CUP area. The ingress/egress access shall be maintained at all times for emergency access.
19. Minturn North Construction Company is required to be under a valid lease agreement with Union Pacific Railroad.
20. Town Staff shall be allowed access to the site to inspect for approved CUP compliance at any time.

Sincerely,



Rick Hermes

RickH@ResortConceptsCO.com

EXHIBIT A

Lease Agreement

LEASE OF PROPERTY
(INDUSTRIAL LEASE - UNIMPROVED - YEAR TO YEAR)

THIS LEASE (“Lease”) is entered into on _____, 2024, between **UNION PACIFIC RAILROAD COMPANY** (“Lessor”) and **MINTURN CROSSING, LLC**, a Colorado Limited Liability Company, whose address is 225 Main St, Suite 101, Edwards, Colorado 81632 (“Lessee”).

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article 1. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises (“Premises”) at Minturn, Colorado, shown on the print dated September 13, 2023, marked **Exhibit A**, hereto attached and made a part hereof, subject to the provisions of this Lease and of **Exhibit B** attached hereto and made a part hereof. The Premises may be used for storage of construction materials, and parking of vehicles and trailers, and purposes incidental thereto, only, and for no other purpose.

Article 2. TERM.

The term of this Lease shall commence June 15, 2024, contingent on the Town of Minturn approval of the special use permit, and, unless sooner terminated as provided in this Lease, shall extend for one year and thereafter shall automatically be extended from year to year.

Article 3. FIXED RENT.

- A. Lessee shall pay to Lessor, in advance, fixed rent of twenty one thousand five hundred sixty three Dollars (\$21,563.00) per annum.. The rent shall be automatically increased by 3.0 percent (3.0%) per annum, cumulative and compounded.
- B. Not more than once every three (3) years Lessor may redetermine the rent. In the event that Lessor does redetermine the rent, Lessor shall notify Lessee of such change.

Article 4. GUARANTOR LIABILITY.

In order to induce Lessor to enter into the above Lease with Lessee, **RICK HERMES** (Guarantor) unconditionally and absolutely guarantees to perform all of the obligations of Lessee under the Lease to the same extent as if both Lessee and Guarantor had been named in the Lease as tenants with joint and several liability for the performance of all of the Lessee’s covenants and conditions contained in the Lease. Guarantor waives any legal obligation of Lessor to proceed first against Lessee or to exhaust any remedy Lessor may have against Lessee. All notices given to Lessee under the Lease will be deemed to have been given to Guarantor. Any modification, amendment, waiver, change or extension of any of the terms, covenants, or conditions of the Lease which Lessee and Lessor may hereafter make (including,

without limitation, any extension or renewal of the term of the Lease) will not in any way impair or discharge Guarantor's liability to Lessor, regardless of whether Guarantor has notice or knowledge thereof.

Article 5. INSURANCE.

- A. Throughout the entire term of this Lease, Lessee shall maintain the insurance coverage required under **Exhibit C** hereto attached and made a part hereof.
- B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- C. Upon request of Lessor, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C**.
- D. All insurance correspondence shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Project No. 0786605.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

Lessor:	Lessee:
UNION PACIFIC RAILROAD COMPANY	MINTURN CROSSING, LLC,

By: _____
General Director - Real Estate

By: _____
Title: Manager

Guarantor:
RICK HERMES

By: _____

EXHIBIT B
TO
INDUSTRIAL LEASE (UNIMPROVED YEAR TO YEAR)

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS, TITLE AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Lease do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

D. Without limitation of Subparagraphs B. and C. above, Lessee shall not interfere in any manner with the use or operation of any signboards now or hereafter placed on the Premises or with any property uses in connection with such signboards (such as, by way of example and not in limitation, roadways providing access to such signboards). In no event may Lessee construct on the Premises any improvements that interfere in any manner with the visibility or operation of any signboards now or hereafter on the Premises or on property in proximity to the Premises.

Section 3. PAYMENT OF RENT.

Rent (which includes the fixed advance rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises other than the Lessor Improvements is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease, including, without limitation, any requirements for subdividing or platting the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party (as defined

in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any of the foregoing exceptions to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Lessor reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) (i) for personal injury or property damage caused to any person while on or about the Premises, or (ii) arising from or related to any use of the Premises by Lessee or any invitee or licensee of Lessee, any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease for Lessee's default by giving Lessee notice of termination, if Lessee (i) defaults under any obligation of Lessee under this Lease and, after written

notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given, or (ii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

B. Notwithstanding the terms of this Lease set forth in Article II, Lessor or Lessee may terminate this Lease without cause upon thirty (30) day's written notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A, at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance. **Notwithstanding anything to the contrary in this Lease, if Lessee has not complied with the requirements of Section 15 A, this Lease, together with all terms contained herein (including payment of rent) will remain in effect until the requirements of Section 15A are met, unless Lessor, in its sole discretion, elects to terminate this Lease.**

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, including all personal property and restored the surface to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration prior to termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall visit www.up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried on the Premises. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, by email or by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: AVP - Real Estate, Real Estate Department, 1400 Douglas Street, Stop 1690, Omaha, Nebraska 68179; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed

notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are faxed, emailed, are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. RIGHTS AND OBLIGATIONS OF LESSOR.

If any of the rights and obligations of Lessor under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under federal or state judicial precedent, then Lessor may require Lessee to enter into an amendment to this Lease to eliminate the negative effect on Lessor's rights and obligations to the extent reasonably possible.

Section 22. MODIFICATION, WAIVER OF DEFAULT, ENTIRE AGREEMENT.

No waiver, modification or amendment to this Lease, including specifically but not limited to, any indemnity and/or insurance requirement herein, shall be of any force or effect unless made in writing, signed by Lessor and Lessee and specifying with particularity the nature and extent of such waiver, modification or amendment. This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, and any other lease under which all or any portion of the Premises was leased to Lessee. Notwithstanding the prior sentence, Lessee shall retain any and all obligations and liabilities which may have accrued under any other such agreements prior to the commencement of the term of this Lease.

Section 23. WATER WELL(S).

The installation of new water well(s) or use of existing water well(s) or other equipment or facilities designed to secure potable or non-potable water from sources on the leased premises, or from any adjoining property owned or operated by Lessor, is prohibited.

EXHIBIT C
Union Pacific Railroad
Contract Insurance Requirements

Lease of Land

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Lessee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

In any and all Claims against Lessor by any employee of Lessee, Lessee's indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers compensation acts, disability benefits acts or other **employee benefits acts.**

D. Pollution Liability insurance. If permitted use as defined in this Lease includes any generation, handling, enrichment, storage, manufacture, or production of hazardous materials pollution liability insurance is required. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If hazardous materials are disposed of from the Premises, Lessee must furnish to Lessor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

- E. **Umbrella or Excess** insurance. If Lessee utilizes umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

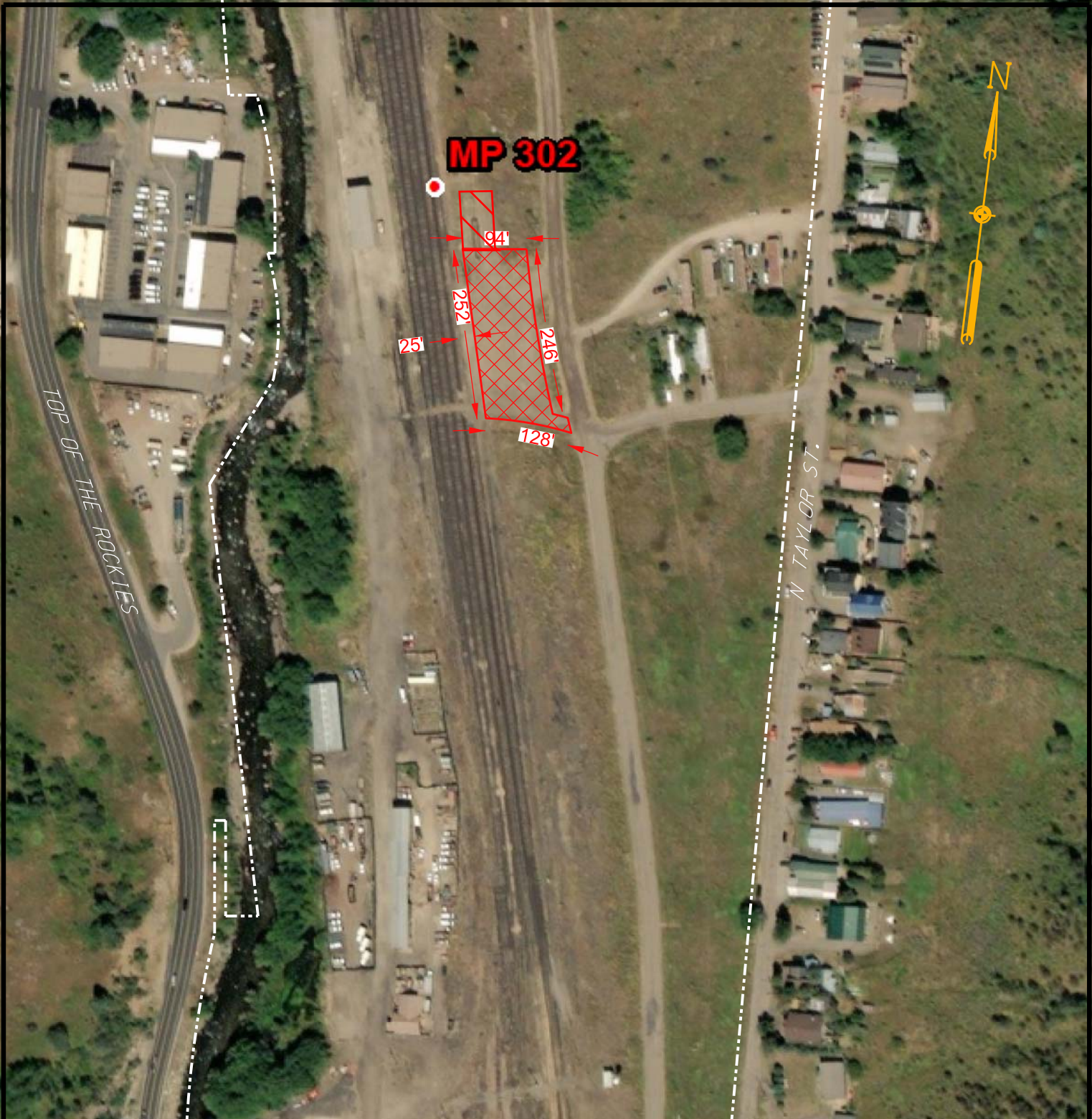
F. All policy(ies) required above must include Lessor as “Additional Insured” using ISO Additional Insured Endorsement CG 20 11 (or a substitute form providing equivalent coverage). The coverage provided to Lessor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for Lessor’s negligence whether sole or partial, active or passive, and shall not be limited by Lessee’s liability under the indemnity provisions of this Lease.

G. Lessee waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers’ liability or commercial umbrella or excess liability insurance obtained by Lessee required by this agreement.


H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by all states in which the Premises are located.


I. All insurance policies must be written by a reputable insurance company acceptable to Lessor or with a current Best’s Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Premises are located.

J. The fact that insurance is obtained by Lessee, or by Lessor on behalf of Lessee, will not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor from Lessee or any third party will not be limited by the amount of the required insurance coverage.



LEGEND:

LEASE AREA..... 

UPRRCO. R/W OUTLINED..... 

LEASE AREA: 28,750 SQ. FT./0.66 AC.+/-

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

MINTURN, EAGLE COUNTY, CO

M.P. 301.95 - TENNESSE PASS SUB.

DRG/CP/V-7A/23

SCALE: 1" = 200'

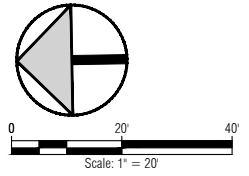
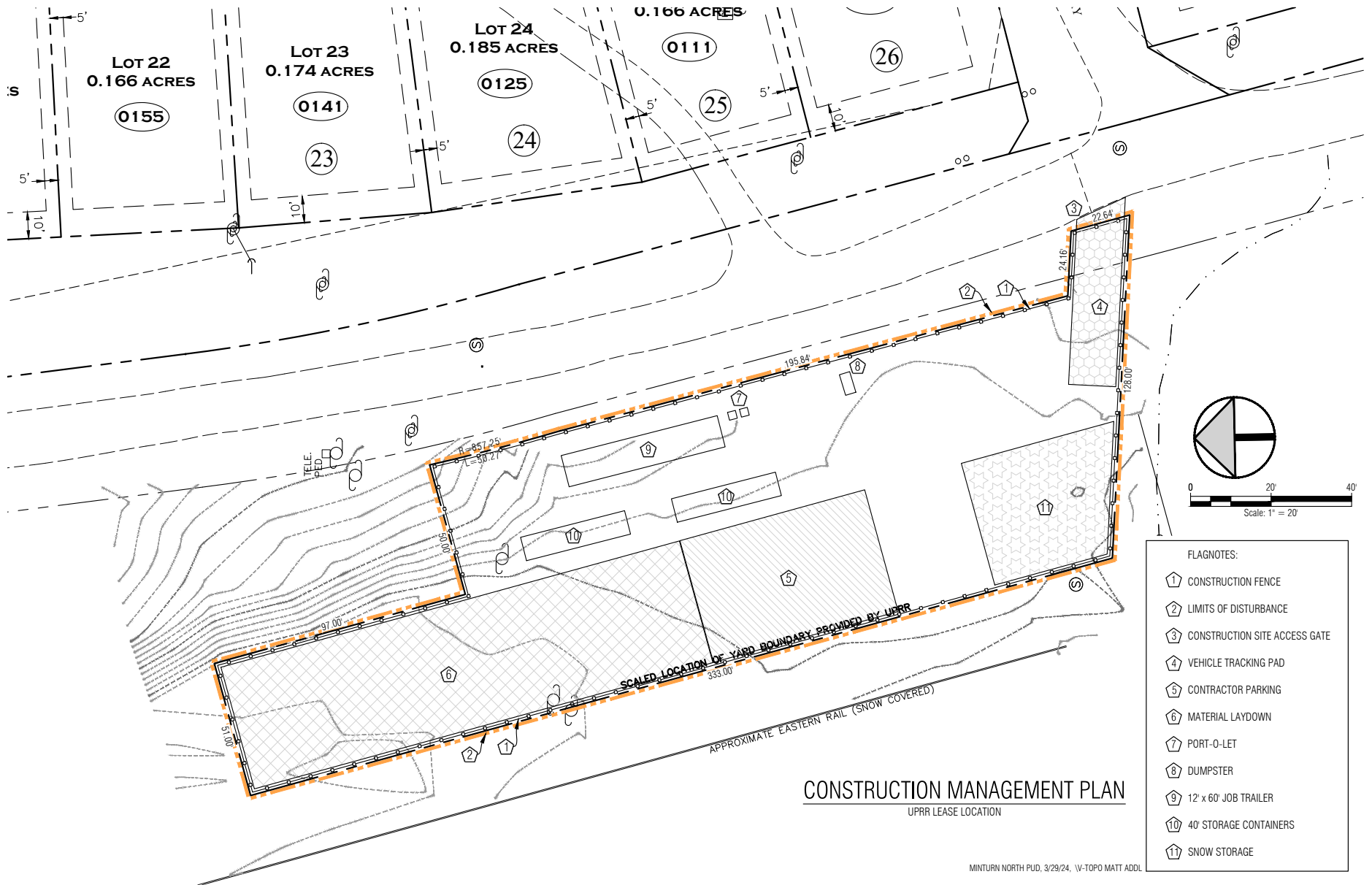
OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 9-13-2023

DSK FILE: 3342-68

CADD FILENAME	0334268
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SCAN FILENAME	AERIAL PRINT
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EXHIBIT B – Site Plan



- FLAGNOTES:**
- ① CONSTRUCTION FENCE
 - ② LIMITS OF DISTURBANCE
 - ③ CONSTRUCTION SITE ACCESS GATE
 - ④ VEHICLE TRACKING PAD
 - ⑤ CONTRACTOR PARKING
 - ⑥ MATERIAL LAYDOWN
 - ⑦ PORT-O-LET
 - ⑧ DUMPSTER
 - ⑨ 12' x 60' JOB TRAILER
 - ⑩ 40' STORAGE CONTAINERS
 - ⑪ SNOW STORAGE

EXHIBIT C – Site Photos & Google Earth Image

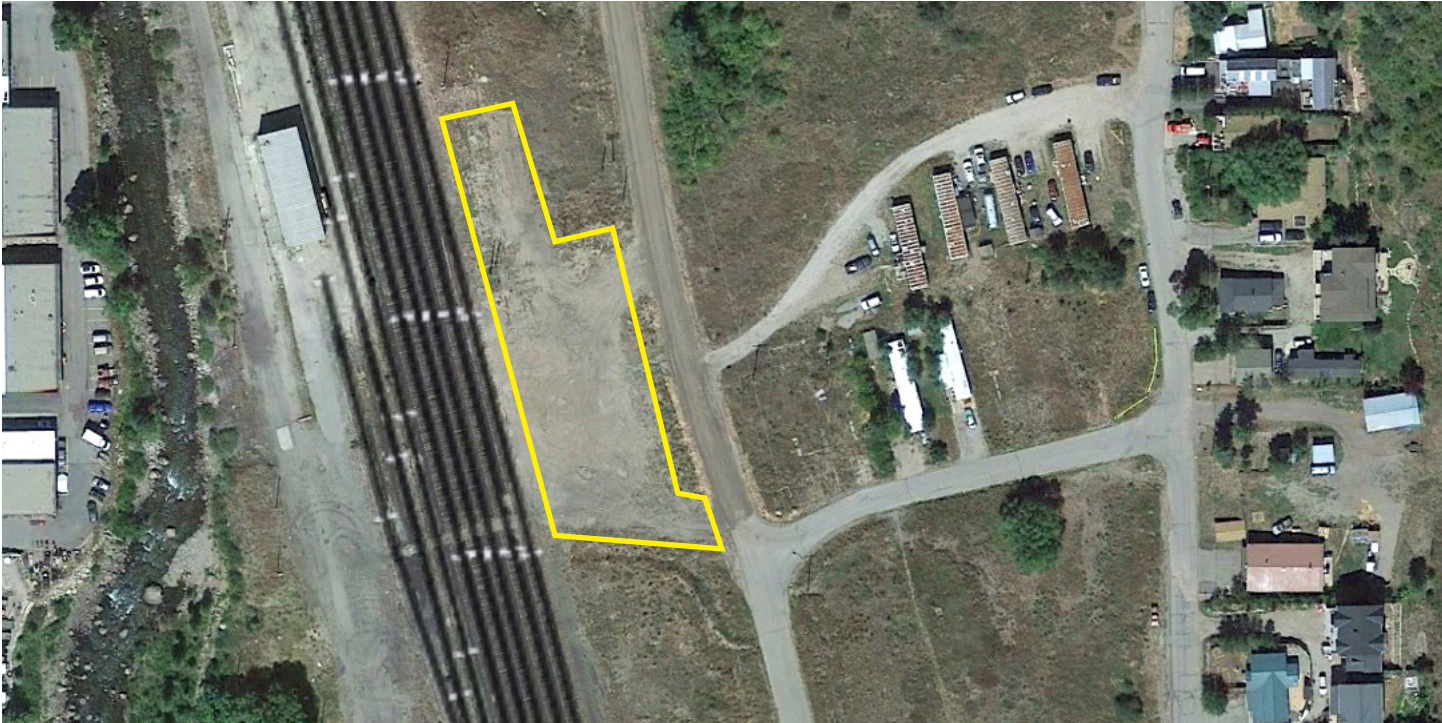


EXHIBIT D – Construction Management Plan Photos



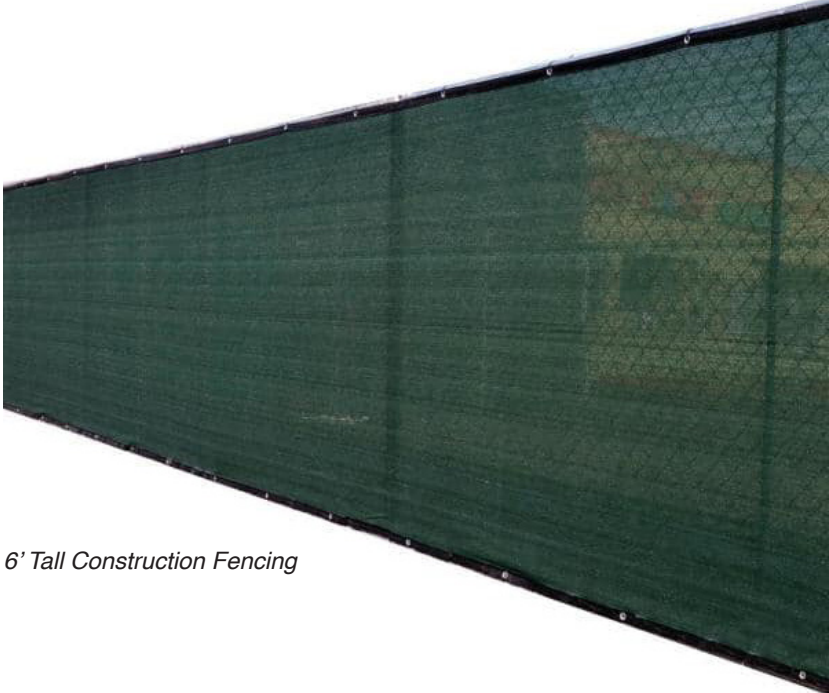
Job Trailer



Storage



Toilets



6' Tall Construction Fencing

EXHIBIT E – Holding Zone Map

