

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING
A LICENSE AGREEMENT WITH THE BASALT REGIONAL LIBRARY DISTRICT
OVER A PORTION OF THE LIBRARY'S PROPERTY**

**Ordinance No. 23
Series of 2014**

RECITALS

1. Pursuant to Article I, Section 1.3(G), of the Home Rule Charter, the Town Council is authorized to lease real property by ordinance.

2. The Town of Basalt has approved plans for creating a passive park on Midland Park. The plan contains a number of amenities including an elevated walkway over wetlands, a story tree, and a tree house.

3. The Basalt Regional Library owns the land under a planned pathway on the Library Property which would take pedestrians from the Midland Avenue on-street parking and the Library to the bridge over Quidditch (Pathway Project) into Midland Park. The Basalt Regional Library Board recognizes the value of the pathway in connecting the Library to Midland Park.

4. At a public meeting on July 22, 2014, the Basalt Town Council approved this ordinance on first reading and scheduled second reading for August 12, 2014, at a meeting beginning no earlier than 6:00 PM at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado. Throughout the meeting, evidence and testimony was offered by the Applicants, Staff and members of the public.

5. At a public hearing on August 12, 2014, the Town Council heard evidence and testimony from the Applicants, Town Staff, and members of the public.

6. The Basalt Town Council finds and determines the Applicants' request described herein to be consistent with the applicable provisions of the Town Code.

7. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Basalt Town Council of Basalt,

Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

Colorado, as follows:

1. The Basalt Regional Library License Agreement with Basalt, attached hereto as **Exhibit A**, is hereby approved and the Mayor of the Town of Basalt is hereby authorized to execute the Easement Agreement on behalf of the Town Council. The Town Attorney is authorized to review and approve minor changes to the license agreement which are consistent with the intent of this approval.

2. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors, and assigns of the Applicants and the owners of the Property.

3. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

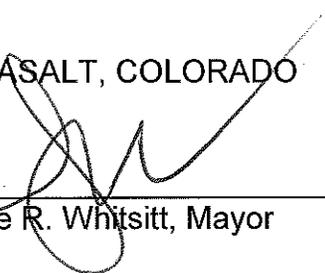
4 This Ordinance shall be effective 14 days after final publication of the Ordinance in accordance with the Town Home Rule Charter.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR SECOND READING TO BE HELD ON August 12, 2014 by a vote of 5 to 0 on July 22, 2014.

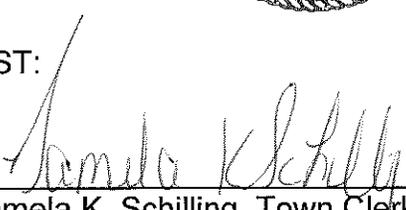
READ ON SECOND READING AND ADOPTED, by a vote of 4 to 0 on August 12, 2014.



TOWN OF BASALT, COLORADO

By: 
Jacque R. Whitsitt, Mayor

ATTEST:

By: 
Pamela K. Schilling, Town Clerk

Town of Basalt, Colorado
Ordinance No. 23, Series of 2014
Page 3

First Publication: Thursday, July 31, 2014
Final Publication: Thursday, August 21, 2014
Effective date: Thursday, September 4, 2014

Exhibit A

BASALT REGIONAL LIBRARY LICENSE AGREEMENT WITH BASALT **(For QUIDDITCH Bridge and Pathway)**

This LICENSE AGREEMENT is made September 15, 2014 between the Town of Basalt, a home-rule municipality of the State of Colorado, whose address is c/o Town Manager 101 Midland Avenue, Basalt, CO 81621 ("Grantee") and the Basalt Regional Library District ("Grantor"), whose address is 14 Midland Avenue.

RECITALS

1. Grantor is the owner of the property known as the Basalt Regional Library.
2. Grantee is the owner of property known as Midland Park, as described in Deed recorded as Reception No. 200814148 of the real estate records of Eagle County, Colorado.
3. Grantee has approved plans for creating a passive park on Midland Park. The plan contains a number of amenities including an elevated walkway over wetlands, a story tree, and a tree house referred to as the "Spirit Nest."
4. The Grantee's improvements include a bridge over the ditch now being referred to as "Quidditch" and a pathway on the Library Property taking pedestrians from the on-street parking area and the Library to the bridge over Quidditch ("Pathway Project") as shown on the attached Exhibit B.
5. The Grantor wishes to have improved access to Midland Park and the planned amenities.
6. The Grantee is willing to construct and pay for the Pathway Project in exchange for the public being permitted to use the pathway.
7. Grantor has agreed to grant a temporary construction license and a minimum 5-year license, with automatic extensions on a portion of the Grantor's Property for the benefit of Grantee and subject to the terms and conditions herein. The purpose of this License Agreement is to permit Grantee to construct, maintain, repair, and replace a pathway, a portion of the bridge over Quidditch and an elevated walkway and to permit public use of these amenities.

AGREEMENT

1. Grant of Temporary Construction License. Grantor hereby licenses to Grantee a temporary construction license over and across the lands shown in Exhibit

"A" attached hereto and made a part hereof within the Library Property ("Temporary Construction License"). The Temporary Construction License shall be used by the Grantee for construction and installation of the Pathway Project as shown on the plans and specifications included as "Exhibit B". The Temporary Construction License shall expire on November 30, 2015. Grantee shall have the right to request that the Grantor extend or reissue the Temporary Construction License by making application to the Library Board. If the Grantee suspends construction for more than thirty (30) days, the Town will remove all equipment from the Grantor's property and return it to a clean and presentable condition until the Grantee resumes construction activities. Grantee shall pay all costs for construction of the Pathway Project. Grantee shall own all improvements associated with the Pathway Project within the License Area. The Grantor shall have the right to use the land beneath the Temporary Construction License Area for the installation, maintenance, repair and replacement of any utility extensions. The Grantee shall pay all costs associated with the construction of the Pathway Project.

2. Grant of License. For an annual license fee of one dollar (\$1.00) due on the annual anniversary of this Agreement, Grantor hereby grants to Grantee a license over and across the lands shown in Exhibit "C" attached hereto and made a part hereof within the Library Property ("License Area") until November 30, 2034 subject to termination by either party as provided in Section 4 below. The License shall be used by the Grantee for public access to the park and library and on-street parking and for the maintenance of the pathway for pedestrian use. Pedestrian use shall be broadly defined and include foot traffic, bicycle, wheelchair, manually-powered mobility aids and other power-driven mobility devices used by individuals with disabilities ("OPMD") unless Grantee determines that any type of OPMD cannot be operated in accordance with legitimate safety requirements. No other motorized access shall be permitted except for vehicles operated by the Town of Basalt for maintenance and repair. The Grantee shall pay all costs associated with construction of the Pathway Project. The Grantor shall have the right to use the land beneath the License Area for the installation, maintenance, repair and replacement of any utility extensions. The Grantee shall be responsible for and shall pay the costs for all maintenance and repair of the License Area and shall keep the pathway in good repair and condition. The License shall automatically terminate if the trail is not completed by the date the Temporary Construction License has terminated.

3. Indemnification. The Grantee agrees to protect, indemnify and hold harmless Grantor, its Board members, employees and agents, from and against any loss, damage or claims, including reasonable attorneys' fees and costs, arising out of: (i) the use, including the initial construction, of the License Area by the Grantee or its guests or invitees, which indemnity shall include, but not be limited to, injury or loss to persons or property; (ii) any mechanic lien claims for unpaid labor, services or materials affecting any of the License Area; and (iii) any and all costs associated with removal of improvements located in the License Area upon termination of this License Agreement

as further outlined in Section 5. The Grantee shall obtain, at its expense, and keep in full force and effect throughout the term of this License Agreement, with a reputable insurer, general public liability insurance for the License Area with a limit of not less than \$350,000.00 per individual and \$1,000,000 per occurrence and, during times of construction of any improvements, repairs or replacements, shall maintain (or cause its contractor to maintain) workmen's compensation and builder's risk insurance in amounts reasonably satisfactory to Grantor; and all said policies shall name Grantor as an additional insured and the Grantee shall provide Grantor with proof of such insurance. Grantor shall have the right to request the Grantee to review and increase the limits of insurance coverage hereunder based on prevailing limits then carried by like or similar risks.

4. Termination for Convenience. This License does not constitute a permanent easement. This License Agreement may be terminated by either party at any time by providing the other with ninety (90) day written notice ("Notice of Termination"). After delivery of the Notice of Termination, the Grantee shall remove the Pathway Improvements and restore the lawn area to the condition that existed prior to the construction activities at Grantee's sole cost, with the exception of the steel bridge and elevated walkway component which constitute a permanent improvement and do not need to be removed.

5. Default, Right to Cure; Termination for Cause. In the event of any default under the provisions of this Agreement, the non-defaulting party shall, prior to the exercise of any right or remedy, give the party alleged to be in default written notice of such default together with right for a period of 10 days after receipt of such notice to cure said default. If an alleged default by its nature is not capable of being cured within the time provided, the party alleged to be in default shall, provided such party is proceeding with all due diligence, have up to an additional twenty days to cure said default unless there are weather conditions that prevent the cure. If the Grantee fails to repair, replace and maintain the trail within the cure period, or any extension thereof, the Grantor may undertake such work and the Grantee agrees to repay the Grantor for such costs, or the Grantor may immediately terminate this agreement and pursue any right or remedy allowed by this Agreement or otherwise by law. If the Grantor terminates the Agreement the Grantee shall remove the Pathway Improvements and restore the lawn area to the condition that existed prior to the construction activities at Grantee's sole cost within thirty (30) days of the date of termination.

6. Notices. Any notice, demand, or document which either party is required or may desire to give, deliver or make to the other party shall be in writing and may be personally delivered or given by facsimile transmission or given by United States certified mail, return receipt requested, addressed as follows:

To Grantor:

Barbara Milnor, Executive Director
14 Midland Avenue

Town of Basalt, CO 81621

To the Grantee: Michael J. Scanlon, Town Manager
Town of Basalt
101 Midland Avenue
Basalt, CO 81621

With copy to: Thomas Fenton Smith
Austin, Peirce & Smith, P.C.
600 East Hopkins Avenue, Ste. 205
Aspen, CO 81621

Any notice, demand or document so given, delivered or made by United States mail shall be deemed to have been received on the earlier of the date actually received or the third business day after the same is deposited in the United States mail as certified matter, addressed as above provided, with postage prepaid. Notice by facsimile transmission shall be deemed given upon receipt of a confirmation by sender.

7. Miscellaneous.

7.1 Remedies. Either party shall have the right and power to bring suit in its own name for any legal or equitable relief due to lack of compliance with any provisions of this Agreement. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Agreement, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorneys' fees, in connection therewith.

7.2 No Waiver. The failure of either party to insist upon the strict performance of any provisions of this Agreement or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or a relinquishment for the future of any such provision.

7.3 Amendments in Writing. This Agreement may not be amended, nor may any rights hereunder be waived, except by an instrument in writing executed by the parties hereto and duly recorded in the real estate records of Eagle County, Colorado.

7.4 Colorado Law. The interpretation, enforcement or any other matters relative to this Agreement shall be construed and determined in accordance with the laws of the State of Colorado. This Agreement is subject to the laws of the State of Colorado, jurisdiction shall be in the District Court of Colorado, and venue in the County of Eagle, in the event of any legal proceedings arising from the transaction described herein.

7.5 Correction Documents. In the event any clerical or other errors are

found in this Agreement or any other descriptions or other exhibits hereto, or in the event any exhibit shall be missing, the parties agree to promptly execute, acknowledge, initial and/or deliver as necessary any documentation in order to correct the erroneous document, description, exhibit or to provide any missing exhibit.

7.6 Changes to Plans. Any changes to the design of the Pathway Project require the written consent of the Grantor, which consent shall not be unreasonably withheld.

7.7 The Grantee shall not erect any signage within the License Area without the prior written agreement of the Grantor, which consent shall not be unreasonably withheld.

7.8 Closure of Trail. The Grantor may close the trail once a year for one day between December 1st and March 31st.

7.9 If the Grantor experiences a significant parking problem due to the location of the pathway access Grantor shall notify Grantee of the parking problem and request in writing that the Grantee construct such additional parking spaces necessary to address the problem. The Grantee agrees to use its best efforts to appropriate funds and construct additional parking spaces on Grantee owned property in the vicinity of Grantor's property. Nothing prevents the Grantee from building a minimum of ten (10) parking spaces in the vicinity of Grantor's property at an earlier date, and said construction shall have the effect of satisfying this requirement.

7.10 Binding Effect. All provisions of this Agreement inure to the benefit of and are binding upon the parties hereto, their heirs, successors, assigns and personal representatives.

7.11 Non-waiver. The Parties hereto understand and agree that the each is relying on and does not waive or intend to waive by this Agreement or any provision hereof, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.* as amended from time to time or otherwise available to the Parties

7.12 No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate either Party to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant to or in aid of any person, company or corporation within the meaning of Colorado law.

Exhibit "A"

Temporary Construction License

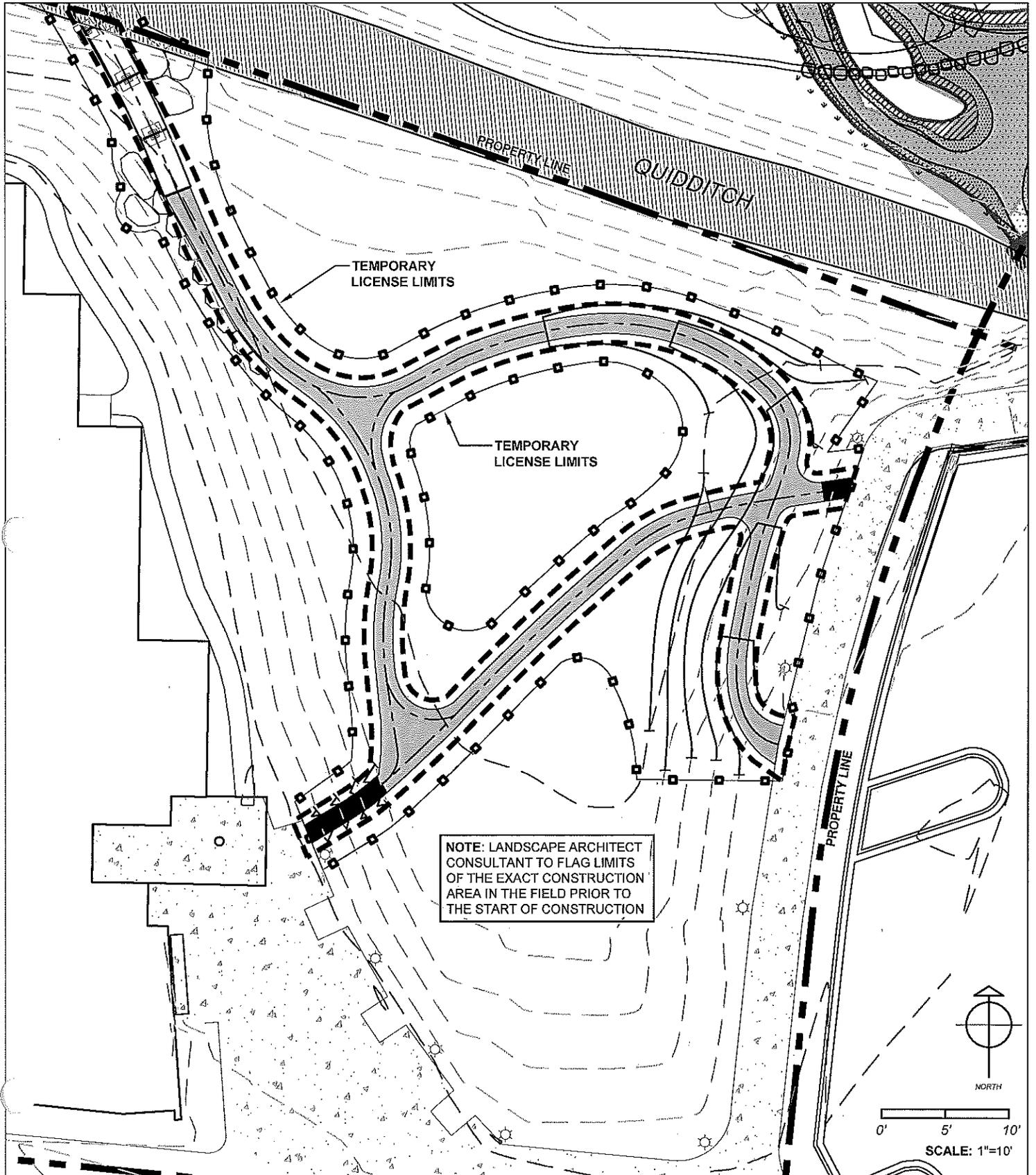


Exhibit "B"

Plans and Specifications for Pathway Project

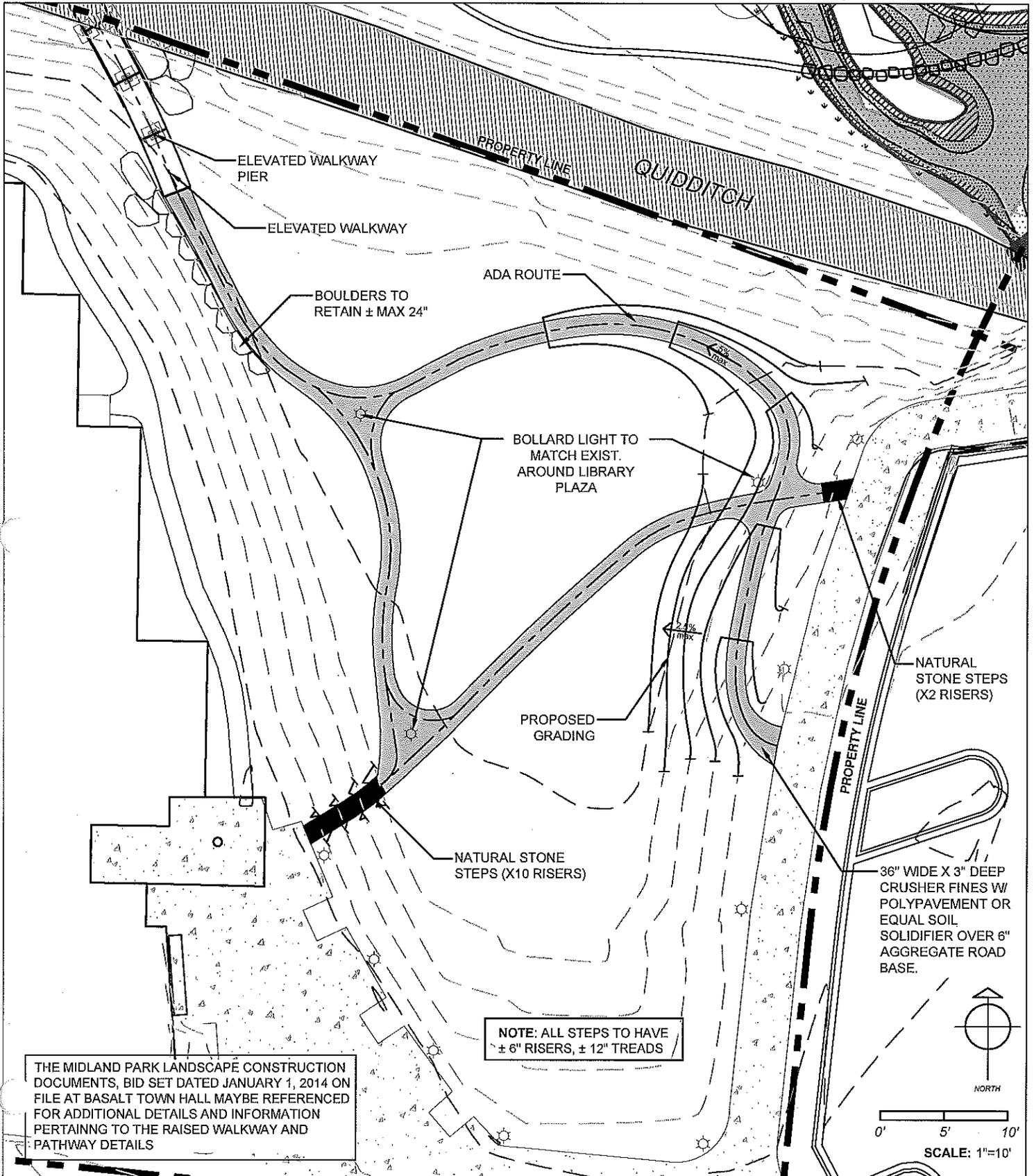


Exhibit "C"

License Area for Pathway Project

