

INDUSTRY TRACK CONTRACT

Parties. THIS AGREEMENT, made and entered into this 30th day of December, 1964
by and between

a corporation of the State of Utah (hereinafter called "Railroad Company"), party of the first part, and **SOUTHERN LUMBER & COAL CO.**, a corporation of the State of Nebraska

FILED FOR RECORD IN SARPY COUNTY NEBR. Jan. 14 1965 AT 7 O'CLOCK A.M.
AND RECORDED IN BOOK 34 OF Rec. PAGE 449 Alvin Benson REGISTER OF DEEDS

Location. WHEREAS, the Industry desires the construction, maintenance and operation of an industry spur track 3153 feet in length (hereinafter referred to as "Track") near South Omaha, in Douglas and in Sarpy Counties,

Nebraska, in the location indicated by a yellow and pink line between points marked on the map hereto attached, marked "Exhibit A," dated July 10, 1964, and hereby made a part hereof, which Track the Railroad Company is willing to construct, maintain and operate upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, it is agreed between the parties hereto as follows:

Right of Way. Section 1. The Industry shall first procure and furnish without expense to the Railroad Company all public authority and permission and all right of way outside the limits of the property of the Railroad Company which are necessary for the construction, maintenance and operation of the Track.

Construction. Section 2. The Railroad Company shall construct at its own expense

~~so much of~~ that portion of the Track between the switch point (~~marked~~) and the ~~clearance point~~ property line line as is located within its right of way, being a distance of 2300 feet as indicated by a yellow line between points marked on Exhibit A. The Railroad Company shall construct, at the cost of the Industry, that portion of the Track lying beyond the ~~switch point (or beyond the boundary line of the right of way of the Railroad Company, if the clearance~~ the property line as indicated by a pink line between points marked on Exhibit A, except the grading therefor, which grading shall be performed by and at the expense of the Industry.

The Industry shall also bear the cost of such incidental work (including changes in, or additions to, the Railroad Company's existing tracks and structures other than track changes connected with the turnout) as may be necessitated by the construction and operation of the Track.

Maintenance. The Railroad Company shall, at its own expense, maintain the Track, except such portion thereof (if any) as may be used for intraplant switching, which portion shall be maintained at the expense of the Industry; PROVIDED, however, that the expense to be borne by the Railroad Company for the maintenance of that part of the Track not owned by it shall be limited strictly to expense incurred in the maintenance of the track structure, and any incidental expense, such as, but not limited to, expense for maintenance, removal or replacement of paving occasioned by the maintenance of the track structure, shall be borne by the Industry.

* If the Industry is to bear initially the expense of the construction between the switch point and clearance point, fill in the words "at the expense of the Industry subject to a refund as hereinafter provided." If the Railroad Company is to bear the expense, fill in the words "at its own expense."

Operation.

Upon the completion of the construction of the Track the Railroad Company shall operate the same for the term of this agreement, subject to, and in the extent as contemplated by, lawful tariffs applicable thereto, with the understanding, however, that the Railroad Company shall not be obligated to operate the Track if it shall be prevented or hindered from so doing by acts of God, public authority, strikes, riots, labor disputes, or by any cause beyond its control.

Deposit

Financing

Payment of Bills

Section 3. The cost incident to the construction by the Railroad Company of that portion of the Track which the Industry is to bear as herein provided is Seven Thousand Six Hundred Seventy-one Dollars (\$7,671.00). Before any work is begun the Industry shall deposit with the Railroad Company the sum of One Thousand Five Hundred Thirty-five Dollars (\$1,535.00). The balance of said cost of Seven Thousand Six Hundred Seventy-one Dollars (\$7,671.00), being the sum of Six Thousand One Hundred Thirty-six Dollars (\$6,136.00), shall be paid by the Industry to the Railroad Company in sixty (60) equal monthly installments of principal and interest, computed at the rate of five and one-half per cent (5½%) per annum, aggregating One Hundred Seventeen Dollars and Twenty Cents (\$117.20) each, the first of such installments to be paid to the Railroad Company on a date one month subsequent to the date of physical completion of the Track, and subsequent installments to be paid on the corresponding day of each succeeding month.

The Industry shall pay to the Railroad Company on any installment not paid when due interest at the rate of five and one-half percent (5½%) per annum until paid.

The Industry shall have the option of paying off the entire principal amount owing at any time with interest prorated at the rate of five and one-half per cent (5½%) per annum from date of payment of latest prior installment to the date of final payment.

In the event the Industry shall discontinue operation of its facilities to be served by the Track prior to the payment to the Railroad Company of that portion of the cost of the Track which is to be borne by the Industry hereunder, the Industry shall pay to the Railroad Company the balance remaining unpaid of said portion of said cost, plus interest at the rate of five and one-half per cent (5½%) per annum accrued thereon.

Bills for expense properly chargeable to the Industry for fuel, oil, and other items which the above-mentioned deposit and installments are made shall be paid by the Industry within thirty days after presentation by the Railroad Company.

Expense for Privilege

Section 5. The Industry shall pay all compensation and assessments required by any municipality, public authority, corporation, firm or person for the privilege of constructing, maintaining and operating the Track.

Ownership of Track

Section 6. The Railroad Company shall own all that portion of the Track which is within the right of way and within the limits of any public street and/or alleys where the width of the Track in such streets and/or alleys forms one continuous area with the right of way of the Railroad Company, but, upon the discontinuance of the use of the Track for shipping shipments to and from the Industry, the Railroad Company shall pay to the Industry the then salvage value of the usable material originally used for the Industry contained in that part of the Track owned by the Railroad Company beyond the clearance point.

The portion of the Track to be owned by the Railroad Company is indicated by a yellow line between points marked _____ on Exhibit A. The remainder of the Track (in area) shall be owned by the Industry.

Right of Railroad Company Industry to use

Section 7. The Railroad Company shall have the right to use the Track when not to the detriment of the Industry.

Clearances

Section 8. No building, platform or other structure shall be erected or maintained and no material or construction of any kind or character shall be placed, piled, stored, stacked or maintained other than not less than six (6) inches to the center line of the Track; PROVIDED, however, that in the case of platforms the height of the line of the Track will be permitted; and PROVIDED further that piping and other structures shall be provided beyond all portions of the Track having a curvature greater than ten (10) degrees the clearance shall be provided shall, with reference to platforms four (4) feet or less in height, be increased horizontally one (1) foot and with reference to all buildings, platforms, structures, and other obstructions greater than four (4) feet in height, shall be increased horizontally one (1) foot; and PROVIDED further that if by statute or order of competent public authority greater clearances shall be required than those provided for in this section, the Industry shall strictly comply with such statute or order. All doors, windows or gates shall be closed or shall open toward the inside of the building or enclosure when such building or enclosure is to be used for the storage of rolling stock, and when such building or enclosure is to be used for other purposes as prescribed.

The Industry shall not locate or permit the location or erection of any beams, pipes, wires or other obstructions over or under the Track without the written consent of the Railroad Company.

Liability

Section 9. It is understood that the movement of railroad locomotives involves some hazard to the property of the Industry or to property upon its premises, regardless of the Railroad Company's negligence arising from fire caused by locomotives operated by the Railroad Company on the Track, or in its vicinity, for the purpose of serving the Industry, except to the premises of the Railroad Company and to rolling stock belonging to the Railroad Company or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad Company, for loss, damage or injury, and their employees and agents, to the person or property of the parties hereto, about the Track; and if any claim or liability other than from fire shall arise from the joint or concurrent negligence of the parties hereto (or of any two or more of them if there be more than two), it shall be borne equally by the parties at fault.

* Subdivision (a) is to be disregarded if it is provided in Section 2 that the Railroad Company shall construct at its expense that portion of the Track between the switch point and the clearance point.

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Rearrangement of Track.

Section 10. The Railroad Company may rearrange or reconstruct the Track or modify the elevation thereof whenever necessary or desirable in connection with the improvement of its property or changes in its tracks at or near the location of the Track provided that the Industry shall continue to have similar trackings without additional cost to the Industry. In the event, however, that a rearrangement or reconstruction of the Track or modification of the elevation thereof is required by reason of or as a result of any law, ordinance or other public enactment or regulation, or by reason of the happening of any contingency over which the Railroad Company has no control, then the Industry shall bear the cost of such rearrangement, reconstruction or modification. Nothing in this section contained shall in any way affect the right of the Railroad Company to terminate this agreement under the conditions set forth in subparagraph (c) of Section 12 hereof.

Governmental Restrictions.

Section 11. This contract is made in full contemplation of all applicable restrictive orders and regulations of the United States Government now or hereafter in effect and, accordingly, it is expressly conditioned upon the ability of the Railroad Company to secure and furnish labor and materials and to secure any necessary authority to perform the work.

Termination.

Section 12. The Railroad Company, after giving sixty (60) days' written notice to the Industry of its intention so to do, may terminate this agreement and take up and remove that portion of the Track owned by it, if

- (a) the Industry ceases for a continuous period of one year the doing of business in an active and substantial way over the Track;
- (b) the Industry shall fail to keep each and every obligation, condition and stipulation stated in or resulting under this agreement; or
- (c) the Railroad Company is required by law, ordinance or police regulations, or changed conditions, to elevate or depress or otherwise change its tracks at or near the location of the Track, so as to make it impracticable, in the judgment of the Railroad Company, to continue the operation of the Track.

Assignment.

Section 13. The Industry shall not assign this agreement or any interest therein without the written consent of the Railroad Company and for any departure in this respect, the Railroad Company may terminate this agreement.

Successors and Assigns.

Section 14. Subject to the provisions of Section 13 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Liens.

Section 15. The said sum of Six Thousand One Hundred Thirty-six Dollars (\$6,136.00), plus interest, shall be considered and become a charge against that portion of the Track shown in pink as described above and said charge shall constitute a lien on said portion of the Track in favor of the Railroad Company until said sum is fully paid.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate as of the date first herein written.

Witness:
 Attest:
 Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,
 By: *[Signature]*
 Vice President

Witness:
 Attest:
 Secretary

SOUTHERN LUMBER & COAL CO.,
 By: *[Signature]*
 President

as described above

Approved as to execution:

[Signature]
Attorney

APPROVED

[Signature]
For Chief Engineer

APPROVED:

[Signature]
For General Manager

Approved as to form:

[Signature]
General Attorney

FORM 11-924

34-551

24-15-52

DFW
Comp.

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss

On this 8th day of January, 1945,
before me, a Notary Public in and for said county in the
state aforesaid, personally appeared D. F. WENGERT, to me per-
sonally known, and to me personally known to be a Vice Presi-
dent of Union Pacific Railroad Company, and to be the same
person whose name is subscribed to the foregoing instrument,
and who, being by me duly sworn, did say that he is a Vice
President of Union Pacific Railroad Company; that the seal
affixed to said instrument is the corporate seal of said
corporation; and that said instrument was signed and sealed
on behalf of said corporation by authority of its board of
directors; and the said D. F. Wengert acknowledged said instru-
ment to be his free and voluntary act and deed, and the free
and voluntary act and deed of said corporation, by it volun-
tarily executed, for the uses specified therein.

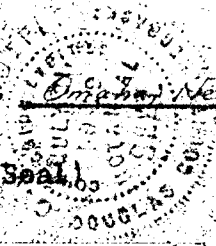
IN WITNESS WHEREOF, I have hereunto set my hand
and official seal the day and year last above written.

My commission expires July 31 1949

[Signature]
Notary Public

Residing at Omaha, Nebr

(Seal)



dfw

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Nebr.
Corp.

STATE OF Nebr.
COUNTY OF Douglas ss

On this 24th day of November
A. D. 1964, before me, a Notary Public duly commissioned
and qualified in and for said County, personally came

Walter D. Faulk, President
of Southern Lumber & Coal Co.

who is personally known to me to be the identical person
whose name is affixed to the foregoing instrument as

President of said Southern Lumber & Coal Co.
and acknowledged said instrument to
be his voluntary act and deed and the voluntary act and deed
of said Southern Lumber & Coal Co.

WITNESS my hand and notarial seal at Omaha
Nebraska in said County, on the day and
year above mentioned.

My commission expires May 28, 1968

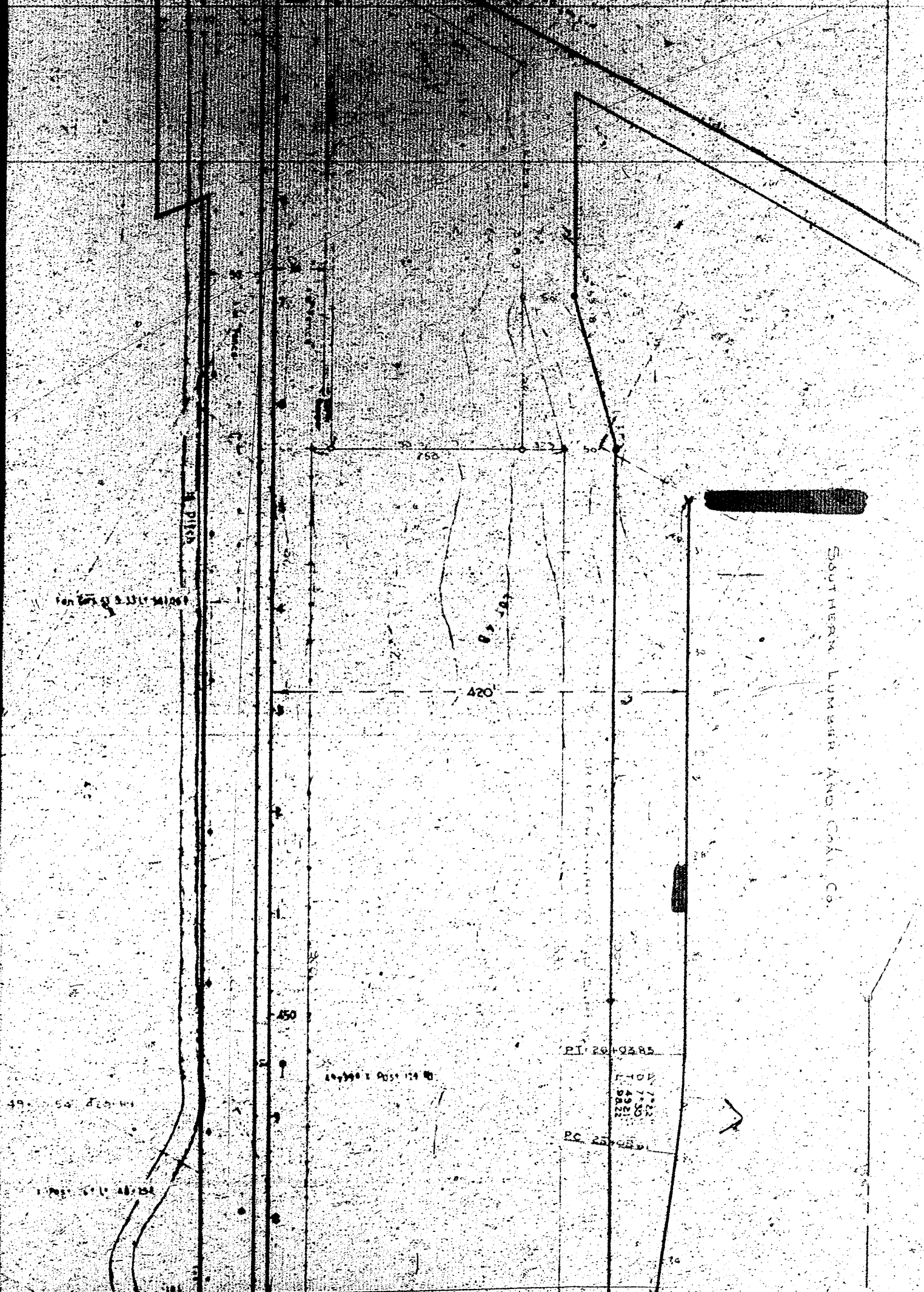


Raymond W. Schubert
Notary Public

Residing at 4679 Oak St. Omaha

nc

34-534



for 20' of 2.11' 24.00'

PI. 29-9285

420'

450'

40-390 X 205-124 80

PI. 29-9285

7.25
7.30
4.92
1.82

PC. 25-9285

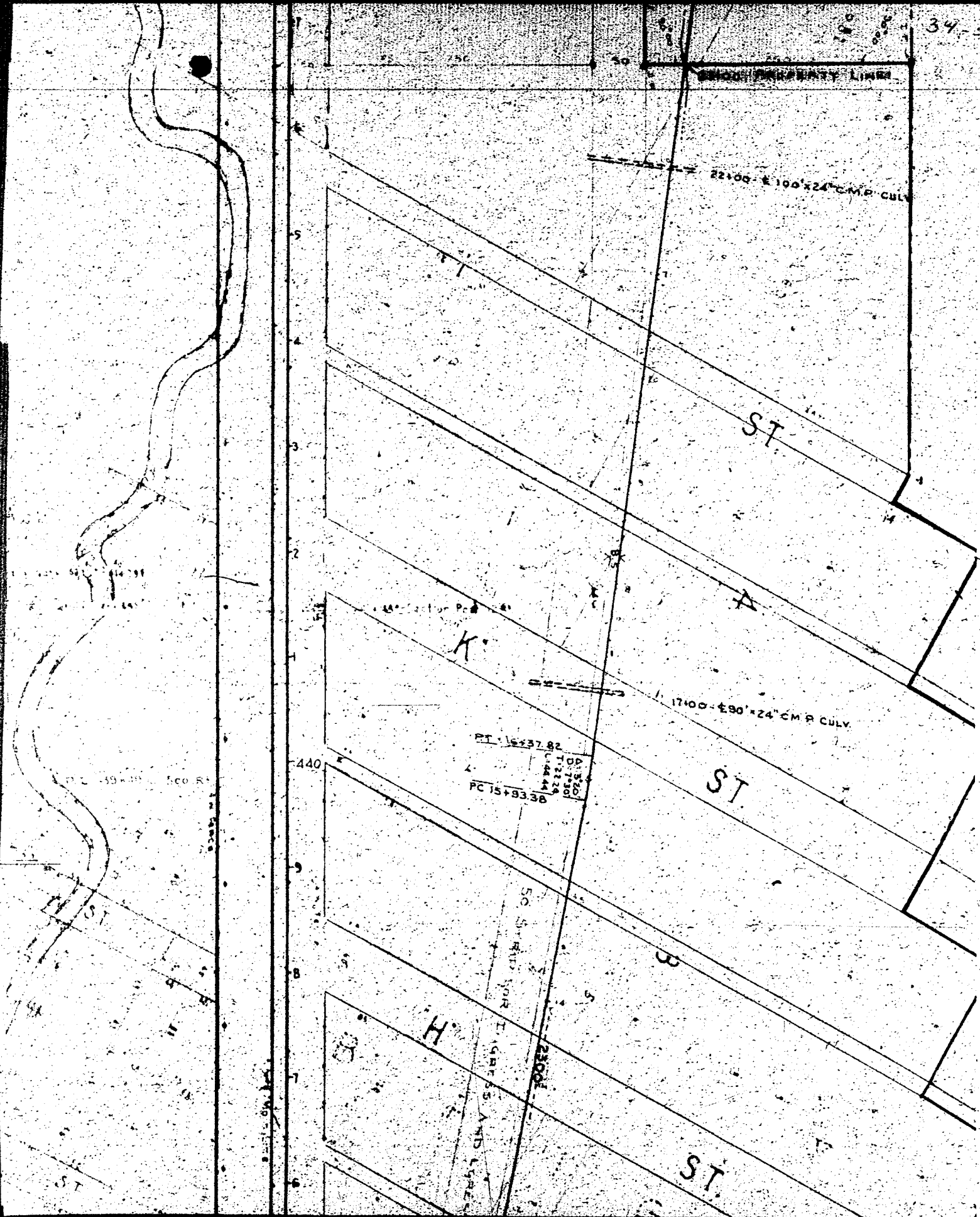
SOUTHERN LUMBER AND COAL CO.

49-054 220-44

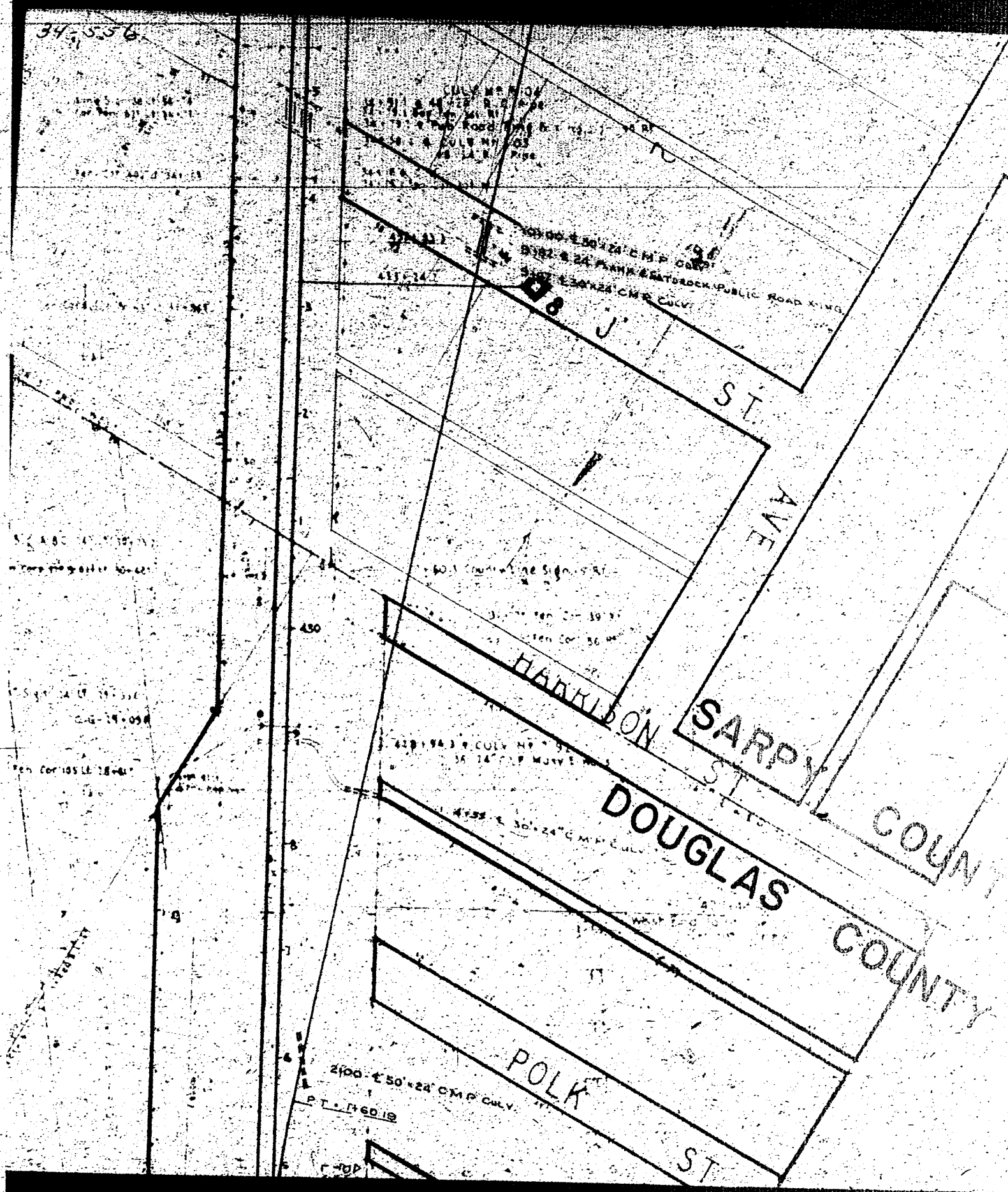
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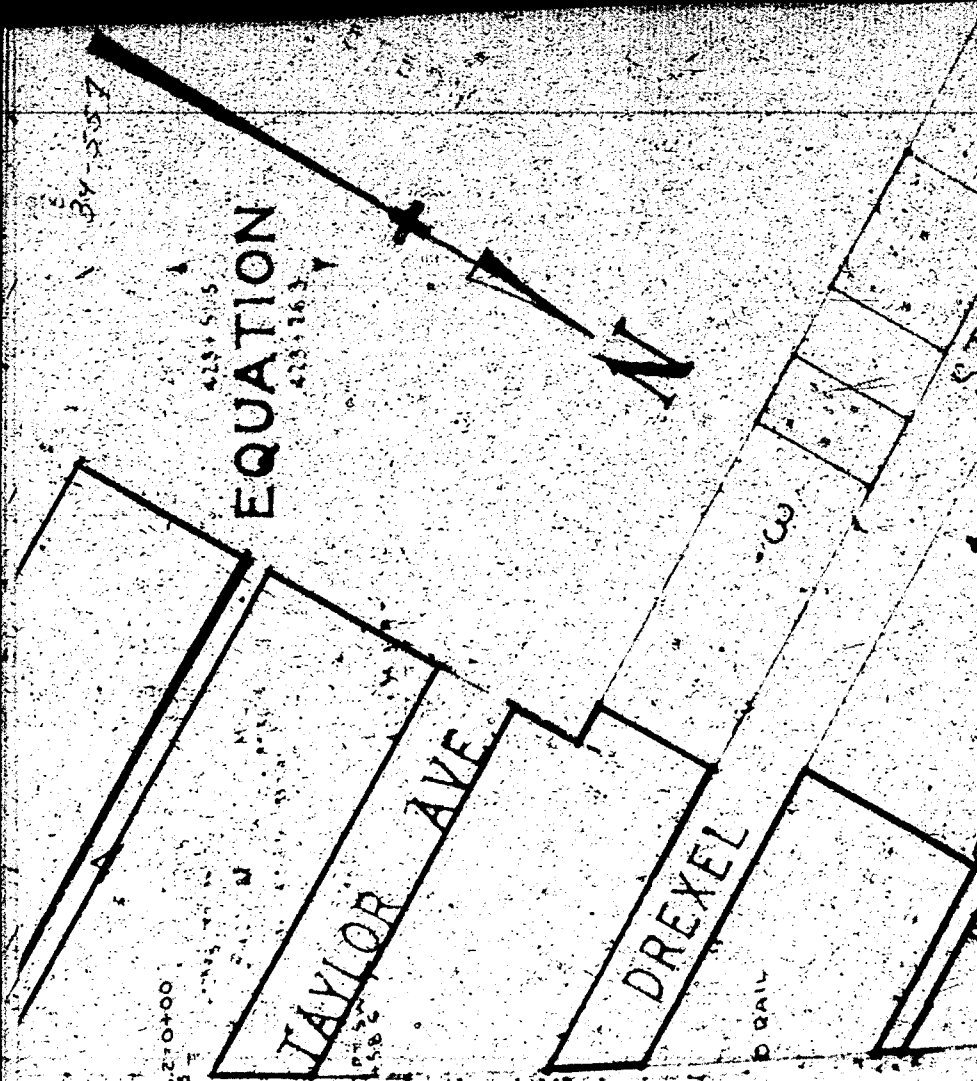
34-



34-556



34-557



10' 38
6' 06
87' 46
74' 32

PC 24+03.210+00
PT 24+03.210+00

N910

Exhibit "A"
UNION PACIFIC RAILROAD COMPANY
Nr South Omaha, Sargey County,
Nebraska MF 7.83 - Old Main
Line

To OMAHA

To accompany agreement with
Southern Lumber and Coal Co.
covering construction,
maintenance and operation of
industry spur track

Scale: 1" = 100'

Office of Division Engineer
Omaha, Nebraska - July 10, 1964

L E G E N D

Track & facilities paid for &
owned by RR Co. shown.....Yellow
Track paid for & owned by
industry shown.....Pink
MF ROW outlined.....Red

RAILROAD