

THIS INDENTURE, Made, in duplicate, this 30th day of January, A. D. 1904, by and between Omaha and Southwestern Railroad Company, hereinafter called the "Railroad Company", of the one part, and Omaha and Council Bluffs Street Railway Company, hereinafter called the "Railway Company", of the other part, W I T N E S S E T H,

That the Railroad Company, for and in consideration of the covenants and agreements of the Railway Company, hereinafter set forth, has granted, and by these presents does grant unto the Railway Company, for the period, upon the conditions, and for the purposes hereinafter mentioned, the right to lay down, construct, maintain and operate, but at the expense and risk of the Railway Company, the water and sewage pipes hereinafter mentioned beneath and across the right of way of the Railroad Company, on a strip of ground ten (10) feet wide, to connect the power plant of the Railway Company now under construction at a point immediately west of the west line of the right of way and railroad tracks of the Railroad Company, with a proposed water intake about to be constructed by the Railway Company on the west bank of the Missouri River, for the purpose of flowing, carrying and discharging water and sewage in, through and by means of the same, within that part of lot three (3) in section twenty-three (23), in Township fifteen (15), north of Range thirteen (13) East of the Sixth Principal Meridian, in Douglas County, State of Nebraska, the center line of which granted area, for the uses and purposes stated, being approximately as follows: Beginning at a point in the dividing line between the existing right of way of the Railroad Company and the property of the Railway Company on which said power plant is proposed to be erected, five hundred and five (505) feet north of the north line of Jones Street, in the City of Omaha, thence in a northeasterly direction to a point on the east boundary line of the Railroad Company's right of way as now existing, six hundred and fifty (650) feet north of the north line of said Jones Street; all as more definitely shown on the blue print hereto attached, marked "Exhibit A"

The Railroad Company has also granted, and by these presents does grant unto the Railway Company upon the terms and conditions herein written in respect to the pipes aforesaid, the right to extend, place and maintain the footings for the foundation of said

proposed water intake within the easterly limits of the right of way of the Railroad Company and adjacent to the west bank of the Missouri River, to an extent westerly within such right of way of about six and one-half (6-1/2) feet, more or less, the base of said footings to be placed at a point not less than twenty (20) feet beneath the present surface, and the top of the intake not to be higher than present track level of existing tracks of the Railroad Company.

The foregoing grant is expressly conditioned upon the performance by the Railway Company of all and singular the covenants and agreements hereinafter contained, to be by it kept and performed; and a default in, or failure to perform, any of such covenants, or a breach in any of such conditions shall, at the option of the Railroad Company, work an absolute forfeiture of said grant, and authorize the Railroad Company after the expiration of thirty days notice in writing served on any officer of the Railway Company to that effect, to remove said pipes and every of them from the granted premises and to declare the rights herein granted forfeited.

Said covenants and agreements are as follows:

ARTICLE 1.

Section 1. That the Railroad Company, notwithstanding the aforesaid grant, shall have, and does hereby retain, the right of absolute possession and control of its right of way, and the right to construct and operate its tracks as now existing, or as it may hereafter construct or operate them or any additional tracks upon or over the same; and the Railway Company agrees that nothing shall be done by it, or suffered to be done by others, that shall in any manner impair the usefulness or safety of said existing tracks, or of any other tracks that may be hereafter laid by the Railroad Company.

Section 2. The sewer and water pipes to be laid, maintained, and operated by the Railway Company under the right of way of the Railroad Company, as aforesaid, shall be of the character, material and dimensions hereinafter provided; and said pipes shall be constructed and maintained subject to the approval and satisfaction of the Chief Engineer of the Railroad Company.

Section 3. The tracks on the right of way and premises

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of the Railroad Company shall not, in the exercise of the rights herein granted, be unnecessarily interfered with or disturbed by the Railway Company in the laying nor hereafter in the maintenance of said pipes and footings; and in the event of any disturbance of the surface whether in the construction or afterwards in the maintenance of said pipes and footings, such surface and the natural supports of the earth shall be restored as speedily as possible to their normal condition.

Section 4. The Railway Company shall have the right to construct and maintain under the track or tracks of the Railroad Company, at the point hereinbefore specified, the following pipes, each of which shall cross beneath such right of way in a course approximately north forty-five (45°) degrees east, to wit:

- (1) Two (2) pipes twenty-four (24) inches in diameter.
- (2) One (1) pipe twelve (12) inches in diameter.
- (3) One (1) pipe four (4) inches in diameter.

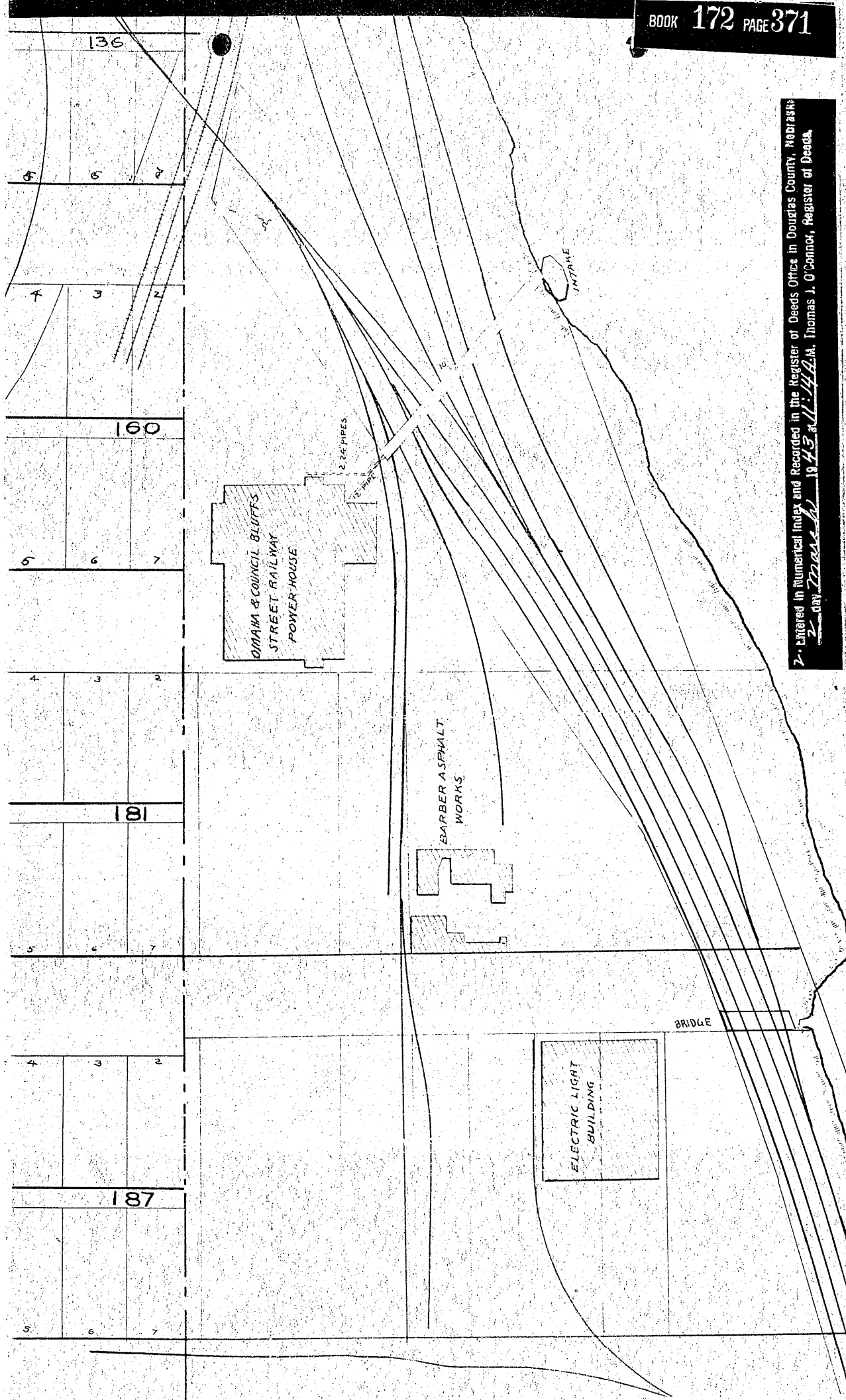
Said pipes, and each of them, shall be depressed that their upper surface shall be at least six (6) feet beneath the present surface of the Railroad Company's right of way.

ARTICLE 2.

Section 1. It is agreed by the parties hereto that the Railway Company, its successors and assigns, shall at all times, keep the said sewer and water pipes in good condition and repair, and forever save and keep the Railroad Company, its successors and assigns, harmless from any and all damages of whatever description it and its successors may sustain, and free and harmless from any cost, expense or damage which the Railroad Company, its successors or assigns, may become liable for, or which may in any manner accrue by reason of any defective construction, or as the result of any default or negligence of the Railway Company, its successors or assigns, in or during the construction, or at any time in the operation, maintenance or management of said pipes under the right of way aforesaid.

Section 2. This agreement shall extend to and bind the respective successors and assigns of the parties hereto.

IN TESTIMONY WHEREOF, the parties hereto have each, by authority of their respective Boards of Directors, hereto and to one



Entered in Numerical Index and Recorded in the Register of Deeds Office in Douglas County, Nebraska
 2 day March 1893 at 11:42 A.M. Thomas J. O'Connor, Register of Deeds.