

MISC 2004133094

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OCT 08 2004 13:22 P 7

Received - RICHARD TAKECHI  
Register of Deeds, Douglas County, NE  
10/8/2004 13:22:33.67



2004133094

Project No.: DPS 28(70)

Tract No.: 14

Address: 1301 Harney Street, Omaha, Nebraska 68102

**PERMANENT EASEMENT**

*KNOW ALL MEN BY THESE PRESENTS:*

THAT **OMAHA DEVELOPMENT COUNCIL, INC.,** a **NEBRASKA NON-PROFIT CORPORATION**, hereinafter referred to as GRANTOR, in consideration of the sum of \$2,070.00 paid or to be paid by CITY (defined below) to GRANTOR, does hereby grant and convey unto the CITY OF OMAHA, NEBRASKA, a Municipal Corporation, herein referred to as CITY, and to its successors and assigns, an easement for the right to construct, maintain or operate a recreational trail and appurtenances thereto for public use in, through, and under or over the parcel of land described as follows, to-wit:

**SEE ATTACHED EXHIBIT "A"  
PERMANENT EASEMENT LEGAL DESCRIPTION AND DRAWING**

TO HAVE AND TO HOLD unto said CITY, its successors and assigns, together with the right of ingress and egress from said premises for the purpose of constructing, inspecting, maintaining or operating said recreational trail at the will of the CITY. The GRANTOR may, following construction of said recreational trail continue to use the surface of the easement strip conveyed hereby for other purposes, subject to the right of the CITY to use the same for the purposes herein expressed.

It is further agreed as follows:

1. That except as otherwise provided herein, no buildings, improvements, or other structures, shall be placed in, on, over or across said easement strip by GRANTOR, its successors and assigns without express approval of the CITY. Improvements which may be approved by CITY include landscaping or road, street or parking area surfacing or pavement. These improvements and any trees, grass or shrubbery placed on said easement shall be maintained by GRANTOR, his heirs, successors or assigns. Notwithstanding the foregoing or any other provisions hereof, GRANTOR expressly reserves air rights over and across said easement strip, including the right to construct improvements, under, over and across said easement strip without being required to obtain the approval of the CITY; provided, however, that any such improvements or use of air rights will not materially adversely affect or interfere with the use of said easement strip by the public as a recreational trail.
2. That CITY will repair, replace or rebuild any and all damage to improvements or landscaping caused by CITY exercising its rights of inspecting or maintaining said recreational trail, including damage to, or loss of, trees and shrubbery.
3. This easement is also for the benefit of any contractor, agent, employee, or representative of the CITY and any of said construction and work.
4. That CITY shall at all times maintain the easement area and the recreational trail improvements constructed thereon in good and safe condition and repair, and make any necessary replacements. The City shall cause any trench made on the easement area to be properly refilled and shall cause the premises to be left in a neat and orderly condition.
5. That GRANTOR warrants that GRANTOR has the right to grant and convey this easement in the manner and form aforesaid. This easement is granted "AS IS" and "WITH ALL FAULTS", and GRANTOR makes no warranty, express or implied, as to title, soils conditions, suitability of the easement area for its intended use, or as to any other matter except as expressly set forth in this instrument and GRANTOR expressly disclaims all implied warranties.

OM-178331-

SEND INTER-OFFICE MAIL TO:  
CITY OF OMAHA PARKS - ROOM #701

6. This easement runs with the land.

7. CITY agrees to release, indemnify, defend, and hold harmless GRANTOR, its officers, directors, agents, employees, tenants, successors and assigns (collectively, the "Indemnified Parties" or individually, and "Indemnified Party") against any and all claims, demands, causes of action, liabilities, costs and expenses whatsoever arising in favor of any person, corporation, or other private or governmental entity because of personal injury, including death, or damage to property, including any improvements installed pursuant to this easement, resulting from any act or omission of CITY, its employees, contractors, subcontractors, or agents in the course of construction, maintenance or use of the recreational trail or the use of the easement. Without limiting the generality of the foregoing, the CITY shall indemnify, defend and hold harmless the Indemnified Parties against any and all claims demands, causes of action, liabilities, costs and expenses whatsoever, including but not limited to claims of personal injury, including death, arising out of or relating to the use of the recreational trail or the easement area by any member of the public unless such claim, demand, cause of action, liability, cost or expense is caused solely by the gross negligence or willful misconduct of the Indemnified Party.

8. That said easement is granted upon the condition that the CITY will remove or cause to be removed all presently existing improvements thereon, including but no limited to, crops, vines, trees within the easement area as necessary for construction.

9. The CITY reserves the absolute right to terminate this permanent easement at any time prior to the payment of the above stated consideration, but in no event later than 60 days after the execution of this Easement Agreement.

10. That this instrument contains the entire agreement of the parties; that there are no other or different agreements or understandings, except a Temporary Construction Easement if and as applicable, between the GRANTOR and the CITY or its agents; and that the GRANTOR, in executing and delivering this instrument, has not relied upon any promises, inducements, or representations of the CITY or its agents or employees, except as are set forth herein.

11. That the CITY will install and maintain a 72 inch chain link fence with a three strand barbed wire security top along the North and South side of the trail and will be installed from Stations 182+99.52 to 188+26.15 North side and Station 183+04.69 to 188+08.10 South side, as shown on "Exhibit A" of this document. It is agreed that the GRANTOR reserves the right to cross the trail easement area and to install a crossing gate on both sides of the trail. The size and location of such gate will be determined by the GRANTOR. If a future owner, tenant, occupant or user requires modifications or improvements to the trail at the location of such crossing gate, GRANTOR shall notify the CITY thereof and such future owner, tenant, occupant or user shall have the right to make and shall be responsible for all costs of constructing such modifications or improvements.

12. The CITY, at its expense, will install 48 inch locking crossing gates on the north and south sides of the trail easement area at approximately Station 185+25, and at its expense will maintain such gates in good condition and repair and promptly make any necessary repairs or replacements. The CITY will provide GRANTOR and any future owner, tenant, occupant or user of Lot 16, Riverfront Industrial Park with keys and other necessary items and information to operate and use such gates.

IN WITNESS WHEREOF the GRANTOR has executed this Permanent Easement this 22nd day of September, 2004.

OMAHA DEVELOPMENT COUNCIL,  
a Nebraska non-profit corporation

By: *Bruce R. Lauritzen*  
Printed Name: Bruce R. Lauritzen  
Title: President

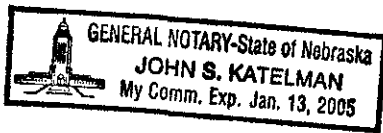
\_\_\_\_\_  
(Federal I.D. No.)

**CORPORATE ACKNOWLEDGMENT**

STATE OF NEBRASKA     )  
  ) SS  
COUNTY OF DOUGLAS    )

On this 22nd day of September, 2004, before me, a Notary Public in and for said County, personally came Bruce R. Lauritzen, President, of Omaha Development Council, Inc., a Nebraska non-profit corporation, to me personally known to be the President of said Corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said Corporation.

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



*John S. Katelman*  
NOTARY PUBLIC

\_\_\_\_\_  
Notary Seal

AGREED:

CITY OF OMAHA

\_\_\_\_\_  
(Name/Title)

\_\_\_\_\_  
(Date)

## EXHIBIT "A" - Page 1

### LEGAL DESCRIPTION

DPS 28(70), C.N. 21973

Tract No. 14, Permanent Easement  
Omaha Development Council, Inc.

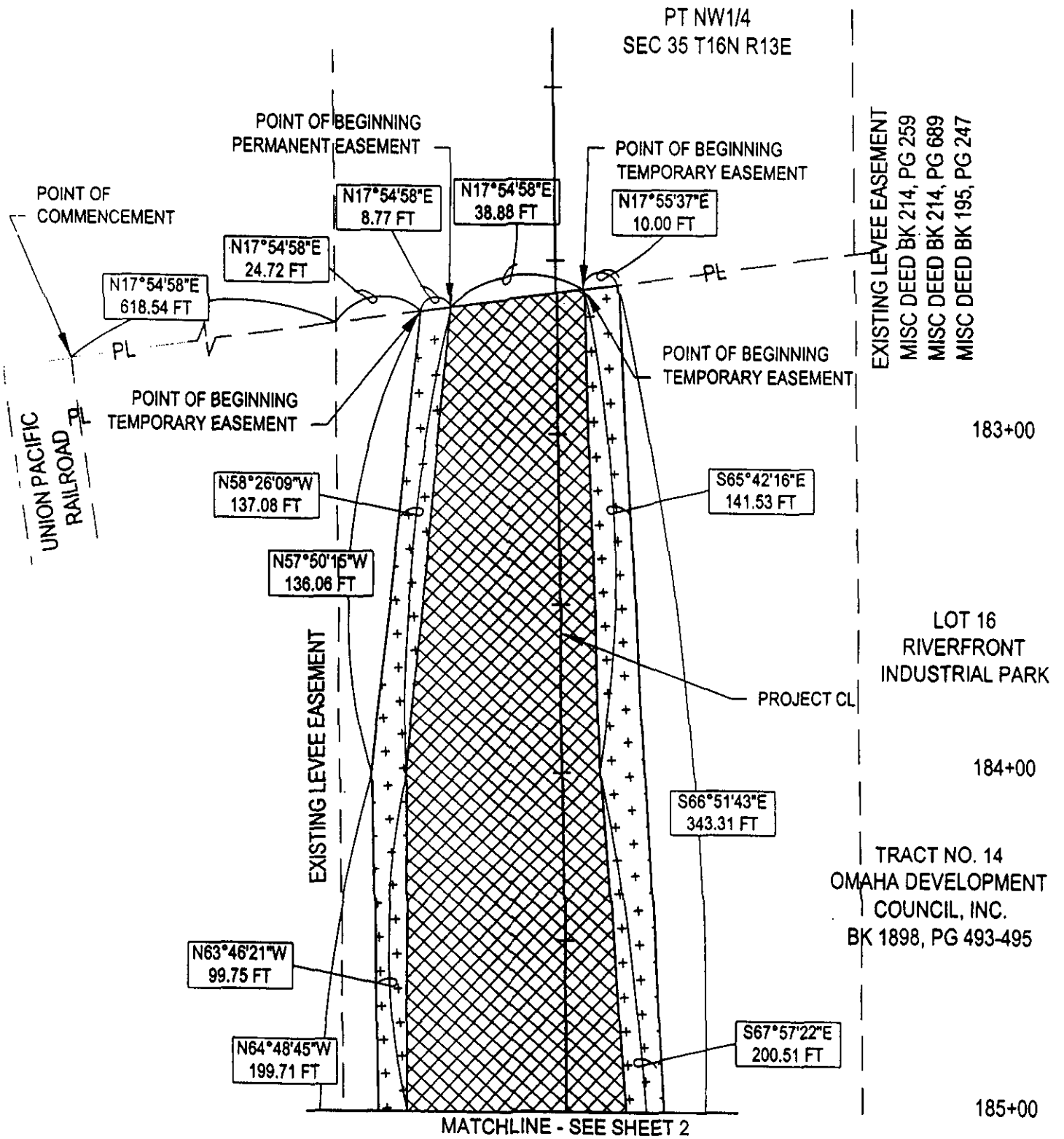
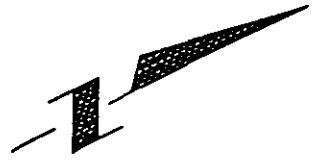
A permanent easement located in part of Lot 16, Riverfront Industrial Park, a subdivision located in the North 1/2 of Section 35, Township 16 North, Range 13 East, of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the Southwest corner of said Lot 16, Riverfront Industrial Park, said point also being the intersection of the Northerly right-of-way line of Union Pacific Railroad and the Easterly line of part of the NW1/4 of Section 35, Township 16 North, Range 13 East, recorded in Deed Book 2182, Page 259; thence N17°54'58"E (assumed bearing) along the Westerly line of said Lot 16, Riverfront Industrial Park, said line also being said Easterly line of part of the NW1/4 of Section 35, Township 16 North, Range 13 East, recorded in Deed Book 2182, Page 259, a distance of 618.54 feet to the Southerly line of existing levee easement, recorded in Miscellaneous Deed Book 216, Page 259; thence continuing N17°54'58"E along said Westerly line of Lot 16, Riverfront Industrial Park, said line also being said Easterly line of part of the NW1/4 of Section 35, Township 16 North, Range 13 East, recorded in Deed Book 2182, Page 259, a distance of 33.49 feet to the point of beginning; thence continuing N17°54'58"E along said Westerly line of Lot 16, Riverfront Industrial Park, said line also being said Easterly line of part of the NW1/4 of Section 35, Township 16 North, Range 13 East, recorded in Deed Book 2182, Page 259, a distance of 38.88 feet; thence S65°42'16"E, a distance of 141.53 feet; thence S67°57'22"E, a distance of 200.51 feet; thence S57°51'11"E, a distance of 100.60 feet; thence S67°36'08"E, a distance of 86.56 feet to a point on the Easterly line of said Lot 16, Riverfront Industrial Park, said point also being on the Westerly right-of-way line of Crown Point Avenue; thence Southerly on a curve to the left with a radius of 87.50 feet, a distance of 38.32 feet, said curve having a long chord which bears S49°35'20"W, a distance of 38.01 feet; thence N77°08'59"W, a distance of 72.99 feet; thence N69°16'23"W, a distance of 100.40 feet; thence N66°25'16"W, a distance of 100.08 feet; thence N63°46'21"W, a distance of 99.75 feet; thence N58°26'09"W, a distance of 137.08 feet to the point of beginning.

Said permanent contains an area of 27,624 square feet or 0.634 acres, more or less.

EXHIBIT "A" - Page 2

NW1/4 SEC 35 T16N R13E



SEE ATTACHED SHEET FOR LEGAL DESCRIPTION

SHEET 1 OF 2

SCALE: 1"=40'

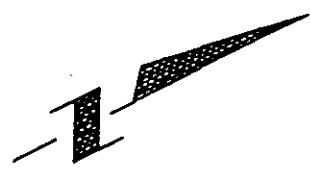
	NEW R.O.W. AQUISITION	0	S.F.
	PERMANENT EASEMENT	27,624	S.F.
	TEMPORARY EASEMENT	10,257	S.F.
	EXISTING R.O.W.		
	EXISTING R.O.W.		

TRACT NO.	14
EXHIBIT NO.	
PROJECT NO.	DPS 28(70) C.N. 21973
DATE:	December 31, 2002

OWNER:  
Omaha Development Council, Inc.  
1301 Harney Street  
Omaha, Nebraska 68102

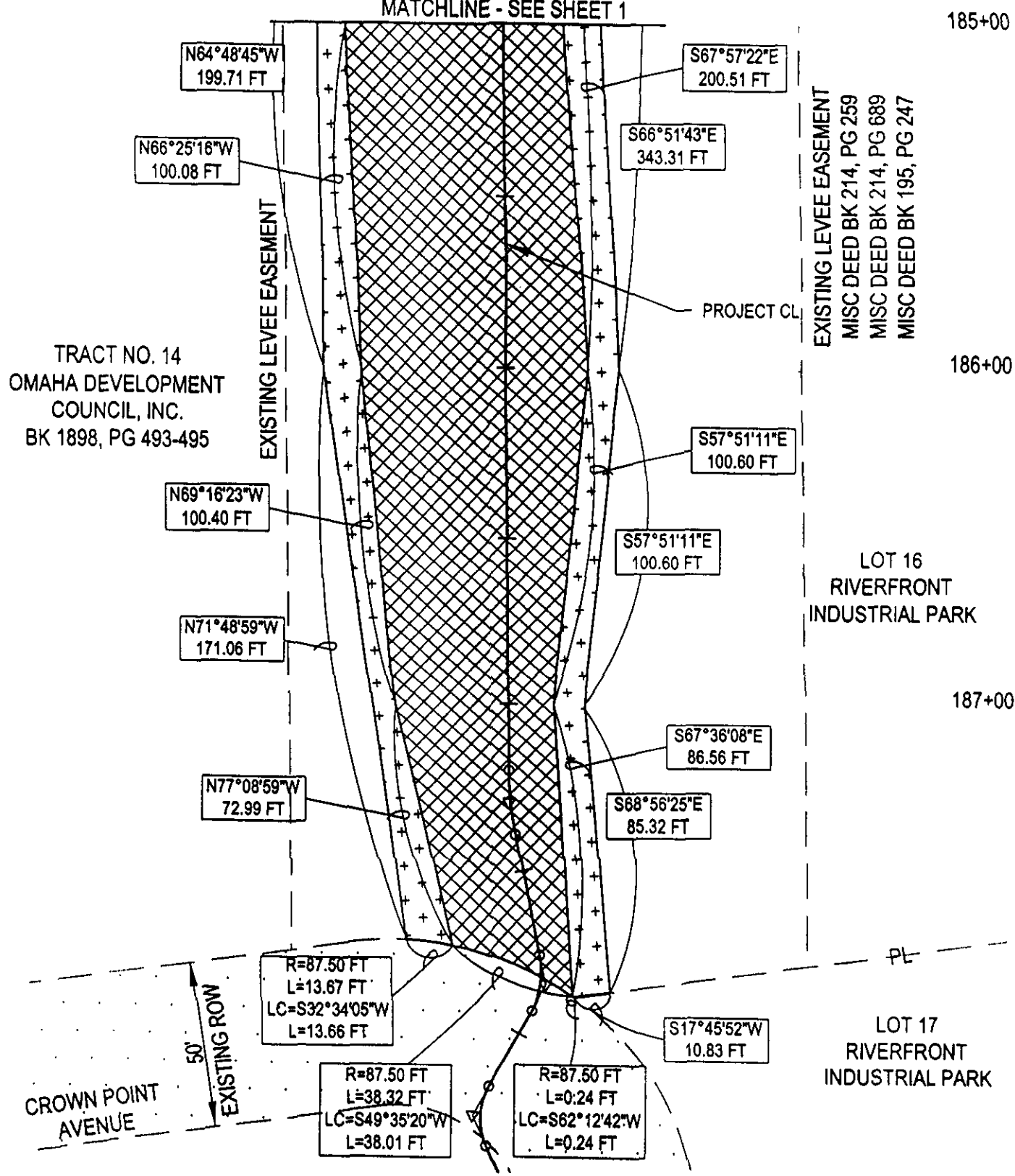
LEAD AGENCY:  
CITY OF OMAHA

EXHIBIT "A" - Page 3



NW1/4 SEC 35 T16N R13E

MATCHLINE - SEE SHEET 1



TRACT NO. 14  
OMAHA DEVELOPMENT  
COUNCIL, INC.  
BK 1898, PG 493-495

EXISTING LEVEE EASEMENT  
MISC DEED BK 214, PG 259  
MISC DEED BK 214, PG 689  
MISC DEED BK 195, PG 247

LOT 16  
RIVERFRONT  
INDUSTRIAL PARK

LOT 17  
RIVERFRONT  
INDUSTRIAL PARK

CROWN POINT  
AVENUE  
50'  
EXISTING ROW

SEE ATTACHED SHEET FOR LEGAL DESCRIPTION

SHEET 2 OF 2

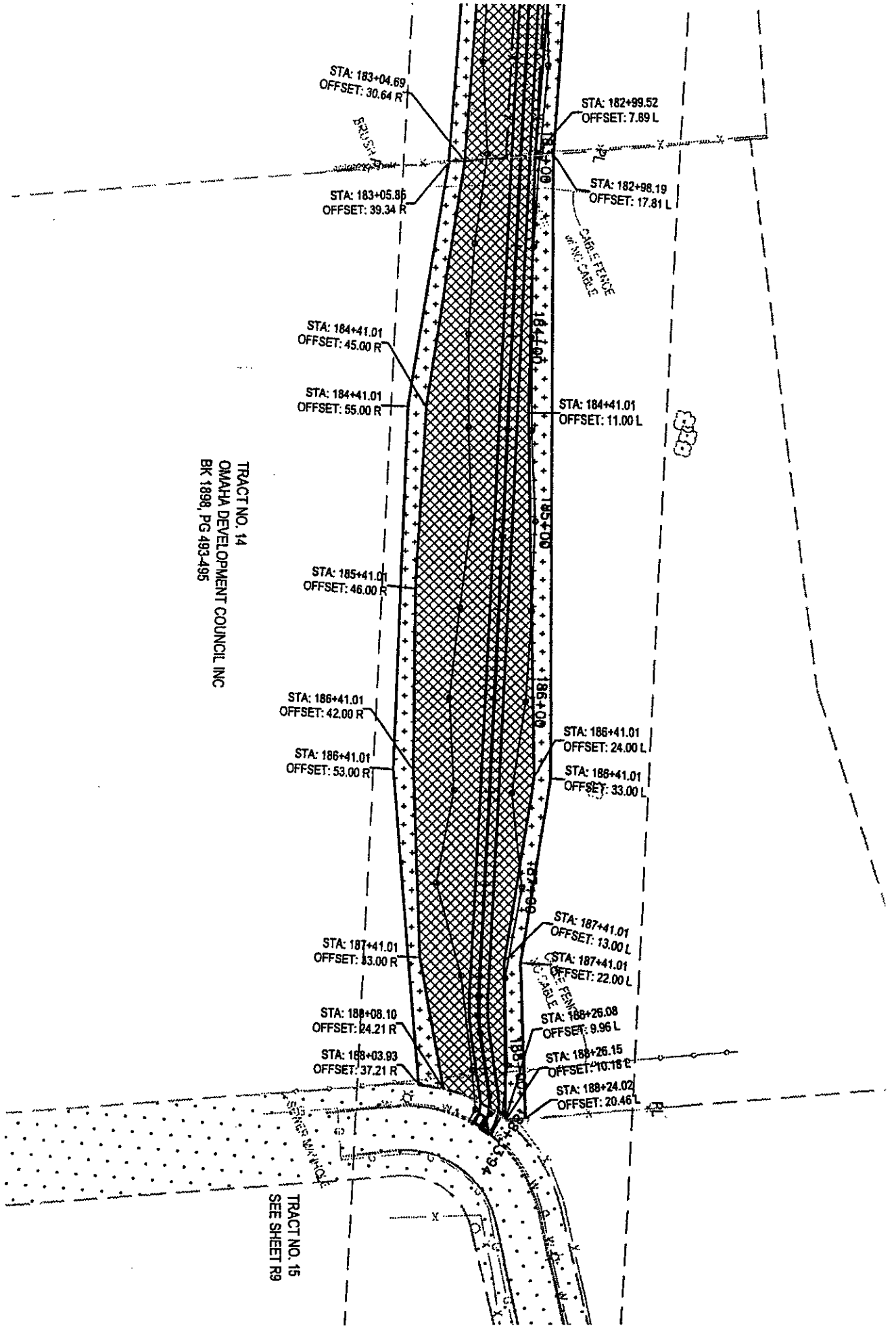
SCALE: 1"=40'

	NEW R.O.W. AQUISITION	0	S.F.
	PERMANENT EASEMENT	27,624	S.F.
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LEAD AGENCY:  
CITY OF OMAHA



TRACT NO. 14  
OMAHA DEVELOPMENT COUNCIL INC  
BK 1898, PG 493-495

TRACT NO. 15  
SEE SHEET R9