

AGREEMENT FOR A PERMANENT EASEMENT

THIS INDENTURE, made the 9th day of February, 1983, by and between ASARCO, INCORPORATED, HEREIN REFERRED TO AS "Grantor" and THE CITY OF OMAHA, NEBRASKA, A Municipal Corporation, hereinafter referred to as "City".

WITNESSETH:

That the Grantor, in consideration of the sum of \$5,877.00 and other valuable consideration to Grantor in hand paid by said City, the receipt whereof is hereby acknowledged, does hereby grant, sell, convey and confirm unto said City, and its assigns, a permanent easement upon the terms and conditions set forth herein as follows, to wit:

1. The permanent easement is for the construction and maintenance by the City of a viaduct overpass for Abbott Drive, within the City of Omaha, Douglas County, Nebraska, over and across the property of Grantor, as described in Exhibit "A" attached hereto.
2. During any construction or maintenance by the City upon the permanent easement, the following conditions shall apply and shall be at the sole cost of the City:
 - (a) Grantor's existing security fence located on the boundary of Grantor's plant shall be properly maintained at all times. In the event that it is necessary to remove or relocate said security fence, a temporary security fence will be constructed and maintained by City so as to provide at all times uninterrupted security of Grantor's plant; provided, however, that upon the termination of any construction or maintenance by the City, Grantor's security fence shall be reconstructed in its original location and at least equal to its original condition.
 - (b) To prevent construction or maintenance activity from occurring off the easement right of way, City, upon the request of Grantor, shall erect a fence or other barrier upon the perimeter of the right of way to prevent such activity from interfering with Grantor's plant operations.
 - (c) All utility services serving the Grantor's plant, including gas, water, electricity and telephone, but expressly not excluding any other utility's services, shall when possible be maintained without interruption and when possible should interruption of utility(s) be necessary, City shall give reasonable notice, but not less than 24 hours notice, prior to any such interruption to Grantor.

(d) Railroad access to Grantor's plant at all railroad entrances shall be maintained.

(e) Dock access to all of the docks of the Grantor's facilities shall when possible remain uninterrupted at all times. Should interruption of truck service and truck access to Grantor's facilities become necessary, the City shall not interrupt such facilities for a period of time longer than one (1) work week consisting of one eight (8) hour period for each work day and the City shall give reasonable notice but not less than 24 hours notice, prior to any such interruption to Grantor.

3. To replace Grantor's loss of a storage area during initial construction of the Abbott Street viaduct, will reimburse Grantor for the lease and fencing of the property described in Exhibit "B" attached hereto.

4. Notwithstanding Exhibit "A", at all times, all existing facilities of Grantor, including buildings, loading docks, and installed equipment, shall remain uninterrupted by said easement, and Grantor expressly retains the right to make such repairs and maintenance of said buildings and equipment as Grantor requires in its operations, and Grantor retains the further right to make such alterations or additions to such buildings and facilities that will not unreasonably interfere with the use by the City of said easement for a viaduct on Abbott Drive.

5. Upon completion of any construction or maintenance by the City, the easement shall be sodded, paved, graveled, etc., by City so as to put said easement area into the same condition and grade which existed prior to said construction and maintenance; and any damage to Grantor's buildings or other facilities shall be repaired by City so as to put said building and facilities into the same condition they existed prior to construction and maintenance. City shall not permit snow, ice or other debris to be expelled by City upon Grantor's buildings or property.

6. The City further agrees to reimburse and indemnify the Grantor for any and all justifiable claims made by Grantor for damages, expenses, etc., that are incurred by Grantor as a proximate result of the failure by the City or its contractor, agent, employee or representative to comply with any of the agreements herein.

7. The Grantor for itself and its successors and assigns has hereby confirmed with the City and its assigns, that Grantor is seized in fee of the easement property, and that it has the right to grant this easement in the manner and the form aforesaid.

IN WITNESS WHEREOF, the parties hereto have signed their names and caused the execution of this instrument in triplicate this 28 day of March, 1983.

ATTEST:

BY: [Signature]

ATTEST:

BY: _____

ASARCO, INCORPORATED,

BY: [Signature]
A.L. Labbe, Vice-President

THE CITY OF OMAHA, NEBRASKA,
a Municipal Corporation,

BY: [Signature]
Erwin A. Hieber
R.O.W. Engineer/Manager
R.O.W. Section - Design Division
Public Works Department

STATE OF New York
COUNTY OF New York ss

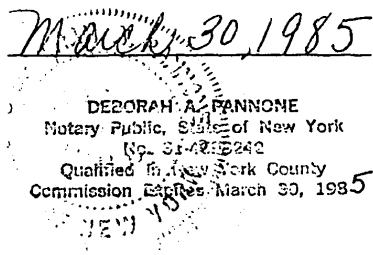
On this 28th day of March, 1983, before me, the undersigned, a Notary Public in and for said County, personally came A.L. Labbe and F.D. Soldtweit of ASARCO, Incorporated, a Corporation known to me to be the identical persons whose names are affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as such officers and the voluntary act and deed of said Corporation, and the Corporate Seal of said Corporation to be thereto affixed by its authority.

WITNESS my hand and Notarial Seal at 120 Broadway in said County the day and year last above written.

[Signature]
Deborah A. Pannone

My Commission expires:

March 30, 1985



LEO A DALY


PLANNING
ARCHITECTURE
ENGINEERING

8600 INDIAN HILLS DRIVE
OMAHA NEBRASKA 68114
TELEPHONE (402) 391 8111
CABLE / LADCO OMA

EXHIBIT "A" CITY COPY

BOOK 694 PAGE 521

RECORD OF SURVEY


PROJECT NO. 5.P.76-45
TRACT NO. 3
OWNER: AMERICAN SMELTING &
REFINING CO.
PERM. EASE. TO BE ACQ.  0.200 AC.

LOCATION
SMELTER PLANT
REPLAT

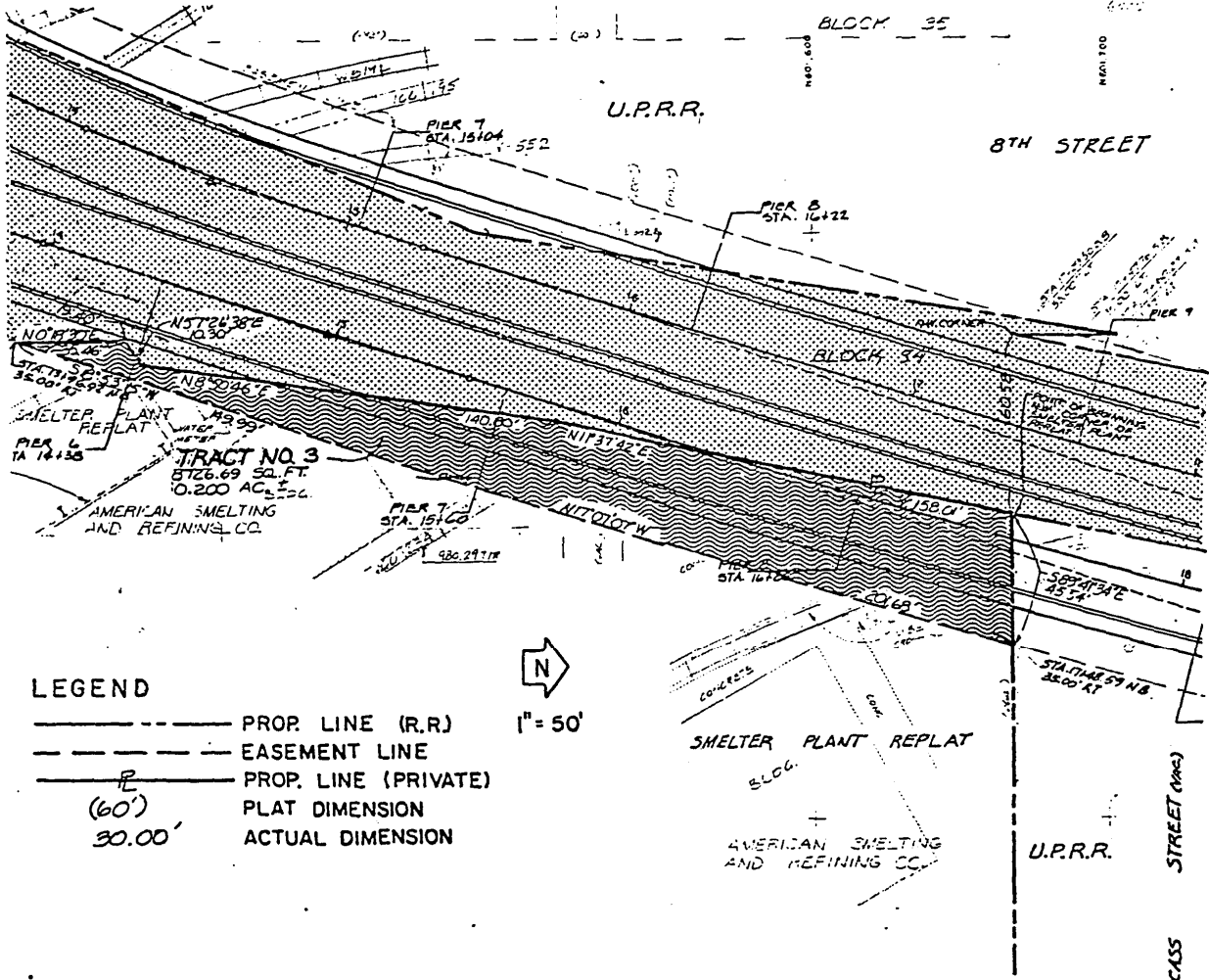
LEGAL DESCRIPTION:

SEE PAGE 2 OF 2




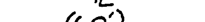

POOR INSTRUMENT FILED

EXISTING R. O. W. 

FIELD NOTES AND PLAT TO SCALE SHOWING TRACT SURVEYED WITH ALL PERTINENT POINTS:



LEGEND

-  PROP. LINE (R.R.)
-  EASEMENT LINE
-  PROP. LINE (PRIVATE)
-  PLAT DIMENSION (60')
-  ACTUAL DIMENSION (30.00')



1" = 50'

LAND SURVEYOR'S CERTIFICATE:

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of NEBR.

Signature _____

DATE RECEIVED: _____

Date: OCT. 16, 1979 Reg. No. _____

OFFICIAL ADDRESS: _____

BLDG PERMIT NO: _____

SEAL

POOR INSTRUMENT FILED

The AIRSPACE above a portion of National Geodetic Survey elevation of 1,015.0 feet and OVER a tract of land in the SMELTER PLANT REPLAT, a replat in the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, described as follows:

Beginning at the northwest corner of said Smelter Plant Replat, which point is on the southerly R.O.W. line of vacated Cass Street, 60.58 feet east of the easterly R.O.W. line of Eighth Street, as originally established; thence S89°41'34"E along the northerly line of said Smelter Plant Replat (the said southerly R.O.W. line of vacated Cass Street) for a distance of 45.54 feet to a point; thence S17°07'07"W for a distance of 201.68 feet to a point; thence S18°53'15"W for a distance of 149.99 feet to a point on the east R.O.W. line of Eighth Street as originally established; thence N0°18'30"E along the said east R.O.W. line of Eighth Street which is also the westerly line of said Smelter Plant Replat for a distance of 35.46 feet to a corner of said Smelter Plant Replat that is 19.40 feet southerly along the easterly line of Eighth Street from the southwest corner of said Block 34; thence N57°26'38"E along the northwesterly line of said Smelter Plant Replat for a distance of 10.30 feet to a certain corner of said Smelter Plant Replat; thence N8°50'46"E along the westerly line of said Smelter Plant Replat for a distance of 140.80 feet to a certain corner of said Smelter Plant Replat; thence N11°37'42"E along the said westerly line of the Smelter Plant Replat for a distance of 158.01 feet to the POINT OF BEGINNING and containing 8,585.58 square feet (0.200 acres) more or less. In this description the easterly R.O.W. line of Eighth Street has an assumed bearing of N0°18'30"E.

"GRANTOR'S COVENANTS AND LIMITATIONS PLACED UPON THE USE OF AIR SPACE LOCATED ABOVE, AT, OR BELOW THE LOWEST POINT OF THE STRUCTURE FOR NON-HIGHWAY PURPOSES, LYING WITHIN THE PERMANENT EASEMENT LIMITS."

The grantors heirs, successors or assigns covenants in regard to said Permanent Easement area as follows:

(1) The grantors shall not construct or maintain any building, structure, or facility within said Permanent Easement area without first obtaining the written approval of the grantee in regard to:

- (a) The nature and term of the proposed use.
- (b) The general design height of the proposed building or structure or alteration of an existing building or structure, and such other plans or specifications as the grantee deems necessary to review, before granting approval for such construction.

(2) The grantors shall not store or permit the storage of any material of an explosive or inflammable nature within said Permanent Easement area, nor permit the storage or any other use deemed by the grantee to be a potential fire or other hazard to the facilities of the grantee. *OK*

(3) The grantors shall not use or occupy the Permanent Easement area or permit a use ^{within the easement area} which will permit hazardous or unreasonably objectionable smoke, fumes, vapor or odors to rise above the grade line of the highway, or such as will subject the highway to hazardous or unreasonably objectionable drippings, drainage or discharge of any nature, including rain or snow.

(4) The grantors shall not use signs, displays or other devices in the said Permanent Easement area unless authorized in writing by the grantee, and any such devices must be restricted to indications of ownership and activity. Reasonable restrictions upon the number, size, location and design of such devices will be regulated by the grantee.

(5) The grantors shall not under any circumstances, have the right of ingress or egress from grantors adjacent lands to any elevated structure or structures that the grantee may construct for highway or related purposes: provided, however, the grantor shall have the right of access below any elevated structures for other uses in said Permanent Easement area not inconsistent with the Permanent Easement, and provided further that any use in said Permanent Easement area shall not extend above a horizontal plane which is equal to the elevation at the lowest point of the structure lying within the Permanent Easement limits.

(6) The grantors shall not

- (a) Construct, reconstruct or maintain any structure or facility in said Permanent Easement area that is not of fireproof construction.
- (b) Construct, reconstruct, or maintain any structure or facility which shall or will extend into the land owned in fee simple title by the grantee or that would in any manner interfere with the maintenance, construction or reconstruction of any highway facility or structure.

(7) The grantors shall in the construction, reconstruction or maintenance of any structure or facility in said Permanent Easement area require all safeguards necessary to protect the public and said highway, and carry adequate insurance for the payment of any damage which may occur during such construction, reconstruction, or maintenance in said Permanent Easement area and save the grantee harmless, from any claim for damages arising thereby.

In the event of the breach or violation by the grantors, their heirs, successors or assigns in any of the foregoing covenants, the grantee shall have the right to exclude the grantors from any and all use of said Permanent Easement area, in order to safeguard the public and the adjacent highway facilities.

Permanent Easement:

The Permanent Easement Right is for the purpose to enter upon and utilize the following described real estate in order to remove and construct the viaduct structure, piers, and appurtenances thereto and rights to maintain, repair, renew, reconstruct, and use said viaduct in the future at, on and over the following described real estate.

Except for existing structures as shown on the Exhibit "A" attached hereto and incorporated by reference herein, the boundaries of the permanent easement right is described as follows:

Beginning at the northwest corner of said Smelter Plant Replat, which point is on the southerly R.O.W. line of vacated Cass Street, 60.58 feet east of the easterly R.O.W. line of Eighth Street, as originally established; thence S89°41'34"E along the northerly line of said Smelter Plant Replat (the said southerly R.O.W. line of vacated Cass Street) for a distance of 45.54 feet to a point; thence S17°07'07"W for a distance of 201.68 feet to a point; thence S18°53'15"W for a distance of 149.99 feet to a point on the east R.O.W. line of Eighth Street as originally established; thence N0°18'30"E along the said east R.O.W. line of Eighth Street which is also the westerly line of said Smelter Plant Replat for a distance of 35.46 feet to a corner of said Smelter Plant Replat that is 19.40 feet southerly along the easterly line of Eighth Street from the southwest corner of said Block 34; thence N57°26'38"E along the northwesterly line of said Smelter Plant Replat for a distance of 10.30 feet to a certain corner of said Smelter Plant Replat; thence N8°50'46"E along the westerly line of said Smelter Plant Replat for a distance of 140.80 feet to a certain corner of said Smelter Plant Replat; thence N11°37'42"E along the said westerly line of the Smelter Plant Replat for a distance of 158.01 feet to the POINT OF BEGINNING and containing 8,585.58 square feet (0.200 acres) more or less. In this description the easterly R.O.W. line of Eighth Street has an assumed bearing of N0°18'30"E.

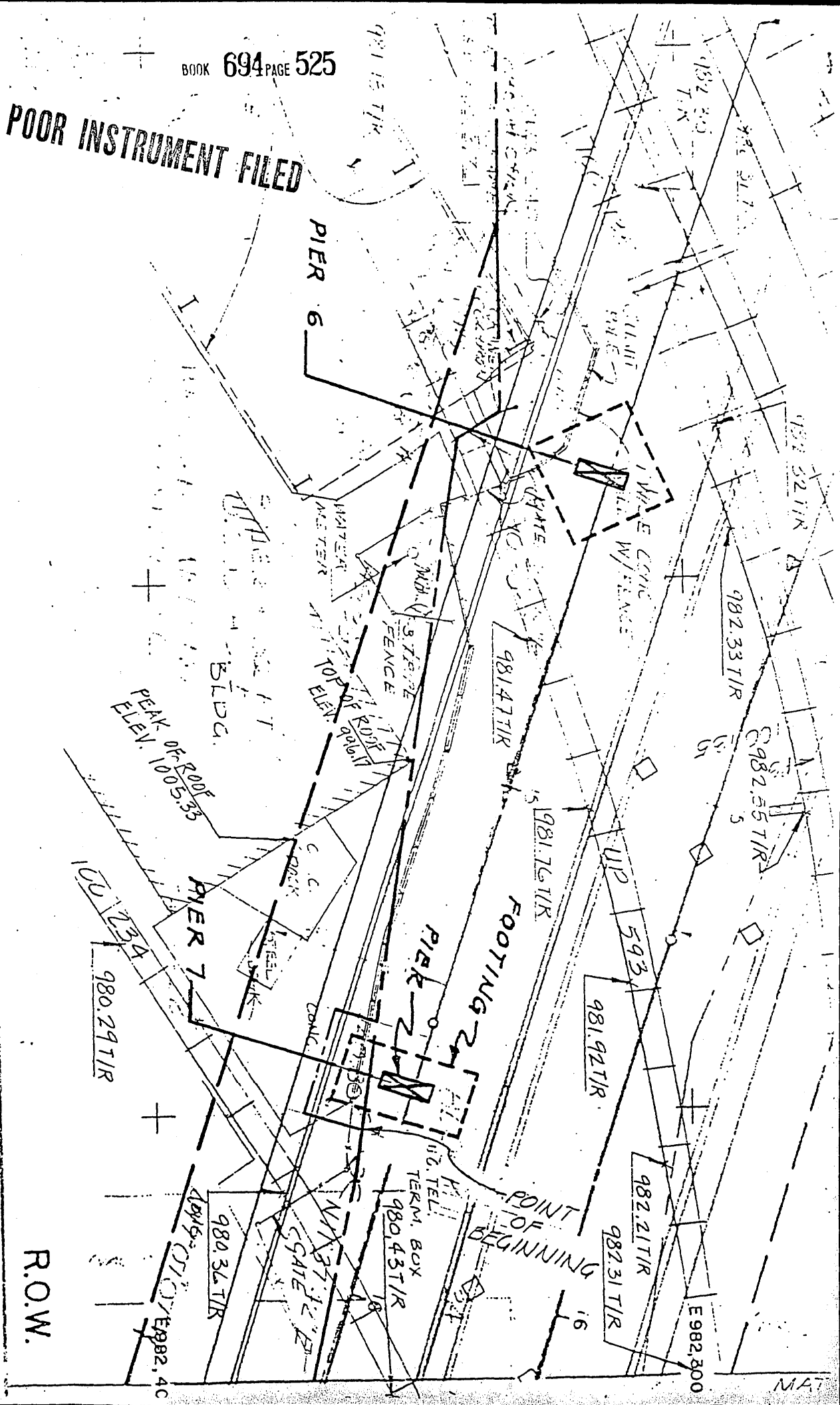
SD7:l

Tract No. 3
Legal Description for BRIDGE PIER
North Bound Pier Number 7

A tract of land for pier footings in the SMELTER PLANT REPLAT, a replat in the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska, described as follows:

Commencing at the northwest corner of said Smelter Plant Replat, which point is on the southerly R.O.W. line of vacated Cass Street, 60.58 feet east of the easterly R.O.W. line of Eighth Street as originally established; thence S. $11^{\circ} 37' 42''$ W. along the westerly line of said Smelter Plant Replat for a distance of 158.01 feet to a certain corner; thence S. $8^{\circ} 50' 46''$ W. continuing along said westerly line of the Smelter Plant Replat for a distance of 8.59 feet to THE POINT OF BEGINNING which is on the northeasterly side of said North Bound Pier Number 7; thence S. $71^{\circ} 50' 32''$ E. along a line that is parallel to the said northerly side of N.B. Pier No. 7 for a distance of 9.46 feet to a point; thence S. $18^{\circ} 09' 27''$ W. along a line that is parallel to the easterly side of said N.B. Pier No. 7 for a distance of 21.00 feet to a point; thence N. $71^{\circ} 50' 32''$ W. along a line that is parallel to the southerly side of said N.B. Pier No. 7 for a distance of 6.02 feet to a point on said westerly line of the Smelter Plant Replat; thence N. $8^{\circ} 50' 46''$ E. along said westerly line of the Smelter Plant Replat for a distance of 21.28 feet to THE POINT OF BEGINNING containing 162.54 square feet more or less. In this description the easterly R.O.W. line of Eighth Street has an assumed bearing of N. $0^{\circ} 18' 30''$ E.

POOR INSTRUMENT FILED

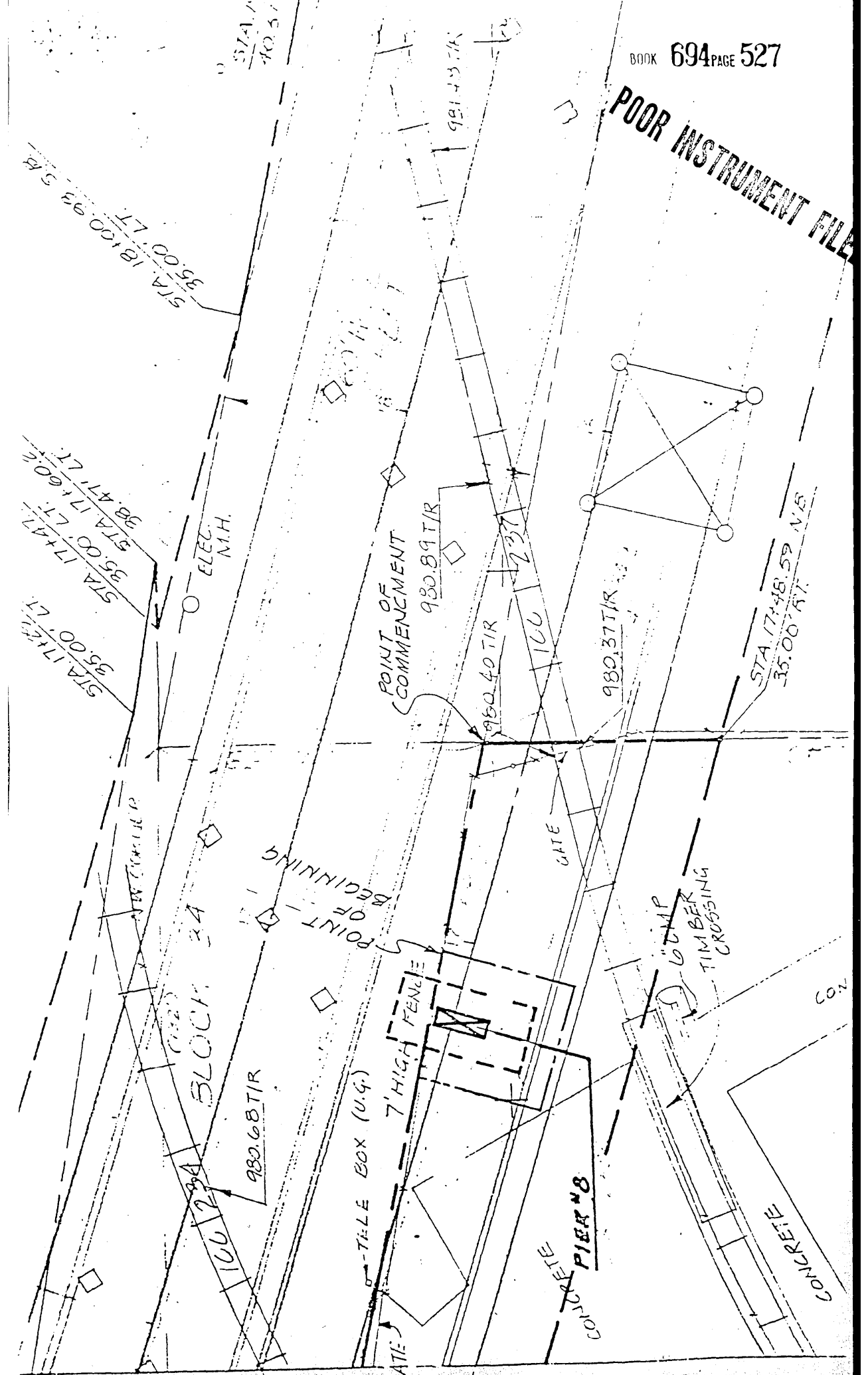


Tract No. 3
Legal Description for BRIDGE PIER
North Bound Pier Number 8

A tract of land for pier footings in the SMELTER PLANT REPLAT, a replat in the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska, described as follows:

Commencing at the northwest corner of said Smelter Plant Replat, which point is on the southerly R.O.W. line of vacated Cass Street, 60.58 feet east of the easterly R.O.W. line of Eighth Street as originally established; thence S. $11^{\circ} 37' 42''$ W. along the westerly line of said Smelter Plant Replat for a distance of 38.88 feet to THE POINT OF BEGINNING, which is on the northeasterly side of said North Bound Pier Number 8; thence S. $73^{\circ} 19' 56''$ E. along a line that is parallel to the said northerly side of N.B. Pier No. 8 for a distance of 24.45 feet to a point; thence S. $16^{\circ} 40' 04''$ W. along a line that is parallel to the easterly side of said N.B. Pier No. 8 for a distance of 25.00 feet to a point; thence N. $73^{\circ} 19' 56''$ W. along a line that is parallel to the southerly side of said N.B. Pier No. 8 for a distance of 22.25 feet to a point on the said westerly line of the Smelter Plant Replat; thence N. $11^{\circ} 37' 42''$ E. along said westerly line of the Smelter Plant Replat for a distance of 25.10 feet to THE POINT OF BEGINNING containing 583.74 square feet more or less. In this description the easterly R.O.W. line of Eighth Street has an assumed bearing of N. $0^{\circ} 18' 30''$ E.

POOR INSTRUMENT FILE



STA. 18+00.93
35.00' LT
17.00' LT

STA. 17+47
35.00' LT
38.47' LT
17.00' LT

STA. 17+47
35.00' LT
17.00' LT

980.68+TR
BLOCK 34

POINT OF COMMENCEMENT

980.89+TR

980.40+TR

980.37+TR

STA. 17+48.59
35.00' LT

7' HIGH FENCE

TILE BOX (U.G.)

GATE

DUMP
TIMBER CROSSING

CONCRETE PIERS

CONCRETE

574.7
40.57

981.43+TR

POOR INSTRUMENT FILED

Reimbursement of Leased Area (130' x 50') for a 2 year construction period at \$0.079 per s.f.
 $50' \times 130' = 6,500 \text{ s.f.} \times \$0.079 =$
 $\$513.50 \times 2 \text{ year term} = \$1,027.00$

Total area leased by American Smelting & Refining Co. from U.P.R.R. Co. 17,800 s.f.
 Lease No. OMA-6143

Reimbursement payment (\$2,000 Lump Sum) for cost to provide an 8' high security fence around the perimeter of the leased area provided for storage & equipment during construction.

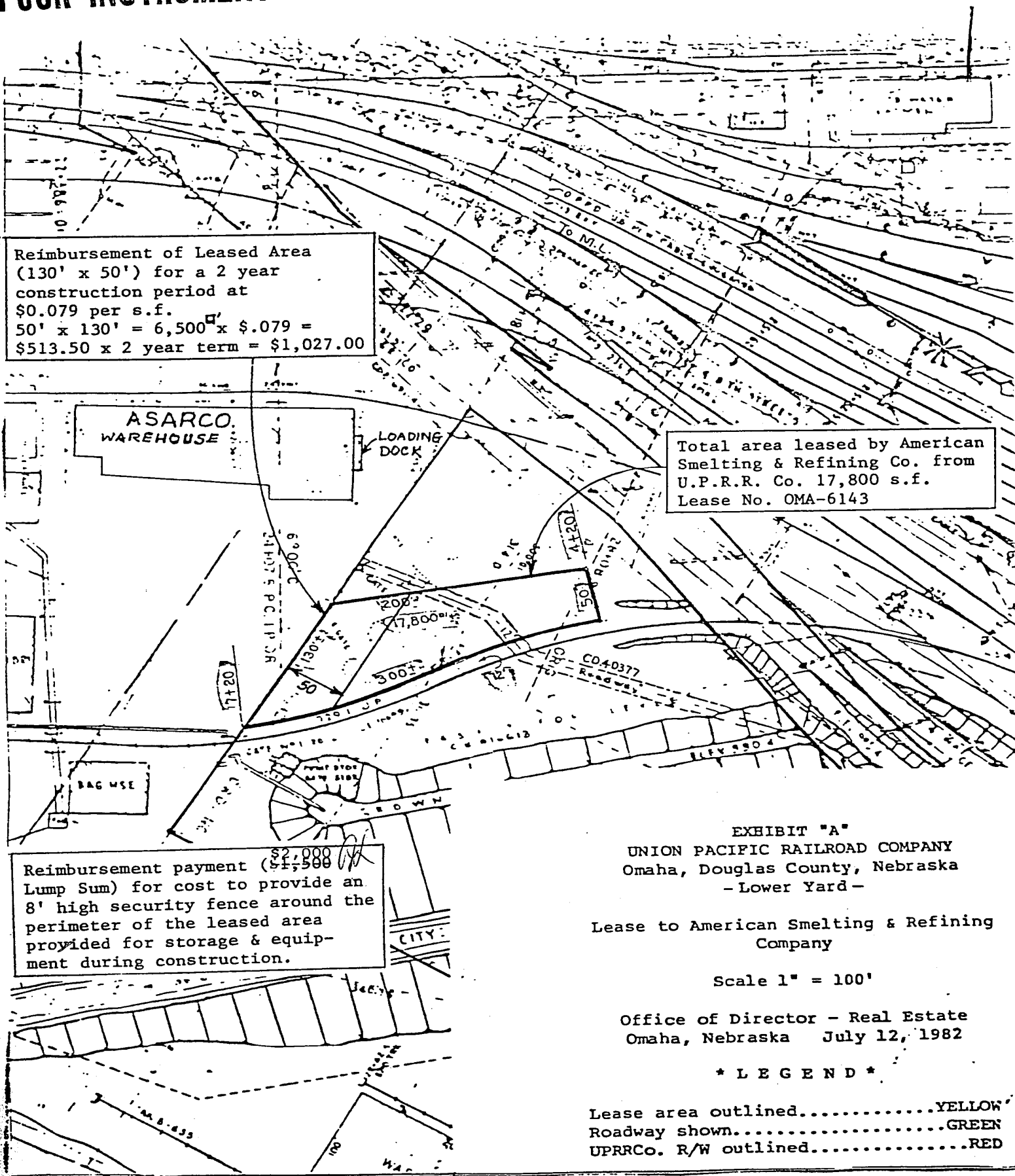


EXHIBIT "A"
 UNION PACIFIC RAILROAD COMPANY
 Omaha, Douglas County, Nebraska
 - Lower Yard -

Lease to American Smelting & Refining Company

Scale 1" = 100'

Office of Director - Real Estate
 Omaha, Nebraska July 12, 1982

* LEGEND *

- Lease area outlined.....YELLOW
- Roadway shown.....GREEN
- UPRRCo. R/W outlined.....RED

EXHIBIT "B"

STATE OF NEBRASKA
DEPARTMENT OF ROADS

DOCUMENT CONTINUATION FORM

Page 1 of 2 DOCUMENT REFERENCE NUMBER: **FILE COPY**

Address:

DESCRIPTION	AMOUNT
Project: BRM-M-5103(7) AFE: R-400 Douglas County District 2	
To Permanent Easement for Construction and Maintenance purposes situated in Smelter Plant Replat, a Replat in the City of Omaha, Douglas County, Nebraska, containing 8,585.58 square feet (0.200 acre), net amount	\$2,800.00
To Abstracting Allowance, net amount	50.00
To Reimbursement of Leased Area (130' x 50' x \$.079/s.f. x 2 years)	1,027.00
To Reimbursement of Security Fence around Leased Area	2,000.00 1,500.00
PE (Corp.) Tract 3 Mtge.	
NOTE: Please include Social Security Number or Federal Identification Number below.	
TOTAL	\$5,877.00

VENDOR'S CERTIFICATE - (Sign Original in Ink)

I hereby certify that the goods or services listed above are proper charges against the State of Nebraska and that payment has not been received or previously claimed.

TITLE: Vice President S.S. NO. or FED. ID NO. DATE:

AGENCY HEAD OR AUTHORIZED AGENT: DATE:

POOR INSTRUMENT FILED

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FILE COPY
BLS-1-5103(7)

- R.O.W. Division, Nebraska Department of Roads
- Owner
- Buyer

DUPLICATE RIGHT OF WAY CONTRACT (PERMANENT EASEMENT)

Project No. BLS-1-5103(7)
Tract No. 3

THIS AGREEMENT, made and entered into this _____ day of _____ 19____ by and between American Smelting & Refining A/K/A ASARCO, Incorporated of the County of _____ State of _____ Address _____ hereinafter called the OWNER, and City of Omaha County, Nebraska.

WITNESSETH: In consideration of the payment or payments as specified below, the Owner hereby agrees to execute to the County, a Permanent Easement for construction, maintenance & air space purposes, and warrant the title thereto, which will be prepared and furnished by the County, to certain real estate described from the centerline of the proposed highway as follows:
SEE ATTACHED PLAT & DESCRIPTION, Pages 1 to 7 of the Exhibit "A" and the agreement for a Permanent Easement, both documents being made a part of this R.O.W. Contract
 From Sta. _____ to Sta. _____ a strip _____ ft. wide _____ side
 From Sta. _____ to Sta. _____ a strip _____ ft. wide _____ side
 From Sta. _____ to Sta. _____ a strip _____ ft. wide _____ side
 From Sta. _____ to Sta. _____ a strip _____ ft. wide _____ side
 From Sta. _____ to Sta. _____ a strip _____ ft. wide _____ side

Said permanent easement for construction & maintenance purposes will be utilized more specifically as follows:
Air space & construction & maintenance of Viaduct
 as shown on approved plans for Project No. BLS-1-5103(7) Tract No. 3 consisting of _____ (acres) (square feet) more or less situated in the _____ Block _____ (of Section _____ Township _____ Range _____ of the 6th P.M.) in _____ County, Nebraska.

It is agreed and understood that the County is hereby granted an immediate right of entry upon the premises described above.

The County agrees to purchase the above described permanent easement and to pay therefor upon the delivery of said executed permanent easement. If the owner so desires he shall have the right to receive 100% of the final payments due under this contract prior to the County's use thereof. Payment or payments are to be made by the County to the Owner for the easement area actually used, not including present public roads, according to the following rate per (acre) (square feet). The parties hereto shall be bound by an (acreage) (square footage) figure which shall not vary 10% from the (acreage) (square footage) set forth below as an approximate figure. This amount shall be renegotiated when a variation in (acreage) (square footage) exceeds these limitations.

Approximately <u>6,505.58</u> sq. ft. at \$ _____ per _____ Sta. _____ to Sta. _____	Net Amount	\$ 2,600.00
Approximately _____ at \$ _____ per _____ Sta. _____ to Sta. _____		\$ _____
Approximately _____ at \$ _____ per _____ Sta. _____ to Sta. _____		\$ _____
Moving and replacing approximately _____ rods of fence at \$ _____ per rod		\$ _____
Moving and replacing approximately _____ rods of fence at \$ _____ per rod		\$ 3,027.00
Reimbursement of leased area \$1,027.00; Reimbursement of Security Fence \$1500.00		2,527.00
Abstracting _____		\$ 50.00
	APPROXIMATE TOTAL	\$ 7,377.00
		\$ 5,877.00

The City of Omaha is substituted for County wherever the later appears on the contract.
 The above payments shall cover all damages caused by the establishment and construction of the above project except for CROP DAMAGE, if any, which will be paid for in the amount based on the yield from the balance of the field less expenses of marketing and harvesting. CROP DAMAGE shall mean damage to such crops as are required to be planted and which were planted at the time of the signing of this contract and which are actually damaged due to construction of this project, but in no case shall damages be paid for more than one year's crop. The Owner agrees to make a reasonable attempt to harvest any crop so as to mitigate the crop damage.

If any other party shall hold any encumbrance against the aforementioned property at the time of delivery of the permanent easement, such payments as are due under this contract shall be made to the owner jointly with the party or parties holding such encumbrance, unless said party, or parties holding such encumbrance shall have in writing waived his right to receive such payment.

Expenses for partial release of mortgages and documentary stamps will be paid by the County, if required.

This contract shall be binding on both parties as soon as it is executed by both parties but, if said permanent easement should not be required this contract shall terminate upon the payment of \$10.00 by the County to the Owner.

THIS IS A LEGAL AND BINDING CONTRACT - READ IT.

The representative of City of Omaha, Inc in presenting this contract has given me a copy and explained all of its provisions. A complete understanding and explanation has been given of the terminology, phrases, and statements contained in this contract. It is understood that no promises, verbal agreements or understanding except as set forth in this contract will be honored by City of Omaha, Inc

COUNTY OF Douglas

OWNER

[Signature]

Vice President

ASARCO Incorporated

By _____

C. HAROLD OSTLER
REGISTER OF RECORDS
DOUGLAS COUNTY, NEBR.

1983 AUG 10 AM 11:19

RECEIVED

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