

Form 2207 DUPLICATE ORIGINAL  
UP Counterpart

Audit No. 47999 34-542

No.

## INDUSTRY TRACK CONTRACT

Parties

THIS AGREEMENT, made and entered into this 30th day of December, 1964,

by and between

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

FILED FOR RECORD IN SARPY COUNTY NEAR Dec 14 1964 AT 9 O'CLOCK A.M.

AND RECORDED IN BOOK 4 OF RECEIVED, PAGE 119 Clara Barker, REGISTER OF DEEDS  
(hereinafter called "Industry"), party of the second part, WITNESSETH:

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 Com-  
pany 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

property  
\_\_\_\_\_ of that portion of the Track between the switch point (marked \_\_\_\_\_) and the clearance point  
line \_\_\_\_\_ also located within the 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 clearance point (located on the boundary line of the right of way of the Railroad Company), the distance  
the property line line is indicated by a pink line between points marked \_\_\_\_\_

on Exhibit A, except the grading thereof, 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 Rail-  
road Company's existing tracks and structures other than track changes connected with the input) 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 interplant 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 replace-  
ment 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."

**Section 2.** The Railroad Company shall construct at its expense the Railroad Company shall operate the same for the benefit of the Industry, subject to the following conditions and stipulations 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 impeded from so doing by acts of God, public authority, strikes, riots, labor disputes, or by any other cause beyond its control.

**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 (\$1,035.00). 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 (5 1/2%) 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 per cent (5 1/2%) 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 (5 1/2%) per annum from date of payment of last 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 (5 1/2%) per annum accrued thereon.

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

**Expenses for Privileges.**

**Section 5.** The Industry shall pay all compensation and assessments required by any town, 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 lying within the right of way and within the limits of any public street and/or alleys where the same is located, excepting 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 handling shipments to and from the Industry, the Railroad Company shall pay to the Industry the then salvage value of the middle material originally constituting the track in that part of the Track owned by the Railroad Company beyond the end of the right of way.

**Right of Railroad Company to use.**

The portion of the Track to be owned by the Railroad Company is indicated by a yellow line between points marked . . . . .

EXHIBIT A.

The remainder of the Track (Track) shall be owned by the Industry.

**Clearances.**

**Section 8.** No building, platform or other structure shall be erected or maintained and no object or structure of any kind or character shall be placed, piled, stored, stacked or maintained closer than four (4) feet to the center line of the Track; PROVIDED, however, that in the case of platforms or high walls four (4) feet above the top of the rail a minimum clearance of six (6) feet, eleven (11) inches and three (3) inches above the center line of the Track will be permitted; and PROVIDED further that along and adjacent to the side of the Track, beyond all portions of the Track having a curvature greater than five (5) degrees, the clearance of the structure provided shall, with reference to platforms four (4) feet or less height, be increased horizontally one (1) foot, and with reference to all buildings, platforms, structures and other obstructions higher than four (4) feet in height, shall be increased horizontally one (1) foot; and PROVIDED further that in the case of objects of competent public authority greater clearances shall be required than those prescribed for in this section, the Industry shall strictly comply with such statute or order. All doors, windows or gates shall, if the walls or shaft open toward the inside of the building, close to when such buildings, platforms or structures are so constructed, and doors, windows or gates if opening outward, would, when opened, impinge the clearance as herein prescribed.

**Liability.**

**Section 9.** It is understood that the movement of railroad locomotives, trailers and freight cars on the property of the Industry, or to property upon its premises, regardless of the Railroad Company's negligence or 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 to receive 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 from any act or omission of the Industry, its employees or agents, and to the person or property of the parties hereto and their employees and agents, and to the person or property of any other person, or corporation, while using the Track; and if any claim or liability other than from fire shall arise from the just or negligent 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.

**Restrangement of Track.** Section 10. The Railroad Company may rearrange or realign the track or roads connecting between the lumber industry or industries in connection with the improvement of its property or property in its possession at or near the location of the lumber industry or industries, and without the consent of the Industry, and without giving any additional notice to the Industry, and notwithstanding any provision of any agreement or stipulation of the parties, modification of the stipulations, changes or alterations of any kind in any agreement or stipulation of the parties, or amendment or termination of any such agreement or stipulation, if such change or alteration shall be made by the Railroad Company without the consent of the Industry, then the Industry shall have the right to terminate this agreement, and the Railroad Company shall be liable to the Industry for all costs and expenses of removal of the track or roads so rearranged, and under this section contained shall be given full effect to the right of the Railroad Company to terminate this agreement under the conditions set forth in sub-agreement (a) 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, is expressly conditioned upon the ability of the Railroad Company to employ and furnish labor and materials and to retain any necessary authority to perform the work.

**Termination.** Section 12. The Railroad Company, after giving sixty (60) days' written notice to the Industry, or its intention to do so, 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 tracks;
- (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 regulation, or changed conditions, to elevate or depress or otherwise change its tracks at or near the location of the tracks, or 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:

UNION PACIFIC RAILROAD COMPANY

By: *D. K. Dierig*  
Vice President

Attest:

*F. G. L. (Seal)*  
Assistant Secretary

Witness:

SOUTHERN LUMBER & COAL CO.

By: *M. L. Campbell*  
President

Attest:

*B. J. Smith (Seal)*  
Secretary

as described

Approved as to execution:

APPROVED

Approved as to form:

For Chief Engineer

APPROVED:

*H. J. Peterson*  
For General Manager

*J. A. Danner*  
General Attorney

54  
J. F. W.  
Compt.

STATE OF NEBRASKA :  
COUNTY OF DOUGLAS :  
ss

On this 8th day of January, 1965, before me, a Notary Public in and for said county in the state aforesaid, personally appeared D. R. WENGERT, to me personally known, and to me personally known to be a Vice President 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. R. Wengert acknowledged said instrument to be his free and voluntary act and deed, and the free and voluntary act and deed of said corporation, by it voluntarily 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, 1969.

J. F. Wengert  
Notary Public

Residing at Omaha, Neb.

(Seal)

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  
Mark W. Faile, 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.

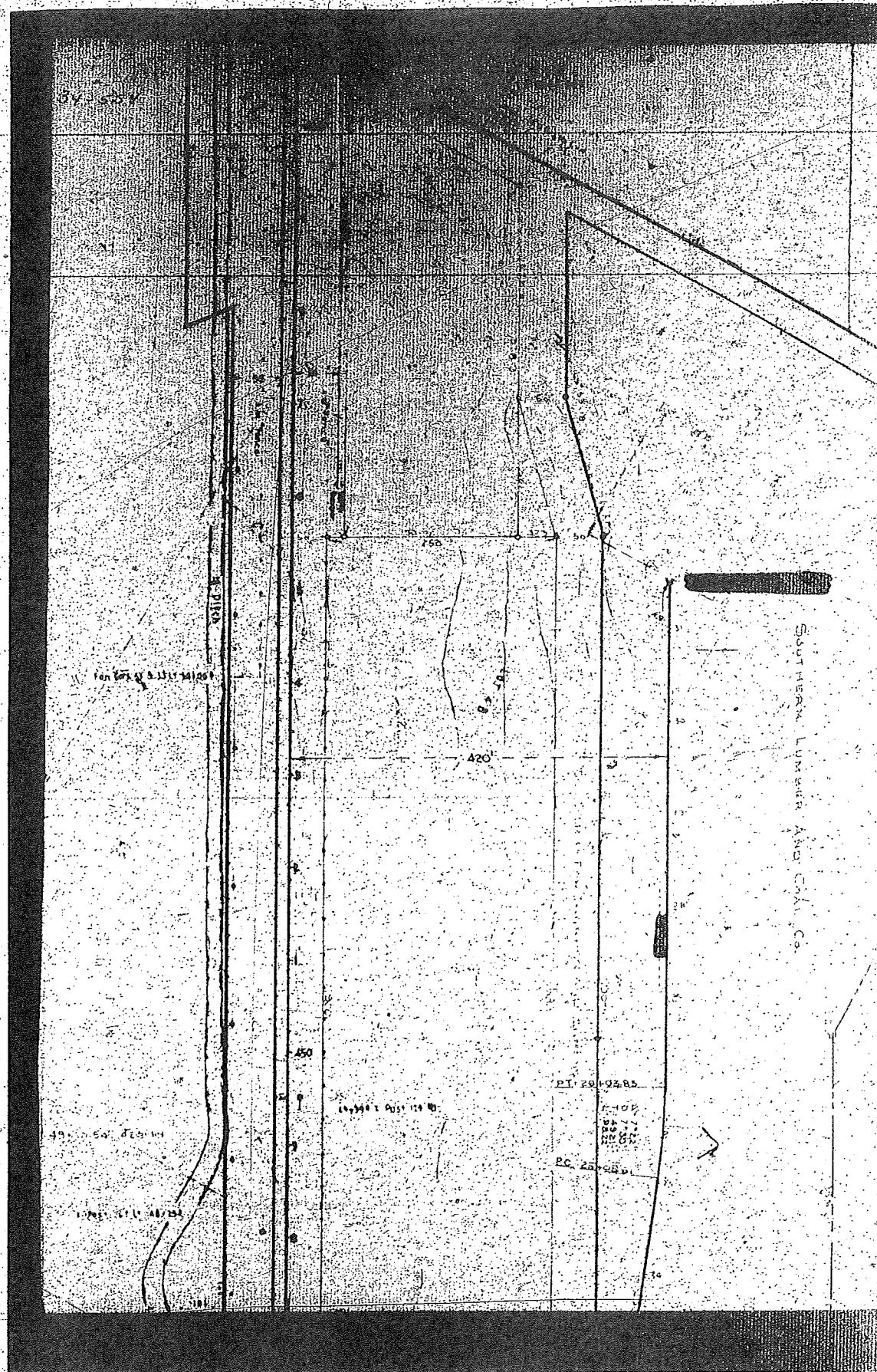
My commission expires May 28, 1968



Raymond M. Schell  
Notary Public

Residing at 16279 Creek Rd.

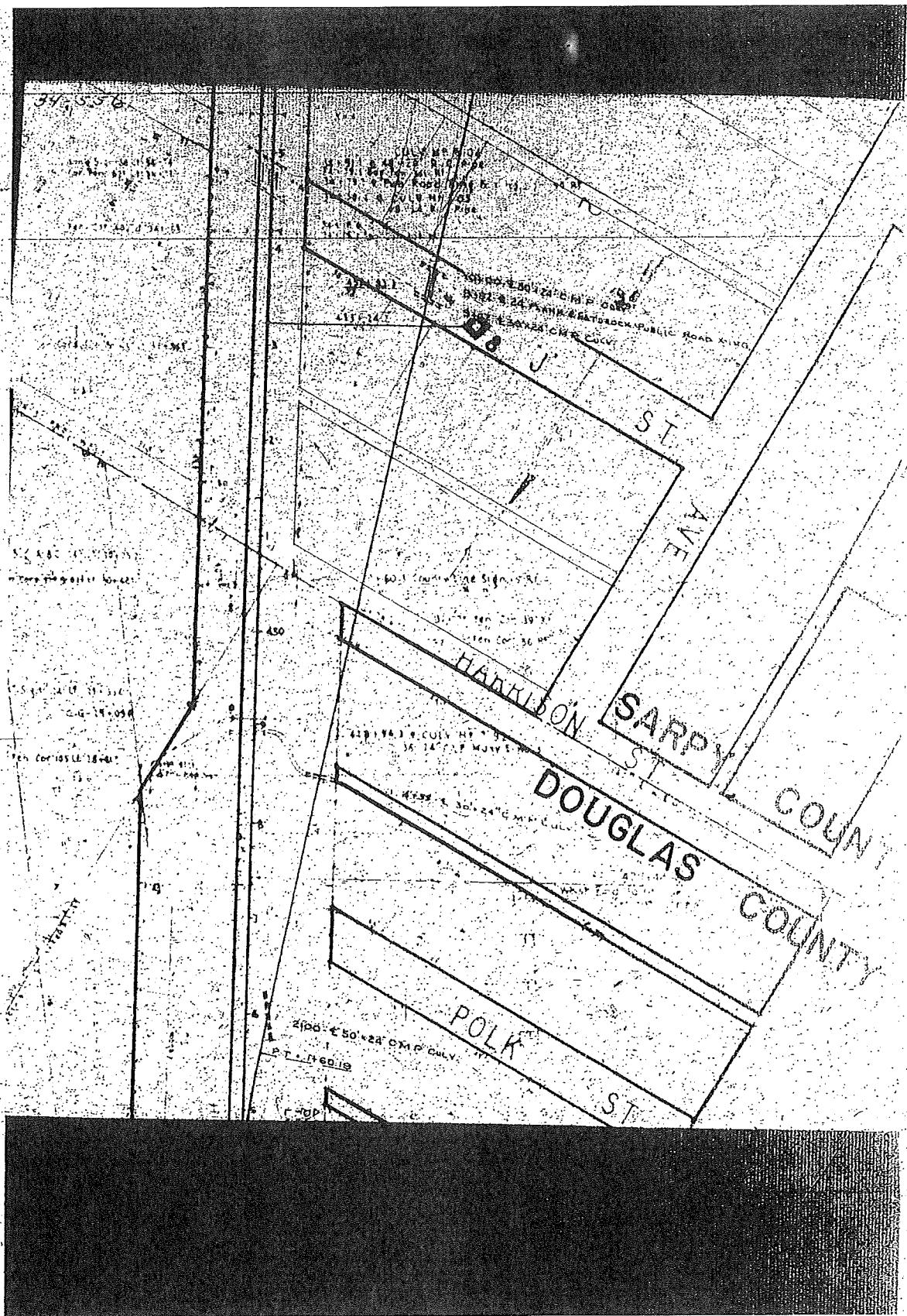
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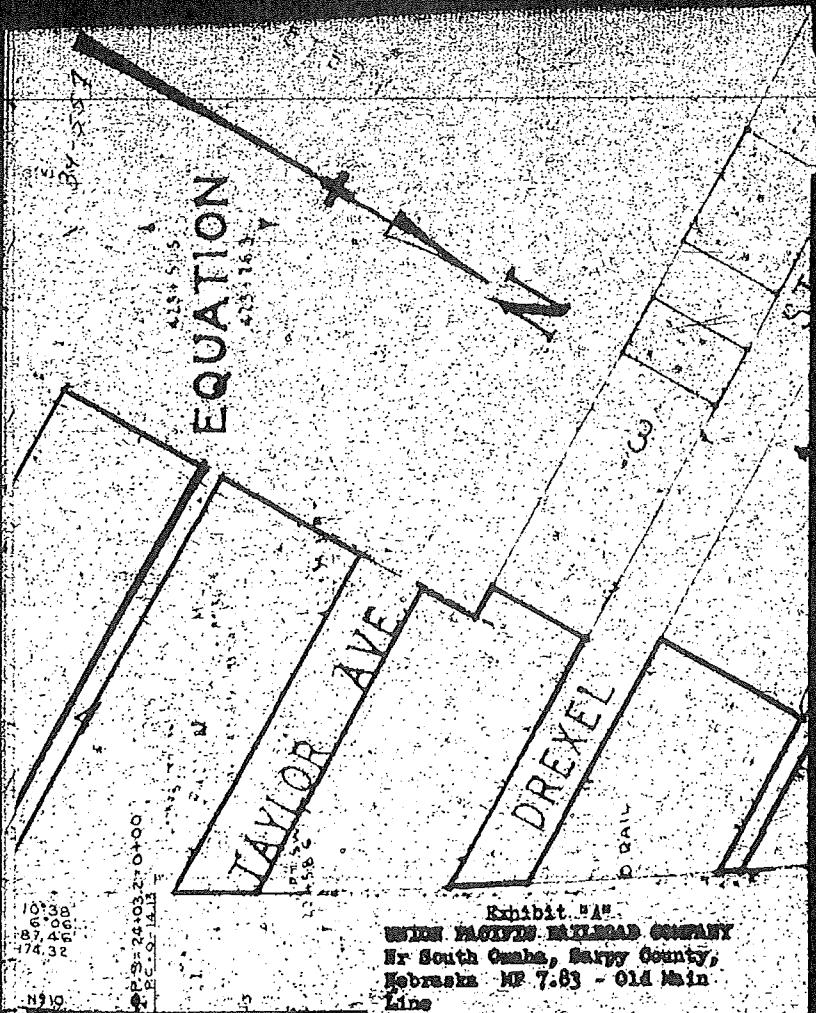
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34-557



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 C H D

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

R A I L