

# ORDINANCE NO. 95-019

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF MAR 28 1995

**AN ORDINANCE RELATING TO THE APPROVAL OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND MARTIN SPROCKET & GEAR, INC. FOR PROPERTY LOCATED AT 1199 VINE STREET, SACRAMENTO, CALIFORNIA (ASSESSOR'S PARCEL NO. 001-0070-036)**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

## **SECTION 1.**

This ordinance incorporates, and by this reference makes part hereof, that certain Development Agreement by and between the City of Sacramento and Martin Sprocket & Gear, Inc., a copy of which is attached hereto as Exhibit "A".

## **SECTION 2.**

The Mayor is hereby directed to execute said Development Agreement on behalf of the City of Sacramento after the effective date of this Ordinance.

## **SECTION 3.**

The City Council adopts the following findings in conjunction with the approval of said Development Agreement:

- A. The Agreement is consistent with the General Plan, the Central City Community Plan, and the Richards Boulevard Area Plan.

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- B. A public hearing considering this Development Agreement was held on February 23, 1995, before the Planning Commission. A subsequent public hearing considering this Development Agreement was held on March 7, 1995, by the City Council.

Notice of intention to consider adoption of this Development Agreement at said public hearings was duly given in the manner prescribed in Government Code Section 65867.

**SECTION 4.**

The City Clerk shall record said Development Agreement no later than ten (10) days after the effective date of this ordinance as required by Government Code Section 65868.5.

DATE PASSED FOR PUBLICATION: MAR 2 1 1995'

DATE ENACTED: MAR 2 8 1995'

DATE EFFECTIVE: APR 2 7 1995

  
MAYOR

ATTEST:

  
ASSISTANT CITY CLERK

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DATE ADOPTED: MAR 2 8 1995

## DEVELOPMENT AGREEMENT

This Development Agreement is made and entered into in the City of Sacramento this \_\_\_\_ day of April, 1995, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter "City") and MARTIN SPROCKET & GEAR, INC. (hereinafter "Owner") pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California and pursuant to the City's power as a charter city.

### RECITALS

- A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 of the Government Code which authorizes any city, county or city and county to enter into a development agreement establishing certain development rights in the subject property.
- B. The Owner owns in fee the real property referred to generally as 1199 Vine Street, Assessor's Parcel No. 001-0070-036, and described more particularly in Exhibit A, attached hereto and incorporated herein by this reference, and located within the City of Sacramento (herein the "Subject Property" or the "Site"). The Current Use of the Site consists of manufacturing and assembly, distribution and warehouse, sales, and related office (referred to hereinafter as "Current Uses" as more fully defined herein). The Owner seeks to ensure its right to continue using the Site for the Current Uses to which it is being devoted; and to be able to modify, alter, rebuild and expand within the limits set forth herein the Current Use as permitted currently under the General Plan, the Central City Community Plan, the Richards Boulevard Area Plan, and the Comprehensive Zoning Ordinance as those documents permit as of the date provided in this Agreement.
- C. On July 17, 1990, the City Council of the City of Sacramento approved the Redevelopment Plan for the Richards Boulevard Redevelopment Project (hereinafter "Redevelopment Plan" or "Richards Boulevard Redevelopment Plan") by adoption of Ordinance No. 90-037, Fourth Series.
- D. On December 14, 1993, the City approved amendments to the General Plan of the City of Sacramento and to the Central City Community Plan of the City of Sacramento by adoption of Resolutions No. 93-740 and 93-741. These amendments included amendments to the land use designations for the Subject Property and amendments affecting the future development of the Subject Property.
- E. On December 13, 1994, the City approved the Richards Boulevard Area Plan and the Railyards Specific Plan by adoption of Resolution No. 94-736.

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F. On December 13, 1994, the City approved a Richards Boulevard Special Planning District by adoption of Ordinance No. 94-053. Pursuant to this ordinance, the Richards Boulevard area was established as a special planning district subject to supplemental zoning rules and regulations.

G. The Owner currently enjoys the right under the General Plan, the Central City Community Plan, the Richards Boulevard Special Planning District, and the Richards Boulevard Area Plan to continue using the Site for the Current Uses to which it is being devoted and to modify, alter and expand the Current Uses as a matter of right subject to compliance with requirements of the Land Use and Development Regulations (defined below) of City including, but not limited to, those governing height, design, public improvements and construction standards.

H. In order to assure the continued viability and economic productivity of the Current Uses, City seeks to grant certain assurances to Owner that the Owner shall, consistent with this Agreement, be permitted to continue using Site for its Current Uses and make improvements as Owner may deem necessary to continue the economic viability of the Current Uses.

I. City is desirous of maintaining a secure economic base, encouraging quality economic growth, financing and installing the infrastructure necessary to redevelop the Richards Boulevard area, and expanding the employment base within the City of Sacramento, thereby advancing the socio-economic interests of its citizens. Owner seeks assurances from City that Owner may (1) proceed with the Current Use, and (2) upgrade, rebuild and/or expand the Current Use in accordance with the Land Use and Development Regulations and this Agreement. Such assurance will reduce the actual or perceived risk of continuing with the Current Uses, planning for and proceeding with possible improvements to the Current Uses.

J. Owner and City are desirous of using this Agreement to protect the economic viability of the Current Use during the period that the Project Area is redeveloping from industrial uses to non-industrial uses. Such protections are directed at changing land uses, potential litigation filed by surrounding property owners as a result of perceptions of incompatibility among the users and owners of the uses permitted by the General Plan and implementing documents, and permits and fees that result in curtailing the Current Use. In particular, with respect to Code permits, the Parties acknowledge and agree that the City may impose Code permits for a legitimate governmental purpose such as the protection of health and safety so long as such permits are applied without any intention by the City to affect adversely the economic viability of the Current Use.

K. In consideration of the Owner's agreements contained herein, including but not limited to Owner's agreement to (1) consent to waive its rights to challenge certain land use approvals and ordinance described herein, (2) continue using the Site, and (3) assist in the retention of existing jobs in the area, the City agrees to enter into this Agreement with Owner in aid and cooperation with the Agency in carrying out the Redevelopment Plan to achieve the purposes set forth in the Owner Participation Agreement by vesting certain operating and development rights in the Subject Property in accordance with the terms and conditions of this Agreement,

the Owner Participation Agreement, the Land Use and Development Regulations, and applicable federal, state and local laws.

L. The authority for this Agreement is contained in inherent police power of the City under the California Constitution, the City Charter of City, other applicable City ordinances, resolutions and procedures and Government Code Sections 65864, *et seq.*

M. The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, the Richards Boulevard Redevelopment Plan, the Central City Community Plan, the Richards Boulevard Special Planning District, and the Richards Boulevard Area Plan. The implementation of this Agreement is in the best interest of the City and the health, safety and welfare of its residents. The environmental impacts of the development rights contained herein were adequately considered in the environmental documentation prepared by City in conjunction with the adoption of the Richards Boulevard Area Plan, the Railyards Specific Plan, and adoption of the ordinance and approval of this Agreement complies in all respect with the California Environmental Quality Act. City has determined that by entering into this Agreement, (a) City is assisting and encouraging the Current Uses, which is beneficial to the public welfare of City; (b) City is receiving assurances of orderly growth and quality development in accordance with the goals and policies set forth in City's General Plan, the Redevelopment Plan and the Richards Boulevard Area Plan; (c) City will receive increased tax revenues if improvements are made to the Site; (d) City will benefit from continued employment opportunities for residents resulting from the Current Uses of the Site; and (e) City and Agency will benefit from facilitating the purposes of the Redevelopment Plan to retain businesses and jobs within the Redevelopment Project Area and to redevelop the Site in a timely and orderly fashion.

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## AGREEMENT

NOW, THEREFORE, in further consideration of the above recitals, all of which are expressly incorporated into this Agreement, and the mutual promises and covenants of the Parties contained in this Agreement, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### I.

#### DEFINITIONS

1. The following definitions shall apply for the purposes of this Agreement:

(a) Agency. "Agency" is the Redevelopment Agency of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at 630 I Street, Sacramento, California 95814. Agency as used in this Agreement includes the Redevelopment Agency of the City of Sacramento and any assignee of or successor to its rights, powers and responsibilities. The Agency, being the Redevelopment Agency of the City of Sacramento, is not the same agency as the Sacramento Housing and Redevelopment Agency, which is a joint powers agency providing staffing for the operation of the Agency. The Agency is not a party to this Development Agreement.

(b) Agreement. This Development Agreement and its Exhibits and attachments.

(c) Central City Community Plan. "Central City Community Plan" is the Central City Community Plan of the City of Sacramento, as approved by adoption of Resolution No. 80-290 as thereafter amended through the Effective Date, including but not limited to the amendments effectuated by the adoption of Resolutions 93-741 and 94-736.

(d) City. "City" is the City of Sacramento in the State of California. The address for the City is 915 I Street, Sacramento, California 95814.

(e) City Council. "City Council" shall mean the City Council for the City of Sacramento.

(f) Code. "Code" means City standards for construction and operation, including but not limited to the Uniform Building Code, the Uniform Fire Code, and Uniform Mechanical Code, as such standards may be amended from time to time during the Term of this Agreement. The application of Code to the Site is described in Section 6 ("Permits").

(g) Current Use. "Current Use" consists of the Current Uses on the Site in the current amounts and locations. The Current Uses consist of and are defined as

manufacturing and assembly, distribution and warehouse, sales, and related offices. The Current Use of the Site, including the location and amount of each of the Current Uses, is further described in Exhibit C: Current Use.

(h) Development Agreement. This Agreement.

(i) Effective Date. Effective Date is date on which the ordinance adopting this Agreement is effective or the date on which the Owner has executed this Agreement in recordable form whichever is later. "Effective Date" is the date for commencement of this Agreement.

(j) Facility Element. "Facility Element" is the Facility Element of the Richards Area Plan and the Railyards Specific Plan.

(k) General Plan. "General Plan" is the General Plan of the City of Sacramento, as approved by adoption of Resolution No. 88-058, as thereafter amended through the Effective Date.

(l) Land Use and Development Regulations. "Land Use and Development Regulations" are the land use and development regulations of the City of Sacramento and the Agency in effect on the dates provided herein including the Richards Boulevard Special Planning District Ordinance, the Richards Boulevard Area Plan, the Central City Community Plan, the Zoning Ordinance, the City of Sacramento Subdivision Ordinance, and the General Plan.

(m) Owner. "Owner" is MARTIN SPROCKET & GEAR, INC. Wherever the term "Owner" is used herein, such term shall include any nominee, lessee, assignee or successor in interest of Owner.

(n) Owner Participation Agreement. Concurrently with the adoption of this Agreement, the Owner and the Agency have entered into an Owner Participation Agreement (the "OPA") in the form substantially attached hereto as Exhibit D, and incorporated herein by reference. Any terms that are not defined in this Agreement shall have the applicable meaning defined in the OPA. In entering into this Agreement, City acknowledges and consents to the OPA.

(o) Party. "Party" means the City, or the Owner(s), and their assignees or successors.

(p) Project Area. "Project Area" is the Richards Boulevard Redevelopment Project Area, as defined in the Redevelopment Plan.

(q) Railyards Specific Plan. "Railyards Specific Plan" (RSP) means the Railyards Specific Plan as approved by the City Council on December 13, 1994 by adoption of Resolution No. 94-736.

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(r) Redevelopment Plan. "Redevelopment Plan" is the Redevelopment Plan for the Richards Boulevard Redevelopment Project, as adopted by the City Council of the City on July 17, 1990, by City Ordinance No. 90-037, Fourth Series. A copy of the Redevelopment Plan was recorded on September 15, 1993, in the Official Records of the County of Sacramento, in Book 930915, beginning at page 0128.

(s) Related Office. "Related Office" means office related to the Current Use.

(t) Richards Boulevard Area Plan. "Richards Boulevard Area Plan" (RBAP) means the land use plan approved by the City Council on December 13, 1994 by adoption of Resolution No. 94-736.

(u) Richards Boulevard Special Planning District Ordinance. "Richards Boulevard Special Planning District Ordinance" (RBSPD) means the Zoning Ordinance amendment approved by the City Council on December 13, 1994.

(v) Site. "Site" is that real property that is subject to this Agreement, as shown on the parcel map attached as Exhibit B: Parcel Map. The Site includes all improvements contained within the Site. The Site as of the Effective Date is more particularly described in the legal description attached as Exhibit A: Legal Description.

(w) Subject Property. "Subject Property" shall have the same meaning as "Site" as defined in Subsection (v) ("Site") above.

(x) Zoning Ordinance. "Zoning Ordinance" shall mean the Comprehensive Zoning Plan of the City of Sacramento, Ordinance 2550, Fourth Series, as amended through January 25, 1995.

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II.

TERMS AND CONDITIONS OF AGREEMENT

2. Property Description and Binding Covenants. The Subject Property is that property described in Exhibit A. It is intended and determined that the provisions of this Agreement shall constitute covenants that shall run with said property and the burdens and benefits hereof shall bind and inure to all successors in interest to the Parties hereto, as provided in Section 28 ("Covenants Run With the Land") below.

3. Interest of Owner(s). Owner(s) represents that it/they is/are the legal owner of the Subject Property and that all other persons holding legal or equitable interests in the Subject Property have executed and are bound by this Agreement.

4. Use and Development of the Subject Property: Vesting of Certain Rights.

(a) Vested Development Rights. Subject to the Land Use and Development Regulations, Code, and the provisions of this Agreement, City and Owner intend to and the City hereby vests Owner with all rights on the Site applicable on the Effective Date that may be required from time to time or at such time as deemed necessary by Owner to perform the following (herein "Vested Rights") and still remain within the definition of Current Use:

(i) Operate, maintain, repair, upgrade, rebuild, and make improvements to the Current Use;

(ii) In the event that the operation of any of the Current Uses ceases, to convert the facility or space containing such Uses to any of the other Current Uses; and/or

(iii) Expand any or all of the Current Uses except Office up to a total expansion on the Site of Fourteen Thousand Two Hundred Eighty (14,280) gross square feet; Notwithstanding the Subsections above, the total amount of office space permitted on the Site shall not exceed Twenty-Three Thousand Eight Hundred (23,800) square feet, all of which shall be Related Office.

(b) Applicable Development Standards. Owner may exercise its Vested Rights under this Agreement pursuant to and subject only to the Land Use and Development Regulations and Code. Any amendments or additions to the Land Use and Development Regulations which would directly or indirectly reduce the scope of these Vested Rights, or impair or hinder their exercise, shall be inapplicable to the Site or development thereon, except those necessary to protect the public health and safety. Code is defined herein as including any amendments or additions thereto; such amendments or additions only may apply to the Site as provided in Section 6 ("Permits") herein.

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Subject to the provisions of Section 4(a) any special permits that may be required for Owner to exercise its Vested Rights are subject only to the City's discretion to address impacts identified during the environmental review process undertaken pursuant to the California Environmental Quality Act.

(c) Superseding Law. Nothing in this Agreement shall preclude the application to the Subject Property of changes in City laws, regulations, plans or policies, including but not limited to the Land Use and Development Regulations, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations. In the event that State or Federal laws, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws. Immediately after enactment of any such new law, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement.

This Agreement has been entered into in partial reliance upon the provisions of the Development Agreement Legislation as those provisions existed as of the Effective Date. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement unless such amendment or addition is specifically required by the Legislature of the State of California or is mandated by a court of competent jurisdiction. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability.

## 5. Permits.

(a) Existing Permits. Subject to subsection (b) ("Modification of Existing Permits and Application of New Permits") below, City agrees that the Current Use shall be subject only to the permits that are required by the Land Use and Development Regulations and Code. City further agrees that upon application, the City shall issue all Code permits necessary to operate, modify, rebuild, or expand the Current Uses so long as such applications meet written standards for such permits as of the Effective Date with respect to this subsection (a) or standards that may be modified in accordance with Subsection (b) ("Modification of Existing Permits and Application of New Permits") below.

(b) Modification of Existing Permits and Application of New Permits. Any new Code permits or modification of existing Code permits required by the City of the Owner to operate, modify, rebuild, or expand the Current Use shall be generally applicable to all entities involved in the type of uses that constitute or operate in the Current Uses. Such Code permits shall directly relate to the protection of health and safety. The requirements of such Code permits shall apply to the Current Use only if there is a demonstrable relationship between the impacts caused by the Current Uses and the protection of health and safety. For the purposes of this Agreement, the term "health and safety" shall be defined as concerns that are directly related to a known and reasonably specific health and safety danger to a definable class of people.

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6. Fees and Charges. Except as specifically provided otherwise herein, fees, charges, taxes, and any other levy or financial assessment or imposition that are revised or adopted by the City during the Term of this Agreement shall apply to development of the Site pursuant to this Agreement including but not limited to alterations or modifications to, or expansions of, the Current Use.

(a) Exception: Facility Element Fees and Assessments. While operating as the Current Use, except as provided in Section 8 ("Levies Imposed by Other Jurisdictions"), the City agrees not to impose development fees or any other charges or assessments on or in connection with the exercise of any Vested Right hereunder or to impose any assessment on the Site, where such fees or assessments are imposed for the purpose of or in connection with the financing of any of the infrastructure described in the Facility Element. The City also agrees not to impose a development fee or other charge for the purpose of or in connection with the financing of any of the infrastructure described in the Facility Element which include an accrual or buy-in penalty. Nothing in this Section (a) relieves Owner from responsibility to mitigate environmental impacts associated with conversion of use or expansion, nor limits Owner's administrative or judicial rights under the law, including, but not limited to those rights related to the mitigation of environmental impacts.

(b) Exception: Discriminatory Fees.

(i) Acknowledgements. The City and Owner acknowledge that in some jurisdictions fees have been adopted and applied, which are either discriminatory or, though facially neutral and rationally related to use, in fact either by intent or effect, have resulted in the elimination of industrial uses which, though consistent with applicable plans and zoning, are deemed by some to be incompatible with surrounding uses. By contrast, the Richards Boulevard Area Plan and Richards Boulevard Special Planning District specify that any conflict between existing industrial uses such as the Current Use, as modified by expanded hereunder, and subsequent residential uses must be resolved in favor of permitting the current industrial use to remain; that the Current Uses and other light industrial uses are permitted uses, while residential uses are conditional uses; and that residential uses may be approved only if external environmental impacts caused by the lawful operation of the permitted industrial uses, including the Current Uses, is mitigated to acceptable residential levels by means of mitigation imposed on the residential use, not the permitted industrial uses.

In entering this Agreement, the City intends to carry out these policies by agreeing not to use the imposition of fees or other discriminatory exercises of its police power to prevent the exercise of the Vested Rights by Owner. The Owner acknowledged that it must pay fees which are not discriminatory facially or otherwise, and are rationally related to extent of use or other legitimate public purposes.

(ii) Prohibition. The City hereby agrees not to impose any discriminatory fee on Owner or activities undertaken by Owner in connection with the exercise of its Vested Rights.

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(iii) Remedy. If a discriminatory fee is imposed by the City, the fee shall either be inapplicable to the Current Uses, including any expansions or modifications hereunder, or the City may modify or restructure the fee such that it is no longer discriminatory. The portion of any fees collected which are determined to be discriminatory shall be returned to Owner.

Nothing in this Section 6 ("Fees and Charges") shall be construed to limit in any way the right of the Owner to administratively or judicially challenge any City fees. Further, nothing in this section is intended to confer any greater or lesser rights or protections upon Owner than exist under the current law.

7. Levies Imposed by Other Jurisdictions. Owner shall be responsible for: (i) all fees, charges, assessments, special taxes or other levies of any sort imposed by any state or local agency other than the City, including but not limited to the Sacramento Regional Sanitation District and the Sacramento Area Flood Control Agency (SAFCA); (ii) all fees, charges, assessments, special taxes or levies of any sort associated with the financing of construction of or maintenance of public improvements, where the Subject Property is located within a district formed for such purpose by any agency other than the City; (iii) ad valorem taxes and utility fees. Nothing in this Agreement shall be construed to limit Owner's right to protest, in accordance with applicable provisions of law: (i) the formation or implementation of any district included within the provisions of this Section or to protest the amount of any assessment levied by or on behalf of such district on the Subject Property or any portion thereof; or (ii) to protest the nature and amount of any tax, fee, assessment or charge imposed pursuant to this Section.

8. Term. The Term of this Agreement shall be 30 years or until the Current Use, as expanded or modified hereunder, ceases, whichever is sooner. The Current Use is deemed for purposes of this Section to cease when any of the following occur:

- (a) the entire Site is vacant for a period of greater than two (2) years; or
- (b) cumulative expansion of the Current Use exceeds Fourteen Thousand Two-Hundred Eighty (14,280) gross square feet.
- (c) any portion of the Site is developed or redeveloped for a use other than a Current Use.

9. Effect of Referendum or Legal Challenge on Provisions of this Agreement.

- (a) Validity of Richards Boulevard Area Plan and Richards Boulevard Special Planning District Ordinance: Effect of Referendum or Legal Challenge on Provisions of this Agreement. In the event of a challenge to the adoption of the Richards Boulevard Area Plan and/or the Richards Boulevard Special Planning District Ordinance, either by the filing of a valid referendum petition or by the filing of a lawsuit, or both, Section 4 ("Use and Development of the Subject Property: Vesting of Certain Rights") of this Agreement shall have no force and effect until (i) in the event of a referendum petition, the City Council submits the referendum

to the voters for decision and the voters deny the referendum, thereby upholding the Richards Boulevard Area Plan and/or Richards Boulevard Special Planning District Ordinance; (ii) in the event of a legal challenge, the lawsuit is the subject of a final decision, by judgment or settlement agreement, pursuant to which Richards Boulevard Area Plan and the Richards Boulevard Special Planning District Ordinance are determined to be lawful and effective; (iii) in the event both a valid referendum petition and a lawsuit are filed, until the latter of the dates specified in (i) and (ii) immediately preceding. Provided, however, if the City, within five years after the City executes this Agreement, adopts a plan or Ordinance substantially similar to the RBAP or RBSPD or otherwise imposes Residential zoning on the Site or surrounding area, then Section 4 ("Use of Development of the Subject Property: Vesting of Certain Rights") of this Agreement shall have force and effect.

- (b) Validity of Railyards Specific Plan, Environmental and Implementation Documents: Effect of Referendum or Legal Challenge on Provisions of this Agreement. In the event of a challenge to the adoption of the Railyards Specific Plan or environmental and implementation documents that are consistent with that Plan either by the filing of a valid referendum petition or by the filing of a lawsuit, or both, the Section 5 ("Fees and Charges") and Section 6 ("Permits") of the Agreement shall have no force and effect until (i) in the event of a referendum petition, the City Council submits the referendum to the voters for decision and the voters deny the referendum, thereby upholding the Railyard Specific Plan or environmental and implementation documents consistent with that Plan; (ii) in the event of a legal challenge, the lawsuit is the subject of a final decision, by judgment or settlement agreement, pursuant to which Railyards Specific Plan or environmental and implementation documents consistent with that Plan are determined to be lawful and effective; (iii) in the event both a valid referendum petition and a lawsuit are filed, until the latter of the dates specified in (i) and (ii) immediately preceding. Provided, however, if the City, within five years after the City executes this Agreement, adopts a plan substantially similar to the Railyards Plan, then Section 5 ("Fees and Charges") and Section 6 ("Permits") of this Agreement shall have force and effect.

10. Agreement not to Challenge Certain Documents. Owner agrees not to challenge judicially the City's adoption of the Railyards Specific Plan, the Richards Boulevard Area Plan, and the Richards Boulevard Special Planning District Ordinance, the supporting environmental documentation or implementing documents which are consistent with those plans and ordinance. In the event Owner does challenge any of the foregoing, or any of them, as adopted, this Agreement shall be null and void. Provided, however, Owner does not waive its right to challenge, nor is this Agreement null or void, if Owner administratively or judicially challenges any other fees or assessments on the Site for purposes.

11. Limitation on Remedies. No Party shall be liable for damages to another Party as a result of breach or termination of this Agreement. The Parties agree that monetary damages are inappropriate and that it is extremely difficult and impractical to fix or determine the actual damages to a party as a result of a default and/or a termination of this Agreement, and that equitable remedies and remedies at law other than damages are particularly appropriate remedies for enforcement of this Agreement, such as actions for specific performance, declaratory and injunctive relief, and mandamus or special writs. The Parties agree that each Party may pursue any remedy at law or equity available for the breach of any provision of this Agreement other than damages.

12. Hold Harmless Agreement. Owner hereby agrees to, and shall hold City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Owner's or Owner's contractors', subcontractors', agents', or employees' operations of the Current Uses under this Agreement, whether such operations be by Owner, or by Owner's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Owner or any of Owner's contractors or subcontractors. Owner agrees to and shall, defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of the aforesaid operations.

13. Waiver or Modification of Terms. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding or litigation between the Parties arising out of or affecting this Agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The provision of this Section may not be waived except as herein set forth.

14. Assignment. Owner shall have the right to sell, assign or transfer this Agreement with all of its rights, titles, and interests therein to any person, firm or corporation at any time during the Term of this Agreement. Express assumption of any of the obligations of Owner under this Agreement by any such assignee shall relieve Owner from said obligation or obligations under this Agreement.

15. Amendment. This Agreement may be amended from time to time by mutual consent of the Parties hereto and in accordance with the provisions of Government Code §65868. In the event of changed conditions, changes in local, state or federal laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, fire, acts of God, or other similar circumstances which substantially interfere with Owner's ability to operate or make improvements to the Site, as contemplated in this Agreement, or with the ability of Owner to perform its obligations under this Agreement, the Parties agree to bargain in good faith to modify such obligations to allow the purpose of this Agreement to proceed as planned to the extent practicable.

16. Cancellation of This Agreement. Except as otherwise permitted herein, this Development Agreement may be canceled in whole or in part only by the mutual consent of the Parties or their successors-in-interest, or the manner set forth in California Government Code §§ 65865.1 and 65868.

17. Relationship to City and Owner. Project is a private undertaking. It is specifically understood and agreed by and between the Parties hereto that the subject project is a private development. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between the City and Owner is that of a government entity regulating the development of private property and the owner of said private property.

18. Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending said action; provided that the City has no obligation to defend Owner, or intervene in any action related to nuisance by a third party against Owner.

19. Status of Agreement. This Agreement shall supersede, replace and render null and void any and all prior oral or written representations, contracts, agreements or understandings between or among any of the Parties hereto relating to or arising out of any of the matters referred to herein.

20. Agreement is Entire Agreement. This written Agreement contains the sole and entire agreement between the Parties. The Parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof, except such representations as are specifically set forth herein, and each party acknowledges that it has relied on its own judgment in entering into the Agreement. The Parties further acknowledge that any statements or representations that may have heretofore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with their dealings with each other.

21. Annual Review. The annual review required by California Government Code Section 65865.1 shall be conducted as provided therein. Such annual review shall be limited in scope to compliance with the terms and conditions of this Agreement. City and Owner shall have a reasonable opportunity to assert matters which either party believes have not been undertaken in accordance with this Agreement, to explain the basis for such assertion, and to receive from the other party a justification for the other party's position with respect to such matter. If either party concludes that the other party is in substantial breach with the terms and conditions of this Agreement, then such party shall deliver a Notice of Breach and the party shall follow the procedure set forth in the Owner Participation Agreement for resolving a breach. Failure of City for any reason to conduct an annual review shall not invalidate, suspend or otherwise affect the provisions of this Agreement and the rights and obligations of the Parties hereunder. If the annual review does not result in a final determination that Owner is in material breach or if there is such a determination and Owner has cured any such material breach within

a reasonable period of time, City will grant a certificate of conformance upon request of Owner or of Owner's Lender pursuant to the Owner Participation Agreement.

22. Notices. Formal written notices, demands, correspondence and communications between City and Owner shall be sufficiently given if dispatched by postage prepaid first class mail to the principal offices of the City and Owner or such person or entity designated in notice to the City pursuant to this Section. Such written notices, demands, correspondence and communications may be directed in the same manner to such other persons and addressees as either party may from time to time designate. At this time, the principal representatives of the Parties and their addresses are as follows:

CITY: City Manager  
Sacramento City Hall  
915 I Street  
Sacramento, CA 95814

OWNER: MARTIN SPROCKET & GEAR, INC.  
3100 Sprocket Drive  
Arlington, TX 76015

23. Construction. In the event of a conflict between the terms of this Agreement and the Exhibits, this Agreement shall be given precedence. The language in all parts of this Agreement shall be construed as a whole and in accordance with its fair meaning. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain.

24. Counterparts. This Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the Parties has executed such a counterpart.

25. Applicable Law and Attorneys Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to reasonable attorneys fees, court costs, and such other costs as may be fixed by the court.

26. Severability. The provisions of this Agreement are intended to be severable. If any provision of this Agreement is found invalid, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect unless amended or modified by the mutual consent of the Parties.

27. Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Sacramento County Recorder no later than ten (10) days from execution of this Agreement by City, which execution shall take place no later than three (3) days following the City adopting the ordinance approving this Agreement.

28. Covenants Run With the Land. All of the provisions, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Subject Property, or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Subject Property, or on or with respect to any property or interest within the Project Area, (i) is for the benefit of such property or interest and is a burden upon such property; (ii) runs with such property as to the burdens; and (iii) is binding upon each owner or interest holder during its ownership of, or interest in, any such property or any portion thereof, and (iv) shall benefit such property, and each person or entity succeeding to an interest in such property.

IN WITNESS WHEREOF, the CITY and OWNER have executed this Development Agreement as of the date first set forth above.

CITY:

CITY OF SACRAMENTO,  
a municipal corporation,

By: \_\_\_\_\_  
JOE SERNA, JR., Mayor

ATTEST:

Date: \_\_\_\_\_

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

Date: March 16, 1995

Richard Earl Archbold  
CITY ATTORNEY

OWNER:

MARTIN SPROCKET & GEAR, INC.

By: Michael D. McClister  
MICHAEL D. MCCLISTER  
VICE PRESIDENT

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
County of Sacramento  
On 2/27/95 before me, Teresa M. Baird, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Michael D. McClister, Vice-President of  
Name of Signer(s)  
Martin Sprocket & Gear, Inc.

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.  
[Signature]  
Signature of Notary Public

OPTIONAL

EXHIBIT "A"

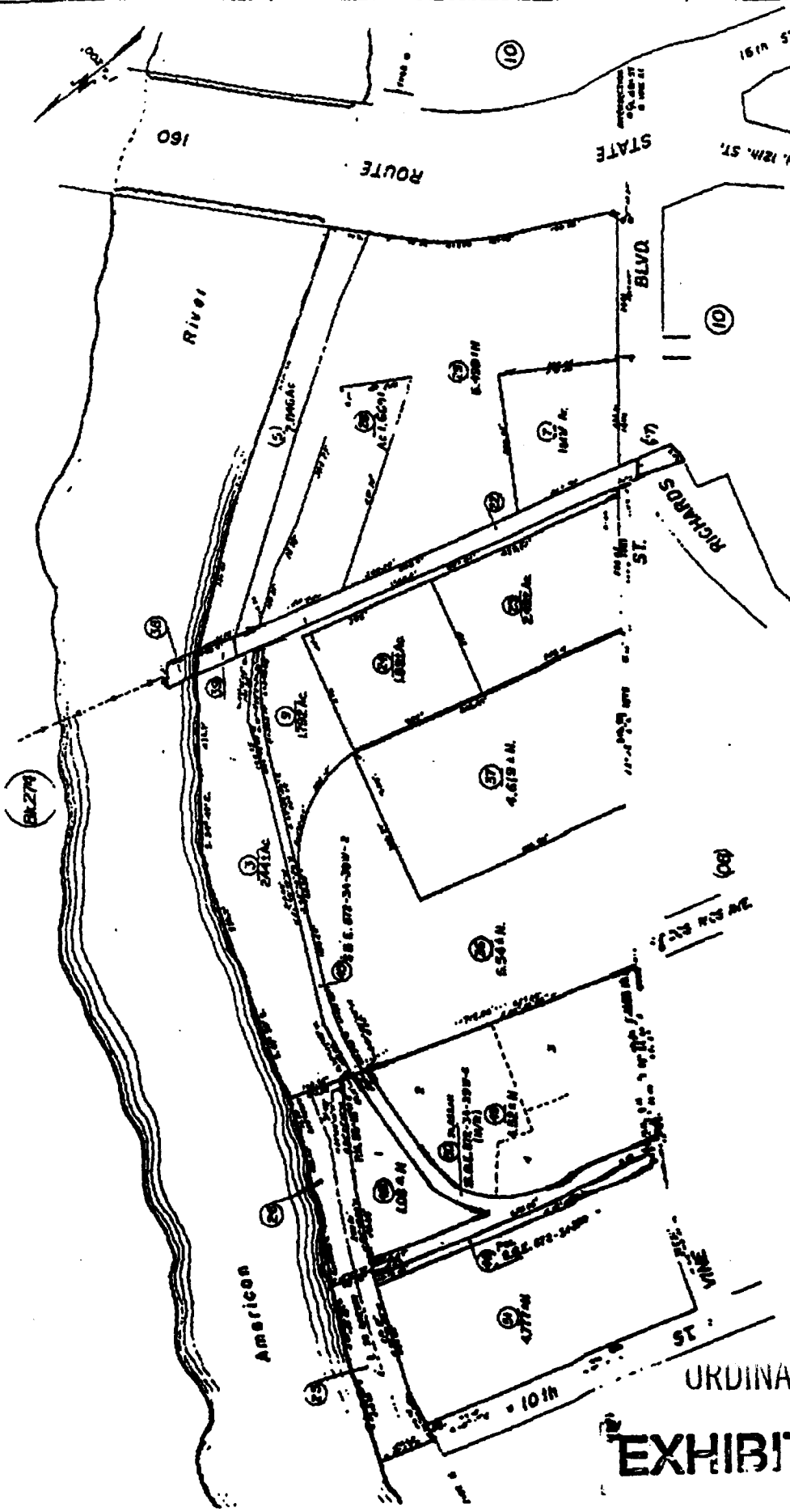
All that certain real property situate, lying and being in the City of Sacramento, County of Sacramento, State of California, particularly described as follows:

Beginning on the north line of Vine Avenue distant thereon North 18°48'01" East 1782.69 feet, North 50°02'15" West 42.19 feet and North 20°41'14" East 63.57 feet from the intersection of the center line of North "D" Street (of the City of Sacramento) with the center line of Dos Rios Boulevard; thence from said point of beginning along the North line of said Vine Street South 50°02'15" East 360.85 feet to the West line of the parcel of land conveyed to Aldo Lovotti et-al by deed recorded in Book 72-08-16 page 26 of Official Records of said County; thence along the exterior lines of said parcel North 16°53'40" East 506.28 feet and South 73°06'20" East 345.27 feet; thence Northwesterly along an arc of a curve to the left, having a radius of 276.84 feet, subtended by a chord bearing North 23°59'46" West 280.61 feet thence North 57°56'25" West 68.38 feet to a point on the southwesterly boundary of the parcel of land conveyed to Central Pacific Railway Company, a corporation by deed recorded May 13, 1958 in Book 3507 page 639 Official Records of said County; thence along the southwesterly line of said parcel the following three (3) Courses and distances, (1) North 62°37'06" West 192.17 feet, (2) Northwesterly along an arc of a curve to the left, having a radius of 563.14 feet subtended by a chord bearing North 72°23'12" West 191.09 feet, (3) North 82°09'19" West 5.75 feet; thence leaving said railroad parcel South 20°41'14" West 632.77 feet to the point of beginning.

1-07

Tax Area Code

FOR RANCHO NEW HELVETIA & SWAMP LAND SURVEYS

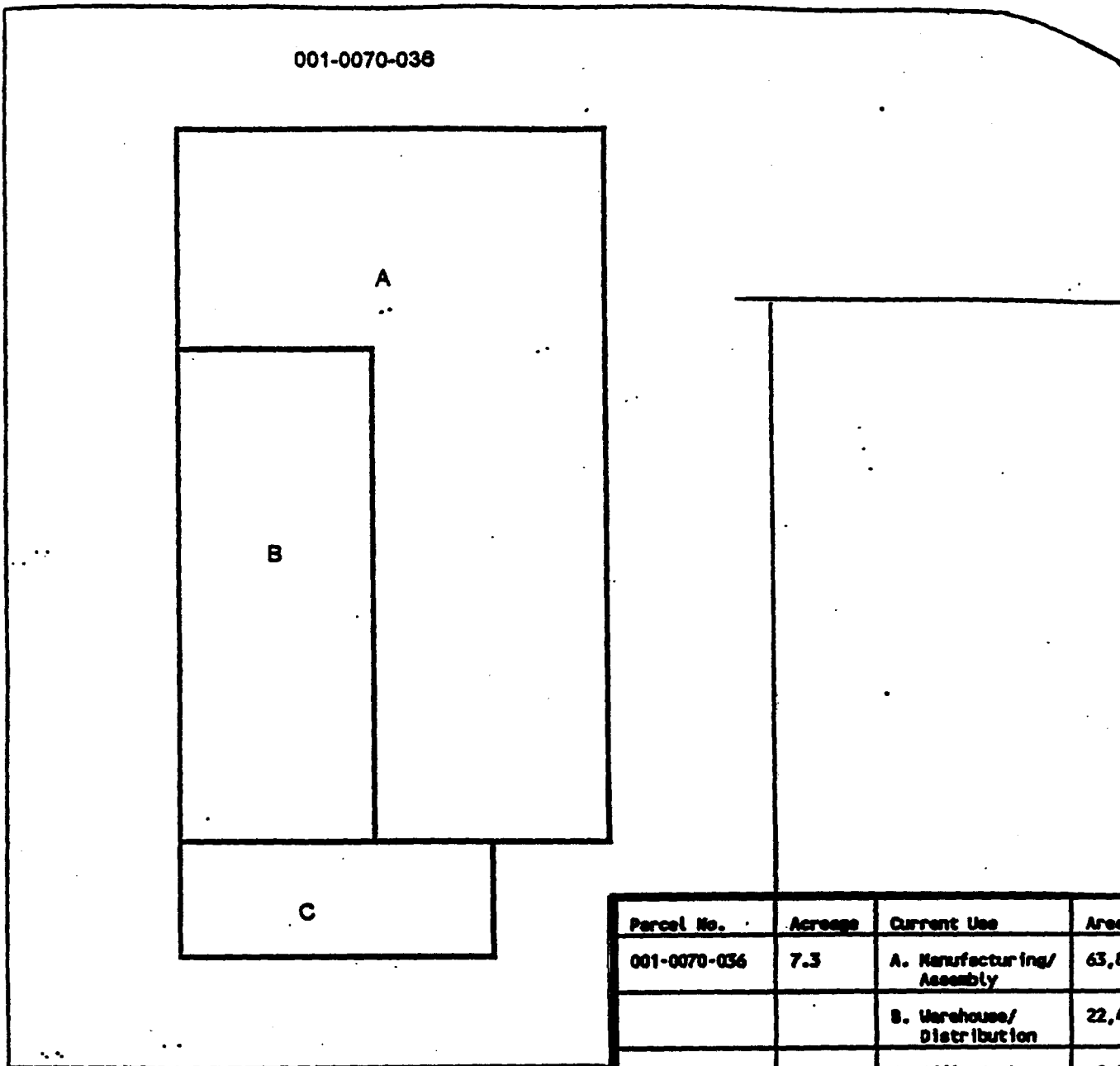


CITY OF SACRAMENTO  
 Assessor's Map Bk. 1 -Pg.07  
 County of Sacramento, Calif.

NOTE--Assessor's Block Numbers Shown in Ellipses.  
 Assessor's Parcel Numbers Shown in Circles.

ORDINANCE NO. 95-019

EXHIBIT B MAR 28 1995



001-0070-036

A

B

C

VINE STREET

DOS RIOS STREET

Parcel No.	Acres	Current Use	Area (s.f.)
001-0070-036	7.3	A. Manufacturing/ Assembly	63,800
		B. Warehouse/ Distribution	22,400
		C. Office/Sales	9,000
<b>Total</b>	<b>7.3</b>	<b>Totals</b>	<b>95,200</b>

ORDINANCE No. **95-019**

MAR 28 1995

Martin Sprocket & Gear Inc.

**EXHIBIT C**

**NO FEE DOCUMENT:**

Entitled to free recording  
per Government Code 6103  
When recorded, return to:

SACRAMENTO HOUSING AND  
REDEVELOPMENT AGENCY  
630 I Street  
Sacramento, CA 95814  
Attention: Legal Department

**OWNER PARTICIPATION AGREEMENT  
Richards Boulevard Redevelopment Area  
1199 Vine Street**

An Agreement Between the  
REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO  
and  
MARTIN SPROCKET & GEAR, INC.

ORDINANCE No. 95-019

**EXHIBIT D**

MAR 28 1995

## OWNER PARTICIPATION AGREEMENT

Agency, THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and Owner, MARTIN SPROCKET & GEAR, INC. a Texas Corporation, enter into this Owner Participation Agreement ("OPA") in consideration of the mutual promises and upon the representations, terms and conditions set out below. [The capitalized and abbreviated terms shall have the meanings assigned in Section 1.3. ("Definitions")]

1. General. In furtherance of the objective of the Community Redevelopment Law, the Agency has undertaken a program for the clearance and reconstruction or rehabilitation of blighted areas in the City of Sacramento including a redevelopment project in the Project Area. City and Agency have adopted the Redevelopment Plan for the Project Area and the Richards Boulevard Area Plan. In preparing land use and implementation plans, including the Richards Boulevard Area Plan, the Agency reviewed the uses of existing properties to assure their continued operation as well as their coordination and consistency with future development contemplated by the Richards Boulevard Area Plan.

1.1. Purpose of the OPA. The purpose of this OPA is to establish the rights of Owner and Agency regarding the use of the Site and the obligations of Owner with regard to the redevelopment of the Project Area.

In specific, Owner may require the improvement, modernization, and expansion of the improvements on the Site to maintain the financial viability of the Current Use as modified or expanded hereunder. The Parties intend this OPA to establish the rights of Owner to make such improvements to the extent such improvements were permitted in the Land Use and Development Regulations (defined below).

Agency is desirous of maintaining a secure economic base, encouraging quality economic growth, financing and installing the infrastructure necessary to redevelop the Richards Boulevard area, and expanding the employment base within the City of Sacramento, and advancing the socio-economic interests of its citizens. Owner seeks assurances from Agency that it can continue the Current Use on the Site and that Owner may, proceed with the Current Use and, upgrade, rebuild, and/or expand the Current Use in accordance with the Land Use and Development Regulations, the Development Agreement and this Agreement. Such assurance will reduce the actual or perceived risk of continuing with the Current Use and planning for and proceeding with possible improvements to the Current Use.

ORDINANCE No. 95-019

MAR 28 1995

This OPA is intended to benefit the Agency by obtaining the assurances provided in this OPA from Owner regarding the Owner's consent to waive its rights to challenge certain land use approvals and ordinance described herein. This OPA is intended to benefit Owner by providing certain assurances that Owner may continue to use the Site in the Current Use and improve or expand the Current Use in accordance with this Agreement, as the Owner reasonably deems necessary to continue the economic viability of the Current Use.

In order to assure the continued viability and economic productivity of the Site, Agency seeks to grant certain assurances to Owner that, until such time that Owner determines is appropriate to redevelop the Site in accordance with the Richards Boulevard Area Plan, the Owner may, consistent with this Agreement, continue using the Site in its Current Use and make improvements as Owner deems necessary to continue its economic viability.

1.2. Agency Powers. Except as expressly stated, this OPA shall not limit, in any manner whatsoever, the rights of the Agency to exercise its power of eminent domain or any other powers and authority it may have under the law.

1.3. Definitions. The following definitions shall apply for the purposes of this OPA:

1.3.1. Agency. "Agency" is the Redevelopment Agency of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at 630 I Street, Sacramento, California 95814. Agency as used in this Agreement includes the Redevelopment Agency of the City of Sacramento and any assignee of or successor to its rights, powers and responsibilities. The Agency, being the Redevelopment Agency of the City of Sacramento, is not the same agency as the Sacramento Housing and Redevelopment Agency, which is a joint powers agency providing staffing for the operation of the Agency. The Agency is not a party to the Development Agreement.

1.3.2. City. "City" is the City of Sacramento in the State of California. The address for the City is 915 I Street, Sacramento, California 95814.

1.3.3. Code. "Code" means City standards for construction and operation, including but not limited to the Uniform Building Code, the Uniform Fire Code, Uniform Mechanical Code, as such standards may be amended from time to time during the Term of this Agreement.

1.3.4. Community Redevelopment Law. "Community Redevelopment Law" is the law governing redevelopment in the State of California and is found commencing at Health and Safety Code Section 33000.

1.3.5. Current Use. "Current Use" consists of the Current Uses on the Site in the current amounts and locations. The Current Uses consist of and are defined as: (i) manufacturing/assembly; (ii) warehouse/distribution; and (iii) related office/sales. The Current Use of the Site, including the location and amount of each of the Current Uses, is further described in Exhibit C: Current Use.

1.3.6. Development Agreement. The Agency enters into this Agreement in aid and cooperation with the City in carrying out the Richards Boulevard Area Plan and the General Plan to achieve the purposes set forth in the Development Agreement described below.

Concurrently with the adoption of this Agreement, the Owner and the City have entered into a Development Agreement in the form substantially attached hereto as Exhibit D, and incorporated herein by reference. Any terms that are not defined in this Agreement shall have the applicable meaning defined in the Development Agreement. In entering into this Agreement, Agency consents to the Development Agreement and accepts the provisions of the Development Agreement as binding and enforceable for purposes of this Agreement.

1.3.7. Effective Date. Effective Date is date on which the ordinance adopting this Agreement is effective or the date on which the Owner has executed this Agreement in recordable form

whichever is later, except as provided in Section 13 herein ("Effect of Referendum or Legal Challenge or Effective Date"). "Effective Date" is the date for commencement of this Agreement.

1.3.8. General Plan. "General Plan" is the General Plan of the City of Sacramento, as approved by adoption of Resolution No. 88-058, as amended from time to time up to January 15, 1995.

1.3.9. Land Use and Development Regulations. "Land Use and Development Regulations" are the land use and development regulations of the City of Sacramento and the Agency in effect as of the Effective Date including the Richards Boulevard Special Planning District Ordinance, the Richards Boulevard Area Plan, the Central City Community Plan, the Zoning Ordinance, the City of Sacramento Subdivision Ordinance, and the General Plan.

1.3.10. Lender. "Lender" is any person or entity, including any deed of trust beneficiary or mortgagee who may acquire title to the Site, or any portion of the Site, by exercise of its security interest in the Site, whether by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

1.3.11. Owner. "Owner" is Martin Sprocket & Gear, Inc. The principal office of Owner is 3100 Sprocket Drive, Arlington, TX 76015. Wherever the term "Owner" is used herein, such term shall include Owner's principals and any nominee, lessee, assignee or successor in interest.

1.3.12. Project Area. "Project Area" is the Richards Boulevard Redevelopment Project Area, as defined in the Redevelopment Plan.

1.3.13. Railyards Specific Plan. "Railyards Specific Plan" means the Railyards Specific Plan approved by the City Council on December 13, 1994 by adoption of Resolution No. 94-071.

1.3.14. Redevelopment Plan. "Redevelopment Plan" is the Redevelopment Plan for the Richards Boulevard Redevelopment Project, as adopted by the City Council of the City on July 17, 1990, by City Ordinance No. 90-037, Fourth Series. A copy of the

Redevelopment Plan was recorded on September 15, 1993, in the Official Records of the County of Sacramento, in Book 930915, beginning at page 0128.

1.3.15. Related Office. "Related Office" means office related to the operation, administration, or sales aspects of existing Current Uses on the Site.

1.3.16. Richards Boulevard Area Plan. "Richards Boulevard Area Plan" (RBAP) means the land use plan approved by the City Council on December 13, 1994 by adoption of Resolution No. 94-071.

1.3.17. Richards Boulevard Special Planning District Ordinance. "Richards Boulevard Special Planning District Ordinance" (RBSPD) means the Zoning Ordinance amendment approved by the City Council on December 13, 1994.

1.3.18. Site. "Site" is that real property that is subject to this Agreement, as shown on the parcel map attached as Exhibit B: Parcel Map. The Site includes all improvements contained within the Site. The Site as of the effective date is more particularly described in the legal description attached as Exhibit A: Legal Description.

1.3.19. Term. "Term" is the term of this Agreement. The Term shall commence on the Effective Date and is fully defined in Section 10 ("Term").

2. Recordation of Agreements. Owner and Agency shall, within three (3) business days following the date of the Resolution approving this Agreement, record this OPA. Owner shall pay any costs, taxes, or fees related to recordation.

3. Use of the Site. To the extent of the jurisdiction of the Agency, the use of the Site shall be governed by Section 4 ("Use and Development of the Subject Property: Vesting of Certain Rights") of the Development Agreement which is incorporated herein by reference.

3.1. No Restriction on New Land Uses. This OPA shall not restrict the Agency

in its establishment of any land use rules, regulations or other restrictions which, in the absence of this OPA, it could enact to govern the Site. In no event, shall such rule, regulation or restriction impair the obligations of the parties under this OPA or the Development Agreement.

3.2. Use Prohibitions. Owner shall not permit any use of the Site for the sale or display of materials containing pornography, nudity, graphic violence or drug paraphernalia. Owner shall not permit any use of the Site as a massage parlor, adult bookstore or second-hand store or to conduct any similar activity which is in violation of any applicable law, ordinance, regulation or restriction.

3.3. Nondiscrimination. Owner, its successors and assigns, shall not discriminate on the basis of race, color, ancestry, religion, creed, sex, marital status, or national origin in the sale, lease or rental or in the use or occupancy of the Site and any improvements.

3.4. Payment of Taxes, Assessments, Encumbrances and Liens. The Owner shall pay all real estate taxes and assessments assessed and levied on the Site, in accordance with law. Nothing contained in this OPA shall prohibit the Owner from reasonably contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Owner in respect to such contest.

3.5. Permits. Before commencement of construction or development of any buildings, structures or other work of improvements upon the Site or change of use of the Site, the Owner shall at its own expense secure any and all certifications and permits which may be required by any governmental agency having jurisdiction over such construction, development, work or use. This Agreement shall not be considered a waiver of any permit or fee required by any governmental agency, other than the City as per the Development Agreement.

3.6. Agency Access to the Site. Owner shall permit Agency representatives access, without charge, to the entire Site at such times, agreed upon by Agency and Owner, provided that such access is reasonably necessary to carry out its obligations and protect its interests under the OPA. Owner shall not unreasonably delay the time or areas of the Site in which such access is permitted. Owner may require that such access be in the company of a representative of Owner who shall not interfere with the actions of the Agency except as reasonably necessary to protect the Owner's property, employees or operations.

4. Covenants Run With the Land. All of the Site shall be subject to this Agreement. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Site or any portion thereof, or any interest in the Site, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors by (merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant in this Agreement to do or refrain from doing some act on the Site, or with respect to any property within the Redevelopment Project Area, (i) is for the benefit of such properties and is a burden upon such properties, (ii) runs with such properties, and (iii) is binding upon each owner or interest holder during its ownership of, or interest in, all or any portion of such properties, and (iv) shall benefit such properties and each other person or entity succeeding to any interest in such properties.

5. Cooperation of Agency. Agency agrees to reasonably cooperate with Owner in implementing all of the conditions of any required permits for construction or operation on the Site. In addition, Agency shall reasonably cooperate with Owner in its endeavors to obtain any other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Site (such as the City, public utilities, special districts or utility districts). Agency is not obligated by this Agreement to provide financial assistance to Owner.

6. Assignment.

6.1. Right to Assign. Owner shall have the right to sell, assign or transfer in whole or in part its rights, duties and obligations under this Agreement, to any person or entity at any time during the Term. However, in no event shall the rights, duties and obligations conferred upon Owner pursuant to this Agreement be at any time so transferred or assigned except through a transfer of all or a portion of the Site. In the event of a transfer of a portion of the Site, Owner shall have the right to transfer its rights, duties and obligations under this Agreement which are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Site.

Agency shall not be obligated to any third party by reason of any such

assignment or transfer unless and until such assignee or transferee shall have executed an unconditional written acceptance of Owner's obligations under this Agreement.

6.2. Release Upon Transfer. Upon the sale, transfer or assignment of Owner's rights and interests under this Agreement, Owner shall be released from its obligations under this Agreement with respect to that portion of the Site sold, transferred or assigned if (i) Owner is not then in material default under this Agreement (ii) Owner has provided to City and Agency a written agreement in which the transferee expressly and unconditionally assumes all of the obligations of Owner under this Agreement with respect to the portion of the Site acquired. Owner's notice to Agency and transferee's written assumption shall also disclose the identity of the transferee and the transferee's address.

Failure to deliver a written assumption agreement shall not effect any covenants and their running with the land, shall not be negated, modified or otherwise affected by the failure to obtain a written assumption from such transferee, and such transferee shall be fully bound by such covenants, in any event.

7. Indemnification. Owner and Agency shall indemnify, protect and defend the other party, its officers, directors, employees and agents, and hold them harmless from any and all claims and liability, arising from this agreement for damage caused by or resulting from its acts or omissions, or the acts or omissions of its officers, employees, agents or independent contractors and for any and all costs incurred by the other party in defending against such claims, including fees and court costs of investigators, witnesses and attorneys.

8. Lender Protection.

8.1 Lender's Rights. No breach of this Agreement shall defeat, render invalid, diminish or impair the Lender's lien against the Site made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against Lender. Lender shall not, by this OPA, gain greater rights than those of Owner with regard to the uses of the Site.

8.2. No Duty to Operate. Notwithstanding the provisions of Section 9.1 ("Notice of Breach and Cure Period"), no Lender shall have any

obligation or duty under this OPA to operate the Current Use or to construct or complete the construction of any improvements, or to guarantee such operation, construction or completion; provided, however, that Lender shall not be entitled to devote the Site to any uses or to construct any improvements on the Site other than those uses or improvements provided for or authorized by this OPA.

8.3. Lender's Notice of Default and Cure Right. If Agency receives a notice from Lender requesting a copy of any notice of default given Owner under this OPA, Agency shall concurrently deliver to Lender any notice given to Owner by Agency that Owner has committed an event of default. As a condition of such notice, Owner shall specify to Agency the address for service of notices. Lender shall have the right during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the default claimed in Agency's notice.

9. Defaults and Remedies. A failure or delay by a party to perform any term or provision of this OPA constitutes a default of this OPA.

9.1. Notice of Breach and Cure Period. A party claiming a default or material breach of this OPA by the other shall deliver written notice of the breach or default ("Notice of Breach") within thirty (30) calendar days after the inception of the breach. The Notice of Breach shall, with reasonable particularity, specify the reasons for the claim of default or breach.

If the other party determines that the event does constitute a default or material breach, such party shall immediately commence and diligently proceed to cure such default or breach within sixty (60) days after receipt of the Notice of Breach. If such party does not promptly begin and diligently pursue a cure of, or fails to cure, the default or breach within sixty (60) days, the aggrieved party may institute proceedings to cure the default or breach, as provided in this OPA.

If the other party instead determines that the event does not constitute a default or material breach, such party shall, within sixty (60) days of receipt of the Notice of Breach, deliver a written objection to the Notice of Breach ("Objection") which specifies with reasonable particularity the reasons that a default or breach has not occurred.

Within the next sixty (60) days following the Objection, the party claiming the breach or default may initiate judicial proceedings or binding arbitration, as provided in this OPA. Failure to initiate judicial proceedings or binding arbitration within ninety (90) days after receipt of the initial Objection shall preclude the party claiming breach or default from initiating such proceedings or arbitration based upon the breach or default described in the Notice of Breach.

9.2. Arbitration. Any controversy, dispute or claim between the Agency and Owner arising out of or relating to this Agreement, or any breach thereof, shall, at the request of either party, be submitted to arbitration in Sacramento, California, pursuant to the Commercial Arbitration Rules of the Judicial Arbitration and Mediation Service except as set forth in this OPA. The arbitrator or arbitrators shall be former judges. All arbitration proceedings, or any action to enforce such proceedings, shall be conducted in as confidential a manner as permitted by law. No prehearing discovery shall be permitted except upon an order of the administrator after demonstration of need. The arbitrator or arbitrators shall be authorized to award any and all of those remedies set forth in this Section 11 ("Defaults and Remedies"). Any award of the arbitrator or arbitrators shall be final and binding and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any state or federal court having appropriate jurisdiction. In any such arbitration, a written decision stating findings of fact and conclusions of law shall be rendered, and any arbitration decision must be based on correct application of law and findings of fact based upon a preponderance of evidence admissible under the Evidence Code of the State of California. The arbitration proceeding shall be reported by a certified court reporter, and all evidence shall be marked and retained as part of the record of the proceedings by the arbitrators or arbitrator until a final judgment on the arbitrators' award is confirmed or the award is vacated. The fee of the arbitrator or arbitrators shall be paid by the party demanding arbitration. The parties agree that this arbitration provision shall not preclude either party from seeking judicial injunctive relief to preserve the status quo pending completion of the arbitration proceedings and enforcement of any award rendered by the arbitrator or arbitrators.

9.3. No Waiving by Delay. Any delay by either party in asserting any rights under this Section shall not operate as a waiver of such rights, or to bar or limit such rights in any way. Any express waiver made by either party with respect to any specific default by the other party under this

Section shall not be considered as a waiver of the rights of the party claiming them with respect to any other defaults by the other party under this Section or with respect to the particular default except to the extent expressly waived in writing.

10. Term. The Term of this Agreement shall be 30 years or until the Current Use, as expanded or modified hereunder, ceases, whichever is sooner. The Current Use is deemed for purposes of this section to cease when any of the following occur:

10.1. The entire Site is vacant for a period of greater than two years; or

10.2. Cumulative expansion of the Current Use exceeds 15% of the existing building square footage per Exhibit C ; or

10.3. Any portion of the Site is developed or redeveloped for a use other than one of the Current Uses.

11. Effect of Referendum or Legal Challenge on Effective Date. In the event of a challenge to the adoption of the Richards Boulevard Area Plan and/or the Richards Boulevard Special Planning District Ordinance, either by the filing of a valid referendum petition or by the filing of a lawsuit, or both, this Agreement shall have no force and effect until i) in the event of a referendum petition, the City Council submits the referendum to the voters for decision and the voters deny the referendum, thereby upholding the Richards Boulevard Area Plan and/or Richards Boulevard Special Planning District Ordinance; (ii) in the event of a legal challenge, the lawsuit is the subject of a final decision, by judgment or settlement agreement, pursuant to which Richards Boulevard Area Plan and the Richards Boulevard Special Planning District Ordinance are determined to be lawful and effective; (iii) in the event both a valid referendum petition and a lawsuit are filed, until the latter of the dates specified in (i) and (ii) immediately preceding. Provided, however, that if the RBAP or the RBSPD are the subject of a successful referendum or otherwise invalidated, this Agreement shall have no force or effect unless the City, within five years after this Agreement is executed by the Agency, adopts a plan or ordinance substantially similar to the RBAP or RBSPD or otherwise imposes Residential zoning on the Site or surrounding area.

12. Agreement not to Challenge Certain Documents. Owner agrees not to challenge judicially the City's adoption of the Railyards Specific Plan, the Richards Boulevard Area Plan, and the Richards Boulevard Special Planning District Ordinance, the supporting environmental documentation or their implementing documents, consistent

with those Plans and Ordinances or any of them, except as provided in the Development Agreement. In the event Owner does challenge any of the foregoing, or any of them, as adopted, this Agreement shall be null and void.

13. Limitation on Remedies. No Party shall be liable for damages to another Party as a result of breach or termination of this Agreement. The Parties agree that monetary damages are inappropriate and that it is extremely difficult and impractical to fix or determine the actual damages to a party as a result of a default and/or a termination of this Agreement, and that equitable remedies and remedies at law other than damages are particularly appropriate remedies for enforcement of this Agreement, such as actions for specific performance, declaratory and injunctive relief, and mandamus or special writs. The Parties agree that each Party may pursue any remedy at law or equity available for the breach of any provision of this Agreement other than damages.

14. General Provisions.

14.1. Counterparts. This OPA may be executed in five (5) counterpart originals, each of which shall constitute one and the same instrument.

14.2. Construction of OPA. In the event of a conflict between the terms of this OPA and the Exhibits, this OPA shall be given precedence. The language in all parts of this Agreement shall be construed as a whole and in accordance with its fair meaning. The captions of the sections and subsections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California. If any material provision of this Agreement shall be judged to be invalid, void or illegal, the parties may by mutual agreement amend or terminate this Agreement in the manner provided by the law of California for the adoption of owner participation agreements.

14.3. Change of Laws. If state or federal laws enacted after the Effective Date prevent or preclude compliance with any provision of this OPA, such provision shall be modified or suspended as may be necessary to comply with such laws. Immediately after enactment of any such new law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such suspension or modification would have on the purposes and intent of this OPA. In any event, either party may, at its sole expense, challenge the laws preventing compliance with the terms of this OPA, and if the challenge is successful,

this OPA shall remain unmodified and in full force and effect.

14.4. Approvals. Approvals required under this OPA of either party shall not be unreasonably withheld.

14.5. Entire Agreement. This OPA integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous agreements between the parties with respect to its subject matter.

14.6. Severability. If any provision of this OPA is held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions shall remain in full force and effect; provided that the operation of the remaining provisions shall substantially fulfill the intent and confer the benefits of the parties in entering into this OPA.

14.7. Waivers and Amendments. All waivers of the provisions of this OPA must be in writing and signed by the appropriate authorities of the Agency or the Owner, and all amendments to this OPA must be in writing and duly authorized and executed by the Agency and the Owner.

14.8. Nonliability of Agency Officials and Employees. No member, official or employee of the Agency shall be personally liable to the Owner, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this OPA.

14.9. Notices and Demands. A notice, demand or other communication under the OPA by either party to the other shall be in writing and shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the address set out above, or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided for a Notice in this Section.

14.10. Estoppel Certificate. Either party may, for good cause, request in writing an estoppel certificate from the other party certifying, to the best of its knowledge, all of the following:

14.10.1. This Agreement is in full force and effect and a

binding obligation of the parties.

14.10.2. This Agreement has not been amended or modified either orally or in writing; of if amended, the nature of the amendments.

14.10.3. The requesting party is not in default in the performance of its obligations under this Agreement or if in default, the nature of any such defaults.

The parties receiving a request for such estoppel certificate shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt of the request. The Executive Director of Agency shall have the right to execute, on behalf of Agency any such estoppel certificate requested by Owner. Agency acknowledges that such an estoppel certificate may be relied upon by transferees and Lender.

This OPA, when executed by the Owner and delivered to the Agency, must be authorized, executed and delivered by the Agency within Three (3) days after approval of the Resolution approving this agreement or this OPA shall be void, except to the extent that the Owner shall consent in writing to a further extension of time for the authorization, execution and delivery of this OPA.

THIS OPA IS EXECUTED as of \_\_\_\_\_

Owner: MARTIN SPROCKET & GEAR, INC.

Agency: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
JOHN E. MOLLOY  
Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Agency Counsel

State of California

ss.

On \_\_\_\_\_, 199\_ before me, Joan Roberts, personally appeared JOHNE E. MOLLOY, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said County and State

State of California

ss.

On \_\_\_\_\_, 199\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said County and State

ORDINANCE No. 95-019  
MAR 28 1995

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February 7, 1995  
Martin Sprocket and Gear, Inc. OPA  
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ORDINANCE No. **95-019**

MAR 28 1995

**EXHIBIT A**  
**LEGAL DESCRIPTION OF REAL PROPERTY**

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EXHIBIT "A"

All that certain real property situate, lying and being in the City of Sacramento, County of Sacramento, State of California, particularly described as follows:

Beginning on the north line of Vine Avenue distant thereon North 18°48'01" East 1782.69 feet, North 50°02'15" West 42.19 feet and North 20°41'14" East 63.57 feet from the intersection of the center line of North "D" Street (of the City of Sacramento) with the center line of Dos Rios Boulevard; thence from said point of beginning along the North line of said Vine Street South 50°02'15" East 360.85 feet to the West line of the parcel of land conveyed to Aldo Lovotti et-al by deed recorded in Book 72-08-16 page 26 of Official Records of said County; thence along the exterior lines of said parcel North 16°53'40" East 506.28 feet and South 73°06'20" East 345.27 feet; thence Northwesterly along an arc of a curve to the left, having a radius of 276.84 feet, subtended by a chord bearing North 23°59'46" West 280.61 feet thence North 57°56'25" West 68.38 feet to a point on the southwesterly boundary of the parcel of land conveyed to Central Pacific Railway Company, a corporation by deed recorded May 13, 1958 in Book 3507 page 639 Official Records of said County; thence along the southwesterly line of said parcel the following three (3) Courses and distances, (1) North 62°37'06" West 192.17 feet, (2) Northwesterly along an arc of a curve to the left, having a radius of 563.14 feet subtended by a chord bearing North 72°23'12" West 191.09 feet, (3) North 82°09'19" West 5.75 feet; thence leaving said railroad parcel South 20°41'14" West 632.77 feet to the point of beginning.

**EXHIBIT B**  
**PARCEL MAP**

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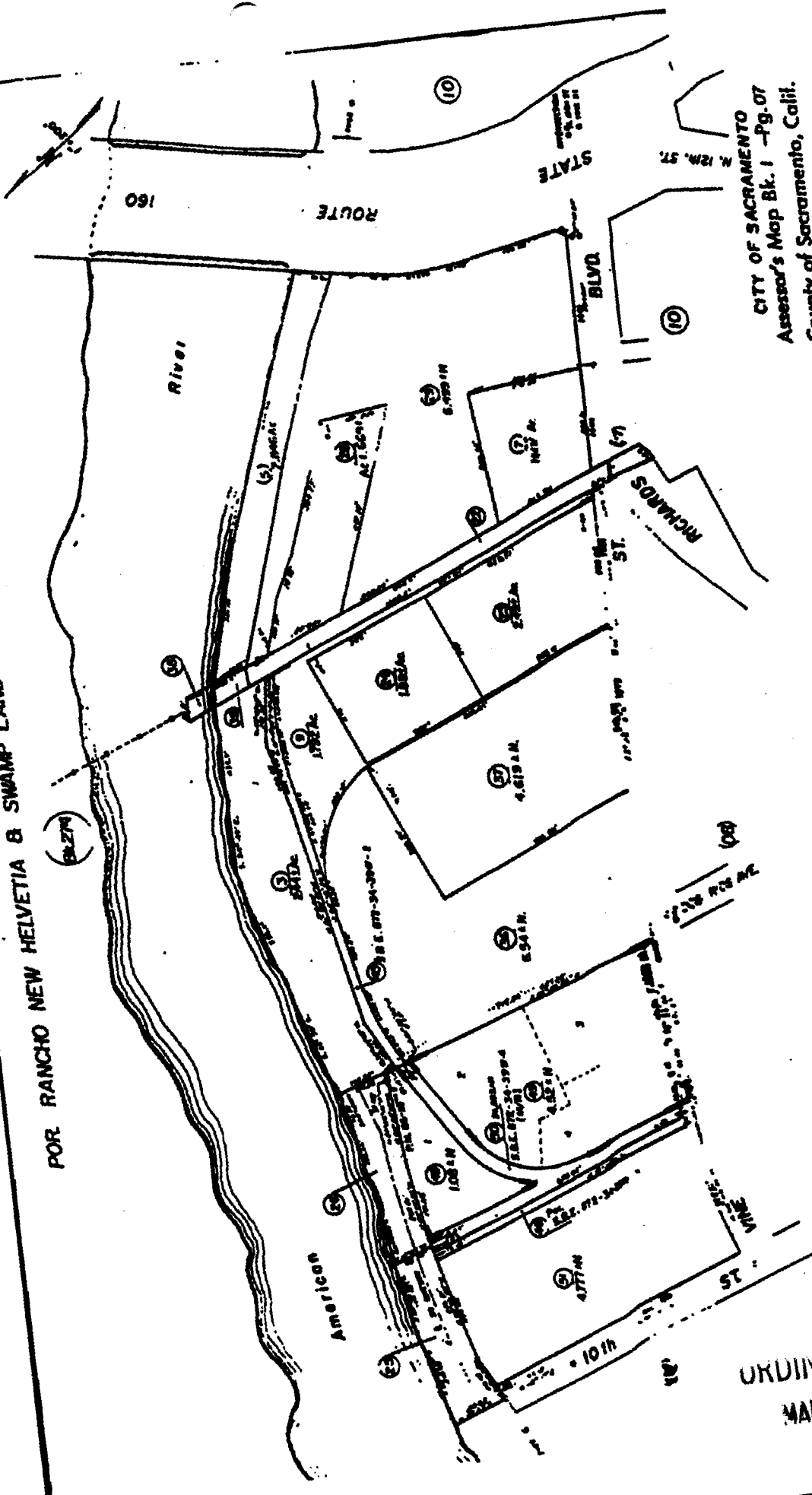
February 7, 1995  
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1-07

Tax Area Code

POR RANCHO NEW HELVETIA & SWAMP LAND SURVEYS



CITY OF SACRAMENTO  
Assessor's Map Bk. 1 -Pg. 07  
County of Sacramento, Calif.

NOTE--Assessor's Block Numbers Shown in Ellipses.  
Assessor's Parcel Numbers Shown in Circles.

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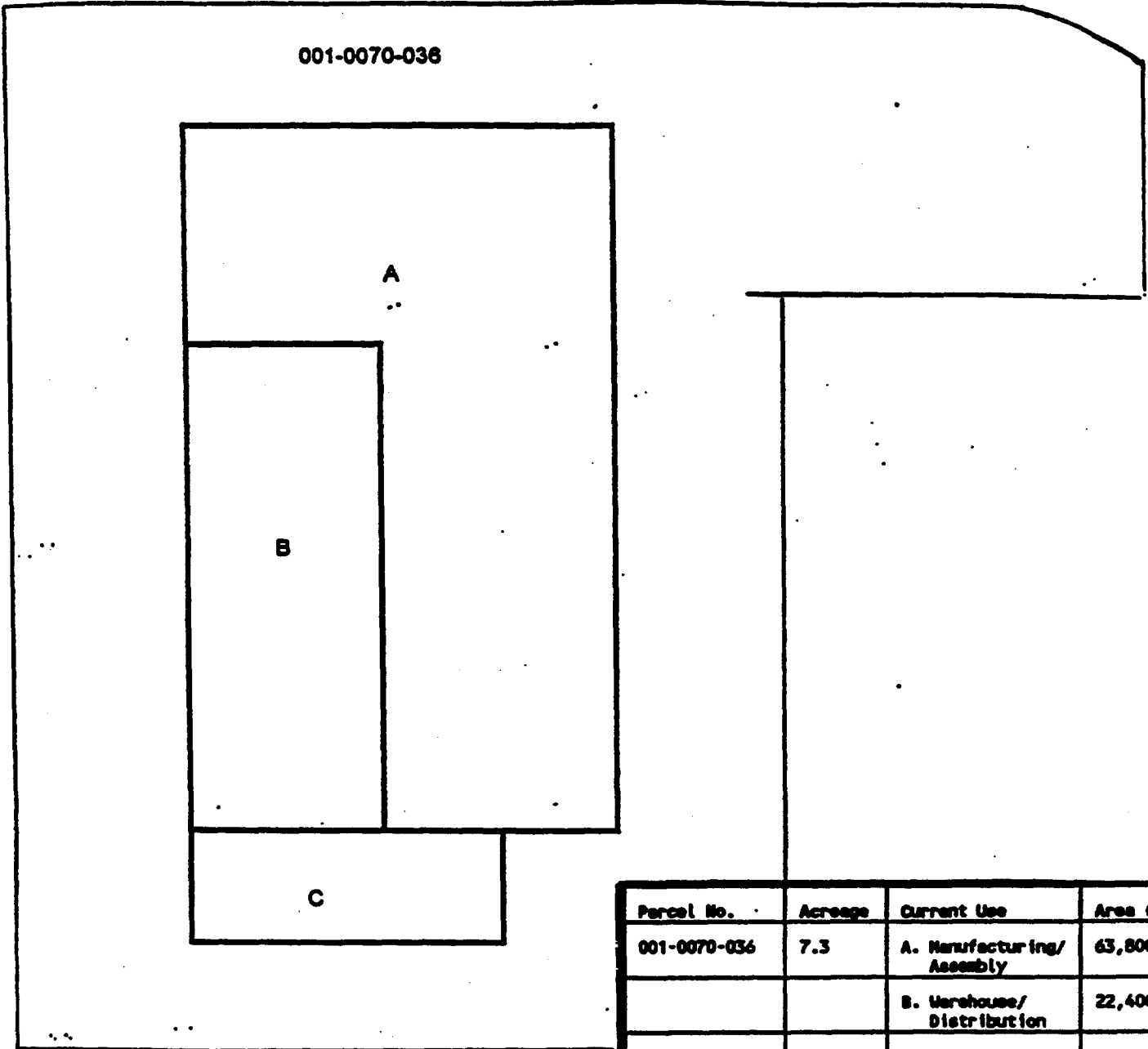
**EXHIBIT C**  
**CURRENT USE**

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001-0070-036

A

B

C

VINE STREET

DOS RIOS STREET

Parcel No.	Acres	Current Use	Area (s.f.)
001-0070-036	7.3	A. Manufacturing/ Assembly	63,800
		B. Warehouse/ Distribution	22,400
		C. Office/Sales	9,000
<b>Total</b>	<b>7.3</b>	<b>Total:</b>	<b>95,200</b>

Martin Sprocket & Gear Inc.

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**EXHIBIT D**

**DEVELOPMENT AGREEMENT**

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