

OFFICIAL RECORDS  
SACRAMENTO COUNTY, CALIF.

94 MAY 19 PH 1:21

*[Signature]*  
COUNTY CLERK-RECORDER

Recording requested by:  
Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105

When recorded, mail certified copy to:  
Department of Toxic Substances Control  
Region 1  
10151 Croydon Way, Suite 3  
Sacramento, California 95827

COVENANT AND AGREEMENT  
TO RESTRICT USE OF PROPERTY

FEE  
\$67.<sup>00</sup>  
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21

(SACRAMENTO STATION SITE AT THE SOUTHERN PACIFIC TRANSPORTATION COMPANY,  
SACRAMENTO LOCOMOTIVE WORKS, SACRAMENTO, SACRAMENTO COUNTY, CALIFORNIA)

This Covenant and Agreement ("Covenant") is made on this 6<sup>th</sup>  
day of May, 1994, by and between the Southern Pacific  
Transportation Company, a Delaware Corporation ("Covenantor") who is  
the owner of record of certain real property situated in the City of  
Sacramento, County of Sacramento, State of California, described in  
Exhibit "A" attached hereto and incorporated herein by this reference  
("the Property") and the California Department of Toxic Substances  
Control ("Department"), with reference to the following facts:

A. The Property, known as the "Sacramento Station Site" and as  
described in Exhibit "A", is located along the southern portion of  
Southern Pacific Transportation Company's Sacramento Yard. The  
Southern Pacific Transportation Company's Sacramento Yard consists of  
more than 220 acres of industrial property located immediately north  
of downtown Sacramento, east of the Sacramento River, and south of  
the American River. Historically, uses of various portions of the

Sacramento Station Site have included foundry activities, maintenance of way and company equipment facilities, a rail passenger terminal, passenger train and car maintenance, and other industrial uses. A Remedial Action Plan for the Site was approved by the Department on December 7, 1989.

B. Covenantor, in compliance with the Sacramento Station Remedial Action Plan dated December 7, 1989, approved by the Department, has attempted to treat and/or remove materials constituting hazardous waste from the Property, such materials including, but not limited to, soil contaminated with petroleum hydrocarbons, antimony, arsenic, copper, and lead, has taken other actions, and continues to take actions as of the date of this Covenant in compliance with the Remedial Action Plan. Due to inaccessibility, small areas of soil contaminated with petroleum hydrocarbons, lead and possibly other compounds remain on the site. The locations of these areas are depicted in Exhibit B. Remediation of these areas is required prior to excavation or initiation of any redevelopment activities in those areas.

Investigation and remediation activities covered in the December 7, 1989 Remedial Action Plan for this property addressed only soil contamination. Investigation of ground water indicates that it contains materials including, but not limited to, vinyl chloride, 1,1 dichloroethane (1,1 DCA), 1,2 dichloroethene (1,2 DCE), trichloroethene (TCE), methylnapthalene, tetrachloroethene (PCE),

naphthalene, arsenic, and lead. The sources for these contaminants are believed to be at locations on the facility other than Sacramento Station Site. Investigations and remediation of the ground water contaminants will be addressed in a separate Remedial Action Plan. Chronic exposure to lead has been known to cause learning deficits in children. It is classified by the United States Environmental Protection Agency (USEPA) as a probable human carcinogen. Exposure to arsenic has been shown to cause hyperkeratosis, anemia, skin cancer, and leukemia. It is classified by EPA as a known human carcinogen. Chronic exposure to antimony may cause pneumoconiosis. 1,1 DCA and 1,2 DCE are classified by the USEPA as a possible human carcinogens. TCE and PCE are classified by USEPA as probable human carcinogens.

C. Covenantor and the Department desire and intend that, for future protection of public health, safety, and the environment, the Property shall be used in such a manner as to avoid any potential harm to persons or property which could potentially result from hazardous wastes which have been deposited historically on portions of the Property.

D. The Covenantor and the Department further desire and intend that the terms of the Covenant are for the mutual benefit of the Property, future owners and occupants of the Property, the Department, and the public and, therefore, shall constitute an

easement, covenant, restriction, and servitude held by the Department on behalf of the People of the State of California in the Property which shall run with the land, shall inure to the benefit of the Property, future owners and occupants of the Property, the Department, and the public and shall apply to and bind the respective successors in interest thereof.

ARTICLE I  
GENERAL PROVISIONS

1.01 Statement Regarding Hazard. The purpose of this Covenant is to protect occupants of the property and the general public from hazardous wastes on the property by restricting use of the property appropriately. Accordingly, this Covenant is not, and shall not be construed as, a statement, admission, or declaration by the Covenantor or the Department that in entering into this Covenant, Covenantor or the Department intend to create or permit to exist on the property a health, safety, environmental, or other hazard or nuisance.

1.02 Provisions To Run With The Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon the Property and subject to which the Property shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and shall

apply to and bind the respective successors in interest thereof.

Each and all of the Restrictions are imposed upon the entire Property as mutual equitable servitude in favor of the Property and every portion thereof... Each and all of the Restrictions are imposed pursuant to and by agreement by and between the Covenantor and the Department under Sections 25355.5 and 25356.1 of the California Health and Safety Code and run with the land pursuant to Section 25230(a)(1) of the California Health and Safety Code.

1.03 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors and assignees, and successors of such owner, heirs, successors, and assignees, that they are bound by the Restrictions as herein established, which must be adhered to for the benefit of future Owners and Occupants of the Property, the Department and the public, and that their interests in the Property will be subject to the Restrictions contained herein.

1.04 Incorporation Into Deeds and Leases. Covenantor desires and covenants, and all purchasers, lessees or possessors shall be deemed to have covenanted, that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of the Property.

1.05 City of Sacramento Notification. The City of Sacramento shall be consulted by the Department prior to approval by the Department of any uses or modification of uses of the property as set forth in Article 3.01B, Excavation of Soil, as set forth in Articles 3.01C and 3.01E, Infrastructure Improvements, as set forth in Article 3.01D, or Approval of Remediation of Additional Contamination Found, as set forth in Article 3.01F. Approval of modification or uses pursuant to Article 3.01B shall not create any entitlement under local or state law. Copies of any such approval shall be provided to the City by the Department.

## ARTICLE II

### DEFINITIONS

2.01 City. "City" shall mean the City of Sacramento and shall include its successor agencies, if any.

2.02 Department. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.03 Excavation. "Excavation" shall mean the digging out and/or the removal of soil from the Property, including landscaping.

2.04 Improvements. "Improvements" shall mean all buildings, structures, roads, driveways, regrading, landscaping, bodies of

water, park and playground improvements, and paved parking areas, constructed or placed upon any portion of the Property.

2.05 Industrial And Commercial Use. "Industrial and Commercial" use shall mean structures and improvements relating to the manufacture, production, or exchange of goods or technology and the provision of services including, but not limited to, offices, cultural facilities, restaurants, entertainment facilities, conference facilities, retail shops, transient occupancy hotels, transportation facilities, warehouses, and manufacturing buildings.

2.06 Occupants. "Occupants" shall mean the Covenantor, its successors in interest, and their successors in interest, including heirs, and assigns, who at any time hold title to all or any portion of the Property.

2.07 Owner. "Owner" shall mean the Covenantor, its successors in interest, and their successors in interest, including heirs, and assigns, who at any time hold title to all or any portion of the Property.

### ARTICLE III

#### DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Every Owner and Occupant promises to restrict the use of the Property described in Exhibit "A" as follows:

A. Permitted Uses. The Property may be used for the following, without restriction, except as otherwise provided under law or other provisions of this Covenant:

(1) Industrial and commercial (as defined in Article II Section 2.05),

(2) Landscaped and paved areas (such as parking lots and court yards) ancillary to industrial, commercial, and office structures that are covered with clean soil satisfying the requirements of paragraph 3.01.E, below, and are not used for play areas.

B. Restricted Uses. All other uses or modifications of uses are precluded unless the Owner or Occupant has demonstrated to the satisfaction of the Department that all remedial measures necessary for protection of human health and the environment have been taken. Other uses or modification can be implemented only after prior written approval from the Department. Said approval shall not be unreasonably withheld or delayed. Physical modifications to existing interior uses which do not disturb the soil, paving, or soil/structure interface shall not require the Department's approval. Such Restricted Uses include but are not limited to the following:

(1) For those areas where identified soil contamination is present as identified in Exhibit B, excavation for any purpose, other

than remediation, and any development or infrastructure improvement activities at or immediately adjacent to these areas are prohibited prior to completion and approval by the Department of any or all required remediation.

(2) All uses not specified in paragraph 3.01.A(1) above. These include, but are not limited to, residential (e.g. single and multiple family, transient occupancy), day care, educational, and public or institutional uses (e.g., cultural facilities, health care facilities, and social service facilities).

(3) All parks, playgrounds, water features, open space, yards, gardens, and landscaped areas, except those specified in paragraph 3.01.A(2), above.

C. No excavation at and/or removal of any soil from the Property shall be allowed, except as allowed pursuant to Section 3.01.E, without the prior written approval of the Department. Excavated soil must be tested for those compounds noted in the preamble of this Covenant and properly used, treated, and/or disposed of as required by law and the Department.

D. Infrastructure improvements (e.g. streets, rail lines, utilities) must be developed consistent with paragraph 3.01.E.

E. Over those areas of the Property to be used for industrial or commercial uses where human exposure to soil is possible, such as landscaped areas or utility easements, the Owner or Occupant of the Property shall continually keep and maintain clean soil to such depth as the Owner or Occupant has demonstrated to the reasonable satisfaction of the Department to be protective of human health, and the environment. Except for routine landscape maintenance (e.g. replacement of portions of the irrigation system, or vegetation), no use, or modification of use, of the Property shall be allowed to disturb the integrity of the overlying clean soil, unless the Owner or Occupant demonstrates to the satisfaction of the Department: (1) that the disturbance is necessary to the present or proposed use of the Property and can be accomplished in a manner that will not materially increase any hazard or potential hazard to human health and or the environment, or (2) that such disturbance is necessary to reduce an imminent threat or endangerment to human health and safety or the environment.

F. In the event that additional contamination is found during development or redevelopment of the site, adequate measures shall be taken to achieve permanent remediation and prevent unacceptable exposure to humans or the environment. Discovery of contamination requires notification of the Department and the City within twenty-four (24) hours. Notification must be made to those individuals listed as contacts for the Department and City in

Section 5.02 of this document. Any plans for remediation must have prior approval by the Department.

G. No water from below the surface shall be extracted, utilized in any way, or consumed without prior approval by the Department. However, all ground water monitoring wells, extraction systems, and associated equipment used for monitoring or other activities required for remediation of ground water by SPTCo or its agents or successors, shall remain intact and access by the Department, SPTCo, or its agents or successors shall not be denied. No owner or occupant of the Property shall hinder, prevent, or permit the prevention of, required remediation efforts deemed necessary by the Department to remove or remediate ground water contamination.

3.02 Conveyance of Property. The Owner or Owners and the Occupants shall provide a thirty (30) day advance notice to the Department and City of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. Such notice shall not be required in the case of leases for internal space only, unless such lease is for a school or day care facility, or a nursing or health care facility. The Department shall not by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property or any interest in it except as otherwise provided by law or by reason of this Covenant.

3.03 Enforcement. Failure of an Owner or Occupant to comply with any of the requirements, as set forth in Section 3.01, shall be grounds for the Department, by reason of the Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Failure to maintain any mitigation requirements as set forth in Section 3.01 shall be grounds for the Department to file civil and criminal actions against the Owner as provided by law, including but not limited to the provisions of Chapter 6.5 and 6.8, Division 20 of the Health and Safety Code.

3.04 Notice in Agreements. The Covenantor shall provide a notice to all Owners and Occupants that shall accompany all purchase, lease, sublease, or rental agreements relating to the Property by supplying a copy of this Agreement. In this way all Owners and Occupants shall be aware of the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists".

ARTICLE IV

VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, subject to the prior written consent of the owner, any Occupant of the Property may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233 of the California Health and Safety Code.

4.02 Termination. Any Owner or, subject to the prior written consent of the owner, any Occupant of the Property may apply to the Department for a termination of the Restrictions as they apply to the Property or any portion of it. Such application shall be made in accordance with Section 25234 of the California Health and Safety Code.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or

dedication, of the Property to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person shall desire to give or serve any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three business days after deposit in the mail if mailed by United States mail, postage paid, certified, return receipt requested to the record Owner or (3) until record ownership changes:

To: Vice President-Real Estate  
Southern Pacific Transportation Company  
Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105

In every case, a copies shall be sent to:

Department of Toxic Substances Control  
Region 1  
Branch Chief  
Site Mitigation Branch  
10151 Croydon Way, Suite 3  
Sacramento, California 95827  
(916) 255-3545  
(916) 255-3747 FAX

and

Director of Planning Department  
City of Sacramento  
1231 I Street  
Sacramento, California 95814  
(916) 264-5571

5.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein are determined to be invalid for any reason, the remaining portions shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor, and by the Director, California Department of Toxic Substances Control. This instrument shall be recorded by Southern Pacific Transportation Company with the County recorder of the County of Sacramento within ten (10) days after the date of execution by both parties in accordance with the recording requirements of the California Health and Safety Code, Section 25230. The provisions of the Covenant will also be incorporated into, and become part of, the land use plan for the Property as instituted by the local planning agency.

5.06 References. All references to Code sections include successor provisions.

5.07 Nothing in this Covenant confers any rights to the Owner or Occupant above and beyond those otherwise in existence under state law.

5.08 Compliance and Cure.

A. The Department shall respond in writing to a written request by the Covenantor for confirmation of Covenantor's compliance with this Agreement within thirty (30) days after receipt of Covenantor's written request.

B. The Department shall give Covenantor reasonable written notice of any alleged default by Covenantor under this Agreement and a reasonable opportunity to cure the alleged default prior to exercising its remedies under this Agreement. This provision shall not restrict the Department in any way from otherwise exercising its authority under laws or regulation.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date first set forth above.

Covenantor: SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: [Signature]

Title: Vice President Real Estate

Date: May 5/94

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: [Signature]

Title: Acting Branch Chief Dept Toxic Substances Control

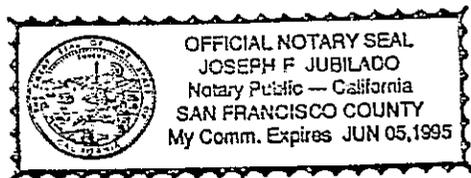
Date: 5/16/94

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN FRANCISCO )

On May 5, 1994, before me, Joseph F. Jubilado,  
Notary Public, personally appeared S. D. Steel -----,  
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.

Joseph F. Jubilado  
Signature of Notary



STATE OF CALIFORNIA

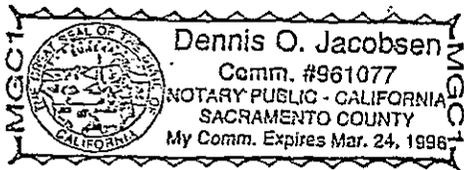
COUNTY OF Sacramento

On May 6, 1994, before me, the undersigned, a Notary Public in and for said state, personally appeared James ~~Ratasvold~~ Tjosvold, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Acting Branch Chief, of the Department of Toxic Substances Control, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

Dennis O. Jacobsen

Notary Public in and for said County and State



# EXHIBIT B

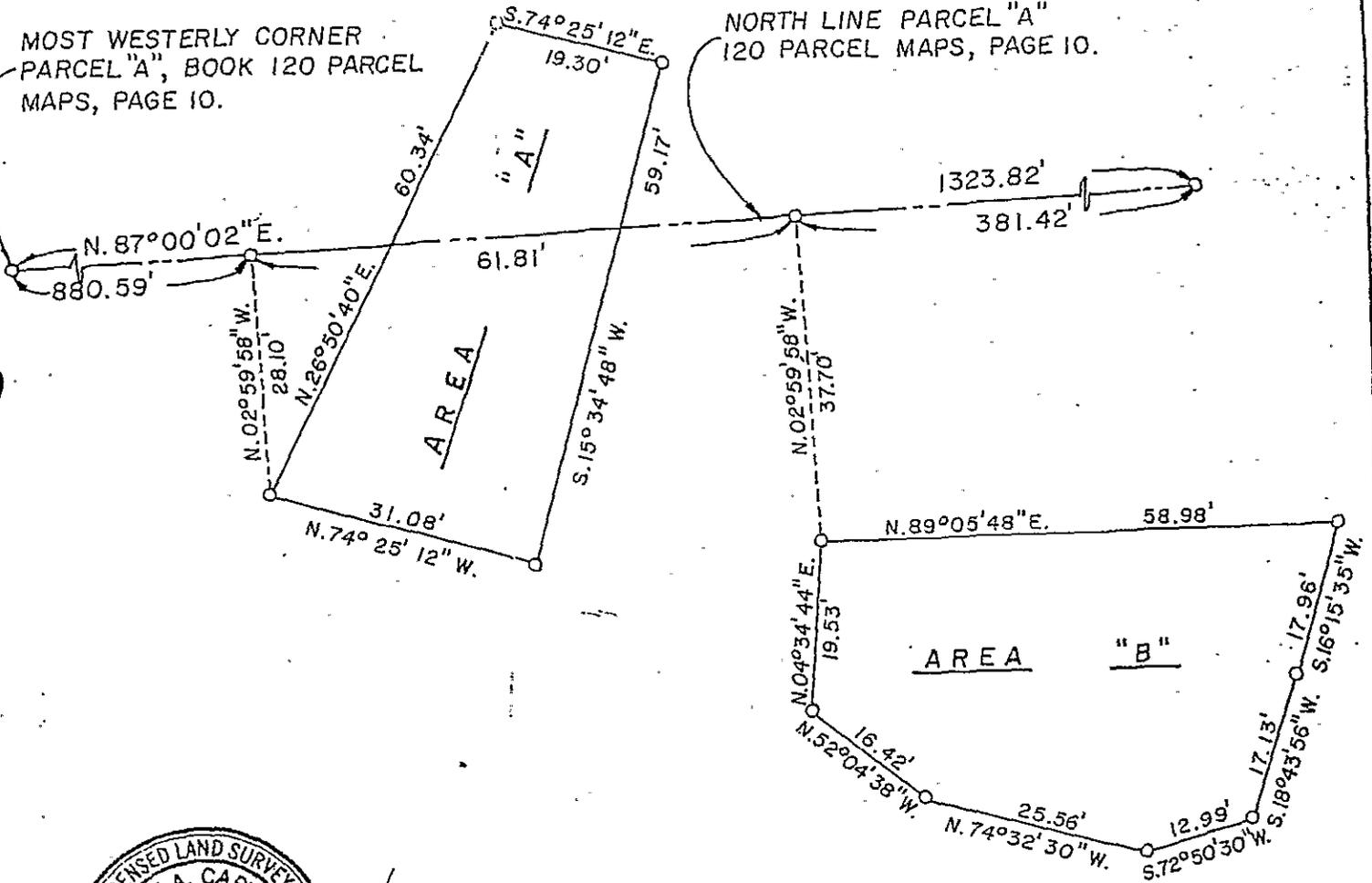
AREA "A" --- PEDESTRIAN TUNNEL AREA

AREA "B" --- LOADING RAMP AREA

N  
SCALE: 1" = 20'

MOST WESTERLY CORNER  
PARCEL "A", BOOK 120 PARCEL  
MAPS, PAGE 10.

NORTH LINE PARCEL "A"  
120 PARCEL MAPS, PAGE 10.



ROY A. CARTER SURVEYING, INC.

8415 VINDING WAY FAIR OAKS, CALIFORNIA 95628

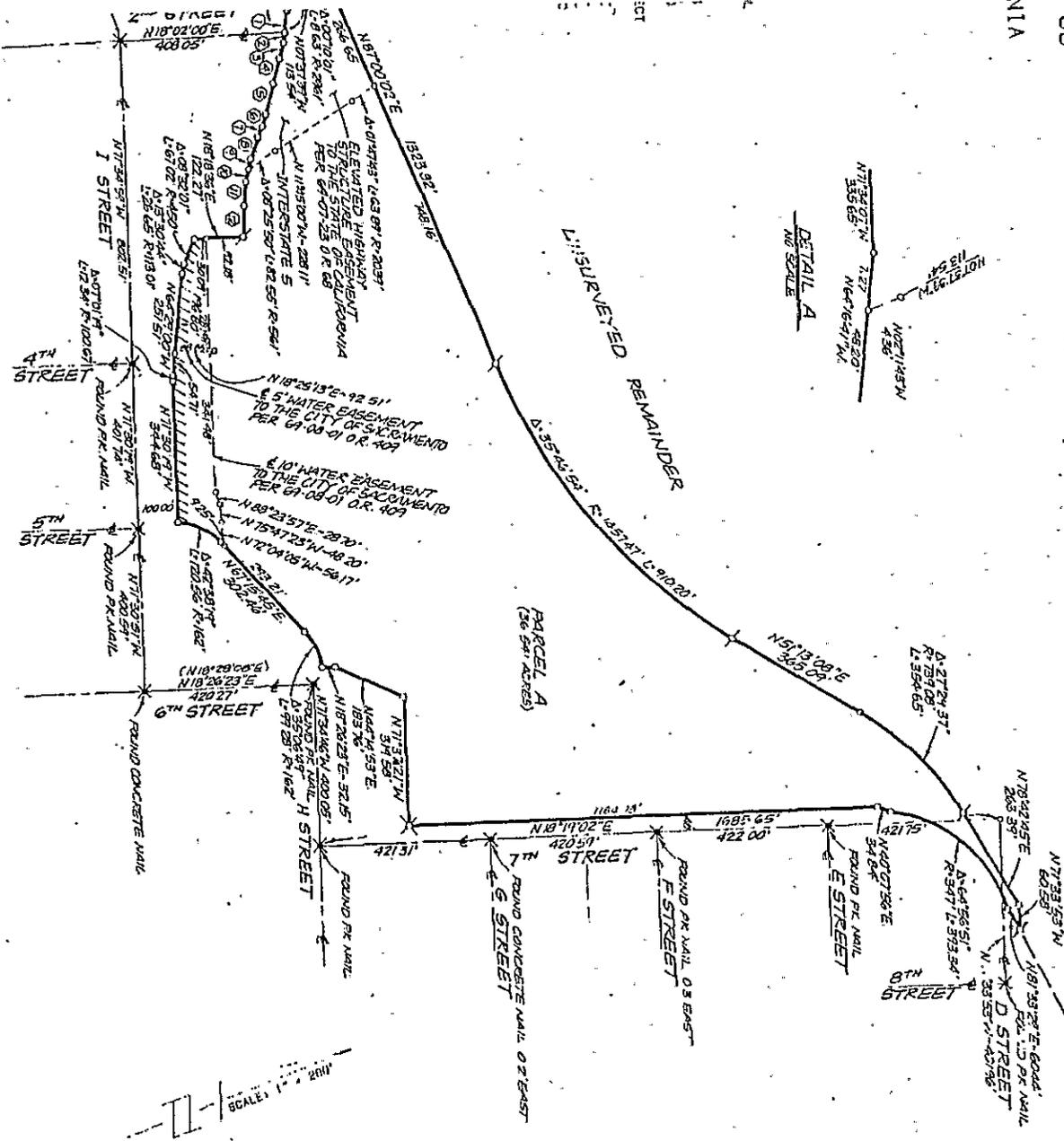
LAND SURVEYOR 3427 19161 967-9287

**BASIS OF BEARINGS:**  
 THIS SURVEY IS CONDUCTED WITH THE CENTERLINE OF THE STREETS AS SHOWN ON THE PLAN. THE BEARING IS GIVEN AS  $N \ 71^{\circ} 30' 19'' \ W$ .

**DETAIL A**  
 NO SCALE

**L'ISSUENED REMAINDER**

**PARCEL A**  
 (26.541 ACRES)



**EXHIBIT A**

**PARCEL MAP**  
**PORTION OF PROJECTED SECTIONS 35 & 36**  
**T. 9 N., R. 1 E., M.D.M.**  
**CITY OF SACRAMENTO STATE OF CALIFORNIA**  
**JULY, 1990 SCALE: 1"=200'**  
**THE SPINK CORPORATION**  
 Sheet 1 of 2 Sheets

**EXHIBIT A**

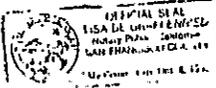
**OWNER'S STATEMENT:**  
 THE UNDERSIGNED HEREBY CONSENT TO THE PREPARATION AND RECORDING OF THIS PARCEL MAP.

SOUTHERN PACIFIC TRANSPORTATION COMPANY  
 DELAWARE CORPORATION

BY [Signature] S. D. STEEL - VICE PRESIDENT  
 BY [Signature] T. F. O'DONNELL - SECRETARY

**NOTARY ACKNOWLEDGMENT:**  
 STATE OF CALIFORNIA  
 COUNTY OF Sutter

ON July 4, 1990 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED S. D. Steel PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHO EXECUTED THE WITHIN INSTRUMENT AS THE Vice President AND Secretary RESPECTIVELY OF THE ABOVE NAMED CORPORATION. THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT SAID CORPORATION EXECUTED THE WITHIN INSTRUMENT PURSUANT TO ITS BY-LAWS OR AS RESOLUTION OF ITS BOARD OF DIRECTORS.



[Signature]  
 NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

**SURVEYOR'S STATEMENT:**

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF THE SOUTHERN PACIFIC TRANSPORTATION COMPANY IN JANUARY, 1990.

I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY. ALL MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED. SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATE: JULY 17, 1990

[Signature]  
 HAROLD A. WECKER L.S. 3013



**CITY ENGINEER'S STATEMENT:**

THIS MAP CONFORMS WITH REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE.

DATE: 7-27-90, 1990

[Signature]  
 DEVELOPMENT SERVICES DIVISION MANAGER  
 OF THE CITY OF SACRAMENTO  
 R.C.E. 19476 EXP. DATE 9-30-93

**CITY CLERK'S STATEMENT:**

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF SACRAMENTO HAS APPROVED THIS PARCEL MAP ENTITLED "PORTION OF PROJECTED SECTIONS 35 & 36, T. 9 N., R. 1 E., M.D.M."

DATE: July 30, 1990

[Signature]  
 CITY CLERK

**RECORDER'S STATEMENT:**

FILED THIS 31st DAY OF JULY, 1990, AT 12:43 P.M. IN BOOK 120