

25
WJ

Recording Requested By:

Campbell Center LLC (Former Owner,
Attn: Mr. Steve Campbell + Responsible
Pier 1, Bay 1 Party)
San Francisco, CA 94111

and

Novato Fair Shopping Center, LLC c/o Kimco Realty Corporation (Current Owner)
Attn: Mr. Scott Gerber
3333 New Hyde Park Road
Suite 100
New Hyde Park, NY 11042

When Recorded, Mail To:

Bruce H. Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY

[Novato Fair Shopping Center
Novato, CA 94947]

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 13th day of October, 2004 by Novato Fair Shopping Center LLC c/o Kimco Realty Corporation (Current Owner of Record), herein identified as the "Covenantor" of that certain property situated at the Novato Fair Shopping Center located on Diablo Avenue, in the City of Novato, County of Marin, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board") with reference to the following facts:

- A. The Burdened Property is identified in Exhibit A. A small portion of the Burdened Property, identified as Areas A and B in Exhibit D, contain hazardous materials.
- B. Contamination of the Burdened Property. Soil at the Burdened Property was

contaminated by dry cleaning operations conducted by the former tenant, Norge Cleaners, located at 936 Diablo Avenue, Novato, California. These operations resulted in contamination of soil and groundwater with organic chemicals including tetrachloroethene (PCE), trichloroethylene (TCE), cis 1,2-dichloroethylene, and trans 1,2-dichloroethylene, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Remedial activities implemented at the site include excavation of impacted soils, soil vapor extraction, and in-situ treatment of contaminants using potassium permanganate. Soil excavation was completed in all accessible areas within the former tenant space. The localized areas of impacted soil that could not be removed due to structural considerations were treated through the installation and operation of the soil vapor extraction system. This system was operated until monitoring confirmed that the extracted soil vapor had reached asymptotic levels. The low levels of VOCs remaining at the site were further treated using potassium permanganate. The soil containing residual hazardous material is identified as Area A in Exhibit D. Groundwater containing residual hazardous materials is identified as Areas A and B in Exhibit D.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater in the specific areas identified as Areas A and B in Exhibit D on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via dermal contact or inhalation exposure during invasive construction or earthwork activities. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for commercial/retail use and is adjacent to commercial and residential land uses.

E. Full and voluntary disclosure to the Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

F. The Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

G. Management of Residual Pollution. In order to assure continued protection of human health and the environment, a Risk Management Plan has been prepared and is attached hereto and incorporated herein by this reference as "Exhibit B". A copy of this document must be maintained by the Property Owner and shall be consulted prior to and complied with during any activities highlighted in the RMP.

H. Environmental Fact Sheet. An Environmental Fact Sheet has been prepared for the Burdened Property and is attached hereto and incorporated herein by this reference as "Exhibit C". Copies of the Fact Sheet shall be available from the Covenantor. Prospective purchasers of the Burdened Property must be made aware of the existence of the RMP and the Environmental Fact Sheet and a copy provided to them prior to entering into any sales agreement.

ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with the Burdened Property designated in Exhibit D and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors and assigns regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed. The Covenantor desires and covenants that a copy of the Covenant and the Restrictions set out herein shall be delivered via certified mail to each and all lessees within Areas A and B as designated on Exhibit D of the Burdened Property within ninety (90) days of the recordation of this Covenant. The RWQCB will be provided with proof of delivery to the affected tenants. All current and future leases, including amendments to current leases, entered into by Covenantor for any portion of the Burdened Property shall contain language prohibiting such lessees from making any improvements or alterations to the building slabs on, or the subsurface of, the Burdened Property without Covenantor / Owner(s) prior consent. All future leases or renewal of current leases of the Burdened Property shall also include language prohibiting such lessees from conducting any dewatering activities or installation of water wells for extracting water for any use. Furthermore, Covenantor(s) / Owner(s) shall be responsible that all Restrictions set forth herein, including Article 3.1h and those outlined in the Risk Management Plan incorporated by reference, shall be adhered to during any modifications to the Burdened Property.

1.4 Purpose. It is the purpose of this instrument to convey to the Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. The Covenantor(s) promises to restrict the use of the Burdened Property as follows:

- a. Development of the Burdened Property shall be restricted to industrial, commercial or office space;
- b. No residence for human habitation shall be permitted on the Burdened Property;
- c. No hospitals shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property, with the exception of learning centers consistent with retail / commercial use (e.g., beauty school, traffic school, educational / tutoring facilities), which will be permitted uses on the Burdened Property.
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- f. No Owners or Occupants of the Burdened Property or any portion thereof shall conduct

any excavation work in Area A as designated on Exhibit D of the Burdened Property, unless permitted in writing by the Board. All excavation activities within Areas A and B designated within Exhibit D shall be conducted in accordance with the RMP including notification to the RWQCB. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or its agent in accordance with all applicable provisions of local, state and federal law;

g. All uses and development of the Burdened Property shall be consistent with any applicable Board Order or Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto.

h. No Owners or Occupants of the Burdened Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.

i. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

j. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation, or otherwise bring into compliance with the Covenant any improvement or alteration in violation of that paragraph. The Board shall compel Owner's compliance with the Covenant in accordance with applicable laws. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners shall execute a written instrument which shall accompany all purchase agreements relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of _____, 200_, and recorded on _____, 200_, in the Official Records of _____ County, California, as Document No. _____, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV
VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property. If at any time in the future additional testing confirms that the Burdened property meets all applicable regulatory criteria, the Covenantor may petition to the Board for removal of the Covenant and Environmental Restriction.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

5.1 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 Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves 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 official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"

Novato Fair Shopping Center LLC (Current Owner)
c/o Kimco Realty Corporation
Attn: Mr. Scott Gerber
3333 New Hyde Park Road
Suite 100
New Hyde Park, NY 11042

If To: "Board"
Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, California 94612

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

5.4 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.


5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Marin within ten (30) days of the date of full execution.

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

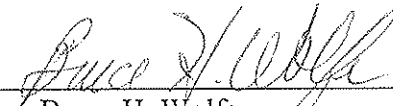
5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

NOVATO FAIR SHOPPING CENTER LLC, a Delaware limited liability company
By: **NOVATO FAIR LIMITED PARTNERSHIP**, a Delaware limited partnership, Member
By: **NOVATO HC, LLC**, a Delaware limited liability company, its general partner
By: **KIMCO NOVATO FAIR 1036, INC.**, a Delaware corporation, its sole member

By: 
Title: Michael J. Flynn
Date: 9/21/04 President

Agency: State of California
Regional Water Quality Board,
San Francisco Bay Region

By: 
Title: Executive Officer
Date: 10/13/04

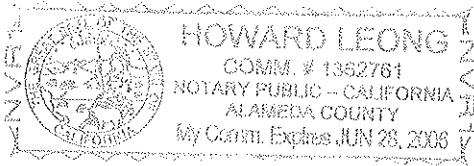
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Alameda } ss.

On 10/13/2004, before me, Howard Leong, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared BRUCE H WOLFE,
Name(s) of Signer(s)

- personally known to me
 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.

Howard Leong
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

STATE OF NEW YORK)
)
COUNTY OF NASSAU)

On Sept 21, 2004 before me, the undersigned a Notary Public in and for said state, personally appeared [Covenantor]*, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

* Michael J.
Flynn

WITNESS my hand and official seal.

Roseanne Dwyer
Notary Public in and for said
County and State

ROSEANNE DWYER
Notary Public, State of New York
No. 4908302
Qualified in Nassau County
Commission Expires January 11, 2006

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 20__ before me, the undersigned a Notary Public in and for said state, personally appeared Bruce H. Wolfe, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

DESCRIPTION

ESCROW NO. 227491 PH

ALL THAT CERTAIN real property situate in the City of Novato, County of Marin, State of California, described below as follows:

PARCEL ONE:

BEGINNING at the point of intersection of the Westerly line of Lamont Avenue, now a portion of the State Highway, with the Southeasterly line of the County Road, now known as Diablo Avenue which is 60 feet wide, as shown on the Map of the Town of Novato, filed March 29, 1890 in Map Book 2 at page 52; thence along said Avenue line, South 48° 45' West 546.566 feet to the most Northerly corner of the parcel described in the Deed to Fred C. Nave, et ux, recorded February 2, 1942 in Book 423 of Official Records at page 331; thence along the Easterly line of said parcel, South 38° 09' East 60.2 feet, South 29° 05' East 52.2 feet, South 15° 08' East 75.3 feet, South 27° 57' East 166.4 feet, South 20° 10' East 23.2 feet, South 03° 01' West 108.5 feet and South 50° 16' East 63.3 feet to the Southeasterly corner of said parcel, said point also being the most Northerly corner of the parcel granted to John L. Novak by Deed recorded March 24, 1950 in Book 644 of Official Records at page 168; thence along the Easterly line of the Novak parcel, South 69° 55' East 110.2 feet, South 50° 50' East 48.4 feet, South 62° 10' East 69.3 feet, South 07° 30' East 53.5 feet, North 89° 00' East 104.9 feet and South 42° 16' 20" East 78.8 feet; thence leaving said line, South 81° 16' East 104.44 feet, North 42° 18' 30" East 28.64 feet, North 76° 53' 30" East 108.82 feet, South 72° 37' 30" East 55.58 feet and North 71° 37' East 97.82 feet to a point on the Westerly line of the State Highway; thence along said Westerly line, as described in the Deed to the State of California, recorded February 8, 1947 in Book 535 of Official Records at page 430, on a curve to the right whose radius is 2051.0 feet and whose center bears North 51° 00' 52" East, thru an angle of 22° 42' 27", a distance of 812.87 feet to the Northerly corner of the State parcel; thence along the Westerly line of the State Highway (the former Westerly line of Lamont Avenue), North 29° 43' 39" West 338.3 feet to the point of beginning.

EXCEPTING THEREFROM that certain portion conveyed to the City of Novato by that certain deed recorded December 17, 1964 in Book 1894 of Official Records at page 346, Marin County Records.

ALSO EXCEPTING THEREFROM that certain portion conveyed to the City of Novato by that certain deed recorded November 2, 1982, as Recorder's Serial No. 82045978, Marin County Records.

ALSO EXCEPTING THEREFROM that portion lying within the bed of the Novato Creek below the line of natural ordinary high tide and also excepting any artificial accretions to said land waterward of said line of natural ordinary high tide.

PARCEL THREE:

AN EASEMENT for pedestrian, non-vehicular and vehicular access as well as access to maintain and operate the existing bridge and roadway surface together with the right to place and maintain appropriate signage adjacent to South Novato Boulevard over the following described parcel:

BEGINNING at the Southwest corner of Parcel Two as described in the deed to Fifty Associates, a Massachusetts Corporation, et al, recorded April 3, 1961 in Book 1449, Official Records, page 188, Marin County Records; thence along the Southeastern line of said Parcel Two and along the direct Northeasterly prolongation thereof, North $66^{\circ} 11' 48''$ East (bearing used for the purpose of this description; North $64^{\circ} 53' 50''$ East deed bearing), 176.02 feet; thence North $48^{\circ} 05'$ West, 39.76 feet; thence North $41^{\circ} 30' 46''$ West, 77.40 feet; thence South $66^{\circ} 11' 48''$ West, 138.36 feet to the Northeastern line of South Novato Boulevard as shown on Sheet 1 of the Record of Survey Map filed February 7, 1966, Book 4 of Surveys, page 98, Marin County Records; thence along said Northeastern line, South $24^{\circ} 58' 02''$ East, 110.00 feet to the point of beginning.

PARCEL FOUR:

BEGINNING at the most Westerly corner of Lot 6 as shown upon that certain map entitled, "Map of Schuman Center, City of Novato, Marin County, California", filed for record June 17, 1969 in Volume 14 of Maps, at Page 54, Marin County Records, said point also being the most Westerly corner of the land conveyed to Theodore R. Schuman by deeds recorded April 12, 1965 in Book 1929 of Official Records, at Page 295 and 297, Marin County Records, and said point also being the most Southwesterly corner of the lands conveyed to Fifty Associates, a Massachusetts Corporation, et al, by deed recorded April 3, 1961 in Book 1449 of Official Records, at Page 188, Marin County Records, running thence from said point of beginning and along the Northerly line of Lot 6, the Lands of Schuman and Southerly line of the Lands of Fifty Associates South $81^{\circ} 16' 00''$ East 104.44 feet, North $42^{\circ} 18' 30''$ East 28.64 feet, North $76^{\circ} 53' 30''$ East 108.82 feet, South $72^{\circ} 37' 30''$ East 55.58 feet, North $71^{\circ} 37'$ East 86.88 feet to the most Westerly corner of that certain parcel described in the deed to Albert Young, et al, recorded May 14, 1954 in Book 866 of Official Records, at Page 282, Marin County Records, thence leaving the Southerly line of the Fifty Associates' Parcel and continuing along the exterior boundary of Lot 6 and the Schuman Parcel South $40^{\circ} 00' 30''$ East 14.03 feet, thence North $49^{\circ} 59' 30''$ East 10.00 feet to the Westerly line of State Highway, thence in a Southeasterly direction along a curve to the left, whose center bears North $50^{\circ} 44' 06''$ East having a radius of 2,051 feet, through a central angle of $0^{\circ} 44' 36''$ for

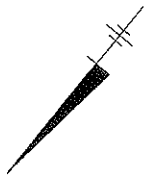
an arc distance of 26.61 feet, thence South 40° 00' 30" East 106.00 feet, thence leaving said boundary line and crossing said Lot 6 South 49° 59' 30" West 225.58 feet to a point on the Southwesterly line of Lot 6, and the Lands of Schuman first above described, thence along said line on a curve to the left whose center bears South 49° 59' 30" West with a radius of 600.00 feet, through a central angle of 15° 44' 53" for an arc distance of 164.91 feet, thence North 57° 55' 30" West 197.08 feet to the point of beginning.

The above described parcel being the lands shown upon the Record of Survey Lot Line Adjustment Schuman – Fifty Associates filed for record May 18, 1983 in Volume 18 of Surveys at page 46, Marin County Records.

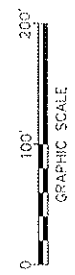
EXCEPTING THEREFROM that portion lying within the bed of the Novato Creek below the line of natural ordinary high tide and also excepting any artificial accretions to said land waterward of said line of natural ordinary high tide.

EXCEPTING THEREFROM that certain portion conveyed to the City of Novato by that certain deed recorded December 16, 1986, as Recorder's Serial No. 86 71201, Marin County Records

ALSO EXCEPTING THEREFROM, that certain portion shown as Parcel One in the Deed to Marin County Flood Control and Water Conservation District, recorded January 23, 1989 as instrument No. 89-03982, Marin County Records.

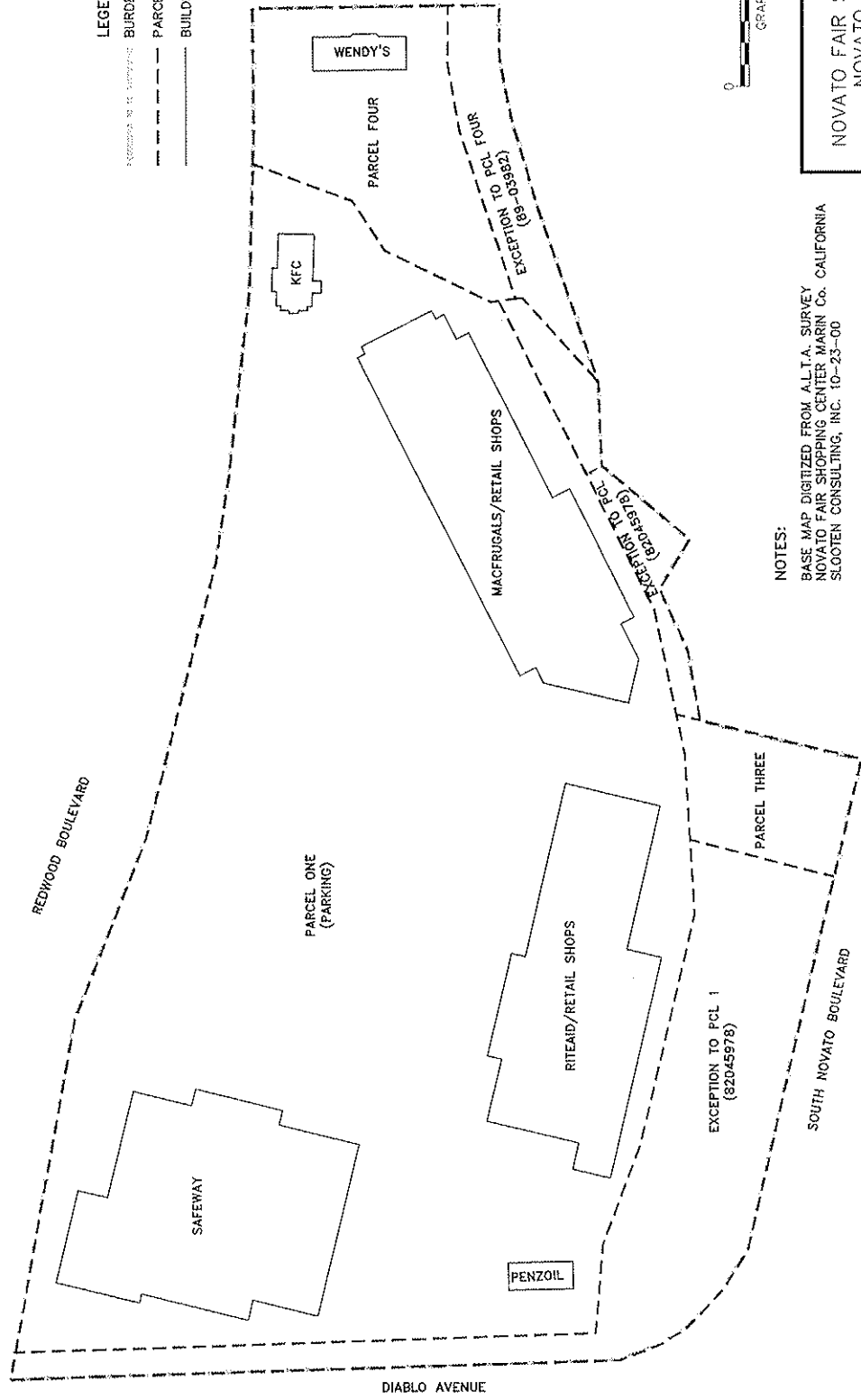


LEGEND:
 BURDENED PROPERTY BOUNDARY
 PARCEL BOUNDARY
 BUILDING



NOVATO FAIR SHOPPING CENTER
 NOVATO, CALIFORNIA

EXHIBIT A
BURDENED PROPERTY
BOUNDARY



NOTES:
 BASE MAP DIGITIZED FROM A.L.T.A. SURVEY
 NOVATO FAIR SHOPPING CENTER MARIN Co. CALIFORNIA
 SLOOTEN CONSULTING, INC. 10-23-00

1. DATE: 11/11/00
 2. DRAWN BY: JLS
 3. CHECKED BY: JLS
 4. APPROVED BY: JLS

EXHIBIT B

RESIDUAL RISK MANAGEMENT PLAN

Exhibit B

Residual Risk Management Plan

SECTION 1.0 Background

The Novato Fair Shopping Center is located in a primarily commercial area in south central Novato, California. The site occupies approximately 11.3 acres and is currently used for mixed commercial purposes (the "Burdened Property"). The shopping center consists of six buildings, which are divided into 21 tenant spaces. A former dry cleaner, Norge Cleaners, operated at 936 Diablo Avenue (the "Site") from approximately the 1960s to the mid-1970s. Releases from past operations have impacted soil and groundwater underlying the Site with volatile organic chemicals (VOCs) including tetrachloroethene (PCE), trichloroethylene (TCE), cis 1,2-dichloroethylene, and trans 1,2-dichloroethylene, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260.

Remedial activities voluntarily implemented at the Site included excavation of impacted soils, soil vapor extraction, and in-situ treatment of contaminants using potassium permanganate. Soil excavation was completed in all accessible areas within the former tenant space. The localized areas of impacted soil that could not be removed due to structural considerations were treated through the installation and operation of a soil vapor extraction system. This system was operated until monitoring confirmed that the extracted soil vapor had reached asymptotic levels. The low levels of VOCs remaining in site soil and groundwater were further treated using potassium permanganate. All of the voluntary remedial activities implemented at the site were conducted with the approval and oversight of the Regional Water Quality Control Board.

Due to the residual levels of VOCs remaining at the Site, the Regional Water Quality Control Board has required that a deed restriction and residual risk management plan (RMP) be implemented at the Site. The purpose of the RMP is to identify subsurface activities where the residual VOCs may be encountered, provide a notification procedure for those activities, and to develop health and safety procedures to ensure safe and proper handling of the impacted soil and groundwater.

SECTION 2.0 Activities and areas covered by the RMP

The Burdened Property encompasses approximately 11.3 acres as shown on Exhibit A. However, the impacts associated with the former dry cleaning activities are limited to the vicinity of the former tenant space at 936 Diablo Avenue (the "Site"). The areas containing residual levels of VOCs in soil are designated as Area A on Exhibit D. The areas containing residual levels of VOCs in groundwater are designated as Areas A and B on Exhibit D. The following subsurface activities are restricted within these areas and will require notification as outlined in Section 3.0.

- a. Concrete Floor Removal
- b. Soil excavation and/or sub-surface utility work
(installation/repair/inspections)
- c. Groundwater extraction and/or construction dewatering
- d. Soil or groundwater sampling
- e. Soil Reuse and Disposal

The restricted activities listed above apply only to Areas A and B as designated on Exhibit D. In addition, groundwater extraction shall not be implemented within the Burdened Property boundary identified on Exhibit A without prior approval from the RWQCB.

SECTION 3.0 Responsibilities and Notification Requirements

The current property owner will be responsible for complying with the land use covenant and procedures outlined within the residual risk management plan. It is the owner's responsibility to ensure that all lessees and contractors that may perform intrusive and subsurface work at the site are aware of all potential risks and requirements outlined in the land use covenant and RMP.

The following notification must be provided if any of the activities listed in Section 2.0 are performed at the Burdened Property.

- A) Internal – Prior to the commencement of any intrusive or subsurface activities identified above in Section 2.0 within Area A as designated in Exhibit D, the Owner's Representative listed below must be notified in writing and written approval must be obtained from the Owner's representative. Furthermore, the owner's representative must be notified in writing of all intrusive activities within Area B as designated in Exhibit D if groundwater may be encountered or extracted. Notification shall consist of a written plan describing in detail the proposed restricted activity and showing the locations of all subsurface activities. Any excavation will be restricted to the designated area and depth as outlined within the plan unless written approval is granted by the owner's representative. A site-specific and project-specific health and safety plan must also be developed in accordance with 29 Code of Federal Regulations (29 CFR) and approved by the owner's representative.
- B) External – Prior to the commencement of any subsurface activities within Areas A or B as designated in Exhibit D, the Regional Water Quality Control Board (RWQCB) Toxics Cleanup Division must be notified in writing by the Owner. The RWQCB representatives currently charged with the project site are listed in the following table.

	PHONE NUMBER	EMAIL
Owner's Representative		
David Lukes	(650) 757-2024	dluke@kimcorealty.com
RWQCB Representative		
John Jang	(510) 622-2366	jmj@rb2.swrcb.ca.gov

The current property owner will be responsible for maintaining a current contact list. The contact information must be updated annually or as needed.

SECTION 4.0 Health and Safety Requirements

Due to the potential exposure to residual VOCs that remain at the Site, a site-specific and project specific health and safety plan (HASP) must be developed if any of the activities identified in Section 2.0 are performed within Areas A or B as shown on Exhibit D. The HASP must be developed in accordance with 29 CFR and must address at a minimum potential exposure due to dermal contact and inhalation of residual VOCs. The HASP must also specify an air monitoring program for VOCs when performing subsurface earth work in the vicinity of Areas A and B and appropriate personal protective equipment (PPE) to be used.

SECTION 5.0 Soil and Groundwater Management Requirements

A) Soil Management

A site-specific soil management plan (SMP) must be developed prior to implementation of restricted activities listed in Section 2.0 within Areas A and B of the Burdened Property as designated on Exhibit D. At a minimum, the SMP should include dust control and monitoring measures, and management of soil stockpiles, etc.

All soil within Area A as designated in Exhibit D must be handled in accordance with applicable local, state, and federal regulations, the site and project specific HASP, and the site-specific soils management plan. If any soil is to be moved onsite or disposed of offsite, the soil must be tested for VOCs by the Environmental Protection Agency (EPA) Method 8260. If the soil is to be reused onsite in a different location, then one discrete sample per 25 cubic yards must be collected and analyzed for the first 500 yards of soil removed. After the initial 500 cubic yards has been sampled, the sampling frequency can be reduced to one discrete sample per 100 cubic yards for volumes greater than 500 cubic yards. If individual VOCs are detected in the soil at

greater than RWQCB Environmental Screening Levels and the soil is to be reused onsite, then the RWQCB must be notified and approval granted prior to reuse of the soils. If VOCs are detected in soil at levels that cannot be reused, then the soil must be properly sampled, profiled, and disposed of at an appropriate waste facility in accordance with all local, state, and federal regulations.

B) Groundwater Management

No groundwater shall be extracted and/or discharged from the Burdened Property without prior approval from the RWQCB. Prior approval from other agencies may also be required. If dewatering activities will be conducted within the Burdened Property, then a groundwater sampling and handling plan must be developed and approved by the Owner's Representative and the RWQCB.

C) Decontamination

All equipment working within Areas A or B will be decontaminated before leaving the Site using visual inspection to verify that COCs have been removed. In addition, all operations that have the potential to generate or release hazardous material will be conducted in a controlled area using the appropriate engineering controls. Specific decontamination techniques will be established based on Site conditions and activities to be performed. Decontamination procedures will be reviewed with all personnel onsite.

EXHIBIT C

ENVIRONMENTAL FACT SHEET

Exhibit C

Environmental Fact Sheet

1. Background

The Novato Fair Shopping Center is located in a primarily commercial area in south central Novato, California. The site occupies approximately 11.3 acres and is currently used for mixed commercial purposes (the "Burdened Property"). The shopping center consists of six buildings, which are divided into 21 tenant spaces. One of the tenant spaces, located at 936 Diablo Avenue, was formerly operated as a dry cleaning facility by Norge Cleaners (the "Site"). These operations resulted in releases of dry cleaning solvents to soil and groundwater. The solvents contained organic chemicals including tetrachloroethene (PCE), trichloroethylene (TCE), cis 1,2-dichloroethylene, and trans 1,2-dichloroethylene, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Remedial activities voluntarily implemented at the Site included excavation of impacted soils, soil vapor extraction, and in-situ treatment of contaminants using potassium permanganate. Soil excavation was completed in all accessible areas within the former tenant space. The localized areas of impacted soil that could not be removed due to structural considerations were treated through the installation and operation of a soil vapor extraction system. This system was operated until monitoring confirmed that the extracted soil vapor had reached asymptotic levels. The low levels of VOCs remaining in site soil and groundwater were further treated using potassium permanganate. All of the voluntary remedial activities implemented at the site were conducted with the approval and oversight of the Regional Water Quality Control Board.

2. Existing Site Conditions

The Site has undergone extensive investigation and remedial activities from 1991 to 2003. Analytical results for the Site indicate that remedial activities have effectively removed the chlorinated solvents in soil, soil vapor, and groundwater at the site to levels that do not adversely affect human health or the environment and are acceptable and consistent with the current and planned commercial and retail use of the Property. The most recent data collected at the site (July 2003) indicate that average soil vapor concentration beneath the former dry cleaning space slab is below industrial environmental screening levels (ESLs) established by the California Environmental Protection Agency, Regional Water Quality Control Board, San Francisco Bay Region (RWQCB). All soil samples, with the exception of one soil sample (49 mg/kg of perchloroethylene (PCE)) beneath the former dry cleaner, are below commercial/industrial and residential ESLs. The soil sample that exceeds commercial/industrial ESL is located at approximately 2 to 4 feet bgs beneath the building slab. Based on deeper soil samples from this boring location and additional

borings taken in the vicinity of the sample, the vertical and horizontal extent of the residual contamination is limited to less than 6 feet bgs and is confined to an area approximately 10 feet in diameter. Groundwater samples collected from beneath the slab and down-gradient of the tenant building are within 10 times the maximum contaminant level (MCL) established for the protection of drinking water. The maximum concentration of PCE and TCE detected in groundwater is 13 ug/l and 27 ug/l respectively.

3. Property Use Restrictions

Due to the limited residual levels of volatile organic compounds (VOCs) in soil underneath the building and residual levels of VOCs in groundwater in excess of the MCLs, the RWQCB is requiring that the residual risks associated with the presence of the VOCs be managed using institutional controls. Therefore, the following restrictions have been placed on the property to limit exposure and potential risks associated with the residual levels of VOCs remaining on the property.

- a. Development of the Property shall be restricted to industrial, commercial or office space;
- b. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses at the property as designated in Exhibit A, unless expressly permitted in writing by the Board and in compliance with the Risk Management Plan (Exhibit B).
- c. No residence for human habitation shall be permitted on the Property;
- d. No hospitals shall be permitted on the Property;
- e. No schools for persons under 21 years of age shall be permitted on the Property, with the exception of learning centers consistent with retail / commercial use (e.g., beauty school, traffic school, educational / tutoring facilities), which will be permitted uses on the Burdened Property;
- f. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Property;
- g. All excavation activities shall be conducted in accordance with the Risk Management Plan (Exhibit B). Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenanters or his agent in accordance with all applicable provisions of local, state and federal law;
- h. All uses and development of the Property shall be consistent with any applicable Board Order or Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto.
- i. The Covenanters agree that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

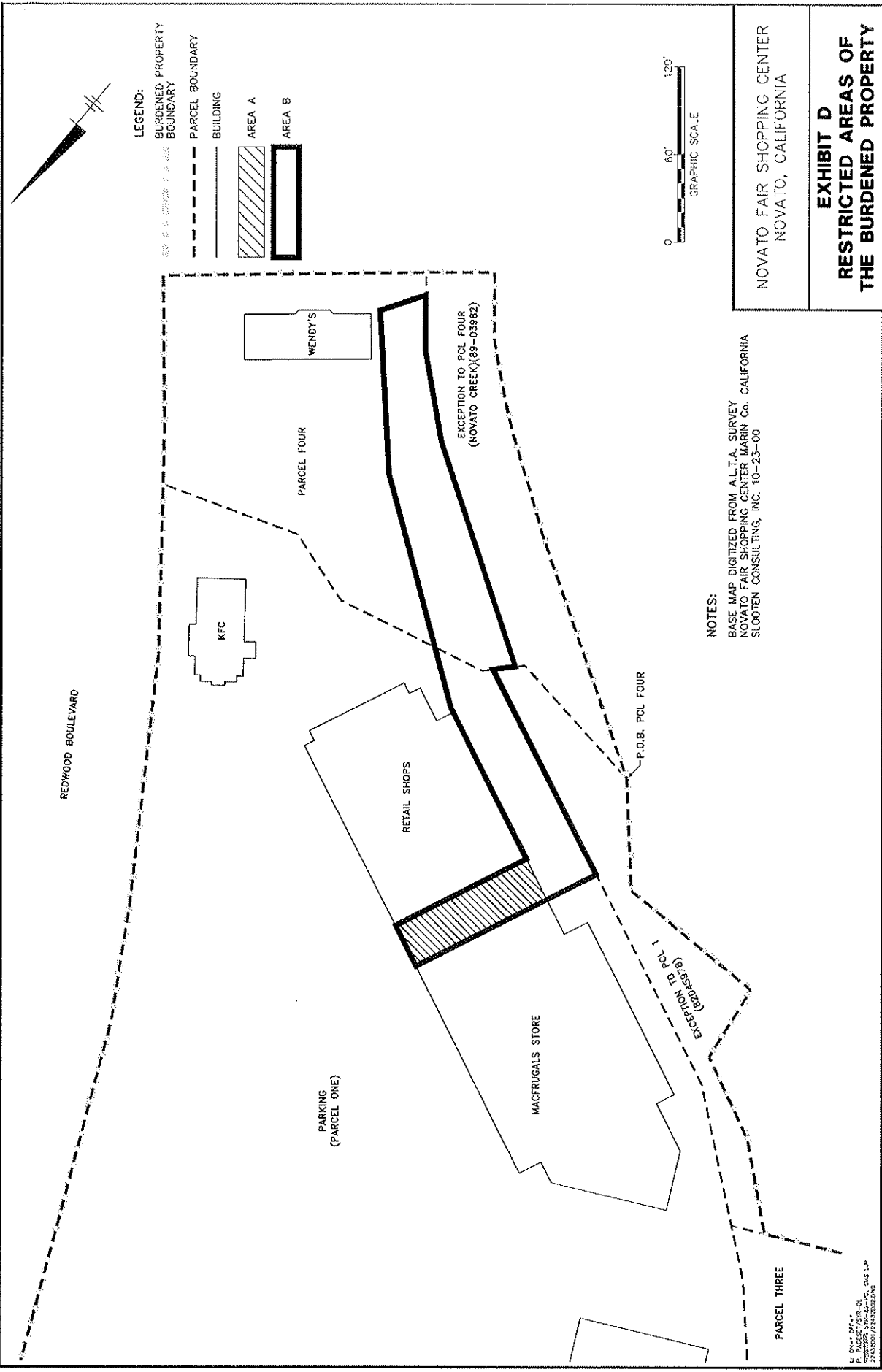
- j. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property.

4. Removal of Property Use Restrictions

The use restrictions outlined above can be removed when the residual levels in soil and soil vapor are below the residential ESLs established by the RWQCB and the groundwater levels are at or below the MCLs or future levels acceptable/promulgated by the RWQCB. This can be accomplished through additional remediation and/or natural attenuation.

EXHIBIT D

RESTRICTED AREAS OF THE BURDENED PROPERTY



- LEGEND:**
- BURDENED PROPERTY BOUNDARY (dashed line)
 - PARCEL BOUNDARY (dash-dot line)
 - BUILDING (solid line)
 - AREA A (hatched area)
 - AREA B (rectangular area)



NOTES:
 BASE MAP DIGITIZED FROM ALL.T.A. SURVEY
 NOVATO FAIR SHOPPING CENTER MARIN Co. CALIFORNIA
 SLOOTEN CONSULTING, INC. 10-23-00

NOVATO FAIR SHOPPING CENTER
 NOVATO, CALIFORNIA

**EXHIBIT D
 RESTRICTED AREAS OF
 THE BURDENED PROPERTY**

U:\046\0711...
 8/1/2005 10:05:00 AM
 2/24/2005 7:54:20 AM