

97 1453511

RECORDING REQUESTED BY:

Mr. Richard Z. Fond  
5264 Buffalo Avenue  
Van Nuys, CA 91401

RECORDED/FILED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
3:21 PM SEP 19 1997

WHEN RECORDED MAIL TO:

Department of Toxic Substances Control  
Southern California Permitting Branch  
1011 Grandview Avenue  
Glendale, California 91201  
Attention: Mr. Jose Kou

FEE \$ 52 N/C

D.A. FEE Code 20 \$ 2.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**COVENANT TO RESTRICT USE OF PROPERTY  
ENVIRONMENTAL RESTRICTION**

NOV 06 1997  
FMS - PERMITTING

(Re: A portion of the property at 2905 Winona Avenue,  
Burbank, California)  
(Formerly occupied by Alumtreat, Inc.)

This Covenant and Agreement ("Covenant") is made on the 27th day of August, 1997 by Richard Z. Fond, Eileen Fond and Neil E. Fond ("Covenantor"), who are the owners of Assessor's Parcel No. 2466-22-23, located at 2905 Winona, (the "Property") and Assessor's Parcel No. 2466-22-34, located at 2901 N. San Fernando Blvd., (the "Adjacent Property"), both of which are located in the City of Burbank, County of Los Angeles, State of California, as shown on Exhibit A attached hereto, and by the California Department of Toxic Substances Control ("DTSC"), the government agency with statutory oversight responsibility with respect to hazardous waste management at the Property.

**This Covenant is made only with respect to the Property (Assessor's Parcel No. 246-22-23), as more fully described in Exhibit B attached hereto and incorporated herein by this reference, and with reference to the following facts:**

A. The Property and the Adjacent Property together are the former site of an aluminum anodizing facility. The waste water treatment system associated with the facility's operations produced heavy metal containing sludges that were stored in a hazardous waste storage area permitted by DTSC as an on-site interim status facility pursuant to the California Hazardous Waste Control Law ("HWCL"), Health & Safety Code § 25100 et seq., and the Federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq. In 1997, Covenantor implemented the closure plan approved by DTSC for closure of the hazardous waste storage and treatment units and other solid waste management units.

- B. Certain heavy metals remain in soils in the area formerly occupied by the aluminum anodizing process tanks. This area is shown on Exhibit "C" attached hereto and incorporated herein by reference and constitutes a portion of the Property which is subject to the restrictions set forth in this Covenant (the "Restricted Area").
- C. As detailed in the Closure Report dated November 25, 1996, all or a portion of the surface and subsurface soils of the Restricted Area contain hazardous wastes and hazardous materials as defined in Health and Safety Code section 25260 which include one or more of the following metal contaminants of concern at the approximate levels set forth below:  
  
Total chromium at 310 mg/Kg, copper 280 mg/Kg, nickel 1400 mg/Kg, lead 420 mg/Kg, zinc 580 mg/Kg, and tin 2100 mg/Kg. Based on the health risk assessment prepared as a part of the closure certification report dated November 25, 1996, the above mentioned concentrations of contaminants meet the acceptable health risk scenarios for industrial use exposure.
- D. Covenantors desire and intend that the Restricted Area shall be used in such a manner as to protect the public health and safety and the environment and to avoid potential harm to persons or property which may result from exposure to hazardous waste and substances deposited on the Restricted Area.
- E. Pursuant to California Civil Code section 1471(c), DTSC has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260.

**ARTICLE I  
PARAMETERS OF THE COVENANT**

1.01 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Restricted Area and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions are imposed upon the entire Restricted Area unless expressly stated as applicable to a specific portion of the Restricted Area. Each and all of the Restrictions (a) shall run with the land pursuant to Health and Safety Code section 25355.5, and Civil Code section 1471; (b) shall inure to the benefit of and pass with each and every portion of the Restricted Area; (c) shall apply to and bind the respective successor in interest to the Restricted Area; (d) are for the benefit of, and shall be enforceable by DTSC; and (e) are imposed pursuant to Health and Safety Code sections 25355.5 and 25356.1.

1.02 Concurrence of Owners/Occupants. Each and every owner ("Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Restricted Area) and occupants ("Occupants" shall mean lessees or other possessors of any portion of the Restricted Area) shall be deemed to be in accord with this Covenant and shall further be deemed to unconditionally agree, for and among themselves, their heirs, successors, and assignees (and for any agents thereof), to the Restrictions as herein established such that their interest(s) and/or possessory rights in the Restricted Area are taken subject to such Restrictions. Pursuant to Civil Code section 1471(b), all successive owners of the land are expressly bound hereby for the benefit of the covenantee(s) herein.

**ARTICLE II  
CONVEYANCE RESTRICTIONS**

2.01 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

2.02 Restrictions on Use: Owner agrees to restrict the use of the Restricted Area in accordance with the restrictions set forth herein in order to protect the present and future public health and safety from potential harm to person which may result from hazardous wastes and materials which exist on the Restricted Area. The restrictions provided herein shall apply only to the Restricted Area. Owner agrees not to use the Restricted Area for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as permanently occupied residential human habitation.
- (b) A long-term care home/hospital for humans. Nothing herein shall restrict use of the Restricted Area for any infirmary, medical aid station, or emergency medical care facility where there is no intent for any patient to remain in such facility for more than 24 hours.
- (c) A traditional public or private school for persons under 21 years of age. Nothing herein shall restrict use of the Restricted Area for any specialized training programs for adults related to then-existing facilities on the Restricted Area or the Property.
- (d) A day care center for children.

Additionally, Owner agrees to provide to DTSC written notice at least fourteen (14) days prior to any excavations in the Restricted Area which present a significant likelihood of disturbing the hazardous wastes in the Restricted Area.

2.03 Construction and Maintenance of Concrete Slab. Owner shall construct and maintain a cover over the Restricted Area as follows:

- (a) A five inch concrete slab on grade shall be installed over gravel back fill in the Restricted Area.
- (b) The concrete slab may be breached as necessary for construction of improvements or installation of fixtures or equipment provided that any soil removed from beneath the gravel backfill in the Restricted Area during such construction or installation activities shall be relocated beneath the gravel backfill and slab at completion of such activities or properly characterized and managed for off-site disposal in accordance with the California Hazardous Waste Control Law, RCRA and regulations promulgated pursuant thereto.
- (c) The concrete slab shall be maintained in a manner that prevents infiltration of liquid which could cause hazardous waste to migrate below the cap and conduct such repairs as deemed necessary.
- (d) The owner shall obtain the prior written approval of DTSC before making any alterations in the concrete slab over the Restricted Area, except for the construction of improvements or the installation of fixtures or equipment, as described in subparagraph (b) above, or the addition of surface materials which do not affect the integrity of the underlying concrete slab, including without limitation, sealants, floor covering materials, additional concrete, or other non-invasive covering materials.
- (e) Any future activity involving removal of soil from beneath the gravel backfill in the Restricted Area shall be initiated only after all personnel involved in the activity are fully informed of the health threats posed by the metal contaminants of concern beneath the Restricted Area (the metal contaminants of concern are identified in section C of this covenant). The owner shall also insure all activities performed in the Restricted Area are in compliance with California-Occupational Safety and Health Act standards.

2.04 Conveyance of Restricted Area. The Owner(s) shall provide a notice to DTSC no later than thirty (30) days after any sale, lease, or other conveyance of any ownership interest in the Restricted Property or an

interest in the Restricted Area to a third person. DTSC shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Restricted Area except as otherwise provided by law, by administrative order, or by reason of this Covenant,

2.05 Notice in Agreements. Owner shall furnish in writing to Occupants and/or the Owner's successor in interest to any part of the Restricted Area, as either part of another written agreement (e.g., a lease), or as a stand alone instrument, the following statement:

"A portion of the land described herein contains hazardous waste. 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 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists and does not address the liability of any party."

### Article III Enforcement

3.01 Enforcement Failure of the Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the DTSC, by reason of this Covenant, to require the Owner to cease any activity or use which violates any of the Restrictions and/or modify or remove any improvements constructed in violation of the Restrictions. Violation of this Covenant shall be grounds for DTSC to file civil and criminal actions against the Owner as provided by law.

### ARTICLE IV VARIANCE, TERMINATION, AND TERM

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Restricted Area or any portion thereof may apply to the DTSC or a written variance from the provisions of this Covenant. Such application shall be made in accordance with Cal. Health & Safety Code Section 25233 and/or other appropriate statutory authorization(s) then in effect.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Restricted Area or any portion thereof may apply to DTSC for a termination of the Restrictions or other term of this Covenant as they apply to all or any portion of the Restricted Area. Such application shall be made in accordance with Cal. Health & Safety Code Section 25234 and/or other appropriate statutory authorization(s) then in effect.

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 Restricted Area or any portion thereof to the general public or for any purposes whatsoever. In addition, nothing in this Covenant shall be deemed to constitute a covenant encumbrance, or restriction on the use of any property other than the Restricted Area.

5.02 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 to an officer of a corporate party 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:

To: "Covenantor"  
Richard Z. Fond  
Neil E. Fond  
Eileen Fond  
5264 Buffalo Avenue  
Van Nuys, CA 91401

Copy to: Department of Toxic Substances Control  
Southern California Permitting Branch  
1011 Grandview Avenue  
Glendale, California 91201  
Attention: Mr. Jose Kou

To: Department of Toxic Substances Control  
Southern California Permitting Branch  
1011 Grandview Avenue  
Glendale, California 91201  
Attention: Ms. Yolanda M. Garza

5.03 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the remaining portions shall remain in full force and effect as if such portion found invalid 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 recorded by the Covenantor, with all referenced Exhibits, in the County of Los Angeles within ten (10) days of the date of execution.

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

5.07 Department References. All references to DTSC include successor agencies/ department or other successor entity.

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

COVENANTORS

By: Eileen Fond  
Richard E. Fond

Date: AUGUST 27, 1997

BY: Neil E. Fond, M.D.  
NEIL E. FOND

DATE: 8/29/97

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: [Signature]

Date: 9/2/97

Title: Chief, So. CA Permits  
Branch, So. CA Region

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 19\_\_\_\_ before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as \_\_\_\_\_, of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

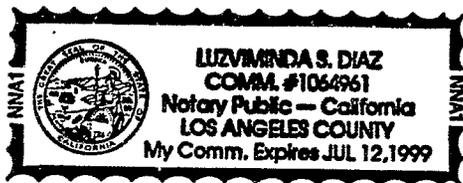
( See Attached )

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

X STATE OF CALIFORNIA )  
COUNTY OF Los Angeles )

On Sept 2, 1997 before me, the undersigned, a Notary Public in and for said state, personally appeared Jose Kou, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Chief S.C. Permit 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.



Luzviminda S. Diaz  
\_\_\_\_\_  
Notary Public in and for said  
County and State

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

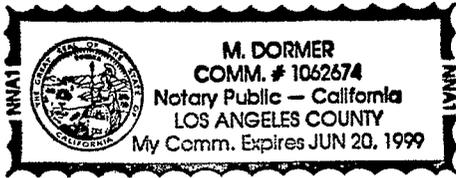
State of CALIFORNIA

County of LOS ANGELES

On AUGUST 27 1997 before me, M. DORMER NOTARY PUBLIC  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared RICHARD Z. FOND AND EILEEN FOND  
Name(s) of Signer(s)

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.

M. Dormer  
Signature of Notary Public

**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: COVENANT TO RESTRICT USE OF PROPERTY ENVIRONMENTAL RESTRICTION

Document Date: AUGUST 27 1997 Number of Pages: 6 PLUS EXHIBTS A + B

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

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

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

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

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

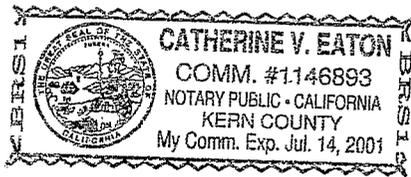
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

No. 5907

State of Calif.  
County of Kern

On Aug. 29, 1997 before me, CATHERINE V EATON NOTARY PUBLIC,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"  
personally appeared Neil E. Fond  
NAME(S) OF SIGNER(S)

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.  
Catherine V. Eaton  
SIGNATURE OF NOTARY

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

- INDIVIDUAL
- CORPORATE OFFICER
- \_\_\_\_\_ TITLE(S)
- PARTNER(S)       LIMITED
- ATTORNEY-IN-FACT       GENERAL
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

Property Environmental Restriction Covenant to Restrict Use of  
TITLE OR TYPE OF DOCUMENT

Thirteen Pages  
NUMBER OF PAGES

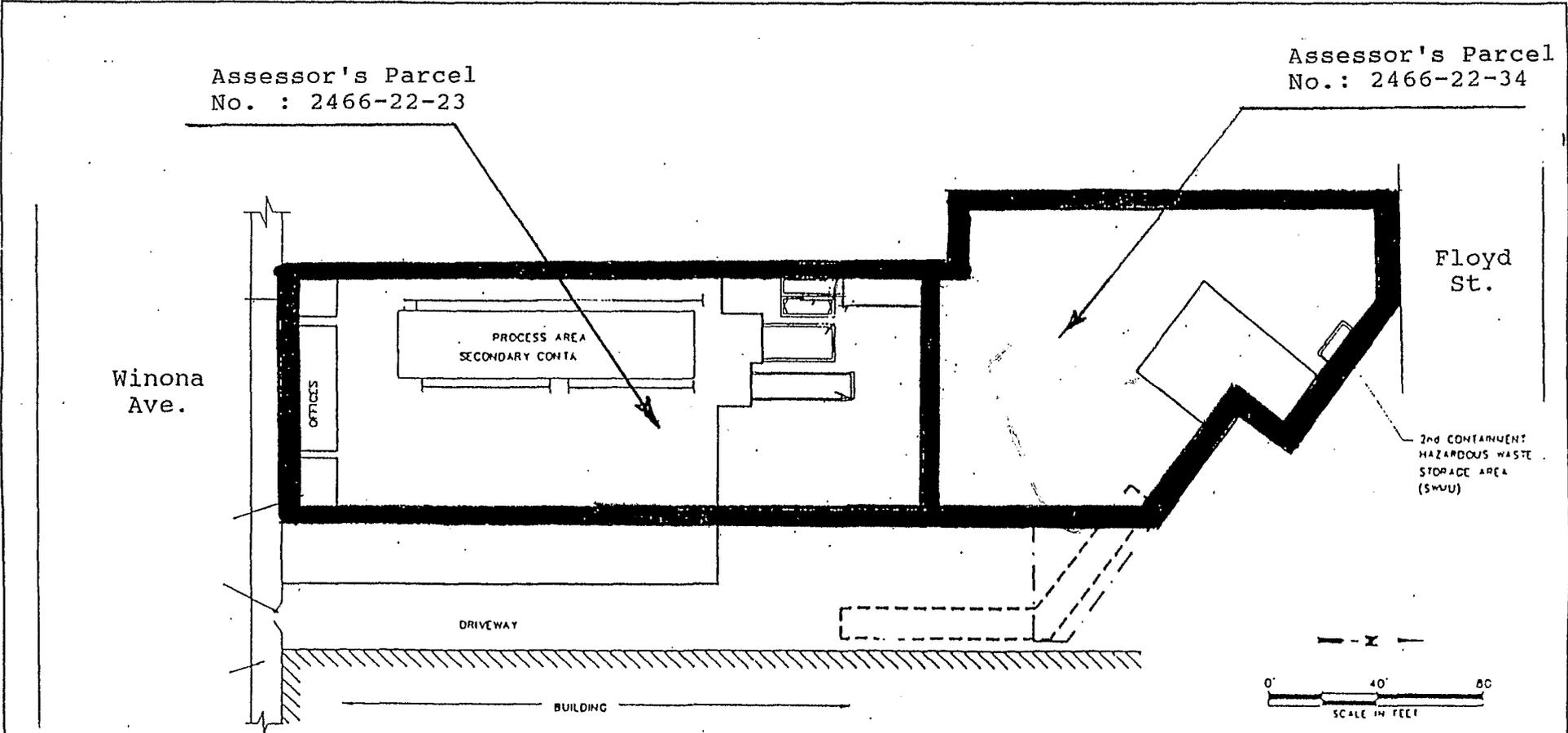
Aug. 27, 1997  
DATE OF DOCUMENT

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)  
\_\_\_\_\_  
\_\_\_\_\_

none  
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

97 1453511



**EXPLANATION**

	PROPERTY LINE
	BUILDING WALL
	LOW WALL

<b>ALUMINUM ANNOZING FACILITY</b>				
<b>SITE PLAN</b>				
2905 WINONA AVE BURBANK, CALIFORNIA				
Prepared for <b>NEIL AND RICHARD FOND</b>				
 <small>SRI Soil Remediation Investments and Consultants Environmental Consulting &amp; Management</small>	Completed by	R.R.	Date	3/98
	Prepared by	I.A.R.	Scale	SHOWN
	Project Mgr	R.R.	Revision	0
	Project No	34301a	File No	34301-2
				2

EXHIBIT A

12

EXHIBIT B



EXHIBIT B

PARCEL 1 OF LAND DESCRIBED IN DEED RECORDED AS INSTRUMENT NO. 86-351970 OF THE OFFICIAL RECORDS OF LOS ANGELES COUNTY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

That portion of the southwest quarter of the northwest quarter of Section 3, Township 1 North, Range 14 West, San Bernardino meridian, in the City of Burbank, County of Los Angeles, State of California, according to the official plat of the survey of said land filed in the District Land Office on April 21, 1876, described as follows:

Beginning at a point in the north line of the south 40 feet of said southwest quarter of the northwest quarter that is distant along said north line South  $88^{\circ} 50' 30''$  East 480 feet from the west line of said section; thence along said north line South  $88^{\circ} 50' 30''$  East 86 feet; thence North  $1^{\circ} 09' 30''$  East 300 feet; thence North  $88^{\circ} 50' 33''$  West 86 feet; thence South  $1^{\circ} 09' 30''$  West 300 feet to the point of beginning.

14

EXHIBIT C

15

LEGAL DESCRIPTION  
RESTRICTED AREA  
BASED ON FIELD SURVEY OF 7/29/97

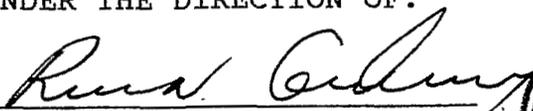
THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 1 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF BURBANK, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF SAID LAND FILED IN THE DISTRICT LAND OFFICE ON APRIL 21, 1876, DESCRIBED AS FOLLOWS:

BEING THAT PORTION OF PARCEL 1 OF LAND DESCRIBED IN DEED RECORDED AS INSTRUMENT NO.86-351970 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID PARCEL 1; THENCE ALONG WESTERLY LINE OF SAID PARCEL 1 NORTH 1°03'26" EAST 47.64 FEET; THENCE DEPARTING FROM SAID WESTERLY LINE SOUTH 88°56'34" EAST 6.60 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 1°03'38" EAST 140.52 FEET; THENCE SOUTH 88°48'26" EAST 37.00 FEET; THENCE SOUTH 1°03'38" WEST 140.46 FEET; THENCE NORTH 88°54'11" WEST 37.00 FEET TO THE POINT OF BEGINNING.

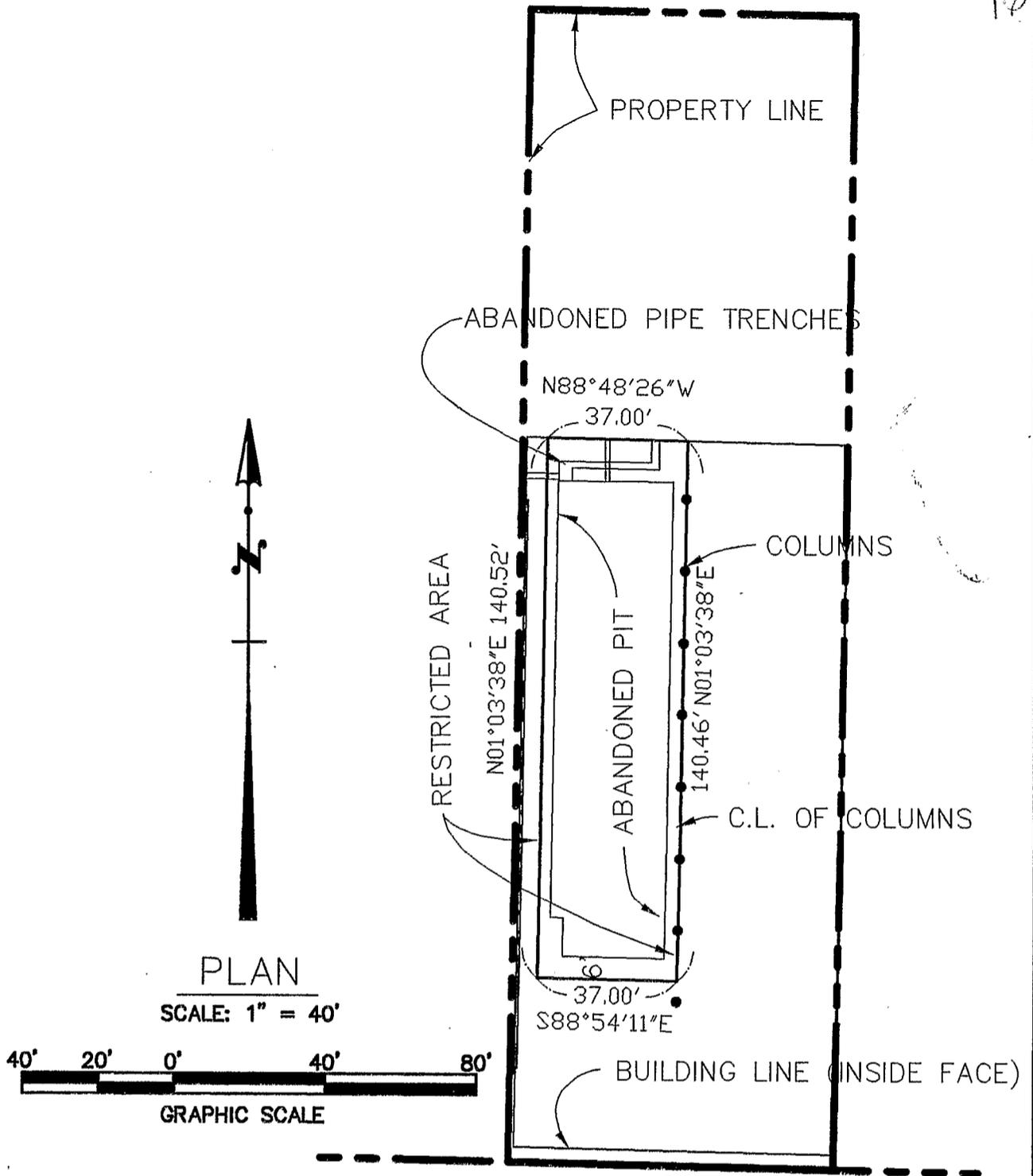
PREPARED FOR: SRI ENVIRONMENTAL ENGINEERS & CONSULTANTS  
UNDER THE DIRECTION OF:

  
\_\_\_\_\_  
RUVIN GRUTMAN, L.S. 5910



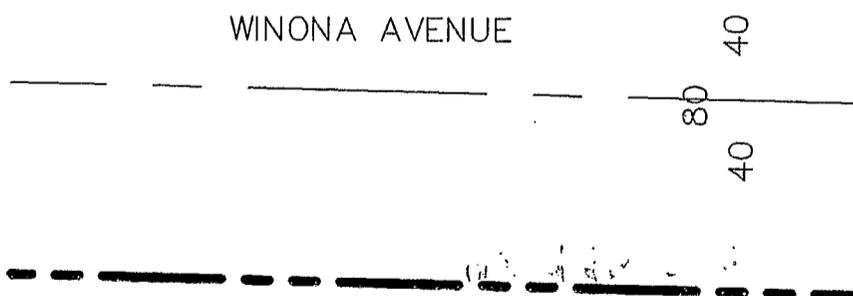
\_\_\_\_\_  
9/5/97  
DATE

16



PLAN

SCALE: 1" = 40'



PREPARED UNDER THE DIRECTION OF :

*Ruv Grutman*

RUVIN GRUTMAN, RCE 41480, LS 5910

97 1453511



**GM Engineering**  
civil engineers, land surveyors & general contractors

14425 SYLVAN ST, VAN NUYS, CA 91401 TEL (818) 908-1824 FAX (818) 908-3814

DATE:	7-31-97
SHEET NO.	1
OF 1 SHEETS	
JOB NO.	58701