13

RECORDING REQUESTED BY:

Richmond Redevelopment Agency
1401 Marina Way South
Richmond, California 94804

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2004-0322884-00
Thursday, AUG 19, 2004 15:47:07
FRE $0.00
Ttl Pd $0.00 Nbr-0002298067
lrc/R9/1-13

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION
TWO PORTIONS OF MARINA WAY SOUTH WITHIN PARCEL D
(WEST SHORE AREAS)
MARINA BAY REDEVELOPMENT
RICHMOND, CALIFORNIA

This Covenant and Agreement ("Covenant") is made by and between the Richmond Redevelopment Agency (the "Covenantor"), the current owner of two portions of the Marina Way South within Parcel D ("West Shore Areas") situated within the Marina Bay Redevelopment project in Richmond, County of Contra Costa, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Covenantee, the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department 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 ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, encompasses approximately 1.13 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is comprised of two separate areas of metal-bearing soil of the Marina Way South within Parcel D. A portion of non-metal-bearing soil approximately six feet wide divides the two separate areas. The Property is located near the south end of the Marina Way South generally bounded by private properties to the east and west, and a public park and private property to the south, County of Contra Costa, State of California. This property is more specifically described in Exhibit A.

1.02. The Property is being remediated pursuant to a Remedial Action Plan ("RAP") pursuant to Chapter 6.8 of Division 20 of the H&SC. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including lead remain in the soil under portions of the Property, the RAP provides that a deed restriction be required as part of the site remediation. The Department circulated the RAP, which contains a Final Health Risk Assessment, together with a draft Negative Declaration prepared pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., for public review and comment. The RAP and the negative declaration were approved by the Department on May 24, 1993. Remediation included relocation of the amended metal-bearing soil to the Marina Way South extension roadway and covering the surface with 4 inches of Class II aggregate road base and 4.5 inches of asphalt/concrete (the "Cap"). Operation and maintenance of the Cap is required pursuant to an Operation and Maintenance Plan incorporated into an Operation and Maintenance Agreement between Richmond Redevelopment Agency and the Department.

1.03. As detailed in the Final Health Risk Assessment as approved by the Department in 1988, all or a portion of the subsurface soils within 5 feet of the surface on the Property contain hazardous substances, as defined in H&SC section 25316, and hazardous materials as defined in H&SC section 25260, which include lead at significant

concentrations. Based on the Final Health Risk Assessment, the Department has determined that the use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department has further determined that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable risk to human health or the environment, if limited to commercial and industrial, parks, or open space use.

ARTICLE II
DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means 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.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to occupy any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), to which the Property and every portion thereof is subject notwithstanding how the Property is improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by, the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to Civil Code section 1471(b), this Covenant expressly binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees.

3.03. Written Notice of Release of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, lessees, or sublessee a copy of this Covenant.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. Covenantor agrees that the Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used/developed for any of the following purposes:

(a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.

(b) A hospital or hospice for humans.

(c) A public or private school for persons under 21 years of age.

(d) A day care center for children.

4.02. Soil Management.

(a) No activities that will disturb the Cap (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) without a Soil Management Plan and a Health and Safety Plan approved by the Department.

(b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

(c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating on the Property, whether such activities are under the control or direction of the Owner or the Owner's Occupant.

4.03. Non-Interference with the Cap. Covenantor agrees:

(a) Activities that may disturb the cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted without prior review and approval by the Department, as required under 4.02(c).

(b) All uses and development of the Property shall preserve the integrity of the cap.

(c) The cap shall not be altered without prior written approval of the Department, as required under 4.02(c).

(d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any other disturbance to the cap that could affect the cap□s ability to contain subsurface hazardous wastes or hazardous materials underneath the Property, and (ii) the type and date of repair of such disturbance. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and

accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety, or the environment.

4.05. Access for Implementing O&M. The entity or person responsible for implementing Operation and Maintenance activities shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance activities until the Department determines that no further Operation and Maintenance is required.

ARTICLE V
ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any Improvements. Improvements herein shall mean all buildings constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to

the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice 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 (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Richmond Redevelopment Agency
1401 Marina Way South
Richmond, California 94804

City Attorney's Office
City of Richmond
1401 Marina Way South
Richmond, California 94804

To Department: Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 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 surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Authority to Bind. Each of the signatories below warrants and represents that he or she is authorized to execute this Covenant of behalf of its respective Party and to legally bind same to the terms and conditions of this Covenant.

322884

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Richmond Redevelopment Agency

Signatory's Name: Irma L Anderson

Title: Chair, Richmond Redevelopment Agency

Date: 8/18/2004

Department of Toxic Substances Control

Signatory's Name: Barbara J Cook

Title: Branch Chief

Date: 8/18/2004

Reviewed By: Rachel J Dragolovich
Agency Attorney

Attest By: Diane Holmes
Agency Secretary

322884

STATE OF CALIFORNIA)
)ss
COUNTY OF CONTRA COSTA)

On August 18, 2004, before me, LINDA L. THOMAS, a Notary Public in and for the State, personally appeared IRMA L. ANDERSON and DIANE HOLMES personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that their signatures on the instrument the persons, or the entity upon behalf of which the person acted, executed the same.

Witness my hand and official seal.

LINDA L. THOMAS
Notary Public

[attached to Covenant to Restrict Use of Property Environmental Restriction, Two Portions of Marina Way South Within Parcel D (West Shore Areas), Marina Bay Redevelopment, Richmond, California. Ms. Anderson signed in her capacity as Chair of the Richmond Redevelopment Agency and Ms. Barnes signed in her capacity as Secretary of the Richmond Redevelopment Agency.]

STATE OF CALIFORNIA)
)ss
COUNTY OF CONTRA COSTA)

On August 18, 2004, before me, LINDA L. THOMAS, a Notary Public in and for the State, personally appeared BARBARA J. COOK, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacities, and that her signature on the instrument the persons, or the entity upon behalf of which the person acted, executed the same.

Witness my hand and official seal.

LINDA L. THOMAS
Notary Public

[attached to Covenant to Restrict Use of Property Environmental Restriction, Two Portions of Marina Way South Within Parcel D (West Shore Areas), Marina Bay Redevelopment, Richmond, California. Ms. Cook signed in her capacity as Branch Manager of the Department of Toxic Substances Control, State of California.]

EXHIBIT A
Site Location, Vicinity, and Parcel Maps
Legal Description

322884

LEGAL DESCRIPTION
MARINA BAY SOUTH

Parcels of land situate in the City of Richmond, County of Contra Costa, State of California, described as follows:

PARCEL D-1

Commencing at the northeast corner of Parcel A, as shown on Parcel Map MS 753-98, recorded 29 December 1998, in Book 176 of Parcel Maps, at Page 11; thence S88°51'44"E, a distance of 69.00 feet; thence S01°08'16"W, a distance of 31.56 feet to the POINT OF BEGINNING; thence continuing southerly along said line, a distance of 115.61 feet; thence N89°34'45"W, a distance of 59.68 feet; thence N01°14'41"E, a distance of 112.44 feet; thence N87°22'35"E, a distance of 59.60 feet to the POINT OF BEGINNING.
Containing 6,792.04 square feet or 0.1559 acres, more or less.

PARCEL D-2

Commencing at the northeast corner of Parcel A, as shown on Parcel Map MS 753-98, recorded 29 December 1998, in Book 176 of Parcel Maps, at Page 11; thence S88°51'44"E, a distance of 69.00 feet; thence S01°08'16"W, a distance of 153.19 feet; thence continuing southerly along said line, S01°08'16"W, a distance of 36.94 feet to a point of curve to the left having a radius of 931.00 feet and a central angle of 18°08'16"; thence southerly along the arc a distance of 294.72 feet; thence S17°00'00"E, a distance of 133.42 feet; thence S72°42'40"W, a distance of 61.33 feet; thence N17°00'00"W, a distance of 128.14 feet to a point of curve to the right having a radius of 990.50 feet and a central angle of 18°08'16"; thence northerly along the arc a distance of 313.56 feet; thence N01°08'16"E, a distance of 42.06 feet; thence S89°35'40"E, a distance of 59.50 feet to the POINT OF BEGINNING.
Containing 28,747.33 square feet or 0.6599 acres, more or less.

Reference: Marina Bay
Marina Way South
A-N West, Inc.
7-30-04
5836-01
AR-4

REGISTERED PROFESSIONAL ENGINEER
ROBERT S. BINSACCA
No. 13739
Exp. 3-31-05
CIVIL
STATE OF CALIFORNIA

FILENAME: 5836\PROJDWGS\5836AR4.DWG MODIFIED: 8/2/04 11:10AM

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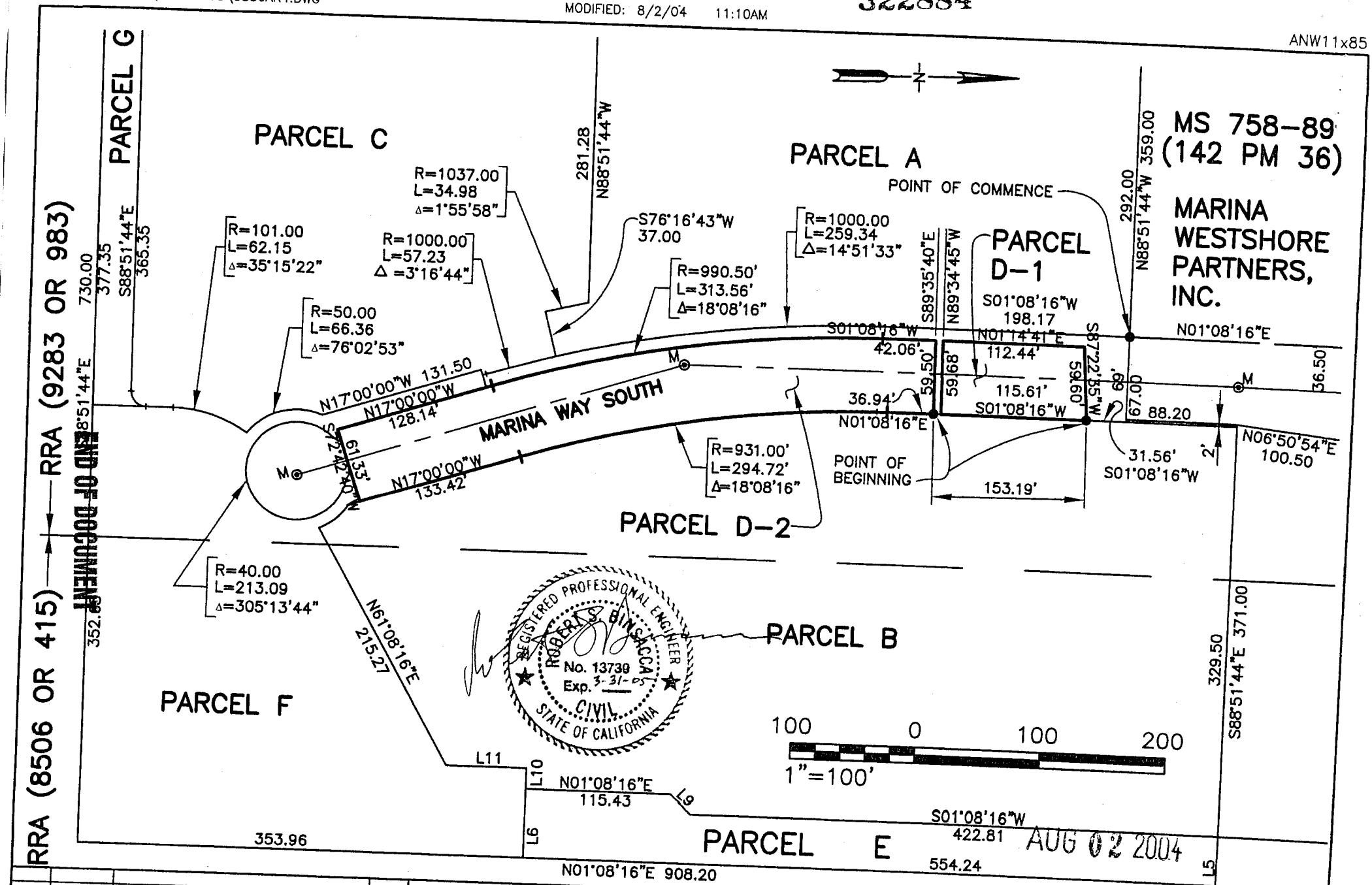
ANW11x85



Rev.	Date	Description	By

AN WEST INC.
Consulting Engineers
3095 Richmond Parkway
Suite 201
Richmond, California 94806

Designed By: FRB	Scale: 1"=100'
Drawn By: TFJR/MN	Project No: 5836-01
Checked By: RSB	Date: 7/29/04

MARINA WAY SOUTH TO PARCELS WITHIN PARCEL D OF PM-M5 753-98 (176 PM 11)

Dwg No: AR-4