



**SNK CAPTEC ANDANTE LLC**  
3996 San Pablo Avenue, Suite A  
Emeryville, CA 94608  
P 510.653.4183 F 510.653.4186

Alameda County  
JAN 25 2004  
Environmental Health Services

**VIA CERTIFIED MAIL**

January 20, 2004

Ms. Donna Drogos  
**Alameda County Environmental  
Health Services**  
1131 Harbor Bay Parkway, Suite 250  
Alameda, CA 94502-5700

**RE: Andante Emeryville – Deed Restriction and Copy of Approval Letter**

Dear Ms. Drogos,

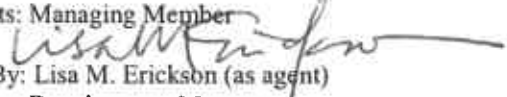
In April, 2003, Alameda County Environmental Health Services (ACEHS) staff reviewed the Contractor's Report of Remediation prepared by Dietz Irrigation for the site on 3992 San Pablo Avenue in Emeryville for the above referenced project. Based on the information presented to the agency, you issued an approval letter contingent upon the satisfaction of several provisions. One of the requirements is for SNK Captec Andante LLC to provide a copy of the recorded deed restriction specifying the provisions.

Enclosed please find a copy of the Declaration Establishing, Covenants and Restrictions Running with the Land, which was recorded on December 29, 2004, along with a copy of the approval letter issued by the agency for your records.

If you have any questions, please don't hesitate to call me at (510) 653-4183 x12 or e-mail me at [lerickson@snk.com](mailto:lerickson@snk.com). Thank you.

Sincerely Yours,  
**SNK CAPTEC ANDANTE LLC**  
A Delaware Limited Liability Company

By: SNK La Playa I LLC, a Delaware Limited Liability Company

Its: Managing Member  
  
By: Lisa M. Erickson (as agent)  
Its: Development Manager

Cc: Ignacio Dayrit, City of Emeryville  
Lee Gotshall-Maxon, Allen Matkins Leck Gamble & Mallony

Alameda County  
JAN 2 5 10 04  
Environmental Health

**COPY**

**DECLARATION ESTABLISHING, COVENANTS AND RESTRICTIONS  
RUNNING WITH THE LAND**

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY  
OF THE DECLARATION RECORDED IN THE OFFICE OF THE  
RECORDER OF ALAMEDA COUNTY, CALIFORNIA, AS INSTRUMENT  
NO. 2004-569808, DECEMBER 29, 2004, OFFICIAL RECORDS.

By: *Susan Davidson*  
Susan Davidson, DRE Consultant

Attached is the document you (or someone on your behalf)  
requested. As required by Section 12956.1(b) of the  
Government Code, please take note of the following:  
If this document contains any restriction based  
on race, color, religion, sex, familial status,  
marital status, disability, national original,  
or ancestry, that restriction violates state and  
federal fair housing laws and is void, and may  
be removed pursuant to Section 12956.1 of the  
Government Code. Lawful restrictions under  
state and federal law on the age of occupants in  
senior housing or housing or older persons shall  
not be construed as restrictions based on  
familial status.

Restrictions indicating a preference, limitation or  
discrimination based on race, color, religion, sex,  
handicap, familiar status, or national origin are hereby  
deleted to the extent such restrictions violate 42 USC §  
3604(c).

WHEN RECORDED MAIL TO:

SNK Captec Andante LLC  
Attn: Operations Department  
1313 East Osborn Road, Suite 213  
Phoenix, Arizona 85014

**DECLARATION ESTABLISHING  
COVENANTS AND RESTRICTIONS  
RUNNING WITH THE LAND**

THIS DECLARATION ("Declaration") is made as of December 21, 2004, by  
SNK Captec Andante LLC, a Delaware limited liability company ("Declarant").

**RECITALS**:

- A. Declarant is the fee owner of, and this Declaration applies to, that certain real property located in the City of Emeryville, County of Alameda, State of California, and described on Exhibit A attached hereto (the "Property").
- B. Declarant has previously performed certain soil remediation activities (the "Soil Remediation") on that portion of the Property shown on Exhibit B attached hereto (the "Remediated Area"). The drawing attached hereto as Exhibit C delineates areas where soil did and did not exceed applicable governmental screening levels for unrestricted land use (the "Screening Levels") prior to completion of the Soil Remediation. The drawing attached hereto as Exhibit D delineates areas where soil did and did not exceed the Screening Levels upon completion of the Soil Remediation.

C. Following completion of the Soil Remediation, the Alameda County Environmental Health Services ("ACEH") reviewed certain soil and groundwater testing at the Property. Based upon the results of such testing, together with additional information regarding the Property made available to the ACEH, the ACEH determined not to object to the development of the Property for commercial and high density residential purposes, subject to the establishment of certain covenants and restrictions with respect to the development, construction and use of the Property.

D. Therefore, Declarant intends to establish and create covenants and restrictions to provide for the development, construction and use of the Property, as more particularly set forth below. The covenants herein created shall be enforceable as covenants running with the land, and shall constitute equitable servitudes under this Declaration.

#### A G R E E M E N T :

NOW, THEREFORE, Declarant declares that the Property shall be held, transferred, encumbered, used, conveyed, and occupied subject to the covenants and restrictions hereinafter set forth for the use and benefit of the Property and every person or entity who now or in the future owns any portion or portions of the Property.

#### ARTICLE 1

#### COVENANTS AND RESTRICTIONS

**Section 1.1 Barrier.** A vapor tight barrier or membrane shall underlie all structures within the Remediated Area, with the exception of the parking structure that Declarant intends to construct on the Property. In no event shall any utilities be permitted to penetrate any such barrier or membrane unless sealed to prevent vapor from passing between the opening made by the penetration and the membrane.

**Section 1.2 Use of Imported Soil.** Clean imported soil shall comprise the upper three (3) feet of all landscaped areas, planting boxes and similar portions of the Property.

**Section 1.3 Restriction on Water Supply Wells.** No water supply wells shall be installed on the Property.

**Section 1.4 Restrictions on Use.** In no event shall any portion of the Property be used for single family residential or townhome use.

**Section 1.5 Monitoring Wells.** Not later than substantial completion of the residential and commercial project that Declarant intends to construct on the Property, Declarant shall install one (1) groundwater monitoring well on the Property in the location shown on Exhibit E attached hereto (the "Monitoring Wells"). Declarant shall cause the groundwater in the Monitoring Wells to be tested quarterly for a minimum of one year following substantial completion of the project.

## ARTICLE 2

### GENERAL PROVISIONS

**Section 2.1 Severability.** If any provision or portion hereof is declared invalid or in conflict with any law of the jurisdiction where the Property is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**Section 2.2 Term.** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of Declarant and its legal representatives, successors and assigns.

**Section 2.3 Amendments.** This Declaration may be amended only by an instrument in writing, executed and acknowledged by a duly authorized representative of Declarant, and any

such amendment shall become effective upon being recorded in the Official Records of the County of Alameda, State of California.

**Section 2.4 Use of Words.** Unless the context otherwise requires, singular nouns and pronouns used in this Declaration should be construed as including the plural thereof. For convenience and brevity, masculine pronouns may have been used herein in their generic sense as a reference to all persons, without regard to sex.

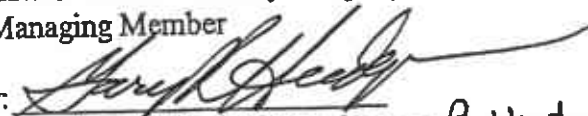
**Section 2.5 Governing Law.** This Declaration shall be governed by and interpreted in accordance with the laws of the State of California.

**Section 2.6 Nondiscrimination.** There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has issued this Declaration as of the day and year first above written.

SNK Captec Andante LLC,  
a Delaware limited liability company

By: SNK La Playa I LLC,  
A Delaware limited liability company  
Its: Managing Member

By:   
Donald C. Peterson Gary R. Hudgens  
Its: Vice President

STATE OF ARIZONA  
~~CALIFORNIA~~ )  
COUNTY OF MARICOPA )

ss.

On December 21, 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared Gary R. Hudgens, Vice President of SNK La Playa I LLC, Managing member of SNK Cuyler Akdank LLC, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Deborah Evans

Name Deborah Evans  
(typed or printed)



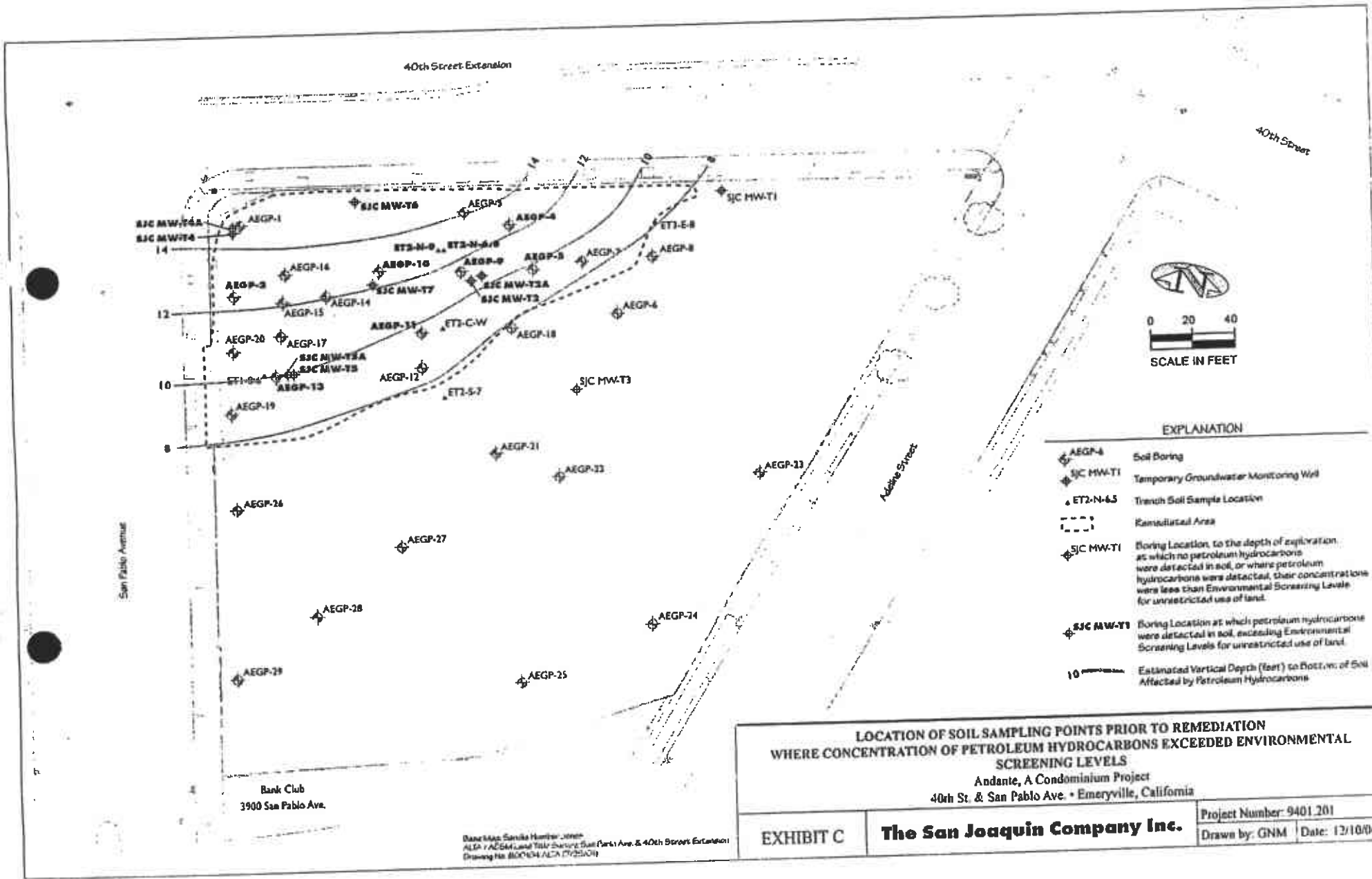
(This area for official notarial seal)

**EXHIBIT C**

**Areas of Compliance With Screening Levels  
Prior to Soil Remediation**

**[See Attached]**





0 20 40  
SCALE IN FEET

**EXPLANATION**

- AEGP-4 Soil Boring
- SJC MW-T1 Temporary Groundwater Monitoring Well
- ET2-N-6S Trench Soil Sample Location
- Remediated Area
- SJC MW-T1 Boring Location, to the depth of exploration, at which no petroleum hydrocarbons were detected in soil, or where petroleum hydrocarbons were detected, their concentrations were less than Environmental Screening Levels for unrestricted use of land.
- SJC MW-T1 Boring Location at which petroleum hydrocarbons were detected in soil, exceeding Environmental Screening Levels for unrestricted use of land.
- 10 Estimated Vertical Depth (feet) to Bottom of Soil Affected by Petroleum Hydrocarbons

**LOCATION OF SOIL SAMPLING POINTS PRIOR TO REMEDIATION  
WHERE CONCENTRATION OF PETROLEUM HYDROCARBONS EXCEEDED ENVIRONMENTAL  
SCREENING LEVELS**

Andante, A Condominium Project  
40th St. & San Pablo Ave. • Emeryville, California

Bank Club  
3900 San Pablo Ave.

Base Map: Sanicle Number 10000  
ALP 7 AEGM (and Title) showing San Pablo Ave. & 40th Street Extension  
Drawing No. 800104 ALP (1/25/04)

<b>EXHIBIT C</b>	<b>The San Joaquin Company Inc.</b>	Project Number: 9401 201	
		Drawn by: GNM	Date: 12/10/04

**EXHIBIT D**

**Areas of Compliance With Screening Levels  
Following Soil Remediation**

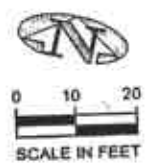
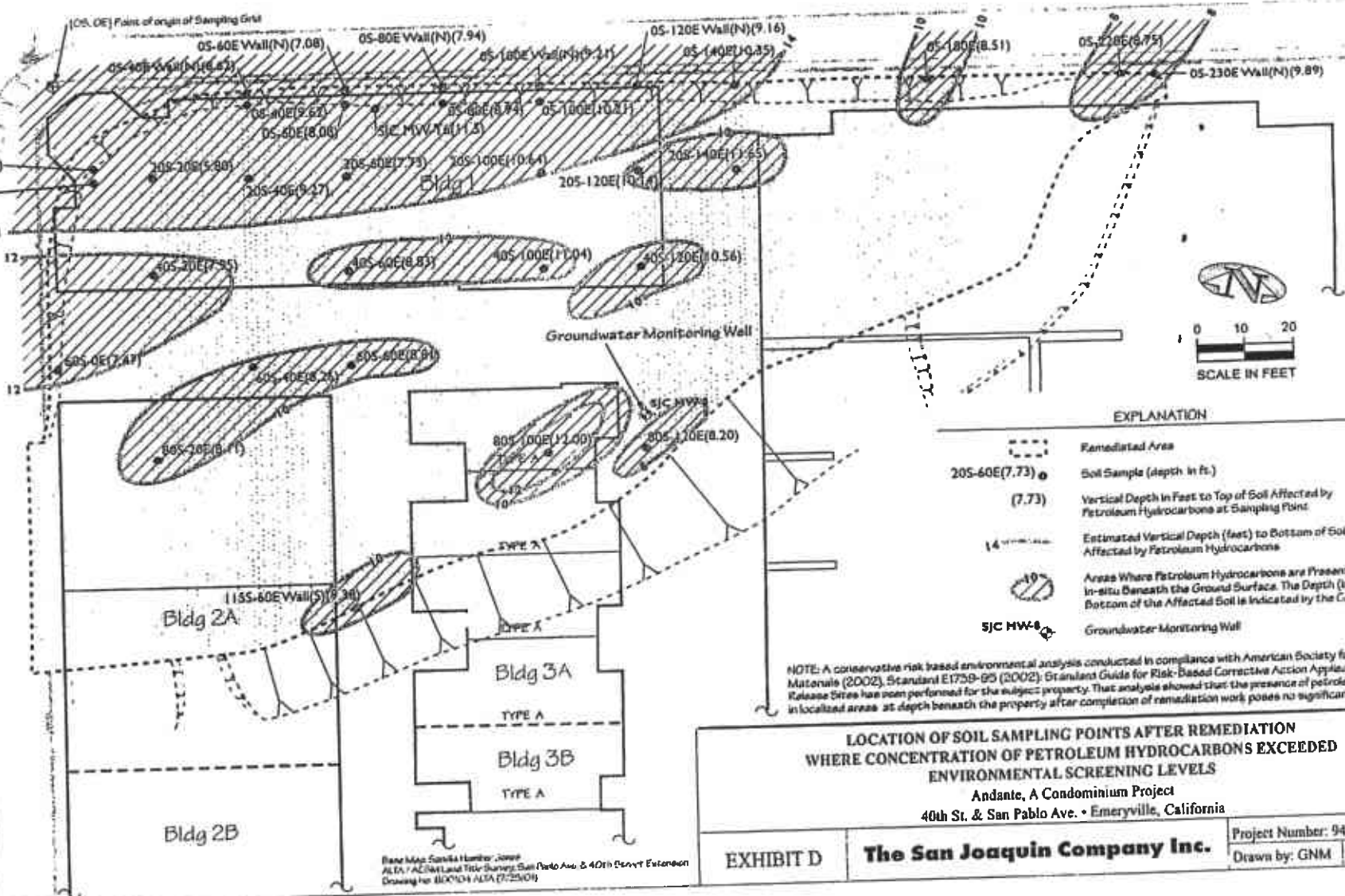
**[See Attached]**

+0th Street Extension

(05.0E) Point of origin of Sampling Grid

SJC MW-T4A (12.00)  
SJC MW-T4 (8.00)

San Pablo Avenue



EXPLANATION

- Remediated Area
- 20S-60E(7.73) Soil Sample (depth in ft.)
- (7.73) Vertical Depth in Feet to Top of Soil Affected by Petroleum Hydrocarbons at Sampling Point
- 14 Estimated Vertical Depth (feet) to Bottom of Soil Affected by Petroleum Hydrocarbons
- Areas Where Petroleum Hydrocarbons are Present in Soil In-situ Beneath the Ground Surface. The Depth (in feet) to the Bottom of the Affected Soil is indicated by the Contour line.
- SJC MW-8 Groundwater Monitoring Well

NOTE: A conservative risk based environmental analysis conducted in compliance with American Society for Testing and Materials (2002), Standard E1759-99 (2002); Granulars Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites has been performed for the subject property. That analysis showed that the presence of petroleum hydrocarbons in localized areas at depth beneath the property after completion of remediation work poses no significant risk to health.

**LOCATION OF SOIL SAMPLING POINTS AFTER REMEDIATION WHERE CONCENTRATION OF PETROLEUM HYDROCARBONS EXCEEDED ENVIRONMENTAL SCREENING LEVELS**  
 Andante, A Condominium Project  
 40th St. & San Pablo Ave. • Emeryville, California

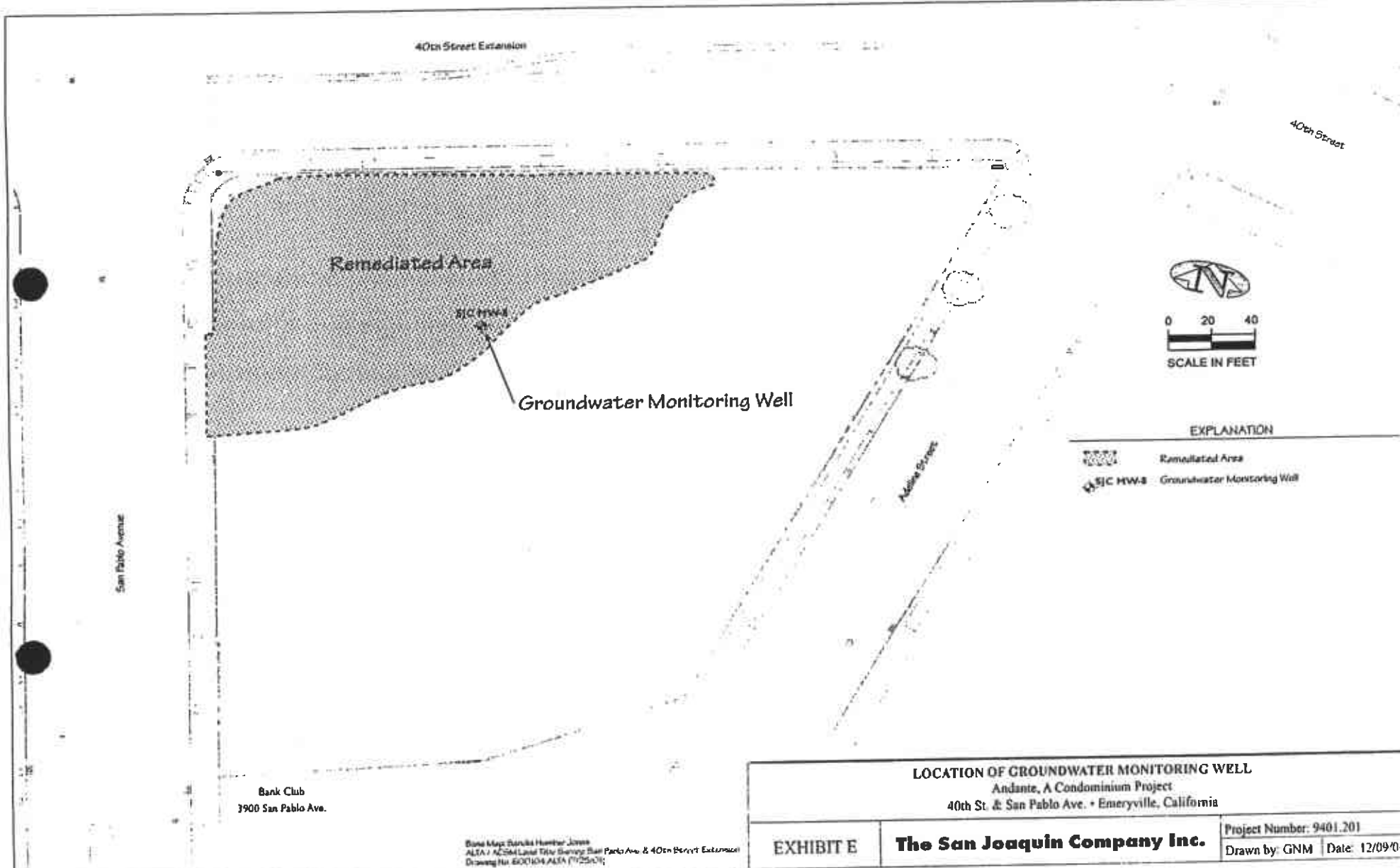
Base Map: Sanfilippo, Jones  
 A/E/C: A/C/W/Land Title Survey, San Pablo Ave. & 40th Street Extension  
 Drawing No. BDC014 ALA (7/25/04)

EXHIBIT D	<b>The San Joaquin Company Inc.</b>	Project Number: 9401.301	
		Drawn by: GNM	Date: 12/12/04

**EXHIBIT E**

**Location of the Monitoring Wells**

**[See Attached]**



Bank Club  
7900 San Pablo Ave.

Base Map: San Joaquin County  
ALTA / ACSM Lateral Title Survey San Pablo Ave. & 40th Street Extension  
Drawing No. 600104 ALTA (1/25/04)

<b>LOCATION OF GROUNDWATER MONITORING WELL</b> Andante, A Condominium Project 40th St. & San Pablo Ave. • Emeryville, California		
<b>EXHIBIT E</b>	<b>The San Joaquin Company Inc.</b>	Project Number: 9401.201 Drawn by: GNM   Date: 12/09/04