

CTH/
MRE

Order No: 112204
Escrow #:

WHEN RECORDED MAIL TO:
SF REGIONAL WATER QUALITY BOARD
2101 WEBSTER STREET
SUITE 500
OAKLAND CA 94612



1997 006746
OFFICIAL RECORDS OF
NAPA COUNTY
H. KATHLEEN BONDS

AT REQUEST OF: **FIRST AMERICAN TITLE**
03/31/1997 08:00 AM
Fee: \$ 55.00 Pgs: 17
TT: \$.00

For Recorder's Use Only

MRE

COVENANT AND RESTRICTION

AND

MUTUAL RELEASE AND COVENANT NOT TO SUE

former name of owners 1823 Lincoln Ave., Napa
2850077

current address of site is 2355 California Blvd., Napa
parcel # 002-011-006

COVENANT AND RESTRICTION ON PROPERTY

1823 Lincoln Avenue, Napa
County of Napa

This Covenant and Restriction on Property ("Covenant") is made February 20, 1997 by Trestle Napa L.L.C., the fee owner of the property commonly known as 1823 Lincoln Avenue, Napa, which is more particularly described in Exhibit A (the "Property"), and the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board").

A. **Restrictions:** No owner or occupant of the Property or any portion thereof shall drill, bore, or excavate or otherwise construct a well for the purpose of extracting water for domestic or potable uses.

B. **Enforceable Covenant Running with the Land:** This Covenant is an enforceable agreement pursuant to the Water Code and Civil Code section 1471. All restrictions described herein are for the mutual benefit of the Property and shall run with the land pursuant to Civil Code section 1471. Such restrictions shall pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, lease, or possession, to be in accord with the foregoing and to agree for themselves, their successors, heirs, and assigns, including their agents and employees, that their interest in the Property shall be subject to the foregoing restrictions. Recordation of this Covenant shall make its terms binding on all purchasers, lessees, successors, and assigns, regardless of whether a copy of the Covenant has been attached to a given deed or lease. For information purposes, a copy of this Covenant shall be attached to future leases of the Property. This Covenant shall be specifically enforceable by the Regional Board. Unless terminated by law or otherwise, this Covenant shall continue in effect in perpetuity.

In witness whereof, the parties execute this Covenant as of the date set forth above.

TRESTLE NAPA, L.L.C.

By: 

John McWells

Title: Manager

S:\CLF\15433858\UMISC\3858SIB.012

REGIONAL WATER QUALITY
CONTROL BOARD, SAN FRANCISCO
BAY REGION

By: 

Loretta Barsamian

Title: Executive Order

**Appendix I to Order No. 97-034
Mutual Release and Covenant Not to Sue
Former Norge Dry Cleaners Facility
1823 Lincoln Avenue, Napa**

This mutual release and covenant not to sue ("Release") is provided in conjunction with Regional Water Quality Control Board ("Regional Board") Order No. 97-034 ("Order"), Final Site Cleanup Requirements for the Former Norge Dry Cleaners Facility located at 1823 Lincoln Avenue, Napa, ("site") as adopted on February 19, 1997.

The Regional Board understands that the parties, Trestle Napa, L.L.C. (Trestle), American Stores Properties, Inc., Lucky Stores, Inc., Mid-Peninsula Bank, McNellis Partners, L.L.C., TKG Development, L.L.C., subsequent purchasers, tenants, lenders, and any occupants of the site, as well as, all of their directors, officers, employees, partners, affiliates, members, agents, successors, and assigns ("Covered Parties") require a commitment, to the maximum extent permitted by law, that they and their successors in interest will not be subject to liability for, or the subject of any actions, orders, or other requirements related to or arising from the contamination previously or presently existing at, under, or originating from the site ("Existing Conditions"), including, without limitation, any assessment, monitoring or remediation of the Existing Conditions. This Release is consistent with the State Water Resources Control Board ("State Board") Executive Director Guidance Memorandum dated July 9, 1996 regarding prospective purchaser agreements, and based on the following findings by Regional Board staff:

1. The site is within the jurisdiction of the Regional Board due to a prior condition of pollution and is subject to the provisions of Regional Board Order No. 97-034;
2. The current owner of the site, F.C.L.L. Realty Company ("FCLL"), is financially viable, has completed and paid for all cleanup and remedial activities required by the Regional Board in Clean Up and Abatement Order No. 95-033, has agreed to fully fund all further verification monitoring required by the Order and to place \$50,000 into an escrow account to assure completion of such monitoring, and has agreed to pay all Regional Board oversight costs and costs associated with developing this Release;
3. Cleanup activities at the site have been successful in removing any continuing source of pollution to groundwater and groundwater pollutant concentrations have demonstrated a steady decline since implementation of the final remedy. It is very likely that the natural attenuation will eventually remediate any pollutants remaining in the groundwater beneath the site. Based on this information, no further active remediation is warranted. In

- accordance with the Order, FCLL shall continue to monitor the site for a period not to exceed two years (semi-annual monitoring) to verify the natural attenuation of any remaining contaminants and, as required in the Order, will implement a plan for control of pollution if water quality objectives are exceeded outside the bounds of the containment zone;
4. No active discharge of pollutants or contaminants is occurring at the site; normal advection and dispersion of the existing pollutants is to be expected.
 5. The Covered Parties are not responsible parties or affiliated with responsible parties for the present contamination or pollution, and are not and have not been owners of the site;
 6. FCLL has fully remediated the site soils to the satisfaction of the Regional Board, and a human health risk assessment performed by Applied Remedial Services, Inc. dated April 14, 1995 and approved by the Regional Board on May 12, 1995, demonstrates that the site poses no significant risk to human health, safety, or the environment;
 7. The Regional Board is acting in its capacity as lead agency for the site. To the best of the parties' knowledge, the site is not the subject of an active enforcement action or agreement with another agency;
 8. The sole interest of Trestle in the site is to purchase the remediated site to facilitate its redevelopment for commercial use. Trestle has arranged for the redevelopment of this currently unoccupied property to a productive commercial/retail use which will benefit the public and the community. Due to the former condition of contamination and the threat of environmental liability to future owners and lenders on the site, all parties to the transaction view this Release as a condition precedent to redevelopment of this "brownfield" to a current and productive use;
 9. This Release is consistent with the goals and purposes of the Porter-Cologne Act and the federal Clean Water Act;
 10. A deed restriction prohibiting installation of any water well shall be recorded against the property and shall accompany transfer to all subsequent purchasers;
 11. No activities at the site consistent with the deed restriction described above, and with the exercise of due care, will aggravate, contribute to or create a condition of pollution as a result of the prior contamination;

12. The effect of continued operation or new commercial development at the site will not result in health risks to those persons likely to be present at the site.

Accordingly, the Regional Board hereby releases the Covered Parties from any and all liability associated with the Existing Conditions, and from any action by the Regional Board for performance of or recovery for any required level of investigation, cleanup, or cost of investigation or cleanup, relating to the Existing Conditions. In addition, in accordance with the Order and the findings of the Regional Board staff, the Regional Board expressly finds that the Covered Parties bear no liability, whether as a "Responsible Party" or otherwise, for such Existing Conditions and hereby covenants and agrees not to initiate, bring, or support any claim, order or action against the Covered Parties arising out of or related to such Existing Conditions. This Release shall remain effective notwithstanding the revocation or modification of the Order, and shall be without prejudice to the ability of the Regional Board to take action against any party, other than the Covered Parties, relating to the investigation, cleanup, or cost of investigation or cleanup of the Existing Conditions.

In partial consideration therefore, the Covered Parties, on behalf of themselves and their successors in interest, hereby release and covenant not to sue the Regional Board, its authorized officers, employees or representatives, with respect to any and all liability or claims associated with or arising out of the Existing Conditions. The Covered Parties further agree on behalf of themselves and their successors, to exercise due care at the site with respect to the Existing Conditions; to comply with the above-described deed restriction and with all applicable local, state, and federal laws and regulations regarding the site; and, to the extent that they have control over the site, to cooperate in providing reasonable access to the site for implementation of the monitoring plan and, if required, the management plan, described in the Order.

Each Covered Party not represented as a signatory below shall, as a precondition to receiving the benefits conferred by this Release, execute a written instrument in the form attached hereto as Exhibit A1 which shall accompany each purchase, lease, sublease, or rental agreement relating to the Property. Execution of this Release or of Exhibit A by or on behalf of any corporation, partnership, or other entity, shall be sufficient to confer the benefits of this Release upon all directors, officers, employees, partners, affiliates, members, agents, successors, and assigns of such entity. Trestle Napa shall record this Release in the County of Napa within 10 days of the date of its execution by all parties.

This Release may be executed in one or more counterparts, each such counterpart being deemed an original but all counterparts constituting a single instrument.

Each of the undersigned parties hereby certifies and warrants that he or she is authorized to bind his or her agency or entity to the continuing obligations described herein, and that the foregoing is a full, true and correct copy of Appendix I to Order No. 97-034 , Mutual Release and Covenant Not To Sue, adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on February 19, 1997.

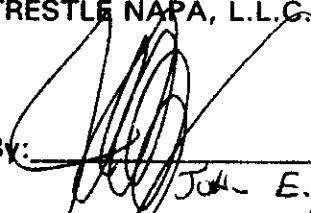
Dated: February 20, 1997

REGIONAL WATER QUALITY CONTROL
BOARD, SAN FRANCISCO BAY REGION

By: 
Loretta Barsamian, Executive Officer

Dated: February 20, 1997

TRESTLE NAPA, L.L.C.

By: 
John E. McNellis

Dated: February 20, 1997

MCNELLIS PARTNERS, L.L.C.

By: 
John McNellis


Dated: February 22, 1997


TKG DEVELOPMENT, L.L.C.

By: 
Hooper Knowlton, III

Dated: February 26, 1997


LUCKY STORES, INC., a Delaware corporation

Attest: 
ASSISTANT Secretary
Julie A. Webb

By: 
Jack Lunt, Vice President

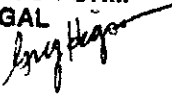
Dated: February 26, 1997

AMERICAN STORES PROPERTIES, INC.,
a Delaware corporation

Attest: 
ASSISTANT Secretary
Julie A. Webb

By: 
Jack Lunt, Executive Vice President

APPROVED AS TO FORM
ASPI LEGAL



**EXHIBIT A)
NOTICE OF MUTUAL RELEASE¹**

_____ [name of owner, purchaser, lender, lessee, or occupant]
(hereinafter "Covered Party"), by signing below verifies and warrants as follows:

1. Covered Party has read the Mutual Release and Covenant Not to Sue, Former Norge Dry Cleaners Facility, 1823 Lincoln Avenue, Napa ("Mutual Release") recorded in Book ___, Page ___ in Napa County, California.
2. Covered Party understands and agrees that the Mutual Release contains a release by the Regional Water Quality Control Board ("Regional Board") and a covenant not to bring or support any action or order against subsequent purchasers, tenants, lenders, and occupants of the 1823 Lincoln Avenue, Napa ("site") (including their directors, officers, employees, partners, affiliates, members, agents, successors and assigns) related to the Existing Conditions at the site, including contamination at, under, or originating from the site.
3. Covered Party understands and agrees that it may enjoy the benefits of the Mutual Release only if it releases and covenants not to sue the Regional Board as set forth in the Mutual Release, and that by executing this Notice, Covered Party releases and covenants not to sue the Regional Board in accordance with the terms of the Mutual Release.
4. Covered Party understands and agrees that its right to rely on the benefits of the Mutual Release is subject to and conditioned on its own, but only its own, compliance with its obligations under the terms of the Mutual Release.

This Notice shall be effective upon the execution by the Covered Party. Within three days of such execution, Covered Party agrees to mail a copy of the executed Notice by United States mail, postage paid, certified, return receipt requested, to: Executive Officer, Regional Water Quality Control Board, San Francisco Bay Region, 2101 Webster Street, Suite 500, Oakland, CA 94612.

Authorized Signature

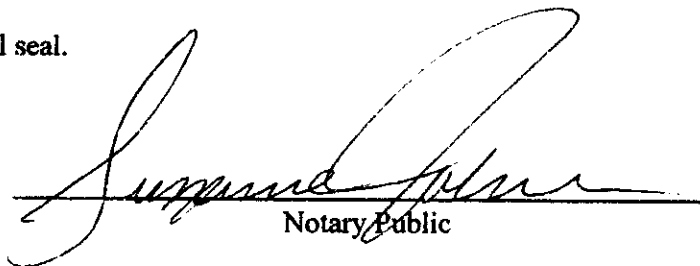
Date

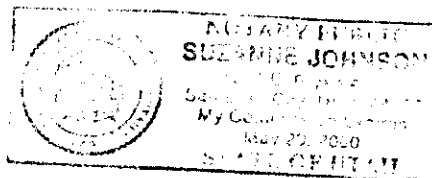
1. All Capitalized terms used but not defined herein shall have the meaning ascribed in the Mutual Release and Covenant Not to Sue, Former Norge Dry Cleaners Facility, 1823 Lincoln Avenue, Napa.

STATE OF UTAH)
 : S. S.
COUNTY OF SALT LAKE)

On February 26, 1997, before me, Suzanne Johnson, a notary public in and for such County and State, personally appeared Jack Lunt and Julie A. Webb, 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 by their signatures on the instrument, the persons or entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.


Notary Public



ILLEGIBLE NOTARY SEAL DECLARATION
(GC 27361.7 and CCP 2015.5)

"I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct." The notary seal on the document to which this statement is attached reads as follows:

Name of Notary Suzanne Johnson

Date Commission Expires May 29, 2000

Commission Number _____

Today's Date 3/31/97



Signature of Declarant

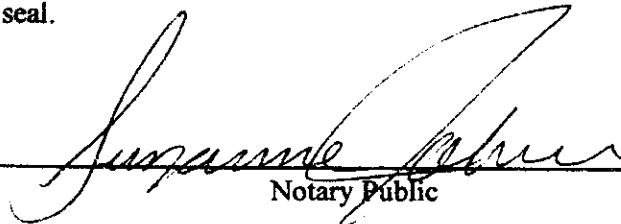
Jason Silva

Printed Name

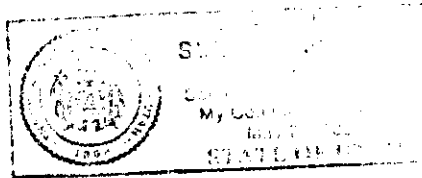
STATE OF UTAH)
 : S. S.
COUNTY OF SALT LAKE)

On February 26, 1997, before me, Suzanne Johnson, a notary public in and for such County and State, personally appeared Jack Lunt and Julie A. Webb, 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 by their signatures on the instrument, the persons or entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.



Notary Public



ILLEGIBLE NOTARY SEAL DECLARATION
(GC 27361.7 and CCP 2015.5)

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Name of Notary Suzanne Johnson

Date Commission Expires May 29, 2000

Commission Number _____

Today's Date 3/31/97


Signature of Declarant

Jason Silva
Printed Name

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

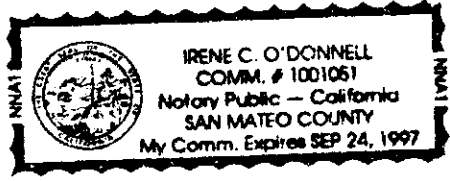
State of California

County of Santa Clara

On Feb. 26, 1997 before me, Irene C. O'Donnell, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared John Mc Nelles and Hooper Knowlton, III
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.

Irene C. O'Donnell
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: Mutual Release

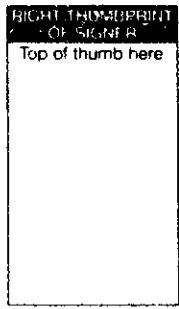
Document Date: February 20, 1997 Number of Pages: four

Signer(s) Other Than Named Above: ⁹⁶⁰ Loretta Barsamian

Capacity(ies) Claimed by Signer(s)

Signer's Name: John Mc Nelles

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



Signer Is Representing:

Signer's Name: Hooper Knowlton III

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

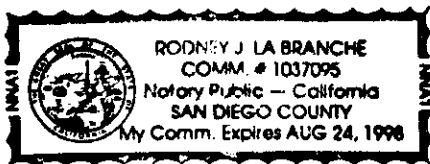


Signer Is Representing:

STATE OF California)
 : S.S.
COUNTY OF San Diego)

On March 11, 1997, 1997 before me,
Rodney J. La Branche, a notary public in and for such County and State,
personally appeared Lucita Khan Barsamian and _____, 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 entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

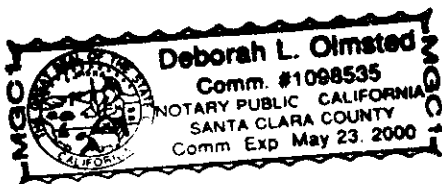


Rodney J. La Branche
Notary Public

STATE OF California)
 : S.S.
COUNTY OF Santa Clara)

On March 18, 1997 before me,
Deborah L. Olmsted, a notary public in and for such County and State,
personally appeared John E. McNellis and _____, 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 entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

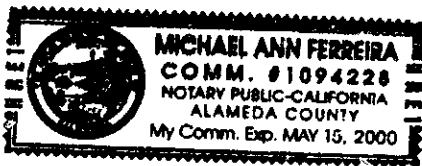


Deborah L. Olmsted
Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
 County of Alameda
 On 3/6/97 before me, Michael Ann Ferreira
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")
 personally appeared Loretta R Barsamian
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.

Michael Ann Ferreira
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: Mutual Release
 Document Date: Feb. 19, 1997 Number of Pages: 6
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Loretta Barsamian
 Individual
 Corporate Officer
 Title(s): _____
 Partner — Limited General
 Attorney-in-Fact
 Trustee
 Guardian or Conservator
 Other: California
Regional Water Control Board
 Signer Is Representing: _____



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

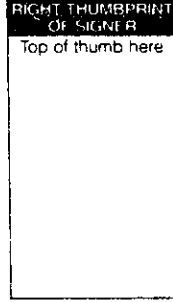


EXHIBIT "A"

PARCEL ONE:

Commencing at the point of intersection of the Southern line of the 2.59 acre tract conveyed to Dwight Spencer by Deed recorded April 18, 1893 in Book 51 of Deeds at page 381, said Napa County Records and the Western line of the 15 acre tract of land conveyed to W. H. Happy recorded January 15, 1885, in Book 35 of Deeds at page 410, said Napa County Records; thence South $77^{\circ} 15' 00''$ West along the Southern line of said 2.59 acre tract (51 Deeds 381), 273.61 feet to the Southeastern corner of Parcel 1A, as described in the Amended Final Order of Condemnation recorded April 25, 1966 in Book 744 at page 759 of Official Records of Napa County; thence along the Eastern and Southern lines of said Parcel 1A the following courses: North $7^{\circ} 03' 02''$ West 313.52 feet, along a curve concave to the Southeast having a radius of 250.00 feet through a central angle of $76^{\circ} 05' 09''$ an arc distance of 331.99 feet, and North $69^{\circ} 02' 07''$ East, 29.97 feet to a point on the Western line of said premises conveyed to W.H. Happy (35 Deeds 410); thence South $12^{\circ} 50' 00''$ East, along said Western line (35 Deeds 410), 73.50 feet to the Southern line of the parcel of land described in the Deed to Chris H. Kothe, et ux, recorded May 5, 1939 in Book 138 at page 267 of Official Records of Napa County; thence North $77^{\circ} 10' 05''$ East, along said Southern line (138 O.R. 267) and the Southern line described in the Deed to Elmo Ratto, et ux, recorded September 7, 1934 in Book 89 at page 163 of Official Records of Napa County, 140.00 feet to the most Eastern corner of said Ratto Parcel (89 O.R. 163); thence North $12^{\circ} 45' 00''$ West along the Eastern line of said Ratto Parcel (89 O.R. 163) 93.74 feet to the Southern line of said Parcel 1A as described in said Amended Final Order of Condemnation (744 OR 759); thence North $69^{\circ} 02' 07''$ East, along said Southern line 70.46 feet to the Western corner of the parcel of land described in the Deed to City of Napa, recorded September 13, 1985 in Book 1406 at page 894 of Official Records of Napa County; thence along the boundary of said City of Napa Parcel (1406 O.R. 894) along a curve to the right having a radius of 25.00 feet, through a central angle of $98^{\circ} 14' 23''$ a distance of 42.87 feet to the Eastern line of the parcel of land described in the Deed to Silverado Title Company of Napa County, a corporation recorded March 27, 1956 in Book 507 at page 541 of Official Records of Napa County, being the Western line of California Boulevard; thence South $12^{\circ} 52' 05''$ East 752.30 feet, more or less, to a point which bears North $12^{\circ} 52' 05''$ West 247.03 feet from the point of intersection of the North line of "F" Street and said Western line of California Boulevard; thence South $77^{\circ} 32' 42''$ West, 46.80 feet; thence North $66^{\circ} 18' 57''$ West, 100.53 feet; thence North $77^{\circ} 22' 05''$ East 110.41 feet; thence North $12^{\circ} 52' 05''$ West along said Western line 144.89 feet, more or less, to the point of beginning.

PARCEL TWO:

Commencing at the point of intersection of the Southern line of the County Road known as Lincoln Avenue with the Western line of the 15 acre tract of land heretofore conveyed to W.H. Happy by Deed recorded January 14, 1885 in Book 35 of Deeds, at page 410, said Napa County Records; and running thence along the Western line of said 15 acre tract, South $12^{\circ} 50'$ East 120 feet to a stake; thence at a right angle North $77^{\circ} 10'$ East 70 feet to a stake; thence at a right angle North $12^{\circ} 50'$ West 120 feet to a stake on the aforesaid Southern line of Lincoln Avenue; and thence along said last mentioned line, South $77^{\circ} 10'$ West 70 feet to the point of commencement.

EXCEPTING THEREFROM HOWEVER, the Northern 12 feet thereof as described in the Deed to the City of Napa, recorded February 5, 1958 in Book 562 at page 440 of Official Records of Napa County.

ALSO EXCEPTING THEREFROM, that portion described in the Final Order of Condemnation to the State of California recorded September 3, 1965 in Book 730 at page 130 of Official Records of Napa County, and amended by Order recorded April 28, 1966 in Book 744 at page 757 of Official Records of Napa County.

PARCEL THREE:

Commencing at a stake on the original Southerly line of Lincoln Avenue which is the Northerly boundary of Lots 40 and 41 of the tract of land known as "Pueblo de Salvador", said stake being at the Northeast corner of the Lot sold to William L. Johnson, by Deed dated February 25, 1905 and recorded in Book 82 of Deeds, at page 50, said Napa County Records, and being 70 feet Easterly from the Northwest corner of the 15 acre tract of land sold to W.H. Happy by Deed dated January 14, 1885 and recorded in Book 35 of Deeds, at page 410, said Napa County Records; running thence South $12^{\circ} 50'$ East, along the Easterly line of said Johnson's lot 120 feet to the Southeast corner thereof; thence North $77^{\circ} 10'$ East 70 feet to a stake; thence at a right angle North $12^{\circ} 50'$ West, 120 feet to a stake on said Southerly line of Lincoln Avenue; thence along said Southerly line South $77^{\circ} 10'$ West 70 feet to the point of commencement.

EXCEPTING THEREFROM HOWEVER, the Northern 12 feet thereof described in the Deed to the City of Napa, recorded February 5, 1958 in Book 562 at page 442 of Official Records of Napa County.

ALSO EXCEPTING THEREFROM, that portion described in the Final Order of Condemnation to the State of California, recorded September 3, 1965 in Book 730 at page 130 of Official Records of Napa County, and amended by Order recorded April 28, 1966 in Book 744 at page 757 of Official Records of Napa County.