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Recorded at Request of:



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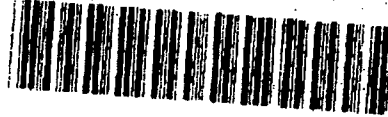
12/23/2005 08:30 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 50.00

RECORDING REQUESTED BY
CHICAGO TITLE COMPANY

**RECORDING REQUESTED BY
CHICAGO TITLE COMPANY**

When Recorded Mail to:



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Pepe & Hazard LLP
Goodwin Square
225 Asylum Street, 22nd Floor
Hartford, CT 06103
Attention: Adam F. Zweifler, Esq.

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JM

**MODIFICATION OF DEED OF TRUST,
SECURITY AGREEMENT and FIXTURE FILING
AND ASSIGNMENT OF LEASES, RENTS AND PROFITS
AND OTHER LOAN DOCUMENTS**

[NOTE: This document amends and modifies documents of record recorded in the Official Records of Alameda County as Series Nos. 2002-205131 and 2002-205132.]

THIS MODIFICATION AGREEMENT ("Agreement") is made as of the 22nd day of December, 2005 (the "Effective Date"), by and between **ROTUNDA PARTNERS II, LLC**, a California limited liability company (the "Borrower"), and **NATIONWIDE LIFE INSURANCE COMPANY**, an Ohio corporation (the "Lender").

RECITALS

1. Borrower and Lender entered into a loan transaction in the original principal amount of \$20,000,000.00 (the "Loan"). The Loan is evidenced by a Note from the Borrower in favor of Lender in the original principal amount of \$20,000,000.00 and dated May 8, 2002 (the "Note").

2. The Loan is secured by a first priority Deed of Trust, Security Agreement and Fixture Filing from the Borrower, as trustor, to Chicago Title Insurance Company, a California corporation, as trustee, in favor of Lender, as beneficiary, dated May 8, 2002 and recorded in the Official Records of Alameda County, California as Series No. 2002-205131 (the "Deed of Trust") and by an Assignment of Leases, Rents and Profits from the Borrower, as Assignor, in favor of Lender, as Assignee, dated and recorded May 8, 2002 and recorded in the Official

Rotunda Building.

(A) 58200300-LE

Records of Alameda County, California as Series No. 2002-205132 (the "Assignment"). The Deed of Trust and the Assignment encumber Borrower's interest in certain real property and the improvements located thereon located in the County of Alameda, City of Oakland, State of California and more particularly described in Exhibit A attached to the Deed of Trust (the "Property"). The Note, the Deed of Trust, the Assignment and the other documents executed by Borrower evidencing or securing the Loan are hereinafter referred to as the "Original Loan Documents").

3. Borrower and Lender are further modifying the Note pursuant to a Modification of Note of even date herewith (the "Modification Agreement").

4. In order to memorialize the changes to the Loan Documents, the Lender requires that the Borrower enter into this Agreement.

5. In consideration of the foregoing and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

AGREEMENT

1. Modification of Deed of Trust. Effective as of the date hereof, the Deed of Trust is modified as follows:

- (a) The first paragraph following the word "Witneseth" on Page 1 of the Deed of Trust is deleted in its entirety, and the following is substituted in lieu thereof:

"WHEREAS, Borrower is justly indebted to Lender for the entire indebtedness in the aggregate principal sum of Twenty-One Million and 00/100 Dollars (\$21,000,000.00) (hereinafter referred to as the "Loan"), with interest thereon, evidenced by that certain Note dated May 8, 2002 as modified by that certain Modification of Note dated December 22, 2005 in the principal amount of Twenty-One Million and 00/100 Dollars (\$21,000,000.00) as executed and delivered by Borrower and payable to the order of Lender and performance of each covenant and agreement of Borrower therein and all modifications, amendments, replacements, extensions and renewals thereof and substitutions therefor (collectively, the "Note"); and"

- (b) Paragraphs (ii) and (iii) on Page 2 of the Deed of Trust are hereby deleted and the following are substituted in lieu thereof:

Rounda Building.

"(ii) All estate, right, title and interest of Borrower in, to, under or derived from that certain leasehold estate (the "**Dalziel Garage Leasehold Estate**") created by that certain Lease dated October 20, 1999, by and between The City of Oakland, a public body, corporate and politic, as lessor, and Borrower, as lessee, filed in the Official Records of Alameda County, California on October 20, 1999 as Document Number 394066 (the "**Dalziel Garage Ground Lease**"), which encumbers certain real property located in City of Oakland, Alameda County, California and more particularly described in Exhibit B attached thereto, and which interest in the Dalziel Garage Ground Lease shall be replaced with the RGLP Parking Lease (as hereinafter defined) on January 1, 2006;

(iii) Borrower's interest in that certain Parking Lease dated December 1, 2004, by and between Rotunda Garage, L.P., as lessor and Borrower, as lessee (the "**RGLP Parking Lease**"; the Dalziel Garage Ground Lease and the RGLP Parking Lease are hereinafter referred to collectively as the "**Ground Lease**"), which encumbers certain real property located in City of Oakland, Alameda County, California and more particularly described in Addendum attached thereto (the "**RGLP Parking Leasehold Estate**"; the Dalziel Garage Leasehold Estate and the RGLP Parking Leasehold Estate shall hereinafter be collectively referred to as the "**Ground Lease Real Property**"; and the Fee Real Property and the Ground Lease Real Property are hereinafter referred to as the "**Real Property**"), and including, without limitation, any extensions and renewals thereof and any greater estate, right, title or interest which Borrower may now or hereafter acquire in the Ground Lease Real Property by exercise of any right, power or option now or hereafter contained in the Ground Lease;"

- (c) The second sentence of the first paragraph of the section of the Deed of Trust entitled "Payment of Principal and Interest" is hereby deleted and the following is substituted in lieu thereof:

"To promptly and punctually pay all other sums required to be paid by Borrower pursuant to the terms, covenants and conditions of the Note, this Deed of Trust, the Assignment of Leases, Rents and Profits, as modified by that certain Modification of Deed of Trust, Security Agreement and Fixture Filing and Assignment of Leases, Rents and Profits and Other Loan Documents dated December 22, 2005 (hereinafter referred to collectively as the "**Assignment**") and all other documents and instruments executed as

Rotunda Building.

further evidence of, as additional security for or executed in connection with the Loan evidenced by the Note and secured by this Deed of Trust (which documents are collectively hereinafter referred to as the "Loan Documents")."

- (d) The words "and the Application/Contract for Mortgage Loan dated November 16, 2005" are hereby inserted after "March 13, 2002" in the second line of Section 39 of the Deed of Trust entitled "Terms of Contract Survive Closing.

2. Ground Lease. Effective as of the date hereof, Borrower represents and warrants that: (i) the Dalziel Garage Ground Lease is in full force and effect and true and complete copies of the Dalziel Garage Ground Lease and RGLP Parking Lease (including all amendments thereto) have been delivered to Lender; (ii) there are no existing defaults under the Ground Lease or in the performance of the terms thereof by either Borrower or the lessor thereunder; and (iii) all rents and other charges reserved in the Ground Lease have been paid to the extent they were due and payable prior to the date hereof.

3. Modification of Assignment. Effective as of the date hereof, the Assignment is modified as follows:

- (a) The second paragraph following the word "Witnesseth" on page 1 of the Assignment is hereby deleted and the following is substituted in lieu thereof:

"WHEREAS, Lender is the owner and holder of a certain Deed of Trust, Security Agreement and Fixture Filing, dated May 8, 2002 (the "Deed of Trust") as modified by a Modification of Deed of Trust, Security Agreement and Fixture Filing and Assignment of Leases, Rents and Profits and Other Loan Documents (the "Modified Deed of Trust"; the Deed of Trust and the Modified Deed of Trust are hereinafter referred to collectively as the "Deed of Trust") encumbering Borrower's interest in the Real Property and other property more specifically described in the Deed of Trust (all of which property is referred to herein as the "Property"), which Deed of Trust secures the payment of the entire indebtedness in the aggregate principal sum of Twenty-One Million and 00/100 Dollars (\$21,000,000.00), with interest thereon, evidenced by that certain Note, as modified by that certain Modification of Note dated of even date herewith in the principal amount of Twenty-One Million and 00/100 Dollars (\$21,000,000.00), as executed and delivered by Trustor and payable to the order of Lender and performance of each covenant and agreement of

Kotunda Building

Borrower therein and all modifications, amendments, replacements, extensions and renewals thereof and substitutions therefor (collectively, the "Note").

4. Modification of Other Loan Documents.

- (a) All of the other Loan Documents, are hereby amended and modified as follows:

As used in the Loan Documents, the term "Note" shall mean and include that certain Note in the original principal amount of Twenty Million and 00/100 Dollars (\$20,000,000.00) dated May 8, 2002, as executed and delivered by Borrower and payable to the order of Lender, and performance of each covenant and agreement of Borrower therein and all modifications, amendments, replacements, extensions and renewals thereof and substitutions therefor, including, without limitation, that certain Modification of Note dated December 22, 2005 in the original principal amount of Twenty-One Million and 00/100 Dollars (\$21,000,000.00) (collectively, the "Note");

As used in the Loan Documents, the term "Loan Documents" shall mean and include all documents executed and delivered by Borrower to Lender in connection with the Loan as modified by that certain Modification of Note dated December 22, 2005 and the Modification of Deed of Trust, Security Agreement and Fixture Filing and Assignment of Leases, Rents and Profits and Other Loan Documents, and including, without limitation the Note.

5. Miscellaneous.

- (a) Except as specifically modified hereby, all of the terms and conditions of the Deed of Trust, the Assignment and the Loan Documents, shall remain unmodified and in full force and effect, and the Borrower hereby ratifies and affirms its obligations, covenants, representations and warranties contained therein, except to the extent expressly modified hereby. The Borrower agrees to be bound by the terms and conditions of the Deed of Trust and Assignment and the Loan Documents, as modified by this Modification Agreement.
- (b) The rights and duties of the parties under this Agreement shall be governed by the laws of the State of California.

Ratunda Building.

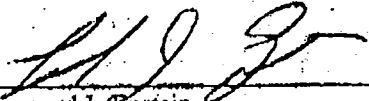
- (c) This Agreement shall be binding upon the Borrower and the Lender, and each of their respective successors and assigns.
- (d) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall be deemed one and the same document.

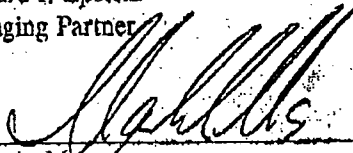
Executed as a sealed instrument as of the day and date first above written.


BORROWER:

ROTUNDA PARTNERS II, LLC,
a California limited liability company

By: **ROTUNDA PARTNERS I, LLC,**
a California limited liability company,
Its Manager

By: 
Leonard I. Epstein
Managing Partner

By: 
Mark A. Moss
Managing Member

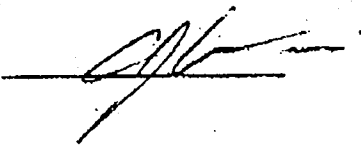
By: 
Phillip A. Tagam
Managing Member

[ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGE.]

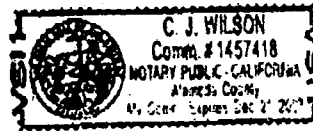
STATE OF CALIFORNIA)
)
COUNTY OF Alameda) ss.

On December 20, 2005, before me, C.J. Wilson, a Notary Public in and for the State of California, personally appeared **Leonard I. Epstein** personally known to me (or 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 he/she executed the within instrument in his/her authorized capacity and that, by his/her signature on the within instrument, the person or entity upon behalf of which he/she acted executed the within instrument.

WITNESS my hand and official seal.

Signature: 

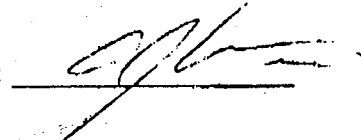
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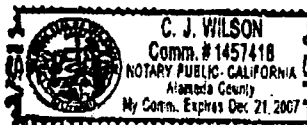


STATE OF CALIFORNIA)
)
COUNTY OF Alameda) ss.

On December 20, 2005, before me, C.J. Wilson, a Notary Public in and for the State of California, personally appeared **Mark A. Moss** personally known to me (or 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 he/she executed the within instrument in his/her authorized capacity and that, by his/her signature on the within instrument, the person or entity upon behalf of which he/she acted executed the within instrument.

WITNESS my hand and official seal.

Signature: 



(Seal)

[ACKNOWLEDGEMENTS CONTINUE ON FOLLOWING PAGE.]

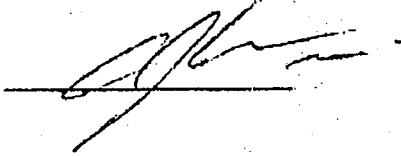
STATE OF CALIFORNIA)
COUNTY OF Alameda)

SS.

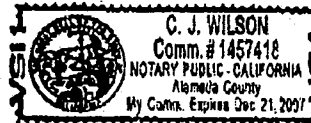
On December 20, 2005, before me, C. J. Wilson, a Notary Public in and for the State of California, personally appeared **Phillip A. Tagami** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the within instrument in his/her authorized capacity and that, by his/her signature on the within instrument, the person or entity upon behalf of which he/she acted executed the within instrument,

WITNESS my hand and official seal.

Signature: _____



(Seal)



[SIGNATURES CONTINUE ON NEXT PAGE]

ILLEGIBLE NOTARY SEAL DECLARATION
(Government Code 27361.7)

I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:

NAME OF NOTARY PUBLIC:C. J. Wilson

COMMISSION NUMBER:1457418

NOTARY PUBLIC STATE:CA

COUNTY:ALAMEDA

MY COMM. EXPIRES:Dec. 21, 2007

(DATE)

SIGNATURE OF DECLARANT: 

PRINT NAME OF DECLARANT:B. ZABROWSKI

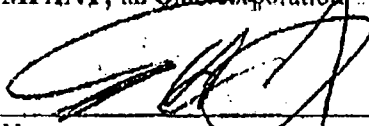
CITY & STATE OF EXECUTION:OAKLAND, CA

DATE SIGNED:Dec. 22, 2005

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

LENDER:

**NATIONWIDE LIFE INSURANCE
COMPANY, an Ohio corporation**

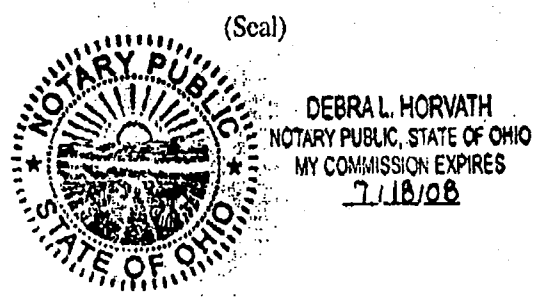
By:  MPA
Name: _____
Title: **TODD A. HARROP
ASSOCIATE VICE PRESIDENT
COMMERCIAL MORTGAGE LOANS**

STATE OF OHIO)
)
COUNTY OF FRANKLIN) ss.

On December 20, 2005, before me, Debra L. Horvath, a Notary Public in and for the State of Ohio, personally appeared Todd A. Harrop, personally known to me (or 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 he/she executed the within instrument in his/her authorized capacity and that, by his/her signature on the within instrument, the person or entity upon behalf of which he/she acted executed the within instrument.

WITNESS my hand and official seal.

Signature: Debra L. Horvath



ILLEGIBLE NOTARY SEAL DECLARATION
(Government Code 27361.7)

I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:

NAME OF NOTARY PUBLIC:Debra L. Horvath

COMMISSION NUMBER: _____

NOTARY PUBLIC STATE:Ohio

COUNTY:Franklin

MY COMM. EXPIRES:7/18/08

(DATE)

SIGNATURE OF DECLARANT: _____

B. Zabrowski

PRINT NAME OF DECLARANT:B. ZABROWSKI

CITY & STATE OF EXECUTION:OAKLAND, CA

DATE SIGNED:Dec. 22, 2005

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

EXHIBIT A

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Beginning at a point in the western line of Broadway, formerly Telegraph Avenue, distant thereon 100 feet southerly from the southern line of 16th Street; running thence southerly along the western line of Broadway 130 feet; thence north $78^{\circ} 48'$ west, 103.95 feet; thence south $75^{\circ} 36'$ west 102.44 feet to the eastern line of San Pablo Avenue; thence northerly along said eastern line of San Pablo Avenue, 130 feet; thence north $75^{\circ} 33'$ east, 90 feet; thence north $14^{\circ} 24'$ west, 5.72 feet; thence north $11^{\circ} 11'$ east, 112.89 feet to the southern line of 16th Street; thence along the southern line of 16th Street, south $78^{\circ} 48'$ east, 74 feet; thence south $11^{\circ} 12'$ west, 100 feet; thence south $78^{\circ} 48'$ east, 100 feet to the point of beginning.

Parcel Two:

Beginning at a point on the western line of Broadway, formerly Telegraph Avenue, distant thereon 230 feet southerly from the point of intersection thereof with the southern line of 16th Street; thence south $11^{\circ} 12'$ west along said western line of Broadway, 20 feet; thence north $78^{\circ} 48'$ west, 99.41 feet; thence south $75^{\circ} 36'$ west, 97.90 feet to a point on the eastern line of San Pablo Avenue, distant thereon 315.00 feet southerly from the point of intersection thereof with the southern line of 16th Street; thence north $14^{\circ} 24'$ west along said line of San Pablo Avenue, 20 feet; thence north $75^{\circ} 36'$ east, 102.44 feet; thence south $78^{\circ} 48'$ east, 103.95 feet to the point of beginning.

Excepting therefrom, the interest taken by the City of Oakland in the Condemnation Proceedings and in the Superior Court of the State of California, in and for the County of Alameda, entitled City of Oakland, vs. San Pablo Co., et al., Case #74496, a certified copy of Final Judgment was recorded September 23, 1924, in Book 803, Official Records, at Page 245; being an interest in a parcel of uniform width of 18 feet extending from the west line of Broadway to the eastern line of San Pablo Avenue.

Parcel Three:

Beginning at the point of intersection of the western line of Telegraph Avenue with the southern line of 16th Street; running thence southerly along said line of Telegraph Avenue, 100 feet; thence at right

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angles westerly 100 feet; thence at right angles northerly 100 feet to the southern line of 16th street; and thence easterly along said last named line 100 feet to the point of beginning.

Being Lots 1, 2, 3 and 4 in Block "A", as said Lots and Block are shown on the "Map of Survey made for G. C. Potter, March 28, 1877, by T. J. Arnold, C.E.", etc., filed April 23, 1877, in the Office of the County Recorder of Alameda County, Map Book 2, Page 14.

Parcel Four:

All of Lots C, D, F, G and H and a portion of Lot E, as said Lots are shown on the map entitled "City Hall Tract", recorded July 15, 1868, in Book 31 of Deeds, at Page 647, Official Records of Alameda County, described as follows:

Beginning at the intersection of the southeastern line of Clay Street, 80.5 feet in width, with the northeastern line of 15th Street, 60 feet in width; running thence along last said line, south $62^{\circ} 35' 26''$ east, 255.06 feet; thence at right angles north $27^{\circ} 24' 34''$ east, 30.75 feet; thence north $76^{\circ} 46' 33''$ east, 57.25 feet; thence south $62^{\circ} 35' 26''$ east, 1.55 feet to an intersection with the northwestern line of City Hall Plaza, formerly Washington Street, as shown on the map of "Plat Showing Lands to be taken for the district to be assessed to pay the expense of opening a Street in the City of Oakland, California, between the northern line of Fifteenth Street and the western line of San Pablo Avenue", filed April 26, 1912, in Book 26 of Maps, at Page 85, et seq., Official Records of Alameda County; thence along last said line, north $27^{\circ} 24' 34''$ west, 16.23 feet to an intersection with the western line of San Pablo Avenue, 100 feet in width; thence along last said line, north $13^{\circ} 13' 27''$ west, 162.39 feet to an intersection with the southwestern line of 16th Street, 60 feet in width; thence along last said line, north $62^{\circ} 35' 26''$ west, 194.30 feet to an intersection with said southeastern line of Clay Street; thence along last said line, south $27^{\circ} 24' 24''$ west, 207.50 feet to the point of beginning.

Parcel Five:

As designated as the land located at 524 16th Street, Oakland, its legal description is as follows:

Lots 17, 18, 19, 20, 21 and 22 and a portion of Lot 23 in Block "B", as said Lots and Block are shown on the "Map of the Survey Made for G. C. Potter", March 28, 1877 by T. Arnold C. E., filed April 23, 1877, in Book Two of Maps, Page 14, in the Office of the County Recorder of Alameda County described as follows:

Beginning at a point on the southern line of 17th Street, distant thereon south $76^{\circ} 54'$ east, 155.35 feet from the eastern line of San Pablo Avenue, as said Street and Avenue are shown on said map, said point of beginning being the intersection of said line of 17th Street with the western line of said Lot 22; running thence along the western line of said Lot 23, south $11^{\circ} 06'$ west, 101.95 feet; thence south $78^{\circ} 54'$ east, 25.06 feet to the western line of said Lot 21; thence along the last named line and

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along the western line of said Lot 23, south $11^{\circ} 06'$ west, 108.36 feet to the northern line of 16th Street, as said Street is shown on said Map; thence along the last named line, south $78^{\circ} 54'$ east, 75 feet to the eastern line of said Lot 18; thence along the eastern line of said Lots 18 and 17, north $11^{\circ} 06'$ east, 210.31 feet to said line of 17th Street; thence along the last named line, north $78^{\circ} 54'$ west, 100.06 feet to the point of beginning.

Parcel Six:

As designated as the land located at 1618 San Pablo Avenue, Oakland, its legal description is as follows:

Lot 28, Block "B", as said Lot and Block are shown on the "Map of the Survey Made for G. C. Potter", March 28, 1877 by T. Arnold C.E., filed April 23, 1877, in Book Two of Maps, Page 14, in the Office of the County Recorder of Alameda County.

Parcel Seven:

As designated as the land located at 529 17th Street, Oakland, its legal description is as follows:

Being all of Lots 29 and 30 and portions of Lots 31 and 32, Block "B", as said Lots and Block are shown on the "Map of the Survey Made for G. C. Potter", March 28, 1877 by T. Arnold C.E., filed April 13, 1877, in Book Two of Maps, Page 14, in the Office of the County Recorder of Alameda County.

Beginning at a point on the south line of 17th Street, distant thereon easterly 103.35 feet from the point of intersection thereof with the northeast line of San Pablo Avenue, as shown on said map; thence easterly along said line of 17th Street, 52 feet to the east boundary line of Lot 29, Block "B", as shown on map; thence southerly along the last named line, 101.95 feet to the southwest boundary line of said Lot 29; thence northwesterly along said last named line, 50.90 feet to the corner common to Lots 28, 29 and 30 in Block "B"; thence southwestery along the southeast boundary line of said Lot 30, a distance of 86.74 feet to said northeast line of San Pablo Avenue; thence northwesterly along said last named line, 45 feet; thence at right angles northeast, 84 feet, more or less, to the west boundary line of said Lot 30; and thence northerly along last named line, 20 feet, more or less, to the point of beginning.