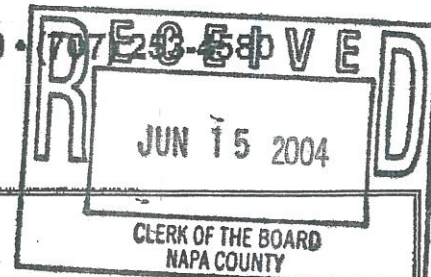


**NAPA COUNTY
CLERK OF THE BOARD'S OFFICE**
1195 Third Street, Room 310, Napa, California, 94559

RECEIVED

APPEALS
(Chapter 2.88 of Napa County Code)



JUN 30 2004

TO BE COMPLETED BY APPELLANT*
(Please type or print legibly)

NAPA CO. CONSERVATION
DEVELOPMENT & PLANNING DEPT

Appellant's Name: Dan Wojtkowiak

Telephone #: (707) 963-8239 **Fax #:** (707) 963-8239 **E-Mail:** eadan@earthlink.net

Mailing Address: 1547 Sage Canyon Road, St. Helena, CA 94574
No. Street City State Zip

Status of Appellant's Interest in Property: Property owner within 200 ft. of applicant's project applicant, adjacent property owner, other (describe) property

Action Being Appealed: Planning Commission Decision approving permit modifications

Permittee Name: Michael and Lyndsey Harrison/Harrison Vineyards Winery

Permittee Address: 1527 Sage Canyon Road, St. Helena, CA 94574

Permit Number: 03383-MOD **Date of Decision:** June 2, 2004

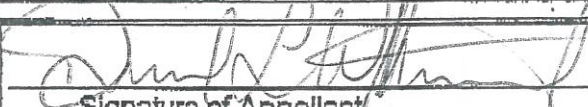
Nature of Permit or Decision: Increase winery production from 7,200 gal. to 15,000 gal.

Reason for Appeal (Be Specific - If the basis of the appeal will be, in whole or in part, that there was a prejudicial abuse of discretion on the part of the approving authority, that there was a lack of a fair and impartial hearing, or that no facts were presented to the approving authority that support the decision, factual or legal basis for such grounds of appeal must be expressly stated or they are waived.) (attach additional sheet if necessary):

Please see Attachment "A" attached hereto and incorporated herein.

Project Site Address/Location: 1527 Sage Canyon Road, St. Helena, CA 94574
Street City State Zip

Assessor's Parcel No.: 32-510-004


Signature of Appellant

6/14/04
Date

Dan Wojtkowiak
PRINT NAME

TO BE COMPLETED BY CLERK OF THE BOARD

Total Fee: \$ 629.30 **Receipt Nos.** 846331 **Received by:** M. Price **Date:** 6-15-04

8:15am

* The following information, in addition to the information required by this form also needs to be provided as attachments hereto pursuant to County Code Section 2.88.050 (F-H): Title Insurance Report, Assessor's Map Book Pages, and Appeals Fee

6/14/04

Attachment A to "Appeals" Form

Clerk of the Board's Office

1195 Third Street, Room 310, Napa, California 94559

On June 2, 2004, the Napa County Planning Commission (Planning Commission) approved #03383-MOD, which is a modification of a use permit for the Harrison Vineyards Winery. The Harrison Vineyards Winery's current use permit allows production capacity of up to 7,500 gallons per year. The approved modification allows: (i) *an increase in such production to a maximum of 15,000 gallons per year*; (ii) conversion of existing space for winery storage and office; (iii) adding tours and tastings; (iv) adding a marketing plan; (v) adding wine retail sales; (vi) adding parking spaces; and (vi) constructing road improvements.

The basis for this Appeal is as follows. As stated in oral comments at the June 2, 2004 Planning Commission hearing, the water analysis set forth in the June 2, 2004 Staff Report is inaccurate, and the Phase I water study prepared for the project is inaccurate and misleading. The Planning Commission should not have relied on the water analysis in the Staff Report, or on the Phase I water study analysis, or on the Department of Public Works recommendations, in making its decision to approve the use permit modification.

The Staff Report states as follows under "Hydrology and Water Quality":

A Phase 1 water study was prepared for the project. There [are] two existing wells with a combined production of 20 gallons per minute on the property that supply the water used for wine processing and domestic purposes. The winery facility will use .25 acre-feet of water per year. The 1.5 ac.-ft. reservoir supplies water for the vineyard during peak irrigation. Water for the reservoir is supplied by a well on the site. The existing residence and farm labor residence on the property use approximately 1.0 acre-feet of water per year. The total amount of well water used on the parcel is 6.65 acre-feet per year. The location of the winery facility is not in a recognized groundwater deficient area. The Department of Public Works has determined that the estimated water demand is below the established 22.43 AF/YR threshold for the property, and no further studies are needed.

Testimony was presented at the public hearing showing that the above information is both inaccurate and misleading. The referenced two wells on the Harrison Vineyards Winery site do not produce water in the quantities set forth in the Staff Report. In our estimation, one of the two wells produces water at approximately 9 gallons per minute, and is dedicated solely to the existing cottage located on the property. We believe that such well has gone dry in the summer months for the last two years. The second of the two wells also produces water at approximately 9 gallons per minute, and also goes dry in the summer months.

The Staff Report states that the 1.5 ac.-ft reservoir on the Harrison Vineyards Winery site "supplies water for the vineyard during peak irrigation..." and "... (W)ater for the reservoir is supplied by a well on the site." As stated above, we believe instead that during peak irrigation, the referenced well is dry and has not in the past been sufficient to produce enough water to supply the reservoir.

We believe that, although not stated in the Staff Report, the Harrison Vineyards Winery water may be drawn from a separate spring located on the Harrison Vineyards Winery property. The spring flows from a cistern, with a pump capable of pumping 40 gallons per minute. The water from this spring services the Harrison, Allen and Bryant properties in the area. The spring water flow is directly proportional to (and dependent upon) the rain fall in any given year. In dry years, the spring flows at less than 40 gallons per minute, and must be shared among the listed property owners and their vineyards.

We understand that as part of the use permit modification, the Harrison Vineyards Winery will be increasing its current planting density. We do not believe that the Staff Report or any other documents submitted to date accurately address the issue of where the additional water will come from to serve the additional Harrison Vineyards Winery capacity and planting.

Our property (Wojtkowiak property) is located approximately 200 feet from the Harrison Vineyards Winery property. Aside from the two wells on the Harrison Vineyards Winery property, there is a well at the end of the Wojtkowiak property driveway (located on the Anderson property), and a separate well on the Wojtkowiak property. The Anderson property well was abandoned several years ago because it went dry. The well on the Wojtkowiak property produces at approximately 9 gallons per minute. Thus, of four wells in the area, one is dry, and two generally go dry during the summer months.

All property owners in the area are concerned about well water and water usage. The Staff Report merely states that the area is not formally recognized as a "water deficient area." The lack of a formal designation does not mean that water supply is adequate in the area. The Staff Report should be amended to provide an accurate

description of the water usage and levels and producing capacity in the area, and an accurate description of the intended water supply for the permit modification.

We believe that the Planning Commission should not have based its decision to increase capacity on the information set forth in the Staff Report. We believe that the Planning Commission decision was based on false and misleading information, and that the facts relied upon do not support the Planning Commission's decision.

We further believe that, if the applicants can in fact demonstrate that the water from the two wells is indeed adequate to support the increased capacity allowed by the modified use permit, then the Staff Report and permit should document and confirm the ability of the two wells to serve the Harrison Vineyards Winery. Further, the modified use permit should confirm, as a condition of approval, that the applicants must utilize only water generated from the two referenced wells, and that water from the referenced spring on the Harrison Vineyards Winery property will not be utilized.

GUARANTEE



First American Title Insurance Company

SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. *Except to the extent* that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
 - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
 - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. *Notwithstanding* any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
 - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
 - (c) The identity of any party shown or referred to in Schedule A.
 - (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS

1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A)(C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

2. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

(a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company

may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss or Damage.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required

First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND THE CONDITIONS AND STIPULATIONS OF THIS GUARANTEE,

First American Title Insurance Company

a corporation, herein called the Company

GUARANTEES

The Assured named in Schedule A against actual monetary loss or damage not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

First American Title Insurance Company

By: 
Authorized Signatory

Guarantee No: H 741829
File No.: LU01769 -

SCHEDULE A

PROPERTY OWNERS NOTICE GUARANTEE

LIABILITY: \$1,000.00

FEE: \$200.00

Name of Assured: **COUNTY OF NAPA**

Date of Guarantee: June 11, 2004 at 7:30 A.M.

The assurances referred to on the face page are:

That, according to the Napa Extended Assessment Roll for the fiscal year 2003-2004 on the Megabyte Property Tax System computer available in the office of the Napa County Tax Collector as of the Date of Guarantee (the "Assessment Roll"):

- A. The persons listed on Exhibit "A" attached hereto as "Current Owner" are shown on the Assessment Roll as owning real property within 300 feet of the property identified as Assessor's Parcel Number(s):

032 510 004 000.

- B. The Assessor's Parcel Number (APN) and any addresses shown on Exhibit "A" attached hereto are as shown on the Assessment Roll.

EXHIBIT A

APN 032 010 010 000
Gordon C Anderson
1541 Sage Canyon Rd
Saint Helena, CA 94574-9628

APN 032 010 078 000
NAPA CITY OF
C/O JEFF FREITAS
1600 FIRST ST
NAPA CA 94559-2430

APN 032 510 002 000
Charles W & Diane Murphy Dunn
PO Box 609
Rutherford, CA 94573-0609

APN 032 510 003 000
Ronald E & Gloria M Allen
1555 Sage Canyon Rd
Saint Helena, CA 94574-9628

APN 032 510 004 000
Lindsey Harrison
1527 Sage Canyon Rd
Saint Helena, CA 94574-9628

APN 032 510 009 000
Jane S Oneil
111 Moffett Rd
Lake Bluff, IL 60044-2811

APN 032 510 010 000
BRYANT VINEYARDS LTD
701 Market St #1200
Saint Louis, MO 63101-1858

APN 032 510 011 000
Daniel L Wojtkowiak
1547 Sage Canyon Rd
Saint Helena, CA 94574-9628

APN

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(5 continued)

in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. Determination and Extent of Liability.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The liability of the Company under this Guarantee

to the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A or in Part 2;

(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or

(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

8. Limitation of Liability.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. Payment of Loss.

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. Arbitration.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

13. Liability Limited to This Guarantee; Guarantee Entire Contract.

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

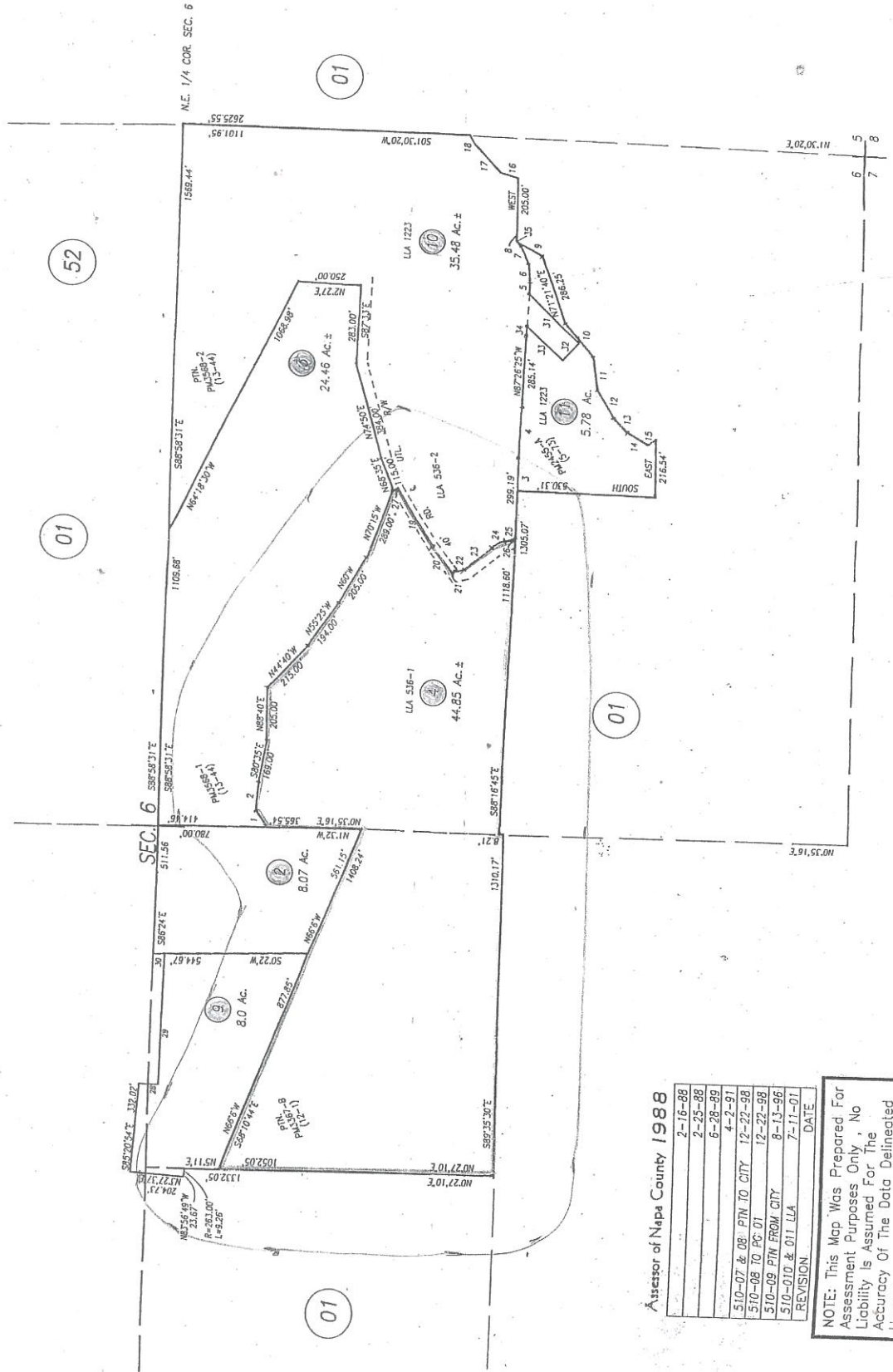
14. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at 1 First American Way, Santa Ana, California 92707.

DEC 14 2001
Tax Area Code
85001

32-51
32-01

32-01



1.	553.30 °W	77.45 °E
2.	582.10 15 °W	110.50 °E
3.	582.10 15 °W	110.50 °E
4.	582.05 15 °W	209.90 °E
5.	582.05 15 °W	209.90 °E
6.	582.05 15 °W	210.10 °E
7.	582.05 15 °W	210.10 °E
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33.	582.05 15 °W	210.10 °E
34.	582.05 15 °W	210.10 °E
35.	582.05 15 °W	210.10 °E

Assessor of Napa County 1988

2-16-88	510-07 & 08: PTN TO CITY	DATE
2-23-88	510-08 TO PG 01	
5-28-89	510-09 PTN FROM CITY	
4-2-91	510-010 & 011 ILLA	
	REVISION	

NOTE: This Map Was Prepared For Assessment Purposes Only , No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.