

**AGREEMENT FOR PURCHASE OF REAL PROPERTY  
BY AND BETWEEN THE CITY OF SAN JOSÉ AND THE  
SANTA CLARA VALLEY WATER DISTRICT**

This agreement, ("Agreement"), by and between the CITY OF SAN JOSÉ, a municipal corporation of the State of California, ("CITY or "CITY"), and SANTA CLARA VALLEY WATER DISTRICT ("DISTRICT" or "BUYER") a public entity, is entered into on the date of execution by CITY ("Effective Date").

**RECITALS**

**WHEREAS**, DISTRICT is the owner in fee simple of real property which is adjacent to City-owned property located in San José, California, which City-owned property is described in **EXHIBIT "A"** and depicted in **EXHIBIT "B"** attached hereto and incorporated herein; and

**WHEREAS**, the City Council has found and determined that City-owned property, described in **EXHIBIT "A"** and depicted in **EXHIBIT "B"**, is not needed for, nor adaptable to, municipal purposes and is Surplus Property, and that the public interest and necessity will be served by its sale; and

**WHEREAS**, Section 4.20.060 (B) (2) of the San José Municipal Code authorizes the sale of surplus City-owned real property to any other governmental or public agency, subject to such terms and conditions as the City Council of CITY may, in its discretion, provide, and the City Council desires to sell such Surplus Property to DISTRICT pursuant to such Section 4.20.060 (B) (1).

**NOW THEREFORE**, DISTRICT and CITY wish to enter into this AGREEMENT for DISTRICT's purchase of CITY's Property.

**1. PURCHASE AND SALE.**

**A.** CITY agrees to sell to DISTRICT, and DISTRICT agrees to purchase from CITY the Property for the sum of One Hundred Fifty Seven Thousand Dollars (\$157,000.00), ("Purchase Price").

**B.** The purchase and sale of the Property shall be in accordance with and subject to all of the following terms of this Agreement.

**2. CONVEYANCE OF PROPERTY BY CITY.**

CITY agrees to convey CITY's interest in the Property to DISTRICT, by Grant Deed, identical to or substantially similar to that described in **Exhibit "C"** attached hereto, at the office of Fidelity National Title Company (Title Company), 2099 Gateway Place, Suite 100, San Jose, California no later than 30 days after the Effective Date of this Agreement.

**3. TITLE TO BE CONVEYED.**

CITY agrees that, except as otherwise expressly provided herein, the Property shall be conveyed by grant deed, from CITY to DISTRICT, free and clear of any and all conditions, restrictions, reservations, liens, encumbrances, assessments, easements, leases (recorded or unrecorded), deeds of trust, mortgages, and any clouds or defects in title.

**4. TITLE INSURANCE.**

CITY agrees to cause to be issued to DISTRICT, at no cost to the CITY, concurrently with the conveyance of the Property to DISTRICT, a C.L.T.A. owner's form policy of title insurance issued by the Title Company, with DISTRICT named as the insured, in the amount of One Hundred Fifty Seven Thousand Dollars (\$157,000.00), insuring DISTRICT's title to the Property is free and clear of any and all conditions, restrictions, liens, encumbrances, assessments, easements, leases (recorded or unrecorded), taxes and any clouds or defects in title whatsoever, except such specific exceptions as DISTRICT expressly authorizes in **Section 12** herein. Acceptance by DISTRICT of any such policy of insurance, whether such insurance complies with the requirements of this **Section 4** or not, shall not constitute a waiver by DISTRICT of its right to such insurance as is herein required of CITY, nor a waiver by the DISTRICT of any rights of action for damages or any other rights which may accrue to DISTRICT by reason of the failure of CITY to convey title or to provide title insurance as required in this Agreement.

**5. COSTS AND FEES.**

DISTRICT shall bear the cost of any applicable transfer taxes, recording fees, title insurance, reconveyance fees, mortgage prepayment penalty, escrow fees and any other closing costs incidental to the conveying of the Property to the DISTRICT.

**6. PAYMENT OF PURCHASE PRICE.**

DISTRICT agrees to deposit the Purchase Price in escrow with the Title Company and to cause Title Company to pay the same to CITY upon and after:

- (a) Conveyance of CITY's Interest in the Property by CITY to DISTRICT as hereinabove provided.
- (b) CITY's execution and DISTRICT's acceptance of a Grant Deed substantially in the form specified in **Exhibit "C"** conveying the Property to the DISTRICT ("Grant Deed").
- (c) Recordation of the Grant Deed.

**7. POSSESSION.**

CITY agrees to deliver to DISTRICT, on the date the Grant Deed conveying the Property to DISTRICT is recorded, quiet and peaceful possession of the Property.

8. **WAIVERS.**

The waiver by DISTRICT of any breach of any term, condition or covenant of this Agreement by CITY shall not be deemed or held to be a waiver of any subsequent or other breach of any term, condition or covenant of this Agreement.

9. **HEIRS AND ASSIGNS.**

This Agreement, and all the terms, covenants and conditions hereof, shall apply to and bind the heirs, executors, administrators, successors and assigns of each party hereto.

10. **LEASES.**

CITY warrants that, except as hereinafter provided, there are no oral or written leases on all or any portion of the Property.

11. **EXCEPTIONS.**

DISTRICT agrees to accept title to and title insurance on the Property subject to the following exception(s), listed in the Preliminary Title Report, a copy of which is attached hereto as **Exhibit "D"**.

12. **ENVIRONMENTAL COMPLIANCE.**

DISTRICT has caused to be conducted an assessment entitled "Phase I Hazardous Substance Liability Assessment –Two McLellan Avenue Parcels APN # 264-35-027 (handwritten addition of 3015-541) and 264-48-001 (handwritten addition of 3015-546) San Jose, California, by Earthtech Engineering and Technology, Project No. 72414.15.01, dated October, 2004 attached hereto as **Exhibit "E"** (the "Report"). DISTRICT has provided a copy of the Report to CITY. In making the representations contained in this **Section 12** and in providing the indemnification and hold harmless provisions in this **Section 12**, both parties are relying on the contents of the Report in making the representations and providing the indemnification provided in this Agreement.

As of the close of escrow, and based on the data and information contained in the Report, the Property will not be in violation of any federal, state or local law, ordinance or regulation relating to the environmental conditions on, under, or about the Property, including, but not limited to, soil and groundwater conditions. CITY warrants and represents that except as provided in the Report specified in this **Section 12**, City is not aware (after due and diligent inquiry) that either CITY or any third party has used, generated, manufactured, produced, stored or disposed of on, under or about the Property any hazardous materials, as defined in **Exhibit "F"**, ("Hazardous Materials"). CITY further warrants and represents that City has not been served with a proceeding or inquiry by any governmental authority (including, without limitation, the California State Department of Health Services) with respect to the presence of Hazardous Materials on the Property or the migration of Hazardous Materials from or to other property, is in progress, or about to commence or has previously occurred, notwithstanding

any investigation conducted by DISTRICT in conjunction with the DISTRICT's purchase of the Property.

**13. INDEMNIFICATION BY CITY**

CITY hereby agrees to indemnify, defend and hold harmless DISTRICT and its officers, employees, contractors and agents from and against any and all claims, demands, liabilities, liens, costs, expenses, penalties, damages and losses, as a direct or indirect result of:

- (a) Any misrepresentation or breach of warranty or breach of covenant made by CITY in this Agreement or any document, certificate or exhibit given or delivered to DISTRICT or escrow holder pursuant to or in connection with this Agreement; and
- (b) Any and all obligations, liabilities, claims, liens, or encumbrances, whether direct, contingent or consequential and no matter how arising, and in any way related to the Property and arising or accruing before the close of escrow, or in any way related to or arising from any act, conduct, omission, contract or commitment of CITY (or any of CITY's agents or employees) at any time or times before the close of escrow, including, without limitation: (i) all foreseeable and all unforeseeable consequential damages directly or indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials by CITY and identified in the Report; and (ii) the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following transfer of title to the Property, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials on the Property that are directly attributable to City, that occur prior to the transfer by CITY to DISTRICT of the title to the Property, and that are identified in the Report..

**14. NOTICES.**

Any notice which is required to be given hereunder, or which either party may desire to give to the other, shall be in writing and may be personally delivered or given by mailing the same by registered or certified mail, postage prepaid, addressed as follows:

To the DISTRICT:           Clerk of the Board  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118

or to such other place as DISTRICT may designate by written notice.

To the CITY:               City of San José  
Department of Public Works, Real Estate Division  
200 East Santa Clara Street – 5<sup>th</sup> Floor  
San José, CA 95113  
Attention: Supervising Real Property Agent

With a Copy to: City of San Jose  
Office of the City Attorney  
200 East Santa Clara Street – 16<sup>th</sup> Floor  
San José, CA 95113  
Attn: Real Estate Attorney

or to such other place as CITY may designate by written notice.

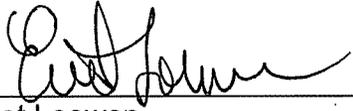
**15. MISCELLANEOUS.**

- A. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- B. If there be more than one entity designated in or signatory to this Agreement, the obligations hereunder imposed upon CITY or DISTRICT shall be joint and several; and the terms "CITY" or "DISTRICT" as used herein shall refer to each and every of said signatory parties, severally as well as jointly.
- C. This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.
- D. Time is and shall be of the essence of each term and provision of this Agreement.
- E. Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration for CITY'S or DISTRICT's entry into this Agreement, and any breach hereof by CITY or DISTRICT shall be deemed to be a material breach. Each term and provision of this Agreement performable by either party shall be construed to be both a covenant and a condition.
- F. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of California.
- G. The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- H. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either CITY or DISTRICT in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.



**"CITY"**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Evet Loewen  
Chief Deputy City Attorney

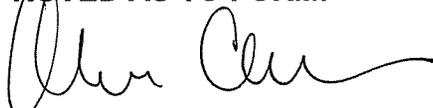
**CITY OF SAN JOSÉ**, a municipal corporation of the State of California

By: \_\_\_\_\_  
Lee Price, MMC  
City Clerk

Date: \_\_\_\_\_

**"DISTRICT"**

**APPROVED AS TO FORM:**

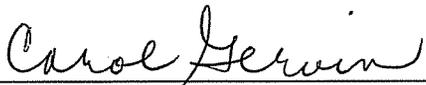
  
\_\_\_\_\_  
District Counsel

Santa Clara Valley Water District  
located in the County of Santa Clara

By:   
Name: Beate Goldie  
Title: Chief Executive Officer  
Date: 6/1/09

**"DISTRICT" REAL ESTATE**

**Approved:**

  
\_\_\_\_\_  
Associate Real Estate Agent

**Approved:**

  
\_\_\_\_\_  
Real Estate Manager

**EXHIBIT "A"**

Legal Description

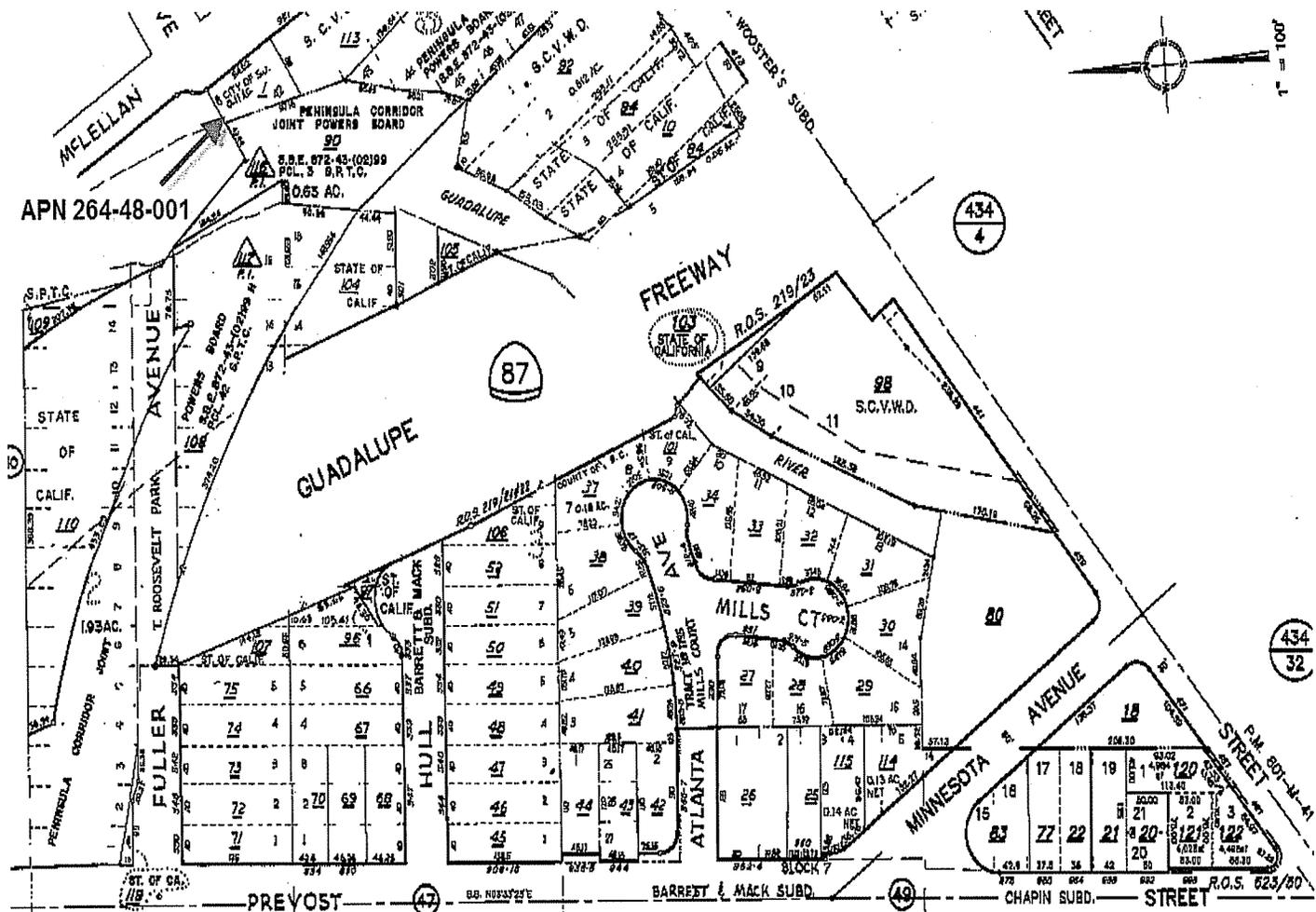
All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

A portion of Lot 42, as shown upon that certain Map entitled, "Map of the Palm Tract," which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on July 11, 1905 in Book K of Maps, at page 90, and being particularly described as follows:

Beginning at a point in the Southwesterly line of McLelland Avenue, distant thereon 50 feet Northwesterly from the common corner of Lots 42 and 43, as shown upon the Map above referred to; thence running Southwesterly and parallel with the dividing line between said Lots 42 and 43, 69 feet, more or less, to the Easterly bank of the Guadalupe River being also the Westerly line of said Lot 42; thence along said Westerly line of said Lot 42, Northerly 100 feet, more or less, to the most Westerly corner of said Lot 42; thence along the Northwesterly Line of said Lot 42, Northeasterly 40 feet to the most northerly corner of said Lot 42; thence Southeasterly and along the said Southwesterly line of McLelland Avenue, 94.62 feet to the point of beginning.

APN No: 264-48-001

**EXHIBIT "B"**  
**Plat of Property**



**EXHIBIT "C"**  
**FORM OF GRANT DEED**

RECORDED WITHOUT FEE UNDER  
SECTION 6103 GOVERNMENT CODE OF  
THE STATE OF CALIFORNIA

**RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:  
AND MAIL TAX STATEMENT TO:**  
City of San Jose – Public Works - Real Estate  
200 E. Santa Clara Street, 5th Floor  
San Jose, CA 95113-1905

Deed # \_\_\_\_\_  
File/Doc. No: \_\_\_\_\_  
APN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ ( "portion of " )

Space above this line for Recorder's use

---

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from fee per Government Code Sections 27383 and 6103.

---

- computed on the consideration or full value of property conveyed, OR  
 computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
 unincorporated area;  **City of San Jose**, and  
 \_\_\_\_\_  
Signature of Declarant

**GRANT DEED**

\_\_\_\_\_ and \_\_\_\_\_,  
\_\_\_\_\_, GRANTOR, does hereby GRANT to the CITY OF SAN JOSE, a municipal corporation of the State of California, GRANTEE, the real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

See Exhibit "A" attached hereto and made a part hereof.

Dated \_\_\_\_\_, 200\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated \_\_\_\_\_, 200\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mail Tax Statements To: **SAME AS ABOVE**

Page 1

T-14397/503995\_3  
District Purchase of City's Parcels  
APN No. 254-35-027 and 264-48-001

EXHIBIT C

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

## ACKNOWLEDGEMENT

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
Paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_ (Seal)

## EXHIBIT "A"

### Legal Description

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

A portion of Lot 42, as shown upon that certain Map entitled, "Map of the Palm Tract," which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on July 11, 1905 in Book K of Maps, at page 90, and being particularly described as follows:

Beginning at a point in the Southwesterly line of McLelland Avenue, distant thereon 50 feet Northwesterly from the common corner of Lots 42 and 43, as shown upon the Map above referred to; thence running Southwesterly and parallel with the dividing line between said Lots 42 and 43, 69 feet, more ore less, to the Easterly bank of the Guadalupe River being also the Westerly line of said Lot 42; thence along said Westerly line of said Lot 42, Northerly 100 feet, more or less, to the most Westerly corner of said Lot 42; thence along the Northwesterly Line of said Lot 42, Northeasterly 40 feet to the most northerly corner of said Lot 42; thence Southeasterly and along the said Southwesterly line of McLelland Avenue, 94.62 feet to the point of beginning.

APN No: 264-48-001

**EXHIBIT "D"**

**PRELIMINARY TITLE REPORT**

T-14397/503995\_3  
District Purchase of City's Parcels  
APN No. 254-35-027 and 264-48-001

Page 1

EXHIBIT D

# FINANCIAL TITLE COMPANY

Underwritten by First American Title Insurance Company

## PRELIMINARY REPORT

Santa Clara Valley Water District  
Attn: Bradie Grimaldo  
5750 Almaden Expressway  
San Jose, CA 95118

Branch:  
910 Campisi Way #1-D  
Campbell, CA 95008  
Phone: (408) 558-8000 Fax: (408) 558-8008  
Contact: Gloria Avila/lac /lac  
Escrow Contact:

Property Address:  
APN: 264-48-001 (Vacant Land)  
San Jose, CA 95110

Order Number: 41213100-288-GLA  
Other Reference: 3015-546  
Buyer/Borrower:

In response to the above referenced application for a policy of title insurance, this Company reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms. The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Exhibit A attached.

Please read the exceptions shown or referred to below and the Exceptions and Exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land. This report (and any supplements hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The form of policy of title insurance contemplated by this report is:

**CLTA Owner's Policy and ALTA Lender's Policy**

Dated as of **April 24, 2008** at 7:30 a.m.

The estate or interest in the land hereinafter described or referred to covered by this Report is:

**A Fee**

Title to said estate or interest at the date hereof is vested in:

**CITY OF SAN JOSE, A MUNICIPAL CORPORATION**

### LEGAL DESCRIPTION

**The land referred to in this Report is described as follows:**

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

A portion of Lot 42, as shown upon that certain Map entitled, "Map of the Palm Tract," which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on July 11, 1905 in Book K of Maps, at page 90, and being particularly described as follows:

Beginning at a point in the Southwesterly line of McLelland Avenue, distant thereon 50 feet Northwesterly from the common corner of Lots 42 and 43, as shown upon the Map above referred to; thence running Southwesterly and parallel with the dividing line between said Lots 42 and 43, 69 feet, more or less, to the Easterly bank of the Guadalupe River being also the Westerly line of said Lot 42; thence along said Westerly line of said Lot 42, Northerly 100 feet, more or less, to the most Westerly corner of said Lot 42; thence along the Northwesterly Line of said Lot 42, Northeasterly 40 feet to the most northerly corner of said Lot 42; thence Southeasterly and along the said Southwesterly line of McLelland Avenue, 94.62 feet to the point of beginning.

**APN: 264-48-001**

**ARB: None**

**NOTES:**

*Privacy Promise For Customers*

We will not reveal non-public personal customer information to any external non-affiliated organization unless we have been authorized by the customer, or are required by law.

Occasionally, due to certain market conditions, it may not be possible to deliver policies of title insurance in a time frame that our clients request. Should you have individual needs please contact the title operation that issued this report. We recognize, appreciate and understand your needs.

- a. STR applies: NO
- b. This report does not reflect requests for notice of default, requests for notice of delinquency, subsequent transfers of easements, and similar matters not germane to the issuance of the policy of title insurance anticipated hereunder.
- c. If this company is requested to disburse funds in connection with this transaction, Chapter 598 of 1989 Mandates of the California Insurance Code requires hold periods for checks deposited to escrow or sub-escrow accounts. Such periods vary depending upon the type of check and anticipated methods of deposit should be discussed with the escrow officer.
- d. No endorsement issued in connection with the policy and relating to covenants, conditions or restrictions provides coverage for environmental protection.
- e. Our investigation has been completed and the improvements located on the land described herein is a Vacant Parcel known as APN: 264-48-001 (Vacant Land), San Jose, CA 95110.

At the close of escrow, an ALTA Lenders Policy of Title Insurance will be issued with 100 and 116 series Endorsements.

- f. If the land is an improved residential lot on which there is located a one-to-four family residence and each insured buyer is a natural person, and unless otherwise directed, we will issue the extended coverage CLTA Homeowners Policy of Title Insurance (6/2/98).
- g. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:

None.

**Note:** The legal description of this property indicates a survey monument preservation fee of \$10.00 may be collected by the County Recorder on the recordation of a Grant Deed. Please consider this in your closing.

**At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy would be as follows:**

**EXCEPTIONS:**

1. Taxes not assessed for the fiscal year 2007-2008
2. Rights of parties in possession of said land by reason of unrecorded leases, or rental agreements, if any.
3. Any easement not disclosed by those public records which impart constructive notice and which are not visible and apparent from an inspection of the surface of said land.
4. Any facts, rights, interests or claims which a correct survey would show.
5. We find no open deeds of trust. Escrow please confirm before closing.
6. Environmental Responsibility Acceptance: Evidence must be provided that there are no commitment statements in effect under Civil Code Section 850 et seq. with respect to the property.

In order to remove this statement, the landowner will need to provide this company with an affidavit stating that they are not aware of any release reports or commitment statements which have been issued under this statute, with respect to the property.

**EXHIBIT "E"**

**PHASE 1 HAZARDOUS SUBSTANCE LIABILITY ASSESSMENT –  
TWO McLELLAN PARCELS (APN # 264-35-037 and APN # 264-48-001)**

## EXHIBIT "F"

### DEFINITION OF HAZARDOUS MATERIALS

For the purpose of this Agreement, "**HAZARDOUS MATERIALS**" shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Agreement, "**ENVIRONMENTAL LAWS**" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up.