



CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 28672**", the original copy of which is attached hereto, was passed for publication of title on the **17th day of November, 2009**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **1st day of December, 2009**, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE

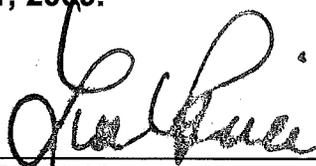
DISQUALIFIED: NONE.

VACANT: NONE.

Said ordinance is effective as of **1st day of January, 2010**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **2nd day of December, 2009**.

(SEAL)



LEE PRICE, MMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 28672**AN ORDINANCE OF THE CITY OF SAN JOSÉ REZONING CERTAIN REAL PROPERTY SITUATED AT THE WEST SIDE OF NORTH TENTH STREET BETWEEN EAST MISSION AND VESTAL STREETS (825 NORTH TENTH STREET) FROM LI LIGHT INDUSTRIAL TO A(PD) PLANNED DEVELOPMENT ZONING DISTRICT**

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, the area encompassed by the subject proposed rezoning was the subject of a Mitigated Negative Declaration prepared in conformance with the California Environmental Quality Act of 1970 (CEQA), as amended, finalized on May 27, 2007, considered and found complete by the Planning Commission on November 4, 2009, which determinations have not been challenged or appealed; and

WHEREAS, this Council of the City of San José, acting as lead agency under CEQA, proposes to approve a project which was the subject of said Mitigated Negative Declaration, to wit: the adoption of an ordinance rezoning certain real property hereinafter described to A(PD) Planned Development Zoning District; and

WHEREAS, the City Council of the City of San José is the decision-making body for the subject rezoning from the LI Light Industrial Zoning District to the A(PD) Planned Development Zoning District; and

WHEREAS, this Council does hereby certify that, as the decision-making body, it has considered and approves the information contained in such Mitigated Negative Declaration prior to acting upon or approving such project.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned as A(PD) Planned Development Zoning District.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.

SECTION 2. The district map of the City is hereby amended accordingly.

SECTION 3. The land development approval that is the subject of City File No. PDC06-069 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

PASSED FOR PUBLICATION of title this 17th day of November, 2009 by the following vote:

AYES: CHIRCO, CHU, HERRERA, KALRA, LICCARDO,
NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CAMPOS, CONSTANT.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk



CHICAGO TITLE COMPANY

PRELIMINARY REPORT

*In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby 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 and Limitations on Covered Risks of said Policy or Policies are set forth in Attachment One. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the Policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments 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 Policy(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company, a Missouri corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One 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.



Chicago Title Company

BY

President

ATTEST

Secretary



Chicago Title Company

675 N. 1st Street, Suite 300 • San Jose, CA 95112
408 292-4212 • FAX 408 282-1404

PRELIMINARY REPORT

Title Officer: Mark Clayton-C&I
Escrow Officer: Sharon LaFountain
Escrow No.: 06-**98201526**-SL

Title No.: 06-**98201526**-MC
Locate No.: CACTI7743-7743-2982-0098201526

TO: Law Offices of Charles R. Sabes
333 W. Santa Clara Street
San Jose, CA 95113

ATTN: Charles Sabes 408 924 0200

SHORT TERM RATE: No

PROPERTY ADDRESS: 825 N. 10th Street, San Jose, California

EFFECTIVE DATE: May 8, 2006, 07:30 A.M.

The form of Policy or Policies of title insurance contemplated by this report is:

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee
2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

825 N. Tenth Street, LLC, a California limited liability company
3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

RR\RL 05/16/2006

LEGAL DESCRIPTION**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

Beginning at the Intersection of the Easterly line of Ninth Street, with the Northerly line of Mission Street; running thence Easterly along said line of Mission Street, North 59° 19' 15" East 275.72 feet to the Intersection thereof with the Westerly line of Tenth Street; thence Northerly along said line of Tenth Street, North 30° 40' 45" West 413.75 feet to the Southeasterly corner of that certain Parcel of land conveyed by Armour & Company, a Corporation, to Frank Panella, by Deed dated December 3, 1935 and recorded December 23, 1935 in Volume 754 Official Records, at Page 298; thence Westerly along the Southerly line of land so conveyed to Frank Panella, South 59° 19' 15" West 275.64 feet to the Easterly line of Ninth Street; and thence Southerly along said line of Ninth Street, South 30° 40' East 413.75 feet to the point of beginning, and being a part of Block 81, as shown upon the Map of City of San Jose, copies from Original Map drawn by Sherman Day, Civil Engineer and recorded in Volume A of Maps, at Pages 72 and 73.

PARCEL TWO:

Portion of Ninth Street, as shown upon that certain Map entitled, "City of San Jose, copies from the original Map drawn by Sherman Day, Civil Engineer", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, in Volume A of Maps, at Pages 72 and 73, and more particularly described as follows:

Beginning at the point of Intersection of the Northwesterly line of Taylor Street, with the Northeasterly line of Ninth Street, as said Streets are shown upon the Map above referred to; thence from said point of beginning Northwesterly along the said Northeasterly line of Ninth Street 1,353.90 feet to the point of Intersection thereof with the Easterly line of the right of way of the Southern Pacific Railroad; thence Southerly along said Easterly line of said right of way to the point of intersection thereof with the center line of said Ninth Street; thence Southeasterly along said center line of Ninth Street to the point of intersection thereof with the said Northwesterly line of Taylor Street thence Northeasterly along said last named line 40.00 feet to the point of beginning.

Excepting therefrom that portion thereof that lies Southeasterly of the centerline of East Mission Street.

PARCEL THREE:

Portion of Mission Street, as shown upon that certain Map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, in Book A of Maps, at Pages 72 and 73, and more particularly described as follows:

Beginning at the point of intersection of the Southeasterly line of Mission Street, with the Southwesterly line of Tenth Street, as said Streets are shown upon the Map above referred to; thence from said point of beginning Northwesterly along said Southwesterly line of Tenth Street 80.00 feet to the point of Intersection thereof with the Northwesterly line of said Mission Street; thence Southwesterly along said Northwesterly line of Mission Street, 275.72 feet to the point of intersection thereof with the Northeasterly line of Ninth Street, as said Street is shown upon the Map above referred to; thence Southeasterly and along said Northeasterly line of Ninth Street, 80.00 feet to the point of intersection thereof with the said Southeasterly line of Mission Street

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EXHIBIT "A" (continued)

Title No. 06-98201526-MC
Locate No. CACTI7743-7743-2982-0098201526

thence Northeasterly and along said last named line 275.73 feet to the point of beginning.

Excepting therefrom that portion thereof that lies Southeasterly of the centerline of East Mission Street.

APN: 249-08-004

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2006-2007.
2. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.
3. **Covenants, conditions and restrictions** in the declaration of restrictions but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

Recorded: November 5, 1958, Book 4221, Page 98, of Official Records

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.

If you should request a copy of the document referred to above, California law requires that a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page over, or stamp on the first page, of the previously recorded document or documents a statement, in at least 14-point boldface type, relating to unlawful restrictions.

4. **A deed of trust** to secure an indebtedness in the amount shown below, and any other obligations secured thereby

Amount: \$3,131,250.00
 Dated: December 2, 1999
 Trustor: 825 N. Tenth Street, LLC, a California limited liability company
 Trustee: American Securities Company, a Corporation
 Beneficiary: Wells Fargo Bank, National Association
 Loan No.: None Shown
 Recorded: December 10, 1999, Instrument No. 15085826, of Official Records

An agreement to modify the terms and provisions of said deed of trust as therein provided

Executed by: 825 N. Tenth Street, LLC, a California limited liability company and Wells Fargo Bank, National Association
 Recorded: May 14, 2001, Instrument No. 15676149, of Official Records

ITEMS: (continued)

Title No. 06-98201526-MC
Locate No. CACTI7743-7743-2982-0098201526**5. Notice of Granting of a Permit pursuant to the Provisions of Title 20 of the San Jose Municipal Code**In Favor of : 825 North Tenth Street LLC
Recorded : July 17, 2000 as Instrument No. 15317036, Official Records**6. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.**Granted to: City of San Jose, A Municipal Corporation
Purpose: to construct, install, maintain, repair, renew, replace, operate and use a storm sewer pipe line
Recorded: October 27, 2000, Instrument No. 15437230, of Official Records
Affects: As follows:

Commencing at the intersection of the center line of Ninth Street (Abandoned), with the Northerly line of Mission Street (Abandoned); thence South 30 deg. 40' East 40 feet to the center line of Mission Street (Abandoned), said point being the Point of Beginning; thence North 59 deg. 19' 15" East, a distance of 315.73 feet along the center line of Mission Street (Abandoned) to the Southerly line of Tenth Street; thence North 30 deg. 40' 45" West, a distance of 20.00 feet; thence South 59 deg. 19' 15" West, a distance of 315.72 feet to a point on the center line of Ninth Street (Abandoned); thence South 30 deg. 40' 00" East, a distance of 20.00 feet, to the Point of Beginning of said easement.

7. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the documentEntitled: Subordination, Non-Disturbance, Attornment and Estoppel Agreement
Lessor: 825 N. Tenth Street, LLC, a California limited liability company
Lessee: Northern Ca Chair Corp dba La-Z-Boy Furniture Galleries
Recorded: December 10, 1999, Instrument No. 15085827, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

An agreement (and the provisions contained therein) which states that said lease is subordinate to the Deed of Trust

Recorded: December 10, 1999, Instrument No. 15085826, of Official Records

By document

Recorded: December 10, 1999, Instrument No. 15085827, of Official Records

ITEMS: (continued)

Title No. 06-98201526-MC
Locate No. CACTI7743-7743-2982-0098201526

An agreement (and the provisions contained therein) which states that said lease is subordinate to the Modification

Recorded: May 14, 2001 as Instrument No. 15676149 of Official Records

By document

Recorded: May 14, 2001 as Instrument No. 15676150 of Official Records

8. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: City of San Jose, A Municipal Corporation
Purpose: Storm sewer pipe line or lines
Recorded: October 27, 2000, Instrument No. 15437230, of Official Records
Affects: As follows:

Commencing at the intersection of the center line of Ninth Street (abandoned), with the Northerly line of Mission Street (abandoned); thence South 30 deg. 40' East 40 feet to the center line of Mission Street (abandoned), said point being the Point of Beginning; thence North 59 deg. 19' 15" East, a distance of 315.73 feet along the center line of Mission Street, (abandoned) to the Southerly line of Tenth Street; thence North 30 deg. 40' 45" West, a distance of 20.00 feet; thence South 59 deg. 19' 15" West, a distance of 315.72 feet to a point on the center line of Ninth Street (Abandoned); thence South 30 deg. 40' 00" East, a distance of 20.00 feet, to the Point of Beginning of said easement.

ITEMS: (continued)

Title No. 06-98201526-MC
Locate No. CACTI7743-7743-2982-0098201526

9. **Before issuing its policy of title insurance**, this Company will require for review, the following documents from the Limited Liability Company named below.

Limited Liability Company: 825 N. Tenth Street, LLC

- (a) A copy of its operating agreement and any and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member.
- (b) Confirmation that its Articles of Organization (LLC-1), and Certificate of Amendment (LLC-2), any restated Articles of Organization (LLC-10) and/or Certificate of Correction (LLC-11) have been filed with the Secretary of State.
- (c) If the Limited Liability Company is member-managed a full and complete current list of members certified by the appropriate manager or member.
- (d) If the Limited Liability Company was formed in a foreign jurisdiction, evidence satisfactory to the Company, that it was validly formed, is in good standing and authorized to do business in the state of origin.
- (e) If the Limited Liability Company was formed in a foreign jurisdiction, evidence satisfactory to the Company, that it has complied with California "doing business" laws, if applicable.

After review of the requested documents, the Company reserves the right to add additional items or make additional requirements prior to the issuance of any policy of title insurance.

10. **Any rights of the parties in possession** of a portion of, or all of, said land, which rights are not disclosed by the public record.

This Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage. The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

11. **Any easements** not disclosed by those public records which impart constructive notice as to matters affecting title to real property and which are not visible and apparent from an inspection of the surface of said land.

12. **Any facts, rights, interests or claims** which a correct survey would disclose and which are not disclosed by the public records.

13. "If an Alta Policy is requested, this Company will require an inspection prior to the Close of Escrow."

END OF ITEMS

Note 1. Property taxes for the fiscal year shown below are PAID. For proration purposes the amounts are:

Tax Identification No.:	249-08-004
Fiscal Year:	2005 - 2006
1st Installment:	\$28,932.15
2nd Installment:	\$28,932.15
Exemption:	None Shown
Land:	\$4,602,422.00
Improvements:	\$28,126.00
Personal Property:	\$0.00

Note 2. There are NO deeds affecting said land, recorded within six (6) months of the date of this report.

Note 3. **Your application** for title insurance was placed by reference to a street address only. Based on our records, we believe that the description in this report covers the parcel that you requested.

To prevent errors and to be certain that the proper parcel of land will appear on the documents and on the policy of title insurance, we require written approval of the legal description in this report be sent to this Company, signed by the parties to the transaction.

Note 4. Effective March 1, 1979, there will be an additional \$10.00 fee for recording a deed with a legal description other than an entire lot in a recorded final map. If there are any questions, please call your escrow officer or title officer.

NOTES: (continued)

Title No. 06-98201526-MC
Locate No. CACTI7743-7743-2982-0098201526

- Note 5.** If a 1970 ALTA Owner's or Lender's or 1975 ALTA Leasehold Owner's or Lender's policy form has been requested, the policy, when approved for issuance, will be endorsed to add the following to the Exclusions From Coverage contained therein:

Loan Policy Exclusion:

Any claim, which arises out of the transaction creating the interest of the mortgage insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

(i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or

(ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or

(iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:

(a) to timely record the instrument of transfer; or

(b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

Owners Policy Exclusion:

Any claim, which arises out of the transaction vesting in the insured, the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

(i) the transaction creating the estate or interest by this policy being deemed a fraudulent conveyance or fraudulent transfer; or

(ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:

(a) to timely record the instrument of transfer; or

(b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

NOTES: (continued)

Title No. 06-98201526-MC
Locate No. CACTI7743-7743-2982-0098201526

Note 6. Wiring instructions for Chicago Title Company, San Jose, CA, are as follows:

Receiving Bank:	Bank of America 275 Valencia Blvd, 2nd Floor Brea, CA 92823-6340
ABA Routing No.:	026009593
Credit Account Name:	Chicago Title Company - San Jose Commercial 675 N. 1st Street, Suite 300, San Jose, CA 95112
Credit Account No.:	12353-81969
Escrow No.:	06-98201526-SL

These wiring instructions are for this specific transaction involving the Title Department of the San Jose office of Chicago Title Company. These instructions therefore should not be used in other transactions without first verifying the information with our accounting department. It is imperative that the wire text be exactly as indicated. Any extraneous information may cause unnecessary delays in confirming the receipt of funds.

Note 7. Section 12413.1, California Insurance Code became effective January 1, 1990. This legislation deals with the disbursement of funds deposited with any title entity acting in an escrow or subescrow capacity. The law requires that all funds be deposited and collected by the title entity's escrow and/or subescrow account prior to disbursement of any funds. Some methods of funding may subject funds to a holding period which must expire before any funds may be disbursed. In order to avoid any such delays, all funding should be done through wire transfer, certified check or checks drawn on California financial institutions.

Note 8. The charge where an order is canceled after the issuance of the report of title, will be that amount which in the opinion of the Company is proper compensation for the services rendered or the purpose for which the report is used, but in no event shall said charge be less than the minimum amount required under Section 12404.1 of the Insurance Code of the State of California. If the report cannot be canceled "no fee" pursuant to the provisions of said Insurance Code, then the minimum cancellation fee shall be that permitted by law.

Note 9. California Revenue and Taxation Code Section 18662, effective January 1, 1994 and by amendment effective January 1, 2003, provides that the buyer in all sales of California Real Estate may be required to withhold 3 and 1/3% of the total sales price as California State Income Tax, subject to the various provisions of the law as therein contained.