

Holland & Knight

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June 9, 2023

Chris Burton
Director of Planning, Building and Code
Enforcement
City of San José
200 East Santa Clara Street
San Jose, CA 95113

Re: **Preliminary Application for the 940 Willow Street Project**

Dear Mr. Burton:

We are pleased to present the accompanying preliminary application for the 940 Willow Street Project (“Project”) pursuant to the Housing Crisis Act of 2019 (“Housing Crisis Act” or “HCA,” also known as SB 330). The Project is a “housing development project” subject to the Housing Crisis Act, and protected by the Housing Accountability Act (“HAA”), Gov. Code § 65589.5, because more than two-thirds of the Project’s square footage is devoted to residential uses. Gov. Code § 65905(b)(3); Gov. Code § 65589.5(h)(2). By submitting a preliminary application with the information in Gov. Code 65941.1, and the permit processing fee, an applicant obtains a vested right to develop a housing development project in accordance with the applicable ordinances, policies, and standards in effect when the preliminary application is submitted. Gov. Code § 65589.5(o)(1). As confirmed by the California Department of Housing and Community Development (“HCD”), the state agency delegated by the Legislature with “primary responsibility for development and implementation of housing policy,” Health & Saf. Code § 50152, these vested rights include a right to proceed under the Housing Element compliance status in effect at the time of preliminary application submittal. *See* HCD, “3030 Nebraska Avenue, Santa Monica – Letter of Technical Assistance” (Oct. 5, 2022).¹ When a preliminary application submittal “occurs at a time when the jurisdiction does not have a compliant housing element, any potential benefits afforded to the applicant as a result of the jurisdiction’s noncompliant status . . . remain throughout the entitlement process even if the jurisdiction

¹ Available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/santa-monica-TA-100522.pdf>. As recently confirmed by the Court of Appeal, “courts generally will not depart from the HCD’s determination unless ‘it is clearly erroneous or unauthorized.’” *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 243 (quotation omitted).

subsequently achieves compliance during the entitlement process.” *Ibid.* The preliminary application is not reviewed for completeness. Gov. Code § 65941.1(d)(3). Rather, the application is “deemed complete” for purposes of the HAA as soon as the preliminary application is submitted. Gov. Code § 65589.5(h)(5). The applicant will submit a complete planning application for the Project within 180 days, consistent with the HCA and the Permit Streamlining Act. Gov. Code § 65941.1(d)(1).

As you know, as of the date this preliminary application is submitted, the City of San Jose has not adopted a Housing Element that is substantially compliant with Housing Element Law. As noted in technical guidance issued by the Association of Bay Area Governments, “[i]f a locality has not adopted a housing element in substantial compliance with state law, developers may propose eligible housing development projects that do not comply with either the zoning or the general plan.” Association of Bay Area Governments, The “Builder’s Remedy” and Housing Elements (Nov. 2022).² This is known informally as the “Builder’s Remedy.” Specifically, under the HAA, a local agency cannot deny a housing development project “for very low, low-, or moderate-income households,” unless the local agency can make one of five findings in Gov. Code § 65589.5, subdivision (d). Ordinarily, a city is permitted to disapprove a project for being noncompliant with local objective General Plan and zoning requirements. *See* Gov. Code § 65589.5(d)(5). But the HAA makes a city’s ability to do this contingent upon having a substantially compliant Housing Element in place. *Ibid.*³

² Available at <https://abag.ca.gov/sites/default/files/documents/2022-11/Builders-Remedy-and-Housing-Elements-Nov-2022.pdf>

³ The other four potential findings under Gov. Code § 65589.5, subd. (d) do not apply either. Subd. (d)(1), like (d)(5), cannot be invoked if a city lacks a compliant housing element. Subds. (d)(3) and (d)(4) do not apply because denial of the Project is not required to comply with state or federal law, and the Project is not “proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.” The Project is on land designated as “Commercial Neighborhood” under San Jose’s zoning code and “Neighborhood/Commercial” under San Jose’s General Plan. The property is within the city’s Urban Growth Boundary so there should be adequate water and wastewater facilities for development. Subd. (d)(2) only applies if a city can make findings based on a preponderance of the evidence that a project will cause a “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete,” and further find there are no feasible measures available to mitigation such a public health and safety impact. The Legislature has emphasized that these circumstances will “arise infrequently,” Gov. Code § 65589.5(a)(3), and that General Plan and zoning inconsistency does not qualify. Gov. Code § 65589.5(d)(2)(A).

For purposes of the HAA, housing “for very low, low-, or moderate-income households,” includes projects in which at least 20 percent of the units are rented at affordable rents to lower-income households, and projects in which 100% of units are rented to “middle-income” households. Gov. Code § 65589.5(h)(3). The Project will reserve 20% of the Project’s units at affordable rents to lower-income households. The Project therefore qualifies as a housing development project “for very low, low-, or moderate-income households,” and since the City lacks a substantially compliant Housing Element, the Project need not comply with general plan or zoning standards.

For this reason, although the Project team has made significant efforts to ensure the Project is generally compatible with the City’s goals and priorities, the Project is not designed to comply in all respects with the General Plan and zoning standards that would otherwise apply. We note that, irrespective of the Builder’s Remedy, the Project might well qualify for modifications from these General Plan and zoning standards pursuant to the Density Bonus Law, Gov. Code § 65915, but in any event, the General Plan and zoning are both rendered inapplicable as a matter of law by the Housing Accountability Act. Despite this, the project team intends to work collaboratively with City officials and members of the community to further refine the Project, and specifically to ensure an appropriate and respectful approach to neighboring structures and uses.

As courts have noted, the Legislature “has made increasingly clear” that mandates included in the HAA “are to be taken seriously and that local agencies and courts should interpret them with a view to giving ‘the fullest possible weight to the interest of, and the approval and provision of, housing.’” Cal. Renters Legal Advoc. & Educ. Fund v. City of San Mateo, 68 Cal. App. 5th 820, 902 (2021) (citing Gov. Code § 65589.5(a)(2)(L)). We look forward to working further with City officials to promptly advance the consideration of the Project in a manner consistent with state law.

Sincerely yours,

HOLLAND & KNIGHT LLP

/s/ Daniel R. Golub

Daniel Golub
Kevin Ashe
Melanie Chaewsky

City of San Jose Planning Division

June 9, 2023

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SB 330 HOUSING PROJECT PRELIMINARY APPLICATION

IMPORTANT: For the SB 330 process to work, you must submit this application in advance of submitting a formal development application.

This form enables a preliminary application for a Housing Development project pursuant to SB 330, the Housing Crisis Act of 2019. The project must be comprised of:

- 1) Residential units;
- 2) A mix of commercial and residential uses where two-thirds of total square footage is residential; OR
- 3) Transitional or supportive housing.

The applicant shall be deemed to have submitted a preliminary application upon provision of all of the information listed in this form and payment of the fee to the City. The applicant then has 180 days to submit a full application or the preliminary application will expire. Please note:

- Submittal of all information requested in this form and payment of the fee freezes fees and development standards as of the submittal date unless exceptions are triggered per Government Code § 65889.5(o).
- California Environmental Quality Act (CEQA) standards apply.
- After submittal of the required information, if the applicant revises the project to change a) the number of residential units or b) the square footage changes by 20 percent or more, excluding any increase resulting from Density Bonus Law, then the applicant must resubmit the required information so that it reflects the revisions.

For questions: Speak with a Planner at 408-535-3555 during phone service hours; see www.sanjoseca.gov/Planning.

Español: Para información en español, comuníquese con un Planificador de la ciudad al **408-793-4100**.

Tiếng Việt: Để được hỗ trợ, nói chuyện với Người lập kế hoạch thành phố tại **408-793-4305**.

INSTRUCTIONS

Complete this application form and submit it with all items outlined in the application package below.

FEES

The fee amount outlined for the SB 330 application at www.sanjoseca.gov/PlanningApplications (see chart) is due at time of the application submittal.

APPLICATION PACKAGE

HOW TO SUBMIT. Please email the application package to: SB330preapp@sanjoseca.gov

WHAT TO SUBMIT. Please include the following in your application package:

- SB 330 HOUSING PROJECT PRELIMINARY APPLICATION - This form, completed.
- SITE PLAN. See an example Site Plan at our [Illustrative Diagrams webpage](#). Draw to scale and show building footprints/location of the proposed building/s and approximate square footage of each building that is to be occupied.
- ELEVATIONS. For each building that is to be occupied, provide elevations showing design, color, material, and the massing and height of each building.

This is a computer-fillable PDF form and signatures, if required, must be a Digital ID Signature.
 See instructions for [Digital Forms & Signatures](#).

| | |
|--------------------------|--|
| Staff will assign FILE # | |
|--------------------------|--|

1. PROJECT LOCATION

APN/S SEE WWW.SCCASSESSOR.ORG USE A COMMA BETWEEN MULTIPLE NUMBERS:

PROPERTY ADDRESS:

2. EXISTING USES

2.a. Briefly describe the existing uses on the site. Identify any planned major physical alterations to the site:

2.b. **EXISTING RESIDENTIAL UNITS.** Enter the number of existing residential units that will be demolished and the existing units that are occupied or unoccupied. Provide an attachment to further describe, if needed.

| | # of Occupied Residential Units | # of Unoccupied Residential Units | # of Total Residential Units |
|-------------------|---------------------------------|-----------------------------------|------------------------------|
| Existing: | | | |
| To be Demolished: | | | |

3. PROPOSED USES

3.a. **DESCRIPTION.** Describe the square footage of all proposed residential and nonresidential land uses using the categories in the applicable zoning ordinance:

3.b. **PROPOSED DWELLING UNIT COUNT.** Enter the proposed number of dwelling units by levels by affordability:

| | # of Units | <i>Enter any notes about the units:</i> |
|-------------------------------|------------|---|
| Market Rate | | |
| Managers Unit/s - Market Rate | | |
| Extremely Low Income | | |
| Very Low Income | | |
| Low Income | | |
| Moderate Income | | |
| Total Units | | |
| Total Affordable Units | | |
| Total Density Bonus Units | | |

3.c. **FLOOR AREA.** Enter the square footage for the proposed floor area uses. Attach any relevant information.

| | Residential | Nonresidential | Total |
|---------------------------------|-------------|----------------|-------|
| Floor Area (Zoning): | | | |
| Square Footage of Construction: | | | |

3.d. **PARKING.** Number of proposed parking spaces:

4. PROJECT QUESTIONS

-
- a. **AFFORDABLE HOUSING INCENTIVES, WAIVERS, CONCESSIONS and PARKING REDUCTIONS** - Yes No
Will the project proponent seek Density Bonus incentives, waivers, concessions, or parking reductions pursuant to California Government Code Section 65915?

If yes, please describe:

As a builders remedy project per Gov Code 65589.5(d)(5), this project is not required to comply with general plan and zoning. However, under the Density Bonus Law (Gov Code 65915), the project is also independently entitled to a density bonus of 35%, an unlimited number of waivers of any development standards that would preclude the permitted density, reductions in required parking, and two further "incentives" that provide cost reductions to provide for affordable housing. The applicant reserves its right to such modifications to the extent necessary to permit the proposed project.

-
- b. **SUBDIVISION** - Will the project proponent seek any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a vesting or tentative map, or a condominium map? Yes No

If yes, please describe:

-
- c. **POLLUTANTS** - Are there any proposed point sources of air or water pollutants? Yes No

If yes, please describe:

-
- d. **HISTORIC/CULTURAL RESOURCES** - Are there any historic and/or cultural resources at the site? Yes No

If yes, please describe:

-
- e. **SPECIES** - Does the project site contain any species of special concern? Yes No

If yes, please describe:

4. PROJECT QUESTIONS - CONTINUED

f. **EASEMENTS** - Does the project site contain any recorded public easement, such as easements for storm drains, water lines, and other public rights of way? If yes, please describe: Yes No

g. **STREAMS** - Does the project site contain a stream, creek or wetlands or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code? If yes, describe below and attach an aerial photograph showing existing conditions of environmental site features that would be subject to regulations by a public agency: Yes No

h. **ADDITIONAL SITE CONDITIONS** - Please indicate whether a portion of the property is located within any of the following:

i. A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection, pursuant to Section 51178? Yes No

ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993)? Yes No

iii. A hazardous waste site that is listed pursuant to Section 65962.5, or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code? Yes No

iv. A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by any official maps published by the Federal Emergency Management Agency? Yes No

v. A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2? Yes No

If "YES" to any, please describe:

5. CONTACT INFORMATION

Who is the primary project contact? Applicant Owner Agent/Representative Other

APPLICANT NAME:

TITLE IF APPLICABLE:

FIRM NAME IF APPLICABLE:

EMAIL:

PHONE:

MAILING ADDRESS:

Are you in escrow to purchase the property? Yes No

PROPERTY OWNER OF RECORD - NAME *only if different from applicant:*

EMAIL:

PHONE:

MAILING ADDRESS:

OPTIONAL: AGENT/REPRESENTATIVE NAME

EMAIL:

PHONE:

MAILING ADDRESS:

OPTIONAL: OTHER - Specify Architect, Engineer, CEQA Consultant, etc.:

NAME:

EMAIL:

PHONE:

MAILING ADDRESS:

6. PROPERTY OWNER AFFIDAVIT

The owner of each property involved must provide a signature to verify the Preliminary Application is being filed with their knowledge. Staff will confirm ownership based on the records of the County Assessor. In the case of partnerships, corporations, LLCs or trusts, the agent for service of process or an officer of the ownership entity so authorized may sign as stipulated below.

- **Ownership Disclosure.** If the property is owned by a partnership, corporation, LLC or trust, a disclosure identifying the agent for service or process or an officer of the ownership entity must be submitted. The disclosure must list the names and addresses of the principal owners (25 percent interest or greater). The signatory must appear in this list of names. A letter of authorization, as described below, may be submitted provided the signatory of the letter is included in the Ownership Disclosure. Include a copy of the current partnership agreement, corporate articles, or trust document as applicable.
- **Letter of Authorization (LOA).** A LOA from a property owner granting someone else permission to sign the Preliminary Application form may be provided if the property is owned by a partnership, corporation, LLC or trust, or in rare circumstances when an individual property owner is unable to sign the Preliminary Application form. To be considered for acceptance, the LOA must indicate the name of the person being authorized to file, their relationship to the owner or project, the site address, a general description of the type of application being filed and must also include the language in items 1-3 below. In the case of partnerships, corporations, LLCs or trusts, the LOA must be signed by the authorized signatory as shown on the Ownership Disclosure or in the case of private ownership by the property owner. Proof of Ownership for the signatory of the LOA must be submitted with said letter.
- **Grant Deed.** Provide Copy of the Grant Deed if the ownership of the property does not match local records. The Deed must correspond exactly with the ownership listed on the application.
- **Multiple Owners.** If the property is owned by more than one individual (e.g., John and Jane Doe, or Mary Smith and Mark Jones) signatures are required of all owners.

1. I hereby certify that I am the owner of record of the herein previously described property located in THE CITY OF SAN JOSE which is involved in this Preliminary Application, or have been empowered to sign as the owner on behalf of a partnership, corporation, LLC, or trust as evidenced by the documents attached hereto.
2. I hereby consent to the filing of this Preliminary Application on my property for processing by THE CITY OF SAN JOSE PLANNING DIVISION for the sole purpose of vesting the proposed housing project subject to the Planning and Zoning ordinances, policies, and standards adopted and in effect on the date that this Preliminary Application is deemed complete.
3. Further, I understand that this Preliminary Application will be terminated and vesting will be forfeited if the housing development project is revised such that the number of residential units or square footage of construction increases or decreases by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, and/or an application requesting approval of an entitlement is not filed with THE CITY OF SAN JOSE PLANNING DIVISION within 180 days of the date that the Preliminary Application is deemed complete.
4. By my signature below, I certify that the foregoing statements are true and correct.



• PROPERTY OWNER SIGNATURE

DATE [MM/DD/YYYY]

PRINT NAME

• PROPERTY OWNER SIGNATURE

DATE [MM/DD/YYYY]

PRINT NAME

A [Digital ID Signature](#) is required of the property owner/s or legally authorized agent of the property owner/s. By signing this application, you acknowledge that you are the property owner/s or a legally authorized agent of the property owner/s.

For additional property owner signatures, use the [Affidavit of Ownership-Multiple Property Owner Form](#).



PIN

- Approximate location based on user input and does not represent an authoritative property location

MAP PANELS

- Selected FloodMap Boundary
- Digital Data Available
- No Digital Data Available
- Unmapped

OTHER AREAS

- Area of Minimal Flood Hazard Zone X
- Effective LOMRs
- Area of Undetermined Flood Hazard Zone D
- Otherwise Protected Area
- Coastal Barrier Resource System Area

SPECIAL FLOOD HAZARD AREAS

- Without Base Flood Elevation (BFE) Zone A, X, ABH
- With BFE or Depth Regulatory Floodway Zone AE, AO, AH, VE, AR
- 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
- Future Conditions 1% Annual Chance Flood Hazard Zone X
- Area with Reduced Flood Risk due to Levee. See Notes. Zone X
- Area with Flood Risk due to Levee Zone D

OTHER AREAS OF FLOOD HAZARD

- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

OTHER FEATURES

- Cross Sections with 1% Annual Chance Water Surface Elevation
- Coastal Transect
- Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary
- Coastal Transect Baseline
- Profile Baseline
- Hydrographic Feature

GENERAL STRUCTURES

- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

Flood Map



Earthquake Map



First American Title Insurance Company
National Commercial Services
333 W. Santa Clara Street, Ste. 220
San Jose, CA 95113-1714

Chris Freise
REDCO Development
715 Colorado Avenue Suite B
Palo Alto, CA 94303
Phone: (415)450-1466

Customer Reference: 940 Willow Street

Escrow Officer: Teresa Woest
Phone: (408)451-7972
Email: TWoest@firstam.com

Title Officer: Madina Alocozy
Phone: (408)451-7914
Email: malocozy@firstam.com

Property: 940 Willow Street, San Jose, CA

PRELIMINARY REPORT

In response to the above referenced application for a policy of title insurance, this 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 below 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 Exhibit A attached. *The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.* 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 Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

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 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.

Dated as of March 28, 2023 at 7:30 A.M.

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

Prelim

A specific request should be made if another form or additional coverage is desired.

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

Sage Investments, LP, 91% interest; Forge Trust Co; CFBO Julia Lynn Spunt IRA 842813, 9% interest.

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

Fee Simple

The Land referred to herein is described as follows:

(See attached Legal Description)

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

1. General and special taxes and assessments for the fiscal year 2023-2024, a lien not yet due or payable.
2. General and special taxes and assessments for the fiscal year 2022-2023.

| | |
|---------------------|------------------|
| First Installment: | \$4,271.71, PAID |
| Penalty: | \$0.00 |
| Second Installment: | \$4,271.71, OPEN |
| Penalty: | \$0.00 |
| Tax Rate Area: | 17-108 |
| A. P. No.: | 429-03-070 |

(Affects Parcel Four)

3. General and special taxes and assessments for the fiscal year 2022-2023.

| | |
|---------------------|-------------------|
| First Installment: | \$11,222.46, PAID |
| Penalty: | \$0.00 |
| Second Installment: | \$11,222.46, OPEN |
| Penalty: | \$0.00 |
| Tax Rate Area: | 17-108 |
| A. P. No.: | 429-03-072 |

(Affects Parcels One, Two and Three)

4. The lien of defaulted taxes for the fiscal year 2020, and any subsequent delinquencies.

Tax Rate Area: 17-108
A. P. No.: 429-03-070
Amount to redeem: \$22,512.78
Valid through: April 2023
Amount to redeem: \$22,763.68
Valid through: May 2023

Please contact the tax office to verify the payoff amount.

(Affects Parcel Four)

5. The lien of defaulted taxes for the fiscal year 2020, and any subsequent delinquencies.

Tax Rate Area: 17-108
A. P. No.: 429-03-072
Amount to redeem: \$60,053.18
Valid through: April 2023
Amount to redeem: \$60,724.64
Valid through: May 2023

Please contact the tax office to verify the payoff amount.

(Affects Parcels One, Two and Three)

6. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
7. RIGHTS OF WAY FOR STREET PURPOSES, AS CONTAINED IN THE FINAL DECREE OF CONDEMNATION RECORDED DECEMBER 28, 1931 IN BOOK OF OFFICIAL RECORDS NUMBERED [595 AT PAGE 325](#), SANTA CLARA COUNTY RECORDS.
8. OFFICIAL PLAN LINE MAP FILED IN BOOK OF OFFICIAL PLAN LINE MAPS NUMBERED [1 AT PAGES 41 AND 42](#), DISCLOSES A BUILDING SETBACK LINE LYING 25 FEET FROM THE SOUTHEASTERLY LINE OF WILLOW STREET.
9. Any right, asserted right, or challenge, made by any party, including, but not limited to, a creditor, trustee or debtor in possession in bankruptcy to avoid or invalidate that certain conveyancing document which recorded December 7, 2022 as Instrument No. [25412566](#) of Official Records.
10. Any irregularity in the foreclosure proceedings leading up to the Trustee's Deed recorded December 7, 2022 as Instrument No. [25412566](#) of Official Records.
11. The effect of a deed dated February 14, 2023, executed by Sage Investments, LP, 91% interest; Forge Trust Co; CFBO Julia Lynn Spunt IRA 842813, 9% interest., as Grantor, to 940 Willow LLC, a California limited liability company, as Grantee, recorded March 7, 2023, as Instrument No. 25445589 of Official Records.

NOTE: The Company will require an Affidavit of Execution and Delivery of Deed executed by the grantor in the presence of a First American notary or other satisfactory proof that the deed was valid prior to removing this exception or insuring the contemplated transaction.

12. We find no outstanding voluntary liens of record affecting subject property. An inquiry should be made concerning the existence of any unrecorded lien or other indebtedness which could give rise to any security interest in the subject property.
13. Water rights, claims or title to water, whether or not shown by the Public Records.
14. Rights of parties in possession.

INFORMATIONAL NOTES

ALERT - CA Senate Bill 2 imposes an additional fee of \$75 up to \$225 at the time of recording on certain transactions effective January 1, 2018. Please contact your First American Title representative for more information on how this may affect your closing.

1. According to the latest available equalized assessment roll in the office of the county tax assessor, there is located on the land a(n) Commercial Structure known as 940 Willow Street, San Jose, CA.

(Affects Parcels One, Two and Three)

2. The property covered by this report is vacant land.

(Affects Parcel Four)

3. 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:

A document recorded December 7, 2022 as Instrument No. [25412566](#) of Official Records.

From: Superior Loan Servicing, as Trustee
To: Sage Investments, LP, 91% interest; Forge Trust Co; CFBO Julia Lynn Spunt IRA 842813, 9% interest.

A document recorded March 7, 2023 as Instrument No. 25445589 of Official Records.

From: Sage Investments, LP, 91% interest; Forge Trust Co; CFBO Julia Lynn Spunt IRA 842813, 9% interest.
To: 940 Willow LLC, a California limited liability company

4. This preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only. It is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.
5. Should this report be used to facilitate your transaction, we must be provided with the following prior to the issuance of the policy:

A. WITH RESPECT TO A CORPORATION:

1. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
2. A certificate copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
3. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
4. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

B. WITH RESPECT TO A CALIFORNIA LIMITED PARTNERSHIP:

1. A certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto

- (form LP-2) to be recorded in the public records;
2. A full copy of the partnership agreement and any amendments;
 3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
 4. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
 5. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
- C. WITH RESPECT TO A FOREIGN LIMITED PARTNERSHIP:
1. A certified copy of the application for registration, foreign limited partnership (form LP-5) and any amendments thereto (form LP-6) to be recorded in the public records;
 2. A full copy of the partnership agreement and any amendment;
 3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
 4. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
 5. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
- D. WITH RESPECT TO A GENERAL PARTNERSHIP:
1. A certified copy of a statement of partnership authority pursuant to Section 16303 of the California Corporation Code (form GP-I), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), to be recorded in the public records;
 2. A full copy of the partnership agreement and any amendments;
 3. Requirements which the Company may impose following its review of the above material required herein and other information which the Company may require.
- E. WITH RESPECT TO A LIMITED LIABILITY COMPANY:
1. A copy of its operating agreement and any amendments thereto;
 2. If it is a California limited liability company, a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) to be recorded in the public records;
 3. If it is a foreign limited liability company, a certified copy of its application for registration (LLC-5) to be recorded in the public records;
 4. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, such document or instrument must be executed in accordance with one of the following, as appropriate:
 - (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such documents must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
 - (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
 5. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
 6. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
- F. WITH RESPECT TO A TRUST:
1. A certification pursuant to Section 18100.5 of the California Probate Code in a form satisfactory to

the Company.

2. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.
 3. Other requirements which the Company may impose following its review of the material require herein and other information which the Company may require.
- G. WITH RESPECT TO INDIVIDUALS:
1. A statement of information.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

LEGAL DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF KOTENBERG AVENUE WITH THE SOUTHEASTERLY LINE OF WILLOW STREET, AS SAID WILLOW STREET NOW EXISTS 60 FEET IN WIDTH; THENCE ALONG SAID LINE OF KOTENBERG AVENUE SOUTH 38° 31' EAST 143.60 FEET; THENCE NORTH 60° 15' EAST 92.89 FEET TO THE SOUTHWESTERLY LINE OF LOT 1, AS SAID LOT 1 IS SHOWN UPON THAT CERTAIN MAP ENTITLED, "SKIDMORE TRACT NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON SEPTEMBER 28, 1904 IN [BOOK F-3 OF MAPS, PAGE 96](#); THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT 1, NORTH 38° 42' WEST 143.94 FEET TO THE SAID SOUTHEASTERLY LINE OF WILLOW STREET; THENCE ALONG THE SOUTHEASTERLY LINE OF WILLOW STREET SOUTH 60° 15' WEST 92.40 FEET TO THE POINT OF BEGINNING, AND BEING A PART OF LOT 3 OF THE PARTITION OF LOT 2, AS SHOWN ON MAP ACCOMPANYING THE FINAL REPORT OF REFEREE IN THE PARTITION SUIT IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA, ENTITLED, "JAMES M. COLEY, PLAINTIFF VS. GEO. T. GRIBNER ET AL, DEFENDANTS", ACTION NO. 12004.

PARCEL TWO:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF KOTENBERG AVENUE, DISTANT THEREON SOUTH 38° 31' EAST 143.60 FEET FROM THE POINT OF INTERSECTION OF SAID LINE OF KOTENBERG AVENUE, WITH THE SOUTHEASTERLY LINE OF WILLOW STREET, AS EXISTING 60 FEET WIDE; THENCE CONTINUING ALONG SAID LINE OF KOTENBERG AVENUE, SOUTH 38° 31' EAST 53.485 FEET; THENCE PARALLEL WITH THE SOUTHEASTERLY LINE OF THAT CERTAIN TRACT OF LAND CONVEYED BY CITY OF SAN JOSE TO CALVARY COMMUNITY CHURCH OF SAN JOSE, A CORPORATION, BY DEED DATED OCTOBER 20, 1941 AND RECORDED JANUARY 20, 1942 IN [BOOK 1074 OF OFFICIAL RECORDS, PAGE 573](#), NORTH 60° 15' EAST 93.02 FEET TO THE SOUTHWESTERLY LINE OF LOT 1 OF THE SKIDMORE TRACT, AS SHOWN UPON THE MAP THEREOF OF RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN [BOOK F-3 OF MAPS, PAGE 96](#); THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 38° 42' WEST 53.5125 FEET; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID TRACT OF LAND SO CONVEYED TO CALVARY COMMUNITY CHURCH OF SAN JOSE, SOUTH 60° 15' WEST 92.83 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF LOT 2 AS SHOWN ON MAP ACCOMPANYING THE FINAL REPORT OF THE REFEREE IN THE PARTITION SUIT IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, ENTITLED, "JAMES M. COLEY, PLAINTIFF, VS. GEORGE T. GRIBNER, ET AL, DEFENDANTS", ACTION NO. 12004.

PARCEL THREE:

PORTION OF LOTS 1 AND 2, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "SKIDMORE TRACT MAP NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON SEPTEMBER 28, 1904 IN [BOOK F-3 OF MAPS, PAGE 96](#), AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE ORIGINAL SOUTHEASTERLY LINE OF WILLOW STREET, AS THE SAME EXISTED PRIOR TO MAY 23, 1931 DISTANT THEREON SOUTH 60° 28' WEST 137.60 FEET FROM THE POINT OF INTERSECTION OF THE ORIGINAL SOUTHEASTERLY LINE OF WILLOW STREET WITH THE CENTER LINE OF CURTISS AVENUE; THENCE RUNNING ALONG THE ORIGINAL SOUTHEASTERLY LINE OF WILLOW STREET, SOUTH 60° 28' WEST 100 FEET TO THE MOST WESTERLY CORNER OF LOT 1 OF

THE SKIDMORE TRACT, HEREINABOVE REFERRED TO; THENCE RUNNING ALONG THE SOUTHWESTERLY LINE OF SAID LOT 1, SOUTH 38° 28' EAST 205 FEET TO THE MOST WESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY MARTHA M. MILLER, ET AL, TO LIBERTY AMUSEMENT COMPANY, A CORPORATION, BY DEED DATED MARCH 6, 1946 AND RECORDED MARCH 6, 1946 IN [BOOK 1327 OF OFFICIAL RECORDS, PAGE 491](#); THENCE RUNNING NORTH 60° 28' EAST AND ALONG THE NORTHWESTERLY LINE OF SAID PARCEL CONVEYED TO LIBERTY AMUSEMENT COMPANY, 100 FEET; THENCE RUNNING NORTH 38° 34' WEST 206 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING FROM PARCEL THREE, ABOVE DESCRIBED, THAT CERTAIN PARCEL OF LAND CONVEYED BY THE CHURCH OF GOD OF SAN JOSE, A CORPORATION, TO ANTONE J. CHIMENTI, ET UX, BY DEED DATED JUNE 3, 1969 AND RECORDED JUNE 5, 1969 IN [BOOK 8557 OF OFFICIAL RECORDS, AT PAGE 227](#), DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF THE PARCEL OF LAND DESIGNATED AS PARCEL THREE IN THE DEED TO THE CHURCH OF GOD OF SAN JOSE, A CORPORATION, RECORDED NOVEMBER 15, 1963 IN BOOK OF OFFICIAL RECORDS NUMBERED [6273 AT PAGE 393](#); THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE, NORTH 60° 28' EAST 42.60 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE PARALLEL WITH THE NORTHEASTERLY LINE OF KOTENBERG AVENUE, SOUTH 38° 31' EAST 205 FEET, MORE OR LESS, TO THE SOUTHEASTERLY LINE OF THE SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE; THENCE ALONG SAID SOUTHEASTERLY LINE OF NORTH 60° 28' EAST 58.02 FEET TO THE MOST EASTERLY CORNER OF SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE; THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE, NORTH 38° 34' WEST 206 FEET, MORE OR LESS, TO THE MOST NORTHERLY CORNER OF SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE 57.40 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

ALSO EXCEPTING FROM PARCELS ONE, TWO AND THREE, ABOVE DESCRIBED, THAT CERTAIN PARCEL OF LAND CONVEYED BY EDWARD J. WILLIAMS, ET UX, TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION, OF THE STATE OF CALIFORNIA BY DEED DATED AUGUST 14, 1970 AND RECORDED SEPTEMBER 11, 1970 IN [BOOK 9050 OF OFFICIAL RECORDS, AT PAGE 548](#), DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF WILLOW STREET (60 FEET WIDE) WITH THE NORTHEASTERLY LINE OF KOTENBERG AVENUE (50 FEET WIDE) SAID POINT OF BEGINNING BEING ALSO THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESIGNATED AS PARCEL ONE AS DESCRIBED IN THAT DEED FROM THE CHURCH OF GOD OF SAN JOSE TO EDWARD J. WILLIAMS, ET UX, FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER, SANTA CLARA COUNTY, CALIFORNIA, ON JUNE 18, 1969 IN [BOOK 8572 OF OFFICIAL RECORDS, AT PAGE 290](#); THENCE IN A NORTHEASTERLY DIRECTION ALONG SAID SOUTHEASTERLY LINE OF WILLOW STREET AND ALONG THE NORTHWESTERLY LINE OF SAID PARCEL ONE A DISTANCE OF 92.40 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL ONE, SAID NORTHEASTERLY CORNER BEING ALSO A POINT IN THE SOUTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESIGNATED AS PARCEL THREE AS DESCRIBED IN SAID DEED TO EDWARD J. WILLIAMS, ET UX; THENCE IN A NORTHWESTERLY DIRECTION ALONG SAID SOUTHWESTERLY LINE A DISTANCE OF 5 FEET, MORE OR LESS TO A POINT IN THE SOUTHEASTERLY LINE OF WILLOW STREET (AS SAID STREET EXISTED 50 FEET WIDE) AS SHOWN UPON THAT CERTAIN MAP ENTITLED "SKIDMORE TRACT MAP NO. 1," WHICH MAP WAS FILED FOR RECORD ON SEPTEMBER 28, 1904 IN BOOK F-3 OF MAPS, AT PAGE 96 RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; LAST SAID POINT BEING ALSO THE NORTHWESTERLY CORNER OF SAID PARCEL THREE; THENCE IN A NORTHEASTERLY DIRECTION ALONG SAID SOUTHEASTERLY LINE OF WILLOW STREET (50 FEET WIDE) AND ALONG THE NORTHWESTERLY LINE OF SAID PARCEL THREE A DISTANCE OF 42.60 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL THREE; THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE NORTHEASTERLY LINE OF

SAID PARCEL THREE A DISTANCE OF 20 FEET, MORE OR LESS, TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT 45.00 FEET, MEASURED AT RIGHT ANGLES, SOUTHEASTERLY FROM THE CENTERLINE OF SAID WILLOW STREET; THENCE IN A SOUTHWESTERLY DIRECTION ALONG SAID PARALLEL LINE A DISTANCE OF 106.5 FEET, MORE OR LESS, TO THE BEGINNING OF A TANGENT CURVE; THENCE ALONG SAID TANGENT CURVE CONCAVE TO THE SOUTHEAST WITH A RADIUS OF 20.00 FEET, FOR AN ARC DISTANCE OF 34.5 FEET, MORE OR LESS, TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT 5.00 FEET, MEASURED AT RIGHT ANGLES, NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF KOTENBERG AVENUE (50 FEET WIDE); THENCE IN A SOUTHEASTERLY DIRECTION ALONG LAST SAID PARALLEL LINE A DISTANCE OF 158.5 FEET, MORE OR LESS, TO A POINT IN THE SOUTHEASTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESIGNATED AS PARCEL TWO AS DESCRIBED IN SAID DEED TO EDWARD J. WILLIAMS ET UX; THENCE IN A SOUTHWESTERLY DIRECTION ALONG SAID SOUTHEASTERLY LINE OF SAID PARCEL TWO A DISTANCE OF 5 FEET, MORE OR LESS, TO A POINT IN SAID NORTHEASTERLY LINE OF KOTENBERG AVENUE AT THE SOUTHWESTERLY CORNER OF SAID PARCEL TWO; THENCE IN A NORTHWESTERLY DIRECTION ALONG SAID NORTHEASTERLY LINE OF KOTENBERG AVENUE AND ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL TWO AND PARCEL ONE A DISTANCE OF 197.09 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR:

PORTION OF LOTS 1 AND 2, "SKIDMORE TRACT MAP NO. 3", FILED IN THE COUNTY OF SANTA CLARA, ON SEPTEMBER 28, 1904 IN BOOK OF MAPS LETTERED F-3 AT PAGE 96.

BEGINNING AT THE MOST WESTERLY CORNER OF THE PARCEL OF LAND DESIGNATED AS PARCEL THREE IN THE DEED TO THE CHURCH OF GOD OF SAN JOSE, A CORPORATION, RECORDED NOVEMBER 15, 1963 IN BOOK OF OFFICIAL RECORDS NUMBERED [6273 AT PAGE 393](#); THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE, NORTH 60° 28' EAST 42.60 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE PARALLEL WITH THE NORTHEASTERLY LINE OF KOTENBERG AVENUE, SOUTH 38° 31' EAST 205 FEET, MORE OR LESS, TO THE SOUTHEASTERLY LINE OF THE SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 60° 28' EAST 58.02 FEET TO THE MOST EASTERLY CORNER OF SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE; THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE; NORTH 38° 34' WEST 206 FEET, MORE OR LESS, TO THE MOST NORTHERLY CORNER OF SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND DESIGNATED AS PARCEL THREE 57.40 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

APN: 429-03-070(Affects Parcel Four) and 429-03-072(Affects Parcels One, Two and Three)

NOTICE

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

Privacy Policy

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

**CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - (a) building;
 - (b) zoning;
 - (c) land use;
 - (d) improvements on the Land;
 - (e) land division; and
 - (f) environmental protection.This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - (a) that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - (b) that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - (c) that result in no loss to You; or
 - (d) that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - (a) to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - (b) in streets, alleys, or waterways that touch the Land.This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows: For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

| Your Deductible Amount | <u>Our Maximum Dollar Limit of Liability</u> |
|--|---|
| Covered Risk 16: 1% of Policy Amount or \$2,500.00 (whichever is less) | \$10,000.00 |
| Covered Risk 18: 1% of Policy Amount or \$5,000.00 (whichever is less) | \$25,000.00 |
| Covered Risk 19: 1% of Policy Amount or \$5,000.00 (whichever is less) | \$25,000.00 |
| Covered Risk 21: 1% of Policy Amount or \$2,500.00 (whichever is less) | \$5,000.00 |

**ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 - (a) and use
 - (b) improvements on the land
 - (c) and division
 - (d) environmental protectionThis exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
 - (a) a notice of exercising the right appears in the public records on the Policy Date
 - (b) the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:

- (a) that are created, allowed, or agreed to by you
 - (b) that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
 - (c) that result in no loss to you
 - (d) that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
- (a) to any land outside the area specifically described and referred to in Item 3 of Schedule A OR
 - (b) in streets, alleys, or waterways that touch your land
- This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

2006 ALTA LOAN POLICY (06-17-06) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement erected on the Land;
 - iii. the subdivision of land; or
 - iv. environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
- a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
- a. a fraudulent conveyance or fraudulent transfer, or
 - b. a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an

accurate and complete land survey of the Land and not shown by the Public Records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

**2006 ALTA OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement erected on the Land;
 - iii. the subdivision of land; or
 - iv. environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - a. a fraudulent conveyance or fraudulent transfer; or
 - b. a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement erected on the Land;
 - iii. the subdivision of land; or
 - iv. environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
 - e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - a. a fraudulent conveyance or fraudulent transfer, or
 - b. a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.