Office of the City Manager

REVISED
AGENDA MATERIAL
for Supplemental Packet 1

Meeting Date: **November 19, 2024**

Item Number: **13**

Item Description: **Ashby BART Transit Oriented Development (TOD) Legal Agreements**

Submitted by: **Jordan Klein, Director, Planning and Development Department**

The enclosed materials include slight revisions to Attachment 1, Exhibit A - Ashby BART Station Transit-Oriented Development Exchange Agreement, to reflect ongoing coordination between the City of Berkeley and BART.

Exhibit A

ASHBY BART STATION TRANSIT-ORIENTED DEVELOPMENT EXCHANGE AGREEMENT

This ASHBY BART STATION TRANSIT-ORIENTED DEVELOPMENT EXCHANGE AGREEMENT (the "**Agreement**") is entered into as of [INSERT], 2024 (the "**Effective Date**"), by and between the City of Berkeley ("**City**"), a California charter city, and the San Francisco Bay Area Rapid Transit District ("**BART**"), a California rapid transit district. Each party to this Agreement may be referred to herein as a "**Party**" and collectively, referenced to herein as the "**Parties**."

RECITALS

A. The Parties share a desire to transform the current surface parking lots at the Ashby BART station into a transit-oriented development that will provide much needed housing (including affordable housing), enliven Adeline Street, and benefit the surrounding community, while continuing to ensure access to the Ashby BART Station. The City and BART each have an interest in having this area developed with high density use to maximize the amount of new housing and to enhance transit ridership.

B. In 2020, the Parties entered into a memorandum of understanding ("**MOU**") to identify their shared vision and priorities for transit-oriented development at the North Berkeley and Ashby BART Stations, to provide clarity on the process and timelines for pursuing development, and to begin to identify the roles and responsibilities of the City and BART in that process. Among other things, the MOU called on the City to establish a Community Advisory Group, reserve funding to support affordable housing development at the sites, and adopt zoning for the sites consistent with Assembly Bill 2923 (California Public Utilities Code sections 29010.1 et seq.) ("**AB 2923**").

C. On December 8, 2020, the City adopted the Adeline Corridor Specific Plan and certified a corresponding environmental impact report, which set forth a comprehensive plan for development, including new affordable and market rate housing, in the area of the City including the Ashby BART Station.

D. On April 27, 2021, the Berkeley City Council unanimously adopted Resolution 69,833-N.S. which, in part, provisionally reserves $53 million of City-controlled funds as the subsidy needed to achieve at least 35% affordable housing at each of the Ashby and North Berkeley BART sites, and allows for a portion of the funding to be allocated to predevelopment uses.

E. On June 2, 2022, the Berkeley City Council approved the Joint Vision & Priorities for Transit-Oriented Development for Ashby and North Berkeley BART Stations ("**JVP**") with Resolution 70,402-N.S. and on June 9, 2022, the BART Board approved the JVP. The JVP expresses the City and BART's shared, high-level expectations for future development of both the Ashby and North Berkeley BART stations. The JVP was incorporated into BART's Request for Qualifications ("**RFQ**") for development of the North Berkeley BART Station site.

F. On June 28, 2022 the Berkeley City Council adopted Chapter 23.202.150 in its Zoning Ordinance, as part of the City of Berkeley Municipal Code, adding a "Residential - BART

Mixed Use (R-BMU)" zoning district, as well as additional conforming amendments to the General Plan and other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into its Zoning Ordinance, to govern development at the North Berkeley and Ashby BART Stations consistent with AB 2923.

G. On June 30, 2022, the City and BART entered into a Memorandum of Agreement ("**MOA**") amending and expanding upon the MOU.

H. On November 29, 2022, the Berkeley City Council adopted Resolution No. 70,622-N.S. approving a conceptual design for a street reconfiguration and new plaza along Adeline Street between Ashby Avenue and Martin Luther King, Jr., Way, in order to increase safety for pedestrians and bicyclists and to enhance access to the Ashby BART Station.

I. On December 7, 2023, the BART Board of Directors authorized BART staff to complete negotiations on a nonbinding Term Sheet for Ashby BART Transit-Oriented Development ("Term Sheet") and to enter into an agreement effectuating the Term Sheet.

J. On September 16, 2024, the Berkeley City Council approved the nonbinding Term Sheet For Ashby BART Transit-Oriented Development setting forth the principal business and legal terms on which BART and the City will negotiate an Exchange Agreement and related documents necessary to provide for the relinquishment of the City's option to purchase air rights over the West Lot (as defined) in exchange for the City's fee simple ownership of the East Lot (as defined), and for establishing certain minimum community benefits and project requirements for the West Lot and East Lot, including a minimum of 50% onsite affordable housing for the first 602 units on the West Lot and a minimum of 35% onsite affordable housing on the East Lot, as more particularly described therein.

K. This Exchange Agreement is intended to be a binding agreement that supersedes the MOU, MOA, and the Term Sheet as they relate to transit-oriented development at the Ashby BART Station.

L. The Parties acknowledge that there are other contractual relationships between the Parties, and such contractual relationships are not modified by this Agreement to the extent that they do not relate to or impact transit-oriented development at the Ashby BART Station, or unless explicitly done herein.

M. After a duly noticed public hearing held on _____, and a second reading on _____, the City Council of the City of Berkeley adopted Ordinance No. _____ approving this Agreement, and authorizing the acquisition of the East Lot, the disposition of the Air Rights Option, and the other actions required pursuant to this Agreement (the "**City Authorizing Ordinance**").

Now, therefore in consideration of the foregoing and other consideration, the sufficiency of which is hereby agreed to, the Parties agree as follows:

Exhibit A

ARTICLE 1.
DEFINITIONS; EXCHANGE; QUITCLAIM; ESCROW

1.1. General Definitions.

1.1.1. West Lot. "**West Lot**" means that real property designated as Alameda County Assessor Parcel Number 053-1597-039-04, and that unassessed approximately 900-foot-long strip of land abutting the existing Adeline Street sidewalk shown as Parcel R9-2 on San Francisco Bay Area Rapid Transit District Amended Record Map of Right of Way RRW 9, dated December 7, 1971 in book 68 of maps, at page 150, the legal description of which is in Schedule 1.1.1.

1.1.2. East Lot. "**East Lot**" means that real property designated as Alameda County Assessor Parcel Number 053-1703-009, the legal description of which is in Schedule 1.1.2.

1.1.3. West Lot Close Of Escrow. "**West Lot Close Of Escrow**" is defined in Article 4.1.

1.1.4. East Lot Close Of Escrow. "**East Lot Close Of Escrow**" is defined in Article 4.2.

1.1.5. Air Rights Option. "**Air Rights Option**" means the City's option to purchase air rights over the West Lot pursuant to an unrecorded agreement dated as of October 22, 1964, as amended, between BART and the City.

1.1.6. Flea Market Permit. "**Flea Market Permit**" means Permit No. R10-0423 between BART and Community Services United to operate or provide for the operation of the Berkeley Flea Market upon BART property at the Ashby BART station.

1.1.7. Area Median Income. "**Area Median Income**" or "**AMI**" means the "Median Income" for the "Alameda County Area" as set forth in the regulations of the California Department of Housing and Community Development promulgated at Section 6932 of Title 25 of the California Code of Regulations (as may be amended from time to time, "**Section 6932**").

1.1.8. Extremely Low Income Households. "**Extremely Low Income Households**" means households earning no more than the "Extremely Low" limits by household size for the "Alameda County Area" as set forth in Section 6932.

1.1.9. Very Low Income Households. "**Very Low Income Households**" means households earning no more than the "Very Low Income" limits by household size for the "Alameda County Area" but more than Extremely Low Income Households, as set forth in Section 6932.

1.1.10. Low Income Households. "**Low Income Households**" means households earning no more than the "Low Income" limits by household size for the "Alameda County Area" but more than Very Low Income Households, as set forth in Section 6932.

1.1.11. Moderate Income Households. "**Moderate Income Households**" means households earning no more than the "Moderate Income" limits by household size for the "Alameda County Area" but more than Low Income Households, as set forth in Section 6932.

1.1.12. Affordable Housing. "**Affordable Housing**" means housing subject to enforceable legal conditions restricting its availability for lease or sale to Extremely Low Income Households, Very Low Income Households, or Low Income Households. Affordable Housing also includes housing subject to enforceable legal conditions restricting its availability for lease or sale to Moderate Income Households, except that no City funds may be used for Moderate Income units, and any Moderate Income units must have rents that are below market.

1.1.13. TOD. "**TOD**" means transit-oriented development.

1.1.14. EIFD. "**EIFD**" means Enhanced Infrastructure Financing District pursuant to Chapter 2.99 of Part 1 of Division 2 of Title 5 of the Government Code.

1.1.15. CFD. **"CFD**" means a Community Facilities District pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code.

1.1.16. Ground Lease. "**Ground Lease**" means a long-term lease between City or BART, on the one hand, and a developer of the East Lot or West Lot, respectively, on the other, pursuant to which the developer will own all or most of the improvements on the land for the term of the lease.

1.1.17. Ground Lease Option. "**Ground Lease Option**" means an agreement between City or BART, on the one hand, and a developer of the East Lot or West Lot, respectively, on the other, pursuant to which the developer has one or more options to enter into one or more Ground Leases on the applicable parcel.

1.1.18. Ground Lease Agreements. "**Ground Lease Agreements**" means the Ground Lease Option and the related Ground Lease(s), collectively, which, taken together, establish the rights and responsibilities of the City or BART, on the one hand, and a developer of the East Lot or West Lot, on the other, in furtherance of an overall development project on the East Lot or West Lot, as applicable.

1.1.19. Parcel R9-2. "**Parcel R9-2**" means the unassessed approximately 900-foot-long strip of land abutting the existing Adeline Street sidewalk shown as Parcel R9-2 on San Francisco Bay Area Rapid Transit District Amended Record Map of Right of Way RRW 9, dated December 7, 1971 in book 68 of maps, at page 150.

1.1.20. Reciprocal Easement Agreement. "**Reciprocal Easement Agreement**" means the agreement executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

1.2. Real Property Exchange. Subject to the terms and conditions hereinafter set forth, BART agrees to grant to City the East Lot and City agrees to quitclaim to BART the Air Rights Option and to quitclaim to BART any rights, title, and interest it may have in Parcel R9-2, subject to a reserved utilities easement.

1.3. Escrow.

1.3.1. Opening Escrow. No later than two (2) business days after the Effective Date, the parties shall submit this Agreement to the Old Republic Title Company (the "**Escrow Holder**"), having its office at the address set forth under Article 14.2. Upon receipt of a fully executed copy of this Agreement, Escrow Holder shall open an escrow account ("**Escrow**") pursuant hereto and deliver the Acknowledgement of Escrow Holder to the parties.

1.3.2. Escrow Instructions. This Agreement shall constitute the initial instructions for the Escrow; provided, however, that each party may provide closing or other instructions for the Escrow that do not conflict with this Agreement. The parties shall, on demand, execute those additional escrow instructions consistent with this Agreement and deposit with the Escrow Holder all instruments and funds as may be necessary and appropriate to close the transactions in accordance with this Agreement. In case of any conflict between them, this Agreement will supersede the Escrow Holder's form of general instructions or general provisions for the Escrow to the extent of such conflict.

ARTICLE 2.
PROPERTY DOCUMENTS; TITLE; NHDA DISCLOSURE

2.1. Preliminary Report. The Parties acknowledge receipt of preliminary title reports for the East Lot and for a portion of the West Lot, dated March 27, 2024, prepared by Escrow Holder and attached hereto as Schedule 2.1(a) and Schedule 2.1(b), respectively, (the "**2024 PTRs**"), which 2024 PTRs include hyperlinks to the recorded documents related to the title exceptions listed in such 2024 PTRs. City hereby approves of all of the title exceptions and matters referenced in the 2024 PTRs. City shall obtain updated Preliminary Reports from Escrow Holder ("**Updated Reports**") during the period prior to the effectiveness of the City Authorizing Ordinance and BART Authorizing Resolution. The Updated Reports will be attached as Schedule 2.1(c) and Schedule 2.1(d) upon City's execution of the Agreement. If City objects to any title exceptions that are included in the Updated Reports that are not included in the 2024 PTRs (individually, "**Objectionable Additional Exception**" and collectively, "**Objectionable Additional Exceptions**"), (a) City shall provide BART with written notice of such objection by the time of BART's execution of this Agreement and (b) BART, in BART's sole and absolute discretion, shall have until the date that is three (3) business days prior to the West Lot Close Of Escrow or the East Lot Close Of Escrow, respectively, to cause Escrow Holder to issue an update to the Updated Reports that removes such Objectionable Additional Exception. BART shall not cause or consent to any additional title encumbrances on the East Lot or West Lot between the Effective Date and the West Lot Close Of Escrow or the East Lot Close Of Escrow, respectively.

2.2. Title Insurance. The parties acknowledge that City may desire to obtain at the East Lot Close of Escrow (a) a title insurance policy covering the East Lot (the "**Title Policy**")

and (b) a number of endorsements to the Title Policy (collectively, "**Endorsements**"). The parties agree that (1) the issuance of the Title Policy or any Endorsements shall not be a condition precedent to the Close of Escrow, (2) in no event shall BART be obligated to provide any indemnity or other documents to permit City to obtain such Title Policy or Endorsements, (3) in no event shall either the East Lot Close Of Escrow or the West Lot Close Of Escrow be extended to permit City to obtain such Title Policy or Endorsements, and (4) City shall be solely responsible for the delivery of any documents and payment of any premiums required by the Escrow Holder as a condition to the issuance of the Title Policy or Endorsements.

2.3. Disclosures Regarding Community Facilities Districts. Both the East Lot and the West Lot are within the boundaries of the California Home Finance Community Facilities District No. 2014-1 and are each subject to special assessments to fund Community Facilities District No. A/C-3 for the East Bay Regional Parks District ("**Districts**"). The Parties each hereby acknowledge the prior receipt of the Notices of Special Tax related to each of the Districts. By the East Lot Close Of Escrow and West Lot Close Of Escrow, the Parties shall have investigated and evaluated those matters considered relevant and important concerning the Districts and will understand the potential financial, title, and other legal impacts of the Districts.

2.4. Natural Hazard Disclosure Act. Each party acknowledges that BART, by the East Lot Close Of Escrow, is required to disclose if the East Lot lies within the following natural hazard areas or zones: (a) a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency (Cal. Gov. Code § 8589.3); (b) an area of potential flooding shown on a dam failure inundation map designated pursuant to Cal. Gov. Code § 8589.5 (Cal. Gov. Code § 8589.4); (c) a very high fire hazard severity zone designated pursuant to Cal. Gov. Code § 51178 or 51179 (in which event the owner maintenance obligations of Cal. Gov. Code § 51182 would apply) (Cal. Gov. Code § 51183.5); (d) a wildland area that may contain substantial forest fire risks and hazards designated pursuant to Cal. Pub. Resources Code § 4125 (in which event [i] the property owner would be subject to the maintenance requirements of Cal. Pub. Resources Code § 4291 and [ii] it would not be the state's responsibility to provide fire protection services to any building or structure located within the wildland area except, if applicable, pursuant to Cal. Pub. Resources Code § 4129 or pursuant to a cooperative agreement with a local agency for those purposes pursuant to Cal. Pub. Resources Code § 4142) (Pub. Resources Code § 4136); (e) an earthquake fault zone (Pub. Resources Code § 2621.9); or (f) a seismic hazard zone (and, if applicable, whether a landslide zone or liquefaction zone) (Pub. Resources Code § 2694). THESE HAZARDS MAY LIMIT CITY'S ABILITY TO DEVELOP THE EAST LOT, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT THE PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. CITY MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

ARTICLE 3.
CONDITIONS PRECEDENT TO CLOSING

3.1. City Conditions Precedent to Close of Escrow. The obligation of City to quitclaim the Air Rights Option to BART shall be subject to the fulfillment on or before the

West Lot Close Of Escrow of all of the following conditions, except to the extent waived by the City in its sole and absolute discretion:

3.1.1. BART Escrow Deposits. BART has deposited the West Lot Covenants, East Lot Deed and all other required documents into escrow in accordance with this Agreement.

3.1.2. Condition of Title. BART has caused Escrow Holder to issue an update to the Updated Report that removes all Objectionable Additional Exceptions as of the date that is three (3) business days prior to the West Lot Close Of Escrow and there has otherwise been no material change in the condition of title for the East Lot.

3.1.3. Physical Condition. There has been no material change in the physical condition of the East Lot as of the date of the West Lot Close Of Escrow.

3.1.4. Covenants. BART has performed and observed, in all material respects, all covenants and agreements of this Agreement that are to be performed and observed by BART as of the West Lot Close Of Escrow.

3.2. BART Conditions Precedent to Close of Escrow. The obligation of BART to grant the East Lot to City shall be subject to the fulfillment on or before the West Lot Close Of Escrow of all of the following conditions, except to the extent waived by BART in its sole and absolute discretion:

3.2.1. No New Zoning Restrictions. The zoning for the West Lot has not been modified or changed since September 17, 2024, to be more restrictive or to reduce the development capacity of the West Lot.

3.2.2. City Escrow Deposits. City has deposited the East Lot Covenants, the Air Rights Quitclaim, the Parcel R9-2 Quitclaim Deed and all other required documents into escrow in accordance with this Agreement.

3.2.3. Covenants. City has performed and observed, in all material respects, all covenants and agreements of this Agreement that are to be performed and observed by City as of the West Lot Close Of Escrow.

3.3. Mutual Conditions Precedent to Close of Escrow. The obligation of either City or BART to close escrow shall be subject to the fulfillment on or before the West Lot Close Of Escrow of all of the following conditions, except to the extent waived by City or BART as to their respective obligations to close, each in its sole and absolute discretion:

3.3.1. West Lot Exclusive Negotiating Agreement. BART has entered into an Exclusive Negotiating Agreement with a master developer for development of the West Lot consistent with this Agreement.

3.3.2. No Legal Actions. There shall be no legal actions challenging the City Authorizing Ordinance or BART Authorizing Resolution.

3.3.3. No Referendum. The City shall not have received a petition to referendum the City Authorizing Ordinance pursuant to California Elections Code Division 9, Sections 9235 through 9247.

3.3.4. Covenants. BART has performed and observed, in all material respects, all covenants and agreements of this Agreement that are to be performed and observed by BART.

3.3.5. Title. East Lot shall be free and clear of any reserved rights of BART, including any easement for mid-block pedestrian passage, or any title encumbrances that would obviate East Lot ability to provide future residential development per Section 10.1 of the Agreement.

ARTICLE 4.
CLOSINGS

4.1. West Lot Close Of Escrow Time and Place. Subject to the prior satisfaction or waiver of the conditions precedent set forth in Articles 3.1, 3.2 and 3.3, the closing of the West Lot transaction ("**West Lot Close Of Escrow**") shall be held at the offices of Escrow Holder at the address described in Article 14.2 and shall occur within 10 days after a West Lot Exclusive Negotiating Agreement is executed that complies with Article 5.1 or at such other date as the Parties may mutually agree (the "**West Lot Closing Date**"). The West Lot Closing Date shall not occur sooner than six months after the Effective Date unless the City consents thereto.

4.2. East Lot Close Of Escrow Time and Place. Subject to the prior satisfaction or waiver of the conditions precedent set forth in Articles 3.1, 3.2, and 3.3, the closing of the East Lot transaction ("**East Lot Close Of Escrow**") shall be held at the offices of Escrow Holder at the address described in Article 14.2 and shall occur on the West Lot Closing Date or at such later date as may be specified in writing by the City (the "**East Lot Closing Date**"), provided that at least 45 days' prior written notice is given to BART.

4.3. City's Obligations at or Prior to West Lot Close Of Escrow. City shall deliver the following to Escrow Holder at least one (1) business day prior to the West Lot Closing Date:

4.3.1. a duly executed and notarized original quitclaim deed conveying the Air Rights Option to BART in the form substantially similar to Schedule 4.3.1 (the "**Air Rights Quitclaim Deed**");

4.3.2. a duly executed and notarized original quitclaim deed quitclaiming to BART any rights, title and interest in Parcel R9-2 in the form substantially similar to Schedule 4.3.2 (the "**Parcel R9-2 Quitclaim Deed**");

4.3.3. a duly executed and notarized original signature page on the covenants and restrictions on the East Lot attached as Schedule 4.3.3 ("**East Lot Covenants**");

4.3.4. a duly executed and notarized original signature page on the covenants and restrictions on the West Lot attached as Schedule 4.3.4 ("**West Lot Covenants**");

4.3.5. a fully executed original City Authorizing Ordinance;

4.3.6. a duly executed certificate of acceptance for the East Lot Deed;

4.3.7. such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of City;

4.3.8. an executed closing statement reasonably acceptable to City; and

4.3.9. such other documents or affidavits as may be customarily and reasonably required by the Escrow Holder.

4.4. BART's Obligations at or Prior to West Lot Close Of Escrow. BART shall deliver the following to Escrow Holder at least one (1) business day prior to the West Lot Closing Date:

4.4.1. a duly executed and notarized original signature page on the East Lot Covenants;

4.4.2. a duly executed and notarized original signature page on West Lot Covenants;

4.4.3. a duly executed and notarized original grant deed conveying the East Lot to City in the form substantially similar to Schedule 4.4.4 (the "**East Lot Deed**");

4.4.4. a duly executed certificate of acceptance for the Air Rights Quitclaim Deed;

4.4.5. such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of BART;

4.4.6. an executed closing statement reasonably acceptable to BART; and

4.4.7. such other documents or affidavits as may be customarily and reasonably required by the Escrow Holder.

4.5. East Lot Credits and Prorations.

4.5.1. Items to be Prorated. All (a) expenses, real property taxes, bonds and assessments affecting the East Lot, and (b) utility service charges for the East Lot shall be apportioned as of 12:01 a.m., on the East Lot Closing Date as if City were vested with title to the East Lot during the entire day upon which the East Lot Closing Date occurs.

4.5.2. Basis of Proration. BART shall be charged at the East Lot Close Of Escrow an amount equal to that portion of the proration items which relate to the period before the East Lot Closing Date and City shall be charged at the East Lot Close Of Escrow an amount equal to that portion of the proration items which relate to the period after the East Lot Closing

Date, each on a basis of, as applicable, a thirty (30) day month or a three hundred and sixty (360) day year.

4.5.3. Initial Use of Estimates; True Up Based on Final Amounts. Any expense amount which cannot be ascertained with certainty as of the East Lot Close Of Escrow shall be prorated on the basis of the parties' reasonable estimates of such amount. Once the previously estimated amounts have been finalized, the parties shall prorate these new amounts pursuant to this Agreement and each party shall pay any amount due to a third party within ten (10) business days after receipt of the final amount. If either party has overpaid an amount based on the prior estimate, the other party shall reimburse the overpaying party within ten (10) business days after receipt of the final amount.

4.6. Transaction Taxes and Closing Costs.

4.6.1. Counsel fees. Each Party shall pay the fees of its counsel in connection with this transaction.

4.6.2. Closing Funds. The Parties shall pay Escrow Holder closing funds ("**Closing Funds**") as follows:

A. BART Costs For West Lot Close Of Escrow. BART shall pay the following costs and expenses for the West Lot Close Of Escrow (the "**BART West Lot Charges**"): (a) One hundred percent (100%) of the documentary/real property transfer tax or similar tax/fee charged by the County of Alameda or City of Berkeley related to the transfer of the Air Rights Option from City to BART, if any; (b) 50% of the fee charged by Escrow Holder; (c) the recording fees for the Parcel R9-2 Quitclaim Deed; (d) surveyor costs to prepare a metes-and-bounds legal description of Parcel R9-2; and (e) the recording fees for the Air Rights Quitclaim Deed, the West Lot Covenants, and any other documents recorded by or on behalf of BART.

B. City Costs For West Lot Close Of Escrow. City shall pay 50% of the fee charged by Escrow Holder for the East Lot Close Of Escrow (the "**City West Lot Charges**").

C. City Costs For East Lot Close Of Escrow. City shall pay the following costs and expenses for the East Lot Close Of Escrow (the "**City East Lot Charges**"): (a) One hundred percent (100%) of the documentary/real property transfer tax or similar tax/fee charged by the County of Alameda or City of Berkeley related to the transfer of the East Lot from BART to City, if any; (b) 50% of the fee charged by Escrow Holder; (c) any premiums for the Title Policy or any Buyer's Endorsements requested by City; and (d) the recording fees for the East Lot Deed, the East Lot Covenants, and any other documents recorded by or on behalf of City.

D. BART Costs For East Lot Close Of Escrow. BART shall pay 50% of the fee charged by Escrow Holder for the East Lot Close Of Escrow (the "**BART East Lot Charges**").

4.6.3. Miscellaneous Costs. All costs and expenses incident to this transaction and the East Lot Close Of Escrow and West Lot Close Of Escrow, and not specifically described above, shall be apportioned per the custom of the County.

4.7. West Lot Close Of Escrow Procedures. When all items required by Articles 4.3 and 4.4 have been timely deposited with Escrow Holder, and Escrow Holder has been notified by both Parties that all of the applicable conditions precedent in Article 3 have been either satisfied or waived, Escrow Holder shall effect the West Lot Close Of Escrow as follows:

4.7.1. Attach the BART certificate of acceptance to the Parcel R9-2 Quitclaim Deed, and the Air Rights Quitclaim Deed and record the Parcel R9-2 Quitclaim Deed, the Air Rights Quitclaim Deed, and the City Authorizing Ordinance in the Official Records of Alameda County;

4.7.2. Record the West Lot Covenants in the Official Records of Alameda County;

4.7.3. Pro rate taxes, assessments and other charges pursuant to Article 4.8 and pay the applicable charges from the Closing Funds;

4.7.4. Pay the City West Lot Charges from the Closing Funds;

4.7.5. Deliver to BART and City conformed copies of the Air Rights Quitclaim Deed and West Lot Covenants.

If Escrow Holder is unable to simultaneously perform all of the instructions set forth above, then, prior to the West Lot Close Of Escrow, Escrow Holder shall notify BART and City and retain all funds and documents pending receipt of further instructions jointly issued by BART and City.

4.8. East Lot Close Of Escrow Procedures. When all items required by Articles 4.3 and 4.4 have been timely deposited with Escrow Holder, Escrow Holder has been notified by both Parties that all of the applicable conditions precedent in Article 3 have been either satisfied or waived, and the City has given notice of the East Lot Closing Date, Escrow Holder shall effect the East Lot Close Of Escrow as follows:

4.8.1. Attach the City certificate of acceptance to the East Lot Deed and record the East Lot Deed in the Official Records of Alameda County;

4.8.2. Record the East Lot Covenants in the Official Records of Alameda County;

4.8.3. Pro rate taxes, assessments and other charges pursuant to Article 4.8 and pay the applicable charges from the Closing Funds;

4.8.4. Pay the City East Lot Charges from the Closing Funds;

4.8.5. Deliver to City and BART conformed copies of the East Lot Deed and East Lot Covenants.

If Escrow Holder is unable to simultaneously perform all of the instructions set forth above, then, prior to the East Lot Close Of Escrow, Escrow Holder shall notify City and BART and retain all funds and documents pending receipt of further instructions jointly issued by City and BART.

ARTICLE 5.
DEVELOPER SOLICITATION

5.1. General. BART shall pursue a separate solicitation for development of the West Lot and City shall pursue a separate solicitation for development of the East Lot, in accordance with this Article. These solicitations shall conform to applicable requirements, if any, of the Surplus Land Act (Government Code §§ 54220 et seq.). BART and City shall each conduct a solicitation whereby a Request For Proposals ("**RFP**") or Request For Qualifications and Proposals ("**RFQ/RFP**") is issued to solicit qualified developers, and respondents will be asked to submit their qualifications, as well as proposals demonstrating workable business frameworks for development that are consistent with the requirements of this Agreement and the specific goals outlined in the JVP and the developer solicitation document or documents. It is expected that successful respondents to the RFPs or RFQ/RFPs would enter into an Exclusive Negotiating Agreement ("**ENA**") with BART for the negotiation of a Ground Lease Option granting one or more options for one or more Ground Leases on the West Lot, and with the City for the negotiation of one or more Ground Leases or contract of sale (or some combination thereof) on the East Lot, respectively.

5.2. Schedule. Both the City and BART shall take every feasible action to ensure that their respective milestone targets included in Schedule 5.2 ("**Schedule**") are achieved and sufficient staff is dedicated by both BART and the City to meet the Schedule.

5.3. East Lot RFP or RFQ/RFP. The RFP or RFQ/RFP for the East Lot shall additionally include, without limitation: (a) a request to respondents to demonstrate how their proposal addresses (i) the negative impacts to African American residents, businesses, and cultural institutions displaced by construction of the Ashby Station, (ii) the JVP priority to "maximize the number of new homes"; and (iii) the requirement that the project include at least 300 bedrooms; (b) the applicable minimum onsite Affordable Housing requirements, as set forth in this Agreement; and (c) a request to respondents to provide a detailed pro forma demonstrating how the development team could potentially achieve a goal of 50% Affordable Housing.

5.3.1. BART Non-Participation. BART staff will not participate in the solicitation process for the East Lot other than to review and approve solicitation materials with respect to matters relating to BART access and operations in order to ensure that BART's access and operational requirements are satisfied.

5.3.2. Selection Process. Following the receipt of proposals, the selection process will include a public meeting of shortlisted RFP or RFQ/RFP respondents that includes

presentations from the respondents. The East Lot selection committee will make a recommendation to the Berkeley City Council based upon selection criteria prepared by the City. Without limiting the City's consideration of other factors, in keeping with the JVP priority to maximize the number of new homes, the number of residential units shall be a positive quantitative factor in the City's evaluation of proposals. The Berkeley City Council shall consider and act upon the East Lot selection committee's recommendation of a developer for the East Lot.

5.3.3. East Lot Developer. The "**East Lot Developer**" is the RFP or RFQ/RFP respondent, if any, selected by the Berkeley City Council who also enters into an ENA or Ground Lease, as applicable, with the City for development of the East Lot.

5.4. West Lot RFP or RFQ/RFP. The RFP or RFQ/RFP for the West Lot shall include, without limitation: (a) a request to proposers to demonstrate (i) how they would incorporate an exhibit honoring the history of the Berkeley Flea Market, (ii) how their proposal addresses the negative impacts to African American residents, businesses, and cultural institutions displaced by construction of the Ashby Station; and (iii) how their proposal would provide a direct connection from the project to Adeline Street; and (b) the applicable minimum onsite Affordable Housing requirements, as set forth in this Agreement; and (c) a request that respondents who would propose a project that includes more than 602 units provide a detailed pro forma demonstrating how the respondent could potentially increase the Affordable Housing of the full project, inclusive of any density bonus units, beyond the required 35% minimum to reach an aspirational goal of up to 50%.

5.4.1. Selection Process. The West Lot evaluation committee will be composed of four BART representatives, two City representatives, and a representative from Equitable Black Berkeley ("**EBB**") approved by the City Manager (total of 7). Following the receipt of proposals, the evaluation process will include a public meeting of shortlisted respondents that includes presentations from the respondents. Without limiting the evaluation committee's or BART's consideration of other factors, the extent to which a proposal would provide a direct connection from the project to Adeline Street shall be a quantitative factor in the evaluation of proposals. In the event that the West Lot evaluation committee concludes that one or more respondents have submitted a satisfactory proposal, the West Lot evaluation committee will recommend the most qualified respondent to the BART General Manager based upon the selection criteria prepared for the RFP or RFQ/RFP. The BART General Manager shall make a recommendation of a developer to the BART Board of Directors which the BART Board of Directors shall consider and act upon.

5.4.2. West Lot Developer. The "**West Lot Developer**" is the RFP or RFQ/RFP respondent selected by BART who also enters into an ENA or Ground Lease Agreements, as applicable, with BART for development of the West Lot. For the avoidance of doubt, references in this Agreement to the West Lot Developer shall include a development team and/or any of its members in the event that more than one developer is duly selected by the BART Board to develop the West Lot.

5.5. West Lot Lease Conditions. The Ground Lease Agreements entered into with the West Lot Developer for the West Lot shall, taken as a whole, include, and BART shall enforce,

the following conditions:

5.5.1. All of the West Lot City Funds Conditions, as defined in Article 7.2.

5.5.2. A requirement that development of the West Lot include commercial space in accordance with the requirements of Article 6.1.

5.5.3. At least 50% of the first 602 units shall be Affordable Housing units. In the event that the total residential component of the West Lot project has more than 602 total housing units (whether through density bonus or otherwise), there shall be no fewer than 301 Affordable Housing units and overall at least 35% of new housing units, inclusive of density bonus units, must be affordable to households earning an average of up to 60% of Area Median Income. At least 20% of that 35% must be affordable to Extremely Low Income Households. Of that same 35%, and other than units for Extremely Low Income Households, priority should be given to units for Very Low Income Households and units for Low Income Households, provided that any units within that 35% for Moderate Income Households have rents that are still below market and are not funded by any City subsidies.

5.5.4. Any project receiving the City's Housing Trust Fund ("**HTF**") funding must meet the City's HTF Guidelines.

5.5.5. BART will provide a discount on land costs in keeping with BART's Framework for Financial Return from Affordable Housing ("**Framework**"), provided the lessee utilizes this land discount solely for the benefit of the Affordable Housing components of the West Lot. As described in the Framework, BART will consider a deeper land discount to its determination of Ground Lease rent for affordable units that serve Very Low Income Households, Low Income Households, or transit-dependent populations.

5.5.6. Those provisions of Article 8.2.5(B)(2) and 8.2.6(A)(2), as applicable, related to the Berkeley Flea Market.

5.5.7. A requirement that the Public Infrastructure construction or maintenance costs required to be paid by the West Lot Developer pursuant to Article 8 shall be paid by the West Lot Developer, and that West Lot Developer shall comply with all of the obligations of West Lot Developer set forth in Article 8.

5.5.8. A requirement that West Lot Developer comply with all obligations of West Lot Developer set forth in Article 9, and that any development of the West Lot comply with applicable ODS (as defined herein) to the extent required by this Agreement.

5.5.9. A requirement that the South Plaza Extension shall be included in any development of the West Lot, and that the BART Terrace Improvements shall be included in any development of the West Lot to the extent consistent with project feasibility.

5.5.10. A requirement that the West Lot Developer comply with all applicable mitigation measures adopted in connection with the City's adoption on June 28, 2022 of the Residential - BART Mixed Use (R-BMU) zoning district ("**2022 Mitigation Measures**") and all

applicable standard conditions of approval relied upon in the associated EIR, as set forth in Schedule 5.5 ("**Standard Conditions**").

5.5.11. Substantial construction of the West Lot development contemplated by this Agreement shall commence within 1 year of the signing of the lease.

5.5.12. If the Ground Lease will include Affordable Housing, a term of at least 99 years.

5.6. East Lot Lease Conditions. Any Ground Lease or contract of sale entered into with the East Lot Developer for the East Lot shall include the following conditions:

5.6.1. East Lot City Funds Conditions, as defined in Article 7.3.

5.6.2. A requirement that any development of the East Lot comply with applicable ODS to the extent required by this Agreement.

5.6.3. A requirement that the East Lot Developer comply with all applicable 2022 Mitigation Measures and all applicable Standard Conditions.

5.6.4. At least 35% of new housing units, inclusive of density bonus units, must be affordable to households earning an average of up to 60% of Area Median Income. At least 20% of that 35% must be affordable to Extremely Low Income Households. Of that same 35%, and other than units for Extremely Low Income Households, priority should be given to units for Very Low Income Households and units for Low Income Households, provided that any units within that 35% for Moderate Income Households have rents that are still below market and are not funded by any City subsidies.

5.6.5. Any project receiving the City's Housing Trust Fund ("HTF") funding must meet the City's HTF Guidelines.

5.6.6. A requirement that the Public Infrastructure construction and maintenance costs required to be paid by the East Lot Developer pursuant to Article 8 shall be paid by the East Lot Developer, and that East Lot Developer shall comply with all of the obligations of East Lot Developer set forth in Article 8.

5.6.7. Any Ground Lease for the East Lot for Affordable Housing development shall have a minimum duration of 99 years.

5.7. BART Cooperation re East Lot Entitlements. In the event the City elects to defer the East Lot Close Of Escrow beyond the West Lot Close Of Escrow, BART shall not unreasonably withhold the requisite consents as landowner that may be required for entitlement applications for the East Lot, provided that in no event shall any such consent obligate BART to compensate the City for its costs in processing said entitlement applications, or to defend and indemnify the City for any claims or litigation arising out of the entitlement process. BART shall also not unreasonably withhold issuance of a permit to enter in connection with providing the City and East Lot Developer access to the East Lot as may be reasonably required to conduct predevelopment activities, provided that the City and/or East Lot Developer, as applicable,

complies with the provisions of said permit.

ARTICLE 6.
COMMUNITY BENEFITS

6.1. West Lot Civic Commercial Uses & Amenities.

6.1.1. The West Lot development shall be required to include a minimum of 5,000 net rentable square feet, based on BOMA ANSI 2017 standards, for ground floor interior space for community-based organizations, non-profits, and/or small and minority-owned businesses, including the Berkeley Flea Market, with triple net lease rents less than or equal to 50% of fair market (triple net) rent during the term of such lease. Tenants for this space, other than the Berkeley Flea Market, may be recommended by the City but are subject to the West Lot Developer's sole discretion.

6.1.2. The West Lot development may incorporate the public artwork by Mildred Howard that was recently commissioned by the City.

6.2. The Berkeley Flea Market. Following the completion of the Adeline Plaza Improvements (1B, 2A, and 3A), the South Plaza Extension (11), and the BART Terrace Improvements (9A and 9B), and consistent with Articles 8.2.5(B) and 8.2.6(A), those areas (or portions thereof as applicable) shall be made available as vending space for the Berkeley Flea Market on terms comparable to the Flea Market Permit, as adjusted for inflation, and potentially for other public markets and microenterprise businesses. The City may allow some portion of adjacent right-of-way to also be utilized to support the Berkeley Flea Market (and other public programming), such as for vendor parking at the curb on weekends. BART will not terminate the Flea Market Permit nor increase its rent until the West Lot Developer requires possession of the West Lot for purposes of commencing construction. If, at that time, the Adeline Main Plaza (1B) is not yet completed, the City will assist the Berkeley Flea Market in identifying and securing a suitable alternate location.

6.3. Community Benefits Fund. The City intends to require that a portion of net project profit from the East Lot mixed income or market rate development parcels be allocated to create a reparative community benefits fund for South Berkeley residents, as follows: By the earlier of (i) the beginning of the fourth year after a temporary certificate of occupancy is approved for a market rate or mixed income parcel on the East Lot, or (ii) stabilization (i.e., 95% occupancy) is achieved for such parcel, the developer of the parcel shall fund its pro rata share, as calculated pursuant to the next sentence, of an $150,000 contribution to the community benefits fund, to be paid annually on the anniversary of the date the first payment was due, with annual cost of living adjustments of no less than 3.0% per annum. The percentage of the total to be paid by each qualifying parcel shall be calculated by dividing the parcel's net rentable or net sellable square footage by the total net rentable or net sellable square footage of all market rate or mixed income development approved or proposed on the East Lot. The final terms of any community benefits fund shall be established by the City in its sole discretion.

ARTICLE 7.
CITY FUNDING

7.1. City Provision Of Affordable Housing Funds. During the term of this Agreement, and subject to the provisions of this Agreement, City intends to make available a total of $53 million for Affordable Housing on the East Lot, West Lot, and the North Berkeley BART station, including up to $4 million in predevelopment funds (collectively the "**City Funds**"). Of these City Funds, City intends to dedicate $18.5 million for Affordable Housing on the West Lot and $8.0 million for Affordable Housing on the East Lot.

7.1.1. Predevelopment Funds. As part of the developer selection processes, up to $2,000,000 in City pre-development loan funds are expected to be made available, with half of the proceeds available to the West Lot Developer and half of the proceeds available to the East Lot Developer.

7.1.2. City Council Approval Required. City Council approval shall be required for each award, grant, loan, or other transfer of City Funds for Affordable Housing on the East Lot or West Lot.

7.1.3. Discretion to Condition City Funds. City may make City Funds for Affordable Housing subject to affordability requirements, project milestones, objective design standards consistent with the provisions of Schedule 9.2.1, and other standard requirements set forth in funding agreements or regulatory agreements between City and West Lot Developer or East Lot Developer, which may be recorded against the applicable developer's Ground Lease interest in the West Lot or East Lot, respectively, and be enforced by City.

7.2. West Lot City Funds Conditions. City shall condition all City Funds for Affordable Housing on the West Lot on the covenants, conditions, and restrictions in Schedule 4.3.4 and those additional conditions in Schedule 7.2 (together "**West Lot City Funds Conditions**").

7.3. East Lot City Funds Conditions. City shall condition all City Funds for Affordable Housing on the East Lot on the on the covenants, conditions, and restrictions in Schedule 4.3.3 and those additional conditions in Schedule 7.3 (together "**East Lot City Funds Conditions**").

ARTICLE 8.
PUBLIC INFRASTRUCTURE; SPECIAL FUNDING MECHANISMS

8.1. General Provisions

8.1.1. Public Infrastructure Definitions. Future transit-oriented development at the Ashby BART station, the East Lot, and the West Lot will require substantial investments in public infrastructure, which may include, but is not limited to, reconfiguration of Adeline Street, Woolsey Street, Ashby Avenue, and Martin Luther King Junior Way ("**MLK**"); plaza improvements along Adeline Street and extensions of the plaza to connect to the new development; BART rider parking for vehicles and bicycles; new pedestrian, bicycle, transit, and passenger loading; lighting; station improvements necessitated by the West Lot project including

but not limited to a new station entry plaza, stairs, ramping, and Traction Power Substation ("**TPSS**") access area and crane area; an Eastside Elevator; and vehicular access roads (individually or collectively "**Public Infrastructure**"). Public Infrastructure does not include infrastructure necessary to serve a specific development parcel, the cost of which shall be borne by the East Lot Developer or by the West Lot Developer, as applicable. Public Infrastructure also does not include BART's construction or operation of a new TPSS, which is anticipated to be on the West Lot.

8.1.2. Infrastructure Map. The location of certain specific Public Infrastructure and TPSS Improvements anticipated to be needed for the development of the West Lot are depicted on Schedule 8.1.2 ("**Infrastructure Map**"). The "**TPSS Improvements**" consist of improvements 7A and 7B as depicted on the Infrastructure Map. Public Infrastructure shown in the Infrastructure Map consists of the following categories:

A. Roadway Reconfigurations. The "**Roadway Reconfigurations**" consist of improvements:

(1) 1A ("**Adeline Street Reconfiguration**"), and

(2) 3B ("**MLK/Adeline/Woolsey Intersection Redesign**").

B. Adeline Plaza Improvements. The "**Adeline Plaza Improvements**" consist of improvements:

(1) 1B ("**Adeline Main Plaza**"),

(2) 2A ("**Ashby/Adeline Corner Plaza**"), and

(3) 3A ("**MLK/Adeline/Woolsey Plaza**").

C. Adeline Plaza Extensions. The "**Adeline Plaza Extensions**" consist of improvements:

(1) 11 ("**South Plaza Extension**"), and

(2) 2B ("**Ashby/Adeline Corner Plaza Extension**").

D. BART Terrace Improvements. The "**BART Terrace Improvements**" consist of improvements:

(1) 9A ("**Existing BART Terrace**"), and

(2) 9B ("**BART Terrace Extension**")

E. Sidewalk Improvements. The "**Sidewalk Improvements**" consist of improvements:

(1) 15 ("**Ashby Sidewalk Widening**"),

(2) 16 ("**MLK Sidewalk Widening (north)**"), and

(3) 17 ("**MLK Sidewalk/Bikeway Widening (south)**")

F. BART Improvements. The "**BART Improvements**" consist of improvements:

(1) 4B ("**Required Emergency Access**"),

(2) 5 ("**TPSS Access Area**"),

(3) 6 ("**Station Entrance Plaza**"),

(4) 8 ("**North Plaza Stair (to be rebuilt)**"),

(5) 10 ("**South Plaza Stair (to be rebuilt)**"),

(6) 12 ("**South Platform Egress Stair and BART Storage (access to be reconfigured)**"),

(7) 13 ("**BART Vents (to be extended above plaza)**"), and

(8) 14 ("**ADA/Bike Ramp (new)**").

8.1.3. Expected Funding Sources. The funds to construct and maintain Public Infrastructure and the TPSS Improvements are expected to come from a combination of sources. The responsibilities and priorities of the parties with respect to constructing, maintaining, and seeking funding for Public Infrastructure and the TPSS Improvements shall be as set forth in the body of this Agreement and in the matrix attached hereto as Schedule 8.1.3 ("**Infrastructure Matrix**"). To the extent there is a conflict between the body of this Agreement and the Infrastructure Matrix, the body of this Agreement shall control.

8.1.4. Financing Strategy. The Parties understand that available funding sources, financing estimates, and economic conditions could change as this Project proceeds. The Parties shall cooperate to prepare a mutually agreeable financing strategy for Public Infrastructure that will respect the priorities for external funding identified in this Agreement, except to the extent the parties agree that flexibility is needed to maximize the external funding available for Public Infrastructure. BART shall require the West Lot Developer to collaborate with the Parties in preparing the financing strategy. Failure of the Parties and the West Lot Developer to prepare such a financing strategy shall not preclude either party from applying for external funding nor relieve either party of the obligations identified in this Agreement to cooperate on funding applications. The Parties acknowledge that the financing strategy may need to be updated over time to reflect availability of financing sources.

8.1.5. Overall Responsibilities of the Parties. Except as otherwise provided in this Agreement, BART and/or the West Lot Developer shall be responsible for constructing and maintaining the TPSS Improvements (7A and 7B) and the Public Infrastructure on the West Lot, the City and/or the East Lot Developer shall be responsible for constructing and maintaining

Public Infrastructure on the East Lot, and the City shall be responsible for constructing and maintaining the Roadway Reconfigurations and the Adeline Plaza Improvements. The parties shall take future maintenance costs into consideration when designing and costing Public Infrastructure.

8.1.6. External Funding Opportunities. Throughout the development process, BART, the City, the West Lot Developer, and the East Lot Developer shall collaborate on securing funding for Public Infrastructure. Such collaboration may include, for example, coordination on the scope and requests for applications to State funding sources that support transit-oriented development such as the Affordable Housing & Sustainable Communities ("**AHSC**"), Infill Infrastructure Grants ("**IIG**"), and Transit and Intercity Rail Corridor ("**TIRCP**") programs. The anticipated external funding sources for each of the Public Infrastructure are identified in, but shall not be limited to, those sources listed in the Infrastructure Matrix. To the extent external funding opportunities are limited, first priority for use of grant funds shall be given to "essential" improvements, second priority shall be given to "high priority" improvements, and third priority shall be given to "medium priority" improvements, as those priorities are identified in the Infrastructure Matrix. BART and the City shall make good faith efforts to develop an infrastructure grant funding strategy that seeks to maximize the total amount of grant funding available for the essential improvements.

8.2. Specific Public Infrastructure Improvements.

8.2.1. Eastside Elevator. BART may, but is not required to, determine whether it is necessary to make upgrades to the elevator on the east side of Adeline Street that is used by BART riders to access the station (the "**Eastside Elevator**"). In the event that BART, in its sole discretion, determines that upgrades to the Eastside Elevator are necessary, BART shall be responsible for securing grants or other funding for such upgrades. To the extent necessary, and as a showing of good faith, the City or the East Lot Developer will cooperate with BART in seeking external funding to support BART-related infrastructure needs necessitated by the East Lot project. However, if external funding is unavailable, neither the City nor the East Lot developer shall be responsible for construction or maintenance funding for BART-related infrastructure.

8.2.2. Adeline Plaza Improvements (1B, 2A, and 3A). Adjacent to the West Lot, within the City's right of way, the City shall be responsible for constructing and maintaining Adeline Plaza Improvements (Adeline Main Plaza, Ashby/Adeline Corner Plaza, and MLK/Adeline/Woolsey Plaza), including improvements related to the anticipated flea market space, which may include, but are not limited to, public open plazas, plantings, and green space. The City, BART, and the West Lot Developer shall collaborate on securing funding for the Adeline Plaza Improvements with the goal of marshalling financial resources from external sources (such as from the county, region, or state) and, for Adeline Main Plaza (1B), through the City's formation of an Enhanced Infrastructure Financing District ("**EIFD**") for the West Lot, which is more particularly described in Article 8.3.1 below. For purposes of determining priority in allocating EIFD funds or external funding for the project, the Adeline Main Plaza (1B) is considered essential to the project, the Ashby/Adeline Corner Plaza (2A) is considered high priority, and MLK/Adeline/Woolsey Plaza (3A) is considered medium priority.

8.2.3. TPSS Improvements.

A. Location. The TPSS Improvements shall be constructed in the locations shown as 7A and 7B on the Infrastructure Map, provided that, if BART believes a material change in location is necessary, BART shall meet and confer with City before materially altering the TPSS location and shall work in good faith to address any concerns with the revised location that the City may identify.

B. Costs. All direct, indirect, and ongoing operating costs associated with the TPSS Improvements shall be the sole responsibility of BART. Any increased TPSS infrastructure construction or operating costs that may result from modifications to the TPSS location shall be the sole responsibility of BART; neither the City nor the East Lot developer shall be responsible for such costs.

C. Access. The TPSS Access Area (5) is expected to provide the crane access required for TPSS maintenance. BART shall not use the existing Adeline Street sidewalk or future Adeline Plaza Improvements for crane access unless BART provides temporary or permanent supports sufficient to support the crane, at BART's sole cost and expense.

D. TPSS Screening Improvements. The TPSS Improvements shall include decorative fencing with artistic treatments or other mutually agreeable screening treatment, along Adeline Street, and along the public facing edges at the north and south ends of the replacement TPSS, to screen the replacement TPSS from pedestrians (the "**TPSS Screening Improvements**"). BART shall be responsible for the construction and maintenance of the TPSS Screening Improvements. The City shall cooperate with BART in seeking external funding for the TPSS Screening Improvements, but the obligation to construct and maintain the improvements shall not be contingent on the availability of such funding.

8.2.4. West Lot BART Improvements and BART-Related Infrastructure. BART shall support the West Lot Developer in seeking external funding to pay for the BART Improvements and any other BART-related infrastructure needs necessitated by new development on the West Lot that may result in costs above and beyond those a developer would incur on similar privately-owned property. To the extent these external funding sources are not sufficient to cover the costs of such BART-related infrastructure, such funding shortfall shall be considered a factor affecting project feasibility for purposes of this Agreement. BART shall also be responsible for, and may seek external funding for, any necessary upgrades to ventilation, lighting, vertical circulation, utilities, or other BART-related infrastructure, provided that the ultimate responsibility as between BART and West Lot Developer for such BART-related infrastructure shall be determined by BART in its sole discretion and may be delegated in whole or in part to the West Lot Developer. The City shall have no responsibility for the construction or maintenance of the BART Improvements or any other BART-related infrastructure on the West Lot.

8.2.5. Adeline Plaza Extensions (11 and 2B). The Adeline Plaza Extensions consist of the South Plaza Extension (11) and the Ashby/Adeline Corner Plaza Extension (2B). South Plaza Extension is an extension of the southern portion of the Adeline Main Plaza by

providing an expanded plaza area and/or public accessways on the West Lot. The South Plaza Extension (11) shall comprise at least 4,800 square feet, and shall be extended as necessary to bridge any gap and connect with the adjacent TOD building. The Ashby/Adeline Corner Plaza Extension (2B) is an extension of Ashby/Adeline Corner Plaza (2A), at the intersection of Adeline Street and Ashby Avenue, and shall connect Ashby/Adeline Corner Plaza (2A) to the adjacent TOD building through an expanded plaza area and/or public accessways on the West Lot.

A. Purpose. The intended purpose of the Adeline Plaza Extensions is to provide at-grade pedestrian connectivity between the Adeline Plaza Improvements and one or more new TOD buildings with commercial and/or residential uses having frontages that support activation of the Adeline Main Plaza (1B), and that complement market activities there. The Adeline Plaza Extensions shall be improved with elements such as a wider sidewalk, outdoor seating area, outdoor dining area, landscaping, or other usable open space.

B. Use by Berkeley Flea Market. At least 50% of the area of the South Plaza Extension shall be publicly accessible open space. The publicly accessible portion of the South Plaza Extension shall be made available for nonexclusive use by the Berkeley Flea Market.

(1) In the event that BART rather than the West Lot Developer retains possession of the portion of the South Plaza Extension to be made available for nonexclusive use the Berkeley Flea Market, the Berkeley Flea Market's use shall be via a "Concession Permit" (or a similar document permitting the Berkeley Flea Market use) issued by BART, on financial terms comparable to the Flea Market Permit, as adjusted for inflation, and subject to the Berkeley Flea Market materially satisfying all requirements thereunder, including but not limited to review and approval of the proposed use, which permit shall not be unreasonably withheld.

(2) In the event that the West Lot Developer's Ground Lease grants it possession of the portion of the South Plaza Extension to be made available for nonexclusive use by the Berkeley Flea Market, that Ground Lease shall obligate the West Lot Developer to make at least 50% of the area open and available to the public, and to, at the Berkeley Flea Market's option, enter into an agreement for the use of at least 50% of the area of the South Plaza Extension by the Berkeley Flea Market on financial terms comparable to the Flea Market Permit, as adjusted for inflation, and subject to the terms of the Ground Lease and to the Berkeley Flea Market satisfying all reasonable requirements of the West Lot Developer.

(3) The 50% area to be used by the Berkeley Flea Market shall be configured to avoid interference with required building emergency egress and BART rider ingress/egress.

C. Delivery. The South Plaza Extension (11) is considered essential to the West Lot development and shall be included in the final project. The Parties acknowledge that the technical issues involved in providing at-grade pedestrian connectivity between a new TOD building and Adeline Street, and the costs associated therewith, have not been fully evaluated at this time. BART shall use good-faith efforts to work with the West Lot Developer to ensure that the final project will deliver at-grade pedestrian connectivity between a new TOD

building and Adeline Main Plaza (1B) using high quality design and materials; provided that, in the event of a funding shortfall, BART, City and West Lot Developer shall work in good faith to identify value-engineering and other cost saving measures as provided in subparagraph E below. The Ashby/Adeline Corner Plaza Extension (2B) is considered a high priority improvement and shall be included in the final project to the extent consistent with project feasibility.

D. Funding. The City, BART, and the West Lot Developer shall collaborate on securing external funding for the Adeline Plaza Extensions (such as from the county, region, State, or federal government). In addition, the South Plaza Extension (11), to the extent eligible for EIFD funding under State law, shall be given priority among plaza extensions for EIFD funding as more particularly described in Article 8.3, below, contingent upon West Lot Developer committing to a capital contribution of no less than $1 million for the South Plaza Extension.

E. Funding Shortfall. If revenues from the EIFD (including related interim bridge financing) and external funding sources are insufficient (or unavailable) to fund the South Plaza Extension, the parties will meet and confer to discuss value engineering measures to ensure the economic feasibility of the West Lot development; provided, however, that in no event shall the South Plaza Extension be constructed using low-quality materials. The West Lot Developer shall be responsible for the costs of constructing the Adeline Plaza Extensions in the event of any funding shortfalls. Neither City nor BART shall be required to contribute funds towards the Adeline Plaza Extensions.

F. CFD Bridge Financing: The Parties acknowledge that EIFD funds may not be available until after the improvements associated with the West Lot project are complete and on the tax rolls. The parties will collaborate on a plan to provide bridge financing through creation of a CFD or other financing mechanism to be offset, reimbursed, or refinanced when EIFD revenues become available. The City shall be responsible for the maintenance of the public portions of the Adeline Plaza Extensions, which shall be funded by the CFD identified in Article 8.3. Any portions of the Adeline Plaza Extensions which are for the exclusive use of the West Lot project shall be maintained by the West Lot Developer.

8.2.6. BART Terrace Improvements (9A and 9B). The BART Terrace Improvements consist of improvements to the Existing BART Terrace (9A) abutting the proposed Adeline Plaza, and any BART Terrace Extension (9B) necessary to connect the Existing BART Terrace to the adjacent TOD Building. As with the Adeline Plaza Extensions, the purpose of any BART Terrace Extension is to provide at-grade pedestrian connectivity between the Adeline Plaza Improvements and one or more new TOD buildings with commercial and/or residential uses having frontages that support activation of the Adeline Main Plaza (1B), and that complement market activities there.

A. Use by Berkeley Flea Market. The Existing BART Terrace shall be publicly accessible open space, and at least 50% of the area shall be made available for nonexclusive use by the Berkeley Flea Market.

(1) In the event that BART rather than the West Lot Developer retains possession of the portion of the Existing BART Terrace to be made available for nonexclusive

use by the Berkeley Flea Market, the Berkeley Flea Market's use shall be via a "Concession Permit" (or a similar document permitting the Berkeley Flea Market Use) issued by BART, on financial terms comparable to the Flea Market Permit, as adjusted for inflation, and subject to the Berkeley Flea Market materially satisfying all requirements thereunder, including but not limited to review and approval of the proposed use, which permit shall not be unreasonably withheld.

(2) In the event that the West Lot Developer's lease grants it possession of the portion of the Existing BART Terrace to be made available for nonexclusive use by the Berkeley Flea Market, BART's Ground Lease shall obligate the West Lot Developer to make the area open and accessible to the public, and, at the Berkeley Flea Market's option, to enter into an agreement for the use of at least 50% of the area of the Existing BART Terrace by the Berkeley Flea Market on financial terms comparable to the Flea Market Permit, as adjusted for inflation, and subject to the terms of the Ground Lease and to the Berkeley Flea Market satisfying all reasonable requirements of the West Lot Developer.

(3) The 50% area to be used by the Berkeley Flea Market shall be configured to avoid interference with building emergency egress, and BART rider ingress/egress.

B. Delivery. BART and/or the West Lot Developer shall be responsible for constructing any improvements to the Existing BART Terrace and, if it is included in the final West Lot project design, for constructing the BART Terrace Extension. EIFD funding may be made available for eligible BART Terrace Improvements if external funding is insufficient to cover construction costs, consistent with the priorities in Article 8.3.1 below. The BART Terrace Improvements are considered a high priority and shall be included in the final West Lot project to the extent consistent with project feasibility.

8.2.7. Roadway Reconfigurations (1A and 3B).

A. Overview. The City's Adeline Street Transportation Improvements Project is expected to repurpose two of the existing four traffic lanes to create a new public pedestrian plaza and protected bikeways, along with upgraded traffic signal infrastructure and enhanced public transit operations on Adeline Street. The project scope of work includes redesigning the intersections of Adeline/Ashby and MLK/Adeline/Woolsey adjacent to Ashby BART. The component of the project to reconfigure Adeline Street is identified in the Infrastructure Map as 1A (Adeline Street Reconfiguration), and the component to reconfigure the MLK/Adeline/Woolsey intersection is identified in the Infrastructure Map as 3B (MLK/Adeline/Woolsey Intersection Redesign).

B. Funding of Roadway Reconfigurations. The Adeline Street Reconfiguration (1A) is considered essential to the project. Existing funding for the Adeline Street Reconfiguration is through Preliminary Engineering only, and funding for subsequent engineering design and construction phases has not yet been identified. The City and BART shall work collaboratively to identify funding for remaining project phases. The MLK/Adeline/Woolsey Intersection Redesign (3B) is considered a high priority improvement. The West Lot Developer shall collaborate with the City on securing funding for the Roadway Reconfigurations, including, for example, by coordinating on the scope and requests for applications to state funding sources. However, the costs of the Roadway Reconfigurations shall

not be borne by BART or the West Lot Developer, but rather by grants, subsidies, or other publicly available funding sources.

8.2.8. Sidewalk Improvements (15, 16, and 17). The Sidewalk Improvements consist of the widening of the sidewalks along Ashby Avenue and MLK Way, and the widening of the sidewalk and construction of a new protected bikeway along MLK Way at the southern portion of the West Lot. The Sidewalk Improvements have a medium priority. West Lot Developer is responsible for the construction of the Sidewalk Improvements and the costs thereof. The City shall be responsible for maintenance of the improved sidewalks.

8.2.9. BART Rider Parking. BART rider parking on the West Lot shall be the sole responsibility of BART and shall be within the sole discretion of BART, except that BART shall commit to providing ADA parking spaces in a quantity sufficient to meet user demand (up to the current amount at the station [16]), but in no event fewer than the quantity required by law. BART will monitor ADA space occupancy during the conceptual design process to determine the appropriate number of ADA spaces prior to construction. BART shall not require BART rider parking, including ADA parking, on the East Lot. The City, at its sole discretion and subject to any required public process and approvals, may elect to accommodate some or all of BART's ADA parking obligation within the City's right of way for the purpose of reducing costs and allowing external funding to be directed to other Public Infrastructure.

8.2.10. Coordination and Construction Process. The City, BART, and the West Lot Developer shall endeavor to coordinate the design and construction of the Roadway Reconfigurations, Adeline Plaza Improvements, the Adeline Plaza Extensions, the BART Improvements, and any other public infrastructure necessary for the project that may affect those improvements, to promote efficiency, seek compatibility of design and materials, and minimize conflicts with other City projects. To facilitate coordination and increase efficiency, the City, BART, and/or the West Lot Developer may enter into construction and reimbursement agreements providing for a single party to construct multiple improvements concurrently, with costs allocated as provided in this Agreement. However, development of the West Lot project and necessary Public Infrastructure may proceed prior to completion of the Roadway Reconfigurations and the Adeline Plaza Improvements. Additionally, nothing in this Agreement is intended to bar the City from assessing any regular public works fees associated with processing development permits and mitigating development impacts.

8.2.11. Maintenance Responsibility for BART-Related Infrastructure. BART shall be responsible for the costs of maintaining any BART-related infrastructure, such as the Eastside Elevator, the TPSS, and the BART Improvements, regardless of whether such infrastructure is on the East Lot, the West Lot, or within the City's right of way, with the exception of any on-street ADA parking spaces, which shall be maintained by the City.

8.3. Special Funding Mechanisms for Public Infrastructure

8.3.1. West Lot EIFD. The City will make good faith efforts to pursue formation of an EIFD over the West Lot to improve the economic feasibility of development on the West Lot and potentially increase the level of Affordable Housing on the site. The City commits to making a good faith effort to form the EIFD within 12 months of approval of the entitlements for

the West Lot Project. BART and the West Lot Developer shall provide the requisite consents to (and refrain from protesting) formation. Priority of funds will be as follows:

A. (a) Adeline Main Plaza (1B) and (b) the South Plaza Extension (11) (to the extent eligible under state law, and contingent upon West Lot Developer committing to a capital contribution of no less than $1 million for the South Plaza Extension).

B. The BART Terrace Improvements (9A and 9B) and Ashby/Adeline Corner Plaza (2B).

C. Public Infrastructure costs with no other available funding source, but excluding the BART Improvements or any other BART-related infrastructure (such as BART rider parking or the Eastside Elevator).

D. Affordable Housing funding gap for units in excess of the City's current inclusionary housing ordinance requirement.

E. Tax increment "pay as you go" financing to reimburse the West Lot Developer for eligible capital and maintenance costs for improvements financed by the EIFD.

8.3.2. East Lot EIFD. The City may, in its discretion, form an EIFD on the East Lot to improve the economic feasibility of development on the East Lot. The City may use the proceeds from the East Lot EIFD for any eligible costs associated with the East Lot development, provided that the funds shall not be applied toward any BART-related infrastructure.

8.3.3. Community Facilities District. The City's costs of maintaining the Adeline Plaza Improvements and the Adeline Plaza Extensions shall be covered by a CFD to be formed consisting solely of the West Lot, to fund ongoing maintenance responsibilities carried out by the City. The CFD shall only cover maintenance expenses for the public portions of the Adeline Plaza Extensions; it shall not cover maintenance of any portion that is for the exclusive use of the West Lot project.

A. Formation. If proceedings for the establishment of a community facilities district are instituted pursuant to section 53318 of the Government Code, City shall then comply with its obligation to institute the proceedings to establish the CFD and otherwise comply with the procedures to create a CFD under Article 2 of Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code. The Parties will collaborate on developing the local goals and policies and, with the West Lot Developer, on determining the CFD's rate and method of apportionment, which determination shall take into account the impact that such additional tax burden will have on the feasibility of the West Lot Project. BART will vote (and, if applicable, require West Lot Developer to vote) in favor of formation of the CFD.

B. Future Project Feasibility. The Parties acknowledge that a CFD will impact the feasibility of the Project by increasing the tax burden on the West Lot, and agree to seek external funding sources if the CFD cannot feasibly generate enough revenue to cover the maintenance costs of the Adeline Plaza Improvements and Adeline Plaza Extensions.

ARTICLE 9.
OBJECTIVE DESIGN STANDARDS

9.1. General. City intends to adopt new binding objective design standards ("**ODS**") applicable to the West Lot and East Lot, respectively, to allow the City, community, BART, and developers to have a strong voice in the design quality of the development at the Ashby Station. Those ODS shall be made applicable to the West Lot Developer and East Lot Developer through any mechanisms allowable by law, including permit conditions, the West Lot and East Lot Covenants, and this Agreement, and compliance with those ODS may be made a condition of disbursement of the City Funds. Except as otherwise provided in Schedule 9.2.1, and with respect to the West Lot only, BART shall ensure that ODS apply to development notwithstanding the availability of waivers, incentives, or other exceptions to development standards that may be available under law. This Article describes the nature and process for the West Lot ODS. The process and content of any ODS for the East Lot shall be determined by City in its sole discretion provided that the ODS must allow for at least 248 units and at least 300 bedrooms.

9.2. Development of West Lot ODS.

9.2.1. ODS Requirements. ODS for the West Lot (**"West Lot ODS**") shall be developed that comply with the ODS requirements ("**ODS Requirements**") of Schedule 9.2.1. Main topics in the ODS may include but are not limited to:

A. Public realm improvements;

B. Building form and massing;

C. Building façade design; and

D. Open space and landscape.

9.2.2. Capacity Study. A capacity study ("**Capacity Study**") is incorporated into this Agreement as Schedule 9.2.2. The Capacity Study establishes the net developable area of the West Lot for purposes of determining the compliance of the ODS with the ODS Requirements.

9.2.3. ODS Process. The process for adoption of ODS shall occur in three phases: (i) the "**Preliminary ODS**", (ii) the "**Final ODS**", and (iii) the approval by the City Council of the Final ODS, with any modifications approved by the Council. The public and BART shall be given an opportunity to review and comment on all three phases, and the West Lot Developer will be given an opportunity to review and comment following developer selection. City shall consider the input of the public, BART, and the West Lot Developer in the preparation of Final ODS to be considered for adoption by the Planning Commission and City Council, and shall make a good faith effort to address any objections raised by BART and the West Lot Developer relating to the impact of ODS on project feasibility or design.

9.2.4. Preliminary ODS. Raimi & Associates ("**Raimi**") and City shall complete the Preliminary ODS for the West Lot by December 10, 2024, in advance of the release of the

RFP or RFQ/RFP so that it may be included as a supplement within one week of the issuance to the RFP or RFQ/RFP.

9.2.5. Final ODS. Prior to submitting proposed Final ODS to the Planning Commission, the City shall provide the Final ODS to BART and the West Lot Developer. If BART or the West Lot Developer object to any of the proposed Final ODS based on noncompliance with ODS Requirements, they shall submit such objections to the City, along with an explanation of the basis for the objections, within fifteen (15) business days of receipt. If objections are timely submitted, the City, BART and West Lot Developer shall promptly meet and confer in good faith to resolve the objections and make any revisions before the proposed Final ODS are submitted to the Planning Commission. If BART or West Lot Developer believes the Final ODS recommended by the Planning Commission for approval by Council would not comply with the ODS Requirements, BART or West Lot Developer shall have fifteen (15) business days following the Planning Commission's recommendation to submit their objections to the City, along with an explanation of the basis for them, and the City, BART, and the West Lot Developer shall promptly meet and confer in good faith to resolve them prior to submittal to the City Council. If no objections based on the ODS Requirements are raised within the applicable fifteen (15) business day period, or if timely raised objections are resolved through the meet and confer process, the Final ODS approved by Council will be deemed to satisfy the requirements set forth in the ODS Requirements unless modified by Council in a manner that affects compliance with the ODS Requirements. Nothing in this paragraph is intended to limit the ability of BART or West Lot Developer to provide comments on the Preliminary or Final ODS at any time prior to final approval, or to raise concerns or objections to the ODS based on considerations other than compliance with the ODS Requirements.

9.2.6. Approval of West Lot ODS. Once a complete draft of Final ODS has been prepared and the process for resolving any objections described in this Article has been completed, City staff will submit the draft Final ODS to the Planning Commission for recommendation. Following the Planning Commission's recommendation and completion of the process for resolving objections to that recommendation, the City shall submit the Final ODS for the West Lot to the City Council for adoption no later than nine months after the execution of the ENA for the West Lot ("**Approval Period**"). Should the City believe that, due to a force majeure event (including but not limited to war, terrorist attack, pandemic, natural disaster, or other similar occurrence beyond the City's control), the City is unable to adopt West Lot ODS within the Approval Period, the City may request an extension of the Approval Period from BART not more than 30 days after the commencement of the force majeure event, which request shall identify the force majeure event and specify how it has affected the City's ability to adopt West Lot ODS within the Approval Period. The extension of the Approval Period requested shall be of a duration equal to the duration of the impact of the force majeure event on the City's ability to adopt the West Lot ODS. BART's approval of an extension request shall not be unreasonably withheld.

9.3. Funding of ODS. The City shall bear full responsibility for any costs to develop ODS on the East or West Lot in excess of the currently available grant funding or those costs incurred after the grant expenditure deadline.

ARTICLE 10.
REPRESENTATIONS AND WARRANTIES

10.1. Representations and Warranties of BART. The execution of this Agreement by City is made in material reliance on the following representations and warranties made by BART:

10.1.1. Other than the Flea Market Permit and the Reciprocal Easement Agreement, no portion of the East Lot or West Lot is subject to a lease, license, or any other occupancy agreement.

10.1.2. To BART's actual knowledge, there are no matters affecting record title to the East Lot or West Lot that are not shown in the 2024 PTRs.

ARTICLE 11.
NO NEW CONTRACTS OR ENCUMBRANCES

11.1. New Contracts; Contract Modifications; Encumbrances. Other than as provided in this Agreement, neither Party shall enter into any leases, contracts to sell, or other agreements, amendments, waivers, modifications or consents affecting title to the East Lot that will survive the East Lot Close of Escrow or affecting title to the West Lot that will survive the West Lot Close Of Escrow, or that otherwise affect the use, operation or enjoyment of the East Lot or the West Lot after the Closing. Neither Party shall voluntarily create or suffer any additional liens, encumbrances, covenants, conditions, obligations, burdens, easements, rights of way affecting the East Lot or West Lot that will survive the closing as to that lot.

ARTICLE 12.
TERMINATION; DEFAULT

12.1. Termination. Any of the following events shall constitute a ground to terminate ("**Termination Ground**"):

12.1.1. No developer submits a timely response to the West Lot RFP or RFQ/RFP that meets all the applicable requirements of this Agreement, or the West Lot evaluation committee determines that none of the responses to the West Lot RFP or RFQ/RFP should be recommended to BART's General Manager, and BART does not issue a revised West Lot RFP or RFQ/RFP within 1 year of the original submittal deadline, and City reasonably concludes that no developer is likely to submit a response that meets all the applicable requirements of this Agreement.

12.1.2. No developer submits a timely response to the East Lot RFP or RFQ/RFP that meets all the applicable requirements of this Agreement, or the East Lot evaluation committee determines that none of the responses to the East Lot RFP or RFQ/RFP should be recommended, and the City does not issue a revised East Lot RFP or RFQ/RFP within 1 year of the original submittal deadline, and BART reasonably concludes that no developer is likely to submit a response that meets all the applicable requirements of this Agreement.

12.1.3. No Ground Lease Option of the West Lot with the West Lot Developer is executed within 5 years of the Effective Date, or no Ground Lease of the West Lot with the West Lot Developer is executed within 15 years of the Effective Date and City reasonably concludes that no Ground Lease of the West Lot is likely to be executed.

12.1.4. No Ground Lease Option of the East Lot with the East Lot Developer is executed within 5 years of the Effective Date, or no Ground Lease or other conveyance of the East Lot with the East Lot Developer is executed within 15 years of the Effective Date and BART reasonably concludes that no Ground Lease or other conveyance of the East Lot is likely to be executed.

12.1.5. Construction has not begun on the West Lot within 1 year of the Effective Date of the execution of a Ground Lease with the West Lot Developer.

12.1.6. Construction has not begun on the East Lot within 1 year of the execution of a Ground Lease with the East Lot Developer.

12.2. Meet and Confer. Upon written notice by one Party to the other Party of the occurrence of any Termination Ground, the Parties shall meet and confer in good faith for a period of not less than 6 months (unless an earlier resolution is reached) to try to resolve the issue, including by an amendment to this Agreement. This meet-and-confer period may be extended for additional 6-month periods upon the mutual agreement of both Parties. No Party may invoke any remedies at law or in equity arising from or relating to any Termination Ground before the procedures described by this Article 12.2 are tried and are unsuccessful in resolving the Termination Ground. Any statutes of limitations or other limitations periods arising from or relating to any Termination Ground shall be tolled while the procedures described by this Article 12.2 are being pursued.

12.3. Failure to Reach Agreement Before Commencement of Construction. If, following the procedures in Article 12.2, the Parties cannot reach agreement, and construction has not begun on either the East Lot or the West Lot, the Parties shall take the following steps to unwind this transaction, which shall be specifically enforceable:

12.3.1. Execute and record the "**West Lot Notice Of CC&R Termination**" in Schedule 12.3.1;

12.3.2. Execute and record the "**East Lot Notice Of CC&R Termination**" in Schedule 12.3.2;

12.3.3. City shall execute a grant deed for the East Lot to BART;

12.3.4. BART shall execute an air rights option for the West Lot to City in substantially the same form as the Air Rights Option.

12.4. Failure to Reach Agreement After Commencement of Construction. If, following the procedures in Article 12.2, the Parties cannot reach agreement, and construction has begun on either the East Lot or the West Lot, the Parties may pursue any remedies at law or in equity arising from any Termination Ground.

12.5. Remedies For Material Breach. No Party may bring any action at law or in equity for other material breaches of this agreement without first giving the other Party written notice and a 30-day opportunity to cure.

ARTICLE 13.
DISCLAIMERS; RIGHT TO PHASE 2 ASSESSMENT

13.1. No Reliance on Documents. Neither Party makes any representations or warranties as to the truth or accuracy of any materials, data or information delivered by one to the other in connection with the transaction contemplated hereby; (b) all materials, data and information delivered in connection with the transaction contemplated hereby are provided as a convenience only and any reliance on or use of such materials, data or information shall be at that Party's sole risk; and (c) no Party, affiliate, or the person or entity which prepared any report or reports delivered by either Party shall have any liability for any inaccuracy in or omission from any such reports.

13.2. East Lot Phase 2 Assessment. Within 6 months of the Effective Date, City shall have the right to conduct a Phase 2 environmental site assessment on the East Lot, subject to a BART permit to enter and inspect, which shall not be unreasonably refused. The costs of that assessment shall be split between BART and City. The East Lot Close Of Escrow shall not occur before the completion of that assessment. If the assessment finds any soil or groundwater contamination on the East Lot, City shall have the right in its sole discretion to terminate this agreement by providing notice thereof to BART no later than six months after the Effective Date.. If City exercises this termination option, City and BART shall take all measures necessary to return the parties to the status quo ante prior to the Effective Date.

ARTICLE 14.
MISCELLANEOUS

14.1. Assignment. Subject to the provisions of this Article 14.1, the terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.

14.2. Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith. Any notice so given shall be deemed to have been given upon receipt or refusal to accept delivery. Notwithstanding the foregoing, notice may be given by electronic mail, deemed given upon sending, provided such notice is concurrently delivered by one of the methods set forth in the initial sentence of this Article. The initial addresses for notices given pursuant to this Agreement shall be as follows:

If to BART:	Director of Transit-Oriented Development BART 2150 Webster St. Oakland, CA 94612
With copy to:	BART Office of the General Counsel 2150 Webster St. Oakland, CA 94612
If to City:	Farimah Brown City Attorney City of Berkeley 2180 Milvia Street Berkeley, CA 94704 Email: fbrown@cityofberkeley.info
With copy to:	
If to Escrow Holder:	Old Republic Title Company

14.3. Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

14.4. Entire Agreement. This Agreement, including the exhibits and schedules hereto, contains the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter, except to the extent expressly provided herein.

14.5. Further Assurances; Cooperation. Each party agrees that it will execute and deliver such other documents and take such other action, whether prior or subsequent to the East Lot Close Of Escrow and the West Lot Close Of Escrow, as may be reasonably requested by the other party to consummate the transaction contemplated by this Agreement.

14.6. Counterparts. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. In addition, this Agreement may be executed by electronic signature or facsimile which will be deemed an original.

14.7. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect; provided that the invalidity or unenforceability of such provision does not materially diminish the benefits accruing to, or materially increase the burdens on, any party hereunder.

14.8. Applicable Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Each party hereby consents to the exclusive jurisdiction of the state and federal courts sitting in Alameda County, California, in any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement.

14.9. Injunctive Relief. The Parties agree that damages would not provide an adequate remedy for material breaches of this Agreement, and that injunctive relief and specific performance are appropriate remedies.

14.10. No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of the Parties only and are not for the benefit of any third party; and, accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at the East Lot Close Of Escrow and the West Lot Close Of Escrow.

14.11. Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

14.12. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to take effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

14.13. Date of Performance. If the date on which any performance required hereunder is other than a business day, then such performance shall be required as of the next following business day.

14.14. Attorneys' Fees. In any court action to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party all costs and expenses incurred by the prevailing Party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

14.15. Nonmerger. Except as otherwise expressly set forth herein, all the terms and provisions of this Agreement, including without limitation all obligations, releases and indemnities of the parties hereto, shall survive the East Lot Closing and the West Lot Closing.

14.16. Time of Essence. The Parties acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

14.17. Effective Date. This Agreement shall become effective thirty-five (35) days after the City Council's filing of a notice of determination or notice of exemption following adoption of the City Authorizing Ordinance, (which notice of determination or notice of exemption shall have been filed no more than three business days after adoption of the City Authorizing

Ordinance) if no legal actions are pending against the City with respect to the City Authorizing Ordinance and the City has not received a petition to referendum the Authorizing Ordinance within thirty (30) days after the City Council's adoption of the Authorizing Ordinance. If any legal action is filed challenging this Agreement or the City Authorizing Ordinance, the Effective Date shall be stayed pending final resolution of such legal action unless City waives the stay.

[*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.*]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

BART:

Bay Area Rapid Transit District,
a California rapid transit district

By: _____
Name: _____
Its: _____

Approved as to Form:

Name:

General Counsel

CITY:

City of Berkeley,
a California charter city

By:_____
Name: _____
Its: _____

Approved as to Form:

Name:

City Attorney

ACKNOWLEDGMENT

Escrow Holder executes this Acknowledgment below for the purpose of acknowledging that, as of the date set forth below it has received a fully executed copy of the foregoing Exchange Agreement and Escrow Instructions made by and between BART and City and agrees to be bound by the provisions thereof including, without limitation, the instructions set forth in Article 1.4 thereof.

ESCROW HOLDER:

Old Republic Title Company

By: _____
Its: _____
Date: _____

Exhibit A

SCHEDULE 1.1.1
Legal Description of the West Lot

Real property in the City of Berkeley, County of Alameda, State of California, described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: non-assessed parcel.

Attached hereto and made a part hereof the following Filed maps:

Exhibit A

Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp., Book 10 of Maps at Page 40, Record Map of Right of Way RRW 10A in Book 68 of Maps at Page 127, Record Map of Right of Way Cover Sheet Book 68 of Maps at Page 147, Record Map of Right of Way RRW 9 Book 68 of Maps at Page 150.

Exhibit A

SCHEDULE 1.1.2
Legal Description of the East Lot

The real property situated in the City of Berkeley, County of Alameda, State of California, described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. in Official Records under Recorder's Serial Number 2008255323, and shown Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

SCHEDULE 2.1(a)

East Lot Preliminary Title Report, dated March 27, 2024

ORDER NO. : 1117028175

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for elevator, stair, transformer access, BART surface entranceway, BART concourse, sidewalk and Adeline driveway as described in “Reciprocal Agreement” executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. in Official Records under Recorder’s Serial Number 2008255323, and shown Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

OLD REPUBLIC
TITLE COMPANY

555 12th Street, Suite 2000
Oakland, CA 94607
(510) 272-1121 Fax: (510) 208-5045

PRELIMINARY REPORT

Our Order Number 1117028175-JM

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
2150 Webster Street, 9th Floor,
Oakland, CA 94612

When Replying Please Contact:

Julie Massey
JMassey@ortc.com
(510) 272-1121

Property Address:

Ashby Bart Station Woolsey & Tremont Streets, Berkeley, CA 94703

In response to the above referenced application for a policy of title insurance, OLD REPUBLIC TITLE COMPANY, as issuing Agent of Old Republic National Title Insurance 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 I 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 Homeowner's Policy of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit I. 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 I 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 27, 2024, at 7:30 AM

OLD REPUBLIC TITLE COMPANY
For Exceptions Shown or Referred to, See Attached

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

CLTA Standard Coverage Owner's Policy of Title Insurance - 2022; AND ALTA Loan Policy of Title Insurance - 2021. A specific request should be made if another form or additional coverage is desired.

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

Fee as to Parcel(s) One and an Easement as to Parcel(s) Two

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

San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

The land referred to in this Report is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for elevator, stair, transformer access, BART surface entranceway, BART concourse, sidewalk and Adeline driveway as described in “Reciprocal Agreement” executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. in Official Records under Recorder’s Serial Number 2008255323, and shown Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

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

1. Taxes and assessments, general and special, for the fiscal year 2024 - 2025, a lien, but not yet due or payable.

2. Taxes and assessments, general and special, are currently not assessed because of a statutory exemption. Should the statutory exemption change, taxes may be levied against the land.

3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.

4. The herein described property lying within the proposed boundaries of a Community Facilities District, as follows:

District No	:	Clean Energy
For	:	Alameda County
Disclosed By	:	Assessment Map
Recorded	:	August 24, 2015 in Official Records under Recorder's Serial Number 2015-235594

Further information may be obtained by contacting:
County of Alameda

5. Any special tax which is now a lien and that may be levied within the East Bay Regional Park District Community Facilities District No. A/C-3, a notice of which was recorded as follows:

Instrument Entitled	:	Notice of Special Tax Lien
By	:	Board of the East Bay Regional Park District
Recorded	:	January 31, 2019 in Official Records under Recorder's Serial Number 2019-0015593

NOTE: Among other things, there are provisions in said Notice for a special tax to be levied annually, the amounts of which are to be added to and collected with the property taxes.

NOTE: The current annual amount levied against this land is exempt at this time.

Further information may be obtained by contacting:

Name	:	EBRPD
Address	:	Oakland, CA

6. Matters as contained or referred to in an instrument,

Entitled	:	Ordering the Vacation of Portions of Prince Street between Tremont and Adeline Streets, Francisco Street between Sacramento and Acton Streets, and Short Street between Delaware and Virginia Streets in the City of Berkeley
Executed By	:	City of Berkeley
Recorded	:	February 2, 1972 in Book 3053 of Official Records, Page 230

7. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as shown on the filed map.

For	:	Limited access
Affects	:	Westerly portion

8. Any rights, easements, interests or claims that may exist or arise by reason of, or reflected by, recitals shown or noted in the filed map(s) referenced in the legal description herein.

9. Terms and provisions as contained in an instrument,

Entitled	:	Reciprocal Easements Agreement
Executed By	:	The Ed Roberts Campus, a California nonprofit benefit corporation and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.
Recorded	:	August 18, 2008 in Official Records under Recorder's Serial Number 2008255323

Note: Reference is made to said instrument for full particulars.

10. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Granted To	:	The Ed Roberts Campus, a California nonprofit public benefit corporation
For	:	Limited Access Area for ingress and egress from the ERC Property
Recorded	:	August 18, 2008 in Official Records under Recorder's Serial Number 2008255323
Affects	:	as described therein and shown map attached to as Exhibit K

11. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.

12. Any unrecorded and subsisting leases.

13. The requirement that this Company be provided with a suitable Owner's Declaration (form ORT 174). The Company reserves the right to make additional exceptions and/or requirements upon review of the Owner's Declaration.

14. The requirement that satisfactory evidence be furnished to this Company of compliance with applicable statutes, ordinances and charters governing the ownership and disposition of the herein described land.

---------- Informational Notes ----------

A. NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument Entitled	:	Grant Deed
By/From	:	Samuel W. Davis, et al
To	:	San Francisco Bay Area Rapid Transit District
Recorded	:	September 8, 1964 in Book 1306 of Official Records, Page 651

various deeds of record in 1964 & 1965

NOTE:

The following statement is deemed attached as a coversheet to any declaration, governing document, or deed identified in the above exceptions:

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Information for processing a "Restrictive Covenant Modification" form:

1. Print a complete copy of the document in question. Strike out what you believe to be unlawful restrictive language in the document.
2. Print and complete the "Restrictive Covenant Modification" ("RCM") form. Note that the signature on the form must be acknowledged by a notary public or other qualified officer.
3. Submit the completed RCM form and the document with your strike-outs to the County Clerk-Recorder's Office for the county where the property is located. No fee is required for this service.
4. The County Clerk-Recorder's Office will forward the RCM form and the document with your strike-outs to the Office of the County Counsel, who will determine whether the document contains any unlawful restrictions.
5. The Office of the County Counsel will return the RCM form and the document with your strike-outs to the County Clerk-Recorder's Office along with its determination. If approved, a Deputy County Counsel will sign the RCM, and the County Clerk-Recorder's Office will record, image and index it. If the Office of the County Counsel determines that the document does not contain an unlawful restriction, the County Clerk-Recorder's Office will not record the RCM.
6. The approved RCM will be returned to the submitter by mail.

The "Restrictive Covenant Modification" form is linked below:

Restrictive Covenant Modification form

Exhibit I

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE OWNER'S POLICY OF TITLE INSURANCE – 2022

EXCLUSIONS FROM COVERAGE

The following matters are 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) that restricts, regulates, prohibits, or relates to:
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement on the Land;
   iii. the subdivision of land; or
   iv. environmental remediation or protection.

   b. any governmental forfeiture, police, regulatory, or national security power.

   c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

   Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.

3. Any defect, lien, encumbrance, adverse claim, or other matter:
   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not Known to the Company, not recorded in the Public Records at the 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 the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or
   e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:
   a. fraudulent conveyance or fraudulent transfer;
   b. voidable transfer under the Uniform Voidable Transactions Act; or
   c. preferential transfer:
      i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
      ii. for any other reason not stated in Covered Risk 9.b.

5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.

6. Any lien on the Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.

7. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

PART I

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 at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.

4. Any encroachment, encumbrance, violation, variation, easement, 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 at Date of Policy.

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, material or equipment unless such lien is shown by the Public Records at Date of Policy.

7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

PART II

(Variable exceptions such as taxes, easements, CC&R's, etc., are inserted here)

Exhibit I

AMERICAN LAND TITLE ASSOCIATION
LOAN POLICY OF TITLE INSURANCE – 2021

EXCLUSIONS FROM COVERAGE

The following matters are 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) that restricts, regulates, prohibits, or relates to:
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement on the Land;
   iii. the subdivision of land; or
   iv. environmental remediation or protection.

   b. any governmental forfeiture, police, regulatory, or national security power.

   c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

   Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.

3. Any defect, lien, encumbrance, adverse claim, or other matter:
   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not Known to the Company, not recorded in the Public Records at the 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 the Date of Policy (Exclusion 3.d. 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 consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser or encumbrancer had been given for the Insured Mortgage at the Date of Policy.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business law.

5. Invalidity or unenforceability of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury law or Consumer Protection Law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction creating the lien of the Insured Mortgage is a:
   a. fraudulent conveyance or fraudulent transfer;
   b. voidable transfer under the Uniform Voidable Transactions Act; or
   c. preferential transfer:
      i. to the extent the Insured Mortgage is not a transfer made as a contemporaneous exchange for new value; or
      ii. for any other reason not stated in Covered Risk 13.b.

7. Any claim of a PACA-PSA Trust. Exclusion 7 does not modify or limit the coverage provided under Covered Risk 8.

8. Any lien on the Title for real estate taxes or assessments imposed by a governmental authority and created or attaching between the Date of Policy and the date of recording of the Insured Mortgage in the Public Records. Exclusion 8 does not modify or limit the coverage provided under Covered Risk 2.b. or 11.b.

9. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

AMERICAN LAND TITLE ASSOCIATION
LOAN POLICY OF TITLE INSURANCE – 2021
(Continued)

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

NOTE: The 2021 ALTA Loan Policy may be issued to afford either Standard Coverage or Extended Coverage. In addition to variable exceptions such as taxes, easements, CC&R's, etc., the Exceptions from Coverage in a Standard Coverage policy will also include the Western Regional Standard Coverage Exceptions listed as 1 through 7 below:

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 at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.

4. Any encroachment, encumbrance, violation, variation, easement, 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 at Date of Policy.

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, material or equipment unless such lien is shown by the Public Records at Date of Policy.

7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

Updated 1/1/2024

OLD REPUBLIC TITLE

FACTS	WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social Security number and employment information • Mortgage rates and payments and account balances • Checking account information and wire transfer instructions When you are no longer our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	**Yes**	**No**
For our marketing purposes — to offer our products and services to you	**No**	**We don't share**
For joint marketing with other financial companies	**No**	**We don't share**
For our affiliates' everyday business purposes — information about your transactions and experiences	**Yes**	**No**
For our affiliates' everyday business purposes — information about your creditworthiness	**No**	**We don't share**
For our affiliates to market to you	**No**	**We don't share**
For non-affiliates to market to you	**No**	**We don't share**

	Go to www.oldrepublictitle.com (Contact Us)

Who we are	
Who is providing this notice?	Companies with an Old Republic Title name and other affiliates. Please see below for a list of affiliates.

What we do	
How does Old Republic Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit https://www.oldrepublictitle.com/privacy-policy
How does Old Republic Title collect my personal information?	We collect your personal information, for example, when you: • Give us your contact information or show your driver's license • Show your government-issued ID or provide your mortgage information • Make a wire transfer We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only: • Sharing for affiliates' everyday business purposes - information about your creditworthiness • Affiliates from using your information to market to you • Sharing for non-affiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See the State Privacy Rights section location at https://www.oldrepublictitle.com/privacy-policy for your rights under state law.

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. • Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., and Mississippi Valley Title Services Company
Non-affiliates	Companies not related by common ownership or control. They can be financial and non-financial companies. • Old Republic Title does not share with non-affiliates so they can market to you
Joint marketing	A formal agreement between non-affiliated financial companies that together market financial products or services to you. • Old Republic Title doesn't jointly market.

Affiliates Who May be Delivering This Notice				
American First Title & Trust Company	American Guaranty Title Insurance Company	Attorneys' Title Fund Services, LLC	Compass Abstract, Inc.	eRecording Partners Network, LLC
Genesis Abstract, LLC	Guardian Consumer Services, Inc.	iMarc, Inc.	L.T. Service Corp.	Lenders Inspection Company
Lex Terrae National Title Services, Inc.	Lex Terrae, Ltd.	Mississippi Valley Title Services Company	Old Republic Branch Information Services, Inc.	Old Republic Diversified Services, Inc.
Old Republic Escrow of Vancouver, Inc.	Old Republic Exchange Company	Old Republic National Ancillary Services, Inc.	Old Republic Title and Escrow of Hawaii, Ltd.	Old Republic National Title Insurance Company
Old Republic Title Company	Old Republic Title Company of Conroe	Old Republic Title Company of Nevada	Old Republic Title Company of Oklahoma	Old Republic Title Company of Oregon
Old Republic Title Company of St. Louis	Old Republic Title Information Concepts	Old Republic Title Insurance Agency, Inc.	Old Republic Title, Ltd.	RamQuest Software, Inc.
Republic Abstract & Settlement, LLC	Sentry Abstract Company	Surety Title Agency, Inc.	Trident Land Transfer Company, LLC	

Updated: January 1, 2024

Privacy Notice for California Consumers

This Privacy Notice for California Consumers supplements the information contained in the Master Privacy Notice for Old Republic Title and applies to consumers that reside in the State of California. The terms used in this Privacy Notice have the same meaning as the terms defined in the California Consumer Privacy Act ("CCPA").

What Personal Information We Collect

In accordance with the CCPA, personal information is information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information does not include:
Information outside the scope of the CCPA such as:

- Health or medical information covered by the Health Insurance Portability Act of 1996 (HIPAA) and the California Confidentiality of Medical Information Act (CMIA).
- Personal Information covered by the Gramm-Leach-Bliley Act (GLBA), the Fair Credit Reporting Act (FCRA), the California Financial Information Privacy Act (FIPA), and the Driver's Privacy Protection Act of 1994,
- Publicly available information or lawfully obtained, truthful information that is a matter of public concern, and
- De-identified or aggregated consumer information.

Please see the chart below to learn what categories of personal information we may have collected about California consumers within the preceding twelve months, the sources of and business purposes for that collection and the third parties to whom the information has been disclosed, if any.

Category	**Examples**	**Sources**	**Business Purpose for Collection**	**Categories of Third Parties with Whom Information is Shared**
Identifiers	Real name, alias, postal address, unique personal identifier, online	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or	Service providers associated with the transaction for a business

	identifier, Internet protocol address, email address, account name, social security number, driver's license number, passport number or other similar identifiers Social security number, driver's license number, passport number are collected	Title Agents associated with the transaction	complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	purpose
Personal information described in California Customer Records statute (Cal. Civ. Code § 1798.80(e))	Name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and Title Agents associated with the transaction	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose

	number, or any other financial information, medical information, or health insurance information. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records. Social security number, driver's license number or state identification card number, passport number, bank account number, citizenship, immigration status are collected			
Characteristics of protected classifications under California or federal law	Age (40 years or older), race, color, ancestry, national origin, citizenship, religions or creed, marital	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and Title Agents	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints. Other	Service providers associated with the transaction for a business purpose

	status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related medical conditions), sexual orientation, veteran or military status, or genetic information (including familial genetic information). Marital status, sex, physical disability, citizenship is collected	associated with the transaction	audit or operational purposes.	
Internet or other electronic network activity	Browsing history, search history, information about a consumer's interaction with a website, application, or advertisement.	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and Title Agents associated with the transaction	To provide access to certain online services. To understand the interests of visitors to our online services, to support certain features of our site, for navigation and to display certain features more effectively. Detecting security incidents,	Not Disclosed

			protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	

What Personal Information We Disclose and Why We Disclose It

The CCPA requires us to tell you what categories of personal information we “sell”, “share” or “disclose.” We do not sell and will not sell your personal information as that term is commonly understood. We also do not sell and will not sell your personal information, including the personal information of persons under 16 years of age, as that term is defined by the CCPA. We do not share your personal information as that term is defined in the CCPA. When it is necessary for a business purpose, we may disclose your personal information with a service provider or contractor, and we enter into a contract with the service provider or contractor that limits how the information may be used and requires the service provider to protect the confidentiality of the information.

In the preceding twelve months, we have disclosed the following categories of personal information for the following business purposes. Where the personal information is shared with third parties, as that term is defined in the CCPA, the category of the third party is indicated.

Category	**Examples**	**Business Purpose for Disclosure**	**Categories of Third Parties with Whom Information is Shared**
Identifiers (Including social security number, driver’s license number,	Real name, alias, postal address, unique personal identifier, online identifier, internet protocol address, email address, account name, social security number, driver’s license number, passport number or other similar identifiers	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints, detecting security incidents, protecting against	Service providers associated with the transaction for a business purpose

and passport number)		malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	
Personal information described in California Customer Records statute (Cal. Civ. Code § 1798.80(e)) (Including Social security number, driver's license number or state identification card number, passport number, bank account number, citizenship, and immigration status)	Name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose
Characteristics of protected classifications under California or federal law (Including marital status, sex, citizenship, and physical disability)	Age (40 years or older), race, color, ancestry, national origin, citizenship, religions or creed, marital status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related medical conditions), sexual orientation, veteran or military status, or genetic information (including familial genetic information).	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose
Internet or other electronic	Browsing history, search history, information about a consumer's interaction with a	To provide access to certain online services. To	Not Disclosed

network activity	website, application, or advertisement.	understand the interests of visitors to our online services, to support certain features of our site, for navigation and to display certain features more effectively. Detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	

We may also transfer to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business.

Our Retention of Your Personal Information

The length of time that we retain personal information largely depends upon the purpose for which the information was collected rather than the category of the information as set forth in this Notice. When establishing retention periods, we consider applicable statutes of limitation and legal and regulatory requirements and guidelines. Personal information is generally retained for periods of time that permit the company to meet its legal and regulatory obligations.

Your Rights and Choices

The CCPA provides California consumers with certain rights regarding their personal information. This chart describes those rights and certain limitations to those rights.

Right	What This Means
Notice	At or before the time your personal information is collected, you will be given written notice of the categories of personal information to be collected, the purposes for which the categories of personal information will be used, and whether that information is sold or shared.
Access	At your verifiable request, but no more than twice in a twelve month period, we shall disclose to you: 1) the categories of personal information we have collected about you, 2) the categories of sources for the personal information we collected about you, 3) our business or commercial purpose for collecting, selling or sharing your personal information, 4) the categories of third parties to whom we disclose your personal information, 5) the specific pieces of information we have collected about you, 6) the categories of personal

	information disclosed about you for a business purpose and the categories of persons to whom your personal information was disclosed for a business purpose, and 7) if we sold or shared personal information, the categories of personal information sold or shared and the categories of third parties to whom it was sold or shared.
Deletion	You have the right to request that we delete any of your personal information that we collected from you, subject to certain exceptions. Once we receive and verify your request, we will delete (and direct our service providers and contractors to delete) your personal information from our records unless an exception applies. We may deny your request if retention of the information is necessary for us or our service providers to: • Complete the transaction for which we collected the personal information, provide a good or service that you requested, take actions reasonably anticipated within the context of our ongoing business relationship with you, or otherwise perform our contract with you. • Help to ensure security and integrity to the extent the use of your personal information is reasonably necessary and proportionate to that purpose. Debug to identify and repair errors that impair existing intended functionality. • Exercise free speech, ensure the right of another consumer to exercise their free speech rights, or exercise another right provided for by law. • Comply with the California Electronic Communications Privacy Act (Cal. Penal Code §1546 et seq.) • Engage in public or peer reviewed scientific, historical, or statistical research that conforms or adheres to all other applicable ethics and privacy laws, when the information's deletion is likely to render impossible or seriously impair the research's completion, if you previously provided informed consent. • Enable solely internal uses that are reasonably aligned with consumer expectations based on your relationship with us and compatible with the context in which you provided the information. • Comply with a legal obligation. • Or if it is the type of personal information that falls outside the scope of the CCPA, (HIPAA, CIMA, GLBA, or publicly available information)
Correct	You have the right to request that we correct inaccurate personal information about you, taking into account the nature of the personal information and the purposes of the processing of the personal information. After we receive and verify your request, we will use commercially reasonable efforts to correct the inaccurate personal information as directed by you.
Opt-Out of Sale or Sharing	With some limitations, you may direct a business that sells or shares personal information to third parties not to sell or share the personal information to these third parties. A business may not sell or share the personal information of persons less than sixteen years of age without their affirmative consent, and in the case of those less than thirteen years of age, the consent must come from a parent.

Opt-In to Sale or Sharing	
Limit Use of Sensitive Personal Information	You may direct a business to limit the use of your sensitive personal information to that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services and certain other limited uses as described in the CCPA and applicable regulations.
Non-Discrimination	We will not discriminate against you for exercising your rights under the CCPA. Unless otherwise permitted by the CCPA we will not: • Deny you goods or service • Charge you different prices or rates for goods or services, including through granting discounts or other benefits, or imposing penalties • Provide a different level or quality of goods or services • Suggest that you will receive a different price or rate for goods or services or a different level or quality of goods or services

To Exercise Your Rights

To Opt-out of the Sale or Sharing of Your Personal Information

The CCPA gives consumers the right to direct a business that sells or shares personal information about the consumer to third parties not to sell or share the consumer's personal information. We do not sell and will not sell your personal information as that term is commonly understood. We also do not sell and will not sell your personal information, as that term is defined by the CCPA. We do not share your personal information as that term is defined in the CCPA.

To Limit the Use of Sensitive Personal Information

The CCPA gives consumers the right to direct a business to limit the use of the consumer's sensitive personal information to that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services and certain other limited uses as described in the CCPA and applicable regulations. We do not use or disclose sensitive personal information for purposes other than those purposes specified in Section 7027, subsection (m) of the California Consumer Privacy Act Regulations. If we begin using or disclosing your sensitive personal information outside of those purposes, then we will provide you with the option to limit our use or disclosure through a clear and conspicuous link on our internet homepage.

To Request Access to, Correction or Deletion of Your Personal Information

To exercise your access, correction or deletion rights described above, please submit a verifiable consumer request to us by either: Calling us at 1-855-557-8437 or contacting us through our website https://ccpa.oldrepublictitle.com .

Only you or your representative that you authorize to act on your behalf (Authorized Agent) can make a verifiable consumer request for your personal information. You may also make a request for your minor child. The verifiable request must provide enough information that allows us to reasonably verify you are the person about whom we collected personal information. We cannot respond to your request or provide you with personal information if we cannot verify your identity or authority to make the request and to confirm the personal information relates to you.

We work to respond to a verifiable consumer request within 45 days of its receipt. If we require additional time, we will inform you of the extension period (up to an additional 45 days), and the reason for the extension in writing. If you have an account with us, we will deliver our response to that account. If you do not have an account with us, we will deliver our response by mail or electronically, depending on your preference. The response we provide will also explain any reasons why we cannot comply with a request.

You may only make a consumer request for access twice within a twelve-month period. Any disclosures we provide will apply to the twelve-month period preceding the consumer request's receipt.

Contact Us

If you have any questions regarding our Privacy Notice or practices, please contact us or send your written request to: CCPA@oldrepublictitle.com, 1-855-557-8437, or 3000 Bayport Drive, Suite 1000 Tampa FL 33707

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ASSESSOR'S MAP 53

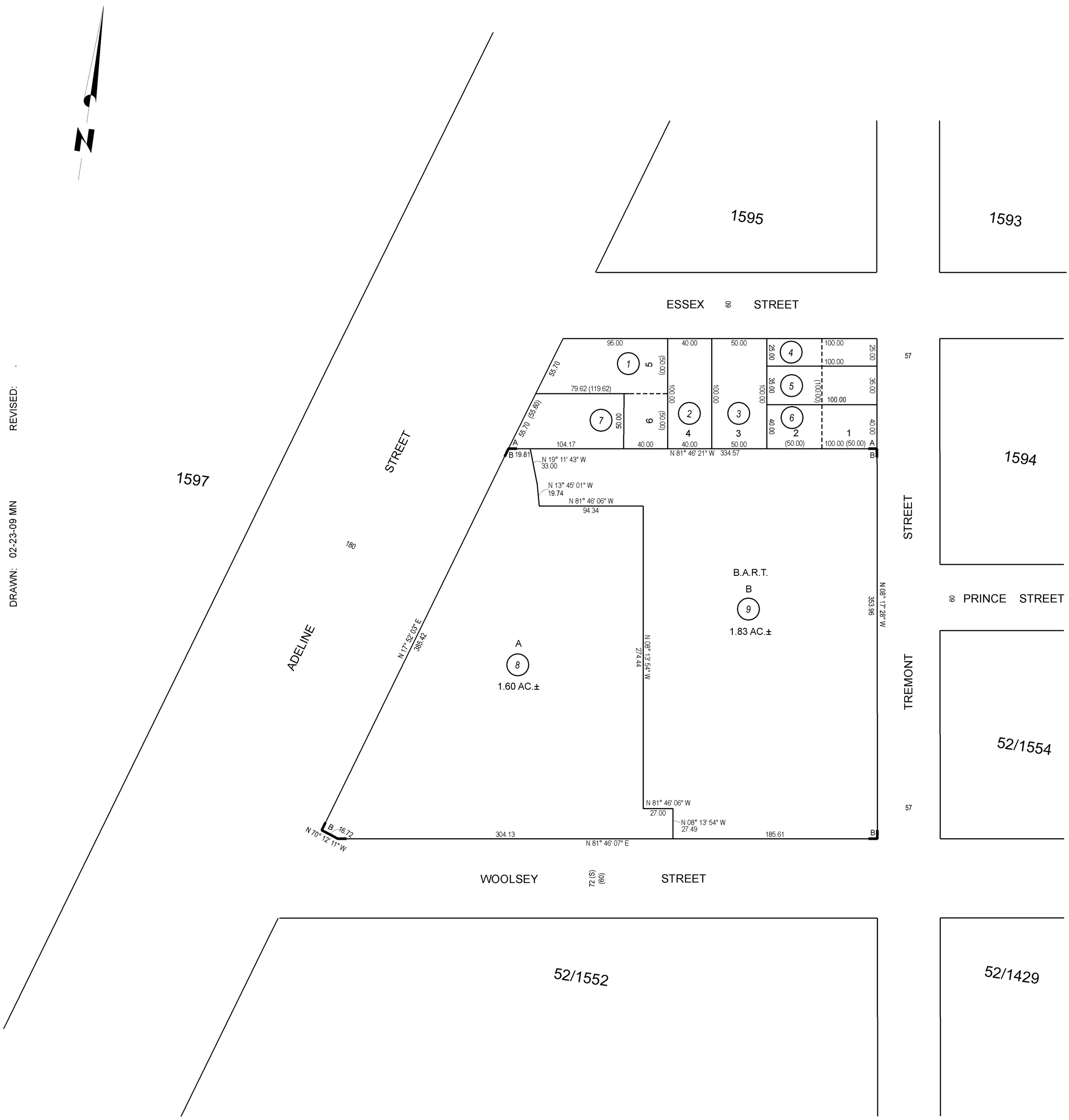
Code Area Nos. 13-000

1703

SCALE: 1" = 80'

(A) AMENDED MAP OF THE NEWBURY TRACT 9/23

(B) P.M.9797 308/76-78



REVISED: .

DRAWN: 02-23-09 MN

FORMERLY: 52/1553, 53/1596

SBE: 11 REF: . HPN: 9 IND PG: 1

SCHEDULE 2.1(b)

Preliminary Title Report for West Lot Excluding Unassessed Parcel, dated March 27, 2024

OLD REPUBLIC TITLE COMPANY

555 12th Street, Suite 2000
Oakland, CA 94607
(510) 272-1121 Fax: (510) 208-5045

PRELIMINARY REPORT

2nd amend

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
2150 Webster Street, 9th Floor
Oakland, CA 94612

Attention: Shannon Dodge

Our Order Number 1117025336-JM

When Replying Please Contact:

Julie Massey
JMassey@ortc.com
(510) 272-1121

Property Address:

3100 Adeline Street, Berkeley, CA 94703

In response to the above referenced application for a policy of title insurance, OLD REPUBLIC TITLE COMPANY, as issuing Agent of Old Republic National Title Insurance 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 I 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 Homeowner's Policy of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit I. 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 I 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 27, 2024, at 7:30 AM

OLD REPUBLIC TITLE COMPANY
For Exceptions Shown or Referred to, See Attached

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

CLTA Standard Coverage Owner's Policy of Title Insurance - 2022; AND ALTA Loan Policy of Title Insurance - 2021. A specific request should be made if another form or additional coverage is desired.

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

Fee

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

San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

The land referred to in this Report is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

Lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled “Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp0.”, which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page(s) 40.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971 as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 7 through RRW 26, filed for record on September 20, 1971 in Book 68 of Maps, at Pages 122 through 146, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

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

1. Taxes and assessments, general and special, for the fiscal year 2024 - 2025, a lien, but not yet due or payable.

2. Taxes and assessments, general and special, are currently not assessed because of a statutory exemption. Should the statutory exemption change, taxes may be levied against the land.

3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.

4. The herein described property lying within the proposed boundaries of a Community Facilities District, as follows:

District No	:	2014-1
For	:	Clean Energy
Disclosed By	:	Notice of Special Tax Lien
Recorded	:	August 24, 2015 in Official Records under Recorder's Serial Number 2015-235594

Further information may be obtained by contacting:

5. Any special tax which is now a lien and that may be levied within the East Bay Regional Park District Community Facilities District No. A/C-3, a notice of which was recorded as follows:

Instrument Entitled	:	Notice of Special Tax Lien
By	:	Board of the East Bay Regional Park District
Recorded	:	January 31, 2019 in Official Records under Recorder's Serial Number 2019-0015593

NOTE: Among other things, there are provisions in said Notice for a special tax to be levied annually, the amounts of which are to be added to and collected with the property taxes.

NOTE: The current annual amount levied against this land is exempt at this time.

Further information may be obtained by contacting:

Name	:	EBRPD
Address	:	Oakland, CA

6. Rights of the public, County and/or City, in and to that portion of said land lying within the lines of Martin Luther King Jr. Way, Ashby Avenue and Adeline Street.

7. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.

8. Any unrecorded and subsisting leases.

9. The requirement that this Company be provided with a suitable Owner's Declaration (form ORT 174). The Company reserves the right to make additional exceptions and/or requirements upon review of the Owner's Declaration.

10. The requirement that satisfactory evidence be furnished to this Company of compliance with applicable statutes, ordinances and charters governing the ownership and disposition of the herein described land.

---------- Informational Notes ----------

A. The applicable rate(s) for the policy(s) being offered by this report or commitment appears to be section(s) 1.1 and 2.1.

B. NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument Entitled	:	Quitclaim Deed
By/From	:	The Ed Roberts Campus, a California nonprofit public benefit corporation
To	:	San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.
Recorded	:	August 18, 2008 in Official Records under Recorder's Serial Number 2008255321

NOTE:

The following statement is deemed attached as a coversheet to any declaration, governing document, or deed identified in the above exceptions:

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Information for processing a "Restrictive Covenant Modification" form:

1. Print a complete copy of the document in question. Strike out what you believe to be unlawful restrictive language in the document.
2. Print and complete the "Restrictive Covenant Modification" ("RCM") form. Note that the signature on the form must be acknowledged by a notary public or other qualified officer.
3. Submit the completed RCM form and the document with your strike-outs to the County Clerk-Recorder's Office for the county where the property is located. No fee is required for this service.
4. The County Clerk-Recorder's Office will forward the RCM form and the document with your strike-outs to the Office of the County Counsel, who will determine whether the document contains any unlawful restrictions.
5. The Office of the County Counsel will return the RCM form and the document with your strike-outs to the County Clerk-Recorder's Office along with its determination. If approved, a Deputy County Counsel will sign the RCM, and the County Clerk-Recorder's Office will record, image and index it. If the Office of the County Counsel determines that the document does not contain an unlawful restriction, the County Clerk-Recorder's Office will not record the RCM.
6. The approved RCM will be returned to the submitter by mail.

The "Restrictive Covenant Modification" form is linked below:

Restrictive Covenant Modification form

Exhibit I

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE OWNER'S POLICY OF TITLE INSURANCE – 2022

EXCLUSIONS FROM COVERAGE

The following matters are 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) that restricts, regulates, prohibits, or relates to:
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement on the Land;
   iii. the subdivision of land; or
   iv. environmental remediation or protection.

   b. any governmental forfeiture, police, regulatory, or national security power.

   c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

   Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.

3. Any defect, lien, encumbrance, adverse claim, or other matter:
   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not Known to the Company, not recorded in the Public Records at the 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 the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or
   e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:
   a. fraudulent conveyance or fraudulent transfer;
   b. voidable transfer under the Uniform Voidable Transactions Act; or
   c. preferential transfer:
      i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
      ii. for any other reason not stated in Covered Risk 9.b.

5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.

6. Any lien on the Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.

7. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

PART I

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 at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.

4. Any encroachment, encumbrance, violation, variation, easement, 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 at Date of Policy.

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, material or equipment unless such lien is shown by the Public Records at Date of Policy.

7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

PART II

(Variable exceptions such as taxes, easements, CC&R's, etc., are inserted here)

Exhibit I

AMERICAN LAND TITLE ASSOCIATION
LOAN POLICY OF TITLE INSURANCE – 2021

EXCLUSIONS FROM COVERAGE

The following matters are 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) that restricts, regulates, prohibits, or relates to:
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement on the Land;
   iii. the subdivision of land; or
   iv. environmental remediation or protection.

   b. any governmental forfeiture, police, regulatory, or national security power.

   c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

   Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.

3. Any defect, lien, encumbrance, adverse claim, or other matter:
   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not Known to the Company, not recorded in the Public Records at the 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 the Date of Policy (Exclusion 3.d. 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 consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser or encumbrancer had been given for the Insured Mortgage at the Date of Policy.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business law.

5. Invalidity or unenforceability of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury law or Consumer Protection Law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction creating the lien of the Insured Mortgage is a:
   a. fraudulent conveyance or fraudulent transfer;
   b. voidable transfer under the Uniform Voidable Transactions Act; or
   c. preferential transfer:
      i. to the extent the Insured Mortgage is not a transfer made as a contemporaneous exchange for new value; or
      ii. for any other reason not stated in Covered Risk 13.b.

7. Any claim of a PACA-PSA Trust. Exclusion 7 does not modify or limit the coverage provided under Covered Risk 8.

8. Any lien on the Title for real estate taxes or assessments imposed by a governmental authority and created or attaching between the Date of Policy and the date of recording of the Insured Mortgage in the Public Records. Exclusion 8 does not modify or limit the coverage provided under Covered Risk 2.b. or 11.b.

9. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

AMERICAN LAND TITLE ASSOCIATION
LOAN POLICY OF TITLE INSURANCE – 2021
(Continued)

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

NOTE: The 2021 ALTA Loan Policy may be issued to afford either Standard Coverage or Extended Coverage. In addition to variable exceptions such as taxes, easements, CC&R's, etc., the Exceptions from Coverage in a Standard Coverage policy will also include the Western Regional Standard Coverage Exceptions listed as 1 through 7 below:

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 at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.

4. Any encroachment, encumbrance, violation, variation, easement, 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 at Date of Policy.

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, material or equipment unless such lien is shown by the Public Records at Date of Policy.

7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

Updated 1/1/2024

OLD REPUBLIC TITLE

FACTS	WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social Security number and employment information • Mortgage rates and payments and account balances • Checking account information and wire transfer instructions When you are no longer our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	**Yes**	**No**
For our marketing purposes — to offer our products and services to you	**No**	**We don't share**
For joint marketing with other financial companies	**No**	**We don't share**
For our affiliates' everyday business purposes — information about your transactions and experiences	**Yes**	**No**
For our affiliates' everyday business purposes — information about your creditworthiness	**No**	**We don't share**
For our affiliates to market to you	**No**	**We don't share**
For non-affiliates to market to you	**No**	**We don't share**

	Go to www.oldrepublictitle.com (Contact Us)

Who we are	
Who is providing this notice?	Companies with an Old Republic Title name and other affiliates. Please see below for a list of affiliates.

What we do	
How does Old Republic Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit https://www.oldrepublictitle.com/privacy-policy
How does Old Republic Title collect my personal information?	We collect your personal information, for example, when you: • Give us your contact information or show your driver's license • Show your government-issued ID or provide your mortgage information • Make a wire transfer We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only: • Sharing for affiliates' everyday business purposes - information about your creditworthiness • Affiliates from using your information to market to you • Sharing for non-affiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See the State Privacy Rights section location at https://www.oldrepublictitle.com/privacy-policy for your rights under state law.

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. • Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., and Mississippi Valley Title Services Company
Non-affiliates	Companies not related by common ownership or control. They can be financial and non-financial companies. • Old Republic Title does not share with non-affiliates so they can market to you
Joint marketing	A formal agreement between non-affiliated financial companies that together market financial products or services to you. • Old Republic Title doesn't jointly market.

Affiliates Who May be Delivering This Notice				
American First Title & Trust Company	American Guaranty Title Insurance Company	Attorneys' Title Fund Services, LLC	Compass Abstract, Inc.	eRecording Partners Network, LLC
Genesis Abstract, LLC	Guardian Consumer Services, Inc.	iMarc, Inc.	L.T. Service Corp.	Lenders Inspection Company
Lex Terrae National Title Services, Inc.	Lex Terrae, Ltd.	Mississippi Valley Title Services Company	Old Republic Branch Information Services, Inc.	Old Republic Diversified Services, Inc.
Old Republic Escrow of Vancouver, Inc.	Old Republic Exchange Company	Old Republic National Ancillary Services, Inc.	Old Republic Title and Escrow of Hawaii, Ltd.	Old Republic National Title Insurance Company
Old Republic Title Company	Old Republic Title Company of Conroe	Old Republic Title Company of Nevada	Old Republic Title Company of Oklahoma	Old Republic Title Company of Oregon
Old Republic Title Company of St. Louis	Old Republic Title Information Concepts	Old Republic Title Insurance Agency, Inc.	Old Republic Title, Ltd.	RamQuest Software, Inc.
Republic Abstract & Settlement, LLC	Sentry Abstract Company	Surety Title Agency, Inc.	Trident Land Transfer Company, LLC	

Updated: January 1, 2024

Privacy Notice for California Consumers

This Privacy Notice for California Consumers supplements the information contained in the Master Privacy Notice for Old Republic Title and applies to consumers that reside in the State of California. The terms used in this Privacy Notice have the same meaning as the terms defined in the California Consumer Privacy Act ("CCPA").

What Personal Information We Collect

In accordance with the CCPA, personal information is information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information does not include:
Information outside the scope of the CCPA such as:

- Health or medical information covered by the Health Insurance Portability Act of 1996 (HIPAA) and the California Confidentiality of Medical Information Act (CMIA).
- Personal Information covered by the Gramm-Leach-Bliley Act (GLBA), the Fair Credit Reporting Act (FCRA), the California Financial Information Privacy Act (FIPA), and the Driver's Privacy Protection Act of 1994,
- Publicly available information or lawfully obtained, truthful information that is a matter of public concern, and
- De-identified or aggregated consumer information.

Please see the chart below to learn what categories of personal information we may have collected about California consumers within the preceding twelve months, the sources of and business purposes for that collection and the third parties to whom the information has been disclosed, if any.

Category	**Examples**	**Sources**	**Business Purpose for Collection**	**Categories of Third Parties with Whom Information is Shared**
Identifiers	Real name, alias, postal address, unique personal identifier, online	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or	Service providers associated with the transaction for a business

	identifier, Internet protocol address, email address, account name, social security number, driver's license number, passport number or other similar identifiers Social security number, driver's license number, passport number are collected	Title Agents associated with the transaction	complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	purpose
Personal information described in California Customer Records statute (Cal. Civ. Code § 1798.80(e))	Name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and Title Agents associated with the transaction	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose

	number, or any other financial information, medical information, or health insurance information. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records. Social security number, driver's license number or state identification card number, passport number, bank account number, citizenship, immigration status are collected			
Characteristics of protected classifications under California or federal law	Age (40 years or older), race, color, ancestry, national origin, citizenship, religions or creed, marital	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and Title Agents	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints. Other	Service providers associated with the transaction for a business purpose

	status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related medical conditions), sexual orientation, veteran or military status, or genetic information (including familial genetic information). Marital status, sex, physical disability, citizenship is collected	associated with the transaction	audit or operational purposes.	
Internet or other electronic network activity	Browsing history, search history, information about a consumer's interaction with a website, application, or advertisement.	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and Title Agents associated with the transaction	To provide access to certain online services. To understand the interests of visitors to our online services, to support certain features of our site, for navigation and to display certain features more effectively. Detecting security incidents,	Not Disclosed

			protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	

What Personal Information We Disclose and Why We Disclose It

The CCPA requires us to tell you what categories of personal information we “sell”, “share” or “disclose.” We do not sell and will not sell your personal information as that term is commonly understood. We also do not sell and will not sell your personal information, including the personal information of persons under 16 years of age, as that term is defined by the CCPA. We do not share your personal information as that term is defined in the CCPA. When it is necessary for a business purpose, we may disclose your personal information with a service provider or contractor, and we enter into a contract with the service provider or contractor that limits how the information may be used and requires the service provider to protect the confidentiality of the information.

In the preceding twelve months, we have disclosed the following categories of personal information for the following business purposes. Where the personal information is shared with third parties, as that term is defined in the CCPA, the category of the third party is indicated.

Category	**Examples**	**Business Purpose for Disclosure**	**Categories of Third Parties with Whom Information is Shared**
Identifiers (Including social security number, driver’s license number,	Real name, alias, postal address, unique personal identifier, online identifier, internet protocol address, email address, account name, social security number, driver’s license number, passport number or other similar identifiers	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints, detecting security incidents, protecting against	Service providers associated with the transaction for a business purpose

and passport number)		malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	
Personal information described in California Customer Records statute (Cal. Civ. Code § 1798.80(e)) (Including Social security number, driver's license number or state identification card number, passport number, bank account number, citizenship, and immigration status)	Name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose
Characteristics of protected classifications under California or federal law (Including marital status, sex, citizenship, and physical disability)	Age (40 years or older), race, color, ancestry, national origin, citizenship, religions or creed, marital status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related medical conditions), sexual orientation, veteran or military status, or genetic information (including familial genetic information).	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose
Internet or other electronic	Browsing history, search history, information about a consumer's interaction with a	To provide access to certain online services. To	Not Disclosed

network activity	website, application, or advertisement.	understand the interests of visitors to our online services, to support certain features of our site, for navigation and to display certain features more effectively. Detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	

We may also transfer to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business.

Our Retention of Your Personal Information

The length of time that we retain personal information largely depends upon the purpose for which the information was collected rather than the category of the information as set forth in this Notice. When establishing retention periods, we consider applicable statutes of limitation and legal and regulatory requirements and guidelines. Personal information is generally retained for periods of time that permit the company to meet its legal and regulatory obligations.

Your Rights and Choices

The CCPA provides California consumers with certain rights regarding their personal information. This chart describes those rights and certain limitations to those rights.

Right	What This Means
Notice	At or before the time your personal information is collected, you will be given written notice of the categories of personal information to be collected, the purposes for which the categories of personal information will be used, and whether that information is sold or shared.
Access	At your verifiable request, but no more than twice in a twelve month period, we shall disclose to you: 1) the categories of personal information we have collected about you, 2) the categories of sources for the personal information we collected about you, 3) our business or commercial purpose for collecting, selling or sharing your personal information, 4) the categories of third parties to whom we disclose your personal information, 5) the specific pieces of information we have collected about you, 6) the categories of personal

	information disclosed about you for a business purpose and the categories of persons to whom your personal information was disclosed for a business purpose, and 7) if we sold or shared personal information, the categories of personal information sold or shared and the categories of third parties to whom it was sold or shared.
Deletion	You have the right to request that we delete any of your personal information that we collected from you, subject to certain exceptions. Once we receive and verify your request, we will delete (and direct our service providers and contractors to delete) your personal information from our records unless an exception applies. We may deny your request if retention of the information is necessary for us or our service providers to: • Complete the transaction for which we collected the personal information, provide a good or service that you requested, take actions reasonably anticipated within the context of our ongoing business relationship with you, or otherwise perform our contract with you. • Help to ensure security and integrity to the extent the use of your personal information is reasonably necessary and proportionate to that purpose. Debug to identify and repair errors that impair existing intended functionality. • Exercise free speech, ensure the right of another consumer to exercise their free speech rights, or exercise another right provided for by law. • Comply with the California Electronic Communications Privacy Act (Cal. Penal Code §1546 et seq.) • Engage in public or peer reviewed scientific, historical, or statistical research that conforms or adheres to all other applicable ethics and privacy laws, when the information's deletion is likely to render impossible or seriously impair the research's completion, if you previously provided informed consent. • Enable solely internal uses that are reasonably aligned with consumer expectations based on your relationship with us and compatible with the context in which you provided the information. • Comply with a legal obligation. • Or if it is the type of personal information that falls outside the scope of the CCPA, (HIPAA, CIMA, GLBA, or publicly available information)
Correct	You have the right to request that we correct inaccurate personal information about you, taking into account the nature of the personal information and the purposes of the processing of the personal information. After we receive and verify your request, we will use commercially reasonable efforts to correct the inaccurate personal information as directed by you.
Opt-Out of Sale or Sharing	With some limitations, you may direct a business that sells or shares personal information to third parties not to sell or share the personal information to these third parties. A business may not sell or share the personal information of persons less than sixteen years of age without their affirmative consent, and in the case of those less than thirteen years of age, the consent must come from a parent.

Opt-In to Sale or Sharing	
Limit Use of Sensitive Personal Information	You may direct a business to limit the use of your sensitive personal information to that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services and certain other limited uses as described in the CCPA and applicable regulations.
Non-Discrimination	We will not discriminate against you for exercising your rights under the CCPA. Unless otherwise permitted by the CCPA we will not: • Deny you goods or service • Charge you different prices or rates for goods or services, including through granting discounts or other benefits, or imposing penalties • Provide a different level or quality of goods or services • Suggest that you will receive a different price or rate for goods or services or a different level or quality of goods or services

To Exercise Your Rights

To Opt-out of the Sale or Sharing of Your Personal Information

The CCPA gives consumers the right to direct a business that sells or shares personal information about the consumer to third parties not to sell or share the consumer's personal information. We do not sell and will not sell your personal information as that term is commonly understood. We also do not sell and will not sell your personal information, as that term is defined by the CCPA. We do not share your personal information as that term is defined in the CCPA.

To Limit the Use of Sensitive Personal Information

The CCPA gives consumers the right to direct a business to limit the use of the consumer's sensitive personal information to that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services and certain other limited uses as described in the CCPA and applicable regulations. We do not use or disclose sensitive personal information for purposes other than those purposes specified in Section 7027, subsection (m) of the California Consumer Privacy Act Regulations. If we begin using or disclosing your sensitive personal information outside of those purposes, then we will provide you with the option to limit our use or disclosure through a clear and conspicuous link on our internet homepage.

To Request Access to, Correction or Deletion of Your Personal Information

To exercise your access, correction or deletion rights described above, please submit a verifiable consumer request to us by either: Calling us at 1-855-557-8437 or contacting us through our website https://ccpa.oldrepublictitle.com .

Only you or your representative that you authorize to act on your behalf (Authorized Agent) can make a verifiable consumer request for your personal information. You may also make a request for your minor child. The verifiable request must provide enough information that allows us to reasonably verify you are the person about whom we collected personal information. We cannot respond to your request or provide you with personal information if we cannot verify your identity or authority to make the request and to confirm the personal information relates to you.

We work to respond to a verifiable consumer request within 45 days of its receipt. If we require additional time, we will inform you of the extension period (up to an additional 45 days), and the reason for the extension in writing. If you have an account with us, we will deliver our response to that account. If you do not have an account with us, we will deliver our response by mail or electronically, depending on your preference. The response we provide will also explain any reasons why we cannot comply with a request.

You may only make a consumer request for access twice within a twelve-month period. Any disclosures we provide will apply to the twelve-month period preceding the consumer request's receipt.

Contact Us

If you have any questions regarding our Privacy Notice or practices, please contact us or send your written request to: CCPA@oldrepublictitle.com, 1-855-557-8437, or 3000 Bayport Drive, Suite 1000 Tampa FL 33707

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ASSESSOR'S MAP 53

Code Area No.13-000

1597

1599

Ashby Avenue.

1598

1595

1703

1550

MARTIN LUTHER KING, JR. WAY

Adeline Street

Central Park. (Amended Map) (BK. 10 Pg. 40)
Scale:- 1"=50'

B.A.R.T.

3.82 Ac.± (R) 14

CT.

Rev. 2-8-72 H.N
12-29-83 G.A
02-24-09 MN

Exhibit A

SCHEDULE 2.1(c)
Updated East Lot Preliminary Title Report

[Will be attached upon execution of the Exchange Agreement.]

Exhibit A

SCHEDULE 2.1(d)
Updated West Lot Preliminary Title Report

[Will be attached upon execution of the Exchange Agreement.]

SCHEDULE 4.3.1

Quitclaim Deed – West Lot Air Rights Option

RECORDING REQUESTED BY:

Old Republic Title Company

WHEN RECORDED MAIL TO:

San Francisco Bay Area Rapid
Transit District
2150 Webster Street, 9th Floor
Oakland, CA 94612
Attn: Real Estate Manager

APN 053-1597-039-04

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant
to Government Code Section 27383

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is $0.00; Exempt pursuant to Revenue & Taxation Code § 11922
( ) computed on full value of property conveyed, or
( ) computed on full value less of liens and encumbrances remaining at time of sale.
( ) Unincorporated area: (X) City of Berkeley, CA

Quitclaim Deed
(Extinguishment of Option to Purchase Air Rights)

Quitclaim Deed
(Extinguishment of Option to Purchase Air Rights)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF BERKELEY, a municipal corporation of the State of California ("City"), hereby remises, releases and forever quitclaims to

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("BART"),

all of City's rights under that certain unrecorded agreement dated as of October 22, 1964, as amended, between BART and the City ("Air Rights Agreement") to acquire an interest in that real property situated in the City of Berkeley, County of Alameda, State of California more particularly described in "**EXHIBIT A**" attached hereto and incorporated herein by reference ("Subject Property"),

City has consented to, accepted, approved, and authorized this Quitclaim Deed pursuant to its Ordinance No. *(add Ordinance number)* entitled *(add name of Ordinance)*. This Quitclaim Deed is recorded for the purpose of extinguishing all right, title, and interest that the City has in the Subject Property arising from the Air Rights Agreement, including without limitation any option to purchase air rights in the Subject Property. Accordingly, for tax assessment purposes this Quitclaim Deed is not a change of ownership under Revenue and Taxation section 60, et seq.

Mail tax statements to owners of record.

Date:_____

CITY OF BERKELEY

_____

By:

Its:

(Seal)

Attest:_____

By: _____, City Clerk

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____ before me, _____, personally appeared
_____
_____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature_____
Notary Public [seal]

CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)

This is to certify that the interest in real property conveyed by this Quitclaim Deed (Extinguishment of Option to Purchase Air Rights) dated _____ from the City of Berkeley to the San Francisco Bay Area Rapid Transit District, a rapid transit district, is hereby accepted by the undersigned officer or agent on behalf of the San Francisco Bay Area Rapid Transit District, pursuant to authority conferred by resolution of the Board of Directors of the San Francisco Bay Area Rapid Transit District entitled "In The Matter of Authorizing Acceptance of Deeds and Grants", bearing No. 291, adopted on October 24, 1963, and the San Francisco Bay Area Rapid Transit District consents to recordation thereof by its duly authorized officer.

Dated: _____

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

_____

By:

Title:

EXHIBIT A

(Subject Property)

The real property situated in the City of Berkeley, County of Alameda, State of California, described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: Non-Assessed Parcel.

Attached hereto and made a part hereof the following Filed maps:

Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp., Book 10 of Maps at Page 40, Record Map of Right of Way RRW 10A in Book 68 of Maps at Page 127, Record Map of Right of Way Cover Sheet Book 68 of Maps at Page 147, Record Map of Right of Way RRW 9 Book 68 of Maps at Page 150.

SCHEDULE 4.3.2

Quitclaim Deed – R9-2 Parcel

RECORDING REQUESTED BY:

Old Republic Title Company

WHEN RECORDED MAIL TO:

San Francisco Bay Area Rapid
Transit District
2150 Webster Street, 9th Floor
Oakland, CA 94612
Attn: Real Estate Manager

APN: Non-Assessed Parcel

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant
to Government Code Section 27383

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is $0.00; Exempt pursuant to Revenue & Taxation Code § 11922
( ) computed on full value of property conveyed, or
( ) computed on full value less of liens and encumbrances remaining at time of sale.
( ) Unincorporated area: (X) City of Berkeley, CA

Quitclaim Deed

Quitclaim Deed

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF BERKELEY, a municipal corporation of the State of California ("City"),

hereby remises, releases and forever quitclaims to

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.,

the real property situated in the City of Berkeley, County of Alameda, State of California more particularly described in **"EXHIBIT A"** attached hereto and incorporated herein by reference ("Subject Property"), reserving therefrom the rights specified in said "EXHIBIT A."

City intends pursuant to this Quitclaim Deed to relinquish its right, title, and interest in the Subject Property, including without limitation its public rights-of-way, except the rights reserved herein, in accordance with the "Ashby BART Station Transit-Oriented Development Exchange Agreement" consented to, accepted, approved, and authorized by the City pursuant to Ordinance No. *(add Ordinance number)* entitled "Ordinance Authorizing Exchange of Real Property for Development of Ashby BART Station Property", recorded *(concurrently herewith OR on _____ as Instrument Number _____ in the Official Records of Alameda County, California)*.

Mail tax statements to owners of record.

Date:_____

CITY OF BERKELEY

_____

By:

Its:

(Seal)

Attest:_____

By: _____, City Clerk

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____ before me, _____, personally appeared
_____
_____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature_____
Notary Public [seal]

CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)

This is to certify that the interest in real property conveyed by this Quitclaim Deed dated _____ from the City of Berkeley to the San Francisco Bay Area Rapid Transit District, a rapid transit district, is hereby accepted by the undersigned officer or agent on behalf of the San Francisco Bay Area Rapid Transit District, pursuant to authority conferred by resolution of the Board of Directors of the San Francisco Bay Area Rapid Transit District entitled "In The Matter of Authorizing Acceptance of Deeds and Grants", bearing No. 291, adopted on October 24, 1963, and the San Francisco Bay Area Rapid Transit District consents to recordation thereof by its duly authorized officer.

Dated: _____

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

_____

By:

Title:

EXHIBIT A

(Subject Property)

The real property situated in the City of Berkeley, County of Alameda, State of California, described as follows:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

RESERVING THEREFROM an easement for underground and aboveground public utilities and all appurtenances therefor, including but not limited to electric, gas, communications, stormwater drainage, and sanitary pipe line facilities, together with access thereto, including without limitation for the use, installation, maintenance, repair, replacement, upgrade, improvement, removal of obsolete or redundant utilities, inspection, and testing thereof.

APN: Non-Assessed Parcel

SCHEDULE 4.3.3

East Lot Covenants

RECORDING REQUESTED BY:

Old Republic Title Company

AND WHEN RECORDED RETURN TO:

San Francisco Bay Area Rapid
Transit District
2150 Webster Street, 9th Floor
Oakland, CA 94612
Attn: Real Estate Manager

APN 053-1703-009

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Section 27383. Government Agency Acquiring Title

The undersigned(s) declare(s):
Documentary Transfer Tax is $0.00; Exempt pursuant to Rev. & Tax. Code § 11922

( ) computed on full value of property conveyed, or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.
( ) unincorporated area: (X) City of Berkeley, State of California

MEMORANDUM OF COVENANTS

Memorandum of Covenants

This Memorandum of Covenants ("Memorandum") is made by the City of Berkeley, a charter city ("Owner") effective as of the date of its recordation in the Official Records of Alameda County, California ("Effective Date").

RECITALS

A. Owner is the fee simple owner of the real property in the City of Berkeley ("City"), County of Alameda, State of California, identified by Assessor Parcel Number 053-1703-009 ("Property"), more particularly described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq., in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

B. Owner and the San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("BART"), entered into that certain ASHBY BART STATION TRANSIT-ORIENTED DEVELOPMENT EXCHANGE AGREEMENT dated ____ ("Exchange Agreement"), by which, inter alia, BART agreed to convey the Property to Owner, and Owner agreed to quitclaim to BART certain of Owner's interests in a parcel of land owned by BART ("West Lot") situated in the City and more particularly described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: non-assessed parcel.

C. In addition, Owner agreed as part of the land exchange to record against the Property this Memorandum, for the purpose of imposing certain conditions, covenants, and restrictions on the future development of the Property ("Covenants").

NOW, THEREFORE, in consideration of the Covenants, the consideration received by Owner pursuant to the Exchange Agreement, and other good and

valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner thus declares that the Property, and all portions thereof and interests therein, shall be irrevocably held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the Covenants described below, which shall be equitable servitudes and shall run with land, and shall be binding on any person or entity now or hereafter having any right, title or interest in the Property, or any part thereof, and such person's or entity's heirs, successors, and assigns, and shall inure to the benefit of the West Lot and BART as the owner of the West Lot, as follows:

MEMORANDUM OF COVENANTS

Development Requirements

1. Any development of the Property shall achieve a minimum density of 75 dwelling units per acre.

Affordable Housing Requirements

2. At least 35% of any new housing units developed on the Property, including any units that may be added as a result of a density bonus, shall be Affordable Housing units. Owner, together with any developer(s) of the property, shall explore the potential for exceeding the 35% requirement, with the goal of 50% of Affordable Housing units, taking into consideration development costs, values and potential for additional City subsidy.

"Affordable Housing" means housing subject to enforceable legal conditions restricting its availability for lease or sale to Extremely Low Income Households, Very Low Income Households, or Low Income Households. "Extremely Low Income Households" means households earning less than the "Extremely Low" limits by household size for the "Alameda County Area" as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations. "Very Low Income Households" means households earning less than the "Very Low Income" limits by household size for the "Alameda County Area" but more than Extremely Low Income Households as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations. "Low Income Households" means households earning less than the "Low Income" by household size for the "Alameda County Area" but more than Very Low Income Households as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations.

3. Any Affordable Housing units that are provided to satisfy the requirements of the City's inclusionary housing ordinance (Chapter 23.238 of the Berkeley Municipal Code) ("Inclusionary Housing Ordinance") and are included in a mixed-income building shall be rent- and income-restricted in perpetuity as required by the Inclusionary Housing Ordinance. All other Affordable Housing units shall be rent- and income-restricted (i) for the duration of the applicable ground lease (each of which shall have a minimum

duration of 99 years), including any lease term extensions, or (ii) for 99 years, for any units on the Property that are not subject to a ground lease.

4. Development of the Property shall meet the following minimum affordability requirements:

(a) At least 35% of the housing units, inclusive of density bonus units, must be affordable to households earning an average of up to 60% of AMI.

(b) At least 20% of the required 35% affordable units referred to in subparagraph (a) must be affordable to Extremely Low-Income ("ELI") households, which are currently defined as those earning up to 30% of AMI.

(c) Of the required 35% affordable units referred to in subparagraph (a), additional affordable units aside from the ELI units should prioritize Very Low Income Households (up to 50% of AMI) and Low Income Households (up to 80% of AMI) but may include some housing restricted to Moderate Income Households (up to 120% of AMI), provided that the moderate-income units have rents that are still below market and are not funded by City subsidies.

5. Any project on the Property that includes construction of both Affordable Housing units and market-rate housing units shall construct the Affordable Housing units prior to or concurrently with any market-rate housing.

6. Affordable Housing units developed on the Property may be clustered into one or more buildings with 100% Affordable Housing buildings or dispersed amongst mixed-income housing buildings, but such Affordable Housing units must be designed in a way that integrates with the larger project on the Property and shares comparable design standards and quality.

7. If a development project will meet all or a portion of the requirements of the Inclusionary Ordinance through clustering as described in Paragraph 6, Owner or developer shall contribute funding towards such clustered Affordable Housing units in an amount calculated as follows: (1) multiplying $56.25 (as this amount may be adjusted biennially pursuant to City Resolution No. 70,698-N.S.) by the total residential unit floor area of the project or projects less the floor area in any 100% Affordable Housing buildings and any floor area in market rate or mixed income buildings that is included as a result of any density bonus (“Net Residential Unit Floor Area”); and then (2) multiplying the result by the percentage of the City’s 20% Affordable Housing requirement remaining after accounting for any on-site Affordable Housing units provided within mixed income buildings that comply with all of the requirements of the Inclusionary Housing Ordinance. For example, buildings that are 10% Affordable Housing units would contribute $28.12 per foot (half of $56.25), adjusted for inflation.

For the purpose of calculating the Net Residential Unit Floor Area, the floor area resulting from the density bonus is the total Residential Unit Floor Area (for the whole

market rate/mixed income project) times the proportion of total units in the project in excess of those allowed under base zoning By way of example, a project that clustered all Affordable Housing units in 100% Affordable Housing buildings would contribute $56.25 times (as adjusted) the base residential square footage of any market rate buildings, excluding any density bonus square footage. A project that included some Affordable Housing units on-site within the market rate buildings would make a pro-rated contribution.

8. The application of the State Density Bonus Law to the Property shall not yield a project that is less than 35% Affordable Housing as a proportion of the total units on the Property, or less than 50% Affordable Housing for the first 602 units.

Objective Design Standards

9. The objective design standards adopted by the City must allow at least 248 residential units with at least 300 bedrooms.

General Provisions

10. Covenants Running with the Land: This Memorandum and the rights and obligations in this Memorandum are covenants running with the land and are binding upon any person or entity now or hereafter having any right, title or interest in the Property, or any part thereof, including any leasehold interest, and such person's or entity's heirs, successors, and assigns. The Covenants shall inure to the benefit of the West Lot and shall be enforceable by BART as the owner of the West Lot, for so long as BART owns any portion of the West Lot; provided, however, that the Covenants shall not be enforceable by the owner of any portion of the West Lot conveyed by BART to a private party. All the terms and provisions of this Memorandum shall be enforceable as equitable servitudes and are covenants running with the land pursuant to applicable law, including without limitation Section 1468 of the California Civil Code.

11. Term: The provisions of this Memorandum shall remain in force and effect for ninety-nine years after the effective date of the first Ground Lease, as defined in the Exchange Agreement, for a portion of the Property, unless amended or terminated pursuant to Paragraph 14 below.

12. Severability: Invalidation of any of the provisions contained in this Memorandum, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions of this Memorandum or its application to any other person, which shall remain in full force and effect.

13. Integrated Agreement: This Memorandum constitutes Owner's entire declaration of covenants, conditions, and restrictions concerning the subjects of this Memorandum; provided, however, that nothing herein shall limit the obligations of Owner or any other party to comply with all of its obligations under the Exchange Agreement. The City ordinance authorizing the Exchange Agreement is recorded in the Official Records of Alameda County.

14. Amendment and Termination: No amendment or modification of this Memorandum shall be valid unless in writing, executed by Owner and BART, and recorded in the Official Records of Alameda County, California. This Memorandum shall terminate if a Notice Of Termination, signed by Owner and BART, with respect to the Property is recorded.

15. Mortgage Protection: Breach of any restriction or provision of this Memorandum does not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of the restrictions and other provisions of this Memorandum are binding and effective as to any mortgagee or beneficiary of a deed of trust that acquires fee title by foreclosure, trustee's sale, or otherwise.

16. Rights Inseverable: The rights or obligations created in this Memorandum shall not be severable from the Property, nor separately conveyed therefrom.

17. Authority to Make and Record Memorandum: Owner has consented to, accepted, approved, and authorized this Covenant, has authorized its execution by the below signatory, and has authorized its recordation in the Official Records of Alameda County, California pursuant to its Ordinance No. *(add Ordinance number)* entitled *(add name of Ordinance)* adopted on *(add date of adoption)*.

18. Captions and Capitalized Terms: The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Memorandum. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Memorandum.

19. Construction: This Memorandum shall be construed in accordance with the laws of the State of California.

OWNER:

Date:_____ CITY OF BERKELEY, a charter city

_____

By:

Its:

(Seal)

Attest:_____
By: _____, City Clerk

Approved as to Form

_____
By:
Its:

BART:

Date:_____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

_____

By:

Its:

Approved as to Form

_____

By:
Its:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____, , before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Notary Public [seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____, , before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Notary Public [seal]

SCHEDULE 4.3.4
West Lot Covenants

RECORDING REQUESTED BY:

Old Republic Title Company

AND WHEN RECORDED RETURN TO:

Farimah Brown
City Attorney
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

APN 053-1597-039-04 & unassessed parcel

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Section 27383. Government Agency Acquiring Title.

The undersigned(s) declare(s):
Documentary Transfer Tax is $0.00; Exempt pursuant to Rev. & Tax. Code § 11922

( ) computed on full value of property conveyed, or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.
( ) unincorporated area: (X) City of Berkeley, State of California

MEMORANDUM OF COVENANTS

Memorandum of Covenants

This Memorandum of Covenants ("Memorandum") is made by the San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("Owner") effective as of the date of its recordation in the Official Records of Alameda County, California ("Effective Date").

RECITALS

A. Owner is the fee simple owner of the real property in the City of Berkeley ("City"), County of Alameda, State of California, consisting of the parcel identified by Assessor Parcel Number 053-1597-039-04 and the non-assessed parcel (collectively "Property"), more particularly described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: non-assessed parcel.

Attached hereto and made a part hereof the following Filed maps:

Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp., Book 10 of Maps at Page 40, Record Map of Right of Way RRW 10A in Book 68 of Maps at Page 127, Record Map of Right of Way Cover Sheet Book 68 of Maps at Page 147, Record Map of Right of Way RRW 9 Book 68 of Maps at Page 150.

B. Owner and City entered into that certain ASHBY BART STATION TRANSIT-ORIENTED DEVELOPMENT EXCHANGE AGREEMENT dated ____ ("Exchange Agreement"), by which, inter alia, the City agreed to quitclaim to Owner certain of the City's interests in the Property, and Owner agreed to convey to City a parcel of land owned by Owner ("East Lot") situated in the City and more particularly described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq., in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

C. In addition, Owner agreed as part of the land exchange to record against the Property this Memorandum, for the purpose of imposing certain conditions, covenants, and restrictions on the future development of the Property ("Covenants").

NOW, THEREFORE, in consideration of the Covenants, the consideration received by Owner pursuant to the Exchange Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner thus declares that the Property, and all portions thereof and interests therein, shall be irrevocably held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the Covenants described below, which shall be equitable servitudes and shall run with land, and shall be binding on any person or entity now or hereafter having any right, title or interest in the Property, or any part thereof, and such person's or entity's heirs, successors, and assigns, and shall inure to the benefit of the East Lot and City as the owner of legal or equitable title to the East Lot, as follows:

MEMORANDUM OF COVENANTS

Development Requirements

1. Except to the extent waived or modified by the City in its sole and absolute discretion, any development project on the Property shall comply with all applicable mitigation measures adopted in connection with the City's adoption on June 28, 2022 of the Residential - BART Mixed Use (R-BMU) zoning district ("2022 Mitigation Measures")

2. Except as may be modified by the City in its sole and absolute discretion, any development project on the Property shall comply with the standard conditions of approval set forth in Exhibit 1.

3. Development of the Property shall achieve a minimum residential density of 75 dwelling units per acre.

Affordable Housing Requirements

4. At least 50% of the first 602 housing units developed on the Property shall be Affordable Housing.

"Affordable Housing" means housing subject to enforceable legal conditions restricting its availability for lease or sale to Extremely Low Income Households, Very Low Income Households, or Low Income Households. "Extremely Low Income Households" means households earning less than the "Extremely Low" limits by household size for the "Alameda County Area" as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations. "Very Low Income

Households" means households earning less than the "Very Low Income" limits by household size for the "Alameda County Area" but more than Extremely Low Income Households as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations. "Low Income Households" means households earning less than the "Low Income" by household size for the "Alameda County Area" but more than Very Low Income Households as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations.

5. In the event that more than 602 total housing units are built on the Property (inclusive of any density bonus units), there shall be no fewer than 301 Affordable Units, and overall at least 35% of the units (including density bonus units) shall be Affordable Units. Owner, together with any developer(s) of the Property, shall consult with City to explore the potential for exceeding the 35% requirement for projects greater than 602 units, with an aspirational goal of up to 50% Affordable Housing units, based on economic feasibility and availability of funding resources if the West Lot is to be developed with more than 602 total housing units, taking into consideration development costs, values and potential for additional City subsidy or funding from external sources.

6. Any Affordable Housing units that are provided to satisfy the requirements of the City's inclusionary housing ordinance (Chapter 23.238 of the Berkeley Municipal Code) ("Inclusionary Housing Ordinance") and are included in a mixed-income building shall be rent- and income-restricted in perpetuity as required by the Inclusionary Housing Ordinance. All other Affordable Housing units shall be rent- and income-restricted for the duration of the applicable ground lease (each of which shall have a minimum duration of 99 years), including any lease term extensions.

7. Development of the Property shall meet the following minimum affordability requirements:

   (a) At least 35% of the housing units, inclusive of density bonus units, must be affordable to households earning an average of up to 60% of AMI.

   (b) At least 20% of the required 35% affordable units referred to in subparagraph (a) must be affordable to Extremely Low-Income ("ELI") households, which are currently defined as those earning up to 30% of AMI.

   (c) Of the required 35% affordable units referred to in subparagraph (a), additional affordable units aside from the ELI units should prioritize Very Low Income Households (up to 50% of AMI) and Low Income Households (up to 80% of AMI) but may include some housing restricted to Moderate Income Households (up to 120% of AMI), provided that the moderate-income units have rents that are still below market and are not funded by City subsidies.

8. Any project receiving the City's Housing Trust Fund ("HTF") funding shall also meet the City's HTF Guidelines, provided that said Housing Trust Fund Guidelines do not restrict or otherwise regulate the project's height, density, or development capacity.

9. Any project on the Property that includes construction of both Affordable Housing units and market-rate housing units shall construct the Affordable Housing units prior to or concurrently with any market-rate housing. In the event there are multiple phases of market rate or affordable housing, development of market rate and affordable housing shall be in accordance with a phasing plan approved by the City.

10. Affordable Housing units developed on the Property may be clustered into one or more buildings with 100% Affordable Housing buildings or dispersed amongst mixed-income housing buildings, but such Affordable Housing units must be designed in a way that integrates with the larger project on the Property and shares comparable design standards and quality.

11. If a development project will meet all or a portion of the requirements of the Inclusionary Ordinance through clustering as described in Paragraph 10, Owner or developer shall contribute funding towards such clustered Affordable Housing units in an amount calculated as follows: (1) multiplying $56.25 (as this amount may be adjusted biennially pursuant to City of Berkeley Resolution No. 70,698-N.S.) by the total residential unit floor area of the project less the floor area in any 100% affordable housing buildings and any floor area in market rate or mixed income buildings that is included as a result of any density bonus ("Net Residential Unit Floor Area"); and then (2) multiplying the result by the percentage of the City's 20% affordable housing requirement remaining after accounting for any on-site Affordable Housing units provided within mixed income buildings that comply with all of the requirements of the Inclusionary Housing Ordinance. For example, buildings that are 10% Affordable Housing units would contribute $28.12 per foot (half of $56.25), adjusted for inflation.

For the purpose of calculating the Net Residential Unit Floor Area, the floor area resulting from the density bonus is the total residential unit floor area (for the whole market rate/mixed income project) times the proportion of total units in the project in excess of those allowed under base zoning. By way of example, a project that clustered all affordable units in 100% Affordable Housing buildings would contribute $56.25 times (as adjusted) the base residential square footage of any market rate buildings, excluding any density bonus square footage. A project that included some Affordable Housing units on-site within the market rate buildings would make a pro-rated contribution.

12. The application of the State Density Bonus Law to the Property shall not yield a project that is less than 35% Affordable Housing as a proportion of the total units on the Property, or less than 50% Affordable Housing for the first 602 units.

<u>Community Benefits</u>

13. Development of the Property shall include at least 5,000 square feet (based on BOMA ANSI 2017 standards) of community/civic commercial ground floor interior space

for community-based organizations, non-profits, and/or small and minority-owned businesses such as the Berkeley Flea Market, to be leased (triple net) at no more than 50% of fair market triple net rent.

14. Development of the Property shall make space available to the Berkeley Flea Market in accordance with the requirements of the Exchange Agreement.

Public Infrastructure

15. Development of the Property shall comply with all obligations and requirements in the Exchange Agreement pertaining to Public Infrastructure, as that term is defined in the Exchange Agreement.

Objective Design Standards.

16. No application for any development project on the Property (including any preliminary application) shall be submitted to City before the earlier of (a) the City's adoption of objective design standards ("ODS") in accordance with the Exchange Agreement, or (b) the deadline for adopting ODS specified in Article 9 of the Exchange Agreement, as may be modified in accordance with the Exchange Agreement.

17. Except as provided in Paragraph 18 below, all development on the Property shall comply with ODS adopted in accordance with all relevant provisions of the Exchange Agreement, notwithstanding any waivers, incentives, concessions or other exceptions available by law

18. An application for development of the Property may seek waivers, incentives, concessions or other exceptions to otherwise applicable zoning or land use regulations to the extent permitted by law, but only with respect to (a) zoning requirements other than those set forth in or modified by the ODS, (b) ODS requirements pertaining to minimum square footage of active or non-residential ground floor uses, but only to the extent such requirements exceed 15,000 square feet, inclusive of the 5,000 square feet of community/civic commercial space described in Paragraph 13, and (c) other ODS requirements that do not pertain to height limits, setbacks/step-backs, open space or massing breaks.

General Provisions

19. Covenants Running with the Land: This Memorandum and the rights and obligations in this Memorandum are covenants running with the land and are binding upon any person or entity now or hereafter having any right, title or interest in the Property, or any part thereof, including any leasehold interest, and such person's or entity's heirs, successors, and assigns. The Covenants shall inure to the benefit of the East Lot and shall be enforceable by City as the holder of legal or equitable title in the East Lot, for so long as the City holds such title in any portion of the East Lot; provided, however, that the Covenants shall not be enforceable by the owner of any portion of the East Lot conveyed by the City to a private party. All the terms and provisions of this Memorandum shall be enforceable as equitable servitudes and are covenants running with the land pursuant to applicable law, including without limitation Section 1468 of the

California Civil Code.

20. Subdivision and Development of the Property.

a) The City understands and acknowledges that, in order to achieve the intent of the Exchange Agreement, the Property may be subdivided into separate parcels (collectively the "Parcels" and individually a "Parcel"), and developed in separate phases pursuant to Ground Lease Agreements, as that term is defined in the Exchange Agreement. In the likely event that the subdivision and Ground Lease Agreements contemplate that one or more Parcels will be retained by Owner for use in connection with its transit operations, City agrees to terminate this Memorandum with respect to that Parcel (or those Parcels) only.

b) In the event that the phased development of the Property results in a period of time during which one or more of the requirements described in paragraphs 1-17 have not been met, said noncompliance shall not constitute a breach of this Memorandum provided that: i) the executed Ground Lease Option will result in full compliance with said requirements upon execution of all of the related Ground Leases and completion of construction thereunder, and ii) phasing of the projects on the Property is consistent with the provisions of Paragraph 9 of this Memorandum.

c) In the event that the phased development of the Property results in one or more, but fewer than all of the Parcels being responsible for full compliance with one or more of the requirements described in paragraphs 1-17, the City shall not unreasonably withhold its consent to an amendment to this Memorandum that identifies said Parcel or Parcels as being solely responsible for satisfying said requirements. Any subsequent breach of said responsibility shall be enforced against the responsible Parcel or Parcels only, and the Ground Lease tenants of the other parcels shall not be deemed to be in violation of their obligations under this Memorandum.

21. Term: The provisions of this Memorandum shall remain in force and effect for ninety-nine years after the effective date of the first Ground Lease, as defined in the Exchange Agreement, for a portion of the Property, unless amended or terminated pursuant to Paragraph 24 below.

22. Severability: Invalidation of any of the provisions contained in this Memorandum, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions of this Memorandum or its application to any other person, which shall remain in full force and effect.

23. Integrated Agreement: This Memorandum constitutes Owner's entire declaration of covenants, conditions, and restrictions concerning the subjects of this Memorandum; provided, however, that nothing herein shall limit the obligations of Owner or any other party to comply with all of its obligations under the Exchange Agreement. The City ordinance authorizing the Exchange Agreement is recorded in the Official Records of Alameda County.

24. Amendment and Termination: No amendment or modification of this Memorandum shall be valid unless in writing, executed by Owner and City, and

recorded in the Official Records of Alameda County, California. This Memorandum shall terminate if a notice of termination, signed by Owner and City, with respect to the Property is recorded.

25. Mortgage Protection: Breach of any restriction or provision of this Memorandum does not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of the restrictions and other provisions of this Memorandum are binding and effective as to any mortgagee or beneficiary of a deed of trust that acquires fee title by foreclosure, trustee's sale, or otherwise.

26. Rights Inseverable: The rights or obligations created in this Memorandum shall not be severable from the Property, nor separately conveyed therefrom.

27. Authority to Make and Record Memorandum: Owner has consented to, accepted, approved, and authorized this Covenant, and all requisite action has been taken by Owner in connection with its execution by the below signatory, and Owner authorizes its recordation in the Official Records of Alameda County, California.

28. Captions and Capitalized Terms: The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Memorandum. Capitalized terms not defined herein shall, unless otherwise indicated, have the meanings ascribed to such terms in the Exchange Agreement.

29. Construction: This Memorandum shall be construed in accordance with the laws of the State of California.

OWNER:

Date:_____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

_____

By:

Its:

Approved as to Form

_____

By:

Its:

CITY:

Date:_____ CITY OF BERKELEY, a charter city.

_____

By:

Its:

Approved as to Form

_____

By:
Its:

Exhibit 1

1. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:

    A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or

    B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

    C. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

        i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.

        ii. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

2. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:

    A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.

B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.

C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.

D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.

E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

3. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

4. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

5. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

6. Construction Noise Reduction Program. The applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070, Prohibited Acts. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:

   A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.

   B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.

   C. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.

   D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.

   E. Prohibit unnecessary idling of internal combustion engines.

   F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.

   G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.

   H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.

   I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

7. Construction Noise Management. Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within 500 feet of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

8. Damage Due to Construction Vibration. The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall consider project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake study of existing conditions (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage.

   This study shall establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and include written descriptions and photographs.

   The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

9. Avoid Disturbance of Nesting Birds. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____, , before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Notary Public [seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____, , before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Notary Public [seal]

SCHEDULE 4.4.4

Grant Deed – East Lot

RECORDING REQUESTED BY:

Old Republic Title Company

WHEN RECORDED MAIL TO AND MAIL TAX STATEMENTS TO:

Farimah Brown
City Attorney
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

APN 053-1703-009

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Sections 6103 and 27383

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is $0.00; Exempt pursuant to Revenue & Taxation Code § 11922
(X) computed on full value of property conveyed, or
( ) computed on full value less of liens and encumbrances remaining at time of sale.
( ) Unincorporated area: (X) City of Berkeley, CA

Grant Deed

Grant Deed

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("Grantor"),

hereby GRANTS to

CITY OF BERKELEY, a municipal corporation of the State of California,

all that property in the City of Berkeley, County of Alameda, State of California, more particularly described in **"EXHIBIT A"** attached hereto and incorporated herein by reference ("Property"), free and clear of any reserved rights of Grantor (including without limitation any claim of easement for mid-block pedestrian passage).

Grantor has consented to, accepted, approved, and authorized this conveyance of land pursuant to its Resolution No. *(add Resolution number)* entitled *(add name of Resolution)*.

Dated: _____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

_____

By:

Its:

Approved as to Form

_____

By:
Its:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____ before me, _____, personally appeared
_____
_____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature_____
Notary Public [seal]

CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)

This is to certify that the interest in real property conveyed by this Grant Deed dated _____ from the San Francisco Bay Area Rapid Transit District to the City of Berkeley, a political corporation and/or governmental agency, is hereby accepted by the undersigned officer or agent on behalf of the City of Berkeley, pursuant to authority conferred by City Council Resolution _____ adopted on _____, and the City of Berkeley consents to recordation thereof by its duly authorized officer.

Dated: _____

CITY OF BERKELEY

_____

By:

Title: City Manager

ATTEST:

_____

CITY CLERK

Approved as to form:
Date:_____
By: _____
City Attorney

EXHIBIT A

The real property situated in the City of Berkeley, County of Alameda, State of California, described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq., in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

Exhibit A

SCHEDULE 5.2
Schedule

Activity	Lead Party	Outside Date
Exchange Agreement Execution	BART & City	10-Jan-25
West Lot Developer Solicitation Issuance	BART	10-Dec-24
West Lot Consideration of Developer Selection	BART Board of Directors	No later than 7 months after West Lot Developer Solicitation Issuance
Execution of an Exclusive Negotiating Agreement or other appropriate agreement ("**ENA**") with West Lot Developer	BART	No later than 9 months after West Lot Developer selection
City Affordable Housing Predevelopment Housing funds (if requested) to East Lot Developer and/or West Lot Developer	City	No later than 60 days after Developer selection
Adoption of Objective Design Standards for West Lot	City	No later than 9 months after ENA execution, subject to potential 30-day extension for approved force majeure event
Infrastructure Financing Strategy: Draft strategy prepared by City and BART with collaboration by West Lot Developer	City & BART with collaboration by West Lot Developer	No later than 9 months after ENA execution; failure to complete this shall not constitute default.
West Lot Developer submits a complete application for a Master Development Permit, or for at least one affordable housing building's entitlements/permit	West Lot Developer	No sooner than Adoption of ODS (or 9 months from execution of ENA, whichever comes first) and no later than 3 years from execution of ENA
Project Financing: For each affordable housing project, development team secures complete project financing. If this milestone is not met, the City may rescind the development funding reservation for that project component.	West Lot Developer and East Lot Developer	31-Dec-2035

Exhibit A

SCHEDULE 5.5

CITY STANDARD CONDITIONS OF APPROVAL RELIED ON IN R-BMU ZONING EIR

1. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:

A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or

B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

C. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.

ii. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

2. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:

A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.

B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.

C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.

D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.

E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

3. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

4. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

5. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

6. Construction Noise Reduction Program. The applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070, Prohibited Acts. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:

A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.

B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.

C. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.

D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.

E. Prohibit unnecessary idling of internal combustion engines.

F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.

G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.

H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.

I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

7. Construction Noise Management. Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within 500 feet of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

8. Damage Due to Construction Vibration. The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall consider project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as

potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake study of existing conditions (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage.

This study shall establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

9. Avoid Disturbance of Nesting Birds. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

Exhibit A

SCHEDULE 7.2
<u>West Lot City Funds Conditions</u>

1. West Lot City Funds shall be used only to support development of Affordable Housing units on the West Lot over and above 20% of the total units (including density bonus units).

2. West Lot City Funds shall comply with the City's Housing Trust Fund Guidelines, provided that said Housing Trust Fund Guidelines do not restrict or otherwise regulate the project's height, density, or development capacity.

3. The City shall not be obligated to provide more than an average of $200,000 per Affordable Housing unit, counting only those Affordable Housing units provided above and beyond 20% of the total units (including density bonus units) in the West Lot project in the event that market rate units are planned, and counting only those units that are affordable to Extremely Low Income Households, Very Low Income Households, and Low Income Households.

4. West Lot City Funds shall be available to buildings which are 100% Affordable Housing, or, at the City's sole discretion, to Affordable Housing units dispersed amongst mixed-income housing buildings which meet the City's Housing Trust Fund Guidelines.

5. For any West Lot Developer planning to construct market-rate units and to cluster Affordable Housing units into one or more 100% Affordable Housing buildings, West Lot City Funds shall only be available to a developer who submits an Affordable Housing Compliance Plan ("AHCP") to confirm that the project's affordable proforma(s) shows the following developer contribution as a source and the market rate proforma(s) shows the following developer contribution as a use. The amount of this developer contribution shall be calculated by: 1) multiplying $56.25 (as this amount may be adjusted biennially pursuant to City of Berkeley Resolution No. 70,698-N.S.) by the Total Residential Unit Floor Area of the project or projects after excluding the floor area in any 100% affordable housing buildings and any floor area in market rate or mixed income buildings that is included as a result of the state density bonus; and then 2) multiplying the result by the percentage of the City's 20% affordable housing requirement remaining after accounting for any on-site Affordable Units provided within mixed income buildings that comply with all of the requirements of Berkeley's Inclusionary Housing Ordinance (codified in Berkeley Municipal Code section 23.328). For example, buildings that are 10% affordable would contribute $28.12 per foot (half of $56.25), adjusted for inflation. For the purpose of calculating the Total Residential Unit Floor Area, the area resulting from the density bonus is the total Residential Unit Floor Area (for the whole market rate/mixed income project) times the proportion of total units in the project in excess of those allowed under base zoning (the "Density Bonus Percentage"). As a result of this formula, a project that clustered all affordable units in 100% affordable buildings would contribute $56.25 times (as adjusted) the base residential square footage of any market rate buildings, excluding any density bonus square footage. A project that included some affordable units on-site within the market rate buildings would make a pro-rated contribution.

   If the AHCP is completed before BART's Board of Directors approves the final terms with West Lot Developer, then BART shall review and approve the AHCP prior to City review.

Exhibit A

West Lot City Funds shall only be available to a developer who agrees to all feasible measures to mitigate significant development impacts adopted in connection with the City's adoption on June 28, 2022 of the Residential - BART Mixed Use (R-BMU) zoning district and all applicable standard conditions of approval relied upon in the associated EIR.

Exhibit A

SCHEDULE 7.3
East Lot City Funds Conditions

1. East Lot City Funds shall be used only to support development of Affordable Housing units on the East Lot over and above 20% of the total units (including density bonus units).

2. East Lot City Funds shall comply with the City's Housing Trust Fund Guidelines.

3. The City shall not be obligated to provide more than an average of $200,000 per Affordable Housing unit, counting only those Affordable Housing units provided above and beyond 20% of the total units (including density bonus units) in the project, and counting only those Affordable Housing Units that are affordable to very low income or lower-income households as defined in California Health and Safety Code sections 50052.5 and 50053.

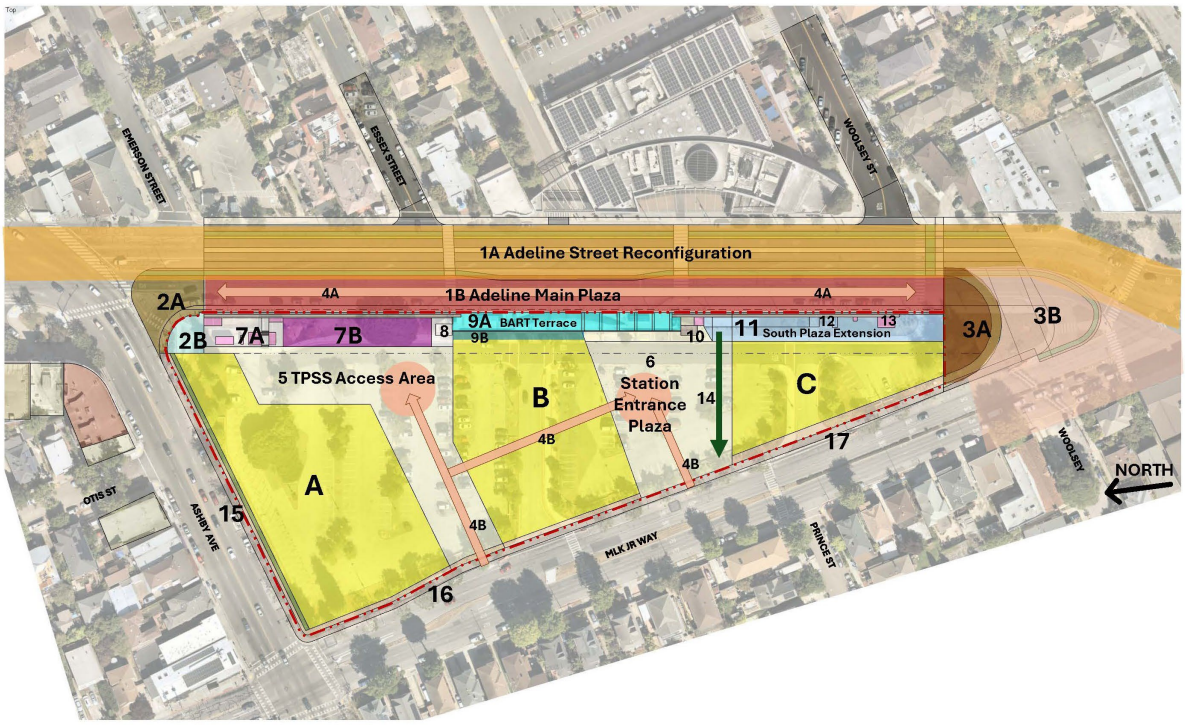
4. East Lot City Funds shall be available to buildings which are 100% Affordable Housing, or, at the City's sole discretion, to Affordable Housing units dispersed amongst mixed-income housing buildings which meet the City's Housing Trust Fund Guidelines.

5. East Lot City Funds shall only be available to a developer who agrees to all feasible measures to mitigate significant development impacts, as determined by City.

Exhibit A

SCHEDULE 8.1.2
INFRASTRUCTURE MAP

Note: The number and footprint of structural elements, as well as the spaces between them, have not been designed and are illustrative. The actual location of various structural elements may differ from the depictions below.



Public Areas

Adeline Street Reconfiguration* **	**1A**
Adeline Main Plaza	**1B**
Ashby/Adeline Corner Plaza**, ***	2A
Ashby/Adeline Corner Plaza Extension**	2B
Existing BART Terrace	9A
BART Terrace Extension*	9B
South Plaza Extension**	11
MLK/ Adeline/Woolsey Plaza**, ***	3A
MLK/ Adeline/Woolsey Intersection Redesign**, ***	3B
Ashby Sidewalk Widening	15
MLK Sidewalk Widening (north)	16
MLK Sidewalk/Bikeway Widening(south)	17
TPSS Access Area**	**5**
Station Entrance Plaza**	**6**

Other Elements

North Platform Egress Stair & BART Vents and TPSS Equipment	7A
TPSS Replacement Area	7B
North Plaza Stair (to be rebuilt)	8
South Plaza Stair (to be rebuilt)	10
ADA Pedestrian/Bike Connection/Ramp (new)**	14
South Platform Egress Stair & BART Storage (access to be reconfigured)	12
BART Vents (to be extended to/above plaza)	13
Estimated BART Property Line	
Estimated Zone of Influence	
Development Areas**	(A, B, C)
Required Emergency Access **, ****	4B
Adeline Main Plaza EVA	4A

*Potential extension, not required, building could be built up to Existing BART Terrace
** Location and geometry flexible if all performance requirements are met
*** Funding for Adeline St Reconfiguration subject to identification of City financial resources to fund improvements; City has identified these improvements as a top priority for funding.
**** 4A refers only to that segment of 4 within the City's ROW; 4B refers only to that segment of 4 within BART's parcel.

Exhibit A

SCHEDULE 8.1.3
INFRASTRUCTURE MATRIX

Map ID	Infrastructure Cost Category	Priority	Funding Sources	Responsibility in the Event of Funding Shortfall	Maintenance Responsibility
PUBLIC AREAS					
1A	Adeline Street Reconfiguration ***	Essential	Bond Funds/Alameda County/OBAG 4/Grants & Subsidies	City	City
1B, 4A	Adeline Main Plaza ***	Essential	Grants & Subsidies/IIG/AHSC/EIFD	City	City (CFD-funded)
2A	Ashby/Adeline Corner Plaza **, ***	Essential	Grants & Subsidies/IIG/AHSC	City	City (CFD-funded)
2B	Ashby/Adeline Corner Plaza Extension **	High	Developer Contribution/Grants & Subsidies/IIG/AHSC	Developer	City (CFD-funded)
9A	Existing BART Terrace	High	Developer Contribution/Grants & Subsidies/IIG/AHSC/EIFD	BART	BART
9B	BART Terrace Extension *	High	Developer Contribution/Grants & Subsidies/IIG/AHSC/EIFD	Developer	Developer
11	South Plaza Extension **	Essential	Developer Contribution/Grants & Subsidies/IIG/AHSC/EIFD	Developer	City (CFD-funded)
3A	MLK/Adeline/Woolsey Plaza **, ***	Medium	Grants & Subsidies/IIG/AHSC	City	City (CFD-funded)
3B	MLK/Adeline/Woolsey Intersection Redesign **, ***	High	Bond Funds/Alameda County/OBAG 4/Grants & Subsidies/IIG/AHSC/City's General Fund	City	City
15	Ashby Sidewalk Widening	Medium	Developer Contribution	Developer	City
16	MLK Sidewalk Widening (north)	Medium	Developer Contribution	Developer	City
17	MLK Sidewalk/Bikeway Widening (south)	Medium	Developer Contribution	Developer	City
5	TPSS Access Area including crane area **	High	BART or Developer Contribution/Grants/Subsidies	BART/Developer	BART
6	Station Entrance Plaza **	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	BART
-	BART Parking - ADA Rider Parking & Staff Parking (station agents, police)	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	BART
-	BART Rider Parking - General	Medium	BART or Developer Contribution/Grants/Subsidies	BART/Developer	BART
OTHER INFRASTRUCTURE ELEMENTS					
7A	North Platform Egress Stair, BART Vents & TPSS Equipment	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	BART
7B	TPSS Replacement Area	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	BART
8	North Plaza Stair (to be rebuilt)	High	BART or Developer Contribution/Grants/Subsidies	Developer	BART
10	South Plaza Stair (to be rebuilt)	Essential	Developer Contribution/Grants/Subsidies	Developer	BART
14	ADA and Bike Ramps (new) **	Essential	Developer Contribution/Grants/Subsidies	Developer	Developer
12	South Platform Egress Stair + BART Storage (access to be reconfigured)	High	Developer Contribution/Grants/Subsidies	Developer	BART
13	BART Vents (to be extended above plazas)	High	Developer Contribution/Grants/Subsidies	Developer	BART
4B	Required Emergency Access + Turn Around ** , ****	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	Developer

Notes:

* Potential extension, not required if building is built up to Existing BART Terrace.

** Location and geometry flexible if all performance requirements are met.

*** Funding for Adeline St Reconfiguration subject to identification of City financial resources to fund improvements; City has identified these improvements as a top priority for funding.

**** 4A refers only to that segment of 4 within the City's ROW; 4B refers only to that segment of 4 within BART's parcel.

Exhibit A

SCHEDULE 9.2.1
ODS REQUIREMENTS

The City's future Objective Design Standards (ODS) for the West Lot shall be binding on BART and the West Lot Developer without respect to any waivers, incentives or other exceptions that may otherwise be available under the Density Bonus Law or other provision of law, and BART shall require the West Lot Developer to comply with the Final ODS utilizing its real estate agreements, provided that:

1. City zoning is consistent with AB 2923 in that it allows a density of at least 75 dwelling units per acre and a height of at least 7 stories, and does not require parking in excess of the AB 2923 maximums;

2. The ODS is adopted by City for the West Lot within the Approval Period;

3. City's Preliminary and Final ODS include standards that are applicable to development that qualifies for a density bonus under the state Density Bonus Law and allow for greater heights than existing zoning ("**ODS Density Bonus Standards**"). The ODS Density Bonus Standards must (a) allow heights of at least 85 feet without a maximum number of stories, and (b) allow (but not require) that development occur in BART's Zone of Influence ("**ZOI**");

4. The ODS Density Bonus Standards, when applied to a hypothetical development that (a) is within the net developable area ("**NDA**") footprint shown in Schedule 9.2.2, the Capacity Study, and (b) has a height no greater than 8 stories, allow for a gross residential square footage of at least 600,000 sq ft.; and

5. The ODS Density Bonus Standards, when applied to a hypothetical development within the NDA that has a height over 85 feet but within the maximum height allowed by the ODS Density Bonus Standards, allow for a gross residential square footage of at least 750,000 square feet.

The Parties agree that an 8-story development under ODS Density Bonus Standards meeting the above requirements will allow for at least 600 units, based on an average net floor area of 750 square feet per unit, assuming a 75% efficiency factor.

Notwithstanding the foregoing, the West Lot Developer may invoke waivers, incentives or other exceptions, to the extent permitted by law, but only with respect to (a) zoning requirements other than those set forth in or modified by the ODS, (b) ODS requirements pertaining to minimum square footage of active or non-residential ground floor uses , but only to the extent such requirements exceed 15,000 square feet, inclusive of the 5,000 square feet of community/civic commercial space, and (c) other ODS requirements that do not pertain to height limits, setbacks/step-backs, open space or massing breaks.

Exhibit A

Net Developable Area

The NDA is defined as the gross developable area of the West Lot, as shown in Schedule 9.2.2, the Capacity Study. The NDA assumes development will occur in the BART ZOI. The NDA shown in the Capacity Study shall not be altered for purposes of determining compliance of ODS with these ODS Requirements, regardless of any later alterations made to the location of BART infrastructure, public site circulation, or building footprints, or any other considerations of development feasibility that may arise in connection with a proposed development project.

The final NDA shall be used solely for the purposes of calculating ODS Capacity and shall not otherwise bind BART, the City or the West Lot Developer in any manner, including with respect to the size, location or configuration of the development footprint for the final project.

ODS Capacity

The amount of gross residential square footage allowed under the applicable Density Bonus Standards ("**ODS Capacity**") shall be calculated by applying R-BMU zoning requirements to a hypothetical project eligible for density bonus within the NDA at the heights specified in paragraphs 4 and 5 above, as applicable, and accounting for square footage that is lost due to required setbacks, step-backs, massing breaks, or other required features (e.g. fire and life safety requirements) required under by the ODS Density Bonus Standards. The determination of ODS Capacity shall be made by Raimi if mutually agreed by the Parties, or if not, then a design professional such as a member of the American Institute of Certified Planners (AICP) or licensed architect, to be selected by mutual agreement of BART and the City. The determination of ODS Capacity shall use the same extrinsic assumptions used in the agreed-upon Capacity Study (to the extent not impacted by the ODS), including without limitation the number of stories (with respect to paragraph 4 above only), space required for emergency access, and the amount of parking assumed for each building. ODS Capacity will be calculated for the entirety of the West Lot development and not individual buildings or blocks. For purposes of the ODS Capacity calculation, residential square footage shall not include square footage for parking.

Exhibit A

SCHEDULE 9.2.2
CAPACITY STUDY

Purpose

BART and the City of Berkeley engaged Raimi + Associates to analyze the development capacity of the Ashby BART Station West Lot to inform their negotiations over future transit-oriented development projects at the site. The net developable area of the site, as defined below, will be used to calculate the total amount of development that is permitted under the objective design standards for the site that are to be developed and adopted by the City of Berkeley, to ensure that the ODS meet the provisions of Schedule 9.2.1. ODS meeting the provisions of Schedule 9.2.1 will be binding on the West Lot Developer via restrictive covenants and BART's real estate agreements.

Methodology

Net developable area (NDA) is defined as the developable area of the West Lot, exclusive of surface areas utilized for public site circulation and BART infrastructure. For the purpose of this capacity study, hypothetical West Lot development areas were determined by the access requirements for the site that were established in consultation with BART and City of Berkeley transportation planners, engineers and public safety staff. An additional emergency vehicle access (EVA) is required through development area B. The total NDA is calculated as 123,000 square feet (see table 1), or approximately 2.82 acres.

Raimi + Associates created architectural models of hypothetical buildings within the NDA, as shown in Figure 1, using the site design assumptions agreed upon by the parties and listed below, for the purpose of estimating the maximum potential development capacity of the site.

Figure 1. Net Developable Area

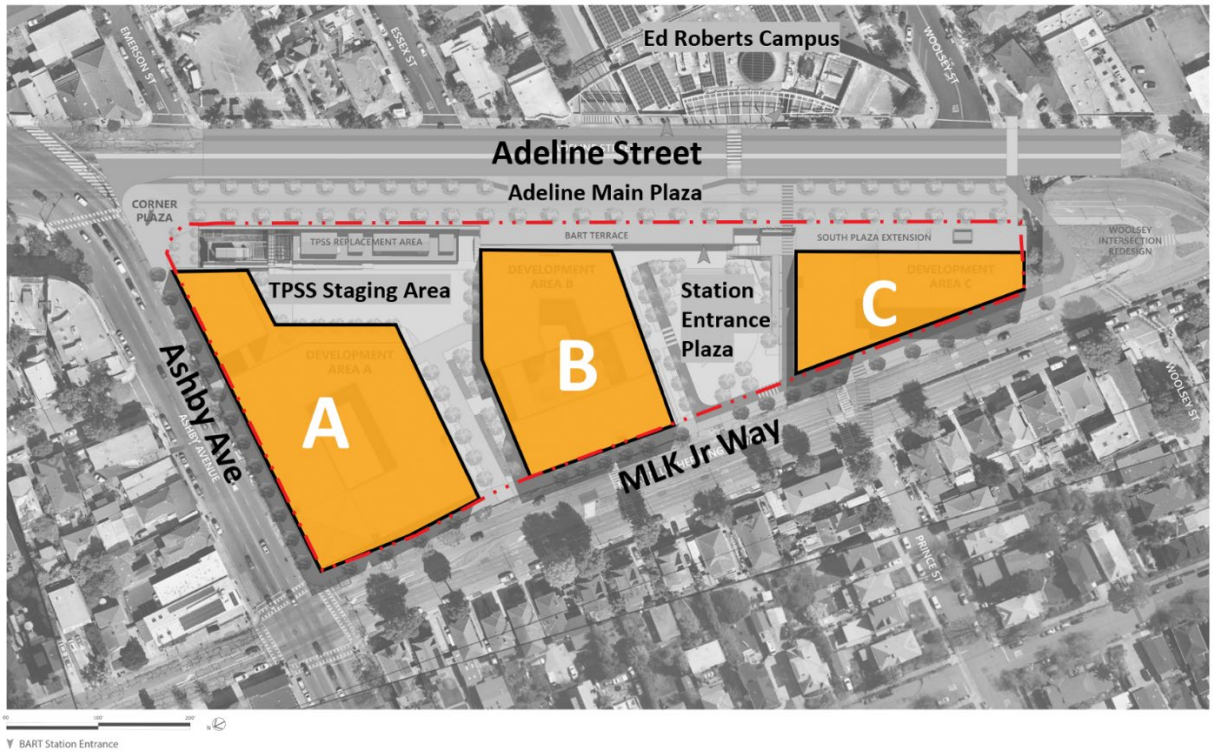


Exhibit A

Table 1. Net Developable Area

Development Area A	~58,300 SF
Development Area B	~41,400 SF
Development Area C	~23,300 SF
Net Developable Area	**123,000 SF**

Site Design Assumptions

- Gross residential floor area, as calculated in "Capacity Findings" below, includes residential units, horizontal and vertical circulation, common spaces, and utility and maintenance spaces.
- Estimated unit counts assume an average gross unit size 1000 sf. Unit counts were calculated per floor per building and rounded down to number of full units per floor.
- Approximately 12,850 square feet of commercial / non-residential space. Any additional commercial space would reduce residential floor area and unit count.
- Development project is assumed to take advantage of state density bonus waivers and concessions to supersede the following R-BMU zoning provisions:
    - Maximum height of 7 stories
    - Active frontage location requirements
    - Parking structure design, underground or located behind conditioned building space
    - On-site pedestrian access from Ashby Avenue
- Mid-rise construction, with Buildings A and B up to 7 stories, and Building C up to 8 stories (requires all access to Building C to be from Adeline or MLK, no access to Station Entrance Plaza).
- EVA modeled through building B included a 60-foot wide connection that included a 20-foot wide emergency vehicle accessway (to be expanded to 26 feet if aerial operations required) and landscaped/stoop areas to activate the through access. The emergency vehicle access is likely to be required to be designed as a pedestrian pathway in the ODS. Bridges will be allowed over the EVA if they do not exceed 30 feet in depth and include a minimum 20 feet high passageway for emergency vehicles.
- 65-foot wide double loaded corridor buildings. In practice, this would be an average and provide space for building articulation, projections, and balconies that may increase or decrease the building width.
- Construction within the BART tunnel Zone of Influence is assumed (8,220 sf of net developable area, about 7% of total net developable area).
- Sidewalks: 13 feet on Ashby, 15 feet on MLK north of station access, 22 feet on MLK south of station access which also includes two-way cycletrack.
- Vehicle Parking:
    - BART rider parking: minimum 11 ADA spaces + 3 staff spaces (co-located in a residential garage).
    - Residential parking goal: 1 space per 5 units (not necessarily located evenly across the site; spaces may be in one garage located within a single building). Goal is only achievable with parking below grade under Building C, which may be costly.
- Bike Parking:
    - Bike station: minimum of 128 spaces – 3,000 to 4,000 sf

  - Shared bike facilities: 23 spaces, external to buildings, easy access to station at 3 feet per bike = ~70 linear feet.
  - Bike lockers: minimum 46 lockers, internal space, ~2,250 sf, about 102 feet x 22 feet
  - Bike racks: minimum 134 racks at 3 feet per 2 bikes, 200 linear feet of bike racks.
- Approximately 17,000 sf reduction of floor area is assumed for façade articulation and other design requirements that would likely result from ODS, including the following potential requirements:
  - Maximum building length fronting Ashby Avenue shall not exceed 240 feet.
  - Façade planes shall not exceed 160 measured from a building corner or major building break.
  - Major breaks shall be a minimum 8 feet wide and 8 feet in depth.
  - Where ground floor residential units front MLK Jr Way, the first two floors shall be set back a minimum of 5 feet to provide space for stoops, landscaping, and improve privacy for ground floor units.
  - Enclosed Courtyards shall have a minimum width of 60 feet.

Capacity Findings

Raimi + Associates estimated the West Lot development capacity at approximately 632,000 square feet of gross residential floor area, or approximately 624 dwelling units (see Table 2).

These assumptions and findings shall be used solely for the purposes of calculating ODS Capacity per Schedule 9.2.1, and shall not otherwise bind BART, the City, or the West Lot Developer in any manner, including with respect to the size, location, or configuration of the development footprint for the final project.

Table 2. Estimated Development Capacity

	Gross Residential Floor Area, square feet (SF)	Commercial / Non-residential Floor Area, SF	Total Floor Area, SF	Dwelling Units	Residential Parking Spaces	Other Parking
Building A	299,158	4,390	303,548	298	118	
Building B	189,854	3,915	193,769	187	-	28
Building C	143,311	4,570	147,881	139	-	
Totals	**632,323**	**12,875**	**645,198**	**624**	**118**	**28**

SCHEDULE 12.3.1
West Lot Notice of CC&R Termination

RECORDING REQUESTED BY:

Old Republic Title Company

AND WHEN RECORDED RETURN TO:

San Francisco Bay Area Rapid
Transit District
2150 Webster Street, 9th Floor
Oakland, CA 94612
Attn: Real Estate Manager

APN 053-1597-039-04 & unassessed parcel

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Section 27383. Government Agency Acquiring Title.

The undersigned(s) declare(s):
Documentary Transfer Tax is $0.00; Exempt pursuant to Rev. & Tax. Code § 11922

( ) computed on full value of property conveyed, or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.
( ) unincorporated area: (X) City of Berkeley, State of California

TERMINATION OF COVENANTS AFFECTING REAL PROPERTY

Termination of Covenants Affecting Real Property

This Termination of Covenants Affecting Real Property ("Termination") is made by and between the San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("Owner") and the City of Berkeley, a charter city ("City"), effective as of the date of its recordation in the Official Records of Alameda County, California.

RECITALS

A. Owner is the fee simple owner of the real property in the City of Berkeley, County of Alameda, State of California, consisting of the parcel identified by Assessor Parcel Number 053-1597-039-04 and the non-assessed parcel (collectively "Property"), more particularly described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: non-assessed parcel.

B. Owner caused the Memorandum of Covenants affecting the Property to be recorded on _____ as Instrument Number _____ in the Official Records of Alameda County, California ("Memorandum of Covenants").

C. Section 24 of the Memorandum of Covenants provides that the Memorandum of Covenants shall be terminated upon the recordation of a notice of termination, signed by Owner and City, in the Official Records of Alameda County, California.

D. Owner and City have agreed that the conditions for the termination of the Memorandum of Covenants have been satisfied, and they desire that the Memorandum of Covenants is terminated.

E. City's termination of the Memorandum of Covenants is authorized in accordance with the "Ashby Bart Station Transit-Oriented Development Exchange Agreement" dated _____, consented to, accepted, approved, and authorized by the City pursuant to Ordinance No. _____ entitled "Ordinance Authorizing Exchange of Real Property for Development of Ashby Bart Station Property", recorded on _____ as Instrument Number _____ in the Official Records of Alameda County, California.

NOW, THEREFORE, for valuable consideration, receipt of which is acknowledged, Owner and City agree as follows:

AGREEMENT TERMINATING COVENANTS

1. Owner and City agree that the above recitals are accurate.

2. Owner and City agree that the Memorandum of Covenants is hereby terminated, and of no further force and effect, as of the date of recordation of this Termination. Upon recordation of this Termination, the Memorandum of Covenants shall no longer affect or encumber the Property in any way.

(signatures on following page)

OWNER:

Date:_____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

_____

By:

Its:

Approved as to Form

_____

By:
Its:

CITY:

Date:_____

CITY OF BERKELEY, a charter city.

_____

By:

Its:

Approved as to Form

_____

By:
Its:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____, , before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Notary Public [seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____, , before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Notary Public [seal]

SCHEDULE 12.3.2

East Lot Notice of CC&R Termination

RECORDING REQUESTED BY:

Old Republic Title Company

AND WHEN RECORDED RETURN TO:

Farimah Brown
City Attorney
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

APN 053-1703-009

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Section 27383. Government Agency Acquiring Title.

The undersigned(s) declare(s):
Documentary Transfer Tax is $0.00; Exempt pursuant to Rev. & Tax. Code § 11922

( ) computed on full value of property conveyed, or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.
( ) unincorporated area: (X) City of Berkeley, State of California

TERMINATION OF COVENANTS AFFECTING REAL PROPERTY

Termination of Covenants Affecting Real Property

This Termination of Covenants Affecting Real Property ("Termination") is made by and between the City of Berkeley, a charter city ("Owner") and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("BART"), effective as of the date of its recordation in the Official Records of Alameda County, California.

RECITALS

A. Owner is the fee simple owner of the real property in the City of Berkeley, County of Alameda, State of California, consisting of the parcel identified by Assessor Parcel Number 053-1703-009 ("Property"), more particularly described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq., in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

B. Owner caused the Memorandum of Covenants affecting the Property to be recorded on _____ as Instrument Number _____ in the Official Records of Alameda County, California ("Memorandum of Covenants").

C. Section 14 of the Memorandum of Covenants provides that the Memorandum of Covenants shall be terminated upon the recordation of a notice of termination, signed by Owner and BART, in the Official Records of Alameda County, California.

D. Owner and BART have agreed that the conditions for the termination of the Memorandum of Covenants have been satisfied, and they desire that the Memorandum of Covenants is terminated.

E. City's termination of the Memorandum of Covenants is authorized in accordance with the "Ashby Bart Station Transit-Oriented Development Exchange Agreement" dated _____, consented to, accepted, approved, and authorized by the City pursuant to Ordinance No. _____ entitled "Ordinance Authorizing Exchange of Real Property for Development of Ashby Bart Station Property", recorded on _____ as Instrument Number _____ in the Official Records of Alameda County, California.

NOW, THEREFORE, for valuable consideration, receipt of which is acknowledged, Owner and BART agree as follows:

AGREEMENT TERMINATING COVENANTS

1. Owner and BART agree that the above recitals are accurate.

2. Owner and BART agree that the Memorandum of Covenants is hereby terminated, and of no further force and effect, as of the date of recordation of this Termination. Upon recordation of this Termination, the Memorandum of Covenants shall no longer affect or encumber the Property in any way.

OWNER:

Date:_____ CITY OF BERKELEY, a charter city.

_____

By:

Its:

Approved as to Form

_____

By:

Its:

(signatures continued on following page)

BART:

Date:_____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

_____

By:

Its:

Approved as to Form

_____

By:

Its:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____, , before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Notary Public [seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____, , before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Notary Public [seal]