



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

www.CityofSacramento.org

Meeting Date: 1/18/2011

Report Type: Consent

Title: Intermodal Site Acquisition: Purchase of Railyards Parcel B and Sliver Easement

Report ID: 2011-00035

Location: District 1

Recommendation: Adopt a Resolution Approving the Purchase and Sale Agreement and Joint Escrow Instructions (the "Inland PSA") with IA Sacramento Development, L.L.C. ("Inland") for Parcel B (APN No. 002-0010-046) and the Sliver (portion of APN No. 002-0010-053) which provides for: 1) Taking a credit of \$29.3 million for value of Parcel B against the City's \$55 million Advanced Payment under City Agreement No. 2006-1405; 2) Receiving a payment of \$3.235 million, which is the principal difference between the \$55 million Advanced Payment and the Arbitrator's valuation of Parcels A and B of \$52.35 million plus four years of interest; 3) Approving the Deeds of Partial Reconveyance to remove the City's existing deeds of trust against Parcel B and Parcel D (APN No. 002-0010-49); 4) Authorizing the City Manager or his designee to accept title to Parcel B and the Sliver by execution of Certificates of Acceptance; 5) Authorizing the City Manager or his designee to convey an easement to UPRR for the Sliver; and 6) Authorizing the City Manager or his designee to execute escrow instructions, enter into agreements to remove title encumbrances, and take all other actions as necessary to close escrow for the acquisition of Parcel B and the Sliver and to convey an easement for the Sliver as required for the Track Relocation and Sacramento Intermodal Transportation Facility project.

Contact: Fran Halbakken, Operations Manager, 808-7194, Department of Transportation

Presenter: None

Department: Transportation Department

Division: Planning & Policy

Dept ID: 15001041

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Attachment 2-Assessor Parcel Map
- 4-Attachment 3-Aerial Maps Parcels A and B
- 5-Attachment 4-Plat Map Parcel B Cover Sheet
- 5b-Attachment 4-Plat Map Parcel B
- 6-Attachment 5-Plat Map Sliver
- 7-Resolution
- 8-Exhibit A-Purchase and Sale Agreement with Escrow Instructions
- 9-Exhibit B-Sliver Easement

City Attorney Review

Approved as to Form
Sheryl N. Patterson
1/14/2011 1:53:37 PM

City Treasurer Review

Prior Council Financial Policy Approval or
Outside City Treasurer Scope
Russell Fehr
1/13/2011 12:08:01 PM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 1/13/2011 6:46:31 PM

Assistant City Manager: John Dangberg - 1/14/2011 12:04:17 PM

Description/Analysis

Issue: Whether to purchase Parcel B for the amount of \$29.33 million as established by the ruling in the Railyards Intermodal property valuation arbitration proceedings and to obtain a small strip of land abutting Parcel B which is 2.5 feet wide and a total of 428 sq. ft. (the “Sliver Addition”) at no cost to accommodate a track crossing of the new UPRR mainline tracks, in consideration for Inland’s payment of \$3.235 million as the net amount owing under the prior purchase and sale agreement with S. Thomas Enterprises of Sacramento, LLC (the “Thomas PSA”), and City’s release of the deed of trust against Parcel D. The two parcels of land (Parcel B and Sliver) are needed for the City’s Track Relocation project, which is the first phase of the City’s Intermodal Transportation Facility project.

In December of 2006, the City made an Advanced Payment of \$55 million towards the cost of Parcel A, the existing Sacramento Valley Station, and closed escrow. The Thomas PSA provided the City with the rights to acquire Parcel B by applying its credit of the difference between the Advanced Payment and the value of Parcel A. The fair market value of Parcel A and B, as of December 28, 2006, was to be determined through negotiations, mediation and arbitration. Once the value of Parcels A and B was determined, the City could then acquire Parcel B, and remaining amount of principal would be owed, and the City would receive interest on the difference between the Advanced Payment and the value of Parcel A from January 2007 until the close of escrow on Parcel B. The City has a first deed of trust on an 8.74 acre area known as Parcel D, which is located northwest of the future intersection of 5th Street and Railyards Blvd., to secure such repayment.

Thomas needed the City to provide the Advanced Payment to facilitate its acquisition of the larger 238 acre Railyards property from Union Pacific Railroad Company (UPRR), and there was insufficient time to obtain an appraisal for Parcels A and B to determine their fair market value before the Thomas and UPRR transaction was set to close. Prior to the City’s approval of the Advanced Payment, Thomas had submitted an appraisal which claimed that Parcels A and B had a value greater than the amount of the Advanced Deposit.

In order to comply with CEQA, NEPA, and the federal acquisition regulations for the Intermodal project, the City could not commit to purchasing Parcel B until the environmental studies and two appraisals were completed. Before the appraisals could be completed, technical studies to determine how Parcels A and B could be developed privately had to be prepared for the appraisers before they could opine as to their fair market value. Also, the NEPA process took almost three years to finish because (i) preliminary engineering design for the Track Relocation project first had to be completed before the environmental analysis could be conducted,

(ii) consultation with Caltrans and the State Office of Historic Preservation was required for compliance with Section 106 and 4f, and (iii) the Environmental Assessment and Finding of No Significant Impact had to be coordinated among five separate federal and state agencies.

Thereafter, the City was able to make an offer to purchase Parcel B, which was rejected by Thomas. Since the parties could not agree on the purchase price, the matter was submitted to arbitration. Those proceedings took nine months to complete. In summary, the environmental and appraisal process took three and one-half years to complete before the City could be in a position to purchase Parcel B.

Less than two months after the arbitrator issued his ruling on the valuation of Parcels A and B of \$52.35 million, Thomas's ownership of the Railyards property was placed in jeopardy by the foreclosure proceedings initiated by its lender, IA Rail Sacramento, L.L.C. On October 22, 2010, ownership of the Railyards property was transferred to a new entity affiliated with the lender, IA Sacramento Holdings, L.L.C. ("Inland"). As a result, Thomas was unable to meet its obligations to transfer Parcel B and repay the City the \$2.65 million principal difference plus interest on \$31.95 million difference between the \$55 million Advanced Payment and the \$23.05 million value of Parcel A.

Although Inland was not a party to the Thomas PSA, arguably it benefitted from the City's Advanced Payment because it facilitated Thomas' purchase of the Railyards. Inland issued loans in the total amount of \$185 million secured against the Railyards property which were due and payable in April, 2010, well before the amount owed to the City was due in January, 2012. As part of an overall resolution of the various Railyards agreements between the City and Thomas, and the City's and Inland's commitment to work cooperatively to advance the Railyards development, the City is willing to accept payment by Inland of \$2.65 million principal difference plus interest only on this amount, for a total payment of \$3.235 million, to be paid through escrow one year earlier than the due date in the Thomas PSA. As part of this transaction, the City would release its deed of trust on Parcel D. In addition, Inland agreed to transfer the Sliver to the City at no cost. The Sliver is needed to accommodate the Track 150 crossing of the new UPRR mainline tracks. The City needs to convey to UPRR an easement for the Sliver so it can become part of the mainline track easement.

Policy Considerations: The proposed actions to advance the Intermodal project by acquiring Parcel B and the Sliver are consistent with the City's Strategic Plan goals of achieving sustainability and enhancing liveability, and expanding

economic opportunities. Similarly, the actions are consistent with the City's 2030 General Plan to promote development of an integrated, multi-modal transportation system to reduce air pollution and greenhouse gases.

Environmental Considerations:

California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA): The Intermodal and Track Relocation projects are subject to both CEQA and NEPA compliance due to federal funding requirements for the planned improvements on Parcel B. The City is the CEQA lead agency and the Federal Highway Administration (FHWA) is the NEPA lead agency. On December 11, 2007, the City approved the Railyards Specific Plan EIR, which evaluated the future Intermodal project at a program-level of analysis. Thereafter, on June 2, 2009, the City Council approved a Mitigated Negative Declaration for the Track Relocation project under CEQA, and a Notice of Determination was filed on June 8, 2009.

On March 27, 2009, FHWA released the Environmental Assessment and Section 4(f) Evaluation Report (EA) for the Intermodal project for public review. In the EA, the Intermodal project is defined as a three phases of implementation, each phase with independent utility, with Track Relocation as phase 1. FHWA also consulted with the State Office of Historic Preservation (SHPO) in accordance with Section 106 and on August 28, 2009 entered into a Programmatic Agreement, which also included the City, Caltrans and the Federal Railroad Administration and the Federal Transit Administration as signatories. On August 31, 2009, FHWA issued a Finding of No Significant Impact and authorized the City to implement phases 1 and 2 of the Intermodal project. Therefore, all requirements of CEQA, NEPA and Sections 4(f) and 106 under federal law have been met and no further environmental review is required to approve the proposed action.

Sustainability Considerations: The Intermodal project will provide facilities to accommodate rail freight movement, heavy passenger rail trains, light rail transit, intercity and local buses, and taxis, as well as bicycle and pedestrian transportation modes. The Track Relocation project, which relocates the existing UPRR mainline freight tracks and passenger tracks and platforms, will improve safety and convenience for Amtrak and Capitol Corridor passengers, as well as facilitate the future development of the Intermodal facility. The improvements are consistent with the City's sustainability goals to provide better accessibility to public transportation.

Commission/Committee Action: None.

Rationale for Recommendation: Although the purchase price for Parcel B is much higher than the City’s appraisal, the PSA provided for binding arbitration as the method for setting the valuation of the property. The City needs to acquire Parcel B in order to relocate the UPRR tracks, which is to be funded with \$64 million in federal, state and Amtrak construction grants. Relocating the existing UPRR tracks will allow for the expansion of the Sacramento Valley Station (Parcel A) into the planned future Intermodal facility encompassing Parcel B. The City expects to leverage the Parcel B purchase price and Sliver value as the 20% local match to obtain future federal Intermodal grants in the amount of approximately \$146.5 million.

Financial Considerations: In making the Advanced Payment, the City paid \$30 million in cash and issued a promissory note for the remaining \$25 million. The City paid off the note in December 2008 and paid \$3,311,458 in interest, for a total investment of \$58,311,458. The sources for this funding are shown below:

<u>Sources</u>	<u>Amounts</u>	<u>Percent</u>
625 H Street	\$ 2,996,540	5.14%
Lot A	\$ 5,000,000	8.57%
CRCIP	\$ 2,500,000	4.29%
Old Measure A	\$ 5,563,000	9.54%
New Measure A	\$42,251,918	72.46%
Total Acquisition Cost	<u>\$58,311,458</u>	<u>100.00%</u>

The value of Parcels A and B has been set through arbitration at \$52.35 million; absorbing all of the Measure A contribution. Therefore, the payment of \$3.235 million by Inland can be programmed for General Fund expenditures.

Emerging Small Business Development (ESBD): There are no ESBD contracting opportunities associated with the acquisition of Parcel B and the Sliver.



Background

Intermodal Project

The City has been planning for the conversion of the existing Sacramento Valley Station at 5th and I Streets in downtown Sacramento, the location of the historic Southern Pacific Railroad Depot building, into an expanded multi-modal transportation facility for over a decade. This project, the Sacramento Intermodal Transportation Facility, involves: (1) the acquisition of right of way for a total of 32.68 acres; (2) relocation of the existing Union Pacific Railroad mainline tracks farther north to straighten out the existing curve alignment for improved railroad operations and passenger safety; (3) construct new passenger platforms and facilities and bus parking areas to accommodate the growth in transit ridership; (4) rehabilitate the historic Depot building, including the recently completed utility upgrades and the pending seismic safety retrofit project; (5) relocate the existing light rail station to a north-south alignment to improve transfer connections; (6) constructing additional parking facilities; and (7) building a new passenger terminal building and facilities to improve the connections and services for transit passengers and accommodate growth in ridership. This project is to be funded through a variety of federal, state and local funding sources. In the future, high speed rail is to be extended to this facility.

Thomas Railyards Property Acquisition

S. Thomas Enterprises of Sacramento, LLC (“Thomas”), previously known as Millennia Sacramento, III, LLC, entered into a Purchase and Sale Agreement dated June 16, 2005 with the Union Pacific Railroad Company (UPRR) to acquire the 238 acre Downtown Railyards property (see Attachment 3) Escrow closed on this transaction on December 28, 2006. At the same time, Thomas conveyed to the City the 8.82 acre Parcel A, resulting in a net ownership of 229.18 acres.

City’s Intermodal Acquisition

On December 12, 2006, the City approved two agreements with Thomas; the Purchase and Sale Agreement and Joint Escrow Instructions, City Agreement No. 2006-1405 (the “Thomas PSA”) and the Track Relocation and Financing Agreement, City Agreement No. 2006-1406 (the “TRFA”). The Thomas PSA provided for the City to make an Advanced Payment of \$55 million, which was funded primarily (84%) from Measure A Intermodal grants, for Parcel A and Parcel B. The City acquired Parcel A, the 8.82 acre Sacramento Valley Station site. Parcel A includes the Depot that encompasses about 3 acres, for a net usable area of 5.82 acres. The Thomas PSA granted the City the right to purchase Parcel B, which is 23.86 gross acres and includes the UPRR mainline track easement comprising 17.46 acres, for a net usable area of 6.40 acres. Together the two parcels equal a total of 32.68 gross acres, but only offer a net usable developable area for Intermodal facilities of 12.22 acres. The location of Parcels A and B is shown in Attachments 2 and 3.

Track Relocation Agreement - In order to develop the Intermodal project on Parcels A and B, the existing UPRR mainline tracks have to be relocated. The TRFA estimated

this cost at \$45 million, and the City committed to fund the first \$40 million plus half of the cost over \$40 million. If the City was successful in obtaining state and federal Track Relocation project grants at a level higher than \$40 million, the cost split would occur after the grant amount if the total project cost exceeded the available grants funds. At the time the Thomas PSA and TRFA were approved, the plan was for the City to apply the amount of the excess payment for Parcels A and B under the Thomas PSA towards the City's \$40+ million commitment under the TRFA. In the interim, the City has been successful in obtaining federal and state grants to cover most of its funding commitment under the TRFA. As noted in a companion staff report regarding funding for the Track Relocation project, the TRFA is no longer applicable given Thomas' loss of the Railyards property through the Inland foreclosure action.

Appraisal Process - In order to determine the fair market value of Parcels A and B, the appraisers for both Thomas and the City assumed that the theoretical purchaser (a motivated private sector developer) would: (i) convey the Depot (3 acres) to the City because of its negative value due to the high renovation costs; and (ii) the City would fund all of the costs to relocate the UPRR tracks. They also placed a zero value on the 17.46 acre portion of Parcel B encumbered by the UPRR easement. In addition, both appraisers allocated their total valuation of the 32.86 acres between Parcels A and B equally.

The City's appraiser came up with a total value for Parcels A and B of \$8.2 million based on a finished lot price of \$135 per sq. ft., which was then adjusted under a "subdivision development approach" or discounted cash flow model to determine the purchase price. They adjusted the value to account for the time required (the holding costs) to relocate the UPRR tracks, obtain entitlements, build streets and utilities (infrastructure) and then sell the finished lots. They also deducted the cost for the infrastructure of \$17.5 million and possible additional environmental remediation costs of \$13.5 million. They assumed that the property could be developed with 1.6 million sq. ft. of primarily office use, and that the property under the freeway and to the west (1.82 acres) would only be used for surface parking.

Thomas' appraiser came up with an adjusted total value for Parcels A and B of \$85.765 million based on a finished lot price of \$200 per sq. ft. Thomas' appraiser used a "comparable sales approach" to determine value. Their appraisal assumptions used of a much shorter holding period, no infrastructure or environmental remediation costs, and 3.34 million sq. ft. of office, retail and residential development, including buildings within the 1.82 acre freeway parcel.

Arbitration Decision - The arbitrator, Honorable William L. Bettinelli (Ret.), issued an opinion of value on April 28, 2010 for Parcels A and B of \$52.350 million. He rejected both the City and Thomas' appraisals, but based his decision on the evidence presented in the volumes of documents and by the 18 witnesses during the two week hearing. The arbitrator made a ruling during the hearing that Thomas' purchase price of the larger 238 acre Railyards property from UPRR and all of the events that occurred after the Thomas PSA was signed (such as the Proposition 1C infrastructure grants)

were not relevant to the value of the subject property. In his ruling, Judge Bettinelli made the following findings:

1. The reserved Union Pacific Railroad Company (UPRR) easement encompassing 17.46 acres has no value.
2. The Depot encompassing 3 acres has no value.
3. The property under the I-5 freeway and to the west (freeway parcel), encompassing 1.82 acres (1.335 acres within Parcel A and 0.485 acres within Parcel B) has a value of \$20 per sq. ft. or a total of \$1,600,000.
4. A reduction in the remaining 10.4 net developable acres that would be needed for roads and other access was set at 20%, for a total reduction of 2.08 acres.
5. The value of remaining property encompassing a total of 8.32 acres was set at \$50,750,000 based on \$140 per sq. ft.

By applying these valuation adjustments, the price for Parcel A was set at \$23.050 million and the price for Parcel B was \$29.3 million, for a total value of \$52.35 million. The arbitrator awarded a “finished lot” price for raw undeveloped land and made no adjustments for the holding costs until the UPRR tracks were relocated (under the assumption the Depot parking revenues would cover such costs), nor deducted costs for infrastructure or environmental remediation.

The PSA provided for binding arbitration, so from the City’s \$55 million Advanced Payment, a deduction of \$23.050 million for Parcel A and \$29.3 million for Parcel B is to be taken, resulting in a net principal balance of \$2.650 million. Under the Thomas PSA, this amount plus interest on \$31.95 million (\$55 million minus \$23.050 million value of Parcel A) would be due and payable on January 1, 2012. Although the Thomas PSA provided for this interest payment from January 2007 through the date escrow closes, which currently is about \$6.35 million, Thomas can’t perform since it no longer owns the Railyards property nor does its limited liability company have any other assets.

Under the Inland PSA, Inland will pay the City the \$2.650 million principal difference and interest on that amount over the past four years of \$0.585 million, for a total of \$3.235 million. In addition, Inland will make payment through escrow, or almost one year earlier than when payment was due under the Thomas PSA. In return, the City would release its deed of trust on Parcel D, which was the security for payment of this purchase price differential. The location of Parcel D is shown in Attachment 2.

Sliver Parcel

Currently, State Parks moves its locomotives and related train equipment from Old Sacramento to the Boiler Shop within the Railyards Central Shops for maintenance along an existing north-south railroad track alignment known as Track 150. With the

relocation of the UPRR mainline tracks along the reserved UPRR easement (“Railroad Easement II”), a new crossing will be installed which will move the Track 150 crossing further east.

After completion of the Track Relocation design plans, it was determined that an additional small sliver of land 2.5 feet wide and encompassing a total of 428 sq. ft. (the “Sliver”) is needed to accommodate the new Track 150 crossing. The City had committed to Thomas to pay for the Sliver at the same price as the arbitrator sets for Parcel B. At the \$140 per sq. ft. price, the Sliver value is \$67,200; however, Inland has agreed to convey the Sliver to the City at no cost.

The City would convey to UPRR an exclusive easement for the Sliver at no cost and on the same terms and conditions as its existing mainline track Railroad Easement II. This easement conveyance requirement was set out in the City and UPRR Sacramento Valley Amtrak Station Construction, Maintenance & Operation Agreement dated November 23, 2009 (City Agreement No. 200-1044).

Parcel B Airspace Reservation

At the time the Thomas PSA was executed, Thomas intended to build above the UPRR easement along 5th Street, so it reserved the fee interest in the airspace all along the 17.46 acre UPRR easement, which extends from the I Street bridge to 12th Street. The reserved airspace is measured 1 centimeter above the top of the rail; however, UPRR controls all development within the 23 feet above its tracks. UPRR has granted the City rights to build the new passenger platforms and other improvements planned for the Track Relocation project within its reserved easement area.

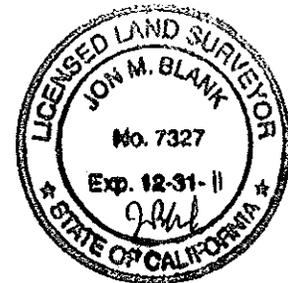
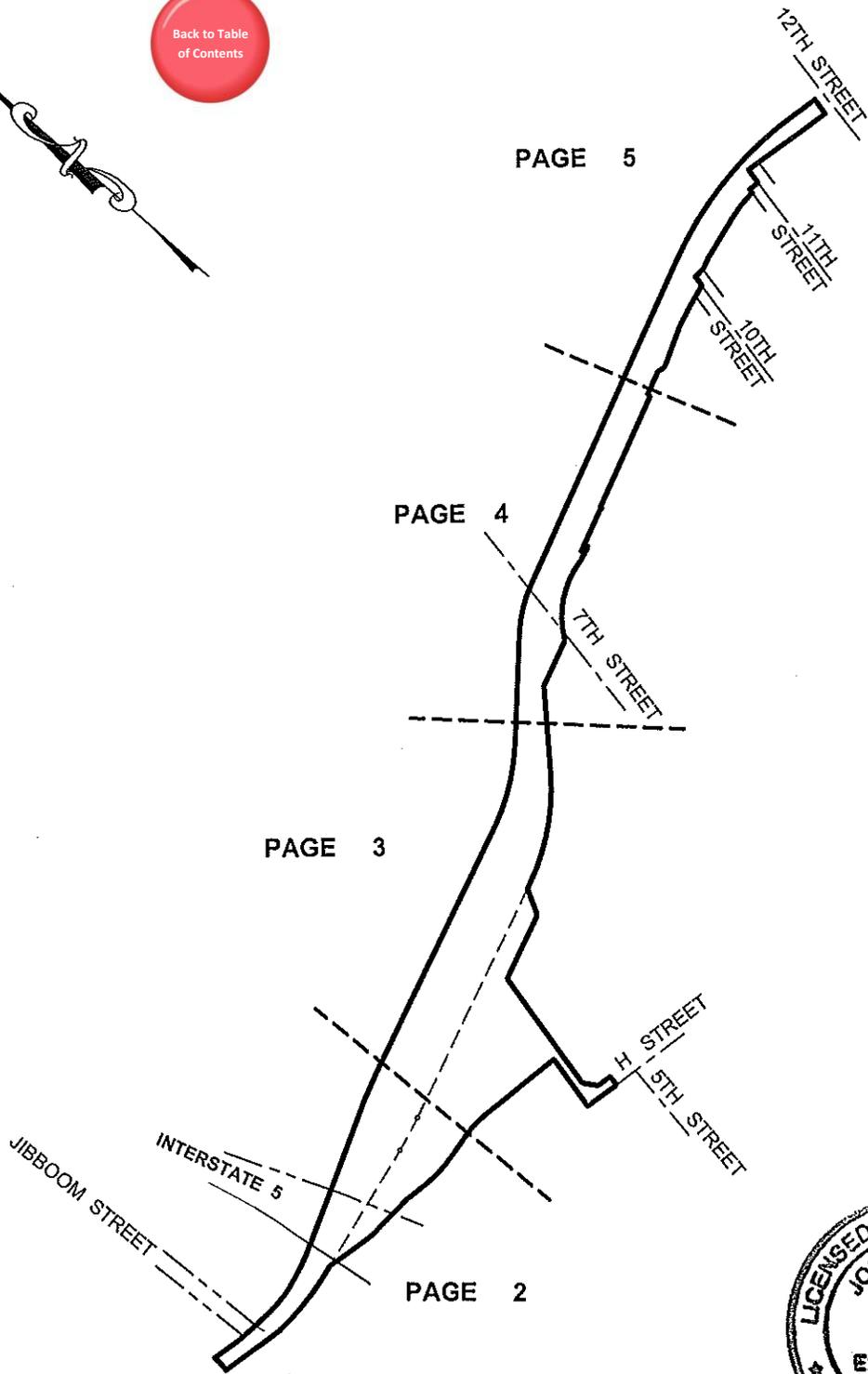
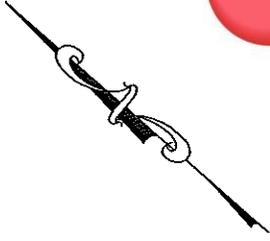
Subsequently, Thomas released its right to build above the UPRR tracks along 5th Street. However, Thomas was unwilling to release ownership of this airspace claiming it had some value. The planned high speed rail project, which is planned to be located above the UPRR tracks, would have to acquire rights from Thomas to build within this airspace. Under the Inland PSA, the City will acquire all of the rights to Parcel B, including the airspace above the UPRR tracks at no additional cost.





Attachment 4

Plat Map Parcel B



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EXHIBIT B

PARCEL B

CITY OF SACRAMENTO

STATE OF CALIFORNIA

SCALE:
NONE

DATE:
1/5/2011

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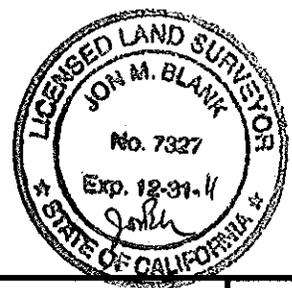
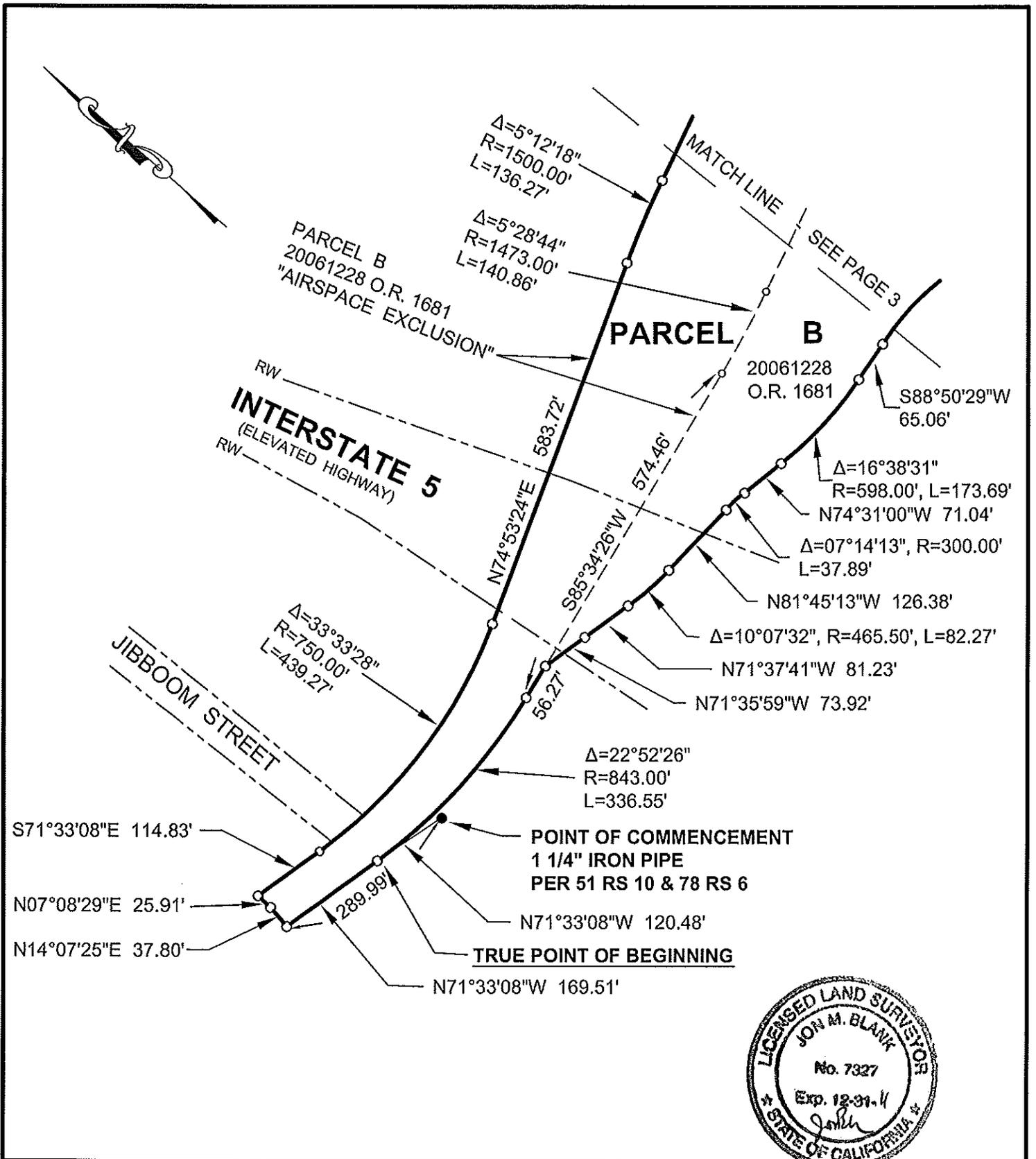
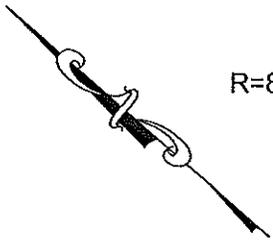


EXHIBIT B		SCALE: 1"=200'
PARCEL B		DATE: 1/5/2011
CITY OF SACRAMENTO	STATE OF CALIFORNIA	PAGE 2 OF 5 OF 5



MATCH LINE - SEE PAGE 4

$\Delta=23^{\circ}28'09''$
 $R=825.00', L=337.93'$

$S49^{\circ}53'43''W$ 326.94'

$\Delta=30^{\circ}11'59''$, $R=843.00'$
 $L=444.33'$



17.41'
 $S33^{\circ}42'41''W$
107.73'

$N80^{\circ}05'42''E$ 1035.82'

$S80^{\circ}05'42''W$ 985.70'

$S80^{\circ}05'42''W$
268.35'

PARCEL B

20061228 O.R. 1681

$S18^{\circ}25'46''W$ 490.56'

$S26^{\circ}43'54''E$ 62.45'

$S71^{\circ}36'39''E$ 57.14'

$S18^{\circ}27'33''W$ 40.00'

MATCH LINE - SEE PAGE 2

$\Delta=16^{\circ}45'28''$
 $R=463.00', L=135.42'$

$N74^{\circ}24'03''W$ 324.15'
 $N78^{\circ}20'43''E$ 219.75'

$N71^{\circ}32'23''W$
136.17'

H STREET
5TH STREET

EXHIBIT B

PARCEL B

SCALE:
1"=200'

DATE:
1/5/2011

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CITY OF SACRAMENTO

STATE OF CALIFORNIA

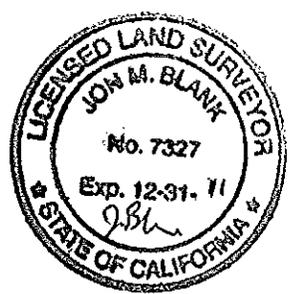
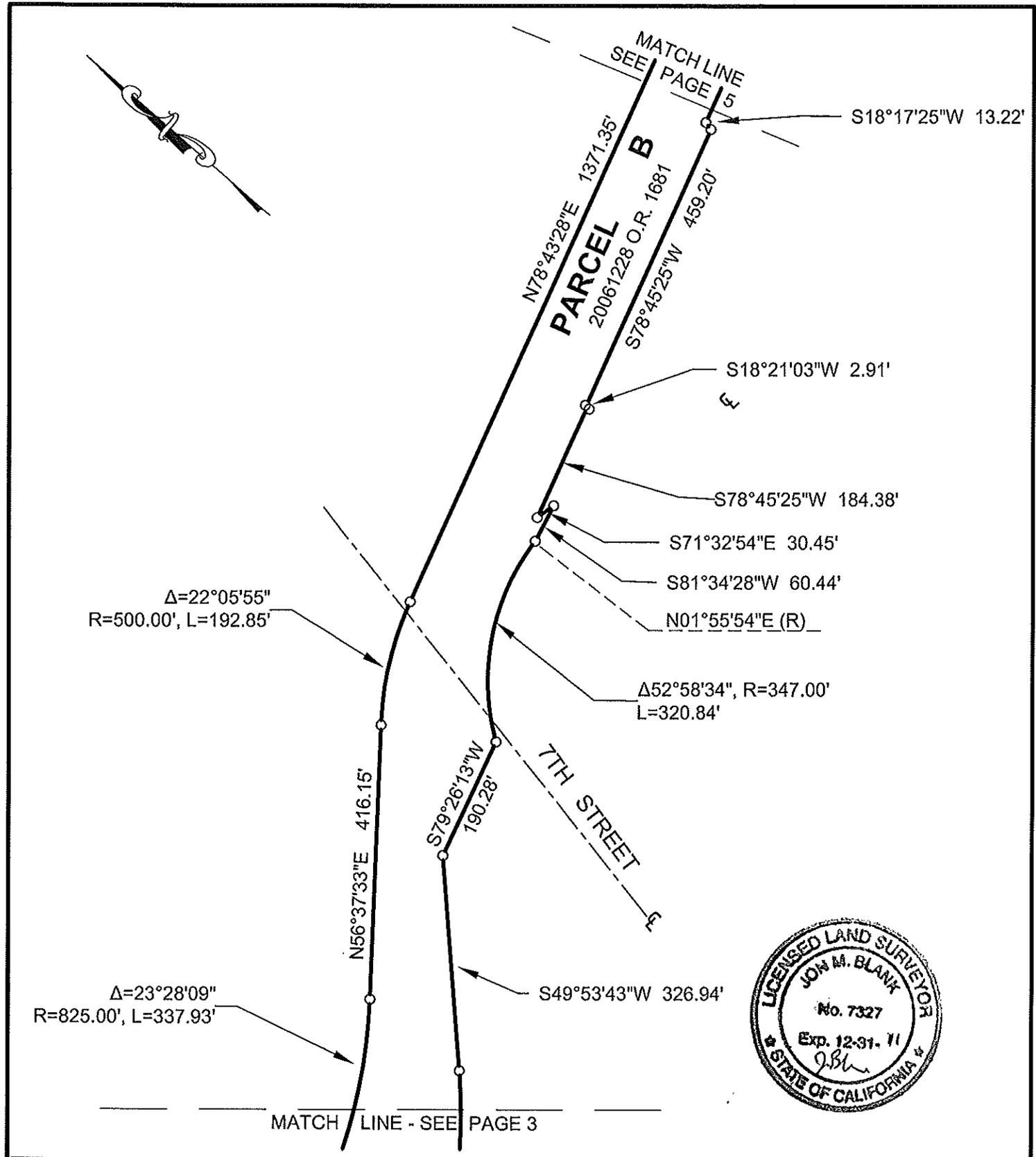
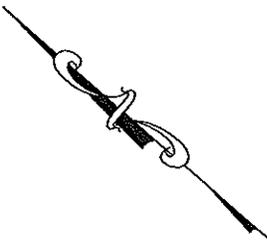


EXHIBIT B

PARCEL B

CITY OF SACRAMENTO

STATE OF CALIFORNIA

SCALE:
1"=200'

DATE:
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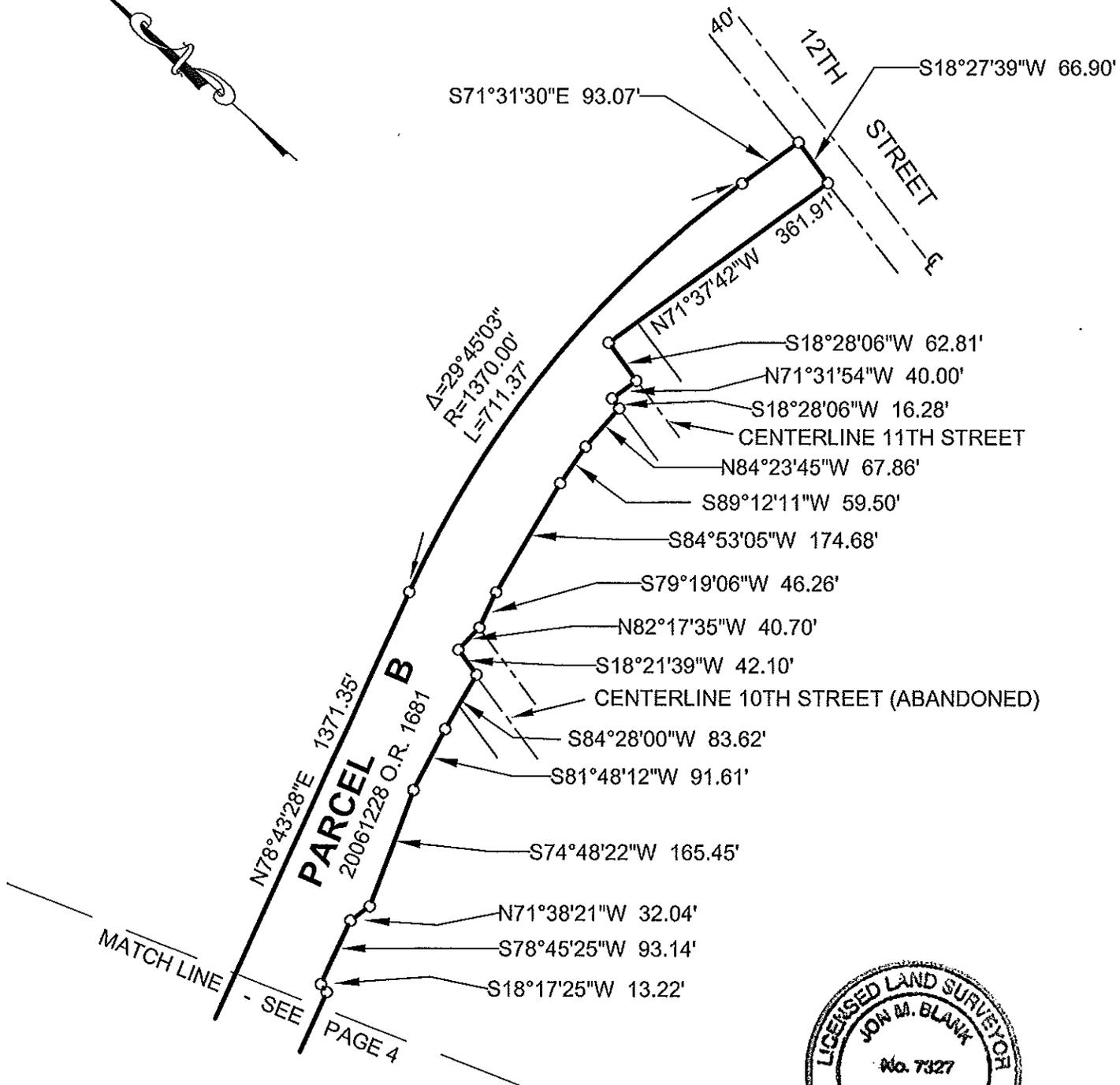
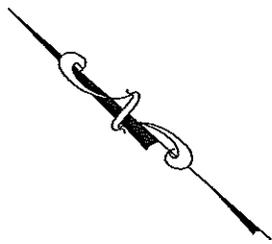


EXHIBIT B

PARCEL B

CITY OF SACRAMENTO

STATE OF CALIFORNIA

SCALE:
1"=200'

DATE:
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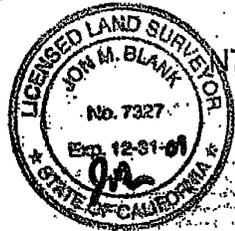
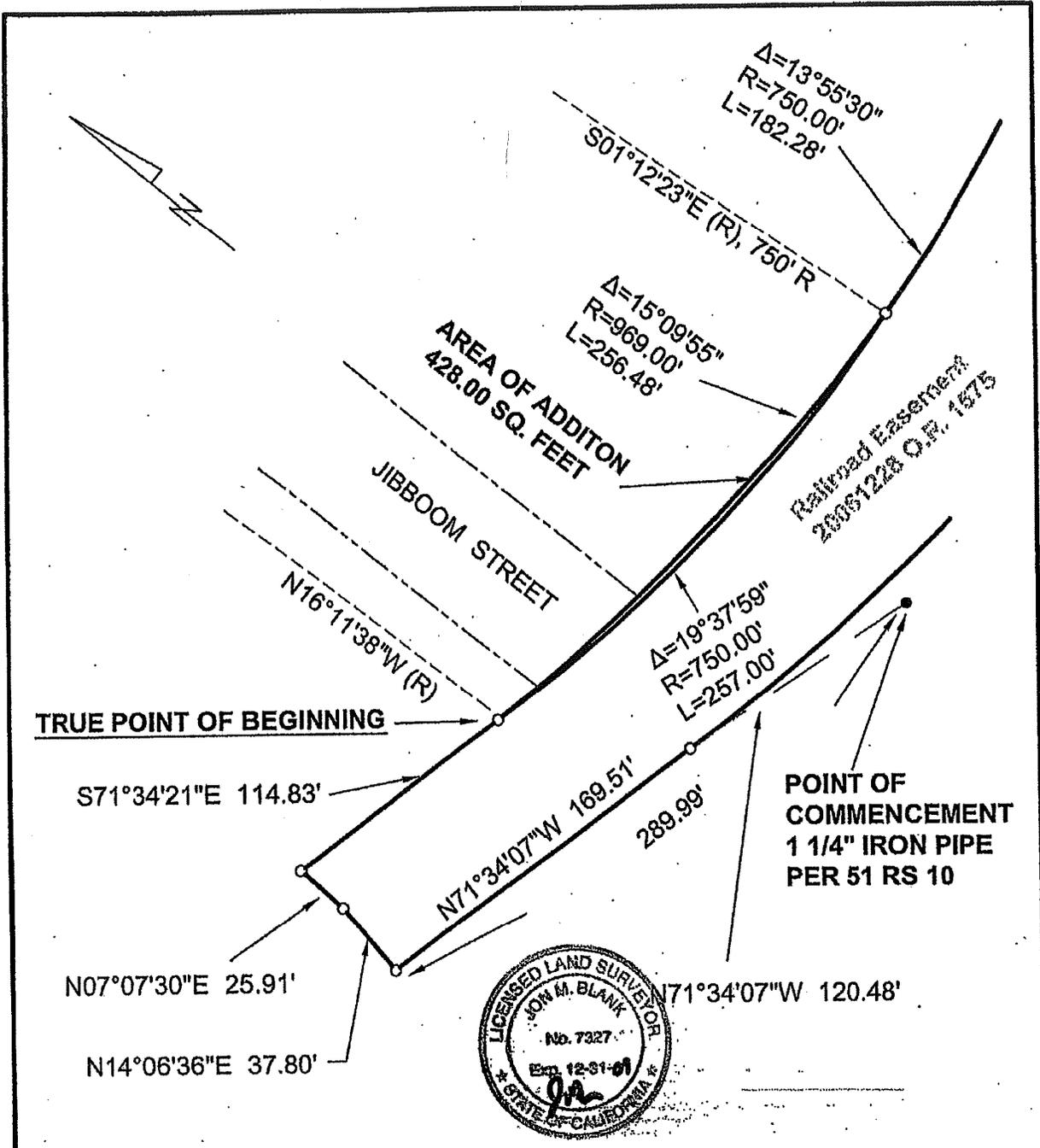


EXHIBIT B		SCALE: 1"=60'
2.5 FOOT SLIVER ADDITION TO		DATE: 09/01/2009
RAILROAD EASEMNT II		SHEET 1 OF 1
RECORDED IN BOOK 20061228 O.R. 1675		
CITY OF SACRAMENTO	STATE OF CALIFORNIA	



RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVING THE PURCHASE AND SALE AGREEMENT FOR ACQUISITION OF PARCEL B (APN NO. 002-0010-046) AND SLIVER (A PORTION OF APN NO. 002-0010-053) FROM IA SACRAMENTO HOLDINGS, L.L.C. FOR THE INTERMODAL PROJECT AND CONVEYING AN EASEMENT FOR THE SLIVER TO UNION PACIFIC RAILROAD COMPANY

BACKGROUND

- A. On December 12, 2006, the City Council approved the Purchase and Sale Agreement and Joint Escrow Instructions, City Agreement No. 2006-1405 (“Thomas PSA”), with S. Thomas Enterprises of Sacramento, LLC (“Thomas”) to acquire Parcel A, the 8.82 acre Sacramento Valley Station, and to obtain rights to purchase Parcel B, a 23.86 acre parcel which includes the 17.46 acre UPRR easement. As part of the Thomas PSA, the City made an Advanced Payment of \$55 million and obtained title to Parcel A on December 28, 2006, and received an option to acquire Parcel B and a security interest in Parcels B and D.
- B. The Thomas PSA provide for determining the fair market value of the two parcels by appraisals and, if the parties could not agree on the valuation, it would be set through negotiation, and if that process was unsuccessful, the value would be determined through binding arbitration. Due to the large spread between the valuation of Parcels A and B in the Thomas and City appraisal reports, the parties agreed to waive the negotiation and mediation process. On April 28, 2010, the arbitrator issued his ruling that established values for each portion of Parcels A and B resulting in a value for Parcel A of \$23.05 million and value for Parcel B of \$29.3 million, for a total cost of \$52.350 million.
- C. IA Sacramento holdings L.L.C. (“Inland”) obtained title to the Railyards through a foreclosure proceeding on October 22, 2010. Inland has agreed to convey Parcel B to the City and to pay the \$2.650 million difference between the Advanced Payment of \$55 million and the arbitrator’s valuation of \$52.350 million, plus interest from January 2007 through December 2010 of \$0.585 million, for a total payment of \$3.235 million. Inland would make this payment as part of the Parcel B escrow, approximately one year sooner than the date set out in the Thomas PSA. In return, the City would release its deed of trust on Parcel D.
- D. A small area of land encompassing 428 sq. ft. within the parcel abutting Parcel B (APN No. 002-0010-53) is needed for the Track 150 crossing (the “Sliver”). Inland is willing convey the Sliver to the City at no cost. Under City Agreement No. 200-

1044, the City is obligated to convey an exclusive easement for the Sliver to the Union Pacific Railroad Company (“UPRR”) at no cost.

- E. The City needs to purchase Parcel B and the Sliver to allow for construction of the Track Relocation Project, which is the first phase of the development of the Sacramento Intermodal Transportation Facility. The City has completed all of the required studies and procedures under CEQA, NEPA and the federal acquisition regulations to proceed with purchasing Parcel B and obtaining title to the Sliver.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Purchase and Sale Agreement and Joint Escrow Instructions (the “Inland PSA”) with IA Sacramento Holdings, L.L.C. for the City’s acquisition of Parcel B (APN No. 002-0010-046) and the Sliver (portion of APN No. 002-0010-053) as set out in Exhibit A, which provides for: (i) a \$29.3 million value for Parcel B credit against the City’s \$55 million Advanced Payment under City Agreement No. 2006-1405; (ii) conveyance of the Sliver to City at no cost; (iii) payment of \$3.235 million by Inland to City; and (iv) releasing the deed of trust encumbering Parcel D (APN No. 002-0010-49); is hereby approved. The City Manager or his designee is authorized to execute the Inland PSA.
- Section 2. The City Manager or his designee is authorized to: (i) accept title to Parcel B and the Sliver by execution of Certificates of Acceptance; (ii) execute a Deed of Partial Reconveyance to remove the City’s existing Deeds of Trust against Parcel B and Parcel D; and (iii) execute escrow instructions, enter into agreements to remove title encumbrances, and take all other actions as necessary to close escrow for the acquisition of Parcel B and the Sliver.
- Section 3. The City Manager or his designee is hereby authorized to convey an exclusive easement to UPRR for the Sliver in the form set out in Exhibit B.
- Section 4. Exhibits A and B are incorporated into and made part of this Resolution.

Table of Contents:

- Exhibit A: Purchase and Sale Agreement with Escrow Instructions
- Exhibit B: Sliver Easement



PURCHASE AND SALE AGREEMENT

Seller: **IA Sacramento Holdings, L.L.C.**
a Delaware limited liability company

Buyer: **City of Sacramento,**
a municipal corporation

Dated as of: January ___, 2011

Property: Parcel B
Sliver Parcel
Railyards Project
Sacramento, California

PURCHASE AND SALE AGREEMENT

Buyer and Seller hereby enter into this Purchase and Sale Agreement (this “**Agreement**”), intending to be legally bound hereby, as of the Effective Date. For mutual consideration, the receipt and sufficiency of which hereby are acknowledged, and the mutual promises contained in this Agreement, Buyer and Seller agree as follows:

1. **Defined Terms:** The terms listed below shall have the following meanings throughout this Agreement:

Buyer: The City of Sacramento, a municipal corporation

Closing Date: _____, 2011, or such earlier date as may be agreed to in writing between Buyer and Seller.

Effective Date: January __, 2011 (i.e., the date both parties have executed this Agreement, and a fully executed copy has been delivered to each of Seller and Buyer).

Overall Property: That certain real property consisting of approximately two hundred forty (240) acres located in the City of Sacramento, State of California, as more particularly described on Exhibit A attached hereto.

Parcel A: That certain real property located in the City of Sacramento, State of California, commonly referred to as Parcel A, as more particularly described on Exhibit A to the Thomas Purchase Agreement (as defined in Section 4(a) below).

Property: A portion of the Overall Property known as Parcel B and the Sliver Parcel, as more particularly described on Exhibit B-1 (“**Parcel B**”) and Exhibit B-2 (the “**Sliver Parcel**”) respectively, attached hereto, together with all rights and interests appurtenant thereto.

Purchase Price Adjustment: Three Million Two Hundred Thirty Five Thousand and 00/100 Dollars (\$3,235,000.00).

Seller: IA Sacramento Holdings, L.L.C., a Delaware limited liability company

Title Company/
Escrow Agent: Stewart Title of California, Inc.
525 N. Brand Blvd.
Glendale, Ca. 91203
Attention: Larry McGuire

2. **Sale and Purchase of Property.** Seller shall transfer the Property to Buyer, and Buyer shall purchase the Property from Seller, subject to all of the terms, covenants and conditions hereinafter set forth in this Agreement. The Property shall be conveyed to Buyer by a

Grant Deed (“**Deed**”) in the form attached hereto as Exhibit C and incorporated herein by this reference. All other interests of Seller in the Property (including any personal property) shall be transferred and assigned by Seller to Buyer pursuant to the General Instrument of Transfer (“**General Instrument**”) in the form annexed hereto as Exhibit D and incorporated herein by this reference.

3. **Seller’s Acquisition of the Overall Property.**

a. In connection with certain loans made by IA Sacramento Rail, L.L.C., a Delaware limited liability company (“**Lender**”), an affiliate of Seller, to S. Thomas Enterprises, LLC, a Delaware limited liability company (“**Thomas**”), as the then current owner of the Overall Property, Thomas executed and delivered to Lender certain promissory notes, secured by, among other things, the two deeds of trust in favor of Lender (the “**Deeds of Trust**”) encumbering the Overall Property and recorded in the Sacramento County Official Records (the “**Official Records**”). On June 15, 2010, Lender recorded a Notice of Default and Election to Sell Under Deed of Trust with respect to the Deeds of Trust (collectively, the “**Notices of Default**”).

b. On October 22, 2010, following completion of the foreclosure process initiated by Lender’s recordation of the Notices of Default, Seller acquired fee title interest in the Overall Property from Thomas pursuant to that certain Trustee’s Deed Upon Sale recorded on October 25, 2010 in the Official Records on Page 0218 of Book 20101025. In its capacity as a secured lender in possession of the Overall Property through foreclosure, Seller has concluded that to protect the value of its security interest in the Overall Property, it is essential that prior agreements as outlined in Section 4 below regarding the plans to transfer the Property be maintained.

4. **Thomas Purchase Agreement; Buyer’s Acquisition of Parcel A; Determination of Final Purchase Price.**

a. Buyer and Thomas, as the then owner of the Overall Property and Parcel A, entered into that certain Purchase and Sale Agreement Joint Escrow Instructions, dated as of December 13, 2006 (the “**Thomas Purchase Agreement**”), pursuant to which Thomas agreed to sell Parcel A and Parcel B to Buyer, and Buyer agreed to purchase from Seller Parcel A and Parcel B.

b. Pursuant to the terms of the Thomas Purchase Agreement, Buyer acquired fee title interest in Parcel A from Thomas upon recordation of that certain Grant Deed on December 13, 2006, in the Official Records on Page _____ of Book _____.

c. At the close of escrow for Parcel A, Buyer delivered to Thomas an advance payment of the purchase price for Parcel A and Parcel B in the amount of Fifty Five Million and 00/100 Dollars (\$55,000,000.00) (the “**Purchase Price Advance**”). Thomas and Buyer agreed that the purchase price for Parcel A and Parcel B would be determined following the close of escrow on Parcel A in accordance with the terms of Exhibit M to the Thomas Purchase Agreement, which included determination by binding arbitration. As a condition to Buyer’s payment of the Purchase Price Advance and to secure Thomas’ obligation to refund the portion of the Purchase Price Advance, if any, that exceeded the amount of the final purchase

price, Thomas delivered a promissory note to Buyer in the amount of Fifty Five Million and 00/100 Dollars (\$55,000,000) (the “**City Note**”), which obligation was secured by that certain Deed of Trust with Assignment of Rents, dated as of December 28, 2006, in favor of Buyer and recorded in the Official Records on Page 1679 of Book 20061228 encumbering Parcel B and a portion of the Overall Property referred to as Parcel D, as more particularly described on Exhibit A attached thereto (the “**City Deed of Trust**”). Thereafter following an arbitration proceeding, the purchase price was determined to be equal to Fifty Two Million Three Hundred Fifty Thousand and 00/100 Dollars (\$52,350,000.00) (the “**Final Purchase Price**”) as provided in that certain Arbitration Award dated April 28, 2010.

d. At the Closing, Buyer shall execute and record in the Official Records a full reconveyance of the City Deed of Trust, whereby Buyer shall reconvey all right, title and interest in that certain real property known as Parcel D (the “**Reconveyance**”).

5. **Possession and Use Agreements.**

a. Pursuant to that certain Agreement for Possession and Use, by and between Thomas and Buyer, dated as of September 3, 2009 (the “**Thomas Parcel B Possession and Use Agreement**”) and that certain Agreement for Possession and Use (Sliver Addition), by and between Thomas and Buyer, dated as of November 19, 2009 (the “**Thomas Sliver Possession and Use Agreement**”) and collectively with the Thomas Parcel B Possession and Use Agreement referred to herein as the “**Thomas Possession and Use Agreements**”), Thomas granted Buyer immediate possession and use of the Property, which included the right to remove and dispose of improvements located thereon in furtherance of Buyer’s completion of the track relocation work contemplated by that certain Track Relocation and Finance Agreement, by and between Thomas and Buyer, dated as of December 13, 2006.

b. Pursuant to the Thomas Sliver Possession and Use Agreement, Thomas and Buyer contemplated that Buyer would acquire the Sliver Parcel on the same terms and conditions set forth in the Thomas Purchase Agreement with respect to the acquisition of Parcel A and Parcel B.

c. Seller and Buyer have entered into or intend to enter into a possession and use agreement for the Property to allow Buyer to continue to retain possession and use of the Property in accordance with the terms thereof prior to the Closing (such agreement referred to herein as the “**Possession and Use Agreement**”).

6. **Payment of Purchase Price Adjustment.** In consideration of the obligations and covenants of Buyer set forth herein, including, without limitation, the release provided in Section 16 below, Seller shall pay to Buyer at Closing the Purchase Price Adjustment in the amount of Three Million Two Hundred Thirty Five Thousand and 00/100 Dollars (\$3,235,000.00) by certified or cashier’s check or wired funds.

7. **Independent Consideration.** Contemporaneously with the execution and delivery of this Agreement, Buyer has delivered to Seller and Seller hereby acknowledges the receipt of funds in the amount of One Hundred Dollars (\$100.00) (the “**Independent Contract Consideration**”), which amount the parties bargained for and agreed to as consideration for

Buyer's right to purchase the Property pursuant to this Agreement and for Seller's execution, delivery and performance of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is nonrefundable, and is fully earned and shall be retained by Seller notwithstanding any other provision of this Agreement.

8. **Review Materials; Feasibility Inspection.**

a. **Delivery of Review Materials.** In connection with Buyer's acquisition of the Property and prior to the Effective Date, Seller has made available to Buyer for its review all of the documents relating to the Property that are in the possession or control of Seller, but excluding Seller's internal memoranda, financial projections, budgets, appraisals, accounting and tax records, attorney client communications and attorney work product relating to the condition, use or operation of the Property and similar proprietary, elective or confidential information ("**Review Materials**"). Seller makes no representation or warranty as to the accuracy or completeness of any such documents made available to Buyer, and Buyer acknowledges that Buyer may not rely on such documents. In addition to the Review Materials, Buyer acknowledges that pursuant to the Thomas Purchase Agreement, Buyer previously received certain Property Documents (as such term is defined in the Thomas Purchase Agreement) relating to the Property. Buyer further agrees and acknowledges that Buyer has had possession and use of the Property prior to the Effective Date pursuant to the Thomas Possession and Use Agreement. Buyer has conducted such feasibility inspections, investigations, tests and studies as it requires to perform with respect to the Property on or prior to the Effective Date hereof and has satisfied itself as to the condition of the Property and Buyer's obligations to close on the acquisition of the Property are not dependent upon the results of any such inspections, investigations, tests and studies.

b. **Natural Hazards Disclosures.** As of the Closing, to the extent permitted by law, Buyer shall be deemed to have knowingly, voluntarily and intentionally waived the right to the disclosures ("**Natural Hazards Disclosures**") set forth in: (i) California Government Code Section 8589.3 (a special flood area); (ii) California Government Code Section 8589.4 (dam failure inundation area); (iii) California Government Code Section 51183.5 (earthquake fault zone); (iv) California Public Resources Code Section 2621.9 (seismic hazard zone); (v) California Public Resources Code Section 4136 (wildland fire area); and (vi) California Public Resources Code Section 2694 (high fire severity area). Buyer acknowledges and represents that it has extensive experience with the Property and the Overall Property. This waiver by Buyer includes, to the extent permitted by law, any remedies Buyer may have for Seller's nondisclosure of the Natural Hazards Disclosures.

c. **Confidentiality.** The Review Materials and all materials, books and records examined by or on behalf of Buyer pursuant to this Agreement shall: (i) be held in strict confidence by Buyer; (ii) not be used for any purpose other than the investigation and evaluation of the Property by Buyer and its lenders, attorneys, engineers, consultants and representatives (collectively, "**Buyer's Agents**"); and (iii) not be disclosed, divulged or otherwise furnished to any other person or entity except to Buyer's Agents or as required by law. If this Agreement is terminated for any reason whatsoever, Buyer shall return to Seller all of the Review Materials in

the possession of Buyer and Buyer's Agents. The provisions of this Section shall survive the termination of this Agreement.

9. **Contingencies.**

a. **Contingencies to Purchase.** Buyer's obligation to purchase the Property is subject to the satisfaction of the contingencies described below ("**Contingencies to Purchase**").

(1) Seller shall have delivered to Escrow Agent or Buyer all of the items required to be delivered to Escrow Agent or Buyer pursuant to the terms of this Agreement, including but not limited to, those required to be delivered by Seller pursuant to Section 12.

(2) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date.

(3) At the Closing, the Escrow Agent shall have delivered to Buyer either the Title Policy (as defined in Section 10 below) or Escrow Agent's irrevocable commitment to issue the Title Policy.

b. **Contingencies to Sell.** Seller's obligation to sell the Property is subject to the satisfaction of the contingencies described below ("**Contingencies to Sell**").

(1) Buyer shall have delivered to Escrow Agent or Seller all of the items required to be delivered to Escrow Agent or Seller pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 12.

(2) Buyer shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Buyer as of the date of Closing.

10. **Title Policy.** The Title Company shall be unconditionally prepared and irrevocably committed to issue to Buyer, at Buyer's expense, a CLTA Owner's Policy of Title Insurance covering the Property, in the full amount of the Purchase Price Adjustment, insuring Buyer as the holder of fee simple title to the Property, subject to real estate taxes and not yet due and payable and all covenants, conditions, restrictions, or easements of record, excluding matters that would be disclosed by a survey of the property, any encroachments, utilities lines of any and any other matter otherwise known to Buyer (the "**Permitted Exceptions**") (collectively, the "**Title Policy**").

11. **Closing Requirements.**

a. **The Closing.** On the Closing Date, all matters to be performed under this Agreement incident to the sale of the Property, and the payment of the Purchase Price Adjustment (collectively, "**Closing**") shall be performed at the offices of Escrow Agent, or other mutually acceptable location agreed to in writing by Buyer and Seller. Notwithstanding anything in this Section 11(a) to the contrary, the parties agree to use commercially reasonable efforts to

pre-close the transaction contemplated hereby (*i.e.*, sign documents into escrow) on the business day immediately preceding the then-scheduled date of Closing.

b. Possession and Condition of the Property. Without limiting the generality of the foregoing, at Closing full possession of the Property is to be delivered to Buyer, subject to the Permitted Exceptions.

c. Extension to Cure. If on the Closing Date Seller shall be unable to give title, or to make conveyance, or to deliver possession, all as herein provided, Seller, shall have the right to extend Closing for a period (“**Seller’s Extension Period**”) of up to thirty (30) days by giving Buyer written notice of such extension.

d. Termination. If, at the expiration of the Seller’s Extension Period, Seller shall have failed so to give title, make conveyance, or deliver possession, as the case may be, all as herein provided, then, subject to Buyer’s rights under Section 11(e), this Agreement shall terminate, whereupon all obligations of the parties hereto shall cease without recourse to the parties hereto except as otherwise specifically set forth herein.

e. Buyer’s Election. Buyer shall have the right, on the original or any extended Closing Date, to accept such title as Seller can deliver to the Property in its then condition and to accept payment of the Purchase Price Adjustment without increase, in which case Seller shall convey such title by delivering the Deed subject to the conditions contained in this Agreement.

12. Closing Deliveries.

a. Seller’s Deliveries. Seller shall deliver or cause to be delivered to Escrow Agent or Buyer the following at or prior to the Closing:

(1) The duly executed and acknowledged Deed.

(2) The full amount of the Purchase Price Adjustment (less such amounts as are necessary to pay Buyer’s share of closing costs and prorations, as hereinafter set forth) by wire transfer of immediately available funds.

(3) A certification duly executed by Seller under penalty of perjury stating that Seller is not a “foreign person” within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, in the form annexed hereto as Exhibit E.

(4) Any corporate, partnership or other authorization documents necessary to record the Deed.

(5) Evidence as the Title Company may reasonably require as to the authority of any individuals or constituent members in Seller to execute any instruments executed and delivered by Seller at Closing.

To the extent that Buyer fails to receive the above deliveries, any of the deliveries specified in Section 12(b) below, or any Contingencies to Purchase shall fail to

be fulfilled, then Buyer may, as its sole remedy, terminate this Agreement by notice to Seller, and upon such notice this Agreement shall be null and void and without recourse to the parties hereto except as otherwise specifically set forth herein.

b. Mutual Deliveries. Buyer and Seller shall deliver or cause to be delivered to Escrow Agent the following at or prior to the Closing:

- (1) Executed counterparts of the General Instrument; and
- (2) A closing statement reflecting the adjustments made at the Closing and described in Section 13 hereof.

c. Buyer's Deliveries. Buyer shall deliver or cause to be delivered to Escrow Agent or Seller the following at or prior to the Closing at the Closing:

- (1) Deliver a Preliminary Change of Ownership Report;
- (2) Deliver a duly executed and acknowledged Reconveyance;
- (3) Deliver evidence as the Title Company may reasonably require as to the authority of any individuals or constituent members in Buyer to execute any instruments executed and delivered by Buyer at Closing.

13. Closing Costs and Prorations. At Closing, closing costs shall be paid and prorations made as follows:

a. Closing Costs. Seller shall pay the fees of any counsel representing it in connection with this transaction. Buyer shall pay: (v) the fees of any counsel representing it in connection with this transaction; (w) recording charges and costs; (x) the fee for any title exam and the title insurance premium for the Owner's title insurance policy issued at Closing to Buyer by the Title Company; (y) the escrow fee charged by the Title Company; and (z) any state, county, or local transfer taxes.

b. Prorations. The Purchase Price Adjustment shall be subject to the following prorations. All such prorations shall be made so that Buyer has the benefit of rent, if any, and bears the burden of expenses as of 12:01 a.m. on the date of Closing.

(1) Taxes. Real property taxes and general and special assessments shall be prorated through the Closing Date on the basis of the fiscal year for such taxes and assessments. If the Closing Date shall occur before the real property tax rate for such fiscal year is fixed, the apportionment of taxes shall be made on the basis of the taxes assessed for the preceding fiscal year. After the real property taxes are finally fixed for the fiscal year in which the Closing Date occurs, Seller and Buyer shall make a recalculation of the apportionment of such taxes, and Seller or Buyer, as the case may be, shall make an appropriate payment to the other based on such recalculation. To the extent Seller has undertaken to obtain any real estate tax abatement, the amount of the net proceeds of such tax abatement shall be prorated through the Closing Date, if, as and when such proceeds are paid by the applicable governmental taxing authority.

(2) Utilities. Final readings on all gas, water and electric meters shall be made as of the Closing Date, if possible. If final readings are not possible, gas, water and electricity charges will be prorated based on the most recent period for which costs are available. Any deposits made by Seller with utility companies shall be returned to Seller by such utility companies. Buyer shall be responsible for making all arrangements for the continuation of utility services.

Notwithstanding any of the foregoing provisions:

(i) Seller shall receive the entire advantage of any discounts for the prepayment by it of any taxes, water rates or sewer rents.

(ii) The personal property, if any, included in this sale, is without further charge, except that Buyer shall be responsible to pay the amount of any and all sales or similar taxes payable in connection with the personal property and Buyer shall execute and deliver any tax returns required of it in connection therewith based on the value for such personal property determined by Seller, said obligations of Buyer to survive Closing.

The provisions of this Section 13 shall survive Closing.

14. **Default**.

a. Buyer's Default. In the event Buyer defaults in any of its obligations hereunder, or breaches any of its representations or warranties set forth herein, then the Seller may (i) terminate this Agreement by delivery of written notice to Buyer and (ii) pursue any and all rights available to Seller hereunder, at law or in equity.

b. Seller's Default. In the event that Buyer is not in default of Buyer's representations, warranties and covenants under this Agreement and is ready, willing and able to take title to the Property in accordance with this Agreement, and Seller fails to consummate this Agreement and convey title as set forth herein and deliver the Purchase Price Adjustment, Buyer shall have an action for specific performance of Seller's obligations to execute the documents required to convey the Property to Buyer and deliver the Purchase Price Adjustment to Buyer, it being understood that the remedy of specific performance shall not be available to enforce any other obligation of Seller hereunder; alternatively, Buyer may elect to terminate this Agreement. In either such case, Buyer shall have no right to an action for damages against Seller. Buyer shall be deemed to have elected to terminate this Agreement if Buyer fails to file suit for specific performance against Seller in a court having jurisdiction in the county and state in which the Property is located, on or before fifteen (15) days following the date upon which Closing was to have occurred.

c. Limitation of Seller's Liability. Buyer acknowledges and agrees that neither the officers, directors nor employees of Seller assume any personal liability for obligations entered into by or on behalf of Seller. Notwithstanding any other provision of this Agreement to the contrary, in no event shall Seller have any liability for speculative, special, consequential, punitive, actual or any other damages, and Buyer's remedies for Seller's default shall be limited to the remedies set forth in Section 14.b above.

15. **Seller's Representations and Warranties.** Seller hereby makes the following representations and warranties to Buyer as of the Effective Date:

a. **Due Authorization.** Seller is duly organized, validly existing, and in good standing under the laws of the State of California, has full power and authority to enter into this Agreement, to execute and deliver the documents and instruments required of Seller herein, and to perform its obligations hereunder.

b. **Requisite Action.** All requisite action (corporate, partnership, trust or otherwise) has been taken by Buyer in connection with entering into this Agreement and the instruments referenced herein, and consummating the transaction contemplated by this Agreement. No additional consent of any individual, officer, director, shareholder, partner, member, manager, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required for Buyer to execute this Agreement and the instruments referenced herein or to consummate the transactions contemplated hereby.

c. **No Conflict.** The execution and delivery of, and consummation of the transactions contemplated by this Agreement is not prohibited by, and will not conflict with, constitute grounds for termination of, or result in the breach of any agreement or instrument to which Seller is now a party or otherwise subject.

d. **Updating of Schedules Exhibits Representations and Warranties.** Seller shall have the right to modify, update and supplement all representations, warranties, exhibits and schedules attached to or delivered in connection with this Agreement through the Closing Date to the extent required to make such representations, warranties, exhibits and schedules true, accurate and complete.

e. **Limitation of Seller's Representations.** All representations and warranties made by Seller in this Agreement shall not survive the Closing. All representations and warranties made by Seller in this Agreement are to the actual knowledge of _____ (the "**Designated Employee**") and shall not be construed, by imputation or otherwise, to refer to the knowledge of Seller or any affiliate of Seller, to any property manager or to any officer, agent, manager, representative or employee of Seller or any affiliate of Seller, or to impose upon such Designated Employee any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains.

16. **Buyer's Representations, Warranties and Covenants.** Buyer hereby makes the following representations, warranties and covenants to Seller as of the Effective Date:

a. **Due Authorization.** Buyer is duly organized, validly existing, and in good standing under the laws of the State of California, is duly qualified and in good standing under the laws of the State of California, has full power to execute, deliver and carry out the terms and provisions of this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and the individual(s) executing this Agreement on behalf of Buyer has the authority to bind Buyer to the terms and conditions of this Agreement.

b. **Requisite Action.** All requisite action, including, without limitation, approval by the Sacramento City Council and all other pertinent review and approval, has been

taken by Buyer in connection with entering into this Agreement and the instruments referenced herein, and consummating the transaction contemplated by this Agreement. No additional consent of any individual, officer, director, shareholder, partner, member, manager, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required for Buyer to execute this Agreement and the instruments referenced herein or to consummate the transactions contemplated hereby.

c. Enforceability. This Agreement and all documents required hereby to be executed by Buyer, when so executed, shall be legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

d. No Conflict. The execution and delivery of, and consummation of the transactions contemplated by this Agreement is not prohibited by, and will not conflict with, constitute grounds for termination of, or result in the breach of any agreement or instrument to which Buyer is now a party or otherwise subject.

e. As-Is Purchase. As a material inducement to Seller to execute this Agreement, Buyer acknowledges, represents and warrants that (i) Buyer has fully examined and inspected the Property, together with such other documents and materials with respect to the Property which Buyer deemed necessary or appropriate in connection with its investigation and examination of the Property, (ii) Buyer has accepted the foregoing and the physical condition, value, presence/absence of Hazardous Substances, financing status, use, leasing, operation, tax status, income and expenses of the Property (the “**Property Condition**”), (iii) the Property will be purchased by Buyer “AS IS” and “WHERE IS” and with all faults and, upon Closing, Buyer shall assume responsibility for the physical condition of the Property and (iv) Buyer has decided to purchase the Property solely on the basis of its own independent investigation. Other than as expressly set forth in this Agreement, Seller has not made, does not make, and has not authorized anyone else to make any representation as to the present or future physical condition, value, presence/absence of Hazardous Substances, financing status, leasing, operation, use, tax status, income and expenses or any other matter or thing pertaining to the Property, and Buyer acknowledges that no such representation or warranty has been made and that in entering into this Agreement it does not rely on any representation or warranty. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. Seller shall not be liable for or bound by any verbal or written statements, representations, real estate broker’s “setups” or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or any other person unless the same are specifically set forth in this Agreement. The provisions of this Section 16(e) shall survive the Closing. If Buyer shall proceed to Closing with actual knowledge of any matter, or as to any matter set forth in the Review Materials which is in conflict with any of Seller’s representations, warranties or indemnities made in this Agreement, Buyer shall be deemed to

have waived such Seller's representations, warranties or indemnities to the extent inconsistent with such actual knowledge or the contents of such Review Materials.

f. Release. Upon Closing, Buyer shall assume the risk that Property Conditions may not have been revealed by Buyer's investigations. The release and waiver of claims set forth below shall be referred to as the "**Release.**" Upon the Closing, Buyer, on its own behalf and on behalf of each of its successors and assigns and each and all of its and their respective members, partners, officers, directors, employees, parents, affiliates and subsidiaries, and each of their respective successors and assigns (collectively, "**Waiver Parties**") hereby fully, forever, irrevocably and unconditionally waives and releases Seller and its respective members, partners, affiliates, parent business organizations, subsidiary business organizations, shareholders, officers, directors, beneficiaries, agents, employees, attorneys and representatives and their respective successors and assigns (collectively, "**Released Parties**") from (collectively, the "**Claims**"): (i) any and all claims, liabilities, demands, damages, counterclaims, suits, causes of action, costs and expenses (including, but not limited to, reasonable attorneys' fees and costs) of any kind and nature whatsoever, whether known or unknown, anticipated or unanticipated, and howsoever arising or accruing, that the Waiver Parties, or any of them, ever had, now have, or may have against the Property or the Released Parties, or any of them, arising or accrued prior to the Closing, including, without limitation, arising out of, or attributable to, the Thomas Purchase Agreement, a determination of the Final Purchase Price, including, without limitation, any and all interest that may be due thereon, and (ii) any and all Property Conditions, including, without limitation, any and all actual, threatened or potential claims, claims for contribution under any law relating to Hazardous Substances, suits, proceedings, actions, causes of action, demands, liabilities, losses, obligations, orders, requirements or restrictions, liens, penalties, fines, charges, debts, damages, costs, and expenses of every kind and nature, whether now known or unknown, whether foreseeable or unforeseeable, whether under any foreign, federal, state or local law (both statutory and non-statutory) or Environmental Law (as hereinafter defined), and, whether asserted or demanded by a third party against any of the Waiver Parties or incurred directly or indirectly by any of the Waiver Parties themselves, that any of the Waiver Parties may now or hereafter have against any of the Released Parties and that arise in connection with or in any way are related to (a) the physical condition of the Property, the financial condition of the Property, the value of the Property or its suitability for Buyer's use, the ownership, management or operation of the Property, or the accuracy or completeness of any information reviewed by Buyer in connection with its investigations of the Property and which may have been relied upon by Buyer in deciding to purchase the Property, (b) any handling of any Hazardous Substances at, beneath, to, from, or about the Property, (c) any compliance or non-compliance with Environmental Laws regarding any Hazardous Substances or any handling related thereto at, beneath, to, from, or about the Property, (d) any acts, omissions, services or other conduct related to any of the foregoing items "(a)" through "(d)," inclusive, and/or (e) any condition, activity, or other matter respecting the Property that is not addressed by any of the foregoing items "(a)" through "(d)," inclusive. Buyer acknowledges that any condition of the Property which Buyer discovers or desires to correct or improve prior to or after the Closing Date shall be at Buyer's sole expense. As used herein, the term "Environmental Law" shall mean all federal, state and local statutes, regulations or ordinances relating to the protection of health, safety or the environment including, without limitation, those under the federal Clear Air Act, the federal Water Pollution Control Act, the federal Resource Conservation and Recovery Act, the federal Comprehensive Environmental Response, Compensation and Liability Act, the

federal Toxic Substances Control Act, and all similar such state and local statutes, all statutes, rules and regulations applicable to wetlands of any federal, state, county or local regulatory agency, and all similar state and local laws now or hereinafter enacted or amended. Buyer shall defend, hold harmless and indemnify the Released Parties and each of them from and against all claims, suits, demands, losses, damages and expenses (including reasonable attorneys' and consultants' fees and costs) incurred as a result of actions that are inconsistent with the provisions of this Section 16(f). This Release and indemnity shall survive the close of escrow and the recording of the Deed conveying the Property from Seller to Buyer.

TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, BUYER HEREBY EXPRESSLY AND SPECIFICALLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE ("SECTION 1542") AND ANY SUCCESSOR LAWS. SECTION 1542 PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BUYER ACKNOWLEDGES THAT THIS WAIVER AND RELEASE IS VOLUNTARY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE, AND IS GIVEN AS PART OF THE CONSIDERATION FOR THE AGREEMENTS SET FORTH HEREIN. BUYER EXPRESSLY ACKNOWLEDGES THAT IT MAY HEREAFTER DISCOVER FACTS DIFFERENT FROM OR IN ADDITION TO THOSE, WHICH IT NOW BELIEVES TO BE TRUE WITH RESPECT TO THE RELEASE OF CLAIMS. BUYER AGREES THAT THE FOREGOING RELEASE SHALL BE AND REMAIN EFFECTIVE IN ALL RESPECTS NOTWITHSTANDING SUCH DIFFERENT OR ADDITIONAL FACTS.

BUYER HAS BEEN ADVISED BY ITS LEGAL COUNSEL AND UNDERSTANDS THE SIGNIFICANCE OF THIS WAIVER OF SECTION 1542 RELATING TO UNKNOWN, UNSUSPECTED AND CONCEALED CLAIMS, AND BUYER HEREBY SPECIFICALLY ACKNOWLEDGES THAT BUYER HAS CAREFULLY REVIEWED THIS SUBSECTION AND DISCUSSED ITS IMPORT WITH LEGAL COUNSEL AND THAT THE PROVISIONS OF THIS SUBSECTION ARE A MATERIAL PART OF THIS AGREEMENT. BY ITS INITIALS BELOW, BUYER ACKNOWLEDGES THAT IT FULLY UNDERSTANDS, APPRECIATES AND ACCEPTS ALL OF THE TERMS OF THIS SUBSECTION AND RELEASE.

BUYER'S INITIALS

Buyer hereby represents and warrants to Seller that is has not heretofore assigned or transferred, or purported to transfer, to any person or entity any matter to be released herein or any portion thereof and shall indemnify, defend and hold Seller harmless from and against any and all claims based on or arising out of any such assignment or transfer or purported assignment or transfer.

17. **Maintenance and Operation of Property After the Effective Date.** From the Effective Date until the Closing or earlier termination of this Agreement, Seller shall use reasonable efforts to operate, maintain and insure the Property consistent with the present business and operations thereof subject to Buyer's continued possession and use of the Property in accordance with the terms and provisions of the Possession and Use Agreement.

18. **Survival.** The terms, covenants and indemnities contained in this Agreement required to be operative after delivery of the Deed shall survive delivery of the Deed without limitation as to time, unless a time limitation is expressly provided, and shall not be deemed to have been merged in the Deed.

19. **Brokerage Commission.** Seller and Buyer warrant to each other that no other broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and the warranting party with respect to the other party or the Property. Seller and Buyer shall indemnify, defend, protect and hold the other party harmless from and against any loss, cost or expense, including, but not limited to, reasonable attorneys' fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Property and this Agreement resulting from the indemnifying parts actions. The foregoing indemnities shall survive the Closing.

20. **Successors and Assigns.** The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Buyer may not assign its rights under this Agreement without first obtaining Seller's written approval, which approval may be given or withheld in Seller's sole and absolute discretion. No assignment shall release or otherwise relieve Buyer from any obligations hereunder.

21. **Entire Agreement.** This Agreement contains all of the covenants, conditions and agreements between the parties and shall supersede all prior correspondence, agreements and understandings, both verbal and written. The parties intend that this Agreement constitute the complete and exclusive statement of its terms and that no extrinsic evidence may be introduced in any proceeding involving this Agreement.

22. **Attorneys' Fees.** In the event of any litigation regarding the rights and obligations under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs. Each party shall bear its own attorneys' fees in connection with the preparation of this Agreement and the consummation of the transactions contemplated hereunder.

23. **Notices.** Any notice, demand, request, consent, approval, disapproval or certificate ("**Notice**") required or desired to be given under this Agreement shall be in writing and given by certified mail, return receipt requested, by personal delivery or by Federal Express or a similar nationwide over-night delivery service providing a receipt for delivery. Notices may not be given by facsimile. The date of giving any Notice shall be deemed to be the date upon which delivery is actually made by one of the methods described in this Section 23 (or attempted if said delivery is refused or rejected). If a Notice is received on a Saturday, Sunday or legal

holiday, it shall be deemed received on the next business day. All notices, demands, requests, consents, approvals, disapprovals, or certificates shall be addressed as follows:

If intended for Buyer:

City of Sacramento
Office of the City Manager
City Hall
915 I Street, 5th Floor
Sacramento, CA 95814-2604
Attention: John Dangberg
Facsimile: (916) 808-7618
Telephone: (916) 808-5704
jdangberg@cityofsacramento.org

with a copy to:

City of Sacramento
Office of the City Attorney
City Hall
915 I Street, 4th Floor
Sacramento, CA 95814-2604
Attention: Sheryl N. Patterson
Facsimile: (916) 808-7455
Telephone: (916) 808-7292
spatterson@cityofsacramento.org

If intended for Seller:

c/o The Inland Real Estate Group
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Dean Stermer
Facsimile: (630) 954-5655
Telephone: (630) 586-6463
dean.stermer@inland-investments.com

With a copy to:

c/o The Inland Real Estate Group
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Michael Podboy
Facsimile: (630) 954-5655
Telephone: 630-218-8000
Podboy@inlandgroup.com

With a copy to:

c/o The Inland Real Estate Group
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Lori Foust
Facsimile: (630) 954-5655
Telephone: 630-218-8000
foust@inland-investments.com

With a copy to: c/o The Inland Real Estate Group
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Scott W. Wilton
Facsimile: (630) 954-5655
Telephone: 630-218-8000
swilton@inlandgroup.com

With a copy to: DLA Piper LLP (US)
203 North LaSalle Street, Suite 1900
Chicago, Illinois 60601
Attention: James L. Beard
Facsimile: (312) 630-7379
Telephone: (312) 368-2169
james.beard@dlapiper.com

With a copy to: DLA Piper LLP (US)
2000 University Avenue
East Palo Alto, California 94303
Attention: Angela L. Castro
Facsimile: (650) 687-1110
Telephone: (650) 833-2352
angela.castro@dlapiper.com

If intended for Escrow Agent: Stewart Title of California, Inc.
525 N. Brand Blvd.
Glendale, Ca. 91203
Attention: Larry McGuire
Facsimile: (818) 502-2723
Telephone: (818) 241-9173
LMCGUIRE@stewart.com

Either party may change its address by giving reasonable advance written Notice of its new address in accordance with the methods described in this Section 23.

24. WAIVER OF RIGHT TO RECORD LIS PENDENS. AS PARTIAL CONSIDERATION FOR SELLER ENTERING INTO THIS AGREEMENT, BUYER, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, EXPRESSLY WAIVES ANY RIGHTS UNDER CALIFORNIA CODE OF CIVIL PROCEDURE, PART II, TITLE 4.5 (INCLUDING SECTIONS 405-405.39), AND AT COMMON LAW OR OTHERWISE, TO RECORD OR FILE A LIS PENDENS OR A NOTICE OF PENDENCY OF ACTION OR SIMILAR NOTICE AGAINST ALL OR ANY PORTION OF THE OVERALL PROPERTY IN CONNECTION WITH ANY ALLEGED DEFAULT BY SELLER HEREUNDER. BUYER AND SELLER HEREBY EVIDENCE THEIR

SPECIFIC AGREEMENT TO THE TERMS OF THIS WAIVER BY PLACING THEIR INITIALS IN THE PLACES PROVIDED BELOW.

Seller Initials

Buyer Initials

25. **Exhibits and Defined Terms.** All exhibits attached hereto are incorporated herein by reference thereto. All of the terms and definitions set forth in the Defined Terms section are incorporated in this Agreement by reference thereto.

26. **Time.** Time is of the essence of every provision herein contained. When the last day for the performance of any act permitted or required hereunder falls on any day which is not a business day in the City of Sacramento, California, such act may be performed on the next business day in said city. When an act must be performed or a notice given by the end of a specified day, such act must be performed or such notice given by 5:00 p.m. in the City of Sacramento, California.

27. **Applicable Law.** This Agreement shall be governed by the laws of the State of California.

28. **No Oral Modification or Waiver.** This Agreement may not be changed or amended orally, but only by an agreement in writing. No waiver shall be effective hereunder unless given in writing, and waiver shall not be inferred from any conduct of either party.

29. **No Recording.** Buyer agrees that it shall not record or file this Agreement or any summary of the provisions thereof. Any such recording or filing shall automatically render this Agreement null and void.

30. **Counterparts; Electronic Copy.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement is legally effective, valid, and enforceable despite the fact that it or signatures on it may be in electronic form or that it may have been created, transmitted, stored, or otherwise handled or formed, in whole or in part, by electronic means.

31. **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope, meaning or intent of this Agreement.

32. **Severability.** The invalidation or unenforceability in any particular circumstance of any of the provisions of this Agreement shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

33. **No Joint Venture.** This Agreement shall not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer-employee relationship between Buyer and Seller.

34. **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto, their respective successors and permitted assigns, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any term hereof.

35. **No Personal Liability.** No general or limited partner of Seller, no officer, director, or stockholder or member of any corporation or limited liability company which is a partner at any tier in Seller, no disclosed or undisclosed principal of Seller, and no person or entity in any way affiliated with Seller shall have any personal liability with respect to this Agreement, any instrument delivered by Seller at Closing, or the transaction contemplated hereby, nor shall the property of any such person or entity be subject to attachment, levy, execution or other judicial process.

36. **Option to Terminate.** Notwithstanding anything to the contrary set forth herein, Seller shall have the right and option to terminate this Agreement by giving written notice to the CITY on or before February 2, 2011.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Seller:

IA Sacramento Holdings, L.L.C.,
a Delaware limited liability company

By: IA Sacramento Development VP, L.L.C.,
a Delaware limited liability company, its sole member

By: Inland American Real Estate Trust, Inc.,
a Maryland corporation, its sole member

By: _____
Its: _____

Buyer:

City of Sacramento, a municipal corporation

By: _____

Name: John Dangberg

Title: Assistant City Manager

Approved as to Legal Form

By: _____

Senior Deputy City Attorney

Attest:

By: _____

City Clerk

EXHIBIT A

LAND DESCRIPTION OF OVERALL PROPERTY

EXHIBIT B-1

LAND DESCRIPTION OF PARCEL B

[NOTE: Not to exclude the airspace 1 cm above the top of the rail
within the UPRR reserved easement]

EXHIBIT B-2
LAND DESCRIPTION OF SLIVER PARCEL

EXHIBIT C

FORM OF GRANT DEED

DO NOT RECORD

DOCUMENT NO. _____

**STATEMENT OF DOCUMENTARY TRANSFER TAX DUE AND
REQUEST THAT AMOUNT OF TAX NOT BE MADE A PART
OF THE PERMANENT RECORD IN THE OFFICE OF THE COUNTY RECORDER**

To: Registrar – Recorder

County of Sacramento

Request is hereby made in accordance with Section 11932 of the Revenue & Taxation Code that the amount of tax shall be shown on this statement, which shall be affixed to the document by the recorder after the record is made and before the original is returned as specified in Section 27321 of the Government Code.

The attached Grant Deed names:

[INSERT NAME OF SELLER, a _____,
as grantor

and

[INSERT NAME OF BUYER], a _____,
as grantee

The property described in the accompanying document is located in Sacramento County, California.

The amount of tax due to the County of _____ on the accompanying document is _____ and No/100 Dollars (\$_____.__) and is computed on full value of the property conveyed [INSERT IF CITY TRANSFER TAX IS CHARGED: , and the amount of tax due to the City of _____ on the accompanying document is _____ and No/100 Dollars (\$_____.__) and is computed on full value of the property conveyed].

Please see attached signature page

STATEMENT OF DOCUMENTARY TRANSFER TAX DUE SIGNATURE PAGE

[INSERT PROPERTY INFORMATION]

IA Sacramento Holdings, L.L.C.,
a Delaware limited liability company

By: IA Sacramento Development VP, L.L.C.,
a Delaware limited liability company, its sole member

By: Inland American Real Estate Trust, Inc.,
a Maryland corporation, its sole member

By: _____
Its: _____

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

MAIL TAX STATEMENTS TO:

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER’S USE)

GRANT DEED

Documentary Transfer Tax not shown pursuant to
Section 11932 of the Revenue and Taxation Code, as amended

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, IA Sacramento Holdings, L.L.C., a Delaware limited liability company (“**Grantor**”), hereby does grant, bargain, and sell and convey unto the City of Sacramento, a municipal corporation (“**Grantee**”), the real property located in the City of Sacramento, County of Sacramento, State of California, described on Exhibit A attached hereto and made a part hereof (the “**Property**”).

This conveyance is subject to: non-delinquent taxes and assessments; all matters of record; and any matters which could be ascertained by a proper inspection or survey of such real property.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed as of this ____ day of _____, 2011.

Grantor:

IA Sacramento Holdings, L.L.C.,
a Delaware limited liability company

By: IA Sacramento Development VP, L.L.C.,
a Delaware limited liability company, its sole member

By: Inland American Real Estate Trust, Inc.,
a Maryland corporation, its sole member

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION

That certain parcel of land situate in the City of Sacramento in the County of Sacramento, State of California, described as follows:

EXHIBIT D

FORM OF GENERAL INSTRUMENT

GENERAL INSTRUMENT OF TRANSFER
PARCEL B AND SLIVER PARCEL
SACRAMENTO, CALIFORNIA

This General Instrument of Transfer (“**Instrument**”) is made as of the ___th day of _____, 20___, by and between IA SACRAMENTO HOLDINGS, L.L.C., a Delaware limited liability company with a principal place of business at 2901 Butterfield Road, Oak Brook, Illinois 60523 (“Assignor”), and City of Sacramento, a municipal corporation having a place of business at City Hall, 915 I Street, 5th Floor, Sacramento, CA (“Assignee”).

In connection with the conveyance of certain property owned by Assignor within the Railyards Project, known as Parcel B and the Sliver Parcel, more particularly described on Schedule I attached hereto and made a part hereof (the “Premises”), and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby sells, assigns, transfers, grants and conveys unto Assignee, all of Assignor’s right, title and interest in and to such tangible personal property owned by Assignor as is set forth in Schedule II attached hereto and made a part hereof (“**Personal Property**”):

1. All appurtenances and privileges belonging to the Premises and the rights, benefits and privileges of owning and operating the same;
2. All rights, entitlements and/or approvals to develop the Premises which have been or may hereafter be granted by governmental bodies having jurisdiction or authority over the Premises, and any certificates evidencing compliance therewith;
3. All variances, conditional use permits, special permits, exceptions, rezonings, general plan amendments, parcel maps, development agreements, permits, Licenses, applications, any other governmental approvals and consents (if any) relating to the Premises;
4. All guarantees, warranties, and indemnities giving rise to any rights or benefits of Assignor in respect of the Premises and all claims and/or causes of action against contractors with respect to the Premises or any part thereof or any buildings, structures or improvements thereon, provided, however, that Assignor reserves, in common with Assignee, such rights in respect of the matters assigned in this paragraph 4 as may be necessary or convenient for Assignor’s discharge of liabilities, or defense of claims, relating to the Premises which are not assigned to or assumed by Buyer in connection with the acquisition of the Premises; and

Assignee hereby accepts the foregoing transfer from Assignor.

This Instrument shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns and shall be governed by the laws of the State of California.

This Instrument may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Assignment under seal as of the date first written above.

Assignor: IA Sacramento Holdings, L.L.C., a Delaware limited liability company

By: IA Sacramento Development VP, L.L.C.,
a Delaware limited liability company, its sole member

By: Inland American Real Estate Trust, Inc.,
a Maryland corporation, its sole member

By: _____
Its: _____

Assignee: City of Sacramento, a municipal corporation

By: _____
Name: John Dangberg
Title: Assistant City Manager

Approved as to Legal Form

By: _____
Senior Deputy City Attorney
Attest:

By: _____
City Clerk

Schedule I

Description of the Premises

That certain parcel of land situate in Sacramento, California, described as follows:

Schedule II
List of the Personal Property

EXHIBIT E

FORM OF NON-FOREIGN CERTIFICATE

NON-FOREIGN CERTIFICATE
[INSERT ADDRESS]

Section 1445 of the Internal Revenue Code provides that a purchaser of a United States Property interest must withhold tax if the seller is a foreign person. To inform _____ (“Buyer”) that withholding of tax is not required upon the disposition of a United States Property interest by IA Sacramento Holdings, L.L.C., a Delaware limited liability company (“Seller”), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign person (as that term is defined in the Internal Revenue Code and Income Tax Regulations);
2. Seller’s United States employer identification number is _____; and
3. Seller’s office address is _____

Seller understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of Seller.

Seller:

IA Sacramento Holdings, L.L.C.,
a Delaware limited liability company

By: IA Sacramento Development VP, L.L.C.,
a Delaware limited liability company, its sole member

By: Inland American Real Estate Trust, Inc.,
a Maryland corporation, its sole member

By: _____
Its: _____

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF

CITY OF SACRAMENTO

NO FEE DOCUMENT
Govt Code 6103

WHEN RECORDED MAIL TO:

Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha Nebraska 68179-1690



NO TRANSFER TAX DUE per R&T Code 11922
Grantor is a Government Agency

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RES File Escrow 10-5010001-B-CD APN 002-0010-046, portion of -053 Agreement #

EASEMENT FOR RAILROAD OPERATIONS

The CITY OF SACRAMENTO, a municipal corporation, ("Grantor") in accordance with terms and conditions of that certain Sacramento Valley Amtrak Station Construction, Maintenance & Operation Agreement dated November 23, 2009, hereby grants to the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, ("Grantee") an exclusive perpetual easement in, on, under, over, across and through that real property situated in the City of Sacramento, County of Sacramento, State of California, described as follows (the "Easement Area"):

**SEE ATTACHED LEGAL DESCRIPTION MARKED EXHIBIT 'A'
AND DIAGRAMED IN THE CORRESPONDING PLAT MAP ATTACHED AS EXHIBIT 'B'**

Grantee (and its lessees, sublessees, licensees, successors or assigns) shall have the right to own, construct, reconstruct, maintain, operate, use and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities, transportation systems, pipelines, communication systems, lines and facilities of every kind and nature, including but not limited to, all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment and appurtenances. Grantee further has the right to use the Easement Area for any other lawful purpose, including, but not limited to, entering into easements, licenses or leases with third parties for longitudinal occupancies or crossings (which may include without limitation granting rights to governmental authorities and/or the public for use as a roadway, public crossing or other related purposes), granting subeasements, licenses and any other interests in the Easement Area, and to collect the rents, issues and profits therefrom. Grantor reserves the right to permit controlled access over the Easement Area as required by the fire department to permit fire and emergency access and egress for the benefit of the existing "Central Shop" improvements north of the Easement Area. The Easement Area includes the airspace above and the area below the surface of the land comprising the Easement Area.

Dated: _____

By:

John Dangberg, Assistant City Manager
[attach notary acknowledgement]

Signed in the presence of:

Deputy City Clerk

EXHIBIT A

Legal Description

