



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

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Meeting Date: 3/30/2011

Report Type: Consent

Title: Railyards Proposition 1C Grant Agreement Assignment: 5th Street Extension Project
(Continued from 3-22-11) [To Be Delivered]

Report ID: 2011-00325

Location: Railyards, District 1

Recommendation: Adopt a Resolution: 1) ratifying the letter agreement, dated October 19, 2010, between the City, the California Department of Housing and Community Development (“HCD”), and IA Sacramento Rail, L.L.C., related to the transit oriented development grant the City received from HCD for the 5th Street extension project (City agreement 2009-0904-A, the “TOD Grant”); 2) authorizing the City Manager or his designee to execute an amendment to the TOD Grant disbursement agreement (City agreement 2009-0904, the “TOD Contract”); 3) authorizing the City Manager or his designee to execute a letter agreement with HCD and IA Sacramento Holdings, L.L.C. (“IA Holdings”) related to the TOD Grant; and, 4) authorizing the City Manager or his designee to execute an agreement (“Assignment Agreement”) with IA Holdings in which the City assigns, and IA Holdings assumes, the City’s rights and obligations under the TOD Grant, TOD Contract, and related agreements described in the Assignment Agreement.

Contact: Fran Halbakken, Operations Manager, (916) 808-7194, Department of Transportation

Presenter: None

Department: Transportation Department

Division: Planning & Policy

Dept ID: 15001041

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Agreements Cover Sheets
- 4-Resolution
- 5 - Exhibit A - Oct. 19 2010 Letter Agreement
- 6 - Exhibit B - 1st Amendment
- 7 - Exhibit C - Extension letter
- 8 - Exhibit D - Assignment and Assumption Agreement 5th Street Extension Project TOD Grant Agreement

- 8a - Exhibit D-A1 - TOD Standard Agreement \$17M (Executed)
- 8b - Exhibit D-A2 - TOD Grant Disbursement Agreement \$17M (Executed)
- 8c - Exhibit D-A3 - First Amendment to Railyards TOD Disbursement Agreement
- 8d - Exhibit D-A4a - TOD Covenant-Railyards-Conformed Copy
- 8e - Exhibit D-A4b - TOD Covenant Amendment
- 8f - Exhibit D-A5 - Response Letter regarding TOD Grant
- 8g - Exhibit D-B - Form LOC Final

City Attorney Review

Approved as to Form
Michael T. Sparks
3/29/2011 12:20:43 PM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 3/29/2011 11:16:17 AM

Assistant City Manager: Patti Bisharat - 3/29/2011 11:38:10 AM

Description/Analysis

Issue: On June 23, 2009, the City accepted \$17 million in funding from the California Department of Housing and Community Development (“HCD”) under Proposition 1C infrastructure and housing program for the Railyards project. The grant was to fund the design and construction of the extension of 5th Street, from H Street northward to the future Stevens Street alignment, bridging over the planned alignment for relocation of the Union Pacific Railroad mainline tracks (the “5th Street Extension Project”). The grant was awarded in consideration for the commitment by S. Thomas Enterprises of Sacramento, LLC (“Thomas”) to construct 457 housing units (the “TOD Housing”), of which 86 would be affordable to low and very low income households.

The grant is set out in two agreements between the City and HCD: the standard agreement dated August 10, 2009, (City Agreement 2009-0904-A, the “TOD Grant”) and the disbursement agreement dated September 10, 2009 (City Agreement 2009-0904, the “TOD Contract”) (the TOD Grant and TOD Contract may be referred to collectively as the “TOD Agreements”). Thomas, as the owner of the Railyards property, was recognized as a subrecipient under the TOD Grant and a covenant to restrict development of Railyards lots 42 and 46 for the TOD Housing was recorded. On June 23, 2009, the City Council also approved assignment of the TOD Agreements to Thomas under an assignment and assumption agreement (City Agreement 2009-0905), whereby Thomas assumed the City’s obligations to undertake the 5th Street Extension Project and develop the TOD Housing under the TOD Grant.

On June 15, 2010, Thomas’ lender, IA Sacramento Rail, L.L.C. (“Inland Rail”) recorded two notices of default on a combined \$185 million in loans, which were due and payable in full on April 1, 2010. On October 22, 2010, Inland Rail proceeded to foreclose by making a credit bid of its second deed of trust in the total amount of \$50,350,000. On October 25, 2010, the trustee recorded a trustee deed upon sale to transfer title to the Railyards property to an Inland Rail affiliate, IA Sacramento Development, L.L.C. (“IA Development”). Thomas also assigned to IA Development its interests in the TOD Agreements for the Railyards project. IA Development subsequently changed its name to IA Sacramento Holdings L.L.C. (“Inland Holdings”).

Prior to the foreclosure sale, on October 19, 2010, Inland Rail, HCD, and the City Manager executed a letter agreement which provided for a commitment to amend the TOD Contract to allow for a pro-rata repayment obligation based on the number of TOD Housing units actually built, Inland Rail to be recognized as the new grant subrecipient, and the City to assign the TOD Agreements to Inland. The City’s obligation under the letter agreement was contingent on City Council approval. Staff is recommending ratification of the letter agreement as part of the proposed actions. The proposed actions also include City approval of the TOD Contract amendment with HCD and Inland Holdings, as well as approval of

another letter agreement between the City, IA Holdings, and HCD that provides for extensions of time to complete certain obligations under the TOD Grant.

By entering into the proposed assignment and assumption agreement (“Assignment Agreement”) with IA Holdings, the City will assign, and IA Holdings will assume, the City’s rights and obligations under the TOD Agreements and related agreements described in the Assignment Agreement, including the obligation to complete the 5th Street Extension Project and the TOD Housing. Under the proposed amendment to the TOD Contract, HCD recognizes that the City is delegating its obligations under the TOD Agreements to Inland Holdings, however, the City, as the grant recipient, remains ultimately responsible to HCD for performance of all obligations under the TOD Agreements. IA Holdings is obligated under the Assignment Agreement to indemnify the City for any liability, including a demand by HCD for repayment of the grant funds, arising from IA Holdings’ failure to complete the 5th Street Extension Project and the TOD Housing as required by the TOD Agreements, subject to a limitation described in detail in the Assignment Agreement.

Policy Considerations: The recommendations are consistent with Council direction on February 19, 2008 (Resolution No. 2008-098) and March 17, 2009 (Resolution No. 2009-146) that the Railyards project is the City’s top priority for funding through the Proposition 1C TOD Housing Program. It is also consistent with Council direction on June 23, 2009 to authorize acceptance of the grant (Resolution No. 2009-429).

The recommendation is also consistent with the City’s Smart Growth Principles, the Railyards Specific Plan, the 2002 Infill Strategy and the transit-supportive housing policies in the 2030 General Plan.

Environmental Considerations:

California Environmental Quality Act (CEQA): The environmental impacts of the 5th Street Extension Project and the TOD Housing, which are the subject matters of the agreements referenced in this report, were included in the environmental impact report prepared for the Railyards Specific Plan, which was certified on December 11, 2007. There have been no project changes or new information of substantial importance which would require reevaluation of the EIR for compliance with CEQA to support the proposed actions.

Sustainability Considerations: The improvements to be funded with the TOD Grant have been reviewed for consistency with the goals, policies and targets of the City’s Sustainability Master Plan and the 2030 General Plan. The improvements comply with many of the goals, in particular number 6 - Urban Design, Land Use, Green Building and Transportation specifically by reducing dependence on the private automobile by providing transit-supportive land uses, and reducing long commutes by providing a wide array of transportation and housing choices near jobs for a balanced, healthy City.

Commission/Committee Action: NA

Rationale for Recommendation: The Railyards project is a major infill and transit-oriented development, with 15% of the housing to be built for low and very low income households per the requirements under the TOD Grant and the City's Inclusionary Housing ordinance. This mixed use development project is expected to promote increased transit ridership in Sacramento. The TOD Grant will fund a portion of the infrastructure needed to serve the TOD Housing.

Financial Considerations: Of the \$17 million grant, approximately \$4.5 million has been expended for the 5th Street Extension Project. Assignment of the TOD Agreements to Inland Holdings as the new property owner and Railyards developer will allow for completion of the 5th Street Extension Project. The City, as the grant recipient remains ultimately responsible for performance of the grant obligations, however, IA Holdings has agreed to indemnify the City for any liability, including a demand by HCD for repayment of the grant funds, arising from IA Holdings' failure to complete the 5th Street Extension Project and the TOD Housing as required by the TOD Agreements, subject to a limitation described in detail in the Assignment Agreement. No General Fund expenditures are involved in this recommendation.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report. However, the 5th Street Bridge Project ESBE goal is 20%, and the 5th Street bridge contractor, MCM Construction, has pledged 21.6% participation.



Background

TOD Grant - On June 23, 2009, the City accepted a \$17 million grant from the California Department of Housing and Community Development (“HCD”) under the Proposition 1C Transit Oriented Development (TOD) housing program for the Railyards project. This grant was awarded by HCD on June 24, 2008, but funding was not made available until the following year. The grant provided funding for the design and construction of the extension of 5th Street, from H Street northward to the future alignment of Stevens Street, bridging over the planned alignment for relocation of the Union Pacific Railroad mainline tracks (the “5th Street Extension Project”). The grant was awarded in consideration for the commitment by S. Thomas Enterprises of Sacramento, LLC (“Thomas”) to construct a 98 unit multi-family residential project, which would include 86 units affordable to low and very low income households, and development of 359 market rate units (the “TOD Housing”) near the Sacramento Valley Station, which is the site for the City’s planned Intermodal project.

The grant is set out in two agreements between the City and HCD: the standard agreement dated August 10, 2009, (City Agreement 2009-0904-A, the “TOD Grant”) and the disbursement agreement dated September 10, 2009 (City Agreement No. 2009-0904, the “TOD Contract”) (the TOD Grant and TOD Contract may be referred to collectively as the “TOD Agreements”). Thomas, as the owner of the Railyards property, was recognized as a subrecipient under the TOD Grant and Thomas also executed the TOD Contract.

Assignment of TOD Grant to Thomas - On June 23, 2009, the City Council also approved an assignment and assumption agreement with Thomas for the TOD Grant (City Agreement 2009-0905) to allow for the grant funding to be used for construction of the 5th Street Extension Project and for Thomas to assume the grant obligations for development of the TOD Housing. On August 10, 2009, the City executed a designate payee form to allow HCD to make grant payments directly to Thomas. On August 31, 2009, a covenant to restrict development of Railyards lots 42 and 46 for the TOD Housing was also recorded. The assignment and assumption agreement allowed Thomas to be reimbursed by HCD for its prior remediation, grading and design costs in the amount of \$653,274 and to proceed with project construction.

On September 29, 2009, the Capital Improvement Project for the 5th Street Extension Project was established. Thereafter, Thomas awarded contracts to MCM Construction and Vali Cooper & Associates for construction and construction management services, respectively, for the 5th Street Bridge Project, which was the first phase of the 5th Street Extension Project. HCD released approximately \$1.5 million to Thomas for the design and grading for the extension of 5th Street and for the costs incurred for the 5th Street bridge construction.

Railyards Loan Default and Foreclosure - On June 15, 2010, Thomas’ lender, IA Sacramento Rail, L.L.C. (“Inland Rail”) recorded two notices of default on a combined \$185 million in loans, which were due and payable in full on April 1, 2010.

On October 22, 2010, Inland Rail proceeded to foreclose by making a credit bid of its second deed of trust in the total amount of \$50,350,000. On October 25, 2010, the trustee recorded a trustee deed upon sale to transfer title to the Railyards property to an Inland Rail affiliate, IA Sacramento Development, L.L.C. ("IA Development"). Thomas had worked with Inland Rail prior to the foreclosure sale to allow the recording of a subordination of Inland Rail's deeds of trust to the HCD covenant to avoid extinguishment. Thomas also assigned to IA Development its interests in the TOD Agreements for the Railyards project. IA Development subsequently changed its name to IA Sacramento Holdings L.L.C. ("Inland Holdings").

TOD Grant Letter Agreement - Prior to the foreclosure sale, on October 19, 2010, Inland Rail, HCD, and the City Manager executed a letter agreement which provided for a commitment to amend the TOD Contract to allow for a pro-rata repayment obligation based on the number of TOD Housing units actually built, Inland Rail to be recognized as the new grant subrecipient, and the City to assign the TOD Agreements to Inland. The City's obligation under the letter agreement was contingent on City Council approval. Staff is recommending ratification of the letter agreement as part of the proposed actions. The proposed actions also include City approval of the TOD Contract amendment with HCD and Inland Holdings, as well as approval of another letter agreement between the City, IA Holdings, and HCD that provides for extensions of time to complete certain obligations under the TOD Grant.

IA Holdings Assignment and Assumption Agreement - By entering into the proposed assignment and assumption agreement ("Assignment Agreement") with IA Holdings, the City will assign, and IA Holdings will assume, the City's rights and obligations under the TOD Agreements and related agreements described in the Assignment Agreement, including the obligation to complete the 5th Street Extension Project and the TOD Housing. Under the proposed amendment to the TOD Contract, HCD recognizes that the City is delegating its obligations under the TOD Agreements to Inland Holdings, however, the City, as the grant recipient, remains ultimately responsible to HCD for performance of all obligations under the TOD Agreements. IA Holdings is obligated under the Assignment Agreement to indemnify the City for any liability, including a demand by HCD for repayment of the grant funds, arising from IA Holdings' failure to complete the 5th Street Extension Project and the TOD Housing as required by the TOD Agreements, subject to a limitation described in detail in the Assignment Agreement.



1st Amendment

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract is included as an exhibit to the Resolution, however, the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.

- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

Extension Letter

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract is included as an exhibit to the Resolution, however, the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.
- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

All unexecuted contracts/agreements which are signed by the other parties are to be in the Office of the City Clerk before agenda publication.

RESOLUTION NO. 2011-

Adopted by the Sacramento City Council

RAILYARDS PROPOSITION 1C GRANT AGREEMENT ASSIGNMENT: 5TH STREET EXTENSION PROJECT

BACKGROUND

- A. On February 19, 2008, the City Council approved submittal of an application to the California Department of Housing and Community Development (“HCD”) for Transit Oriented Development (“TOD”) Housing Program funding on behalf of the Railyards development project because only public agencies are permitted to request TOD grants.
- B. On June 24, 2008, HCD awarded the City \$17 million in TOD funding for the Railyards project. This grant funding was designated to fund the extension of 5th Street from H Street northward to the future Stevens Street alignment over the relocated Union Pacific Railroad (“UPRR”) tracks (the “5th Street Extension Project”), thereby improving access to the Sacramento Valley Station, in consideration for the development of 457 units of affordable and market rate housing (the “TOD Housing”) as specified in the contract between the City and HCD for expenditure of the grant.
- C. On June 23, 2009, the City Council authorized acceptance of the grant and approved execution of the standard agreement (City Agreement No. 2009-0904-A, the “TOD Grant”) and disbursement agreement (City Agreement No. 2009-0904, the “TOD Contract”) (the TOD Grant and TOD Contract may be referred to collectively as the “TOD Agreements”). The City Council also approved assignment of the TOD Grant to S. Thomas Enterprises of Sacramento, LLC (“Thomas”) under an assignment and assumption agreement (City Agreement 2009-0905), whereby Thomas assumed the City’s obligations to undertake the 5th Street Extension Project and develop the TOD Housing under the TOD Grant and TOD Contract.
- D. I.A. Sacramento Rail, L.L.C. (“Inland Rail”) completed a non-judicial foreclosure of the Railyards property on October 22, 2010, and on October 25, 2010, IA Sacramento Development, L.L.C. (“Inland Development”) became the owner of the Railyards property by trustee deed (Inland Development subsequently changed its name to IA Sacramento Holdings, L.L.C. (“Inland Holdings”)).
- E. On October 19, 2010, HCD, Inland Rail, and the City Manager signed a letter agreement which provided for a commitment to amend the TOD Contract to allow for a pro-rata repayment obligation based on the number of TOD Housing units actually built, Inland Rail to be recognized as the new grant subrecipient, and the City to assign the TOD Agreements to Inland. On October 22, 2010, Thomas assigned to Inland Development its interest in the TOD Agreements.

- F. By entering into the proposed assignment and assumption agreement (“Assignment Agreement”) with IA Holdings, the City will assign, and IA Holdings will assume, the City’s rights and obligations under the TOD Agreements and related agreements described in the Assignment Agreement, including the obligation to complete the 5th Street Extension Project and the TOD Housing. Under the proposed amendment to the TOD Contract, HCD recognizes that the City is delegating its obligations under the TOD Agreements to Inland Holdings, however, the City, as the grant recipient, remains ultimately responsible to HCD for performance of all obligations under the TOD Agreements. IA Holdings is obligated under the Assignment Agreement to indemnify the City for any liability, including a demand by HCD for repayment of the grant funds, arising from IA Holdings’ failure to complete the 5th Street Extension Project and the TOD Housing as required by the TOD Agreements, subject to a limitation described in detail in the Assignment Agreement.
- G. The City, IA Holdings, and HCD have negotiated another letter agreement that provides for extensions of time to complete certain obligations under the TOD Grant.

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

- Section 1. The letter agreement, dated October 19, 2010, between the City, the California Department of Housing and Community Development (“HCD”), and IA Sacramento Rail, L.L.C., related to the transit oriented development grant the City received from HCD for the 5th Street extension project (City agreement 2009-0904-A, the “TOD Grant”) is ratified. The letter agreement is attached as Exhibit A.
- Section 2. The City Manager or his designee is authorized to execute an amendment to the TOD Grant disbursement agreement (City agreement 2009-0904, the “TOD Contract”). The amendment to the TOD Contract is attached as Exhibit B.
- Section 3. The City Manager or his designee is authorized to execute a letter agreement with HCD and IA Sacramento Holdings, L.L.C. (“IA Holdings”) related to the TOD Grant. The letter agreement is attached as Exhibit C.
- Section 4. The City Manager or his designee to execute an agreement (“Assignment Agreement”) with IA Holdings in which the City assigns, and IA Holdings assumes, the City’s rights and obligations under the TOD Grant, TOD Contract, and related agreements described in the Assignment Agreement. The Assignment Agreement is attached as Exhibit D.
- Section 5. Exhibits A, B, C, and D are made part of this Resolution.

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Exhibit A – Letter agreement dated October 19, 2010

Exhibit B – Amendment to TOD Contract

Exhibit C – Letter agreement with HCD and IA Holdings

Exhibit D – Assignment Agreement



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October 19, 2010

Chris Westlake, Deputy Director
Department of Housing and
Community Development
1800 Third Street, Suite 460
Sacramento, CA 95811

RE: TOD Grant (TOD) Program: Sacramento Railyards (the "*Property*")

Dear Mr. Westlake:

This letter agreement (this "*Letter Agreement*") relates to that certain award letter dated June 24, 2008 (the "*Award Letter*"), from the Department of Housing and Community Development (the "*Department*") to the City of Sacramento, a municipal corporation (the "*Recipient*") and S. Thomas Enterprises of Sacramento, LLC ("*Thomas*"), the Standard Agreement (STD 213), between the Department and the Recipient, dated August 10, 2009 (the "*Standard Agreement*"), the Transit-Oriented Development Housing Program Infrastructure Grant Disbursement Agreement, between the Department, the Recipient and Thomas, dated September 10, 2009 (the "*Disbursement Agreement*") and that certain Assignment and Assumption Agreement (5th and 6th Street Overpass Agreements), by and between the Recipient and Thomas, dated September 15, 2009 (the "*Assignment Agreement*") and collectively with the Award Letter, the Standard Agreement and the Disbursement Agreement referred to herein as the "*TOD Agreements*"), whereby the Department awarded the Recipient grant funds in the amount of Seventeen Million Dollars (\$17,000,000.00) (the "*Grant Funds*") under the Transit-Oriented Development Housing Program (the "*TOD Program*"). Pursuant to the TOD Agreements, the Recipient is required to use the Grant Funds to complete certain infrastructure improvement to the Property and to construct certain Housing Developments (the "*TOD Project*"). Capitalized terms used herein that are not otherwise defined, shall have the same meaning as set forth in the TOD Agreements.

In furtherance of the TOD Agreements, Thomas and the Department entered into that certain Declaration of Restrictive Covenants for the Development and Operation of Housing, recorded on August 31, 2009, in Book 20090831, page 0583 of the Official Records of Sacramento County, California (the "*Official Records*"), as amended by that certain Amendment to Declaration of Restrictive Covenants for the Development and Operation of Housing, recorded on June 18, 2010, in Book 20100618, Page 1280 of the Official Records (collectively referred to herein as the "*Housing Covenants*").

Thomas is the present legal owner of the Property. In connection with certain loans (the "*Loans*") made by IA Sacramento Rail, L.L.C., a Delaware limited liability company ("*Inland*") to Thomas in 2007 and 2008, Thomas executed and delivered to Inland certain

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promissory notes, secured by, among other things, the two deeds of trust in favor of Inland encumbering the Property and recorded in the Official Records (the "*Deeds of Trust*"). On June 15, 2010, Inland recorded a Notice of Default and Election to Sell Under Deed of Trust with respect to both Deeds of Trust (collectively, the "*Notices of Default*"). The Deeds of Trust and the documents executed by Thomas in connection with the Loans are liens on the Property prior and superior to the lien or charge of the Housing Covenants.

With regards to the foreclosure process (the "*Foreclosure Process*") initiated by recordation of the Notices of Default by Inland, one of the Department's concerns is that the Housing Covenants, as encumbrances junior to the Deeds of Trust, will be extinguished upon the conclusion of the Foreclosure Process. As a result of the initiation of the Foreclosure Process by Inland, the Department has temporarily ceased disbursing of Grant Funds to Thomas until it has cured its default under the terms of the Loans. Transfer of title to the Property from Thomas to Inland, through the Foreclosure Process or otherwise, is one means of curing the default. The Department is willing to continue with the disbursement of Grants Funds to Recipient if Inland agrees not to extinguish the Housing Covenants if such foreclosure should occur. Inland desires the continued disbursement and allocation of the Grant Funds to the TOD Project and therefore will agree not to extinguish the Housing Covenants as set forth herein.

Accordingly, the Department, the Recipient and Inland hereby agree to the following:

1. Notwithstanding that the Deeds of Trust are liens on the Property prior and superior to the lien or charge of the Housing Covenants, Inland agrees not to extinguish the Housing Covenants and agrees to take appropriate steps to ensure that the Housing Covenants are not terminated as a result of the Foreclosure Process. Upon request by the Department, Inland and the Department shall execute an instrument, in a form reasonably acceptable to the parties, in favor of the Department whereby Inland subordinates all of its right, title and interest under the Deeds of Trust to the Housing Covenants.

2. In the event that Inland comes into possession of title to the Property following the completion of the Foreclosure Process, and Inland meets the TOD requirements of an eligible TOD developer and desires to continue with the construction and development of the TOD Project, then (a) Inland, Recipient and the Department will execute an amendment to the Disbursement Agreement to replace Thomas with Inland, (b) the Recipient and the Department will execute an amendment to the Standard Agreement as set forth below, (c) Inland and the Recipient will execute an assignment of the TOD Agreements, and (d) Recipient will execute a Designated Payee form in favor of Inland. Special conditions acceptable to Inland, Recipient and the Department that are necessary to memorialize the agreed to terms and conditions unique to the TOD Project, will be negotiated in good faith and added to the Department's form Disbursement Agreement in order for Inland, as direct payee of Recipient, to receive the Grant Funds for the TOD Project. Without limiting the foregoing, the parties agree that the

amendment to the Standard Agreement entered into by and between the Recipient and the Department shall include the following provision,

"Repayment of Grant Funds for Failure to Develop Housing. Recipient will be required to repay disbursed Program grant funds where construction of residential units in the Housing Development used as the basis for calculating the grant amount pursuant to Section 305(a) of the Guidelines has not received building permits within five (5) years from the date of the Program grant award. The Department may provide one extension to these deadlines, for a term not to exceed five (5) years, if the Recipient demonstrates that construction has not begun for reasons outside their control, such as deteriorating market conditions. The amount to be repaid shall be the same proportion to the total grant amount as the number of residential units where construction has not timely commenced to the total number of designated residential units. The per unit grant amount for such residential units shall be calculated based on the methodology and factors initially used in calculating the grant funds awarded. Recipient applied for the Program award that is the basis for this Agreement as a Large Multiphase Project under section ___ of Transit-Oriented Development Housing Program Final Guidelines dated December 3, 2007 ("*Guidelines*"). That section requires the development of a minimum of 200 residential units to be eligible for the award of a Program grant. In the event that, at the end of the time periods for the issuance of building permits and occupancy of residential units set forth in this Agreement and the Guidelines, the total number of residential units, as determined by the Department, that meet the requirements of this Agreement and the Guidelines does not meet or exceed 200, the Recipient will be no longer eligible for the award of the Program grant. In such event, the Recipients shall repay to the Department one hundred percent (100%) of the total outstanding, disbursed amount of the Program grant. This obligation shall exist notwithstanding any other obligation, including any repayment obligation, contained in this Agreement, the Disbursement Agreement or the Guidelines."

3. In the event that Inland comes into possession of title to the Property following the completion of the Foreclosure Process or otherwise, Inland, upon written approval by the Department (not to be unreasonably withheld), may modify the development plan for the Housing Development (to change the location of the particular parcels that the Housing Covenants encumber) as proposed by the Recipient in connection with the Recipient's application for the Grant Funds. However, the modification of the development plan for the Housing Development will require the satisfaction of all TOD Program requirements to include, but not limited to, the number of units, bedroom counts of these units and the density and affordability of the housing to be developed which was the basis for calculating the amount of the Grant Funds. Should the modification of the Housing Development result in the reduction of the number of units, the Department may only approve of such modification so long as all requirements under the TOD Program are satisfied and the proposed reduction in the number of units

does not result in the TOD Project receiving a score less than the established cut-off score required for funding of projects under the TOD Program. The Department shall not unreasonably withhold its approval of any such modifications that Inland desires to make to the development plan for the Housing Development and upon approval thereof by the Department, the parties thereto shall amend the TOD Agreements and/or the Housing Covenants to effectuate such modifications to include, but not limited to, reducing the Grant Funds based on the reduction in the number of units as approved by the Department.

4. Inland has expressed certain concerns to the Department with respect to the Housing Covenants, including, without limitation, the overall effect of the Housing Covenants on the marketability of the lots (collectively the "Lots") encumbered by the Housing Covenants. In connection with any sale, financing or development of any of the Lots, the Department agrees to cooperate reasonably with any potential developer or purchaser of any of the Lots and their respective lenders with respect to any modifications they may require with respect to the Housing Covenants. Inland may elect to act as a master developer for the Property and in connection therewith, Inland may sell or otherwise transfer one or more Lots to different purchasers.

The Department agrees that upon the issuance of a certificate of occupancy, or its equivalent, issued by the City of Sacramento for affordable non-market rate Housing Development on an individual Lot (such Lot referred to herein as a "Completed Lot"), the Housing Covenants shall be modified with respect to such Completed Lot to provide that the failure to commence or complete the construction of Housing Development as required on Lots other than the Completed Lot shall not cause or be deemed to be a default under the Housing Covenants by the owner of the Completed Lot. In such event, the Department shall only be entitled to recover damages from the owner(s) of those Lots other than the Completed Lot for such failure to commence or complete the construction of the Housing Development within the time periods set forth in the Housing Covenants. Notwithstanding the foregoing, if all or any portion of the Grant Funds are required to be repaid pursuant to the TOD Agreements, as modified in accordance with Section 2 of this Letter Agreement, the Recipient under the TOD Agreements shall remain liable for the entire portion of the Grant Funds required to be repaid to the Department, although Inland will assume this obligation under the assignment agreement between Inland and Recipient.

This Letter Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties. This Letter Agreement shall be governed by and construed in accordance with the laws of the State of California.

In the event that any party to this Letter Agreement brings an action to interpret or enforce its rights under this Letter Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in such action. This Letter Agreement may be executed, acknowledged and delivered in any number of counterparts and each such counterpart shall constitute an original, but

Chris Westlake
October 19, 2010
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together such counterparts shall constitute only one instrument. Counterpart signatures may be delivered electronically.

The parties acknowledge and agree that if a voluntary or involuntary petition under the Bankruptcy Code is filed with respect to Thomas prior to the date that Inland obtains title to the Property pursuant to the Foreclosure Process or otherwise, then this Letter Agreement shall automatically terminate and have no further force or effect.

Please execute below to acknowledge the Department's and Recipient's acceptance and agreement to the terms and conditions of this Letter Agreement. Once executed, please return the fully executed Letter Agreement to IA Sacramento Rail, L.L.C., a Delaware limited liability company, attention Scott Wilton, 2901 Butterfield Road, Oak Brook, Illinois 60523.

Very truly yours,

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

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

By: 
Its: Scott W. Wilton/Secretary

THE UNDERSIGNED HAS THE AUTHORITY TO EXECUTE THIS LETTER AGREEMENT ON BEHALF OF THE DEPARTMENT AND ACKNOWLEDGES AND AGREES TO THE TERMS AND CONDITIONS OF THIS LETTER AGREEMENT.

Chris Westlake, Deputy Director
Department of Housing and Community Development

Chris Westlake
October 19, 2010
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together such counterparts shall constitute only one instrument. Counterpart signatures may be delivered electronically.

The parties acknowledge and agree that if a voluntary or involuntary petition under the Bankruptcy Code is filed with respect to Thomas prior to the date that Inland obtains title to the Property pursuant to the Foreclosure Process or otherwise, then this Letter Agreement shall automatically terminate and have no further force or effect.

Please execute below to acknowledge the Department's and Recipient's acceptance and agreement to the terms and conditions of this Letter Agreement. Once executed, please return the fully executed Letter Agreement to IA Sacramento Rail, L.L.C., a Delaware limited liability company, attention Scott Wilton, 2901 Butterfield Road, Oak Brook, Illinois 60523.

Very truly yours,

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

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

By: _____
Its: _____

THE UNDERSIGNED HAS THE AUTHORITY TO EXECUTE THIS LETTER AGREEMENT ON BEHALF OF THE DEPARTMENT AND ACKNOWLEDGES AND AGREES TO THE TERMS AND CONDITIONS OF THIS LETTER AGREEMENT.



Chris Westlake, Deputy Director
Department of Housing and Community Development

Chris Westlake
October 19, 2010
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THE UNDERSIGNED HAS EXECUTED THIS LETTER AGREEMENT ON BEHALF OF THE CITY OF SACRAMENTO AND ACKNOWLEDGES AND AGREES TO THE TERMS AND CONDITIONS OF THIS LETTER AGREEMENT; PROVIDED HOWEVER, THAT THIS LETTER AGREEMENT SHALL NOT BE BINDING AS TO THE CITY UNLESS AND UNTIL IT IS APPROVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO.

By: 
Name: John Dangberg
Title: Assistant City Manager

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364900-000023

FIRST AMENDMENT TO TRANSIT-ORIENTED DEVELOPMENT HOUSING PROGRAM INFRASTRUCTURE GRANT DISBURSEMENT AGREEMENT

This FIRST AMENDMENT TO TRANSIT-ORIENTED DEVELOPMENT HOUSING PROGRAM INFRASTRUCTURE GRANT DISBURSEMENT AGREEMENT (this "**Amendment**") is dated for reference purposes only as of March __, 2011, and is made by and among the City of Sacramento, a municipal corporation (the "**Recipient**"), IA Sacramento Holdings, L.L.C., a Delaware limited liability company ("**IA Sacramento**") and the Department of Housing and Community Development, a public agency of the State of California (the "**Department**").

Recitals

A. On September 10, 2009, the Recipient, the Department and S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company ("**Thomas**"), entered into that certain Transit-Oriented Development ("**TOD**") Housing Program Infrastructure Grant Disbursement Agreement, Contract No. 07-TOD-4243 (the "**Disbursement Agreement**"), whereby the Department agreed to disburse the Program Funds to the Recipient to be used to pay for the construction of the Infrastructure Project and the Housing Development. In connection with the foregoing, the Recipient and the Department had previously entered into that certain Standard Agreement Number 07-TOD-4243, dated August 10, 2009 (the "**Standard Agreement**" and collectively with the Disbursement Agreement referred to herein as the "**TOD Contract**"). Unless otherwise defined herein, all capitalized terms in this Amendment shall be as defined in the TOD Contract.

B. Pursuant to that certain Assignment and Assumption Agreement (5th and 6th Street Overpass Agreements), between the Recipient and Thomas, dated September 15, 2009, as amended by that certain First Amendment to Assignment and Assumption Agreement, dated October 15, 2009 (as amended, referred to herein as the "**Thomas Assignment Agreement**"), the Recipient transferred all duties and obligations of performance under the TOD Contract to Thomas. Thereafter, Thomas commenced construction of certain portions of the Infrastructure Project and the Department released a portion of the Program Funds to Thomas pursuant to the Designated Payee authorization issued by Recipient.

C. To secure the obligation to complete the Housing Development in accordance with the terms of the TOD Contract, Thomas and the Department entered into that certain Declaration of Restrictive Covenants for the Development and Operation of Housing, which was recorded against the Property on August 31, 2009 in the Official Records of Sacramento County, California ("**Official Records**") on Page 583 of Book No. 20090831, as thereafter amended by that certain Amendment to Declaration of Restrictive Covenants For the Development and Operation of Housing, dated as of April 29, 2010 and recorded in the Official Records on June 18, 2010 on

Page 1280 of Book No. 20100618 (as amended, referred to herein as the “HCD Covenant”).

D. In connection with certain loans (the “**Loans**”) made by IA Sacramento Rail, L.L.C., a Delaware limited liability company (“**Lender**”), an affiliate of IA Sacramento, to Thomas in 2007 and 2008, Thomas executed and delivered to Lender certain promissory notes, secured by, among other things, two deeds of trust in favor of Lender encumbering the Property and recorded in the Official Records (the “**Deeds of Trust**”). 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**”).

E. On October 19, 2010, Lender and the Department entered into that certain Subordination Agreement recorded in the Official Records on Page 0198 of Book 20101022, whereby Lender agreed to subordinate the Deeds of Trust to the HCD Covenant to avoid extinguishment in connection with a foreclosure proceeding and in anticipation of the TOD Contract being amended as set forth herein pursuant to that certain Letter Agreement, dated October 19, 2010, by and between the Recipient, the Department and Lender (the “**Letter Agreement**”).

F. On October 22, 2010, following completion of the foreclosure process initiated by Lender’s recordation of the Notices of Default, IA Sacramento (formerly known as IA Sacramento Development, L.L.C.) acquired fee title interest in the 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 Property through foreclosure, IA Sacramento has concluded that to preserve the value of the foreclosed-on Property, it is essential that prior agreements regarding the plans, funding and approval of infrastructure projects, such as the Infrastructure Project, be maintained.

G. Following IA Sacramento’s acquisition of the Property, IA Sacramento submitted information to the Department evidencing that IA Sacramento meets the requirements of an eligible TOD developer to allow for the construction of the Infrastructure Project to continue, which work must be completed before any work by any entity may begin to construct and develop the Housing Development. The Infrastructure Project and the Housing Development are sometimes collectively referred to herein as the “**TOD Project**”).

H. Concurrently with the execution of this Agreement, Recipient and IA Sacramento will enter into that certain Assignment and Assumption Agreement (5th Street Extension Project TOD Grant Agreement), (“**IA Sacramento Assignment Agreement**”), whereby the Recipient will transfer all duties and obligations of performance under the TOD Contract to IA Sacramento. Pursuant to the IA Sacramento Assignment Agreement, IA Sacramento will accept and assume all duties and obligations of the Recipient. Furthermore, IA Sacramento will agree to comply with all terms and conditions set forth in the TOD Contract. IA Sacramento, as current

owner of the real property will dedicate, upon completion, the Infrastructure Project and the real property to the Recipient.

I. The Department acknowledges the IA Sacramento Assignment Agreement will be executed, however, the Department has not and will not release the Recipient from its duties and obligations under the TOD Contract. The Department acknowledges that performance of the Scope of Work and any and all other obligations under the TOD Contract by IA Sacramento will be deemed performance by the Recipient. The Recipient, however, will remain ultimately responsible for the performance of all duties and obligations under the TOD Contract.

J. The parties desire to amend the Disbursement Agreement to allow IA Sacramento to proceed to complete construction of the Infrastructure Project and arrange for the Housing Development to be built in accordance with the terms of the TOD Contract.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing Recitals are part of this Amendment.
2. The Disbursement Agreement. The Disbursement Agreement is hereby amended to allow IA Sacramento Holdings, L.L.C. to complete construction of the Infrastructure Project and arrange for the Housing Development to be built in accordance with the terms of the TOD Contract. IA Sacramento is hereby named as the TOD Grant Developer in the Disbursement Agreement replacing Thomas in that capacity.
3. Repayment of Grant Funds for Failure to Develop Housing.

Notwithstanding any other provision of the TOD Contract or the HCD Covenant to the contrary, including, without limitation, Paragraphs 42 and 43 of Exhibit C to the Standard Agreement, Paragraph 2 of Exhibit E to the Standard Agreement and Paragraph 22(b) of the Disbursement Agreement, the parties hereby agree that Recipient will be required to repay disbursed Program Funds if construction of residential units in the Housing Development, which units were used as the basis for calculating the grant amount pursuant to the TOD Guidelines, have not received all necessary and discretionary public land use approvals within five (5) years from the date of the Program grant award. Due to the complex structure of this jointly funded TOD and Infill Infrastructure Grant (IIG) Program project, the Department may provide, at its sole discretion, one extension to the foregoing deadline, such extension not to exceed five (5) years, if the Recipient demonstrates to the Department that construction has not begun for reasons outside of its control, such as deteriorating market conditions. The amount of Program Funds to be repaid shall be the same proportion to the total grant amount as the number of residential units where construction has not timely commenced to the total number of designated residential units. The per unit grant amount for such residential units shall be calculated based on

the methodology and factors initially used in calculating the grant funds awarded. Pursuant to Section 108(k)(1) of the TOD Guidelines dated December 3, 2007, Recipient was awarded the maximum points for proposing a Housing Development with 200 or more residential units. In the event that, upon expiration of the time periods set forth in the TOD Contract and the TOD Guidelines, the Department determines in its reasonable discretion that the total number of residential units that meet the requirements as set forth herein and the TOD Guidelines does not meet or exceed two hundred (200) units, then the Recipient will be no longer eligible for the award of the Program grant. In such event, the Recipient shall repay to the Department one hundred percent (100%) of the total outstanding, disbursed amount of the Program Funds.

If the total number of completed residential units exceeds 200 units, but is less than the number required to qualify for the entire TOD Program award, the repayment of TOD Program funds shall be the difference between the amount of TOD Program funds actually disbursed and the amount that the Project would have qualified for based on the methodology and factors initially used in calculating the TOD Program funds awarded pursuant to the Notice of Funding Availability (NOFA), dated December 11, 2007.

This obligation shall exist notwithstanding any other obligation, including any repayment obligation, contained in the Standard Agreement, the Disbursement Agreement or the TOD Guidelines. The provisions of this Paragraph 3 shall survive the expiration or earlier termination of the TOD Contract.

4. Modification of the Development Plan. IA Sacramento, upon written approval by the Department (not to be unreasonably withheld), may modify the development plan for the Housing Development as designated in the Application, including, without limitation, to change the location of the particular Lots (as defined in Paragraph 5(a) below) encumbered by the HCD Covenant or modify the number and type (market, low income and very low income) of units located on any particular Lot. The modification of the development plan for the Housing Development must satisfy all TOD program requirements to include, but not limited to, the number of units, bedroom counts of the units and the density and affordability of the housing to be developed which was the basis for calculating the amount of the Program Funds; provided, however, that if such modification of the Housing Development results in the reduction in the number of units, the Department may only approve such modification so long as all requirements under the TOD program are satisfied and the proposed reduction in the number of units does not result in the TOD Project receiving a score less than the established cut-off score required for funding of projects under the TOD program. The Department shall not unreasonably withhold its approval of any such modifications that IA Sacramento desires to make to the development plan for the Housing Development and upon approval thereof by the Department, the parties hereto shall amend the TOD Contract and/or the HCD Covenant to effectuate such modifications to include, but not limited to, reducing the Program Funds based on the reduction in the number of units as

approved by the Department if applicable. The provisions of Paragraph 4 shall survive the expiration or earlier termination of the TOD Contract.

5. Modification of the HCD Covenant. Notwithstanding any other provision of the TOD Contract or the HCD Covenant to the contrary, including, without limitation, Paragraph 4 of Exhibit C to the Standard Agreement, Paragraph 15(I) of the Disbursement Agreement and Paragraph 7 of Exhibit E to the Disbursement Agreement, the parties hereby agree to the following provisions with respect to the HCD Covenant.

(a) In connection with any sale, financing or development of any of the lots (individually referred to herein as a "Lot" and collectively as the "Lots"), the Department shall reasonably cooperate with any potential developer or purchaser of any of the Lots and their respective lenders with respect to any modifications required to the HCD Covenant in furtherance of any sale, financing or development of the Lots. Notwithstanding anything to the contrary in the TOD Contract or the HCD Covenant, including without limitation, as set forth in Paragraph 38 of the Disbursement Agreement, IA Sacramento may elect to act as a master developer for the Property and in connection therewith, IA Sacramento may sell or otherwise transfer one or more Lots to different purchasers. In such event, the Department and IA Sacramento shall enter into and record in the Official Records an amendment or modification to the HCD Covenant in connection with the provisions of this Paragraph 5(a).

(b) Upon the issuance of a certificate of occupancy, or its equivalent, by the City of Sacramento for affordable non-market rate Housing Development on an individual Lot (such Lot referred to herein as a "Completed Lot"), the Department and the fee holder of the Completed Lot shall enter into an amendment to the Housing Covenant with respect to such Completed Lot to provide that the failure to commence or complete the construction of Housing Development as required on Lots other than the Completed Lot shall not cause or be deemed to be a default under the HCD Covenant by the owner of the Completed Lot. In such event, the Department shall only be entitled to recover damages from the owner(s) of those Lots other than the Completed Lot for such failure to commence or complete the construction of the Housing Development within the time periods set forth in the HCD Covenant or the TOD Contract. Notwithstanding the foregoing, if all or any portion of the Program Funds are required to be repaid pursuant to the TOD Contract, as modified in accordance with this Amendment, the Recipient under the TOD Contract shall remain liable for the entire portion of the Program Funds required to be repaid to the Department.

The provisions of Paragraph 5 shall survive the expiration or earlier termination of the TOD Contract.

6. Disbursement of Retention. Notwithstanding anything contained in the TOD Contract or the HCD Covenant to the contrary, including, without limitation, Paragraph 18(c) of the Disbursement Agreement, final disbursement of the Program Funds, including the ten percent (10%) retention, shall not be conditioned upon the

commencement or completion of all or any portion of the Housing Development. The provisions of Paragraph 6 shall survive the expiration or earlier termination of the TOD Contract.

7. Integration. All of the other terms and conditions set out in the Disbursement Agreement, the Standard Agreement and the HCD Covenant remain unchanged and in full force an effect.

IN WITNESS WHEREOF, the Recipient, IA Sacramento and Department have executed this Amendment as of the date set forth above.

RECIPIENT:
City of Sacramento,
a municipal corporation

By: _____
John Dangberg
Assistant City Manager

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

**IA Sacramento:
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: Scott W. Wilton,
Secretary

**DEPARTMENT:
Department of Housing and Community Development,
a public agency of the State of California**

By: _____
Chris Westlake
Deputy Director

March 15, 2011

Chris Westlake, Deputy Director
Department of Housing and
Community Development (“HCD”)
1800 Third Street, Suite 460
Sacramento, CA 95811



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of Contents](#)

RE: Sacramento Railyards (the “*Property*”); 07-TOD-4243

Dear Mr. Westlake:

We are in receipt of your letter dated February 4, 2011, regarding the process to extend the deadline by which the Recipient is required to have received all necessary and discretionary public land use approvals for the Property and the corresponding extension of the Performance Milestone dates and construction completion date deadlines. For the reasons outlined herein, IA Sacramento Holdings, LLC (“IA Holdings”), in its capacity as proposed assignee, is unable to satisfy the parameters outlined in your letter to obtain an extension.

In an effort to provide context to why the existing timeframes are unattainable, this letter outlines some of the extenuating circumstances relative to the development of this specific and unique Property. As you know, IA Holdings is operating in the capacity of a secured lender in possession of the Property through foreclosure, which foreclosure process began in June of 2010 and concluded with IA Holdings taking title to the Property on October 22, 2010. The development of this Property is very complex and requires that certain portions of the development be completed in a specific sequence.

For example, before the Infrastructure Project or any portion of the Housing Development can be completed, a substantial amount of backbone infrastructure must be constructed on the Property. This backbone infrastructure work includes, without limitation, the relocation of existing railroad tracks and the completion of environmental remediation work. Today, there are railroad tracks running through the Property where portions of the Infrastructure Project will ultimately be built and thus, the Infrastructure Project cannot be completed until the track relocation work is done. It is not anticipated that the track relocation work will be done until late 2012. Until the Infrastructure Project is completed, the Housing Development cannot commence because there is no current physical access to the lots where the Housing Development will be built.

To satisfy the parameters set forth in your February 4th letter, we would need to be much farther along with the development of the Property in order to meet the existing deadlines to obtain certain approvals by June 2013, complete construction of the Infrastructure Project by March 2012, commence the construction of the Housing Development by December 2012 and receive final disbursement of funds by February 1, 2012. Under the best of circumstances, we do not anticipate gaining access to the housing lots until late 2012. The TOD grant was awarded to the City of Sacramento (the

“Recipient”) over two and a half years ago. Certain Performance Milestones dates have already been missed, such as the obligation to commence the Infrastructure Project by April 2009, and based on the date of the grant award, half of the time allotted to satisfy certain Performance Milestones has passed. According to the current projected development of the critical backbone infrastructure, it is a virtual certainty that other Performance Milestones will be missed in the near future.

As a result of the foregoing, we are unable to satisfy many of the existing Performance Milestone dates, obtain all necessary and discretionary public land use approvals by June 2013, and submit all invoices as required by December 1, 2011 for final disbursement of funds (the foregoing timeframes referred to collectively herein as the “Timeframes”). In order for the continued development of the Property to be successful, we are requesting a commitment to extend the Timeframes. We are seeking agreement and acknowledgment from HCD that at least two years of progress was lost in the development of the project due to various circumstances. We understand that HCD will not entertain a request for an extension while performance is ongoing under the initial timeframes and milestones. HCD acknowledges by its signature below that one extension of up to five years can be made pursuant to HCD’s February 4, 2011 letter despite the fact that not all parameters set forth in such letter can or will be satisfied. By its signature below, HCD hereby agrees that a minimum three year extension to the Timeframes will be granted to the Recipient City of Sacramento, plus additional years based on documentation that delay was beyond the control of the City of Sacramento and IA Holdings and including, but not limited to, general market conditions. Further, HCD will act reasonably and in good faith when making a determination for an extension for such additional years to the Timeframes.

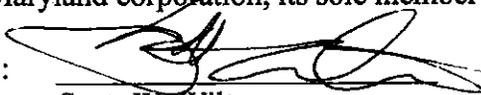
Please execute below to acknowledge HCD's acceptance and agreement to the terms and conditions of this Letter. Once executed, please return the fully executed Letter Agreement to IA Holdings, attention Scott Wilton, 2901 Butterfield Road, Oak Brook, Illinois 60523.

Very truly yours,

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: 
Scott W. Wilton,
Its: Secretary

Chris Westlake
March 15, 2010
Page 3

THE UNDERSIGNED HAS THE AUTHORITY TO EXECUTE THIS LETTER AGREEMENT ON BEHALF OF HCD AND ACKNOWLEDGES AND AGREES TO THE TERMS AND CONDITIONS OF THIS LETTER AGREEMENT.

Chris Westlake, Deputy Director
Department of Housing and Community Development

Chris Westlake
March 15, 2010
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THE UNDERSIGNED EXECUTED THIS LETTER ON BEHALF OF THE
RECIPIENT CITY OF SACRAMENTO AND ACKNOWLEDGES AND AGREES TO
THE TERMS AND CONDITIONS OF THIS LETTER.

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

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

ASSIGNMENT AND ASSUMPTION AGREEMENT 5th Street Extension Project TOD Grant Agreement

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Assignment Agreement**") is made and entered into as of this _____ day of March, 2011 ("**Effective Date**"), by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "**CITY**") and IA SACRAMENTO HOLDINGS, L.L.C., a Delaware limited liability company (hereinafter "**IA HOLDINGS**"). The CITY and IA HOLDINGS hereinafter may be referred to collectively as the "**Parties**" or in the singular as "**Party**," as the context requires.

RECITALS

A. On December 11, 2007, the CITY approved the Railyards Tentative Map and related entitlements authorizing development of the 240 acre site ("**Railyards Property**"), which included the requirement for construction of the extension of 5th Street between H Street and the future Stevens Street (the "**5th Street Extension Project**", which is also sometimes referred to herein as the "**TOD Infrastructure Project**").

B. CITY has been awarded a \$17 million grant (the "**TOD Grant**") by the State Department of Housing and Community Development ("**HCD**") under Proposition 1C. Certain costs for the design and construction of the 5th Street Extension Project are eligible for reimbursement under the TOD Grant. To administer the TOD Grant, CITY and HCD entered into that certain Standard Agreement (07-TOD-4243), dated as of August 10, 2009 (the "**Standard Agreement**") and that certain Transit-Oriented Development Housing Program Infrastructure Grant Disbursement Agreement, dated as of September 10, 2009 (the "**Disbursement Agreement**").

C. The TOD Grant was awarded to CITY in consideration of the commitment of the prior owner of the Railyards Property, S. Thomas Enterprises of Sacramento, LLC ("**Thomas**"), to construct 457 housing units (the "**TOD Housing**"), of which (i) 69 units must be affordable to low and very low income households, 17 units must be affordable to low income households, and 12 units would be market rate (one of which may be designated as a manager's unit) (the "**Phase I Project**"); and (ii) 359 units would be market rate (the "**Phase II Project**") as specified in the TOD Contract (as defined in Recital D).

D. Pursuant to the terms of the Standard Agreement and to restrict development of certain portions of the Railyards Property for the TOD Housing, Thomas and HCD entered into that certain Declaration of Restrictive Covenants for the Development and Operation of Housing, which was recorded on August 31, 2009 in the Official Records of Sacramento County, California ("**Official Records**") on Page 583 of Book No. 20090831, as thereafter amended by that certain Amendment to Declaration of Restrictive Covenants For the Development and Operation of Housing, dated as of April

29, 2010 and recorded in the Official Records on June 18, 2010 on Page 1280 of Book No. 20100618 (as amended, referred to herein as the "**HCD Covenant**"). The Parties acknowledge that the HCD Covenant places the Phase I Project's low income and very low income housing units in a location that does not currently comply with Chapter 17.190 of the Sacramento City Code - the Mixed Income Housing Ordinance ("**Housing Ordinance**"). Collectively the Standard Agreement, Disbursement Agreement and HCD Covenant are referred to herein as the "**TOD Contract**".

E. Pursuant to that certain Assignment and Assumption Agreement (5th and 6th Street Overpass Agreements), between the City and Thomas, dated September 15, 2009 (City Agreement No. 2009-0905), as amended by that certain First Amendment to Assignment and Assumption Agreement, dated October 15, 2009 (as amended, referred to herein as the "**Thomas Assignment Agreement**"), CITY assigned its rights to the TOD Grant pursuant to the TOD Contract to Thomas.

F. Thereafter, Thomas commenced construction of the 5th Street bridge portion of the 5th Street Extension Project pursuant to the terms of the Thomas Assignment Agreement and such construction is near completion.

G. IA Rail Sacramento LLC ("**Lender**"), an affiliate of IA HOLDINGS, made two loans to Thomas each of which were secured by, among other things, deeds of trust encumbering the Railyards Property and recorded in the Official Records (the "**Deeds of Trust**"). 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**").

H. On October 19, 2010, Lender and HCD entered into that certain Subordination Agreement recorded in the Official Records on Page 0198 of Book 20101022, whereby Lender agreed to subordinate the Deeds of Trust to the HCD Covenant to avoid extinguishment in connection with a foreclosure proceeding and in anticipation of the TOD Grant being assigned to IA HOLDINGS in accordance with the terms set forth in that certain Letter Agreement, dated October 19, 2010, by and between CITY, HCD and Lender (the "**Letter Agreement**"). The Letter Agreement, by its terms, is not binding on the CITY until it is approved by the City Council. City Council approval of the Letter Agreement is being sought concurrently with approval of this Assignment Agreement.

I. Pursuant to that certain Assignment of IIG Agreements and TOD Agreements, dated as of October 22, 2010, by and between Thomas and Lender, Thomas assigned to IA HOLDINGS all of Thomas' right, title and interest in all agreements pertaining to the Transit-Oriented Development Housing Program Infrastructure Grant Program, including, without limitation, the TOD Contract, thereby releasing any and all of Thomas' interest in the TOD Grant and the Thomas Assignment Agreement to IA HOLDINGS as of that date. Accordingly, in reliance on Thomas' assignment of its interest in the foregoing agreements to IA HOLDINGS, CITY is entering into this Assignment Agreement.

J. On October 22, 2010, Thomas' ownership of the Railyards Property was extinguished and IA HOLDINGS (formerly known as IA Sacramento Development, L.L.C.) acquired title interest to the Railyards Property pursuant to a foreclosure of one of the Deeds of Trust and that certain Trustee's Deed Upon Sale was 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 Railyards Property through foreclosure, IA HOLDINGS has concluded that to preserve the value of the foreclosed-on Railyards Property, it is essential that prior agreements regarding the plans, funding and approval of infrastructure projects, such as the 5th Street Extension Project, be maintained.

K. As contemplated by the Letter Agreement, IA HOLDINGS, HCD and CITY intend to enter into an amendment to the Disbursement Agreement (the "**Disbursement Agreement Amendment**") concurrently with IA HOLDINGS and CITY entering into this Assignment Agreement. The Disbursement Agreement Amendment names IA HOLDINGS as the TOD Grant subrecipient and designated payee to allow IA HOLDINGS to proceed to complete construction of the 5th Street Extension Project and modifies the TOD Grant repayment obligations pursuant to the terms of the Letter Agreement.

L. In connection with the execution of the Disbursement Agreement Amendment, IA HOLDINGS, HCD and City intend to enter into a letter agreement regarding the process for granting a time extension for development of the TOD Housing (the "**Extension Letter**"). The Standard Agreement, the Disbursement Agreement, HCD Covenant, the Disbursement Agreement Amendment, and the Extension Letter are collectively referred to herein as the "**Revised TOD Contract.**"

M. Construction of the bridge portion of the 5th Street Extension Project over the easement (the "**Railroad Easement II**") controlled by the Union Pacific Railroad Company, a Delaware corporation ("**UPRR**") is near completion. Pursuant to that certain Public Highway Overpass Agreement 5th Street, dated as of October 16, 2009, between CITY and the UPRR (the "**UPRR 5th Street Agreement**"), UPRR has approved the design of the bridge portion of the 5th Street Extension Project and granted rights of entry for the bridge construction. UPRR also holds an easement interest in the location of its existing mainline tracks (the "**Railroad Easement I**") where a portion of the 5th Street Extension Project is to be located. The 5th Street Extension Project cannot be completed until UPRR abandons its interest in Railroad Easement I, which is to occur after CITY completes the relocation of UPRR's tracks (the "**Track Relocation Project**").

N. IA HOLDINGS desires to enter into this Assignment Agreement so that IA HOLDINGS can obtain payment from HCD for unpaid and overdue contractor costs incurred in connection with Thomas' construction of the bridge portion of the 5th Street Extension Project and, thus, provide for payment to contractors for work previously

performed, and to undertake construction of the remaining portion of the 5th Street Extension Project with the TOD Grant funds pursuant to the terms of the Revised TOD Contract.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Assignment Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Effective Date; Termination and Grant Repayment Obligations. This Assignment Agreement begins on the Effective Date and ends upon completion, to the satisfaction of HCD, of both (a) the TOD Infrastructure Project and (b) all of the TOD Housing required by the Revised TOD Contract (the “**Expiration Date**”), subject to the indemnity and housing obligations that survive the termination of this Assignment Agreement as set forth in Sections 3, 4, 5 and 7.

Neither Party may terminate this Assignment Agreement for its convenience prior to the Expiration Date; provided, however, that either Party may terminate this Assignment Agreement upon the occurrence of an Event of Default (as defined in Section 6 below) prior to the Expiration Date subject to the cure provisions set forth in Section 6. IA HOLDINGS’ obligations under this Assignment Agreement shall apply solely to actions taken on or after the Effective Date, although IA HOLDINGS is nonetheless (i) entitled to reimbursements of costs incurred for the 5th Street Extension Project with the TOD Grant proceeds prior to the Effective Date under the Revised TOD Contract, and (ii) except as otherwise set forth herein, obligated to repay the amount of the TOD Grant which has been disbursed prior to the Effective Date in the Event of Default under the Revised TOD Contract or this Assignment Agreement.

2. Assignment and Assumption.

A. Assignment - As of the Effective Date, CITY hereby assigns and transfers to IA HOLDINGS all of CITY’s rights under the Revised TOD Contract and IA HOLDINGS hereby accepts and assumes all of the duties and obligations of CITY under the Revised TOD Contract from and after the Effective Date and agrees to comply with all of the terms and conditions set out therein. The Revised TOD Contract (as defined in Recital K above) contains the Standard Agreement, which is attached and incorporated herein as Exhibit A-1, the Disbursement Agreement, which is attached and incorporated herein as Exhibit A-2, the Disbursement Agreement Amendment, which is attached and incorporated herein as Exhibit A-3, the HCD Covenant which is attached and incorporated herein as Exhibit A-4, and the Extension Letter which is attached and incorporated herein as Exhibit A-5.

- B. IA HOLDINGS as Subrecipient - Notwithstanding the foregoing assignment of the Revised TOD Contract by CITY and assumption by IA HOLDINGS, the CITY remains as the named grantee and party to the Revised TOD Contract because HCD has not released the CITY from its obligations under the Revised TOD Contract. Therefore, in connection with the construction of the TOD Infrastructure Project, IA HOLDINGS must submit all plans, draw requests, other required documents and correspondence as specified under the Revised TOD Contract to CITY for its review, approval and forwarding to HCD. IA HOLDINGS shall comply with the terms and conditions of and the obligations of Recipient under the Revised TOD Contract from and after the Effective Date.
- C. Amendments to Revised TOD Contract – The Parties acknowledge that HCD may be amenable to further amendments to the Revised TOD Contract, such as to change the milestone schedules, extend the time period for final distribution of the TOD Grant proceeds and other matters. Any written amendment, modification or waiver of any term or condition of the Revised TOD Contract, which is approved by CITY, IA HOLDINGS and HCD in the form of a grant amendment or other written acknowledgment, shall become binding under the terms of this Assignment Agreement. CITY shall not unreasonably withhold, condition or delay its consent to any proposed amendment, modification or waiver that has been approved by IA HOLDINGS and shall approve and execute any amendment, modification to or waiver of any portion of the Revised TOD Contract approved by IA HOLDINGS which provides for an extension of the time period to complete performance thereunder. CITY shall not unilaterally amend or terminate the Revised TOD Contract without IA HOLDINGS' prior written approval unless, pursuant to Section 6 below, CITY is entitled to terminate this Assignment Agreement for IA HOLDINGS' failure to cure an Event of Default to HCD's satisfaction.
- D. Enforcement – CITY shall have the right, at its sole cost and expense, to oversee IA HOLDINGS' compliance with all of the terms and conditions set out in the Revised TOD Contract relating to the design and construction of the TOD Infrastructure Project and the TOD Housing, and to notify HCD if CITY determines that IA HOLDINGS has violated any such terms and conditions after providing not less than ten (10) days prior written notice thereof to IA HOLDINGS, which notice shall set forth with specificity the nature of such violation.

3. **Street Extension Design and Construction Requirements.** In undertaking the design and construction of the 5th Street Extension Project, IA HOLDINGS shall comply with the following requirements:

- A. Design Plans and Permits – The 5th Street Extension Project must be designed in compliance with the Project Entitlements, as defined in that certain Development Agreement dated December 11, 2007, City Agreement No. 2008-0150, pursuant to Ordinance No. 2007-104 (the “**Development Agreement**”). IA HOLDINGS must obtain all applicable approvals from CITY and any other applicable agency in accordance with all applicable laws before CITY is obligated to issue the necessary building permits; provided, however, that in connection with the foregoing, CITY shall promptly review, process and shall not unreasonably withhold, condition or delay issuance of any such required permits or approvals.
- B. Track Relocation Project - In the event that the actual construction of the 5th Street Extension Project would be reasonably likely to cause a delay or materially impede construction of the CITY’s Track Relocation Project, then the CITY may add conditions to building permits issued for the 5th Street Extension Project so that the construction of the 5th Street Extension Project does not cause such delay or materially impede the construction of the CITY’s Track Relocation Project.
- C. Public Works Requirements - IA HOLDINGS is undertaking the 5th Street Extension Project with the TOD Grant funds to which CITY is the named grantee. Therefore, in bidding the construction contract and undertaking the work, IA HOLDINGS shall (i) comply with all rules and regulations of HCD and the Revised TOD Contract, which rules and regulations may include local agency public works statutory requirements as determined by HCD, (ii) name CITY as an obligee and an additional insured on all contractor payment and performance bonds and insurance policies, and (iii) require the contractor to provide to CITY a one year warranty in a form approved by the CITY for any construction defects.
- D. Assignment of Plans and Contracts - In an Event of Default (as defined in Section 6 below) where IA HOLDINGS abandons the 5th Street Extension Project work or this Assignment Agreement is otherwise terminated, IA HOLDINGS’ right, title and interest in and to the plans, engineering and construction contracts for the 5th Street Extension Project will vest in the CITY without any action required by either Party to the extent permitted under the applicable operative documents and agreements; to the extent that further action is required by IA HOLDINGS, IA HOLDINGS shall, without unreasonable delay, use commercially reasonable efforts to ensure that such right, title, and interest vests in the CITY.
- E. Indemnification - IA HOLDINGS shall indemnify, defend and hold harmless CITY (including its officers, employees and agents) from and against any liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys’ fees for outside counsel), causes of action, claims, or judgments (collectively, “**Claims**”) arising by reason of any death, bodily injury, personal injury, or

property damage, to the extent arising from any action or omission of IA HOLDINGS (including its officers, employees, contractors, subcontractors, and agents) in connection with the design and construction of the 5th Street Extension Project from and after the Effective Date.

4. **Payment of Costs.** CITY shall promptly review and approve, which approval shall not be unreasonably withheld, delayed, or conditioned and promptly forward to HCD, IA HOLDINGS' invoices for reimbursement of the 5th Street Extension Project design and construction costs for payment as a draw request under the TOD Grant. Concurrently with the execution of this Assignment Agreement, CITY shall designate IA HOLDINGS as the direct payee for the TOD Grant. IA HOLDINGS' draw requests shall comply with the Revised TOD Contract requirements. Except as limited by Section 7 below, IA HOLDINGS shall indemnify, defend and hold harmless CITY from and against all demands and claims by HCD against CITY seeking reimbursement of all or any portion of the TOD Grant due to IA HOLDINGS' failure to comply with all applicable conditions to disbursement as set forth in the Disbursement Agreement beyond the expiration of all applicable notice and cure periods as set out in Section 6. CITY shall not be liable to IA HOLDINGS for any decisions of HCD in regards to the amount and timing of payments of IA HOLDINGS' invoices under the draw requests.

5. **Housing Development.** IA HOLDINGS hereby assumes the obligation to develop and/or arrange for the development of the TOD Housing to be built in accordance with the terms of the Revised TOD Contract. If IA HOLDINGS is unable to obtain a variance or waiver of the Housing Ordinance to develop the Phase I Project's low income and very low income housing units on Lot 42, then CITY shall approve and execute an amendment or modification to the revised TOD Contract approved by IA HOLDINGS and HCD to modify the location, number, or type (market, low income and very low income) of TOD Housing on any particular lot, provided that such amendment or modification is consistent with applicable law.

6. **Default.**

A. Following the issuance of a written notice of default ("**Default Notice**") by either Party and the expiration of any and all applicable cure periods, it shall be an event of default (an "**Event of Default**") hereunder upon the occurrence of (a) any violation by either Party of a material term or condition of the Revised TOD Contract which violation (i) constitutes an event of default under the Revised TOD Contract as expressly set forth in such document and as determined by HCD (a "**HCD Default**") and (ii) results in the delivery by HCD of a notice of default under the Revised TOD Contract as applicable (a "**HCD Default Notice**"); or (b) any violation by either Party of a material term or condition of this Assignment Agreement.

B. Notwithstanding Section 6.A. above, IA HOLDINGS will not be deemed in default under this Assignment Agreement for failure to comply with the Revised TOD Contract

if: (i) CITY fails to complete the Track Relocation Project or the 6th Street Roadway Project (as hereinafter defined) by December 31, 2013; (ii) CITY's failure to complete the Track Relocation Project or the 6th Street Roadway Project by December 31, 2013, prevents or materially interferes with IA HOLDINGS' timely performance of its obligations under the Revised TOD Contract; and, (iii) the such failure is the proximate cause of or materially contributes to IA HOLDINGS' failure to timely comply with its obligations under the Revised TOD Contract. For purposes of this Assignment Agreement, the "6th Street Roadway Project" refers to the CITY's construction of the 6th Street roadway on a portion of the Railyards Project, more particularly extending the roadway from H Street north to the southern boundary line of Railroad Easement II.

C. The Party receiving the Default Notice shall be afforded a period of thirty (30) days following receipt of the Default Notice within which to effectuate a cure, provided that if such default or breach cannot reasonably be cured within such thirty (30) day period and if curative action is commenced within such thirty (30) day period and is being continuously and diligently pursued by such Party, then such Party shall be given such additional period of time as is reasonably necessary for such Party in the exercise of due diligence to cure such default or breach. During any such cure period, the Party charged shall not be considered in default or breach for purposes of termination of this Assignment Agreement, the institution of legal proceedings, or otherwise. If the Party receiving the Default Notice fails to cure within the cure period, then the non-defaulting Party shall be entitled to terminate this Assignment Agreement for breach and receive its actual damages (excluding consequential damages and lost profits) and/or seek injunctive or declaratory relief, which includes, without limitation, the amount of the TOD Grant that must be repaid to HCD, as set forth herein, as well as reasonable attorneys' fees and litigation costs.

D. If either CITY or IA HOLDINGS receives a HCD Default Notice in connection with a HCD Default, then either Party may rely on the HCD Default Notice for the purpose of issuing a Default Notice under this Assignment Agreement, and the applicable period to cure such HCD Default shall be as specified by HCD if a cure period is set out in the HCD Default Notice. In such event, the applicable cure period under this Assignment Agreement may be shorter or longer than thirty (30) days. Each Party shall provide the other Party with a copy of any HCD Default Notice issued by HCD under the Revised TOD Contract. If HCD issues a HCD Default Notice, then the non-defaulting Party shall be entitled to terminate this Assignment Agreement for breach and receive its actual damages (excluding consequential damages and lost profits) and/or seek injunctive or declaratory relief, which includes, without limitation, the amount of the TOD Grant that must be repaid to HCD, as set forth herein, as well as reasonable attorneys' fees and litigation costs.

E. If HCD issues (i) a HCD Default Notice on the Revised TOD Contract and (ii) a written demand to CITY to repay all or a portion of the TOD Grant, then CITY may thereafter, until such HCD Default is cured, withhold approval of final maps, Urban

Development Permits and other discretionary entitlements and issuance of building permits for the Railyards Project to IA HOLDINGS, its affiliates and successors in interest, or any other owner of the Railyards Property (excluding any portion of the Railyards Property upon which TOD Housing has commenced), notwithstanding any provision of the Development Agreement, the Project Entitlements, the City Code, the Subdivision Map Act or any other applicable state law, until the amount CITY owes HCD is paid in full by IA HOLDINGS or another party on behalf of IA HOLDINGS; provided, however, that City shall have no right to exercise such option if IA HOLDINGS is not deemed in default under this Assignment Agreement. This Section 6.E. does not apply to (i) the first 40 acres of Railyards Property sold after the Effective Date and (ii) the portion of the Railyards Property (the "**Settlement Property**") that is transferred to the California State Railroad Museum or its designee in settlement of certain title claims made by the California State Lands Commission. The Parties hereby agree that (i) the acreage of the Settlement Property shall not be included in the calculation of the 40 acres set forth in the preceding sentence and (ii) this Section 6.E. shall terminate and be of no further force and effect upon the Expiration Date.

F. IA HOLDINGS shall have the right, at its option, at any time after the Effective Date to elect to secure its obligation to repay all or any portion of the TOD Grant proceeds in accordance with the Revised TOD Contract as and when required pursuant to the terms of this Assignment Agreement by delivering to CITY an irrevocable letter of credit. If IA HOLDINGS delivers and maintains a letter of credit pursuant to this Section 6.F., then CITY shall not withhold approvals under Section 6.E. so long as the letter of credit is in effect. The letter of credit shall be in the original amount of seventeen million dollars (\$17,000,000); however, if HCD states in a signed writing that CITY's maximum repayment obligation under the Revised TOD Contract is less than \$17,000,000, then the letter of credit shall be in an original amount equal to the amount that HCD states is CITY's maximum repayment obligation under the Revised TOD Contract. The letter of credit must comply with, and will be subject to, the requirements, criteria, terms, and conditions set forth in Sections 6.F.i. – 6.F.v. below.

- i. Requirements for Letter of Credit - Each letter of credit that IA HOLDINGS provides under this Assignment Agreement must satisfy all of the following requirements:
 - (a) The letter of credit by its express terms must be irrevocable, unconditional, and absolutely free of defenses on the part of IA HOLDINGS or the bank or financial institution that is the issuer of the letter.
 - (b) The bank or financial institution proposed by IA HOLDINGS to be the issuer of the letter of credit is subject to CITY's prior approval, which will be in the reasonable discretion of CITY Treasurer's Office, however, the bank or financial institution must have a Fitch Ratings individual rating of C or above.

- (c) The expiration date of the letter of credit will be one year after the date of issuance. If the letter of credit expires, then CITY may withhold approvals as and to the extent provided under Section 6.E. unless IA HOLDINGS delivers to CITY a replacement letter of credit that meets the same requirements as the expired letter of credit.
 - (d) The letter of credit must substantially conform to the sample letter set forth in Exhibit-B to this Assignment Agreement. The CITY Attorney's Office will determine, in its reasonable discretion, what constitutes substantial conformance.
- ii. Criteria for Release of Letter of Credit - CITY shall release or reduce any letter of credit provided under this Assignment Agreement, as follows:
 - (a) The amount of the letter of credit will be reduced whenever HCD states in writing that the amount of the letter of credit exceeds the City's maximum repayment obligation under the Revised TOD Contract. The amount of the letter of credit will be reduced to the amount that HCD states in a signed writing represents the City's maximum repayment obligation under the Revised TOD Contract.
 - (b) The letter of credit will be released in full upon the Expiration Date.
 - (c) The letter of credit will be released or reduced in exchange for one or more substitute letters of credit that meet the same requirements as the letter of credit.
- iii. Right to Draw on Letter of Credit- CITY is absolutely and unconditionally entitled to draw on any letter of credit provided under this Assignment Agreement, in accordance with the terms and conditions of the letter of credit and this Assignment Agreement, as follows:
 - (a) If HCD issues a written demand to repay all or a portion of the TOD Grant, and if IA HOLDINGS fails to make payment in the amount and within the time required by HCD, as such time may be extended by HCD, then CITY may draw on the letter of credit an amount equal to (1) HCD's demand for repayment and (2) CITY's reasonable out of pocket costs in presenting the letter of credit if the issuing bank or financial institution requires that presentment occur at a location outside the County of Sacramento, California.
- iv. Notice to IA HOLDINGS - CITY shall notify IA HOLDINGS before CITY exercises its right to draw upon a letter of credit under Section 6.F.iii. above. CITY and IA HOLDINGS intend that IA HOLDINGS be given at least thirty-days' written notice; however, if it is not possible to give at least thirty-days' written notice, then CITY shall provide as much notice as is practicable under the circumstances , but in any event CITY's failure to

provide notice will not preclude CITY from exercising its right to draw on a letter of credit.

- v. **Use of Proceeds** -If CITY draws on a letter of credit, then CITY shall deposit the proceeds into the appropriate funds, as determined in the sole discretion of CITY Treasurer's Office, for use in paying (a) HCD the amount due to HCD under the Revised TOD Contract and (b) CITY's reasonable out of pocket costs, if any, incurred in presenting the letter of credit, as described in Section 6.F.iii.a.2. CITY shall use commercially reasonable and good faith efforts to obtain from HCD a receipt of payment and a release of CITY and IA HOLDINGS from the performance of all obligations and covenants under the Revised TOD Contract, such release to be in a form reasonably acceptable to CITY and IA HOLDINGS.

G. Upon receiving of a letter of credit satisfying the requirements of subsection 6.F.i. above, CITY shall not withhold approval of final maps, Urban Development Permits and other discretionary entitlements and issuance of building permits for the Railyards Project pursuant to this Section 6 so long as such letter of credit or any replacement letter of credit that satisfies the requirements of Section 6.F.i. above remains in effect.

7. Grant Repayment; Release and Indemnification. IA HOLDINGS shall indemnify, defend and hold harmless CITY from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description (hereafter collectively "Liabilities") arising out of or in any way connected with (a) the failure of IA HOLDINGS to comply with the Revised TOD Contract with respect to the obligation to complete the TOD Infrastructure Project or to develop and operate the TOD Housing, or (b) a violation by IA HOLDINGS of any other material term or condition in the Revised TOD Contract, whether or not such Liabilities are litigated, settled or reduced to judgment; provided that if the foregoing Liabilities arise as a result of all of the following: (i) the CITY fails to complete the Track Relocation Project or the 6th Street Roadway Project by December 31, 2013; (ii) the CITY's failure to complete the Track Relocation Project or the 6th Street Roadway Project by December 31, 2013, prevents or materially interferes with IA HOLDINGS' timely performance of its obligations under the Revised TOD Contract and (iii) such failure is the proximate cause of or materially contributes to IA HOLDINGS' failure to timely comply with its obligations under the Revised TOD Contract, then each Party shall bear the proportionate share of the Liabilities based upon the extent to which such Liabilities arise from each Party's acts or omissions.

8. Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such other Party certify in writing that, to the knowledge of the certifying Party: (i) this Assignment Agreement is in full force and effect; (ii) this Assignment Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (iii) the

requesting Party is not in default in the performance of its obligations under this Assignment Agreement, or if in default, describing therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute the estoppel certificate in favor of the requesting Party and such other persons as the requesting Party designates and return such estoppel certificate, or give a written detailed response explaining why it will not do so, to the requesting Party and such other persons as the requesting Party designates within thirty (30) days following the receipt of each such request. Each Party acknowledges that such an estoppel certificate may be relied upon by third parties acting in good faith.

9. Governing Law and Venue. This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of California. Any litigation concerning this Assignment Agreement must be brought and prosecuted in the Sacramento County Superior Court and the prevailing party shall be entitled to reimbursement of its attorneys' fees and litigation costs.

10. Successors and Assigns. This Assignment Agreement may not be assigned by either party without the other party's prior written consent. The obligations in this Assignment Agreement shall inure to and bind the successors and assigns of each party and to the successors in interest in ownership of those portions of the Railyards Property encumbered by the HCD Covenant. CITY, subject to IA HOLDINGS' approval which shall not be unreasonably withheld, may record a memorandum of this Assignment Agreement.

11. Warranties and Representations. Each person who signs this Assignment Agreement on behalf of a Party warrants and represents that he or she has the capacity and legal authority to execute this Assignment Agreement for that Party and to bind that Party to the obligations imposed on it by this Assignment Agreement.

12. Survival. IA HOLDINGS' obligations arising under this Assignment Agreement pertaining to completion of the TOD Infrastructure Project, development of the TOD Housing, and indemnity and TOD Grant repayment obligations as set forth in Sections 3, 4, 5 and 7 hereof and CITY's obligations set forth in Section 7 hereof shall survive the expiration, termination or cancellation of this Assignment Agreement.

13. Entire Agreement. This Assignment Agreement sets forth the entire understanding of each Party regarding the matters set forth herein. It supersedes all prior or contemporaneous agreements, representations, and negotiations, whether written, oral, express or implied, in regards to the assignment and assumption of the Revised TOD Contract and this Assignment Agreement may only be modified by another written agreement signed by the Parties.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement as of the Effective Date.

CITY OF SACRAMENTO

By: _____
John Dangberg
Assistant City Manager

Attest:

By: _____
City Clerk

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

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: 

Scott W. Wilton, Secretary

EXHIBIT A-1

HCD Standard Agreement

EXHIBIT A-2

Disbursement Agreement

EXHIBIT A-3

Disbursement Agreement Amendment

EXHIBIT A-4

HCD Covenant

EXHIBIT A-5

Extension Letter

EXHIBIT B

Form of Letter of Credit

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK

Transit-Oriented Development (TOD) Housing Program

Infrastructure Grant for Housing Developments

1. Authority & Purpose

This Standard Agreement, STD 213, (hereinafter "Agreement") is the result of the Recipient's application ("Application") for funding under the TOD Housing Program ("Program") pursuant to:

- A. Part 13 of Division 31 of the Health and Safety Code (commencing with Section 53560);
- B. The Program Guidelines dated December 3, 2007 ("Guidelines"), issued by the State of California, Department of Housing and Community Development ("Department"); and
- C. The Program's Notice of Funding Availability ("NOFA") issued by the Department, dated December 11, 2007. In accepting this grant award, the Recipient agrees to comply with the terms and conditions of the Guidelines, the NOFA, this Agreement, and the Disbursement Agreement, more particularly described in Exhibit B hereto.

2. Definitions:

Capitalized terms herein shall have the meaning of the definitions set forth in the Guidelines, and page 1 of this Exhibit A, in addition:

"Recipient" refers to the entity or entities submitting an application or to a related entity approved by the Department entering into this Agreement and identified as "Contractor" on page 1 to this Agreement (Std 213). In the case of joint applicants, "Recipient" shall refer to each applicant or the approved assignee of such applicant. Each joint applicant shall be jointly and severally liable for all obligations of a Recipient as set forth herein.

EXHIBIT A

3. Scope of Work

The Scope of Work ("Work") for this Agreement shall consist of the development and construction by or on behalf of Recipient of the following:

A. The capital improvement(s) ("Infrastructure Project") described as follows:

The TOD infrastructure grant will be used to fund the first of a three-stage infrastructure project that is essential to begin the redevelopment of the Railyards site.

The total project is the extension of 5th Street from H Street in the south to North B Street in the north. The first phase (TOD) will extend 5th Street from H Street in the south to Stevens Street in the north and include improvements to facilitate bike and pedestrian travel in and around the project area and transit station.

and

B. The residential housing development designated in the Application ("Housing Development") that is supported by the Infrastructure Project, and which is to be developed and constructed by the Recipient, or other developer, as provided in the Application and meeting the following criteria:

EXHIBIT A

Location of Housing Development (APN, address, parcel map, specific plan or similar reference) City and County	TOD Phase One-Lot 42 69 TOD Restricted Affordable rental apartment units, 17 otherwise restricted affordable rental apartment units, 11 market rate lofts and 1 manager's unit (98 total units)		
Enter the number of units by bedroom size and income level.			
# of Bedrooms	# of Units	TOD Restricted Units	Income Limit (% of AMI)
1	44	44	50%
1	10	0	60%
2	5	5	50%
2-lofts	11	0	Market
3	20	20	50%
3	7	0	60%
2-Mgrs	1	0	Market
Total Project Units**	<u>98</u>	<u>69</u>	_____

*TOD Restricted Units must equal at least 15% of the total residential units.

**Total Project Units must meet or exceed the number of residential units set out in the application for which points were awarded for the Recipient's application under section 108(k) of the Guidelines (e.g. 200+ units = 30 points) Additionally, upon completion, the Housing Development will meet or exceed the applicable minimum Net Density as set forth in the 103(a)(4) of the Guidelines.

EXHIBIT A

- C. The Infrastructure Project is necessary for the development of the Housing Development or to facilitate connections between the Housing Development and the transit station. The Recipient is responsible for and shall ensure the completion of the Infrastructure Project and the completion and occupancy of the Housing Development in accordance with the criteria set forth above. The Department reserves the right to review and approve all Work to be performed by the Recipient, or contracted by the Recipient, in relation to this Agreement. Any substantial revision to the Work shall be submitted in writing for review and approval by the Department and shall require an amendment to this Agreement.
- D. The Department, the Recipient and other parties as required by the Department shall enter into a Disbursement Agreement governing among other things the disbursement of Program funds as more particularly described in Exhibit B hereto.

4. Evidence of Transit-Supportive Land Uses, Walkable Corridor Features and Parking Attributes

- A. Transit-Supportive Land Uses – The Recipient’s application was evaluated for rating points based on the existing and planned transit-supportive amenities, services and uses located within half-mile of the Qualifying Transit Station, pursuant to Section 108(d) of the Guidelines. Based on the points awarded to its application, Recipient assures the Department of the existence of the following amenities, services, and uses meeting the criteria of Section 108(d):

List of Transit- Supportive Amenities, Services, and Uses (“ASUs”)	Status of ASUs (e.g., completed and in service or in construction stage.)	If not in service, anticipated completion date of ASUs
1) Banking facility (<i>Bank of the West</i>)	In-service at application due date	N/A
2) Childcare facility (<i>Kids East, Inc.</i>)	In-service at application due date	N/A
3) Convenience store (<i>The General Store</i>)	In –service at application due date	N/A
4) Hair care facility (<i>Salon 515</i>)	In-service at application due date	N/A
5) Health club facility (<i>CA Family Fitness</i>)	In-service at application due date	N/A
6) Library (<i>Sacramento Main Public Library</i>)	In-service at application due date	N/A

EXHIBIT A

7) Medical/Dental office (<i>Yee Dental office</i>)	In-service at application due date	N/A
8) Police facility (<i>Sacramento County Sheriff</i>)	In-service at application due date	N/A
9) Shoe repair facility (<i>Express Shoe Fix</i>)	In-service at application due date	N/A
10) Theater (<i>Century Downtown Theatre</i>)	In-service at application due date	N/A
11) Restaurant (<i>Denny's</i>)	In-service at application due date	N/A
12) Bakery (<i>LaBou Bakery</i>)	In-service at application due date	N/A
13) Coffee Shop (<i>Starbucks</i>)	In-service at application due date	N/A
14) Pharmacy (<i>Rite Aid</i>)	In-service at application due date	N/A
15) Place of worship (<i>Churches of Christ Scientist</i>)	In-service at application due date	N/A
16) Playground (<i>Zapata Park</i>)	In-service at application due date	N/A

B. Walkable Corridor Features - The Recipient's application was evaluated for rating points in potentially five (5) different categories based on the existence (at time of application or will be by the completion of the Project) of features within the primary walkable corridor between the Housing Development and the Qualifying Transit Station, pursuant to Section 108(e) of the Guidelines. Based on the points awarded to its application, Recipient shall ensure the following existing or planned Walkable Corridor Features for the Project:

List of Walkable Corridor Features ("WCFs")	Status of WCFs (e.g., completed and in service or in construction stage.)	If not in service, anticipated completion date of WCFs
1) No more than 25% of the street blocks in the corridor exceed 500 feet in length.	Pre-construction stage	No later than 03/01/2014
2) The corridor is fully served by continuously-paved, ADA-compliant sidewalks with a minimum width of 4 feet.	Pre-construction stage	No later than 03/01/2014
3) The corridor allows for safe pedestrian crossing of any arterials between the Housing Development and the Transit Station and the corridor is adequately lighted to accommodate pedestrian use after dark.	Pre-construction stage	No later than 03/01/2014
4) The Transit Station contains transit waiting facilities that are lighted and provide overhead shelter from outdoor elements.	Pre-construction stage	No later than 03/01/2014

EXHIBIT A

5) The Transit Station has bicycle access and provides secure bicycle storage facilities, or the transit service allows bicycle conveyance on-board.	Pre-construction stage	No later than 03/01/2014
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C. Parking - The Recipient's application was evaluated for rating points in potentially five (5) different categories based on the extent to which the pricing, supply and management of motor vehicle parking serving the Housing Development promotes economic efficiency and minimizes the development of new parking spaces, pursuant to Section 108(f) of the Guidelines. Based on the points awarded to its application, Recipient shall ensure the following attributes for motor vehicle parking serving the Housing Development:

List of Parking Attributes "Attributes"	Status of Attributes (e.g., completed and in service or in construction stage.)	If not in service, anticipated completion date of Attributes
1) Parking Pricing	Pre-construction stage	No later than 03/01/2014
2) Transit Passes	Pre-construction stage	No later than 03/01/2014
3) Shared Parking	Pre-construction stage	No later than 03/01/2014
4) Car Sharing	Pre-construction stage	No later than 03/01/2014
5) Maximum Parking	Pre-construction stage	No later than 03/01/2014

At the request of the Department, Recipient shall provide further and additional evidence sufficient to demonstrate the existence and/or completion of the items listed in A-C above for which the Recipient's application received points. Failure to provide such evidence to the reasonable satisfaction of the Department may result in a reevaluation of the application and the reductions or cancellation of the amount of the grant award, require repayments of any disbursed Program funds and the disencumbrance of Program funds awarded.

5. Performance Milestones

Recipient shall ensure the completion of the Performance Milestones set forth in this Exhibit, attached hereto and made a part hereof, by the designated dates. Recipient may apply to the Department for an extension of these timelines based on good cause shown and best efforts and assurances from the Recipient for timely completion of the remaining Milestones.

EXHIBIT A

6. State Contract Coordinator

The State Contract Coordinator of this Agreement for the Department is the TOD Housing Program Manager, Division of Financial Assistance, or the Manager's designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class to the State Contract Coordinator at the following address:

Craig Morrow, Program Manager
TOD Housing Program
Division of Financial Assistance
Department of Housing and Community Development
P. O. Box 952054
Sacramento, California 94252-2054

7. Recipient Contact Coordinator

The Recipient's Contact Coordinator for this Agreement is listed below. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class to the contact at the following address:

Recipient:	City of Sacramento
Contact Name:	Ray Kerridge, City Manager 915 I Street, 5 th Floor Sacramento, CA 95814
Contact Phone No.:	(916) 808-5704

EXHIBIT A

PERFORMANCE MILESTONES

Performance Milestone	Infrastructure Project		Housing Development	
	Single Phase	Multi-Phase	TOD Phase I	
Executed binding agreement between the Recipient and developer of the proposed Housing Development detailing the terms and conditions of the Project development.			7/2009	N/A
Site Control of Housing Development site(s) by proposed housing developer.			7/2009	N/A
Completion of all necessary environmental clearances, including those required under CEQA and NEPA.	12/2007	N/A	12/2007	N/A
Obtaining all necessary and discretionary public land use approvals.	12/2007	N/A	12/2007	N/A
Obtaining all enforceable funding commitments for at least the first phase of the Housing Development supported by the infrastructure Project.			5/2009	N/A
Obtaining all enforceable funding commitments for all construction period financing.	6/2008	N/A	5/2009	N/A
Obtaining enforceable commitments for all construction/permanent financing described in the Sources and Uses including substantially final construction/permanent loan documents, and Tax Credit syndication documents for remaining phases of Project.	6/2008	N/A	3/2012	N/A
Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority.	3/2010	N/A	9/2011	N/A
Commencement of construction	4/2009	N/A	3/2012	N/A
Construction complete and the filing of the Notice of Completion.	3/2012	N/A	12/2013	N/A
Program funds fully disbursed	5/2012	N/A	N/A	N/A

EXHIBIT A

Performance Milestone	Infrastructure Project		Housing Development	
	Single Phase	Multi-Phase	TOD Phase II	
Executed binding agreement between the Recipient and developer of the proposed Housing Development detailing the terms and conditions of the Project development.			9/2011	N/A
Site Control of Housing Development site(s) by proposed housing developer.			9/2011	N/A
Completion of all necessary environmental clearances, including those required under CEQA and NEPA.	12/2007	N/A	12/2007	N/A
Obtaining all necessary and discretionary public land use approvals.	12/2007	N/A	12/2007	N/A
Obtaining all enforceable funding commitments for at least the first phase of the Housing Development supported by the infrastructure Project.			5/2009	N/A
Obtaining all enforceable funding commitments for all construction period financing.	6/2008	N/A	11/2012-11/2014	N/A
Obtaining enforceable commitments for all construction/permanent financing described in the Sources and Uses including substantially final construction/permanent loan documents, and Tax Credit syndication documents for remaining phases of Project.	6/2008	N/A	11/2012-11/2014	N/A
Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority.	3/2010	N/A	5/2011-5/2014	N/A
Commencement of construction	4/2009	N/A	11/2012-11/2014	N/A
Construction complete and the filing of the Notice of Completion.	3/2012	N/A	12/2014-12/2016	N/A
Program funds fully disbursed	5/2012	N/A	N/A	N/A

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Project Sources and Uses

The preliminary projected Sources and Uses set forth in this Exhibit contains the cost items for the design, development and construction of the approved Infrastructure Project. Recipient agrees that any cost overruns or increases resulting in a total cost for Infrastructure Project exceeding that set forth therein shall be the responsibility of Recipient.

2. Contract Amount

- A. For the purposes of performing the Work, the Department agrees to provide the amount identified on page 1, number 3 of this Agreement in the form of a grant for the uses identified in the Sources and Uses. In no instance shall the Department be liable for any costs for the Work in excess of this amount, or for any unauthorized or ineligible costs.
- B. The Department may approve a request from the Recipient to reallocate funds between authorized activities and itemized amounts stated in the budget. Changes in aggregate of ten percent (10%) or less, of the total grant amount between activity categories during the term of this Agreement, and expenditures pursuant thereto, may be made only after the Department's express written approval, but do not require a written amendment to this Agreement.

3. Other Funding Sources

- A. The grant must be matched by a cash contribution of funds, including Federal and State funds under local control, allocated by the Recipient equal to 20% of the TOD Program grant.
- B. Where the Sources and Uses set forth in this Exhibit identify funds other than Program funds, those funds shall be expended and applied to Project costs as provided therein. Recipient agrees that it will make best efforts to ensure that the other funds specified in the Sources and Uses are available for disbursement as provided in this Exhibit, and approved for the use specified in the Sources and Uses, except to the extent the Sources and Uses may be updated and modified by the Disbursement Agreement described below. The Recipient shall provide evidence and assurance of the commitment and availability of such other sources of

EXHIBIT B

funding identified in the Sources and Uses as provided in the Disbursement Agreement. The terms and conditions of all construction financing to be used in conjunction with the Program funds shall be subject to the Department's review and approval.

4. Completion Dates

Program funds must be disbursed no later than February 1, 2012. All undisbursed funds remaining as of February 1, 2012, shall be disencumbered. All invoices for payment must be submitted to the Department no later than December 1, 2011.

5. Method of Payment

- A. Payment shall be made as progress payments as set forth in the Disbursement Agreement. Recipient shall request payment for Work completed on forms provided by the Department and subject to such documentation as the Department may require.
- B. The Department shall not authorize payments unless it determines that the Program funds shall be expended in compliance with the terms and provisions of the Guidelines, the NOFA, this Agreement and the Disbursement Agreement.
- C. For multi-phased Housing Developments, disbursement of funds for improvements in excess of those needed for the first phase of the Housing Development will be subject to the following, as determined by the Department:
 - 1) The need for additional improvements at the time of the disbursement request, and
 - 2) The receipt of evidence acceptable to the Department that the subsequent phases to be supported by the additional fund disbursement are consistent with applicable planning and zoning requirements.

EXHIBIT B

6. Disbursement Agreement

- A. The Recipient, the Department and such other parties as may be reasonably required by the Department, shall enter into a Disbursement Agreement in a form provided by the Department. The Disbursement Agreement shall contain a specific description of the Infrastructure Project and an updated Sources and Uses therefore, including an updated table of Sources and Uses, and the specific terms and conditions for the disbursement of Program funds. In the event of a conflict between this Agreement and the Disbursement Agreement, as determined by the Department, the terms of the Disbursement Agreement, being the later and more specific document, shall govern; provided however, that no resolution of any such conflict shall be contrary to, or result in a waiver or violation of, the Guidelines or the NOFA.
- B. The requirement for a Disbursement Agreement set forth in this paragraph may be waived by the Department where, at its sole discretion, it determines that: 1. satisfactory completion of the Work, 2. proper disbursement and use of Program funds, 3. performance of, and compliance with, all the obligations, terms and conditions of this Agreement, and 4. compliance with all applicable statutes, laws and regulations, all have been or will be achieved without the execution of a Disbursement Agreement. The Department may require the submittal by the Recipient of such information, records, documents, certificates and other material as it deems necessary to make this determination.
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TRANSIT-ORIENTED DEVELOPMENT (TOD) HOUSING PROGRAM INFRASTRUCTURE DEVELOPMENT BUDGET

TOD PROJECT NAME:		The Railyards		BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE										
ESTIMATED TOD CAPITAL IMPROVEMENT PROJECT COSTS				FUNDING SOURCES (Identify all sources)										
Submit contracts, bids, engineer's estimates or any other back-up evidencing accuracy of eligible TOD CIP costs				QUANTITY	UNIT TYPE	UNIT PRICE	TOTAL AMOUNT	TOD Grant	Infill Grant Program	TE Funds	Local Funds	other	other	other
COSTS CATEGORY				DEVELOPMENT COSTS										
SITE ACQUISITION														
Site acquisition of the Capital Improvement Project, including easements and right of ways:														
Other:				1	LS	5,807,000.00	\$5,807,000			\$5,807,000				
Total Site Acquisition Costs							\$5,807,000	\$0	\$0	\$5,807,000	\$0	\$0	\$0	\$0
SITE PREPARATION														
Clearing and Grubbing														
				1	LS	50,000.00	\$50,000	\$50,000						
				1	LS	51,000.00	\$51,000	\$51,000						
Excavation							\$0							
Grading (excluding grading for housing and mixed use structural improvements)							\$156,000	\$156,000						
				1	LS	156,000.00	\$156,000							
Soil Stabilization (Lime, etc.)							\$0							
				1	LS	243,000.00	\$243,000	\$243,000						
Erosion/Weed Control							\$0							
Dewatering							\$0							
Other:							\$0							
Total Site Preparation Costs							\$500,000	\$500,000	\$0	\$0	\$0	\$0	\$0	\$0
UTILITIES														
Sanitary Sewer														
				500	LF	220.00	\$110,000	\$110,000						
Potable Water														
				1,150	LF	242.00	\$278,300	\$278,300						
Non-Potable Water							\$0							
				700	LF	440.00	\$308,000	\$308,000						
Storm Drain							\$0							
				1,100	LF	192.00	\$211,200	\$211,200						
Detention Basin/Culverts							\$0							
Joint Trench:							\$0							
Other:							\$0							
Total Site Utilities Costs							\$907,500	\$907,500	\$0	\$0	\$0	\$0	\$0	\$0
SURFACE IMPROVEMENTS														
Aggregate Base														
				47,850	SF	2.85	\$136,373	\$136,373						
Asphalt Pavement														
				47,850	SF	3.75	\$179,438	\$179,438						
Curb, Gutter, Sidewalk														
				34,000	SF	6.00	\$204,000	\$204,000						
Street Lights														
				24	EA	5,500.00	\$132,000	\$132,000						
Striping/Signage/Barricades														
				47,850	SF	0.60	\$28,710	\$28,710						
Traffic Mitigation														
				1	LS	525,000.00	\$525,000	\$525,000						
Total Surface Improvements Costs							\$1,273,521	\$1,273,521	\$0	\$0	\$0	\$0	\$0	\$0

COSTS CATEGORY	DEVELOPMENT COSTS				FUNDING SOURCES (Identify all sources)							
	QUANTITY	UNIT TYPE	UNIT PRICE	TOTAL AMOUNT	TOD Grant	Infill Grant Program	TE Funds	Local Funds	other	other	other	
LANDSCAPE AND AMENITIES												
Parks:												
Irrigation	1 LS		150,000.00	\$150,000	\$150,000							
Concrete Work				\$0								
Landscaping	1 LS		150,000.00	\$150,000	\$150,000							
Tot Lot				\$0								
Playground Facilities				\$0								
Walking/Bike Path				\$0								
Drinking Fountains				\$0								
Structures				\$0								
Lighting				\$0								
Open Space				\$0								
Other: Retaining Walls	28155 SF		87.00	\$2,449,485	\$2,449,485							
Total Landscape and Amenities Costs				\$2,749,485	\$2,749,485	\$0	\$0	\$0	\$0	\$0	\$0	\$0
ENVIRONMENTAL MITIGATION/REMEDIATION												
Wetland Mitigation				\$0								
Endangered Species				\$0								
Tree Mitigation				\$0								
Environmental Remediation				\$0								
Other: Identify				\$0								
Total Mitigation/Remediation Costs				\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
PARKING												
Replacement Transit Station Parking Spaces				\$0								
Residential Parking Structures				\$0								
Other: Off Site Construction/Parking Garage	1 LS		5,055,000.00	\$5,055,000								
Total Parking Costs				\$5,055,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TRANSIT												
Transit Facilities:												
Access Plazas				\$0								
Pathways	1 LS		7,350,000.00	\$7,350,000	\$7,350,000							
Bus Shelters				\$0								
Transit Shelters				\$0								
Pedestrian Facilities				\$0								
Bicycle Facilities				\$0								
Other: Off Site Construction/Track Relocation	1 LS		40,000,000.00	\$40,000,000				\$40,000	\$40,000,000			
Total Transit Costs				\$47,350,000	\$7,350,000	\$0	\$0	\$40,000	\$40,000,000	\$0	\$0	\$0

COSTS CATEGORY	DEVELOPMENT COSTS				FUNDING SOURCES (Identify all sources)							
	QUANTITY	UNIT TYPE	UNIT PRICE	TOTAL AMOUNT	TOD Grant	Infill Grant Program	TE Funds	Local Funds	other	other	other	
IMPACT FEES												
Impact fees are eligible for funding if used for identified Capital Assets eligible for funding and required by local ordinance.												
Other: Permits/Inspection	1	LS	269,494.00	\$269,494	\$269,494							
Other: Dry Utility Fees	1	LS	150,000.00	\$150,000	\$150,000							
Total Impact Fees				\$419,494	\$419,494	\$0	\$0	\$0	\$0	\$0	\$0	\$0
SOFT COSTS RELATED TO ELIGIBLE COSTS												
Engineering	1	LS	1,300,000.00	\$1,300,000	\$1,300,000							
Design				\$0								
Overhead	1	LS	2,500,000.00	\$2,500,000	\$2,500,000							
Contractor Fee				\$0								
Other: Identify				\$0								
Total Soft Costs				\$3,800,000	\$3,800,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
OTHER CAPITAL ASSET COSTS												
Other: JIG Funded Costs	1	LS	8,463,000.00	\$8,463,000		\$8,463,000						
Other: Identify				\$0								
Total Other Asset Costs				\$8,463,000	\$0	\$8,463,000	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL PROJECT COSTS				\$76,325,000	\$17,000,000	\$8,463,000	\$5,807,000	\$40,000	\$40,000,000	\$0	\$0	\$0
Note: Total amount in TOD Grant Column must equal amount requested in application.												
COST NARRATIVE: USE THE SPACE BELOW TO EXPLAIN ANY EXTRAORDINARY SITE CONDITIONS WHICH RESULT IN DEVELOPMENT COSTS TO BE HIGHER THAN ACCEPTED INDUSTRY STANDARDS												

EXHIBIT C

HCD GENERAL TERMS AND CONDITIONS

GENERAL

1. Effective Date, Commencement of Work and Completion Dates

This Agreement is effective upon approval by the State which is the date stamped by the Department in the lower right hand corner of the coversheet of this Agreement. The Recipient agrees that neither the construction of the Infrastructure Project nor the Housing Development has commenced as of the deadline for submittal of applications set forth in the Notice of Funding Availability. The Recipient agrees that the Work shall be completed as specified in this Agreement, subject to the termination date specified on page 1, number 2, of this Agreement (Std 213), unless a written request for an extension is submitted and written approval by the Department is provided within ninety (90) days prior to the termination date of the Agreement. Any extension to the termination date shall require an amendment to this Agreement.

2. Sufficiency of Funds and Termination

- A. The Department may terminate this Agreement at any time for cause by giving at least fourteen (14) days notice in writing to the Recipient. Cause shall consist of violations by Recipient of any terms and/or special conditions of this Agreement, to include but not limited to Paragraph 43 of this Exhibit, or withdrawal of the Department's expenditure authority. ~~Upon termination of this Agreement, unless otherwise approved in writing~~ by the Department, any unexpended funds received by the Recipient shall be returned to the Department within fourteen (14) days of the Notice of Termination.
- B. This Agreement is valid and enforceable only if sufficient funds are made available by the State for the purposes of this Program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the State Legislature or any statute enacted by the State Legislature which may affect the provisions, terms or funding of this Agreement in any manner.

EXHIBIT C

- C. If the State does not appropriate sufficient funds for the Program, the Department may amend the Agreement to reflect any reduction in funds or it may terminate this Agreement by giving fourteen (14) days written notice to the Recipient.

3. Transit-Oriented Development Grant Documents

In addition to this Agreement the Recipient shall execute and enter into a Disbursement Agreement which shall govern the terms, disbursement and use of the Program funds, the Covenant described below, and other additional agreements and documents, as the Department may deem reasonable and necessary to meet the requirements of the Program and the terms and conditions of this Agreement.

4. Covenant Regarding Development of Affordable Housing

Prior to the disbursement of Program funds, the Recipient shall enter into a written Covenant Regarding Development of Affordable Housing ("Covenant") with the Department, and including such other parties as the Department may reasonably require, which shall require the development and construction of the Housing Development with, the number of units and the number of bedrooms per unit, the extent and depth of affordability, as set forth in Exhibit A, and other uses and amenities for which points were granted to the Application. The Covenant shall be recorded against the parcel or parcels of real property on which the Housing Development is to be located and shall be binding on all successors, transferees, and assignees acquiring an interest in the Housing Development as follows:

- A. For rental housing developments, the Covenant shall require the continuation of the affordability of the Housing Development for a period of not less than fifty-five (55) years from the date of the filing of a notice of completion for Housing Development.
- B. For homeownership housing developments the Covenant shall require the continuation of the affordability for a period of not less than thirty (30) years from the date of a filing of a Notice of Completion for the Housing Development. The affordability will be ensured through a resale restriction or equity sharing upon resale.

EXHIBIT C

- C. The Department may waive this requirement for the Covenant upon the Department's determination that sufficient protections are in place to ensure the development and continued operation and occupancy of the Housing Development in accordance with this Agreement.

5. Site Control

The Recipient shall ensure that site control of the real property for both the Infrastructure Project and Housing Development is sufficient to meet the requirements of the Program. This shall include, but not be limited to, ensuring the timely commencement of the Infrastructure Project and the Housing Development as determined by the Department. Site control of the Infrastructure Project and Housing Development may be evidenced by one of the following:

- A. Fee title;
 - B. A leasehold interest on the project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with all program requirements;
 - C. An option to purchase or lease;
 - D. A disposition and development Agreement with a public agency; or
 - E. A land sales contract or other enforceable Agreement for the acquisition of the property.
-

The Recipient shall also obtain all licenses, easements and rights-of-way or other interests required for completion of the Infrastructure Project and the Housing Development, and provide evidence of such instruments prior to the first disbursement of Program funds.

6. Appraisals

Recipient shall, at the request of the Department, provide an appraisal of the real property to be acquired as part of the Infrastructure Project or the Housing Development, prepared in a form, and by a qualified appraiser, acceptable to the Department.

EXHIBIT C

7. Relocation Plan

If there is or will be any residential or commercial displacement directly or indirectly caused by the Project, as defined in state law, the Recipient shall provide a relocation plan conforming to the requirements of state law and regulations issued by the Department in California Code of Regulations, Title 25, section 6000 et seq. In addition to the regulatory requirements, the relocation plan shall contain a line item budget. The project and/or the development budget shall contain sufficient funds to pay all costs of relocation benefits and assistance as set forth in the relocation plan accepted by the Department.

8. Article XXXIV

The Recipient shall submit to the Department satisfactory evidence that the requirements of Article XXXIV of the California Constitution are inapplicable or have been satisfied as to the Housing developments identified in the Recipient's Program application.

9. Environmental Conditions

The Recipient shall provide to the Department the following:

- A. All Environmental Site Assessment ("ESA") Reports (to include Phase I, II, III, supplemental or update assessments and reports) for the Infrastructure Project and the Housing Development, in conformance with ASTM Standard Practice E 1527, evaluating whether the Infrastructure Project is affected by any recognized environmental conditions.
- B. Documentation and/or a certification satisfactory to the Department that all Environmental Site Assessment Report recommendations including remediation and/or mitigation work has been completed.
- C. Mitigation requirements required as a result of the Final Environmental Impact Report ("EIR" or Mitigated Negative Declaration if applicable and evidence satisfactory to the Department that all mitigation requirements have been satisfied.

EXHIBIT C

10. Compliance with State and Federal Laws, Rules, Guidelines and Regulations

The Recipient agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Infrastructure Project and Housing Development, the Recipient, its Contractors or Subcontractors, and any grant activity.

11. Litigation

If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.

The Recipient shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

12. Milestones

Recipient shall ensure the completion of the designated activities within the times designated in Exhibit A, Performance Milestones, and as further set forth in the Disbursement Agreement.

13. Insurance

The Recipient shall have and maintain in full force and effect forms of insurance, at such levels and for such periods, in accordance with the Disbursement Agreement.

14. Change of Conditions

Notwithstanding the Department's obligations to provide payments pursuant to Exhibit B hereof, the Department reserves the right to evaluate the Infrastructure Project's need for Program funds based on new information or funding sources. If the Department determines that the Program funds, or a portion thereof, are no longer necessary to complete the Infrastructure Project, the Department may

EXHIBIT C

reduce the amount of the grant accordingly. In the event the Department determines the Infrastructure Project or Housing Development is no longer financially feasible, any grant commitment issued by the Department and this Agreement may be terminated.

15. Obligations of Recipient with Respect to Certain Third Party Relationships

The Recipient shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Infrastructure Project and Housing Development with respect to which assistance is being provided under this Agreement. The Recipient shall comply with all lawful requirements of the Department necessary to ensure the completion, occupancy and use of the Infrastructure Project and Housing Development in accordance with this Agreement.

16. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Recipient of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

17. Identity of Interests

~~As a condition of disbursement, Recipient shall execute a Certificate of Identity of Interest ("Certificate") listing all relationships constituting an identity of interest with entities providing goods or services in connection with Recipient's performance of the Work. The Certificate shall be in a form provided by the Department. At the Department's request, Recipient shall submit contracts, instruments, documents, correspondence or other writings relating to Recipient's relationship with entities listed in the Certificate. The existence and nature of such relationships shall be subject to the review and approval of the Department to the extent necessary to ensure compliance with Program requirements and this Agreement.~~

EXHIBIT C

DESIGN

18. Architect

The Recipient shall utilize the services an architect and/or an engineer to provide professional design and engineering services for the Infrastructure Project and Housing Development. The contract shall require an architect and/or an engineer to supervise the construction work, conduct periodic site visits, prepare periodic inspection reports, verify the validity of the construction contractor's payment requests, prepare or review change orders, and, upon completion of construction, provide the certification described in paragraph 33 of these General Conditions. At the request of the Department, Recipient shall submit any and all contracts for these services to the Department for its review and approval.

19. Plans and Specifications and Project Cost Estimates

At the request of the Department, the Recipient shall submit plans and specifications and project cost estimates for the Infrastructure Project and Housing Development to the Department for its review and approval. The Infrastructure Project and Housing Development shall be constructed in substantial compliance with the plans and specifications, subject to any change order(s) accepted by the Department where such acceptance is required.

20. Reasonable Development Costs

At the request of the Department, the Recipient shall provide evidence acceptable to the Department that the total costs of the Infrastructure Project and Housing Development are reasonable and necessary for the proposed improvements. To verify cost reasonableness, the Department may require qualified third party verification of cost, evidence of the competitive bidding of major cost components and appraisals.

21. Adaptability and Accessibility

The Infrastructure Project and Housing Development shall comply with all applicable federal, state and local laws regarding adaptability and accessibility for persons with disabilities in the design, construction and rehabilitation of projects.

EXHIBIT C

22. Acoustics Report

Upon request, the Recipient shall provide the Department with an acoustics report for the Housing Development in form acceptable to the Department.

23. Approval by Public Works Department

Where approval by a local public works department, or its equivalent, is required for the Infrastructure Project, the Recipient must submit, prior to the disbursement of grant funds, a statement from that department, or other documentation acceptable to the Department, indicating that the Infrastructure Project has been approved by that department.

CONSTRUCTION

24. Construction Contract

Except for work performed by its own employees, the Recipient shall enter into a written construction contract or contracts ("Construction Contract(s)") with a duly licensed contractor or contractors ("Contractor(s)") for the construction work of the Infrastructure Project and the Housing Development. The Construction Contract(s) shall require, where applicable, prevailing wages be paid in conformance with Labor Code section 1720 et seq. and applicable provisions of this Agreement. The Construction Contract(s) and any amendments thereto shall be subject to the prior approval of the Department.

25. Contractor's Assurance of Completion

The Contractor(s) shall provide security to assure completion of the Infrastructure Project by furnishing the Recipient with Performance and Payment Bonds, or a Letter of Credit, which shall remain in effect during the entire term of the Construction Contract(s), and which shall be in a form and from an issuer which is acceptable to the Department. The Performance Bond shall be in an amount at least equal to one hundred percent (100%) of the approved construction costs included in the Construction Contract(s) to provide security for the faithful performance of the Construction Contract(s) including a warranty period of at least twelve (12) months after completion. The Payment Bond shall be in an amount at least equal to one hundred percent (100%) of the approved construction costs included in the Construction Contract(s) to provide security for the payment of all persons performing labor on the Infrastructure Project and Housing Development and furnishing materials in connection with the

EXHIBIT C

Construction Contract. A Letter of Credit shall be in an amount equal to at least twenty percent (20%) of the approved construction costs included in the Construction Contract(s), in the form of an unconditional irrevocable, stand-by letter of credit. The Department shall be named as an additional obligee in the Bonds or an additional beneficiary under the Letter of Credit.

26. Prevailing Wages

Pursuant to Section 109(h)(5) of the Guidelines, for the purposes of the State Prevailing Wage Law (Labor Code Sections 1720-1781), a grant under the Program shall be considered public funding for the construction, rehabilitation, demolition, relocation, preservation, or other physical improvement of the Infrastructure Project subject to the provisions of the State Prevailing Wage Law. Program funding of an Infrastructure Project shall not necessarily, in and of itself, be considered public funding of a Housing Development unless such funding is otherwise considered public funding under the State Prevailing Wage Law. It is not the intent of the Department to subject Housing Developments to the State Prevailing Wage Law by reason of Program funding of the Infrastructure Project in those circumstances where such public funding would not otherwise make the Housing Developments subject to the State Prevailing Wage Law. Although the use of Program funds does not require compliance with federal Davis-Bacon wages, other funding sources may require compliance with federal Davis-Bacon wages. The Recipient shall prepare a plan for compliance with this section, which plan shall be subject to the review and approval of the Department.

27. Construction Phase Information

If requested by the Department, the Recipient shall provide the Department:

- A. Information during the construction period including but not limited to all change orders and modifications to the construction documents, and all inspection reports of the Infrastructure Project. Upon written notice to Recipient, the Department may require its advance written approval of all future change orders and modifications. Deviations from the plans and specifications which have the effect of reducing the quality, life or utility of a specified item or system must receive the prior written approval of the Department. Should change orders be submitted to the Department for its approval, they shall be deemed accepted if not rejected in writing within ten (10) business days of receipt by the Department. Recipient shall not authorize or approve any change orders rejected by the Department where the Department's approval is required.

EXHIBIT C

- B. Information during the construction period including but not limited to all change orders and modifications to the construction documents, all inspection reports prepared by the Housing Development architect and other consultants, and information relative to the Housing Development income, expenses, occupancy, relocation benefits and expenses, contracts, operations and conditions of the Housing Development. Upon written notice to Recipient, the Department may require its advance written approval of all future change orders and modifications. Deviations from the plans and specifications which have the effect of reducing the quality, life or utility of a specified item or system must receive the prior written approval of the Department. Should change orders be submitted to the Department for its approval, they shall be deemed accepted if not rejected in writing within ten (10) business days of receipt by the Department. Recipient shall not authorize or approve any change orders rejected by the Department where the Department's approval is required.

28. Signage

Recipient shall place signs on the construction site for the Infrastructure Project and Housing Development stating that the Department is providing financing through the TOD Housing Program in an appropriate location(s), typeface and size containing the following message:

(INFRASTRUCTURE PROJECT/HOUSING DEVELOPMENT NAME)

**~~THIS PROJECT HAS BEEN MADE POSSIBLE~~
~~BY FINANCING FROM VOTER-APPROVED~~
PROPOSITION 1C
TRANSIT-ORIENTED DEVELOPMENT HOUSING PROGRAM
THROUGH THE CALIFORNIA DEPARTMENT
OF HOUSING AND COMMUNITY DEVELOPMENT**

The sign shall be maintained in a prominent location visible and legible to the public through construction completion. If the job sign includes the acknowledgment and/or logo of one or more other public lenders or grantors, the Department acknowledgement and logo shall also be displayed in a similar size and layout. A copy of the Department logo can be obtained by contacting the Department Contract Manager.

EXHIBIT C

Upon installation of the sign, the Recipient shall submit a digital photograph thereof to the Department. The Recipient will also provide the Department, upon its request, with copies of any photographs that may be taken of the Infrastructure Project and the Housing Development by or on behalf of the Recipient or its architect. The Recipient will provide an acceptable written consent and release agreement authorizing use of said photographs, all at no expense to the Department.

INSPECTION OF GRANT ACTIVITIES

29. Site Inspection

The Department reserves the right, upon reasonable notice, to inspect the Infrastructure Project site and any structures or other improvements thereon to determine whether the Infrastructure Project site meets the requirements of Program and this Agreement. If the Department reasonably determines that the site is not acceptable for the proposed Infrastructure Project in accordance with the Guidelines, the Department reserves the right to cancel its funding commitment and this Agreement.

30. Infrastructure Project and Housing Development Inspection

- A. The Department and any authorized representative of the Department shall have the right, during construction and thereafter, to enter upon and inspect the construction of the Infrastructure Project and Housing Development to ensure that the construction is being and has been performed in accordance with the applicable Federal, State, and /or local requirements, the Guidelines and the terms of this Agreement. Such right to inspect shall include, but shall not be limited to, the right to inspect all work done, all materials and equipment used or to be used, and all books and records, including payroll records, maintained in connection with the construction work. Such right of inspection shall be exercised in a reasonable manner.
- B. The Recipient shall be required to correct all circumstances found by such inspections not to conform to the applicable Program requirements, and to withhold payment to the Contractor and/or Subcontractor(s) until action(s) to correct the non-conforming circumstances is/are corrected by the Recipient and approved by the Department.

EXHIBIT C

- C. The Department reserves the right to withhold payment for any costs found not to conform to applicable Program requirements until such actions have been taken to correct the non-conforming circumstances and such corrective actions have been approved by the Department.
- D. The Department shall have no affirmative duty to inspect the Infrastructure Project or the Housing Development and shall incur no liability for failing to do so. Once having undertaken any inspection, neither the Department, nor any representative of the Department shall incur any liability for failing to make any such inspection properly, or for failing to complete any such inspection. The fact that such inspection may or may not have occurred shall not relieve the Recipient, the contractor, the construction lender, the architect, the structural engineer, the locality or anyone else of any obligation to inspect the Infrastructure Project and the Housing Development.

31. Audit/Retention and Inspection

- A. The Department, its representatives or employees, or its delegatee shall have the right to review, obtain, and copy all records pertaining to performance of the Agreement. Recipient shall provide the Department or its delegatee with any relevant information requested and shall permit the Department or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material. Recipient further agrees to maintain such records for a minimum period of four (4) years after final payment under the Agreement, unless a longer period of records retention is stipulated.
- B. Payment for any cost which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Recipient.
- C. At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Infrastructure Project or the Housing Development. At the Department's request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.

EXHIBIT C

- D. The audit shall be performed by a qualified State, Department, local or independent auditor. The Agreement for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
- E. If there are audit findings, the Recipient shall submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends and the Department will notify the Recipient in writing. If the Department is not in agreement, the Recipient will be contacted in writing and will be informed as to the corrective actions required to cure any audit deficiencies. This action could include the repayment of disallowed costs or other remediation.
- F. If so directed by the Department upon termination of this Agreement, the Recipient shall cause all records, accounts, documentation and all other materials relevant to this Agreement to be delivered to the Department as depository.

COMPLETION OF CONSTRUCTION

32. Relocation Plan Implementation Report

The Recipient shall provide a report, in a form acceptable to the Department, summarizing the actions taken and identifying all recipients of relocation assistance and benefits, and the amounts paid, and benefits provided, to or on behalf of each recipient.

33. Architect Certification

Where required by the Department, the Recipient shall cause the Infrastructure Project and Housing Development architect(s) or other appropriate professional to certify to the Department, in form acceptable to the Department, that all construction is completed in accordance with the "as-built" Plans and Specifications and in compliance with all applicable federal, state and local laws relating to disabled accessibility.

34. Cost Certification

At the request of the Department, the Recipient shall submit an Infrastructure Project and Housing Development cost certification that shall have been audited

EXHIBIT C

by an independent certified public accountant in accordance with the requirements of the Department and the California Tax Credit Allocation Committee, if applicable. The Recipient (and the developer or builder if there is an identity of interest with the Recipient) shall keep and maintain records of all construction costs not representing work done under the construction contract and to make such records available for review by the Department.

35. Recorded Notice of Completion

The Recipient shall provide to the Department a certified copy of any Notice of Completion for the Housing Development recorded in the county in which the Housing Development is located.

36. "As-built" Plans and Specifications

Upon completion, at the request of the Department, the Recipient shall submit "as-built" plans and specifications for the Infrastructure Project and Housing Development acceptable to the Department.

HOUSING DEVELOPMENT REQUIREMENTS

37. Confirmation of Permitted Housing Units

Conditions precedent to the first disbursement of Program funds shall include receipt of all required public agency entitlements and all required funding commitments for the Housing Development. Alternatively, if the Housing Development includes multiple phases or developments, no program funds shall be disbursed until all entitlements and funding commitments for at least the first phase of the Housing Development have been received. The housing units to be developed in the Housing Development must be completed, as evidenced by receipt of a certificate of occupancy, within the time period established in this Agreement.

REPORTING REQUIREMENTS

38. Reports on Infrastructure Project

Recipient shall submit, upon request of the Department, a periodic performance report regarding the construction of the Infrastructure Project. The reports will be filed on forms provided by the Department.

EXHIBIT C

39. Reports on Housing Development

Recipient shall submit to the Department periodic reports, as required by the Department, but not less than annually, describing the development, construction and occupancy of the Housing Development. The report shall include, but not limited to, information regarding unit affordability and occupancy, construction and permanent financing evidenced by commitment letters, and a construction and completion schedule demonstrating compliance with this Agreement and the Guidelines. The reports will be filed on forms provided by the Department.

40. Updated Information

Recipient shall provide the Department updated documentation for any substantial change in the information previously provided relating to the Infrastructure Project and the Housing Development and the conditions described above.

41. Monitoring Requirements

The Program may perform program and/or fiscal monitoring of the grant. The Recipient agrees to cooperate with any such monitoring and provide reasonable access to all Infrastructure Project files, records, documents and other information to employees or representatives of the Department. The Recipient shall resolve any monitoring findings to the Program's satisfaction by the deadlines set by the Department.

REPAYMENT OF GRANT FUNDS

42. Breach of this Agreement

In the event of a breach or violation by the Recipient of any of the provisions of this Agreement, the Department may give written notice to the Recipient to cure the breach or violation within a period of not less than thirty (30) days. If the breach or violation is not cured to the satisfaction of the Department within the specified time period, the Department, at its option, may declare a default of the Agreement and may seek remedies for the default, including the following:

- A. The Department may terminate this Agreement and demand repayment of the Program funds to the extent that work for costs to be paid by Program funds as provided in Exhibit B remains unperformed or uncompleted.

EXHIBIT C

Recipient shall be liable for all costs to complete all such uncompleted or unperformed work.

- 1) The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the Infrastructure Project in accordance with Program requirements.
 - 2) The Department may seek such other remedies as may be available under this Agreement or any law.
- B. This Agreement may be canceled by the Department under any of the following conditions:
- 1) An uncured breach or violation by Recipient of this Agreement or the Disbursement Agreement.
 - 2) The objectives and requirements of the Program cannot be met by continuing the commitment or this Standard Agreement;
 - 3) Construction of the Infrastructure Project or Housing Development cannot proceed in a timely fashion in accordance with the Performance Milestones in Exhibit A of this Agreement;
 - 4) Funding or disbursement conditions have not been or cannot be fulfilled within required time periods.

43. Repayment of Grant Funds for Failure to Develop Housing

Pursuant to §105(f)(1) of the Guidelines, the grant shall be repaid to the Department if all necessary and discretionary public land use approvals have not been received for the Housing Development within five (5) years of the date of the Program award.

EXHIBIT D

State of California
General Terms and Conditions

1. Approval

This Agreement is of no force and effect until signed by both parties.

2. Amendment

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. Assignment

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. Indemnification

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

5. Disputes

Contractor shall continue with the responsibilities under this Agreement during any dispute.

6. Termination for Cause

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided.

7. Independent Contractor

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

EXHIBIT D

8. Non-Discrimination Clause

- A. During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- B. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

9. Timeliness

Time is of the essence in this Agreement.

10. Governing Law

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

11. Child Support Compliance Act

If this Agreement is in excess of \$100,000, by executing this Agreement, Contractor acknowledges and agrees to the following:

- A. Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

EXHIBIT D

- B. Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

12. Severability

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

13. Drug-Free Workplace Requirements

Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and shall provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- B. Establish a Drug-Free Awareness Program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available counseling, rehabilitation and employee assistance programs; and (4) penalties that may be imposed upon employees for drug abuse violations.
- C. Every employee who works on the proposed contract will: (1) receive a copy of the Contractor's drug-free workplace policy statement; and (2) agree to abide by the terms of the Contractor's statement as a condition of employment under this agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or (2) violated the certification by failing to carry out the requirements as noted above. (Government Code section 8350 et seq.)

EXHIBIT D

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California:

14. Conflict of Interest

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

A. Current State Employees (Public Contracts Code Section 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent Contractor with any state agency to provide goods or services.

B. Former State Employees (Public Contract Code Section 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

C. If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Public Contract Code section 10420).

D. Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Public Contract Code section 10430 (e))

EXHIBIT D

15. Labor Code/Workers' Compensation

Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code section 3700)

16. Americans With Disabilities Act

Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

17. Contractor Name Change

An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change, the State will process the amendment.

18. Corporate Qualifications to Do Business in California

- A. If Contractor is a corporation, the State may verify that the Contractor is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.
- B. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the State not be subject to the franchise tax.
- C. Both domestic and foreign corporations (those incorporated outside California) must be in good standing in order to be qualified to do business in California. If Contractor is a corporation, the State will determine whether Contractor is in good standing by contacting the Office of the Secretary of State.

19. Resolution

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

EXHIBIT D

20. Air or Water Pollution Violation

Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of the provisions of federal law relating to air or water pollution.

21. Payee Data Record Form Std. 204

This form must be completed by all contractors that are not another state agency or other government entity.

22. National Labor Relations Board Certification

If Contractor is receiving federal funds under this Agreement, Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Not applicable to public entities.)

EXHIBIT E

SPECIAL TERMS AND CONDITIONS

The following Special Terms and Conditions are applicable to this Agreement:

- (1) Conditions precedent to the first disbursement of Program funds shall include receipt of all required public agency entitlements and all funding commitments for the Housing Development supported by the infrastructure. If the Housing Development includes multiple phases or developments, all entitlements and funding commitments for the first phase must be received.
- (2) Pursuant to Section 105(f)(1) of the TOD Housing Program Guidelines, the infrastructure grant shall be repaid to the Department if all necessary and discretionary public land use approvals have not been received for the Housing Development within five years of the date of the Program award.
- (3) Pursuant to Section 105(f)(6) funds will be disbursed as progress payments for eligible costs incurred.
- (4) Notwithstanding any other provision of this Agreement, a Covenant as referred to in paragraph 4 of Exhibit C shall be recorded against all Housing Developments listed in Exhibit A, including those developments containing only market rate units. The Department will release or terminate a Covenant recorded against a Housing Development containing only market rate units upon receipt of a valid Certificate of Occupancy for such development.
- (5) Sponsor shall submit a Phase I report to the Department that is acceptable to the Department. If the phase 1 Environmental Assessment is unacceptable, the sponsor shall mitigate the environmental concerns to the Department's satisfaction.
- (6) If the Applicant has received an award from the Infill Infrastructure Grant Program, then the Applicant shall provide to the Department a detailed line item budget for the total infrastructure construction project. The budget shall show all sources of funding and provide evidence that the Department's awards are paying separately for all components of the project.

**TRANSIT-ORIENTED DEVELOPMENT HOUSING PROGRAM
INFRASTRUCTURE GRANT
DISBURSEMENT AGREEMENT**

This DISBURSEMENT AGREEMENT (the "Agreement") is dated for reference purposes only as of September 10, 2009, and is made by and among the city of Sacramento, a municipal corporation (the "Recipient"), S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company (the "Developer") and the Department of Housing and Community Development, a public agency of the State of California (the "Department").

Recitals

A. Recipient has submitted an application (the "Application") to the Department for an infrastructure grant under the Transit-Oriented Development (TOD) Housing Program ("Program") and in accordance with Part 12 of Division 31 of the Health and Safety Code (commencing with Section 53560) and the TOD Housing Program Guidelines, issued by the Department and dated December 3, 2007 (the "Guidelines"), to finance, in part, the construction of the capital improvement (the "Infrastructure Project") described herein pursuant to the Standard Agreement Number 07-TOD-4243, entered into by the Recipient and the Department dated August 10, 2009 (the "Standard Agreement"). The Department has conditionally agreed to provide the grant to the Recipient in an amount not to exceed SEVENTEEN MILLION AND 00/100 Dollars (\$17,000,000.00) (the "Program Funds"). The Standard Agreement, the Application, this Agreement and all amendments, exhibits and attachments thereto (the "Grant Documents"), are incorporated in full by referenced to this Agreement.

B. The Infrastructure Project is integral to or necessary for the development of a residential housing development (the "Housing Development"), or to facilitate connections between the Housing Development and the designated transit station as described in the Standard Agreement in conjunction with the construction of the Infrastructure Project.

C. Recipient and Developer have entered into an Assignment and Assumption Agreement 5th and 6th Street Overpass Agreements (the "Assignment and Assumption"), whereby Recipient transferred all duties and obligations of performance under the Standard Agreement and this Disbursement Agreement to Developer. Pursuant to the Assignment and Assumption, Developer accepted and assumed all duties and obligations of the Recipient. Furthermore, the Developer agreed to comply with all terms and conditions set forth in the Standard Agreement and this Disbursement Agreement. The Developer, as current owner of the real property (as defined below), will dedicate, upon completion, the Infrastructure Project and the real property to the Recipient.

D. The Department acknowledges the Assignment and Assumption between Recipient and Developer; however, the Department has not and will not release the Recipient from its duties and obligations under the Standard Agreement and this Disbursement Agreement. The Department acknowledges that performance of the Scope of Work and any and all other obligations under the Standard Agreement and this Disbursement Agreement by the Developer will be deemed performance by the Recipient. The Recipient, however, will remain ultimately responsible for the performance of all duties and obligations under the Standard Agreement and this Disbursement Agreement.

E. The parties hereto wish to enter into an agreement for the disbursement of Program Funds to ensure timely completion of the Infrastructure Project and the Housing Development in accordance with the requirements of the Grant Documents, the Guidelines, and the rules, laws and regulations of the Department and the State of California.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement.
2. Project. The Recipient shall construct the Infrastructure Project and the Housing Development, as generally described in the Standard Agreement, on the real property described in Exhibit A hereto (the "Property") and incorporated herein, in accordance with the Standard Agreement and the Scope of Work as described in Exhibit B attached hereto and incorporated herein.
3. Representations and Warranties. Recipient represents and warrants to the Department as follows:
 - a. Organization. Recipient is duly organized, validly existing and in good standing under the laws of the State of California and has the

power and authority to own or lease the Property and to own, develop, construct, operate and maintain the Infrastructure Project and the Housing Development. The copies of the documents evidencing the organization of Recipient delivered to the Department are true, complete, and correct copies of the originals, as amended to the date of this Agreement.

- b. Authority of Recipient. Recipient has full power and authority to execute and deliver the Grant Documents and all other instruments, agreements and documents executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.
- c. Authority of Persons Executing Documents. The Grant Documents and all other instruments, agreements and documents executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Recipient. All actions required under Recipient's organizational documents and applicable governing law for the authorization, execution, delivery and performance of the Grant Documents and all other instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.
- d. No Breach of Law or Agreement. None of the execution or delivery of the Grant Documents and other instrument, agreement and document executed and delivered, or to be executed or delivered, pursuant to this Agreement, or the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission, or agency whatsoever binding on the Recipient or any provision of the organizational documents of the Recipient, will conflict with or constitute a breach of or a default under any agreement to which Recipient is a party, or will result in the creation or imposition of any lien upon the Property of Recipient, other than liens approved by the Department.
- e. Compliance with Laws; Consents and Approvals. The Infrastructure Project and the Housing Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies having jurisdiction over either the Recipient, the Property, the Infrastructure Project or the Housing Development, and with all applicable

directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency. All permits, consents, permissions and licenses required by any federal, state or local government or agency to which Recipient, the Property, the Infrastructure Project or the Housing Development is subject, which may be necessary in relation to this Agreement or the acquisition, development, construction or ownership of the Infrastructure Project or the Housing Development, at or prior to the commencement of construction, have been, or will be, obtained, and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met.

- f. Pending Proceedings. The Recipient is not in default under any law or regulations or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Recipient, threatened against or affecting Recipient, the Property, the Infrastructure Project or the Housing Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Recipient, materially affect Recipient's ability to acquire, construct or develop the Infrastructure Project or the Housing Development.
- g. Title to Property. Recipient or its subsidiary will have good and marketable title to the Property, Infrastructure Project and the Housing Development or a leasehold interest therein approved by the Department and there shall exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and assessments not yet due and payable and other matters of record approved in writing by the Department.
- h. Financial Statements. The financial statements of Recipient and other financial data and information if requested by the Department and furnished by Recipient, fairly represents the financial information contained therein.
- i. Adequacy of Program Funds. The amount of the Program Funds, together with any funds to be provided by the Recipient or to the Recipient from any other sources, is adequate as construction financing for the Infrastructure Project in accordance with Exhibit C.
- j. Payment of Taxes. All federal, state, county and municipal taxes

required to be paid by the Recipient or on account of the Property due and payable as of the date of this Agreement have been paid in full as of such date.

- k. Availability of Utilities. All utilities necessary for the development and occupancy of the Housing Development are available at or within the boundaries of the Housing Development and all steps necessary to assure that such utility services will be available upon completion of the Housing Development have been taken.
 - l. Hazardous Materials. Recipient has performed due diligence review of the condition of the Infrastructure Project and the Housing Development including review to disclose the possible existence of asbestos and toxic or hazardous materials. All information regarding the condition of the Infrastructure Project and the Housing Development have been disclosed to the Department in writing including but not limited to all Phase I, soils and hazardous materials reports regarding the condition of the Property, the Infrastructure Project and the Housing Development.
4. Sources and Uses. The Recipient has received, or will receive, funds for the purpose of developing the Infrastructure Project and Housing Development in the amounts and the sources identified in the Sources and Uses of Funds attached hereto and incorporated herein as Exhibit C. All funds shall be used and secured in the manner specified in Exhibit C. Recipient agrees to comply with and satisfy all the terms and conditions imposed on the Recipient in connection with the sources of funding identified in the Sources and Uses of Funds.
 5. Use of Funds. Recipient agrees that the Program Funds shall be expended only in accordance with the applicable statutes and Program Guidelines governing the Program, and only for the purposes and activities set forth in this Agreement. The Program Funds shall be used exclusively for the payment of, or reimbursement for, Approved Costs as shown in the Project Budget, as the same may be amended from time to time with the written approval of the Department, such payment of, or reimbursement for, costs to be made only after the same have been incurred by the Recipient. "Approved Costs" shall mean all hard and soft eligible costs under the Program (and modifications thereto), which were approved, or will be approved by the Department, which are needed for the completion of the Infrastructure Project, in accordance with Scope of Work.

6. Disbursement Schedule. The Disbursement Schedule attached to this Disbursement Agreement as Exhibit D represents a good faith estimate of when the Program Funds will be disbursed to pay costs. The Department and the Recipient shall confer as necessary, to update the Disbursement Schedule throughout the construction period.
7. Displacement and Relocation. If the acquisition, construction or development of the Infrastructure Project or Housing Development will result in the temporary or permanent displacement of occupants, the Recipient shall provide relocation payments and assistance in accordance with the applicable Federal and State requirements.
8. Contractors and Subcontractor. For the performance of all construction work on the Infrastructure Project, Recipient agrees to use a general contractor or contractors ("Contractor") in order to complete the Scope of Work described in Exhibit B. Any successor to or substitute for the Contractor shall be subject to the approval of the Department. The Recipient hereby certifies that the Contractor is in good standing with the California State Contractors' License Board. The Recipient shall only contract with contractors, and shall ensure that the Contractor and any successor thereto shall only contract with subcontractors, which are so licensed.
9. Construction Contract. The Recipient shall enter into a written contract or contracts with the Contractor for the performance of the Scope of Work as set forth in Paragraph 2 above (the "Construction Contract"). Recipient shall not terminate or substantially amend the Construction Contract with respect to the Infrastructure Project without the prior written approval of the Department. Recipient shall monitor and enforce the terms and conditions of the Construction Contract to ensure completion of the Scope of Work. The Construction Contract shall contain provisions for compliance with State Prevailing Wage Law as required by the Grant Documents and the Guidelines.
10. Construction Responsibilities. Recipient shall be solely responsible for all aspects of Recipient's business and conduct in connection with the Property, the Infrastructure Project and the Housing Development, including, but not limited to, the quality and suitability of the Scope of Work and the equipment used in the construction of the Infrastructure Project and the Housing Development, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors and subcontractors of any tier, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements.

11. Delay. Recipient shall promptly notify the Department in writing of any event causing delay or interruption of construction work, in excess of (3) three working days, or the timely completion of construction for a period of (5) five working days beyond the scheduled completion date. The notice shall specify the particular work delayed and the cause and period of each delay.
12. Purchase of Materials Under Title Retention Agreement. The Recipient shall not purchase or install or permit to be purchased or installed any materials, equipment, fixtures or other part of the Infrastructure Project under any agreements or arrangements wherein the supplier or seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation into the Infrastructure Project, unless authorized in writing by the Department.
13. Liens and Stop Notices. If a claim of lien is recorded affecting the Property, Infrastructure Project, Housing Development or a bonded stop notice is served upon the Department which affects Program Funds or the Recipient's other funding, Recipient shall, within twenty (20) days of such recording or service or within five (5) days of the Department's demand (whichever last occurs): (i) pay and fully discharge the same; (ii) effect the release thereof by recording or delivering to the Department a surety bond in sufficient form and amount, or otherwise; or (iii) provide the Department with other assurance which the Department deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the Department from the effect of such lien or bonded stop notice. If Recipient has not received actual notice of the claim of lien or bonded stop notice prior to the Department's demand, then the five (5) day period described above shall be extended to twenty (20) days. Recipient shall give the Department prompt written notice of all lien claims affecting the Property, the Infrastructure Project or the Housing Development.
14. General Conditions of Disbursement. Disbursement of Program Funds shall be subject to the following conditions:
 - a. Disbursement of Program Funds shall be subject to the procedures and conditions set forth in this Agreement and Exhibit B of the Standard Agreement.

- b. The Department shall disburse Program Funds to Recipient for reimbursement or payment of Approved Costs incurred by Recipient as provided for herein.
 - c. The aggregate disbursement of all or any portion of Program Funds for hard construction costs under the Construction Contract shall be limited to an amount equal to ninety percent (90%) of such costs with the ten percent (10%) being retained except for the final disbursement of Program Funds. The ten percent retained amount shall be disbursed as part of the final disbursement as set forth in Paragraph 18 hereof.
 - d. There exists no Event of Default, as defined in this Agreement, or the Standard Agreement, or event, omission or failure of condition which would constitute a default or Event of Default after notice or lapse of time, or both that will not be cured concurrently with the funding of the Program Funds.
 - e. Recipient has satisfied all requirements for receipt of the Program Funds in accordance with the applicable statutes and TOD Program Guidelines.
 - f. Right to Condition Disbursements. The Department shall have the right to condition any disbursement upon receipt and approval of such documentation, evidence or information that the Department may request, including, but not limited to, vouchers, invoices, and architect's inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed.
15. Conditions Precedent to Individual Disbursements. The Department shall not be obligated to make any disbursement of Program Funds or take any other actions under this Agreement or the Standard Agreement unless all of the following conditions precedent are satisfied at the time of such actions:
- a. Recipient has and will continue to maintain site control over the Infrastructure Project and Housing Development. Recipient has provided to the Department evidence demonstrating that Recipient has obtained all licenses, easements and right-of-way or other interest required for completion of the Infrastructure Project and the Housing Development.

- b. If applicable, Recipient has provided to the Department a relocation plan conforming to the requirements of state law and regulations issued by the Department in California Code of Regulations Title 25, Section 6000 et seq.
- c. Recipient has executed and provided to the Department a Certificate of Identity of Interest.
- d. Recipient has obtained all necessary insurance policies and endorsements as described in Exhibit E of this Agreement.
- e. The Recipient shall provide security to assure completion of the Project by furnishing the Department and other construction lenders with Performance and Payment Bonds, or a Letter of Credit, which shall remain in effect during the entire term of construction of the Scope of Work, and which shall be in a form and from an issuer which is acceptable to the construction lenders and Department. The Performance Bond shall be in an amount at least equal to one hundred percent (100%) of the approved construction costs to provide security for the faithful performance of the Standard Agreement including a warranty period of at least 12 months after completion. The Payment Bond shall be in an amount at least equal to one hundred percent (100%) of the approved construction costs to provide security for the payment of all persons performing labor on the Project and furnishing materials in connection with the Project. If a Letter of Credit is used, it shall be in an amount equal to at least 20% of the approved construction costs. The Department shall be named as an additional obligee in the Bonds or beneficiary under a Letter of Credit.
- f. Recipient has obtained all required permits and approvals required for the lawful construction of the Infrastructure Project and, when required by the Department, the Housing Development.
- g. Where approval by a local public works department, or its equivalent, is required for the Infrastructure Project, the applicant must submit a statement from that department, or other documentation acceptable to the Department, indicating that the Infrastructure Project has received that approval.
- h. Recipient has received all required public agency entitlements and land use approvals for the Housing Development.

If the Housing Development includes multiple phases or

developments, no Program Funds shall be disbursed until all entitlements and funding commitments for at least the first phase of the Housing Development has been received.

- i. Submission to the Department of all lien waivers required by the Department or passage of the applicable statutory periods for filing mechanic and other similar liens.
- j. Recipient has obtained all applicable CEQA and NEPA clearances and submitted evidence thereof as required by the Department.
- k. Recipient has provided to the Department a Title Report acceptable to the Department.
- l. Recipient has executed and recorded a written covenant for the development of affordable housing with the Department as required in the Standard Agreement.
- m. Recipient has provided evidence of binding agreements for construction financing and enforceable commitments for permanent financing as identified in the Sources and Uses of Funds (or equivalent, alternative financing approved by the Department) demonstrating adequate funding to complete the Infrastructure Project and Housing Development and to provide permanent financing therefore.

If the Housing Development includes multiple phases or developments, no Program Funds shall be disbursed until all binding agreements for construction financing and enforceable commitments for permanent financing for at least the first phase of the Housing Development has been received.

- n. Recipient has provided evidence acceptable to the Department of ongoing compliance with State Prevailing Wage Law as required by the Grant Documents and the Guidelines.
- o. Recipient has completed, executed and submitted to the Department, on a form provided by the Department, a Draw Request indicating Recipient's request for disbursement of Program Funds.
- p. Recipient has completed or complied with all events or conditions in the Disbursement Schedule prior to the submission of the Draw Request.

- q. Recipient has complied with all special conditions contained in the Exhibit F which are conditions precedent to the disbursement of Program Funds.
- r. Recipient has submitted a Draw Request as provided below.

16. Draw Requests.

- a. Application for Payment. Recipient shall request Program Funds by submitting a written itemized statement or draw request in a form that is acceptable to the Department (the "Draw Request"), subject to the conditions set forth below. A Draw Request for payment shall be submitted to the Department not more frequently than once monthly. The Department shall determine whether or not the conditions precedent to its obligation to advance Program Funds have been satisfied or whether or not to waive any conditions precedent to its obligations to advance its Program Funds which the Department determines have not been satisfied.
- b. Contents of Application for Payment. Each Draw Request shall set forth the following: (i) a description of work performed, material supplied and/or costs incurred or due for which the disbursement is requested with respect to any Approved Costs shown as a line item ("Item") in the Sources and Uses of Funds; (ii) the total amount incurred, expended and/or due for each requested Item, less prior disbursement; and (iii) the percentage of completion of the portion of the work to be paid from the Item.
- c. Delivery of Draw Request. Recipient shall deliver each Draw Request to the Department at its address set forth in Paragraph 30 or such other address designated by the Department in writing. Each Draw Request shall be subject to the approval of the Department.

- d. Documentation. Each Draw Request shall be accompanied by the following: (i) copies of paid invoices and unconditional lien releases for construction costs paid with the proceeds of prior Draw Requests (except for the first Draw Request), and conditional (upon receipt of payment) lien releases for construction costs to be paid with the proceeds of the instant Draw Request, which invoices and lien releases shall be considered a part of each Draw Request; (ii) a copy of inspection report or other documentation from localities, municipalities, or other construction lenders indicating the percentage of work completed pertaining to instant Draw Request; (iii) submission of all lien waivers required by the Department or passage of the applicable statutory periods for filing mechanic and other similar liens; and (iv) any applicable change order(s) that affect or alter the Scope of Work.

17. Approval of Draw Request.

- a. Procedure. The Department shall within thirty (30) business days after receipt of a Draw Request containing all of the items described in Paragraph 15, above, determine the amount of the Draw Request to be approved, notify Recipient of such amount, and disburse the approved amount, by State Warrant, to the Recipient or designated payee approved by the Department.
- b. Disapproval. Any item in a Draw Request which is not specifically approved within thirty (30) business days shall be deemed disapproved. On the basis of the progress of work performed on the Infrastructure Project and the conditions precedent to making disbursements in this Agreement, the Standard Agreement and the applicable statutes and Program Guidelines, the Department may disapprove all or part of a Draw Request. In the event the Department disapproves any portion of the amount requested by Recipient in a Draw Request, the Department shall promptly notify the Recipient in writing of the disapproved amount and the reason therefore.
- c. Concurrent Review of Draw Request. In the event any item shall be disapproved or deemed disapproved, the Recipient and the Department shall meet and in good faith attempt to resolve the matter to their mutual satisfaction.

- d. Disbursement of Undisputed Amounts. In the event of any dispute, the Department shall disburse the amount of the Draw Request not in dispute, and fund any disputed amount promptly upon resolution of the dispute. Disputed amounts shall not be deducted from the Department's Program Funds, but shall be available for disbursement for other approved costs in accordance with the Sources and Uses of Funds. The Department and Recipient shall seek to resolve any disputes promptly and in good faith.
18. Condition Precedent to Final Disbursement. The final disbursement of the of Program Funds, including ten percent (10%) retention of hard construction costs, shall be subject to the following conditions:
- a. All of the conditions set forth in Paragraphs 14, 15 and 16 above have been met.
 - b. Submission to the Department of a Notice of Completion duly recorded by Recipient.
 - c. Submission to the Department of a Certificate of Occupancy for the Housing Development issued by the local government having jurisdiction over the Housing Development, or any equivalent thereto acceptable to the Department. If the Housing Development has multiple phases or developments, then submission to the Department of a Certificate of Occupancy for the first phase of the Housing Development.
 - d. Receipt by the Department, if so requested, of a development cost audit for the Infrastructure Project satisfactory to the Department.
 - e. Issuance of a certificate or certificates, each in form and substance satisfactory to the Department, executed by Recipient and the Architect, either jointly or severally, each certifying that the Infrastructure Project has been completed in accordance with the Scope of Work.
 - f. Completion of the Infrastructure Project in accordance with Exhibit B and acceptance and approval of the Project by the Department and by any person or governmental agency whose approval may be required.
 - g. Submission to the Department of all lien waivers required by the Department or passage of the applicable statutory periods for filing mechanic and other similar liens.

- h. Disposition of mechanic's liens that have been recorded or stop notices that have been delivered to the Department or other construction lenders, so that any such liens shall have been paid, settled, bonded around or otherwise extinguished or discharged, and the Department has been provided satisfactory evidence of such payment, settlement, bond or discharge, including without limitation all statutory waivers.
 - i. Review and approval by the Department of evidence submitted by Recipient that the Housing Development meets or exceeds the requirements for access to transit for which Recipient received points under the Program.
 - j. Review and approval by the Department of evidence submitted by Recipient that the Housing Development meets or exceeds the requirements for proximity to amenities for which Recipient received points under the Program.
19. Disbursement of Program Funds Received by Recipient. All Program Funds received by Recipient shall be disbursed to pay costs in accordance with the Draw Request approved by the Department and in accordance with this Agreement.
20. Inspection of the Infrastructure Project and the Housing Development. The Department shall have the right to inspect the Infrastructure Property and the Housing Development during construction. Recipient shall deliver to the Department any inspection reports prepared on behalf of the other construction lenders, to the extent available to the Recipient. Inspection of the Infrastructure Property and the Housing Development shall be for the sole purpose of protecting the Department's interest and is not to be construed as a representation by the Department that there has been compliance with plans or that the Infrastructure Property and the Housing Development will be free of faulty materials or workmanship. The Recipient can make or cause to be made such other independent inspections as the Recipient may desire for its own protection.
21. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder following written notice to the Recipient by the Department, specifying (i) the applicable event, (ii) the action required to prevent such event from becoming an Event of Default, and (iii) a date, which shall be not fewer than fifteen (15) after the date the notice is mailed to Recipient, by which such action must be taken:

- a. Monetary. (i) Recipient's failure or inability to secure anticipated permanent financing from parties other than the Department's Program Funds as specified in Exhibit C (or equivalent alternative financing approved by the Department), regardless of fault of the Recipient; (ii) Recipient's failure to use or apply Program Funds in the manner specified by, or consistent with the purposes of this Agreement and as specified in Exhibits B and C; or (iii) the occurrence of an event of default under the terms of the commitment for any of the loans or grants received from other construction funding sources as specified in Exhibit C hereto which results in a termination or cancellation of such commitment(s).

- b. Construction; Use. (i) Recipient's failure to remedy any material deviation in the work of construction from the Scope of Work that occurred without the Department's approval or defective workmanship or materials in constructing the Infrastructure Project or Housing Development, in each case to the Department's satisfaction, within ten (10) days of the Department's written demand to do so; (ii) the cessation of construction of the Infrastructure Project and Housing Development prior to completion for a continuous period of more than fifteen (15) days (unless caused by war, rebellion, insurrection, strike, lockout, boycott or act of God, or other event beyond the Recipient's control as determined in the sole discretion of the Department); (iii) the prohibition, enjoining or delay (in any manner) of the construction of, or the prohibition or enjoining (in any manner) of the leasing or sale of any unit in the Housing Development in accordance with the Grant Documents for a continuous period of more than thirty (30) days; or (iv) the curtailment in availability to the Infrastructure Project or Housing Development for a continuous period of more than thirty (30) days of utilities or other public services necessary for construction or the full occupancy or utilization of the Infrastructure Project or Housing Development.

- c. Performance of Obligations. Recipient's default and failure to cure such default in a timely manner under any other Grant Documents or other construction lender loan documents, Recipient's default under any ground lease or sale of the Housing Development, or Recipient's failure to perform its obligations under this Agreement.

- d. Representations and Warranties. (i) Any of Recipient's representations or warranties in any of the Grant Documents or any statements, certificates or schedules furnished by Recipient to the Department, shall prove to have been untrue in any material

respect when made or the Recipient shall have concealed any material fact from the Department, (ii) any of the Recipient's representations or warranties in any of the Grant Documents or any statement, certificates or schedules furnished by Recipient to the Department, other than representations, warranties, statements and certificates as to the financial condition of Recipient or any other person, shall cease to be true and shall remain untrue for thirty (30) days after notice of such change to Recipient by the Department, or (iii) any material adverse change in the financial condition of Recipient from the financial condition represented to the Department as of the date of this Agreement which alters or affects the Scope of Work.

- e. Voluntary Bankruptcy; Insolvency; Dissolution. Recipient's or any general partner of Recipient's (i) filing of a petition for relief under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) filing any pleading in any involuntary proceeding under any state or federal law regarding bankruptcy, reorganization or other relief to debtors which admits the jurisdiction of the court or the petition's material allegations regarding the Recipient's insolvency; (iii) making a general assignment for the benefit of creditors; (iv) applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Recipient, any general partner of Recipient or any of their respective properties; (v) inability or admission in writing of its inability to pay its debts as they are due; or (vi) death, if an individual; or the filing by Recipient or any general partner of Recipient of a petition seeking the liquidation or dissolution of Recipient or any general partner of Recipient or the commencement of any other procedure to liquidate or dissolve Recipient or any general partner of Recipient.

- f. Involuntary Bankruptcy. Recipient's or any general partner of Recipient's failure to effect a full dismissal of any involuntary (i) petition under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) proceeding for the appointment of a receiver, trustee or liquidator for Recipient or any general partner of Recipient or all or a material part of the assets of the Recipient or any general partner of Recipient, or (iii) petition or proceeding under other state or federal law regarding bankruptcy, reorganization or other relief to debtors that is filed against Recipient or any general partner of Recipient or in any way restrains or limits Recipient or any general partner of Recipient or the Department regarding the Program Funds, the Property, the Infrastructure Project or Housing Development, in any event prior to

the earlier of the entry of any order granting relief sought in the involuntary petition or proceeding, or sixty (60) days after the date of filing of the petition or beginning of the proceeding.

- g. Liens; Attachment; Condemnation; Encroachments. (i) The filing of any claim of lien against the Property, Housing Development or the Infrastructure Project, or any part thereof, or service on the Department of any bonded stop notice relating to the Property, Housing Development or the Infrastructure Project and the continuance of the claim for lien or bonded stop notice for twenty (20) days after Recipient receives actual notice thereof without discharge, satisfaction or provision for payment being made as provided for in Paragraph 12 hereof; (ii) the condemnation, seizure or appropriation of, or the occurrence of an uninsured casualty with respect to, any material portion of the Property, Housing Development or the Infrastructure Project, such materiality to be determined by the Department in its sole and absolute discretion; (iii) the sequestration or attachment of, assignment by Recipient for the benefit of its creditors of, or any levy or execution upon, the Property, Housing Development, the Infrastructure Project, other collateral provided by Recipient under any of the Grant Documents, monies in any account as may be required under any Grant Documents for the deposit of operating income, or substantial portion of the other assets of Recipient, which is not released, expunged or dismissed prior to the earlier of sixty (60) days after sequestration, attachment or execution or the sale of the assets affected thereby; or (iv) any survey provided to the Department upon a request for a disbursement of Program Funds shows encroachments which occurred without the written approval of the Department which, in its sole discretion, the Department requires to be removed or corrected, and the failure to remove or correct any such encroachments within thirty (30) days after receipt of the survey.
- h. General. Recipient's breach of any condition, covenant, warranty, promise or representation contained in this Agreement not otherwise resulting in an Event of Default hereunder and the continuance of such breach for a period of thirty (30) days after written notice thereof to Recipient.

22. Remedies upon an Event of Default. Upon the happening of an Event of Default, the Department's obligation to disburse Program Funds shall terminate and the Department shall have the right to withhold any further disbursement of Program Funds until the default has been cured. Upon

the occurrence of an Event of Default, the Department may also, in addition to all other rights and remedies available to the Department hereunder or under the Grant Documents or applicable law, at its option, proceed with any or all remedies set forth herein:

- a. Terminate this Agreement.
- b. Call all sums paid or advanced under the Program due and payable, all without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notice or demand of any kind or character.
- c. Completion of Project. The Department shall have the right to enter into possession of the Property, the Infrastructure Project or the Housing Development, to take over and complete the Infrastructure Project or Housing Development in accordance with the Scope of Work, to discharge and replace the Contractor and to employ personnel to protect the Property, the Infrastructure Project or the Housing Development and, for those purposes, to make disbursements of Program Funds. All such disbursements shall be deemed to have been paid to the Recipient by the Department. Any funds so paid or advanced shall be reimbursed to the Department by Recipient on demand, together with interest thereon at the rate of ten (10%) percent per annum from the date of expenditure. Any contracts entered into or indebtedness incurred upon the exercise of such right may be in the name of the Recipient, and for such purposes and the other purposes of this Paragraph 21 the Department is hereby authorized and irrevocably appointed attorney-in-fact (said appointment being coupled with an interest) to enter into said contracts or agreements or contracts or agreements theretofore made by or on behalf of Recipient and to do any and all things necessary or proper to complete the work of construction, including the signing of Recipient's name to such contracts and documents as may be deemed necessary by counsel for the Department.

In addition to the foregoing and not in limitation thereof, the Recipient hereby further empowers the Department as said attorney-in-fact as follows: (i) to use any Program Funds for the purpose of completing the construction of the Infrastructure Project in the manner called for by the Scope of Work; (ii) to make such additions, changes and corrections in the Scope of Work as shall be necessary or desirable to complete the Infrastructure Project in substantially the manner contemplated by the Scope of Work; (iii) to

employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (iv) to pay, settle or compromise all existing bills and claims which may be liens against the Property, the Infrastructure Project, or any part thereof, or as may be necessary or desirable for the completion of the construction of the Infrastructure Project, or for clearance of title; (v) to execute all applications and certificates in the name of the Recipient which may be required by the Construction Contract or documents entered into in connection therewith; (vi) to prosecute and defend all actions and proceedings in connection with the Infrastructure Property or the construction of the Infrastructure Project and to take such action and require such performance necessary; and (vii) to do any and every act which the Recipient might do in its own behalf with regard to completion of the construction of the Infrastructure Project. In no event shall the Department be required to expend its own funds to complete the Infrastructure Project if the remaining Program Funds are insufficient, but the Department may, at its option, advance such funds.

- d. Stoppage of Construction. Upon an Event of Default specified in subparagraph (b)(i), (b)(iv) or (g)(iv) of Paragraph 21, the Department may order immediate stoppage of construction and demand that the condition be corrected, notwithstanding any right of Recipient under this Agreement to correct or insure against such defects. After issuance of such an order in writing, no further work shall be done on the Infrastructure Project without the prior written consent of the Department and until said condition has been fully corrected.
- e. Curing of Defaults by Disbursement From Program Funds. Upon the happening of any Event of Default that may be cured by payment of money, the Department shall have the right to make such payment from the Program Funds. If the payment of any such sums may, in the Department's good faith determination, result in the reduction in the total amount of remaining Program Funds below that required to complete construction of the Infrastructure Project, the amount which the Department determines in good faith to be necessary to provide for such completion shall be deposited by Recipient with the Department or in such account as the Department may designate, within ten (10) days after written demand therefore by the Department.
- f. Judgment for Specific Performance; Appointment of a Receiver.

Upon the occurrence of an Event of Default, the Department may seek an order for specific performance in any court of competent jurisdiction or may apply to any such court for the appointment of a receiver to take over and complete construction of the Infrastructure Project or Housing Development in accordance with the terms of the Grant Documents, or for such other relief as may be appropriate.

23. Right to Advance or Post Program Funds. Where disputes have arisen which, in the good faith opinion of the Department, may endanger timely completion of the Infrastructure Project or fulfillment of any condition precedent or covenant herein or result in lien claims against the Property or the Infrastructure Project, the Department may agree to advance Program Funds for the account of Recipient without prejudice to Recipient's rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form which the Department, in its discretion, deems proper, including, but without limiting the generality of the foregoing, agreements to indemnify a title insurer against possible assertion of lien claims, agreements to pay disputed amounts to the Contractor or any potential lien claimant in the event Recipient is unable or unwilling to pay the same, and the like. All sums paid or agreed to be paid pursuant to such undertaking shall be for the account of Recipient, and Recipient agrees to reimburse the Department for any such payments made upon demand therefore with interest at the rate of ten (10%) percent per annum, or such lower rate of interest as may be approved by the Department, from the date of payment until date of reimbursement. Nothing in this or any other paragraph of this Agreement shall be construed to require the Department to advance monies over and above the amount of the Program Funds, though the Department may, at its option, advance such amounts.
24. Right of Contest. Recipient shall have the right to contest in good faith any claim, demand, levy or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Department or the rights of the Department hereunder. Upon demand by the Department, Recipient shall make suitable provision by deposit of funds with the Department or by bond or by title insurance or other assurance satisfactory to the Department for the possibility that the contest will be unsuccessful. Such provision shall be made five (5) days after demand therefore, and, if made by deposit of funds with the Department, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Recipient or the adverse claimant.

25. Rights Cumulative, No Waiver. All the Department's rights and remedies provided in the Grant Documents, granted by law or otherwise, are cumulative and, except as provided herein, may be exercised by the Department at any time. No waiver shall be implied from any failure of the Department to take, or any delay by the Department in taking, action concerning any Event of Default or failure of condition under the Grant Documents, or from any previous waiver of any similar or unrelated Event of Default or failure of condition. Any waiver or approval under any of the Grant Documents must be in writing and shall be limited to its specific terms.
26. Attorneys' Fees; Enforcement. If any attorney, including the California Attorney General, is engaged by the Department to enforce, construe or defend any provision of any of the Grant Documents, or as a consequence of any Event of Default not cured hereunder or default under any other Department document, with or without the filing of any legal action or proceeding, Recipient shall pay to the Department, immediately upon demand, the amount of all attorneys' fees and costs incurred by the State in connection therewith, together with interest thereon from the date of such demand at the rate of ten (10%) percent per annum.
27. Enforcement of the Construction Contract. The parties hereto agree that the Department shall have, and is hereby assigned, the right of the Recipient to enforce the provisions of the Construction Contract and all documents related thereto in the event, as determined by the Department, in its sole discretion, that the Recipient fails, refuses, or is otherwise unable to enforce them. The Department shall notify the Recipient, in writing, of its determination to effect this assignment, specifying the reasons therefor, at least fifteen (15) days prior to the Department's undertaking any such action.
28. Indemnification and Waiver.
- a. Indemnification. Recipient agrees to indemnify the Department and its agents, employees and officers against, and hold the Department and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), of every name, kind and description, which the Department may incur as a direct or indirect consequence of: (i) the making of the grant to the Recipient, except for violations of banking laws or regulations by the Department; (ii) Recipient's failure to perform any obligations

as and when required by this Agreement or any of the Grant Documents; (iii) any failure at any time of any of Recipient's representations or warranties to be true and correct; (iv) any act or omission by Recipient, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property, the Infrastructure Project or Housing Development; or (v) the presence of hazardous substances on or at the Property, the Infrastructure Project or the Housing Development. Recipient shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. The duty of the Recipient to indemnify and hold harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. Recipient shall indemnify and hold harmless the Department and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department or the Recipient or their respective agents, officers, employees, contractors or subcontractors; provided, however, that Recipient's duty to indemnify and hold harmless hereunder shall not extend to liability arising from gross negligence or willful misconduct of the Department. Recipient's duty to indemnify the Department shall survive the term of this Agreement or the cancellation of the Standard Agreement.

- b. Waiver and Release. The Recipient waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.
 - c. Waiver. The Recipient expressly waives the protections of Section 1542 of the Civil Code in relation to subparagraphs (a) and (b) above.
29. Further Assurances. At the Department's request and at Recipient's expense, Recipient shall execute, acknowledge and deliver any other instrument and perform any other act necessary, desirable or proper (as determined by the Department) to carry out the purpose of the Grant Documents or to perfect and preserve any liens or covenants created by the Grant Documents.
30. Notices. All written notices and demands under the Grant Documents shall be deemed served upon delivery or, if mailed, upon the date shown on the delivery receipt (or the date on which delivery was refused as shown on the delivery receipt) after deposit in United States Postal

Service certified mail, postage prepaid, return receipt requested, or after delivery or attempted delivery by an express delivery service, and addressed to the address of Recipient or to the primary place of business or the mailing address of the Department, as applicable, appearing below. Notice of change of address may be given in the same manner, provided Recipient's address shall be in the State of California or the state where Recipient's principal place of business is located, as represented to the Department in the Grant Documents.

Recipient's Address:
City of Sacramento
915 I Street, 5th Floor
Sacramento, CA 94252

Department's Address:
Department of Housing and Community Development
1800 Third Street, Room 460
Sacramento, CA 95811

31. Amendments and Additional Agreements. This Agreement shall not be altered or amended except in writing executed by all parties. The Recipient agrees that any other agreements entered into by the Recipient relating to the performance of this Agreement shall be subject to the written approval of the Department.
32. Books and Records. Recipient shall maintain complete books of accounts and other records for the Project and for the use of the Program Funds; including, but not limited to, records of preliminary notices, lien releases, invoices and receipts, and certificates of insurance pertaining to the Contractor and each subcontractor; and the same shall be available for inspection and copying by the Department upon reasonable notice to Recipient.
33. No Third Parties Benefited. No person other than the Department and Recipient and their permitted successors and assigns shall have any right of action under any of the Grant Documents.
34. Authority to File Notices. At any time subsequent to the funding of the Program Funds, Recipient irrevocably appoints and authorizes the Department, as Recipient's attorney-in-fact, which agency is coupled with an interest, to execute and record, on either of them, in the Department's or Recipient's name, any notices, instruments or documents that the Department deems appropriate to protect the Department's interest under any of the Grant Documents.

35. Actions. At any time subsequent to the funding of the Program Funds, the Department may commence, appear in or defend any action or proceeding purporting to affect the Property, the Infrastructure Project, the Housing Development or the Grant Documents, or the rights, duties or liabilities of Recipient or the Department under the Grant Documents. In exercising this right, the Department may incur or incur and pay reasonable costs and expenses including, without limit, attorneys' fees and court costs and Recipient agrees to pay all such expenses so incurred and reimburse the Department for any expenses so paid.
36. Relationship of Parties. The relationship of Recipient and the Department under the Grant Documents is, and shall at all times remain, solely that of Recipient as the Grantee and Department as Grantor. The Department neither undertakes nor assumes any responsibility or duty to Recipient or to any third party with respect to the Property, the Infrastructure Project or the Housing Development, except as expressly provided in the Grant Documents.
37. Assignment of Grant Documents. The Recipient shall not assign any interest, or any portion thereof, under the Grant Documents, or in any monies due or to become due thereunder, without the Department's prior written consent. Any such assignment made without the Department's consent shall be void. Recipient recognizes that this is not a commercial loan and that the Department would not make the grant except in reliance on Recipient's expertise and reputation. In this instance, the work to be funded has not been performed at the time of grant approval and the Department is relying on Recipient's expertise and prior experience to construct and develop the Infrastructure Project and Housing Development in accordance with the terms of the Grant Documents.
38. Restrictions on Transfer of the Project and Interest in Recipient. Recipient shall not assign, sell, transfer or convey any interest held by the Recipient in the Infrastructure Project or the Housing Development, including, without limitation, any general partnership interest in the Recipient, except as provided for in this Agreement, without the Department's prior written consent. Recipient shall promptly notify the Department of such transfers and shall provide the Department with any documents respecting such transfer as the Department may reasonably request; provided however that Recipient, if Recipient is a limited partnership, may sell, assign, transfer or convey limited partnership interests without the prior approval of the Department.

39. Integrated Agreement. This Agreement is made for sole benefit and protection of the parties hereto and no other person or persons shall have any right of action or right to rely hereon. As this Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof shall be deemed to exist or bind any party unless in writing and signed by the party to be charged. Notwithstanding the foregoing sentence or any other provision of this Agreement, this Agreement does not supersede and shall not be deemed to amend any Department Grant Documents.
40. Termination of this Disbursement Agreement. This Agreement shall terminate four years after all of the Program Funds have been fully disbursed and expended by Recipient.
41. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.
42. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. All code references herein refer to the California Codes, unless specifically indicated otherwise.
43. Titles and Captions. Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provisions hereof.
44. Interpretation. No provision in this Agreement is to be interpreted for or against either party because that party or his legal representatives drafted such provision.
45. Waiver, Amendments. No breach of any provisions hereof may be waived unless in writing. Waiver of any breach of any provisions hereof shall not be deemed to be a waiver of any other breach of the same or any other provisions hereof. This Agreement may be amended only by a written agreement executed by the parties in interest at the time of the modification.

46. Severance. If any provision of this Agreement is determined by a court of competent jurisdiction, to be illegal, invalid, or unenforceable, such provisions will be deemed to be severed and deleted from the Agreement, as a whole and neither such provisions, nor its severance and deletion shall in any way affect the validity of the remaining provisions of this Disbursement Agreement.
47. Voluntary Agreement. The parties hereto, and each of them, further represent and declare that the parties carefully read this Agreement and the parties know the contents thereof, and that the parties sign the same freely and voluntarily.
48. Attorney's Fees. In the event of any dispute between the parties regarding this Agreement, the prevailing party shall be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees.
49. Non-Discrimination. In the performance of this Agreement, Recipient shall not discriminate against any provider, or potential provider, on the basis of race, color, religion, ancestry, sex, age, national origin, physical handicap or any other arbitrary factor.
50. Incorporation. The following Exhibits, all attached hereto, are hereby incorporated into this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Scope of Work
- Exhibit C: Sources and Uses of Funds
- Exhibit D: Disbursement Schedule
- Exhibit E: Insurance Requirements
- Exhibit F: Special Conditions

IN WITNESS WHEREOF, the Department, Recipient and Developer have executed this Disbursement Agreement as of the date set forth above.

RECIPIENT:

**City of Sacramento,
a municipal corporation**

By: 
Marty Hanneman,
Utilities Director

DEVELOPER:

**S. Thomas Enterprises of Sacramento, LLC,
a Delaware limited liability company**

By: 
Suheil Totah,
Vice President

DEPARTMENT:

**Department of Housing and Community Development,
a public agency of the State of California**

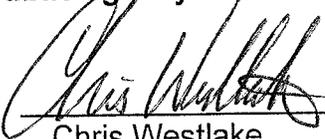
By: 
Chris Westlake,
Deputy Director

Exhibit "A" to Disbursement Agreement

Legal Description

EXHIBIT A

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, CITY OF SACRAMENTO, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY AND COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND BEING A PORTION OF THAT CERTAIN 203.161 ACRE TRACT OF LAND SHOWN AND DELINEATED ON RECORD OF SURVEY FILED IN BOOK 51 OF SURVEYS AT PAGE 10 OF THE OFFICIAL RECORDS OF SACRAMENTO COUNTY AND A PORTION OF PARCEL A AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON PARCEL MAP FILED IN BOOK 120 OF PARCEL MAPS, AT PAGE 10 OF SAID OFFICIAL RECORDS BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WESTERLY LINE OF 6TH STREET (80 FEET WIDE) AND THE NORTHERLY LINE OF H STREET (80 FEET WIDE);

THENCE ALONG SAID WESTERLY LINE OF 6TH STREET NORTH 18 DEGREES 26'23" EAST, 15.24 FEET;

THENCE LEAVING SAID WESTERLY LINE NORTH 44 DEGREES 14'53" EAST, 183.76 FEET TO THE POINT OF INTERSECTION OF THE EASTERLY LINE OF SAID 6TH STREET AND THE NORTHERLY LINE OF THE ALLEY (20 FEET WIDE) IN THE BLOCK BOUNDED BY G, H, 6TH AND 7TH STREETS;

THENCE ALONG THE NORTHERLY LINE OF SAID ALLEY SOUTH 71 DEGREES 37'21" EAST, 319.58 FEET TO ITS INTERSECTION WITH THE WESTERLY LINE OF 7TH STREET (80 FEET WIDE);

THENCE ALONG SAID WESTERLY LINE OF 7TH STREET NORTH 18 DEGREES 19'02" EAST, 1164.13 FEET TO A POINT THEREON LOCATED 100 FEET SOUTHERLY FROM THE NORTHERLY LINE OF THE ALLEY BETWEEN D, E, 6TH AND 7TH STREETS, SAID POINT BEING THE POINT OF BEGINNING OF THE STREET VACATION BY SACRAMENTO CITY ORDINANCE NO. 214, FOURTH SERIES;

THENCE NORTH 40 DEGREES 07'56" EAST, 34.84 FEET TO A POINT ON THE NORTHWESTERLY LINE OF THE LAND CONVEYED TO THE CITY OF SACRAMENTO BY DEED RECORDED IN BOOK 8512-31 AT PAGE 1928 OFFICIAL RECORDS OF SAID COUNTY;

THENCE NORTHEASTERLY ALONG SAID NORTHWESTERLY LINE 72.50 FEET THROUGH A CENTRAL ANGLE OF 11 DEGREES 58'18" SAID NORTHWESTERLY LINE BEING THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 347.00 FEET TO WHICH A RADIAL LINE BEARS NORTH 63 DEGREES 01'57" WEST;

THENCE LEAVING SAID NORTHWESTERLY LINE SOUTH 79 DEGREES 25'14" WEST, 190.28 FEET;

THENCE SOUTH 49 DEGREES 52'44" WEST, 326.94 FEET;

THENCE 444.33 FEET ALONG THE ARC OF A 843.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 30 DEGREES 11'59";

THENCE SOUTH 80 DEGREES 04'43" WEST, 17.41 FEET;

THENCE SOUTH 33 DEGREES 41'42" WEST, 107.73 FEET;

THENCE SOUTH 80 DEGREES 04'43" WEST, 268.35 FEET;

THENCE SOUTH 18 DEGREES 24'47" WEST, 490.56 FEET;

THENCE SOUTH 26 DEGREES 44'53" EAST, 62.45 FEET;

THENCE SOUTH 71 DEGREES 37'38" EAST, 57.14 FEET TO THE INTERSECTION OF THE NORTHERLY LINE OF "H" STREET (80 FEET WIDE) WITH THE WESTERLY LINE OF 5TH STREET (80 FEET WIDE);

THENCE ALONG THE NORTHERLY LINE OF "H" STREET SOUTH 71 DEGREES 33'22" EAST, 405.74 FEET TO THE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE MOST SOUTHERLY LINE OF PARCEL A, AS FILED IN BOOK 120 OF PARCEL MAPS, AT PAGE 10. SAID BEARING IS SHOWN ON SAID MAP AS NORTH 71 DEGREES 30'19" WEST.

THIS PARCEL IS ALSO DESCRIBED AS PARCEL 1 IN THE CERTIFICATE OF COMPLIANCE RECORDED JANUARY 31, 2007 IN BOOK 20070131, PAGE 2410, OFFICIAL RECORDS.

APN: 002-0010-047

Exhibit "B" to Disbursement Agreement

Scope of Work

The TOD infrastructure grant will be used to fund the first of a three-stage infrastructure project that is essential to begin the redevelopment of the Railyards site.

The total project is the extension of 5th Street from H Street in the south to North B Street in the north. The first phase (TOD) will extend 5th Street from H Street in the south to Stevens Street in the north and include improvements to facilitate bike and pedestrian travel in and around the project area and transit station.

Location of Housing Development (APN, address, parcel map, specific plan or similar reference) City and County	TOD Phase One-Lot 42 69 TOD Restricted Affordable rental apartment units, 17 otherwise restricted affordable rental apartment units, 11 market rate lofts and 1 manager's unit (98 total units)		
Enter the number of units by bedroom size and income level.			
# of Bedrooms	# of Units	TOD Restricted Units*	Income Limit (% of AMI)
1	<u>44</u>	<u>44</u>	<u>50%</u>
1	<u>10</u>	<u>0</u>	<u>60%</u>
2	<u>5</u>	<u>5</u>	<u>50%</u>
2-lofts	<u>11</u>	<u>0</u>	<u>Market</u>
3	<u>20</u>	<u>20</u>	<u>50%</u>
3	<u>7</u>	<u>0</u>	<u>60%</u>
2-Mgrs	<u>1</u>	<u>0</u>	<u>Market</u>
Total Project Units**	<u>98</u>	<u>69</u>	_____

Exhibit 'C' to Disbursement Agreement

TOD INFRASTRUCTURE PROJECT DEVELOPMENT BUDGET

TOD PROJECT NAME		The Railyards					COMPARATIVE BREAKDOWN OF DEVELOPMENT COSTS				
ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS											
Submit contracts, bids, engineer's estimates or any other back-up evidencing accuracy of eligible CIP costs											
COSTS CATEGORY	DEVELOPMENT COSTS			TOTAL AMOUNT	TOD Original Application Budget	TOD Revised Budget (Standard Agreement)	TOD \$ Change from APP to Revised budget	Draw Request #1	Initial Disbursement-HCD Allowed		
	QUANTITY	UNIT TYPE	UNIT PRICE								
Land acquisition			\$5,807,000	\$5,807,000	\$0	\$0	\$0				
Other: Land Cost & Remediation											
Total Site Acquisition Costs			\$5,807,000	\$5,807,000	\$0	\$0	\$0				
Clearing and Grubbing			\$0	\$0	\$0	\$50,000	\$50,000	\$0	\$0		
Demolition			\$0	\$0	\$0	\$51,000	\$51,000	\$0	\$0		
Excavation								\$0	\$0		
Grading (excluding grading for housing and mixed use structural improvements)			\$0	\$0	\$0	\$156,000	\$156,000	\$0	\$0		
Soil Stabilization (Lime, etc.)			\$0	\$0	\$0	\$0	\$0	\$0	\$0		
Erosion/Weed Control			\$0	\$0	\$0	\$243,000	\$243,000	\$0	\$0		
Dewatering								\$0	\$0		
Other OFF-SITE construction costs			\$45,055,000	\$45,055,000	\$0	\$0	\$0	\$0	\$0		
Other ON -SITE construction costs			\$8,463,000	\$8,463,000	\$0	\$0	\$0	\$0	\$0		
Total Site Preparation Costs			\$53,518,000	\$53,518,000	\$0	\$500,000	\$500,000	\$0	\$0		

COSTS CATEGORY	QUANTITY	UNIT TYPE	UNIT PRICE	TOTAL AMOUNT	TOD Original Application Budget	TOD Revised Budget (Standard Agreement)	TOD \$ Change from APP to Revised budget	Draw Request #1	Initial Disbursement-HCD Allowed
Sanitary Sewer			\$125,000	\$125,000	\$125,000	\$110,000	(\$15,000)	\$0	\$0
Potable Water			\$376,000	\$376,000	\$376,000	\$278,300	(\$97,700)	\$0	\$0
Non-Potable Water			\$0	\$0	\$0	\$0	\$0	\$0	\$0
Storm Drain			\$205,000	\$205,000	\$205,000	\$308,000	\$103,000	\$0	\$0
Detention Basin/Culverts			\$0	\$0	\$0	\$0	\$0	\$0	\$0
Joint Trench:			\$0	\$0	\$0	\$211,200	\$211,200	\$0	\$0
Other: Dry Utility Systems			\$557,000	\$557,000	\$557,000	\$0	(\$557,000)	\$0	\$0
Total Site Utilities Costs			\$1,263,000	\$1,263,000	\$1,263,000	\$907,500	(\$355,500)	\$0	\$0
Aggregate Base			\$0	\$0	\$0	\$136,373	\$136,373	\$0	\$0
Asphalt Pavement			\$0	\$0	\$0	\$179,438	\$179,438	\$0	\$0
Curb, Gutter, Sidewalk			\$6,981,000	\$6,981,000	\$6,981,000	\$272,000	(\$6,709,000)	\$0	\$0
Street Lights			\$0	\$0	\$0	\$132,000	\$132,000	\$0	\$0
Striping/Signage/Barricades			\$0	\$0	\$0	\$28,710	\$28,710	\$0	\$0
Traffic Mitigation-Signals			\$1,024,000	\$1,024,000	\$1,024,000	\$525,000	(\$499,000)	\$0	\$0
Other: Roadway on Structure								\$0	\$0
Total Surface Improvements Costs			\$8,005,000	\$8,005,000	\$8,005,000	\$1,273,521	(\$6,731,479)	\$0	\$0
Parks:									
Irrigation			\$0	\$0	\$0	\$150,000	\$150,000	\$0	\$0
Concrete Work							\$0	\$0	\$0
Landscaping			\$0	\$0	\$0	\$150,000	\$150,000	\$0	\$0
Tot Lot									
Playground Facilities									
Walking/Bike Path			\$1,004,000	\$1,004,000	\$1,004,000	\$0	(\$1,004,000)	\$0	\$0
Drinking Fountains			\$0	\$0	\$0	\$0	\$0	\$0	\$0
Retaining Walls			\$0	\$0	\$0	\$2,449,485	\$2,449,485	\$0	\$0
Lighting									
Open Space									

COSTS CATEGORY	QUANTITY	UNIT TYPE	UNIT PRICE	TOTAL AMOUNT	TOD Original Application Budget	TOD Revised Budget (Standard Agreement)	TOD \$ Change from APP to Revised budget	Draw Request #1	Initial Disbursement-HCD Allowed
Wetland Mitigation									\$0
Endangered Species									\$0
Tree Mitigation									\$0
Environmental Remediation								\$60,000	\$60,000
Other: Environmental Surveys / MMRP Compliance									\$0
Total Mitigation/Remediation Costs								\$60,000	\$60,000
Replacement Transit Station Parking Spaces									\$0
Residential Parking Structures			\$593,000	\$593,000	\$593,000	\$0	(\$593,000)		\$0
Other:									\$0
Total Parking Costs			\$593,000	\$593,000	\$593,000	\$0	-\$593,000		\$0
Transit Access/Facilities:									\$0
Intelligent Transportation Systems			\$388,000	\$388,000	\$388,000	\$0	(\$388,000)	\$0	\$0
Pathways			\$0	\$0	\$0	\$7,350,000	\$7,350,000	\$0	\$0
Pedestrian Bridge			\$2,299,000	\$2,299,000	\$2,299,000		(\$2,299,000)	\$0	\$0
Transit Shelters								\$0	\$0
Pedestrian Walkways			\$3,448,000	\$3,448,000	\$3,448,000	\$0	(\$3,448,000)	\$0	\$0
Bicycle Facilities								\$0	\$0
Other:								\$0	\$0
Total Transit Costs			\$6,135,000	\$6,135,000	\$6,135,000	\$7,350,000	\$1,215,000	\$0	\$0
Impact fees are eligible for funding if used for identified Capital Assets eligible for funding and required by local ordinance.									
Other: Dry Utility Fees			\$0	\$0	\$0	\$150,000	\$150,000		\$0

COSTS CATEGORY	QUANTITY	UNIT TYPE	UNIT PRICE	TOTAL AMOUNT	TOD Original Application Budget	TOD Revised Budget (Standard Agreement)	TOD \$ Change from APP to Revised budget	Draw Request #1	Initial Disbursement-HCD Allowed
Engineering			\$0	\$0	\$0	\$1,300,000	\$1,300,000	\$82,964	\$82,964
Design				\$0	\$0	\$0	\$0	\$245,113	\$245,113
Overhead			\$0	\$0	\$0	\$2,500,000	\$2,500,000	\$28,685	\$28,685
Contractor Fee			\$0	\$0	\$0	\$0	\$0	\$0	\$0
Construction Management									
Other:									
Total Soft Costs			\$0	\$0	\$0	\$3,800,000	\$3,800,000	\$356,762	\$356,762
Other:									\$0
Other:									\$0
Total Other Asset Costs								\$0	\$0
TOTAL PROJECT COSTS			\$76,325,000	\$76,325,000	\$17,000,000	\$17,000,000	\$0	\$653,274	\$653,274

Exhibit "D" to Disbursement Agreement
Disbursement Schedule

N/A

Exhibit "E" to Disbursement Agreement

INSURANCE REQUIREMENTS

These insurance requirements govern insurance coverage on Projects improved using infrastructure grant funding from the Department's Transit Oriented Development Housing Program. The Department reserves the right to revise and vary these requirements based on, among other items, the availability of coverage, current insurance industry standards and concerns specific to the insured property.

Recipients of Department infrastructure grants are responsible for carrying the minimum required insurance coverage according to this Disbursement Agreement. Insurance coverage meeting the following requirements will be deemed by the Department to be in compliance with this Disbursement Agreement.

Submit a certificate of insurance (or other evidence) that acknowledges the Department's security interest and has appropriate coverage in force for property and liability exposures as follows:

1. GENERAL REQUIREMENTS:

- (a) Copy of its commercial general liability policy and its excess policy or binder until such time as a policy is available, including the declarations page, applicable endorsements, riders, and other modifications in effect at the time of contract execution. Standard ISO form No. CG 0001 or similar exclusions are allowed if not inconsistent with Section 2, "Indemnification and Insurance." Allowance of additional exclusions is at the discretion of the Department.
- (b) Certificate of insurance showing all other required coverages. Certificates of insurance, as evidence of required insurance for the auto liability and any other required policy, shall set forth deductible amounts applicable to each policy and all exclusions that are added by endorsement to each policy. The evidence of insurance shall provide that no cancellation, lapse, or reduction of coverage will occur without 10 days prior written notice to the Department.
- (c) A declaration under the penalty of perjury by a certified public accountant certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines confirming the Recipient has sufficient funds and resources to cover any self-insured retentions if the self-insured retention is \$50,000 or higher.

- (d) If the Recipient uses any form of self-insurance for workers compensation in lieu of an insurance policy, it shall submit a certificate of consent to self-insure in accordance with the provisions of Section 3700 of the Labor Code.

2. INDEMNIFICATION AND INSURANCE:

The Contractor's obligations regarding indemnification of the State of California and the requirements for insurance shall conform to the provisions in Section 2(a), "Indemnification," and Section 2(b), "Insurance," of Section 2.

(a) INDEMNIFICATION:

- (1) The Contractor shall defend, indemnify, and save harmless the State, including its officers, employees, and agents (excluding agents who are design professionals) from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity arising out of or in connection with the Contractor's performance of this contract for:
- (2) Bodily injury including, but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to, the public, any employees or agents of the Contractor, the State, or any other contractor; and
- (3) Damage to property of anyone including loss of use thereof; caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of the Contractor or anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable.
- (4) Except as otherwise provided by law, these requirements apply regardless of the existence or degree of fault of the State. The Contractor is not obligated to indemnify the State for Claims arising from conduct delineated in Civil Code Section 2782 and to Claims arising from any defective or substandard condition of the roadway that existed at or before the start of work, unless this condition has been changed by the work or the scope of the work requires the Contractor to maintain existing roadway facilities and the Claim arises from the Contractor's failure to maintain. The Contractor's defense and indemnity obligation shall extend to Claims arising after the work is completed and accepted if the Claims are directly related to alleged acts or omissions by the Contractor that occurred during the course of the work. State inspection is not a waiver of full compliance with these requirements.

- (5) The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determine that the Contractor is not liable. The Contractor shall respond within 30 days to the tender of any Claim for defense and indemnity by the State, unless this time has been extended by the State. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, the Department may withhold such funds the State reasonably considers necessary for its defense and indemnity until disposition has been made of the Claim or until the Contractor accepts or rejects the tender of defense, whichever occurs first.
- (6) With respect to third-party claims against the Contractor, the Contractor waives all rights of any type to express or implied indemnity against the State, its officers, employees, or agents (excluding agents who are design professionals).
- (7) Nothing in the Contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these indemnification specifications.

(b) INSURANCE

- (1) Nothing in the contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.

(c) CASUALTY INSURANCE

- (1) The Contractor shall procure and maintain insurance on all of its operations with companies acceptable to the State as follows:
 - (A) The Contractor shall keep all insurance in full force and effect from the beginning of the work through contract acceptance.
 - (B) All insurance shall be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.
 - (C) The Contractor shall maintain completed operations coverage with a carrier acceptable to the State through the expiration of the patent deficiency in construction statute of repose set forth in Code of Civil Procedure Section 337.1.

(d) WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

- (1) In accordance with Labor Code Section 1860, the Contractor shall secure the payment of worker's compensation in accordance with Labor Code Section 3700.
- (2) In accordance with Labor Code Section 1861, the Contractor shall submit to the Department the following certification before performing the work:
 - (A) I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.
- (3) Contract execution constitutes certification submittal.
- (4) The Contractor shall provide Employer's Liability Insurance in amounts not less than:
 - (A) \$1,000,000 for each accident for bodily injury by accident
 - (B) \$1,000,000 policy limit for bodily injury by disease
 - (C) \$1,000,000 for each employee for bodily injury by disease
- (5) If there is an exposure of injury to the Contractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

(e) GENERAL LIABILITY INSURANCE

- (1) The Contractor shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of the Contractor providing insurance for bodily injury liability and property damage liability for the following limits and including coverage for:
 - (A) Premises, operations, and mobile equipment
 - (B) Products and completed operations
 - (C) Broad form property damage (including completed operations)
 - (D) Explosion, collapse, and underground hazards
 - (E) Personal injury
 - (F) Contractual liability
- (2) The Contractor shall not require certified Small Business subcontractors to carry Liability Insurance that exceeds the limits in Section 2(f)(1), "Liability

Limits/Additional Insureds," of these specifications. The maximum required Liability Insurance limits in Section 2(f)(1), "Liability Limits/Additional Insureds," of these specifications shall apply to certified Small Business subcontractors for work performed on the project, regardless of tier. The provisions of Section 2(f)(1), "Liability Limits/Additional Insureds," shall be included in all subcontracts for all tiers.

(f) LIABILITY LIMITS/ADDITIONAL INSUREDS

- (1) The limits of liability shall be at least the amounts shown in the following table:

Construction Contract Amount ⁴	For Each Occurrence ¹	Aggregate for Products/ Completed Operation	General Aggregate ²	Umbrella or Excess Liability ³
≤\$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
>\$1,000,000 ≤\$5,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
>\$5,000,000 ≤\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
>\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000

1. Combined single limit for bodily injury and property damage.
2. This limit shall apply separately to the Contractor's work under this contract.
3. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
4. "Construction Contract Amount" is the total amount of the construction contract all or a portion of which is funded with TOD funds.

- (2) The State, including its officers, directors, agents (excluding agents who are design professionals), and employees, shall be named as additional insureds under the General Liability and Umbrella Liability Policies with respect to liability arising out of or connected with work or operations performed by or on behalf of the Contractor under this contract. Coverage for such additional insureds does not extend to liability:

- (A) Arising from any defective or substandard condition of the roadway which

existed at or before the time the Contractor started work, unless such condition has been changed by the work or the scope of the work requires the Contractor to maintain existing roadway facilities and the claim arises from the Contractor's failure to maintain;

(B) For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the Contractor that occurred during the course of the work; or

(C) To the extent prohibited by Insurance Code Section 11580.04

(3) Additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO), or other form designated by the Department.

(g) **CONTRACTOR'S INSURANCE POLICY IS PRIMARY**

The policy shall stipulate that the insurance afforded the additional insureds applies as primary insurance. Any other insurance or self-insurance maintained by the State is excess only and shall not be called upon to contribute with this insurance.

(h) **AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall carry automobile liability insurance, including coverage for all owned, hired, and nonowned automobiles. The primary limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The umbrella or excess liability coverage required under Section 2 (f)(1) also applies to automobile liability.

(i) **POLICY FORMS, ENDORSEMENTS, AND CERTIFICATES**

The Contractor shall provide its General Liability Insurance under Commercial General Liability policy form No. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form No. CG0001.

(j) **DEDUCTIBLES**

The State may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to the interests of the State. Regardless of the allowance of exclusions or deductions by the State, the

Contractor is responsible for any deductible amount and shall warrant that the coverage provided to the State is in accordance with Section 2(b), "Insurance."

(k) ENFORCEMENT

- (1) The Department may assure the Contractor's compliance with its insurance obligations. Ten days before an insurance policy lapses or is canceled during the contract period, the Contractor shall submit to the Department evidence of renewal or replacement of the policy.
- (2) If the Contractor fails to maintain any required insurance coverage, the Department may maintain this coverage and withhold or charge the expense to the Contractor or terminate the Contractor's control of the work.
- (3) The Contractor is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless the State, its officers, agents, and employees by the Department's acceptance of insurance policies and certificates.
- (4) Minimum insurance coverage amounts do not relieve the Contractor for liability in excess of such coverage, nor do they preclude the State from taking other actions available to it, including the withholding of funds under this contract.

(l) SELF-INSURANCE

- (1) Self-insurance programs and self-insured retentions in insurance policies are subject to separate annual review and approval by the State.
- (2) If the Contractor uses a self-insurance program or self-insured retention, the Contractor shall provide the State with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Execution of the contract is the Contractor's acknowledgement that the Contractor will be bound by all laws as if the Contractor were an insurer as defined under Insurance Code Section 23 and that the self-insurance program or self-insured retention shall operate as insurance as defined under Insurance Code Section 22.

Exhibit "F" to Disbursement Agreement

Special Conditions

In the event of any inconsistencies or conflicts between these Special Conditions and the terms of this Disbursement Agreement or any of the other Grant Documents, the terms of these Special Conditions shall control.

1. Representations and Warranties (paragraph 3):

Subsection (f) Pending Proceedings is replaced with the following:

Except as disclosed to the Department in writing as of the date of execution of this Agreement, the Recipient is not in default under any law or regulations or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Recipient, threatened against or affecting Recipient, the Property, the Infrastructure Project or the Housing Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Recipient, materially affect Recipient's ability to acquire, construct or develop the Infrastructure Project or the Housing Development.

2. Use of Funds (paragraph 5):

Amended to add the following:

The Total Soft Cost portion (as set forth in line items of the Project Budget) of the Approved Costs to be expended or reimbursed with Program funds shall not exceed \$3.8 million. In any given disbursement, the percentage of Soft Costs disbursed in an aggregate amount, per Soft Cost line item, shall not to exceed the aggregate percent of completion of the design and engineering contracts, line items 84 and 85, as determined by the Department. For example, if the Department determines for a particular disbursement that in aggregate, a total of 45% of the design and engineering contracts have been completed, the total aggregate disbursement for each Soft Cost line item shall not exceed 45%.

The Department retains the right to limit any and all design and overhead costs to approved reimbursable amounts in accordance with normally accepted construction industry standards and practices.

The initial disbursement shall be limited to "HCD Approved/Allowed" amounts as set forth in the Project Budget attached herein as Exhibit C.

3. Disbursement Schedule (paragraph 6):

This paragraph is inapplicable.

4. Construction Contract (paragraph 9):

Amended to add the following:

A construction contract addendum ("Construction Contract Addendum") will be executed by the Recipient and the Construction Contractor and made part of the Construction Contract. A form of the Construction Contract Addendum shall be provided by the Department to the Recipient for inclusion in the construction contract.

5. Conditions Precedent to Individual Disbursements (paragraph 15):

Amended to add the following subparagraph (s):

A Collateral Assignment of Design Professional's Contract, Plans, Specifications, and Tests, and Design Professional's Agreement and Consent to Assignment ("Collateral Assignment") will be executed by the Recipient, the Department and the Design Professional. A form of the Collateral Assignment will be provided by the Department.

6. Conditions Precedent to Final Disbursement (paragraph 18):

Subsection (c) is replaced with the following:

Submission to the Department of a building permit for the Housing Development issued by the local government having jurisdiction over the Housing Development, or any equivalent thereto acceptable to the Department. If the Housing Development has multiple phases or developments, then submission to the Department of a building permit for the first phase of the Housing Development.

7. Notwithstanding any other provision of this Agreement, a Covenant as referred to in paragraph 4 of Exhibit C of the Standard Agreement and paragraph 15(l) of this Agreement, shall be recorded against all Housing Developments listed in Exhibit A of the Standard Agreement, including those developments containing only market rate units. The Department will release or terminate a Covenant recorded against a Housing Development containing only market rate units upon receipt of a valid Certificate of Occupancy for such development.

8. The terms of these Special Conditions are applicable only to this specific Disbursement Agreement, related to the Program funds awarded under the NOFA issued 12/11/07 for the Project. The Special Conditions are not meant to and will not establish precedent for any future Program funds that may be awarded to Recipient for this Project.

**FIRST AMENDMENT TO
TRANSIT-ORIENTED DEVELOPMENT HOUSING
PROGRAM INFRASTRUCTURE GRANT DISBURSEMENT AGREEMENT**

This FIRST AMENDMENT TO TRANSIT-ORIENTED DEVELOPMENT HOUSING PROGRAM INFRASTRUCTURE GRANT DISBURSEMENT AGREEMENT (this "**Amendment**") is dated for reference purposes only as of March __, 2011, and is made by and among the City of Sacramento, a municipal corporation (the "**Recipient**"), IA Sacramento Holdings, L.L.C., a Delaware limited liability company ("**IA Sacramento**") and the Department of Housing and Community Development, a public agency of the State of California (the "**Department**").

Recitals

A. On September 10, 2009, the Recipient, the Department and S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company ("**Thomas**"), entered into that certain Transit-Oriented Development ("**TOD**") Housing Program Infrastructure Grant Disbursement Agreement, Contract No. 07-TOD-4243 (the "**Disbursement Agreement**"), whereby the Department agreed to disburse the Program Funds to the Recipient to be used to pay for the construction of the Infrastructure Project and the Housing Development. In connection with the foregoing, the Recipient and the Department had previously entered into that certain Standard Agreement Number 07-TOD-4243, dated August 10, 2009 (the "**Standard Agreement**" and collectively with the Disbursement Agreement referred to herein as the "**TOD Contract**"). Unless otherwise defined herein, all capitalized terms in this Amendment shall be as defined in the TOD Contract.

B. Pursuant to that certain Assignment and Assumption Agreement (5th and 6th Street Overpass Agreements), between the Recipient and Thomas, dated September 15, 2009, as amended by that certain First Amendment to Assignment and Assumption Agreement, dated October 15, 2009 (as amended, referred to herein as the "**Thomas Assignment Agreement**"), the Recipient transferred all duties and obligations of performance under the TOD Contract to Thomas. Thereafter, Thomas commenced construction of certain portions of the Infrastructure Project and the Department released a portion of the Program Funds to Thomas pursuant to the Designated Payee authorization issued by Recipient.

C. To secure the obligation to complete the Housing Development in accordance with the terms of the TOD Contract, Thomas and the Department entered into that certain Declaration of Restrictive Covenants for the Development and Operation of Housing, which was recorded against the Property on August 31, 2009 in the Official Records of Sacramento County, California ("**Official Records**") on Page 583 of Book No. 20090831, as thereafter amended by that certain Amendment to Declaration of Restrictive Covenants For the Development and Operation of Housing, dated as of April 29, 2010 and recorded in the Official Records on June 18, 2010 on

Page 1280 of Book No. 20100618 (as amended, referred to herein as the “HCD Covenant”).

D. In connection with certain loans (the “**Loans**”) made by IA Sacramento Rail, L.L.C., a Delaware limited liability company (“**Lender**”), an affiliate of IA Sacramento, to Thomas in 2007 and 2008, Thomas executed and delivered to Lender certain promissory notes, secured by, among other things, two deeds of trust in favor of Lender encumbering the Property and recorded in the Official Records (the “**Deeds of Trust**”). 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**”).

E. On October 19, 2010, Lender and the Department entered into that certain Subordination Agreement recorded in the Official Records on Page 0198 of Book 20101022, whereby Lender agreed to subordinate the Deeds of Trust to the HCD Covenant to avoid extinguishment in connection with a foreclosure proceeding and in anticipation of the TOD Contract being amended as set forth herein pursuant to that certain Letter Agreement, dated October 19, 2010, by and between the Recipient, the Department and Lender (the “**Letter Agreement**”).

F. On October 22, 2010, following completion of the foreclosure process initiated by Lender’s recordation of the Notices of Default, IA Sacramento (formerly known as IA Sacramento Development, L.L.C.) acquired fee title interest in the 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 Property through foreclosure, IA Sacramento has concluded that to preserve the value of the foreclosed-on Property, it is essential that prior agreements regarding the plans, funding and approval of infrastructure projects, such as the Infrastructure Project, be maintained.

G. Following IA Sacramento’s acquisition of the Property, IA Sacramento submitted information to the Department evidencing that IA Sacramento meets the requirements of an eligible TOD developer to allow for the construction of the Infrastructure Project to continue, which work must be completed before any work by any entity may begin to construct and develop the Housing Development. The Infrastructure Project and the Housing Development are sometimes collectively referred to herein as the “**TOD Project**”).

H. Concurrently with the execution of this Agreement, Recipient and IA Sacramento will enter into that certain Assignment and Assumption Agreement (5th Street Extension Project TOD Grant Agreement), (“**IA Sacramento Assignment Agreement**”), whereby the Recipient will transfer all duties and obligations of performance under the TOD Contract to IA Sacramento. Pursuant to the IA Sacramento Assignment Agreement, IA Sacramento will accept and assume all duties and obligations of the Recipient. Furthermore, IA Sacramento will agree to comply with all terms and conditions set forth in the TOD Contract. IA Sacramento, as current

owner of the real property will dedicate, upon completion, the Infrastructure Project and the real property to the Recipient.

I. The Department acknowledges the IA Sacramento Assignment Agreement will be executed, however, the Department has not and will not release the Recipient from its duties and obligations under the TOD Contract. The Department acknowledges that performance of the Scope of Work and any and all other obligations under the TOD Contract by IA Sacramento will be deemed performance by the Recipient. The Recipient, however, will remain ultimately responsible for the performance of all duties and obligations under the TOD Contract.

J. The parties desire to amend the Disbursement Agreement to allow IA Sacramento to proceed to complete construction of the Infrastructure Project and arrange for the Housing Development to be built in accordance with the terms of the TOD Contract.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing Recitals are part of this Amendment.
2. The Disbursement Agreement. The Disbursement Agreement is hereby amended to allow IA Sacramento Holdings, L.L.C. to complete construction of the Infrastructure Project and arrange for the Housing Development to be built in accordance with the terms of the TOD Contract. IA Sacramento is hereby named as the TOD Grant Developer in the Disbursement Agreement replacing Thomas in that capacity.
3. Repayment of Grant Funds for Failure to Develop Housing.

Notwithstanding any other provision of the TOD Contract or the HCD Covenant to the contrary, including, without limitation, Paragraphs 42 and 43 of Exhibit C to the Standard Agreement, Paragraph 2 of Exhibit E to the Standard Agreement and Paragraph 22(b) of the Disbursement Agreement, the parties hereby agree that Recipient will be required to repay disbursed Program Funds if construction of residential units in the Housing Development, which units were used as the basis for calculating the grant amount pursuant to the TOD Guidelines, have not received all necessary and discretionary public land use approvals within five (5) years from the date of the Program grant award. Due to the complex structure of this jointly funded TOD and Infill Infrastructure Grant (IIG) Program project, the Department may provide, at its sole discretion, one extension to the foregoing deadline, such extension not to exceed five (5) years, if the Recipient demonstrates to the Department that construction has not begun for reasons outside of its control, such as deteriorating market conditions. The amount of Program Funds to be repaid shall be the same proportion to the total grant amount as the number of residential units where construction has not timely commenced to the total number of designated residential units. The per unit grant amount for such residential units shall be calculated based on

the methodology and factors initially used in calculating the grant funds awarded. Pursuant to Section 108(k)(1) of the TOD Guidelines dated December 3, 2007, Recipient was awarded the maximum points for proposing a Housing Development with 200 or more residential units. In the event that, upon expiration of the time periods set forth in the TOD Contract and the TOD Guidelines, the Department determines in its reasonable discretion that the total number of residential units that meet the requirements as set forth herein and the TOD Guidelines does not meet or exceed two hundred (200) units, then the Recipient will be no longer eligible for the award of the Program grant. In such event, the Recipient shall repay to the Department one hundred percent (100%) of the total outstanding, disbursed amount of the Program Funds.

If the total number of completed residential units exceeds 200 units, but is less than the number required to qualify for the entire TOD Program award, the repayment of TOD Program funds shall be the difference between the amount of TOD Program funds actually disbursed and the amount that the Project would have qualified for based on the methodology and factors initially used in calculating the TOD Program funds awarded pursuant to the Notice of Funding Availability (NOFA), dated December 11, 2007.

This obligation shall exist notwithstanding any other obligation, including any repayment obligation, contained in the Standard Agreement, the Disbursement Agreement or the TOD Guidelines. The provisions of this Paragraph 3 shall survive the expiration or earlier termination of the TOD Contract.

4. Modification of the Development Plan. IA Sacramento, upon written approval by the Department (not to be unreasonably withheld), may modify the development plan for the Housing Development as designated in the Application, including, without limitation, to change the location of the particular Lots (as defined in Paragraph 5(a) below) encumbered by the HCD Covenant or modify the number and type (market, low income and very low income) of units located on any particular Lot. The modification of the development plan for the Housing Development must satisfy all TOD program requirements to include, but not limited to, the number of units, bedroom counts of the units and the density and affordability of the housing to be developed which was the basis for calculating the amount of the Program Funds; provided, however, that if such modification of the Housing Development results in the reduction in the number of units, the Department may only approve such modification so long as all requirements under the TOD program are satisfied and the proposed reduction in the number of units does not result in the TOD Project receiving a score less than the established cut-off score required for funding of projects under the TOD program. The Department shall not unreasonably withhold its approval of any such modifications that IA Sacramento desires to make to the development plan for the Housing Development and upon approval thereof by the Department, the parties hereto shall amend the TOD Contract and/or the HCD Covenant to effectuate such modifications to include, but not limited to, reducing the Program Funds based on the reduction in the number of units as

approved by the Department if applicable. The provisions of Paragraph 4 shall survive the expiration or earlier termination of the TOD Contract.

5. Modification of the HCD Covenant. Notwithstanding any other provision of the TOD Contract or the HCD Covenant to the contrary, including, without limitation, Paragraph 4 of Exhibit C to the Standard Agreement, Paragraph 15(I) of the Disbursement Agreement and Paragraph 7 of Exhibit E to the Disbursement Agreement, the parties hereby agree to the following provisions with respect to the HCD Covenant.

(a) In connection with any sale, financing or development of any of the lots (individually referred to herein as a "Lot" and collectively as the "Lots"), the Department shall reasonably cooperate with any potential developer or purchaser of any of the Lots and their respective lenders with respect to any modifications required to the HCD Covenant in furtherance of any sale, financing or development of the Lots. Notwithstanding anything to the contrary in the TOD Contract or the HCD Covenant, including without limitation, as set forth in Paragraph 38 of the Disbursement Agreement, IA Sacramento may elect to act as a master developer for the Property and in connection therewith, IA Sacramento may sell or otherwise transfer one or more Lots to different purchasers. In such event, the Department and IA Sacramento shall enter into and record in the Official Records an amendment or modification to the HCD Covenant in connection with the provisions of this Paragraph 5(a).

(b) Upon the issuance of a certificate of occupancy, or its equivalent, by the City of Sacramento for affordable non-market rate Housing Development on an individual Lot (such Lot referred to herein as a "**Completed Lot**"), the Department and the fee holder of the Completed Lot shall enter into an amendment to the Housing Covenant with respect to such Completed Lot to provide that the failure to commence or complete the construction of Housing Development as required on Lots other than the Completed Lot shall not cause or be deemed to be a default under the HCD Covenant by the owner of the Completed Lot. In such event, the Department shall only be entitled to recover damages from the owner(s) of those Lots other than the Completed Lot for such failure to commence or complete the construction of the Housing Development within the time periods set forth in the HCD Covenant or the TOD Contract. Notwithstanding the foregoing, if all or any portion of the Program Funds are required to be repaid pursuant to the TOD Contract, as modified in accordance with this Amendment, the Recipient under the TOD Contract shall remain liable for the entire portion of the Program Funds required to be repaid to the Department.

The provisions of Paragraph 5 shall survive the expiration or earlier termination of the TOD Contract.

6. Disbursement of Retention. Notwithstanding anything contained in the TOD Contract or the HCD Covenant to the contrary, including, without limitation, Paragraph 18(c) of the Disbursement Agreement, final disbursement of the Program Funds, including the ten percent (10%) retention, shall not be conditioned upon the

commencement or completion of all or any portion of the Housing Development. The provisions of Paragraph 6 shall survive the expiration or earlier termination of the TOD Contract.

7. Integration. All of the other terms and conditions set out in the Disbursement Agreement, the Standard Agreement and the HCD Covenant remain unchanged and in full force an effect.

IN WITNESS WHEREOF, the Recipient, IA Sacramento and Department have executed this Amendment as of the date set forth above.

RECIPIENT:
City of Sacramento,
a municipal corporation

By: _____
John Dangberg
Assistant City Manager

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

**IA Sacramento:
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: Scott W. Wilton,
Secretary

**DEPARTMENT:
Department of Housing and Community Development,
a public agency of the State of California**

By: _____
Chris Westlake
Deputy Director

FREE RECORDING IN ACCORDANCE
WITH CALIFORNIA GOVERNMENT
CODE SECTIONS 6103 AND 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

TOD Program
Department of Housing and
Community Development
P.O. Box 952052
Sacramento, CA 94252-2052

ORIGINAL
Accepted for Recording
COPY-NOT CERTIFIED

AUG 31 2009

Sacramento County
Clerk-Recorder

**DECLARATION OF RESTRICTIVE COVENANTS
FOR THE
DEVELOPMENT AND OPERATION OF HOUSING**

This Declaration for the Development of Housing (the "**Declaration**") by S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company, its successors, assigns and transferees (the "**Owner**"), is hereby given to and on behalf of the California Department of Housing and Community Development, an agency of the State of California (the "**Department**").

RECITALS

This Declaration affects that certain real property commonly known as The Railyards and located in the City of Sacramento, County of Sacramento, State of California, as more particularly described in the Legal Description attached hereto as **Exhibit "A"** and incorporated herein by this reference (the "**Property**") and is entered into based on the following facts and understandings:

1. The Department entered into an agreement with the City of Sacramento (the "City") dated August 10, 2009 (the "**Standard Agreement**"), under the Transit-Oriented Development ("**TOD**") Housing Program (the "**Program**"). The Program was funded by Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006 and is authorized by Part 12 of Division 31 of the Health and Safety Code (commencing with Section 53560). The purpose of the Program is to stimulate the production of housing developments located near transit stations that include affordable units, increase public transit ridership and minimize automobile trips.

2. Pursuant to the terms of the Standard Agreement, the Department agreed to provide the City with a grant under the Program (the "**Grant**") in an amount not to exceed \$17,000,000. The Standard Agreement requires City to use the Grant to complete certain infrastructure improvements to the Property and to develop residential

TOD Grant - Declaration of Restrictive Covenants (NOFA 12/11/07)

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Rev: 08/18/09

Prep: 08/27/09

Dev: The Railyards

Contract No.: 07-TOD-4243

developments containing market rate and affordable housing units (the "**Housing Developments**") on the Property, all as specified in the Standard Agreement.

3. The Department, the City and the Owner also entered into a Disbursement Agreement dated August 28, 2009, governing the disbursement of funds from the Program Grant (the "**Disbursement Agreement**").

4. The Department acknowledges that the Owner and the City have also entered, or will enter, into an Assignment and Assumption Agreement 5th and 6th Street Overpass Agreements (the "**Assignment and Assumption**"), whereby the City transfers all duties and obligations of performance under the Standard Agreement and the Disbursement Agreement to Owner. Pursuant to the Assignment and Assumption, Owner accepts and assumes all duties and obligations of the City. Furthermore, the Owner agrees to comply with all terms and conditions set forth in the Standard Agreement and the Disbursement Agreement. The Owner, as current fee owner of the Property, will dedicate, upon completion, the Infrastructure Project to the City.

5. To ensure the construction and continued operation of the Housing Developments and as consideration for the Program Grant funds pursuant to the Assignment and Assumption, Owner agreed to enter into this Declaration, to restrict the development, use and occupancy of the Housing Developments.

6. The term "Owner" as used in this Declaration shall include all successors, assigns and transferees of any or all of the Owner's interest in the Housing Developments and the Property.

NOW, THEREFORE, Owner, in consideration of the Department's Grant to City, the City's assignment to Owner pursuant to the Assignment and Assumption, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner hereby covenants, agrees and declares that the Property shall be owned, held, used, maintained, and transferred pursuant to the following restrictive covenants (the "**Covenants**") and that such Covenants shall be binding upon all of Owner's successors, assigns and transferees to the Property, and all leases, tenants, contractors, agents, and all persons claiming an interest in the Property, or claiming an interest by and through any of the foregoing.

COVENANTS

1. Construction, Operation and Maintenance of the Housing Developments.
Owner, for itself and for any successors-in-interest to and transferees or assigns of the Property, hereby declares and covenants that the Property is restricted to the development and use of the Housing Developments and uses ancillary to such housing

and other uses as may be reasonably approved by the Department in its sole discretion. The Housing Developments shall be comprised of, at the minimum, the number and size of units, have such occupancy and affordability restrictions and such other characteristics as are described in **Exhibit "B"**, "Housing Developments," attached hereto and incorporated herein by this reference.

Each of the Housing Developments listed in Exhibit B is identified by a parcel number in reference to a tentative map for the Property approved by the City of Sacramento on December 11, 2007. Owner warrants that each of the parcels is located within the Property described in Exhibit A. A separate Declaration shall be recorded against each parcel individually as each parcel is surveyed and recordation is permitted against such parcel. Once individual Declarations are recorded against all parcels listed in Exhibit B, this Declaration will be released by the Department as to all remaining property. In addition to the housing units described for each parcel in Exhibit B, retail and commercial uses approved by the City of Sacramento are permitted under this Declaration. A Declaration recorded against an individual parcel containing a Housing Development permitted by the Department to contain only market-rate units shall be released by the Department upon submittal of a valid certificate of occupancy issued by the City of Sacramento for that Housing Development.

2. Repair and Maintenance of the Property and other Building or Improvements of the Housing Developments. Owner agrees:

- a. To keep the Property in a decent, safe, sanitary, rentable, tenantable condition and repair, and permit no waste thereof;
- b. Not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable;
- c. Not to construct any buildings or improvements on the Property, other than the buildings and improvements contemplated as part of the Housing Developments or add to, remove, demolish or structurally alter any buildings and improvements now or hereinafter located on the Property;
- d. To repair, restore or rebuild promptly any buildings or improvements on the Property that may become damaged or be destroyed while subject to this Declaration;
- e. To comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property;

- f. Not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without the Department's prior written consent; and
- g. Not to alter the use of all or any part of the Property without prior written consent of the Department.

3. Restrictions on Sale, Encumbrance, and Other Acts.

- a. Except with the Department's prior written approval, which approval shall not be unreasonably withheld, Owner shall not make any sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, or transfer in any other form of the Property or the Housing Developments or of any of its interest in either of them.
- b. The Department may grant its approval for a sale, transfer or conveyance of the Property or the Housing Developments subject to such reasonable terms and conditions as may be necessary to preserve or establish the fiscal integrity of the Property or the Housing Developments or to ensure compliance with the Program Requirements. Such approval shall not be unreasonably withheld.

4. Charges; Liens. Owner shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property or to the Housing Developments, if any, by Owner making payment, when due, directly to the payee thereof. Owner shall promptly furnish to Department all notices of amounts due under this paragraph, and in the event Owner shall make payment directly, Owner shall promptly furnish to Department receipts evidencing such payments. Owner shall pay when due all encumbrances, charges, and liens, on the Property or to the Housing Developments, any portion thereof and payments on notes or other obligations secured by an interest in the Property or Housing Developments, any portion thereof, with interest in accordance with the terms thereof. Owner shall have the right to contest in good faith any claim or lien, or payment due thereunder, provided that Owner does so diligently and without prejudice to Department.

5. Hazard and Liability Insurance and Condemnation.

- a. The Owner shall at all times keep the Property and the Housing Developments insured against loss by fire and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as required by the Department. All insurance policies and renewals thereof shall be issued by a carrier and in form acceptable to the Department.

- b. In the event of any fire or other casualty to the Property or Housing Developments or eminent domain proceedings resulting in condemnation of the Property or Housing Developments or any part thereof, Owner shall have the right to rebuild the Property or the Housing Developments, and to use all available insurance or condemnation proceeds therefore, provided that, as determined by the Department in its sole discretion, (a) such proceeds are sufficient to rebuild the Property or Housing Developments in a manner that ensures continued operation of the Housing Developments and as consideration for the Program Grant, (b) the Department shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material breach or default then exists under the Grant. If the casualty or condemnation affects only part of the Property or Housing Developments and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and/or partial repayment of the Grant.

6. Covenants Run with the Land. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land. Owner expressly acknowledges and agrees that the Covenants are reasonable restraints on Owner's right to own, use, maintain, and transfer the Property and any estate or interest therein and are not and shall not be construed to be an unreasonable restraint on alienation. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument.

7. Binding Effect. Any purchaser of the Property or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Owner or from any subsequent owner of the Property, or by the signing of a contract or agreement to purchase the Property, shall by the acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the Covenants set forth in this Declaration.

8. Term of Declaration. The Covenants in this Declaration shall be binding, effective and enforceable commencing upon the execution of this Declaration and shall continue in full force and effect for a period of not less than fifty-five (55) years for Rental Housing Developments or "thirty (30) years" for Home Ownership Housing Developments after a certificate of occupancy or its equivalent has been issued for the

Housing Developments by the local jurisdiction or, if no such certificate is issued, from the date of initial occupancy of the Housing Developments .

9. **Building Permits.** Owner agrees not to apply for or accept any permits for the construction of improvements on the Property inconsistent with the Housing Developments as described in Exhibit B hereto.

10. **Default.** The following shall constitute a default of this Declaration and shall entitle the Department to all of the remedies contained herein.

a. Any default under the Standard Agreement or the Disbursement Agreement shall also be a default under this Declaration.

b. Owner's failure to repay all disbursed Grant funds upon demand by the Department where construction of the Housing Developments has not received building permits and begun within five (5) years from the date of the Program Grant award in addition to any granted extension of the deadline date.

c. Failure to complete the Housing Developments, as evidenced by a certificate of occupancy, within the period of time set forth in the Standard Agreement, but not more than eight (8) years from the effective date of the Standard Agreement or any extension granted by the Department.

11. **Remedies.** The Department and its successors and assigns may use any or all of the following provisions in the event of a default or breach of this Declaration. The failure by the Department to exercise any specific right or remedy shall not preclude the Department from exercising any other right or remedy, or from maintaining any action to which it may otherwise be entitled at law or in equity:

a. **Specific Performance.** The development, use and maintenance of the Property for Housing Developments in accordance with Exhibit B attached to this Declaration is of a special and unique kind and character, so that a breach of any material provision of this Declaration by Owner, its successors, assigns or transferees, would not have an adequate remedy at law. Therefore, the Department's rights in the affordable housing provisions may be enforced by an action for specific performance and such other equitable relief as is provided by the laws of the State of California.

b. **Injunctive Relief.** In pursuing specific performance of the Covenants, the Department shall be entitled to petition the court for injunctive relief to preserve the Department's interests in the Property and its rights under this Declaration. Such injunctive relief may include, but is not limited to, an order of the court restraining any development of the Property inconsistent with the Covenants made herein.

c. **Appointment of Receiver.** In conjunction with any other remedy provided herein or by law, the Department may apply to any court of competent jurisdiction for the appointment of a receiver to take over and operate the Property or the Rental Housing Development in accordance with the terms of this Declaration and the Standard Agreement.

d. **Legal Actions.** In addition to any other rights and remedies, any party may institute a legal action to require the cure of any breach or default of the Covenants contained in this Declaration and to recover damages for any breach or default, or to obtain any other remedy consistent with the purpose of this Declaration. Damages may include, but are not limited to, reimbursement of the Department's Grant to Owner with interest at the highest rate permissible under applicable law. In any action seeking enforcement or interpretation of any of the terms or provisions of this Declaration, the prevailing party shall be awarded, in addition to damages, injunctive relief, or other relief, its reasonable costs and attorneys' fees.

12. Department Review and Inspection.

- a. At any time during the term of this Declaration, the Department or its designee may enter and inspect the Property and inspect all accounting records pertaining to the construction of the infill infrastructure projects funded by the Grant, and the development or operation of the Housing Developments. Upon request by the Department, the Owner shall notify occupants of upcoming inspections of their units in accordance with state law.
- b. At the Department's request, the Owner shall provide, at Owner's expense, a special audit of the infill infrastructure projects funded by the Grant and the Housing Developments certified by an independent certified public accountant. The Department may also perform or cause to be performed audits of any and all phases of the Owner's activities related to the Grant.
- c. The Department may request any other information that it deems necessary to monitor compliance with the Covenants and other requirements set forth in this Declaration and the Standard Agreement. The Owner shall provide such information within 14 days from the Department's written request for such information.

13. Owner Representations. Owner represents and warrants to the Department that: (1) Owner has sufficient interest in the Property to own, develop, construct and operate the Housing Developments in accordance with this Declaration, (2) to Owner's actual knowledge and belief, there are no agreements, contracts, covenants, conditions or exclusions to which Owner (or its predecessor in interest) is a party which would, if

enforced, prohibit or restrict the use of the Property in accordance with the terms of this Declaration, (3) Owner has the full right and authority to enter into this Declaration, (4) this Declaration constitutes a valid and legally binding obligation on Owner, enforceable in accordance with its terms, and (5) Owner is duly organized and authorized to do business in the State of California.

14. Governing Law. This Declaration shall be interpreted and be governed by the laws of the State of California.

15. Severability. Every provision of this Declaration is intended to be severable. If any provision of this Declaration is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representative, as of the day and year first written above.

OWNER

**S. Thomas Enterprises of Sacramento, LLC,
A Delaware limited liability company**

By: 

**Suheil Totah,
Vice President**

[All signatures must be acknowledged.]

ADD NOTARY ACKNOWLEDGEMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento }

On August 31, 2009 before me, Shirlene Garner Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Suhail Totah
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal Above

Signature [Handwritten Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration of Restrictive Covenants

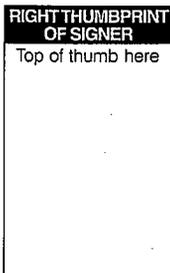
Document Date: 8-10-09 Number of Pages: _____

Signer(s) Other Than Named Above: Ma

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

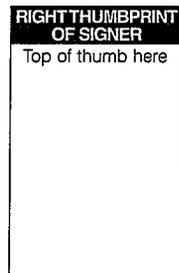
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, CITY OF SACRAMENTO, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY AND COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND BEING A PORTION OF THAT CERTAIN 203.161 ACRE TRACT OF LAND SHOWN AND DELINEATED ON RECORD OF SURVEY FILED IN BOOK 51 OF SURVEYS AT PAGE 10 OF THE OFFICIAL RECORDS OF SACRAMENTO COUNTY AND A PORTION OF PARCEL A AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON PARCEL MAP FILED IN BOOK 120 OF PARCEL MAPS, AT PAGE 10 OF SAID OFFICIAL RECORDS BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WESTERLY LINE OF 6TH STREET (80 FEET WIDE) AND THE NORTHERLY LINE OF H STREET (80 FEET WIDE);

THENCE ALONG SAID WESTERLY LINE OF 6TH STREET NORTH 18 DEGREES 26'23" EAST, 15.24 FEET;

THENCE LEAVING SAID WESTERLY LINE NORTH 44 DEGREES 14'53" EAST, 183.76 FEET TO THE POINT OF INTERSECTION OF THE EASTERLY LINE OF SAID 6TH STREET AND THE NORTHERLY LINE OF THE ALLEY (20 FEET WIDE) IN THE BLOCK BOUNDED BY G, H, 6TH AND 7TH STREETS;

THENCE ALONG THE NORTHERLY LINE OF SAID ALLEY SOUTH 71 DEGREES 37'21" EAST, 319.58 FEET TO ITS INTERSECTION WITH THE WESTERLY LINE OF 7TH STREET (80 FEET WIDE);

THENCE ALONG SAID WESTERLY LINE OF 7TH STREET NORTH 18 DEGREES 19'02" EAST, 1164.13 FEET TO A POINT THEREON LOCATED 100 FEET SOUTHERLY FROM THE NORTHERLY LINE OF THE ALLEY BETWEEN D, E, 6TH AND 7TH STREETS, SAID POINT BEING THE POINT OF BEGINNING OF THE STREET VACATION BY SACRAMENTO CITY ORDINANCE NO. 214, FOURTH SERIES;

THENCE NORTH 40 DEGREES 07'56" EAST, 34.84 FEET TO A POINT ON THE NORTHWESTERLY LINE OF THE LAND CONVEYED TO THE CITY OF SACRAMENTO BY DEED RECORDED IN BOOK 8512-31 AT PAGE 1928 OFFICIAL RECORDS OF SAID COUNTY;

THENCE NORTHEASTERLY ALONG SAID NORTHWESTERLY LINE 72.50 FEET THROUGH A CENTRAL ANGLE OF 11 DEGREES 58'18" SAID NORTHWESTERLY LINE BEING THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 347.00 FEET TO WHICH A RADIAL LINE BEARS NORTH 63 DEGREES 01'57" WEST;

THENCE LEAVING SAID NORTHWESTERLY LINE SOUTH 79 DEGREES 25'14" WEST, 190.28 FEET;

THENCE SOUTH 49 DEGREES 52'44" WEST, 326.94 FEET;

THENCE 444.33 FEET ALONG THE ARC OF A 843.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 30 DEGREES 11'59";

THENCE SOUTH 80 DEGREES 04'43" WEST, 17.41 FEET;

THENCE SOUTH 33 DEGREES 41'42" WEST, 107.73 FEET;

THENCE SOUTH 80 DEGREES 04'43" WEST, 268.35 FEET;

THENCE SOUTH 18 DEGREES 24'47" WEST, 490.56 FEET;

THENCE SOUTH 26 DEGREES 44'53" EAST, 62.45 FEET;

THENCE SOUTH 71 DEGREES 37'38" EAST, 57.14 FEET TO THE INTERSECTION OF THE NORTHERLY LINE OF "H" STREET (80 FEET WIDE) WITH THE WESTERLY LINE OF 5TH STREET (80 FEET WIDE);

THENCE ALONG THE NORTHERLY LINE OF "H" STREET SOUTH 71 DEGREES 33'22" EAST, 405.74 FEET TO THE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE MOST SOUTHERLY LINE OF PARCEL A, AS FILED IN BOOK 120 OF PARCEL MAPS, AT PAGE 10. SAID BEARING IS SHOWN ON SAID MAP AS NORTH 71 DEGREES 30'19" WEST.

THIS PARCEL IS ALSO DESCRIBED AS PARCEL 1 IN THE CERTIFICATE OF COMPLIANCE RECORDED JANUARY 31, 2007 IN BOOK 20070131, PAGE 2410, OFFICIAL RECORDS.

APN: 002-0010-047

TOD Grant - Declaration of Restrictive Covenants (NOFA 12/11/07)

Page 10 of 11

Rev: 08/18/09

Prep: 08/27/09

Dev: The Railyards

Contract No.: 07-TOD-4243

EXHIBIT "B"

HOUSING DEVELOPMENT

Location of Housing Development (APN, address, parcel map, specific plan or similar reference) City and County	TOD Phase One-Lot 42 69 TOD Restricted Affordable rental apartment units, 17 otherwise restricted affordable rental apartment units, 11 market rate lofts and 1 manager's unit (98 total units)		
Enter the number of units by bedroom size and income level.			
# of Bedrooms	# of Units	TOD Restricted Units*	Income Limit (% of AMI)
1	<u>44</u>	<u>44</u>	<u>50%</u>
1	<u>10</u>	<u>0</u>	<u>60%</u>
2	<u>5</u>	<u>5</u>	<u>50%</u>
<u>2-lofts</u>	<u>11</u>	<u>0</u>	<u>Market</u>
3	<u>20</u>	<u>20</u>	<u>50%</u>
3	<u>7</u>	<u>0</u>	<u>60%</u>
<u>2-Mgrs</u>	<u>1</u>	<u>0</u>	<u>Market</u>
Total Project Units**	<u>98</u>	<u>69</u>	_____

FREE RECORDING IN ACCORDANCE
WITH CALIFORNIA GOVERNMENT
CODE SECTIONS 6103 AND 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

TOD Program
Department of Housing and
Community Development
P.O. Box 952052
Sacramento, CA 94252-2052


Sacramento County Recorder
Craig A. Kramer, Clerk/Recorder
BOOK 20100618 PAGE 1280
Friday, JUN 18, 2010 2:23:51 PM
Ttl Pd \$0.00 Nbr-0006390851
TTL/85/1-16

**AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS
FOR THE
DEVELOPMENT AND OPERATION OF HOUSING**

This Amendment to Declaration of Restrictive Covenants for the Development and Operation of Affordable Housing (the "Amendment") dated April 29, 2010, for reference purposes only, by S. Thomas Enterprises of Sacramento, LLC, its successors, assigns and transferees (the "Owner"), is hereby given to and on behalf of the California Department of Housing and Community Development, an agency of the State of California (the "Department").

RECITALS

Whereas, that certain Declaration of Restrictive Covenants for the Development and Operation of Housing (the "Declaration") was given by Owner, to and on behalf of Department on August 31, 2009 (the "Original Effective Date") and recorded in the office of the Sacramento County Clerk-Recorder on Page 583 of Book 20090831. All capitalized terms not defined herein shall be as defined in the Declaration.

Whereas, the legal descriptions for the parcels to be affected by the Declaration were not in existence on the Original Effective Date and the Declaration was recorded against and affected a larger parcel that encompassed the parcels intended to be affected by the Declaration; and

Whereas the legal descriptions for the parcels intended to be affected by the Declaration do now exist and, per the terms of the Declaration, Owner and Department now wish to amend the Declaration to release the property against which the Declaration was originally recorded and affect only the parcels originally intended by Owner and Department.

TOD Grant-Amendment to Declaration of Restrictive Covenants
S. Thomas Enterprises of Sacramento, LLC
The Railyards

NOW, THEREFORE, Owner, in consideration of the Department's Grant to City, the City's assignment to Owner pursuant to the Assignment and Assumption, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Department hereby agree as follows:

1. Exhibit A to the Declaration is hereby replaced in its entirety by the Exhibit A attached hereto. The Declaration and covenants contained therein shall no longer affect the property described in the Exhibit A attached to the Declaration and the covenants contained in the Declaration shall apply only to the property described in the Exhibit A attached to this Amendment.

2. Exhibit B to the Declaration is hereby replaced in its entirety by the Exhibit B attached hereto. The Exhibit B attached to the Declaration shall have no further force or effect.

3. With the exception of the changes described in Sections 1 and 2 of this Amendment, all other provisions, terms, obligations, duties and covenants contained in the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representative, as of the day and year first written above.

"(OWNER)"

By: 
Suheil Totah,
Vice President

Consented and Agreed to by:

"(DEPARTMENT)"

By: 

[All signatures must be acknowledged.]

ADD NOTARY ACKNOWLEDGEMENT

TOD Grant-Amendment to Declaration of Restrictive Covenants
S. Thomas Enterprises of Sacramento, LLC
The Railyards

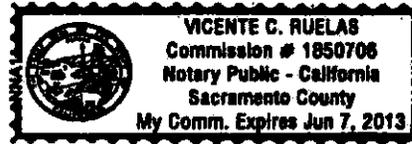
STATE OF CALIFORNIA
County of Sacramento, ss.

On June 15, 2010, before me, Vicente C. Ruelas, Notary Public, personally appeared EUGENE LEE, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Vicente C. Ruelas*



Title or Type of Document: Amendment to Declaration of Restrictive Covenants
For the Development and Operation of Housing

Date of Document: April 29, 2010

Project Name: The Railyards

ACKNOWLEDGMENT

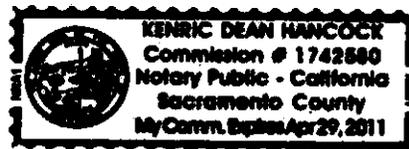
State of California
County of SACRAMENTO

On 4/29/2010 before me, KENRIC DEAN HANCOCK, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature  (Seal)

EXHIBIT "A"

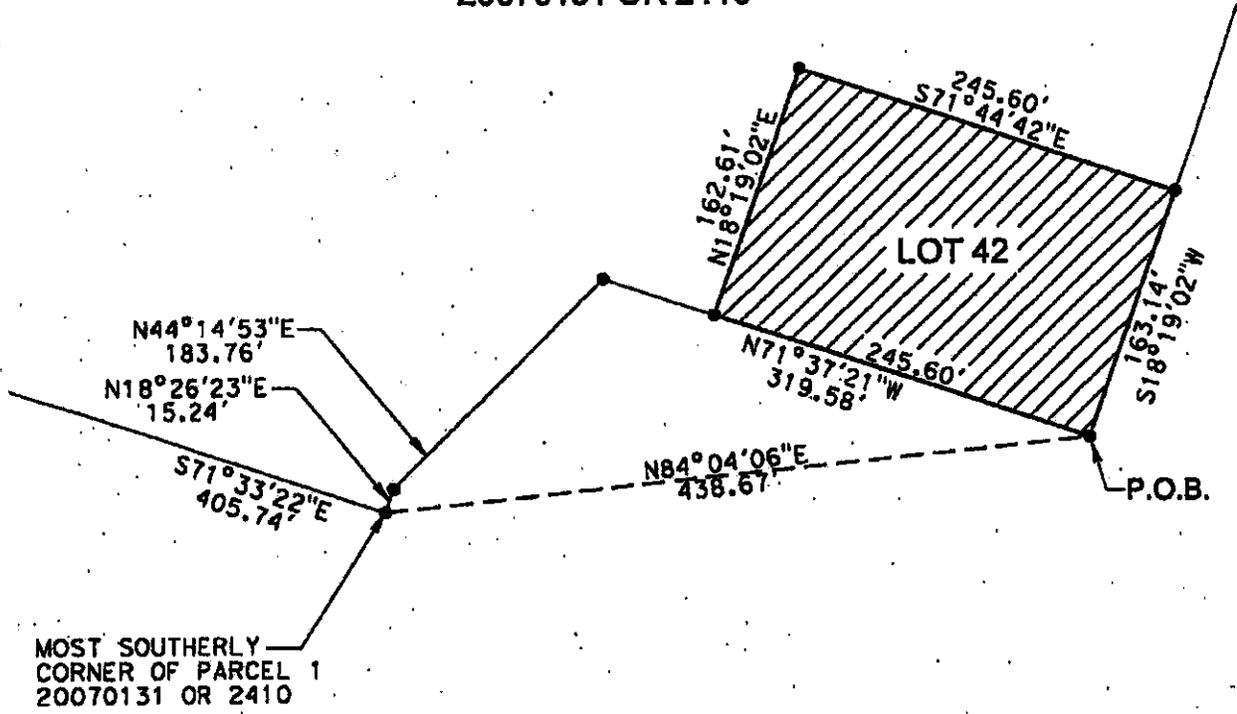
LEGAL DESCRIPTION OF THE PROPERTY

**TOD Grant-Amendment to Declaration of Restrictive Covenants
S. Thomas Enterprises of Sacramento, LLC
The Railyards**

LOT

42

PARCEL 1
20070131 OR 2410



LEGEND

- DIMENSION POINT
- NOTHING SET / NOTHING FOUND
- DESCRIBED AREA
- P.O.B. POINT OF BEGINNING

0' 50' 100' 200'
SCALE



Jon Wheat
12-2-09

G QUINCY ENGINEERING INC
3307 BARRIS CIRCLE
SACRAMENTO, CA 95827-3501
PH: 916-302-8818

SCALE: 1"=100'
DATE: 12-01-09
DRAWN BY: GM
CHECKED BY: JW

EXHIBIT B
PROPOSED LOT 42

IN THE CITY OF SACRAMENTO
SACRAMENTO COUNTY, CALIFORNIA

SHEET NUMBER
1
OF 1 SHEETS

ALL THAT REAL PROPERTY SITUATE IN THE CITY AND COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AS SHOWN AND DELINEATED ON THE "CERTIFICATE OF COMPLIANCE FOR LOT SPLIT" RECORDED ON JANUARY 31, 2007 IN BOOK 20070131 AT PAGE 2410 OF THE OFFICIAL RECORDS OF SACRAMENTO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT BEARS NORTH $84^{\circ}04'06$ EAST, 438.67 FEET FROM THE MOST SOUTHERLY CORNER OF SAID PARCEL, SAID POINT BEING ON THE SOUTHEAST BOUNDARY OF SAID PARCEL;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL NORTH $71^{\circ}37'21$ " WEST, 245.60 FEET;

THENCE NORTH $18^{\circ}19'02$ " EAST, 162.61 FEET;

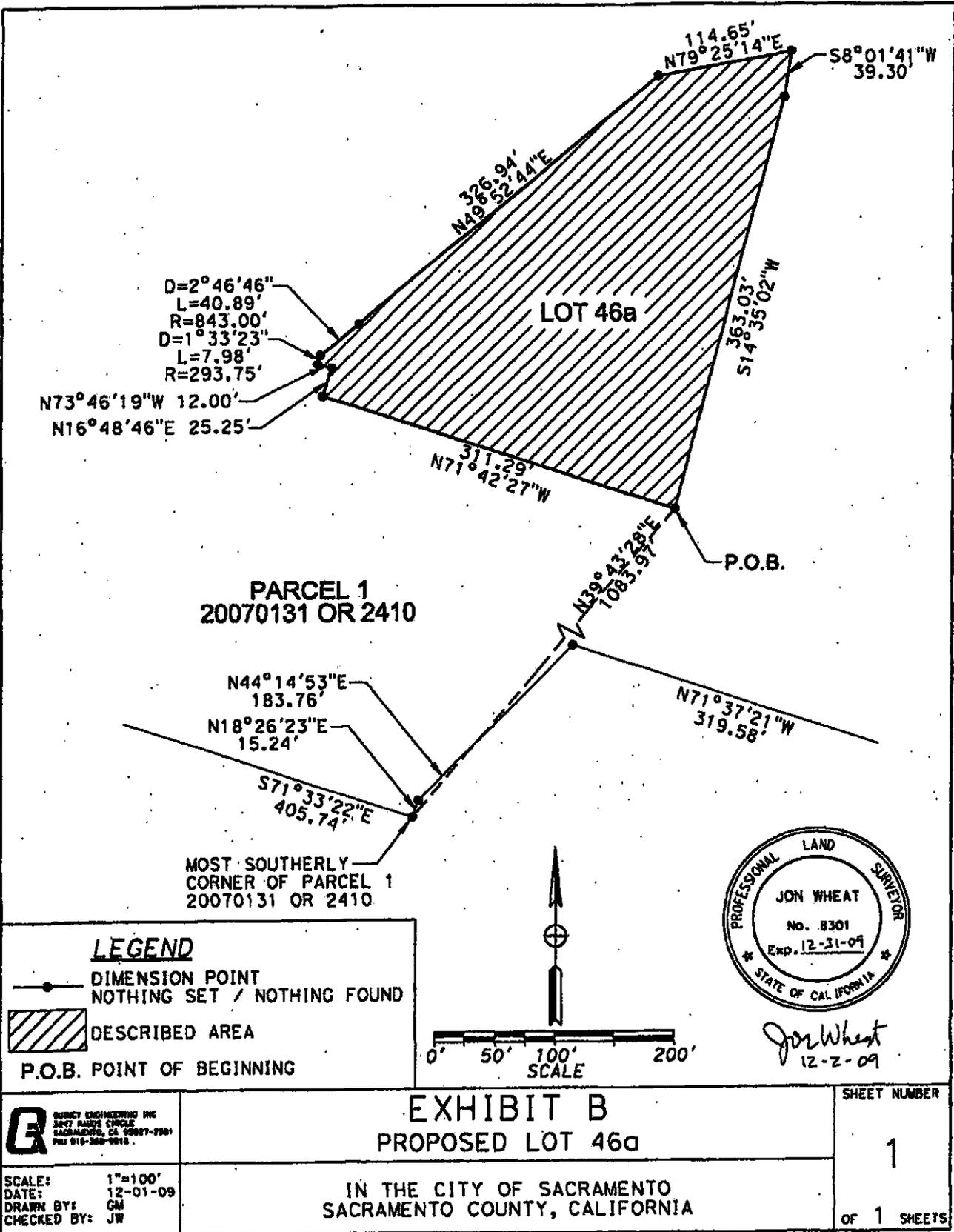
THENCE SOUTH $71^{\circ}44'42$ " EAST, 245.60 FEET, TO THE EASTERLY BOUNDARY OF SAID PARCEL;

THENCE ALONG SAID BOUNDARY SOUTH $18^{\circ}19'02$ " WEST, 163.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.92 ACRES, MORE OR LESS.

LOT

46a



ALL THAT REAL PROPERTY SITUATE IN THE CITY AND COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AS SHOWN AND DELINEATED ON THE "CERTIFICATE OF COMPLIANCE FOR LOT SPLIT" RECORDED ON JANUARY 31, 2007 IN BOOK 20070131 AT PAGE 2410 OF THE OFFICIAL RECORDS OF SACRAMENTO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

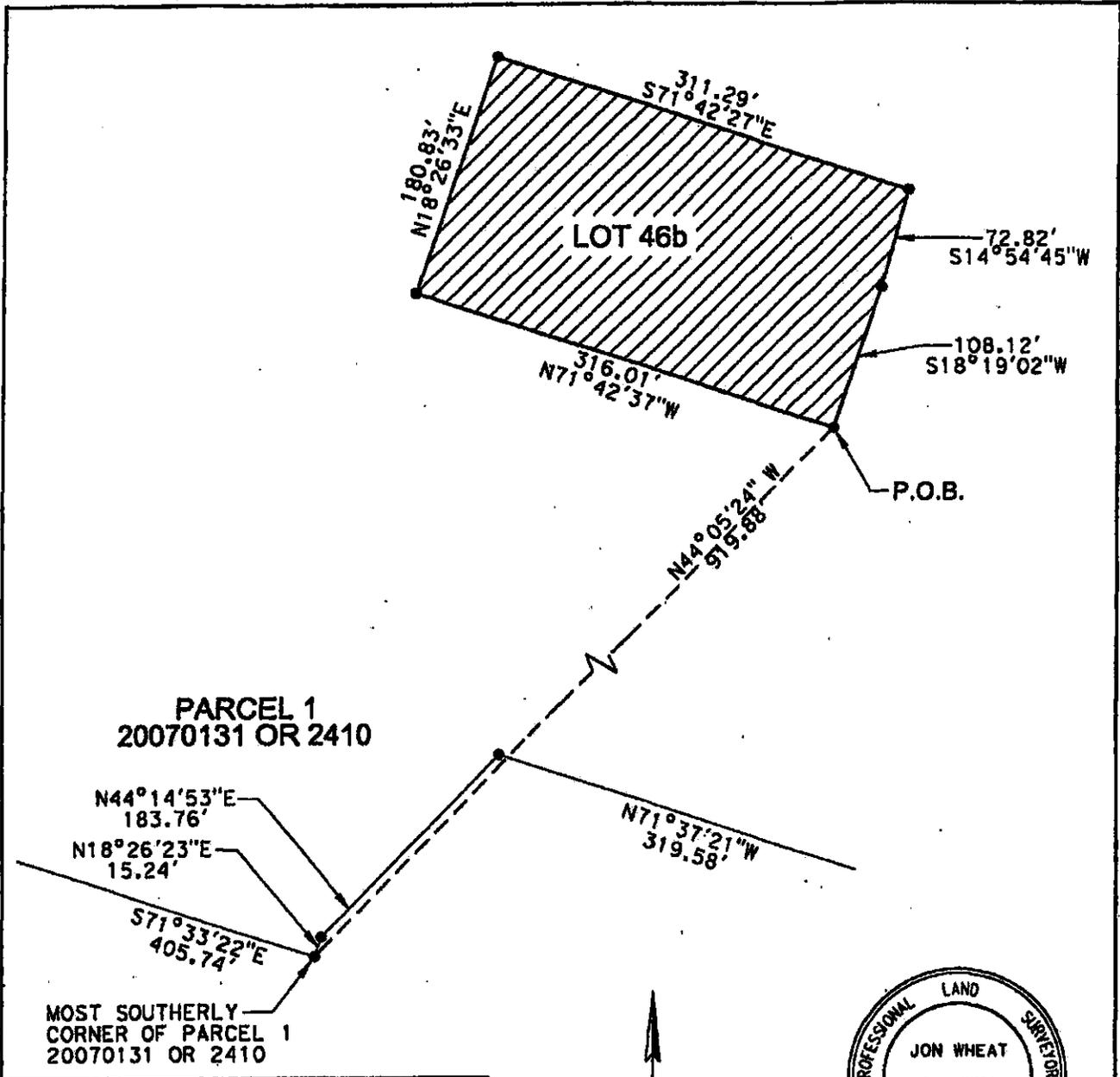
BEGINNING AT A POINT THAT BEARS NORTH 39°43'28" EAST, 1083.97' FROM THE MOST SOUTHERLY CORNER OF SAID PARCEL;

THENCE NORTH 71°42'27" WEST, 311.29 FEET;
THENCE NORTH 16°48'46" EAST, 25.25 FEET;
THENCE NORTH 73°46'19" WEST, 12.00 FEET TO THE BEGINNING OF A NON-TANGENT 293.75 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY TO WHICH A RADIAL LINE BEARS SOUTH 74°09'50" EAST;
THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE NORTH BOUNDARY OF SAID PARCEL, THROUGH A CENTRAL ANGLE OF 1°33'23" A DISTANCE OF 7.98 FEET TO THE BEGINNING OF A NON-TANGENT 843.00 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY TO WHICH A RADIAL LINE BEARS SOUTH 37°20'30" EAST;
THENCE FOLLOWING SAID BOUNDARY NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°46'46" A DISTANCE OF 40.89 FEET;
THENCE CONTINUING ALONG SAID BOUNDARY NORTH 49°52'44" EAST, 326.94 FEET;
THENCE NORTH 79°25'14" EAST, 114.65 FEET;
THENCE LEAVING SAID BOUNDARY SOUTH 8°01'41" WEST, 39.30 FEET;
THENCE SOUTH 14°35'02" WEST, 363.03 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.85 ACRES, MORE OR LESS.

LOT

46b



LEGEND

-  DIMENSION POINT
-  NOTHING SET / NOTHING FOUND
-  DESCRIBED AREA
-  P.O.B. POINT OF BEGINNING

0' 50' 100' 200'
SCALE

Jon Wheat
12-2-09

Q QUINCY ENGINEERING INC
3947 RANCHO CIRCLE
SACRAMENTO, CA 95827-2801
PH 916-368-9818

SCALE: 1"=100'
DATE: 12-01-09
DRAWN BY: GM
CHECKED BY: JW

EXHIBIT B
PROPOSED LOT 46b

IN THE CITY OF SACRAMENTO
SACRAMENTO COUNTY, CALIFORNIA

SHEET NUMBER
1
OF 1 SHEETS

ALL THAT REAL PROPERTY SITUATE IN THE CITY AND COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AS SHOWN AND DELINEATED ON THE "CERTIFICATE OF COMPLIANCE FOR LOT SPLIT" RECORDED ON JANUARY 31, 2007 IN BOOK 20070131 AT PAGE 2410 OF THE OFFICIAL RECORDS OF SACRAMENTO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT BEARS NORTH $84^{\circ}04'06$ EAST, 438.67 FEET FROM THE MOST SOUTHERLY CORNER OF SAID PARCEL, SAID POINT BEING ON THE SOUTHEAST BOUNDARY OF SAID PARCEL;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL NORTH $71^{\circ}37'21''$ WEST, 245.60 FEET;

THENCE NORTH $18^{\circ}19'02''$ EAST, 162.61 FEET;

THENCE SOUTH $71^{\circ}44'42''$ EAST, 245.60 FEET, TO THE EASTERLY BOUNDARY OF SAID PARCEL;

THENCE ALONG SAID BOUNDARY SOUTH $18^{\circ}19'02''$ WEST, 163.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.92 ACRES, MORE OR LESS.

EXHIBIT "B"

HOUSING DEVELOPMENTS

Location of Housing Development (APN), address, parcel map, specific plan or similar reference, City and County Enter the number of units by bedroom size and income level.	TOD Phase I-Lot 42 69 TOD Affordable rental apartment units, 17 otherwise restricted affordable rental apartment units, 11 market rate lofts and 1 manager's unit (98 total)			
	# of Bedrooms	# of Units	TOD Restricted	Income Limit (% of AMI)
<u>1</u>	<u>44</u>	<u>44</u>	<u>50%</u>	
<u>1</u>	<u>10</u>	<u>0</u>	<u>60%</u>	
<u>2</u>	<u>5</u>	<u>5</u>	<u>50%</u>	
<u>2-lofts</u>	<u>11</u>	<u>0</u>	<u>Market</u>	
<u>3</u>	<u>20</u>	<u>20</u>	<u>50%</u>	
<u>3</u>	<u>7</u>	<u>0</u>	<u>60%</u>	
<u>2-Mgrs</u>	<u>1</u>	<u>0</u>	<u>Market</u>	
_____	_____	_____	_____	
_____	_____	_____	_____	
_____	_____	_____	_____	
_____	_____	_____	_____	
_____	_____	_____	_____	
_____	_____	_____	_____	
_____	_____	_____	_____	
_____	_____	_____	_____	
Total	98	69	_____	

TOD Grant-Amendment to Declaration of Restrictive Covenants
 S. Thomas Enterprises of Sacramento, LLC
 The Railyards

March 15, 2011

Chris Westlake, Deputy Director
Department of Housing and
Community Development ("HCD")
1800 Third Street, Suite 460
Sacramento, CA 95811

RE: Sacramento Railyards (the "*Property*"); 07-TOD-4243

Dear Mr. Westlake:

We are in receipt of your letter dated February 4, 2011, regarding the process to extend the deadline by which the Recipient is required to have received all necessary and discretionary public land use approvals for the Property and the corresponding extension of the Performance Milestone dates and construction completion date deadlines. For the reasons outlined herein, IA Sacramento Holdings, LLC ("IA Holdings"), in its capacity as proposed assignee, is unable to satisfy the parameters outlined in your letter to obtain an extension.

In an effort to provide context to why the existing timeframes are unattainable, this letter outlines some of the extenuating circumstances relative to the development of this specific and unique Property. As you know, IA Holdings is operating in the capacity of a secured lender in possession of the Property through foreclosure, which foreclosure process began in June of 2010 and concluded with IA Holdings taking title to the Property on October 22, 2010. The development of this Property is very complex and requires that certain portions of the development be completed in a specific sequence.

For example, before the Infrastructure Project or any portion of the Housing Development can be completed, a substantial amount of backbone infrastructure must be constructed on the Property. This backbone infrastructure work includes, without limitation, the relocation of existing railroad tracks and the completion of environmental remediation work. Today, there are railroad tracks running through the Property where portions of the Infrastructure Project will ultimately be built and thus, the Infrastructure Project cannot be completed until the track relocation work is done. It is not anticipated that the track relocation work will be done until late 2012. Until the Infrastructure Project is completed, the Housing Development cannot commence because there is no current physical access to the lots where the Housing Development will be built.

To satisfy the parameters set forth in your February 4th letter, we would need to be much farther along with the development of the Property in order to meet the existing deadlines to obtain certain approvals by June 2013, complete construction of the Infrastructure Project by March 2012, commence the construction of the Housing Development by December 2012 and receive final disbursement of funds by February 1, 2012. Under the best of circumstances, we do not anticipate gaining access to the housing lots until late 2012. The TOD grant was awarded to the City of Sacramento (the

“Recipient”) over two and a half years ago. Certain Performance Milestones dates have already been missed, such as the obligation to commence the Infrastructure Project by April 2009, and based on the date of the grant award, half of the time allotted to satisfy certain Performance Milestones has passed. According to the current projected development of the critical backbone infrastructure, it is a virtual certainty that other Performance Milestones will be missed in the near future.

As a result of the foregoing, we are unable to satisfy many of the existing Performance Milestone dates, obtain all necessary and discretionary public land use approvals by June 2013, and submit all invoices as required by December 1, 2011 for final disbursement of funds (the foregoing timeframes referred to collectively herein as the “Timeframes”). In order for the continued development of the Property to be successful, we are requesting a commitment to extend the Timeframes. We are seeking agreement and acknowledgment from HCD that at least two years of progress was lost in the development of the project due to various circumstances. We understand that HCD will not entertain a request for an extension while performance is ongoing under the initial timeframes and milestones. HCD acknowledges by its signature below that one extension of up to five years can be made pursuant to HCD’s February 4, 2011 letter despite the fact that not all parameters set forth in such letter can or will be satisfied. By its signature below, HCD hereby agrees that a minimum three year extension to the Timeframes will be granted to the Recipient City of Sacramento, plus additional years based on documentation that delay was beyond the control of the City of Sacramento and IA Holdings and including, but not limited to, general market conditions. Further, HCD will act reasonably and in good faith when making a determination for an extension for such additional years to the Timeframes.

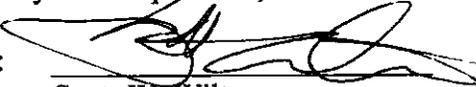
Please execute below to acknowledge HCD's acceptance and agreement to the terms and conditions of this Letter. Once executed, please return the fully executed Letter Agreement to IA Holdings, attention Scott Wilton, 2901 Butterfield Road, Oak Brook, Illinois 60523.

Very truly yours,

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: 
Scott W. Wilton,
Its: Secretary

Chris Westlake
March 15, 2010
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THE UNDERSIGNED HAS THE AUTHORITY TO EXECUTE THIS LETTER AGREEMENT ON BEHALF OF HCD AND ACKNOWLEDGES AND AGREES TO THE TERMS AND CONDITIONS OF THIS LETTER AGREEMENT.

Chris Westlake, Deputy Director
Department of Housing and Community Development

Chris Westlake
March 15, 2010
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THE UNDERSIGNED EXECUTED THIS LETTER ON BEHALF OF THE
RECIPIENT CITY OF SACRAMENTO AND ACKNOWLEDGES AND AGREES TO
THE TERMS AND CONDITIONS OF THIS LETTER.

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

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

Exhibit B

[Place on Issuer's Letterhead]

Irrevocable Letter of Credit

Beneficiary: City of Sacramento

Letter of Credit No. _____

Date: _____

^{c/o} City Treasurer's Office
City of Sacramento
915 1 Street
Historic City Hall, Third Floor (0900)
Sacramento, CA 95814

This irrevocable, unconditional letter of credit is issued to the City of Sacramento (the "Beneficiary"), a California municipal corporation, by [name of issuer] (the "Issuer") at the request of, and for the account of, [name of applicant] (the "Applicant"). It is provided to comply with the Applicant's obligation under section 6 of the following agreement between the Beneficiary and the Applicant (the "Agreement"):

Assignment and Assumption Agreement
5th Street Extension Project TOD Grant Agreement
City Agreement No. 2011-

The Issuer hereby establishes this irrevocable, unconditional letter of credit in the Beneficiary's favor in the amount of _____ U.S. Dollars (\$ _____) available with the Issuer, at the address stated below, by payment of the Beneficiary's draft or drafts drawn at sight and accompanied by a signed-and-dated demand letter worded substantially as follows:

"I, [insert "the City Treasurer" or "an official representative"] of the City of Sacramento, California, hereby demand payment under [identify the letter of credit] in the amount of the sight draft that accompanies this letter."

This letter of credit is absolute and unconditional, and it may not be dishonored for any reason before it expires. It is not subject to any offset or defense that may have existed in the past or may exist now or in the future between the Issuer and the Beneficiary, or between the Applicant and the Beneficiary, or between the Applicant and the Issuer.

Each sight draft presented under this letter of credit must be accompanied by this original letter of credit for the Issuer's endorsement on this letter of credit of the

amount of the draft. After endorsement, the Issuer will return this letter of credit to the Beneficiary unless it is fully utilized.

This letter of credit expires at the Issuer's office on [insert date].

The total amount of this letter of credit may be reduced, in the exclusive discretion of the Beneficiary, upon specific written instructions signed by the Sacramento City Treasurer's Office and accompanied by this original letter of credit.

The person who signs below for Issuer represents that he or she has unconditional and full execution authority to sign letter of credit for the Issuer and that this letter of credit is a valid and binding obligation of the Issuer.

This letter of credit may be presented for payment in accordance with the Supplement to the 2007 Uniform Customs and Practice for Documentary Credits for Electronic Presentation (the "eUCP").

This letter of credit is subject to the 2007 Uniform Customs and Practice for Documentary Credits – ICC Pub. No. 600 as supplemented by the eUCP ("UCP 600") and to the laws of the State of California to the extent they are not inconsistent with UCP 600.

[Issuer's name]
[Issuer's address]

By: _____
[Name & title]