

RESOLUTION NO. 2011-591

Adopted by the Sacramento City Council

October 25, 2011

FIRST AMENDMENT TO PARKING OPERATIONS MANAGEMENT AGREEMENT

BACKGROUND

- A. On June 26, 2007, the City of Sacramento and S. Thomas Enterprises of Sacramento, LLC ("Thomas") entered into a Parking Operations Management Agreement, City Agreement No. 2007-0657, (the "Agreement") whereby the City agreed to operate parking lots (Lots 296 and 297) located within the Sacramento Railyards and owned by Thomas. The term of the Agreement was for three years, with an option for the City to extend the Agreement for one additional three-year term, which the City exercised in December 2009.
- B. Under the Agreement, on a monthly basis, the City paid Thomas the net revenue collected from the City's operation of the parking lots less a \$5,000 management fee ("Monthly Owner Proceeds").
- C. On October 22, 2010 IA Sacramento Holdings, LLC ("IA") acquired Thomas' interest in the Agreement when IA foreclosed on a deed of trust encumbering the Railyards.
- D. Due to uncertainty of regarding Thomas' and IA's right to the Monthly Owner Proceeds due from parking fees collected prior to the foreclosure date, and IA's rights and obligations under the Agreement following foreclosure, the City has withheld payment of the Monthly Owner Proceeds until the City and IA could amend the Agreement.
- E. By this amendment, IA expressly assumes the obligations under the Agreement and agrees to indemnify the City for any claims made regarding the Monthly Owner Proceeds due from parking fees collected prior to the foreclosure date.

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

- Section 1. The City Manager or his designee is authorized to execute an amendment to the Parking Operations Management Agreement, City Agreement 2007-0657, with IA Sacramento Holdings, L.L.C.; the amendment is attached as Exhibit A and is a part of this resolution.

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Exhibit A – Contract

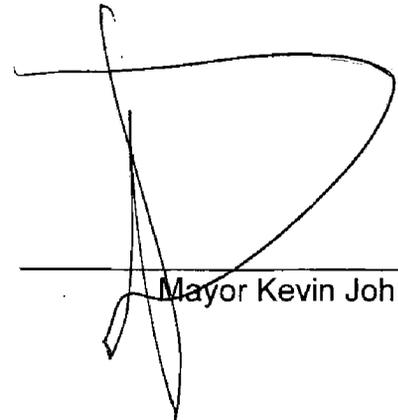
Adopted by the City of Sacramento City Council on October 25, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

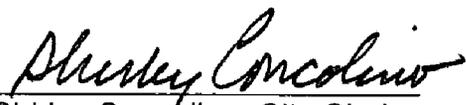
Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:


Shirley Concolino, City Clerk

FIRST AMENDMENT TO PARKING OPERATIONS MANAGEMENT AGREEMENT

This First Amendment to Parking Operations Management Agreement ("Amendment") is dated _____, 2011 ("Execution Date"), and is between IA Sacramento Holdings, L.L.C., a Delaware limited liability company, ("Owner") as successor-in-interest to S. Thomas Enterprises of Sacramento, LLC ("Thomas") and City of Sacramento, a municipal corporation ("Manager"). Owner and Manager hereinafter may be referred to collectively as the "Parties".

RECITALS

WHEREAS, the Manager and Thomas entered into that certain Parking Operations Management Agreement dated June 26, 2007, identified as City Agreement 2007-0657 ("Agreement") regarding the use and operation of certain parking facilities at the Site;

WHEREAS, the Site is located within the Sacramento Railyards;

WHEREAS, the term of the Agreement was three years, beginning on June 26, 2007, and ending June 25, 2010, with an option on the part of Manager to extend the term for one additional three-year period (the "Extended Term"). All references in the Agreement to the "Term" shall be deemed to refer to the Term, as extended by the Extended Term;

WHEREAS, the Extended Term began on June 26, 2010, and will end on June 25, 2013;

WHEREAS, Manager exercised its option to extend the Agreement on December 14, 2009, by providing written notice to Thomas as required by Section 2 of the Agreement;

WHEREAS, Owner is a secured lender holding an ownership interest in real property located in City of Sacramento, California, commonly referred to as the Sacramento Railyards, as a result of its foreclosure on October 22, 2010 of certain loans made to Thomas. The loans were secured by, among other things, deeds of trust encumbering the Sacramento Railyards. Owner succeeded in fee title interest to the Sacramento Railyards from Thomas pursuant to the Trustee's Deed recorded on October 25, 2010 in the office of the County Recorder of the County of Sacramento, State of California, as Book 20101025, Page 0218;

WHEREAS, due to uncertainty about the Parties' rights and obligations under the Agreement following Owner's acquisition of fee title to the Site, Manager has possession of the Monthly Owners Proceeds attributable to Revenue collected by Manager from September 2010 through the Execution Date;

WHEREAS, the Parties now desire to amend the Agreement as further set forth herein, and,

WHEREAS, all capitalized terms not defined herein shall have the meaning set forth in the Agreement.

AGREEMENT

NOW THEREFORE, in consideration of mutual agreements as herein expressed, and for other good and valuable consideration exchanged by the Parties, it is hereby agreed as follows:

1. Assumption of Obligations. Owner hereby assumes all obligations arising under the Agreement. This assumption of obligations is retroactive to October 22, 2010, and continues for the remainder of the Extended Term.

2. Payments. No later than thirty (30) days after the Execution Date Manager shall pay to Owner the Monthly Owner Proceeds due from Revenue collected by Manager from September 2010 through the last complete calendar month immediately preceding the Execution Date. Owner shall defend, indemnify and hold harmless Manager, its Council, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from Manager's payment of these Monthly Owner Proceeds. Manager shall pay to Owner Monthly Owner Proceeds from Revenue collected by Manager during the calendar month in which this Amendment is executed and all future calendar months during the Extended Term as required by Section 4 of the Agreement.

3. Construction and Environmental Remediation. Notwithstanding any other provision of the Amendment or Agreement, Manager may not in the performance of its obligations under the Agreement interfere with or delay: (1) construction conducted under the November 23, 2009, Construction Maintenance & Operation Agreement including, but not limited to, the removal of existing railroad tracks; and, (2) environmental remediation conducted pursuant to the June 2, 1988 Enforceable Agreement between Southern Pacific Transportation Company and the State Department of Health Services.

4. Notices. Section 20 of the Agreement entitled "Notices" is hereby deleted in its entirety and is replaced with the following:

"All notices hereunder or required by law shall be given in writing, sent (i) via United States Mail, postage prepaid, certified mail, return receipt requested, (ii) via any nationally recognized commercial overnight carrier with provisions for proof of delivery, (iii) by personal delivery, or (iv) sent by facsimile, receipt confirmed, addressed to the parties hereto at their respective addresses set forth below or as they have theretofore specified by written notice delivered in accordance herewith. The date of giving any notice shall be deemed to be the date upon which delivery is actually made by one of the methods described in this Section 10 (or attempted if such delivery is refused or rejected). If a notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day. All notices, demands, requests, consents, approvals, disapprovals, or certificates shall be addressed as follows:

OWNER:

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

Copy to:

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

And to:

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

MANAGER:

City of Sacramento
Parking Services
300 Richards Blvd, 2nd Floor
Sacramento, CA 95814
Attention: Howard Chan
Facsimile: (916) 808-5115
Telephone: (916) 808-7488
hchan@cityofsacramento.org

PAYMENTS ADDRESS:

IA Sacramento Holdings, LLC
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Michael Podboy
Facsimile: (630) 954-5655
Telephone: 630-218-8000
Podboy@inlandgroup.com

5. Ratification. Except as expressly modified herein, all the terms and conditions of the Agreement shall remain unmodified and shall continue to be binding on all Parties and shall remain in full force and effect during the term of the Agreement.

6. Conflicting Provisions. Any inconsistencies or conflicts between the terms and provisions of the Agreement and the terms and provisions of this Amendment shall be resolved in favor of the terms and provisions of this Amendment.

7. Execution/Entire Agreement. This Amendment, together with the Agreement as affected hereby, constitutes the entire agreement of the Parties, and may not be amended except by written instrument signed by all Parties. This Amendment binds and inures to the benefit of the Parties and their respective successors and assigns.

8. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one fully executed original Amendment, binding upon the Parties, notwithstanding that all of the Parties may not be signatories to the same counterpart. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or portable document format (.pdf) shall be effective as delivery of a manually executed counterpart of this Amendment.

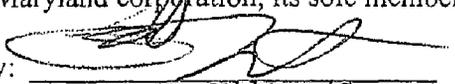
IN WITNESS WHEREOF, the parties have executed this First Amendment to Parking Operations Management Agreement as of the date first written above.

OWNER:

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

MANAGER:

**CITY OF SACRAMENTO, a Municipal
Corporation**

By: _____
Its: _____

APPROVED AS TO FORM:

By: 
Senior Deputy City Attorney

ATTEST:

By: _____
City Clerk