Meeting Date: **9/8/2015**

Report Type: Consent

Report ID: 2015-00788

City of SACRAMENTO 01

City Council Report
915 I Street, 1st Floor
www.CityofSacramento.org

Title: Assignment and Assumption of Railyards Agreements

Location: District 3

Recommendation: Pass a Motion authorizing the City Manager to execute Assignment and Assumption Agreements with IA Sacramento Holdings, L.L.C. and Downtown Railyard Venture, LLC for 1) City Agreement 2008-0150 (Development Agreement for Sacramento Railyards Project); 2) City Agreement 2008-0409 (Funding Agreement); 3) City Agreement 2011-0083 (5th and 6th Street Roadway Project Memorandum of Understanding); 4) City Agreements 2013-0238 and 2013-0777 (Project Delivery Agreement); and, 5) City Agreement 2011-0253 (Assignment and Assumption Agreement 5th Street Extension Project TOD Grant Agreement).

Contact: Fran Halbakken, Assistant to the City Manager, (916) 808-7194, Office of the City Manager

Presenter: None

Department: City Manager
Division: Executive Office
Dept ID: 02001011
Attachments:
1-Description/Analysis
2-DA Execution Copy
3-Funding Execution Copy
4-MOU Execution Copy
5-PDA Execution Copy
6-TOD Execution Copy

City Attorney Review

Approved as to Form
Michael Sparks
9/2/2015 2:10:12 PM

Approvals/Acknowledgements

Department Director or Designee: Howard Chan - 9/1/2015 2:02:48 PM

Description/Analysis

Issue Detail:

Whether to consent to the assignment to IA Sacramento Holdings, L.L.C.'s (IA Sacramento) assignment of its interest in various Railyards agreements to Downtown Railyards Venture, L.L.C. (DRV), in connection with IA Sacramento's sale of the Railyards to DRV.

The Development Agreement for Railyards Project provides the property owner with a vested right to develop the project as approved and limits the power of the City to apply newly-enacted ordinances or regulations to the project.

The Funding Agreement sets out the existing planned transportation project improvements for the I-5 and Richards Boulevard interchange, allocates a total of $600,000 in park funds for West Tunnel and Market Plaza, conditionally commits up to $2 million per year over 5 years to help finance the 5th/6th Street parking garage, and commits all of the Housing Trust Fund fees generated by the Railyards for development of affordable housing within the project area.

The 5th & 6th Street Roadway Memorandum of Understanding relates to the development and maintenance of portions of 5th and 6th Streets.

The Project Delivery Agreement contains the terms by which the City will deliver the 5th Street, 6th Street and Railyards Boulevard project for IA Sacramento.

The TOD Assignment and Assumption Agreement 5th Street Extension Project TOD Grant Agreement sets out terms by which IA Sacramento assumed the City's rights and responsibilities under the $17,000,000 Prop. 1C TOD grant (TOD Grant) awarded to the City by the California Department of Housing and Community Development (HCD).

DRV has agreed to assume IA Sacramento's obligations under these agreements in connection with DRV's purchase of the Railyards with the understanding that changes to the development plan and phasing may result in the need to amend these agreements. The assignment and assumption agreements will only be effective if the sale of Railyards by IA Sacramento to DRV occurs.

Policy Considerations: The proposed actions are consistent with the City's Smart Growth Principles, Infill Strategy, the 2035 General Plan, and the Railyards Specific Plan.

Economic Impacts: None

Environmental Considerations: The staff recommendation relates to the assignment and assumption of various Railyards agreements to facilitate the property transfer from IA Sacramento to DRV. The recommended action relates only to ownership and control of the site and no physical changes would occur. It can be seen with certainty that no significant effect would occur, and the action is exempt from California Environmental Quality Act (CEQA) review pursuant to CEQA Guidelines section 15061(b)(3).

The Railyards project has been evaluated in an EIR certified by the City Council in December 2007. Subsequent actions and approvals for the Railyards project will, when appropriate, be reviewed for CEQA compliance.

Sustainability: The Railyards Specific Plan is consistent with the goals and policies of the 2035 General Plan and the Sustainability Master Plan. A key project goal is to reduce dependence on private automobiles by providing transit-supportive land uses, and a wide array of transportation and housing choices located near jobs for a balanced and healthy City.

Commission/Committee Action: None

Rationale for Recommendation: The Railyards project is one of the largest urban infill projects in the United States. It is planned as a transit-oriented development and is expected to provide thousands of new residential units and jobs in the downtown core. The assignment of these various Railyards agreements will facilitate the sale of the Railyards by IA Sacramento to the new developer, DRV.

Financial Considerations: The assignment of the various agreements only changes the parties to the agreements. There is no change in the City's rights or obligations under the agreements as a result of the assignments.

Local Business Enterprise (LBE): No goods or services are being purchased under the recommended actions.

Background

In 2008, the City entered into a development agreement and funding agreement for the Railyards project with S. Thomas Enterprises of Sacramento, L.L.C. (Thomas), the former owner of the Railyards, to facilitate the development of the Railyards project. In 2009, the City assigned to Thomas its interest in the TOD Grant awarded to the City by HCD, although the City remains ultimately liable to HCD for performance of the grant obligations.

In October 2010, IA Sacramento acquired title to the Railyards after its affiliate, IA Rail Sacramento LLC, foreclosed on a deed of trust that secured a loan made to Thomas. In connection with the foreclosure, Thomas assigned its rights in the development agreement and the funding agreement to IA Sacramento. In 2011, the City consented to the assignment of these two agreements. The City also entered into an assignment and assumption agreement with IA Sacramento in 2011 for the TOD Grant. The City and IA Sacramento entered into the 5th & 6th Street Roadway Memorandum of Understanding in 2012 and the Project Delivery Agreement in 2013 to continue delivery of infrastructure projects and preserve grant funds already committed to the Railyards.

IA Sacramento and DRV have agreed on the terms of the sale of the Railyards. In connection with the sale, IA Sacramento and DRV have requested that the City consent to the assignment of the Railyards agreements from IA Sacramento to DRV. The assignment and assumption agreements will only be effective if the sale of Railyards by IA Sacramento to DRV occurs.

In July 2015, DRV submitted a planning application for a Railyards Specific Plan Amendment. If the City Council eventually approves changes to the development project or phasing, some or all of these agreements may need to be amended. However, City staff and DRV agree that it is advisable to assign the agreements in their current form at this time.

Recording requested by and return to:

CITY OF SACRAMENTO
Office of the City Clerk
915 I Street, 5th Floor
Sacramento, California 95814

EXEMPT FROM RECORDING FEES PURSUANT TO GOVT. CODE SECTION 27383.

ASSIGNMENT AND ASSUMPTION AGREEMENT
(City Agreement 2008-0150)

This assignment and assumption agreement (the "**Assignment**"), dated _____, 2015, for purposes of identification, is between **IA Sacramento Holdings, L.L.C.** (the "**Landowner**"), a Delaware limited liability company, **Downtown Railyard Venture, LLC** (the "**Assignee**"), a Delaware limited liability company, and the **City of Sacramento** (the "**City**"), a municipal corporation. The Landowner, Assignee and City may be referred to collectively as the "**Parties**" or in the singular as "**Party**," as the context requires.

Background

A. By way of the unrecorded Consent to Assignment and Assumption of Railyards Development and Funding Agreement, dated February 28, 2011, and identified as City Agreement 2011-0277, Landowner and the City are now parties to a development agreement dated January 10, 2008, and identified as City Agreement 2008-0150, recorded on February 22, 2008 in Book 20080222, Page 0651 of the Official Records (the "**Development Agreement**"), pursuant to which Landowner has a vested right to develop certain property as more particularly described in the Development Agreement (the "**Property**") for the project referred to as the Sacramento Railyards Project (the "**Project**"), subject to Landowner's compliance with certain conditions and obligations set forth in the Development Agreement.

B. Landowner intends to transfer the portion of the Property that it still owns to Assignee (the "**Assigned Parcels**") under the terms of a written agreement between Landowner and Assignee dated August 30, 2013, as amended (the "**Purchase Agreement**").

C. The City and Assignee acknowledge that they have discussed (i) changes to the Development Plan that may require future amendments to the Project Entitlements and the Development Agreement, and (ii) issues within the Development Agreement and the former Tri-Party MOU, including the allocation of hazardous materials responsibilities provided in the Railyards Agreement, dated February 15, 2015, between Landowner, Assignee, and the Union Pacific Railroad Company, and that further discussions regarding such matters and the finalizing of any documents addressing such changes and issues shall occur after the Effective Date.

D. Landowner has agreed to assign to Assignee, and Assignee has agreed to assume from Landowner, all of the rights and obligations under the Development Agreement as they relate to the Assigned Parcels. The City has consented to the foregoing assignment and assumption on the terms set forth below.

With these background facts, the Parties agree as follows:

1. **Defined Terms.** All capitalized terms used in this Assignment but not expressly defined in this Assignment shall have the meanings ascribed to them in the Development Agreement.

2. **Effective Date; Termination.** This Assignment shall be effective as of the "**Closing Date**," as defined in the Purchase Agreement (the "**Effective Date**"). In the event the Purchase Agreement terminates prior to the closing contemplated by the Purchase Agreement, this Assignment shall not be effective for any purpose.

3. **Assignment and Assumption; Release.** Landowner hereby assigns and transfers to Assignee all of Landowner's rights under the Development Agreement as they relate to the Assigned Parcels as of the Closing Date, and Assignee hereby accepts and assumes all of the duties and obligations of Landowner under the Development Agreement as they relate to the Assigned Parcels as of the Closing Date. Assignee hereby agrees to observe and fully perform all of the duties and obligations of Landowner under the Development Agreement, and to be subject to all of the terms and conditions of the Development Agreement, with respect to the Assigned Parcels as of the Closing Date. The City hereby releases Landowner from all duties, liabilities, and obligations under the Development Agreement as of the Closing Date.

4. **Assumption Terms and Conditions.** Landowner and Assignee understand and agree that this Assignment is subject in particular to Section 2.7 of the Development Agreement, which reads as follows:

"2.7 **<u>Assignment</u>**

2.7.1. **Right to Assign**. LANDOWNER shall have the right to freely sell, alienate, transfer, assign, lease, license and otherwise convey all or any portion of the Property and improvements thereon, and as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without the consent of CITY; provided that no partial transfer shall be permitted to cause a violation of the Subdivision Map Act (Government Code Section 66410 et seq.). LANDOWNER shall notify CITY of any sale, transfer or assignment of all of LANDOWNER's interests in all or any portion of the Property by providing written notice thereof to CITY in the manner provided in Section 9.2 not later than thirty (30) days before the effective date of such sale, transfer or assignment the assignment; provided, however, that LANDOWNER's failure to provide such notice shall not invalidate such sale, transfer or assignment and provided further that any successor in interest in ownership of all or a portion of the Property shall not benefit from the Vested Rights conferred herein without entering into an Assignment and Assumption Agreement with CITY.

2.7.2. **Release of LANDOWNER**. Such purchaser, assignee or transferee shall execute and deliver to CITY an Assignment and Assumption Agreement whereby such purchaser, assignee or transferee assumes all obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned, or transferred. Upon such execution and delivery, CITY shall release LANDOWNER from all duties, liabilities and obligations under the Development Agreement with respect to the interest(s) sold, assigned or transferred only if LANDOWNER is not in default under this Agreement as of the effective date of the Assignment.

2.7.3 **Assignees**. The Assignee shall be obligated and bound by the terms and conditions of this Agreement if it executes the Assignment and Assumption Agreement, and shall be the beneficiary hereof and a party hereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to Assignee by LANDOWNER. The Assignee shall observe and fully perform all of the duties and obligations of LANDOWNER under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred. CITY shall release Assignee from all duties, liabilities and obligations under the Development Agreement of LANDOWNER with respect to the interest(s) that are not sold, assigned or transferred to Assignee. Any such assumption agreement shall be deemed to be to the satisfaction of the City Attorney if executed substantially in form of the Assignment and Assumption Agreement attached hereto as Exhibit K and incorporated herein by this reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to the effective date of the assignment."

5. **CEQA Defense Costs.** Assignee shall pay the City's reasonable attorney's fees and costs incurred in the joint defense of the City and the City in its capacity as the redevelopment agency successor agency in the two pending lawsuits challenging City's approval of the Project Entitlements and the City and the former Redevelopment Agency of the City of Sacramento's approval of the Railyards Redevelopment Plan and Agency's approval of the Railyards Owner Participation Agreements under the California Environmental Quality Act.

6. **Successors and Assigns.** All of the covenants, terms and conditions set forth in this Assignment shall be binding upon and shall inure to the benefit of the Parties and to their respective heirs, successors and assigns.

7. **Legal Advice.** Assignee agrees that it has read, and has sought and received all required legal and other expert consultation with regard to the duties and obligations set out in the Development Agreement to which Assignee is hereby bound, and fully understands all of its terms and conditions. Assignee further agrees that: (i) Landowner has furnished Assignee with a copy of all documents and materials containing or relating to terms and conditions of development of the Assigned Parcels; (ii) Assignee has read and understands all of the terms and conditions of said documents and materials; and (iii) with such knowledge and understanding, which includes the nature and extent of the fees, taxes, assessments and other public financing mechanisms and obligations inherent in such documents and materials, nevertheless has voluntarily, freely and knowingly assumed and agreed to

perform all of obligations and requirements, and be bound by all of the provisions of such documents and materials, in addition to the express terms and conditions of the Development Agreement.

8. **Representations; Entire Agreement.** Assignee hereby affirms and acknowledges that City has not made any representations, commitments or promises to Assignee that are contrary to or different from the express terms and conditions of the Development Agreement, unless such terms and conditions have been set forth in writing and approved by Assignee and the City Council prior to the execution of this Assignment. This Assignment contains the entire agreement of the Parties, no other understanding whether verbal, written or otherwise exists between the Parties, and no prior verbal or written communications regarding this Assignment shall be binding on any Party.

9. **Further Assurances.** The Parties agree to execute all such additional instruments and documents and to take all such additional actions, as may be reasonable and necessary to carry out the provisions of this Assignment.

10. **Notices.** All notices required or provided for under this Assignment shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the other Parties and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other Party(ies) as indicated below:

Notice to City:

City Manager
City of Sacramento
915 I Street, 5th Floor
Sacramento, CA 95814
Attention: Fran Halbakken

Notice to Assignee:

Downtown Railyard Venture, LLC
3140 Peacekeeper Way
McClellan, CA 95652
Facsimile: (916) 568-2764
Telephone: (916) 965-7100
Attention: Larry Kelley and Jay Heckenlively
Email: lkelley@ldkcapital.com; jjh@ldkventures.com

Notice to Landowner:

c/o InvenTrust Properties Corp.
2809 Butterfield Road, Suite 200
Oak Brook, Illinois 60523
Attention: Michael Podboy

Facsimile: (630) 570-0650
Telephone: (630) 570-0650
Podboy@inlandgroup.com

c/o InvenTrust Properties Corp.
2809 Butterfield Road, Suite 200
Oak Brook, Illinois 60523
Attention: Scott W. Wilton
Facsimile: (630) 570-0622
Telephone: (630) 570-0622
swilton@inlandgroup.com

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

Notice to Lender:

c/o InvenTrust Properties Corp.
2809 Butterfield Road, Suite 200
Oak Brook, Illinois 60523
Attention: _____
Facsimile: _____
Telephone : _____
_____

Any Party may change the address to which notices are to be mailed by giving written notice of such changed address to each other Party(ies) in the manner provided herein.

11. **Governing Law.** The Assignment shall be governed by and construed in accordance with the laws of the State of California.

12. **Counterparts.** The parties may sign this Assignment in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the Assignment have the same binding effect as originals.

13. **Recitals**. The recitals set forth in this agreement are incorporated herein by this reference.

[Signature Page Follows]

DOWNTOWN RAILYARD VENTURE, LLC,
a Delaware limited liability company

By: LDK RAILYARD, LLC, a California limited liability company
Its: Manager

By LDK VENTURES, LLC, a California limited liability company
Its: Member

By: _____
Larry D. Kelley, SR.
Its: Manager

Date: _____

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: InvenTrust Properties Corp.,
a Maryland corporation, its sole member

By: _____
Scott W. Wilton, Secretary

Date: _____

CITY OF SACRAMENTO
A municipal corporation

By: _____

Date:_____

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

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

State of _____)

County of _____)

On _____ before me,

_____, Notary Public (here insert name and title of the officer),

personally appeared _____

_____,

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

DOWNTOWN RAILYARD VENTURE, LLC,
a Delaware limited liability company

By: LDK RAILYARD, LLC, a California limited liability company
Its: Manager

By LDK VENTURES, LLC, a California limited liability company
Its: Member

By: _____
Larry D. Kelley, SR.
Its: Manager

Date: _____

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: InvenTrust Properties Corp.,
a Maryland corporation, its sole member

By: _____
Scott W. Wilton, Secretary

Date: _____

CITY OF SACRAMENTO
A municipal corporation

By: _____

Date:_____

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

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

State of California)

County of Sacramento)

On 8/26/15 before me, Tiffany Garcia, Notary Public, Notary Public (here insert name and title of the officer), personally appeared Larry D. Kelley, Sr.,

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)

TIFFANY GARCIA
Commission # 2100999
Notary Public - California
Sacramento County
My Comm. Expires Feb 22, 2019

TIFFANY GARCIA
Commission # 2100999
Notary Public - California
Sacramento County
My Comm. Expires Feb 22, 2019

DOWNTOWN RAILYARD VENTURE, LLC,
a Delaware limited liability company

By: LDK RAILYARD, LLC, a California limited liability company
Its: Manager

By LDK VENTURES, LLC, a California limited liability company
Its: Member

By: _____
Larry D. Kelley, SR.
Its: Manager

Date: _____

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: InvenTrust Properties Corp.,
a Maryland corporation, its sole member

By: _____
Scott W. Wilton, Secretary

Date: _____

CITY OF SACRAMENTO
A municipal corporation

By: _____

Date:_____

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

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

State of Illinois)

County of Du Page)

On August 25, 2015 before me,

Teresa Zinga, Notary Public (here insert name and title of the officer),

personally appeared Scott W. Wilton, Secretary of InvenTrust Properties Corp., a MD corp., the sole member of IA Sacramento Development VP, L.L.C., a DE LLC, the sole member of IA Sacramento Holdings, L.L.C., a DE LLC,

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/the~~ir 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 Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

"OFFICIAL SEAL"
TERESA ZINGA
Notary Public, State of Illinois
My Commission Expires 03/03/2016

EXECUTION PAGE FOR LENDER

IA Sacramento Holdings, L.L.C. (the "**Landowner**"), a Delaware limited liability company (herein "LENDER") owns an equitable interest in the Property described in Exhibit A of this Agreement as the beneficiary of that certain Deed of Trust, Security Agreement and Fixture Filing dated and recorded concurrently herewith in the Official Records, Sacramento County, California.

LENDER hereby executes this Agreement and agrees that the Property shall be bound by the terms and conditions hereof, subject to the limitations set forth in Section 8.1. Nothing herein shall be deemed to modify the terms of the loan documents between Lender and LANDOWNER.

LENDER requests that it be provided with copies of all notices mailed to LANDOWNER pursuant to the terms of this Agreement and that said copies be addressed as follows:

c/o InvenTrust Properties Corp.
2809 Butterfield Road, Suite 200
Oak Brook, Illinois 60523
Attn:_____

LENDER:

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: InvenTrust Properties Corp.,
a Maryland corporation, its sole member

By: _____
Scott W. Wilton, Secretary

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

State of Illinois)

County of Du Page)

On August 25, 2015 before me,

Teresa Zinga, Notary Public (here insert name and title of the officer),

personally appeared Scott W. Wilton, Secretary of InvenTrust Properties Corp., a MD corp., the sole member of IA Sacramento Development VP, L.L.C., a DE LLC, the sole member of IA Sacramento Holdings, L.L.C., a DE LLC,

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 Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

"OFFICIAL SEAL"
TERESA ZINGA
Notary Public, State of Illinois
My Commission Expires 03/03/2016

Assignment and Assumption Agreement
(City Agreement No. 2008-0409)

This agreement, dated _____, 2015, for purposes of identification, is between the **City of Sacramento** (the "**City**"), a California municipal corporation, **IA Sacramento Holdings L.L.C.** ("**Assignor**"), a Delaware limited-liability company, and **Downtown Railyard Venture, LLC** ("**Assignee**"), a Delaware limited liability company. The City, Assignor and Assignee may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

Background

By way of the Consent to Assignment and Assumption of Railyards Development and Funding Agreement, dated February 28, 2011, and identified as City Agreement 2011-0277, Assignor and the City are now parties to a funding agreement dated May 13, 2008, and identified as City Agreement 2008-00409, as amended by the first amendment to funding agreement dated February 4, 2009, and identified as City Agreement 2008-0409-1. The funding agreement and first amendment to the funding agreement are collectively referred to as the "**Funding Agreement**". A copy of the Funding Agreement is attached to this agreement as Exhibit A.

Assignor owns the real property known as the Sacramento Railyards (the "**Railyards**"). Assignor intends to transfer the Railyards to Assignee under the terms of a written agreement between Assignor and Assignee dated August 30, 2013, as amended (the "**Purchase Agreement**.")

Assignor has agreed to assign to Assignee, and Assignee has agreed to assume from Assignor, all of Assignor's rights and obligations under the Funding Agreement. This agreement sets forth the conditions of the City's consent to Assignor's assignment of the Funding Agreement to Assignee.

With these background facts in mind, the Parties agree as follows:

1. **Effective Date; Termination.** This agreement will be effective as of the "**Closing Date**," as defined in the Purchase Agreement (the "**Effective Date**"). If the Purchase Agreement terminates before the closing contemplated by the Purchase Agreement, this agreement will not be effective for any purpose.

2. **Consent of the City**. The City hereby consents to Assignor's assignment of the Funding Agreement to Assignee as of the Closing Date. The City hereby releases Assignor from all duties, liabilities, and obligations under the Funding Agreement as of the Closing Date.

3. **Assignment by Assignor**. Assignor hereby assigns its rights and obligations under the Funding Agreement to Assignee as of the Closing Date.

4. **Assumption by Assignee**. Assignee hereby accepts the assignment and assumes all of Assignor's rights and obligations under the Funding Agreement as of the Closing Date as if Assignee had been an original Party to it.

5. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that the rule of interpretation in Civil Code section 1654 will not apply. Exhibit A is part of this agreement.

6. **Authority**. Each person signing this agreement hereby represents and warrants that he or she is fully authorized to sign this agreement on behalf of his or her Party and to bind that Party to the performance of its obligations under this agreement.

7. **Binding effect.** This agreement binds and inures to the benefit of the Parties' successors and assigns.

8. **Severability.** If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

9. **Counterparts.** The Parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.

10. **Entire agreement.** This agreement sets forth the Parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both Parties.

11. **Recitals**. The recitals set forth in this agreement are incorporated herein by this reference.

[Signature page follows]

DOWNTOWN RAILYARD VENTURE, LLC,
a Delaware limited liability company

By: LDK RAILYARD, LLC, a California limited liability company
Its: Manager

By LDK VENTURES, LLC, a California limited liability company
Its: Member

By: _____
Larry D. Kelley, SR.
Its: Manager

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: InvenTrust Properties Corp.,
a Maryland corporation, its sole member

By: _____
Scott W. Wilton, Secretary

CITY OF SACRAMENTO
A municipal corporation

By: _____

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

Exhibit A

FUNDING AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO
AND
S. THOMAS ENTERPRISES OF SACRAMENTO, LLC

FOR THE

SACRAMENTO RAILYARDS PROJECT

This FUNDING AGREEMENT (hereinafter "Agreement") is made and entered into as of this 13th day of MAY, 2008 ("Effective Date"), by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and S. THOMAS ENTERPRISES OF SACRAMENTO, LLC, a Delaware Limited Liability Company (hereinafter the "LANDOWNER"). The CITY and LANDOWNER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires. This Agreement uses capitalized terms which, if not defined below, are defined in the Development Agreement for the Railyards Project dated January 10, 2008 (Ordinance No. 2007-104, Agreement No. 2008-0150) (hereinafter "Development Agreement").

CITY AGREEMENT NO. 2008-0409

RECITALS

WHEREAS, the Parties entered into the Development Agreement to establish the permitted land uses and applicable development regulations for the Property; and

WHEREAS, the Development Agreement provided for the Parties to negotiate the terms for providing specified funding for development of certain portions of the Project, as set out in Exhibit P of the Development Agreement; and

WHEREAS, the purpose of this Funding Agreement is to further define the scope, timing and allocation of CITY funding for development of certain portions of the Project consistent with the terms of the Development Agreement.

AGREEMENT

NOW, THEREFORE, based on the Recitals, the mutual promises and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

CITY AGREEMENT NO. 2008-0409

1.0 TRANSPORTATION FUNDING.

1.1 **Richards Boulevard and I-5 Interchange Access Improvements.** CITY will undertake the design and construction of the access improvements from the I-5 freeway and Richards Blvd interchange along Bercut and Jibboom Streets, between Richards Blvd and the future alignment of Railyards Blvd. This project includes: (i) minor freeway ramp improvements to expand capacity at both the northbound and southbound freeway off-ramps by adding additional lanes on the off-ramps (the exact number and configuration of the additional lanes is to be determined through the project development process); (ii) minor widening and improvements to Bercut and Jibboom Streets; and (iii) constructing a portion of Railyards Blvd underneath the I-5 freeway between Bercut and Jibboom Streets to create an access loop connection to the freeway ramps (collectively the "Richards Blvd/I-5 Access Improvement Project"[1]). The Richards Blvd/I-5 Access Improvement Project is needed to serve the Initial Phase of development of the Sacramento Railyards Project.

1.1.1 **Design and Environmental Review.** The Richards Blvd/I-5 Access Improvement Project was included as part of the Railyards Specific Plan Environmental Impact Report. Design and construction of the Richards Blvd/I-5 Access Improvement Project must be coordinated with the California State Department of Transportation (Caltrans). A Project Study Report to initiate project design with Caltrans has already been prepared. Final design and construction of the Richards Blvd/I-5 Access Improvement Project cannot be initiated until after the project has received project-level environmental clearance under both CEQA and NEPA by Caltrans.

1.1.2 **Funding.** The Richards Blvd/I-5 Access Improvement Project is to be funded as part of the North CBD Access Study improvements, with $8,900,000 in federal funding and $1,700,000 in local New Measure A funds under the current funding plan, for a total project funding of $10,600,000. The total project costs may or may not exceed the funding currently programmed, and the allocation of costs between the federal and local funding sources may change in the future. If additional funding is needed, CITY will make a good faith effort to secure such funding to complete the Richards Blvd/I-5 Access Improvement Project.

1.1.3 **Schedule.** Construction of the Richards Blvd/I-5 Access Improvement Project is currently anticipated to be completed by 2010.

1.1.4 **Right of Way.** LANDOWNER shall cooperate with CITY by dedicating right of way and granting construction access easements along Bercut and Jibboom Streets and the Railyards Blvd. alignment as needed for CITY to construct the Richards Blvd/I-5 Access Improvement Project,

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[1] The formal project name as approved by Caltrans and City is "Access Improvements from the Railyards to Richards Boulevard and Interstate 5 Interchange Project"

consistent with the Tentative Map conditions for the Sacramento Railyards Project.

1.2 **I-5 Freeway Richards Boulevard Interchange.** CITY has proposed expanding the capacity of the I-5 freeway interchange at Richards Boulevard (I-5/Richards Blvd Interchange Project[2]). The current design concept for this improvement is to create a "split diamond" configuration, although other configurations will be considered during the design process. The I-5/Richards Blvd Interchange Project is anticipated to increase the existing capacity of this interchange to accommodate the anticipated additional traffic demand from build-out of the Railyards and River District[3] areas. The I-5/Richards Blvd Interchange Project is needed to serve development of the Sacramento Railyards Project after the Initial Phase.

1.2.1 **Design and Environmental Review.** The I-5/Richards Blvd Interchange Project was included as part of the Railyards Specific Plan Environmental Impact Report. Design and construction of the I-5/Richards Blvd Interchange Project must be coordinated with the California State Department of Transportation (Caltrans) and the Federal Highways Administration (FHWA). Final design and construction of the I-5/Richards Blvd Interchange Project cannot be initiated until after the project has received project-level environmental clearance under both CEQA and NEPA by Caltrans and FHWA.

1.2.2 **Funding.** The I-5/Richards Blvd Interchange Project is included in the SACOG Metropolitan Transportation Plan (MTP) and is currently programmed as costing $45 million. The cost of this project could increase significantly once it is designed, especially if existing developments must be acquired to provide the additional right of way.

CITY intends to seek federal and state funding for the I-5/Richards Blvd Interchange Project. Based on funding one-third of the total cost, the New Measure A Transportation Plan adopted by the Sacramento Transportation Authority included $17,750,000 as the local share for the I-5/Richards Blvd Interchange Project cost.

A portion of the cost of the I-5/Richards Blvd Interchange Project has been included in the development impact fees for the Railyards, Downtown and River District areas. After completion of the River District Specific Plan, which includes an update of the Richards Boulevard Area Plan Facility Element and Financing Plan, the fair share allocation of the costs of the I-5/Richards Blvd Interchange Project will be included in the Railyards, Downtown and the River District development impact fees.

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[2] The formal project name as approved by Caltrans and City is "Richards Boulevard and Interstate 5 Ultimate Interchange Improvement Project."

[3] The Richards Boulevard area has been renamed to the River District.

1.2.3 **Schedule.** Next year, CITY expects to initiate the I-5/Richards Blvd Interchange Project through preparation and submittal of a Project Study Report (PSR) to Caltrans after completion of the River District Specific Plan. The PSR process will define scope of work, schedule, cost and funding. The MTP scheduled construction of this improvement to commence by 2014; however, the actual construction initiation and completion dates are uncertain at this time.

2.0 PARKS AND OPEN SPACE FUNDING – MARKET PLAZA

As set out in the Railyards Specific Plan, Market Plaza is an open space area located just north of the realigned Union Pacific Railroad tracks. Market Plaza extends between the Car Shop #3 building and the Paint Shop Building within the Central Shops area, and between the Paint Shop building and the future extension of 5th Street and the 5th Street Steps, which is one of the pedestrian entry points into the Central Shops area. Market Plaza encompasses lots 21a and part of lot 21b, and is approximately 2.5 acres in size. Market Plaza provides a pedestrian connection between Camille Lane on the north, the 5th Street Steps and the 5th/6th Street Garage on the east, and the tunnel entrance to the passenger train platforms on the south.

2.1 **Environmental Review.** Market Plaza was included as part of the Railyards Specific Plan Environmental Impact Report. No further environmental review is anticipated to be required.

2.2 **Design.** The Railyards Design Guidelines provide that Market Plaza is intended to serve pedestrians and visitors to the Central Shops area. The pavement, light fixtures and other materials would be consistent with the historical use and character of the Central Shops. Site furnishings would include benches, tables, shade structures, chairs, bike racks and trash receptacles. The design of Market Plaza would be subject to the approval, pursuant to Chapter 17.124 of Title 17 of the City Code, the Sacramento Railyards Special Planning District, of the CITY's Preservation Commission and Parks and Recreation Commission.

2.3 **Ownership.** As set out in the Railyards Tentative Map conditions and the Development Agreement, LANDOWNER shall retain fee ownership of Market Plaza and grant CITY a public access and maintenance easement over the entire plaza, and shall receive Quimby credit for this public open space area.

2.4 **Funding.** CITY has committed $600,000 of its park improvement fees collected within the Central City to help fund the costs of construction of Market Plaza. In order to receive this funding, LANDOWNER must (i) prepare design plans and specifications for Market Plaza that are approved by CITY, (ii) enter into the CITY's standard Park Improvement Reimbursement/Credit Agreement, the form of which has been provided to LANDOWNER, which specifies the scope, cost, schedule and conditions for reimbursement, and (iii) undertake construction of Market Plaza.

2.5 **Schedule.** Pursuant to the Development Agreement, LANDOWNER shall undertake improvements to develop Market Plaza and the gateway structure on lot 22 that is intended to serve Intermodal passengers so that such improvements are completed and open to the public no later than at the time of opening of the 5th/6th Street Garage.

3.0 HOUSING TRUST FUND.

Chapter 17.188 of the City Code sets out the requirement that all non-residential development projects (and the non-residential portion of mixed use projects) must pay a housing impact fee (Housing Trust Fee). The Housing Trust Fee is paid at the time of issuance of building permits and placed in the CITY's low income housing fund. The Housing Trust Fees are used to subsidize the costs of construction or rehabilitation of housing affordable to very low and low income households who are reasonably expected to come from the labor force in the area. The Sacramento Housing and Redevelopment Agency (SHRA) administers use of the Housing Trust Fees fund on behalf of CITY. The affordable housing projects that may be funded with Housing Trust Fees are to be located within a specified commuting distance of the non-residential projects that paid the fee, with an emphasis on projects located within a quarter mile of existing or planned public transit routes. Nothing in this Funding Agreement is intended to alter or modify the provisions of Chapter 17.188 of the City Code.

3.1 **Railyards Housing Trust Fees.** It has been estimated that if all of the office and retail commercial development permitted within the Railyards Specific Plan area (Railyards Boundary) was constructed, the total amount of Housing Trust Fees paid by Railyards developers would be approximately $8,000,000. This figure is based on LANDOWNER's phasing plan and assumes that the Housing Trust Fees are increased by a 5% annual inflation factor.

3.2 **Railyards Affordable Housing Projects.** Subject to the provisions of Chapter 17.188 of the City Code and the terms of this Funding Agreement, CITY commits to LANDOWNER that all Housing Trust Fees paid by developers for non-residential projects located within the Railyards Boundary (Railyards Housing Fees) will be invested in housing projects affordable to very low and low income households that are also located within the Railyards Boundary (Railyards Housing Projects) to assist LANDOWNER in complying with its obligations under the Inclusionary Housing Ordinance.

3.3 **Schedule.** Because the timing of payment of Railyards Housing Fees and development of Railyards Housing Projects is uncertain, and because the amount of Railyards Housing Fees collected may not be sufficient to fund the amount of subsidy needed for a particular Railyards Housing Project; CITY may use Housing Trust Fees collected from projects outside of the Railyards Boundary for Railyards Housing Projects. In that event, the amount of such Housing Trust Fees shall constitute a debit against Railyards Housing Fees subsequently collected by CITY. All expenditures of Housing Trust Fees are

subject to compliance with Chapter 17.88 of the City Code.

3.4 **Funding Leveraging.** The Railyards project is located within a redevelopment project area and tax increment housing funds will also be available for Railyards Housing Projects, subject to the approval of the Redevelopment Agency of the City of Sacramento. In addition, federal and state affordable housing funds may be available for Railyards Housing Projects. CITY's obligation to invest Railyards Housing Fees in Railyards Housing Projects is contingent on each affordable housing project maximizing funding from other available funding sources, providing verification of the need for the Housing Trust Fees to subsidize the project funding gap, compliance with SHRA's underwriting guidelines, and the developer entering into SHRA's loan and regulatory agreements for receipt of such funds. CITY agrees to cooperate with LANDOWNER to secure affordable federal and state housing funds for Railyards Housing Projects, subject to CITY's (and SHRA's) right to prioritize all eligible projects for such funding.

4.0 5TH/6TH STREETS PUBLIC PARKING GARAGE.

CITY has commissioned a feasibility study to determine if there will be sufficient demand to generate the parking revenue required for issuance of revenue bonds to fund construction of a prototypical 1,948 space parking garage underneath the 5th and 6th Street overcrossings of the realigned Union Pacific Railroad (UPRR) tracks (5th/6th Streets Garage). The 5th/6th Street Garage is to be located between the UPRR tracks and Stevens Street and extend from the 5th Street Steps on the west to east of 6th Street (tentative map parcels 18, 17a and 47b). The feasibility study, prepared by Walker and Associates dated April, 2008 (Walker Study), has determined that if certain conditions are met, the parking demand would be sufficient to justify proceeding with construction of the 5th/6th Street Garage. The total cost for the 5th/6th Street Garage has been estimated at $80,000,000.

The Walker Study assumed full build out of LANDOWNER's proposed Phases 1A and 1B.1 by 2012 as those phases are defined in the Development Agreement, as well as (i) replacement of 320 spaces for County employees in the 5th/6th Street Garage, (ii) County jury parking payments, (iii) 150 spaces used by Intermodal passengers, (iv) no discounts for parking validations, (v) no surface parking lots within a 1,200 ft. walking distance radius from the garage, and (vi) competitive parking rates for surface lots and garage facilities constructed and operated by LANDOWNER within the Railyards. In addition, monthly parking demand was based in part on build-out of the 492,000 sq. ft. of office space in Phase 1A, but those parcels are designated as flexible mixed use. For these and other reasons, the Parties agree that the demand for the 1,948 spaces in the 5th/6th Street Garage may need further refinement and that the garage may need to be built in phases.

4.1 **Funding.** CITY has committed to allocating $2,000,000 annually to pay for a portion of the debt service for financing the 5th/6th Street Garage. This funding was anticipated to be allocated from the surplus operating revenue in the CITY's parking fund. The remaining debt service must be funded through parking

revenues generated from operation of the 5th/6th Street Garage. The future refinement of the Walker Study will establish the level of debt service that parking revenues can support.

4.2 **Cost.** The cost to construct the 5th/6th Street Garage has not yet been determined with any certainty because it has not yet been designed. The Parties anticipate that it may be costly to construct this garage due to its location underneath and around the street overcrossings, the potential integration of retail space and the 5th Street steps in lot 18, integration of retail space along the elevated portions of 5th and 6th Streets, and the potential need for additional foundation support to accommodate development within the airspace above the garage on lots 17a and 47b.

The Parties also acknowledge that the costs to construct any retail space or other improvements that will be owned by LANDOWNER within lot 18, the steps from 5th Street into Market Plaza that may be integrated into the garage structure, and the foundation support for LANDOWNER's vertical private development must be funded by LANDOWNER (or public financing mechanisms for the 5th Street steps) and are not a part of the CITY's 5th/6th Street Garage cost estimate or funding obligation.

CITY is considering constructing all or a portion of the 5TH/6TH Street Garage with precast modular components to reduce costs, which may limit the design and size of the retail space, the garage access entry locations, and possibly other garage features. The Parties acknowledge the CITY's design of the 5th/6th Street Garage may limit the amount of LANDOWNER development currently envisioned for integration into the garage structure.

4.3 **Size and Phasing.** Due to cost considerations and the uncertainty as to the amount of parking that may be required to serve LANDOWNER's development project and the adjacent developments, CITY may phase construction of the 5th/6th Street Garage. In particular, if the 5th Street Garage can be constructed in phases without significantly increasing the total project cost, the Parties anticipate that the phase of the garage over lot 47b would be constructed at a later time and possibly in coordination with construction of the office building that is anticipated to be developed by LANDOWNER within the airspace over that portion of the garage.

4.4 **Schedule.** CITY's tentative project schedule is to complete construction of the 5th/6th Street Garage so that it is operational by 2012 in order to serve LANDOWNER's development of Project Phases 1A and 1B1, which are to be completed and operational by 2012. CITY's decision to proceed with the financing and construction of the 5th/6th Street Garage will be contingent upon LANDOWNER entering into an agreement which includes binding commitments to construct a certain quantity and type of development sufficient to generate the parking demand necessary to make the 5th/6th Street Garage financially feasible in regard to meeting debt service payments.

Construction of the 5th/6th Street Garage cannot commence until after the supports for the 5th and 6th Street overcrossings are constructed as part of the Track Relocation Project. Therefore, and without limitation of the terms of the Track Relocation Agreement, garage construction shall be coordinated with the design and construction of the 5th and 6th Street overcrossings, for which LANDOWNER is responsible. LANDOWNER shall be entitled to provide comments on CITY's garage design in furtherance of such coordination. The 2012 schedule assumes that it is feasible to construct the 5th/6th Street Garage concurrently with LANDOWNER's construction of the extensions of 5th and 6th Streets between H Street and Camille Lane, and construction of Stevens Street, all of which must be completed to access the 5th/6th Street Garage and before it can be opened to the public. In addition, construction of the 5th/6th Street Garage may be built in phases due to cost considerations and parking demand, among other reasons. Therefore, the Parties acknowledge that only a portion of the 5th/6th Street Garage may be completed by 2012, and that such portion is assumed to be on lot 17a.

4.5 **Land Dedication, Airspace Rights and Master Retail Lease.** The terms and conditions for LANDOWNER's dedication of land to CITY for the 5th/6th Street Garage, LANDOWNER's contingent rights to develop within the airspace above and within the garage subject to funding the additional costs, and CITY's obligation to allow LANDOWNER to master lease all of the retail space within the garage funded by CITY is set forth in the Development Agreement, which terms and conditions remain unchanged and shall control.

4.6 **Garage Design and Airspace Development Feasibility.** The Parties agree to cooperate in the design of the 5th/6th Street Garage by undertaking the tasks as specified for each Party that are set out in Exhibit 1, (5th/6th Street Garage Conceptual Design Study). Upon completion of the Conceptual Design Study, the Parties agree to meet and negotiate in good faith to develop the terms of the 5th/6th Street Garage Public Improvement and Lease Agreement (Garage Agreement). It is anticipated that the Garage Agreement will set out the scope, cost, schedule, phasing and funding for construction of the 5th/6th Street Garage concurrent with LANDOWNER's construction of Project Phases 1A and 1B1, the transfer of property rights between the Parties to the garage airspace and improvements, the master garage retail lease, and other related matters.

5.0 CONSTRUCTION COORDINATION.

The Parties acknowledge that construction of the CITY projects described herein may occur concurrently with LANDOWNER's construction of the Railyards Project. In order to avoid conflicts between construction contractors and wasted work, to maintain site access, and to expedite construction schedules; the Parties anticipate the need for construction coordination agreements. In addition, to the extent that LANDOWNER is obligated to undertake construction of a public improvement in accordance with the Railyards Tentative Map conditions, and such improvement is to be built concurrently with the CITY projects described herein, CITY may undertake construction of such betterment on behalf of LANDOWNER in accordance with the terms of a public

improvement and reimbursement agreement. The Parties agree to cooperate and negotiate in good faith in development of such agreements. However, nothing contained herein shall obligate CITY to incur costs for CITY projects described herein in excess of the amounts specified in this Funding Agreement.

6.0 DEVELOPMENT AGREEMENT.

This Funding Agreement is entered into in furtherance of the obligations of the Parties under the terms of the Development Agreement for the Railyards Project dated January 10, 2008 (Ordinance No. 2007-104, Agreement No. 2008-0150). The Development Agreement is incorporated in this Agreement by this reference as if set forth in full and all of the provisions in the Development Agreement shall apply to this Agreement. If the Development Agreement is suspended, repealed, terminated or cancelled, this Agreement will automatically also be suspended, repealed, terminated or cancelled. Nothing in this Agreement is intended to alter, modify, supplant or waive any provision in the Development Agreement or the Project Entitlements.

The foregoing funding commitments are contingent on the compliance of LANDOWNER and its Assignees with the terms of the Development Agreement and all of the Project Entitlements. Subject to applicable notice and cure provisions, CITY may terminate or suspend this Funding Agreement in the event of a default by LANDOWNER or its Assignees with the obligations set forth in the Development Agreement or the Project Entitlements. In particular, the default and cure provisions set out in Section 7.5 of the Development Agreement, including, without limitation, the provisions of Section 7.5.4 (No Cross Default) shall apply to this Agreement.

[signature pages follow]

IN WITNESS WHEREOF, the CITY and LANDOWNER have executed this Agreement as of the date first set forth above.

CITY:

CITY OF SACRAMENTO,
a Municipal Corporation

By: _____

Marty Hanneman, Assistant City Manager
for Ray Kerridge, City Manager/May 28, 2008

ATTEST:

_____
City Clerk 5-29-08

APPROVED AS TO FORM:

_____
City Attorney

CITY AGREEMENT NO. 2008-0409

LANDOWNER:

S. THOMAS ENTERPRISES OF SACRAMENTO, LLC,
a Delaware Limited Liability Company

By: _____
Suheil Totah
Vice President

Date: May 6, 2008

CITY AGREEMENT NO. 2008-0409

Declaration of Authority

Railyards Funding Agreement
Railyards Owner Participation Agreements

I hereby declare under penalty of perjury and under the laws of the State of California that I am authorized to execute, on behalf of S. Thomas Enterprises of Sacramento, LLC, the following documents, all dated May 6, 2008:

Railyards Funding Agreement (City)

Railyards Master Owner Participation Agreement (Agency)
Railyards Initial Phase Infrastructure Owner Participation Agreement (Agency)
Railyards Initial Phase Regulatory Agreement (Agency)

By: _____
Suheil J. Totah
Vice President, Development

Dated: May 6, 2008

Exhibit 1
5th/6th Street Parking Garage Conceptual Design Study

CITY Responsibility

The 5th/6th Street Parking Garage is to be developed as a publicly-owned and operated facility. Based on the information from the Walker Study, CITY will undertake preparation of the Conceptual Design Study at CITY's cost, subject to information to be provided by LANDOWNER from its consultants. Each Party shall be solely responsible for their respective consultant contracts and work products.

CITY will coordinate with LANDOWNER regarding the scope of work for the Conceptual Design Study and will keep LANDOWNER informed of the Conceptual Design Study progress, through regular coordination meetings and providing interim and draft project reports for review. CITY and its consultant shall regularly consult with LANDOWNER's representatives and seek input on the conceptual design of the 5th/6th Street Garage to address LANDOWNER's interests in regards to coordination of the design of the garage with adjacent retail and office development, and integration of LANDOWNER's private development and improvements that may be included within the garage structure that will be privately financed and constructed.

CITY anticipates analyzing various issues related to the 5th/6th Street Garage as part of the Conceptual Design Study including, but not limited to, the subject matters listed below. CITY reserves the right to define the scope of work and to modify or amend any component of this study as it deems necessary in its independent judgment. The CITY may also suspend or delay completion of the Conceptual Design Study if LANDOWNER is unable to provide the information required for the study in a timely manner.

The Conceptual Design Study will address the following subject matters or issues:

1. Construction of the garage as two or three separate structures (lots 17a, 18 and 47b) so that each structure can be built at different times based on parking demand and funding, or construction as one large structure.

2. Integration of private development (above or within certain floors of each individual structure or portions of the one large structure) in regards to foundation supports, utilities (including HVAC systems and mechanical venting), vehicle access for deliveries, pedestrian and vehicle circulation and connectivity, and life safety.

3. Integration of the 5th and 6th Street overcrossings and the 5th Street Steps in the garage design and construction phasing of these public improvements prior to or concurrently with the garage construction.

4. Feasibility of subsequent construction above the garage structure(s) in lots 17a and 47b, including impacts on garage operations and revenues losses during such construction.

5. Additional costs to construct the parking structure(s) to be consistent or compatible with the design of the new buildings within the Central Shops Historic District, and to be consistent with the Railyards Design Guidelines (e.g., retail space along frontage of 5th and 6th Streets).

LANDOWNER Responsibility

LANDOWNER shall actively participate with CITY in the Conceptual Design Study by reviewing interim and draft work products in a timely manner and providing information and design plans requested by CITY staff and consultants in accordance with the mutually approved schedule to avoid any delays, cost overruns and rework. LANDOWNER shall provide qualified and informed representation at coordination meetings. LANDOWNER shall submit its consulting engineers work products and information as set out below, and any additional information which may reasonably be requested by CITY staff and consultants in a timely manner.

LANDOWNER shall cooperate with CITY in developing integrated construction plans and schedules, identifying critical paths for the development and project delivery of the garage and the various related public improvement projects (including the 5th and 6th Street overcrossings, Stevens Street and the 5th Street Steps), and LANDOWNER's private development that is to be located within or adjacent to the garage structure(s). LANDOWNER shall defer to CITY's chosen process for design development of the garage and shall cooperate with CITY and its consultants in developing design solutions for any garage components of common interest.

LANDOWNER shall, to the extent available. provide the following information to CITY staff and its consultants during the Conceptual Design Study:

1. Information including, without limitation, design plans and construction scheduling, for the public infrastructure improvements that are to be undertaken by LANDOWNER under the Tentative Map conditions which will pass through, be integrated within, or be developed adjacent to the garage structure(s).

2. Information including, without limitation, design plans and construction scheduling, for the private development that is proposed by LANDOWNER which will pass through, be integrated within, or be located above any portion of the garage structure(s). At a minimum, the proposed type of use, the structure support requirements, vertical access and access for deliveries and life safety, and utility requirements for each type of use must be provided.

3. Detailed information regarding the type and size of all land uses including the retail and office uses to be developed within phases 1A and 1B1, the location and size of all surface parking lots that will be built during these phases, the schedule for construction (commencement and completion) of each building and surface parking lot within these phases, and the proposed parking rate structure for all parking lots to be owned and operated by LANDOWNER.

FIRST AMENDMENT TO FUNDING AGREEMENT BY AND BETWEEN THE CITY OF SACRAMENTO AND S. THOMAS ENTERPRISES OF SACRAMENTO, LLC

FOR THE

SACRAMENTO RAILYARDS PROJECT

This FIRST AMENDMENT TO FUNDING AGREEMENT (hereinafter "Amendment") is made and entered into as of this 4th day of February, 2009 ("Effective Date"), by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and S. THOMAS ENTERPRISES OF SACRAMENTO, LLC, a Delaware Limited Liability Company (hereinafter the "LANDOWNER").

The CITY and LANDOWNER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires. This Agreement uses capitalized terms which, if not defined below, are defined in the Funding Agreement for the Sacramento Railyards Project dated May 13, 2008 (Agreement No. 2008-0409) (hereinafter "Funding Agreement") and in the Development Agreement for the Railyards Project dated January 10, 2008 (Ordinance No. 2007-104, Agreement No. 2008-0150) (hereinafter "Development Agreement").

RECITALS

WHEREAS, the Development Agreement provided for the Parties to negotiate the terms for providing specified funding for development of certain portions of the Project, as set out in Exhibit P of the Development Agreement; and

WHEREAS, the purpose of the Funding Agreement was to further define the scope, timing and allocation of CITY funding for development of certain portions of the Project consistent with the terms of the Development Agreement; and

WHEREAS, LANDOWNER has certain obligations under the Sacramento Railyards Tentative Master Parcel Map condition no. 52 to design and construct a pedestrian and bicycle connection between Old Sacramento, within the vicinity of 2nd Street and the I-5 freeway overcrossing, across lots 38 and 39 and including a tunnel underneath the relocated Union Pacific Railroad ("UPRR") tracks, and connecting to lot 30a within the Central Shops District which is referred to as Museum Plaza, (hereinafter the "Old Sacramento-Central Shops Multi-Use Trail"). This tunnel is also shown as part

of the bicycle and pedestrian circulation network in the Railyards Specific Plan, Figure 7-29; and

WHEREAS, the design and construction of the tunnel portion of the Old Sacramento-Central Shops Multi-Use Trail must occur concurrently with the design and construction of the Track Relocation Project, which will relocate the existing UPRR tracks northward pursuant to the Track Relocation and Financing Agreement between the Parties dated December 13, 2006 (Agreement No. 2006-1406); and

WHEREAS, under the terms of the Funding Agreement, which was entered into to further define and implement the CITY's financial obligations under the Development Agreement, LANDOWNER is entitled to $600,000 in Central City park development impact fees to help fund the costs of construction of Market Plaza located within the Central Shops District; and

WHEREAS, the cost to design the tunnel portion of the Old Sacramento-Central Shops Multi-Use Trail has been estimated at $300,000 and LANDOWNER desires to apply a portion of its Market Plaza park funding under the Funding Agreement to meet its obligation to fund the design of this tunnel so as not to delay the Track Relocation Project schedule; and

WHEREAS, the use of Central City park development impact fees for the design of the tunnel portion of the Old Sacramento-Central Shops Multi-Use Trail is an eligible expense and allocation of $300,000 for this purpose has been approved by the City Council, contingent on LANDOWNER's execution of this Amendment.

AGREEMENT

NOW, THEREFORE, based on the Recitals, the mutual promises and covenants of the Parties contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Amendment of Funding Agreement Regarding Market Plaza

Section 2.4 of the Funding Agreement is hereby amended to add subsection 2.4.1 as follows:

2.4 "**Funding.** CITY has committed $600,000 of its park improvement fees collected within the Central City to help fund the costs of construction of Market Plaza. In order to receive this funding, LANDOWNER must (i) prepare design plans and specifications for Market Plaza that are approved by CITY, (ii) enter into the CITY's standard Park Improvement Reimbursement/Credit Agreement, the form of which has been provided to LANDOWNER, which specifies the scope, cost, schedule and conditions

for reimbursement, and (iii) undertake construction of Market Plaza.

2.4.1 Old Sacramento-Central Shops Multi-Use Trail Design. LANDOWNER hereby authorizes CITY to expend a portion of the $600,000 of the park improvement fees set-aside for Market Plaza for the design of the tunnel portion of the Old Sacramento-Central Shops Multi-Use Trail, which opens into Museum Plaza in lot 30a of the Central Shops District. CITY will provide LANDOWNER with copies of the CITY's consultant invoices to verify the total amount of the tunnel design costs, both preliminary and final design costs. The remaining amount of the park improvement fees not expended for the tunnel design shall be made available by CITY to LANDOWNER for Market Plaza construction in accordance with the foregoing provisions."

Except as specifically amended by the addition of subsection 2.4.1, the terms and conditions of the Funding Agreement shall remain unchanged and in full force and effect.

Section 2. Affect of Amendment on Related Agreements

Nothing in this Amendment is intended to alter, modify, supplant or waive any provision in the Development Agreement or the Track Relocation and Financing Agreement.

Section 3. Affect of Amendment on LANDOWNER's Obligations

The amount of the Central City park development impact fees that are used by CITY for design of the tunnel portion of the Old Sacramento-Central Shops Multi-Use Trail as provided herein, shall not be charged to LANDOWNER as part of the cost for a change to the scope of work under the Track Relocation and Financing Agreement.

Nothing herein is intended to alter, modify, supplant or waive Tentative Map condition No. 52, the Specific Plan, or any other Project Entitlement regarding the obligation to design and construct the Old Sacramento-Central Shops Multi-Use Trail.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the CITY and LANDOWNER have executed this First Amendment to the Funding Agreement for the Sacramento Railyards Project as of the date first set forth above.

CITY:

CITY OF SACRAMENTO,
a Municipal Corporation

By: _____
Gustavo F. Vina, Assistant City Manager
For: Ray Kerridge, City Manager/ February 6, 2009

ATTEST:

_____
City Clerk 2-9-09

APPROVED AS TO FORM:

_____
City Attorney

LANDOWNER:

S. THOMAS ENTERPRISES OF SACRAMENTO, LLC,
a Delaware Limited Liability Company

By: _____
Suheil Totah
Vice President

Date: FEBRUARY 2, 2009

Assignment and Assumption Agreement
(City Agreement No. 2012-0083)

This agreement, dated _____, 2015, for purposes of identification, is between the **City of Sacramento** (the "**City**"), a California municipal corporation, **IA Sacramento Holdings L.L.C.** ("**Assignor**"), a Delaware limited-liability company, and **Downtown Railyard Venture, LLC** ("**Assignee**"), a Delaware limited liability company. The City, Assignor and Assignee may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

Background

Assignor and the City are Parties to that certain 5th Street and 6th Street Roadway Project Memorandum of Understanding, dated January 17, 2012, and identified as City Agreement 2012-0083 (the "**5th Street and 6th Street MOU**"). A copy of the 5th Street and 6th Street MOU is attached to this agreement as Exhibit A.

Assignor owns the real property known as the Sacramento Railyards (the "**Railyards**"). Assignor intends to transfer the Railyards to Assignee under the terms of a written agreement between Assignor and Assignee dated August 30, 2013, as amended (the "**Purchase Agreement**.")

Assignor has agreed to assign to Assignee, and Assignee has agreed to assume from Assignor, all of Assignor's rights and obligations under the 5th Street and 6th Street MOU. This agreement sets forth the conditions of the City's consent to Assignor's assignment of the 5th Street and 6th Street MOU to Assignee.

With these background facts in mind, the Parties agree as follows:

1. **Effective Date; Termination.** This agreement will be effective as of the "**Closing Date**," as defined in the Purchase Agreement (the "**Effective Date**"). If the Purchase Agreement terminates before the closing contemplated by the Purchase Agreement, this agreement will not be effective for any purpose.

2. **Consent of the City**. The City hereby consents to Assignor's assignment of the 5th Street and 6th Street MOU to Assignee as of the Closing Date. The City hereby releases Assignor from all duties, liabilities, and obligations under the 5th Street and 6th Street MOU as of the Closing Date.

3. **Assignment by Assignor**. Assignor hereby assigns its rights and obligations under the 5th Street and 6th Street MOU to Assignee as of the Closing Date.

4. **Assumption by Assignee**. Assignee hereby accepts the assignment and assumes all of Assignor's rights and obligations under the 5th Street and 6th Street MOU as of the Closing Date as if Assignee had been an original Party to it.

5. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that the rule of interpretation in Civil Code section 1654 will not apply. Exhibit A is part of this agreement.

6. **Authority**. Each person signing this agreement hereby represents and warrants that he or she is fully authorized to sign this agreement on behalf of his or her Party and to bind that Party to the performance of its obligations under this agreement.

7. **Binding effect.** This agreement binds and inures to the benefit of the Parties' successors and assigns.

8. **Severability.** If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

9. **Counterparts.** The Parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.

10. **Entire agreement.** This agreement sets forth the Parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both Parties.

11. Recitals. The recitals set forth in this agreement are incorporated herein by this reference.

[Signature page follows]

DOWNTOWN RAILYARD VENTURE, LLC,
a Delaware limited liability company

By: LDK RAILYARD, LLC, a California limited liability company
Its: Manager

By LDK VENTURES, LLC, a California limited liability company
Its: Member

By: _____
Larry D. Kelley, SR.
Its: Manager

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: InvenTrust Properties Corp.,
a Maryland corporation, its sole member

By: _____
Scott W. Wilton, Secretary

CITY OF SACRAMENTO
A municipal corporation

By: _____

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

Exhibit A

City of Sacramento

Tax ID# if applicable: NA

Requires Council Approval: ☐ No ☒ Yes **Meeting:** 01/17/12

☐ Real Estate ☐ Other Party Signature Needed ☐ Recording Requested

General Information

Type: Outside Agency POType: $ Not to Exceed: $0.00	Attachment: Original NO: Original Doc Number:
Other Party: IA Sacramento Holdings, L.L.C.	Certified Copies of Document:
Project Name: 5th Streetand 6th Street Roadway Project MOU	Deed: ☒ None ☐ Included ☐ Seperate
Project Number: T15116200 Bid Transaction #	E/SBE-DBE-M/WBE:

Department Information

Department: Transportation — Division: Office of the Director

Project Mgr: Hinda Chandler — Supervisor: Jerry Way

Contract Services: Angela Edwards — Date: 01/13/12 — Section Manager: Jerry Way

Phone Number: (916) 808-6725 — Division Manager: Jerry Way

Comment: — Org Number: 15001011

Review and Signature Routing

Department	Signature or Initial	Date
Contract Services:	Angela Edwards	1-13-12
Project Mgr:	Hinda Chandler	1-13/12
Supervisor:		
Section Manager:		
Division Manager:		

City Attorney	Signature or Initial	Date
City Attorney (MC: 09300):	MTS	1/13/12

☐ Send Interoffice Mail ☒ Notify for Pick Up

Authorization	Signature or Initial	Date
Department Director, Jerry Way Concurrence here and signature inside:		1-13-12
City Manager (MC: 09200):		

Yes ☐ No ☐

City Clerk (MC: 09200):

Contract Cover/Routing Form: Must Accompany ALL Contracts; (01-01-09)

For City Clerk Processing

Finalized:
Initial: DEB
Date: 1-25-12

Imaged:
Initial: VE
Date: 1/25/12

Received:
(City Clerk Stamp Here)

2012-0083

Title: 5th and 6th Street Roadway Project

Other Party: IA Sacramento Holdings

2012 JAN 24 P 3:30

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO

5TH STREET AND 6TH STREET ROADWAY PROJECT MEMORANDUM OF UNDERSTANDING

This 5th Street and 6th Street Roadway Project Memorandum of Understanding (this "MOU") is dated January 17, 2012, and is between the City of Sacramento ("**City**") and IA Sacramento Holdings, L.L.C., ("**IA Holdings**") for the 6th Street Roadway Project (the "**Project**"). IA Holdings and the City are sometimes collectively called the "**Parties**."

The Parties desire to enter into this MOU to memorialize certain understandings reached by the Parties with respect to (1) the actions needed in order for the City to move forward with an application to the California Transportation Commission ("**CTC**") to request (a) a construction start date extension and (b) a June 2012 funding allocation from the CTC for the Project and (2) certain understandings reached by the Parties with respect to the 5th Street Roadway Project (the "**5th Street Project**") to be completed by IA Holdings.

Therefore, the Parties agree to the following:

1) **Attachment 1** to this MOU sets forth the Parties' understanding of their roles and responsibilities regarding the Project.
2) IA Holdings shall grant the City exclusive maintenance easements (the "Maintenance Easements") in a mutually acceptable form over each parcel that will adjoin a mechanically stabilized earth wall ("MSE Wall") included in the Project. In addition, IA Holdings will similarly grant such Maintenance Easements with respect to parcels which adjoin the MSE Wall to be constructed in connection with the 5th Street Project. The purpose of the Maintenance Easements is to provide the City with access to inspect, maintain, and repair the MSE Walls; additional terms of the Maintenance Easements applicable to the Project are set forth on Attachment 2. The Parties shall endeavor to agree upon the specifics of the Maintenance Easements for the Project by March 31, 2012. The City acknowledges that IA Holdings' ability to satisfy the foregoing delivery dates is contingent upon the City's timely review of the proposed form of Maintenance Easement.
3) If IA Holdings grants the Maintenance Easements as described above, then once the Project is completed and the City has accepted the dedication of the 6th St. right-of-way or the 5th Street Project is completed and the City has accepted the right-of-way associated with the 5th Street Project, the City shall inspect, maintain, and repair the MSE Walls associated with the Project and/or the 5th Street Project, as the case may be, and neither IA Holdings nor any future property owner will be responsible for maintenance and repair of the MSE Walls and neither IA Holdings nor any future property owner shall be required to release or indemnify the City with respect to defects in the MSE Walls, including, without limitation, any structural failure of the MSE Walls. However, in performing such inspections, maintenance, and repairs, the City shall not be responsible to IA Holdings or any future property owners for (i) direct or consequential damages resulting from loss of use, loss of access from a particular access point, or similar losses, that may be alleged by such future property owners in connection with the City's performance of such inspection, maintenance, and/or repair, or (ii) any damages caused by water seepage or mold or similar occurrence that is caused solely by the proximity of the MSE Walls to any building that may be constructed on an adjoining parcel. IA Holdings or its successors and the City shall record covenants that are consistent with the foregoing on each parcel that adjoins or will adjoin a

MSE Wall prior to completion of the Project or the 5th Street Project and the date the City accepts the 6th Street right-of-way and the 5th Street right-of-way, as applicable.

4) Prior to the issuance of a building permit for construction of a building on a parcel adjoining a MSE Wall, the City may require the owner of the parcel to seek an encroachment permit as a condition of encroaching into the Maintenance Easement, but in no event shall either IA Holdings or any future property owner be required to release or indemnify the City with respect to defects in the MSE Walls, including without limitation any structural failure of the MSE Walls.

5) IA Holdings shall direct Kimley Horn & Associates ("KHA") to begin work and shall endeavor to cause KHA to continue to work uninterrupted until all the engineering work is fully completed for the City to certify to the CTC by April 20, 2012, the Project's right-of-way and that the plans, specifications and contract documents are ready to be listed for bids. The City acknowledges that IA Holdings' ability to satisfy the foregoing delivery date is contingent upon the City's review and comment on such engineering work in a timely manner.

6) The City acknowledges and accepts that the Grant Deed between Thomas Enterprises and UPRR dated December 28, 2006 provides that UPRR will quitclaim the track easement (Railroad Easement I) which crosses the proposed 6th Street right-of-way after UPRR accepts the new track in Railroad Easement II.

7) Before March 31, 2012, IA Holdings shall dedicate the 6th St. right-of-way and shall endeavor to complete the Maintenance Easements, gain the requisite City approvals, and execute the agreements listed in **Attachment 2**.

8) The Parties acknowledge that IA Holdings' ability to dedicate the 5th and 6th St. rights-of-way is contingent on its ability to provide the City with written verification from the Department of Toxic Substances Control that the 5th and 6th St. rights-of-way have been properly remediated, as required by section 7 of the form offer of dedication attached as Exhibit I to the Development Agreement. The Parties agree to discuss whether this requirement affects IA Holdings' ability to comply with the terms of this MOU.

9) The Parties acknowledge that this MOU does not limit the authority or discretion granted to the planning director under the Sacramento Railyards Special Planning District (City Code, Chapter 17.124).

10) This MOU does not modify or amend any of the other agreements between the Parties, nor does it waive or excuse performance of the Parties' obligations under any of the other agreements between the Parties.

11) This MOU is governed by the laws of the State of California.

12) This MOU may not be changed or amended orally, buy only by an agreement in writing signed by the Parties. No waiver will be effective unless given in writing, and waiver will not be inferred from conduct of either Party.

13) This MOU may be executed in identical counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles, pdfs and photocopies of signature pages of the agreement have the same binding effect as originals.

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: Secretary

City of Sacramento, a municipal corporation

By: _____
for John Shirey
City Manager

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
asst City Clerk 1-25-12

EAST\47484941.7

Attachment 1

1. IA Holdings' primary responsibilities with respect to the Project are as follows:

(a) IA Holdings has deposited $7,865,000 with the Escrowee (as hereafter defined) under that certain 6th Street Roadway Project Escrow Agreement dated December 20, 2010 (the "**6th Street Agreement**") among IA Sacramento Holdings, L.L.C. ("**IA Holdings**"), the City of Sacramento (the "**City**") and Chicago Title Insurance Company ("**Escrowee**") which shall be used to pay a portion of the cost of the Project, as more particularly provided in the 6th Street Agreement. All defined terms in the 6th Street Agreement are used herein with the same meaning that such terms have in the 6th Street Agreement.

(b) IA Holding has retained Kimley-Horn and Associates, Inc. ("**KHA**") to prepare the Plans and Specifications for the Project, which Plan and Specifications are subject to the approval of the City, as provided in the 6th Street Agreement;

(c) As part of its contract for the Project, KHA will provide the City with certain construction support services for the Project; and

(d) IA Holdings is not obligated to provide any construction oversight or construction management services with regard to the Project.

2. The City's primary responsibilities with respect to the Project are as follows:

(a) Review and approval of the Plan and Specifications prepared by KHA as provided in the 6th Street Agreement;

(b) Retention of a construction manager to oversee the design and construction of the Project on behalf of the City;

(c) Solicit bids for the construction of the Project;

(d) Select and retain one or more contractors for the construction of the Project; and

(e) In conjunction with the construction manager selected by the City, oversee the implementation and administration of the construction of the Project, including, without limitation, inspection of the construction and coordinating with KHA with respect to change orders, design changes and the like.

Attachment 2

Number	Description
1.	Post Subdivision Modification reflecting the revised 6th Street alignment.
2.	Dedication of the 6th Street right-of-way to the City by IA Holdings.
3.	All development in the Railyards is governed by the Sacramento Railyards Special Planning District (City Code, Chapter 17.124), and as such, it requires a planning director urban development permit, which is discretionary in nature. The planning director may condition an urban development permit as follows:

Future building improvements located on lots adjoining MSE Walls will be conditioned at time of building permit to comply with the general provisions shown below. Conditions will be implemented through issuance of an encroachment permit for encroachments on the Maintenance Easement, or through a modification or amendment of the Maintenance Easement, and will be more specifically developed at the time of the encroachment permit application. The maintenance easement must remain accessible from above until such time as a building improvement is proposed with a design adjacent to a MSE Wall at the elevation of the adjoining sidewalk (see section (c) below). The following three subsections provide specific provisions for future building improvements with different design conditions adjacent to the MSE Walls.

(a) Improvements set back from MSE Walls - For those improvements proposed to be set back from a MSE Wall, provide a minimum six foot clear space from any and all obstructions and elements associated with the structure or the MSE Wall, and accessible from at least two points at either end of the property fronting the MSE Wall. The easement area is to be paved with concrete, have positive drainage to the satisfaction of the Department of Transportation, and is to be kept in good condition and free of debris. If access to the MSE Wall is obstructed from above, property owners of lots adjoining the MSE Wall must provide access from within their buildings. Access requirements may require the granting of additional easements and will be further developed at time of building permit and issuance of an encroachment permit.

(b) Improvements built against MSE Walls - For those improvements proposed to be built against a MSE wall, or that may come into contact with a MSE Wall by settlement or deformation of the MSE wall, the structure is to be designed to withstand all forces that may be exerted by the MSE Wall. In addition, all surfaces of the MSE Wall that are not obscured by structural elements of the structure are to be left exposed and be fully accessible by the City or its contractors for inspection, maintenance, and/or repairs. Personnel and mechanical equipment access is to be provided for all enclosed MSE Wall areas not abutting the structural elements of the building, and is to be provided from within the building.

(c) Improvements exceeding the height of the adjoining MSE Walls – For those improvements proposed to be built according to subsection (a), above, any part of the structure that will be built at or above s the height of the adjoining sidewalk in the 6th Street right-of-way may be built to the property line. The specific design

of the improvements built to the property line, e.g., building entryway, will be conditioned at the time of the encroachment permit application.

4. Executed dry utility agreements for utility installations within the proposed 6th Street right-of-way.

5. Approval by the City Utility Department of water improvements within the Project consistent with an approved Master Water Plan.

6. Approval by the City Utility Department of sewer improvements within the Project consistent with an approved Master Sewer Plan.

7. Approval by the City Utility Department of interim drainage improvements consistent with an approved Master Drainage Plan.

8. Approval by the City Utility Department of the Project's storm water runoff treatment.

9. Executed Construction Agreement and recordation of easements for a temporary detention basin.

10. Executed Construction Agreement for method of construction of future utility stubs through the proposed MSE walls.

11. Executed Landscaping and Storm Water Pollution Prevention Maintenance Agreement.

12. Approved Soil Management Plan.

13. Executed Soil Management Agreement.

14. Executed Temporary Construction Easement Agreement for the Project's construction staging areas.

15. Executed 2nd Amendment to the 6th Street Project Escrow Agreement.

Assignment and Assumption Agreement
(City Agreement No. 2013-0238)

This agreement, dated _____, 2015, for purposes of identification, is between the **City of Sacramento** (the "**City**"), a California municipal corporation, **IA Sacramento Holdings L.L.C.** ("**Assignor**"), a Delaware limited-liability company, and **Downtown Railyard Venture, LLC** ("**Assignee**"), a Delaware limited liability company. The City, Assignor, and Assignee may be referred to collectively as the "**Parties**" or in the singular as "**Party**," as the context requires.

Background

Assignor and the City are parties to a project delivery agreement dated February 28, 2013, and designated as City Agreement 2013-0238, as amended by the first amendment to project delivery agreement dated August 7, 2013, and designated as City Agreement 2013-0777, and as amended by the first amendment to project delivery agreement dated June 3, 2014, and designated as City Agreement 2013-0238-1. The project delivery agreement and each of the amendments to the project delivery agreement are collectively referred to as the **"Project Delivery Agreement"**. A copy of the Project Delivery Agreement is attached to this agreement as Exhibit A.

Assignor owns the real property known as the Sacramento Railyards (the "**Railyards**"). Assignor intends to transfer the Railyards to Assignee under the terms of a written agreement between Assignor and Assignee dated August 30, 2013, as amended (the "**Purchase Agreement**").

The City and Assignee acknowledge that they have discussed changes to the legal interest to be dedicated under Article XIII of the Project Delivery Agreement, and that further discussions regarding the legal interest to be dedicated and the finalizing of any changes to the Project Delivery Agreement shall occur after the Effective Date.

Assignor has agreed to assign to Assignee, and Assignee has agreed to assume from Assignor, all of Assignor's rights and obligations under the Project Delivery Agreement in accordance with the terms and conditions of this Agreement. This agreement sets forth the conditions of the City's consent to Assignor's assignment of the Project Delivery Agreement to Assignee.

With these background facts in mind, the Parties agree as follows:

1. **Effective Date; Termination.** This agreement will be effective as of the "**Closing Date**," as defined in the Purchase Agreement (the "**Effective Date**"). If the Purchase Agreement terminates before the closing contemplated by the Purchase Agreement, this agreement will not be effective for any purpose.

2. **Consent of the City**. The City hereby consents to Assignor's assignment of the Project Delivery Agreement to Assignee as of the Closing Date. The City hereby releases Assignor from all duties, liabilities, and obligations under the Project Delivery Agreement as of the Closing Date.

3. **Assignment by Assignor**. Assignor hereby assigns its rights and obligations under the Project Delivery Agreement to Assignee as of the Closing Date. Notwithstanding the foregoing, Assignor shall retain any and all rights to pursue and exercise remedies available under any warranties or

guaranties obtained in connection with the Project Delivery Agreement for claims arising prior to the Closing Date.

4. **Assumption by Assignee**. Assignee hereby accepts the assignment and assumes all of Assignor's rights and obligations under the Project Delivery Agreement as of the Closing Date as if Assignee had been an original Party to it.

5. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that the rule of interpretation in Civil Code section 1654 will not apply. Exhibit A is part of this agreement.

6. **Authority**. Each person signing this agreement hereby represents and warrants that he or she is fully authorized to sign this agreement on behalf of his or her Party and to bind that Party to the performance of its obligations under this agreement.

7. **Binding effect.** This agreement binds and inures to the benefit of the Parties' successors and assigns.

8. **Severability.** If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

9. **Counterparts.** The Parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.

10. **Entire agreement.** This agreement sets forth the Parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both Parties.

11. **Recitals**. The recitals set forth in this agreement are incorporated herein by reference.

[Signature page follows]

DOWNTOWN RAILYARD VENTURE, LLC,
a Delaware limited liability company

By: LDK RAILYARD, LLC, a California limited liability company
Its: Manager

By LDK VENTURES, LLC, a California limited liability company
Its: Member

By: _____
Larry D. Kelley, SR.
Its: Manager

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: InvenTrust Properties Corp.,
a Maryland corporation, its sole member

By: _____
Scott W. Wilton, Secretary

CITY OF SACRAMENTO
A municipal corporation

By: _____

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

Exhibit A

City of Sacramento

Tax ID# if applicable : NA

Requires Council Approval: ☐ No ☒ Yes Meeting: 02/26/13

☐ Real Estate ☐ Other Party Signature Needed ☐ Recording Requested

General Information

Type: Outside Agency POType: $ Not to Exceed: $225,000.00	Attachment: Original NO: Original Doc Number:
Other Party: IA Sacramento Holdings, L.L.C.	Certified Copies of Document:
Project Name: 5th Street Project Delivery Agreement IA Holding	Deed: ☒ None ☐ Included ☐ Seperate
Project Number: T15135800 Bid Transaction #	E/SBE-DBE-M/WBE:

Department Information

Department: Division:

Project Mgr: Nicholas Theocharides Supervisor: Marc Lee

Contract Services: Jose Ledesma Date: 02/26/13 Section Manager: Jon Blank

Phone Number: (916) 808-8195 Division Manager: Nicholas Theocharides

Comment: Org Number:

Review and Signature Routing

Department	Signature or Initial	Date
Contract Services:	Jose Ledesma	2-26-13
Project Mgr:	[signature]	2-26-13
Supervisor:		
Section Manager:		
Division Manager:	[signature]	2/26/13

City Attorney	Signature or Initial	Date
City Attorney (MC: 09300):	MTS	2-26-13

☒ Send Interoffice Mail ☐ Notify for Pick Up

Authorization	Signature or Initial	Date
Department Director, Concurrence here and signature inside:	[signature]	2-28-13
City Manager (MC: 09200):		
Yes ☐ No ☐		
City Clerk (MC: 09200):		

For City Clerk Processing

Finalized:
Initial: DRB
Date: 3-5-13

Imaged:
Initial: AB
Date: 03/06/2013

Received:
(City Clerk Stamp Here)

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
2013 MAR -5 A 10:58

Title: 5th Street Project Delivery Agreement IA Holding
Other Party: IA Sacramento Holdigsm LLC

2013-0238

Contract Cover/Routing Form: Must Accompany ALL Contracts; (01-01-09)

PROJECT DELIVERY AGREEMENT

THIS PROJECT DELIVERY AGREEMENT (this "**Agreement**") is dated February 28, 2013, and is between IA SACRAMENTO HOLDINGS, L.L.C., a Delaware limited liability company ("**IA Holdings**") and the City of Sacramento, a California municipal corporation (the "**City**").

RECITALS

A. In connection with certain loans made by IA Sacramento Rail, L.L.C., a Delaware limited liability company ("**Lender**"), an affiliate of IA Holdings, to S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company ("**Thomas**"), as the then owner of that certain real property located in the City and County of Sacramento, California, commonly known as the Sacramento Railyards (the "**Railyards**"), Thomas executed and delivered to Lender certain promissory notes, secured by, among other things, two deeds of trust in favor of Lender encumbering the Railyards. On October 22, 2010, IA Holdings acquired fee title interest to the Railyards pursuant to a foreclosure of one of the foregoing deeds of trust.

B. The Railyards is currently entitled for the development of the Railyards as a mixed-use urban district, including, among other things, residential units, retail and office space, and cultural attractions (the "**Railyards Project**") in accordance with the Railyards Specific Plan adopted by the City on December 11, 2007, and that certain Development Agreement dated January 10, 2008 (the "**Development Agreement**"), which entitlements contemplate the construction of Railyards Boulevard, an east-west street that will connect Jibboom Street and 12th Street, and construction of an extension of 5th Street between H Street and the North B Street. The construction of Railyards Boulevard between 7th Street and Bercut Drive and the 5th Street extension between H Street and Railyards Boulevard are collectively referred to as the "**Roadway Project**".

C. The State Department of Housing and Community Development ("**HCD**") prior to October 22, 2010, awarded the City a grant funded by Proposition 1C in the amount of Seventeen Million Dollars ($17,000,000) (the "**TOD Grant**") to reimburse roadway design and construction costs of certain portions of the Roadway Project. Pursuant to that certain Assignment and Assumption Agreement, by and between IA Holdings and the City, dated as of March 29, 2011 (the "**Assignment Agreement**"), the City assigned to IA Holdings all of the City's rights under the Revised TOD Contract (as defined in the Assignment Agreement) and IA Holdings assumed the obligations of the City under the Revised TOD Contract in accordance with the terms and conditions set forth in the Assignment Agreement. The parties do not intend for this Agreement to modify the terms and conditions of the Assignment Agreement, and the parties do not intend for their performance of this Agreement or failure to perform this Agreement to affect their rights or duties under the Assignment and Assumption Agreement.

D. HCD previously awarded prior to October 22, 2010, a grant under the Infill Infrastructure Grant Program funded by Proposition 1C in the amount of Thirty Million Dollars ($30,000,000) (the "**IIG Grant**"), such funds to be used to pay for costs associated with the infrastructure construction of a portion of the Roadway Project. Following IA Holdings' acquisition of fee title interest to the Railyards following the foreclosure, the award of the IIG

2013-0238

Title: 5th Street Project Delivery Agreement IA Holding
Other Party: IA Sacramento Holdigsm LLC

55 of 355

Grant was transferred to IA Holdings pursuant to and in accordance with that certain Transfer of Interest Agreement, dated as of April 26, 2011, by and between HCD and IA Holdings. The TOD Grant and IIG Grant are collectively referred to as the "**HCD Grants**".

E. In its capacity as a secured lender in possession of the Railyards through foreclosure, IA Holdings has concluded that to protect the value of its security interest in the Railyards, it is necessary for IA Holdings to ensure the completion of the Roadway Project that benefits the Railyards and was planned, approved, and funded prior to the foreclosure. To accomplish the foregoing in its capacity as a secured lender and because IA Holdings does not have roadway infrastructure project oversight expertise, IA Holdings would like to utilize the City's experience in expediently and cost-effectively delivering public infrastructure projects by hiring the City to deliver the Roadway Project.

F. Although the City does not ordinarily deliver infrastructure projects for private parties, the City is willing to deliver the Roadway Project for IA Holdings because the City recognizes the importance of the successful completion of the Roadway Project; however, the parties recognize that the City is not willing to assume the financial risks in delivering the Roadway Project. Furthermore, the parties recognize that the City, as a public entity, is subject to policies, procedures, charter provisions, and local, state, and federal laws, when delivering the Roadway Project to which a private construction manager would not be subject. This Agreement reflects these unique circumstances.

NOW, THEREFORE, the parties hereto, intending legally to be bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Each of the following terms is defined as follows:

(a) "**Contractor**" means each party who enters into a contract directly with the City and who provides labor, services, or materials for any part of the Roadway Project under the terms of a Construction Contract. The term Contractor includes the General Contractor and the Construction Manager.

(b) "**Construction Budget**" means the projected costs and expenses, in the form attached hereto as Exhibit "A" (which shall be based upon the Construction Schedule), prepared by the City and approved in writing by IA Holdings, and any changes thereto approved in writing by IA Holdings. The Construction Budget is intended to reflect all projected costs and expenses to be incurred in connection with the completion of the Roadway Project through Final Completion.

(c) "**Construction Contract**" means any contract between the City and a Contractor providing for the construction of, or any services related to the construction of, any portion of the Roadway Project. The term Construction Contract includes the General Contract and the Construction Management Contract.

(d) "**Construction Contract Documents**" means the Contract Documents as defined in section 1 of the City's modified construction contract for projects over $25,000 (the "**City Construction Agreement**"), which City Construction Agreement is attached as Exhibit "B".

(e) "**Construction Manager**" means Vali Cooper & Associates, Inc., the construction management firm to be retained by the City

(f) "**Construction Management Contract**" means the construction management agreement between the City and the Construction Manager providing for the management of the construction of any portion of the Roadway Project. The City will use its standard professional services agreement for architects, landscape architects, professional engineers, and professional land surveyors (the "**Standard PSA**"), which is attached as Exhibit "C", as the form for the Construction Management Contract.

(g) "**Construction Schedule**" means the initial construction schedule attached hereto as Exhibit "D".

(h) "**Deliver**" means to oversee, manage, and coordinate all phases of the Roadway Project from pre-bid through Final Completion and to enter into all Construction Contracts necessary for the construction and oversight of construction of the Roadway Project.

(i) "**Direct Costs**" means the amount of money due to the Contractors under the Construction Contract and the Construction Management Contract.

(j) "**Final Completion**" refers to the completion of the Roadway Project, and shall mean and be effective at such time as (a) the satisfactory lien-free completion of the Roadway Project substantially in accordance with the Project Documents (including completion of the punch list items and execution of a final pay request), as evidenced by (i) final unconditional lien waivers by all Contractors (and, if applicable, the consent of each surety which shall have issued a performance and payment bond for the benefit of the City or IA Holdings with respect to the Roadway Project), and (ii) such other waivers and releases from the General Contractor and/or the Contractors as IA Holdings and its title insurer may reasonably require in order to assure lien free completion of the Roadway Project (including any equitable lien claims), and (b) the receipt by IA Holdings (or by the City on behalf of IA Holdings) of all necessary final certificates, (c) the receipt by IA Holdings (or by the City on behalf of IA Holdings) of six copies of a final "as-built" construction survey (which means a survey showing vertical and horizontal control points), a final record set of Construction Contract Documents showing actual changes made during construction, (d) the General Contractor has completed its final site cleanup and restoration, including, without limitation, removal of all excess materials, rock, sand, paving, and miscellaneous debris, supplies, equipment and trailers; and (e) all temporary utilities, if any, are disconnected.

(k) "**General Contract**" means the construction contract entered into between the City and the General Contractor for the construction of the Roadway Project. The City will use the City Construction Agreement as the form for the General Contract, without material modification thereto unless approved in writing by IA Holdings.

(l) **"General Contractor"** means the lowest responsible and responsive bidder for the construction of the Roadway Project to be identified by the City and approved in writing by IA Holdings prior to award of the General Contract by the City's city council.

(m) **"Project Documents"** means:

(i) The Construction Budget;

(ii) All Construction Contracts and Construction Contract Documents;

(iii) The Construction Schedule;

(iv) The Construction Management Agreement;

(v) The Roadway Plans and Specifications;

(vi) This Agreement; and

(vii) All applications, permits, easements, approvals, surety bonds, and all other contracts and agreements relating to the Roadway Project executed or otherwise approved in writing by IA Holdings or which the City is otherwise authorized to execute or enter into pursuant to this Agreement.

(n) **"Roadway Plans and Specifications"** means the final plans and specifications for the construction of the completion of the Roadway Project as prepared on behalf of IA Holdings by Kimley-Horn and Associates, Inc.

(o) **"Standard Agreements"** means the City Construction Agreement and the Standard PSA.

(p) **"Standard Policies and Procedures"** means the policies, procedures, and requirements in the Construction Contract Documents, the City's charter and city code, and state and federal laws that the City follows in delivering public projects.

(q) **"Termination Costs"** means expenses reasonably incurred by the City in connection with stopping planned work because this Agreement and/or any Construction Contracts are terminated for a reason other than as a result of an Event of Default (as defined in Section 8.4) by City, whether by the City or IA Holdings, prior to Final Completion of the Roadway Project.

(r) **"Public Utilities"** means every public utility defined in Public Utilities Code section 216, subsection (a); it also means the Sacramento Municipal Utility District.

ARTICLE II

PROJECT DELIVERY SCOPE OF SERVICES

2.1 The City shall provide IA Holdings with the following services (the "Project Delivery Services"):

(a) Deliver the Roadway Project for IA Holdings in substantial compliance with the Standard Policies and Procedures, except as expressly provided in this Agreement.

(b) Submit to IA Holdings for IA Holdings' review the City's bid analysis for each bid received in connection with the Roadway Project.

(c) Select each Contractor and negotiate each Construction Contract on the City Construction Agreement form; provided, however, that final approval of the selection of each Contractor, approval of any material deviations to the City Construction Agreement form, and the approval of the amount of each Construction Contract is reserved to IA Holdings.

(d) Recommend that the City Council award a General Contract to the lowest responsive and responsible bidder only if IA Holdings first approves the Contractor and the amount of the Construction Contract in writing.

(e) Recommend that the City Council authorize the city manager to execute a Construction Management Contract with the Construction Manager, who was pre-selected through a request for qualifications solicitation process, if IA Holdings first approves the Construction Manager and the amount of the Construction Manager Contract in writing.

(f) Reject all bids and not award a Construction Contract to a General Contractor if directed in writing by IA Holdings to do so.

(g) Include in each Construction Contract requirements that: (i) each progress payment request be accompanied by a conditional lien waiver executed by the Contractor; (ii) each Contractor execute and submit an unconditional lien waiver not more than 5 business days after receiving each progress payment; and, (iii) each Contractor execute and submit an unconditional lien waiver not more than 5 business days after receiving final payment. To the extent allowed by law, the City will require each Contractor to impose the same conditions on every subcontractor or materialmen.

(h) Review and analyze the Construction Schedule prepared by the General Contractor; the City will accept the Construction Schedule only when approved by IA Holdings.

(i) Prior to the award of any Construction Contract, the City shall cause the preparation, for approval by IA Holdings, of an update to the Construction Schedule identifying a change in the number of working days, if necessary.

(j) Cause the General Contractor to obtain, and to provide to IA Holdings copies of, all permits identified in the Construction Contract Documents. IA Holdings is responsible for obtaining all other permits and shall provide copies to the City. Prior to the

award of the General Contract by the City, IA Holdings shall obtain written verification from the California Department of Toxic Substances Control ("DTSC"), to the satisfaction of the City, that the right–of-way of the Roadway Project has been remediated pursuant to a DTSC-approved remedial action plan and that the use of the right-of way of the Roadway Project for its intended use is consistent with the remediation level of the Roadway Project site and any applicable deed restrictions.

(k) Update the Construction Budget so that it remains an accurate reflection of the future costs and expenses through Final Completion.

(l) Cause the progress of the work on the Roadway Project to be inspected and shall promptly notify IA Holdings and the applicable Contractor of any defective work or any other default under a Construction Contract observed.

(m) Identify and analyze alternative courses of action for unforeseen conditions, such as shortages, work stoppages, and/or accidents or casualties, as they occur, and make recommendations to IA Holdings about how to respond.

(n) Review each Contractor's monthly payment requisitions and, if appropriate or necessary, negotiate revisions thereto with such Contractor.

(o) Review the completeness of all monthly reports prepared by each Contractor, the final punch list prepared by the Construction Manager and approved in writing by IA Holdings for finalizing the work; monitor each Contractor to facilitate the satisfactory completion of all of the work to be done under such Contractor's Construction Contract; cause the General Contractor to coordinate any modification of such systems as required; and procure record drawings with notation of all changes and added details.

(p) Obtain certificates of insurance from (and ensure that insurance is maintained for) each Contractor and forward such certificates to IA Holdings.

(q) Perform its obligations under this Agreement in timely manner.

(r) Review any final claims and proposed final change orders and closeout of each Construction Contract; review all payments, including the final payment on each Construction Contract; obtain written confirmation or certificates from each Contractor with respect to work performed to date that such work has been properly done; collect conditional and final lien waivers (confirm correct amount) from all subcontractors, and materialmen if required by HCD, working on the Roadway Project and, comply with all stop payments notices (as defined in Civil Code section 8044) served on the City. The City will not be in default of its obligations under this subsection if it makes reasonable efforts to collect conditional and final lien waivers from subcontractors and materialmen, but is unable to collect them provided that the City does not make any payment under the applicable Construction Contracts without first receiving such conditional and/or final lien waivers.

(s) Make timely payments due under each Construction Contract in the manner specified in the applicable Construction Contract, provided that payments shall be made

by the City only following receipt of IA Holdings approval for payment of such amounts in accordance with Article IV below.

(t) Maintain or caused to be maintained records of costs incurred, and any potential claims against any entity, in connection with construction of the Roadway Project, including costs advanced prior to the date of this Agreement, and make them available to IA Holdings to inspect and copy at IA Holdings' own expense during regular business hours, at the place where they are then regularly maintained, on reasonable advance notice to the City.

(u) Not amend or modify the Construction Contract Documents without the prior written consent of the IA Holdings.

(v) Keep IA Holdings informed of all proposed changes to the Construction Contract Documents with respect to (i) the validity, necessity and cost thereof, and (ii) any implications to the overall job progress and costs, applicable Construction Contracts or engineering contracts and identify possible alternatives. The City shall not authorize work which will modify the Direct Costs or Construction Schedule based on, or with respect to, any such proposed change until the City receives an executed Change Order from IA Holdings (which will be sufficient if given by electronic mail), except that the City may issue a field order (i) if the proposed changes to the Construction Contract Documents are necessary to avoid an unjustifiable project delay or increase in project cost and such changes do not increase the Direct Costs by more than $5000.00 or (ii) if IA Holdings shall fail to respond to a request (which will be sufficient if given by electronic mail) for approval of a proposed Change Order or field order, or alternative thereto, within five (5) business days after such submission in writing by the City to IA Holdings and such Change Order or field order does not modify the Direct Costs or Construction Schedule, then IA Holdings shall be deemed to have approved the City's recommended action. The City shall provide concurrent written notice to IA Holdings at the time of issuing any Change Order or field order provided by subsections (i) or (ii) of this paragraph.

(w) Employ at its own expense such qualified and capable personnel as may be necessary and appropriate to perform its obligations and carry out its responsibilities under this Agreement.

(x) Provide IA Holdings with information relevant to the Roadway Project, including periodic reports as required herein, and provide day-to-day coordination and periodic evaluation of the activities of all surveyors, architects, Contractors, engineers, consultants, public utilities, and government agencies in connection with the Roadway Project, and shall promptly advise IA Holdings with respect to any significant issues that may arise.

(y) Make recommendations to IA Holdings in connection with decisions regarding the Roadway Project reserved to IA Holdings.

(z) In the event of an emergency on the Roadway Project, the City shall act reasonably under the circumstances and at IA Holdings' expense to protect IA Holdings' interest in the Roadway Project after first making all reasonable efforts to contact IA Holdings orally for approval of such action and confirm in writing the action so taken promptly thereafter.

(aa) Notify IA Holdings in writing, promptly after it has knowledge of any potential claim against any entity, or any action, suit, or proceeding in connection with the Roadway Project. The City shall analyze such claim and make recommendation for a course of action to IA Holdings. The City shall review any disputed issues, provide analysis, and make recommendations to IA Holdings for the resolution of any claims and disputes. IA Holdings acknowledges that this Agreement does not create an attorney-client relationship between the City and IA Holdings; and, the parties agree that in performing its obligations under this subsection (aa), the City will not provide IA Holdings with legal advice or representation.

(bb) May assign, delegate, or subcontract all or a portion of its duties and obligations under this Agreement to Construction Manager without the written consent of IA Holdings; provided, however, that such assignment or delegation shall be set forth in the Construction Management Contract.

(cc) Use commercially reasonable efforts to provide IA Holdings with advance notice of, and IA Holdings shall have the right to participate in, all meetings concerning construction of the Roadway Project, including meetings with subcontractors regarding material disputes, meetings with consultants and other third parties regarding the Roadway Project, and all regularly scheduled project meetings with the General Contractor, provided, however, it is not intended that the City notify IA Holdings of day-to-day meetings involving only its employees and the General Contractor (and subcontractors). However, the City shall inform IA Holdings if such meetings result in an impact to the Construction Budget or Schedule. The City is not required to postpone or cancel a meeting because IA Holdings is not available at the scheduled meeting time.

2.2 The City shall prepare and distribute monthly executive summary reports that include 1) an overview of the current stage of the project, 2) an assessment of actual versus projected schedule and 3) budget status and trend reporting for anticipated costs in comparison to the Approved Budget.

2.3 Upon IA Holdings' reasonable advance notice, the City shall meet with IA Holdings and/or its designees (telephonically or in-person); the City shall determine in its sole and exclusive discretion the City staff who will attend the meetings. In advance of such meetings, the City will provide reports in such forms as may be reasonably required by IA Holdings, including reports regarding: (a) the costs incurred in connection with the construction of the Roadway Project, on a line by line basis as itemized in the Construction Budget and on a cumulative basis; (b) a comparison of costs incurred to the date of such report with the Construction Budget; and (c) any recommended revision of any or all of the Project Documents.

2.4 If a Public Utility requires that new utilities be installed in the right-of-way during the completion of the Roadway Project, or if a Public Utility requires that existing utilities in the right-of-way be inspected during the completion of the Roadway Project, then to the extent agreed to by the Public Utility and IA Holdings, and provided that the City agrees to the form and substance of the contract, the City shall enter into a contract with the Public Utility to install or inspect the utilities during completion of the Roadway Project. The parties acknowledge that City Council approval may be required before the City enters into a utility service contract with a Public Utility. Prior to entering into any utility service contract, the City shall also obtain IA

Holdings' prior approval of the form of such contract. Within twenty (20) days of receipt of an invoice due under any utility service contract, IA Holdings shall submit payment for such amount to the City and the City shall pay such amounts directly to the applicable Public Utility.

2.5 The City shall act as a conduit for communication and resolution of the day-to-day queries and issues that arise on the Roadway Project.

2.6 The City shall coordinate IA Holdings' involvement throughout the construction process to enable positive engagement, buy-in to results, necessary support and responsive decision making as required to support the demands of the Roadway Project.

2.7 All written data and materials, including all records, contracts, receipts for deposits, unpaid bills, and other papers or documents in the possession of the City or its affiliates which pertain to the Roadway Project are records subject to disclosure under the California Public Records Act, and they are subject to City and state document retention requirements.

ARTICLE III

PROJECT REPRESENTATIVES

3.1 IA Holdings shall, from time to time, designate in writing one or more "representatives" to receive reports and notices on behalf of IA Holdings under this Agreement. Initially, IA Holdings' representatives for this purpose shall be Dean Stermer and Lynx Chan and for purposes of processing Payment Requests under Article V or requests for payment of the Fee under Article VII, IA Holdings' representative shall be Dean Stermer, Lynx Chan and Anaam Hasan.

3.2 The duties of the City hereunder shall be supervised at all times during the term of this Agreement by Fran Halbakken and the City staff assigned responsibility for oversight and implementation of public works projects in the Standard Policies and Procedures.

ARTICLE IV

PAYMENT OF CONSTRUCTION CONTRACT

4.1 No later than the fourth (4th) Tuesday of each calendar month, the City shall meet with IA Holdings and/or its designees (telephonically or in-person) and Construction Manager to complete a "pencil draw" review and preliminary approval ("**Pencil Draw**") of the then next due payment request from each Contractor for costs associated with the Roadway Project.

4.2 The City shall submit to IA Holdings on the first (1st) business day of every calendar month a payment request for costs associated with the Roadway Project for IA Holdings review and approval, which payment request shall have been previously reviewed by the City, IA Holdings and Construction Manager during the Pencil Draw ("**Payment Request**"), which payment request shall include all supporting documentation (provided, however, that IA Holdings acknowledges that the final unconditional lien waiver from each Contractor shall be submitted to the City concurrently with the final payment of retainage and a copy shall promptly thereafter be forwarded to IA Holdings).

4.3 Provided IA Holdings has received a Payment Request and supporting documentation by the first (1st) business day of the calendar month, then no later than the fifth (5th) day of the calendar month, IA Holdings shall provide the City with written notice (the "**Payment Notice**") stating either that IA Holdings agrees with the amount of the payment requested in the Payment Request or if IA Holdings disputes any portion of the payment requested, or is not satisfied with the supporting documentation, the Payment Notice shall set forth the same in detail and the City shall return the Payment Notice to Contractor immediately but no later than seven (7) days following receipt of the Payment Request in accordance with applicable law. IA Holdings' approval of a Payment Request shall not be unreasonably withheld, conditioned or denied, and IA Holdings shall not disapprove of any costs of the Roadway Project as long as such costs are properly documented and in accordance with the Construction Budget and the Pencil Draw.

4.4 The City shall provide written acknowledgement of approval of the Payment Notice to IA Holdings no later than the twelfth (12th) day of the calendar month ("**Confirmation Notice**"); the Confirmation Notice may be provided by e-mail. Following IA Holdings' receipt of the Confirmation Notice, IA Holdings shall process the non-disputed portion of the Payment Request and deliver payment to the City by wire or check no later than the twenty-second (22nd) day of the calendar month.

4.5 The City shall make timely payments of the non-disputed Payment Request no later than the thirtieth (30th) day of the calendar month or as may earlier be required in the manner set forth in the applicable Construction Contract and in accordance with applicable law, provided that payments shall be made by the City only following receipt of IA Holdings' approval for payment of such amounts in accordance with this Article V.

4.6 Provided the City has fulfilled its obligations under this Article and there is a good-faith dispute between the City and IA Holdings as to the amount of a payment that is owed to a Contractor, then IA Holdings shall bear at its own expenses and without reimbursement from the City all claims, costs, damages, penalties, and damages that arise because the City makes payment to the Contractor in the amount of the non-disputed amount only.

ARTICLE V

RESPONSIBILITIES OF IA HOLDINGS

IA Holdings shall do all of the following:

5.1 Respond to all written requests submitted by the City, and make all necessary decisions called for in such requests as soon as practicable following receipt of such request taking into account the subject matter of such request.

5.2 Provide the City with access to any information or documents which will reasonably assist the City in meeting its obligations.

5.3 IA Holdings shall have the right of final approval as to all material documentation relating to the Roadway Project, including all Project Documents, all change orders, and any substantial change in any of the foregoing. Notwithstanding the foregoing, material

documentation shall not include equipment leases, temporary staging agreements, and other similar documents in the ordinary course of developing the Roadway Project; none of which by the terms thereof will continue in effect after Final Completion without the prior review and approval of IA Holdings.

ARTICLE VI

PAYMENT FOR SERVICES

6.1 In consideration of the City's services provided under this Agreement, IA Holdings shall pay the City on a time and materials basis calculated in accordance with the hourly rates as approved by the Public Works Engineering Division Manager (the "**Fee**"). The City estimates that the Fee shall not exceed Two Hundred Twenty Five Thousand Dollars ($225,000.00), but this is an estimate only. In the event that the total amount due to the City under this Agreement reaches $225,000.00, then unless IA Holdings agrees to pay the City for its actual time and materials in excess of $225,000.00, the City may terminate this Agreement and the Construction Contracts. The Fee does not include costs typically associated with roadway projects, such as plan check fees, surveying fees, and electrical/traffic signal turn-on costs; IA Holdings is responsible for payment of these fees.

6.2 On or before the fifth (5th) business day of each month, the City shall submit to Owner an accurate and complete invoice requesting, in a form acceptable to Owner, payment for services performed by the City incurred during the preceding month (the "**Application for Payment**"). Only one Application for Payment shall be submitted during any single month. Each Application for Payment shall be signed by the City and shall include the employees' hours of service rendered, the employees' rates, and the stated reporting category of the work as shown in the City's accounting system. The City shall deliver to IA Holdings a conditional lien release executed by the City, conditionally releasing all lien rights with respect to services for the time period covered by the Application for Payment, and unconditionally releasing all such rights for the period of time covered by the immediately preceding Application for Payment.

6.3 IA Holdings shall make payment of the total amount contained in each Application for Payment no later than the last business day of each month, except that IA Holdings shall have no less than twenty-five (25) days from its receipt of the Application for Payment in which to review and approve such Application for Payment.

6.4 Except to the extent permitted by Section 6.1 above, the City shall not stop, slow or suspend performance of the services required of the City hereunder on account of a good faith dispute between IA Holdings and the City as to the appropriate amount due and payable to the City for services rendered hereunder.

ARTICLE VII

TERM

The term of this Agreement shall commence on the date hereof and shall terminate at such time as (i) Final Completion has been achieved and the City has performed its obligations,

or (ii) if prior thereto, the City receives a written notice from IA Holdings that it is abandoning the Roadway Project, or (iii) the Agreement is terminated pursuant to section 6.1, section 8.1, section 8.2, section 8.3, or section 8.4 hereof. In the event that this Agreement is terminated prior to Final Completion for any reason other than as a result of an Event of Default (as defined in Section 8.4 below) by the City, then the City shall be entitled, as its sole and exclusive remedy if this Agreement to the amount of the Fee earned to the date of such termination plus all Termination Costs, which amount shall be paid within thirty (30) days following IA Holdings' receipt of the invoice and supporting documentation reasonably requested by IA Holdings, such as a labor cost reports from the City accounting system.

ARTICLE VIII

DEFAULT AND TERMINATION

8.1 IA Holdings, upon seventy-two (72) hours written notice to the City, may terminate this Agreement for convenience, in which case the City shall be entitled to the amount of the Fee earned to the date of such termination plus Termination Costs, which amount shall be paid within thirty (30) days following IA Holdings' receipt of the invoice and all required supporting documentation. Such payment shall be requested and made in accordance with the terms and conditions of this Agreement. If IA Holdings terminates the Agreement under this section 8.1, then the City shall cause the Contractors to immediately stop all planned work under the Construction Contracts and commence contract termination activities, and IA Holdings shall be responsible for the payment of all costs for the work performed under the Construction Contracts up to the date of the work stoppage and all Termination Costs.

8.2 Upon request from IA Holdings, the City shall cause the Contractors to suspend or stop all work under the Construction Contracts in the event all or any portion of either of the HCD Grants are terminated or reduced for any reason, in which case the City shall be entitled to the amount of the Fee earned to the date of IA Holdings' request to suspend or stop work. If IA Holdings elects to so order that work be stopped or suspended, then in such event IA Holdings shall also be responsible for (a) the payment of all costs for the work performed under the Construction Contracts up to the date of the work suspension or stoppage, as such costs have been approved by the City and IA Holdings and (b) all costs for the work performed under the Construction Contracts related to the suspension or stoppage of work or all Termination Costs in the event that the Construction Contracts are terminated.

8.3 If IA Holdings fails to pay the City in accordance with the terms and conditions of this Agreement any undisputed amount due the City and such failure continues for more than thirty (30) days after written notice from the City to IA Holdings identifying such default, then the City shall have, in addition to all other remedies available to it provided by law and this Agreement, the right in its sole discretion to either: (i) to terminate this Agreement and seek payment in accordance with the terms and conditions of this Agreement, or (ii) suspend this Agreement and the Construction Contracts until IA Holdings cures the default. In the event the City terminates this Agreement under this section or section 6.1, the City may also terminate the Construction Contracts and IA Holdings shall be responsible for the payment of all costs for the work performed under the Construction Contracts up to the date of termination, as well as any Termination Costs. If the City chooses to suspend this Agreement and the Construction Contracts

under this section 8.3, then IA Holdings is responsible for all costs that arise because the City suspends the Construction Contracts.

8.4 If the City fails to perform its obligations under this Agreement and (a) the City fails to cure the default within thirty (30) days after written notice from IA Holdings identifying such default or, if the default cannot be reasonably cured within thirty (30) days, (b) does not begin work on a cure within thirty (30) days after written notice from IA Holdings identifying such default and diligently pursue the cure to completion within sixty (60) days after work begins, then the foregoing shall be an Event of Default and IA Holdings may, among other things, terminate this Agreement.

8.5 In addition to all other requirements of the City hereunder, upon the expiration of the term of this Agreement, whether by completion of the Roadway Project or any earlier termination, the City shall deliver to IA Holdings at IA Holdings' expense the original (or copies if originals are not available) of all materials relating to the Roadway Project prepared pursuant to this Agreement or any of the Project Documents and/or other materials prepared with respect to the Roadway Project which are in the possession of the City if allowed by law, except as provided in the Assignment and Assumption Agreement.

8.6 In the event this Agreement is terminated prior to Final Completion, the City shall, at the option of IA Holdings, assign its rights, duties and obligations under the Construction Contracts and any utility service contracts to a third party identified by IA Holdings. The City's obligation to assign its rights, duties and obligations under this section 8.6 is subject to the condition that the City receive from each Contractor and Public Utility a written release, in a form reasonably acceptable to the City Attorney's Office, releasing the City from its obligations under the Construction Contract or utility service contract.

8.7 In no event does this Agreement, the performance of this Agreement, or the failure to perform this Agreement, affect the parties' rights and duties under the Assignment and Assumption Agreement.

ARTICLE IX

SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall be binding upon, and inure to the benefit of, IA Holdings, the City and their respective successors, and assigns; provided, however, except as expressly provided herein, neither party may assign or transfer its interest in this Agreement without the written consent of the other party, which consent may not be unreasonably withheld, conditioned, or delayed.

ARTICLE X

INDEMNITY AND LIMITATION OF LIABILITY

10.1 Each of IA Holdings and the City (the "indemnifying party") shall indemnify, defend, and hold harmless the other party, its officers and employees (the "indemnified party"), from and against any and all actions, damages, costs, liabilities, claims, demands, losses,

judgments, penalties, costs and expenses of every type and description, including, but not limited to, reasonable attorneys' fees (including in-house attorneys' fees) and/or costs and any fees and expenses incurred in enforcing this provision, including but not limited to Liabilities arising from personal injury or death, damage to personal or real property or the environment, contractual or other economic damages, or regulatory or statutory penalties (collectively referred to as "Liabilities"), arising out of or in any way connected with the gross negligence or willful misconduct of the indemnifying party, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment.

10.2 The City shall not be liable for environmental conditions encountered in connection with the completion of the Roadway Project.

10.3 The City's total liability, in the aggregate, for claims arising out of or in any way connected with performance of or failure to perform this Agreement or the Construction Contract by the City, and regardless of the form of action, whether in contract or in tort, is limited to the total amount of the Fee. Notwithstanding the foregoing, this limitation on liability does not apply to claims based solely on the gross negligence or willful misconduct of the City. In no event will the City be liable for consequential, incidental, indirect, or special damages, even if the City receives notice of the possibility of such damages. This does not waive or limit the City's sovereign immunity or any other immunity from suit provided by law.

ARTICLE XI

INSURANCE

11.1 The City, at its sole expense, shall place and maintain in force until Final Completion or the earlier termination of this Agreement insurance with coverage, limits, and amounts as follows:

(a) Worker's Compensation insurance as required by law (including employers' liability insurance of not less than $1,000,000 per accident) covering employees of the City, employed in, on or about the Roadway Project, in an amount sufficient to provide statutory benefits as required by applicable laws.

(b) Commercial General Liability insurance, with limits of at least $2,000,000.00 per occurrence. The policy(ies) for such insurance shall: (i) name IA Holdings as an additional insured, (ii) be issued by insurers, and be in forms and for amounts, approved by IA Holdings, (iii) be effected under valid and enforceable policies issued by insurers of recognized responsibility, and (iv) provide that such policy(ies)shall be primary and non-contributory and shall not be canceled without at least thirty (30) days' prior written notice to IA Holdings.

(c) Automobile Liability insurance with limits of at least $2,000,000 per occurrence. The policy(ies) for such insurance shall name IA Holdings as an additional insured and will be primary and non-contributory.

(d) IA Holdings, its employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities

performed by or on behalf of the City, products and completed operations of the City, and premises owned, leased or used by the City. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier. If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

(e) The policies are to contain, or be endorsed to contain, the following provisions:

(i) City's insurance coverage shall be primary insurance as respects IA Holdings, its officials, employees and volunteers. Any insurance or self-insurance maintained by IA Holdings, its officials, employees or volunteers shall be in excess of the City's insurance and shall not contribute with it.

(ii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to IA Holdings, its officials, employees or volunteers.

(iii) Coverage shall state that the City's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(iv) IA Holdings will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms

(f) Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11.1 must be declared to and approved by the IA Holdings in writing prior to execution of this Agreement.

(g) City shall furnish IA Holdings with certificates and required endorsements evidencing the insurance required. Copies of policies shall be delivered to IA Holdings on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(h) It is understood and agreed by City that its liability to IA Holdings shall not in any way be limited to or affected by the amount of insurance coverage required or carried by City in connection with this Agreement.

(i) The City is a self-insured public agency and may satisfy any or all of the insurance requirements of this Article XI through use of the City's self-insurance program. If the City elects to satisfy the insurance requirements of this Article XI through use of its self-insurance program, then the City shall provide IA Holdings with a letter of self-insurance from the City stating that its self-insurance program adequately protects against liabilities and claims the types of which the insurance required by Article XI are intended to protect against.

11.2 The City shall require and verify that all Contractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this Section 11.2

during the entire term of the Construction Contracts and until completion and final acceptance of the Roadway Project as provided in the Construction Contract Documents.

(a) Minimum Scope and Limits of Insurance Coverage

(i) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than $2,000,000 per occurrence and $2,000,000 per project aggregate. The policy shall provide contractual liability and products liability and products and completed operations coverage for the term of the policy.

(ii) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than $2,000,000 per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.

(iii) Worker's Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of not less than $1,000,000. The Worker's Compensation policy shall include a waiver of subrogation in favor of the City and IA Holdings. In the event Contractor is self-insured, it shall furnish City with a certificate of consent to self-insure issued by the director of the California Department of Industrial Relations.

(b) In addition to the insurance coverage requirements set forth in Section 11.2(a), the City shall require and verify that the General Contractor maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this Section 11.2(b) during the entire term of the Construction Contracts and until completion and final acceptance of the Roadway Project as provided in the Construction Contract Documents:

(i) Pollution Legal Liability Insurance (including asbestos and lead paint) providing coverage on an occurrence basis form with limits of not less than $10,000,000 per occurrence.

(ii) Umbrella/Excess Liability Insurance providing coverage at least as broad as the underlying policies and with limits of not less than $25,000,000 per occurrence on an occurrence basis in excess of the underlying insurance coverage limits.

(iii) Builder's Risk Insurance.

(1) Contractor shall purchase and maintain Builder's Risk Insurance with a company or companies lawfully authorized to do business in the State of California. Such policy shall be written in the amount of the total bid amount set forth in Contractor's Proposal Form, plus the value of subsequent Contract modifications, comprising the total value Work at the project site on a replacement cost basis. Such insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed upon in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in the Contract Documents or until no persons or entities other than

the Contractor has an insurable interest in the Work required to be covered, whichever is later. This insurance shall include the City, IA Holdings, and all subcontractors working on the Work as primary additional insureds. Contractor shall be responsible to pay any deductible under the policy.

(2) Such policy or policies shall provide waivers of all subrogation rights against the City of Sacramento, IA Holdings, and all subcontractors working on the Work, even if their negligence causes a covered loss, and regardless of the extent of their insurable interest in the covered property.

(3) Such Builder's Risk Insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage), flood, theft, vandalism, malicious mischief, collapse, windstorm, testing and startup and debris removal.

(4) Such policy or policies shall cover portions of the materials for the Work that are stored off of the project site and also portions in transit.

(c) In addition to the insurance coverage requirements set forth in Section 11.2(a), the City shall require and verify that the Construction Manager maintains Errors and Omissions coverage with a limit of not less than $2,000,000 per claim. Such coverage shall be provided on a coverage form acceptable to IA Holdings.

(d) Additional Insured Coverage.

(i) Commercial General Liability Insurance: The City, IA Holdings, and their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of all Contractors, products and completed operations of Contractors, and premises owned, leased or used by Contractors. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier. If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

(ii) The City, IA Holdings, and their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured under the automobile liability insurance of all Contractors and pollution legal liability insurance and umbrella/excess liability insurance policies for General Contractor.

(e) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(i) Contractor's insurance coverage shall be primary insurance with respect to the City, IA Holdings, and their officials, employees and volunteers. Any insurance or self-insurance maintained by the City, IA Holdings, and their officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

(ii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, IA Holdings and their officials, employees or volunteers.

(iii) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(iv) City will be provided with written notice of cancellation or material change in the policy language or terms and shall convey such information to IA Holdings.

(f) Acceptability of Insurance. Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11.2 must be declared to and approved by the City Risk Management Division and IA Holdings in writing prior to execution of this Agreement.

(g) Verification of Coverage. Contractor shall furnish City with certificates and required endorsement evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative designated by City. Copies of policies shall be delivered to City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

11.3 IA Holdings, at its sole expense, shall place and maintain in force until Final Completion or the earlier termination of this Agreement commercial general liability insurance with coverage, limits, and amounts as follows:

(a) Providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than two million dollars ($2,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(b) The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of IA Holdings, products and completed operations of IA Holdings, and premises owned, leased or used by IA Holdings. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier. If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

(c) The policies are to contain, or be endorsed to contain, the following provisions:

(i) IA Holdings' insurance coverage shall be primary insurance as

respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of IA Holdings' insurance and shall not contribute with it.

(ii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.

(iii) Coverage shall state that IA Holdings' insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(iv) The City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

(d) Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11.4 must be declared to and approved by the City's Risk Management Division in writing prior to execution of this Agreement.

(e) IA Holdings shall furnish the City with certificates and required endorsements evidencing the insurance required. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(f) It is understood and agreed by IA Holdings that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by IA Holdings in connection with this Agreement.

ARTICLE XII
SECURITY

12.1 In order to secure its obligations under this Agreement, IA Holdings shall not later than thirty (30) days after this Agreement is executed by the parties deliver to the City an irrevocable letter of credit. The letter of credit shall be in the original amount of Five Million Dollars ($5,000,000). The letter of credit must comply with, and will be subject to, the requirements, criteria, terms, and conditions set forth in sections 12.2 – 12.6 below.

12.2 The letter of credit that IA Holdings provides under this 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 the City's prior approval, which will be in the reasonable

discretion of the 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 (i) three years after the date of issuance, or (ii) one year after the date of issuance, subject to the following: the letter of credit will extend automatically for additional 12-month periods unless the issuer gives the City written notice that the letter of credit will not extend beyond the then-applicable expiration date. A notice of non-extension must be sent to the City's address set forth in article XIV, below, by certified U.S. Mail (with postage prepaid and a return receipt requested) or by express courier (who must provide a receipt of delivery), and the City must actually receive the notice at least 30 days before the expiration date. A notice that is received less than 30 days before the expiration date will be ineffective for all purposes. Upon receiving a timely notice of non-extension, the City will be entitled to draw the entire remaining balance of the letter of credit unless a replacement letter of credit has been issued by the issuer or by another financial institution under section 12.2(b), and the replacement is in substantially the same form as the letter of credit and complies in every respect with the requirements specified in this Agreement (in the reasonable discretion of the Sacramento City Attorney's Office). If the City draws on a letter of credit under this subsection (c)(ii) because it receives notice of non-renewal, then the City shall deposit the proceeds into an escrow account, and the use and disposition of the proceeds will be subject to the provisions of this section 12.

(d) The letter of credit must substantially conform to the sample letter set forth in Exhibit "E" to this Agreement. The City Attorney's Office will determine, in its reasonable discretion, what constitutes substantial conformance.

12.3 The City shall release the letter of credit provided under this Agreement, as follows:

(a) If the Roadway Project is constructed to Final Completion, then this letter of credit will be released upon IA Holdings' payment of: (i) all Fees earned by the City in performing services under this Agreement, (ii) all costs for the work performed under the Construction Contracts, (iii) all Closeout Costs, and (iv) payment of all Liabilities then due and payable.

(b) If this Agreement is terminated, whether by the City or IA Holdings, prior to Final Completion of the Roadway Project, then this letter of credit will be released upon IA Holding's payment of: all Fees earned by the City in performing services under this Agreement, (ii) all costs for the work performed under the Construction Contracts, (iii) all Termination Costs, and (iv) payment of all Liabilities then due and payable.

12.4 The City is absolutely and unconditionally entitled to draw on the letter of credit provided under this Agreement, in accordance with the terms and conditions of the letter of credit and this Agreement, as follows:

(a) If IA Holdings fails to make payment in the amount and within the time required by this Agreement upon expiration of the notice and cure periods set forth in Section 8.3

or fails to fulfill its obligations under section 10.1, then the City may draw on the letter of credit an amount equal to (i) the unpaid Fees, Closeout Costs, Termination Costs, costs for the work performed under the Construction Contracts, and Liabilities then due and payable and (ii) the 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.

12.5 The City shall notify IA Holdings before the City exercises its right to draw upon the letter of credit under section 12.4. above. The City and IA Holdings agree that IA Holdings be given at least ten business-days' written notice.

12.6 If the City draws on the letter of credit, then the City shall deposit the proceeds into the appropriate funds, as determined in the sole discretion of the City Treasurer's Office, for use in paying: (a) the portion of the Fee earned by the City that remains unpaid, (b) the portion of the costs for the work performed under the Construction Contracts that remains unpaid, (c) the Closeout Costs that remain unpaid, (d) the Termination Costs that remain unpaid, (e) the Liabilities that remain unpaid, and (f) the City's reasonable out of pocket costs, if any, incurred in presenting the letter of credit, as described in Section 12.4.

ARTICLE XIII

DEDICATION

IA Holdings and the City hereby agree that IA Holdings shall dedicate to the City in fee title the public street right-of-way of the Roadway Project, and the City hereby agrees to accept IA Holding's offer of dedication of the public street right-of-way of the Roadway Project upon Final Completion of the Roadway Project, subject to the following conditions: (a) IA Holdings and the City have entered into a mechanically stabilized earth wall maintenance easement agreement for 5th Street, (b) IA Holdings and the City have entered into an interim maintenance funding agreement for 5th Street and Railyards Boulevard, (c) the public street right-of-way of the Roadway Project is free and clear of all liens and all encumbrances identified by the City in a writing provided to IA Holdings not more than 30 days after the effective date of this Agreement; provided, however, in no event shall either party have any obligation to remove or resolve any lien or encumbrance identified by the City, and, (d) the public street right-of-way of the Roadway Project is free and clear of all liens and all encumbrances recorded after the effective date of this Agreement, except those that the City has consented to in writing. IA Holdings and the City hereby agree that the dedication to the City of the public street right-of-way of the Roadway Project shall be completed substantially in the form of Grant Deed attached hereto as Exhibit "F".

ARTICLE XIV

NOTICES

All notices, requests, demands, and other communications required or permitted to be given under this instrument shall be in writing and shall be conclusively deemed to have been duly given or delivered, as the case may be, (a) when hand delivered or sent by facsimile (if

confirmation of receipt has been received) to the addressee; (b) three (3) business days after having been sent by certified mail, postage prepaid return receipt requested; or (c) one (1) business day after having been deposited, properly addressed and prepaid for guaranteed next-business-day delivery, with a nationally-recognized overnight courier service. All such notices, requests, or demands shall be addressed as set forth below, or to such other address as a party may from time to time designate by notice given to the other party(ies). A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Article XIII. Courtesy copies are provided as a convenience only. Failure to provide courtesy copies does not affect the timeliness of or invalidate a notice, request, demand, or other communication.

If to IA Holdings:	c/o The Inland Real Estate Group 2901 Butterfield Road Oak Brook, Illinois 60523 Attention: Dean Stermer Facsimile: (630) 954-5655 Telephone: (630) 586-6463 dean.stermer@inland-investments.com
With a courtesy copy to:	c/o The Inland Real Estate Group 2901 Butterfield Road Oak Brook, Illinois 60523 Attention: Michael Podboy Facsimile: (630) 954-5655 Telephone: 630-218-8000 Podboy@inlandgroup.com
With a courtesy copy to:	c/o The Inland Real Estate Group 2901 Butterfield Road Oak Brook, Illinois 60523 Attention: Jack Potts Facsimile: (630) 954-5655 Telephone: 630-218-8000 potts@inland-investments.com
With a courtesy copy to:	c/o The Inland Real Estate Group 2901 Butterfield Road Oak Brook, Illinois 60523 Attention: Scott W. Wilton Facsimile: (630) 954-5655 Telephone: 630-218-8000 swilton@inlandgroup.com
With a courtesy copy to:	DLA Piper LLP (US) 203 North LaSalle Street, Suite 1900 Chicago, Illinois 60601 Attention: James L. Beard

Facsimile: (312) 630-7379
Telephone: (312) 368-2169
james.beard@dlapiper.com

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

If to the City: City of Sacramento
Office of the City Manager,
Operations Manager
City Hall
915 I Street, 5th Floor
Sacramento, CA 95814-2604
Attention: Francesca Halbakken
Facsimile: (916) 808-7618
Telephone: (916) 808-7194
fhalbakken@cityofsacramento.org

With a courtesy copy to: City of Sacramento
Office of the City Attorney
City Hall
915 I Street, 4th Floor
Sacramento, CA 95814-2604
Attention: Michael Sparks
Facsimile: (916) 808-7455
Telephone: (916) 808-5346
Msparks@cityofsacramento.org

Any time period following notice shall commence on the date of such delivery. Rejection or other refusal to accept or inability to deliver because of change of address as to which no notice has been given shall constitute receipt of any such notice, demand, or request.

ARTICLE XV

MISCELLANEOUS

15.1 IA Holdings and any other designated representative of IA Holdings shall, at all times during the term of this Agreement, have the right of entry and free access to the area of the Roadway Project, subject to California Division of Occupational Safety and Health rules and regulations, and the right (but not the obligation) to inspect all work done, labor performed, and materials furnished in and about the Roadway Project and the right (but not the obligation) to inspect and audit all books, records, and contracts relating to the Roadway Project.

15.2 In performing its services hereunder, the City (including the City's employees) is and shall be, an independent contractor and not an employee of IA Holdings.

15.3 Whether or not expressly required by the other provisions hereof, no approval by IA Holdings shall be effective unless contained in a writing signed by its Representative.

15.4 Time is of the essence in the performance of this Agreement.

15.5 The provisions of this Agreement that by their nature survive completion of the Roadway Project or termination of this Agreement, including, without limitation, all warranties and indemnities, shall remain in full force and effect after completion of the Roadway Project or termination of this Agreement.

15.6 If a nonmaterial provision, or portion of a provision, of this Agreement is held to be invalid, illegal, or unenforceable, then the validity, legality, and enforceability of the remaining provisions or portions shall not be affected and shall be enforceable to the fullest extent allowable by law in order to give maximum legal force and effect to those provisions or portions that are not invalid, illegal, or unenforceable.

15.7 The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimiles, PDFs, and photocopies of signature pages of this agreement will have the same binding effect as originals.

15.8 A waiver by either IA Holdings or the City of any breach of a term or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term or condition contained in this Agreement, whether of the same or a different character. No payment by IA Holdings to the City shall constitute a waiver by IA Holdings of any breach, violation, or default the Agreement. A waiver is binding only if set forth in a writing signed by the waiving party.

15.9 This Agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Any litigation concerning this Agreement must be brought and prosecuted in the Superior Court of California, County of Sacramento.

15.10 This Agreement is solely for the benefit of the City and IA Holdings. It is not intended to benefit any third parties.

15.11 The parties shall bear their own costs and attorneys' fees incurred in connection with this Agreement, except as provided in Article X, above.

15.12 This Agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the day and year first set forth above.

IA HOLDINGS:

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: Secretary

CITY OF SACRAMENTO:

City of Sacramento,
a California municipal corporation

By: _____
Name: Francesca Halbakken
Title: Operations Manager

Approved as to Legal Form

By: _____
Senior Deputy City Attorney

Attest: Dawn Bullwinkel
By: _____
asst City Clerk 3-5-13

EXHIBIT A

CONSTRUCTION BUDGET
5th Street & Railyards Boulevard Roadway Project

Pre-Construction Cost			
1	Civil Engineering (estimated cost to complete)	$ 191,000.00	
2	Project Management	$ 1,072,000.00	
	Total Pre-Construction Cost		**$ 1,263,000.00**
Construction Cost			
3	Construction Cost Estimate		$ 23,291,500.00
4	Soil Remediation		$ 350,000.00
5	Soil Surcharge		$ 48,500.00
	Utility Fees		
6	PG&E Gas	$ 135,000.00	
7	City DOU - Water Meter	$ 6,400.00	
8	City DOU - Water Development	$ 29,600.00	
9	City DOU - Water Resource Control Board	$ 10,000.00	
10	Kinder Morgan - Deposit - Gas Line Inspection	$ 10,000.00	
11	RT Conduit	$ 25,000.00	
12	SMUD	$ 450,000.00	
	TOTAL Utility Fees (items 6-12)		$ 666,000.00
	Construction Management		
13	Construction Management (Vali Cooper & Assoc.)	$ 1,648,600.00	
14	City Inspection/Construction Monitoring	$ 302,400.00	
15	City Surveying	$ 150,000.00	
	Total Construction Management (items 13-15)		$ 2,101,000.00
	Total Construction Cost		**$ 26,457,000.00**
Contingency			
16	Contingency		$ 2,218,000.00
	Total Project Cost		**$ 29,938,000.00**

Exhibit B

AGREEMENT
(Construction Contract Over $25,000)

THIS AGREEMENT, dated for identification _____, 20__, is made and entered into between the CITY OF SACRAMENTO, a municipal corporation ("City"), and
_____ ("Contractor").

The City and Contractor hereby mutually agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents, sometimes also referred to as the "Contract," consist of the following items, which are hereby incorporated by reference as if set forth in full in this Agreement:

The Notice to Contractors
The Proposal Form submitted by the Contractor
The Instructions to Bidders
The Emerging and Small Business Enterprise (ESBE) Requirements
The Requirements for the Non-Discrimination in Employee Benefits by City Contractors Ordinance and the Declaration of Compliance
The City's Reference Guide for Construction Contracts
The Addenda, if any
This Agreement
The Standard Specifications
The Special Provisions
The Plans and Technical Specifications
The drawings and other data and all developments thereof prepared by City pursuant to the Contract
Any modifications of any of the foregoing made or approved by City, including but not limited to duly authorized change orders.

Unless specifically noted otherwise, references to the "Standard Specifications" shall mean and refer to the Standard Specifications for Public Construction of the City of Sacramento approved by the Sacramento City Council on June 4, 2007 (Resolution No. 2007-350), and any subsequent amendments thereto approved by the Sacramento City Council or the Sacramento City Manager. Work called for in any one Contract Document and not mentioned in another is to be performed and executed as if mentioned in all Contract Documents. The table of contents, titles and headings contained in the Contract Documents are provided solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretation of the provisions to which they refer.

2. DEFINITIONS

Unless otherwise specifically provided herein, all words and phrases defined in the Standard Specifications shall have the same meaning and intent in this Agreement.

3. AGREEMENT CONTROLS

In the event of a conflict between any of the terms and conditions set forth in this Agreement and the terms and conditions set forth in other Contract Documents, the terms and conditions set forth in this Agreement shall prevail, except that the provisions of any duly authorized change order shall prevail over any conflicting provisions of this Agreement.

4. SCOPE OF CONTRACT

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, material and transportation necessary to perform and complete in a good and workmanlike manner to the satisfaction of City, all the Work called for in the Contract Documents entitled:

_____ (PN:)

including the Work called for in the following alternative bid items described in the Proposal Form:

_____

Contractor agrees to perform such Work in the manner designated in and in strict conformity with the Contract Documents.

5. CONTRACT AMOUNT AND PAYMENTS

City agrees to pay and Contractor agrees to accept, as complete payment for the above Work, in accordance with the schedule and procedures set forth in the Contract Documents and subject to deductions, withholdings and additions as specified in the Contract Documents, a total sum that shall not exceed the total bid amount set forth in Contractor's Proposal Form. In addition, subject to deductions, withholdings and additions as specified in the Contract Documents, payment for individual items of the Work shall be computed as follows:

(A) For items of the Work for which a lump sum price is specified in Contractor's Proposal Form, Contractor shall be paid the lump sum price(s) specified in Contractor's Proposal Form; and

(B) For items of the Work for which a unit price is specified in Contractor's Proposal Form, Contractor shall be paid the sum computed at such unit price, or computed at a different price if such different price is determined by City in accordance with the Standard Specifications, based on the actual amount of each such item performed and/or furnished and incorporated in the Work; provided that in no event shall the total sum for a unit price item exceed the total bid amount set forth for such item in the Contractor's Proposal Form, unless authorized by Change Order.

6. PROGRESS PAYMENTS

Subject to the terms and conditions of the Contract, City shall cause payments to be made upon demand of Contractor as follows:

(A) On or about the first of the month, the Engineer shall present to the Contractor a statement showing the amount of labor and materials incorporated in the Work through the twentieth (20) calendar day of the preceding month. , and, The City shall issue a certificate for ninety-five (95) percent of the amount it shall find to be due, subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations, if (i) both Contractor and Engineer approve the statement in writing; (ii) the City's labor compliance officer provides written approval; and, (iii) Contractor executes and submits to City a conditional waiver and release for the amount certified by the City on a form that complies with Civil Code section 8132. Not later than five (5) days after receipt of a progress payment, Contractor shall execute and submit to City an unconditional waiver and release on a form that complies with Civil Code section 8134 for an amount equal to the progress payment.

(B) No inaccuracy or error in said monthly estimates shall operate to release Contractor from damages arising from such Work or from enforcement of each and every provision of the Contract Documents, and City shall have the right subsequently to correct any error made in any estimate for payment.

(C) Contractor shall not be paid for any defective or improper Work.

(D) The remaining five (5) percent of the value of the Work performed under the Contract, if unencumbered and subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations, shall be released not later than sixty (60) days after (i) completion and final acceptance of the Work by City; and (ii) Contractor executes and submits to City a conditional waiver and release for the amount to be released on a form that complies with Civil Code section 8136. Not later than five (5) days after receipt of final payment, Contractor shall execute and submit to City an unconditional waiver and release on a form that complies with Civil Code section 8138 for an amount equal to the final payment. Acceptance by Contractor of the final payment shall constitute a waiver of all claims against the City arising under the Contract Documents, except for disputed claims in stated amounts that the Contractor specifically reserves in writing, but only to the extent that the Contractor has complied with all procedures and requirements applicable to the presentation and processing of such claim(s) under the Contract Documents. Contractor shall be entitled to substitute securities for retention or to direct that payments of retention be made into escrow, as provided in Public Contract Code Section 22300, upon execution of the City's Escrow Agreement for Security Deposits in Lieu of Retention.

(E) The parties agree that, for purposes of the timely progress payment requirements specified in Public Contract Code Section 20104.50, the date that the City receives a statement jointly approved by the Contractor and the Engineer as provided above shall be deemed to constitute the date that City receives an undisputed and properly submitted payment request from the Contractor. Progress payments not made within 30 days after this date may be subject to payment of interest as provided in Public Contract Code Section 20104.50.

7. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR

When, under the provisions of this Contract or any applicable Laws or Regulations, City is authorized or required to withhold, deduct or charge any sum of money against Contractor, City may deduct and retain the amount of such charge from the amount of the next succeeding progress estimate(s), or from any other moneys due or that may become due Contractor from City. If, on completion or termination of the Contract, sums due Contractor are insufficient to pay City's charges, City shall have the right to recover the balance from Contractor or its Sureties.

8. COMMENCEMENT AND PROSECUTION OF WORK

Contractor shall commence the Work not later than fifteen (15) working days after the date of the written Notice to Proceed from City to Contractor and shall diligently prosecute the Work to final completion. The phase "commence the Work" means to engage in a continuous program on-site including, but not limited to, site clearance, grading, dredging, land filling and the fabrications, erection, or installation of the Work. The Notice to Proceed shall be issued within fifteen (15) calendar days following execution of the Agreement by the City and the filing by Contractor of the required Bonds and proof of insurance, provided that the Engineer may delay issuance of the Notice to Proceed if the Engineer determines in the Engineer's sole discretion that conditions on the site of the Work are unsuitable for commencement of the Work. After the Notice to Proceed is issued, the continuous

prosecution of Work by Contractor shall be subject only to Excusable Delays as defined in this Agreement.

9. TIME OF COMPLETION

The entire Work shall be brought to completion in the manner provided for in the Contract Documents on or before _____ days from the date of the Notice to Proceed (hereinafter called the "Completion Date") unless extensions of time are granted in accordance with the Contract Documents.

Failure to complete the entire Work by the Completion Date and in the manner provided for in the Contract Documents shall subject Contractor to liquidated damages as provided in this Agreement. Time is and shall be of the essence in the performance of the Contract and the Work.

10. PAYMENTS DO NOT IMPLY ACCEPTANCE OF WORK

The payment of any progress payment, or the acceptance thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way reduce the liability of Contractor to replace unsatisfactory work or material, whether or not the unsatisfactory character of such work or material was apparent or detected at the time such payment was made.

11. ACCEPTANCE NOT RELEASE

Contractor shall correct immediately any defective or imperfect work or materials that may be discovered before final acceptance of the entire Work, whether or not such defect or imperfection was previously noticed or identified by the City. The inspection of the Work, or any part thereof, shall not relieve Contractor of any of its obligations to perform satisfactory work as herein specified.

Failure or neglect on the part of City or any of its officers, employees or authorized agents to discover, identify, condemn or reject defective or imperfect work or materials shall not be construed to imply an acceptance of such work or materials, if such defect or imperfection becomes evident at any time prior to final acceptance of the entire Work, nor shall such failure or neglect be construed as barring City from enforcing Contractor's warranty(ies) or otherwise recovering damages or such a sum of money as may be required to repair or rebuild the defective or imperfect work or materials whenever City may discover the same, subject only to any statutes of limitation that may apply to any such claim.

12. CITY'S RIGHT TO TAKE POSSESSION OF THE WORK IN WHOLE OR IN PART

The City shall have the right at any time to enter upon the Work and perform work not covered by this Contract, or to occupy and use a portion of the Work, prior to the date of the final acceptance of the Work as a whole, without in any way relieving Contractor of any obligations under this Contract.

13. NO WAIVER OF REMEDIES

Neither the inspection by City, its officers, employees or agents, nor any certificate or other approval for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by City, nor any extensions of time, nor any position taken by City, its officers, employees or its agents shall operate as a waiver of any provision of the Contract Documents nor of any power herein reserved to City or any right to damages herein provided, nor shall any waiver of any breach of this Agreement be held to be a waiver of any other or subsequent breach. All remedies provided in the Contract Documents shall be taken and construed as cumulative; in addition to each and every other remedy herein provided, the City shall have any and all equitable and legal remedies that it would in any case have.

14. WARRANTY

Except as otherwise expressly provided in the Contract Documents, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect by City, Contractor warrants and guarantees all Work executed and all supplies, materials and devices of whatsoever nature incorporated in or attached to the Work, or otherwise provided as a part of the Work pursuant to the Contract, to be absolutely free of all defects of workmanship and materials for a period of one year after final acceptance of the entire Work by the City. Contractor shall repair or replace all work or material, together with any other work or material that may be displaced or damaged in so doing, that may prove defective in workmanship or material within this one year warranty period without expense or charge of any nature whatsoever to City.

In the event that Contractor shall fail to comply with the conditions of the foregoing warranty within ten (10) days after being notified of the defect in writing, City shall have the right, but shall not be obligated, to repair, or obtain the repair of, the defect and Contractor shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing warranty results in a condition that constitutes an immediate hazard to public health or safety, or any property interest, or any person, City shall have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include both temporary and permanent repairs that may be required as determined in the sole discretion and judgment of City.

In addition to the above, the Contractor shall make a written assignment of all manufacturer's and other product warranties to the City, prior to completion and final acceptance of the Work by City.

The Contractor's Performance Bond shall secure the performance of the Contractor's obligations under this Section 14, and the Contractor and its Surety shall be jointly and severally liable for these obligations.

15. LIQUIDATED DAMAGES IF WORK NOT COMPLETED ON TIME

(A) The actual fact of the occurrence of damages and the actual amount of the damages that City would suffer if the entire Work, and/or any specified portion thereof, were not completed within the time(s) specified herein are dependent upon many circumstances and conditions that could prevail in various combinations, and for this reason, it is impracticable and extremely difficult to fix the actual damages. Damages that City would suffer in the event of such delay include: loss of the use of the project; expenses of prolonged assignment to the project of an architectural and/or engineering staff; prolonged costs of administration, inspection, and supervision; increased operational expenses and/or impaired operation of other facilities dependent upon completion of the project; and the loss and inconvenience suffered by the public within the City of Sacramento by reason of the delay in the completion of the project or portion thereof. Accordingly, the parties agree, and by execution of this Agreement, Contractor acknowledges that it understands and agrees, that the amount(s) set forth herein as liquidated damages reflect the parties' best efforts at the time of entering into the Contract to estimate the damages that may be incurred by City and the public due to the Contractor's delay in completion of the Work and/or any specified portion thereof, and shall be presumed to be the amount of damages sustained by the failure of Contractor to complete the entire Work and/or any specified portion thereof within the time(s) specified herein.

(B) Contractor shall pay liquidated damages to City for failure to complete the entire Work by the Completion Date (as extended in accordance with the Contract Documents, if applicable) in the amount of _____ for each calendar day after the Completion Date (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which the entire Work

is completed. Such amount is the actual cash value agreed upon by the City and Contractor as the loss to City and the public resulting from Contractor's default.

The parties agree, and by execution of this Agreement, Contractor acknowledges that it understands and agrees, that the foregoing provisions provide for the imposition of liquidated damages from the Completion Date (as extended in accordance with the Contract Documents, if applicable) until the date of completion of the entire Work as determined by the Engineer in accordance with Section 8-4 of the Standard Specifications, whether or not the Work or any portion thereof is claimed or determined to be substantially complete prior to such date of completion.

SHADED TEXT BELOW ALSO CAN BE OMITTED IF NOT APPLICABLE

THE FOLLOWING ADDITIONAL LIQUIDATED DAMAGES PROVISION(S) APPLY IF CHECKED:

☐ In addition to the liquidated damages specified above, Contractor shall pay additional liquidated damages to City for failure to complete the portion of the Work specified below by the milestone date specified below (as such milestone date may be extended in accordance with the Contract Documents, if applicable). The amount of such additional liquidated damages shall be either *[check one]*:

☐ a lump sum amount of _____, OR

☐ the daily amount of _____, for each calendar day after such milestone date (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which such portion of the Work is completed.

Such amount is the actual cash value agreed upon by the City and Contractor as the additional loss to City and the public resulting from Contractor's default.

Portion of the Work _____ Milestone Date

_____ _____

_____ _____

CONTRACTOR'S ACKNOWLEDGMENT: _____

☐ In addition to the potential damages described above, failure to complete the entire Work within the time(s) specified herein may expose the City to penalties or fines and/or may negatively affect the availability of project funding. In recognition of these potential damages, in addition to the liquidated damages specified above, Contractor shall pay additional liquidated damages to City in the lump sum amount of _____ if the entire Work is not completed by _____. Such amount is the actual cash value agreed upon by the City and Contractor as the additional loss to City and the public resulting from Contractor's default.

CONTRACTOR'S ACKNOWLEDGMENT: _____

(C) In the event Contractor shall become liable for liquidated damages, City, in addition to all other remedies provided by law, shall have the right to withhold any and all payments that otherwise would be or become due Contractor until the liability of Contractor under this section is finally determined. City shall have the right to use and apply such payments, in whole or in part, to reimburse City for all liquidated damages due or to become due to City. Any remaining balance of such payments shall be paid to Contractor only after discharge in full of all liability incurred by Contractor under this section or

otherwise under any provision of the Contract Documents or any applicable Law or Regulation. If the sum so retained by City is not sufficient to discharge all such liabilities of Contractor, Contractor shall continue to remain liable to City until all such liabilities are satisfied in full. No failure by City to withhold any payment as specified above shall in any manner be construed to constitute a release of any such liabilities nor a waiver of the City's right to withhold payment for such liabilities.

16. INDEMNITY AND HOLD HARMLESS

(A) Contractor shall defend, hold harmless and indemnify the City, its officers, employees, and agents, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the site of the Work, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the Work by the Contractor, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder, or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to City, or (ii) the active negligence of City.

(B) The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 16, nor shall the limits of such insurance limit the liability of Contractor hereunder. The provisions of this Section 16 shall survive any expiration or termination of the Contract.

17. CONTRACTOR SHALL ASSUME RISKS

Until the completion and final acceptance by City of all Work under this Contract, the Work shall be under Contractor's responsible care and charge, and Contractor, at no cost to City, shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the Work.

18. GENERAL LIABILITY OF CONTRACTOR

Except as otherwise herein expressly stipulated, Contractor shall perform all the Work and furnish all the labor, materials, tools, equipment, apparatus, facilities, transportation, power and light, and appliances, necessary or proper for performing and completing the Work herein required in the manner and within the time herein specified. The mention of any specific duty or liability of Contractor shall not be construed as a limitation or restriction of any general liability or duty of Contractor, and any reference to any specific duty or liability shall be construed to be solely for the purpose of explanation.

19. INSURANCE

During the entire term of this Contract and until completion and final acceptance of the Work as provided in the Contract Documents, Contractor shall maintain in full force and effect the insurance coverage described in this section.

Full compensation for all premiums that Contractor is required to pay for the insurance coverage described herein shall be included in the compensation specified for performance of the Work under the Contract. No additional compensation will be provided for Contractor's insurance premiums.

It is understood and agreed by the Contractor that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required of or carried by the Contractor.

(A) Minimum Scope and Limits of Insurance Coverage

(1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than two million dollars ($2,000,000) per occurrence and two million dollars ($2,000,000) per project aggregate. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than two million dollars ($2,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.

(3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars ($1,000,000). The Worker's Compensation policy shall include a waiver of subrogation in favor of the City of Sacramento, IA Sacramento Holdings, L.L.C. In the event Contractor is self-insured, it shall furnish City with a certificate of consent to self-insure issued by the director of the California Department of Industrial Relations.

(4) Pollution Legal Liability Insurance (including asbestos and lead paint) providing coverage on an occurrence form with limits of not less than $10,000,000 per occurrence.

(5) Umbrella/Excess Liability Insurance providing coverage at least as broad as the underlying policies and with limits of not less than $25,000,000 per occurrence on an occurrence basis in excess of the underlying insurance coverage limits.

(6) Builder's Risk Property Insurance

i. Contractor shall purchase and maintain Builder's Risk Insurance with a company or companies lawfully authorized to do business in the State of California. Such policy shall be written in the amount of the total bid amount set forth in Contractor's Proposal Form, plus the value of subsequent Contract modifications, comprising the total value Work at the project site on a replacement cost basis. Such insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed upon in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in the Contract Documents or until no persons or entities other than the Contractor has an insurable interest in the Work required to be covered, whichever is later. This insurance shall include the City, IA Holdings, and all subcontractors working on the Work as primary

additional insureds. Contractor shall be responsible to pay any deductible under the policy.

ii. Such policy or policies shall provide waivers of all subrogation rights against the City of Sacramento, IA Holdings, and all subcontractors working on the Work, even if their negligence causes a covered loss, and regardless of the extent of their insurable interest in the covered property.

iii. Such Builder's Risk Insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage), flood, theft, vandalism, malicious mischief, collapse, windstorm, testing and startup and debris removal.

iv. Such policy or policies shall cover portions of the materials for the Work that are stored off of the project site and also portions in transit.

(B) Additional Insured Coverage

(1) Commercial General Liability Insurance: The City, IA Sacramento Holdings, L.L.C., and their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of Contractor, products and completed operations of Contractor, and premises owned, leased or used by Contractor. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

(2) Automobile Liability Insurance: The City, IA Sacramento Holdings, L.L.C., and their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds under the automobile liability insurance, pollution legal liability insurance, and umbrella/excess liability insurance policies.

(C) Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

(1) Contractor's insurance coverage shall be primary insurance as respects City, IA Sacramento Holdings, L.L.C., and their officials, employees and volunteers. Any insurance or self-insurance maintained by City, IA Sacramento Holdings, L.L.C., and their officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, IA Sacramento Holdings, L.L.C., and their officials, employees or volunteers.

(3) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) City will be provided with sixty (60) days written notice of cancellation or material change in the policy language or terms.

(D) Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 19 must be declared to and approved by the City Risk Management Division in writing prior to execution of this Agreement.

(E) Verification of Coverage

(1) Contractor shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative designated by City. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) The City may withdraw its offer of contract or cancel the Contract if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The City may withhold payments to Contractor and/or cancel the Contract if the insurance is canceled or Contractor otherwise ceases to be insured as required herein.

(F) Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsections A(1), A(2) and A(3) above.

20. FAILURE TO MAINTAIN BONDS OR INSURANCE

If, at any time during the performance of this Contract, Contractor fails to maintain any item of the bonds and/or insurance required under the Contract in full force and effect, Contractor shall immediately suspend all work under the Contract and notify City in writing of such failure. After such notice is provided, or if City discovers such failure and notifies Contractor, the City thereafter may withhold all Contract payments due or that become due until notice is received by City that such bonds and/or insurance have been restored in full force and effect and that the premiums therefor have been paid for a period satisfactory to the Division of Risk Management. Contractor shall not resume work until notified by City to do so, and the City shall have no responsibility or liability for any costs incurred by Contractor as a result of such suspension of Work.

In addition to the foregoing, any failure to maintain any item of the required bonds and/or insurance at any time during the performance of this Contract will be sufficient cause for termination of the Contract by City.

The Contractor shall be solely responsible for, and shall defend, indemnify and hold harmless the City, its officers, employees and agents against and from, any and all damages, claims, losses, actions, costs or other expenses of any kind incurred by any party as a direct or indirect result of any suspension of Work or termination of the Contract under the provisions of this Section.

21. EXCUSABLE DELAYS

For the purpose of these Contract Documents, the term "Excusable Delay" shall mean, and is limited to, delay caused directly by: acts of God; acts of a public enemy; fires; inclement weather as determined

by the Engineer; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sitdowns; acts of a governmental agency; priorities or privileges established for the manufacture, assemble, or allotment of materials necessary in the Work by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the Work ordered by City insofar as they necessarily require additional time in which to complete the Work; the prevention of Contractor from commencing or prosecuting the Work because of the acts of others, excepting Contractor's subcontractors or suppliers; or the prevention of Contractor from commencing or prosecuting the Work because of a Citywide failure of public utility service.

The term "Excusable Delay" shall specifically not include: (i) any delay that could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Contractor; (ii) any delay in the prosecution of any part of the Work that does not constitute a Controlling Operation, whether or not such delay is unavoidable; (iii) any reasonable delay resulting from time required by City for review of any Contractor submittals and for the making of surveys, measurements and inspection; and, (iv) any delay arising from an interruption in the prosecution of the Work on account of reasonable interference by other Contractors employed by City that does not necessarily prevent the completion of the entire Work within the time specified. Excusable Delays, if any, shall operate only to extend the Completion Date (not in excess of the period of such delay as determined by City) and shall not under any circumstances increase the amount City is required to pay Contractor except as otherwise provided in these Contract Documents.

22. CONTRACTOR TO SERVE NOTICE OF DELAYS

Whenever Contractor foresees any delay in the prosecution of the Work, and in any event as soon as possible (not to exceed a period of ten (10) calendar days) after the initial occurrence of any delay that Contractor regards as or may later claim to be an Excusable Delay, the Contractor shall notify the Engineer in writing of such delay and its cause, in order that the Engineer: (i) may take immediate steps to prevent if possible the occurrence or continuance of the delay; or (ii) if this cannot be done, may determine whether the delay is to be considered excusable, how long it continues, and to what extent the prosecution and completion of the Work are delayed thereby. Said written notice shall constitute an application for an extension of time only if the notice requests such an extension and sets forth the Contractor's estimate of the additional time required together with a full description of the cause of the delay relied upon.

After the completion of any part or whole of the Work, the Engineer, in estimating the amount due Contractor, will assume that any and all delays that may have occurred in its prosecution and completion were not Excusable Delays, except for such delays for which the Contractor has provided timely written notice as required herein, and that the Engineer has found to be excusable. Contractor shall not be entitled to claim Excusable Delay for any delay for which the Contractor failed to provide such timely written notice.

23. EXTENSION OF TIME

If the Contractor complies with Section 22, above, and the Engineer finds a delay claimed by the Contractor to be an Excusable Delay, the Contractor shall be allowed an extension of time to complete the Work that is proportional to the period of Excusable Delay determined by the Engineer, subject to the approval by City of a change order granting such time extension. During a duly authorized extension for an Excusable Delay, City shall not charge liquidated damages against the Contractor for such delay.

If the City extends the time to complete the Work as provided herein, such extension shall in no way release any warranty or guarantee given by Contractor pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties of the Bonds provided pursuant to the Contract Documents. By executing such Bonds, the Sureties shall be deemed to have

expressly agreed to any such extension of time. The granting of any extension of time as provided herein shall in no way operate as a waiver on the part of City of its rights under this Contract, excepting only extension of the Completion Date for such period of Excusable Delay as may be determined by the Engineer and approved by a duly authorized change order.

24. NO PAYMENT FOR DELAYS

No damages or compensation of any kind shall be paid to Contractor or any subcontractor because of delays in the progress of the Work whether or not such delays qualify for extension of time under this Agreement; except that this provision shall not preclude the recovery of damages for a delay caused by the City that is unreasonable under the circumstances and that is not within the contemplation of the parties, provided that the Contractor timely submits all such written notice(s) and fully complies with such other procedures as may be specified in the Contract Documents or any Laws or Regulations for Contractor to claim damages for such delay.

25. CHANGES IN THE WORK

Changes in the Work authorized or directed in accordance with the Contract Documents and extensions of time of completion made necessary by reason thereof shall not in any way release any warranty or guarantee given by Contractor pursuant to the provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties on Bonds provided pursuant to the Contract Documents. By executing such Bonds, the Sureties shall be deemed to have expressly agreed to any such change in Work and to any extension of time made by reason thereof.

26. TERMINATION AFTER COMPLETION DATE

In addition to any other rights City may have, if any services or work required under the Contract (including but not limited to punch list items) are not completed as of the Completion Date (as adjusted by any extensions of time for Excusable Delays granted pursuant to the Contract Documents), City may terminate the Contract at any time after the Completion Date (as adjusted by any extensions of time for Excusable Delays granted pursuant to the Contract Documents), by providing a written notice to Contractor specifying the date of termination. Such notice also may specify conditions or requirements that Contractor must meet to avoid termination of the Contract on such date. If Contractor fails to fulfill all such conditions and requirements by such termination date, or, if no such conditions or requirements are specified, Contractor shall cease rendering services and performing work on such termination date, and shall not be entitled to receive any compensation for services rendered or work performed after such termination date. In the event of such termination, Contractor shall remain liable to City for liquidated damages incurred for any period of time prior to the termination date.

In addition to any other charges, withholdings or deductions authorized under the Contract or any Laws or Regulations, if City terminates the Contract pursuant to this section, City may withhold and deduct from any payment and/or retention funds otherwise due Contractor any sum necessary to pay the City's cost of completing or correcting, or contracting for the completion or correction of, any services or work under the Contract that are not completed to the satisfaction of the City or that otherwise are deficient or require correction as of such termination date, including but not limited to incomplete punch list items. Such costs shall include all of the City's direct and indirect costs incurred to complete or correct such services or work, including the City's administrative and overhead costs. If the amount of payment(s) and/or retention funds otherwise due the Contractor are insufficient to pay such costs, City shall have the right to recover the balance of such costs from the Contractor and/or its Surety(ies).

27. TERMINATION FOR CONVENIENCE

Upon written notice to the Contractor, the City may at any time, without cause and without prejudice to any other right or remedy of the City, elect to terminate the Contract for the convenience of City. In

such case, the Contractor shall be paid (without duplication of any items, and after deduction and/or withholding of any amounts authorized to be deducted or withheld by the Contract Documents or any Laws or Regulations):

(A) For Work executed in accordance with the Contract Documents prior to the effective date of termination and determined to be acceptable by the Engineer, including fair and reasonable sums for overhead and profit on such Work;

(B) For reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with subcontractors, suppliers, and others; and

(C) For reasonable expenses directly attributable to termination.

Contractor shall not be paid for any loss of anticipated profits or revenue for any Work not performed prior to termination, nor for any economic loss arising out of or resulting from such termination, except for the payments listed in this section. Contractor's warranty under Section 14 of this Agreement shall apply, and Contractor shall remain responsible for all obligations related to such warranty, with respect to all portions of the Work performed prior to the effective date of the termination for convenience pursuant to this section. The City shall be entitled to have any or all remaining Work performed by other contractors or by any other means at any time after the effective date of a termination for convenience pursuant to this section.

28. TERMINATION FOR BREACH OF CONTRACT

If Contractor abandons the Work under this Contract, or if the Contract or any portion of the Contract is sublet or assigned without the consent of the City, or if the Engineer determines in the Engineer's sole discretion that the conditions of the Contract in respect to the rate of progress of the Work are not being fulfilled or any part thereof is unnecessarily delayed, or if Contractor violates or breaches, or fails to execute in good faith, any of the terms or conditions of the Contract, or if Contractor refuses or fails to supply enough properly skilled labor or materials or refuses or fails to make prompt payment to subcontractors for material or labor, or if Contractor disregards any Laws or Regulations or proper instruction or orders of the Engineer, then, notwithstanding any provision to the contrary herein, the City may give Contractor and its Sureties written notification to immediately correct the situation or the Contract shall be terminated.

In the event that such notice is given, and, in the event such situation is not corrected, or arrangements for correction satisfactory to the City are not made, within ten (10) calendar days from the date of such notice or within such other period of time as may be specified by the City in the notice, the Contract shall upon the expiration of said period cease and terminate. In the event of any such termination, City may take over the Work and prosecute the Work to completion, or otherwise, and the Contractor and its Sureties shall be liable to City for any cost occasioned City thereby, as hereinafter set forth.

In the event City completes the Work, or causes the Work to be completed, no payment of any kind shall be made to Contractor until the Work is complete. The cost of completing the Work, including but not limited to, extra costs of project administration and management incurred by City, both direct or indirect, shall be deducted from any sum then due, or that becomes due, to Contractor from City. If sums due to Contractor from City are less than the cost of completing the Work, Contractor and its Sureties shall pay City a sum equal to this difference on demand. In the event City completes the Work, and there is a sum remaining due to Contractor after City deducts the costs of completing the Work, then City shall pay such sum to Contractor. The Contractor and Contractor's Sureties shall be jointly and severally liable for all obligations imposed on Contractor hereunder.

No act by City before the Work is finally accepted, including, but not limited to, exercise of other rights under the Contract, actions at law or in equity, extensions of time, payments, assessments of liquidated damages, occupation or acceptance of any part of the Work, waiver of any prior breach of the Contract or failure to take action pursuant to this section upon the happening of any prior default or breach of Contractor, shall be construed to be a waiver or estoppel of the City's right to act pursuant to this Section upon any subsequent event, occurrence or failure by Contractor to fulfill the terms and conditions of the Contract. The rights of City to terminate the Contract pursuant to this Section and pursuant to Sections 26 and 27 are cumulative and are in addition to all other rights of City pursuant to the Contract and at law or in equity.

29. CONTRACTOR BANKRUPT

If Contractor should commence any bankruptcy proceeding, or if Contractor is adjudged a bankrupt, or if Contractor makes any assignment for the benefit of creditors, or if a receiver is appointed on account of Contractor's insolvency, then the City may, without prejudice to any other right or remedy, terminate the Contract and complete the work by giving notice as provided in Section 28 above.

30. SURETIES' OBLIGATIONS UPON TERMINATION

If the City terminates the Contract pursuant to Section 28 or Section 29 above:

(A) The Surety under Contractor's performance bond shall be fully responsible for all of the Contractor's remaining obligations of performance under the Contract as if the Surety were a party to the Contract, including without limitation Contractor's obligations, as provided in the Contract Documents, to complete and provide a one-year warranty of the entire Work, pay liquidated damages and indemnify, defend and hold harmless City, up to the full amount of the performance bond.

(B) The Surety under Contractor's payment bond shall be fully responsible for the performance of all of the Contractor's remaining payment obligations for work, services, equipment or materials performed or provided in connection with the Work or any portion thereof, up to the full amount of the payment bond.

31. ACCOUNTING RECORDS OF CONTRACTOR

During performance of the Contract and for a period of three (3) years after completing the entire Work, Contractor shall maintain all accounting and financial records related to the Contract and performance of the Work in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the City upon reasonable written notice.

32. USE TAX REQUIREMENTS

During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

(A) Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

(B) Sellers Permit: For any construction contract and any construction subcontract in the amount of $5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.

(C) The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date set for opposite their names.

CONTRACTOR

Under penalty of perjury, I certify that the taxpayer identification number and all other information provided here are correct.

DATE _____

BY _____

_____
Print Name

_____
Title

BY _____

_____
Print Name

_____
Title

_____
Federal ID#

_____
State ID#

_____
City of Sacramento Business Operation Tax Certificate No. (City will not award contract until Certificate Number is obtained)

Type of Business Entity *(check one)*:

_____ Individual/Sole Proprietor
_____ Partnership
_____ Corporation
_____ Limited Liability Company
_____Other (*please specify:*_____)

CITY OF SACRAMENTO
a municipal corporation

DATE _____

BY _____
For: _____
City Manager

Original Approved As To Form:

_____
City Attorney

Attest:

_____
City Clerk

Exhibit C

PROJECT #:
PROJECT NAME:
DEPARTMENT:
DIVISION:

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT FOR ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, AND PROFESSIONAL LAND SURVEYORS

THIS AGREEMENT is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO,** a municipal corporation ("CITY"), and

Name of Contractor
Address
Phone/Fax

("CONTRACTOR"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.

2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.

3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.

4. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of

this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.

7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By:_____

Print name:_____

Title:_____

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Attachments

Exhibit A - Scope of Service
Exhibit B - Fee Schedule/Manner of Payment
Exhibit C - Facilities/Equipment Provided
Exhibit D - General Provisions
Exhibit E - Non-Discrimination in Employee Benefits

CONTRACTOR:

_____
NAME OF FIRM

_____
Federal I.D. No.

_____
State I.D. No.

_____
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY *(check one)*:

_____ Individual/Sole Proprietor
_____ Partnership
_____ Corporation *(may require 2 signatures)*
_____ Limited Liability Company
_____ Other (*please specify:* _____)

_____
Signature of Authorized Person

_____
Print Name and Title

_____
Additional Signature *(if required)*

_____
Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: _____

Address: _____

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.

2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").

3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:

   a. Bereavement Leave
   b. Disability, life, and other types of insurance
   c. Family medical leave
   d. Health benefits
   e. Membership or membership discounts
   f. Moving expenses
   g. Pension and retirement benefits
   h. Vacation
   i. Travel benefits
   j. Any other benefit offered to employees

   Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:

   a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.

b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.

c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.

d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.

e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.

g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).

h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.

5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of $50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.

6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to

maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.

7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.

8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

_____ _____

Signature of Authorized Representative Date

_____

Print Name

_____

Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

SCOPE OF SERVICES

1. **Representatives.**

The CITY Representative for this Agreement is:

Name/Title
Address
Phone/Fax/E-mail

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

Name/Title
Address
Phone/Fax/E-mail

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. **Professional Liability Insurance.** Professional Liability (Errors and Omissions) insurance is __ is not ___ *[check one]* required for this Agreement. If required, such coverage must be continued for at least _____ year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. **Conflict of Interest Requirements.**

A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

(1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;

(2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and

(3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: ____ yes ____ no *[check one]*

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

(1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";

(2) Cause these individuals to file with the CITY Representative the "assuming office" statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. Scope of Services. [*Describe services to be provided here, or, if scope of services is described in an attachment, label the attachment "Attachment 1 to Exhibit A" and include the following sentence:*]

The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

5. Time of Performance. The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of $_____.

2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein. *[Attach list of billable rates that apply, labeled "Attachment 1 to Exhibit B".]*

3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.

4. **Payments to CONTRACTOR.**

   A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.

   B. All invoices submitted by CONTRACTOR shall contain the following information:

      (1) Job Name
      (2) Description of services billed under this invoice, and overall status of project
      (3) Date of Invoice Issuance
      (4) Sequential Invoice Number
      (5) CITY's Purchase Order Number
      (6) Total Contract Amount
      (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
      (8) Total Billed to Date
      (9) Total Remaining on Contract
      (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.

   C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

Office
Address
Phone/Fax
Attn: _____

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other consultants to perform said Additional Services.

6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.

7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*] ____ Not furnish any facilities or equipment for this Agreement; or

____ furnish the following facilities or equipment for the Agreement [*list, if applicable*]:

EXHIBIT D

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

GENERAL PROVISIONS

1. Independent Contractor.

A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)

B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.

5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.

6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. **CONTRACTOR Information.**

A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.

D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the

standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.

C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:

(1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.

(2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this

provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real, or intellectual property, or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to, or relate to any negligent act or omission, recklessness, or willful misconduct of CONTRACTOR, its sub-consultants, subcontractors, or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled, or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY.

B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits, or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

(1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than two million dollars ($2,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than two million dollars ($2,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

> "I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

(3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars ($1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

> _____ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

> "I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

(4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than two million ($2,000,000) dollars if required by the CITY under Exhibit A, Section 2.

B. Additional Insured Coverage

(1) Commercial General Liability Insurance: The CITY, IA Sacramento Holdings, L.L.C, and their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

> _____ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

(2) Automobile Liability Insurance: The CITY, IA Sacramento Holdings, L.L.C, and their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

(1) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, IA Sacramento Holdings, L.L.C. and their officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, IA Sacramento Holdings L.L.C., and their officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, IA Sacramento Holdings L.L.C., and their officials, employees or volunteers.

(3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

(1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in

subsection A, above (excluding Professional Liability Insurance).

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".

B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:

(1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

(2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance;

provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

    A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

B. Sellers Permit: For any construction contract and any construction subcontract in the amount of $5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.

C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding $100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm, partnership, corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directly on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

Attachment A

YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On ..... (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for ..... (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

  City of Sacramento
  Procurement Services Division
  5730 24th Street, Bldg. 1
  Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:

  - Reinstatement, injunctive relief, compensatory damages and punitive damages

  - Reasonable attorney's fees and costs

Attachment B

YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

  City of Sacramento
  Procurement Services Division
  5730 24th Street, Bldg. 1
  Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

Exhibit D

5th Street and Railyards Blvd Project Schedule
February 20, 2013

Milestones	Dates
Complete 100 percent Plans, Specifications and Estimate	3/21/2013
Complete Soil Management Plan	3/21/2013
Advertise for Bids	3/26/2013
Open Bids	5/7/2013
Award Construction Contracts and Execute Soil Management Agreement	6/4/2013
Start Construction	6/12/2013
Complete Construction	10/14/2014
Execute Wall Maintenance Agreement and Interim funding Agreement	11/1/2014
Dedicate Right of Way	11/14/2014
Complete Final Billing	12/11/2014
HCD Performance Milestone - Construction Completion & Filing of Notice of Completion	2/2/2015
HCD Performance Milestone - Program Funds Fully Disbursed	4/1/2015

Exhibit E

[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 Article XII of the following agreement between the Beneficiary and the Applicant (the "Agreement"):

Project Delivery Agreement
City Agreement No. 2013-

The Issuer hereby establishes this irrevocable, unconditional letter of credit in the Beneficiary's favor in the amount of Five Million U.S. Dollars ($5,000,000.00) 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 close of business on [insert date], subject to the following: this letter of credit will extend automatically for additional 12-month periods unless the Issuer gives the Beneficiary written notice that this letter of credit will not extend beyond the then-applicable expiration date. A notice of non-extension must be sent to the Beneficiary's address set forth above by certified U.S. Mail (with postage prepaid and a return receipt requested) or by express courier (who must provide a receipt of delivery), and the Beneficiary must actually receive the notice at least 30 days before the expiration date. A notice that is received less than 30 days before the expiration date will be ineffective for all purposes. Upon receiving a timely notice of non-extension, the Beneficiary will be entitled to present a demand letter, in the form specified above, to draw the entire remaining balance of this letter of credit unless a replacement letter of credit has been issued by the Issuer or by another financial institution acceptable to the Beneficiary (in the reasonable discretion of the Sacramento City Treasurer's Office), and the replacement is in substantially the same form as this letter of credit and complies in every respect with the requirements specified in the Agreement (in the reasonable discretion of the Sacramento City Attorney's Office).

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]

Exhibit E

[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 Article XII of the following agreement between the Beneficiary and the Applicant (the "Agreement"):

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"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]

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF

CITY OF SACRAMENTO

NO FEE DOCUMENT
Govt Code 6103
WHEN RECORDED MAIL TO
CITY OF SACRAMENTO
Real Estate Services
5730 24th Street, Building 4
Sacramento, California 95814

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ACQ-12-08-00	5012873	002-0010-047, 055	City Agreement #2012-0083
RES File	Escrow	APN	Agreement #

GRANT DEED

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, IA Sacramento Holdings, L.L.C., a Delaware limited liability company ("GRANTOR") hereby grants to the CITY OF SACRAMENTO, a Municipal Corporation ("CITY"), the real property in the City of Sacramento, County of Sacramento, State of California, described as follows (the "Property"):

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

GRANTOR, for itself, and its successors and assigns, hereby waives any claim for any and all severance damages to its remaining property contiguous to the Property hereby conveyed, related to or arising by reason of this conveyance.

IN WITNESS WHEREOF, GRANTOR has executed this Grant Deed as of this ___ day of October, 2012.

GRANTOR:

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

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

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

By: _____
Its: _____

"Approved as to form - City Attorney"

A portion of the tract of land described as Parcel 1 of Exhibit A in that certain Grant Deed to S. Thomas Enterprises of Sacramento, LLC, recorded in Book 20061228, Page 1675, Official Records of Sacramento County, located in the City of Sacramento, being more particularly described as follows:

Commencing 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) also being the point of beginning of said Parcel 1; thence along said northerly line of H Street, North 71°31'11" West (Record South 71°33'22" East) 318.55 feet to the TRUE POINT OF BEGINNING.

Thence from said TRUE POINT OF BEGINNING the following ten (10) courses: (1) North 18°31'52" East 210.98 feet; (2) along the arc of a tangent 565.00 foot radius curve concave southeasterly, having a central angle of 12°35'10" with a chord bearing North 24°49'27" East 123.86 feet; (3) along the arc of a compound 10.00 foot radius curve concave southerly, having a central angle of 77°10'31" with a chord bearing North 69°42'17" East 12.47 feet; (4) tangent South 71°42'28" East 51.51 feet; (5) North 18°17'32" East 80.00 feet; (6) North 71°42'28" West 9.22 feet; (7) along the arc of a tangent 16.00 foot radius curve concave easterly, having a central angle of 114°40'31" with a chord bearing North 14°22'12" West 26.94 feet; (8) along the arc of a compound 565.00 foot radius curve concave southeasterly, having a central angle of 5°21'47" with a chord bearing North 45°38'56" East 52.87 feet; (9) along the arc of a reverse 635.00 foot radius curve concave northwesterly, having a central angle of 47°37'50" with a chord bearing North 24°30'55" East 512.81 feet; (10) tangent North 0°42'00" East 35.03 feet to a point on the northerly line of Railroad Easement II as described in Exhibit D of said Grant Deed to S. Thomas Enterprises of Sacramento, LLC; thence along said northerly line along the arc of a non-tangent 824.96 feet radius curve concave northerly, a radial bearing to which bears South 10°50'48" East, having a central angle of 0°21'17" with a chord bearing North 78°58'34" East 5.11 feet; thence leaving said northerly line the following twenty three (23) courses: (1) North 0°42'00" East 373.35 feet; (2) along the arc of a tangent 10.00 foot radius curve concave

southeasterly, having a central angle of 90°00'00" with a chord bearing North 45°42'00" East 14.14 feet; (3) tangent South 89°18'00" East 15.00 feet; (4) North 00°42'00" East 62.00 feet; (5) North 89°18'00" West 15.00 feet; (6) along the arc of a tangent 10.00 foot radius curve concave northeasterly, having a central angle of 90°00'00" with a chord bearing North 44°18'00" West 14.14 feet; (7) tangent North 0°42'00" East 248.23 feet; (8) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 93°43'42" with a chord bearing North 47°33'51" East 14.59 feet; (9) along the arc of a compound 2960.00 foot radius curve concave southerly, having a central angle of 0°26'51" with a chord bearing South 85°20'52" East 23.12 feet; (10) North 4°52'33" East 80.00 feet; (11) along the arc of a non-tangent 3040.00 foot radius curve concave southerly, a radial bearing to which bears North 4°52'33" East, having a central angle of 0°34'14" with a chord bearing North 85°24'34" West 30.28 feet; (12) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 85°46'00" with a chord bearing North 42°48'41" West 13.61 feet; (13) along the arc of a reverse 640.00 foot radius curve concave westerly, having a central angle of 2°32'09" with a chord bearing North 1°11'46" West 28.32 feet; (14) tangent North 2°27'51" West 284.18 feet; (15) South 87°32'09" West 80.00 feet; (16) South 2°27'51" East 284.18 feet; (17) along the arc of a tangent 560.00 foot radius curve concave westerly, having a central angle of 1°56'11" with a chord bearing South 1°29''45" East 18.93 feet; (18) along the arc of a compound 10.00 foot radius curve concave northwesterly, having a central angle of 92°57'02" with a chord bearing South 45°56'51" West 14.50 feet; (19) along the arc of a reverse 3040.00 foot radius curve concave southerly, having a central angle of 0°15'25" with a chord bearing North 87°42'20" West 13.64 feet; (20) South 2°09'57" West 80.00 feet; (21) along the arc of a non-tangent 2960.00 foot radius curve concave southerly, a radial bearing to which bears North 2°09'57" East, having a central angle of 0°19'04" with a chord bearing South 87°40'31" East 16.42 feet; (22) along the arc of a compound 10.00 foot radius concave southwesterly, having a central angle of 88°12'58" with a chord bearing South 43°24'29" East 13.92 feet; (23) tangent South 0°42"00" West 723.57 feet to a point in said northerly line of Railroad Easement II; thence along said northerly line South 80°06'54" West 5.09 feet; thence leaving said northerly line the following four (4) courses: (1) South 0°42'00" West 19.96 feet; (2) along the arc of a tangent

555.00 foot radius curve concave westerly, having a central angle of 47°37'50" with a chord bearing South 24°30'55" West 448.21 feet; (3) along the arc of a reverse 645.00 foot curve concave easterly, having a central angle of 29°47'58" with a chord bearing South 33°25'51" West 331.70 feet; (4) tangent South 18°31'52" West 211.05 feet to a point on said northerly line of H Street; thence along said northerly line of H Street, South 71°31'11" East 80.00 feet to the TRUE POINT OF BEGINNING.

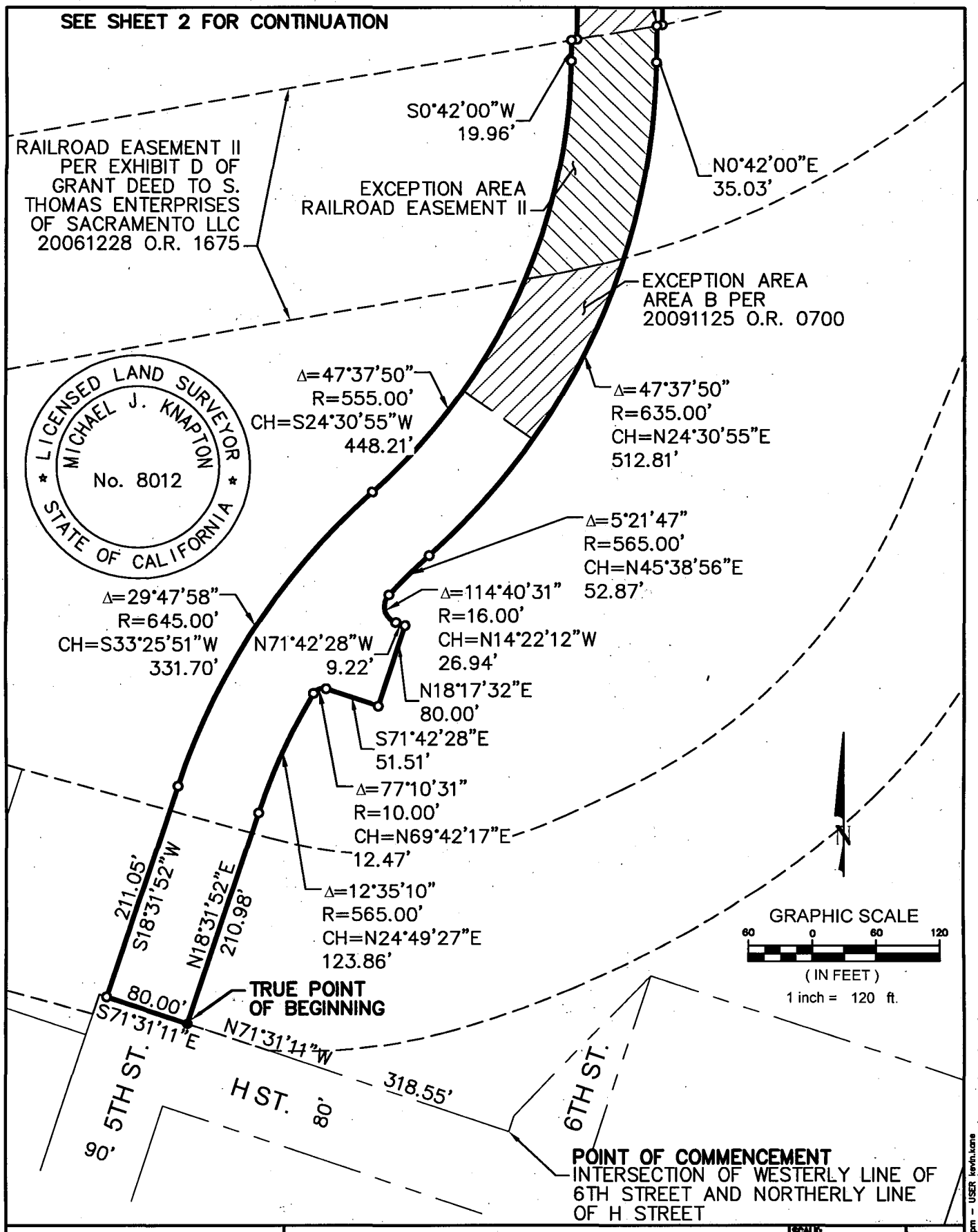
Excepting therefrom said Railroad Easement II. Also excepting therefrom Area A and Area B as described in that certain "Easement for Public Road and Public Utilities, (5th Street Bridge Improvements)" recorded in Book 20091125, Page 0700, Official Records of Sacramento County.

All as shown on Exhibit B attached hereto and by this reference made a part hereof.

MICHAEL JAMES KNAPTON DATE

P.L.S.8012 EXPIRES 12/31/2012

P:\ENGINEERING SERVICES\ACTIVE\T15116200.6TH STREET OVERCROSSING ROADWAY\5TH ST FILES\COUNCIL REPORT\PROJECT DELIVERY AGREEMENT\EXHIBIT A_5TH.DOC



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www.kimley-horn.com
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Fax No. (916) 608-0885
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EXHIBIT B

SCALE: HORIZ. 1"=120' VERT. ____
DATE: 6/08/2012
PROJECT NO. 097677002

SHEET 1 OF 2

Jun 11, 2012 – 3:46pm – USER kevin.kane
K:\SAC_DEV\097922008 Railyards\100 Overall\08 CADD_Civil\Legals\5th St.dwg

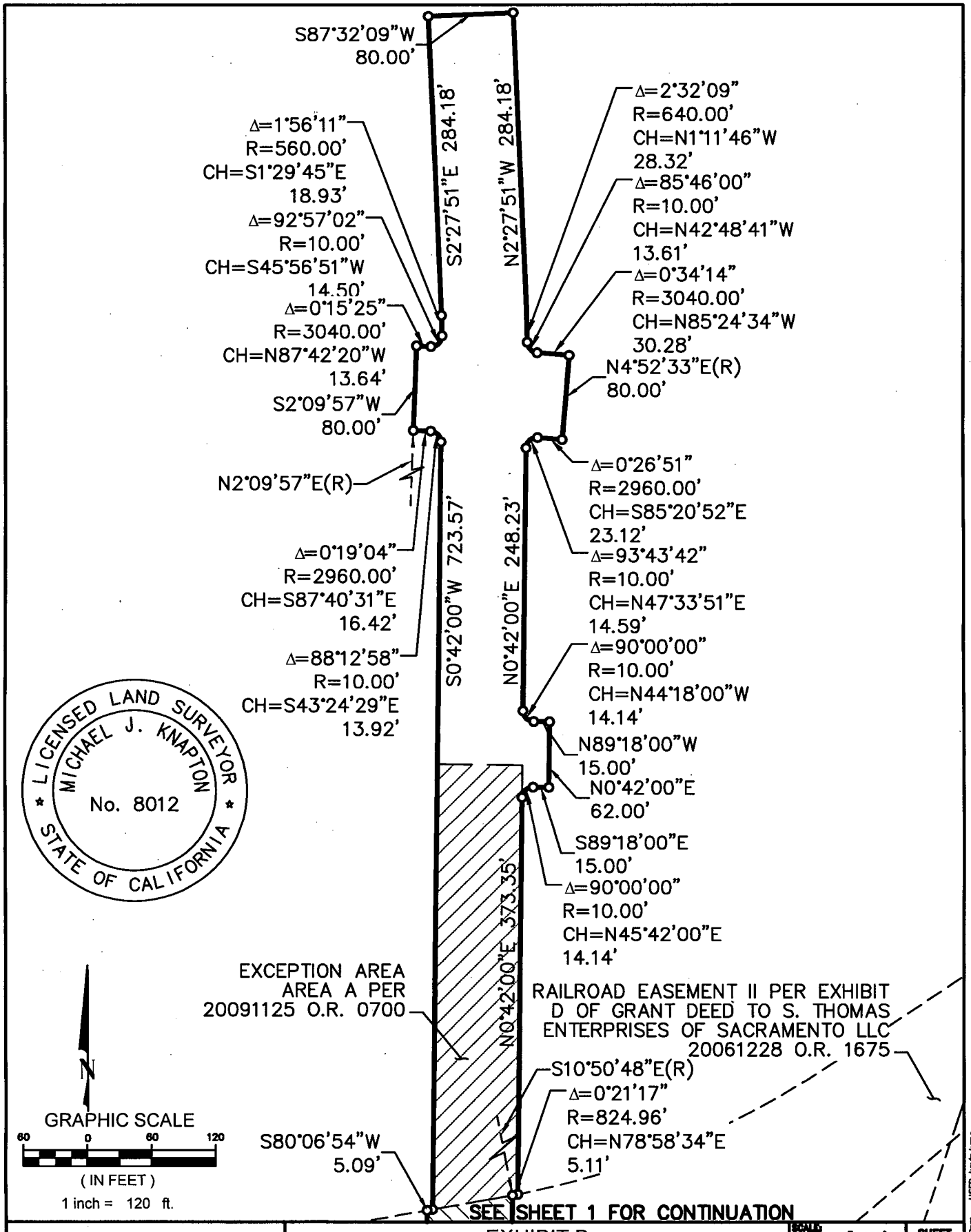

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EXHIBIT B

SCALE: HORIZ. 1"=120' VERT.	SHEET 2 OF 2
DATE: 6/08/2012	
PROJECT NO. 097677002	

Jun 11, 2012 - 3:30pm - USER: kevin.kane
K:\SAC_LTDEV\097677002 Railyards\100 Overall\08 CADD_Civil\Legals\5th St.dwg

Exhibit F

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF

CITY OF SACRAMENTO

NO FEE DOCUMENT
Govt Code 6103
WHEN RECORDED MAIL TO
CITY OF SACRAMENTO
Real Estate Services
5730 24th Street, Building 4
Sacramento, California 95814

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ACQ-12-08-00	5012873	002-0010-047, 055	City Agreement #2012-0083
RES File	Escrow	APN	Agreement #

GRANT DEED

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, IA Sacramento Holdings, L.L.C., a Delaware limited liability company ("GRANTOR") hereby grants to the CITY OF SACRAMENTO, a Municipal Corporation ("CITY"), the real property in the City of Sacramento, County of Sacramento, State of California, described as follows (the "Property"):

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

GRANTOR, for itself, and its successors and assigns, hereby waives any claim for any and all severance damages to its remaining property contiguous to the Property hereby conveyed, related to or arising by reason of this conveyance.

IN WITNESS WHEREOF, GRANTOR has executed this Grant Deed as of this ___ day of _____, 2013.

GRANTOR:

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

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

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

By: _____
Its: _____

"Approved as to form - City Attorney"

A portion of the land described as Parcel 1 of Exhibit A in that certain Grant Deed to S. Thomas Enterprises of Sacramento, LLC, recorded in Book 20061228, Page 1675, Official Records of Sacramento County, located in the City of Sacramento, being more particularly described as follows:

Beginning at the northwesterly corner of 6th Street as described in that certain Grant Deed recorded in Book _____, Page _____, Official Records of Sacramento County; thence along the northerly line of said 6th Street, South 71°07'47" East 80.00 feet to the northeasterly corner thereof; thence leaving said northerly line of 6th Street the following five (5) courses: (1) North 18°52'13" East 7.66 feet; (2) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 86°35'54" with a chord bearing North 62°10'10" East 13.72 feet; (3) along the arc of a compound 2948.50 foot radius curve concave southerly, having a central angle of 2°53'14" with a chord bearing South 73°05'16" East 148.56 feet; (4) tangent South 71°38'40" East 163.05 feet; (5) along the arc of a tangent 10.00 foot radius curve concave southwesterly, having a central angle of 47°48'47" with a chord bearing South 47°44'16" East 8.10 feet to a point on the westerly line of 7th Street as shown on that certain Record of Survey recorded in Book 66 of Surveys, Page 15, Official Records of Sacramento County, said point lying North 27°16'48" East 2235.62 feet of 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 continuing along said westerly line of 7th Street, along the arc of a 8547.63 foot radius curve concave easterly, a radial to which bears North 69°04'19" West, having a central angle of 0°42'48" with a chord bearing North 21°17'05" East 106.42 feet; thence leaving said westerly line of 7th Street the following sixty four (64) courses: (1) North 71°38'40" West 175.90 feet; (2) along the arc of a tangent 3051.50 foot radius curve concave southerly, having a central angle of 2°41'41" with a chord bearing North 72°59'30" West 143.51 feet; (3) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 92°43'55" with a chord bearing North 27°58'23" West 14.48 feet; (4) tangent North 18°23'34" East 15.29'; (5)

North 71°36'26" West 80.00 feet; (6) South 18°23'34" West 21.70 feet; (7) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 85°23'34" with a chord bearing South 61°05'21" West 13.56 feet; (8) along the arc of a reverse 3051.50 foot radius curve concave southerly, having a central angle of 4°16'58" with a chord bearing North 78°21'22" West 228.05 feet; (9) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 98°53'24" with a chord bearing North 31°03'09" West 15.20 feet; (10) tangent North 18°23'34" East 9.32 feet; (11) North 71°36'26" West 80.00 feet; (12) South 18°23'34" West 26.66 feet; (13) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 79°12'37" with a chord bearing South 57°59'53" West 12.75 feet; (14) along the arc of a reverse 3051.50 foot radius curve concave southerly, having a central angle of 3°31'12" with a chord bearing North 84°09'25" West 187.44 feet; (15) along the arc of a reverse 20.00 foot radius curve concave northeasterly, having a central angle of 84°31'34" with a chord bearing North 43°39'14" West 26.90 feet; (16) along the arc of a compound 1160.00 foot radius curve concave easterly, having a central angle of 0°21'39" with a chord bearing North 1°12'38" West 7.31 feet; (17) South 88°58'12" West 80.00 feet; (18) along the arc of a 1240.00 foot radius curve concave easterly, a radial to which bears South 88°58'12" West, having a central angle of 0°25'41" with a chord bearing South 1°14'39" East 9.27 feet; (19) along the arc of a reverse 10.00 foot radius curve concave northwesterly, having a central angle of 93°29'39" with a chord bearing South 45°17'20" West 14.57 feet; (20) along the arc of a reverse 3051.50 foot radius curve concave southerly, having a central angle of 6°52'17" with a chord bearing South 88°36'01" West 365.75 feet; (21) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 84°56'10" with a chord bearing North 52°22'03" West 13.50 feet; (22) tangent North 9°53'58" West 3.47 feet; (23) South 80°06'02" West 64.00 feet; (24) South 9°53'58" East 9.21 feet; (25) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 93°30'05" with a chord bearing South 36°51'04" West 14.57 feet; (26) along the arc of a reverse 3039.50 foot radius curve concave southerly, having a central angle of 3°34'14" with a chord bearing South 81°48'59" West 189.39 feet; (27) tangent South 80°01'52" West 162.53 feet; (28) along the arc of a tangent 10.00 foot radius curve concave northeasterly, having a central angle of 90°04'10" with a chord bearing North 54°56'03" West 14.15 feet; (29) tangent North 9°53'58" West 17.00

feet; (30) South 80°06'02" West 80.00 feet; (31) South 9°53'58" East 17.12 feet; (32) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 89°55'50" with a chord bearing South 35°03'57" West 14.13 feet; (33) tangent South 80°01'52" West 321.78 feet; (34) along the arc of a tangent 10.00 foot radius curve concave northeasterly, having a central angle of 90°04'10" with a chord bearing North 54°56'03" West 14.15 feet; (35) tangent North 9°53'58" West 17.36 feet; (36) South 80°06'02" West 80.00 feet; (37) South 9°53'58" East 17.48 feet; (38) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 89°55'50" with a chord bearing South 35°03'57" West 14.13 feet; (39) tangent South 80°01'52" West 396.47 feet; (40) South 9°58'08" East 6.50 feet; (41) South 5°10'54" West 68.38 feet; (42) South 9°58'08" East 18.50 feet; (43) North 80°01'52" East 414.21 feet; (44) along the arc of a tangent 10.00 foot radius curve concave southwesterly, having a central angle of 90°04'10" with a chord bearing South 54°55'57" East 14.15 feet; (45) tangent South 9°53'58" East 19.10 feet; (46) North 80°06'02" East 80.00 feet; (47) North 9°53'58" West 19.22 feet; (48) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 89°55'50" with a chord bearing North 35°03'57" East 14.13 feet; (49) tangent North 80°01'52" East 321.78 feet; (50) along the arc of a tangent 10.00 foot radius curve concave southwesterly, having a central angle of 90°04'10" with a chord bearing South 54°56'03" East 14.15 feet; (51) tangent South 9°53'58" East 17.59 feet; (52) North 80°06'02" East 80.00 feet; (53) North 9°53'58" West 17.72 feet; (54) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 89°55'50" with a chord bearing North 35°03'57" East 14.13 feet; (55) tangent North 80°01'52" East 162.66; (56) along the arc of a tangent 2948.50 foot radius curve concave southerly, having a central angle of 3°42'11" with a chord bearing North 81°52'58" East 190.53 feet; (57) along the arc of a compound 10.00 foot radius curve concave southwesterly, having a central angle of 86°21'59" with a chord bearing South 53°04'57" East 13.69 feet; (58) tangent South 9°53'58" East 22.89 feet; (59) North 80°06'02" East 64.00 feet; (60) North 9°53'58" West 16.35 feet; (61) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 95°16'36" with a chord bearing North 37°44'20" East 14.78 feet; (62) along the arc of a compound 2948.50 foot radius curve concave southerly, having a central angle of 6°39'49" with a chord bearing North 88°42'32" East 342.73 feet; (63) along the arc of a compound 20.00 foot

radius curve concave southwesterly, having a central angle of 85°29'43" with a chord bearing South 45°12'42" East 27.15 feet; (64) tangent South 2°27'51" East 14.30 feet to the northwesterly corner of 5th Street as described in that certain Easement for Public Road recorded in Book _____, Page _____, Official Records of Sacramento County; thence along the northerly line of said 5th Street, North 87°32'09" East 80.00 feet to the northeasterly corner of said 5th Street; thence leaving said northerly line of 5th Street the following four (4) courses: (1) North 2°27'51" West 2.35 feet; (2) along the arc of a tangent 20.00 foot radius curve concave southeasterly, having a central angle of 96°51'52" with a chord bearing North 45°58'05" East 29.93 feet; (3) along the arc of a compound 2948.50 foot radius curve concave southerly, having a central angle of 9°06'45" with a chord bearing South 81°02'36" East 468.45 feet; (4) along the arc of a compound 10.00 foot radius curve concave southwesterly, having a central angle of 95°21'27" with a chord bearing South 28°48'30" East 14.79 feet to the northwesterly corner of said 6th Street and the Point of Beginning

All as shown on Exhibit B attached hereto and by this reference made a part hereof.

Containing an area of 289,337 square feet more or less.

_____

MICHAEL JAMES KNAPTON DATE

P.L.S.8012 EXPIRES 12/31/2012

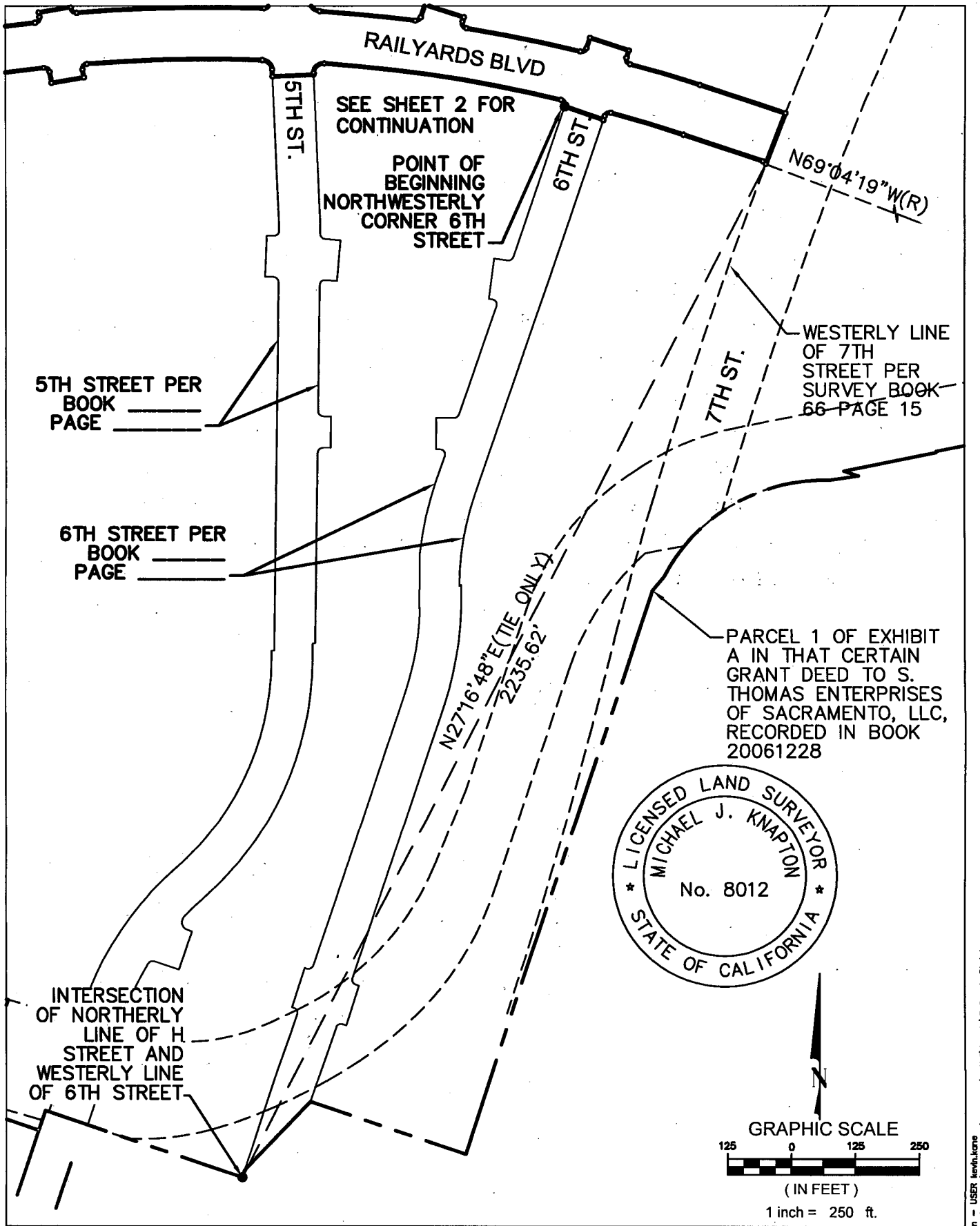

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EXHIBIT B

SCALE: HORIZ. 1"=120'
VERT.
DATE: 6/08/2012
PROJECT NO.

SHEET 1 OF 5

Jun 11, 2012 – 3:32pm – USER kevin.kane
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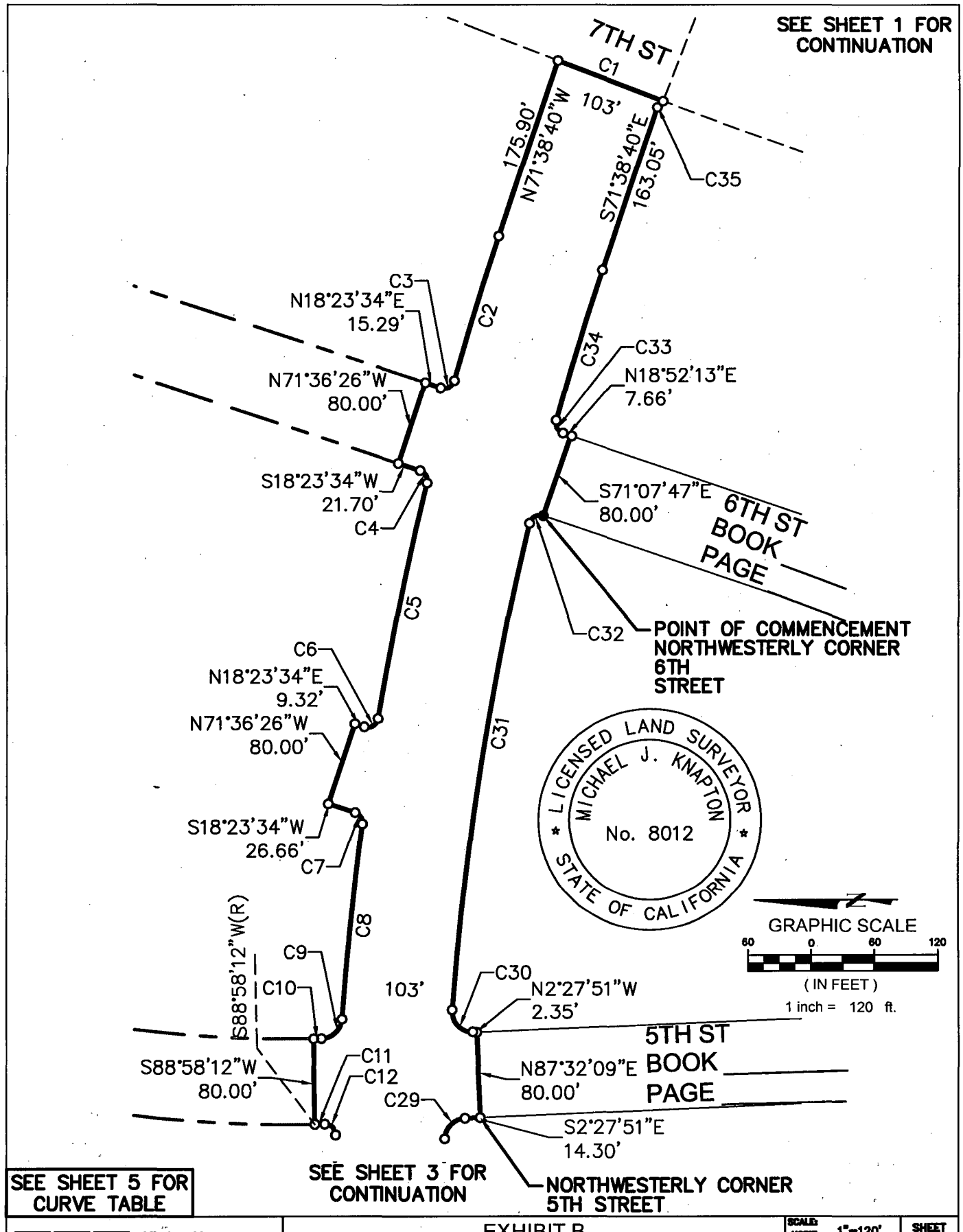

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SCALE: HORIZ. 1"=120' VERT.
DATE: 6/08/2012
PROJECT NO.

SHEET 2 OF 5

Jun 11, 2012 - 3:32pm - USER kevin.kane
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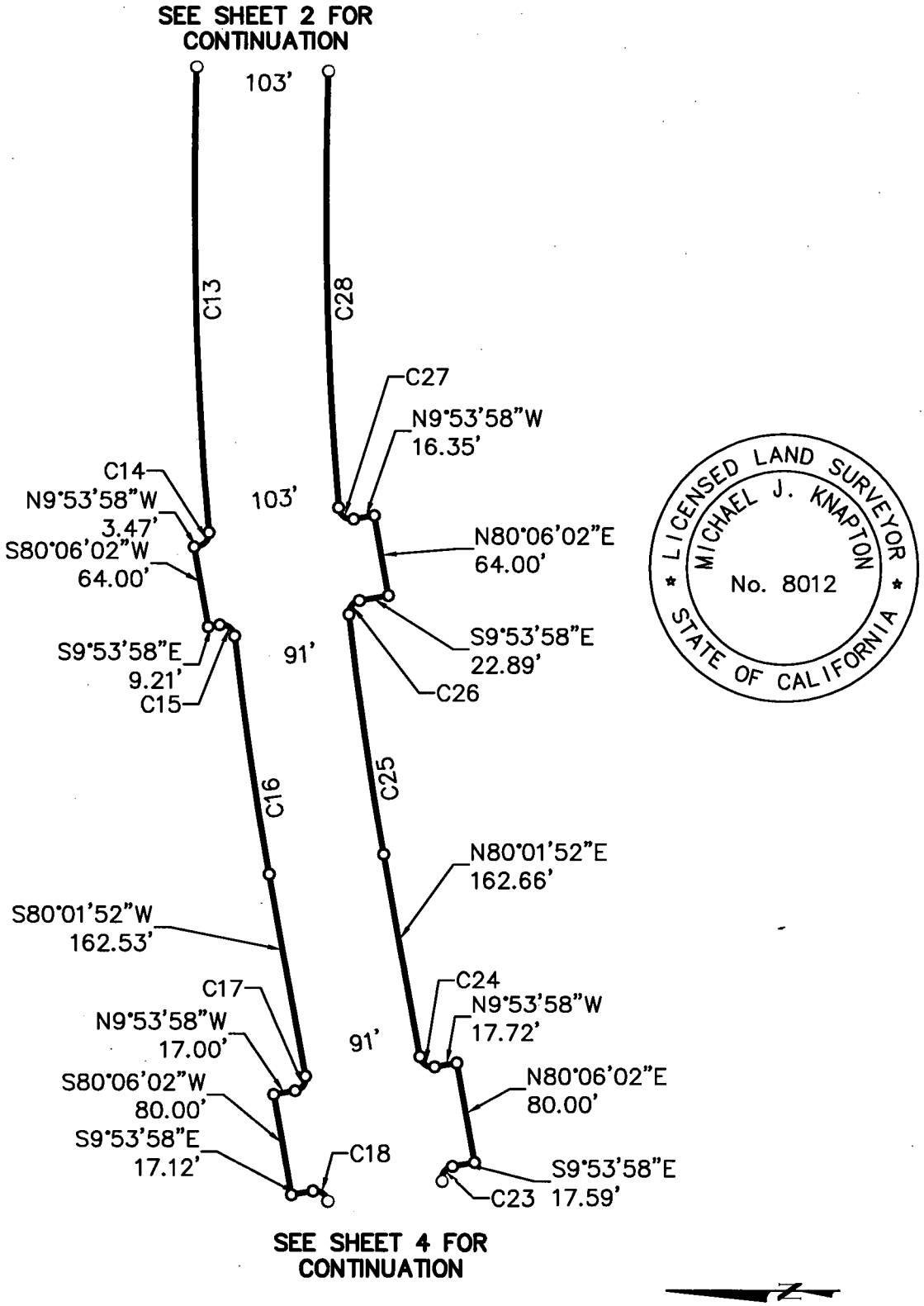

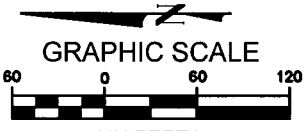

SEE SHEET 5 FOR CURVE TABLE

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EXHIBIT B

SCALE: HORIZ. 1"=120' VERT.
DATE: 6/08/2012
PROJECT NO.

SHEET 3 OF 5

Jun 11, 2012 – 3:32pm – USER kevin.kane
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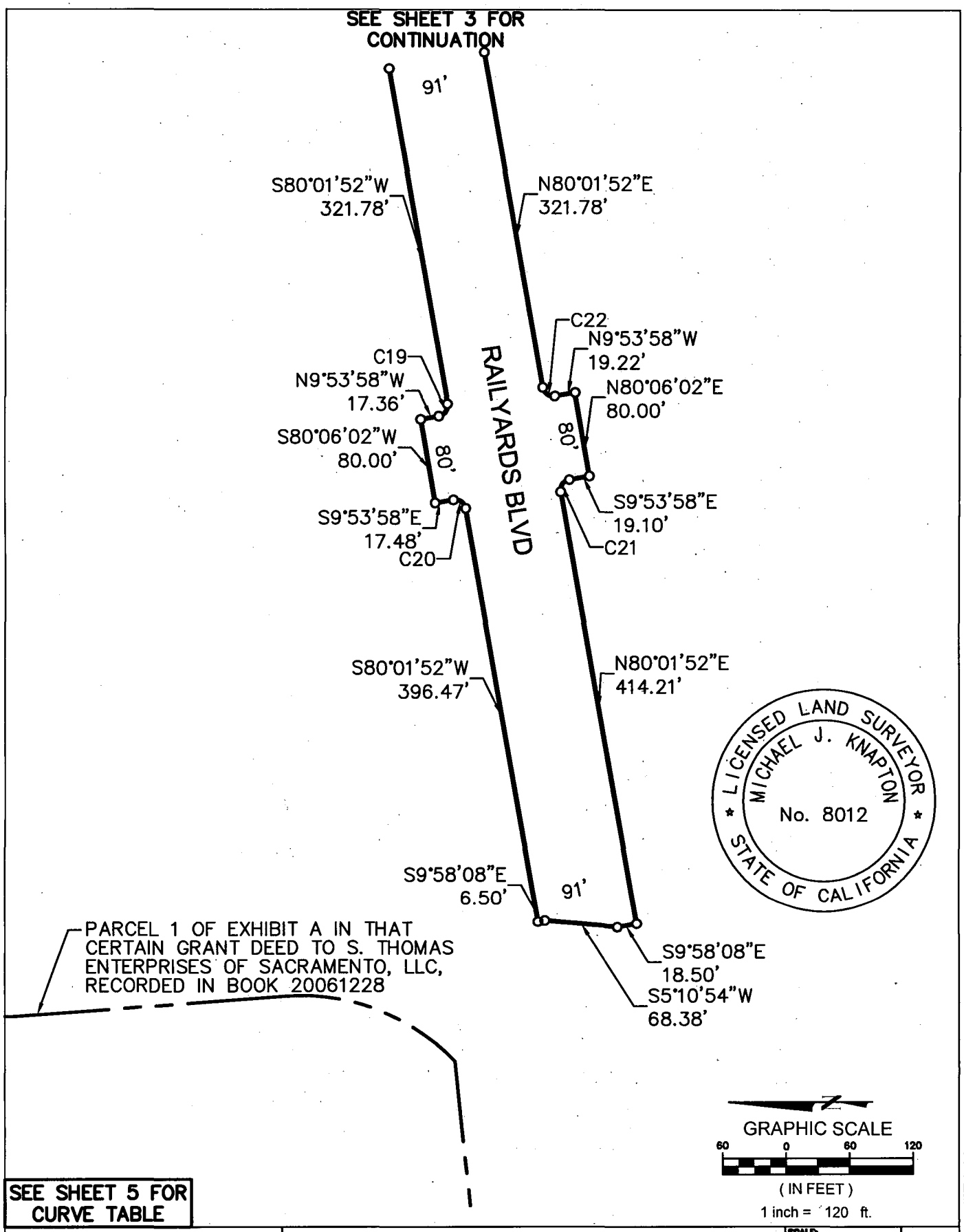

SEE SHEET 5 FOR CURVE TABLE

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SCALE: HORIZ. 1"=120' VERT.
DATE: 6/08/2012
PROJECT NO.

SHEET 4 OF 5

Jun 11, 2012 - 3:33pm - USER kevin.kane
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CURVE TABLE				
CURVE	DELTA	RADIUS	CHORD BEARING	CHORD
C1	0°42'48"	8547.63'	N21°17'05"E	106.42'
C2	2°41'41"	3051.50'	N72°59'30"W	143.51'
C3	92°43'55"	10.00'	N27°58'23"W	14.48'
C4	85°23'34"	10.00'	S61°05'21"W	13.56'
C5	4°16'58"	3051.50'	N78°21'22"W	228.05'
C6	98°53'24"	10.00'	N31°03'09"W	15.20'
C7	79°12'37"	10.00'	S57°59'53"W	12.75'
C8	3°31'12"	3051.50'	N84°09'25"W	187.44'
C9	84°31'34"	20.00'	N43°39'14"W	26.90'
C10	0°21'39"	1160.00'	N1°12'38"W	7.31'
C11	0°25'41"	1240.00'	S1°14'39"E	9.27'
C12	93°29'39"	10.00'	S45°17'20"W	14.57'
C13	6°52'17"	3051.50'	S88°36'01"W	365.75'
C14	84°56'10"	10.00'	N52°22'03"W	13.50'
C15	93°30'05"	10.00'	S36°51'04"W	14.57'
C16	3°34'14"	3039.50'	S81°48'59"W	189.39'
C17	90°04'10"	10.00'	N54°56'03"W	14.15'
C18	89°55'50"	10.00'	S35°03'57"W	14.13'
C19	90°04'10"	10.00'	N54°56'03"W	14.15'
C20	89°55'50"	10.00'	S35°03'57"W	14.13'
C21	90°04'10"	10.00'	S54°55'57"E	14.15'
C22	89°55'50"	10.00'	N35°03'57"E	14.13'
C23	90°04'10"	10.00'	S54°56'03"E	14.15'
C24	89°55'50"	10.00'	N35°03'57"E	14.13'
C25	3°42'11"	2948.50'	N81°52'58"E	190.53'
C26	86°21'59"	10.00'	S53°04'57"E	13.69'
C27	95°16'36"	10.00'	N37°44'20"E	14.78'
C28	6°39'49"	2948.50'	N88°42'32"E	342.73'
C29	85°29'43"	20.00'	S45°12'42"E	27.15'
C30	96°51'52"	20.00'	N45°58'05"E	29.93'
C31	9°06'45"	2948.50'	S81°02'36"E	468.45'
C32	95°21'27"	10.00'	S28°48'30"E	14.79'
C33	86°35'54"	10.00'	N62°10'10"E	13.72'
C34	2°53'14"	2948.50'	S73°05'16"E	148.56'
C35	47°48'47"	10.00'	S47°44'16"E	8.10'

LICENSED LAND SURVEYOR
MICHAEL J. KNAPTON
No. 8012
STATE OF CALIFORNIA

Kimley-Horn and Associates, Inc.
Engineering, Planning, and Environmental Consultants
11919 Foundation Place, Suite 200
Gold River, California 95670
www.kimley-horn.com
Tel. No. (916) 858-5800
Fax No. (916) 858-0885
© 2012

EXHIBIT B

SCALE: HORIZ. 1"=120' VERT.
DATE: 6/08/2012
PROJECT NO.

SHEET 5 OF 5

Jun 11, 2012 - 3:33pm - USER kevin.kane
K:\SAC_LDEV\097922008 Railyards\100 Overall\06 CADD_Civil\Legals\Railyards Blvd.dwg

City of Sacramento

Tax ID# if applicable: NA

Requires Council Approval: ☐ No ☒ Yes Meeting: 07/30/13

☐ Real Estate ☐ Other Party Signature Needed ☐ Recording Requested

General Information

Type: Outside Agency POType: $ Not to Exceed: $0.00	Attachment: Original NO: Original Doc Number:
Other Party: IA Sacramento Holdings, L.L.C.	Certified Copies of Document:
Project Name: Project Delivery Agreement - IA Holdings	Deed: ☒ None ☐ Included ☐ Seperate
Project Number: T15135800 Bid Transaction #	E/SBE-DBE-M/WBE:

Department Information

Department: Public Works — Division: Engineering Services

Project Mgr: Marc Lee — Supervisor: Jon Blank

Contract Services: Brenda Kee — Date: 06/28/13 — Section Manager: Jon Blank

Phone Number: 916-808-1923 — Division Manager: Nicholas Theocharides

Comment: — Org Number: 15001141

Review and Signature Routing

Department	Signature or Initial	Date
Contract Services:	BKee	6/28/13
Project Mgr:	[illegible]	6/28/13
Supervisor:	[illegible]	6/29/13
Section Manager:	[illegible]	
Division Manager:	[illegible]	6/29/13

City Attorney	Signature or Initial	Date
City Attorney (MC: 09300):	[illegible]	7-2-13

☐ Send Interoffice Mail ☒ Notify for Pick Up

Authorization	Signature or Initial	Date
Department Director, Jerry Way Concurrence here and signature inside:	[illegible]	7-31-13
City Manager (MC: 09200):	[illegible]	8-6-13
Yes ☐ No ☐		
City Clerk (MC: 09200):		

Contract Cover/Routing Form: Must Accompany ALL Contracts; (01-01-09)

For City Clerk Processing

Finalized:
Initial: [illegible]
Date: 08/07/2013
Imaged:
Initial:
Date:
Received:
(City Clerk Stamp Here)

2013-0777
Title: Project Delivery Agreement-IA Holdings
Other Party: IA Sacramento Holdings, LLC

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
2013 AUG -1 A 8:53

FIRST AMENDMENT TO

PROJECT DELIVERY AGREEMENT

THIS FIRST AMENDMENT TO PROJECT DELIVERY AGREEMENT (this "**Amendment**") is dated as of 8-7, 2013, by and between IA Sacramento Holdings, L.L.C., a Delaware limited liability company ("**IA Holdings**"), and the City of Sacramento, a California municipal corporation (the "**City**").

RECITALS

This Amendment is entered into with reference to the following circumstances:

A. IA Holdings and the City entered into that certain Project Delivery Agreement, dated as of February 28, 2013 (the "**PDA**").

B. On May 21, 2013, IA Holdings delivered to the City an irrevocable letter of credit in satisfaction of Article XII of the PDA.

C. The parties desire to amend the PDA as set forth herein. Unless otherwise defined herein, all capitalized terms in this Amendment shall have the same meaning ascribed to them in the PDA.

TERMS AND CONDITIONS

In consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IA Holdings and the City agree as follows:

1. Dedication.

(a) Condition of Title. The City has completed its investigation and review of the condition of title of the public street right-of-way of the Roadway Project as contemplated in subsection (b) of Article XIII.

(b) Title Policy. The City desires to obtain owner's policies of title insurance in connection with the acceptance of each of the dedications contemplated in Article XIII of the PDA. Accordingly, the City has obtained an irrevocable commitment from Fidelity National Title Company, 8950 Cal Center Drive, Bldg. 3, Suite 100, Sacramento, CA 95826 (the "**Title Company**"), for the issuance of owner's policies of title insurance insuring that fee title to each of the public street rights-of-way of the Roadway Project are vested in the City upon recordation of the Grant Deed, with coverage in the amount of $3,000,000 each and in the form of the proforma policies attached hereto as Exhibit A and Exhibit B (the "**Title Policies**"). The parties hereby agree and acknowledge that the Title Policies may upon written consent of the City be amended prior to Final Completion of the Roadway Project to account for new exceptions permitted under Article XIII of the PDA, if any. IA Holdings shall pay a total of $5,400 toward

the premiums for the Title Policies. The parties hereby acknowledge and agree that the condition to dedication set forth in subsection (c) of Article XIII has been satisfied.

2. Full Force and Effect. Except to the extent expressly modified by this Amendment, the PDA remains in full force and effect. To the extent any inconsistency exists between this Amendment and the PDA, the terms and conditions of this Amendment shall control. This Amendment may be executed in multiple counterparts, all of which, taken together, shall constitute one document. Facsimiles, PDFs, and photocopies of signature pages of this Amendment have the same binding effect as originals.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, IA Holdings and the City have executed this Amendment as of the date first above written.

IA HOLDINGS:

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: _____
Name: Marcia L. Grant
Date: Assistant Secretary
Title: May 22, 2013

CITY:

City of Sacramento,
a California municipal corporation

By: _____
Name: Francesca Halbakken
Title: Operations Manager

Approved as to Legal Form

By: _____
Senior Deputy City Attorney

Attest: _____
By: _____ 08072013
City Clerk

EXHIBIT A

PROFORMA FOR 5TH STREET

Fidelity National Title Company

PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein, ***Fidelity National Title Company*** *hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Fidelity National Title Insurance Company, a California corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Fidelity National Title Company

BY _____ President

SEAL

ATTEST _____ Secretary

_____ Countersigned

Visit Us on our Website: www.fntic.com

Fidelity National Title Company

ISSUING OFFICE: 11050 Olson Dr., Suite 200 • Rancho Cordova, CA 95670

FOR SETTLEMENT INQUIRIES, CONTACT: Fidelity National Title Company - Sacramento Commercial & Industrial
8950 Cal Center Drive, Bldg. 3, Suite 100 • Sacramento, CA 95826
916 364-4070 • FAX 916 364-4093

PRELIMINARY REPORT

Amended

Title Officer: Craig Donner
Escrow Officer: Paul Avila
Escrow No.: 13-**5014562**-PA

Title No.: 13-**5014562**-E-CD
Locate No.: CAFNT0934-0934-0010-0005014562

TO: City of Sacramento
5730 24th St., Bldg 4
Sacramento, CA 95822

ATTN: Bill Sinclair
YOUR REFERENCE: 5th Street

PROPERTY ADDRESS: 5th Street, Sacramento, California

EFFECTIVE DATE: May 7, 2013, 07:30 A.M.

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

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

   A Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

   City of Sacramento, a municipal corporation

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

   SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

CD\CD 03/08/2013

LEGAL DESCRIPTION

EXHIBIT "A"

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

A portion of the tract of land described as Parcel 1 of Exhibit A in that certain Grant Deed to S. Thomas Enterprises of Sacramento, LLC, recorded in Book 20061228, Page 1675, Official Records of Sacramento County, located in the City of Sacramento, being more particularly described as follows:

Commencing 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) also being the point of beginning of said Parcel 1; thence along said northerly line of H Street, North 71°31'11" West (Record South 71°33'22' East) 318.55 feet to the TRUE POINT OF BEGINNING. Thence from said TRUE POINT OF BEGINNING the following ten (10) courses: (1) North 18°31'52" East 210.98 feet; (2) along the arc of a tangent 565.00 foot radius curve concave southeasterly, having a central angle of 12°35'10" with a chord bearing North 24°49'27" East 123.86 feet; (3) along the arc of a compound 10.00 foot radius curve concave southerly, having a central angle of 77°10'31" with a chord bearing North 69°42'17" East 12.47 feet; (4) tangent South 71°42'28" East 51.51 feet; (5) North 18°17'32" East 80.00 feet; (6) North 71°42'28" West 9.22 feet; (7) along the arc of a tangent 16.00 foot radius curve concave easterly, having a central angle of 114°40'31" with a chord bearing North 14°22'12' West 26.94 feet; (8) along the arc of a compound 565.00 foot radius curve concave southeasterly, having a central angle of 5°21'47" with a chord bearing North 45°38'56" East 52.87 feet; (9) along the arc of a reverse 635.00 foot radius curve concave northwesterly, having a central angle of 47°37'50" with a chord bearing North 24°30'55" East 512.81 feet; (10) tangent North 0°42'00" East 35.03 feet to a point on the northerly line of Railroad Easement II as described in Exhibit D of said Grant Deed to S. Thomas Enterprises of Sacramento, LLC; thence along said northerly line along the arc of a non-tangent 824.96 feet radius curve concave northerly, a radial bearing to which bears South 10°50'48' East, having a central angle of 0°21'17' with a chord bearing North 78°58'34" East 5.11 feet; thence leaving said northerly line the following twenty three (23) courses: (1) North 0°42'00" East 373.35 feet; (2) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 90°00'00" with a chord bearing North 45°42'00" East 14.14 feet; (3) tangent South 89°18'00" East 15.00 feet; (4) North 00°42'00" East 62.00 feet; (5) North 89°18'00" West 15.00 feet; (6) along the arc of a tangent 10.00 foot radius curve concave northeasterly, having a central angle of 90°00'00" with a chord bearing North 44°18'00" West 14.14 feet; (7) tangent North 0°42'00" East 248.23 feet; (8) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 93°43'42" with a chord bearing North 47°33'51" East 14.59 feet; (9) along the arc of a compound 2960.00 foot radius curve concave southerly, having a central angle of 0°26'51" with a chord bearing South 85°20'52" East 23.12 feet; (10) North 4°52'33" East 80.00 feet; (11) along the arc of a non-tangent 3040.00 foot radius curve concave southerly, a radial bearing to which bears North 4°52'33" East, having a central angle of 0°34'14" with a chord bearing North 85°24'34" West 30.28 feet; (12) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 85°46'00" with a chord bearing North 42°48'41" West 13.61 feet; (13) along the arc of a reverse 640.00 foot radius curve concave westerly, having a central angle of 2°32'09" with a chord bearing North 1°11'46" West 28.32 feet; (14) tangent North 2°27'51" West 284.18 feet; (15) South 87°32'09" West 80.00 feet; (16) South 2°27'51" East 284.18 feet; (17) along the arc of a tangent 560.00 foot radius curve concave westerly, having a central angle of 1°56'11" with a chord bearing South 1°29'45" East 18.93 feet; (18) along the arc of a compound 10.00 foot radius curve concave northwesterly, having a central angle of 92°57'02" with a chord bearing South 45°56'51" West 14.50 feet; (19) along the arc of a reverse 3040.00 foot radius curve concave southerly, having a central angle of 0°15'25" with a chord bearing North 87°42'20" West 13.64 feet; (20) South 2°09'57" West 80.00 feet; (21) along the arc of a non-tangent 2960.00 foot radius curve concave southerly, a radial bearing to which bears North 2°09'57" East, having a central angle of 0°19'04" with a chord bearing South 87°40'31" East 16.42 feet; (22) along the arc of a compound 10.00 foot radius concave southwesterly, having a central angle of 88°12'58" with a chord bearing South 43°24'29" East 13.92 feet; (23) tangent South 0°42'00" West 723.57 feet to a point in said northerly line of Railroad Easement II; thence along said northerly line South 80°06'54" West 5.09 feet; thence leaving said northerly line the following four (4) courses: (1) South 0°42'00" West 19.96 feet; (2) along the arc of a tangent 555.00 foot radius curve concave westerly, having a central angle of 47°37'50" with a chord bearing South 24°30'55" West 448.21 feet; (3) along the arc of a reverse 645.00 foot curve

concave easterly, having a central angle of 29°47'58" with a chord bearing South 33°25'51" West 331.70 feet; (4) tangent South 18°31'52" West 211.05 feet to a point on said northerly line of H Street; thence along said northerly line of H Street, South 71°31'11" East 80.00 feet to the TRUE POINT OF BEGINNING.

Excepting therefrom said Railroad Easement II per Exhibit D of Grant Deed to S. Thomas Enterprises of Sacramento LLC, recorded December 28, 2006, in Book 20061228, Page 1675, Official Records of Sacramento County. Also excepting therefrom Area A and Area B as described in that certain ?Easement for Public Road and Public Utilities, (5th Street Bridge Improvements)? recorded November 25, 2009, in Book 20091125, Page 0700, Official Records of Sacramento County.

A portion of Assessor's Parcel No. 002-0010-056-0000 and 002-0010-058-0000

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2013-2014.

2. **Matters** contained in that certain document entitled "Conveyance from Southern Pacific Transportation Company to Southern Pacific Pipe Lines, Inc." dated December 9, 1988, executed by and between Southern Pacific Transportation Company, and Southern Pacific Pipe Lines, Inc. recorded December 15, 1988, Book 881215, Page 1322, of Official Records.

   Reference is hereby made to said document for full particulars.

3. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Reserved by:	Union Pacific Railroad Company, a Delaware corporation
Purpose:	Railroad Easements
Recorded:	December 28, 2006, Book 20061228, Page 1675, of Official Records

   Said was amended May 10, 2010, in Book 20100510, Page 1085 of Official Records.

4. Restriction on Use of Property and Grant of Easement" dated December 28, 2006, executed by and between Union Pacific Railroad Company, a Delaware corporation, formerly known as Southern Pacific Transportation Company, a Delaware corporation, successor in interest by merger with Southern Pacific Company, a Delaware corporation, successor by merger with Central Pacific Railway Company, a Utah corporation, and S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company formerly known as Millennia Sacramento III, LLC recorded December 28, 2006, Book 20061228, Page 1676, of Official Records.

   Reference is hereby made to said document for full particulars.

5. **Matters** contained in that certain document entitled "Declaration of Restrictive Covenants for the Development and Operation of Housing" dated None shown, executed by and between S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company, and the California Department of Housing and Community Development, an agency of the State of California recorded August 31, 2009, Book 20090831, Page 582 , of Official Records.

Reference is hereby made to said document for full particulars.

Amendment to Declaration of Restrictive Covenants for the Development and Operation of Housing recorded June 18, 2010, in Book 20100618, Page 1281 of Official Records thereof.

By the provisions of an agreement

Dated:	October 19, 2010
Executed by:	Department of Housing and Community Development, a public agency of the State of California
Recorded:	October 22, 2010, Book 20101022, Page 197, of Official Records

Said instrument was made subordinate to the lien of the document or interest described in the instrument

Recorded:	April 27, 2007, Book 20070427, Page 362, of Official Records

6. This is a Proforma report and should not be used in any evidence of title without approval of management.

END OF ITEMS

Note 1. **Note 1.** Property taxes for the fiscal year shown below are PAID. For proration purposes the amounts are:

Tax Identification No.:	002-0010-056-0000
Fiscal Year:	2012 - 2013
1st Installment:	$166,245.18
2nd Installment:	$166,245.18
Land:	$20,021,018.00
Improvements:	$0.00
Personal Property:	$0.00
Code Area:	03308
Bill No.:	12250534

Note 2. Property taxes, Property taxes for the fiscal year shown below are PAID. For proration purposes the amounts are:

Tax identification No.	002-0010-058-0000.
Code Area Number:	03-308
1st Installment:	$14,230.89
2nd Installment:	$14,230.89
Land:	$2,441,778.00
Improvements:	$0.00
Exemption:	$0.00
Personal Property:	$0.00
Bill No.:	12250536

Note 3. Wiring instructions for Fidelity National Title Company, Sacramento, CA, are as follows:

Receiving Bank:	Citibank (West), F.S.B. 1116 Alhambra Blvd. Sacramento, CA 95816
ABA Routing No.:	321171184
Credit Account Name:	Fidelity National Title Company - Sacramento Commercial & Industrial 8950 Cal Center Drive, Bldg. 3, Suite 100, Sacramento, CA 95826
Credit Account No.:	202125712
Escrow No.:	13-**5014562**-PA

These wiring instructions are for this specific transaction involving the Title Department of the Rancho Cordova office of Fidelity National Title Company . These instructions therefore should not be used in other transactions without first verifying the information with our accounting department. It is imperative that the wire text be exactly as indicated. Any extraneous information may cause unnecessary delays in confirming the receipt of funds.

Note 4. Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.

END OF NOTES

ATTACHMENT ONE

AMERICAN LAND TITLE ASSOCIATION
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS

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

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - improvements on the land
   - land division
   - environmental protection

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at policy date.

   This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowledge of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date- unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A

     or
   - in streets, alleys, or waterways that touch your land

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

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

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.
3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.
4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

ATTACHMENT ONE
(CONTINUED)

CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990
EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

SCHEDULE B, PART I
EXCEPTIONS FROM COVERAGE

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

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

ATTACHMENT ONE
(CONTINUED)

FORMERLY AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92) WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
   (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
   (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
      (a) to timely record the instrument of transfer; or
      (b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

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

EXCEPTIONS FROM COVERAGE

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

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

ATTACHMENT ONE
(CONTINUED)

2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

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

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

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

EXCEPTIONS FROM COVERAGE

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

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

ATTACHMENT ONE
(CONTINUED)

FORMERLY AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)
EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy, or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
   (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
      (a) to timely record the instrument of transfer; or
      (b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

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

EXCEPTIONS FROM COVERAGE

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

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

ATTACHMENT ONE
(CONTINUED)

2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

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

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

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

EXCEPTIONS FROM COVERAGE

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

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

ATTACHMENT ONE
(CONTINUED)

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)
EXCLUSIONS

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

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
   a. building
   b. zoning
   c. Land use
   d. improvements on Land
   e. Land division
   f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.
This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
   a. notice of exercising the right appears in the Public Records at the Policy Date; or
   b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
   a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
   c. that result in no loss to You; or
   d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 14:	1.00% of Policy Amount or $ 2,500.00 (whichever is less)	$ 10,000.00
Covered Risk 15:	1.00% of Policy Amount or $ 5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 16:	1.00% of Policy Amount or $ 5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 18:	1.00% of Policy Amount or $ 2,500.00 (whichever is less)	$ 5,000.00

ATTACHMENT ONE
(CONTINUED)

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

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

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
   a. building;
   b. zoning;
   c. land use;
   d. improvements on the Land;
   e. land division; and
   f. environmental protection.

   This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
   a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
   c. that result in no loss to You; or
   d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.

   This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A or $ 2,500.00 (whichever is less)	$ 10,000.00
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A or $ 5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or $ 5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or $ 2,500.00 (whichever is less)	$ 5,000.00

ATTACHMENT ONE
(CONTINUED)

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)
EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
   (a) created, suffered, assumed or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
   (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:
   (a) The time of the advance; or
   (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

ATTACHMENT ONE
(CONTINUED)

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

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

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

Notice

You may be entitled to receive a $20.00 discount on escrow services if you purchased, sold or refinanced residential property in California between May 19, 1995 and November 1, 2002. If you had more than one qualifying transaction, you may be entitled to multiple discounts.

If your previous transaction involved the same property that is the subject of your current transaction, you do not have to do anything; the Company will provide the discount, provided you are paying for escrow or title services in this transaction.

If your previous transaction involved property different from the property that is subject of your current transaction, you must - prior to the close of the current transaction - inform the Company of the earlier transaction, provide the address of the property involved in the previous transaction, and the date or approximate date that the escrow closed to be eligible for the discount.

Unless you inform the Company of the prior transaction on property that is not the subject of this transaction, the Company has no obligation to conduct an investigation to determine if you qualify for a discount. If you provide the Company information concerning a prior transaction, the Company is required to determine if you qualify for a discount which is subject to other terms and conditions.

Effective through November 1, 2014

Effective Date: 5/1/2008

Fidelity National Financial, Inc.
Privacy Statement

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

Personal Information Collected
We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

Disclosure of Personal Information
We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

Effective Date: 5/1/2008

Disclosure to Affiliated Companies - We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties - We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

Confidentiality and Security of Personal Information
We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

Access To Personal Information/
Requests for Correction, Amendment, or Deletion of Personal Information
As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer
Fidelity National Financial, Inc.
601 Riverside Avenue
Jacksonville, FL 32204

Changes to this Privacy Statement
This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

FNF Underwritten Title Companies
FNTC – Fidelity National Title Company
FNTCCA – Fidelity National Title Company of California

FNF Underwriter
FNTIC – Fidelity National Title Insurance Company

Available Discounts

CREDIT FOR PRELIMINARY REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES (FNTIC)
Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within 12 or 36 months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge.

FEE REDUCTION SETTLEMENT PROGRAM (FNTC, FNTCCA and FNTIC)
Eligible customers shall receive a $20.00 reduction in their title and/or escrow fees charged by the Company for each eligible transaction in accordance with the terms of the Final Judgments entered in *The People of the State of California et al. v. Fidelity National Title Insurance Company et al.*, Sacramento Superior Court Case No. 99AS02793, and related cases.

DISASTER LOANS (FNTIC)
The charge for a Lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within 24 months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be 50% of the appropriate title insurance rate.

CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (FNTIC)
On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be 50% or 70% of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be 32% or 50% of the appropriate title insurance rate, depending on the type of coverage selected.

EXHIBIT B

PROFORMA FOR RAILYARDS BLVD.

Fidelity National Title Company

PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein, ***Fidelity National Title Company*** *hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Fidelity National Title Insurance Company, a California corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Fidelity National Title Company

BY _____ President

ATTEST _____ Secretary

CORPORATE SEAL

Countersigned

Visit Us on our Website: www.fntic.com

Fidelity National Title Company

ISSUING OFFICE: 11050 Olson Dr., Suite 200 • Rancho Cordova, CA 95670

FOR SETTLEMENT INQUIRIES, CONTACT: Fidelity National Title Company - Sacramento Commercial & Industrial
8950 Cal Center Drive, Bldg. 3, Suite 100 • Sacramento, CA 95826
916 364-4070 • FAX 916 364-4093

PRELIMINARY REPORT

Amended

Title Officer: Craig Donner
Escrow Officer: Paul Avila
Escrow No.: 13-**5014564**-PA

Title No.: 13-**5014564**-C-CD
Locate No.: CAFNT0934-0934-0010-0005014564

TO: City of Sacramento
5730 24th St., Bldg 4
Sacramento, CA 95822

ATTN: Bill Sinclair
YOUR REFERENCE: Railyards Blvd

PROPERTY ADDRESS: Railyards Blvd, Sacramento, California

EFFECTIVE DATE: February 26, 2013, 07:30 A.M.

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

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

   A Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

   City of Sacramento, a municipal corporation

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

   SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

CD\CD 03/08/2013

LEGAL DESCRIPTION

EXHIBIT "A"

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

A portion of the land described as Parcel 1 of Exhibit A in that certain Grant Deed to S. Thomas Enterprises of Sacramento, LLC, recorded in Book 20061228, Page 1675, Official Records of Sacramento County, located in the City of Sacramento, being more particularly described as follows:

Beginning at the northwesterly corner of 6th Street as described in that certain Grant Deed recorded April 26, 2012, in Book 20120426, Page 1168, Official Records of Sacramento County; thence along the northerly line of said 6th Street, South 71°07'47" East 80.00 feet to the northeasterly corner thereof; thence leaving said northerly line of 6th Street the following five (5) courses: (1) North 18°52'13" East 7.66 feet; (2) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 86°35'54" with a chord bearing North 62°10'10" East 13.72 feet; (3) along the arc of a compound 2948.50 foot radius curve concave southerly, having a central angle of 2°53'14" with a chord bearing South 73°05'16" East 148.56 feet; (4) tangent South 71°38'40" East 163.05 feet; (5) along the arc of a tangent 10.00 foot radius curve concave southwesterly, having a central angle of 47°48'47" with a chord bearing South 47°44'16" East 8.10 feet to a point on the westerly line of 7th Street as shown on that certain Record of Survey recorded in Book 66 of Surveys, Page 15, Official Records of Sacramento County, said point lying North 27°16'48" East 2235.62 feet of 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 continuing along said westerly line of 7th Street, along the arc of a 8547.63 foot radius curve concave easterly, a radial to which bears North 69°04'19" West, having a central angle of 0°42'48" with a chord bearing North 21°17'05" East 106.42 feet; thence leaving said westerly line of 7th Street the following sixty four (64) courses: (1) North 71°38'40" West 175.90 feet; (2) along the arc of a tangent 3051.50 foot radius curve concave southerly, having a central angle of 2°41'41" with a chord bearing North 72°59'30" West 143.51 feet; (3) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 92°43'55" with a chord bearing North 27°58'23" West 14.48 feet; (4) tangent North 18°23'34" East 15.29?; (5) North 71°36'26" West 80.00 feet; (6) South 18°23'34" West 21.70 feet; (7) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 85°23'34" with a chord bearing South 61°05'21" West 13.56 feet; (8) along the arc of a reverse 3051.50 foot radius curve concave southerly, having a central angle of 4°16'58" with a chord bearing North 78°21'22" West 228.05 feet; (9) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 98°53'24" with a chord bearing North 31°03'09" West 15.20 feet; (10) tangent North 18°23'34" East 9.32 feet; (11) North 71°36'26" West 80.00 feet; (12) South 18°23'34" West 26.66 feet; (13) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 79°12'37" with a chord bearing South 57°59'53" West 12.75 feet; (14) along the arc of a reverse 3051.50 foot radius curve concave southerly, having a central angle of 3°31'12" with a chord bearing North 84°09'25" West 187.44 feet; (15) along the arc of a reverse 20.00 foot radius curve concave northeasterly, having a central angle of 84°31'34" with a chord bearing North 43°39'14" West 26.90 feet; (16) along the arc of a compound 1160.00 foot radius curve concave easterly, having a central angle of 0°21'39" with a chord bearing North 1°12'38" West 7.31 feet; (17) South 88°58'12" West 80.00 feet; (18) along the arc of a 1240.00 foot radius curve concave easterly, a radial to which bears South 88°58'12" West, having a central angle of 0°25'41" with a chord bearing South 1°14'39" East 9.27 feet; (19) along the arc of a reverse 10.00 foot radius curve concave northwesterly, having a central angle of 93°29'39" with a chord bearing South 45°17'20" West 14.57 feet; (20) along the arc of a reverse 3051.50 foot radius curve concave southerly, having a central angle of 6°52'17" with a chord bearing South 88°36'01" West 365.75 feet; (21) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 84°56'10" with a chord bearing North 52°22'03" West 13.50 feet; (22) tangent North 9°53'58" West 3.47 feet; (23) South 80°06'02" West 64.00 feet; (24) South 9°53'58" East 9.21 feet; (25) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 93°30'05" with a chord bearing South 36°51'04" West 14.57 feet; (26) along the arc of a reverse 3039.50 foot radius curve concave southerly, having a central angle of 3°34'14" with a chord bearing South 81°48'59" West 189.39 feet; (27) tangent South 80°01'52" West 162.53 feet; (28) along the arc of a tangent 10.00 foot radius curve concave northeasterly, having a central angle of 90°04'10" with a chord bearing North 54°56'03" West 14.15 feet; (29) tangent North 9°53'58" West 17.00 feet; (30) South 80°06'02" West 80.00 feet;

(31) South 9°53'58" East 17.12 feet; (32) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 89°55'50" with a chord bearing South 35°03'57" West 14.13 feet; (33) tangent South 80°01'52" West 321.78 feet; (34) along the arc of a tangent 10.00 foot radius curve concave northeasterly, having a central angle of 90°04'10" with a chord bearing North 54°56'03" West 14.15 feet; (35) tangent North 9°53'58" West 17.36 feet; (36) South 80°06'02" West 80.00 feet; (37) South 9°53'58" East 17.48 feet; (38) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 89°55'50" with a chord bearing South 35°03'57" West 14.13 feet; (39) tangent South 80°01'52" West 396.47 feet; (40) South 9°58'08" East 6.50 feet; (41) South 5°10'54" West 68.38 feet; (42) South 9°58'08" East 18.50 feet; (43) North 80°01'52" East 414.21 feet; (44) along the arc of a tangent 10.00 foot radius curve concave southwesterly, having a central angle of 90°04'10" with a chord bearing South 54°55'57" East 14.15 feet; (45) tangent South 9°53'58" East 19.10 feet; (46) North 80°06'02" East 80.00 feet; (47) North 9°53'58" West 19.22 feet; (48) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 89°55'50" with a chord bearing North 35°03'57" East 14.13 feet; (49) tangent North 80°01'52" East 321.78 feet; (50) along the arc of a tangent 10.00 foot radius curve concave southwesterly, having a central angle of 90°04'10" with a chord bearing South 54°56'03" East 14.15 feet; (51) tangent South 9°53'58" East 17.59 feet; (52) North 80°06'02" East 80.00 feet; (53) North 9°53'58" West 17.72 feet; (54) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 89°55'50" with a chord bearing North 35°03'57" East 14.13 feet; (55) tangent North 80°01'52" East 162.66; (56) along the arc of a tangent 2948.50 foot radius curve concave southerly, having a central angle of 3°42'11" with a chord bearing North 81°52'58" East 190.53 feet; (57) along the arc of a compound 10.00 foot radius curve concave southwesterly, having a central angle of 86°21'59" with a chord bearing South 53°04'57" East 13.69 feet; (58) tangent South 9°53'58" East 22.89 feet; (59) North 80°06'02" East 64.00 feet; (60) North 9°53'58" West 16.35 feet; (61) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 95°16'36" with a chord bearing North 37°44'20" East 14.78 feet; (62) along the arc of a compound 2948.50 foot radius curve concave southerly, having a central angle of 6°39'49" with a chord bearing North 88°42'32" East 342.73 feet; (63) along the arc of a compound 20.00 foot radius curve concave southwesterly, having a central angle of 85°29'43" with a chord bearing South 45°12'42" East 27.15 feet; (64) tangent South 2°27'51" East 14.30 feet to the northwesterly corner of 5th Street as described in that certain Easement for Public Road recorded April 26, 2012, in Book 20120426, Page 1168, Official Records of Sacramento County; thence along the northerly line of said 5th Street, North 87°32'09" East 80.00 feet to the northeasterly corner of said 5th Street; thence leaving said northerly line of 5th Street the following four (4) courses: (1) North 2°27'51" West 2.35 feet; (2) along the arc of a tangent 20.00 foot radius curve concave southeasterly, having a central angle of 96°51'52" with a chord bearing North 45°58'05" East 29.93 feet; (3) along the arc of a compound 2948.50 foot radius curve concave southerly, having a central angle of 9°06'45" with a chord bearing South 81°02'36" East 468.45 feet; (4) along the arc of a compound 10.00 foot radius curve concave southwesterly, having a central angle of 95°21'27" with a chord bearing South 28°48'30" East 14.79 feet to the northwesterly corner of said 6th Street and the Point of Beginning.

A portion of Assessor's Parcel Nos. 002-0010-056-0000 & 002-0010-049-0000

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2013-2014.

2. **Matters** contained in that certain document entitled "Conveyance from Southern Pacific Transportation Company to Southern Pacific Pipe Lines, Inc." dated December 9, 1988, executed by and between Southern Pacific Transportation Company, and Southern Pacific Pipe Lines, Inc. recorded December 15, 1988, Book 881215, Page 1322, of Official Records.

   Reference is hereby made to said document for full particulars.

3. **Matters** contained in that certain document entitled "Covenant to Restrict Use of Property" dated None shown, executed by and between Union Pacific Railroad Company, and the State of California acting by and through the Department of Toxic Substances Control recorded July 11, 2001, Book 20010711, Page 1498, of Official Records.

   Reference is hereby made to said document for full particulars.

4. **Matters** contained in that certain document entitled "Covenant and Agreement Regarding Restriction on Use of Property and Grant of Easement" dated December 28, 2006, executed by and between Union Pacific Railroad Company, a Delaware corporation, formerly known as Southern Pacific Transportation Company, a Delaware corporation, successor in interest by merger with Southern Pacific Company, a Delaware corporation, successor by merger with Central Pacific Railway Company, a Utah corporation, and S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company formerly known as Millennia Sacramento III, LLC recorded December 28, 2006, Book 20061228, Page 1676, of Official Records.

   Reference is hereby made to said document for full particulars.

5. **Matters** contained in that certain document entitled "Declaration of Restrictive Covenants for the Development and Operation of Housing" dated None shown, executed by and between S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company, and the California Department of Housing and Community Development, an agency of the State of California recorded August 31, 2009, Book 20090831, Page 582 , of Official Records.

Reference is hereby made to said document for full particulars.

Amendment to Declaration of Restrictive Covenants for the Development and Operation of Housing recorded June 18, 2010, in Book 20100618, Page 1281 of Official Records thereof.

By the provisions of an agreement

Dated:	October 19, 2010
Executed by:	Department of Housing and Community Development, a public agency of the State of California
Recorded:	October 22, 2010, Book 20101022, Page 197, of Official Records

Said instrument was made subordinate to the lien of the document or interest described in the instrument

Recorded:	April 27, 2007, Book 20070427, Page 362, of Official Records

6. This a Proforma report and should not be used in any evidence of title without the approval of management.

END OF ITEMS

Note 1. Property taxes for the fiscal year shown below are PAID. For proration purposes the amounts are:

Tax Identification No.:	002-0010-056-0000
Fiscal Year:	2012 - 2013
1st Installment:	$166,245.18
2nd Installment:	$166,245.18
Land:	$20,021,018.00
Improvements:	$0.00
Personal Property:	$0.00
Code Area:	03308
Bill No.:	12250534

Note 2. Property taxes for the fiscal year shown below are PAID. For proration purposes the amounts are:

Tax Identification No.:	002-0010-049-0000
Fiscal Year:	2012 - 2013
1st Installment:	$6,857.16
2nd Installment:	$6,857.16
Land:	$1,173,000.00
Improvements:	$0.00
Personal Property:	$0.00
Code Area:	03308
Bill No.:	12250531

Note 4. Wiring instructions for Fidelity National Title Company, Sacramento, CA, are as follows:

Receiving Bank:	Citibank (West), F.S.B. 1116 Alhambra Blvd. Sacramento, CA 95816
ABA Routing No.:	321171184
Credit Account Name:	Fidelity National Title Company - Sacramento Commercial & Industrial 8950 Cal Center Drive, Bldg. 3, Suite 100, Sacramento, CA 95826
Credit Account No.:	202125712
Escrow No.:	13-**5014564**-PA

These wiring instructions are for this specific transaction involving the Title Department of the Rancho Cordova office of Fidelity National Title Company . These instructions therefore should not be used in other transactions without first verifying the information with our accounting department. It is imperative that the wire text be exactly as indicated. Any extraneous information may cause unnecessary delays in confirming the receipt of funds.

Note 5. Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.

END OF NOTES

ATTACHMENT ONE

AMERICAN LAND TITLE ASSOCIATION
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS

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

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - improvements on the land
   - land division
   - environmental protection

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at policy date.

   This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowledge of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date- unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A

     or
   - in streets, alleys, or waterways that touch your land

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

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

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.
3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.
4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

ATTACHMENT ONE
(CONTINUED)

CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990
EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

SCHEDULE B, PART I
EXCEPTIONS FROM COVERAGE

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

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

ATTACHMENT ONE
(CONTINUED)

FORMERLY AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)
WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE
EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
   (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
   (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
      (a) to timely record the instrument of transfer; or
      (b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

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

EXCEPTIONS FROM COVERAGE

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

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

ATTACHMENT ONE
(CONTINUED)

2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

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

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

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

EXCEPTIONS FROM COVERAGE

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

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

ATTACHMENT ONE
(CONTINUED)

FORMERLY AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)
EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters: (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy, or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
   (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
   (a) to timely record the instrument of transfer; or
   (b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

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

EXCEPTIONS FROM COVERAGE

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

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

ATTACHMENT ONE
(CONTINUED)

2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

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

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

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

EXCEPTIONS FROM COVERAGE

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

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

ATTACHMENT ONE
(CONTINUED)

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)
EXCLUSIONS

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

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
   a. building
   b. zoning
   c. Land use
   d. improvements on Land
   e. Land division
   f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.
This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
   a. notice of exercising the right appears in the Public Records at the Policy Date; or
   b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
   a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
   c. that result in no loss to You; or
   d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 14:	1.00% of Policy Amount or $ 2,500.00 (whichever is less)	$ 10,000.00
Covered Risk 15:	1.00% of Policy Amount or $ 5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 16:	1.00% of Policy Amount or $ 5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 18:	1.00% of Policy Amount or $ 2,500.00 (whichever is less)	$ 5,000.00

ATTACHMENT ONE
(CONTINUED)

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

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

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
   a. building;
   b. zoning;
   c. land use;
   d. improvements on the Land;
   e. land division; and
   f. environmental protection.

   This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
   a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
   c. that result in no loss to You; or
   d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.

   This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A or $ 2,500.00 (whichever is less)	$ 10,000.00
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A or $ 5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or $ 5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or $ 2,500.00 (whichever is less)	$ 5,000.00

ATTACHMENT ONE
(CONTINUED)

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)
EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
   (a) created, suffered, assumed or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
   (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:
   (a) The time of the advance; or
   (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

ATTACHMENT ONE
(CONTINUED)

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

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

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

Notice

You may be entitled to receive a $20.00 discount on escrow services if you purchased, sold or refinanced residential property in California between May 19, 1995 and November 1, 2002. If you had more than one qualifying transaction, you may be entitled to multiple discounts.

If your previous transaction involved the same property that is the subject of your current transaction, you do not have to do anything; the Company will provide the discount, provided you are paying for escrow or title services in this transaction.

If your previous transaction involved property different from the property that is subject of your current transaction, you must - prior to the close of the current transaction - inform the Company of the earlier transaction, provide the address of the property involved in the previous transaction, and the date or approximate date that the escrow closed to be eligible for the discount.

Unless you inform the Company of the prior transaction on property that is not the subject of this transaction, the Company has no obligation to conduct an investigation to determine if you qualify for a discount. If you provide the Company information concerning a prior transaction, the Company is required to determine if you qualify for a discount which is subject to other terms and conditions.

Effective through November 1, 2014

Effective Date: 5/1/2008

Fidelity National Financial, Inc.
Privacy Statement

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

Personal Information Collected

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

Disclosure of Personal Information

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

Effective Date: 5/1/2008

Disclosure to Affiliated Companies - We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties - We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

Confidentiality and Security of Personal Information
We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

Access To Personal Information/
Requests for Correction, Amendment, or Deletion of Personal Information
As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer
Fidelity National Financial, Inc.
601 Riverside Avenue
Jacksonville, FL 32204

Changes to this Privacy Statement
This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

FNF Underwritten Title Companies
FNTC – Fidelity National Title Company
FNTCCA – Fidelity National Title Company of California

FNF Underwriter
FNTIC – Fidelity National Title Insurance Company

Available Discounts

CREDIT FOR PRELIMINARY REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES (FNTIC)
Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within 12 or 36 months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge.

FEE REDUCTION SETTLEMENT PROGRAM (FNTC, FNTCCA and FNTIC)
Eligible customers shall receive a $20.00 reduction in their title and/or escrow fees charged by the Company for each eligible transaction in accordance with the terms of the Final Judgments entered in *The People of the State of California et al. v. Fidelity National Title Insurance Company et al.,* Sacramento Superior Court Case No. 99AS02793, and related cases.

DISASTER LOANS (FNTIC)
The charge for a Lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within 24 months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be 50% of the appropriate title insurance rate.

CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (FNTIC)
On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be 50% or 70% of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be 32% or 50% of the appropriate title insurance rate, depending on the type of coverage selected.

City of Sacramento

Tax ID# if applicable : NA

Requires Council Approval: ☐ No ☒ Yes Meeting: 05/27/14

☐ Other Party Signature Needed ☐ Recording Requested

General Information

Type: Outside Agency POType: Interagency Agreement $ Not to Exceed: $225,000.00	Attachment: Original NO: Original Doc Number: 2013-0238
Other Party: IA Sacramento Holdings, L.L.C.	Certified Copies of Document:
Project Name: West Tunnel Ramps - First Amendment to Project Delivery Agreement	Deed: ☒ None ☐ Included ☐ Seperate
Project Number: T15135800 Bid Transaction #	E/SBE-DBE-M/WBE:

Department Information

Department: Public Works

Division: Engineering Services

Project Mgr: Marc Lee

Supervisor: Tim Mar

Contract Services: Brenda Kee

Date: 05/08/14

Section Manager: Tim Mar

Phone Number: 916-808-1923

Division Manager: Nicholas Theocharides

Comment:

Org Number: 15001131

Review and Signature Routing

Department	Signature or Initial	Date
Contract Services:	BLee	5/8/14
Project Mgr:	[illegible]	5/13/14
Supervisor:	[illegible]	5/13/14
Section Manager:	[illegible]	5/13/14
Division Manager:	[illegible]	5/13/14

City Attorney	Signature or Initial	Date
Michael Sparks City Attorney (MC: 09300):	MTS	5-8-14

☐ Send Interoffice Mail ☒ Notify for Pick Up

Authorization	Signature or Initial	Date
Department Director, Jerry Way Concurrence here and signature inside	JW	6-2-14
City Manager (MC: 09200):	[illegible]	6-2-14
Yes ☐ No ☐		
City Clerk (MC: 09200):		

For City Clerk Processing

Finalized:
Initial: [illegible]
Date: 06032014

Imaged:
Initial: [illegible]
Date: 6/3/14

Received:
(City Clerk Stamp)

2013-0238-1
Title: West Tunnel Ramps
Other Party: IA Sacramento Holdings LLC

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
2014 JUN -3 A 11:21

Contract Cover/Routing Form: Must Accompany ALL Contracts; (01-01-09)

FIRST AMENDMENT TO PROJECT DELIVERY AGREEMENT

6-3 This First Amendment to Project Delivery Agreement (the "**First Amendment**") is dated _____, 2014, for reference, and is between IA SACRAMENTO HOLDINGS, L.L.C., a Delaware limited liability company ("**IA Holdings**") and the City of Sacramento, a municipal corporation (the "**City**"). IA Holdings and the City are collectively referred to herein as the "Parties."

RECITALS

A. The City and IA Holdings entered into that certain Project Delivery Agreement, dated as of February 28, 2013 (the "**Agreement**", identified as City Agreement 2013-0238), related to the construction of the Roadway Project. Under section 6.1 of the Agreement, the City estimates that the Fee to be paid by IA Holdings for the City's services under the Agreement will not exceed $225,000. Based on performance of the Agreement to-date, the Parties agree that the estimate should be reduced to $125,000.

B. The City is willing to enter into this First Amendment contingent on the Parties executing an amendment to that certain Amended and Restated 6th Street Roadway Project Escrow Agreement, dated as of December 13, 2002 (City Agreement 2012-1018) (the "**6th Street Escrow Agreement**").

C. IA Holdings and the City desire to amend the Agreement as set forth in this First Amendment.

AGREEMENT

With these background facts in mind, the City and IA Holdings agree as follows:

1. Definitions. Capitalized terms defined in the Agreement, which are used in this First Amendment and not otherwise defined, shall have the same meaning as in the Agreement.

2. Payment for Services. Section 6.1 of the Agreement is hereby deleted in its entirety and replaced with the following language:

> "In consideration of the City's services provided under this Agreement, IA Holdings shall pay the City on a time and materials basis calculated in accordance with the hourly rates as approved by the Public Works Engineering Division Manager (the "Fee"). The City estimates that the Fee shall not exceed One Hundred Twenty-Five Thousand Dollars ($125,000.00), but this is an estimate only. In the event that the total amount due to the City under this Agreement reaches $125,000.00, then unless IA Holdings agrees to pay the City for its actual time and materials in excess of $125,000.00, the City may terminate this Agreement and the Construction Contracts. The Fee does not include costs typically associated with roadway projects, such as plan check fees, surveying fees, and electrical/traffic signal turn-on costs; IA Holdings is responsible for payment of these fees."

2013-0238-1
Title: West Tunnel Ramps
Other Party: IA Sacramento Holdings LLC

3. **All Other Terms Remain in Force**. Except as modified by this First Amendment, the terms of the Agreement remain unchanged. If there is any inconsistency between the Agreement and this First Amendment, the terms of this First Amendment shall control.

4. **Counterparts**. This First Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Facsimiles, pdfs, and photocopies of signature pages of this First Amendment have the same binding effect as originals.

5. **Effective Date**. This First Amendment is effective only if the parties execute the First Amendment to the 6th Street Escrow Agreement in the form of Exhibit 1 attached hereto.

IN WITNESS WHEREOF, IA Holdings and the City have duly executed this First Amendment as of the date first set forth above.

IA Holdings: 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: Jack Potts

Its: Treasurer

Date: May 7, 2014

City: City of Sacramento, a municipal corporation

By: Francesca Lee Halbert

for John F. Shirey
City Manager

Date: June 2, 2014

Approved as to Legal Form

By:
Michael Sparks
Senior Deputy City Attorney

Attest:

By: Wkplnll acc 06032014
City Clerk

Exhibit 1

FIRST AMENDMENT TO AMENDED AND RESTATED 6TH STREET ROADWAY PROJECT ESCROW AGREEMENT

This First Amendment to Amended and restated 6th Street Roadway Project Escrow Agreement (the "**First Amendment**") is dated May ___, 2014, for reference, and is by and between IA SACRAMENTO HOLDINGS, L.L.C., a Delaware limited liability company (the "**Owner**"), the City of Sacramento, a municipal corporation (the "**City**"), and CHICAGO TITLE INSURANCE COMPANY (the "**Escrowee**").

RECITALS

A. Owner, Escrowee, and City entered into that certain 6th Street Roadway Project Escrow Agreement, dated as of December 20, 2010, identified as City Agreement 2011-0019, as amended by that certain First Amendment to 6th Street Roadway Project Escrow Agreement, dated as of February 27, 2011 (collectively, the "**Original Agreement**"). The parties then amended and completely restated and superseded the Original Agreement in its entirety by entering into that certain Amended and Restated 6th Street Roadway Project Escrow Agreement, dated as of December 13, 2012, identified as City Agreement 2012-1018 (the "**Amended Agreement**").

B. The 6th Street Roadway Project is nearly complete, and the City estimates that upon completion of the 6th Street Roadway Project, approximately Seven Hundred Fifty Thousand and 00/100 Dollars ($750,000.00) in Escrow Funds will remain in the escrow account established under the Amended Agreement. The Amended Agreement provides that up to $500,000 of Escrow Funds remaining in the escrow account upon completion of the 6th Street Roadway Project can, at the request of the City, be transferred to the escrow account established under the Track Relocation Project Escrow Agreement, dated as of January 27, 2011 (identified as City Agreement 2011-0196) (the "**Track Relocation Escrow Agreement**") as more particularly set forth in this Amended Agreement. The Track Relocation Project and Railyards Improvements have been completed and the track relocation escrow agreement was closed.

C. The City is preparing to undertake the West Tunnel Access Improvement Project (PT15029030) (the "**Access Project**") adjacent to the Property to improve pedestrian access to the West Tunnel, which is located on the Property. The City and Owner agree that a portion of the Escrow Funds remaining in the escrow account upon completion of the 6th Street Roadway Project may be used to pay costs incurred in connection with the completion of the Access Project in accordance with the terms and conditions set forth in the Amended Agreement, as amended by this First Amendment.

D. Owner is willing to enter into this First Amendment contingent on the City and Owner executing an amendment to that certain Project Delivery Agreement, dated as of February 28, 2013 (City Agreement 2013-0238) in the form of Exhibit 1 attached hereto.

AGREEMENT

With these background facts in mind, the Owner, City, and Escrowee agree as follows:

1. **Definitions and Interpretation**. Capitalized terms defined in the Amended Agreement, which are used in this First Amendment and not otherwise defined, shall have the same meaning as in the Amended Agreement. All references to the 6th Street Roadway Project in Paragraph 3 and Paragraphs 5.1(b), 5.1(c), and 5.1(d) of the Amended Agreement are deemed to refer to the 6th Street Roadway Project or the Access Project, as the case may be, except in the context of Additional City Costs, which shall be deemed only to refer to the 6th Street Roadway Project.

2. **Additional City Costs**. Paragraph 4(d)(i) of the Amended Agreement is hereby deleted in its entirety and replaced with the following language:

> (i) "Additional City Costs. If there are any Additional City Costs (as defined in Paragraph 3(a) above) for which City is entitled to reimbursement from Escrow Funds, then City may deliver to Escrowee and Owner a Disbursement Request and Supporting Documentation for payment of such Additional City Costs provided that such Disbursement Request is received by Escrowee no later than ninety (90) days after the recording of the notice of completion of the 6th Street Roadway Project. The procedures in Paragraph 4(a) will govern a Disbursement Request from City for Additional City Costs."

3. **Access Project**. Paragraph 4(d)(ii) of the Amended Agreement is hereby deleted in its entirety and replaced with the following language:

> "Access Project. After the payment of Additional City Costs, if any, the remaining Escrow Funds will remain on deposit with Escrowee for purposes of helping the City to pay for the Access Project (the "**Access Project Funds**") in accordance with the terms and conditions set forth in this Amended Agreement; provided, however, in no event shall the Access Project Funds exceed the amount of Seven Hundred Fifty Thousand and 00/100 Dollars ($750,000.00) ("**Access Project Cap**"). The Access Project Funds shall be used to pay the costs described in Paragraph 3 of this Amended Agreement up to the amount of the Access Project Cap except that there are no Owner Costs associated with the Access Project. Escrowee shall make distributions to pay the Eligible Costs for the Access Project as set forth in Paragraph 4(a). The parties hereby acknowledge and agree that the conditions precedent in Paragraphs 5.1(b), 5.1(c), and 5.1(d) apply to the disbursements from the Access Project Funds for the Access Project. The parties hereby further agree that the terms in Paragraphs 5.1(a), 5.2, 5.3, 5.4, 5.5, 5.6, and 5.7 do not apply to disbursements for the Access Project from the Access Project Funds."

4. **Release to Owner**. Paragraph 4(d)(iii) of the Amended Agreement is hereby deleted in its entirety and replaced with the following language:

"Release to Owner. Upon the earlier of (i) disbursement of the Access Project Funds in the amount of the Access Project Cap or (ii) completion of the Access Project, as evidenced by the recording of a notice of completion in the Sacramento Recorder's Office, Escrowee shall release to Owner any Escrow Funds that remain after the payment of any costs permitted under Paragraph 4(d)(i) and the payment of the Access Project Funds pursuant to Paragraph 4(d)(ii) above."

5. **All Other Terms Remain in Force.** Except as modified by this First Amendment, the terms of the Amended Agreement remain unchanged. If there is any inconsistency between the Amended Agreement and this First Amendment, the terms of this First Amendment control.

6. **Counterparts**. This First Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Facsimiles, pdfs, and photocopies of signature pages of this First Amendment have the same binding effect as originals.

7. **Effective Date**. This First Amendment is effective only if the City and Owner execute the first amendment to project delivery agreement in the form of Exhibit 1.

[signature page follows]

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: _____

Date: _____, 2014

City: City of Sacramento, a municipal corporation

By: _____
Name: Francesca Halbakken
2. Title: Operations Manager
3.
4. Date: _____, 2014

Approved as to Legal Form

By:_____
Senior Deputy City Attorney
Attest:

By:_____
City Clerk

ESCROWEE: Chicago Title Insurance Company

By: _____
Name: Nancy R. Castro
5. Title: Resident Vice President & CCC Escrow Manager

Date: _____, 2014

Assignment and Assumption Agreement
(City Agreement No. 2011-0523)

This agreement, dated _____, 2015, for purposes of identification, is between the **City of Sacramento** (the "**City**"), a California municipal corporation**; IA Sacramento Holdings L.L.C.** ("**Assignor**"), a Delaware limited-liability company; and **Downtown Railyard Venture, LLC**, a California limited-liability company ("**Assignee**"). The City, Assignor and Assignee may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

Background

Assignor owns the real property known as the Sacramento Railyards (the "**Railyards**"). Assignor intends to transfer the Railyards to Assignee under a written agreement between Assignor and Assignee dated August 30, 2013, as amended from time to time (the "**Purchase Agreement**.")

The City and Assignor are Parties to an assignment and assumption agreement for the 5th Street extension project TOD grant agreement dated March 29, 2011, and designated as City Agreement No. 2011-0523 (the "**IA Assignment and Assumption Agreement**"). A copy of the IA Assignment and Assumption Agreement is attached to this agreement as Exhibit A.

Assignor has agreed to assign to Assignee, and Assignee has agreed to assume from Assignor, all of Assignor's rights and obligations under the IA Assignment and Assumption Agreement. This agreement sets forth the conditions of the City's consent to Assignor's assignment of the IA Assignment and Assumption Agreement to Assignee.

With these background facts in mind, the Parties agree as follows:

1. **Effective Date; Termination.** This agreement will be effective as of the "Closing Date," as defined in the Purchase Agreement (the "**Effective Date**"). If the Purchase Agreement terminates before the closing described in the Purchase Agreement, this agreement will automatically terminate and the Parties will have no obligations under this agreement.

2. **Consent of the City**. The City hereby consents to Assignor's assignment of the IA Assignment and Assumption Agreement to Assignee as of the Closing Date. By consenting to this assignment, the City does not release Assignor from its obligations under the IA Assignment and Assumption Agreement.

3. **Assignment by Assignor**. Assignor hereby assigns its rights and obligations under the IA Assignment and Assumption Agreement to Assignee as of the Closing Date. As of the Closing Date, Assignor shall indemnify, defend and hold Assignee, its agents, directors, officers and employees harmless from and against any and all losses, claims, judgments, damages, demands, costs, expenses (including, without limitation, reasonable attorneys' fees), and liabilities arising from Assignor's failure to perform or breach of any of the terms,

covenants, conditions or provisions of the IA Assignment and Assumption Agreement prior to the Closing Date. The provisions of this paragraph shall survive the expiration or termination of the IA Assignment and Assumption Agreement and this agreement.

4. **Assumption by Assignee**. Assignee hereby accepts the assignment and assumes all of Assignor's rights and obligations under the IA Assignment and Assumption Agreement as of the Closing Date as if Assignee had been an original Party to it. As of the Closing Date, Assignee shall indemnify, defend and hold Assignor, its agents, directors, officers and employees harmless from and against any and all losses, claims, judgments, damages, demands, costs, expenses (including, without limitation, reasonable attorneys' fees), and liabilities arising from Assignee's failure to perform or breach of any of the terms, covenants, conditions or provisions of the IA Assignment and Assumption Agreement from and after the Closing Date. The provisions of this paragraph shall survive the expiration or termination of the IA Assignment and Assumption Agreement and this agreement.

5. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that the rule of interpretation in Civil Code section 1654 will not apply. Exhibit A is part of this agreement.

6. **Authority**. Each person signing this agreement hereby represents and warrants that he or she is fully authorized to sign this agreement on behalf of his or her Party and to bind that Party to the performance of its obligations under this agreement.

7. **Binding effect.** This agreement binds and inures to the benefit of the Parties' successors and assigns.

8. **Severability.** If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

9. **Counterparts.** The Parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.

10. **Entire agreement.** This agreement sets forth the Parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both Parties.

11. **Recitals**. The recitals set forth in this assignment are incorporated herein by this reference.

[Signature page follows]

DOWNTOWN RAILYARD VENTURE, LLC,
a Delaware limited liability company

By: LDK RAILYARD, LLC, a California limited liability company
Its: Manager

By LDK VENTURES, LLC, a California limited liability company
Its: Member

By: _____
Larry D. Kelley, SR.
Its: Manager

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: InvenTrust Properties Corp.,
a Maryland corporation, its sole member

By: _____
Scott W. Wilton, Secretary

CITY OF SACRAMENTO
A municipal corporation

By: _____

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

Exhibit A

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 29th 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

2011-0523
Title: Assignment/Assumption Agmt 5th Street Extension (TOD)
With: IA Sacramento Holdings LLC
Authorization: Reso 2011-184

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
For: William H. Edgar, Interim City Manager, April 11, 2011

Attest:

By: _____
City Clerk
Asst 4-14-11

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

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

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 06/03)

CONTRACTOR'S COPY

AGREEMENT NUMBER
07-TOD-4243
REGISTRATION NUMBER
N/A

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME
City of Sacramento

2. The term of this Agreement is: Upon HCD approval through 6/30/2013

3. The maximum amount of this Agreement is: **$ 17,000,000.00**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Authority, Purpose and Scope of Work	9	page(s)
Exhibit B – Budget Detail and Payment Provisions	6	page(s)
Exhibit C – HCD General Terms and Conditions	16	page(s)
Exhibit D – State of California General Terms and Conditions	6	page(s)
Exhibit E – Special Terms and Conditions	1	page(s)
Exhibit F – Additional Provisions	0	page(s)
TOTAL NUMBER OF PAGES ATTACHED:		**38 pages**

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR	*California Department of General Services Use Only*
CONTRACTOR'S NAME *(if other than an individual, state whether a corporation, partnership, etc.)* City of Sacramento	
BY *(Authorized Signature)* ☒ Marty Hanneman ACM DATE SIGNED *(Do not type)* 8-10-09	
PRINTED NAME AND TITLE OF PERSON SIGNING Marty Hanneman, Assistant City Manager	
ADDRESS 951 I Street, 5th Floor Sacramento CA 94252	AUG 10 2009
STATE OF CALIFORNIA	
AGENCY NAME **Department of Housing and Community Development**	
BY *(Authorized Signature)* ☒ Stacy Q. Hernandez DATE SIGNED *(Do not type)* 8/10/09	
PRINTED NAME AND TITLE OF PERSON SIGNING **Stacy Q. Hernandez, Contracts Manager, Budget and Contracts Branch**	☒ **Exempt per: SCM 4.04.3 (DGS Memo Dated 6/12/81)**
ADDRESS **1800 Third Street, Room 350, Sacramento, CA 95811**	

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**	98	69	____
		____	

*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 (*Bank of the West*)	In-service at application due date	N/A
2) Childcare facility (*Kids East, Inc.*)	In-service at application due date	N/A
3) Convenience store (*The General Store*)	In –service at application due date	N/A
4) Hair care facility (*Salon 515*)	In-service at application due date	N/A
5) Health club facility (*CA Family Fitness*)	In-service at application due date	N/A
6) Library (*Sacramento Main Public Library*)	In-service at application due date	N/A

EXHIBIT A

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

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, 5th 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 un-disbursed 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.

TRANSIT-ORIENTED DEVELOPMENT (TOD) HOUSING PROGRAM INFRASTRUCTURE DEVELOPMENT BUDGET

TOD PROJECT NAME: The Railyards

ESTIMATED TOD CAPITAL IMPROVEMENT PROJECT COSTS					BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE						
Submit contracts, bids, engineer's estimates or any other back-up evidencing accuracy of eligible TOD CIP costs											
	DEVELOPMENT COSTS				FUNDING SOURCES (identify all sources)						
COSTS CATEGORY	QUANTITY	UNIT TYPE	UNIT PRICE	TOTAL AMOUNT	TOD Grant	Infill Grant Program	TE Funds	Local Funds	other	other	other
SITE ACQUISITION											
Site acquisition of the Capital Improvement Project, including easements and right of ways	1	LS	5,807,000.00	$5,807,000			$5,807,000				
Other:				$0							
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						
Demolition	1	LS	51,000.00	$51,000	$51,000						
Excavation				$0							
Grading (excluding grading for housing and mixed use structural improvements)	1	LS	156,000.00	$156,000	$156,000						
Soil Stabilization (Lime, etc.)				$0							
Erosion/Weed Control	1	LS	243,000.00	$243,000	$243,000						
Dewatering				$0							
Other:				$0							
Other:				$0							
Total Site Preparation Costs				**$500,000**	**$500,000**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
UTILITIES											
Sanitary Sewer	1,500	LF	220.00	$110,000	$110,000						
Potable Water	1,150	LF	242.00	$278,300	$278,300						
Non-Potable Water				$0							
Storm Drain	1,700	LF	440.00	$308,000	$308,000						
Detention Basin/Culverts				$0							
Joint Trench:	1,100	LF	192.00	$211,200	$211,200						
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	8.00	$272,000	$272,000						
Street Lights	24	EA/TA	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**

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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**
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**
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**
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**

EXHIBIT B
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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.				$0							
Other: Permits/Inspections	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**
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**
OTHER CAPITAL ASSET COSTS											
Other: Off-site indirect 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**
TOTAL PROJECT COSTS				**$76,325,000**	**$17,000,000**	**$8,463,000**	**$5,807,000**	**$40,000**	**$40,000,000**	**$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.

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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. <u>Repayment of Grant Funds for Failure to Develop Housing</u>

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.

EXHIBIT A-2

Disbursement Agreement

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 beach 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	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**	98	69	____
		____	

TOD INFRASTRUCTURE PROJECT DEVELOPMENT BUDGET

TOD PROJECT NAME	The Railyards								
ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS					COMPARATIVE BREAKDOWN OF DEVELOPMENT COSTS				
Submit contracts, bids, engineer's estimates or any other back-up evidencing accuracy of eligible CIP costs									
	DEVELOPMENT COSTS								
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
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									

Other:	Roadway Landscape & Irrigation								$0	$0
Total Landscape and Amenities Costs				**$1,004,000**	**$1,004,000**	**$1,004,000**	**$2,749,485**	**$1,745,485**	**$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
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

Other:	City Plan Check and Inspection			$0	$0	$0	$269,494	$269,494	$236,512	$236,512
	Total Impact Fees			$0	**$0**	**$0**	**$419,494**	**$419,494**	**$236,512**	**$236,512**

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
Other:	Construction Management									$0
	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) INDEMNIIFICATION:

(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.

EXHIBIT A-3

Disbursement Agreement Amendment

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(l) 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: _____
Scott W. Wilton,
Its: Secretary

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

By: _____
Chris Westlake
Deputy Director

EXHIBIT A-4

HCD Covenant

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 3 1 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

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. <u>Repair and Maintenance of the Property and other Building or Improvements of the Housing Developments.</u> 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 (Date) before me, Shirlene Garner, notary Public (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.

Signature _____ (Signature of Notary Public)

SHIRLENE GARNER
Commission # 1799818
Notary Public - California
Sacramento County
My Comm. Expires May 31, 2012

Place Notary Seal Above

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: Na

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: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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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

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	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**	98	69	———

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-0008390851
TML/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.

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

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

VICENTE C. RUELAS
Commission # 1850706
Notary Public - California
Sacramento County
My Comm. Expires Jun 7, 2013

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.

KENRIC DEAN HANCOCK
Commission # 1742580
Notary Public - California
Sacramento County
My Comm. Expires Apr 29, 2011

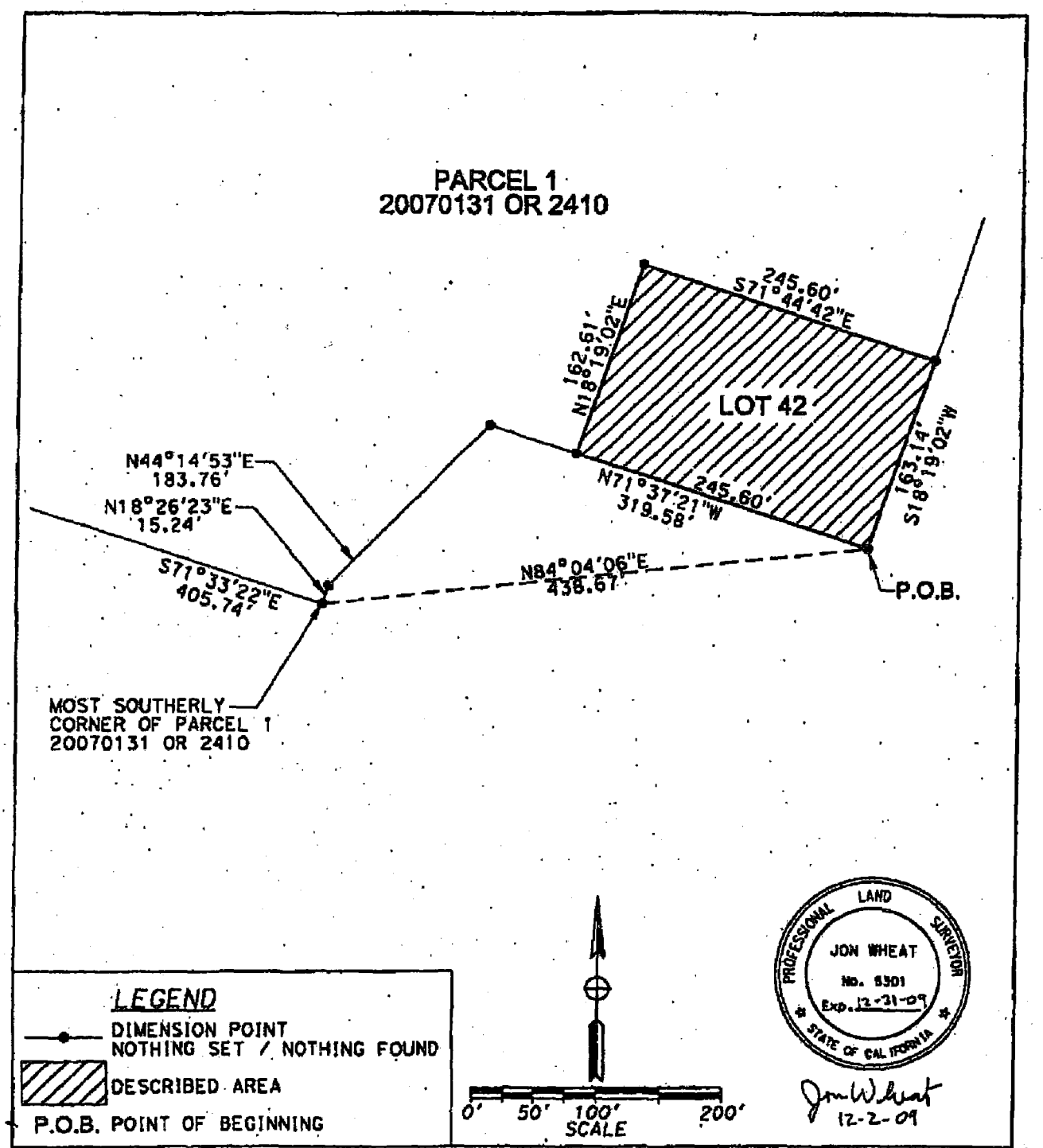
Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

LOT

42



QUINCY ENGINEERING INC 3247 MARTIN CIRCLE SACRAMENTO, CA 95827-2501 PH: 916-369-9916	EXHIBIT B PROPOSED LOT 42	SHEET NUMBER 1
SCALE: 1"=100' DATE: 12-01-09 DRAWN BY: GM CHECKED BY: JW	IN THE CITY OF SACRAMENTO SACRAMENTO COUNTY, CALIFORNIA	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°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°37'21" WEST, 245.60 FEET;

THENCE NORTH 18°19'02" EAST, 162.61 FEET;

THENCE SOUTH 71°44'42" EAST, 245.60 FEET, TO THE EASTERLY BOUNDARY OF SAID PARCEL;

THENCE ALONG SAID BOUNDARY SOUTH 18°19'02" WEST, 163.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.92 ACRES, MORE OR LESS.

LOT

46a

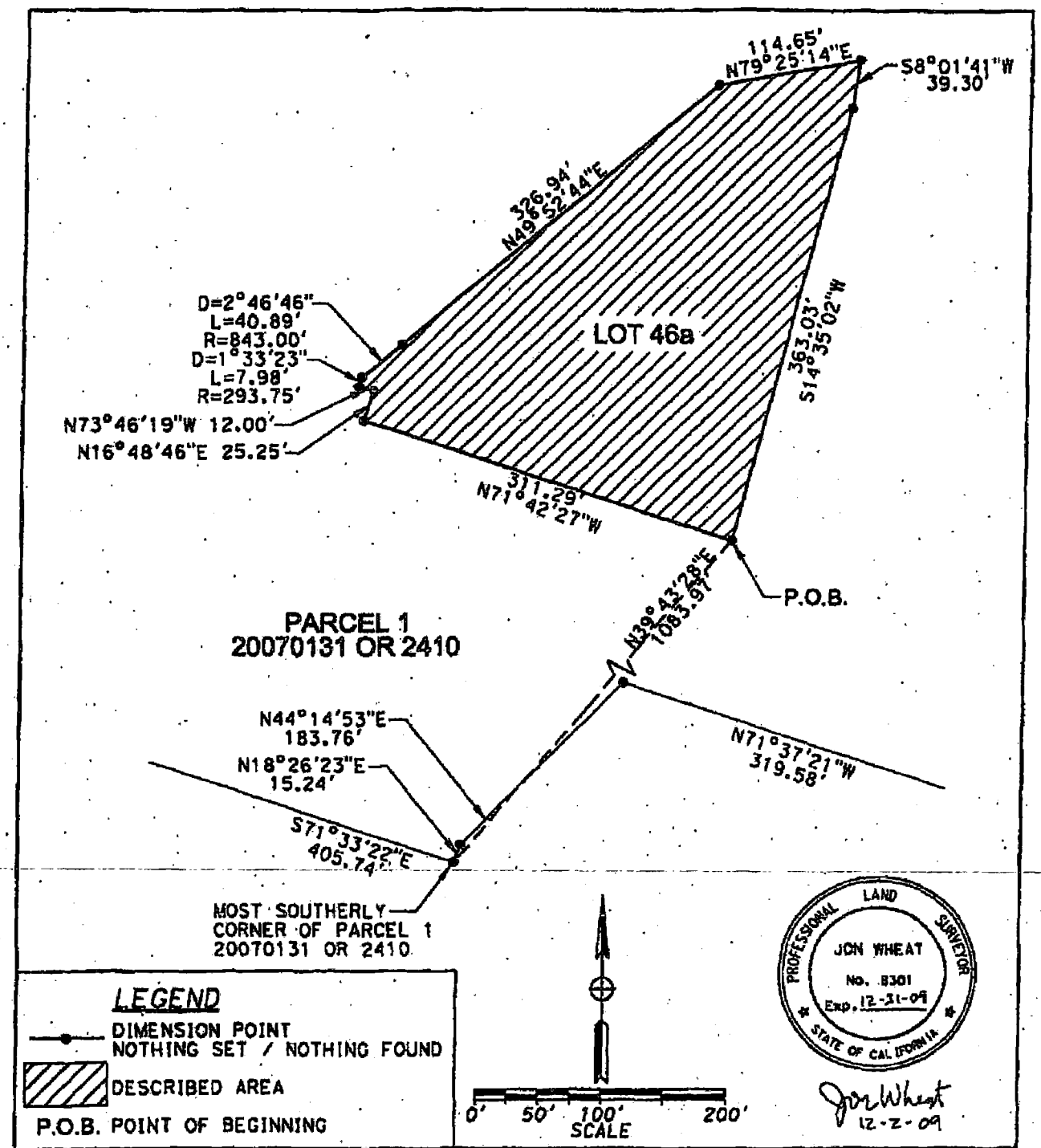


	EXHIBIT B PROPOSED LOT 46a	SHEET NUMBER 1
SCALE: 1"=100' DATE: 12-01-09 DRAWN BY: GM CHECKED BY: JW	IN THE CITY OF SACRAMENTO SACRAMENTO COUNTY, CALIFORNIA	OF 1 SHEETS

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 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

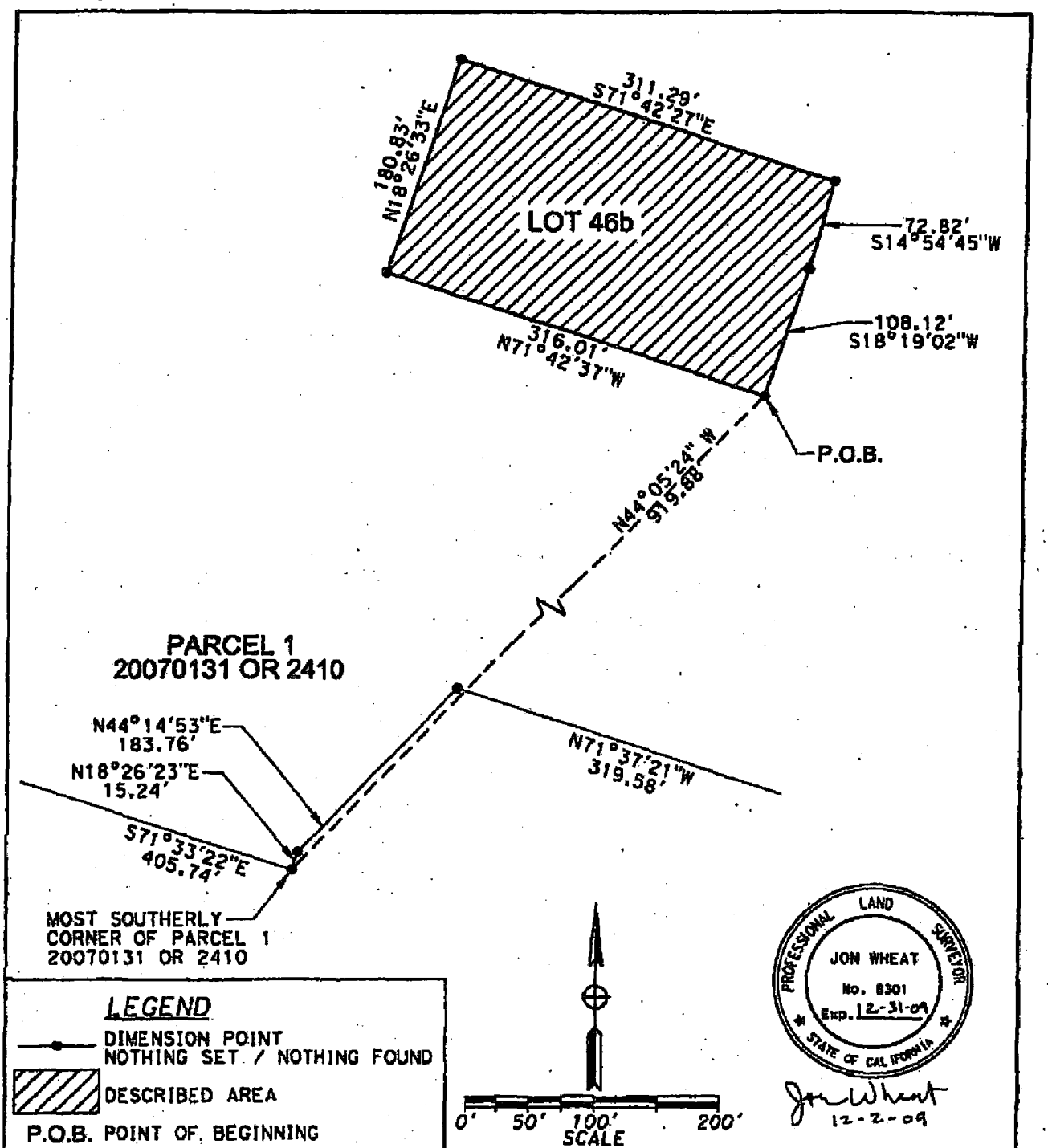


	EXHIBIT B PROPOSED LOT 46b	SHEET NUMBER 1
SCALE: 1"=100' DATE: 12-01-09 DRAWN BY: GM CHECKED BY: JW	IN THE CITY OF SACRAMENTO SACRAMENTO COUNTY, CALIFORNIA	OF 1 SHEETS

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°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°37'21" WEST, 245.60 FEET;

THENCE NORTH 18°19'02" EAST, 162.61 FEET;

THENCE SOUTH 71°44'42" EAST, 245.60 FEET, TO THE EASTERLY BOUNDARY OF SAID PARCEL;

THENCE ALONG SAID BOUNDARY SOUTH 18°19'02" WEST, 163.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.92 ACRES, MORE OR LESS.

EXHIBIT "B"

HOUSING DEVELOPMENTS

[illegible]	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)
[illegible]	

# of Bedrooms	# of Units	TOD Restricted	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	98	69	—

[illegible]	TOD Phase II-Lots 46a & 46b 359 Market Rate Units

# of Bedrooms	# of Units	TOD Restricted	Income Limit (% of AMI)
1	83	0	Market
2	239	0	Market
3	37	0	Market
—	—	—	—
—	—	—	—
—	—	—	—
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—	—	—	—
—	—	—	—
Total	359	0	—

EXHIBIT A-5

Extension Letter

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

EAST\44232118.4

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

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

Form of Letter of Credit

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]