

RESOLUTION NO. 2011-002

Adopted by the Redevelopment Agency
of the City of Sacramento

February 1, 2011

APPROVING THE CONSENT TO ASSIGNMENT AND ASSUMPTION OF RAILYARDS OWNER PARTICIPATION AGREEMENTS WITH IA SACRAMENTO HOLDINGS, L.L.C.

BACKGROUND

- A. On May 6, 2008, the Agency certified the Environmental Impact Report for the Railyards Redevelopment Project. On May 13, 2008, the Agency approved the Initial Phase Owner Participation Agreement and the Master Owner Participation Agreement for the Sacramento Railyards Project with S. Thomas Enterprises of Sacramento, LLC ("Thomas"), the owner of the Railyards property.
- B. The Initial Phase and Master Owner Participation Agreements (OPAs) were approved in furtherance of the Railyards Redevelopment Plan and Implementation Plan for the Railyards Redevelopment Project Area, and based on a pro forma analysis of the cost of the developing the Sacramento Railyards Project as set out in the Railyards Specific Plan and the Railyards Specific Plan Public Facilities Financing Plan.
- C. The Initial Phase OPA committed up to \$50 million in net tax increment revenues received over a 15 year period to reimburse the developer for specified infrastructure improvements and rehabilitation of the Central Shops. As part of the Initial Phase OPA, the Initial Phase Regulatory Agreement was executed and recorded.
- D. The Master Owner Participation Agreement committed the housing set-aside funds generated within the Railyards Project Area to assist in development of affordable housing and provided the developer with the first right to seek Agency assistance for individual development projects based on a gap analysis for each project.
- E. Ownership of the Railyards property was transferred from Thomas to IA Sacramento Holdings, L.L.C. ("Inland Holdings") on October 22, 2010 through a foreclosure proceeding. Inland Holdings has represented that Thomas has released its interest in the OPAs as part of the foreclosure proceedings. Inland Holdings has requested that the Agency consent to the assignment of the OPAs in consideration of its assumption of Thomas' obligations thereunder.

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

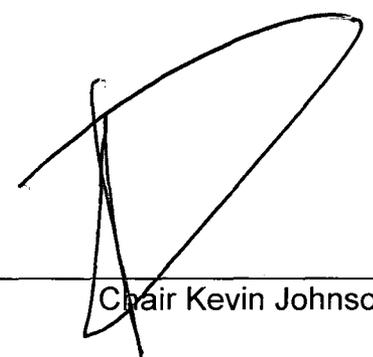
- Section 1. The Board of the Agency finds that there have been no project changes or new information of substantial importance which would require reevaluation of the Environmental Impact Report for the Railyards Redevelopment Project for compliance with the California Environmental Quality Act to support the proposed actions.
- Section 2. The Executive Director or her designee, on behalf of the Agency, is authorized to execute the Consent to Assignment and Assumption Agreement for the Railyards Initial Phase and Master Owner Participation Agreements with IA Sacramento Holdings L.L.C. ("Inland Holdings"), which will allow for these two agreements to remain in effect and for Inland Holdings to assume the obligations thereunder, in the form attached as Exhibit A .
- Section 3. The Executive Director or her designee, on behalf of the Agency, is authorized to execute an amendment to the Railyards Initial Phase and Master Owner Participation Agreements with Inland Holdings to conform these agreements with the terms of the Consent to Assignment and Assumption Agreement.

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Exhibit A – Consent to Assignment and Assumption Agreement for the Railyards Initial Phase and Master Owner Participation Agreements

Adopted by the Redevelopment Agency of the City of Sacramento on February 1, 2011 by the following vote:

- Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.
- Noes: None.
- Abstain: None.
- Absent: None.



Chair Kevin Johnson

Attest:


Shirley Concolino, Secretary

CONSENT TO ASSIGNMENT AND ASSUMPTION OF RAILYARDS OWNER PARTICIPATION AGREEMENTS

THIS CONSENT TO ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter this "**Agreement**") is entered into this _____ day of February, 2011 ("**Execution Date**"), by and between **IA SACRAMENTO HOLDINGS, L.L.C.**, a Delaware limited liability company (hereinafter "**IA HOLDINGS**"), and the **REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO**, a public body, corporate and politic (hereinafter "**the AGENCY**"). **IA HOLDINGS** and **AGENCY** hereinafter may be referred to collectively as the "**Parties**" or in the singular as "**Party**," as the context requires.

RECITALS

A. **IA HOLDINGS** owns the approximate 240 acre parcel of land known as the Railyards and located within the Railyards Project Area of the City of Sacramento (the "**Property**"). The Property is more particularly described in the Master Owner Participation Agreement, as defined below. **IA HOLDINGS** obtained title to the Property on October 22, 2010 through a foreclosure proceeding (the "**Foreclosure**").

B. The prior owner of the Property, S. Thomas Enterprises of Sacramento, LLC ("**Thomas**"), and **AGENCY** entered into two agreements related to development of the Property: (1) that certain Initial Phase Infrastructure Owner Participation Agreement dated May 13, 2008 (hereinafter the "**Initial Phase OPA**"); and (2) that certain Master Owner Participation Agreement dated May 13, 2008 (hereinafter the "**Master OPA**"). The rights of Thomas under the Initial Phase OPA and the Master OPA were assigned to **IA Sacramento Rail, L.L.C.**, as predecessor in interest of **IA HOLDINGS** under that certain Second Deed of Trust, Security Agreement and Fixture Filing ("**Deed of Trust**") dated August 29, 2008 and recorded against the Property on August 29, 2008, as additional security for repayment of loans under the Deed of Trust. The Deed of Trust was assigned to **IA HOLDINGS** prior to the Foreclosure, and **IA HOLDINGS** acquired all of the rights of Thomas under the Initial Phase OPA and the Master OPA through the Foreclosure.

C. Thomas, as Developer, obtained a right under the Initial Phase OPA to receive up to \$50 million in **AGENCY** funding for reimbursement of Developer's cost for the projects included in the Qualified Infrastructure and Building Rehabilitation List, subject to compliance with certain conditions and obligations set forth therein. This funding commitment was based on allocating a portion of the Initial Phase Net Tax Increment actually received by the **AGENCY** that would be generated by development of the Initial Phase Property. The amount was determined based on the projected non-housing property tax increment revenues that would be generated by development of Phases 1A, 1B and 2, which was estimated at approximately \$106 million.

D. The Master OPA allowed for the Developer to apply for **AGENCY** funding for Individual Projects which may be developed on the Property with the remaining Net Tax

Increment after satisfying the Initial Phase OPA obligations, subject to compliance with certain conditions and obligations set forth therein.

E. Pursuant to the Initial Phase OPA and Master OPA, in the event of the foreclosure of a loan secured against the Property, the AGENCY is required to recognize the subsequent owner of the property through the foreclosure as the Developer if such entity expressly assumes the obligations of Developer by an assumption agreement satisfactory to AGENCY. IA HOLDINGS and AGENCY desire and intend that, as a result of the Foreclosure, the Initial Phase OPA and the Master OPA shall remain in full force and effect, to the extent and on the terms and conditions set forth herein, to confer the same right to receive Net Tax Increment funding.

F. Under a separate agreement with the City of Sacramento (“City”) to be approved concurrently with this Agreement, IA HOLDINGS has agreed to assume certain obligations of Thomas under the Development Agreement with City with respect to the payment of City’s and AGENCY’s legal costs previously incurred in defending the four lawsuits challenging City’s and AGENCY’s approval of the Railyards development project, the Railyards Redevelopment Plan and the Initial Phase OPA and Master OPA agreements under the California Environmental Quality Act and to take subject to and assume certain obligations as hereafter arising under the Development Agreement.

G. IA HOLDINGS and AGENCY acknowledge that due to changes in market conditions since the Initial Phase OPA and Master OPA were approved, it may be desirable to revise the Development Plan and Phasing Plan, as those terms are defined in the Development Agreement, which may affect the amount of the Net Tax Increment received by AGENCY.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation by Reference.** The Initial Phase OPA and Master OPA are hereby incorporated herein by this reference as if set forth in full. In the event that this Agreement is in conflict in any way with the terms and conditions of the Initial Phase OPA and/or the Master OPA, the terms of this Agreement shall be deemed to govern; provided, however, that the Recitals set forth in this Agreement are incorporated herein solely to provide background information and context for this Agreement and are not intended to modify the terms of the Initial Phase OPA or the Master OPA. Unless otherwise expressly set forth in this Agreement, all capitalized terms used herein shall be deemed to have the meanings assigned to such terms in the Initial Phase OPA and the Master OPA.

2. **Effective Date; Termination.** This Agreement shall be effective (the “**Effective Date**”) as of October 22, 2010, the date when IA HOLDINGS acquired title to the Property through the Foreclosure.

3. **Assignment and Assumption.**

(a) As of the Effective Date, AGENCY hereby recognizes and consents to the transfer to IA HOLDINGS of any and all of rights of Developer under the Initial Phase OPA and the Master OPA arising from the Foreclosure as they relate to receiving AGENCY funding for development of the Property in accordance with the terms of the City agreements specified therein, and AGENCY agrees to perform all of the duties and obligations under the Initial Phase OPA and the Master OPA that run in favor of Developer for the benefit of IA HOLDINGS. As of the Effective Date, IA HOLDINGS hereby accepts and assumes all of the duties and obligations of Developer under the Initial Phase OPA and Master OPA that arise from and after the Effective Date, as modified by Section 3 of this Agreement, and to be subject to all of the terms and conditions thereof with respect to ownership and development of the Property; provided, however that by doing so IA HOLDINGS shall not be deemed to have assumed the obligations of Developer under the Tri-Party MOU or any other agreement referenced in the Initial Phase OPA or the Master OPA unless and except to the extent IA HOLDINGS has executed an agreement with the AGENCY or the City of Sacramento ("City") expressly assuming such obligation. Any reference to the Developer in the Initial Phase OPA and Master OPA shall hereafter be deemed to be a reference to IA HOLDINGS with respect to any rights that run in favor of the Developer or with respect to any duties or responsibilities of the Developer that arise after the Effective Date.

(b) IA HOLDINGS has provided AGENCY with a fully executed copy of the Trustee's Deed Upon Sale that was executed, delivered and recorded pursuant to the Foreclosure. AGENCY'S consent to and approval of the assignment and assumption of the Master OPA and the Initial Phase OPA to IA HOLDINGS is based upon the assignment of Thomas' rights and obligations under the Master OPA and Initial Phase OPA pursuant to the Foreclosure.

(c) AGENCY acknowledges and agrees that by assumption of duties, liabilities and obligations under the Initial Phase OPA and the Master OPA as set forth in Paragraph 3(a) above, IA HOLDINGS is not assuming any duties, liabilities or obligations (i) of the Developer under the Initial Phase OPA and the Master OPA except as set forth in Paragraph 3(a) above, or (ii) to commence or complete any development of the Project, including any of the Backbone Infrastructure described in the Development Agreement, except to the extent that IA HOLDINGS has executed an instrument or instruments expressly assuming such obligations with the City.

(d) IA HOLDINGS acknowledges and agrees that AGENCY'S obligation to pay Net Tax Increment, as defined in the Initial Phase OPA and Master OPA, (i) constitutes an obligation to make payments authorized incurred and collected pursuant to Health and Safety Code Section 33670 et seq. and (ii) is payable only from and limited by the availability of Net Tax Increment actually received by AGENCY from the site and is not a general obligation of AGENCY, the City or any other public or private person or entity.

(e) AGENCY hereby waives any obligation for IA HOLDINGS (or any assignee to IA HOLDINGS who seeks to enforce AGENCY's obligations under this Agreement) to indemnify and defend AGENCY, its officers, directors, commission members, employees, advisory committee members, and agents from any liability, costs, fees, penalties and claims

related to the existence, removal, discharge or release of Hazardous Substances released or discharged on the Property as of the Effective Date as provided in the Master OPA and/or the Initial Phase OPA, including without limitation, as set forth in Section 7 of the Master OPA and Section 7 of the Initial Phase OPA, unless and until such time that AGENCY first advances funds under the Initial Phase OPA and the Master OPA (the “**Initial Funding Date**”).

(f) Notwithstanding anything to the contrary set forth in the Initial OPA or the Master OPA, AGENCY acknowledges and agrees that IA HOLDINGS shall not be required to comply with any obligations of Developer under any agreement referenced in the Initial Phase OPA or the Master OPA unless and except to the extent IA HOLDINGS has executed an agreement with the AGENCY or the City expressly assuming such obligation or agreement. Accordingly, the obligation for IA HOLDINGS as it relates to not being in default under Section 4.10 of the Initial Phase OPA and Sections 3.10 and 3.11 of the Master OPA (the “**Compliance Sections**”) shall be deemed to refer only to those agreements referenced in the Compliance Sections as to which IA Holdings (or any assignee to IA HOLDINGS who seeks to enforce AGENCY’s obligations under this Agreement) has executed a written agreement with the AGENCY or the City assuming obligations under the agreements referenced in the Compliance Sections or has executed agreements which are intended to replace and supersede agreements described in the Compliance Sections (collectively the “**IA Holdings Agreements**”). Such condition shall be deemed satisfied if there are no defaults under the IA Holdings Agreements as of the Initial Funding Date and any subsequent date on which funding is to be allocated and/or released under the Initial OPA, the Master OPA or any Subsequent OPA and, as to any assignee of IA HOLDINGS, such condition shall apply only to the extent there are any defaults under the IA Holdings Agreements with regards to that assignee’s assigned interest in the Property.

(g) AGENCY hereby acknowledges that the 6th Street Roadway Project constitutes a "Qualified Infrastructure and Building Rehabilitation" as contemplated in the Initial Phase OPA and that any amount paid or incurred by IA HOLDINGS in connection with the 6th Street Roadway Project shall be reimbursed by AGENCY, with interest thereon, as set forth in the Initial Phase OPA.

4. **Subsequent Purchasers.** AGENCY and IA HOLDINGS understand and agree that this Agreement is subject in particular to Section 11 of the Initial Phase OPA and Section 11.10 of the Master OPA, which read as follows:

“11. **ASSIGNMENT AND TRANSFER.** In reliance on the financial capability and experience of Developer, substantial public financing and other public aids have been reserved and will be made available to make development of the Initial Phase Property possible. Developer may assign all or a portion of Developer's interests or obligations under this Initial Phase Infrastructure OPA, or undertake any act or transaction resulting in a significant change in the interests of the principals of Developer or the degree of their control of Developer, without the prior written consent of Agency. However, the transfer or assignment of all or a portion of Developer’s interests or obligations under this Initial Phase Infrastructure OPA, pursuant to this Section, requires the transferee or assignee to assume all or a proportionate share thereof of Developer’s rights and obligations under this Initial Phase Infrastructure OPA to provide substantial and adequate

evidence of its ability to fulfill Developer's obligations and to execute and deliver to Agency a valid, binding, written assumption of all or a proportionate share of such rights and obligations. Such a transfer or assignment as permitted in this Section shall not relieve Developer, or any other party bound in any way by this Initial Phase Infrastructure OPA, from any of its obligations under this Initial Phase Infrastructure OPA or any Funding Agreement unless such assignee or transferee's valid, binding written assumption executed and delivered to Agency provides for transfer of Developer's obligations in a manner acceptable to Agency. With respect to this provision, the Developer and the parties signing the Initial Phase Infrastructure OPA on behalf of the Developer represent that they have the authority of all of Developer's principals to agree to and bind them to this provision."

"11.10 ASSIGNMENT AND TRANSFER. In reliance on the financial capability and experience of Developer, substantial public financing and other public aids have been reserved and will be made available to make development of the Property possible. Developer may assign all or a portion of Developer's interests or obligations under this Master OPA, or undertake any act or transaction resulting in a significant change in the interests of the principals of Developer or the degree of their control of Developer, without the prior written consent of Agency. However, the transfer or assignment of all or a portion of Developer's interests or obligations under this Master OPA, pursuant to this Section, requires the transferee or assignee to assume all or a proportionate share thereof of Developer's rights and obligations under this Master OPA to provide substantial and adequate evidence of its ability to fulfill Developer's obligations and to execute and deliver to Agency a valid, binding, written assumption of all or a proportionate share of such rights and obligations. Such a transfer or assignment as permitted in this Section 11.10 shall not relieve Developer, or any other party bound in any way by this Master OPA, from any of its obligations under this Master OPA or and Funding Agreement unless such assignee or transferee's valid, binding written assumption executed and delivered to Agency provides for transfer of Developer's obligations in a manner acceptable to Agency. With respect to this provision, the Developer and the parties signing the Master OPA on behalf of the Developer represent that they have the authority of all of Developer's principals to agree to and bind them to this provision."

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

6. **No Existing Defaults.** AGENCY acknowledges and agrees that there are no outstanding defaults of Developer under the Initial Phase OPA or the Master OPA as of the Execution Date. Section 9.1 of the Initial Phase OPA provides that a default of the City's Development Agreement is a default of the Initial Phase OPA; therefore Agency's acknowledgement relies upon on the City's representations and concurrent consent to assignment of the Development Agreement to IA HOLDINGS. Notwithstanding anything to the contrary set forth in the Initial Phase OPA, the Master OPA or elsewhere, AGENCY acknowledges and

agrees that unless and until the Initial Funding Date occurs, AGENCY's sole remedy in the event of default by IA HOLDINGS of any construction obligations that may exist under the Initial Phase OPA or the Master OPA, including but not limited to obligations under Section 3.9 of the Master OPA, shall be to terminate such agreements.

7. **Time for Performance.** IA HOLDINGS and AGENCY hereby acknowledge and agree that notwithstanding anything to the contrary set forth in the Initial Phase OPA and/or the Master OPA, including, without limitation in Section 2.4 or Section 12.7 of the Initial Phase OPA, nothing herein requires IA HOLDINGS to satisfy specific time performance requirements set forth in the Schedule of Performance. Notwithstanding the foregoing, IA HOLDINGS and AGENCY acknowledge and agree that nothing herein affects the language in Section 2.4 of the Initial Phase OPA limiting the Agency's obligation to reimburse Developer under Section 2 of the Initial Phase OPA for any infrastructure not substantially completed before the expiration of fifteen (15) years from the effective date of the Initial Phase OPA.

8. **Legal Advice.** IA HOLDINGS acknowledges 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 Initial Phase OPA and Master OPA to which IA HOLDINGS hereby agrees to be bound, and fully understands all of its terms and conditions; provided, however, that by executing this Agreement, IA HOLDINGS has not agreed to accept and assume the obligations under documents and materials referenced in the Initial Phase OPA and Master OPA unless and except to the extent that IA HOLDINGS has executed a document expressly assuming the obligations under any such documents and materials or as expressly set forth in Section 3 of this Agreement.

9. **Representations; Entire Agreement.** Each of the Parties hereby affirms and acknowledges that neither Party has made any representations, commitments or promises to the other Party that are contrary to or different from the express terms and conditions of the Initial Phase OPA and Master OPA, unless such terms and conditions have been set forth in writing and approved by IA HOLDINGS and AGENCY by an act of the AGENCY Board prior to the execution of this Agreement.

10. **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 Agreement.

11. **Notices.** All notices required or provided for under this Agreement 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 AGENCY:

c/o City Manager
City of Sacramento
915 I Street, 5th Floor
Sacramento, CA 95814

Attention: John Dangberg
Facsimile: (916) 808-5704
Telephone: (916) 808-7618
jdangberg@cityofsacramento.org

Redevelopment Agency of the City of Sacramento
801 12th Street
Sacramento, CA 95814
Attention: Agency Counsel
Facsimile: (916) 440-6558
Telephone: (916) 440-1330

Notice 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@inlandgroup.com

With 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

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

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

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

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

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.

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

13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a Party by facsimile transmission) as against the Party signing such counterpart, but which together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

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

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

a public body, corporate and politic

By: _____
John Dangberg
Assistant City Manager
Delegated authority to sign on behalf of Agency

Approved as to Legal Form:

By: _____
Agency Counsel

Attest:

By: _____
City Clerk