



**Sacramento
Housing &
Redevelopment
Agency**

**REPORT TO THE
REDEVELOPMENT AGENCY OF
THE CITY OF SACRAMENTO**

915 I Street, Sacramento, CA 95814-2604

www.cityofsacramento.org

Consent

September 27, 2005

Honorable Chair and Members of the Board

Subject: Agreement: First and Second Modifications to REA Building Owner Participation Agreement (OPA)

Location/Council District: Northwest corner of 5th and I streets, Richards Boulevard Redevelopment Project Area, District 1

Recommendation:

Adopt a resolution : 1) Modifying the Regulatory Agreement to include preservation and maintenance requirements in lieu of a façade easement, and 2) Modifying the Loan Agreement to allow "sale or transfer" to another owner, in compliance with tax code requirements for use of Historic Rehabilitation Tax Credits.

Contact: Paul Blumberg, Senior Project Manager, 808-7204
Wendy S. Saunders, Economic Development Director, 808-7223

Presenters: Paul Blumberg, Senior Project Manager

Department: Economic Development Department

Division: Citywide

Organization No: 4453

Summary:

Agency staff is recommending modifications to the REA Project Owner Participation Agreement (OPA) to provide language that complies with federal tax code requirements for use of Historic Rehabilitation Tax Credits, and to ensure viability of project financing.

Committee/Commission Action: None.

Background Information:

On October 12, 2004, the Redevelopment Agency approved the Owner Participation Agreement which authorized financial assistance for the REA Project. The agreement provided a subsidy to the developer in the form of a phased, "forgivable" loan. The project financing structure included use of Historic Rehabilitation Tax Credits as a part of the overall financing structure for the REA project. (See Investment Structure Diagram included as Exhibit 1 to the resolution.) The use and/or full utilization of the tax credits is jeopardized without modifications to the existing OPA.

The OPA requires that the developer dedicate a façade easement to provide the City Council assurances that the REA Building façade would be protected, maintained, or repaired if damaged. The developer’s legal counsel and Agency legal counsel concur that use of both the tax credit and the façade easement are not allowable without significantly reducing the tax benefits to the developer. The façade easement dedication would, in turn, would jeopardize the financial structure of the project.

Agency staff recommends pursuing full value of tax credits to maintain the investment structure. However, staff recommends that in lieu of the façade easement, similar “easement” requirements regarding the Agency’s access to repair, maintain and rebuild the historic façade, and recover the cost of doing so, be added to the Regulatory Agreement for the REA Project. Responsibility for this regulatory control will be assigned to the City’s Preservation Director. Staff believes that this modification is consistent with City Council’s past direction to protect the REA Building from future damage or neglect.

Another hurdle to the use of the Historic Preservation Tax credits is a provision of the Loan Agreement that does not meet the tax code definition of “real debt”. The Agency’s phased loan to the developer is not considered real debt under certain circumstances, such as if the loan is “forgiven” prior to completion of the project. Staff is recommending amendment to the loan agreement to require that the Agency’s loan with REA Partners to be assumed by any future owner, should the project be sold or transferred prior to completion. This change is of benefit to the City by ensuring that the debt owed to the Agency would be assumed by future owners of the REA Project.


Financial Considerations: None

Environmental Considerations:

The final environmental impact report for the REA Project was certified on October 12, 2005. No further environmental impacts are associated with the actions recommended.

Policy Considerations: None

Emerging Small Business Development (ESBD): None

Approved By: 
Wendy S. Saunders
Economic Development Director

Recommendation Approved:

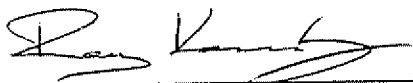

for ROBERT P. THOMAS
City Manager

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RESOLUTION NO.

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

ON DATE OF _____

**APPROVAL OF THE
FIRST AND SECOND MODIFICATIONS TO REA BUILDING PROJECT
OWNER PARTICIPATION AGREEMENT WITH REA PARTNERS**

BACKGROUND:

- A. On October 12, 2004, the Redevelopment Agency of the City of Sacramento ("Agency") approved the Owner Participation Agreement (OPA) with REA Partners for the REA Building Rehabilitation Project; and
- B. Developer intends to utilize historic preservation tax credits as a part of the overall financing structure (See Investment Structure Diagram included as Exhibit 1 to the resolution) for the REA Project, and Internal Revenue Service regulations preclude a full value consideration of the tax credits if used concurrently with the façade easement dedication; and
- C. Agency and Developer desire to modify the Owner Participation Agreement to facilitate the use of Historic Preservation Tax Credits, including 1) Placing façade easement provisions in the Regulatory Agreement, 2) allowing the Agency's loan agreement with REA Partners to be assumed by a future owner should the project be sold or transferred prior to completion of the project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:

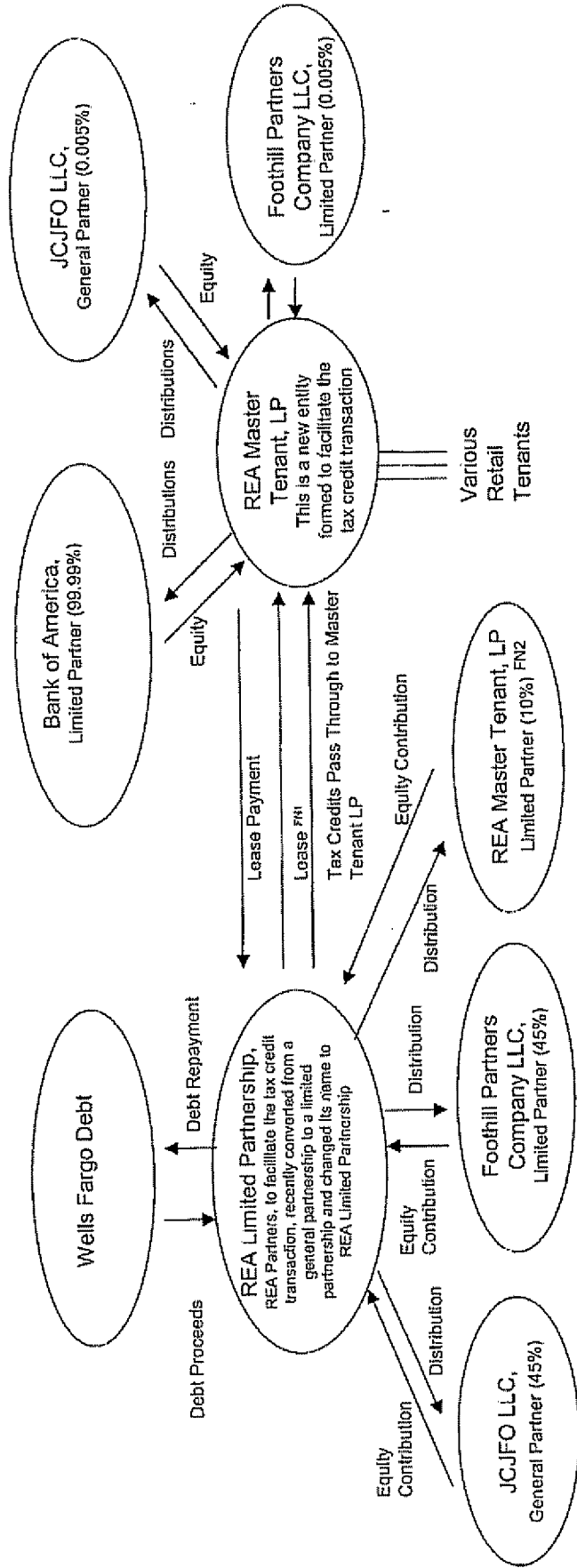
The City Manager is authorized to execute the 1st and 2nd modifications to the OPA with Developer (included as Exhibit 2 and Exhibit 3 to the resolution are hereby approved) and to take such actions, execute such other documents and instruments as approved by Agency counsel, as necessary to effectuate and implement this resolution and the modifications to the OPA.

Attest:

Chair

Secretary

INVESTMENT STRUCTURE



FN#1 The lease is anticipated to be for a term of approximately thirty-two (32) years.

FN#2 Once the 5-year recapture period expires, JCJFO and Foothill Partners Company LLC have the right to buy out BofA's interests in the REA Master Tenant LP. Once that occurs, they would own 100% of the REA Master Tenant LP (resulting in their being no "downside" of REA Master Tenant LP owning 10% of REA Limited Partnership).

EXHIBIT 2

**REA BUILDING PROJECT
OWNER PARTICIPATION AGREEMENT
BETWEEN THE
REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
AND REA PARTNERS, L.P.**

1ST MODIFICATION

This 1st Modification Agreement is made and entered into as of this ____ day of August, 2005, by and between the Redevelopment Agency of the City of Sacramento ("Lender") and REA Limited Partnership (f/k/a as REA Partners) ("Borrower").

WHEREAS, Borrower and Lender entered into that certain Owner Participation Agreement, dated as of October 12, 2004 (the "OPA") recorded in Book 20041223, Page 2193 of the land records of Sacramento County, California, that certain Construction and Permanent Loan Agreement REA Building Phases II and III (the "Loan Agreement") dated as of December 7, 2004, together with that certain Promissory Note, dated as of December 7, 2004 (the "Note"), Deed of Trust and Assignment of Rents dated as of December 7, 2004 recorded in Book 20041223, Page 2195 of such land records (the "Deed of Trust") and Regulatory Agreement dated as of December 7, 2004 and recorded in Book 20041223, Page 2194 of said land records (the "Regulatory Agreement").

WHEREAS, the parties desire to modify the OPA and Loan Agreement and Regulatory Agreement as set forth below.

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged by Lender, the parties hereby agree as follows:

1. The OPA is hereby modified as follows:

a) Section 4.18.1 and 4.18.2 of the OPA are hereby deleted in their entirety, and all references in the Loan Agreement, Note, Deed of Trust and Regulatory Agreement to the requirement of a historic façade easement are hereby deleted, and of no further force or effect;

b) New Section 4.18.1 is hereby added to read as follows:

4.18.1 Historic Preservation Requirements

Developer hereby agrees that the REA Building, including, specifically, the exterior façades of the REA Building, shall at all times be maintained and preserved as a historic building subject to the standards for rehabilitation set forth in Title 36 of the Code of Federal Regulations, Part 67.7, or any successor

provisions, as amended from time to time (the "Secretary's Standards"), as determined by the Preservation Director of the City of Sacramento, and that this provision shall be included in an amendment to the Regulatory Agreement. Furthermore, the Regulatory Agreement shall permit City of Sacramento or the Redevelopment Agency of the City of Sacramento entry onto the property to perform such maintenance and preservation as may be required should the Owner fail to do so and to collect such costs as may be incurred by performing the maintenance and preservation..

2. The Regulatory Agreement is hereby modified as follows:

a) Section 1 of "Special Provisions" is hereby modified to read in its entirety as follows:

The historic external façades of the building shall remain intact except for changes approved in the Preliminary Plans attached to the Regulatory Agreement and Owner shall assure that building, including, specifically, the exterior façades of the building, shall at all times be maintained and preserved as a historic building subject to the standards for rehabilitation set forth in both the City of Sacramento's Preservation Ordinance and Title 36 of the Code of Federal Regulations, Part 67.7, or any successor provisions, as amended from time to time (the "Secretary's Standards"), as determined by the Preservation Director of the City of Sacramento,. If the exterior façade is altered, damaged, or not maintained the Agency shall have the right to enter the property and restore, maintain, correct or preserve the exterior façade and collect the cost of such restoration, maintenance, correction or preservation.

b) Section 3.a is hereby modified to consent to the master lease of the Premises to REA Master Tenant, L.P. and to leases of space in the REA Building to tenants for uses in compliance with the Regulatory Agreement. Lender agrees that because REA Master Tenant, L.P. is aware of the Regulatory Agreement the requirement of a recorded acknowledgment is hereby waived. Further, if the leases with tenants contain an acknowledgment of receipt of a copy of the Regulatory Agreement, a recorded acknowledgment by such tenants also does not need to be recorded.

c) Section 3.b is hereby deleted.

3. Except as specifically modified herein, all of the terms and provisions of the OPA, Loan Agreement and Regulatory Agreement remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this 1st Modification Agreement as of the date first above written.

DEVELOPER

REA LIMITED PARTNERSHIP, a California limited partnership (f/k/a REA PARTNERS, a California General Partnership)

By: JCJFO, LLC, General Partner

By:

Johan Otto, Managing Member

Date:

AGENCY

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By:

Robert P. Thomas,
City Manager, as Designated Signatory

Date: _____

Approved as to form:

Agency Counsel

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this _____ day of August, 2005, before me personally appeared Johan Otto, to me personally known, who being by me duly sworn did say that he is managing member of JCJFO, LLC, a California limited liability company, which is the General Partner of REA LIMITED PARTNERSHIP, a California limited partnership, and that said instrument was signed in behalf of said company and partnership and acknowledged to me that he/she executed the same as the free act and deed of said company and partnership.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On this _____ day of August, 2005, before me personally appeared Robert P. Thomas, City Manager, to me personally known, who being by me duly sworn did say that he is Designated Signatory on behalf of the Redevelopment Agency of the City of Sacramento and that said instrument was signed in behalf of said agency, with due authorization.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

EXHIBIT 3

**REA BUILDING PROJECT
OWNER PARTICIPATION AGREEMENT
BETWEEN THE
REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
AND REA PARTNERS, L.P.**

2ND MODIFICATION

This 2nd Modification Agreement is made and entered into as of this ____ day of _____, 2005, by and between the Redevelopment Agency of the City of Sacramento ("Lender") and REA Limited Partnership (f/k/a as REA Partners) ("Borrower").

WHEREAS, Borrower and Lender entered into that certain Owner Participation Agreement, dated as of October 12, 2004 (the "OPA") recorded in Book 20041223, Page 2193 of the land records of Sacramento County, California, that certain Construction and Permanent Loan Agreement REA Building Phases II and III (the "Loan Agreement") dated as of December 7, 2004, together with that certain Promissory Note, dated as of December 7, 2004 (the "Note"), Deed of Trust and Assignment of Rents dated as of December 7, 2004 recorded in Book 20041223, Page 2195 of such land records (the "Deed of Trust") and Regulatory Agreement dated as of December 7, 2004 and recorded in Book 20041223, Page 2194 of said land records.

WHEREAS, the parties desire to modify the OPA and Loan Agreement as set forth below.

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged by Lender, the parties hereby agree as follows:

3. The OPA is hereby modified as follows:

a) Section 11.1 is hereby modified to delete all references to the Phases II and III Loan therefrom.

4. The Loan Agreement is hereby modified as follows:

a) Notwithstanding language to the contrary in the Loan Agreement, the Phases II and III Loans shall be payable in full at the maturity date thereof in all events, unless sooner paid.

b) Section C Repayment Terms "Sale or Transfer" provision is hereby modified as follows:

The section discussing "Proportional Repayment Upon Refinancing or Sale" is deleted in its entirety.

The section discussing "Refinancing" is amended in its entirety to read as follows: Payment is required if refinancing of Primary Loan results in proceeds in excess of loan payoff amount. Loan repayment to Agency shall equal 70% of the amount of loan proceeds in excess of Primary Loan payoff amount, with the remainder of the Loan continuing as outstanding and repayable in accordance with the terms of this Loan Agreement.

The section discussing "Sale or Transfer" is amended in its entirety to read as follows: Unless the buyer assumes the Loan, the Loan is repayable in full upon sale of the Property. Upon the assumption of the Loan, Loan repayment to Lender is required if sales proceeds are in excess of the sum of the Primary Loan payoff amount, related sales expenses and Developer Equity. Final payment shall equal at least 70% of the sales proceeds in excess, up to payoff of this loan amount. Any remaining Loan balance shall be assumed by the buyer at that time and, in that case, the provisions of this Loan Agreement will continue to apply to the remaining Loan balance, and the assignee will be substituted in the place and stead of Borrower, with all rights, obligations, and remedies of Borrower, including, without limitation, the right to further assign the Loan on a subsequent sale. In the case of any such permitted assignment and assumption, Lender agrees to subordinate the Loan balance to any first mortgage loan placed on the property by any such buyer. Property cannot be sold to a related third party to avoid this payment due upon sale requirement. For these purposes, a related third party shall be defined as a party that is related by blood or marriage or has a partnership or investment relationship with anyone who is named as a partner or owner of an entity that is party to this OPA. Notwithstanding language in the Loan Agreement to the contrary, including, without limitation, the language of Section 10.11 discussing "Assignments," the assignment discussed immediately above shall be permitted.

3. Except as specifically modified herein, all of the terms and provisions of the OPA and Loan Agreement remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this 2nd Modification Agreement as of the date first above written.

DEVELOPER

REA LIMITED PARTNERSHIP, a California limited partnership (f/k/a REA PARTNERS, a California General Partnership)

By: JCIFO, LLC, General Partner

By: _____
Johan Otto, Managing Member

Date: _____

AGENCY

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: _____
Robert P. Thomas,
City Manager, as Designated Signatory

Date: _____

Approved as to form:

Agency Counsel

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2005, before me personally appeared Johan Otto, to me personally known, who being by me duly sworn did say that he is managing member of JCJFO, LLC, a California limited liability company, which is the General Partner of REA LIMITED PARTNERSHIP, a California limited partnership, and that said instrument was signed in behalf of said company and partnership and acknowledged to me that he/she executed the same as the free act and deed of said company and partnership.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On this ____ day of _____, 2005, before me personally appeared Robert P. Thomas, City Manager, to me personally known, who being by me duly sworn did say that he is Designated Signatory on behalf of the Redevelopment Agency of the City of Sacramento and that said instrument was signed in behalf of said agency, with due authorization.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]