

**AMENDED
RESOLUTION NO. 2002-039**

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

ON DATE OF OCT 1 2002

**APPROVAL OF CONCEPTUAL BUSINESS TERMS AS A FRAMEWORK WITH WHICH
STAFF IS AUTHORIZED TO NEGOTIATE AN OWNER PARTICIPATION AGREEMENT AND
RELATED DOCUMENTS WITH LYNN POMEROY AND JOHAN OTTO, FOR THE RAILWAY
EXPRESS ANNEX (REA) BUILDING MIXED USE PROJECT AT 401 I STREET**

WHEREAS, the Redevelopment Agency of the City of Sacramento ("Agency") has adopted the Richards Boulevard Redevelopment Plan ("Redevelopment Plan") and a 5-year "Implementation Plan" for the Richards Boulevard Redevelopment Project Area ("Project Area") and the City Council of the City of Sacramento has adopted the Economic Development Strategy Framework ("Economic Strategy") that identifies a strategies for rehabilitation adaptive-reuse of the REA Building; and

WHEREAS, Lynn Pomeroy and Johan Otto (collectively the "Developer"), collectively, owns or has the right to acquire an ownership interest in certain real property ("Property"), in the Project Area generally described as 401 I Street, and

WHEREAS, the Agency and the Developer desire to pursue the negotiation of an Owner Participation Agreement ("OPA") and related documents for the development of a mixed use project with retail, office and parking uses within the framework of the Statement of Conceptual Business Terms and Purchase of Covenants ("Business Terms") attached as Exhibit A; and

WHEREAS, the proposed project and an OPA that may be negotiated are still subject to all applicable laws and regulations including the California Environmental Quality Act (CEQA), the Agency Redevelopment Plan and Implementation Plan, zoning regulations, design review and historic preservation ordinances and building codes prior to any binding approvals being granted;

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO:

FOR CITY CLERK USE ONLY

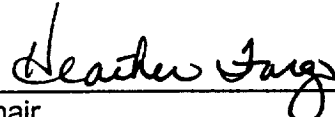
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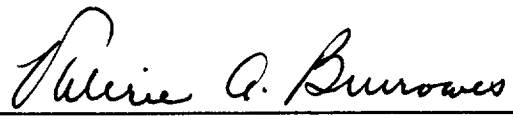
Section 1. The proposed project is consistent with goals and objectives identified in the Redevelopment Plan, Implementation Plan and Economic Strategy in that it proposes the development of a mixed-use catalyst project with office space and ground floor retail uses that will increase downtown employment, and establish community-serving restaurant or retail uses on a key corner in the Railyards planning district portion of the Project Area.

Section 2. The Business Terms attached as Exhibit A are approved as a framework with which staff is authorized to negotiate a draft OPA and other related documents as necessary. Staff is directed to return for consideration of the Agency.

Section 3. The foregoing approval shall be considered merely as general direction to staff, but is not and shall not be construed as an approval of any term contained in the Business Terms. Staff shall return with the proposed OPA for due consideration by the Agency, in exercise of its legislative powers, and Agency's approval of the OPA shall and the project shall be subject to all applicable policies, laws and regulations including CEQA, the Redevelopment and Implementation Plans, City planning, zoning, historic preservation and building codes.



Chair



Secretary

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EXHIBIT A to RACS resolution

**Historic Southern Pacific Railway Express Annex (REA) Building Mixed-Use Project
401 I Street, UP Railyards site
Statement of Conceptual Business Terms and Purchase Covenants
September 19, 2002**

A. INTRODUCTION

1. The Redevelopment Agency of the City of Sacramento (the "Agency"), to the extent of its authority and Lynn Pomeroy and Johan Otto (collectively, the "Developer") are considering forming a public/private partnership in the form of an Owner Participation Agreement and Regulatory Agreement to be recorded against real property (collectively, the "OPA"), to redevelop an underutilized historic building located at 401 I Street (the Railway Express Annex, "REA Building," or "Property") on the Union Pacific Railyards site. Developer owns, or has the right to acquire an ownership interest in, the REA Building located at 401 "I" Street.
2. The City of Sacramento ("City") has the authority to consider and grant all land-use entitlements necessary to approve a development project involving the REA Building.
3. **Policy Context:** The Agency has identified rehabilitation and adaptive reuse of the REA Building as a priority redevelopment activity for the Richards Boulevard Redevelopment Area. This project was identified in the Five-Year Implementation Plan for the Richards Boulevard Redevelopment Area. The project is also identified in the Economic Development Department's Framework Strategy. Also, the Agency is already assisting with the replacement of the roof structure on the adjacent Historic Southern Pacific Depot Building, a National Register Listed Structure that currently serves as public transportation.

While the structure is listed on the National Register of Historic Structures, it was heavily altered in the early 1990s, the REA Building is listed as a "priority and contributory structure" in the City's list of Central City Historic Landmarks.

4. **Project Description:** Developer would rehabilitate, seismically stabilize, and convert the REA Building into a mixed-use, urban project while essentially maintaining its historic façade. Because of damage due to fire in the building in the early 1990s, the City's demolition of the loading docks as part of the Federal Courthouse project, and the advanced state of collapse of interior floors and the roof structure, rehabilitation, seismic stabilization and conversion for the proposed uses will necessitate substantial modification to interior appearances of the building.

The REA building was formerly a freight warehouse, and it is the developer's intent to reconstruct the original two-story floor plan, and maintain the original floor/ceiling heights. Some interior details may be retained, although most interior elements have already been

damaged or lost to fire or water infiltration. The first story would include 12,400 s.f. of restaurant, café, retail space, or other visitor attraction, consistent with the adopted development standards for the REA Building. The second story would be developed for 12,400 s.f. of office use, which could serve either public or private tenants. Developer would provide approximately 40 parking on surrounding surface lot to the south of the REA Building. The City would seek dedication of future H Street extension on the north side of the building, and pedestrian easements over the existing sidewalk on the south side of the building.

5. The following paragraphs set forth conceptual business terms and conditions of an OPA for the proposed project. These terms and conditions as well as customary business and legal provisions will be incorporated into an OPA for the project described above to be brought back to the Agency for consideration and approval.

B. AGENCY COVENANTS AND CONSIDERATION

Phase I Activities (prior to approval of the Sacramento Intermodal Transportation Facility preferred concept)

1. Within 90 days of the close of escrow, the developer, at their expense, will complete all waterproofing and stabilization activities in order to protect and preserve the REA Building, including the following specific activities:
 - a. Developer will submit all interior demolition, stabilization, and preservation plans to the City Building Official and the City Preservation Director for review and approval.
 - b. In the plans, the developer will provide a comprehensive plan for sealing and protecting both the interior and exterior of the building from water damage. These methods will include covering in interior walls to achieve the same level as protection as would have been attained with installation of a temporary roof structure.
 - c. Developer will review reports prepared by the City, including 1) Façade Evaluation of the Southern Pacific Railway Express Agency Building, and 2) Structural and Seismic Evaluation of the Southern Pacific Railway Express Agency Building. Both studies were prepared by the City's structural engineering consultant, Simpson Gumhertz & Heger, Inc. and are dated April 30, 2002. The developer should be prepared to address the key issues of identified by the consultant in the near-term weatherization and stabilization plans.
 - d. Developer must provide a plan for stabilizing exterior walls that would allow for removal of the City's pedestrian/auto barrier system on 5th Street.
 - e. The developer must continue to catalogue and warehouse exterior elements removed from the building, prior to the rehabilitation project.

2. The developer will participate in and cooperate with the City's Sacramento Intermodal Transportation Facility study. Cooperation includes consideration of alternative uses for the REA Building that may include the establishment of transportation, or transportation-related uses that serve the expanded facility.
3. The developer will prepare a reuse plan for the building and submit the plans for review to the City Planning Department, and participate in review by the City's Design Review/Preservation Board, and the City Planning Commission, and the Redevelopment Agency of the City of Sacramento.

Phase II Activities (upon approval of Sacramento Intermodal Transportation Facility preferred concept)

1. Upon approval of the preferred concept for the Sacramento Intermodal Transportation Facility, which will address the role and function for the REA Building, the developer and the City staff will negotiate an Owner Participation Agreement for the REA Building. The OPA will address the following:
 - a. Consideration of a grant to the developer to assist in the rehabilitation of the building.
 - b. The OPA shall include deed restrictions that regulate the use of the building, including establishing continued covenants to ensure that active ground floor uses are maintained.
 - c. The OPA shall address the coordination of the REA Building operations and maintenance with that of the surrounding transportation facilities, in order to ensure that the building continues to be perceived as a part of the adjacent Historic Southern Pacific Building and future uses within that building.

C. PROPERTY ACQUISITION

1. The OPA shall be subject to the Developer's closing of the escrow for acquisition of fee title ownership of the REA Building.

D. GENERAL PROVISIONS

1. The proposed project to be described in the OPA shall be substantially similar to the project design and concept presented at the time of presentation of this statement, subject to modifications required by CEQA, City's Planning Department, other governmental authorities having jurisdiction, and as approved by the City Manager, or his designee.
2. The Developer, at the time of Agency's consideration and approval of the OPA, shall consist of the development team as presented at the time of this agreement, except that changes affecting, in the aggregate, no more than fifteen percent (15%) of the ownership or control of Developer shall be permitted without Agency's approval. Any changes

affecting ownership or control of the Developer, in the aggregate, by greater than 15 percent are subject to the City Manager, or his designee's reasonable approval through the completion of construction.

3. The Agency's approval of the OPA shall be subject to the completion of the required environmental review process.
4. The Agency shall assist the Developer in expediting where possible the necessary public approvals and entitlements to allow the mixed use project, as proposed, to be developed. This shall include but not be limited to zoning, building code, historic preservation/design review approvals and variances, as needed. Developer is obligated to comply with all applicable processes and regulations, including those of the City and Agency. Nothing requires the City or Agency to change or waive any of its existing policy, processes or regulations.

E. STATEMENT OF CONCEPTUAL BUSINESS TERMS AND AGREEMENT TO PURCHASE COVENANTS NOT BINDING

1. The conceptual business terms and financing identified herein do not create a binding legal obligation on the part of the Developer or the City or Agency and does not constitute an offer, a contract, an agreement or an agreement to agree. This document has been prepared and executed to serve as an aid in the preparation and negotiation of future legal documents and to provide the developer with a general indication of whether the Agency would conceptually consider project assistance at the level identified, for a project of this description, at this location, and with this development team.
2. The specific terms and amounts of the Agency's financial participation itemized in this document are subject to further analysis of the development program and subsequent operating pro forma.
3. This document sets forth all fundamental business terms of the proposed transaction. Additional essential terms, such as those relating to the mechanics of project implementation, any financing terms and customary provisions for the protection of the parties' interests, are subject to further discussion and negotiations; however, the negotiation of such additional terms shall be governed by concepts of reasonableness and the parties' mutual desire to effectuate the terms contained in this document. Both parties acknowledge and agree that this document is insufficient to give rise to any claim of right to either party, except as to the right to reasonable negotiations on the terms stated in this document. No obligation by either party will exist unless and until the parties have complied with all applicable laws and regulations, including without limitation full and independent environmental review under the California Environmental Quality Act, public meeting of the Redevelopment Agency of the City of Sacramento and the City of Sacramento regarding the Project, and Agency's full consideration regarding approval or disapproval of the environmental documentation, the Owner Participation Agreement and any other document developed under the guidance of this document, in exercise of its legislative authority, all of which are conditions to the approval of such agreement, have

duly authorized and have executed a formal written contract approved by their respective legal counsel, covering the terms described in this document and all other essential terms of this transaction.

4. If the guidance of this document and subsequent negotiations fail, for any reason, to result in the approval and execution of an Owner Participation Agreement for the Property, neither this document nor any actions of the parties taken pursuant thereto shall limit in any way Developer's ability to develop and utilize the Property for any lawful uses. If the guidance of this document and subsequent negotiations fail, for any reason, to result in the approval and execution of an Owner Participation Agreement or any other agreement regarding the Property, then the Agency shall obtain no interest in the Property or the Project and neither party shall have any cause of action against the other for any reason arising from or related to this document.
5. Neither the Developer nor the Agency may claim any legal right against the other by reasons of any actions taken in reliance on this document, including without limitation any partial performance or expenditure of time and money in anticipation of entering into binding legal agreements.
6. The direction provided by this document, and any subsequent agreements that may be executed pursuant to its terms shall be contingent upon the approval of project entitlements and other required approvals by the City. Nothing herein is intended to limit the discretion of the City in the review of the application for the project, which will be subject to all necessary public hearings and findings as required by City ordinance or State law.

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