City of Culver City, California

Redevelopment Agency Agenda Item Report

Meeting Date: 12/17/07	Item Number: A-4
AGENDA ITEM: Consideration of an Owner Participation Agreement with Westfield, Inc. for the Westfield Mall Culver City.	
Contact Person/Dept.: Sol Blumenfeld and Todd Tipton/ CDD	Phone Number: (310) 253-5760
Fiscal Impact: Yes [] No []	General Fund: Yes [] No []
Public Hearing: [] Consent Item: []	Action Item: [] Attachments: []
Public Notification: Master Notification List; Fox Hills Homeowner Association on December 14, 2007; Chamber of Commerce on December 14, 2007.	
Department Approval: Sol Blumenfeld 12/13/07	Executive Director Approval: Jerry Fulwood 12/13/07
Chief Financial Officer: Jeff Muir 12/13/07	

RECOMMENDATION:

That the Culver City Redevelopment Agency (the "Agency") consider adoption of an Owner Participation Agreement ("OPA") with Westfield, Inc. ("Westfield") for the Westfield Mall Culver City.

BACKGROUND:

In November 2005, the Westfield obtained Planning Commission approval to construct a project that consisted of modifying the existing 1.05 million square foot mall (the "Mall") by demolishing some 180,000 square feet of existing space and replacing it with some 446,000 square feet of new space in a multi-level configuration with rooftop parking. The new Mall would have approximately 1.3 million square feet of retail space upon completion, would be supported by 4,233 parking spaces, and would implement an array of on-site and off-site access and circulation improvements.

This expansion and remodeling program was subject to environmental review pursuant to the California Environmental Quality Act via the preparation of a Mitigated Negative Declaration ("MND") by the City in August 2005 and as revised in September and November 2005. This document was duly circulated for public review and adopted by the City Planning Commission with the conclusion that the Project would not result in significant adverse environmental impacts in November 2005.

In the successive two years, the Mall's scale, massing and mix of uses has remained in substantial conformance with that approved by the Planning Commission in November 2005.

DISCUSSION:

Westfield has requested that the Agency assist with financing in order to implement the high-quality project they propose. Westfield has requested that they receive all of the net new tax increment generated by their project until 2024, the expiration of time limit to receive tax increment for Component Area One. An OPA is necessary to memorialize the terms requirements of the Agency's participation.

If the Agency authorizes execution of an OPA with Westfield, staff believes the following items to be of importance:

A. Tenant threshold requirements;
B. Proportional assistance and accrual of the Agency's assistance;
C. Conditions to be satisfied prior to the release of initial Agency assistance;
D. Conditions to be satisfied prior to the release of ongoing Agency assistance;
E. Agency participation in sign revenues;
F. Agency participation in net sale or refinance proceeds;
G. Duration of Agency restrictions and covenants; and
H. Waiver of property tax assessment.

A. Tenant threshold requirements

When the Mall renovation is complete, Westfield will seek tenants to occupy the new floor area. The quality of the tenants is imperative to the Mall's long-term success. To that end staff and its consultants have establish the threshold square footage requirements described in Table 1 below and the attached preferred tenant list (the "List"). The List is comprised of quality, national tenants from a variety of categories that include housewares and home; men's, women's and children's fashion and accessories; books, cards and gifts; health and beauty; and restaurants.

In order to receive Agency assistance, Westfield must either satisfy the threshold requirements in Option 1 or provide tenants from the List in accordance with the percentages in Option 2. This requirement will be applied to the initial and ongoing Agency assistance.

It is noted for the Agency's information that Westfield will be allowed to utilize up to 36,000 square feet of new restaurants in order to satisfying Option 1 in Table 1 below if they so choose. This option (including restaurant tenants) would be available to Westfield during Year 1 only and is intended to ensure a diverse mix of tenants.

	Option 1		Option 2
Table 1	**Total Sq. ft. of Tenant Threshold in Mall Expansion**	**Minimum Sq. ft. of Tenant Threshold in Existing Mall**	**% New Tenants from the List**
Year 1	90,000	20,000	75%
Year 2	115,000	25,000	85%
Year 3	140,000	30,000	90%

B. <u>Proportional assistance and accrual of the Agency's assistance</u>

Staff believes it important to reward Westfield's performance if it satisfies the threshold requirements in Table 1. In the same regard, if Westfield fails to satisfy the threshold requirements, actions must occur that encourage them to perform.

To encourage performance staff recommends withholding a portion of the Agency's assistance in an amount equivalent to the threshold Westfield failed to satisfy less a 10 percent grace factor. The withholding would be deposited in an interest bearing accrual account and paid to Westfield once the thresholds are achieved. Westfield would have up to three years to satisfy the threshold requirements. If they fail to do so within the time period, the assistance would return to the Agency.

In addition to withholding the assistance, staff also recommends that there be a 10% penalty for poor performance. The penalty would be applied to the funds Westfield would be eligible to receive after the withholding was deducted. The formula would commence when the Agency's assistance began and renew every three years thereafter throughout the term of the agreement (until 2024).

For example, if in Year 2 the threshold is 85 percent and Westfield only secures 73 percent of the tenants from the List then 12 percent of the Agency's assistance will be deducted and deposited in an interest bearing account to accrue. If Westfield satisfies the threshold for Year 3 then the accrual plus interest will be provided, less the 10% penalty for the prior year. Thus at Year 2 with a $1 million annual per year of tax increment payment to Westfield, the amount would be:

> $1,000,000 x .12 (amount Westfield deficient) = $120,000 amount withheld and deposited in an interest bearing account.
>
> $1,000,000 - $120,000 = $880,000 amount of Agency assistance prior to penalty.

The penalty is calculated as follows:

$880,000 x .10 percent penalty = $88,000 amount returned to the Agency.

$880,000 - $88,000 = $792,000 amount available to Westfield less penalty.

C. <u>Conditions to be satisfied prior to the release of initial Agency assistance</u>

Prior to payment of the initial disbursement, staff believes Westfield must:

1. Provide documentation that identifies the amount of funds to be expended to improve to the Mall. Staff believes this important because the total expenditure is related to the resulting scope and quality of the improvements. Westfield indicates that the expenditure is anticipated to be approximately $125 million.
2. Execute the Agreement Affecting Real Property, which assures that Agency's ongoing restrictions and requirements related to maintenance, land use, development obligations, use of Agency Approved Tenants, prohibited uses, property tax payments and appeals, prohibitions on assignment and encumbrances and return of Agency Assistance, and payment of Agency participation in sign revenues will be memorialized. The Agreement Affecting Real Property will not be subordinate to the property's financing.
3. Comply with the thresholds established in Table 1 above.
4. Facilitate discussions with Target in order to ascertain the status of the existing Target store on Jefferson Boulevard.
5. There must not be an event that could become a default pursuant to the agreement. Staff believes this important because the Agency assistance will be delivered over time once Westfield meets conditions precedent, and so long as they meet ongoing conditions. If a default were identified after disbursement of the assistance, there may not be sufficient motivation for Westfield to expeditiously resolve the default.

D. <u>Conditions to be satisfied prior to the release of ongoing Agency assistance</u>

Prior to payment of the ongoing disbursements, staff believes Westfield must:

1. Be in compliance with the preferred tenant threshold and Agreement Affecting Real Property.
2. Not have transferred the property to a non-Westfield affiliate. If Westfield were to sell the Mall to a non-Westfield affiliate that was not acceptable to the Agency, Westfield will return all Agency assistance provided.

3. Not have closed more than 10 percent of the Mall permanently. Westfield will be able to occasionally close portions of the Mall in order to facilitate retenanting. If Westfield should close more than 10 percent of the Mall, then Agency assistance will be suspended and accrued until the Mall is again more than 90 percent occupied.
4. Be in compliance with the Agency approved Master Plan and the Schedule of Performance for the Westfield parcel.

E. Agency participation in sign revenues

Should the Agency authorize execution of this agreement and the Design for Development ("DFD") related to Westfield's proposed Master Sign Program ("MSP"), staff believes it important that the Agency receive a portion of the gross revenues generated in the form of a $500,000 guaranteed annual payment and 50 percent of any gross proceeds in excess of $2.2 million. The Agency will be entitled to gross revenues as long as the signs are in existence. Please see the Agenda Item Report related to the DFD for additional information.

It is noted for the Agency's information that staff explained to Westfield the Agency's request to see the Mall's design improved if additional signs were proposed. To date, Westfield has not responded to this request.

F. Agency participation in net sale or refinance proceeds

If Westfield was to refinance or sell the Mall to an approved affiliate and they experienced a windfall, staff believes the Agency should participate due to its $10 million in assistance. If Westfield was to sell the Mall to a non-approved Westfield affiliate, staff believes the Agency should receive all of the assistance it provided up to the time of the sale.

G. Duration of Agency restrictions and covenants

The conditions identified in the Agreement Affecting Real Property will remain in effect until 2037 (30 years) in order to justify the Agency's assistance.

H. Waiver of property tax assessment

Agency legal counsel has developed language that would limit Westfield's ability to seek a reduction in assessed value below that initially established following completion of the Mall's expansion.

FISCAL ANALYSIS:

It is estimated that Westfield's improvements to the Mall will generate approximately $1 million annually in net new tax increment. Pursuant to the proposed Owner Participation Agreement, this amount would be returned to the Westfield until 2024.

It is estimated that Westfield's improvements to the Mall will generate approximately $1.3 annually in sales tax.

ATTACHMENTS:

1. Draft Owner Participation Agreement with Westfield
2. Preferred Tenant List.

MOTION:

That the Culver City Redevelopment Agency:

1. Adopt an Owner Participation Agreement with Westfield, Inc. for the Westfield Mall Culver City.