

**City of Culver City, California
Agenda Item Report**

Meeting Date: 12/05/2011		Item Number: <u>JC-2</u>	
JOINT CITY COUNCIL/REDEVELOPMENT AGENCY BOARD AGENDA ITEM: Approval of a First Amendment to the Disposition and Development Agreement By and Between The Culver City Redevelopment Agency, The City of Culver City, and Tilden Terrace, L.P.			
Contact Person/Dept.: John Fisanotti Tevis Barnes		Phone Number: (310) 253-5767 (310) 253-5782	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☐ Attachments: ☒	
Commission Action Required: Yes ☐ No ☒		Date: _____	
Public Notification E-mail, Agenda and Meetings – City Council, and Redevelopment Agency, Affordable Housing, Redevelopment Agency Projects and Top Ten Development Projects (12/01/2011).			
Department Approval: Sol Blumenfeld: (11/22/11)		City Attorney Approval: Carol Schwab (by H. Baker) (11/28/11) Agency General Counsel Approval: Murray Kane: (11/18/11)	
Chief Financial Officer Approval: Jeff Muir (11/29/11)		City Manager/Executive Director Approval: John Nachbar: (12/01/11)	
<u>RECOMMENDATION:</u> Staff recommends that the Agency Board participates in the deliberation regarding the First Amendment to the Disposition and Development Agreement for the development of the Tilden Terrace mixed use, affordable housing project (Project). Staff recommends the City Council approve the First Amendment to the Disposition and Development Agreement for the development of the Tilden Terrace mixed use, affordable housing project (the “Project”). <u>BACKGROUND:</u> On March 21, 2011, the City of Culver City (City) and the Culver City Redevelopment Agency (Agency) entered into a Disposition and Development Agreement (DDA) with Tilden Terrace, L.P. (Developer) for the development of a mixed use affordable housing project. The Developer is an entity formed by the Los Angeles Housing Partnership, Inc. (LAHP) to develop their property at 11042-52 West Washington Boulevard jointly with property under City ownership at 11054-56 West Washington Boulevard (formerly known as the Pleasantview Site).			

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Pursuant to the DDA, the City will sell its property to the Developer upon the closing of construction financing for the Project. In addition to a loan of Former Agency Funds (including former Housing Set Aside Funds former tax increment funds) from the City to the Developer, the Project is dependent upon the Developer's receipt of tax credits from the State of California Tax Credit Allocation Committee (TCAC) and commercial financing.

In June of 2011, the project received an award of tax credits from TCAC, and the Developer is now attempting to obtain the construction financing, conclude sale of the property, and start construction by December 19, 2011 in accordance with the timelines contained in the DDA and the Preliminary Reservation Letter from TCAC.

Reasons for the Amendment:

In the ensuing months since the DDA was approved, staff has learned after-the-fact of certain changes initiated by the Developer in order to improve their TCAC application. The most significant changes involve a revised project pro forma and budget. In addition to these project specific changes, staff also became aware of management changes at LAHP. Based on these changes, staff and City Special Counsel/Agency General Counsel believe that an amendment to the DDA is needed for the Project to go forward.

Because of the stay issued by the California Supreme Court on August 11, 2001, the Agency is prevented from taking action on certain items until the Court renders a decision (expected by January, 2012) in the case of California Redevelopment Association et al v. Matosantos et al. Pursuant to the Cooperation Agreement between the Agency and the City, the City has full authority to amend the DDA as outlined more fully below. Therefore, the Agency Board is only participating in the deliberations regarding the proposed Amendment to the DDA.

The Agency and the City entered into a Cooperation Agreement dated January 15, 2011, which was amended on February 22, 2011, and again on March 7, 2011 (collectively, the "Cooperation Agreement"), obligating the City to, among other things, carry out the Project and obligating the Agency to, among other things, pay the City's costs of carrying out the Project. In furtherance of the Cooperation Agreement and to achieve important municipal and other public purposes pursuant to Resolutions adopted by the Agency and City on March 7, 2011, the Agency conveyed the Agency Parcel and other Agency owned properties to the City and transferred the Agency's cash accounts (Former Agency Funds) to the City.

Article VIII(c) of the DDA provides the City with the authority to amend the DDA without further Agency action. Further, Section 708(a) of the DDA provides the City with the authority, among other things and without further Agency action, to perform all of the duties and obligations of the Agency under the DDA and to exercise and have the benefit of all of the Agency's rights, remedies and interests under the DDA.

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Extension Request to TCAC:

Notwithstanding the above efforts of the Agency and the City to ensure that the Project is an enforceable obligation, and not jeopardized by recent state legislation and/or the Supreme Court's pending decision, the construction lender is unwilling to close on its loan pending the State Supreme Court's decision regarding redevelopment law. As a result, the Developer intends on seeking a 90-day time extension from TCAC in connection with deadline to begin construction. TCAC regulation 10325 permits Developers under these circumstances to request a 90-day extension to the project construction start date.

DISCUSSION:

Amendment Contents:

After the City and Agency approved the DDA on March 21, 2011, the Developer filed its application for tax credits with TCAC. Contained within the TCAC application, various terms of the Project pro-forma and budget were altered from the version contained in the approved DDA. Ostensibly, the changes were intended to improve the Project's chances of obtaining the critically needed tax credits from TCAC within the framework of the competitive process used to determine award of tax credits.

In the months of September and October 2011, the Developer provided staff with the revised project pro-formas and budgets stemming from the changes introduced as part of the TCAC application. The Developer's proposed changes to the Project financing during the construction and permanent phase would result in significant revisions to the DDA, the Project Budget (Exhibit No. 6 to the DDA), and the Method of Financing (Exhibit No. 3 to the DDA). It should be noted that: a) funding from other sources is reasonably anticipated at the levels shown below; and b) the numbers will be finalized only at closing; and c) the final numbers may vary slightly, but not significantly from the list below; and d) the City's contribution is fixed and will not change in response to minor changes in the levels from the other funding sources; and therefore, with the City Council's consent, staff will execute the final draft of the proposed First Amendment so long as the final numbers do not vary greatly from the anticipated numbers. As currently negotiated by staff, such revisions now include:

1. Increasing the Construction Loan during the construction phase from \$4,177,217 to \$4,923,457;
2. Reducing the Permanent Loan during the permanent phase from \$1,798,790 to \$1,710,000;
3. Including as a new source of funding for the Project from the Enterprise Housing and Green Grant in the amount of \$40,000;
4. Eliminating as a source of funding for the Project during the permanent phase the conditional grant or loan to be awarded to the Developer pursuant to the Federal Home Loan Bank Affordable Housing Program in the amount of \$330,000 ("AHP

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Funds”) (however, staff insisted that these funds be pursued and the Developer agreed to apply for them in 2012 which, if awarded, shall cause a corresponding reduction in the City’s Residential Loan);

5. Eliminating the costs deferred until Completion during the construction phase in the amount of \$132,843; reducing the Deferred Developer Fee during the construction phase from \$1,260,000 to \$1,171,543 and eliminating the Deferred Developer Fee during the permanent phase in the amount of \$700,000; reducing the Limited Partner Capital Contributions during the construction phase from \$3,216,800 to \$2,650,000; and,
6. Increasing the additional Limited Partner Capital Contribution during the permanent phase from \$2,740,910 to \$4,385,000.

With respect to the changes to the Project pro forma, it should be pointed out that the City’s/Agency’s total contribution toward the Project under the DDA did not and would not change, nor did the total Project cost change.

Therefore, in connection with the Agency’s review and approval rights set forth in the DDA, staff recommends the City Council approve the First Amendment to the DDA in order to include in the DDA (i) certain warranties, covenants, and representations to be made by and on behalf of the Developer in connection with Developer’s ability to carry out the Project and the status of the Developer and its general partners, and (ii) a requirement for the Developer to submit to the Agency on an annual basis audited financial statements of its general partners.

Extension Request to TCAC:

No action is needed by either the Agency Board or the City Council. By receiving and filing Attachment No. 5, the City and the Agency hereby acknowledge receipt of the construction lender’s concern in its letter dated, November 29, 2011 requesting an extension of 90-days from TCAC, pursuant to Regulation No. 10325 (c) (8). The proposed language of the First Amendment also includes a requirement for the Developer to obtain the written approval of the City Manager prior to requesting an extension. Staff will provide documentation to the Developer as required per the regulation. Although this will be a delay, it does greatly improve the overall chance of successfully closing the transaction. The Developer’s attorney has had numerous discussions with the Executive Director at TCAC and we believe that this request will be granted as similar requests have already been received favorably by TCAC.

FISCAL ANALYSIS:

Approval of the First Amendment does not alter the financial terms to the City/Agency (i.e. the land sale price for the sale of the Agency’s parcel does not change, the amount of City/Agency financial contribution to the Project cost does not change, and the total Project budget remains essentially the same).

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ATTACHMENTS:

1. Proposed Revised Method of Financing
2. Proposed Revised Project Budget
3. Letter from the City Manager to the Los Angeles Housing Partnership
4. Letter from the Los Angeles Housing Partnership in reply to the City Manager
5. Letter from Wells Fargo Bank stating its inability to fund the construction loan

MOTION:

That the City Council:

1. Approve a First Amendment to the Disposition and Development Agreement By and Between the Culver City Redevelopment Agency, the City of Culver City, and Tilden Terrace, L.P.; and,
2. Authorize the City Attorney/City Special Counsel to review/prepare the necessary documents; and,
3. Authorize the City Manager to execute such documents on behalf of the City of Culver City.