CITY OF
HAYWARD
HEART OF THE BAY

DATE: June 2, 2009

TO: Redevelopment Agency Board Members

FROM: Redevelopment Director

SUBJECT: Cinema Place Construction Loan Restructuring

RECOMMENDATION

That the Redevelopment Agency Board adopts the attached resolution authorizing the Executive Director to negotiate and execute documents allowing for the restructuring of Cinema Place construction loan debt.

SUMMARY

The Agency Board is requested to authorize the City Manager/Executive Director to negotiate and execute several documents that will allow for the owner of Hayward Cinema Place, Hayward Cinema Place, LLC (HCP), to re-structure its construction loan agreement with Redwood Capital Finance, in order to allow remaining amounts of the construction loan to be funded; and to allow continued operation of the shopping center.

BACKGROUND

The Hayward Redevelopment Agency first entered into a Disposition and Development Agreement (DDA) and Ground Lease with HCP in August 2004, in order to provide for the redevelopment of the Agency-owned property, located on Foothill Boulevard between B and C Streets in downtown Hayward with an entertainment-oriented retail center, including a multi-screen theater and restaurant/retail space, plus a parking garage. The DDA and Ground Lease were amended twice, and subsequent to the approval of the second DDA amendment, the Agency executed an Implementation Agreement. The financing of the retail center included the following contributions by the Agency: acquisition of the site in 2002 for approximately $3.5 million, construction of the adjacent 244-space public parking garage in 2007 at a cost of approximately $7 million, environmental remediation of the site under the direction of the State Regional Water Quality Control board, and a $1.5 million site preparation and improvement loan to the developer. The developer has contributed approximately $4 million in project "equity" funding and obtained a construction loan of approximately $11 million, of which approximately $8.5 million has been funded to date.

The retail center began construction in August 2007 and was substantially completed by August 2008. The 12-screen Century Theatre opened in October 2008. The Agency has ordered additional lighting for the Cinema Place alley, and staff is pursuing the installation of murals for the alley and garage walls, as well as additional signage for the theater. In addition to the theater, two retail/restaurant spaces have been leased and are now open: Zuckersuss Yogurt, and Wing Stop restaurant, the latter of which opened last week. Leasing activities are ongoing at the center under the direction of a new broker, GD Commercial, and the Agency is offering Retail Attraction loan funds, as appropriate, for tenants at the center.

Although leasing activities and prospects are continuing, the nation-wide reduction in commercial lending and the general economic downturn, has slowed leasing progress at this center, as well as reduced expectations of how much rent can be generated by the center.

DISCUSSION

In late 2008, Redwood Capital Finance notified HCP, LLC that its construction loan was "out of balance", and that more equity funds were needed from the owners in order to cover additional operating expenses, interest carry, and tenant improvement costs. The lender indicated that it would not release the final $2.5 million of its construction loan unless HCP contributed additional equity funds to cover these costs. As a result of the lender not releasing the remainder of the loan, the construction company that built the center, San Jose Construction, has not been paid over $1 million that it is owed for the project. In turn, San Jose Construction has filed a mechanics lien on the Agency's property. In accordance with the terms of the contract, the Agency will not issue a Certification of Completion to HCP until all mechanics liens are removed.

In order to rebalance and fund the remainder of its loan, the lender is requiring that HCP contribute approximately $530,000 in additional cash equity funds. BHV Hayward, LLC (Blake-Hunt Ventures), is providing these equity funds, as its equity partner, Hanover Financial, elected not to do so. In return, the lender has agreed to extend the term of its construction loan by two years, until December 2012, and to defer, or subordinate, the repayment of the $3 million portion of its construction loan, until HCP is repaid its equity funds, plus $265,000 (1.5 times the additional equity amount). If the project is sold, the order of repayment would be as follows:

- Repayment of $8 million of construction loan to Redwood Capital
- Return of approximately $530,000 of "additional equity" to HCP, plus return of $265,000 (1.5 times additional equity)
- Repayment of remaining $3 million of construction loan to Redwood Capital plus interest due
- Remaining sales proceeds would be split 50/50 between Redwood and HCP

The Agency's $1.5 million loan would be repaid out of HCP's 50% split. In 2007, the Agency's loan repayment formula was defined as: 80% of the proceeds of any sale of the development occurring before or on April 27, 2012, exceeding a gross sales price that would provide the seller with a 15% unleveraged internal rate of return (IRR). HCP and Redwood Capital have both agreed to extend the date for repayment to the Agency by two years to 2014, just as Redwood Capital's loan has been extended by two years, which gives the Agency additional time to recoup its loan.

When the Agency originally approved the terms of the $1.5 million site preparation loan in 2007, it was estimated that the development would need to sell for a price of $24 million by August 2012 in order for the Agency to start receiving repayment on its loan. Given an initial value of the project at approximately $16 million, the prospects for repayment of the Agency's loan were reported to be "uncertain" at the time. Under the "15% IRR" formula, if the project were to sell two years later in 2014, the hurdle sale amount would increase to $29 million. However, the developer has offered to stipulate that even if the development were to sell in August 2014, the development would need to sell for no more than $24 million, before the Agency begins to recoup its $1.5 million loan amount. This is another concession from HCP, given the Agency's subordination to the new loan terms.

In the past several days, staff has been notified that Hanover has agreed to a buy-out of its partnership interest by BHV Hayward, LLC for a nominal amount, and that Hanover has "written off" its share of prior equity investment, which is approximately $3 million.

Prevailing Wage Dispute: In late 2008, complaints were filed by the Foundation for Fair Contracting and several construction trade unions with the California Department of Industrial Relations (DIR), which resulted in an investigation by the DIR as to whether prevailing wages had been paid to employees of Moorefield Construction and certain of its sub-contractors. These firms installed tenant improvements in the theater under contract to Century Theatres/Cinemark. As a result of the investigations, the DIR recently determined that one of the sub-contractors owed approximately $40,000 in prevailing wages to its employees, and this amount has recently been paid. HCP has agreed to include language in the documents it is requesting of the Agency as part of the loan restructure, to release the Agency of liability in these matters, and to clarify the need for future tenants at the center to ensure that prevailing wages are paid to construction trade workers in accordance with both State law and local Hayward policies.

FISCAL IMPACT

The proposed actions will allow the loan restructuring to take place, which will assist in preventing the development from lapsing into loan default and foreclosure. A foreclosure would likely result in a further reduction of value in the project, and potentially a reduction in the quality of property management and attention to leasing, all of which would have a direct negative impact to the Agency and a more general negative impact to the downtown area.

In addition, the proposed actions would assist in providing a solution to the recent prevailing wage complaints, which may have had a financial impact on the Agency.

Finally, the loan restructuring would further reduce the likelihood of repayment of the Agency's $1.5 million site preparation loan. The chances of the Agency being fully repaid under the August 2007 terms were uncertain at the time; they are even less certain at present.

PUBLIC CONTACT

No public meetings have previously been held regarding the proposed loan restructuring. Agency counsel has determined that these actions do not require an amendment to the Agency's DDA, as they do not change the original terms of disposition to the property, and thus do not require a public hearing.

NEXT STEPS

Upon Agency approval, the Executive Director will proceed to finalize and execute documents to enable the restructuring of the Cinema Place construction loan, including but not limited to the following documents: Second Implementation Agreement to the Second Amended DDA and Consent to Subordinate and Estoppel Agreement, and Side Letter Side Letter Agreement from the Agency to Redwood Capital Finance in which the Agency acknowledges the superiority of the lender's new documents to the Agency's loan documents, acknowledges resolution of the prevailing wage dispute, and commits to issue a Certificate of Completion for the project, contingent upon the release of the construction mechanics liens. It is anticipated that the restructured loan documents will be finalized and executed within this month.

Prepared by:

Maret Bartlett

Maret Bartlett, Redevelopment Director

Recommended by:

Fran David, Assistant City Manager

Approved by:

for

Gregory T. Jones, Executive Director/City Manager

Attachments: Resolution

DRAFT

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA _____

Introduced by Agency Member_________

mde
5/29/09

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND EXECUTE ANY AND ALL DOCUMENTS NECESSARY FOR RESTRUCTURING OF THE CINEMA PLACE CONSTRUCTION LOAN DEBT

BE IT RESOLVED by the Redevelopment Agency of the City of Hayward that the Executive Director is hereby authorized and directed to negotiate and execute on behalf of the Redevelopment Agency any and all documents necessary for the restructuring of the Cinema Place construction loan debt, including but not limited to, a Second Implementation Agreement to the Second Amended Disposition and Development Agreement, a Side Letter Agreement regarding the modification of the developer's obligation to the Agency and a Consent, Subordination and Estoppel Certificate, all documents in a form to be approved by the General Counsel.

HAYWARD, CALIFORNIA_________, 2009

ADOPTED BY THE FOLLOWING VOTE:

AYES: AGENCY MEMBERS:
MAYOR:

NOES: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

ATTEST:_____________________________
Secretary of the Redevelopment Agency

APPROVED AS TO FORM:

____
General Counsel