



Building A Better Long Beach

August 17, 2009

REDEVELOPMENT AGENCY BOARD MEMBERS

City of Long Beach
California

RECOMMENDATION:

Approve and authorize the Executive Director to execute a First Amendment to the Owner Participation Agreement with GGF, LLC, for a new retail and façade project. (North – District 8)

DISCUSSION

In October 2007, the Redevelopment Agency (Agency) authorized the Executive Director to execute an Owner Participation Agreement (OPA) with GGF, LLC (GGF), for a new retail structure and façade project at the Bixby Knolls Shopping Center. GGF has negotiated a lease with Marshalls Department Store that requires GGF to demolish the existing 52,661-square-foot structure and replace it with a new modern retail facility of 43,355 square feet. The OPA also includes a façade improvement to renovate the retail buildings east of, and across the parking lot from, the new retail facility.

Unforeseen delays in the financial market have caused GGF to request a First Amendment to the OPA that will amend the Schedule of Performance (Exhibit A). The amended Schedule of Performance shall be updated, denoting all completed items and the schedule for all subsequent items. The First Amendment shall also clarify Section 7.6.2 of the OPA regarding termination by the Agency for Participant default per the amended Schedule of Performance. Staff believes these changes are warranted, and that the project should be able to proceed as envisioned.

SUGGESTED ACTION:

Adopt recommendation.

Respectfully submitted,

for CRAIG BECK
EXECUTIVE DIRECTOR

CB:AJB:th

Attachment: Exhibit A – Schedule of Performance

EXHIBIT A
REVISED ATTACHMENT NO. 4

REVISED SCHEDULE OF PERFORMANCE
(AUGUST 2009)

**I. APPROVAL OF THE AGREEMENT;
APPROVAL OF LEASE**

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| 1. <u>Submission-Project Architect.</u>
Participant shall submit to the Executive Director the name and qualifications of the Project Architect. (§ 3.8) | Submitted. |
| 2. <u>Submission-Marshall's Lease.</u>
Participant shall deliver to the Agency's counsel the fully executed lease with Marshall's in form and substance reasonably satisfactory to the Executive Director. (§ 2.4.9) | Submitted. |
| 3. <u>Approval – Project Architect.</u> Agency approves the Project Architect. (§ 3.8) | Approved. |
| 4. <u>Approval of Agreement.</u> Agency Board shall consider and approve the Agreement. (§ 11.0) | Basic financial terms of an agreement approved October 15, 2007. |
| 5. <u>Approval-Preliminary Drawings.</u>
Agency will approve the Stage III Final Review Drawings for the Retail Project and the Façade Improvements. (§ 5.1.3) | Approved. |
| 6. <u>Approval, Marshall's Lease.</u> The Executive Director shall approve or disapprove the Marshall's lease. (§ 2.4.9) | Approved. |
| 7. <u>Execution and Final Approval by Agency of Agreement.</u> Agreement authorized, executed and delivered to Participant by Agency. (§ 11.0) | Approved and executed. |

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| 8. <u>Submission - Amendment of the Marshall's Lease.</u> Participant shall deliver to the Executive Director a fully executed amendment to the Marshall's lease providing, among other terms, that Marshall's may not terminate the Marshall's lease before May 30, 2010. | By September 30, 2009. |
| 9. <u>Approval – Amendment to Marshall's Lease.</u> The Executive Director shall approve or disapprove the amendment to the Marshall's lease. | Within 30 days after receipt from Participant of the executed amendment. |

II. DESIGN AND CONSTRUCTION OF THE RETAIL PROJECT

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| 10. <u>Submission – Construction Drawings for the Retail Project.</u> Participant will prepare and submit to the Agency (and to the Building Department) Construction Drawings for the Retail Project (Stage IV). (§ 5.1.3) | Submitted. |
| 11. <u>Approval – Construction Drawings for the Retail Project.</u> The Agency shall approve or disapprove Participant's Stage IV Drawings for the Retail Project. (§ 5.1.3) [Note: this approval is unrelated to City's approval of Participant's final construction drawings for purposes of issuance of building permits.] | Approved. |
| 12. <u>Opening of Escrow.</u> Agency and Participant shall open an escrow for the Agency Loan. (§ 2.2) | Within thirty (30) days after Agency's approval of Participant's Stage IV Drawings for the Retail Project and after notice from Participant that items numbered 13 and 14 below are completed. |

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| <p>13. <u>Participant's Notice that all terms of the Construction Contract for the Retail Project have been agreed to.</u> Participant shall notify the Executive Director that it and the general contractor have agreed upon the terms of the construction contract for the Retail Project. (§ 2.3)</p> | <p>Prior to Agency's deposit of the Agency Loan in Escrow.</p> |
| <p>14. <u>Deposit of Participant's Façade Deposit.</u> Participant shall deposit into escrow the Participant's Façade Deposit. (§ 2.3)</p> | <p>Prior to Agency's deposit of the Agency Loan in Escrow.</p> |
| <p>15. <u>Deposit of the Agency Loan.</u> Agency shall deposit the full amount of the Agency Loan with Escrow Holder. (§ 2.3)</p> | <p>Within ten (10) days after written notice from Participant that items numbered 13 and 14 above are completed.</p> |
| <p>16. <u>Participant's Deposit of Executed Construction Contract for Retail Project in Escrow.</u> Participant shall deposit the executed construction contract for the Retail Project with Escrow Holder with copy to the Executive Director. (§ 2.3)</p> | <p>Within ten (10) days of written notice from Agency that Agency has deposited Agency Loan in Escrow.</p> |
| <p>17. <u>Execution and Delivery of Participant's Documents.</u> Participant shall execute and deliver to Escrow Holder the Note, the Deed of Trust, the Agreement Containing Covenants, and the Environmental Indemnity. (§§ 2.2, 2.3, 2.4)</p> | <p>Prior to disbursement of the Agency Loan.</p> |
| <p>18. <u>Commencement of Construction of the Retail Project.</u> Participant shall commence construction of the Retail Project. (§ 5.1.1)</p> | <p>Not later than September 30, 2009.</p> |

19. Completion of Construction of the Retail Project. Participant will substantially complete the construction of the Retail Project. (§ 5.1.1)

Not later than September 30, 2010.

20. Close of Escrow for, and Disbursement of, the Agency Loan. Agency and Participant shall close the escrow for the Agency Loan for the Retail Project and Escrow Holder shall disburse the Agency Loan. (§ 2.2, 2.3, 2.4)

Upon Participant's written request after satisfaction of those conditions precedent set forth at Section 2.4 and provided that Participant is not then in material breach of its lease with Marshall's or Marshall's equivalent.

III. DESIGN AND CONSTRUCTION OF THE FAÇADE IMPROVEMENT PROJECT

21. Submission – Construction Drawings for the Façade Improvements. Participant will prepare and submit to the Agency Construction Drawings for the Façade Improvements (Stage IV). (§ 5.1.3) Not later than September 30, 2009.
22. Approval – Construction Drawings. The Executive Director shall approve or disapprove Participant's Stage IV Drawings for the Façade Improvements. (§ 5.1.3) [Note: this approval is unrelated to City's approval of Participant's final construction drawings for purposes of issuance of building permits.] Within thirty (30) days after receipt of Participant's Stage IV Drawings.
23. Submission - Evidence of Insurance and, if required, Evidence of Financing for Façade Improvement Project. Participant shall submit to the Executive Director the evidence of insurance and, if required, evidence of financing. (§ 4.1) Prior to Agency funding of the Façade Improvement Grant.
24. Participant deposits Participants Share with Escrow Holder. Participant shall deposit Participant's Share in Escrow. (§§ 3.3, 3.4) Prior to deposit of the Agency Façade Improvement Grant with Escrow Holder.
25. Participant Notification of Façade Improvement Project Construction Contract Terms & Submittal of Draft Construction Contract and Project Budget to Executive Director for Approval. Participant shall notify the Executive Director that Participant and its general contractor have agreed upon the terms of the construction contract for the Façade Improvement Project, submit a copy of draft Prior to Agency deposit of the Façade Improvement Grant with Escrow Holder.

construction contract to Agency Executive Director for Approval, and submit the Facade Project budget to the Executive Director for approval. (§§ 3.2; 4.2, 4.3)

26. Executive Director Approval of Facade Construction Contract and Facade Project Budget. The Executive Director shall review and approve in writing, subject to terms of Agreement, the construction contract for the Facade Project and approve the Facade Project budget. (§§ 3.2, 4.2, 4.3)

Within ten (10) days after receipt of Participant's submittal.

27. Deposit of the Façade Improvement Grant With Escrow Holder. Agency shall deposit the Façade Improvement Grant with Escrow Holder. (§§ 3.2, 3.3)

Immediately after receipt by the Executive Director of notice from Participant that it has deposited the Participant's Share and construction contract terms for the Facade Project have been agreed to and approved by the Executive Director.

28. Agency Notice to Participant of Deposit of Facade Improvement Grant In Escrow. Agency shall provide written notice to Participant of Agency deposit of Facade Improvement Grant with Escrow Holder. (§ 3.2)

Immediately upon Agency deposit of Facade Improvement Grant with Escrow Holder.

29. Participant Deposit of Copy of Executed Facade Project Construction Contract in Escrow. Participant shall deposit a copy of executed construction contract for Facade Project with Escrow Holder. (§§ 3.2; 3.3)

Within five (5) days after Participant's receipt of Agency's written notice that Agency has deposited Facade Improvement Grant with Escrow Holder.

30. Participant Submittal of Evidence of Financing. Participant shall submit evidence of Financing for Facade Project (if necessary). (§ 4.1)

Prior to disbursement of Facade Improvement Grant.

31. Executive Director Approval of Evidence of Financing. Executive

Prior to disbursement of Facade Improvement Grant.

Director shall review and approve Participant submittal of evidence of financing (if necessary subject to terms of Agreement). (§ 4.1)

32. Commencement of Construction of the Façade Improvements. Participant shall commence construction of the Façade Improvements. (§ 5.1.6)

Not later than January 4, 2010.

33. Disbursement of the Façade Improvement Grant. Escrow Holder shall disburse portions of the Grant. (§ 3.3)

Upon Participant's written request and after Participant's satisfaction of those conditions precedent set forth at Section 3.4 (and Section 4.1 if applicable).

34. Completion of Construction of the Façade Improvement Project. Participant shall substantially complete the construction of the Façade Improvements. (§ 5.1.6)

Not later than September 30, 2010.

IV. CERTIFICATE OF COMPLETION

35. Compliance Report. Participant shall submit to the Executive Director a written report regarding its compliance with the requirements of Sections 5.1.5(b) and 5.1.5(c).

Prior to the issuance of a certificate of completion.

36. Issuance of the Certificate of Completion. Agency shall issue a Certificate of Completion for the Retail Project and/or the Façade Improvement Project (Stage V Approval). (§ 5.7)

Within ten (10) days after written request of Participant, which request may be given after completion of the Retail Project and Facade Project, as applicable, and thirty-five (35) days following the recordation of a Notice of Completion pursuant to Civil Code Section 3093.