

CITY COUNCIL

For City Clerk's Use:

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APPROVED

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DENIED

Reso No. _____

File No. _____

Ord No. _____

Agenda Item No.: 11

Date: January 11, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey R. Epp, City Attorney

SUBJECT: SUPPLEMENTAL Staff Report for Agenda Item #11 - Extension of Westfield Shopping Center Ground Lease

INTRODUCTION:

On January 5, 2012, proposed Ordinance 2012-02 and the accompanying staff report were distributed for Agenda Item 11, authorizing the Mayor and City Clerk to execute a Lease Amendment and related documents to provide an option to extend the ground lease for the Westfield Shopping Center for an additional fifteen (15) years. Both the ordinance and staff report included documents subject to additional negotiation of non-substantive, but important issues related to the proposed transaction. This report describes those items.

TIMING OF PROJECT COMPLETION:

Westfield has publicly committed to completing the renovation project in time for the December 2012 holiday season. Since that time, additional detail has been discussed and Westfield presently proposes to submit all plans and specifications as well as necessary building and land use approvals to the City no later than the first quarter of 2012 and to commence construction within 90 days following City approval of such items. Westfield has committed to completing the majority of the renovation work by the December 2012 holiday season, but wishes to have until January 2014 to complete all items in the renovation project. This is consistent with agreement that certain items, such as the parking lot renovation, can be completed over a two year time frame.

Westfield has also sought to amend the legal documents to provide that they will obtain an executed lease and an opening covenant from Target, but wishes to assure they will be able to still exercise the lease extension if events subsequently occur with Target which are beyond Westfield's control, and yet all other aspects of the renovation project are completed. Staff and legal counsel believes this is a reasonable request.

POTENTIAL PROPERTY TAX REASSESSMENT

Certain portions of the project may result in a reassessment pursuant to Proposition 13 and regulations of the County Assessor. As the ground lessee, Westfield will be responsible for any such reassessment. Both parties believe that any reassessment related solely to the lease extension are

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unlikely. Westfield has requested that the City share a portion of any potential exposure should an assessment occur related to this specific part of the project. After negotiations, the staff and Westfield have agreed that an appropriate resolution would require first that Westfield take commercially reasonable steps to avoid, contest or appeal any such potential reassessment. Only if such efforts were unsuccessful, the City would share up to 50% of the increase from a Prop 13 event (due solely to the lease extension), such share would only come from any incremental increases in the percentage rent above the base year of 2011, such share will be year by year with no carry forward or accumulation, and such sharing would expire in 2038. A separate agreement between Westfield and the City would effectuate these terms.

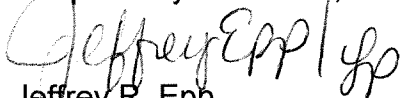
LAND USE ITEMS:

As presently structured, a number of land use items which are part of Westfield's ultimate plans for the shopping center are not included in the proposed transaction authorized by Ordinance 2012-02. Westfield has requested that both parties defer executing any legally binding documents until such time as they have processed and received any necessary land use approvals. As noted above, they intend to submit applications for all such approvals during the first quarter of 2012. As presently worded, Ordinance 2012-02 states that the legally binding documents (such as the Agreement to Renovate, the parcel trade documents, and the actual lease extension) would not be signed in any event until both parties are in agreement on final language. An additional delay until Westfield achieves a level of comfort with the land use approvals will not prejudice the City because Westfield will not obtain any right to extend the current ground lease. Therefore, Westfield's request to delay executing the documents until they are reasonably satisfied with the level of land use approval is acceptable.

ERRATA

The original staff report represented that the fixed rent on the Robinsons-May North (Adcor) and May tract would be subject to the 2.5% or CPI increase formula (p. 5, second paragraph). Westfield has indicated that those parcels will not be subject to the fixed rent escalator and should be addressed separately as with the other department store parcels. In addition, Westfield pointed out that the intended additional retail square footage which will be proposed in the modified Master and Precise Development plans (p. 6, second full paragraph) will not be approximately 2,500 square feet, but rather, closer to 10,000 square feet.

Respectfully submitted,


Jeffrey R. Epp
City Attorney