

COPY

MEMORANDUM

TO: City Council Finance Committee  
City Manager Bill Pupo  
Deputy City Manager Pete Fortin  
Mike Adolfae, Community Development Director  
James C. Sloane, City Attorney

From: Stanley M. Schwartz, Assistant City Attorney

RE: Section 108 Loan

DATE: February 9, 1998

The following issues remain to be resolved.

1. Promissory Note. There must be a clear statement that the developer promises to pay the amount of the Note when due regardless of whether the identified revenue stream is sufficient.

Recall, this is a non-recourse Promissory Note. The developer has indicated that private lenders would consider a recourse Note a liability of the corporation (Citizens/Lincoln) and therefore would make less money available through private financing. It was suggested that we take priority in certain revenue streams and become subordinate in those revenue streams identified for the private lender, however, developer's representative indicated this is not acceptable.

Because the City will have the Note paid only through identified revenue streams, the City could find that the developer is making a profit yet the City must use its CDBG funds in order to make payment on the Note to avoid default. This could occur, for instance if the Nordstrom percentage rent falls off but the remainder of the project is strong thus providing sufficient income for the private lenders.

A way to resolve this issue, in part, is to provide that if percentage rent is not obtained by the City, then the developer is not entitled to deduct from the Nordstrom rent, taxes, a parking fee and management expenses. When this was presented to the developer, the developer indicated that again this was not acceptable because it would be a liability of the corporation and thus reduce developer's ability to borrow.

Note: We should provide that if CDBG funds are used in any given year for repayment of the Note, the City is entitled to recover those funds in subsequent years.

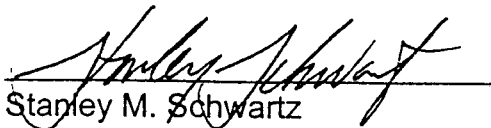
2. Developer Pledge. To support the connection fees the developer previously agreed to pledge \$400,000. This was a corporate pledge of Citizens/Lincoln. The developer has now agreed to increase that pledge to \$500,000 and expand the coverage of that pledge to include any deficit in the identified revenue streams. Still, the developer has stated that all connection fees paid by developer will be deducted from this \$500,000. Nevertheless, the scope of this pledge has been expanded.

3. Collateral Appraisal. The developer has agreed to offer a corporate pledge of Cowles Publishing to support any collateral coverage requirement. The developer desires the following collateral alignment.

- A. Nordstrom Lease
- B. Percentage of PDA Ground Lease (Present Value)
- C. Connection Fees (Present Value)
- D. CDBG Future Grant Funds
- E. Cowles Publishing Pledge

I suggested, in order to further the "public-private" partnership that the Cowles Publishing pledge be mixed equally with the CDBG pledge for collateral purposes. This was rejected.

4. Assignment. The developer will not permit the City to have unilateral rights regarding an assignment. The developer suggests that objective criteria be written such that the developer has the right to assign provided a purchaser has equivalent experience and financial worth.

  
Stanley M. Schwartz