

**DATE:** January 11, 2011

**ITEM:** 7.A.1)

**RE:** CONSIDERATION AND ADOPTION OF A RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING THE TERMS FOR THE PURCHASE AND SALE AGREEMENT, DEVELOPMENT AGREEMENT, SPECIAL WARRANTY DEED, AND GUARANTY OF COMPLETION AND PERFORMANCE WITH WILMINGTON GARDENS GROUP L.L.C. FOR THE DEVELOPMENT OF AGENCY-OWNED PROPERTY LOCATED AT 1193-1233 EAST WILMINGTON AVENUE

**PROJECT AREA:** Sugar House Project Area Business District

**PREPARED BY:** Valda Tarbet and Justin Belliveau

**EXECUTIVE SUMMARY:** Attached is the proposed term sheet for the sale and development agreements (the "Term Sheet"), which contains the terms for the Purchase and Sale Agreement, Development Agreement, Special Warranty Deed, and Guaranty of Completion and Performance, for the development of the Agency-owned property located at 1193-1233 East Wilmington (the "Property") by Wilmington Gardens Group L.L.C. (Developer), an affiliate of the Woodbury Corporation. The Redevelopment Agency of Salt Lake City's (RDA) Board of Directors' (the "Board") approval of the Term Sheet is required before the form of the sale and development agreements can be finalized.

**ALTERNATIVES:** 1) Approve the Term Sheet.  
2) Do not approve the Term Sheet.  
3) Approve the Term Sheet with revisions.

**ANALYSIS AND ISSUES:** The Term Sheet identifies those non-standard terms that will be incorporated into the legal documents required for the sale and development of the Property. The following terms are included in the Term Sheet and are unique to this project.

**Purchase Price:** The offering price in the RFP was \$1.25 million. The Developer has agreed to pay the offering price.

**Closing Deadline:** The Term Sheet indicates that closing on the purchase and sale of the Property will need to occur by December 31, 2011.

**Design Review:** Prior to closing, the Agency shall have approved the Schematic Design Drawings, Design Development Drawings, and Final Construction Documents.

**Maintenance and Pedestrian Easement:** Developer shall reconstruct a publicly accessible 26-foot wide walkway and maintenance area along the eastern boundary. The easement will be used for maintenance of the Hidden Hollow Natural Area by Salt Lake City Corporation and provide access to the trash room and freight elevator for the residential development.

**Public Art:** The Developer, at its expense, will include public artwork within the Developer Improvements. The artwork shall be selected by Agency and Developer. The location of the artwork within the Developer Improvements shall be agreed to by the Developer and the Agency.

**LEED Compliance:** As a condition to Agency's obligation to execute the Certificate of Completion, Developer must provide a certificate from the Architect certifying that the construction of the Developer Improvements was consistent with the design elements required to achieve the "certified" level according to the LEED standards established by the U.S. Green Building Council (official certification will not be required).

The Board's approval of the Term Sheet is required before staff can finalize the form of the sale and development agreements. Other terms may also be required as deemed necessary by the Agency's attorney.

**BACKGROUND:**

- August 18, 2009 – Issued Request for Proposals.
- January 7, 2010 – Received nine responses to RFP.
- March 9, 2010 – Board of Directors granted Wilmington Gardens Group a nine-month Exclusive Right to Negotiate.
- September 21, 2010 – Board of Directors accepted Wilmington Gardens Group's final proposal with the exception of the financing plan.
- December 14, 2010 – Board of Directors approved the Schematic Design Submission

**ATTACHMENTS:** Draft Resolution and Term Sheet

RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING THE TERMS FOR THE PURCHASE AND SALE AGREEMENT, DEVELOPMENT AGREEMENT, SPECIAL WARRANTY DEED, AND GUARANTY OF COMPLETION AND PERFORMANCE WITH WILMINGTON GARDENS GROUP L.L.C. FOR THE DEVELOPMENT OF AGENCY OWNED PROPERTY LOCATED AT 1193-1233 EAST WILMINGTON

WHEREAS, the Redevelopment Agency of Salt Lake City (“Agency”) was created to transact the business and exercise the powers provided for in the Utah Community Development and Renewal Agencies Act; and

WHEREAS, the Agency adopted the “Sugar House Neighborhood Development Plan” on September 19, 1986; and

WHEREAS, the Agency owns certain property within the Sugar House Project Area and desires to redevelop it in accordance with the “Sugar House Neighborhood Development Plan;” and

WHEREAS, in July 2009 the Agency approved the terms for a Request for Proposals for the development of the Agency-owned property located at 1193 – 1233 East Wilmington Avenue (the “Property”); and

WHEREAS, a Request for Proposals was published for the Property on August 18, 2009 with responses due on January 7, 2010; and

WHEREAS, nine firms responded to the Request for Proposals; and

WHEREAS, the Selection Committee recommended the Wilmington Gardens Group as the first-ranked developer, Hidden Hollow Court as the second-ranked developer, and Taeryeo Corporation as the third-ranked developer; and

WHEREAS, the Agency feels that the Wilmington Gardens Group has responded with a proposal that best addresses the Program Considerations identified in the Request for Proposals; and

WHEREAS, on March 9, 2010, the Agency selected Wilmington Gardens Group as the developer to enter into exclusive negotiations with regard to the development of the Property; and

WHEREAS, Wilmington Gardens Group prepared a final proposal for the development of the property that was reviewed and approved by the Agency with the exception of the financing plan on September 21, 2010; and

WHEREAS, Wilmington Gardens Group prepared and submitted Schematic Design documents for the project;

WHEREAS, the Agency felt that the Schematic Drawings were consistent with the approved final proposal and approved the Schematic Design at its meeting on December 14, 2010, and

WHEREAS, the Agency and Wilmington Gardens Group, L.L.C. desire to enter into a Purchase and Sale Agreement, Development Agreement, Special Warranty Deed, and Guaranty of Completion and Performance.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY, that we do hereby approve the terms in the Term Sheet attached hereto.

BE IT FURTHER RESOLVED, that we do hereby authorize the Chief Administrative Officer and the Executive Director to negotiate the form of a Purchase and Sale Agreement, Development Agreement, Special Warranty Deed, and Guaranty of Completion and Performance between the Redevelopment Agency of Salt Lake City and Wilmington Gardens Group L.L.C., for the Property in accordance with the Term Sheet attached hereto. The Agreements shall also incorporate such other terms as recommended by Agency legal counsel.

Passed by the Board of Directors of the Redevelopment Agency of Salt Lake City, this 11th day of January, 2011

\_\_\_\_\_  
Luke Garrott, Chairperson

ATTEST:

\_\_\_\_\_  
D. J. Baxter, Executive Director

Transmitted to the Chief Administrative Officer on \_\_\_\_\_. The Chief Administrative Officer

\_\_\_ does not request reconsideration  
\_\_\_ requests reconsideration at the next regular Agency meeting.

\_\_\_\_\_  
Ralph Becker, Chief Administrative Officer

ATTEST:

\_\_\_\_\_  
D. J. Baxter, Executive Director

Approved as to form: \_\_\_\_\_  
Fabian and Clendenin

**Term Sheet for  
Wilmington Avenue Property  
Purchase and Sale Agreement**

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**Agency Objective  
for Development:**

The redevelopment of the properties located at 1193 – 1233 East Wilmington Avenue (the “Property”) shall result in the design and new construction of a commercial, residential, or mixed-use project on the site.

**Proposed Terms:**

The following terms will be incorporated into the Purchase and Sale Agreement for the sale and development of the Property between Wilmington Gardens Group, L.L.C. (“Developer”) and the Redevelopment Agency of Salt Lake City (the “Agency”).

**Purchase and Sale  
Agreement:**

- (a) Purchase Price: \$1,250,000
- (b) Assessments: Developer shall pay prorated share of pre-paid assessments at closing.
- (c) Payment: Payment of the Purchase Price and Assessments shall be made at the time of closing.
- (d) Earnest Money: Developer has deposited \$25,000 with Agency. An additional \$50,000 shall be deposited with the Agency upon execution of the Purchase and Sale Agreement for a total earnest money deposit of \$75,000. Failure to close the transaction in accordance with the Purchase and Sale Agreement, except in the case of an Agency default or in the event Agency does not approve of Developer’s plans, will result in the Agency retaining the earnest money and will allow the Agency to open negotiations with an alternate developer or to reoffer the property for sale. The earnest money will be credited to the Purchase Price at closing, and the \$25,000 deposit will be returned to Developer if the Purchase and Sale Agreement is not signed.
- (e) Guarantor: Woodbury Corporation, subject to review of guarantor’s financial statements
- (f) Purchase “As Is”: The purchase of Property shall be on an “as-is” basis, and the Purchase and Sale Agreement shall specify that Agency has made no representation or warranty with respect to title matters (other than ownership) or the compliance of the

Property with applicable zoning and use regulations or the ability of Developer to obtain any necessary governmental approvals and permits. Agency shall be under no obligation to assist Developer in obtaining any of the foregoing.

- (g) **Deadline for Execution of Agreement:** In the event that the Purchase and Sale Agreement (with all exhibits) is not executed by January 31, 2011, then either Party may give notice of termination to the other Party, in which event neither Party shall have any further obligations or liabilities to the other Party, except the Agency shall return the \$25,000 deposit.
- (h) **Closing:** In the event that the Purchase and Sale Agreement does not close by December 31, 2011 and neither Party is in default, then either Party may give notice of termination to the other Party, in which event neither Party shall have any further obligations or liabilities to the other Party, except as described in Section (d).
- (i) **Inspection Period:** Developer acknowledges that Developer will complete its due diligence with respect to the physical properties, title and zoning and entitlement of the Property by January 31, 2011, and it will have determined the Property is satisfactory for its purposes.
- (j) **Title Insurance:** Agency shall pay for a standard owner's policy of title insurance. Developer shall pay for an extended policy and all requested endorsements.
- (k) **Conditions to Closing:** Agency's obligation to sell the Property is subject to the following conditions:
  - 1) The Agency shall have approved the Schematic Design Drawings, Design Development Drawings, and Final Construction Documents.
  - 2) Agency shall have approved the Construction Contract and Architectural Contract.
  - 3) Agency shall have approved the Construction Financing. The documents evidencing the Construction Financing must provide that, in the event of a default by Developer, they may be assigned and assumed by a designee of Agency or purchased at par (with no prepayment premium) by Agency or a designee of Agency, and that Agency is a third party beneficiary of such obligations. Developer shall have provided written evidence to the Agency that all conditions

necessary for the closing of the Construction Financing have been satisfied excepting only the closing of the Purchase Agreement, and that the Developer's lender is ready to close on the Construction Financing in connection with the Closing hereunder.

- 4) Developer shall have satisfied all of the requirements necessary for the commencement of site preparation and construction of the Developer Improvements.
- (l) Reports: In the event the transaction contemplated herein fails to close for any reason other than a default by the Agency under the Purchase and Sale Agreement, at the request of Agency, Developer shall deliver to the Agency (at no expense to Agency) copies of all studies and reports prepared in connection with this transaction or otherwise pertaining to the Property whether such studies and reports were prepared for or on behalf of the Developer, the Agency or any third party, including environmental, soils and hydrology reports, but not architectural plans or financial information related to Developer.
- (m) Public Art: The Developer, at its expense, will include public artwork within the Developer Improvements. The artwork shall be selected by Agency and Developer. The location of the artwork within the Developer Improvements shall be agreed to by the Developer and the Agency.
- (n) Approval of Other Agreements: The Agency and the Developer acknowledge and agree that the Parties must negotiate and approve the forms of the following documents, which will be attached to the Purchase and Sale Agreement as exhibits:
  - 1) Special Warranty Deed and Right of Reverter Agreement
  - 2) Guaranty of Completion and Performance
  - 3) Development Agreement (Including all exhibits and the schedule of development)
  - 4) Pedestrian and Maintenance Easement Agreement

**Development Agreement:**

Developer Improvements: The Developer will be responsible for the construction and development of all aspects of the Project, including site preparation, public improvements, and pedestrian linkages. These responsibilities shall be governed by the Development Agreement, which shall include the following terms and conditions:

- (a) Site Preparation: Site preparation shall be coordinated with neighboring property owners.
- (b) Developer Improvements: Developer shall agree to construct a mixed use development including the following (“Developer Improvements”):
  - a. 7-story mixed-use building containing approximately 99 apartment units, and retail/office/academic space on the first two floors,
  - b. containing approximately 6 townhomes ,and retail/office/academic space on the first floor,
  - c. approximately 18,400 square foot plaza, and
  - d. the retail/office/academic space within the two buildings will total approximately 84,000 square feet.
- (c) Developer will commit to restricting a minimum of 20% of the apartment units for Workforce Housing units that will be affordable to households at or less than 80% of area median income. The remainder of the units will be market-rate rentals. The apartments shall include the following mix of unit types/sizes:

		Approximate No of Units	Approximate Square Footage
a.	Studio	2	553
b.	1 Bed/1Bath	35	708
c.	2 Bed/2 Bath	40	942
d.	Studio – Affordable	3	553
e.	1 Bed/1 Bath – Affordable	8	708
f.	2 Bed/ 2 Bath - Affordable	<u>11</u>	942
		99	

- (d) The Developer shall construct, as part of the residential development, a community room, a community patio, a leasing office, a business center, a mailroom and community restrooms.
- (e) Developer shall construct the retail/office/academic space in such a way as the as to provide openings on both the north and south sides of the building fronting Wilmington Avenue and Hidden Hollow, and on east and west frontages facing the plaza. The retail/office/academic spaces shall provide active uses such as academic space, restaurants, coffee shops, local retailers, and sports/health facilities.
- (f) Developer will professionally manage and maintain the plaza and make it available to various users to maximize activity and enhance

the community experience. Examples of expected uses for the plaza include community gardens, farmer's markets, music events, and holiday events to be planned seasonally with the intent that the plaza is in use year round.

- (g) Developer shall construct
  - a. One level of underground parking with at least 150 parking stalls.
  - b. A multi-story above grade parking structure on the south side of Wilmington Avenue with at least 350 parking stalls.
  - c. The following Desired Elements will also be built as part of the project:
    - Dedicated parking for scooters, motorcycles; and charging stations for electric vehicles
    - Showers and changing areas for employees/tenants of any commercial space
    - A design that creates active connections to Hidden Hollow and the adjacent Sugar House Commons development
    - Street level retail, regardless of the upper floor uses
    - Provide a space that would encourage local businesses and arts organizations to locate at the site
    - Inclusion of bike lockers and storage space for residents, if any, and the public
    - Public off street parking
    - Parking for a car-sharing program
    - Maintenance of part of the property as a community garden
    - Transit passes tied to the residential units
    - Inclusion of affordable housing that will serve individuals and families whose incomes are at or less than 80% of median income
- (h) Agency will relocate and Developer will construct the Pedestrian and Maintenance Vehicle Access from Wilmington Avenue to Hidden Hollow as referred to in the instrument recorded May 15, 2000 as Entry No. 7638031 in Book 8381 at Page 4771 of the official records of the Salt Lake County Recorder.
- (i) Developer shall construct a service loading area at the eastern edge of the project. Developer shall design the service loading area so that it can be accessed from Wilmington Avenue while maintaining the Pedestrian and Maintenance Vehicle Access from Wilmington Avenue. The service area shall include space for recycling of wastepaper, aluminum and other commercially recyclable materials generated by the building users.
- (j) Developer shall also construct landscaping, artwork, sidewalks,

curbs, street lighting, brick work or other beautification and amenities located on the Property and the property across the street as required by Salt Lake City and approved by the Agency.

- (k) Schedule for Construction: Developer shall commence site preparation and construction on the Developer Improvements within fifteen business days following the closing. Developer shall complete the construction of the Developer Improvements by 18 months following Closing of the purchase of the Property.
- (l) Change Orders: Agency's approval is required for all construction change orders that (either individually or together with any previous change orders) reduce the size of any element of the Project (more than 5%) involve the substitution of any materials or design specified in the Final Construction Documents that have a lower cost, or otherwise constitutes a material change from the Final Construction Documents.
- (m) Guaranty of Completion and Performance: The Guarantor will guarantee Developer's obligations.
- (n) LEED Compliance: As a condition to Agency's obligation to execute the Certificate of Completion, Developer must provide a certificate from the project architect certifying that the construction of the Developer Improvements was consistent with the design elements required to achieve the "certified" level according to the LEED standards established by the U.S. Green Building Council (official certification will not be required).
- (o) Access to Records: Developer will provide access to records of the Project with ten business days' notice.

**Recordation of Documents:**

The Development Agreement and Easement Agreement will be recorded immediately after Agency's deed and must not be subject to any deed of trust or other financial lien.

**All Documents:**

All documents shall have such other terms and conditions not inconsistent herewith as may be advised by Agency's legal counsel. In addition, since the terms of the senior financing have not been agreed upon, the default provisions in the documents may need to be revised as appropriate to protect the interests of Agency.