

**DATE:** August 9, 2011

**ITEM:** 7.B.

**RE:** CONSIDERATION AND ADOPTION OF A RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING AN AMENDMENT TO THE PURCHASE AND SALE AGREEMENT WITH TANNACH PROPERTIES L.L.C. FOR THE DEVELOPMENT OF AGENCY OWNED PROPERTY LOCATED AT 237-255 SOUTH STATE STREET AND 241 AND 247 FLORAL STREET.

**PROJECT AREA:** Central Business District

**PREPARED BY:** Matt Dahl

**EXECUTIVE SUMMARY:** In July 2010, the Redevelopment Agency of Salt Lake City (Agency) and Tannach Properties LLC (Tannach) executed a Purchase and Sale Agreement (the "Agreement") for the Development of Agency-owned property located at 237-255 South State Street and 241 and 247 South Floral Street (the "Property"). The Agency, Tannach, and the project financiers have been working earnestly to negotiate and draft a number of agreements in an effort to prepare to close on the sale of the Property and construction financing. Resulting from these efforts, several issues have arisen that require modification to the current Purchase and Sale Agreement and the approved terms of the other development documents if the development project is to proceed. The specific modifications to the Purchase and Sale Agreement are outlined in the attached term sheet. Board approval of the attached term sheet is being requested by Tannach.

**REDEVELOPMENT ADVISORY COMMITTEE RECOMMENDATION:** The Redevelopment Advisory Committee recommended that the RDA Board approve the Purchase and Sale Agreement Amendment Term Sheet.

**ALTERNATIVES:**

- 1) Approve the resolution.
- 2) Do not approve the resolution.
- 3) Approve the resolution with changes.

**ANALYSIS AND ISSUES:** The Agreement, executed by Tannach and the Agency in July 2010, outlined the requirements for the sale and development of the Property. Included in the Agreement were terms that were derived from Tannach's development proposal, the project's approved basic design, and the Agency's standard terms. The current terms have been modified by previous amendments that were approved by the Agency Board.

Tannach's proposal for the development of the Property includes the restoration of the front and back facades of the Regis and Cambridge Hotels, with the remainder of the buildings being

demolished and replaced by a new seven story building. The northern buildings will be razed and a new ten-story multi-family apartment building will be constructed in their place. The entirety of the development's ground floor will be used as commercial space, including a new theater. Despite the appearance of being comprised of multiple buildings, the development will function as one building, allowing market rate and income targeted units to be located throughout the development. The development will include 180 apartment units, including studios, one-, two-, three-, and four-bedroom units. The development is also designed to include 180 underground parking stalls.

Tannach has been working on three general tracks in preparation of closing on the property and moving forward with construction: Project Design/Regulatory Approval, Project Financing, and Construction Preparation. The following is a summary of what has been accomplished and a brief description of outstanding issues:

#### Project Design/Regulatory Approval:

- In May 2011, the Agency Board approved the Final Construction Plans for The Plaza at State Street Development (the "Plaza"). Following approval by the Agency, Tannach submitted the plans to Salt Lake City Building Services to review the plans for building permits. Since the initial submittal Building Services has provided comments on the plans, Tannach has resubmitted modified plans, and Building Services has provided a second round of comments. Tannach, the plan review engineer, and RDA staff have met to discuss the most recent comments and devise a process for quickly addressing the remaining issues. The modifications to the plans that have resulted from the Building Services' review have not resulted in significant changes to the plans approved by the Agency.
- Tannach has received preliminary approval for their condominium plat. Tannach has also obtained conditional use approval in order to include two separate structures in one parcel and to allow the existing water tower to exceed the current height restriction of 100 feet when it is placed on the new development. Tannach must still obtain final approval for their plat. The final approval is tied to the approval of the development's construction documents and responses to specific issues identified in the preliminary review.

#### Project Financing:

- Tannach will be receiving construction and permanent financing through a combination of several sources. These sources include Salt Lake City (subordinate construction lender), Olene Walker Housing Loan Fund (subordinate construction lender), Startford Capital (low income housing tax credit investor), Citibank (primary construction lender), Utah Housing Trust Fund (bonds), Key Bank (Federal New Markets tax credit investor), the Logue Foundation (subordinate construction lender), and Freddie Mac (permanent lender). Coordinating the due diligence, underwriting, and contract negotiations has been challenging. One aspect of this ongoing effort to coordinate the sources of financing will delay closing until after the current outside closing date. Citibank is filing an application with Freddie Mac for approval of permanent financing that will takeout Citibank once

construction is complete. Citibank has indicated that they plan on submitting the application by August 26<sup>th</sup>. Upon receiving the application, Freddie Mac can take up to four weeks to review the application. Once the application is approved by Freddie Mac, it will still take approximately four weeks to close on the project. Given this issue, among others, the financiers are currently working towards an October 13, 2011 closing date. The deadline for submitting the details on the final construction financing is July 31, 2011. Given the issues described above, Tannach was unable to provide the requisite information on time. Tannach is requesting that the deadline for this submission be extended to September 30, 2011.

- The Agency has historically utilized a series of contractual tools to ensure that a development is completed as approved by the Agency Board. These tools include:
  - Development Agreement: The Development Agreement outlines the process for constructing a project, the requisite developer improvements, and the timeline for completing the development. The Development Agreement is also the first document recorded against the property at closing, thus giving it precedence over most other agreements and filings.
  - Payment and Performance Bonds: These bonds are intended to provide funds to pay sub-contractors and cover contractor obligations in case the general contractor is unable to perform.
  - Right of Reverter: This tool is included in the special warranty deed that conveys ownership of the Agency's property to the developer. The Reverter would be used in the case of an uncured default of the Development Agreement to return the ownership of the property to the Agency for the purpose of completing the project, although it is subject to the lien of the construction lender.
  - Completion Bond: This bond was intended to provide the Agency with funding to complete a development project in the instance that a developer defaulted on the requirements in the Development Agreement.
  - Assumption of Agreements: The Purchase and Sale Agreement requires that the Agency have the right assume and utilize the architect, construction, and sub-contractor agreements, as well as the construction financing, in the instance of a developer default.

The Agency would use the tools in concert to complete the project in the case of a developer default. In this instance, the financiers and Tannach have had reservations about the specific terms of these tools or the tools themselves. Tannach has requested that the Agency not require a Completion Bond, because it probably cannot obtain one and due to the \$1,000,000 cost if it could. Additional staff research has determined that a Completion Bond has been very difficult to procure following the economic downturn. The terms now included in completion bonds would also likely dilute its benefits. Additionally, Citibank and Stratford Capital have voiced reservations about the Agency's requirement that it be able to assume the construction financing and use the right of reverter. Staff is currently working with the financiers to provide certain alternative assurances that the project will likely be completed in the case of a developer default. To

achieve this, the attached term sheet proposes that, prior to closing, the Agency shall enter into a Cooperation Agreement with Citibank, the construction lender. The agreement shall specify under what conditions Citibank will continue to be obligated to fund the construction of the Developer Improvements in the event of a developer default. The Agency shall also require that Stratford Capital, the syndicator of the low-income housing tax credits, agree to its funding obligations if Citibank or the Agency exercises its rights under the Cooperation Agreement. The Cooperation Agreement will require the Agency to terminate its Development Agreement and right of reverter under certain circumstances, including if the Agency should choose not to exercise its rights to complete the Developer Improvements after a developer default.

Construction Preparation:

- Tannach has been working with contractors to bid out the project construction. This includes asbestos removal, demolition, and construction. These contracts will require Agency approval and may be impacted by the ongoing document preparation by the Agency, Tannach, and the financiers, as well as the plan review that is currently in process.
- Tannach's current deadline for submitting their construction contract for approval was July 31, 2011. Given the delay in finalizing the construction documents and project financing, Tannach has missed this deadline and is currently not in compliance with the Purchase and Sale Agreement. Tannach is requesting that the deadline for submitting the construction contract be extended until September 30, 2011.

The attached term sheet addresses the issues described above. Board approval of the term sheet is required in order for the project to proceed. Without Board approval of the Purchase and Sale Agreement, the Purchase and Sale Agreement will terminate as a result of the current submission issues or the failure to close by the current outside closing date. If the Purchase and Sale Agreement were to terminate, the Agency would be able to remarket the Property for development.

**BACKGROUND:**

- Staff marketed the State Street properties from December 2007 until May 1, 2008. No responses were submitted in response to the Request for Proposals.
- In November 2008, the Board directed staff to issue a Request for Letters of Intent for the State Street Properties.
- In May 2009, the Agency received three responses to the Request for Letters of Intent.
- In June 2009, the Agency issued a Request for Qualifications to the three firms who responded to the Request for Letters of Intent.
- On September 3, 2009, two firms responded to the Request for Qualifications
- On October 13, 2009, the Agency Board approved Resolution No. 665.02, which authorized the Agency to enter into a six-month exclusive negotiation with the La

Porte Group/Tannach.

- On April 7, 2010, RAC recommended that the Board approve extending exclusive negotiations with the La Porte Group/Tannach until September 30, 2010. They also recommended that the Board approve the La Porte Group/Tannach's updated design proposal.
- On April 20, 2010, the Agency Board approved an updated version of the La Porte Group/Tannach's development proposal, and extended exclusive negotiations to September 30, 2010.
- On June 2, 2010, RAC recommended that the Board approve the Term Sheet for the purchase and development agreements.
- On June 8, 2010, the Agency Board approved Resolution 679.02, which approved the Term Sheet for the purchase and development agreements. The Term Sheet did not include a purchase price.
- On July 13, 2010 the Agency Board approved Resolution 680.01, which approved an amendment to the Term Sheet that included the purchase price for the property.
- On July 27, 2010 the Purchase and Sale Agreement for the sale of the State Street Property was executed by the Agency and the Tannach Properties.
- On October 12, 2010 the Agency Board approved Resolution 683.02, which approved an amendment to the unit income requirements included in the Purchase and Sale Agreement.
- On November 16, 2010, the Agency Board approved Resolution 685.02, which approved an amendment to the Purchase and Sale Agreement that extended the outside closing date to March 31, 2011.
- On February 8<sup>th</sup>, the Agency Board approved a Resolution, which approved an amendment to the Purchase and Sale Agreement that extended the outside closing date to May 31, 2011.
- On April 12, 2011, the Agency Board approved resolutions increased the number of apartment units from 157 to 180 and approved the Final Construction Documents.
- On May 10, 2011, the Agency Board approved Resolution 696.03 extending the outside closing date to August 31, 2011 and the date for submitting the construction financing and construction contract to July 31, 2011.

**ATTACHMENTS:** Resolution, Term Sheet

CONSIDERATION AND ADOPTION OF A RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING AN AMENDMENT TO THE PURCHASE AND SALE AGREEMENT WITH TANNACH PROPERTIES L.L.C. FOR THE DEVELOPMENT OF AGENCY OWNED PROPERTY LOCATED AT 237-255 SOUTH STATE STREET AND 241 AND 247 FLORAL STREET.

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 “C.B.D. Neighborhood Development Plan” on May 1, 1982; and

WHEREAS, the Agency owns certain property within the Central Business District Project Area and desires to redevelop it in accordance with the C.B.D. Neighborhood Development Plan; and

WHEREAS, on October 13, 2009, the Board adopted Resolution No. 665.02 authorizing the Agency to enter into a six-month exclusive negotiation period with The La Porte Group for the development of the Agency-owned property located at 235-255 South State Street and 241 and 247 South Floral Street (the “Property”); and

WHEREAS, on April 20, 2010, the Board adopted Resolution No. 677.01 authorizing the Agency to extend the exclusive negotiation period with the La Porte Group until September 30, 2010; and

WHEREAS, on June 8, 2010, the Board adopted Resolution No. 679.02 approving specific terms that were to be included in the agreements for the purchase and development of the Property; and

WHEREAS, on July 13, 2010, the Board adopted Resolution No. 680.02 approving the purchase price for the Property; and

WHEREAS, on July 27, 2010, the Agency and Tannach Properties, LLC (Tannach), an affiliate of the La Porte Group, executed a Purchase and Sale Agreement (the “Agreement”) for the development of the Property; and

WHEREAS, the Agreement included a requirement that the Developer Improvements’ parking not exceed the greater of 160 parking stalls; or the minimum number of parking stalls required by Salt Lake City for the Property; and

WHEREAS, on February 8, 2011 the Board adopted Resolution No. 689.01 approving the extension of the Agreement’s Outside Closing Date to May 31, 2011; and

WHEREAS, on April 21, 2011 the Agency and Tannach executed the First Amendment to the Purchase and Sale Agreement; and

WHEREAS, on May 10, 2011 the Board adopted Resolution No. 696.03 approving the terms for

a second amendment to the Purchase and Sale Agreement; and

WHEREAS, on May 31, 2011 the Agency and Tannach executed the Second Amendment to the Purchase and Sale Agreement; and

WHEREAS, the Agency and Tannach Properties L.L.C., an affiliate of the La Porte Group, desire amend the Purchase and Sale Agreement.

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 an amendment to the Purchase and Sale Agreement between the Redevelopment Agency of Salt Lake City and Tannach Properties 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 9<sup>th</sup> day of August, 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: \_\_\_\_\_  
Jones, Waldo, Holbrook & McDonough, P.C.

**Purchase and Sale Agreement**  
**Third Amendment Term Sheet**

<b>Defined Terms:</b>	Capitalized terms shall have the same definitions as in the Purchase and Sale Agreement.
<b>Outside Closing Date:</b>	The Outside Closing Date shall be extended from August 31, 2011 to October 31, 2011.
<b>Earnest Money:</b>	If Closing does not occur on or before the Outside Closing Date, the \$100,000 Earnest Money shall be retained by the Agency.
<b>Holding Costs:</b>	The Developer shall reimburse the Agency for all costs resulting from holding, managing, repairing, and maintaining the Property from September 1, 2011 until the Closing on the sale of the Property, up to a maximum of \$10,000 per month. The Developer shall reimburse the Agency for the Holding Costs upon Closing or on October 31, 2011, whichever occurs first.
<b>Construction Contract and Financing Submittal Deadline:</b>	The date for submitting the proposed Construction Contract and the proposed Construction Financing for review and approval by the Agency shall be extended from July 31, 2011 to September 30, 2011.
<b>Completion Bond:</b>	The Developer will not be required to provide a completion bond for the Project. Payment and performance bonds will be required.
<b>Personal Guaranty:</b>	Ben Logue shall provide a Personal Guaranty of Completion and Performance.
<b>Cooperation Agreement:</b>	Prior to closing, the Agency shall enter into a Cooperation Agreement with Citibank, the construction lender. The agreement shall specify under what conditions Citibank will continue to be obligated to fund the construction of the Developer Improvements in the event of a developer default. The Agency shall also require that Stratford Capital, the syndicator of the low-income housing tax credits, agree to its funding obligations if Citibank or the Agency exercises its rights under the Cooperation Agreement. The Cooperation Agreement will require the Agency to terminate its Development Agreement and right of reverter under certain

circumstances, including if the Agency should choose not to exercise its rights to complete the Developer Improvements after a developer default.