

DATE: February 10, 2014

ITEM: 7.A.

RE: CONSIDERATION AND ADOPTION OF A RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING TERMS OF A FOREBEARANCE AND SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH TANNACH PROPERTIES L.L.C. FOR THE DEVELOPMENT OF THE PLAZA AT STATE STREET

PROJECT AREA: Central Business District

PREPARED BY: Matt Dahl

EXECUTIVE SUMMARY: In April 2012, the Redevelopment Agency of Salt Lake City sold to Tannach Properties L.L.C. (Tannach) property located at 255 South State Street and entered into a Development Agreement with Tannach pursuant to which Tannach agreed to develop the Property as the Plaza at State Street (the "Project"). In August 2013, following a number of delays in the Project's development and construction, the RDA Board approved an amendment to the Development Agreement that modified the Schedule of Development and other terms. Tannach is currently behind schedule and otherwise out of compliance with terms of the amended Development Agreement. Staff has been actively negotiating with Tannach and other participants in the financing of the Project to support completion of the Project as soon as possible. A notice of default on the Development Agreement has not yet been issued, pending the outcome of these negotiations. Staff has prepared the terms of a Forbearance and Second Amendment to the Development Agreement that preserve the RDA's rights under the Development Agreement and provide time for Tannach to work out an acceptable plan for completing the project.

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

ANALYSIS AND ISSUES: Tannach purchased the site from the RDA in April 2012. Under the Development Agreement, Tannach was required to abate the asbestos that was found in the existing structures, demolish the structures, and construct the Plaza at State Street in accordance with the plans approved by the RDA.

The Project will be comprised of a multi-level building that incorporates the historic facades of the Regis and Cambridge Hotels. The entire ground floor will be used as commercial space, including a new theater. The development will include 180 apartment units, including studios, one-, two-, three-, and four-bedroom units. The majority of the residential units will be available

for specific income levels, though 25% of the units will be market-rate. The Project will also include 180 underground parking stalls.

Beginning approximately this time last year, construction on the project slowed, and eventually stopped, due to design, cash flow, contracting, and operational issues. Throughout the course of 2014, Tannach worked to resolve these issues. At this time the design issues have been resolved, and sufficient cash flow was achieved to allow workers and materials to return to the site. While construction has recommenced, it is not proceeding at an optimum pace. As many as 50 people have been on site working on the project, though most days the number is significantly lower. Tannach has indicated that the issues relating to contracting and operations have been resolved.

While cash flow was sufficient to recommence construction, Tannach is projecting that it has insufficient funding to complete the project. The total project cost has increased from \$32 million to \$52 million. As a result of this cost increase, Tannach has a short fall of approximately \$10 million in construction funding. Tannach is currently working to identify sources to balance the project budget. Tannach has indicated that, among other sources, they will be requesting funding from the RDA and Salt Lake City. In March of 2014, the RDA Board approved \$2.5 million in construction and permanent financing for the project, but Tannach was unable to meet the conditions to close and the approval expired. The RDA does not currently have a commitment to providing financing for the development.

Tannach is currently not in compliance with several provisions of the Development Agreement, as a result of the construction delays and operational issues. The RDA has been aware of these issues, and has been monitoring Tannach's efforts to address them. Given the progress that Tannach has made, staff feels it is the appropriate time to take formal action to amend the Development Agreement. If the RDA were to issue a notice of default, Tannach would not be able to cure the defaults within the time frame provided in Development Agreement. For example, the current Substantial Completion Date is November 15, 2014. If the RDA issued a notice of default in the absence of an agreed upon plan to get the project back on track that had the support of the other participants, that may lead to other defaults being declared and legal remedies being exercised, including a foreclosure on the development. That chain of events could easily result in the Project remaining in its current condition for a significant period of time. Rather than issuing Tannach a notice of default, staff is proposing that the Forbearance and Second Amendment to the Development Agreement specify the terms and conditions that preserve the RDA's rights under the Development Agreement and provide time for Tannach to work out an acceptable plan for completing the project.

Below is a summary of the instances where Tannach is not in compliance with the Development Agreement and the proposed terms that would be included in the Forbearance and Second Amendment to the Development Agreement:

1. Execution of Contracts with Major Subcontractors: The current deadline is January 15, 2014. Staff is proposing that the new date be April 1, 2015.

2. Updated Construction Budget: The current deadline is January 15, 2014. Staff is proposing that the new date be April 8, 2015.
3. Balanced Sources and Uses: The current deadline is January 15, 2014. Staff is proposing that the new date be April 8, 2015.
4. Substantial Completion of Developer Improvements: The current deadline is November 15, 2014. Staff is proposing that the new date be December 1, 2015.
5. Completion of Punch List: The current deadline is February 15, 2015. Staff is proposing that the new date be March 1, 2016.
6. Encumbrances: Tannach is prohibited from allowing new encumbrances to be placed on the title of the Property. The Property currently has mechanic's liens recorded against the title. Staff is proposing the Forbearance Agreement require that the encumbrances be removed from the Property's title by April 1, 2015.
7. Payment and Performance Bonds: Tannach is currently required to provide Payment and Performance Bonds for every subcontract valued at \$500,000 or more. Staff is proposing that requirement be waived, at the discretion of the RDA staff.

If the RDA Board approves the proposed terms, staff will incorporate them in the Forbearance and Second Amendment to the Development Agreement and continue deliberations with Tannach and project financiers to identify a plan for Tannach's completion of the project under the development agreement. If the RDA Board does not approve the proposed terms, staff will need to work with legal counsel to evaluate the RDA's options under the Development Agreement, with the goal being the completion of construction or reducing the time in the case of a foreclosure, that the Project remains inactive. If either the RDA or Citibank issues a notice of default, the RDA will have the ability to attempt to find a replacement developer under the Curative Rights Agreement with Citibank, though quickly identifying and putting into place a suitable replacement developer in the allotted time would be very challenging. If a replacement developer is not found, the Project would likely go into foreclosure.

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 RDA 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 RDA 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 RDA 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 RDA 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 RDA and the Tannach Properties.
- On October 12, 2010 the RDA 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 RDA 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 8th, the RDA 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 RDA Board approved resolutions increased the number of apartment units from 157 to 180 and approved the Final Construction Documents.
- On May 10, 2011, the RDA 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.
- On August 9, 2011, the RDA Board approved Resolution 699.01 extending the outside closing date to October 31, 2011 and the date for submitting the construction financing and construction contract to September 30, 2011. The Resolution also included changes to the completion bond requirement and required Tannach to cover the holding costs for the Property.
- On October 7, 2011, the RDA Board approved Resolution 702.01 extending the outside closing date to December 16, 2011.
- On December 13, 2011, the RDA Board approved Resolution 704.01 extending the outside closing date to February 16, 2012.

- On February 14, 2011, the RDA Board approved Resolution 708.01 extending the outside closing date to December 30, 2012.
- On April 11, 2012 Tannach acquired the Plaza at State Street Site from the RDA and commenced asbestos abatement.
- On August 20, 2013 the RDA Board approved Resolution 736.04 extending the Substantial Completion Date to November 15, 2014 by amendment of the Development Agreement.
- On December 10, 2013, the RDA approved Resolution 741.01 approving a construction loan for the Plaza at State Street Development
- On March 18, 2014, the RDA Board approved Resolution 744.03 approving a construction loan and permanent financing for the Plaza at State Street Development.
- On June 1, 2014, the authorization to negotiate and execute the loan documents granted by Resolution 744.03 expired without the Developer meeting the conditions to closing.

ATTACHMENTS: Resolution and Term Sheet

RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING THE FORBEARANCE AND SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH TANNACH PROPERTIES L.L.C. FOR THE DEVELOPMENT OF THE PLAZA AT STATE 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 “Purchase Agreement”) for the development of the Property; and

WHEREAS, on February 8, 2011 the Board adopted Resolution No. 689.01 approving the extension of the Purchase 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, on August 9, 2011 the Board adopted Resolution No. 699.01 approving the terms for a Third Amendment to the Purchase and Sale Agreement; and

WHEREAS, on August 30, 2011 the Agency and Tannach executed the Third Amendment to the Purchase and Sale Agreement; and

WHEREAS, on October 26, 2011, the Agency and Tannach executed the Fourth Amendment to the Purchase and Sale Agreement; and

WHEREAS, on December 20, 2011, the Agency and Tannach executed the Fifth Amendment to the Purchase and Sale Agreement; and

WHEREAS, on April 11, 2012 the Agency sold the Property to Tannach and the Agency and Tannach executed the Development Agreement between Agency and Tannach (the "Development Agreement"), which established the requirements for the development of the Plaza at State Street; (the "Project"); and

WHEREAS, on February 7, 2014, the Agency and Tannach executed the First Amendment to the Development Agreement; and

WHEREAS, the Agency and Tannach desire to further amend the Development Agreement; and

WHEREAS, the Agency desires to forbear from exercising its remedies under the Development Agreement to allow Tannach another opportunity to complete the Project as provided in the amended Development 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 Forbearance and Second Amendment to Development Agreement Term Sheet (the "Term Sheet") attached hereto.

Be it further resolved, that we do hereby authorize the Chief Administrative Officer and the Executive Director to negotiate and execute a forbearance and amendment agreement to the Development 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 authorization to negotiate and execute the forbearance and amendment and the RDA Board's approval of the Term Sheet shall expire on April 1, 2015 if the forbearance and amendment agreement have not been executed by both parties. The forbearance and amendment agreement shall also incorporate such other terms as recommended by Agency's legal counsel.

Passed by the Board of Directors of the Redevelopment Agency of Salt Lake City, this ____ day of February, 2015.

Stan Penfold, 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.

**Plaza at State Street Development
Forbearance and Second Amendment to Development Agreement Term Sheet**

Defined Terms:	Capitalized terms shall have the same definitions as in the Development Agreement.
Conditions of Forbearance	The RDA shall agree not to issue a notice of default under the terms of the Development Agreement provided the following conditions are met:
	<ol style="list-style-type: none"> 1) Tannach shall comply with the following schedule: <ol style="list-style-type: none"> a) All contracts for Major Sub-contractors must be approved by the RDA and executed by April 1, 2015. b) Tannach shall submit an updated construction budget, incorporating the terms of all executed construction contracts, to the RDA by April 8, 2015 c) Tannach shall submit a balanced Sources and Uses Budget to the RDA by April 8, 2015. All sources and uses shall be supported by written commitment or agreement that have reasonable and realistic conditions to funding. d) The Substantial Completion Date shall be coterminous with Substantial Completion date established, or that shall be established, by Citibank prior to the issuance of Certificate of Completion by the Agency, though it shall not be later than December 1, 2015 e) The Final Completion Date shall be coterminous with Final Completion date established, or that shall be established, by Citibank prior to the issuance of Certificate of Completion by the Agency, though it shall not be later than March 1, 2016 f) Tannach shall remove all encumbrances on the title of the property other than the Construction Financing Documents by April 1, 2015.

Payment and Performance Bonds Requirements	The Payment and Performance Bond requirement for Major Subcontractors may be waived by the RDA, at its own discretion, provided the Major Subcontractors are paid directly from an RDA approved funding source, other than the Developer.
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