

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Capital Expenditures		\$4,721,950	\$38,892,050	\$21,000,000	
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT		\$4,721,950	\$38,892,050	\$21,000,000	

No. ADDITIONAL FTE POSITIONS (Cumulative)

Is Item Included In Current Budget? Yes _____ No _____
 Budget Account No.: Fund _____ Department _____ Unit _____
 Object _____ Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:
 The Fiscal Impact in 2008 and 2009 will be funded by tourist development taxes. The fiscal impact in 2010 will be funded by general revenue. *(NON-AD VALOREM REVENUES)*

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

THE COUNTY WILL ISSUE NON-AD VALOREM REVENUE BONDS FOR COSTS LISTED ABOVE PLUS THE COST OF LAND FOR HOTEL. THE BIDS ON THE PARKING GARAGE AND TUNNEL WILL BE PAID FROM THE 1ST CENT BOND TAX. ALL OTHER COSTS ARE PAID FROM NON-AD VALOREM REVENUES.

John A. King 4/6/07
 OFMB

Contract Dev. and Control
At the time of costs review, the documents were not available for review.

B. Legal Sufficiency:

James Chung 4/9/07
 Assistant County Attorney

C. Other Department Review:

 Department Director

Palm Beach County Convention Center Hotel Agreement Terms

On June 1, 2004 the Board of County Commissioners selected Ocean Properties, LTD. (OPL) as the developer for the Convention Center Hotel. On March 15, 2005 the County, the City of West Palm Beach, West Palm Beach Community Development Redevelopment Agency, City Place Retail, LLC and City Place Partners entered into a Settlement Agreement to resolve litigation regarding the acquisition of the Convention Center Hotel site.

Staff and OPL and its affiliates have successfully negotiated the required Agreements to allow the construction of the Convention Center Hotel to move forward in accordance with the terms presented to the Board of County Commissioners by Ocean Properties and in accordance with the terms in the Settlement Agreement.

These Agreements include:

- Development Agreement
- Hotel Lease
- Residential Land Lease
- Hotel Room Block Agreement

Over the last six months, Staff and Ocean Properties have been meeting with City of West Palm Beach staff to discuss the site plan/subdivision approvals. OPL is currently preparing the Site Plan and Subdivision Applications and is anticipated to submit such applications to the City of West Palm Beach within the next month.

Additionally, Staff and OPL have had several successful meetings with the Grandview Heights Neighborhood Association in regards to the proposed garage architectural design. The Association is in support of the project as currently planned.

The following summarizes the critical terms for each of the Agreements.

Development Agreement

- Hotel Developer, an Affiliate of OPL, will cause the lien free construction of a 400 room, First Class Westin Convention Center Hotel and related improvements, to be constructed on the Hotel Land. The Hotel Developer's contractors will be required to secure payment and performance bonds.
- The Residential Building Developer, an Affiliate of OPL, will cause the lien free construction of the Residential Building consisting of 104 condominiums with an assessed value of \$32,000,000, and related improvements to be constructed on the Residential Land.
- The Garage Developer, an Affiliate of OPL, will cause the 1809 space Garage and associated improvements to be constructed on the Garage Land. The Garage Developer's contractors will be required to secure payment and performance bonds.
- The Tunnel Developer, an Affiliate of OPL, will cause the Tunnel and associated improvements, to be constructed on the Tunnel Land. The Tunnel Developer's contractors will be required to secure payment and performance bonds.
- The County shall disperse a total sum of \$21,000,000 to the Hotel Developer upon final completion of the project.
- The current schedule anticipates a final completion date of April 2010. Construction will not commence until after April 1, 2008 to minimize interference with the prime convention center business.
- The Default Date is 27 months after the Construction Commencement Date, 90 days after the substantial completion date. The 27 month period commences with the start of vertical construction of the hotel. OPL shall pay liquidated damages in the amount of \$100,000/month if the project is not complete by the Default Date. The Default Date is subject to extensions due to unavoidable delays.

- If the project is not complete within two years of the Default Date then the County may pursue any other legal remedy.
- Prior to commencement of construction, the Tunnel Developer shall submit a guaranteed fixed price for the construction of the Tunnel to the County based on actual bids received. The Tunnel construction cost estimate, including engineering, permitting, construction management, construction and project contingencies, is \$ 2,675,000. If the guaranteed fixed price exceeds this estimate then the County may:
 - A) Negotiate with the Tunnel Developer for a period of 60 days to achieve an acceptable price if unacceptable;
 - B) The County may independently solicit a fixed price for construction. If unsuccessful, the Development Agreement will terminate. If the County obtains an acceptable fixed price then the County may tender the fixed price to the Tunnel Developer. If the Tunnel Developer rejects the fixed price then the County may commence with construction. If the Tunnel Developer accepts the fixed price then the Tunnel Developer may commence with construction.
- Prior to commencement of construction the Garage Developer shall submit a guaranteed fixed price to the County for its portion of the construction costs of the Garage. The Garage construction cost estimate, including engineering, permitting, construction management, architectural treatment, landscaping, construction and contingencies, is \$ 40,939,000. If the guaranteed fixed price exceeds this estimate than the County may:
 - A) Negotiate with the Garage Developer for a period of 60 days to achieve an acceptable price if unacceptable;
 - B) The County may independently solicit a fixed price for construction. If unsuccessful; the Development Agreement will terminate. If the County obtains an acceptable fixed price then the County may tender the fixed price to the Garage Developer. If the Garage Developer rejects the fixed price then the County may commence with construction. If the Garage

Developer accepts the fixed price then the Garage Developer may commence with construction.

- The Tunnel and Garage Developers will be reimbursed on a monthly basis for costs to design and construct the Tunnel and Garage. The initial garage construction consists of two Phases (Phase I and Phase II) consisting of a total of 1809 spaces. The County's total obligation for the cost of the garage shall be the cost of Phase II (less any common components costs) plus 63.2% of the cost of the spaces in Phase I (less any common component costs) plus 79.1% of the common component costs. Ocean will be responsible for the remaining costs.
- The County will own and operate the Garage. OPL will reimburse the County their fair share percentage of the costs to maintain the Garage.
- The County will own and maintain the Tunnel. The County will pay to maintain the Tunnel. OPL will be permitted to utilize the tunnel for hotel valet use only.
- The Hotel Developer will endeavor to negotiate a labor peace agreement with respect to the operations of the Hotel.
- The Hotel, Garage and Tunnel Developers shall endeavor to meet the County's Small Business Enterprise goals in connection with the project.

Hotel Lease

- The County and OPL have selected three benchmark properties:
 - Tampa Marriott Waterside Hotel and Marina
 - Indianapolis Marriott Downtown
 - Sheraton Myrtle Beach Convention Center
- The Quality Standards are tied to the Benchmark Hotels and the Westin Franchise Standards with the Franchise Standards controlling.
- The Tenant will be WPB West, LLC a Florida limited liability company.
- Tenant will receive a 99 Year Lease with an Option to Purchase the Hotel Land and Hotel at fair market value at the end of the 99 year lease. There are no early purchase options or an option to renew the lease.

- The County will own the Hotel which will allow the Hotel to be immune from ad valorem taxes. The County is prohibited from selling its interests in the Hotel and Hotel Land.
- Tenant must enter into a Franchise Agreement with the Westin Hotel within 180 days of execution of the Agreements.
- Tenant will make lease payments to begin upon commencement of vertical construction of the hotel as follows: \$500,000 per year for 7 years commencing when commencement of construction occurs, \$1,346,896 per year with annual escalation of 2% from year 8 until the \$21,000,000 County subsidy is repaid in year 28, then \$2,001,417 annually for balance 99 year term.
- The County will be responsible to pay ad valorem taxes on the Hotel at such time when Ocean Properties, thru its annual rent payments, repays the County its investment in the Hotel including, land purchase costs, the \$21,000,000 Hotel subsidy and the total debt service. It is projected that this will not occur until after year 2060. The County may be required to pay ad valorem taxes prior to this date in the event of a change of laws, which is considered to be a remote possibility. Additionally, the County will be required to pay ad valorem taxes should the property become taxable for any other reason.
- Tenant will be allowed to set-off from their base rent any ad valorem taxes assessed on the property. The County will be responsible for any portion of the tax not covered by the annual rent.
- Tenant is permitted to sell its interest to Walsh Entity, Institutional Lenders and entities with assets of not less than \$300,000,000 who hire a hotel operator who has operated 10 or more hotels and at least one first class convention center hotel with 250 or more rooms and 25,000 or more square feet of meeting space.
- Tenant shall engage the services of a Hotel Manager to assist OPL in reviewing the architectural plans develop criteria for furnishing and equipping the Hotel, prepare the Hotel for opening, prepare marketing and advertising, and negotiate contracts and overall management and operation of the Hotel.

- Tenant will be required to fund an FF & E Reserve Account for the purpose of funding the renewal, repair, replacement and additions of FF & E.
- Tenant is entitled to recover, through litigation, damages the Hotel suffers if the County ceases to operate the Convention Center or operates it at level of quality materially lower than on lease effective date.
- The Tenant and Hotel Operator are prohibited from operating a hotel with 400 rooms or more and 30,000 or more square feet of meeting space within the municipal limits of the City of West Palm Beach.
- The County is prohibited from operating, subsidizing or permitting the operation of a competing hotel within 5 miles of the Convention Center Hotel; however this restriction does not apply to the Palm Beach International Airport and adjacent vicinity.
- Tenant is permitted to grant mortgages encumbering lease for not more than 80% of cost or value of hotel. Mortgagees are granted various rights including notice of Tenant default and right to cure and right to apply proceeds of casualty or condemnation to pay down loan.
- In the event of a casualty, Tenant is obligated to repair at Tenant's cost. Tenant entitled to fair and equitable abatement of rent in event of casualty.

Residential Lease

- The residential land and condominium envelope (essentially the underground parking beneath hotel and residential land) will be deeded to OPL upon final completion of the condominiums without charge.
- The Tenant, under the Lease, will be Convention Center Residential Leasing LLC, an affiliate of OPL. The Lease will expire when the land is deeded to OPL.
- Tenant shall pay annual rent in the amount of \$10.00/year during the term of Lease.

- The Residential land may be used in whole or in part as a public lodging establishment whether such establishment is comprised of units in a residential or commercial condominium, cooperative, timeshare, interval ownership plan, regardless of whether or such lodging units are booked , managed or operated by the Hotel.
- The Deed provides for a reservation of easement for the tunnel in favor of the County.
- The Deed provides for a reservation of a perpetual easement for the right to relocate and/or reconfigure the parking within the Condominium envelope in favor of the County.
- The County will pay 50% of the cost of the title policy which total cost is estimated to be \$70,000.

Hotel Room Block Agreement

- During the room block booking period, the Hotel is required to provide the County a guaranteed room block of 75% of the total hotel inventory for 12 days a month for the County to book rooms required by the Convention Center.
- The County's guaranteed room block booking period is that period 18 months and out.
- The Hotel may request the release of rooms from the County's room block. The County shall not unreasonably withhold approval if the Hotel's request includes Convention Center Business or the County is unable to deliver a room block request for a potential convention center customer within 30 days.
- The maximum rate the Hotel can offer during the County's room block booking period is based on the Hotel's published seasonal corporate rate plus an annual escalation factor not to exceed 6% annually.