

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: February 24, 2009 Consent Regular
 Public Hearing

Department: Facilities Development & Operations, Property & Real Estate Management Division

Submitted By: COUNTY ATTORNEY
Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

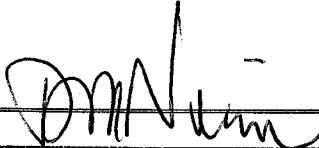
Motion and Title: Staff recommends motion to: 1) approve settlement agreement authorizing the payment of \$5,000.00 and return of \$202,000.00 deposit, in exchange for dismissal of pending lawsuit in the case of Centennial Real Estate Investors L.L.C-1 v. Palm Beach County et. al., Case No.: 50-2006CA 010604XXXXMB, and a release signed by Plaintiffs; 2) approve execution of a release by Palm Beach County.

Summary: In 2005, the County issued a request for proposals (RFP) for the potential sale and purchase of an approximately 9 acre parcel formerly used by the Water Utilities Department commonly known as the Pike Utility property. Centennial submitted a proposal to purchase the property for \$2,020,000.00, less the cost of environmental remediation. PREM was unable to recommend acceptance of Centennial's proposal, because of the unquantified contingency regarding remediation. Centennial filed a lawsuit, seeking a writ of mandamus and injunctive relief that the County and PREM Director Ross Hering be ordered to award the purchase contract to Centennial as highest bidder. The County has negotiated with Centennial, and recommends the attached settlement agreement which provides for dismissal with prejudice of the lawsuit in exchange for a return of the \$202,000 deposit and a one-time payment of five thousand dollars (\$5,000.00) as well as the execution of mutual releases. District 6 (ATP)

Background and Justification: In 2005, the County issued a request for proposal for the sale and purchase of an approximately 9 acre parcel former Water Utilities Department site, commonly known as the Pike Utility property and located south of Lake Worth Road on Charleston Road. The property is zoned for residential use, but its prior usage by the Water Utilities Department suggested the possibility of environmental contamination concerns. The RFP identified that the property was being offered for sale "as is." Plaintiff Centennial Real Estate Investors, L.L.C.-1 ("Centennial") submitted a proposal to purchase the property for two million twenty thousand dollars (\$2,020,000.) less the cost of remediation. Along with its bid, Centennial submitted a 10% deposit of two hundred two thousand dollars and no cents (\$202,000.00).
(Continued on Page 3)

Attachments:

- 1. Settlement Agreement
- 2. Release

Recommended by:  2/17/09
County Attorney Date

Approved by: _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>5,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>5,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund 0001 Department 410 Unit 4240 Object 3401

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

Jim Dink 2-18-09
 OFMB CN 2/18/09
 2/18/09

Jim J. Jacobson 2/18/09
 Contract Development and Control

B. Legal Sufficiency:

Christopher Powell
 Assistant County Attorney

C. Other Department Review:

R. C. H.
 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Basis and Justification (continued):

During the process of evaluating the responses to the RFP, the property was considered for various uses, including affordable housing, which led to a delay in the decision-making process. Ultimately, it was decided that the property would be offered for sale, as per the RFP. However, PREM could not recommend Centennial's bid because of the unquantified contingency regarding remediation.

On October 11, 2006, after being informed of PREM's decision, Centennial sued both the County and PREM Director Ross Hering, alleging improprieties in the RFP review process and demanding that it be named the highest bidder. Settlement negotiations have occurred since the lawsuit was filed, and the parties have provisionally agreed that, in exchange for return of the \$202,000 deposit and a one-time payment of five thousand dollars and no cents (\$5,000.00), Centennial will dismiss its lawsuit with prejudice and each party will execute a release in favor of the other.

**SETTLEMENT AGREEMENT BETWEEN CENTENNIAL REAL ESTATE
INVESTORS, L.L.C. AND PALM BEACH COUNTY
RE: CENTENNIAL REAL ESTATE INVESTORS, LLC-1 V. PALM BEACH
COUNTY ET. AL., CASE NO.: 50-2006CA 010604 XXXX MB**

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida (hereinafter referred to as "County"), ROSS HERING, Director of Palm Beach County's Property and Real Estate Management Department (hereinafter referred to as "Hering"), and CENTENNIAL REAL ESTATE INVESTORS, LLC-1 (hereinafter referred to as "CENTENNIAL").

WHEREAS, the County issued a request for proposals to sell County property known as the Pike property, the legal description of which is attached hereto as Exhibit A, which was formerly used as a water utilities site; and

WHEREAS, Centennial submitted a proposal to purchase the property on July 20, 2005, and submitted a deposit of two hundred two thousand dollars and no cents (\$202,000.00) to the County; and

WHEREAS, Centennial's proposal is currently the highest dollar bid, but contains an un-quantified contingency provision to do due diligence for environmental concerns with the option of withdrawing the bid or lowering the bid price to reflect the cost of remediation, and a contingency requiring that there be adequate width of right of way on Charleston Road to comply with the Palm Beach Uniform Land Development Code for Access on the property; and

WHEREAS, Centennial has sued the County and PREM Director Ross Hering, alleging irregularities in the County's evaluation of the request for proposals;

WHEREAS, all parties wish to avoid the expense, time, and uncertainty of litigation.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. Recitations. The above recitals are true and correct and form a part of this Agreement.

2. Effective Date. The Effective Date of this Agreement shall be the date the Agreement is approved by the Palm Beach County Board of County Commissioners (the "Effective Date").

3. Payment. Palm Beach County agrees to return to Centennial its deposit of two hundred two thousand dollars and no cents (**\$202,000.00**) and will pay Centennial an additional one-time payment of five thousand dollars and no cents (**\$5,000.00**), for a total payment of two hundred seven thousand dollars and no cents (**\$207, 000.00**), in exchange for the filing by Centennial of a dismissal with prejudice of its pending lawsuit against Palm Beach County and Ross Hering and execution of the mutual releases described herein. Payment shall be made payable to "Ned Kimmelman, P.A. Trust Account" within thirty (30) days of the effective date of this Agreement.

4. Dismissal of the Lawsuit. Within ten business days of receipt of both the payment set forth in Paragraph 3 of this Agreement and the releases set forth in Paragraph 5 of this Agreement, Centennial shall dismiss with prejudice the lawsuit brought in the Fifteenth Circuit Court titled, Centennial Real Estate Investors, LLC-1 v. Palm Beach County, and Ross Hering, and assigned Case No. 50-2006CA 010604 XXXX MB.

5. Releases. Within thirty (30) days of the effective date of this Agreement, Palm Beach County shall execute a release substantially in the form attached hereto as Exhibit A, Centennial shall execute a release substantially in the form attached hereto as Exhibit B, and Ross Hering shall execute a release substantially in the form attached hereto as Exhibit C.

6. Dual Capacity. Ross Hering agrees and acknowledges that he is signing this Agreement both in his capacity as Director of Palm Beach County's Property and Real Estate Management Division and in his individual capacity.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed this AGREEMENT on the day and year first above written.

WITNESSES:

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS

By: _____

By: _____

Commissioner John F. Koons
Chairman Board of County Commissioners

By: _____

Approved as to Legal Sufficiency:

By: Amy Taylor Petric

WITNESSES:

DIRECTOR, PALM BEACH COUNTY
PROPERTY AND REAL ESTATE
MANAGEMENT DEPARTMENT

By: Barbara Wheeler

By: R.C.H.

Ross Hering, individually and as Director
Palm Beach County Property and
Real Estate Management Department

By: Brenda J. D'Agostino

Approved as to Legal Sufficiency:

By: Amy Taylor Petric

WITNESSES:

CENTENNIAL REAL ESTATE INVESTORS, LLC - 1:

By: _____

By: _____

By: _____

IN THE CIRCUIT COURT OF THE FIFTEENTH CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CENTENNIAL REAL ESTATE INVESTORS, LLC-1,
a Florida limited liability company,

Plaintiff,

v.

Case No.: 50-2006CA 010604XXXXMB

PALM BEACH COUNTY,
a political subdivision of the State of Florida,
and ROSS HERRING,
Director of Palm Beach County Real Estate Management Division,

Defendants.

RELEASE

The undersigned, Centennial Real Estate Investors, LLC-1, a Florida limited liability company ("Centennial,"), in consideration of the execution of a Settlement Agreement and a payment of Two Hundred Seven Thousand Dollars and No Cents (\$207,000.00,) representing return of Centennial's Two Hundred Two Thousand Dollars and No Cents (\$202,000.00) deposit on the property that forms the subject matter of the above-styled lawsuit, and an additional payment of Five Thousand Dollars and No Cents (\$5,000.00) worth of accrued interest, the receipt and sufficiency of which is hereby acknowledged, voluntarily and knowingly execute this release with the express intention of extinguishing the legal obligations described below.

The undersigned, on behalf of itself, its heirs, executors, administrators, and assigns, releases and forever discharges PALM BEACH COUNTY, its officers, agents, and employees, and ROSS HERING, Director of Palm Beach County Real Estate Management Division, none of whom admit any liability to the undersigned, and all of whom expressly deny any such liability,

from any and all claims, demands, damages, actions, causes of action, suits, judgments, and executions of any kind or nature whatsoever, which have resulted or may in the future develop from the incidents and claims that are the subject of the lawsuit styled Centennial Real Estate Investors, LLC-1, a Florida limited liability company, Plaintiff, v. Palm Beach County, a political subdivision of the State of Florida, and Ross Herring, Director of Palm Beach County Real Estate Management Division, Case No.: 50-2006CA 010604XXXXMB, in the Fifteenth Circuit Court in and for Palm Beach County Florida. Additionally, the undersigned withdraws its offer to purchase and releases any right it may have or claim to have to purchase the property that forms the subject of the above-styled lawsuit.

The undersigned has read this release, has consulted with legal counsel, understands all of its terms, and executes it with full knowledge of its significance.

DATED this ____ day of _____, 2009.

President
Centennial Real Estate Investors, LLC-1

Sworn to and subscribed before me this ____ day of _____,
2009, by _____.

Notary Public, State of Florida

Print, Type or Stamp Name of Notary

Personally Known _____ OR Produced Identification _____.

Type of Identification Produced _____.

IN THE CIRCUIT COURT OF THE FIFTEENTH CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CENTENNIAL REAL ESTATE INVESTORS, LLC-1,
a Florida limited liability company,

Plaintiff,

v.

Case No.: 50-2006CA 010604XXXXMB

PALM BEACH COUNTY,
a political subdivision of the State of Florida,
and ROSS HERRING,
Director of Palm Beach County Real Estate Management Division,

Defendants.

RELEASE

Palm Beach County ("County") in consideration of the execution of a Settlement Agreement, the filing of a voluntary dismissal with prejudice, and the execution of a release by Centennial Real Estate Investors, LLC-1, voluntarily and knowingly executes this release with the express intention of extinguishing the legal obligations described below.

The undersigned, on behalf of itself and its assigns, releases and forever discharges CENTENNIAL REAL ESTATE INVESTORS, LLC-1, its directors, officers, agents, and employees, from any and all claims, demands, damages, actions, causes of action, suits, judgments, and executions of any kind or nature whatsoever, which have resulted or may in the future develop from the incidents and claims that are the subject of the lawsuit styled Centennial Real Estate Investors, LLC-1, a Florida limited liability company, Plaintiff, v. Palm Beach County, a political subdivision of the State of Florida, and Ross Hering, Director of Palm Beach County Real Estate Management Division, Case No.: 50-2006CA 010604XXXXMB, in the

Fifteenth Circuit Court in and for Palm Beach County Florida.

The undersigned has read this release, has consulted with legal counsel, understands all of its terms, and executes it with full knowledge of its significance.

DATED this _____ day of _____, 2009.

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Commissioner John F. Koons
Chairman Board of County Commissioners

Approved as to Legal Sufficiency:

By: Amy Taylor Petrus

Sworn to and subscribed before me this _____ day of _____,
200__, by _____.

Notary Public, State of Florida

Print, Type or Stamp Name of Notary

Personally Known _____ OR Produced Identification _____.

Type of Identification Produced _____.

IN THE CIRCUIT COURT OF THE FIFTEENTH CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CENTENNIAL REAL ESTATE INVESTORS, LLC-1,
a Florida limited liability company,
Plaintiff,

v.

Case No.: 50-2006CA 010604XXXXMB

PALM BEACH COUNTY,
a political subdivision of the State of Florida,
and ROSS HERRING,
Director of Palm Beach County Real Estate Management Division,
Defendants.

RELEASE

Ross Hering ("Hering"), individually and as Director of Palm Beach County Real Estate Management Division ("Hering"), in consideration of the execution of a Settlement Agreement, the filing of a voluntary dismissal with prejudice, and the execution of a release by Centennial Real Estate Investors, LLC-1, voluntarily and knowingly executes this release in his official and individual capacities with the express intention of extinguishing the legal obligations described below.

The undersigned, on behalf of himself, his successors, and assigns, releases and forever discharges CENTENNIAL REAL ESTATE INVESTORS, LLC-1, its directors, officers, agents and employees, from any and all claims, demands, damages, actions, causes of action, suits, judgments, and executions of any kind or nature whatsoever, which have resulted or may in the future develop from the incidents and claims that are the subject of the lawsuit styled Centennial Real Estate Investors, LLC-1, a Florida limited liability company, Plaintiff, v. Palm Beach County, a political subdivision of the State of Florida, and Ross Hering, Director of Palm Beach

County Real Estate Management Division, Case No.: 50-2006CA 010604XXXXMB, in the Fifteenth Circuit Court in and for Palm Beach County Florida.

The undersigned has read this release, has consulted with legal counsel, understands all of its terms, and executes it with full knowledge of its significance.

DATED this _____ day of _____, 2009.

DIRECTOR, PALM BEACH COUNTY PROPERTY AND REAL ESTATE MANAGEMENT DEPARTMENT

By: _____
Ross Hering, Director
Palm Beach County Property and Real Estate Management Department

Approved as to Legal Sufficiency:

By: _____

By: _____
Ross Hering

Approved as to Legal Sufficiency:

By: Amy Taylor Feluch

Sworn to and subscribed before me this _____ day of _____, 200__, by _____.

Notary Public, State of Florida

Print, Type or Stamp Name of Notary

Personally Known _____ OR Produced Identification _____.

Type of Identification Produced _____.