

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: May 7, 2013 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve an Escrow Agreement between Palm Beach County, Sharon R. Bock Clerk & Comptroller of Palm Beach County (Clerk), The Related Companies, L.P. and CityPlace Hotel, LLC; and

B) authorize the deposit of \$27 Million of the proceeds of the bonds issued relating to the Project in the escrow account no earlier than October 1, 2013, and not later than November 15, 2013.

Summary: On October 30, 2012, the Board of County Commissioners (BCC) approved the necessary agreements to facilitate the construction and operation of the Convention Center Hotel. The approved Development Agreement (R2013-0103) requires the County to deposit \$27 Million, the County's contribution to the project, into an escrow account held by the Clerk. These funds will be utilized to reimburse the developer for the design, construction, equipping and furnishing of the hotel in accordance with the terms established in the Agreement. Disbursements shall not be made until the developer's equity of \$20 Million has been expended. Countywide (HF) (JM)

Background and Justification: On July 24, 2012, the BCC conceptually approved the Terms and Conditions of the hotel agreements. On April 12, 2011, the BCC conceptually approved a subsidy in the amount of \$27 Million. On March 9, 2010, the BCC approved the Selection Committee's number one ranking of The Related Companies, LP to develop and operate the hotel.

Attachments:

1. Escrow Agreement

Approved By: Sharon R. Bock 4-21-13
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures					
Operating Costs					
Debt Service					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	*				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes _____ No _____

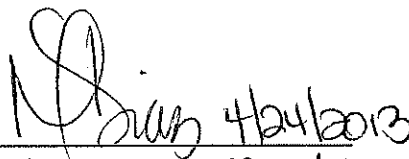
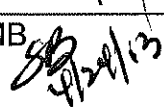


B. Recommended Sources of Funds/Summary of Fiscal Impact:

* A separate resolution will be presented to the BCC to authorize the issuance of bonds for the convention center hotel subsidy. The attached escrow agreement has no fiscal impact; however, the issuance of the bonds will generate approximately \$2.1M of debt service annually.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

 4/24/2013
 OFMB  4/24/13
 4/26/13
 Contract Development and Control
 4-26-13 

B. Legal Sufficiency:

 4/29/13
 Chief Assistant County Attorney

C. Other Department Review:

Department Director

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") made and entered into by THE RELATED COMPANIES, L.P. a New York limited partnership, CITYPLACE HOTEL, LLC, a Delaware limited liability company (collectively "Contractor") and PALM BEACH COUNTY, a political subdivision of the State of Florida ("County"), (hereinafter Contractor and County are collectively referred to as the "Principals") and SHARON R. BOCK, Clerk & Comptroller of Palm Beach County ("Escrow Agent").

WHEREAS, on November 30, 2012, Principals entered into a Development Agreement under Resolution No. R2013-0103 (the "Agreement"), a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Principals desire that Escrow Agent act as escrow agent relating to the Agreement and hold certain property as described in Exhibit "B", attached hereto and incorporated herein by reference, (the "Escrow Property") pursuant to the Escrow Instructions described on Exhibit "C", attached hereto and made a part hereof, (the "Instructions"); and

WHEREAS, Escrow Agent has agreed to act as Escrow Agent for the Escrow Property on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and agreements herein set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

I. Escrow.

A. Escrow Agent agrees to hold the Escrow Property in escrow subject to the terms and conditions contained in this Escrow Agreement and the Instructions.

B. Unless otherwise provided in this Escrow Agreement, Escrow Agent shall disburse the Escrow Property without interest or other accumulation in value.

C. Escrow Agent shall not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actually received written notice of such matter or thing. Escrow Agent shall not be charged with any constructive notice whatsoever.

D. In the event Instructions from Principals would require Escrow Agent to spend any monies or incur any costs, Escrow Agent shall be entitled to refrain from taking any action until Escrow Agent has notified Principals that payment for such costs is required and Escrow Agent receives payment for such costs.

E. Principals acknowledge and agree that nothing in this Escrow Agreement shall prohibit Escrow Agent from serving in a similar capacity on behalf of others.

II. Release of Escrow Property.

A. Escrow Agent agrees to release the Escrow Property in accordance with the terms and conditions set forth in the Instructions in this Escrow Agreement.

B. If all or any portion of the Escrow Property delivered to Escrow Agent is in the form of a check or in any form other than cash, Escrow Agent shall deposit same in an Escrow or Trust Account but shall not be liable for the non-payment thereof nor responsible to enforce collection thereof. In the event such check or other instrument is returned to Escrow Agent unpaid, Escrow Agent shall notify the Principals for further instructions.

III. Liability of Escrow Agent.

A. It is agreed that the duties of the Escrow Agent are purely ministerial in nature and shall be expressly limited to the safe keeping of the Escrow Property and for the disposition of the same in accordance with the Instructions in this Escrow Agreement. Contractor hereby agrees to indemnify Escrow Agent and holds it harmless from and against any and all claims, liabilities, damages, costs, reasonable attorney's fees and court costs at all trial and appellate levels, penalties, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature which it may incur or with which it may be threatened directly or indirectly, arising from, or in any way connected with this Escrow Agreement or which may result from Escrow Agent's following of Instructions from Principals, and in connection therewith agrees to indemnify Escrow Agent against any and all expenses, including attorney's fees and the costs of defending any action, suit, or proceeding or resisting any claim, whether or not litigation is instituted. This Article III shall not apply in the event Escrow Agent breaches the terms of this Agreement or fails to follow the instructions contained herein, nor shall Contractor indemnify or hold Escrow Agent harmless for any claims, liabilities, damages, costs, attorney's fees, court costs or other costs or matters set forth in this Article III or any other provisions of this Escrow Agreement arising as a result of the Escrow Agent's gross negligence..

IV. Disputes.

A. In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrow Property, Escrow Agent shall, at its option, either (1) tender the Escrow Property into the registry of the appropriate court or (2) disburse the Escrow Property in accordance with the court's ultimate disposition of the case, and Contractor hereby agrees to indemnify and hold Escrow Agent harmless from and against any damages or losses in connection therewith including, but not limited to, reasonable attorney's fees and court costs at all trial and appellate levels.

B. In the event Escrow Agent tenders the Escrow Property into the

registry of the appropriate court and files an action of interpleader naming the Principals and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith and Contractor hereby agrees to indemnify and hold Escrow Agent harmless from and against any damages or losses arising in connection therewith including, but not limited to, all costs and expenses incurred by Escrow Agent in connection with the filing of such action including, but not limited to, reasonable attorney's fees and court costs at all trial and appellate levels.

V. Term of Agreement.

A. This Escrow Agreement shall remain in effect unless and until it is canceled in any of the following manners:

1. Upon written notice given by all Principals of cancellation of designation of Escrow Agent to act and serve in said capacity, in which event, cancellation shall take effect no earlier than twenty (20) days after notice to Escrow Agent of such cancellation; or

2. Upon Escrow Agent's resignation as Escrow Agent, which Escrow Agent may do at anytime upon giving notice to Principals of its desire to so resign; provided, however, that resignation of Escrow Agent shall take effect no earlier than ten (10) days after the giving of notice of resignation; or

3. Upon compliance with all escrow provisions as set forth in this Escrow Agreement and in the Instructions.

B. In the event Principals fail to agree to a successor escrow agent within the time period described herein above, Escrow Agent shall have the right to deposit all of the Escrowed Property held hereunder into the registry of an appropriate court and request judicial determination of the rights of Principals, by interpleader or other appropriate action, and Contractor hereby indemnifies and holds Escrow Agent harmless from and against any damages or losses in connection therewith, including, but not limited to, reasonable attorney's fees and court costs at all trial and appellate levels.

C. Upon termination of the duties of Escrow Agent in either manner set forth in subparagraphs 1. and 2. of Paragraph A. of this Article V., Escrow Agent shall deliver all of the Escrowed Property to the newly appointed Escrow Agent designated by the Principals.

D. Escrow Agent shall not be bound by any modification, cancellation or rescission of this Escrow Agreement unless in writing and signed by Escrow Agent and Principals. In no event shall any modification of this Escrow Agreement, which shall affect the rights or duties of Escrow Agent, be binding on Escrow Agent unless it shall have given it prior written consent.

VI. Notices.

All notices, certificates, requests, demands, materials and other communications hereunder shall be in writing and deemed to have been duly given (1) upon delivery by hand to the appropriate address of each Principal or Escrow Agent as set forth in this Escrow Agreement, or (2) on the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid to such address or (3) upon delivery by an overnight courier service at the following addresses:

Contractor:

The Related Companies, L.P.
60 Columbus Circle
19th Floor
New York, New York 10023
Attention: Bruce Warwick

And to:

The Related Companies, L.P.
60 Columbus Circle
19th Floor
New York, New York 10023
Attention: Gopal Rajegowda

Copy to:

Carlton Fields, P.A.
525 Okeechobee Blvd.
Suite, 1200
West Palm Beach, FL 33401
Attention: Lynda J. Harris, Esquire

COUNTY:

PALM BEACH COUNTY
301 N. Olive Avenue
West Palm Beach, FL 33491
Attention: Shannon LaRocque, Assistant County Administrator

Copy to:

Palm Beach County Attorney's Office
301 N. Olive Avenue
West Palm Beach, FL 33401
Attention: Real Estate

ESCROW AGENT:

SHARON R. BOCK, Clerk & Comptroller
of Palm Beach County
Governmental Center
301 North Olive Avenue, 9th Floor Administration
West Palm Beach, FL 33401

VII. Choice of Law and Venue.

This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event any action, suit or proceeding is instituted as a result of any matter or thing affecting this Escrow Agreement, the parties hereto hereby designate Palm Beach County, Florida as the proper jurisdiction and venue in which the same is to be instituted.

VIII. Cumulative Rights.

No right, power or remedy conferred upon Escrow Agent by this Escrow Agreement is exclusive of any other right, power or remedy, but each and every such right, power or remedy, shall be cumulative and concurrent and shall be in addition to any other right, power or remedy Escrow Agent may have under the Escrow Agreement or now or hereafter existing at law, in equity or by statute. The exercise of one right, power or remedy by Escrow Agent shall not be construed or considered as a waiver of any other right, power or remedy.

IX. Binding Agreement.

This Escrow Agreement shall be binding upon the Principals and Escrow Agent and their respective successors and assigns.

X. Survival.

All indemnification provisions contained herein shall survive the termination of this Escrow Agreement.

(Remainder of page is left blank intentionally)

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of _____.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(Signature)

(Print name of witness)

(Signature)

(Print name of witness)

Signed in the presence of:

(Signature)

(Print name of witness)

(Signature)

(Print name of witness)

Signed in the presence of:

(Signature)

(Print name of witness)

(Signature)

(Print name of witness)

ESCROW AGENT:
SHARON R. BOCK, Clerk & Comptroller

By: _____
Deputy Clerk

CONTRACTOR:
RELATED COMPANIES, L.P. a New York
limited partnership

The Related Realty Group, Inc., a
Delaware corporation, its sole general
partner

By: _____
Name: Michael J. Brenner
Title: Executive Vice President
Date: _____

CITYPLACE HOTEL, LLC

By: _____
Name: Gopal Rajegowda
Title: Vice President
Date: _____

ATTEST:

SHARON R. BOCK, CLERK &
COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Assistant County Attorney

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Steven L. Abrams, Mayor

APPROVED AS TO TERMS
AND CONDITIONS

Department Director

EXHIBIT "A"

AGREEMENT

EXHIBIT "B"

ESCROW PROPERTY

TWENTY SEVEN MILLION DOLLARS (\$27,000,000.00).

EXHIBIT "C"

INSTRUCTIONS

The Escrow Property shall be disbursed pursuant to the Disbursement Procedures set forth in Article 6 of the Agreement.

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