

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: June 4, 2013 Consent Regular
 Ordinance Public Hearing

Department: Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: **A)** An Amendment to the Hotel Lease; and **B)** An Amendment to the Development Agreement with Related Companies, L.P. and City Place Hotel, LLC (collectively "Developer").

Summary: On October 30, 2012, the Board of County Commissioners approved Agreements to facilitate the construction and operation of the Convention Center Hotel. The Hotel Lease required the County to provide a guarantee of the first mortgage obtained by Developer. This guarantee was limited to 40% of the first mortgage amount up to \$20 Million with a maximum length of seven (7) years. The Payment, Performance and Construction Guaranty required Related Companies, L.P. (Related) to guarantee the operation of the hotel for the duration of the lease, which had a maximum term of 98 years. Following execution of the Agreements, it was determined by the County's external Bond Counsel that it is not legal under Florida's Constitution for the County to provide this type of guarantee. The elimination of the County's mortgage guarantee, along with the requirement for Related to guarantee that the hotel would stay operational for up to 98 years, created a significant financing challenge for Developer.

To overcome these financial challenges, Related requested that the operational guarantee be reduced to a period of seven (7) years after execution of the Agreements. In the event of an operational default after the expiration of the operational guarantee that is not cured by Developer, the first mortgage lender would very likely cure such default in order to avoid termination of the lease and loss of their leasehold mortgage which secures the first mortgage. If the lender fails to cure, the County could pursue termination of the lease which would also terminate the first mortgage. In this event, the County's investment would be \$27 Million as compared to \$47 Million due to the elimination of the \$20 Million mortgage guarantee.

Staff is recommending amendments to the Hotel Lease and the Development Agreement to resolve the financing issues, to clarify and strengthen the language of the Agreements related to funding sources and public purpose, and to allow Developer to pursue the construction of the project in phases thereby enabling an earlier start date for the commencement of construction. Countywide (JM) (HJF)

Background and Policy Issues: (continued on page 3)

Attachments:

1. Proposed Amendments
2. Amendment to Hotel Lease
3. Amendment to Development Agreement

Approved By:


 Assistant County Administrator

5-20-13

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	\$0	\$0	\$27,000,000	\$0	\$0
Operating Costs	0	0	0	0	0
Debt Service	0	0	2,242,690	2,243,910	2,243,100
External Revenues	0	0	(27,000,000)	0	0
Program Income (County)	0	0	0	0	0
In-Kind Match (County)	0	0	0	0	0
NET FISCAL IMPACT	\$0	\$0	\$2,242,690	\$2,243,910	\$2,243,100
No. Additional FTE Positions (Cumulative)	0	0	0	0	0
Is Item Included in Current Budget:	Yes	_____	No	_____	_____
Budget Account No:			\$		
Reporting Category:					

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

The debt service will be funded by available non Ad Valorem sources. However, the use of the funds will have a direct impact on Ad Valorem requirements.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

<p>OFMB <i>RAW 5/14</i> <i>5/30</i> <i>5/10</i> <i>5/21/2013</i></p>	<p>Contract Dev. and Control <i>5-24-13</i> <i>5/24/13</i></p>
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B. Legal Sufficiency:

James C. [Signature] 5/28/13
Assistant County Attorney

C. Other Department Review:

Department Director

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

Background and Policy Issues: 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 for the development of a 400 room Hilton Convention Center Hotel to The Related Companies, L.P. and directed Staff to begin negotiations with Related. On March 9, 2010, the BCC approved the Selection Committee's number one ranking of The Related Companies, L.P. to develop and operate the Hotel.

Attachment 1

Convention Center Hotel

Proposed Amendments

Developers Agreement

- Eliminates the County Guarantee of \$20 Million on the Senior Debt
- Incorporates Paramount Public Purpose language
- Clarifies that neither the full faith and credit nor the taxing power of the County is pledged to payment of the County's obligations
- Clarifies that the County Contribution cannot be used for the privately owned hotel garage
- Allows the developer to commence construction on portions of the project
- Changes defined term Developer Equity to Developer Contribution
- Changes defined term Subsidy to County Contribution

Hotel Lease

- Amends the Payment, Performance and Construction Guarantee such that the Operational Guarantee survives for seven (7) years after the Effective Date instead of the term of the lease.
- Eliminates the County Guarantee of \$20 Million on the senior debt
- Incorporates Paramount Public Purpose language
- Clarifies that neither the full faith and credit nor the taxing power of the County is pledged to payment of the County's obligations
- Modifies the disbursement of condemnation proceeds
- Amends the definition of Unavoidable Delays to include the systematic and pervasive failure of the capital markets that causes the unavailability of debt in the United States
- Changes defined term Subsidy to County Contribution

AMENDMENT TO HOTEL LEASE

THIS IS AN AMENDMENT TO HOTEL LEASE made and entered into _____, 2013, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, ("Owner") and CITYPLACE HOTEL, LLC, a Delaware limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Owner and Tenant entered into that certain Hotel Lease dated November 30, 2012 (R2013 - 0104) (Hotel Lease); and

WHEREASE, Owner and Tenant have agreed to amend the Hotel Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Hotel Lease.
2. The defined term "Subsidy" and all references to "Subsidy" are hereby changed to "County Contribution".
3. The defined term "Unavoidable Delays" is hereby deleted in its entirety and amended as follows:

"Unavoidable Delays" means delays due to (a) strikes, slowdowns, lockouts, pandemic outbreak or other health or environmental disaster, (b) acts of God, (c) inability to obtain labor or materials, (d) war, enemy action, civil commotion or terrorism, (e) fire, casualty or catastrophic weather conditions, (f) a court order which causes a delay (unless resulting from disputes between or among or caused by the party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging party or Affiliates (or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging party), (g) the inability to obtain permits and/or other required authorizations through no fault of Tenant, (h) the inability to fund or obtain funding or financing or to obtain the funding of insurance proceeds if occasioned by failure of the other party to comply in any material respect with its obligations under and pursuant to this Hotel Lease, (i) the inability to fund or obtain funding or financing or to obtain the funding of insurance proceeds if occasioned solely by a catastrophic weather incident, (j) a material change in Applicable Law, or (k) another cause beyond such party's control. Such party shall use good faith efforts to notify the other party not later than thirty (30) days after such party knows of the occurrence of an Unavoidable Delay. In no event shall any party's financial condition or inability to fund or obtain funding or financing or to obtain the funding of insurance proceeds constitute an "Unavoidable Delay" with respect to such party, unless the inability to fund or obtain funding or financing or to obtain the funding of insurance proceeds is occasioned by: (i) failure of the other party to comply in any material respect with its obligations under and pursuant to this Hotel Lease, (ii) a catastrophic weather incident, or (iii) systematic and pervasive failure of the capital markets that causes the unavailability of debt for similar projects in the continental United States (i.e. terrorist attacks similar to 9/11, major lender collapse such as Lehman Brothers event in 2008, and etc.). In no event shall any delay arising from a party's (or its Affiliate's (or,

in the case of Tenant, Related or Related's Affiliate's) default under any Project Document constitute an "Unavoidable Delay" with respect to such party's obligations hereunder. The times for performance set forth in this Hotel Lease (other than for monetary obligations of a party) shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Hotel Lease.

4. Section 9.1(b) entitled "Disbursement of Award" is hereby deleted in its entirety and amended as follows:

Disbursement Award. If all or Substantially All of the Premises are taken or condemned as provided in Section 9.1(a), the Net Condemnation Award paid or payable to Owner, Tenant or any lender or mortgagee claiming through either of them in connection with such taking or condemnation, as finally determined by an applicable court having jurisdiction over the condemnation proceeding, shall be apportioned as follows:

- (i) there shall first be paid to Owner that portion of the Net Condemnation Award equal to the amount Owner would have received from Tenant if Tenant exercised the Purchase Option on the date of such taking, to the extent and only to the extent attributable to the fair market value of the Hotel Land (with the balance of the Net Condemnation Award being referred to herein as the "Adjusted Net Condemnation Award");
- (ii) there shall next be paid to any Recognized Mortgagee the unpaid principal indebtedness secured by such Recognized Mortgagee with interest thereon at the rate specified therein to the date of payment (including any prepayment fees thereon and any so-called "yield maintenance" or "make-whole" amounts or other sums intended to assure to the Recognized Mortgagee a certain rate of return under the loan secured by the Recognized Mortgage, if any, as well as any costs payable by Tenant in connection with such Recognized Mortgage pursuant to any "swap" or other interest rate protection or hedging mechanism);
- (iii) there shall next be paid to Owner that portion of the Adjusted Net Condemnation Award equal to the amount Owner would have received from Tenant if Tenant exercised the Purchase Option on the date of such taking less the amount paid to Owner pursuant to 9.1(b)(i) above for the Hotel Land; and
- (iv) the remaining Adjusted Net Condemnation Award shall be disbursed to Tenant.

For example purposes only, if, all or Substantially All of the Premises are taken on the 37th anniversary of the Effective Date, (1) the Net Condemnation Award is equal to \$125 million, (2) the fair market value of the Hotel Land is equal to \$25 million, (3) the value of Improvements is equal to \$100 million, (4) the fair market value of Owner's Interest in the Premises is equal to \$125 million, and (5) the amount of the Recognized Mortgage is \$33 million:

- a) Owner shall be paid an amount equal to \$97 million (\$25 million for the Hotel Land under clause (i) above and \$67 million under clause (iii) above.
- b) Lender shall be paid an amount equal to \$33 million.
- c) Tenant shall be paid \$0.

5. The following is hereby added to Section 10.1(j):

On the seventh (7th) anniversary of the Effective Date of the Hotel Lease, Owner acknowledges and agrees that the Payment, Performance and Construction Guaranty shall terminate and be of no further force and effect notwithstanding anything to the contrary contained in the Payment, Performance and Construction Guaranty, this Hotel Lease, the Development Agreement, the Hotel Room Block Agreement or the Garage Easement (the "Guaranty Termination Date"). Subject to the foregoing, in the event a Permitted Sale occurs prior to the Guaranty Termination Date, the Payment, Performance and Construction Guaranty shall continue and be in full force and effect until the Guaranty Termination Date unless the proposed purchaser provides a substitute guaranty (on substantially the same terms and conditions as the Payment, Performance and Construction Guaranty), to be effective from and after the effective date of any such Permitted Sale through the Guaranty Termination Date, from a guarantor reasonably acceptable to Owner.

6. Section 11.13 entitled "County Credit Enhancement Guaranty of Mortgage" is hereby deleted in its entirety.

7. A new Section 36.23 is hereby added to the Hotel Lease as follows:

Source of Funds. The parties hereto acknowledge and agree that neither the full faith and credit nor the taxing power of the County is pledged to payment of the County's obligations under this Hotel Lease or the other Project Documents and that said obligations are to be satisfied solely from the sources provided for in this paragraph. The County intends to finance its monetary obligations under the Project Documents, including, but not limited to, its funding obligations with respect to the Project by the issuance of the County's limited obligation revenue bonds or other indebtedness, secured by a pledge of certain legally available revenues of the County ("Bonds"). Notwithstanding any other provision of this Agreement to the contrary, Developer acknowledges and agrees that: (i) the County's obligations under the Project Documents are subject to the condition precedent that the County generate sufficient funds to satisfy such obligations by the issuance and sale of Bonds; and (ii) the County may, in its sole and absolute discretion, choose to fund the County's obligations under the Project Documents with any other non-ad valorem revenue or financing source in lieu of issuing the Bonds.

8. A new Section 36.24 is hereby added to the Hotel Lease as follows:

Paramount Public Purpose finding. The County has determined that in order for its Convention Center to be as successful as possible, a first class convention center hotel is needed immediately adjacent to the Convention Center and accordingly, County hereby finds that development of the Hotel pursuant to the Development Agreement and operation of the Hotel pursuant to the Hotel Lease serves a Paramount Public Purpose for the County.

9. Except as set forth herein, the Hotel Lease remains unrevised and in full force and effect, and the parties hereby ratify, confirm and adopt the Hotel Lease as amended hereby.

THE REMAINDER OF THIS PAGE WAS LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties have set their hands and seals on the date set forth above.

PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida

ATTEST:

SHARON R. BOCK, Clerk & Comptroller

By its BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Steven L. Abrams, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Assistant County Attorney

By: _____
Assistant County Administrator

Witnesses:

CITIPLACE HOTEL, LLC

Signature

By: _____

Name: _____

Print Name

Title: _____

Signature

Print Name

State of New York)

) SS:

County of _____)

On the _____ day of _____ in the year _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to be within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public (Signature)

(Printed Name)

(Serial Number, if any)

(AFFIX NOTARY SEAL)

(My Commission Expires)

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS IS AN AMENDMENT TO DEVELOPMENT AGREEMENT made and entered into _____, 2013, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, ("County") THE RELATED COMPANIES, L.P., a New York limited partnership ("Related") and CITYPLACE HOTEL, LLC, a Delaware limited liability company ("Developer"). (The County, Related and Developer are collectively referred to herein as the Parties.)

WITNESSETH:

WHEREAS, the Parties entered into that certain Development Agreement dated November 30, 2012 (R2013-0103) (the "Development Agreement"); and

WHEREASE, the Parties have agreed to amend the Development Agreement as hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Development Agreement.

2. The defined term "County Guarantee" and all reference to "County Guarantee" are hereby deleted from the Development Agreement.

3. The defined term "Developer Equity" and all references to "Developer Equity" are hereby changed to "Developer Contribution".

4. The defined term "Subsidy" and all references to "Subsidy" are hereby changed to "County Contribution".

5. The references to "and Garage" are hereby deleted from Section 6.1(a) and the following is hereby added to Section 6.1(a):

Notwithstanding anything herein to the contrary, Developer shall only use the County Contribution for planning, permitting, designing and constructing the Hotel and shall not use any of the County Contribution for planning, permitting, designing or constructing the Garage.

6. The following is hereby added at the end of Section 2.1:

Notwithstanding anything to the contrary contained herein, the Developer shall, in Developer's sole and absolute discretion, after obtaining written consent from the County (such consent not to be unreasonably withheld, conditioned or delayed), be allowed to Commence Construction for the Improvements prior to satisfaction of all conditions precedent set forth in Article 2(i), (ii), or (iii), and, moreover, Developer shall be allowed to Commence Construction

on portions of the Project constituting the preliminary site work, borings and foundations (collectively "Preliminary Site Work"), the Hotel, or the Garage prior to starting the rest of the Improvements. In the event the Developer elects to Commence Construction on the foregoing described separate components of the Project before starting the rest of the Improvements then the provisions of Sections 2.1 (i), (v), (vi), (ix)(c), and the portion of Section 2.2 relating to the gross maximum price contract, shall apply only to those portions of the Project that Developer intends to Commence Construction and to which the County has consented as provided in the first sentence of this Section 2.1. Subject to the foregoing provisions of this Section 2.1, Developer shall provide to the County, prior to Commencement of Construction, all documentation required by the County in order to provide such consent (including without limitation all permits and approvals required for such work and insurance coverage on companies and in such reasonable amounts as shall be required for such work by the County).

7. The Section 26.18 is amended as follows:

County Obligations (Funds). As set forth in this Agreement, County, Related and Developer acknowledge and agree that the County's obligation to pay any of the amounts called for in this Agreement including, but not limited to, the obligations set forth in Section 6.1 is conditioned upon the County's issuance and sale of bonds, or other indebtedness, secured by a pledge of certain legally available non ad valorem revenues of the County. Until such time as the proceeds from the sale of bonds become available or to the extent that the proceeds from the sale of bonds are insufficient to cover the obligations of the County in this Agreement, County may, but shall not be obligated to, budget and appropriate funds sufficient to cover all commitments of the County set forth in this Agreement. The parties acknowledge and agree that the County's funding of the bonds or budgeting and appropriating funds sufficient to cover all commitments of the County set forth in this Agreement prior to issuance of the Notice to Proceed is a condition precedent to the Developer's and Related's obligations under this Agreement, under the Hotel Lease and under the other Project Documents.

The Parties hereto acknowledge and agree that neither the full faith and credit nor the taxing power of the County is pledged to payment of the County's obligations under this Development Agreement or the other Project Documents and that said obligations are to be satisfied solely from the sources provided for in this Section.

8. A new Section 26.20 is hereby added to the Development Agreement as follows:

Paramount Public Purpose Finding. The County has determined that in order for its Convention Center to be as successful as possible, a first class convention center hotel is needed immediately adjacent to the convention Center and accordingly, County hereby finds that development of the Hotel pursuant to the Development Agreement and operation of the Hotel pursuant to the Hotel Lease serves a Paramount Public Purpose for the County.

9. Except as set forth herein, the Development Agreement remains unrevised and in full force and effect, and the Parties hereby ratify, conform and adopt the Development Agreement as amended hereby.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date set forth above

Witnesses:

CITYPLACE HOTEL, LLC

Signature

By: _____

Name: _____

Title: _____

Printed Name

Signature

Printed Name

State of New York)
) SS:
County of New York)

On the _____ day of _____, 2013, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to be within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public (Signature)

(Printed Name)

(AFFIX NOTARY SEAL)

(My Commission Expires)

Witnesses:

**RELATED COMPANIES, L.P., a
New York limited partnership**

Signature

By: The Related Realty Group, Inc., a
Delaware corporation, its sole general
Partner

Printed Name

By:

Signature

Name:

Printed Name

Title:

Date:

State of New York)
) SS:
County of _____)

On the _____ day of _____ in the year _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to be within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public (Signature)

(Printed Name)

(AFFIX NOTARY SEAL)

(My Commission Expires)

PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida

ATTEST:

SHARON R. BOCK, Clerk & Comptroller

By its BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Steven L. Abrams, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Assistant County Attorney

By: _____
Assistant County Administrator

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Steven L. Abrams and _____, as Mayor of the Pam Beach County Board of County Commissioners and as Clerk & Comptroller of Palm Beach County, on behalf of Palm Beach County, a political Subdivision of the State of Florida who are ____ personally know to me or ____ who have produced _____ as identification.

Notary Public (Signature)

(Printed Name)

(AFFIX NOTARY SEAL)

(My Commission Expires)