PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Department:	County Administr		Ordinance	LJ	Public Hearing
Meeting Date:	June 7, 2016	[x] []	Consent Ordinance	[]	Regular Bublic Usering

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends a motion to approve: the Fourth Amendment to the Development Agreement between the Related Companies, L.P. (Related) and CityPlace Hotel, LLC (Developer) and Palm Beach County.

Summary: On October 30, 2012, the Board of County Commissioners (BCC) approved a Development Agreement and Lease to facilitate the construction and operation of the Convention Center Hotel. Under the terms of the Development Agreement, the Developer was required to achieve Substantial Completion no later than March 30, 2016, as memorialized in the County's Notice to Proceed for Vertical Construction dated September 22, 2014. The hotel opened for business on January 29, 2016, approximately two (2) months prior to the March 30, 2016, date. Substantial Completion also requires delivery of the project as built drawings, final waivers and releases of liens. The Developer is requesting an extension from March 30, 2016 to September 30, 2016 to finalize these documents. This Amendment also extends the Final Completion date from August 30, 2016 to February 28, 2017. <u>District 7</u> (HF)

Background and Justification: On December 15, 2015, the BCC approved the Third Amendment to the Development Agreement (R2015-1856) and Third Amendment to the Hotel Lease (R2015-1857). On July 22, 2014, the BCC approved the Second Amendment to the Development Agreement (R2014-0982) and the Second Amendment to the Hotel Lease (R2014-1090). On June 4, 2013, the BCC approved an Amendment to the Development Agreement (R2013-0707) and an Amendment to the Hotel Lease (R2013-0706). On October 30, 2012, the BCC approved agreements to facilitate the construction and operation of the Convention Center Hotel and Garage. 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.

Attachments:

1. Fourth Amendment to Development Agreement

Approved by:	6-6-16
Assistant County Administrator	Date

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures Operating Costs External Revenues Program Income (County)	\$0 0 0 0	\$0 0 0 0	\$0 0 0 0	\$0 0 0 0	\$0 0 0 0
In-Kind Match (County)	0	0	0	0	0
NET FISCAL IMPACT	\$0	\$0	\$0	\$0	\$0
# Additional FTE Positions (Cumulative)	0	0	0	0	0
Is Item Included in Current Budget:	Y	Yes		No	

Budget Account No:

Reporting Category _____

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

NO Fiscal Impact

Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

A. Legal Sufficiency:

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A. Other Department Review:

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Department Director

This summary is not to be used as a basis for payment.

FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment") is made and entered into on _______, 2016, 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", and each individually, a "Party".

WITNESSETH:

WHEREAS, the Parties entered into that certain Development Agreement dated November 30, 2012 (R2013-0103), as amended by that certain Amendment to Development Agreement dated June 4, 2013 (R2013-0707), as further amended by that certain Second Amendment to Development Agreement dated July 22, 2014 (R2014-0982), as further amended by that certain Third Amendment to Development Agreement dated December 15, 2015 (R2015-1856) (the "Development Agreement");

WHEREAS, 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. **Recitals**. The foregoing recitals are true and correct and incorporated herein by reference.

2. **Capitalized Terms**. Terms not defined herein shall have the same meaning as ascribed to them in the Development Agreement.

3. **Extension of Completion Deadlines**. The following defined terms under the Development Agreement are hereby amended as follows:

3.1 "Substantial Completion Deadline" shall mean September 30, 2016.

3.2 "Final Completion Deadline" shall mean February 28, 2017.

4. **Ratification; Conflict**. Except as modified by this Amendment, the Development Agreement shall remain otherwise unmodified and in full force and effect. If there is any conflict between the terms of this Amendment and the Development Agreement, the terms of this Amendment shall control.

5. **Miscellaneous Provisions**. This Amendment constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Amendment. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Amendment are expressly

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merged into and superseded by this Amendment. The provisions of this Amendment may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Amendment, none of the Parties have relied upon any statement, representation, warranty, or agreement of any of the other Parties except for those expressly contained in this Amendment. The Parties waive and release all claims and causes of action for fraud in the inducement or procurement of this Amendment it being their intent that this Amendment is incontestable on account of any claim of fraud, or for any other reason. The Parties may amend this Amendment only by a written agreement of the Parties that identifies itself as an amendment to this Amendment or the Development Agreement. The Parties may execute this Amendment in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or in PDF format is as effective as executing and delivering this Amendment in the presence of the other parties to this Amendment. This Amendment is effective upon delivery of one executed counterpart from each Party to the other Parties. In proving this Amendment, a Party must produce or account only for the executed counterpart of the Party to be charged. Whenever placed before one or more items, the words "include," "includes," and "including" shall mean considered as part of a larger group, and not limited to the item(s) recited. Each of the Parties have reviewed this Amendment and all of its terms with legal counsel, or had an opportunity to review this Amendment with legal counsel, and is not relying on any representations made to him by any other person concerning the effect of this Amendment. This Amendment shall be interpreted without regard to any presumption or rule requiring construction against the Party causing this Amendment to be drafted. No inference shall be drawn from the modification or deletion of versions of the provisions of this Amendment contained in any drafts exchanged between the parties before execution of the final version of this Amendment that would be inconsistent in any way with the construction or interpretation that would be appropriate if the prior drafts had never existed.

[SIGNATURE PAGES FOLLOW]

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

Witnesses:	CITYPLACE HOTEL, LLC, a Delaware limited liability company
Signature	By:
	Name:
Printed Name	Title:
Signature	
Printed Name	
State of New York)) SS: County of New York)	
County of New York)	
appeared personally	, 2016, before me, the undersigned, personally known to me or proved to me on the basis of) whose name(s) is(are) subscribed to be within

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)

(AFFIX NOTARY SEAL)

(My Commission Expires)

(Printed Name)

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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:		
	Name:		
Signature	Title:		
Printed Name	Date:		
State of New York)) SS:			

On the _____ day of ______, 2016, 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)

(AFFIX NOTARY SEAL)

County of New York

)

(My Commission Expires)

(Printed Name)

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

ATTEST:

By: _____

By: ____

SHARON R. BOCK, Clerk & Comptroller

By its BOARD OF COUNTY COMMISSIONERS

Mary Lou Berger, Mayor

APPROVED AS TO

Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

_____ By: _____ Assistant County Attorney

Ву: ____

CONDITIONS

Assistant County Administrator

TERMS

AND

STATE OF FLORIDA COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Mary Lou Berger, _____, and _____, as Mayor of the Palm Beach County Board of County Commissioners, as Clerk & Comptroller of Palm Beach County, as Assistant County Attorney of Palm Beach County, and as Assistant County Administrator of Palm Beach County, respectively, on behalf of Palm Beach County, a political Subdivision of the State of Florida who are _____ personally know to me or have produced ______as identification.

Notary Public (Signature)

(Printed Name)

(AFFIX NOTARY SEAL)

(My Commission Expires)

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