



AUDIT COMMITTEE
"A Committee of the City Commission"
P.O. Box 3366
West Palm Beach, Florida 33402
Tel: 561/659-8099
Fax: 561/659-8066

"The Capital City of the Palm Beaches"

TO: Honorable Mayor
and
Members of the City Commission

FROM: Commissioner William Moss, Audit Committee Chairperson

DATE: April 11, 2003

SUBJECT: Transmittal of Internal Audit Report No. 2003-001
AUDIT OF CITY CENTER PARTNERSHIP, INCORPORATED

Attached is the report on **AUDIT OF CITY CENTER PARTNERSHIP, INCORPORATED (CCP)** approved by the Audit Committee at its regular meeting held today.

The audit showed that CCP needed to update its Articles of Incorporation and By-Laws, improve internal controls over cash management, and revise some of its financial reports. After these issues were brought to the attention of CCP's President during the audit, several improvements were implemented. Plans are in-place to correct the remaining items needing attention.

William Moss, Commissioner, Audit Committee Chairperson

"An Affirmative Action/Equal Opportunity Employer"



"The Capital City of the Palm Beaches"

INTERNAL AUDITOR'S OFFICE

P.O. Box 3366
West Palm Beach, Florida 33402
Tel: 561/659-8084
Fax: 561/659-8066

TO: Lois J. Frankel, Mayor
and
Lyn Harris, Board Chairperson, City Center Partnership, Incorporated

FROM: Imogene Isaacs, CIA, CGFM, Internal Auditor

DATE: April 11, 2003

SUBJECT: REPORT NO. 2003-001
AUDIT OF CITY CENTER PARTNERSHIP, INCORPORATED

INTRODUCTION

At the former Mayor's request and as approved by the Audit Committee at its August 17, 2001 meeting, we have completed an audit of City Center Partnership, Incorporated (CCP).

Several circumstances led to the request and approval of this audit. A company, located in the downtown area and a recipient of a City economic development grant, went out of business raising concerns that similar conditions might exist with other businesses receiving West Palm Beach Community Redevelopment Agency (CRA) loans and grants made by CCP. Also, the Finance Department expressed concerns over CCP's practices of remitting loan principal and interest payments to the CRA. Furthermore, the CRA Director wanted an assessment of CCP for possible CRA use in future economic development activities and initiatives.

The audit focused on verifying compliance with the agreements between the CRA and the CCP (Agreements) for loans and grants and loan principal and interest payments through September 30, 2001, and on evaluating CCP's organizational structure and internal controls.

"An Affirmative Action/Equal Opportunity Employer"

CONCLUSIONS AND SUMMARY OF FINDINGS

CCP activities primarily consisted of loans and grants funded by the CRA. A source and application of funds from inception, August 24, 1990, to September 30, 2001, summarizing CCP's financial transactions is shown on Exhibit I.

We believe that the \$1,286,288.91 provided by the CRA helped stimulate downtown businesses and rental housing. It should be noted, however, that some of the loans and grants did not meet the original criteria set out in the Agreements. Notwithstanding, the CRA approved most deviations and was, or should have been, aware of other inconsistencies with the criteria.

With regard to funds provided by the CRA, three firms receiving \$103,500 in grants are no longer in business in downtown West Palm Beach and one of those firms received a \$17,500 loan and defaulted. One loan in the amount of \$100,000 was repaid, although the firm is one of those that closed its downtown location, and one loan in the amount of \$150,000 was repaid to a balance of about \$60,000 at September 30, 2001. The two housing developments receiving grants totaling \$200,000 and with combined loan balances totaling \$490,678 at September 30, 2001, are not required to pay the loans until maturity in 2009 and 2015; however, interest is being accrued. A portion of the interest, two percent (2%), is due annually if the developments generate net operating incomes. Exhibit II shows more detail on the grants and loans made with CRA funds.

Since the CCP's governance and control environment are concerns, we believe that the City and CRA should not initiate any new projects or activities with CCP until the President and Board of Directors bring about a concerted effort to improve CCP's governing documents, its compliance with Agreements with the CRA, its cash management practices, and its recording and reporting of financial information. Our findings along with recommendations for corrective action and CCP President Bill Fountain's and former Mayor Joel Daves' responses are found under the **Findings, Recommendations, and Responses** section.

The following summarizes our findings.

Finding No. 1: Articles of Incorporation and By-Laws Need to be Reviewed, Evaluated, and Revised identifies inconsistencies between requirements of the governing documents and Florida Statutes, noncompliance with the governing documents and the statutes, and related weaknesses in internal controls. Mr. Fountain reported that the CCP authorized its attorney, Broad and Cassel, to review and make any necessary revisions for compliance.

Finding No. 2: Cash Management and Handling Practices Need to be Improved sets out that:

- CCP had no formal procedures established for cash management.
- A large cash receipt (\$110,000) was not timely recorded in the books and properly stated in the financial reports for several months.
- Practices covering the remittance of loan principal and interest payments had not complied with contract provisions agreed to with the CRA.
- Issuing checks payable to “cash” for police security had become a regular practice.
- A bank account not belonging to CCP was used to pay invoices addressed to CCP although the invoices were obligations of another party and the bank account was recorded in CCP’s books.
- Paid invoices were not stamped “paid” to mitigate the chance of duplicate payments.
- The person responsible for reconciling cash did not receive bank statements directly from the bank and the bank statements did not include the cancelled checks.

Mr. Fountain requested recommendations for cash management procedures from the City. He also reported that no checks will be issued to “cash” in the future, accounting records will be revised to remove the bank account not owned by CCP from its records, the bank was requested to return cancelled checks with the bank statements and to mail the statements to the accountant, and invoices would be stamped “paid.” He also agreed to review CCP’s practices over remittance of loan principal and interest payments to the CRA and, if appropriate, may request the CRA to allow quarterly payments.

Finding No. 3: Financial Records and Statements Should be Corrected and Reissued and IRS Returns Should be Amended identifies that accounting records and audited financial statements, as well as Internal Revenue Service (IRS) returns, contain errors in, and omissions of, financial information. Mr. Fountain reported that he will have the records, financial statements, and IRS returns corrected, as necessary.

We thank Bill Fountain and the staff of the West Palm Beach Downtown Development Authority (DDA) for their cooperation during the audit. We also thank Gary Porro, City Treasury Supervisor, and the staff of the City’s Finance Department and the City Clerk’s Office for their assistance.

OBJECTIVES, SCOPE, AND METHODOLOGY

Specific objectives were to determine that:

- CCP complied with general and specific guidelines for providing loans and grants set forth in the Agreements.
- All funds provided by the CRA were properly used.
- Remittances to the CRA for loan principal and interest payments were accurate and timely.
- Outstanding loan balances were correct.
- The system of internal controls over financial matters was adequate.
- CCP's organizational structure was in compliance with Florida Statutes covering not-for-profit corporations.

We examined records, reports, and financial activities of CCP from August 24, 1990 to fiscal year ending September 30, 2001.

The audit was performed in accordance with government auditing standards. We performed various audit steps as follows:

- Obtained and reviewed Agreements between the CCP and the CRA.
- Obtained and reviewed Loan Guarantee Program.
- Obtained and reviewed the Articles of Incorporation, By-Laws, monthly and audited financial statements, and IRS Forms 990, Returns of Organization Exempt from Income Tax (Form 990).
- Reviewed CCP and CRA minutes.
- Analyzed cash receipts and disbursements from August 24, 1990 to September 30, 2001. Prepared a source and application of funds.
- Verified receipts and disbursements by vouching a random sample of cancelled checks, duplicate copies of checks, bank statements, invoices, and remittance advices.
- Performed a test of subsequent receipts and disbursements.
- Tested loans and grants for compliance with specific guidelines in the Agreements.
- Performed independent confirmations of loan balances with borrowers.
- Verified CCP remittances to the CRA. Traced items to the City's records.
- Performed a test of loan principal and interest payments received by the CCP and the related timing of remittances to the CRA.
- Performed such other procedures as considered necessary.

Donald A. Pierro, former Assistant Internal Auditor, performed most of this audit. Kenneth Nielson, Senior Assistant Internal Auditor, performed additional work in selected areas and completed the report.

BACKGROUND AND PERTINENT INFORMATION

CCP was initially formed by the members of the DDA as a Florida corporation on August 24, 1990. CCP is listed as a non-profit corporation on the Florida Corporations Registry with active status. In August 1990, the DDA provided a \$100,000 grant as initial funding for CCP.

On July 20, 1993, the IRS granted CCP exempt status from Federal income tax under Section 501(a) of the Internal Revenue Service Code as described in Section 501(c) (6). Notwithstanding CCP's tax-exempt status, the IRS ruled that contributions and gifts to CCP are not deductible by donors as charitable contributions for Federal income tax purposes.

The organizational structure consists of a membership body and a board of directors, with an executive committee. The officers of CCP include a chairman, chairman elect, president (who may also serve as secretary and treasurer), secretary, and treasurer.

Bill Fountain, Executive Director of the DDA, is CCP President. The president is the chief operating officer and carries out the day-to-day operations. The CCP has no staff. The DDA houses CCP and absorbs its overhead, staffing, and administrative costs.

CCP includes among its purposes:

- All of the purposes of the DDA,
- Promoting neighborhood and community development, and
- Making loans to merchants and other businesses within the boundaries of the DDA District.

The DDA functions, stated in its enabling special laws, include:

- Preparing an analysis of the economic conditions and changes occurring in the downtown area, considering the effect of factors as growth, traffic congestion, parking, access facilities, and structural obsolescence and deterioration.
- Formulating long-range plans for improving the attractiveness and accessibility to the public of downtown facilities, remedying the deterioration of downtown property values, and developing the downtown area.

- Recommending to the Mayor and downtown businesses and residents actions for implementing the downtown development plans, including removal, razing, repair, renovation, reconstruction, and remodeling of existing structures, addition of new structures and facilities, etc.
- Participating actively in the implementation and execution of downtown development plans.
- Carrying out projects and undertakings authorized by law related to the downtown area.

After increasing for several previous years, property values decreased in 1992. The City focused on revitalization through code enforcement and economic development and a bond issue for improvements in the City’s downtown area, intended to positively affect property values.

In an effort to stimulate development of affordable rental housing units and retail businesses and to sustain going concerns in the downtown area, the CRA passed Resolutions No. 93-1 and No. 93-2 on January 11, 1993 and entered into the Agreements with CCP to provide low interest loans and grants for rental housing and retail business. Loans and grants were to be made for rehabilitation or retrofitting of buildings for housing and for capital improvements for manufacturer’s outlets and traditional retail businesses.

Initial funding totaled \$500,000 each for housing and business. Grants were limited to \$50,000 and loans were limited to \$100,000 to any one entity. Loans were limited to a five-year term, although amortization for twenty years with a balloon payment at the end of the five years was allowed.

On September 27, 1993, the CRA amended the earlier resolutions to the following allocations:

	<u>Grants</u>	<u>Loans</u>
	\$	\$
• Rental Housing	100,000	300,000
• Retail Business	250,000	350,000

At that time, the CRA also agreed that loans in excess of the limit and with terms longer than the five-year limit would be reviewed and approved on a case-by-case basis.

On January 10, 1994, the CRA approved an additional \$300,000 earmarked for the Ballet Villages development. The approval brought the total available to CCP to \$1,300,000 (\$700,000 for housing, \$600,000 for business).

On September 12, 1994, the CRA approved the use of monies received from loan principal payments for additional grants and loans to be made by CCP. On October 11, 1994, the CRA approved the use of these monies for facade grants to be made by CCP.

The Agreements covered the period February 1, 1993 to September 30, 1995. There were no extensions of the Agreements.

While the Agreements were in effect and as shown on Exhibit II, the CRA funded the CCP loan and grant programs in an amount of \$1,305,183.61, less a reimbursement for retail business program over-funding of \$18,894.70 resulting in net cash from the CRA of \$1,286,288.91. CCP earned a one percent (1%) fee on loans and grants, approximately \$13,500, for administration of the programs. Loans made totaled \$817,500 and grants made totaled \$474,223.38.

In addition to the above loan and grant programs, effective July 1, 1997, and extending for a period of two years, the City entered into a Loan Guarantee Program Agreement with CCP and five area banks. No funding was made for this program, although funding was provided for in the agreement. Mr. Fountain stated that CCP guaranteed one loan under this program for The Firehouse Group, Inc. (Datura Street Station) for \$168,000 representing twenty percent (20%) of \$840,000. This loan was refinanced in 1999 and the CCP guaranty released.

Not only did CCP make loans and grants with CRA funds, the CCP also made loans with \$150,000 made available by DDA.

For all practical purposes, the CCP has no ongoing activities or programs. CCP services three loans (only one is making payments) and leases commercial space in the Harris Building along with a sublease to the occupant. In addition, CCP handled accounting for revenues and expenditures of the PR/Marketing bank account (a DDA program) and transactions involving Park One and police officer security services. Both of these activities have been discontinued.

FINDINGS, RECOMMENDATIONS, AND RESPONSES

FINDING No. 1: ARTICLES OF INCORPORATION AND BY-LAWS NEED TO BE REVIEWED, EVALUATED, AND REVISED

Amendments to the By-Laws over the years have become confusing precluding the CCP from compliance with certain provisions of Florida Statutes and weakening the internal control structure.

Membership eligibility for CCP has evolved since the Articles of Incorporation in 1990 whereby the CCP cannot comply with Florida Statutes Chapter 617, Corporations Not-For-Profit, requirements for keeping a record of its members. In addition, an attempt was made to shift the responsibility for the selection of the board of directors, as well as the number of directors, from the members to the board of directors. The By-Laws do not

preclude City employees from serving as directors on the board creating a possible conflict of interest. Furthermore, the president and chief operating officer may also serve as the secretary and treasurer, placing control over financial activities under one person thus weakening a vital internal control, i.e. segregation of duties. Also, the Articles of Incorporation contain references and requirements relating to provisions of IRS Code Section 501(c)(3) (religious, charitable, scientific, etc., organizations), while CCP was determined by the IRS to come under Code Section 501(c)(6) (business leagues, chambers of commerce, etc.).

Specifics are discussed below.

Membership

When the Articles of Incorporation were filed with the State of Florida on August 24, 1990, the initial members were the members of the DDA ex officio with the provision for additional members regulated by the By-Laws.

The January 28, 1993 revision to the By-Laws provided that members were the "...individual property owners within the boundaries of the Downtown Development District."

An amendment to the By-Laws on October 6, 1994, extended members to "...individual property owners or individuals whose primary business is located within the Downtown Development District."

By-Laws amended on December 3, 1998, provided "...individual property or business owners, their employees or agents, or any other West Palm Beach Downtown Development District taxpayers within the boundaries of the Downtown Development District shall comprise the members of this corporation. Additional members may be accepted by the Board of Directors that are representatives of financial institutions participating in the corporation's loan program."

The addition of new criteria for CCP members has made the membership unidentifiable. Florida Statutes 617.2103(3)(a) provides: "If the corporation has members entitled to vote, it must keep at its registered office in this state a copy of its articles of incorporation and its bylaws and amendments thereto and a record of the names and addresses of such members in alphabetical order."

The By-Laws indicate that the members do transact business and vote, although what members vote on is not clear. By broadening the membership to include business owners, their employees or agents and taxpayers, the identification of membership as required by Florida Statutes is very cumbersome, if not impossible.

Board of Directors

Appointment and Number

The Articles of Incorporation dated August 24, 1990, provided that the CCP have seven (7) directors. The number could be increased or decreased under the By-Laws, but never be less than three (3) as required by Florida Statutes 617.0803, governing the number of directors.

The January 28, 1993 By-Laws provided that the board consist of the Mayor of the City of West Palm Beach and other duly elected qualified members determined by the members. Furthermore, the By-Laws provided that on the third Tuesday of September of each year, there was to be an annual meeting of the members to elect the board of directors. Also, the number of directors for the ensuing year was to be determined at this annual meeting by the members.

At the October 6, 1994 annual meeting, the Articles of Incorporation seemed to have been amended to allow for the number of directors to be changed each year up to, but not more than eleven (11) members.

By-Laws amended on December 3, 1998 made several unclear revisions. Under Article III, Membership Meeting, the By-Laws provided for an annual meeting of the board of directors, not members as previously provided or indicated by the section title, to elect the board of directors. An annual meeting of the directors was also provided for under Article IV, Meetings of Directors.

Inconsistent and conflicting with the new provisions, Article IV provided: "The Board of Directors shall be composed of the duly elected qualified members determined by the members of this Corporation. The actual number of Directors to serve in the ensuing year shall be designated and elected at each annual meeting by the members."

The By-Laws appear to conflict: Are the board of directors elected by the board or by the members?

Also, the By-Laws did not appear to be followed in transacting business. For example, the By-Laws provided that directors serve for one-year terms and until a successor was elected and qualified and that the board of directors could fill a vacancy for the unexpired term. At a regular meeting of the board of directors on July 12, 2001, John Zakian, Neil Merin and Paul Twitty were appointed to the board. There was no indication in the minutes that they were filling unexpired terms. Mr. Fountain told us these were new members.

Also, the By-Laws under Article IV provided that the board of directors may meet after the annual election of directors to elect officers. The annual meeting was supposed to be in September. At the July 12 meeting, nominations for chairman, vice chairman and president were made and passed unanimously. It was not clear whether these were nominations to be voted on at an annual meeting; however, they were listed in the minutes under “New Officers.”

Furthermore, the number of directors was not clear. At the July 27, 2001 board of directors meeting, there were sixteen (16) persons listed as directors present.

Florida Statutes 617.0803 provides that:

A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or the bylaws.

The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but the corporation must never have fewer than three directors.

We believe that the Florida Statutes require that the number of directors be set out in the Articles of Incorporation or By-Laws while subject to change by amendment. Both the Articles of Incorporation and By-Laws should specify or fix the number of directors on the board of directors and should specify how the directors are to be appointed.

Elected Term

Directors serve for one year. Consequently, every director is up for election every year. It seems that continuity of business would be more effective if directors serve for more than one year with their terms staggered.

CRA/City Employee, CCP Director - Possible Conflict of Interests

At its regular monthly meeting on July 12, 2001, the CCP Board of Directors appointed John Zakian, CRA Executive Director and Assistant City Administrator, as a director. It was represented that the CRA owns property in the downtown development area, thereby allowing such membership.

We are not concerned whether such an appointment is consistent with the current By-Laws since almost anyone could qualify. We are, however, concerned that, as a CRA and a City employee, such an appointment could be viewed as a conflict of interest or give the appearance of impropriety, especially if the CRA or the City were to provide future funds to the CCP. Also, we need to make sure that CRA and City dealings with

CCP are arms length, impartial and independent. Furthermore, we should not place CRA or City employees in positions where their integrity could be questioned.

Florida Statutes do not address these exact circumstances, although they are very clear that when a conflict exists the director involved must disclose the conflict and the director's vote on the issue may not be counted. The special laws creating the DDA provide that a member may not be a City officer or employee. Since the DDA created the CCP, CCP should consider the same prohibition.

If CCP moves forward and becomes involved in new programs and activities to further development in the downtown area, CRA and City representatives will be required to work closely with the CCP and the DDA. This does not have to be in the role as a CCP director.

Officers

The By-Laws provided for a chairman, president, chairman elect, secretary, treasurer, and such other officers as may be designated from time to time to be appointed by the board of directors. One person may hold the office of secretary and treasurer.

In the December 3, 1998 revision to the By-Laws, a provision was added that "...the President may serve as appointed by the Board of Directors as the Secretary and Treasurer of the Board."

With the addition that the president can also be the treasurer, what little segregation of duties offered by the different officers was eliminated. Consequently, if the president was also treasurer, the president is allowed virtually sole control over the finances of the CCP. Separate individuals in the positions of president and treasurer and secretary offers checks and balances over assets, especially cash.

Tax Exempt Status

Articles of Incorporation, Article IX, Prohibited Activities, Section 9.3, made reference to activities not permitted by a corporation exempt from taxes under IRS Code Section 501(c) (3) or an entity or a corporation where contributions are deductible under Section 170 (c) (1) or (2).

CCP was granted tax exemption under IRS Code Section 501 (c) (6), not 501 (c) (3), and IRS specifically stated that: "Donors may not deduct contributions to you because you are not an organization described in section 170 (c) of the Code." Since the IRS Code references are not applicable to CCP, it seems that the Articles of Incorporation should be reviewed and amended to include the proper citations.

On October 14, 2002, the CRA approved the expenditure of \$30,000 to assist CCP obtain IRS tax exempt status under Section 501(c)(3) and seek designation as a Community Development Financial Institution (CDFI) by the U.S. Treasury Department and Intermediary with the Small Business Administration. If the IRS determination is obtained, then the changes in the Articles of Incorporation relating to the IRS would not have to be made. Notwithstanding, if the CDFI designation is obtained, additional changes at CCP may be necessary. For example, the CCP might have to employ an independent president and chief operating officer since the organization can not be under the control of any government entity.

* * * * *

Overall, we believe the Board of Directors should look at the organizational structure and make changes that will bring CCP into compliance with Florida Statutes and that will foster responsible oversight and control.

Recommendations and Responses

The recommendations that follow were directed to former Mayor Daves or the CCP President, Bill Fountain, as applicable. Their responses are shown in *italics* after each recommendation.

We recommend that:

- a. The CCP President and the Board of Directors review and evaluate the By-Laws and Articles of Incorporation with respect to the items mentioned above and other items needing attention, and take action to revise the By-Laws and Articles of Incorporation accordingly. Special care should be taken to assure compliance with Florida Statutes.

Mr. Fountain advised that CCP's attorney, Mr. Matthew G. Schindel, Esq. at Broad and Cassel, has reviewed the finding and recommendations and determined that the most efficient method for effecting remedial measures to greater clarify and simplify the operational and organizational documents of CCP, will be the adoption of Amended and Restated Articles of Incorporation and Amended and Restated Bylaws. Mr. Fountain estimates the adoption of the documents will completed by May 2003.

- b. The Mayor take action to:

1. Not use CCP for any CRA or City related activity until the above issues have been satisfactorily addressed.

Mayor Daves indicated that presently there are no plans for the City to use CCP for new activities. And, those revisions to the Articles and By-Laws will be reviewed prior to any future uses of CCP by the CRA or the City.

2. Preclude CRA and City employees from serving on boards of non-profit organizations with whom the City or the CRA transacts business.

Mayor Daves responded that the CRA employee now on the CCP board of directors will be advised to remove himself from the board. Also, he indicated the Office of the City Attorney will be asked to review the need to establish a formal policy to address CRA and City employees' eligibility to serve on boards of directors for organizations doing business with the City.

FINDING No. 2: CASH MANAGEMENT AND HANDLING PRACTICES NEED TO BE IMPROVED

CCP had no formal procedures established for cash management. A large cash receipt (\$110,000) was not timely recorded on the books and properly stated in the financial reports for several months. Practices of remitting loan principal and interest payments to the CRA were not in compliance with contract provisions agreed to with the CRA. Issuing checks payable to "cash" was a regular practice. Invoices addressed to CCP were paid with checks issued from a bank account not belonging to CCP and the bank account transactions were recorded in CCP records. Paid invoices were not stamped "paid" to mitigate the chance of duplicate payments. The person responsible for reconciling cash did not receive bank statements directly from the bank and bank statements did not include the cancelled checks. These conditions result in a significant risk of loss and misappropriation of cash assets.

Specific conditions noted were:

Cash Receipt not Promptly Recorded in Accounting Records

CCP received a payment of \$110,000 resulting from an eminent domain action by the City against Ballet Villages. The payment was by check dated July 5, 2000 drawn on the registry account of the Clerk of the Circuit Court pursuant to a court order. The payment was in settlement for ten of the 59 residential units taken by the City at Ballet Villages that were pledged as mortgage security for a CCP loan.

When the check was received, it was not deposited in CCP's regular operating account at First Union Bank and the receipt was not recorded on CCP's books. The check was used to purchase an \$110,000 certificate of deposit in the name of the CCP from Fidelity Federal Bank. The payment was not recorded in the accounting records presented prior

to the bi-annual audit and was not reported on the IRS Form 990 for the fiscal year ending September 30, 2000. Not promptly recording assets received on the corporate books is a serious control weakness.

Mr. Fountain reported that the purchase of the certificate of deposit which was in the name of CCP was not intended to circumvent good controls and that it was an oversight that the accounting firm did not promptly record the assets in the accounting records.

Payments to CRA not Promptly Made

When CCP received loan principal and interest payments from borrowers, CCP's practice was to invest these receipts rather than promptly remit the funds to the CRA. As a result, the CCP earned substantial interest income while the CRA was denied that opportunity. Our computation shows the CRA could have earned \$18,631.61 interest had payments been timely remitted.

An example of this practice is Ultima making regular monthly payments of \$785 on one loan beginning in February 1995 and CCP accumulating over \$39,000 before remitting the loan principal and interest payments to the CRA in August 1999.

Also, the \$110,000 payment from Ballet Villages mentioned earlier was to cover:

- \$59,322 for principal owed on the ten units,
- \$15,678 for accrued interest owed on the ten units, and
- \$35,000 for 10% share of profit from sale of the units.

These funds were invested in a certificate of deposit and the principal and interest payments totaling \$75,000 were not remitted to the CRA for a period of 16 months.

We believe these actions were counter to the "Specific Guidelines for Loans" spelled out in the Agreements between the CRA and the CCP. The Agreements state: "The payment of all principal and interest payments shall be paid immediately to the Agency by the Partnership."

When we asked why CCP had not complied with the requirement for timely remittance of funds, CCP paid the CRA principal and interest, \$75,000, received from the Clerk of the Courts for the Ballet Villages sale and \$6,316 accumulated since the previous payment of funds from Ultima. CCP kept the interest it earned from investing the moneys.

Because the CCP did not promptly remit payments to the CRA, the CRA did not have the funds to invest denying the CRA over \$18,000 in earnings from interest while the CCP earned interest.

CCP has an obligation to comply with requirements of the Agreements. Timely remittance of loan principal and interest payment receipts is a requirement. Furthermore, if the CCP does not comply with the terms of the Agreements, the CRA should consider obtaining assignment of the remaining loans and having the City service them.

Mr. Fountain stated that he would work to effect timely payments to CRA and that he may request CRA concurrence for quarterly rather than immediate payments.

Checks Made Payable to Cash

CCP received payments from Park One that were deposited in the CCP bank account. The CCP then wrote checks payable to “cash” and gave them to the Park One Parking Manager or Assistant Parking Manager at the 101 Clematis Street garage. The CCP checks were cashed by the recipient and the cash given to City police officers who were hired by Park One for extra security during Clematis by Night. Park One required the officers to sign a receipt for the money showing the date, amount received, officer’s name, social security number, and badge number; however, this information was not maintained by CCP.

In the period between August 29, 2001, and September 26, 2002, CCP received 23 checks from Park One totaling \$16,110 and wrote 51 checks payable to “cash” totaling \$16,110.

When we inquired at CCP and Park One about this arrangement, we were advised that the police officers required payment in cash when hired for security services and that Park One did not have a local bank account to enable them to obtain cash to pay the officers. CCP agreed to the arrangement to accommodate the police. Officer Dale Fell, coordinator of police extra duty assignments, advised that he was not aware of this special arrangement and that officers performing extra duty may be paid either by check or cash.

We were not able to determine why Park One was required to pay the police officers in cash. Furthermore, we are uncertain which party, Park One or CCP, if either one, will issue the Forms 1099 to meet IRS reporting requirements.

Writing corporate checks payable to “cash” is an extremely poor practice. The check signers should pay more attention when signing checks and exercise better judgment in performing their fiduciary responsibility. While checks drawn on CCP’s operating account require dual signatures, we noted one of the regular signers of the checks written to “cash” was a board member who is a CPA. We attempted to contact that individual for an explanation, but our phone calls were not returned.

Writing checks payable to “cash” is risky since anyone in possession of a check made out to cash can negotiate it. Mr. Fountain reported that this arrangement was terminated and no checks will be written to “cash” in the future.

Bills Paid from Another Corporation’s Bank Account

Invoices addressed to CCP were paid with checks drawn on a DDA bank account for PR/Marketing. Although the bank account was owned by the DDA, the transactions were recorded in the CCP’s books. Improper use of another corporation’s assets is a serious matter and can cover up fraudulent activity although we found no such activity.

For the fiscal period October 2000 through September 2001, checks drawn on DDA’s Republic Security Bank checking account were used to pay invoices showing charges to CCP as well as DDA for PR/Marketing activities. The checks were signed by authorized signers for DDA. The account activities were recorded in the books and records of CCP. Several related CCP journal entries were incorrect.

As discussed in Finding No. 3, all records and reports, both of CCP and DDA, affected by these improper accounting transactions need to be corrected and restated. Mr. Fountain stated that the records and reports will be corrected and reissued.

Invoices not Stamped “Paid”

While voucher packages included a record of the check number for the payment and, in some cases, a copy of the check, we noted that the actual invoices were not stamped “paid.” Should an invoice become separated from the voucher package, it is possible the invoice could be paid again. To mitigate the chances of duplicate payments, all invoices should be stamped “paid” at the time the payments are made. Mr. Fountain agreed to require the invoices to be marked “paid” when the checks are written.

No Agreement Defining Accountant’s Services

CCP pays an outside accounting firm to perform bookkeeping and accounting services. The firm reconciles CCP’s bank account and prepares monthly financial statements. The firm has no access to CCP’s assets.

The firm did not receive the bank statements directly from the bank nor did the bank return the canceled checks. (Note: Canceled checks were returned until fiscal year 1995 when the practice stopped.) All bank statements should be sent directly to the firm performing the reconciliation with the canceled checks or with a CD (compact disk) containing images (front and back) of the canceled checks. This precludes any alteration of the bank’s submission and allows the reconciler opportunity to examine the checks for propriety. During the audit, Mr. Fountain took action to have the bank statements with

cancelled checks mailed directly to the accounting firm responsible for reconciling the bank accounts.

Furthermore, according to Mr. Fountain, although CCP advised the accounting firm of certificates of deposit held in a saving account rather than its regular checking account, the accountant did not record the assets accordingly. Consequently, the firm did not record all assets on the books and did not report these assets in the periodic financial statements resulting in inaccurate reporting.

Since CCP and the accounting firm have no written agreement covering services to be performed, responsibility for problems arising out of miscommunication or negligence is not readily determinable. Normal business practice is to have written agreements specifying work to be performed, when the work is to be completed, and specific responsibilities of the parties involved and fees. Mr. Fountain reported that an agreement will be prepared for CCP's accountant.

* * * * *

CCP needs to establish formal written procedures for handling and recording of all incoming cash, requiring timely payments of contractual obligations, prohibiting the issuing of checks payable to "cash," requiring paid invoices to be stamped "paid," requiring bank statements to include cancelled checks (or a CD) and to be sent directly to the reconciler, recording of all bank accounts on the books, and reviewing checks by the check signers before signing.

Recommendations and Responses

The following recommendations were directed to former Mayor Daves or the CCP President, Bill Fountain, as applicable. Their responses are shown in *italics* after each recommendation.

We recommend that:

- a. The CCP President, with the approval of the Board of Directors:
 1. Establish formal accounting procedures.

Mr. Fountain responded that formal cash management procedures now in place will require:

- *All checks to be endorsed for deposit to the Wachovia bank account.*
- *All invoices to be paid by check.*
- *No checks be issued that are payable to "cash."*

- *Each check issued by CCP to have two signatures and CCP to have three approved signatories for the checking account.*
- *Signed checks to be copied and the copies attached to the related invoice.*
- *Each paid invoice to be stamped "paid."*

Additionally, he said CCP will review written procedures obtained from the City and adopt any that are appropriate for CCP. And, CCP plans are to complete implementation of formal cash handling procedures within the next three months.

Mr. Fountain said CCP will remit timely payments to the CRA in the future. Furthermore, CCP will seek CRA approval that the payments be scheduled on a quarterly basis rather than immediately.

2. Enter into a written agreement with the firm performing CCP's accounting services specifying work to be performed, timeframe for completing the work, and specific responsibilities and fees.

Mr. Fountain advised that a formal agreement with the bookkeeper will be completed by April 1, 2003.

b. The Mayor:

1. Consider obtaining assignment of the three outstanding CCP loans to the CRA.

Mayor Daves replied that this action will be recommended at an upcoming meeting of the CRA board. Upon approval, the action should be completed within ninety (90) days.

2. Advise the City's Finance Director to bill CCP for interest on delinquent payments to the CRA in the amount of \$18,631.61.

Mayor Daves agreed and said the City's Finance Director will be asked to bill CCP the interest lost due to delinquent payments to CRA and that payment or resolution of this billing is expected by June 30, 2003.

FINDING No. 3: FINANCIAL RECORDS AND STATEMENTS SHOULD BE CORRECTED AND REISSUED AND IRS RETURNS SHOULD BE AMENDED

The accounting records and the audited financial statements, as well as the IRS returns, contain numerous errors in and omissions of financial information. The accounting

records and the audited financial statements need to be corrected and reissued and the IRS Form 990 should be amended.

Fiscal Year Ended September 30, 2000

Although the Independent Auditor's Report on the financial statements for the fiscal year ended September 30, 2000, was dated January 31, 2001, and IRS Form 990 was dated May 14, 2001, the financial information on Form 990 did not agree with the audited financial statements. These two documents were prepared by the same CPA firm.

The CPA firm reported that, although the Independent Auditor's Report was dated in January 2001, it was not finished until after the Form 990 was completed. Since the audit was not completed, the CPA firm used the accounting records. These accounting records did not include the transactions relating to the \$110,000. The CPA firm did include the amounts in the audited financial statements.

The major differences from not reporting transactions relating to proceeds received on a partial sale of Ballet Villages real property pledged as security for a loan resulted in several errors on the Form 990. Cash was understated by \$110,000, notes receivable were overstated by about \$59,000, and revenues were understated by about \$51,000. A partial correction of some \$15,000 was made on the Form 990 for fiscal year ended September 30, 2001; however, the \$35,000 CCP received pursuant to an agreement as a share of profits still was not reported.

In addition, neither the audited financial statements nor the Form 990 showed the details of the rental arrangement for the ground floor of the Harris Building property. Consequently, about \$35,000 in revenues and \$33,000 in expenses were netted together and reported with something else in a line item showing revenue of a little over \$1,000.

Although they had to be aware that differences existed, the CPA firm took no action to file an amended Form 990 at the time the auditor's report was issued. An amended return for the fiscal year ended September 30, 2000 was prepared after we spoke with the CPA firm's auditor in September 2002.

Fiscal Year Ended September 30, 2001

Financial statements are audited every two years; consequently, statements for fiscal year ended September 30, 2001, were not audited. The accounting records maintained by a bookkeeper, not the CPA firm performing the audit, contained numerous errors in accounting.

Notes payable to the CRA were recorded as \$43,796 while the amounts owed the CRA for loan principal and interest payments totaled almost \$81,500 at September 30, 2001.

A DDA bank account called PR/Marketing was incorporated into the CCP accounting records in October 2000. This should not have occurred. Moreover, related entries were improper, incomplete or inaccurate. Rather than recording the \$63,139 bank balance brought into the records as program revenue, the amount was recorded as accounts payable to DDA. To record the bank balance as a payable led to improper reporting of disbursements. Disbursements charged against the payable account were not shown as expenditures. A subsequent DDA contribution of \$36,500 was recorded directly to fund balance rather than as a reimbursement of expenditures as intended. In both cases, expenditures were not properly recognized, thus violating basic accounting principles.

Form 990 filed with IRS for the fiscal year ended September 30, 2001 contained errors and misrepresentations. For example, part of the expenditures for PR/Marketing, \$68,545, were shown as “professional fundraising fees.” Part of the funds received for PR/Marketing and the Signage Program, \$63,611, were shown as “direct public support.” The Harris rental payments and sublease receipts were netted as discussed above and not reported.

Overall, the Forms 990 did not contain adequate descriptions of CCP activities. Form 990 contains places for reporting program revenues and expenditures that certainly seem more appropriate than “direct public support” and “professional fundraising fees.” Filing an incomplete and inaccurate Form 990 could result in revocation of CCP’s tax exempt status.

* * * * *

CCP needs to reconstruct the accounting records for fiscal year ending September 30, 2001, and to amend the IRS Form 990 for the fiscal year ending September 30, 2001. CCP needs to evaluate the performance of the accountant and give serious consideration to employing a new bookkeeper and a new CPA firm.

Recommendations and Responses

The following recommendations were directed to CCP President, Bill Fountain. His responses are shown in *italics* after each recommendation.

We recommend that the CCP President, with the approval of the Board of Directors:

- a. Remove the PR/Marketing bank account activities from the CCP records and, accordingly, require reconstruction of the accounting records for fiscal year ending September 30, 2001.

Mr. Fountain advised that CCP’s auditors have been requested to review items in question and recommend appropriate adjustments. He concurred the records need to be

correct and the auditors will be asked to verify that records are correct during the audit of the financial statements for the two years ended September 30, 2002.

b. Require that Forms 990 be properly amended to show program activities and correct account data for fiscal years ending September 30, 2000 and 2001.

Mr. Fountain will request an amended Form 990, for the year ended September 30, 2001, to be filed by April 2003.

c. Evaluate performance of the accountant/bookkeeper and consider employing the services of an accountant/bookkeeper skilled in not-for-profit accounting. Additionally, consider rotating to a new CPA firm as recommended for governmental entities.

Mr. Fountain advised the recommendations to consider employing a different bookkeeper and rotating to a new CPA will be reviewed at the completion of the current audit.

CITY CENTER PARTNERSHIP, INC.

Exhibit I

SOURCES AND APPLICATIONS OF FUNDS
August 24, 1990 to September 30, 2001

	9/30/90	9/30/91	9/30/92	9/30/93	9/30/94	9/30/95	9/30/96	9/30/97	9/30/98	9/30/99	9/30/00	9/30/01	Total
Sources													
DDA Contribution	100,000.00												100,000.00
DDA Loan				50,000.00									50,000.00
Investment Interest	613.89	5,034.93	3,083.28	2,734.00	3,255.05	4,932.81	2,777.29	3,432.61	4,748.71	5,181.58	3,420.41	5,734.94	44,949.50
CRA Funding				200,000.00	620,894.70	484,288.91							1,305,183.61
Loan Repayments			3,000.00	794.67	130,273.64	56,244.18	36,497.75	20,859.63	90,712.83	9,970.51	85,205.26	9,420.24	442,978.71
Deposits (Tom & Jerry's)							2,500.00						2,500.00
Grant Recipient Contributions				29,785.09	12,162.79	5,000.00	21,212.33		1,190.77				69,350.98
Loan Guarantee Fee							100.00	8,400.00					8,500.00
Partial Sale of Ballet Villages											35,000.00		35,000.00
Rent & Sales Tax (Tom & Jerry's)								18,550.01	21,200.04	19,433.37	35,077.56	22,836.52	117,097.50
PR Marketing - Participant Funding												88,111.63	88,111.63
Signage - Participant Funding							500.00					12,000.00	12,500.00
Park One Security Funding												2,160.00	2,160.00
Reimbursement of Misc. Expense					89.50				1,067.50		3,000.00		4,157.00
Net Misc. Difference				210.94	(93.04)	3,620.27	700.57	(93.99)	(123.55)	(100.00)	(121.00)	252.31	4,252.51
Total Sources	100,613.89	5,034.93	6,083.28	283,524.70	766,582.64	554,086.17	64,287.94	51,148.26	118,796.30	34,485.46	161,582.23	140,515.64	2,286,741.44
Applications													
General Expenses		78.05	61.25	3,300.48	384.35	655.43	4,989.41	488.25	1,031.25	3,061.25	61.25	100.25	14,211.22
Professional Fees - Legal			3,000.00	6,735.22	1,554.85	457.50	3,738.70	4,205.15	6,758.94		4,524.59	7,269.10	38,244.05
Professional Fees - Accounting/Audit			100.00	920.00		8,000.00	1,175.00	5,900.00	1,350.00	6,745.00	1,277.50	2,400.00	27,867.50
Grants and Grant Related Expenditures				70,414.00	315,577.03	100,144.78	55,631.00						541,766.81
Loans			10,000.00	100,000.00	482,500.00	355,000.00	2,500.00						950,000.00
Loan Repayment - DDA				790.80	3,954.00	5,535.60	4,744.80	5,140.20	39,394.64				59,560.04
Loan Repayment - CRA					62,734.71	73,427.05				75,381.01		17,000.00	228,542.77
Grant Repayment (overfunding) - CRA					18,894.70								18,894.70
Factory Outlet Study			6,000.00										6,000.00
PR Marketing - Transfers												133,333.00	133,333.00
Signage Program Expenditures												13,864.29	13,864.29
Loss on Loan Guarantee				5,000.00									5,000.00
Park One Security - Cash Payments												1,440.00	1,440.00
Rent & Sales Tax (Tom & Jerry's)							5,575.44	15,386.05	22,849.40	19,562.27	33,392.40	23,097.96	119,863.52
Total Applications	0.00	78.05	19,161.25	187,160.50	885,599.64	543,220.36	78,354.35	31,119.65	71,384.23	104,749.53	39,255.74	198,504.60	2,158,587.90
Net Source (Application)	100,613.89	4,956.88	(13,077.97)	96,364.20	(119,017.00)	10,865.81	(14,066.41)	20,028.61	47,412.07	(70,264.07)	122,326.49	(57,988.96)	128,153.54
Cash Beginning of Year	0.00	100,613.89	105,570.77	92,492.80	188,857.00	69,840.00	80,705.81	66,639.40	86,668.01	134,080.08	63,816.01	186,142.50	0.00
Cash End of Year	100,613.89	105,570.77	92,492.80	188,857.00	69,840.00	80,705.81	66,639.40	86,668.01	134,080.08	63,816.01	186,142.50	128,153.54	128,153.54

Note: Does not include transactions of the PR/Marketing Bank Account.

SCHEDULE OF LOANS AND GRANTS MADE WITH CRA FUNDS
August 24, 1990 to September 30, 2001

<u>Company Name</u>	<u>Loan</u>	<u>Grant</u>	<u>Total</u>	<u>Status of Firm and Loan</u>
	\$	\$	\$	
<u>Business</u>				
Downtown Furniture Gallerie	0.00	50,000.00	50,000.00	closed
Anthony's	100,000.00	50,000.00	150,000.00	closed, loan paid in full
Utilma	150,000.00	50,000.00	200,000.00	open, loan balance \$60,130
House of Rubies	17,500.00	3,500.00	21,000.00	closed, defaulted
Façade - various	0.00	95,723.38	95,723.38	
Subtotal Business	<u>267,500.00</u>	<u>249,223.38</u>	<u>516,723.38</u>	
<u>Housing</u>				
Harris	200,000.00	100,000.00	300,000.00	open, loan balance \$200,000
Ballet Villages	350,000.00	100,000.00	450,000.00	open, loan balance \$290,678
The Downtown Partnership Group	0.00	25,000.00	25,000.00	open
Subtotal Housing	<u>550,000.00</u>	<u>225,000.00</u>	<u>775,000.00</u>	
Total Loans and Grants	817,500.00	474,223.38	1,291,723.38	
CCP Administrative Fees	<u>8,175.00</u>	<u>5,285.23</u>	<u>13,460.23</u>	
Total before refund	825,675.00	479,508.61	1,305,183.61	
Refund	<u>0.00</u>	<u>-18,894.70</u>	<u>-18,894.70</u>	
Total	<u>825,675.00</u>	<u>460,613.91</u>	<u>1,286,288.91</u>	



MEMORANDUM

TO: Imogene Isaacs, Internal Auditor

FROM: Bill Fountain, President, City Center Partnership

SUBJECT: Report No. 2003-001
Audit of City Center Partnership, Incorporated

DATE: March 17, 2003

Our responses to the recommendations cited for findings in the draft report on the Audit of City Center Partnership, Incorporated follow.

Finding No. 1, Recommendation a:

CCP's attorney, Mr. Matthew G. Schindel, Esq. at Broad and Cassel, has reviewed the finding and recommendations and determined that the most efficient method for effecting remedial measures to greater clarify and simplify the operational and organizational documents of CCP, will be the adoption of Amended and Restated Articles of Incorporation and Amended and Restated Bylaws.

We estimate the adoption of the documents will be completed by May 2003.
Finding No. 2, Recommendation a 1:

Formal cash management procedures now in place require:

- All checks to be endorsed for deposit to the Wachovia bank account.
- All invoices to be paid by check.
- No checks are to be issued payable to "cash."
- Each check issued by CCP to have two signatures and CCP to have three approved signatories for the checking account.
- Signed checks to be copied and the copies attached to the related invoice.
- Each paid invoice to be stamped "paid."

Page Two

Additionally, CCP will review written procedures obtained from the City and adopt any that are appropriate for CCP. CCP plans are to complete implementation of formal cash handling procedures within the next three months.

CCP will remit timely payments to the CRA in the future. Furthermore, CCP will seek CRA approval that the payments be scheduled on a quarterly basis rather than immediately.

Finding No. 2, Recommendation a 2:

A formal agreement with the bookkeeper will be completed by April 1, 2003.

Finding No. 3, Recommendation a:

CCP's auditors have been requested to review items in question and recommend appropriate adjustments. The records need to be correct and the auditors will be asked to verify that records are correct during the audit of the financial statements for the two years ended September 30, 2002.

Finding No. 3, Recommendation b:

An amended Form 990, for the year ended September 30, 2001, will be filed by April 2003.

Finding No. 3, Recommendation c:

The recommendations to consider employing a different bookkeeper and rotating to a new CPA will be reviewed at the completion of the current audit.

Again, we thank you for this helpful report. Your work has been very helpful to the CCP and will enable us to be more effective and responsive to accounting principles. We have responded to all of your recommendations realizing this is for the betterment of the management of CCP.

MEMO



Mayor's Office

To: Imogene Isaacs, Internal Auditor
From: Mayor Daves
Date: February 26, 2003
RE: Responses to Draft Audit of City Center Partnership, Incorporated

My responses to the report's recommendations for the findings that you asked me to consider are as follows:

Finding No. 1: Articles of Incorporation and By-Laws need to be Reviewed, Evaluated, and Revised.

Recommendation b. 1: The Mayor take action to not use CCP for any CRA or City related activity until the above issues have been satisfactorily addressed.

Response: Presently there are no plans for the City to use CCP for new activities. Revisions to the Articles and By-Laws will be reviewed prior to any future uses of CCP by the CRA or the City.

Recommendation b. 2: The Mayor take action to preclude CRA and City of West Palm Beach employees from serving on boards of non-profit organizations with whom the City or the CRA transacts business.

Response: The CRA employee now on the CCP board of directors will be advised to remove himself from the board. The Office of the City Attorney will be asked to review the need to establish a formal policy to address CRA and City employees' eligibility to serve on boards of directors for organizations doing business with the City.

"An Equal Opportunity Employer"

Finding No. 2: Cash Management and Handling Practices Need to be Improved.

Recommendation b. 1: The Mayor consider having the three outstanding CCP loans assigned to the CRA.

Response: This action will be recommended at an upcoming meeting of the CRA board. Upon approval, the action should be completed within ninety (90) days.

Recommendation b. 2: The Mayor advise the City's Finance Director to bill CCP for interest on delinquent payments to the CRA in the amount of \$18,631.61.

Response: The City's Finance Director will be asked to bill CCP the interest lost due to delinquent payments to CRA. Payment or resolution of this billing is expected by June 30, 2003.

c: CCP President
CRA Executive Director
City Attorney
Finance Director