

ADD ON

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| Meeting Date |
| July 22, 2014 |



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| AGENDA | |
| Section | New Business |
| Item No. | V.C.1 |

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

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| SUBJECT: | Assignment of Ground Lease and Adoption of Resolution authorizing the Assignment of Ground Lease to the City of Melbourne. |
| DEPT/OFFICE: | Central Services Department |

Requested Action:

It is requested that the Board approve the Assignment of Ground Lease, assigning the property on which Trinity Towers South is located on Melbourne Avenue, to the City of Melbourne; and adoption of a Resolution pursuant to Section 125.38, Florida Statutes, authorizing the Assignment of the Ground Lease to County Real Property, and providing for an effective date.

Summary Explanation & Background:

On March 15, 1979, the Board approved a 99-year ground lease to Trinity Towers South, Inc. The adjacent property is the former site of the Melbourne Senior Center. When the County elected to build the new Melbourne Senior Center at Wickham Park, the County conveyed the former senior center site to the City in 2012. The legal description for the 2012 conveyance was incorrect, and included the property on which Trinity Towers South sits. Therefore the property under ground lease is under lease with Brevard County, but owned by the City.

It is requested that the Board assign the Ground Lease to the City of Melbourne since the City now owns the real property in fee simple. The real property is needed for public purposes and uses that are presently located on the property. The County does not need the property for County purposes.

Assignment of the Ground Lease and Adoption of the Resolution will transfer ownership of the real property to the City of Melbourne effective immediately.

There is no fiscal impact associated with this action.

Contact: Teresa Camarata, Central Services Director, extension 52543

Clerk to the Board Instructions:

Exhibits Attached: Assignment of Ground Lease; Resolution Authorizing the Assignment of Ground Lease

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

| | | |
|------------------|---|--|
| County Manager | Assistant County Manager, Mel Scott | Department Director / Extension |
| Stockton Whitten | Assistant County Manager, Venetta Valdeno | Teresa Camarata, Central Services Director |



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

July 23, 2014

MEMORANDUM

TO: Teresa Camarata, Central Services Department

RE: Item V.C.1., Resolution and Assignment of Ground Lease to the City of Melbourne for Trinity Towers South

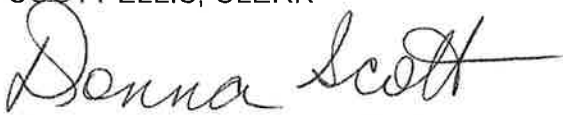
The Board of County Commissioners, in regular session on July 22, 2014, adopted Resolution No. 14-121, pursuant to Section 125.38, Florida Statutes, authorizing the Assignment of Ground Lease to County Real Property, and providing for an effective date; and approved the Assignment of Ground Lease, assigning the property on which Trinity Towers South is located on Melbourne Avenue, to the City of Melbourne. Enclosed are certified copy of Resolution and original Assignment of Ground Lease.

Upon execution by the City of Melbourne, please return the fully-executed Assignment of Ground Lease to this office, for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for 
Tammy Etheridge, Deputy Clerk

/ds

Encls. (2)

cc: Parks and Recreation Director
Finance
Budget

RESOLUTION NO. 2014 - 121

**A RESOLUTION PURSUANT TO SECTION 125.38,
FLORIDA STATUTES, AUTHORIZING THE
ASSIGNMENT OF A GROUND LEASE TO COUNTY REAL
PROPERTY; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Brevard County, Florida (County), formerly owned certain real property described in Exhibit "A"; and

WHEREAS, the County has conveyed the property to the City of Melbourne, a Florida municipal corporation; and

WHEREAS, the Trinity Towers is located on the land described in Exhibit "A", which has been the subject of a ground lease between Trinity Towers South, Inc. and the County since 1979; and

WHEREAS, the County wishes to assign the ground lease to the City of Melbourne since the City now owns the real property in fee simple; and

WHEREAS, the County desires to cooperate with and assist the City of Melbourne in acquiring the real property,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

1. The County hereby agrees to assign the attached ground lease relating to the real property described in Exhibit "A" to the City of Melbourne by the attached assignment.
2. The County has determined that the real property is needed for public purposes and uses that are presently located on the real property.
3. The County has determined that the real property is not needed for County purposes.
4. The real property interest is being transferred to the City of Melbourne without charge.
5. This Resolution shall become effective immediately upon its adoption.

This Resolution is PASSED AND ADOPTED this 22nd day of July, 2014.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

Mary Bolin Lewis, Chair

As approved by the Board on: July 22, 2014

EXHIBIT A

The West 133 feet of Lot 5, the East 38.6 feet of the South 377 feet of Lot 5, the West 13.4 feet of the South 377 feet of Lot 6 and the East 68 feet of the West 81.4 feet of the South 258 feet of Lot 6 all North of Melbourne Avenue and of Fee's Unrecorded Subdivision in Section 3, Township 28, Range 37, Brevard County, Florida;

LEASE AGREEMENT

THIS LEASE made this 15th day of March, 1979, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter called "Landlord", and TRINITY TOWERS SOUTH, INC., hereinafter referred to as "Tenant", which terms "Landlord" and "Tenant" shall include, wherever the context admits or requires, the singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties;

WITNESSETH:

That the Landlord, in consideration of the covenants of the Tenant, does hereby lease and demise unto the Tenant and the Tenant hereby agrees to take and lease from the Landlord, for the term hereinafter specified, the premises:

The West 133 feet of Lot 5, the East 38.6 feet of the South 377 feet of Lot 5, the West 13.4 feet of the South 377 feet of Lot 6 and the East 68 feet of the West 81.4 feet of the South 258 feet of Lot 6 all North of Melbourne Avenue and of Pee's Unrecorded Subdivision in Section 3, Township 28, Range 37, Brevard County, Florida;

hereinafter referred to as the "leased premises".

FOR THE TENANT TO HAVE AND TO HOLD commencing on the 1st day of April, 1978, for a term of ninety-nine (99) years from said commencement date until the 31st day of March, 2077.

The Lease is granted and accepted upon the foregoing and upon the following terms, covenants, conditions and stipulations:

1. Rent: The Tenant shall pay as annual rent for the leased premises the sum of ONE DOLLAR (\$1.00) per year; payable in advance on the first day of each and every year. The Tenant shall pay all taxes, assessments and other charges which are at any time during the lease term levied upon the leased premises or which arise in respect to the occupancy or use thereof.

THIS INSTRUMENT PREPARED BY:

BILL WALKER
SCHOOL BOARD ATTORNEY
P.O. BOX 1084
TITUSVILLE, FL. 32780

WILLIAM E. GEILICH
P.O. BOX 820
Melbourne, Florida 32901

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2. Use: The leased premises shall be used for the conduct of a Congregate Housing Facility which shall be open to all persons who qualify in accordance with the eligibility criteria contained in Exhibit "A" which is attached hereto and made a part hereof by this reference, and there shall be no discrimination on the basis of race, religion, color, sex, or national origin. In the event the Tenant modifies the use of the leased premises, such new use shall only be for a public purpose. The Tenant specifically understands that the Landlord received this property from the School Board of Brevard County with a reverter clause requiring the leased premises be used for a public purpose and the Tenant and its assigns and successors agrees to use the leased premises for a public purpose, except as the same has been modified by a Subordination Agreement executed by the School Board on February 13, 1979.

The Tenant at all times shall fully and promptly comply with all laws, ordinances and regulations of every lawful authority having jurisdiction of said premises, as such shall relate to the cleanliness, use and occupancy of said premises, and the Tenant will pay all cost and expenses incidental to such compliance, and will indemnify and save harmless the Landlord free of expense or damage by reason of any notice, violations or penalties filed against or imposed upon the premises, or against the Landlord as owner thereof, because of the failure of the Tenant to comply with any of the provisions contained in this section. The Landlord may, after ten (10) days notice to the Tenant, comply therewith, and the cost and expense of so doing may be paid by the Landlord, or may be charged against the Tenant as additional rent, becoming due upon demand. The Tenant agrees to indemnify and save harmless the Landlord from and against any and all judgments, decrees, penalties, costs and expenses, by reason of such non-compliance.

3. Utilities: The Tenant shall pay for all sewage disposal service, water, gas, heat, electric, telephone, garbage collection and public utilities furnished it or consumed by it, in or upon the demised premises during the term hereof. Landlord shall not be responsible or liable, however, in any way for the quality, impairment, interruption, stoppage or other interference with any of such utility services.

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4. Repairs: The Tenant shall, at its own cost and expense, maintain in good condition and repair any and all buildings which are located on the demised premises. Without limiting the generality of the foregoing, within such repair responsibility the Tenant shall be included, the air conditioning and heating equipment and the replacement of all broken glass with glass of the same size and quality as that broken.

5. Indemnification: The Tenant agrees to indemnify and save harmless the Landlord from any and all claims or loss by reason of any accident or damage to any personal property happening on or about the demised premises, excepting, however, accident or damage caused by the negligent acts or omissions of the Landlord or its servants, agents or employees. The Tenant further agrees to carry, at its own expense, public liability insurance coverage on the leased premises, with a contract liability endorsement on the policy, with a company qualified to transact business in the state in which the leased premises are located, stipulating limits of liability of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) for an accident affecting any one (1) person; not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for an accident affecting more than one (1) person; and FIFTY THOUSAND DOLLARS (\$50,000.00) property damage. This limit shall be raised to an amount which is agreed upon by the parties and the Department of Housing and Urban Development every five (5) years on the anniversary date of this lease. In the event the parties are unable to agree as to the increase in insurance limits, the Tenant shall every five (5) years increase the limits the same percentage the Consumer Price Index published by the U. S. Department of Labor has increased from the date the policy limits were last established. Insurance policies shall as a minimum be in an amount, and in such company or companies and in such form, and against such risks and hazards, as shall be approved by the Department of Housing and Urban Development.

6. Cleanliness and Nuisances: The Tenant shall at all times keep the interior and exterior of the building in a reasonably neat and orderly condition, shall not permit the premises or any portion thereof to be used for any illegal or unlawful purpose,

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will not make or suffer any waste of the premises or permit anything to be done in or upon the demised premises tending to create a nuisance thereon.

7. Assignment: The Tenant may not assign this lease or sublet the whole lease premises at any time during the term of this lease without such assignee or subleasee specifically assuming the public use obligations of paragraph two, except as the same is modified by the Subordination Agreement executed by the School Board.

8. Covenant Against Liens: The Tenant shall never, under any circumstances, have the power to subject the interest of the Landlord in the leased premises to any mechanic or material lien or liens of any kind. All persons who may hereafter during the life of the lease furnish work, labor, services or materials to the leased premises, on the request or order of the Tenant of any person claiming under, or by, or through the Tenant, must look wholly to the Tenant for compensation.

The Tenant covenants and agrees with the Landlord that the Tenant will not permit or suffer to be filed a claim against the interest of the Landlord in the leased premises. If during the lease term any liens of any kind are claimed or filed, it shall be the duty of the Tenant to cause the leased premises to be released from such claim.

The Tenant, however, may allow a mortgage to be filed against the Tenant's leasehold interest by the U. S. Department of Housing and Urban Development on the leased premises.

9. Site Plan Approval: The Tenant must receive the written approval of the Landlord as to the nature, size, type of construction, and location of all permanent facilities which are located on the leased premises, and for any major modification of such facilities. The Landlord will not unreasonably withhold its consent to any major modification of the leased premises which is consistent with the Tenant's use of the leased premises for the purposes described in paragraph 2 of this Lease Agreement.

10. Access: The Tenant understands and agrees that the Landlord and its assign shall have access from the adjacent property owned by the Landlord across the leased premises to Melbourne Avenue

and New Haven Avenue. Such access shall be sufficient to provide for vehicular traffic including service vehicles. The route and limits of access reserved for the Landlord is shown in Exhibit "B" which is attached hereto and made a part hereof by this reference.

11. Construction: If the Tenant removes any building on the leased premises which encroaches on the Landlord's adjacent property, the Tenant shall remove the encroachment from the Landlord's property and fill and resod the Landlord's property.

12. HUD Loan: The Tenant is authorized to obtain a loan from the Department of Housing & Urban Development secured by a mortgage on this leasehold estate. The Tenant is also authorized to comply with the requirements of the Department of Housing & Urban Development prior to and subsequent to obtaining said loan.

If approved by the Department of Housing & Urban Development, Tenant may assign, transfer or sell his interest in the demised premises provided the assignee, transferee or purchaser specifically assumes the public use obligation for the leased premises contained in paragraph two.

Notwithstanding anything to the contrary contained herein the Tenant shall at all times have the right to convey its rights under this lease to the Department of Housing & Urban Development.

13. Severability: In the event a Court of competent jurisdiction declares any word, sentence, or paragraph of this Agreement as invalid, the rest of this Agreement shall remain in full force and effect.

14. Condemnation: If any or any part of the leased premises shall be taken by condemnation, that portion of any award attributable to the improvements or damage to the improvements shall be paid to the Department of Housing & Urban Development or otherwise disposed of as may be provided in the insured mortgage. Any portion of the award attributable solely to the taking of land shall be paid to the Landlord.

In the event of a negotiated sale of all or a portion of demised premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation, but the approval of the Department of Housing & Urban Development shall be required as to the amount and division of the payment to be received.

15. Permits: The Landlord agrees that, within thirty (30) days after receipt of written request from Tenant, it will join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the Tenant may do hereunder, and will also join in any grants for easements for electric, telephone, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the demised premises or of any improvements that may be erected thereon.

16. Default: Upon any default under this lease which authorizes the cancellation thereof by the Landlord, Landlord shall give notice to the Department of Housing & Urban Development, and the Department of Housing & Urban Development, its successors and assigns, shall have the right within any time within sixty (60) days from the date of such notice to correct the default and reinstate the lease unless Landlord has first terminated the lease as provided herein.

At any time after sixty (60) days from the date a notice of default is given to the Department of Housing & Urban Development, the Landlord may elect to terminate the lease and acquire possession of the demised premises. Upon acquiring possession of the demised premises Landlord shall notify the Department of Housing & Urban Development. The Department of Housing & Urban Development shall have ninety (90) days from the date of such notice of acquisition to elect to take a new lease on the demised premises. Such new lease shall have a term equal to the unexpired portion of the term of this lease and shall be on the same terms and conditions as contained in this lease, except that the Department of Housing & Urban Development's liability for ground rent shall not extend beyond their occupancy under such lease. The Landlord shall tender such new lease to the Department of Housing & Urban Development within thirty (30) days after a request for such lease and shall deliver possession of the demised premises immediately upon execution of the new lease. Upon executing a new lease the Department of Housing & Urban Development shall pay to the Landlord any unpaid ground rentals due or that would have become due under this lease to the date of the execution of the new lease, including any

taxes which were liens on demised premises and which were paid by Landlord, and any other charges due, less any net rentals or other income which Landlord may have received on account of this property since the date of default under this lease.

17. Notices: All notices, demands and requests which are required to be given by the Landlord, the Tenant, or the Department of Housing & Urban Development shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given. Notices shall be sent to the Landlord at County Administrator Courthouse Annex A, Titusville, Florida . Notices shall be given to the Tenant at 650 E. Strawbridge Ave., Melbourne, Florida . and Notices shall be sent to the Department of Housing & Urban Development at Peninsular Plaza, 661 Riverside Avenue, Jacksonville, Florida 32204 .

18. Modification: This lease shall not be modified without the consent of the Department of Housing & Urban Development.

19. Waiver: The waiver by the Landlord of any of the Tenant's obligations or duties under this lease shall not constitute a waiver of any other obligation or duty of the Tenant under this lease.

IN WITNESS WHEREOF, the parties have executed and sealed this lease the day and year first above written.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

R. C. Winstead, Jr.
R. C. Winstead, Jr., Clerk

By: D. Gene Roberts
D. Gene Roberts, Chairman (Landlord)

WITNESS:

TRINITY TOPERS SOUTH, INC.

Calvin K. ...
Paul ...

By: William D. ...

ATTEST:

William D. ...



STATE OF FLORIDA)
COUNTY OF BREVARD)

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and in the County aforesaid to take acknowledgements, personally appeared D. GENE ROBERTS and R. C. WINSTEAD, JR., Chairman and Clerk, respectively, of the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA known as Landlord, to be known to be the persons described in and who executed the foregoing instrument, and they acknowledged before me that they executed the same pursuant to authority vested in them by said Board.

WITNESS my hand and official seal in the County and State last aforesaid this 15TH day of MARCH, 1979.



Bernadette A. Parker
Notary Public, State of Florida
at Large

STATE OF FLORIDA)
COUNTY OF BREVARD)

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and in the County aforesaid to take acknowledgements, personally appeared Alex W. Boyce and William H. Penland, as President and Secretary, respectively, of TRINITY TOWERS SOUTH, INC., to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 23rd day of March, 1979.

Raymond L. ...
Notary Public, State of Florida
at Large

(SEAL)

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JAN. 15 1987
BONDED FROM GENERAL INS. UNDERWRITERS

EXHIBIT "A"

1. Eligibility for Occupancy: TRINITY TOWERS SOUTH, INC. is required to establish and maintain occupancy rules, rental rates, and charges necessary to insure maximum occupancy and use of this facility.
2. Eligibility Criteria of Occupant: The eligibility criteria for occupancy is as follows:
 - a. Families or persons shall be admitted regardless of race, creed, color, sex, or national origin.
 - b. Eligible occupants are:
 - (1) Persons who are 62 years of age or over;
 - (2) Families, the head of which (or spouse) is 62 years of age or over;
 - (3) Two related persons when both persons are 62 years of age or older;
 - (4) Two unrelated persons when both persons are 62 years of age or older.
 - c. Persons under age 62 who are not family members will be admitted as permanent residents only if their presence is essential for the physical care or economic support of the eligible occupant or occupants.
 - d. Handicapped single persons and families, the head of which (or spouse) is handicapped, also are eligible for occupancy. It must be determined, however, that the handicapped individual has a physical impairment which meets all of the following criteria:
 - (1) It is expected to be of long-continued and indefinite durations.
 - (2) It substantially impedes his/her ability to live independently.
 - (3) It is of such a nature that ability to live independently could be improved by more suitable housing conditions.
 - e. Developmentally disabled persons also shall be considered handicapped, but it is not required to admit developmentally disabled persons when such persons are so disabled that they are not capable of functioning within the program of the facility.
 - (1) A developmental disability is defined as a disability attributable to mental retardation, cerebral palsy, epilepsy, autism (or dyslexia resulting from these), or any other conditions closely related to mental retardation in terms of intellectual and adaptive problems.
 - (2) The handicap must originate before age 18, can be expected to continue indefinitely, and constitutes a substantial handicap.
 - f. The requirement limiting occupancy to senior citizens or the handicapped can be legally waived for a limited period, provided, (a) that a reasonable effort has been made to obtain occupancy by eligible persons, (b) the waiver is necessary to maintain the solvency of the project within a framework of reasonable rentals, and (c) the terms of the waiver stay within program objectives to the greatest extent possible.

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- (1) The waiver of the age eligibility requirement should be limited in time and scope to the narrowest extent considered necessary to achieve needed occupancy.
- (2) Waiver of the age requirement should be handled on a tenant-by-tenant basis rather than as built-in exceptions in the eligibility criteria, in order to avoid abuses and assure necessary supervision.
- (3) The waiver of the requirement limiting occupancy to senior citizens or the handicapped must receive the prior written approval of the landlord and such waiver must be made within a limited period of time.

3. Income Limitation: In addition to the above criteria, occupancy by persons and families shall be limited to those whose annual incomes at admission do not exceed the official maximum income limits established by the Secretary of Housing and Urban Development of the United States Government for the geographical area in which the project is located.

- a. Income limits that the income of the family shall not exceed 135 percent of the Public Housing Admission requirements, or 80 percent of the median income, or 80 percent of the BMIR, whichever is highest.
- b. In exceptional cases where physical default is foreseen or the survival of the project is threatened by competition from other projects or by the absence of sufficient market demand within the desired income level, the Department of Housing and Urban Development Area and Insuring Office Directors may increase or waive the admission income limits. Such increase or waiver shall require the prior written approval of the landlord. Such increase of the waiver shall be limited to one-year increments subject to subsequent review and renewal or cessation. During such periods, if any, the exception granted must be further conditioned to assure that preference shall always be given to those eligible under normal program criteria.

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Page 2 of Exhibit "A"