

Replacement

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| AGENDA | |
| Section | Consent |
| Item No. | II C 6 |



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|---------------------------|
| Meeting Date |
| September 16, 2014 |

AGENDA REPORT

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

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| SUBJECT: | Request for Consent and Joinder to Triple Net Lease for property owned by City of Melbourne and authorization to execute corrective deed/release of reverter rights |
| DEPT/OFFICE: | Central Services |
| Requested Action: | |
| Request Board approve a Consent and Joinder to Triple Net Lease and authorize the Chair to execute a corrective deed and release and termination of right of reverter and restrictive covenant, subject to the County Attorney Office's review and approval. | |
| Summary Explanation & Background: | |
| <p>On September 21, 1976, the School Board conveyed ownership of the land and improvements on New Haven Avenue known as Ruth Henegar School to the County. For many years the south part of the property fronting Melbourne Avenue was developed for parking and intended as the site of the original Melbourne Senior Center. The Melbourne Senior Center relocated to a new facility in Wickham Park. On March 6, 2012, the County conveyed the property to the City of Melbourne. This property is adjacent to the Trinity Towers South, Inc. property that the County recently assigned the lease to the City in July 2014. Both properties are owned by the City and subject to a reverter clause which requires the property be forever used for public purpose would revert ownership back to the County should the City discontinue using the property for public purpose.</p> <p>In June 2014, the City entered into a lease with the not-for-profit organization Brevard Regional Arts Group, Inc. (BRAG) that includes a portion of the parking lot and requests a consent and joinder to this lease from the County in light of the reverter clause. Pending grant conditions require County approval of the lease on or before September 16, 2014.</p> <p>As the County no longer has a use for the property it may release and terminate the County's reverter rights and restrictive covenant. In the event that the City ceases to use it for a public purpose, ownership will revert from the City directly back to the School Board, instead of reverting ownership to the County. (The School Board retained the same reverter right and restrictive covenant.) There is also an error in the legal description attached to the 2012 county deed that should be corrected to avoid future title problems.</p> <p>There is no fiscal impact associated with this action except for the cost to record the corrective deed and release and termination of the County's reverter and restrictive covenant.</p> <p style="text-align: right;">Contact: Teresa Camarata, ext. 52543; Teresa.camarata@brevardcounty.us</p> | |
| Clerk to the Board Instructions: Return one executed copy to Central Services. | |
| Exhibits Attached: Consent and Joinder to Triple Net Lease | |
| Contract /Agreement (If attached): Reviewed by County Attorney Yes <input type="checkbox"/> No <input type="checkbox"/> PR <input type="checkbox"/> | |
| County Manager | Assistant County Manager, Mel Scott |
| Stockton Whitten | Assistant County Manager, Venetta Valdengo |
| Department Director / Extension <i>Teresa Camarata</i> 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

September 17, 2014

M E M O R A N D U M

TO: Teresa Camarata, Central Services Director

RE: Item II.C.6., Request for Consent and Joinder to Triple Net Lease for Property Owned by City of Melbourne, and Authorization to Execute Corrective Deed/Release of Reverter Rights

The Board of County Commissioners, in regular session on September 16, 2014, executed Consent and Joinder to Triple Net Lease with City of Melbourne; and authorized the Chairman to execute a corrective deed and release and termination of right of reverter and restrictive covenant, subject to the County Attorney's Office review and approval. Enclosed is the original Consent and Joinder to Triple Net Lease.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

Encl. (1)

THIS INSTRUMENT RETURN TO:
Cathleen A. Wysor, CMC, City Clerk
City of Melbourne
900 East Strawbridge Avenue
Melbourne, Florida 32901

THIS INSTRUMENT PREPARED BY:
Paul R. Gougelman, III, City Attorney
City of Melbourne
900 East Strawbridge Avenue
Melbourne, Florida 32901

Tax Parcel: Part of
28-37-03-75-00000.0-0005.00

CONSENT AND JOINDER TO TRIPLE NET LEASE

THIS CONSENT AND JOINDER TO TRIPLE NET LEASE is entered into this 16 day of September, 2014, by the Board of County Commissioners of Brevard County, Florida, a body politic, whose address is 2725 Judge Fran Jamieson Way, Melbourne, Florida 32940 (the "County") in favor of the City of Melbourne, Florida, a Florida Municipal Corporation, and the Brevard Regional Arts Groups, Inc., a Florida Not-for-Profit Corporation.

RECITALS:

WHEREAS, the Brevard Regional Arts Group, Inc., a Florida Not-for-Profit Corporation ("BRAG") and the City of Melbourne, Florida, a Florida Municipal Corporation (the "City"), entered into a Triple Net Lease on June 12, 2014 (the "Lease");

WHEREAS, the Lease is for twenty-five (25) years for the purpose of constructing a set design and costume shop building, as further described in the Lease, on the following described property, to-wit:

The Lease is for property located in Township 27 South, Range 37 East, Section 03, within the City of Melbourne, Florida (the "Property"), and described as follows:

That portion of Lots 6 and 7, of Fee's Unrecorded Subdivision in Section 3, Township 28 South, Range 37 East, City of Melbourne, Brevard County, Florida, described as follows:

Commence at the Northwest corner of Lot 5 of said Fee's Unrecorded Subdivision, same being the Northeast corner of Lot 12, Block 2 of Hallwood Place, according to the plat thereof, as recorded in Plat Book 2, Page 33-A, of the Brevard County Public Records; same point being on the South right of way line of New Haven Avenue, an uneven width public right-of-way; thence South 88°34'35" East, along the South right-of-way line of said New Haven Avenue, for 133.0 feet to the Northeast corner of that parcel of land described in Official Records Book 2214, Page 1640 of the Public Records of Brevard County, Florida; thence run South 00°49'32" East, along the East line of that parcel of land described in Official Records Book 2214, Page 1640, for 305.11 feet, to a ½ inch iron rod, with a cap marked "Briel LB 3859"; thence run South 88°34'35" East, for 53.37 feet, to a ½ inch iron rod with a cap marked "Briel LB 3859" at the POINT OF BEGINNING; thence run North 00°18'16" West, for 70.00 feet to a ½ inch iron rod with a cap marked "Briel LB 3859"; thence run South 88°34'35" East, for 131.00 feet, to a ½ inch iron rod with a cap marked "Briel LB 3859"; thence run South 00°18'16" East, for 70.00 feet, to a ½" iron rod with a cap marked "Briel LB 3859"; thence run North 88°34'35" West, for 131.00 feet to the POINT OF BEGINNING. Containing 9,170 feet, more or less.

[Pursuant to legal description prepared by Gabriel L. Denes, PLS, Melbourne, FL, Project No. 14-182, dated April 15, 2014]

(herein: the "Property");

WHEREAS, the Property is subject to a reversionary interest in favor of the County set forth in a deed from the County to the City, recorded on June 15, 2012, in Official Records Book 6622, Page 2756, Public Records of Brevard County, Florida (the "Deed");

WHEREAS, the reverter clause in the Deed provides that the title to the Property will revert back to the County if the

Property is not used for "a public use and public related activities and for purposes providing public recreational use and related activities"; and

WHEREAS, the County has reviewed the terms of the Lease and finds that the City has not committed a violation of the Deed reverter clause to date.

NOW, THEREFORE, in consideration of Ten and 00/100 DOLLARS (\$10.00), the receipt and sufficiency all of which is acknowledged, the Board of County Commissioners of Brevard County do hereby join in and consent and agree to the Lease, finding that it is consistent with and does not violate provisions in the Deed that would trigger a reversion of title to the Property to the County.

Signed, sealed and delivered in the presence of:

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a body politic

By: Mary Bolin Lewis
Print Name: Mary Bolin Lewis
Title: Chairman

ATTEST: [Signature]
Clerk, Board of County Commissioners

(SEAL)

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 18 day of September, 2014, by Mary Bolin Lewis, as Chairman of the Board of County Commissioners of Brevard County, Florida, a body politic, on behalf of Brevard County, Florida. She is personally known to me or has produced _____ as identification.

Reviewed for legal form and content: [Signature]
County Attorney

[Signature]
Signature of Notary Public and Name of Notary Public typed, printed or stamped

