

Memorandum



Agenda Item No. 8(F)(1)(A)

Date: May 18, 2010
To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners
From: George M. Burgess
County Manager
Subject: Amendment to Lease Agreement for County-Owned Property Located at
6060 S.W. 66 Street, South Miami with St. Alban's Nursery, Inc., a Florida Not-for-Profit
Corporation
Property # 4025-03-00

RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing execution of an Amendment to Lease Agreement for County-owned property located at 6060 S.W. 66 Street, South Miami, indicating a transfer in the maintenance responsibilities as per Article IV of the Lease Agreement dated September 1, 1987, from the County to St. Alban's Day Nursery, Inc. The attached Amendment to Lease Agreement has been prepared by General Services Administration (GSA).

PROPERTY: 6060 S.W. 66 Street, South Miami

COMMISSION DISTRICT: 7

OWNER: Miami-Dade County

USE: 5,644 square feet of classroom and building space for the operation of a child care center.

TENANT'S TRACK RECORD: The County has no record of negative performance issues with the St. Alban's Day Nursery, Inc., a Florida Not-for-Profit Corporation.

JUSTIFICATION: St. Alban's Day Nursery, Inc. has been managing the County-owned child care center since 1987. The lease has successive two-year renewal options at an annual rental amount of \$1.00. The Tenant is responsible for charges for water, electricity, trash pickup, janitorial and custodial services. The County is responsible for maintaining the structure, which includes the roof and the air-conditioning system. The adopted FY2009-10 budget included the elimination of the maintenance services being performed at this facility by GSA. This Amendment to Lease Agreement transfers the responsibility of maintaining the structure, including the roof and air conditioning system, from the County to St. Alban's Day Nursery, Inc.

PURPOSE OF AMENDMENT:

a) To modify the following paragraphs which shall supersede and replace the referenced Articles in the Lease as of the effective date of the amendment:

Article IV, "Maintenance"; Article VIII, "Liability for Personal Property"; Article XIII, "Indemnification and Hold Harmless"; Article XIV, "Liability for Damage or Injury."

b) To incorporate the following paragraphs within the Lease as of the effective date of the amendment:

Article XXII, "Radon Gas"; Article XXIII, "Governing Law"; Article XXIV, "Permits and Regulations"; Article XXV, "Force Majeure"; Article XXVI, "Waiver"; and Article XXVII, "Default of Tenant."

EFFECTIVE DATES
OF AMENDMENT:

This Amendment to Lease Agreement shall become effective upon approval by the Board of County Commissioners and shall be co-terminus thereafter with the term of the Lease Agreement.

CURRENT LEASE:

The current lease agreement was approved by the Board on September 1, 1987 by Resolution No. R-1159-87. The lease is for a two-year term with successive two-year renewal option periods.

COMMENTS:

Attached for your information is a copy of the previously approved resolution and memorandum with data concerning the lease.

MONITOR:

Linda Weber, Real Estate Officer

DELEGATED AUTHORITY:

Authorizes the County Mayor or County Mayor's designee to execute the Amendment to Lease Agreement and exercise the cancellation provision.


Wendi J. Norris, Director
General Services Administration

RESOLUTION NO. R-1159-87

RESOLUTION AUTHORIZING EXECUTION OF MANAGEMENT AND LEASE AGREEMENTS WITH ST. ALBAN'S DAY NURSERY FOR THE MANAGEMENT AND OPERATION OF THE SOUTH MIAMI CHILD CARE CENTER; AND AUTHORIZES THE COUNTY MANAGER TO EXERCISE RENEWAL AND CANCELLATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board approves the Management and Lease Agreements between Dade County and St. Alban's Day Nursery to manage and operate the South Miami Child Care Center, a unit of the Office of Human Development, Department of Human Resources, in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Dade County; and to exercise the renewal and cancellation provisions contained therein.

The foregoing Resolution was offered by Commissioner Clara Oesterle, who moved its adoption. The motion was seconded by Commissioner Beverly B. Phillips, and upon being put to a vote, the vote was as follows:

Barbara M. Carey	Aye
Clara Oesterle	Aye
Beverly B. Phillips	Aye
James F. Redford, Jr.	Aye
Harvey Ruvin	Aye
Barry D. Schreiber	Absent
Jorge E. Valdes	Absent
Sherman S. Winn	Aye
Stephen P. Clark	Aye

The Mayor thereupon declared the Resolution duly passed and adopted this 1st day of September, 1987.

DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

RICHARD P. BRINKER, CLERK

Approved by County Attorney [Signature]
form and legal sufficiency.

By: [Signature]
Deputy Clerk

TO: Honorable Mayor and Members
Board of County Commissioners

DATE: September 1, 1987

FROM: Sergio Perera
County Manager

SUBJECT: Resolution Authorizing
Execution of Management and
Lease Agreements with St.
Alban's Day Nursery
Property #4025-03-00 LF

RECOMMENDATION:

The following Management and Lease Agreements have been reviewed by General Services Administration, and are recommended for approval:

USING AGENCY:

St. Alban's Day Nursery, Inc.

BACKGROUND:

The Board of County Commissioners at its September, 1982, budget hearing, directed the Department of Human Resources to divest itself from the direct operation of the two County-owned Child Care Centers, Jackson-Dade and South Miami. As a result of that directive, it was recommended that a contract be negotiated with St. Alban's Day Nursery for the management and operation of the South Miami Child Care Center. The Health and Human Services Committee also established the Child Care Support Committee and charged it with the responsibility of reviewing the management and operation of these centers, making recommendations where needed, and providing technical assistance in the implementation of approved recommendations.

PROPERTY:

South Miami Child Care Center, 6060 S.W. 66 Street.

OWNER:

DADE COUNTY

TERMS:

LEASE AGREEMENT: 2 years/\$1.00 per year for 5,644 square feet, payable in advance.

MANAGEMENT AGREEMENT: 2 years/not to exceed \$15,000 per year.

EFFECTIVE DATES:

October 1, 1987 through September 30, 1989.

RENEWAL OPTION:

Two (2) year successive renewal periods, subject to joint review, with sixty (60) days notice.

CANCELLATION PROVISION:

MANAGEMENT AGREEMENT: 60 days with 5 days termination by County for cause.

LEASE AGREEMENT: 30 days. Either party, the Tenant through its County Manager or his designee, shall have the right to cancel by giving written notice as indicated prior to effective date.

FORMER LEASE AND MANAGEMENT AGREEMENTS:

10-1-83 through 9-30-84, Retroactive R-511-84, approved 5-1-84.
10-1-84 through 9-30-85, R-1233-84, approved 9-18-84.
10-1-85 through 9-30-86, R-1414-85, approved 10-15-85.
10-1-86 through 10-15-87, R-953-86, approved 7-15-86.

FUNDING SOURCE:

General Fund - HRS



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: May 18, 2010

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(F)(1)(A)

Please note any items checked.

- _____ **“3-Day Rule” for committees applicable if raised**
- _____ **6 weeks required between first reading and public hearing**
- _____ **4 weeks notification to municipal officials required prior to public hearing**
- _____ **Decreases revenues or increases expenditures without balancing budget**
- _____ **Budget required**
- _____ **Statement of fiscal impact required**
- _____ **Ordinance creating a new board requires detailed County Manager’s report for public hearing**
- _____ **No committee review**
- _____ **Applicable legislation requires more than a majority vote (i.e., 2/3’s ____, 3/5’s ____, unanimous ____) to approve**
- _____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor

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Veto _____

5-18-10

Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF AN AMENDMENT TO LEASE AGREEMENT AT COUNTY-OWNED PROPERTY LOCATED AT 6060 S.W. 66 STREET, SOUTH MIAMI, WITH ST. ALBAN'S DAY NURSERY, INC., TRANSFERRING PROPERTY MAINTENANCE RESPONSIBILITIES FROM THE COUNTY TO THE TENANT; INCORPORATING ADDITIONAL ARTICLES IN THE LEASE AS OF THE EFFECTIVE DATE; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, St. Alban's Day Nursery, Inc., a Florida not-for-profit Corporation is a political subdivision of the State of Florida; and

WHEREAS, both Landlord and Tenant are desirous of amending said Lease as set forth and desires to continue the use of certain county-owned property located at South Miami Child Care Center, 6060 S.W. 66 Street, South Miami, for premises used as a child care center; and

WHEREAS, the County is satisfied that the St. Alban's Day Nursery, Inc. does require a County-owned property for such use and the property is not otherwise needed for County purposes; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Amendment to Lease Agreement between Miami-Dade County and St. Alban's Day Nursery, Inc., a Florida not for profit Corporation, for premises to be utilized as a child care center, transfers property maintenance responsibilities from the County to the Tenant; incorporates additional Articles in the Lease as of the effective date; authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County;

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The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman	
Jose "Pepe" Diaz, Vice-Chairman	
Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of May, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

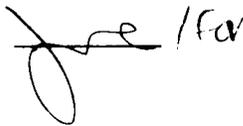
MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman



AMENDMENT TO LEASE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2010, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, herein called the "LANDLORD," and ST. ALBAN'S DAY NURSERY, INC., a Florida not-for-profit Corporation, hereinafter called the "TENANT,"

WITNESSETH:

WHEREAS, by Resolution No. R-1159-87, adopted by the Board of County Commissioners on September 1, 1987, the Board authorized a Lease, attached hereto as Exhibit "A," (the "Lease") between the above named parties for an initial term of two years with successive two-year renewal option periods for that certain property located at 6060 S.W. 66 Street, Miami, FL (the "Building"); and

WHEREAS, the Lease has been successively renewed every two years and is currently in the twelfth renewal option period, which commenced October 1, 2009 and terminates on September 30, 2011 under the same terms and conditions; and

WHEREAS, both LANDLORD and TENANT are desirous of amending said Lease as set forth below; and

WHEREAS, by Resolution No. _____, adopted _____, 2010, the Board of County Commissioners has authorized the amending of said Lease; and

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. The foregoing recitals and provisions are hereby adopted and incorporated herein to the Lease.
2. The following paragraphs shall supersede and replace the referenced Articles in the Lease as of the effective date;

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3. Article IV, **"MAINTENANCE"**, TENANT shall be responsible to maintain the Building and keep in good repair and condition, during the term of this Lease, or any extension or renewal thereof, the structure of the Building which includes the roof and air-conditioning system. TENANT agrees to maintain and keep in good repair, condition, and appearance, during the term of this Lease or any extension or renewal thereof, the interior and exterior of the Demised Premises. TENANT shall be responsible for and shall repair any damage caused to the Demised Premises, including but not limited to any damage resulting from TENANT or TENANT's agents, employees, invitees, or visitors negligence, but excepting ordinary wear and tear. LANDLORD shall notify TENANT after discovering any damage which TENANT is responsible for repairing and TENANT shall make the necessary repairs promptly after said notice.

4. Article VIII, **"LIABILITY FOR PERSONAL PROPERTY"**, All personal property placed or moved in the Demised Premises shall be at the risk of TENANT or the owner thereof. LANDLORD shall not be liable to TENANT or any third party for any damage to said personal property unless caused by or due to the sole negligence of LANDLORD, LANDLORD's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

5. Article XIII, **"INDEMNIFICATION AND HOLD HARMLESS"**, TENANT shall indemnify and hold harmless the LANDLORD and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney fees and costs of defense, which the LANDLORD or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Lease by the TENANT or its employees, agents, servants, partners, principals or subcontractors. TENANT shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the LANDLORD, where applicable, including appellate proceedings, and shall pay all costs,

judgments, and attorney's fees which may issue thereon. TENANT expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by TENANT shall in no way limit the responsibility to indemnify, keep and save harmless and defend the LANDLORD or its officers, employees, agents and instrumentalities as here in provided.

6. Article XIV, "LIABILITY FOR DAMAGE OR INJURY", LANDLORD shall not be liable for any damage or injury which may be sustained by any party or person on the Demised Premises other than the damage or injury caused solely by the negligence of LANDLORD, its officers, employees, agents, invitees, or instrumentalities, subject to all limitations of Florida Statutes, Section 768.28.

The following paragraphs shall be added to, and incorporated within the Lease;

7. Article XXII, "RADON GAS", Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
8. Article XXIII, "GOVERNING LAW", This Lease, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, or tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida.
9. Article XXIV, "PERMITS, AND REGULATIONS", TENANT covenants and agrees that during the term of this Lease, TENANT will obtain any and all necessary permits and approvals that all uses of the leased property will be in conformance with all applicable laws,

including all applicable zoning regulations. Any and all charges, taxes, or assessments levied against the Demised Premises shall be paid by TENANT and failure to do so will constitute a breach of this Lease.

10. Article XXV, "FORCE MAJEURE", TENANT and LANDLORD shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of the Lease when prevented from so doing by cause or causes beyond TENANT's or LANDLORD's control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of TENANT or LANDLORD.

11. Article XXVI, "WAIVER", If under the provisions hereof, LANDLORD or TENANT shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of LANDLORD's or TENANT's rights hereunder, unless expressly stated in such settlement agreement. No waiver by LANDLORD or TENANT of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by LANDLORD or TENANT of any breach of covenant, condition or agreement herein contained shall operate as a waiver of such covenant, condition or agreement itself, or any subsequent breach thereof. No payment by or reentry by LANDLORD and no acceptance by LANDLORD of keys from TENANT shall be considered an acceptance of a surrender of this Lease.

12. Article XXVII, "DEFAULT OF TENANT", If TENANT shall violate or fail to perform any of the other conditions, covenants, or agreements herein made by TENANT, and if such violation or failure continues for a period of thirty (30) days after written notice thereof to TENANT by LANDLORD, then LANDLORD may proceed with any remedy available at law or in equity in the State of Florida or by such other proceedings, including

reentry and possession, as may be applicable. All rights and remedies of LANDLORD under this Lease shall be cumulative and shall not be exclusive of any other rights and remedies provided to LANDLORD under applicable law.

In all other respects, all terms and provisions of the Lease shall remain in full force and effect.

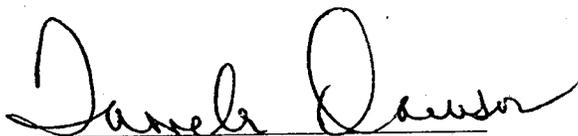
IN WITNESS WHEREOF, the LANDLORD and TENANT have caused this Amendment to Lease to be executed by their respective and duly authorized officers the day and year first above written.

(CORPORATE SEAL)

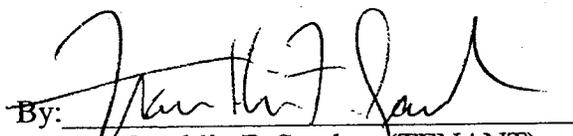
ST. ALBAN'S DAY NURSERY, INC.
a Florida not-for-profit corporation



WITNESS



WITNESS



By: Dr. Franklin F. Sands (TENANT)
Executive Director & C.E.O.

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

DADE COUNTY FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Carlos Alvarez
Mayor (LANDLORD)

Approved by County Attorney as to form and legal sufficiency: _____

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