

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: June 4, 2013 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) adopt a Resolution authorizing a continuing reduction in the rental rate and finding that the Fourth Amendment (R2002-0829) to Governmental Center Lease Agreement with LJL Food Management, Inc., d/b/a Tina's Café is in the best interest of the County; and

B) approve a Fourth Amendment to Governmental Center Lease Agreement with LJL Food Management, Inc., d/b/a Tina's Café.

Summary: LJL Food Management, Inc., d/b/a Tina's Café has been the food service provider operating in Suite 110 of the Governmental Center Parking Garage since 2005. In response to the economic downturn and Tina's Café's poor payment history, rent was reduced by 20% in 2009 and by another 50% in 2010 for a period of two years. The Third Amendment, approved by the Board on December 18, 2012 (R2012-1941) documented the reduced rental rate of \$16,601/yr until April 30, 2013, at which time the Board requested a further review of the rent. Tina's Café just recently became current with payment of rent, is still on a payment plan for a Federal tax lien and Staff doubts that Tina's Café would be able to pay the higher rent at this time. This Fourth Amendment provides for the continuance of the same \$16,601/yr reduced rental rate until April 30, 2014. (PREM) Countywide (HJF)

Background & Policy Issues: Staff views the provision of food service at this location as a benefit to the employees at and visitors to the Governmental Center. The amount of rent derived from this Lease is not significant. Staff's primary concern is with respect to the enforcement of the terms of the Lease. Staff has spent a considerable amount of time in following up on late payments and preparing Agenda Items on this issue.

(continued on page 3)

Attachments:

- 1. Location Map
- 2. Resolution
- 3. Fourth Amendment to Governmental Center Lease Agreement
- 4. Fiscal Impact Calculation Sheet

Recommended By: [Signature] Department Director 5/13/13 Date

Approved By: [Signature] County Administrator 5/22/13 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>\$7,027.73</u>	<u>\$10,458.63</u>	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$7,027.73</u>	<u>\$10,458.63</u>	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ -0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes No

Budget Account No: Fund 0001 Dept 410 Unit 4240 Object 6225
 Program _____

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

The above fiscal impact figures are a comparison of the rental revenue for the 12-month period of 5/1/13 – 4/30/14, based on the Board approving this Fourth Amendment (½ rent will continue until 4/30/14 and the 4% adjustment on 9/1/13 will be waived). See attached Fiscal Impact Calculation Sheet for details.

C. Departmental Fiscal Review: _____ *5-14-13*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

OFMB *[Signature]* *5/17/2013*
8/2 5/11

Contract Development and Control *[Signature]* *5/20/13*
B. Wheeler

B. Legal Sufficiency:

[Signature] *5/21/13*
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

Background & Policy Issues (cont'd.): On April 3, 2012, Staff requested Board direction regarding whether to terminate the Agreement and issue a new RFP for a food service lease. At the Board meeting, Tina's Café represented that it would become current with rent by April 30, 2012, as it had consistently been running two (2) months behind in payment of rent. The Board chose not to terminate the Agreement, and directed that rent continue at the reduced ($\frac{1}{2}$) rate until April 30, 2013, with a further review at that time. On December 18, 2012, the Board approved the Third Amendment to Government Center Lease Agreement (R2012-1940 & -1941) that documented suspension of the rent adjustment and continued the $\frac{1}{2}$ rent until April 30, 2013.

Tina's Café has been struggling to remain current in payment of rent; however, on April 29, 2013, they became current. As Staff has previously disclosed to the Board, Tina's Café has also incurred State Department of Revenue and Federal Department of Treasury liens but has been on payment schedules with both entities. Tina's Café has informed Staff that the State lien has been paid off but the Federal lien continues. As Tina's Café feels the economy has not yet rebounded to allow payment of full rent, it has requested that $\frac{1}{2}$ rent continue retroactively for another year from May 1, 2013, to April 30, 2014, and the four percent (4%) rent adjustment scheduled for September 1, 2013, be suspended yet again. Further, Tina's Café claims that the funds they had been remitting for the State lien payment can now be directed towards County rental payments. Approval of the Fourth Amendment to Government Center Lease Agreement will result in a reduction of previously projected revenue of \$7,027.73 for FY2013 and \$10,458.63 for FY2014.

State Statutes do not require a Disclosure of Beneficial Interests to be obtained when the County leases property to a tenant, Staff did not request an updated disclosure as a Disclosure was submitted with the Third Amendment on December 18, 2012, and Tina's Café has stated no corporate changes have occurred.

TWP 43

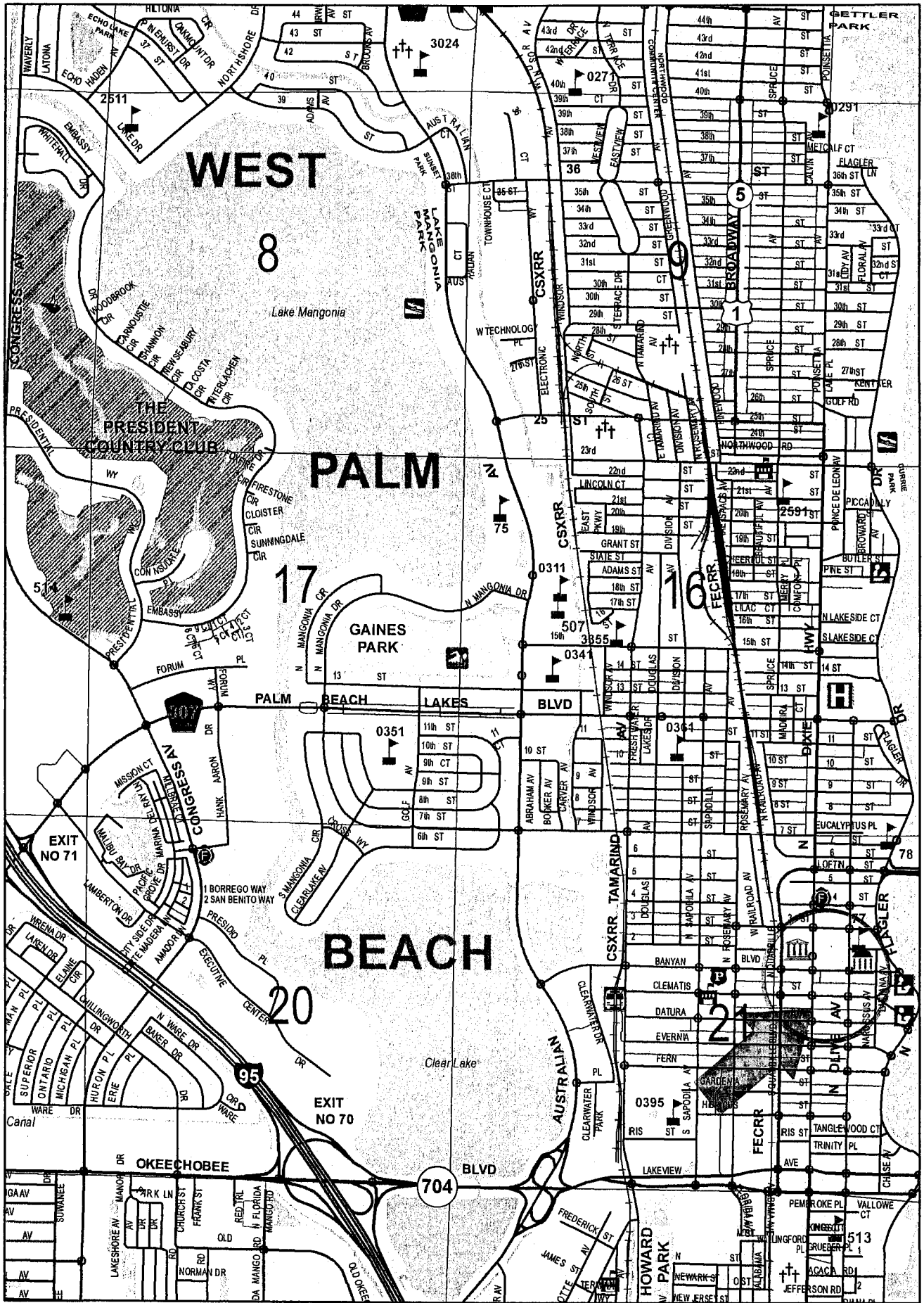
TWP 43

TWP 43

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RNG 43

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RNG 43

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LOCATION MAP



RESOLUTION NO. 2013-_____

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
PALM BEACH COUNTY, FLORIDA, AUTHORIZING AN EXTENSION OF
THE RENTAL REDUCTION PERIOD FOR RENT DUE PURSUANT TO
COUNTY'S LEASE OF SPACE TO LJL FOOD MANAGEMENT, INC.;
AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, LJL Food Management, Inc., a Florida corporation, ("Tenant"), pursuant to a lease dated May 21, 2002 (R2002-0829), as amended, leases space from County for the operation of Tina's Café, a restaurant located on the first floor of the County-owned Governmental Center Parking Garage;

WHEREAS, Tenant has made application to the Board of County Commissioners of Palm Beach County requesting that Palm Beach County extend the rent relief currently being provided due to continuing adverse economic conditions;

WHEREAS, Tenant is largely dependent on County-derived business and has seen a continued reduction in its business due to a reduction in the customer base;

WHEREAS, Tina's Café provides a service to government employees and visitors to the surrounding government buildings by offering them convenient food service at a reasonable price and County wishes to retain Tenant's operations in the Governmental Center Parking Garage space;

WHEREAS, Tenant has requested rent relief due to the current adverse economic conditions, and County has agreed to extend the rental reduction period through April 30, 2014;

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that Tenant provides a service to employees and visitors of the Governmental Center and Courthouse that County does not wish to lose, and extension of the rent reduction period is in the best interest of the County.

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

Section 1. Recitals

The foregoing recitals are true and correct and incorporated herein by reference.

Section 2. Authorization to Adjust Rent

The Board of County Commissioners of Palm Beach County shall amend its lease agreement dated May 21, 2002 (R2002-0829) with LJL Food Management, Inc., a Florida corporation, by entering into the Fourth Amendment to Governmental Center Lease Agreement attached hereto and incorporated herein by reference, in order to continue to lease the building space identified in the Lease, as amended, for the use identified above, at a reduced annual rent rate of Sixteen Thousand Six Hundred One Dollars (\$16,601.00) through April 30, 2014.

Section 3. Conflict with Federal or State Law or County Charter

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

Section 4. Effective Date

The provisions of this Resolution shall be effective immediately upon adoption hereof.

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:

- Commissioner Steven L. Abrams, Mayor
- Commissioner Priscilla A. Taylor, Vice Mayor
- Commissioner Hal R. Valeche
- Commissioner Paulette Burdick
- Commissioner Shelley Vana
- Commissioner Mary Lou Berger
- Commissioner Jess R. Santamaria

The Mayor thereupon declared the resolution duly passed and adopted this _____ day of _____, 2013.

PALM BEACH COUNTY, a
political subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

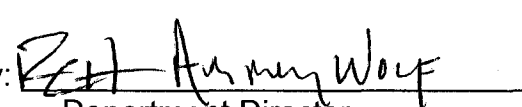
SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: 
Assistant County Attorney

By: 
Department Director

**FOURTH AMENDMENT
TO
GOVERNMENTAL CENTER LEASE AGREEMENT**

THIS FOURTH AMENDMENT TO GOVERNMENTAL CENTER LEASE AGREEMENT (the "Fourth Amendment") is made and entered into _____ by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and LJL Food Management, Inc., a Florida corporation ("Tenant"). County and Tenant are sometimes referred to herein collectively as the "parties".

WITNESSETH:

WHEREAS, County and Tenant entered into that certain Governmental Center Lease Agreement dated May 21, 2002 (R2002-0829) (the "Lease"), which Lease has been amended to extend the Term, increase the leased area, modify the rent provisions, allow outside seating, and modify certain other provisions; and

WHEREAS, Tenant has requested further rent relief due to continuing adverse economic conditions; and

WHEREAS, the parties have agreed to extend the rental reduction period.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning ascribed to them in the Lease.
2. The rental reduction period that was scheduled to end effective April 30, 2013, shall be retroactively extended through April 30, 2014, and Annual Rent for the Premises shall continue to be Sixteen Thousand Six Hundred One Dollars (\$16,601.00), plus applicable sales tax, and shall not be subject to escalation during such extended rental reduction period. Tenant shall inform County by the end of February 2014 whether Tenant is able to return to the full annual rental rate of Thirty-Three Thousand Two Hundred Two Dollars (\$33,202.00), plus applicable sales tax, or whether Tenant requires an extension of the rental reduction period. County shall evaluate the annual rental rate by the end of April 2014 and shall establish then the rental rate to be in effect commencing May 1, 2014.
3. No provision of the Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizen or employees of the County and/or Tenant.
4. This Fourth Amendment is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.
5. Except as modified by this Fourth Amendment and the prior amendments, the Lease remains unmodified and in full force and effect and the parties hereby ratify, confirm, and adopt the Lease, as amended, in accordance with the terms thereof.

IN WITNESS WHEREOF, the parties have duly executed this Fourth Amendment as of the day and year first written above.

ATTEST:

COUNTY:

**SHARON R. BOCK
CLERK & COMPTROLLER**

PALM BEACH COUNTY, a political subdivision of the State of Florida

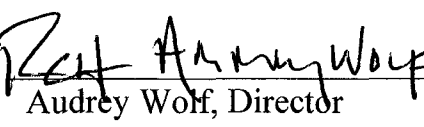
By: _____
Deputy Clerk

By: _____
Steven L. Abrams, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

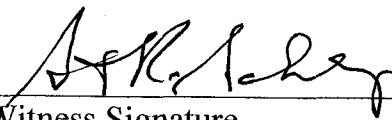

Assistant County Attorney


Audrey Wolf, Director
Facilities Development & Operations

WITNESSES AS TO BOTH:

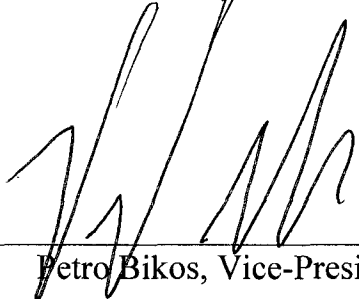
TENANT:


LJL FOOD MANAGEMENT, INC., a Florida corporation


Witness Signature

By: 
Katina Bikos, President

Steven R. Schlange
Print Witness Name

By: 
Petro Bikos, Vice-President


Witness Signature

Dion O'Connell
Print Witness Name

(SEAL)

ATTACHMENT #4

Fiscal Impact Calculation Sheet for Tina's Café Fourth Amendment

- The below calculations only involve the time period of 5/1/2013 – 4/30/2014 (12 months).
- Sales tax is not included.
- The Lease stipulates that each 9/1 the rent is to be increased by 4%, but the 9/1/13 adjustment is waived while the ½ rent occurs.

The fiscal impact referenced below and on the agenda summary is the loss of revenue pursuant to the ½ rent continuing from 5/1/2013 – 4/30/2014 (the difference of what full rent would be [including the 4% adjustment on 9/1/2013] compared to ½ rent [not including the 4% adjustment on 9/1/2013 as that is waived]).

Revenue at full rent

FY2013:

- 5/1/2013 – 8/31/2013 = 4 months
- Full rent is \$33,202.00 per year ÷ 12 = \$2,766.83 per month
- \$2,766.83 x 4 months = \$11,067.32
- Effective 9/1/2013, rent is increased by 4%
- \$33,202.00 + 4% = \$34,530.08 per year ÷ 12 = \$2,877.51 per month
- September 2013 = \$2,877.51

FY2013 TOTAL = \$11,067.32 + \$2,877.51 = \$13,944.83

FY2014:

- 10/1/2013 – 4/30/2014 = 7 months
- Full rent is \$34,530.08 per year ÷ 12 = \$2,877.51 per month
- \$2,877.51 x 7 months = \$20,142.57

FY2014 TOTAL = \$20,142.57

Revenue at ½ rent

FY2013:

- 5/1/2013 – 9/30/2013 = 5 months
- ½ rent is \$16,601.00 per year ÷ 12 = \$1,383.42 per month
- \$1,383.42 x 5 months = \$6,917.10

FY2013 TOTAL = \$6,917.10

FY2014:

- 10/1/2013 – 4/30/2014 = 7 months
- ½ rent is \$16,601.00 per year ÷ 12 = \$1,383.42 per month
- \$1,383.42 x 7 months = \$9,683.94

FY2014 TOTAL = \$9,683.94

Difference of above figures is the fiscal impact

FY2013: \$13,944.83 – \$6,917.10 = \$ 7,027.73 loss of revenue

FY2014: \$20,142.57 – \$9,683.94 = \$10,458.63 loss of revenue

TOTAL: \$17,486.36 loss of revenue