



Interoffice Memorandum

October 12, 2020

TO: Mayor Jerry L. Demings
—AND—
Board of County Commissioners

FROM: Carla Bell Johnson, Acting Assistant County Administrator 
County Administrator's Office

Contact: 407-836-5610

SUBJECT: October 27, 2020 Consent Agenda Item
Transfer of Aquatic Center to Rosen Foundation

In 1993, the Aquatic Center ("Center") on International Drive went into foreclosure and was transferred to the YMCA pursuant to a special warranty deed from the bank ("Deed") that requires that the Center be used as a swimming, diving and fitness facility. Over the past 27 years, Orange County has provided financial support to the Center by various means, most recently through an annual \$50,000 funding agreement. The YMCA closed the Center during the global pandemic and has determined not to reopen it. The Deed requires the County's consent prior to a transfer of title to a new owner. The Harris Rosen Foundation, Inc. ("Foundation"), a long-standing financial contributor to the Center, has requested County consent to the YMCA's transfer of title to the Foundation and, after a newly formed non-profit entity, the Rosen Aquatic and Fitness Center, Inc., has received 501(c)(3) status from the IRS, to the new entity.

The Deed requires that a new owner must be a governmental entity or a 501 (c) (3) entity which possesses demonstrated management experience or management capability of a type consistent with the restricted use of the Center as a swimming, diving and fitness facility; and has sufficiently demonstrated financial capability in order to ensure the reasonable ability to operate the Center subject to the restrictions. Under the Deed, the determination of whether a new owner meets these criteria is made solely by the County through whatever process the County deems reasonable and appropriate.

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County staff has held several meetings with the representatives of the Foundation and reviewed information demonstrating Mr. Harris Rosen's and the Foundation's well documented philanthropy and the Rosen hotels' history of facility management and operations. In addition, the Foundation submitted IRS Form 1099's and a 3-yr. operating pro-forma for the operation of the Center. The Foundation anticipates continued financial support from the County at \$50,000 per year.

Finally, as required by the Deed County staff conferred with the successor to the bank, currently Sun Vista LLC. Although there are currently certain unresolved issues between the Center and Sun Vista, those matters are private property matters beyond the scope of the County's involvement in the transfer.

The consent document has been reviewed by the County Attorney's Office.

If you have any questions, please contact Lila McHenry or me at the above telephone number.

ACTION REQUESTED: **Approval and execution of Consent to Transfer Ownership Interest by Orange County, Florida, Central Florida Young Men's Christian Association, Inc., Harris Rosen Foundation, Inc., and Rosen Aquatic and Fitness Center, Inc. for the Aquatic Center Property.**

CBJ/es

Attachments

c: Byron W. Brooks, AICP, County Administrator
Fred Winterkamp, Manager, Fiscal & Business Services
Lila McHenry, Sr. Assistant County Attorney, County Attorney's Office



HARRIS ROSEN FOUNDATION

9840 International Drive • Orlando, FL 32819-8122
tel 407.996.9840

October 12, 2020

Via U.S. Mail and E-Mail

Honorable Jerry L. Demings
Orange County Mayor
201 South Rosalind Avenue
Orlando, Florida 32801

Honorable Betsy VanderLey
Orange County Commission, District 1
201 South Rosalind Avenue
Orlando, Florida 32801

Honorable Christine Moore
Orange County Commission, District 2
201 South Rosalind Avenue
Orlando, Florida 32801

Honorable Mayra Uribe
Orange County Commission, District 3
201 South Rosalind Avenue
Orlando, Florida 32801

Honorable Maribel Cortez Cordero
Orange County Commission, District 4
201 South Rosalind Avenue
Orlando, Florida 32801

Honorable Emily Bonilla
Orange County Commission, District 5
201 South Rosalind Avenue
Orlando, Florida 32801

Honorable Victoria P. Siplin
Orange County Commission, District 6
201 South Rosalind Avenue
Orlando, Florida 32801

Re: Proposed Transfer of Rosen YMCA Aquatic Center to The Harris Rosen Foundation, Inc.

Dear Mayor Demings and Commissioners,

I am writing to request your support and approval for the transfer of the Rosen YMCA Aquatic Center from the Central Florida Young Men's Christian Association, Inc. to The Harris Rosen Foundation, Inc., a Florida not for profit corporation, and subsequent transfer to Rosen Aquatic And Fitness Center, Inc., a Florida not for profit corporation, once it has received confirmation from the Internal Revenue Service that it has achieved status as a 501(c) 3 non-profit entity, for fund raising purposes. This would include an assignment of rights granted to the YMCA pursuant to that certain Non-Exclusive Parking Easement Agreement by and between Great Western Bank, a Federal Savings Bank, and Central Florida Young Men's Christian Association recorded February 8, 1993 in Official Records Book 4660, Page 291, of the Public Records of Orange County, Florida (the "Temporary Parking Agreement").



The Rosen YMCA Aquatic Center is a state-of-the-art facility that serves area residents. The Rosen YMCA Aquatic Center has two Olympic-size swimming pools and new diving platforms. It is home for many competitive swimmers, divers, and water polo players as well as for hundreds of children from nearby communities who have learned drowning prevention and swimming skills. The Harris Rosen Foundation has donated millions of dollars for renovations at the Rosen YMCA Aquatic Center, and with your approval, looks forward to continuing to support and operate this world class facility and community asset.

The YMCA and The Harris Rosen Foundation, Inc. have worked diligently to provide your staff evidence that the transfer meets the conditions set forth in that certain Special Warranty Deed from Great Western to the YMCA, recorded February 8, 1993 in Official Records Book 4522, Page 4002, of the Public Records of Orange County, Florida (the "Special Warranty Deed"), which provides any transfer of the Rosen YMCA Aquatic Center be subject to the following conditions:

- 1) The use of the Rosen YMCA Aquatic Center will be in accordance with the restrictions to be used as a swimming, diving, fitness facility (or such other compatible uses similar to the use of other YMCA facilities), open to the public, etc. as set forth in the Special Warranty Deed.
- 2) The Rosen YMCA Aquatic Center will be operated by a nonprofit 501(c) 3 qualified under the Internal Revenue Code, approved by the IRS.
- 3) Any successor grantee/operator of the Rosen YMCA Aquatic Center must possess demonstrated management experience and/or management capability of a type consistent with the use of the Aquatic Center Property; and
- 4) Any successor grantee/operator possesses and shall have sufficiently demonstrated financial capability in order to insure the reasonable ability to operate the Rosen YMCA Aquatic Center; (collectively, the "Transfer Conditions").

The Rosen Team has extensive background in managing providers of services through its many charitable programs and will be using the same management team to oversee the operation and management of the Aquatic Center. Rosen Hotels further has vast experience at operating large venues and will be assisting the Foundations. The Harris Rosen Foundation has been involved in the Aquatic Center for many years through the provision of operational advice and, as mentioned, imputing of millions of dollars of improvements and funding. For the past few years Rosen Hotels has further supplied all the catering at the Aquatic Center and one of its sales managers works from the Aquatic Center.

The Harris Rosen Foundation, Inc., which, together with public donations, will fund any deficits for Rosen Aquatic and Fitness Center, Inc., as necessary to operate the Aquatic Center in a first class manner consistent with other Rosen Hotel properties and YMCA Family Centers. The Rosen Foundation will provide additional financial support to operate the Aquatic Center as necessary even after the Rosen Aquatic and Fitness Center, Inc. is approved by the IRS as a public 501(c)3. Our team has provided financial information on The Harris Rosen Foundation as well as a 3 year pro forma for the operations of the Rosen YMCA Aquatic Center together with other relevant information.

Should you have any questions concerning the qualifications of The Harris Rosen Foundation, Inc. as to the management experience and/or management capability to operate the Rosen YMCA Aquatic Center and financial capability submitted to your staff for review or otherwise to meet the Transfer Conditions, I look forward to providing such additional information for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harris Rosen", with a horizontal line extending to the right.

Harris Rosen
President

HARRIS ROSEN FOUNDATION

cc: Mr. Byron Brooks, Orange County Administrator (via/email)
Mr. Fred Winterkamp
Orange County Fiscal and Business Services Division Manager (via/email)
Lila Ingate McHenry, Esq.
Orange County Senior Assistant County Attorney (via/email)

BCC Mtg. Date: October 27, 2020

THIS INSTRUMENT PREPARED BY:

Ronald W. Sikes, Esquire
Sikes Law Group, PLLC
310 South Dillard Street
Suite 120
Winter Garden, FL 34787
(407) 877-7115

CONSENT TO TRANSFER OF OWNERSHIP INTEREST

THIS CONSENT ("Consent") is granted as of the date of last execution below, by **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the state of Florida ("Orange County") and is granted in connection with the proposed transfer of ownership of the real property described in Exhibit "A" attached hereto (the "Aquatic Center Property") by the **CENTRAL FLORIDA YOUNG MEN'S CHRISTIAN ASSOCIATION, INC.**, a Florida not for profit corporation (the "YMCA") to **THE HARRIS ROSEN FOUNDATION, INC.**, a Florida not for profit corporation (the "Existing Rosen Foundation") and the **ROSEN AQUATIC AND FITNESS CENTER, INC.**, a Florida not for profit corporation (the "Newly Created Rosen Foundation"), on and subject to the terms and conditions hereinafter set forth.

WHEREAS, on or about May 13, 1992, an agreement entitled "Aquatic Center Donation Agreement" was entered into between **GREAT WESTERN BANK** ("Great Western") and the YMCA providing for the donation of the Aquatic Center by Great Western to the YMCA on the terms and conditions set forth in said agreement (the "Donation Agreement");

WHEREAS, the Donation Agreement was subsequently amended on or about June 22, 1999, through an agreement entitled "First Amendment to Aquatic Center Donation Agreement" (the "First Amendment") and on or about March 28, 2000, through

an agreement entitled "Second Amendment to Aquatic Center Donation Agreement" (the "Second Amendment");

WHEREAS, the Donation Agreement, First Amendment and Second Amendment are collectively referred to herein as the "Donation Agreement, as Amended" provided certain conditions for a transfer of the Aquatic Center Property;

WHEREAS, that certain Special Warranty Deed from Great Western to the YMCA, recorded February 8, 1993 in Official Records Book 4522, Page 4002, of the Public Records of Orange County, Florida (the "Special Warranty Deed"), incorporated transfer conditions set forth in the Donation Agreement, as Amended, and provided any transfer of the Aquatic Center Property be subject to the following conditions:

- 1) The use of the Aquatic Center Property will be in accordance with the restrictions to be used as a swimming, diving, fitness facility (or such other compatible uses similar to the use of other YMCA facilities), open to the public, etc. as set forth therein.
- 2) The Aquatic Center Property will be operated by a nonprofit 501(c) 3 qualified under the Internal Revenue Code, approved by the IRS).
- 3) Any successor grantee/operator of the Aquatic Center Property must possess demonstrated management experience and/or management capability of a type consistent with the use of the Aquatic Center Property; and
- 4) Any successor grantee/operator possesses and shall have sufficiently demonstrated financial capability in order to insure the reasonable ability to operate the Aquatic Center Property;

all as expressly set forth in the Special Warranty Deed (collectively, the "Transfer Conditions");

WHEREAS, the YMCA desires for the transfer of the ownership and operation of the Aquatic Center Property from the YMCA to the Existing Rosen Foundation and for the transfer of the ownership and operation of the Aquatic Center Property by the Existing Rosen Foundation to the Newly Created Rosen Foundation at such time as the Newly Created Rosen Foundation has received confirmation from the Internal Revenue Service that it has achieved status as a 501(c) 3 non-profit entity;

WHEREAS, the Special Warranty Deed provides for Orange County to review for approval any proposed transfers of the ownership or operation of the Aquatic Center Property for compliance with the Transfer Conditions;

WHEREAS, Orange County has reviewed the qualifications of the Existing Rosen Foundation and the Newly Created Rosen Foundation and has determined that Existing Rosen Foundation currently meets the Transfer Conditions and that, upon its recognition by the Internal Revenue Service as a 501(c) 3 non-profit entity, the Newly Created Rosen Foundation will thereupon meet the Transfer Conditions;

WHEREAS, on or about February 8, 1993, Great Western and the YMCA entered into that certain Non-Exclusive Parking Easement Agreement by and between Great Western Bank, a Federal Savings Bank, and Central Florida Young Men's Christian Association recorded February 8, 1993 in Official Records Book 4660, Page 291, of the Public Records of Orange County, Florida (the "Parking Easement ");

WHEREAS, the Parking Easement provides in Paragraph 5 thereof any assignment of the rights granted thereunder or any interest therein shall not be valid

unless such assignment is made as part of, and is consistent with, the terms and conditions relating to the YMCA's transfer or assignment of its interest in and to its interest in and to the YMCA Property as set forth in the Special Warranty Deed;

WHEREAS, in addition to the approval by Orange County of the transfer of the ownership and operation of the Aquatic Center Property as set forth herein; the YMCA and Existing Rosen Foundation request the County to approve the transfer and assignment of rights of YMCA set forth in the Parking Easement to the Existing Rosen Foundation and for the transfer of the ownership and operation of the Aquatic Center Property by the Existing Rosen Foundation to the Newly Created Rosen Foundation at such time as the Newly Created Rosen Foundation; and

WHEREAS, the County has consulted with the successors and assigns of Great Western regarding the selection and approval of the Existing Rosen Foundation and the selection and approval of the Newly Created Rosen Foundation upon confirmation from the Internal Revenue Service that it has achieved status as a 501(c) 3 non-profit entity pertaining to the matters set forth herein;

It is, thereupon, AGREED as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Consent to Transfers.** Orange County hereby consents to:
 - a) the transfer of the Aquatic Center Property from the YMCA to the Existing Rosen Foundation; and
 - b) at such time as the Newly Created Rosen Foundation has received confirmation from the Internal Revenue Service that it has achieved status as a 501(c) 3

non-profit entity, to the transfer of the Aquatic Center Property from the Existing Rosen Foundation to the Newly Created Rosen Foundation.

3. **Proof of Status.** At such time as the Newly Created Rosen Foundation has received confirmation from the Internal Revenue Service that it has achieved status as a 501(c) 3 non-profit entity, it shall cause to be recorded in the public records of Orange County, Florida, an Affidavit verifying the receipt from the Internal Revenue of written notice that it has achieved such status and attaching a copy of said notice to the affidavit.

4. **Reservation of Rights as to Future Transfers.** The parties to this Consent hereby acknowledge that the consent of Orange County to the transfer of the Aquatic Center Property is strictly limited to the transfers expressly addressed herein and do not apply to any other transfers.

5. **Miscellaneous Provisions.**

a) **Choice of Law and Venue.** This Consent shall be construed and interpreted under the laws of the State of Florida, without giving effect to principles of conflict of laws, except where specifically pre-empted by Federal law. Proper venue with respect to any state or federal litigation in connection with this Consent shall be exclusively in Orange County, Florida.

b) **Amendments.** No amendment to this Consent shall bind any of the parties unless and until such amendment is in writing and executed by all of the parties to this Consent.

c) **Entire Agreement.** This Consent, together with the exhibit attached hereto, constitutes the entire agreement between the parties regarding the issues addressed herein and no prior or contemporary oral statements, representations,

promises, or understandings not embodied in this Consent shall be of any force and/or effect.

d) **Assignment.** This Consent may not be assigned to any person or entity absent the express written consent by Orange County to such assignment.

e) **Interpretation.** Captions and section headings contained in this Consent are for convenience and reference only; in no way do they define, describe, extend or limit the scope or intent of this Consent or any provision hereof. The terms and provisions of this Consent have been fully negotiated between the parties and each party has been afforded the opportunity to engage, if such party desires, legal counsel to assist in the preparation, negotiation, and drafting of this Consent. Accordingly, the terms and provisions of this Consent shall not be interpreted for or against any of the parties hereto as the drafting party.

f) **Waiver.** No waiver of any provision of this Consent shall be effective unless it is in writing signed by the party against whom it is asserted, and any waiver of any provision of this Consent shall be applicable only to the specific instance to which it is related and shall not be deemed to be a continuing or future waiver as to such provision or a waiver as to any other provision.

g) **Severability.** The invalidity or unenforceability of any particular provision of this Consent shall not affect the other provisions hereof, and this Consent shall be construed in all respects as if such invalid or unenforceable provision was omitted.

h) **Counterparts.** This Consent may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent agreement. To facilitate execution and delivery of this Consent, the parties may execute and exchange executed counterparts by facsimile or e-mail in a PDF file to the other party or to the other party's counsel. Facsimile or signatures in a PDF file shall have the same legal effect as original signatures.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates indicated below.

"Orange County"

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

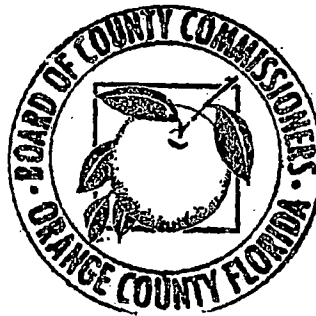
By: *Jerry L. Demings*
for Jerry L. Demings
County Mayor

Date: OCT 27 2020

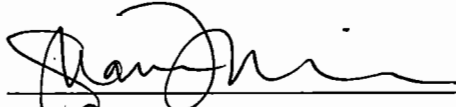
ATTEST: Phil Diamond, County
Comptroller, as Clerk of the Board
of County Commissioners

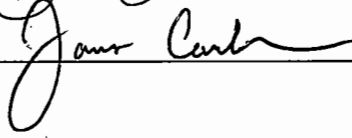
By: *Katie Smith*
Deputy Clerk

Date: OCT 27 2020

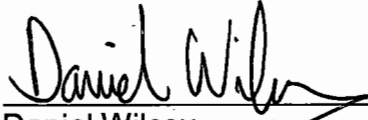


Witnesses:





**CENTRAL FLORIDA YOUNG MEN'S
CHRISTIAN ASSOCIATION, INC.**

By: 

Daniel Wilcox
Its: President and Chief Executive
Officer

Witnesses:

**THE HARRIS ROSEN FOUNDATION,
INC.**

By: _____
Harris Rosen
Its: President

Witnesses:

**ROSEN AQUATIC AND FITNESS CENTER,,
INC.**

By: _____
Harris Rosen
Its: President

Witnesses:

**CENTRAL FLORIDA YOUNG MEN'S
CHRISTIAN ASSOCIATION, INC.**

By: _____
Daniel Wilcox
Its: President and Chief Executive
Officer

Witnesses:

Alberta Hamandi
Mani Lowe

**THE HARRIS ROSEN FOUNDATION,
INC.**

By: Harris Rosen
Harris Rosen
Its: President

Witnesses:

Alberta Hamandi
Mani Lowe

**ROSEN AQUATIC AND FITNESS CENTER,,
INC.**

By: Harris Rosen
Harris Rosen
Its: President

EXHIBIT "A"
THE ROSEN YMCA AQUATIC CENTER
Legal Description

That part of Block "B", PLAZA INTERNATIONAL UNIT SEVEN, as recorded in Plat Book 12, Page 135, of the Public Records of Orange County, Florida, being described as follows:

Commence at Northwest corner of said Block "B", thence run North 89°55'27" East along the North line of said Block "B" for a distance of 385.00 feet; thence run North 41°16'49" East along a radial line and said North line for a distance of 138.23 feet to point on a curve concave Northeasterly having a radius of 225.00 feet and a chord bearing of South 62°03'07" East, said point being on said North line and the South Right-of-Way line of Jamaican Court (75 foot Right-of-Way); thence run Southeasterly along the arc of said curve, said North line and said South Right-of-Way line through a central angle 26°39'53" for a distance of 104.71 feet to a point of non-tangency; thence run South 00°27'04" East, for a distance of 249.56 feet; thence run South 89°55'27" West, for a distance of 240.68 feet to the POINT OF BEGINNING; thence continue South 89°55'27" West for distance of 328.89 feet to the West line of said Block "B" and the Easterly Right-of-Way line Interstate 4 (State Road 400); thence run South 00°04'33" East along West line and said Easterly Right-of-Way line for a distance of 405.44 feet; thence run South 00°08'38" East along said West line and said Easterly Right-of-Way line for a distance for 81.57 feet; thence run North 89°05'49" East for a distance of 246.03 feet; thence run North 00°54'11" West, for a distance of 37.17 feet; thence run North 36°44'51" East, for a distance of 18.28 feet; thence run North 00°17'10" West for a distance of 10.38 feet; thence run North 43°56'55" East for a distance of 26.45 feet; thence run North 00°55'39" West, for a distance of 207.98 feet; thence run North 89°01'33" East, for a distance of 60.16 feet; thence run North 00°58'27" West, for a distance of 193.39 feet to the POINT OF BEGINNING, now known as LOT 2, GREAT WESTERN AQUATIC PLAZA, according to the plat thereof as recorded in Plat Book 32, Pages 57 and 58, Public Records of Orange County, Florida.

AND

That Part of Lots 2 and 4, GREAT WESTERN AQUATIC PLAZA, as recorded in Plat Book 32, Pages 57 and 58, of the Public Records of Orange County, Florida, being described as follows:

Commencing at the Northwest corner of Lot 3, of said Plat; thence run South 00°04'33" East along the East Right-of-Way line for Interstate 4 (State Road 400) and the West line of said Lots 3 and 2 as shown on said Plat, 600.00 feet; thence South 00°08'38" East continuing along said East Right-of-Way line and said West line of said Lot 2, 76.07 feet to the POINT OF BEGINNING; thence North 89°05'07" East, 246.64 feet, thence South 00°54'53" East, 227.49 feet; thence South 89°05'07" West, 249.70 feet to a point of intersection with said East Right-of-Way line of the West line of Lot 4; thence North

00°08'38" West along said East Right-of-Way line and said West line of Lots 4 and 2,
227.51 FEET TO THE POINT OF BEGINNING.