

RESOLUTION NO. R-04-263

A RESOLUTION AUTHORIZING A LEASE OF REAL PROPERTY BETWEEN MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS AND MEALS ON WHEELS PLUS OF MANATEE, INC.

WHEREAS, §125.38, Florida Statutes, provides that a county may lease or convey real or personal property owned by the county to the United States or any department or agency thereof, the State or any political subdivision or agency thereof, or any municipality of the State, or corporation or other organization not-for-profit which may be organized for the purpose of promoting community interest and welfare at such price, whether nominal or otherwise, as the Board may fix; and

WHEREAS, the County owns and operates a center commonly identified as Samoset Community Center; and

WHEREAS, Meals on Wheels Plus of Manatee, Inc., a Florida not-for-profit corporation, has applied to the County for a lease of a portion of the Samoset Community Center to locate certain buildings to be used solely for the Program as described in the Lease Agreement attached hereto as Exhibit A (the "Lease"); and

WHEREAS, the Board is satisfied that the real property referred to in this Resolution is required for the uses cited above and is not needed for other County purposes.

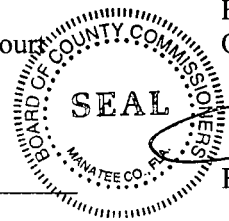
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, THAT:

1. The Chairman of the Board of County Commissioners is authorized to execute the Lease allowing Meals on Wheels Plus of Manatee, Inc. to provide the Program at the Samoset Community Center and for no other purposes.
2. The term of the Lease with Meals on Wheels Plus of Manatee, Inc., shall be for a period of two (2) years and subject to continuation thereafter unless terminated as provided in the Lease Agreement.
3. County shall collect no rent from Meals on Wheels Plus of Manatee, Inc. The sole consideration for the Lease shall be the community interest and welfare served by the Program.

ADOPTED with a quorum present and voting this 19th day of October, 2004.

ATTEST: R. B. SHORE
Clerk of the Circuit Court

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA



By: Rubin Liberty, DC
Deputy Clerk

By: Steve Wood
Chairman

LEASE AGREEMENT BETWEEN
MEALS ON WHEELS PLUS OF MANATEE, INC.
AND
MANATEE COUNTY

This is a Lease granted by MANATEE COUNTY, a political subdivision of the State of Florida (hereafter "COUNTY"), whose mailing address is Post Office Box 1000, Bradenton, Florida 34206, to MEALS ON WHEELS PLUS OF MANATEE, INC. (hereafter "LESSEE"), a not-for-profit corporation whose mailing address is 811 23rd Avenue East, Bradenton, Florida 34208.

NOW, THEREFORE, it is agreed as follows:

1. THE PROPERTY. COUNTY hereby grants unto LESSEE and LESSEE hereby accepts from COUNTY this Lease of certain improved real property located in the County of Manatee, State of Florida, as more specifically described on Exhibit "A" attached hereto (hereinafter the "PROPERTY") subject to the terms, conditions, restrictions and limitations set forth herein.

It is understood and it is a condition of the granting of this Lease that LESSEE's interest in the PROPERTY shall, at all times during the period of this Lease, be limited to the use of the PROPERTY for the sole purpose of operating a public senior center and adult day care program as set forth in Section 2 below and LESSEE has not and shall not be considered as having any right in or to the PROPERTY or any other interest of any kind or nature therein.

2. USE. LESSEE shall use the PROPERTY solely for the purpose of operating a public senior center and adult day care program and in accordance with the program outlined in Exhibit "B" attached hereto (hereinafter the "PROGRAM") and shall maintain recognition in the State of Florida and with the United States Department of Treasury, Internal Revenue Service as a Tax Exempt Organization throughout the term of this Lease.

3. TERM. The term of this Lease shall extend from October 1, 2004 through September 30, 2006, a period of two (2) years. After the end of the above term, LESSEE may continue under this Lease until terminated in accordance with Section 11.

4. RENT. The consideration for this Lease is LESSEE's obligation to provide the Program described herein.

As additional rent, LESSEE shall pay, as and when due and payable, all taxes, assessments or other charges, that may be imposed by the State of Florida or any agency thereof, against the PROPERTY or any part thereof or with respect to this Lease and the operation and conduct of the Program.

5. IMPROVEMENTS AND CONSTRUCTION OF FACILITIES. LESSEE accepts the PROPERTY as is and is solely responsible for inspecting the property and determining the suitability of the PROPERTY for LESSEES PROGRAM.

6. UTILITIES. Except as otherwise provided herein, LESSEE shall initiate, contract for and obtain in LESSEE's name any utility services required on the premises including, but not limited to, telephone, burglar alarm system, and trash removal services. All charges for these services shall be paid by LESSEE as they become due.

LESSEE shall pay for all water, sewer, garbage, and electricity costs for the property used by LESSEE. At the time of signing this Lease, a portion of the improvements are leased to Manatee County Rural Health Services, Inc. The distribution of responsibility for payment for water, sewer, garbage, and electricity is as follows:

MANATEE COUNTY RURAL HEALTH SERVICES 61.25%
MEALS ON WHEELS PLUS OF MANATEE, INC. 38.75%

Manatee County Rural Health Services will pay the utility bills in full upon receipt and provide LESSEE with a bill for payment based on the above percentages. In the event Manatee County Rural Health Services vacates the improvements or discontinues this practice, LESSEE shall be responsible for making other arrangements for such services and shall cooperate with COUNTY in apportioning water, sewer, garbage, and electricity with any replacement tenant.

7. RIGHT OF ENTRY. COUNTY reserves the right and the LESSEE shall permit COUNTY, its agents or employees, to have access to and enter the PROPERTY to inspect the PROPERTY to assure its proper care and maintenance and for any purpose reasonably connected with COUNTY's interest in the PROPERTY and the PROGRAM and to determine the necessity for LESSEE's performance of any work or replacement, restoration or repair of any building, structure, facility, installation or improvement on the PROPERTY as shall be required to maintain compliance with applicable codes and rules. COUNTY may enter the PROPERTY at any time the COUNTY reasonably believes an emergency exists upon the PROPERTY or in relation to the PROGRAM and shall, as soon as reasonably possible, notify LESSEE.

8. REPAIR AND MAINTENANCE. LESSEE shall be responsible for maintenance of the interior of the premises and keeping the premises in good order and repair. LESSEE shall be responsible for repair and maintenance of the burglar alarm system. COUNTY shall be responsible for the repair and maintenance of heating, air conditioning, plumbing, and electrical systems. Moreover, COUNTY shall be responsible for all landscaping of the property and for all external portions of the premises.

9. DAMAGE OR DESTRUCTION. The responsibility for insuring against loss of/or damage to any personal property of LESSEE that will be placed or stored on the premises shall be borne by LESSEE and LESSEE shall not look to COUNTY for any damage or loss occurring during the term of this Lease.

COUNTY shall have no obligation to repair or restore the improvements on the PROPERTY if all or a portion of the improvements are damaged or destroyed as the result of any casualty. In the event of such a loss, LESSEE may continue to use such portions of the premises as

are usable or terminate this Lease. LESSEE shall claim no interest in the PROPERTY or improvements in the event of any eminent domain proceedings.

10. As consideration for this Lease, LESSEE covenants and agrees to:
 - a. Implement and continue to operate and maintain the PROGRAM substantially in accordance with Exhibit "B".
 - b. Maintain records, accounts, property records and personnel records in accordance with generally accepted accounting principles, as deemed necessary by COUNTY, to assure proper use of the PROPERTY and compliance with the provisions of this Lease and make such books and records available to COUNTY for inspection and audit. By October 31, 2004, and at least every other year thereafter, LESSEE shall submit an audit or financial statement and letter from an Independent Certified Public Accountant which, at a minimum, will include: a review of LESSEE'S books and records, including canceled checks, invoices and budgets. The audit or financial statement and letter shall not be more than two (2) years old. The submission of the documents required hereunder shall serve as LESSEE's certification and representation that the information contained therein is true and correct. COUNTY reserves the right to require audits instead of financial statements.
 - c. The performance of this Lease shall be in compliance with all applicable laws, orders and codes of Federal, State and local governments and the Americans with Disabilities Act. LESSEE covenants and agrees that no person shall, on the grounds of race, creed, color, handicap, national origin, sex, age, political affiliation or beliefs, be excluded from participation in or denied the benefits of employment by LESSEE, or be subjected to discrimination under any program or activity on the PROPERTY.
 - d. LESSEE shall submit to COUNTY within thirty (30) days of execution of this Lease, a list of LESSEE'S Board of Directors. LESSEE agrees that paid staff shall not be a voting or elected member of the LESSEE'S Board of Directors.
 - e. LESSEE shall not sublease or assign any right or interest in this Lease.
11. TERMINATION. LESSEE's rights under this LEASE shall terminate:
 - a. As of the date established in written notice to COUNTY of LESSEE's election to terminate this Lease.
 - b. Due to a default by LESSEE that has not been cured in accordance with Section 12.

- c. Upon receipt of written notice from COUNTY, with one hundred twenty (120) days advance notice. Provided, however, during the initial two (2) year term provided in Section 3, this right of termination shall only apply if the Board of County Commissioners determines in good faith that the property is required for other governmental uses.

12. DEFAULT BY LESSEE. Each of the following events shall be deemed to be an "event of default" by LESSEE under this Lease.

- a. LESSEE's or SUBLESSEE'S failure to fulfill the PROGRAM at any time during the term of this Lease. As used herein, the term "fulfill" means LESSEE's operating and maintaining the facilities, installations and improvements in, to and on the PROPERTY and use the facility in accordance with the PROGRAM.
- b. In the event the LESSEE or SUBLESSEE permits to be done anything which creates a lien upon the PROPERTY and such lien is not discharged or LESSEE has not posted a bond or other security satisfactory to COUNTY within thirty (30) days after LESSEE received written notice of such lien being imposed against the PROPERTY.
- c. In the event that at the time of commencement of the term of this Lease or at any time hereafter and until the termination thereof a petition in bankruptcy shall be filed by or against the LESSEE (unless the petition is vacated or dismissed within sixty (60) days of such filing), or the LESSEE shall be declared bankrupt or insolvent, or a receiver or trustee shall be appointed to take charge of LESSEE's affairs or property or LESSEE shall make an assignment for the benefit of creditors.
- d. In the event an attachment at law against the goods, property or chattels of the LESSEE or SUBLESSEE is issued and any such levy is not vacated or dissolved or the attached property restored to the LESSEE by the giving or posting of a bond with surety within twenty (20) days after any such attachment.
- e. In the event the LESSEE or SUBLESSEE, at any time during the term of this LEASE, fails to comply with, observe and/or meet the terms and conditions required under any state or federal law, rule or regulation to maintain a not-for-profit tax exempt status or causes or permits any use or activity on the PROPERTY that serves as the basis for the imposition of ad valorem or intangible personal property taxes.
- f. LESSEE's failure to comply with any term, provision, or covenant of this Lease on its part to be complied with, performed or observed not specifically referenced in a through c above, if such failure shall continue for more than thirty (30) days after written notice thereof to LESSEE, or if such failure

cannot reasonably be cured within said thirty (30) days and LESSEE shall not have commenced to cure such failure within such thirty (30) days or shall not thereafter, with reasonable diligence and good faith, proceed to cure such failure.

13. COUNTY'S REMEDIES. Upon the occurrence of any event of default, COUNTY shall have the right, at COUNTY's election, to pursue, in addition to and cumulative of any other rights COUNTY may have, at law or in equity, any one or more of the following remedies.

- a. COUNTY may cancel and terminate this Lease and discontinue or terminate or cause to be discontinued or terminated LESSEE's use of the PROPERTY and any building, structure, improvement or facility thereon.
- b. COUNTY may enter the PROPERTY and do or cause to be done whatever LESSEE is obligated to do under the terms of this Lease and LESSEE shall reimburse COUNTY on demand for any expenses which COUNTY may incur in effectuating compliance with or performance of LESSEE's obligations under this Lease, and COUNTY shall not be liable for damages resulting to LESSEE from such action.

14. LESSEE'S ACCESS TO AND USE OF THE PROPERTY. COUNTY agrees that if LESSEE shall perform all of the covenants and agreements herein stipulated to be performed on LESSEE's part, LESSEE shall, at all times during the term of this Lease, be entitled to the use of the PROPERTY as herein provided, without any interference or hindrance from COUNTY or any persons, and LESSEE shall have access to the PROPERTY at all times during the day and night.

15. SURRENDER OF THE PROPERTY. LESSEE agrees to deliver up, cease and surrender to COUNTY the PROPERTY upon the expiration or earlier termination of this Lease in a condition as close as reasonably possible to the condition existing at the time of entering into this Lease. Any buildings, structures and improvements remaining thereon shall be removed and relocated or demolished by LESSEE unless COUNTY agrees to accept any specific building, structure or improvement.

16. HOLDING OVER. If LESSEE shall continue to use or remain on the PROPERTY or any part thereof after termination of this Lease as provided herein, then LESSEE shall be deemed liable for all damages for or resulting from such use of the PROPERTY or any part thereof. COUNTY shall have the right to invoke, take or institute any and all steps or actions as may evidence termination of LESSEE's use of the PROPERTY as granted by virtue of this Lease and COUNTY shall have the right to take any and all steps or actions to remove LESSEE and any of LESSEE's employees from the PROPERTY.

17. ATTORNEY FEES. In the event of litigation regarding this Lease or the parties respective obligations hereunder, the prevailing party will be entitled to such collection and court costs incurred by it and attorney fees as the court shall deem just and equitable, including such reasonable fees incurred in the enforcement of the terms of the defense or interpretation of this Lease, whether such fees and costs be incurred at trial, on appeal or in any bankruptcy proceeding.

18. INDEMNIFICATION. LESSEE shall indemnify, keep and save harmless the COUNTY, its agents, officials and employees, against all claims, suits, actions or proceedings for injuries, deaths, losses, damages, patent claims, liabilities, judgments, costs and expenses which may accrue or be asserted against the COUNTY arising out of LESSEE's activities on the PROPERTY and LESSEE's performance of, or its failure to perform the PROGRAM referenced in this Lease, or the use of the PROPERTY by LESSEE whether or not contemplated under the terms of this Lease, whether or not it shall be alleged or determined that the act was caused through negligence or omission of LESSEE or its employees, or of the subcontractors or its employees, if any, or the agents of LESSEE. LESSEE shall pay all charges of attorneys and all costs and other expenses incurred in connection therewith, and if any judgment shall be rendered against COUNTY in any such action the LESSEE shall, at its own expense, satisfy and discharge the same. LESSEE expressly understands and agrees that any performance bond or insurance protection required by this Lease or otherwise provided by or on behalf of LESSEE shall in no way limit LESSEE's responsibility to indemnify, keep and save harmless and defend the COUNTY as provided herein.

LESSEE's agreement and obligation to indemnify, keep and save harmless the COUNTY, its agents, officials and employees against all claims, suits, liabilities, judgments, costs and expenses shall also extend to, cover and relate to any claim, suit or action arising from or predicated upon COUNTY's ownership of the PROPERTY. LESSEE's obligation and agreement to indemnify, save and hold harmless the COUNTY and those operating under its explicit direction does not include any intentional act of the COUNTY or any of its officials, agents or employees as aforesaid.

The indemnity hereunder shall continue until such time as any and all claims arising out of LESSEE's performance or failure to perform under the terms of this Lease and use of the PROPERTY have been finally settled, regardless of when any such claims may be made.

In the event that any action, suit or proceeding is brought against the COUNTY upon any liability arising out of this Lease, COUNTY at once shall give notice thereof in writing to LESSEE by certified mail addressed to LESSEE at the address contained herein. Upon receipt of notice, LESSEE, at its own expense, may defend against such action and take all steps as may be necessary or proper to prevent a judgment against the COUNTY. Nothing in or under this Lease shall be deemed to affect the COUNTY's right to provide its own defense and recover from LESSEE attorney fees and expenses associated with such representation or be deemed or construed in anyway as a waiver or limitation of or upon the rights, privileges or immunity of the COUNTY as set forth in Section 768.28, Florida Statutes, or any successor provision addressing or related to COUNTY's sovereign immunity. The indemnity provided by LESSEE under this article shall not apply to any settlement agreement entered into by COUNTY without the written consent of LESSEE.

19. INSURANCE. LESSEE shall procure and maintain insurance in such amounts as may from time to time be required by COUNTY in order to secure the indemnification of COUNTY to be furnished herein. Requirements for insurance coverage may be also established in a manner consistent with policies adopted by the Board of County Commissioners applicable to

similarly situated agencies in amounts deemed necessary to afford reasonable protection to the public.

20. NOTICES AND REPRESENTATIVES. Every notice, demand, payment, request or other communication hereunder shall be deemed to have been given or served at the time that the same shall be deposited in the United States mail, postage prepaid, addressed to LESSEE or COUNTY, signed by their recognized representatives respectively and addressed as provided below until either party provides written notice of a different representative or address. Notwithstanding any other notice requirement, any notice of default or termination shall be sent by certified mail, return receipt requested to the other party at the address given below.

If to COUNTY: Chairman
Board of County Commissioners of Manatee County
Post Office Box 1000
Bradenton, FL 34206

Copy to: Manatee County
ATTENTION: Director
Community Services Department
Post Office Box 1000
Bradenton, FL 34206

If to LESSEE: Meals on Wheels Plus of Manatee, Inc.
811 23rd Avenue East
Bradenton, FL 34208
ATTENTION: Executive Director

COUNTY designates as its representative and Director, as used herein, the Director of the Community Services Department or such different representative as may be designated by the Manatee County Administrator. LESSEE's designated representative is Executive Director.

21. NO IMPLIED WAIVER. The failure of either party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or the relinquishment thereof for the future.

22. APPLICABLE LAW AND CONSTRUCTION. This Lease shall be governed and construed in accordance with the applicable laws of the State of Florida. The invalidity or unenforceability of any provision of this Lease shall not effect or impair any other provision. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit or describe the scope or intent of such sections of this Lease.

23. ENTIRE AGREEMENT AND PROVISIONS BINDING. This Lease and any attached or incorporated items or Exhibits set forth all of the covenants, promises, agreements, conditions and understandings between the parties concerning this Lease, and there are no covenants promises, agreements or understandings, either oral or written, between them other than

as herein set forth. No subsequent alterations, amendments, changes or additions to this Lease shall be binding upon the parties unless reduced to writing and signed by them. Except as herein otherwise expressly provided, the terms and provision hereof shall be binding upon and ensure to the benefit of the respective successors and assigns of the parties. Each agreement, term and provision of this Lease may be performed by the parties shall be construed to be both a covenant and a condition. This provision does not constitute a consent to the assignment of this Lease by LESSEE, but as reference only to those instances in which COUNTY may have given written consent to a particular assignment; and LESSEE shall have no right to assign, transfer or encumber this lease except as specifically provided for in this Lease.

24. RADON GAS. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks 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. Additionally, information regarding radon and radon testing may be obtained from your county health department.

25. PRIOR LEASE. LESSEE has occupied the PROPERTY pursuant to a prior lease with Neighborly Senior Services, Inc. (now known as Neighborly Care Network), signed by COUNTY on the 14th day of December, 1999 (the "Prior Lease"). Upon both parties signing this Lease, the Prior Lease will be terminated.

IN WITNESS WHEREOF, the COUNTY has caused this Lease to be duly executed on the date herein below set forth.

WITNESS:

MEALS ON WHEELS PLUS OF
MANATEE, INC.

Jennifer Springer
Sign Name

By: Ellen Campbell

Jennifer Springer
Print Name

Title: Executive Director

Natalie Aschiff
Sign Name

Date of Execution: 10/1/2004

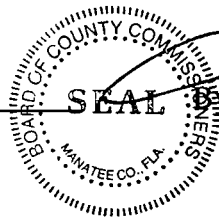
NATALIE A. SCHIFF
Print Name

APPROVED, with a quorum present and voting this 19th day October of 2004.

ATTEST: R. B. SHORE

COUNTY OF MANATEE, FLORIDA
By Its Board of County Commissioners

By: Robin Liberty, DE
Deputy Clerk



By: Gene Wood Sherman
Chairman

Joined by Neighborly Care Network solely for the purpose of acknowledging the termination of the Prior Lease.

NEIGHBORLY CARE NETWORK

By: Debra Shade
Title: President/CEO
Date: 09-20-04

EXHIBIT A
PROPERTY DESCRIPTION

DEMISED PREMISES COUNTY hereby leases to LESSEE and LESSEE hereby leases from COUNTY that portion of the CENTER more specifically shown on Exhibit A attached hereto, consisting of the adult day care addition, activity rooms, office space, kitchen and rest rooms which is located at 2703 19th Street Court East, in Manatee County, Florida on property more particularly described as: The NE 1/4 of the NE 1/4 of the NW 1/4 of Section 6, Township 35 South, Range 18 East.

EXHIBIT B
SCOPE OF SERVICES

MEALS ON WHEELS PLUS OF MANATEE, INC.

Service Description: LESSEE shall provide a public senior center and an Adult Day Care Program which shall include a variety of social, physical, self-care, educational, leisure, and health related support services, a meal and snacks, and transportation to and from the Program as needed. LESSEE shall ensure sufficient staff to provide programs for clients. Program shall be provided in accordance with the Older Americans Act guidelines for Adult Day Care Programs in addition to other guidelines governing the Adult Day Care programs operated within this property.