

Board of County Commissioners Agenda Request

Date of Meeting: December 2, 2014

Date Submitted: November 19, 2014

To: Honorable Chairperson and Members of the Board

From: David Weiss, County Attorney
Robert Presnell, County Administrator

Subject: Approval and Execution of Lease with Gadsden Senior Services, Incorporated to occupy the building located at 79 Lasalle Lefall Drive and Adoption of Resolution No. 2014-025, Approving the Lease and Setting Forth its Terms

Statement of Issue:

The current lease with Gadsden Senior Services, Incorporated to occupy the building located at 79 Lasalle Lefall Drive (the "Premises") expires on December 4, 2014. Approval and execution of the proposed lease and resolution would allow Gadsden Senior Services to continue to occupy the Premises.

Background:

Upon review of the current lease, the County Attorney identified certain provisions which could be added or amended which would provide the County with more protection. The general terms and conditions of the proposed lease are substantially similar to the current lease, but certain provisions have been added or amended to better protect the County. In addition, pursuant to Section 125.38, Florida Statutes, the lease must be approved by a resolution which sets forth its terms.

Analysis:

Attached is the proposed lease and resolution No. 2014-025 for the Board's consideration. If approved by the Board, the lease would permit Gadsden Senior Services to continue to occupy the Premises on the terms and conditions contained therein for one dollar (\$1.00) per year for an initial term of two (2) years, with automatic one (1) year renewals until such time that either party notifies the other in writing of termination at least thirty (30) days prior to expiration of the term. It also permits either party to terminate the lease without cause by providing thirty (30) days written notice.

Fiscal Impact:

The County will recognize nominal consideration for the lease of the building and is potentially forgoing revenue which could be realized if the building were sold or leased to a tenant at market value. However, the County is not responsible under the terms of the lease for taxes, maintenance, utilities or insurance.

Options:

1. Approve and authorize the Chairperson to execute the attached lease with Gadsden Senior Services, Incorporated to occupy the building located at 79 Lasalle Lefall Drive and adopt Resolution No. 2014-025, approving the lease and setting forth its terms.
2. Propose changes to the attached lease with Gadsden Senior Service, Incorporated to occupy the building located at 79 Lasalle Lefall Drive and Resolution No. 2014-025, and authorize the Chairperson to execute and adopt with changes.
3. Disapprove and reject the lease with Gadsden Senior Service, Incorporated to occupy the building located at 79 Lasalle Lefall Drive and Resolution No. 2014-025.
4. Board Direction

Staff Recommendation:

Option 4

Attachments:

1. Resolution No. 2014-025;
2. Lease with Gadsden Senior Service, Incorporated to occupy the building located at 79 Lasalle Lefall Drive.

RESOLUTION NO. 2014-025

A RESOLUTION OF GADSDEN COUNTY, FLORIDA, APPROVING THE LEASE WITH GADSDEN SENIOR SERVICES, INCORPORATED TO OCCUPY THE BUILDING LOCATED AT 79 LASALLE LEFALL DRIVE, QUINCY, FLORIDA 32351 AND SETTING FORTH THE TERMS OF THE LEASE AND AUTHORIZING THE CHAIRPERSON TO EXECUTE THE LEASE; PROVIDING FOR REPEALER, SEVERABILITY, AND MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC MEETING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Gadsden Senior Services, Incorporated (the “Lessee”) is an organization not for profit organized and existing for the purposes of promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County; and

WHEREAS, the Lessee does not own and is in need of a building for use in promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County; and

WHEREAS, the Lessee has applied to Gadsden County, Florida (the “Lessor”) for the use of the building located at 79 Lasalle Lefall Drive, Quincy, Florida 32351 for use in promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County; and

WHEREAS, the Lessor owns the building located at 79 Lasalle Lefall Drive, Quincy, Florida 32351, which is suitable for the purpose of promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County and is not otherwise needed for County purposes; and

WHEREAS, the Lessor, through its duly authorized Board of County Commissioners, has determined that the provision of the building to the Lessee for one dollar per year for an initial two year term with potential extensions on certain terms and conditions for the sole and exclusive purpose of promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County will promote the health, safety, and welfare of Gadsden County citizens; and

WHEREAS, the Lessor is authorized to lease the building to the Lessee on certain terms and conditions for the sole and exclusive purpose of promoting community interest and welfare

through the provision of services to the elderly community and the senior citizens of Gadsden County pursuant to Section 125.38, Florida Statutes.

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

Section 1. Lease.

The attached Lease with Gadsden Senior Services, Incorporated to occupy the building located at 79 Lasalle Lefall Drive, Quincy, Florida 32351 for one dollar per year for an initial two year term with potential extensions on certain terms and conditions for the sole and exclusive purpose of promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County is hereby approved and the Chairperson is authorized to execute the same.

Section 2. Repealer.

This Resolution and the Lease attached hereto shall repeal and supersede all prior leases, policies, resolutions and ordinances which are in conflict herewith to the extent of such conflict.

Section 3. Severability.

If any section, subsection, sentence, clause, phrase, or provision of this Resolution or the Lease attached hereto is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, the remainder shall be construed as not having contained said section, subsection, sentence, clause, phrase, or provision, and shall not be affected by such holding.

Section 4. Modification.

It is the intent of the Board of County Commissioners that the provisions of this Resolution, including the Lease attached hereto, may be modified as a result of considerations that may arise during public meetings. Such modifications shall be incorporated into the final version of the Resolution and Lease adopted and approved by the Board and filed by the Clerk pursuant to Section 5.

Section 5. Effective Date.

This Resolution shall be effective as provided by law.

DULY PASSED AND ADOPTED by the Board of County Commissioners of Gadsden County, Florida, this ____ day of _____ 2014.

BOARD OF COUNTY COMMISSIONERS
GADSDEN COUNTY, FLORIDA

BRENDA HOLT, Chairperson

ATTEST:

NICHOLAS THOMAS,
Clerk of the Circuit Court

APPROVED AS TO FORM FOR THE
RELIANCE OF GADSDEN COUNTY ONLY:

DAVID J. WEISS, County Attorney

LEASE AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 2014 (the "Effective Date"), by and between **Gadsden County, Florida, a political subdivision of the State of Florida** (the "Lessor"), and **Gadsden Senior Services, Incorporated, a Florida nonprofit corporation** (the "Lessee").

WHEREAS, the Lessee is an organization not for profit organized and existing for the purposes of promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County; and

WHEREAS, the Lessee does not own and is in need of a building for use in promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County; and

WHEREAS, the Lessee has applied to the Lessor for the use of the building located at 79 Lasalle Lefall Drive, Quincy, Florida 32351 for use in promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County; and

WHEREAS, the Lessor owns the building located at 79 Lasalle Lefall Drive, Quincy, Florida 32351, which is suitable for the purpose of promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County and is not otherwise needed for County purposes; and

WHEREAS, the Lessor, through its duly authorized Board of County Commissioners, has determined that the provision of the building to the Lessee for one dollar per year for an initial two year term with potential extensions on certain terms and conditions for the sole and exclusive purpose of promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County will promote the health, safety, and welfare of Gadsden County citizens; and

WHEREAS, the Lessor is authorized to lease the building to the Lessee on certain terms and conditions for the sole and exclusive purpose of promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County pursuant to Section 125.38, Florida Statutes.

NOW, THEREFORE, for an in consideration of the agreements to be performed hereunder, the Lessor and Lessee hereby agree as follows:

1. **LEASED PREMISES AND TERM.** The Lessor hereby leases to the Lessee the building located at 79 Lasalle Lefall Drive, Quincy, Florida 32351 (the parcel on which the building is located being identified by Parcel ID No. 3-17-2N-3W-0000-00415-0100) (the "Premises"), for the term commencing on December 2, 2014 (the "Commencement Date"), and running for two (2) years, or on such earlier date on which the term of this lease may expire or be terminated pursuant to the provisions of this lease or by law (the "Initial Term"). After the Initial Term, this lease shall be automatically renewed upon the same terms and conditions, without notice from either party, for successive one (1) year periods until such time that either party shall, at least thirty (30) days prior to the expiration of the Initial Term or the applicable successive term, notify the other party in writing of the termination of the lease. Notwithstanding the foregoing, this lease and any extensions thereof may be cancelled by either party, without cause, by giving thirty (30) days' written notice to the other party of the cancelling party's termination of the lease.

2. **RENTAL RATE.** The Lessee will pay to the Lessor, without any demand, as rent for the Premises, the amount of One Dollar (\$1.00) per year, plus all sales and use taxes due thereon, payable in advance on the first of each year. Rental payments are to be made by check payable to Lessor and mailed to Gadsden County Board of County Commissioners, Attn: County Administrator, Post Office Box 1799, Quincy, Florida 32353, unless Lessee is otherwise notified in writing by Lessor.

3. **INSURANCE; LIABILITY AND CASUALTY.** The Lessee, at its sole cost and expense, shall procure and maintain throughout the term of this lease, public liability and property damage insurance with a single combined liability limit of not less than ONE MILLION AND NO/100 DOLLARS(\$1,000,000.00), and property damage limits of not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), protecting the Lessor and Lessee against any claims for property damage, wrongful death or personal injury and insuring against the liability of Lessee and Lessor and their authorized representatives arising out of and in conjunction with possession, use, occupancy, operation, management, repair or maintenance of the leased premises by any person or entity. Lessee, at its sole cost and expense, shall also maintain on all of its personal property in the leased premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of the full replacement value of such personal property. Lessee shall defend, indemnify, and hold Lessor harmless from and against all claims, actions, damages, liability and expense arising out of or in connection with loss of life, personal injury or damage to property occurring on the leased premises or in connection with the

possession, use, occupancy, operation, management, repair or maintenance of the leased premises. Notwithstanding any provision of this Lease to the contrary, Lessor and Lessee hereby release each other and each other's officers, directors, employees, servants and agents, from liability or responsibility for any loss or damage to the leased premises and Lessee's personal property, fixtures and equipment, that is covered by valid and collectible fire insurance with an extended coverage endorsement. This release will apply not only to liability and responsibility of the parties to each other, but will also extend to liability and responsibility for anyone claiming through or under the parties by way of subrogation or otherwise. This release will apply even if the fire or other casualty is caused by the fault or negligence of a party or anyone for whom a party may be responsible. However, this release will apply only with respect to loss or damage actually recovered from an insurance company. All insurance required of Lessee hereunder shall list the Lessor as an additional insured. ON OR PRIOR TO THE COMMENCEMENT DATE HEREOF AND PRIOR TO BEING PERMITTED ACCESS TO THE LEASED PREMISES, LESSEE SHALL DELIVER TO LESSOR EVIDENCE OF THE INSURANCE REQUIRED BY THIS PARAGRAPH IN A FORM ACCEPTABLE TO LESSOR.

4. PERMITTED USE. Lessee may use and occupy the leased Premises for the sole and exclusive purpose of promoting community interest and welfare through the provision of services to the elderly community and the senior citizens of Gadsden County. No other use shall be allowed without the express prior written consent of Lessor or Lessor's authorized agent. Lessee shall not use or permit any part of the leased premises to be used for an unlawful purpose and will not use the leased premises for, or carry on or permit upon leased premises any offensive, noisy or dangerous trade, business, manufacture or occupation, or any nuisance or anything against public policy, nor permit any auction sale to be held or conducted in or about leased premises.

5. CONDITION "AS IS". By taking possession of the leased premises, Lessee shall accept and shall be held to have accepted the leased premises in its "AS IS" condition and as suitable for the use intended by Lessee. Lessor shall not be required, after delivery of possession, to make any repairs or improvements to leased premises. Lessor shall not be liable to Lessee for losses to Lessee's property or personal injury caused by criminal acts or entry by unauthorized persons into the leased premises. Lessee hereby releases Lessor of and from any liability for criminal acts or entry by unauthorized persons into the leased premises, regardless of any actions or precautions that Lessor may have taken to prevent the acts or entry of any such persons. Lessor shall have no obligation to provide security service of any kind to the leased Premises.

6. REPAIRS. Lessee shall not allow any damage, waste or deterioration to occur to the leased premises and shall, at its sole expense, be responsible for the repair and maintenance of all portions of the leased premises, including without limitation, windows, doors, skylights, adjacent sidewalks, storefront, interior walls, and all other portions of the leased premises, in as good order and repair as it is at the date of the commencement of this lease, reasonable wear and tear only excepted. This is intended to be a net lease; therefore, Lessor shall not be required to make any repairs or improvements to the leased premises whatsoever.

7. ALTERATIONS. No alteration in, or addition to, the leased premises will be made without first obtaining Lessor's prior written consent, which Lessor may grant or withhold for any reason. Any such improvements, alterations or additions shall become property of Lessor upon expiration of this lease.

8. ASSIGNMENT. Lessee shall not assign this lease, or any right or privilege granted hereunder, or sublet all or any portion of the leased premises, without Lessor's prior written consent, which consent may be withheld or denied in Lessor's sole and absolute discretion. Lessor reserves the right to terminate the lease if the lease is assigned. Lessee shall remain jointly and severally liable if Lessee assigns the lease.

9. LIENS. Lessee shall not permit any mechanic's, materialmen's or other similar liens to stand against the leased premises for work and material furnished to Lessee, provided that Lessee shall have the right to contest the validity of an lien or claim; and further provided that if any such claim or lien is filed for record in the public records of Gadsden County, Florida, such claim or lien shall be satisfied or transferred to the security furnished by Lessee within ten (10) days of service of such claim or lien upon the parties hereto. Failure to remove any claim or lien as provided herein shall constitute a default hereunder.

10. UTILITIES. Lessee shall be responsible for and pay all charges for electricity, sewer, water, light, heat, power, gas and all other utilities to the leased premises and shall indemnify Lessor against any liability or damages on such account. Lessee's obligation to pay for utilities service used or consumed on the leased premises will survive expiration or any termination of this Lease.

11. SIGNS. Lessee shall not erect or install any signs or symbols on or about any portion of the leased premises without the prior written consent of Lessor, which consent may be unreasonably conditioned or withheld. Lessee shall, at its

own expense, remove any signs or symbols placed on the Premises by it, and repair and restore the portion of the Premises upon which they were placed in the same condition as prior to their placement, upon expiration or termination of this lease.

12. DEFAULT. In the event Lessee shall fail to timely pay any installment of rent due hereunder, or in the event Lessee otherwise breaches any term, covenant or condition of this lease and if said breach or default is not cured within ten (10) days after written notice thereof, then in such event Lessor may at its option: (a) institute an action or actions to enforce the performance of this lease; (b) terminate this lease by notice to Lessee, re-enter the leased premises and recover damages, including but not limited to cost of repossession, reletting, attorneys' fees and brokerage commission for services performed by the Lessor or by others (it being further agreed that upon termination of this lease by Lessor, it shall have the right to remove any and all of the personal property located on the above-described premises without liability to Lessee for damage to said property or to the business of Lessee); (c) demand acceleration of rental for the remaining term based on an annualized rent; and (d) exercise any other remedy allowed by law or equity.

13. LESSOR'S RIGHT TO PERFORM FOR LESSEE'S ACCOUNT. Upon the occurrence of any default of Lessee under this lease, Lessor may cure the default at any time for the account and at the expense of Lessee. If Lessor cures a default on the part of Lessee, such sum will be immediately due as additional rent and Lessee will reimburse Lessor for any amount expended by Lessor in connection with the cure, together with interest on the amount so expended from the date such amount is expended until repaid at the highest rate permitted to be charged under Florida law.

14. NOTICES. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and shall be deemed given on the date served personally, on one (1) day after deposited in Federal Express or other guaranteed overnight courier, or three (3) business days after deposit in prepaid, first-class United States mail, certified or registered. Any such notice, demand, request, consent, approval, or communication shall be addressed to the other party at the following respective addresses:

LESSOR: Gadsden County Board of County Commissioners
Attn: County Administrator
Post Office Box 1799
Quincy, Florida 32353

LESSEE: Gadsden Senior Services, Incorporated
Attn: Executive Director
79 LaSalle Lefall Drive
Quincy, Florida 32351

Either party may change its address by notifying the other party of the change of address.

15. LESSOR ENTRY. Lessor or its agents may enter the leased premises at any hour to exhibit same to prospective purchasers or tenants, to inspect the leased premises to see that Lessee is complying with all of its obligations hereunder, and to make repairs, improvements, alterations, or additions that Lessor shall deem necessary for the safety, preservation, or improvement of the leased premises.

16. COMPLIANCE WITH LEGAL REQUIREMENTS. Lessee will, at Lessee's sole cost and expense, promptly comply with all legal requirements that are now in force, or which may hereafter be in force, pertaining to the conduct of Lessee's business operations on the leased premises.

17. ENVIRONMENTAL LAWS; INDEMNITY. Lessee agrees to indemnify and hold Lessor harmless from and against any and all loss, claim, liability, damages, injuries to person, property, or natural resources, cost, expense, action or cause of action, arising in connection with the release or presence of any Hazardous Substances at the leased premises, through the acts of Lessee, its officers, employees, contractors, agents or invitees, whether foreseeable or unforeseeable, regardless of the source of such release and when such release occurred or such presence is discovered. The foregoing indemnity includes, without limitation, all costs in law or in equity of removal, remediation of any kind, and disposal of such Hazardous Substances; all costs of determining whether the leased premises is in compliance and to cause the leased premises to be in compliance with all applicable environmental laws, all costs associated with claims for damages to persons, property or natural resources, and Lessor's reasonable attorneys' and consultants' fees and costs, whether or not litigation is instituted. For the purposes of definition, "Hazardous Substances" includes, without limitation, any toxic or hazardous wastes, pollutants (or

substances, including, without limitation, asbestos, PCBs, petroleum products and by products, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9061 et. seq., hazardous materials identified in or pursuant to the Hazardous Materials Transportation Act 49 U.S.C. Section 1802 et. seq.

18. LANDLORD'S LIABILITY. Lessor shall not be responsible or liable to Lessee in any way for any claimed loss or damage occurring on the leased premises or in connection with this lease or the possession, use, occupancy, operation, management, repair or maintenance of the leased premises. In the event that the foregoing is found to be ineffective by a court of law, Lessee shall look solely to the estate and property of the Lessor in the leased premises for the collection of any judgment, or in connection with any other judicial process, requiring the payment of money by Lessor in the event of any default by Lessor with respect to any of the terms, covenants and conditions of this Lease to be observed and performed by Lessor, and no other property or estates of Lessor shall be subject to levy, execution or other enforcement procedures for the satisfaction of Lessee's remedies and rights under this Lease. The provisions of this Section are not designed to relieve Lessor from the performance of any of its obligations hereunder, but rather to limit Lessor's liability in the case of a recovery of a money judgment against Lessor. The word "Lessor" as used in this Lease shall mean only the owner from time to time of Lessor's interest in this Lease. In the event of any assignment of Lessor's interest in this Lease, the assignor shall no longer be liable for the performance or observation of any agreements or conditions on the part of Lessor to be performed or observed subsequent to the effective date of such assignment provided the assignee specifically assumes all such obligations.

19. WAIVER. The failure of either party to insist on strict performance of any covenant or condition hereof shall not be construed as a waiver of such covenant or condition in any other instance. This lease cannot be changed or terminated orally.

20. ENTIRE AGREEMENT. This lease contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No failure of the Lessor to exercise any power given the Lessor hereunder, or to insist upon strict compliance by the Lessee of any obligation hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of the Lessor's right to demand exact compliance with the terms hereof

21. MISCELLANEOUS. Time is of the essence of this agreement. Lessor does not, in any way or for any purpose, become a partner of Lessee in the conduct of its business, or otherwise, or joint adventurer or member of a joint enterprise with Lessee. This Lease shall be governed by, and construed in accordance with, the laws of the State of Florida. The terms, conditions and covenants contained in this Lease shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, administrators, executors, representatives, successors and assigns. In the event of any litigation or other proceedings between Lessor and Lessee arising out of this lease or the leased premises, the prevailing party therein shall be allowed all reasonable attorney's and paralegal assistant's fees expended or incurred in such litigation, including those incurred before, during, and at trial, on appeal, or in federal bankruptcy or reorganization proceedings, to be recovered as part of the costs therein, or in a subsequent proceeding therefor. Lessee agrees not to record this Lease or any memorandum hereof but Lessor may record this Lease or a memorandum thereof, at its sole election.

22. RADON DISCLOSURE: THE FOLLOWING DISCLOSURE IS REQUIRED BY FLORIDA STATUTES, SECTION 404.056(8): 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. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

IN WITNESS WHEREOF, the Lessee and the Lessor have hereunto set their hands and seals the day and year first above written.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

Witnesses:

Sign Name Above

Print Name Above

Sign Name Above

Print Name Above

LESSOR:

GADSDEN SENIOR SERVICES, INCORPORATED, a Florida nonprofit corporation

Print Name: _____

As its: _____

Date: _____, 2014

LESSEE:

GADSDEN COUNTY, FLORIDA,
a political subdivision of the State of Florida

Brenda Holt, Chairperson
Gadsden County Board of County Commissioners

Attest: **NICHOLAS THOMAS**,
Clerk of the Circuit Court

Date: _____, 2014

EXHIBIT "A"

DEPICTION OR DESCRIPTION OF LEASED PREMISES