

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20021107

1. REQUESTED MOTION:

ACTION REQUESTED: Approve Subordination Agreement for change of ownership of the facility located at 3434 Hancock Bridge Parkway in No. Ft. Myers, from Volute Enterprises, Inc. to Robert B. Cheyney and Patricia A. Cheyney. Lee County Government is currently leasing two separate areas within this building. No other changes will affect the existing lease agreements, all terms and conditions will remain the same.

WHY ACTION IS NECESSARY: Board must approve all agreements and leases and amendments to those documents.

WHAT ACTION ACCOMPLISHES: Establishes the change in ownership of the facility located at 3434 Hancock Bridge Parkway and amends that portion of the existing lease agreements.

2. DEPARTMENTAL

CATEGORY:

COMMISSION DISTRICT

C2A

#: 4

3. MEETING DATE:

10-22-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)*
- STATUTE
 - ORDINANCE
 - ADMIN. CODE *AC-4-1*
 - OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT *Construction & Design*
- C. DIVISION *Facilities Management*
- BY: *[Signature]*
Richard J. Beck

7. BACKGROUND: Lee County Government entered into a lease agreement with Volute Enterprises, Inc. on July 31, 2001 to lease space in the facility located at 3434 Hancock Bridge Parkway, No. Ft. Myers, Florida for the Purchasing Department and for the ITG/Telecommunications organization. The leases actually commenced in October of 2001. On September 10, 2002, Facilities Management was notified, by Volute Enterprises, Inc., that they were in the process of selling the property to Robert B. Cheyney and Patricia A. Cheyney.

Attachments: Subordination Agreements
Copies of Current Lease Agreements

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services			G County Manager	
<i>[Signature]</i> 10-7-02	N/A	N/A	N/A	<i>[Signature]</i> 10/1/02	<i>CA</i> 10/7/02	<i>DM</i> 10/7/02	<i>Risk</i> 10/08/02	<i>GC</i> 10/8	<i>[Signature]</i> 10-7-02

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by County
Date: *10/4/02*
Time: *1:41 pm*
Forwarded To:

CA
10-7-02
1045
COUNTY ADMIN.
FORWARDED TO:
10/8/02

LEASE SUBORDINATION AGREEMENT

THIS AGREEMENT is dated the ____ day of _____, 2002, between ROBERT B. CHEYNEY AND PATRICIA A. CHEYNEY (hereinafter "Cheyney"), and LEE COUNTY (hereinafter "Tenant").

WHEREAS, Volute Enterprises, Inc. and Tenant previously executed a lease dated October 1, 2001 for the property described therein (hereinafter "Lease"); and,

WHEREAS, in connection with the sale of the property, Cheyney has executed, or is about to execute, a Mortgage and Security Agreement in favor of Charlotte State Bank, referred to as "Lender"; and,

WHEREAS, it is a condition precedent to obtaining the loan that the Mortgage and Security Agreement be, and remain, a lien or charge upon the real property described above, prior and superior to the Lease described above and the leasehold estate created thereby.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender to make the loan above referred to, it is hereby declared, understood and agreed as follows:

1. Mortgage is Lien. The Mortgage and Security Agreement securing the Note in favor of the Lender, and any renewals or extensions of same, shall be and remain at all times a lien or charge on the property prior and superior to the Lease, the leasehold estate created thereby, and to all rights, privileges, and conditions therein contained.

2. Tenants Subordination, Waiver or Relinquishment of Liens. The Tenant declares and acknowledges that they hereby intentionally waive, relinquish, and subordinate the priority and superiority of the leasehold estate created by the Lease referred to above, and subjects any interest which they may hereafter acquire in the property by reason of the Lease to Lender. Tenant also declares and acknowledges that they understand that in reliance upon and in consideration of this waiver, relinquishment, and subordination, specific loans and advances may be made and as part and parcel thereof specific monetary and other obligations will be entered into by third parties which would not be made or entered into but for reliance upon this waiver, relinquishment, and subordination.

3. Lease Modification. The Lease is deemed modified to the extent required to incorporate the foregoing provisions. Tenant shall, at Cheyney's request, execute any further document which Cheyney or any lender deems necessary to subordinate Tenant's interest to any such mortgage or security agreement.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

Signed in the presence of:



LEE COUNTY

Witness

By: _____
Printed Name: _____
Title: _____

Witness


Witness


ROBERT B. CHEYNEY

PATRICIA A. CHEYNEY


Witness

COPY

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
P.O. BOX 398
FT. MYERS, FL 33902-0398

THIS LEASE AGREEMENT, entered into this 31st, day of July, 2001, between Volute Enterprise, Inc., A Florida Corporation, party of the first part, hereinafter called the Lessor, and Lee County, acting by and through the Board of County Commissioners for Lee County, a political subdivision of the State of Florida, party of the second part, hereinafter called the Lessee.

WITNESSETH:

That the Lessor, for and in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the Lessee, has demised and leased to the Lessee, for the term and under the conditions hereinafter set out, those certain premises in LEE COUNTY, FLORIDA, described as follows:

North Point Office Plaza
3434 Hancock Bridge Parkway
No. Ft. Myers, Florida 33903

which shall constitute an aggregate area of 11,000 square feet of net rentable space measured in accordance with the American National Standard Z65.1 - 1991 as published by the Building Owners and Managers Association International, at a rate of \$14.00 per square foot per year.

I. TERM

TO HAVE AND TO HOLD the above described premises for a term commencing on the 1st day of October, 2001 to and including the 30th day of September, 2006.

II. RENTALS

The Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor the above described premises for the term set out in this lease and the Lessee agrees to pay the Lessor the sum of twelve thousand, eight hundred thirty-three dollars and thirty-three cents (\$12,833.33) per month for the rental period described in Article I of this lease. The rent for any fractional part of the first month shall be prorated. The rent shall be payable the month following the month of occupancy in accordance with Section 215.422, Florida Statutes. The rentals shall be paid to the Lessor at: Volute Enterprise, Incorporated, a Florida Corporation, 3434 Hancock Bridge Parkway, Suite 205, North Ft. Myers, Florida 33903.

177

III. HEATING, AIR CONDITIONING AND JANITOR SERVICES

(2) COPY

1. The Lessor agrees to furnish to the Lessee heating and air conditioning equipment and maintain same in satisfactory operating condition at all times for the leased premises during the term of the lease at the expense of the Lessor.

2. The Lessor agrees to furnish janitorial services and all necessary janitorial supplies for the leased premises during the term of the lease.

IV. LIGHT FIXTURES

1. a. The Lessor agrees to install in the demised premises light fixtures for the use of the Lessee.

b. The Lessor shall be responsible for replacement of all bulbs, lamps, tubes and starters used in such fixtures for the purpose of furnishing light.

V. MAINTENANCE AND REPAIRS

1. The Lessor shall provide for interior maintenance and repairs, and replacement of interior equipment as may be necessary due to normal usage. The Lessee shall, during the term of this Lease, keep the interior of the demised premises in as good a state of repair as good as it is at the time of the commencement of this lease; reasonable wear and tear and unavoidable casualties expected.

2. The Lessor shall maintain and keep in repair the exterior of the demised premises during the term of this Lease and shall be responsible for the replacement of all windows broken or damaged in the demised premises, except such breakage or damage caused to the exterior of the demised premises by the Lessee, its officers, or agents.

VI. UTILITIES

Unless otherwise indicated, the Lessor should bear the full cost of water service used by the Lessee and shall also bear their proportionate share of the cost for trash pick-up, use of electricity, and any other services to the space occupied at its own expense. The Lessee shall bear the full cost of telephone service at its own expense during the term of this lease.

VII. HANDICAPPED STANDARDS AND ALTERATIONS

1. The Lessor agrees that the demised premises now conform, or that prior to Lessee's occupancy, the said premises shall, at Lessor's expense, be brought into conformance with the requirements of Sections 255.21 and 255.211, Florida Statutes and ADA requirements.

2. That the Lessee shall have the right to make any alterations in and to the demised premises during the term of this lease upon first having obtained the written consent thereto of the Lessor. The Lessor shall not capriciously withhold the consent to any such alterations.

VIII. INJURY OR DAMAGE TO PROPERTY ON PREMISES

That all property of any kind that may be on the premises during the continuancy of this Lease shall be at the sole risk of the Lessee. Except for negligence of the Lessor, the Lessor shall not be liable to the Lessee or any other person for any injury, loss or damage to property or to any person on the premises.

IX. FIRE AND OTHER HAZARDS

1. In the event that the demised premises, or the major part thereof, are destroyed by fire, lightning, storm or other casualty, the Lessor at its option may forthwith repair the damage to demised premises at its own cost and expense. The rental thereon shall cease until the completion of such repairs and the Lessor will immediately refund the pro rata part of any rentals paid in advance by the Lessee prior to such destruction; should the premises be only partly destroyed so that the major part thereof is usable by the Lessee, then the rental shall abate to the extent that the injured or damaged part bears to the whole of such premises and such injury or damage shall be restored by the Lessor as speedily as is practicable and upon the completion of such repairs, the full rental shall commence and the Lease shall then continue the balance of the term.

2. The Lessor shall provide for fire protection during the term of this lease in accordance with the fire safety standards of the State Fire Marshall. The Lessor shall be responsible for maintenance and repair of all fire protection equipment necessary to conform to the requirements of the State Fire Marshall. The Lessor agrees that the demised premises shall be available for inspection by the State Fire Marshall, prior to occupancy by the Lessee, and at any reasonable time thereafter.

3. The Lessor certifies no asbestos was used in the construction of the demised premises or that if asbestos was used, actions have been completed to correct the hazards caused by the use of asbestos.

X. SUITABILITY FOR USE

The Lessor warrants that the premises are fit for the conduct of the governmental business of the Lessee. The Lessor further warrants that the premises are in compliance with all statutes and laws, either federal, state, or local, applicable to the intended use of the premises. The legal interpretation of any such existing statute or law, or the enactment of any new statutes or laws that, in the opinion of the Lessee, result in a material interference with the peaceful entry or occupation of the demised premises, or any portion thereof by the Lessee, at the option of the Lessee, shall automatically void this lease prior to entry and occupation, or entitle the Lessee, after entry and occupation, to wholly terminate this lease by giving seven (7) days notice to the Lessor of the intention to do so.

XI. EXPIRATION OF TERM

At the expiration of the Term, the Lessee will peaceably yield up to the demised premises in good and tenantable repair. It is understood and agreed between the parties that the Lessee shall have the right to remove from the

premises, all personal property of the Lessee and all fixtures, machinery, equipment, appurtenances and appliances placed or installed on the premises by it, provided the Lessee restores the premises to as good a state of repair as they were prior to the removal.

XII. SUBLETTING AND ASSIGNMENT

The Lessee upon the obtaining of the written consent of the Lessor, which written consent shall not capriciously be withheld, shall have the right to sublet all or any part of the demised premises, or to assign all or any part of the demised premises.

XIII. WAIVER OF DEFAULTS

The waiver by the Lessor of any breach of this lease by the Lessee shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this lease.

XIV. RIGHT OF LESSOR TO INSPECT

The Lessor, at all reasonable times, may enter into and upon the demised premises for the purpose of viewing the same and for the purpose of making repairs as required under the terms of this lease.

XV. BREACH OF COVENANT

These presents are upon this condition, that, except as provided in this lease, if the Lessee shall neglect or fail to perform or observe any covenant herein contained, which on the Lessee's part is to be performed, and such default shall continue for a period of thirty (30) days after written notice thereof from the Lessor to the Lessee, then the Lessor lawfully may, immediately, or at any time thereafter, without further notice or demand, enter into and upon the demised premises, or any part thereof, and repossess the same as of their former estate and expel the Lessee and remove its effects forcefully, if necessary, without being taken or deemed to be guilty of any manner of trespass and thereupon this demise shall terminate but without prejudice to any remedy which might otherwise be used by the Lessor for arrears of rent or for any breach of the Lessee's covenants herein contained.

XVI. ACKNOWLEDGMENT OF ASSIGNMENT

That the Lessee upon the request of the Lessor shall execute such acknowledgment(s) or any assignment(s), of rentals and profits made by the Lessor to any third person, firm or corporation, provided that the Lessor will not make such request unless required to do so by the Mortgagee under a mortgage(s), executed by the Lessor.

XVII. TAXES, INSURANCE, AND COMMISSIONS

1. Lessor should pay all real estate taxes and fire insurance premiums on the demised premises. Lessee shall not be liable to carry fire insurance on the premises or property of the Lessor or any other personal property which may now or thereafter be placed on the demised premises. The Lessor

shall not be liable for damages or theft to the personal property or fixtures belonging to the Lessee which are located on the rental property.

2. The County will be liable for money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the County while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be held to be liable in accordance with the general laws of the State of Florida, subject to the limitations as set out in Section 768.28, Florida Statutes, as it may be revised or amended from time to time.

3. Lessor agrees, covenants, certifies, and warrants to Lessee that no portion of the rent payable pursuant to Article II of this Lease Agreement includes, represents, is based on or is attributable to any commission or fee which is paid or is payable by Lessor as the result of Lessor's having utilized or contracted for the services of any real estate broker, salesman, agent or firm in any aspect of Lessor's dealings or any dealings involving the leasing of the demised premises to Lessee.

4. The Lessor must furnish an appropriate certificate of insurance naming Lee County Board of County Commissioners as Certificate Holder and Additional Insured. The Lessor agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.

The Lessor shall purchase and maintain Commercial General Liability insurance in the amount of \$100,000 Per Person, \$300,000 Per Occurrence Bodily Injury and \$100,000 Per Occurrence Property Damage, or \$300,000 Per Occurrence Combined Single Limit of Bodily Injury and Property Damage. Coverage shall include Contractual Liability as pertaining to this contract with insurers approved by the County Risk Manager.

The Lessor agrees that this insurance requirements shall not relieve or limit Lessor's liability and that the Lessee does not in any way represent that the insurance required is sufficient or adequate to protect the Lessor's interests or liabilities, but are merely minimums.

XVIII. AVAILABILITY OF FUNDS

The obligations of the Lessee under this lease agreement are subject to the availability of funds lawfully appropriated annually for its purposes by the Board of County Commissioners and/or the availability of funds through contract or grant programs.

XIX. USE OF PREMISES

The Lessee will not make or suffer any unlawful, improper or offensive use of the premises or any use or occupancy thereof contrary to the laws of the State of Florida, or to such Ordinances of the City and/or County in which the demised premises are located, now or hereinafter made, as may be applicable to the Lessee.

XX. RENEWAL

The Lessee is hereby granted the option to renew this Lease for one, 5 year renewal period upon the same terms and conditions. If the Lessee desires to renew this lease under the provisions of this Article, it shall give the Lessor written notice thereof three (3) months prior to the expiration of the term provided in Article I of this lease or any applicable renewal period.

XXI. RIGHT TO TERMINATE

The Lessee shall have the right to terminate this lease upon giving six (6) months advance written notice to the Lessor by Certified Mail, Return Receipt Requested. The Lessor shall not have a right to accelerate lease payments for the remainder of the lease duration.

XXII. NOTICES AND INVOICES

All notices required to be served upon the Lessor shall be served by Registered or Certified Mail, Return Receipt Requested, at Volute Enterprise, Incorporated, a Florida Corporation, 3434 Hancock Bridge Parkway, Suite 205, North Ft. Myers, Florida 33903 and all notices required to be served upon the Lessee shall be served by Registered or Certified Mail, Return Receipt Requested, at the address of the Lessee at P.O. Box 398 Ft. Myers, Florida 33902-0398, Attention: Facilities Management. Invoices should be submitted monthly to Lee County Finance Department, P.O. Box 398, Fort Myers, Florida 33902-0398.

XXIII. CONTACTS

For purposes of this agreement, the County representative shall be Facilities Management and the Lessor's representative shall be Reid Schaefer.

XXIV. DEFINITION OF TERMS

- (a) The terms "Lease", "Lease Agreement", or "Agreement" shall be inclusive of each other and shall also include any renewals, extensions or modifications of this Lease.
- (b) The terms "Lessor" and "Lessee" shall include the heirs, successors and assigns for the parties hereto.
- (c) The singular shall include the plural and the plural shall include the singular whenever the context so requires or permits.

XXV. MISCELLANEOUS PROVISIONS

1. After the first year of this lease agreement, and annually thereafter, the base rental cost will increase by the latest increase in the Consumer Price Index, U.S. City Average, All Items, Wage and Clerical Workers, as published by the Bureau of Labor Statistics, Southeastern Region.

COPY

XXVI. WRITTEN AGREEMENT

This lease contains the entire agreement between the parties hereto and it may be modified only by a writing, with the approval of the Board of County Commissioners and the agreement to such modification by the Lessor.

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

[Signature]
LANDLORD

STATE OF Florida
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 9 day of July 2005, by Reid B. Schaefer, who is personally known to me or who has produced drivers license as identification and did/did not take an oath.



[Signature]
Notary
Frances Shahbazian
Printed Name of Notary
6/3/05
Commission Expires

ATTEST:

CHARLIE GREEN, CLERK

[Signature]
BY: [Signature] DEPUTY CLERK

[Signature]
CHAIRMAN, LEE COUNTY BOARD OF COUNTY COMMISSIONERS

[Signature]
APPROVED AS TO LEGAL FORM BY COUNTY ATTORNEY'S OFFICE