

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

Blue Sheet No. 20030558

1. REQUESTED MOTION:

ACTION REQUESTED: Approve agreement with SunTrust Bank, a Georgia State Bank, to sublease 23,160 sq. ft. of space in the SunTrust Plaza. This space is currently being leased by SunTrust Bank, however, it is unoccupied. The space is defined as 144 sq. ft. on the second floor, Suite 300 on the third floor (9,724 sq. ft.) and Suite 900 on the 9th floor (13,292 sq. ft.). Base rental cost will be \$26.09 per sq. ft. with a CPI increase after the first year. Lease is for 5 years with no renewal periods. Lease can be terminated by giving 3 months advance written notice or at time of purchase. Lease includes the use of 102 parking spaces at the adjacent parking garage.

WHY ACTION IS NECESSARY: Board must approve all lease agreements.

WHAT ACTION ACCOMPLISHES: Secures an additional 23,160 sq. ft. of space in the SunTrust Plaza for county related offices so that current Lessee, SunTrust Bank, cannot sublease to another entity before the County's purchase of the building.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #: 2

A2B

3. MEETING DATE:

08-26-2003

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: *Richard J. Beck, Director*

7. BACKGROUND:

When the Board of County Commissioners authorized County staff to pursue purchase of the SunTrust Plaza, data showed that SunTrust Bank was leasing approximately 30,000 sq. ft. of space in the building and was looking to sublease approximately 23,000 sq. ft. of that because they were no longer occupying it. Facilities Management approached SunTrust Bank about subleasing so that space would not be leased to another entity for the term of their lease (2027) and making the total purchase of the building less attractive.

FUNDING IS AVAILABLE IN THE FOLLOWING ACCOUNT STRING:

GC5190300100.504410
Non-departmental/Non-departmental/General Fund/Building Rental

Attachments: Lease agreements (2)

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 |
|-------------------------------|------------------------------|----------------------|------------|-----------------------|----------------------|----------------------|----------------------|-------------------------------|
| | | | | | OM | Risk | GC | |
| <i>J. Saunders</i> 8-11-03 | | | | <i>KLE</i> 8/12/03 | <i>CA</i> 8/12/03 | <i>AM</i> 8/12/03 | <i>VR</i> 8/12/03 | <i>J. Saunders</i> 8-11-03 |

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *8/12/03*
Time: *11:25 am*
Forwarded to:
County Admin
8/12/03 11:30 am

RECEIVED BY
COUNTY ADMIN: *CA*
8/12/03
COUNTY ADMIN
FORWARDED TO:
8/14/03

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

THIS LEASE AGREEMENT, entered into this _____, day of _____, 20____, between SunTrust Bank, 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:

SunTrust Plaza
Second Floor (144 sq.ft.)
Suite 300 (9,724 sq.ft.) on the third floor, and
Suite 900 (13,292 sq.ft.) on the ninth floor
2000 Main Street
Ft. Myers, Florida 33901

which shall constitute an aggregate area of 23,160 square feet of net rentable space, at a rate of \$26.09 per square foot per year. Landlord will also provide 23 covered and 85 uncovered parking spaces for the non-exclusive use of the Lessee.

I. TERM

TO HAVE AND TO HOLD the above described premises for a term commencing on the 1st day of September, 2003 to and including the 30th day of September, 2008.

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 fifty thousand, three hundred fifty-three dollars and seventy cents (\$50,353.70) per month for the rental period described in Article I of this lease, subject to increase as provided in Article XXV. 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: Real Estate Asset Manager, SunTrust Bank, Inc. Corporate Real Estate, 595 Cypress Gardens Blvd., Winter Haven, Florida 33882.

III. HEATING, AIR CONDITIONING AND JANITOR SERVICES

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, pursuant to the terms of the Master 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 shall bear the reasonable cost of water service, trash pick-up, and electricity during normal business hours at its own expense. Telephone service will be the responsibility of the Lessee as well as electricity service used during non-normal business hours.

VII. HANDICAPPED STANDARDS AND ALTERATIONS

1. The Lessor makes no representation or warranty that the leased premises conform with the requirements of Sections 255.21 and 255.211, Florida Statutes and ADA requirements.

2. That the Lessee shall have no right to make any alterations in and to the leased premises during the term of this lease without first having

obtained the written consent thereto of the Lessor. The Lessor shall not unreasonably 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 leased 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 leased 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 Leased 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 leased 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 makes no warranties that the premises are fit for the conduct of the governmental business of the Lessee, nor that the premises are in compliance with all statutes and laws, either federal, state, or local, applicable to the intended use of the premises.

XI. EXPIRATION OF TERM

At the expiration of the Term, the Lessee will peaceably yield up to the leased 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 leased 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 prior written consent of the Lessor, which written consent shall not unreasonably be withheld, shall have the right to sublet all or any part of the leased premises, or to assign this Lease.

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 leased 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 leased 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 shall pay all real estate taxes and fire insurance premiums on the leased 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 leased 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 under this Lease Agreement includes a commission or fee payable by Lessor as the result of Lessor's dealings with any realtor, sales person or agent.

4. The Lessor must furnish its current 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 Leased 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 Leased premises are located, now or hereinafter made, as may be applicable to the Lessee.

XX. RENEWAL

There is no right or option to renew this lease.

XXI. RIGHT TO TERMINATE

The Lessee shall have the right to terminate this lease upon giving three (3) months advance written notice to the Lessor by Certified Mail, Return Receipt Requested and payment of all rents coming due through the date of termination. 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 Real Estate Asset Manager, SunTrust Bank, Inc. Corporate Real Estate, 595 Cypress Gardens Blvd., Winter Haven, Florida 33882 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 2238, Fort Myers, Florida 33902.

XXIII. CONTACTS

For purposes of this agreement, the County representative shall be Facilities Management and the Lessor's representative shall be Michael J. Battle III, Real Estate Asset Manager.

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

After the first year of the initial term of this agreement, and annually thereafter, the base rental cost will increase by the latest increase in the Consumer Price Index for All Urban Consumers, All Items, U.S. City Average (1967=100) issued by the Bureau of Labor Statistics of the United States Department of Labor. If the manner in which such Index is determined by the Bureau of Labor Statistics is substantially revised, then the Bureau of Labor Statistics shall be requested to furnish a statement converting the Index published most recently prior to the start of the immediately

preceding Lease Year (as hereinafter defined) to a figure that would be comparable to the revised Index published most recently prior to the start of the new Lease Year. If the 1967 average shall no longer be used as an index of the 100, such change shall constitute a substantial revision. If the Consumer Price Index, published by the Bureau of Labor Statistics is discontinued, then Lessor and Lessee shall agree on a reasonable substitute. "Lease Year" means the twelve (12) month period beginning on (a) the first day of the calendar month following the Rent Commencement Date. The Rent specified in 2.01 shall be paid during the first Lease Year. On the first day of each and every Lease Year after the First Lease Year, the Rent, as increased by previous Rent adjustments hereunder, shall be increased by an amount equal to the product of the Rent, as increased by previous Rent adjustments hereunder, multiplied by the difference, expressed as percentage, between the Index published most recently prior to the start of such new Lease Year and the Index published most recently prior to the start of the immediately preceding Lease Year. The annual adjustments shall be calculated only on the basis of fifty (50%) percent of the CPI increase set forth above.

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 written agreement to such modification by the Lessor.

XXV. OWNERSHIP

Lessor covenants and warrants that it is lawfully possessed of the leased premises pursuant to the Master Lease (as hereinafter defined, has good and lawful right, power and sufficient interest to convey a sub-leasehold in same, and that the leased premises are free from any other leases or encumbrances that would otherwise interfere with the landlord-tenant relationship between Lessor and Lessee herein.

XXVIII. MASTER LEASE

Lessee acknowledges that the leased Premises are the subject of a Lease Agreement dated April 8, 1987, as amended by Addendum to the Lease Agreement dated April 8, 1987, Second Amendment to Lease Agreement dated July 29, 1991, Third Amendment to lease Agreement dated September 28, 1992, Amendment to Lease dated September 29, 1997, Satellite Dish Addendum dated November 24, 1993, and Amendment to Lease dated March 26, 2001, (collectively the "Master Lease"), a copy of which is attached to this Lease as Exhibit "A" and agrees to abide by all of the conditions and restrictions of the Master Lease governing the use and occupancy of the leased Premises.

BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURES FOLLOW

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


LESSOR
SUNTRUST BANK

BY: [Signature]
MICHAEL J. BATTLE, III
SENIOR VICE PRESIDENT

STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was acknowledged before me this ___ day of July, 2003, by Michael J. Battle, III, as Senior Vice President of SUNTRUST BANK, on behalf of said Bank, who is (personally known) to me or who has produced _____ as identification and did/did not take an oath.

 Nancy Jane Hay
My Commission DD118907
Expires July 13, 2006

Nancy Jane Hay
Notary
Nancy Jane Hay
Printed Name of Notary
July 13, 2006
Commission Expires

ATTEST:

CHARLIE GREEN, CLERK

CHAIRMAN, LEE COUNTY BOARD OF COUNTY COMMISSIONERS

BY: DEPUTY CLERK

APPROVED AS TO LEGAL FORM BY COUNTY ATTORNEY'S OFFICE