# Lee County Board Of County Commissioners Agenda Item Summary

Blue Sheet No. 20041425

# 1. REQUESTED MOTION:

ACTION REQUESTED: Approve re-negotiated lease with Allstate Insurance Company for 2,252 square feet of space on the second floor of the Justice Center Annex (former Suntrust Plaza) at 2000 West Main Street, Ft. Myers, FL. Lease cost will be \$14.35 per square foot or \$32,316.20 per year plus the CAM cost, which will be determined as of 1/1/05. Lease will be for five (5) years with five (5), one year options to renew. Lease to commence upon completion of remodel of the new space, which will be sometime in January of 2005.

WHY ACTION IS NECESSARY: Board must approve all leases and changes to those leases.

WHAT ACTION ACCOMPLISHES: Allows the county to place its government entities in the space that Allstate Insurance Company currently occupies on the 7<sup>th</sup> floor, while satisfying a request from Allstate Insurance Company to relocate their office to a space with less square footage

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4. AGENDA:		5. REQUIREMENT/P		REQUESTOR OF IN	<del></del>	
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APPEALS		x ADMIN. CODE		DIVISION	Facilities Management	
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7. BACKGROUN	<u>D</u> :		<u></u>			
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mutually agreed upo	on, to relocate them to	the 2 <sup>na</sup> floor.				
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Attachments: 4 original lease documents						
8. MANAGEMEN	T RECOMMENDAT	ΓΙΟΝS:				
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# LEASE AGREEMENT BETWEEN LEE COUNTY AND ALLSTATE INSURANCE COMPANY

THIS LEASE AGREEMENT, entered into this day of,
2004, between LEE COUNTY acting by and through the Board of County Commissioners for
Lee County, a political subdivision and Charter County of the State of Florida, hereinafter
called the "Lessor", and ALLSTATE INSURANCE COMPANY, an Illinois corporation,
hereinafter called "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:

Suite 201 2000 Main Street Fort Myers, Florida

which shall constitute an aggregate area <u>2,252</u> square feet of net rentable office space located on the 2nd floor and 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 \$14.35 per square foot per year.

# **SECTION 1: TERM**

Lessee shall have and hold the Premises for a term of five (5) years (the "lease term") commencing on the first day of the month following completion of renovations to said space. Lessee shall have access to the premises upon completion of renovations for purpose of relocating its furniture, fixtures and equipment. Payment of rent shall begin on the first (1<sup>st</sup>) day of the month following completion of renovations. A letter to file will be provided by Lessor to confirm this "Commencement Date". The term will expire on the last day of the sixtieth (60) month following this Commencement Date. Lessee shall have the right to renew this lease for five (5) additional terms of one (1) year by giving written notice of such intent to Lessor at least three (3) months prior to the expiration of the term.

#### SECTION 2: RENT

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 two thousand, six hundred and ninety-three dollars and two cents (\$2,693.02) 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. Rent shall be paid to the Lessor on the first (1st) day of each month of occupancy by the Lessee, for the term of the Lease. The rent shall be paid to the Lessor at:

Lee County Community Development/Public Works Center Attn: Fiscal Manager 1500 Monroe Street, 4<sup>th</sup> Floor Fort Myers, Florida 33901

On the first anniversary of the first year of the initial term of the Lease and the anniversary of any renewal period thereafter, the base rental fee shall increase by 3%.

#### SECTION 3: HEATING. AIR CONDITIONING AND JANITORIAL SERVICES

- 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 sole expense of the Lessor.
- The Lessor agrees to furnish janitorial services and all necessary janitorial supplies for the leased premises during the term of the Lease.

# **SECTION 4: LIGHT FIXTURES**

The Lessor agrees to install in the stated premises, suitable light fixtures for the use of the Lessee.

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

#### SECTION 5: MAINTENANCE AND REPAIRS

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 stated premises in as good a state of repair it is at the time of the commencement of this Lease; reasonable wear and tear and unavoidable casualties excepted.

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

# **SECTION 6: UTILITIES**

Unless otherwise indicated, the Lessee will bear the full cost of telephone and data services to the leased space, at its own expense. Lessee will pay Lessor Three Hundred twenty five (\$325.00) per month for use of electricity.

#### Section 7: ALTERATIONS BY LESSEE

The Lessee shall have the right to make reasonable alterations in and to the stated premises during the term of this Lease upon first having obtained the written consent from the Lessor. The Lessor shall not unreasonably withhold consent to any such alterations.

#### SECTION 8: INJURY OR DAMAGE TO PROPERTY ON PREMISES

Lessee's property of any kind that may be placed on the premises during the continuance of this Lease shall be at the sole risk of the Lessee. Except for the 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.

## SECTION 9: FIRE AND OTHER HAZARDS

 In the event that the stated 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 stated premises at its own cost and expense.
 As the result, the rent shall cease until the completion of such repairs and the Lessor will immediately refund the pro rata part of any rent 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 rent 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 rapidly as is practicable and upon the completion of such repairs, the full rent 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 stated premises shall be available for inspection by the State Fire Marshall, prior to occupancy by the Lessee, and at any reasonable times thereafter.

#### **SECTION 10: SUITABILITY FOR USE**

The Lessor warrants that the premises are fit for the conduct of the business of the Lessee. The Lessor further warrants that the stated 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 stated 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) calendar days notice to the Lessor of its intention to do so.

#### **SECTION 11: EXPIRATION OF TERM**

At the expiration of the initial Lease Term, the Lessee will peaceably yield up the stated premises in good and Lessee able repair unless the Agreement is renewed for an additional term. 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.

#### SECTION 12: SUBLETTING AND ASSIGNMENT

- A. The Lessee, shall not have the right to sublet all or any part of the leased premises, or to assign all or any part of the premises subject to this lease.
- B.. Notwithstanding anything to the contrary contained herein, without Lessor's consent, Lessee may assign this lease or sublet all or any portion of the premises to (i) any person or entity which, directly or indirectly, controls Lessee or is controlled by Lessee or is under common control with Lessee (ii) any successor to Lessee by merger, consolidation or operation of law, (iii) any person or entity to whom all or substantially all of Lessee's assets are conveyed, or (iv) any person or entity purchasing the business which Lessee conducts at the Premises, provided, however, that same shall have a net worth, determined in accordance with generally accepted accounting principles, equal to or greater than the net worth similarly determined of Lessee immediately prior to such assignment.

# **SECTION 13: 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.

#### SECTION 14: RIGHT OF LESSOR TO INSPECT

The Lessor, at reasonable times and with twenty four (24) hours advance notice, may enter into and upon the stated premises for the purpose of viewing the same and for the purpose of making repairs as required under the terms of this Lease except in the case of an emergency where no advance notice is required.

#### SECTION 15: BREACH OF COVENANT

These presents are made upon the 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 stated 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.

#### SECTION 16: ACKNOWLEDGMENT OF ASSIGNMENT

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.

#### SECTION 17: TAXES, INSURANCE, AND COMMISSIONS

- 1. Lessor will pay all real estate taxes and fire insurance premiums on the stated premises. Lessee shall not be liable to carry fire insurance on the premises or property of the Lessor or any other personal property of Lessor which may now or thereafter be placed on the stated 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.
- The Lessor 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 omissions(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. Lessee agrees, covenants, certifies and warrants to Lessor that no portion of the rent payable pursuant to Section 2 of this Lease Agreement includes, represents, is based on or is attributable to any commission or fee which is paid or is payable by Lessee as the result of Lessee having utilized or contracted for the services of any real estate broker, salesman, agent or firm in any aspect of Lessee's dealings or any dealings involving the leasing of the stated premises to Lessee.

4. The Lessee shall purchase and maintain Commercial General Liability insurance in the

amount of \$500,000 Per Person, \$1,000,000 Per Occurrence Bodily Injury and \$100,000

Per Occurrence Property Damage, or \$1,000,000 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

Lessee must furnish an appropriate certificate of insurance naming Lee County Board of County Commissioners as Certificate Holder and Additional Insured. The Lessee agrees

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that the coverage granted to the Additional Insured applies on a primary basis, with the

Additional Insured's coverage being excess. The Lessee agrees that these insurance

requirements shall not relieve or limit Lessee's liability and that the Lessor does not in

any way represent that the insurance required is sufficient or adequate to protect the

Lessee's interest or liabilities, but are merely minimums.

**SECTION 18: USE OF PREMISES** 

The Lessee will not make or suffer any unlawful, improper or offensive use of the

premises or make any use or occupancy thereof contrary to the laws of the State of Florida,

or to Ordinances of the City, as applicable and/or County in which the stated premises are

located, now or hereinafter made, as may be applicable to the Lessee.

**SECTION 19: RENEWAL** 

The Lessee is hereby granted the option to renew this Lease for five (5)additional

terms of one (1) year 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.

**SECTION 20: NOTICES AND INVOICES** 

All notices required to be served upon the Lessor or Lessee shall be served by

Registered or Certified Mail, Return Receipt Requested, at:

Lessor:

Lee County Board of County Commissioners

Attention: Facilities Management

P. O. Box 398

Fort Myers, Florida 33902-0398

Lessee:

Allstate Insurance Company
Allstate Plaza South, Suite G1D

3075 Sanders Road

Northbrook, Illinois 60062-7127

Attention: Real Estate and Construction Department

Rent payment should be submitted monthly to:

Lee County BOCC

Attention: Fiscal Manager 1500 Monroe Street, 4<sup>th</sup> Floor Fort Myers, Florida 33901

## **SECTION 22: CONTACTS**

For purposes of this Agreement, the representatives for the Lessor and Lessee are:

Lessor:

Facilities Management

Lee County

Lessee:

Thomas Marciciak

#### **SECTION 23: DEFINITION OF TERMS**

- 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.
- The terms "Lessor" and "Lessee" shall include the heirs, successors and assigns for the parties hereto.
- The singular shall include the plural and the plural shall include the singular whenever the context so requires or permits.

#### **SECTION 24: MISCELLANEOUS PROVISIONS**

1. Leasehold Improvements- The premises shall be completed and prepared for Lessee's occupancy by Lessor, at Lessor's expense, in accordance with architectural drawings attached hereto by reference as Exhibit "A" using Building standard lighting and HVAC. Lessor shall use its best efforts to relocate the law library shelves currently located in Lessee's existing space within the building to the new premises. Such relocation shall be at Lessee's sole cost and expense and Lessor shall have no liability with respect to loss or breakage of such shelving. Lessee, at Lessee's sole cost and

- expense, shall be responsible for installation of phone and data lines and any other low-voltage wiring as well as installation of its security system.
- Parking Spaces- Lessee shall be entitled to the non-exclusive use of ten (10)
  parking spaces in the parking garage, three (3) of which are in the covered area
  of the parking garage and seven (7) of which are in the open area of the parking
  garage.
- 3. Construction Delay- Lessor agrees to honor terms of this new lease agreement, including amount Lessee pays for rent, additional rent (operating costs) and electricity, effective January 1, 2005, whether or not remodeling of the new premises has been completed. Lessee may occupy Suite 704 until which time the new premises are completed.

#### **SECTION 25: 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 Lessee. Upon commencement of this lease agreement, all prior lease agreements between Allstate Insurance Company and Lee County under the Master Lease Agreement dated October 28, 1994 and amended October 22, 1999 are declared void and of no further force or effect.

#### SECTION 26: OPERATING COSTS -ADDITIONAL RENT

In addition to the Base Rent, Lessee shall pay as Additional Rent its proportionate share ("Lessee's Proportionate Share") of the Operating Costs of the Building and the Property. Additional Rent shall be paid to Lessor in accordance with the following provisions:

- Interim Operating Costs: During the period from the Commencement Date of this Lease until December 31, 2004, Lessee shall pay, as Interim Operating Costs, \$7.13 per rentable square foot per year, or \$1,338.06, payable monthly as Additional Rent..
- 2. Lessor shall furnish to Lessee prior to thirty (30) days after the beginning of each calendar year, including the first calendar year, a budget setting forth Lessor's estimate of Operating Costs for the up coming calendar year. The

budget shall be determined as though the Building were occupied at the actual occupancy rate or at an occupancy rate of ninety five (95%) percent, whichever is higher. Lessee shall pay to Lessor, on the first day of each month as Additional Rent, an amount equal to one-twelfth (1/12th) of Lessee's Proportionate Share of Lessor's estimate of the Operating Costs for that calendar year. If there shall be any increase or decrease in the Operating Costs for any year, whether during or after such year, Lessor shall furnish to Lessee a revised budget and the Operating Costs shall be adjusted and paid or refunded, as the case may be. If a calendar year ends after the expiration or termination of this Lease, the Additional Rent payable hereunder shall be prorated to correspond to that portion of the year occurring within the Term of this Lease. Notwithstanding the foregoing, in the event the total square footage of the Building is not ninety-five (95%) percent occupied during any calendar year, appropriate adjustments shall be made to determine both the estimated and actual Operating Expenses as though the same had been ninety five (95%) percent occupied for the full calendar year.

3. Beginning in Year 2006 and within 120 days after the end of each subsequent calendar year, Lessor shall furnish to Lessee an operating statement showing the actual Operating Costs incurred for the preceding year. Lessee shall either receive a refund or be assessed an additional sum based on the difference between Lessee's Proportionate Share of actual Operating Costs and the payments made by Lessee during the proceeding calendar year. Any sum owed by Lessee to Lessor or Lessor to Lessee shall be paid within thirty (30) days of receipt of assessment. Each operating statement given by Lessor shall be conclusive and binding upon Lessee unless within ninety (90) days after the receipt thereof, Lessee shall notify Lessor that it disputes the accuracy of said operating statement.

# **SECTION 27: OPERATING COSTS-DEFINITIONS**

Lessor's "Operating Costs" shall mean expenses incurred by Lessor in operating and maintaining the Building and the Property, except for those expenses directly attributable to one Lessee or where a Lessee is separately metered due to a special use, and shall include the following:

- A. wages and salaries of all persons engaged in the maintenance and operations of the Building and Property and the cost of rentable space occupied by such persons;
- social security taxes and all other taxes (real or personal) which may be levied against Lessor;
- medical and general benefits for all Building employees, pension payments and other fringe benefits;
- D. administrative expenses and charges;
- E. all insurance premiums;
- F. stand-by sprinkler charges, water charges and sewer charges;
- G. electricity and fuel used in the lighting and all other operations of the common areas of the Building;
- H. trash removal;
- I. painting of all common areas of the Building and Property;
- J. window cleaning, janitorial services, and related equipment and supplies;
- K. maintenance and repair of the Building and Property;
- maintenance and service contracts;
- M. tools, equipment and supplies necessary for the performance of repairs and maintenance (which are not required to be capitalized for federal income tax purposes);
- Maintenance and repair of all mechanical and electrical equipment in the Building;
- O. maintenance and repair of restrooms and other common areas of the Building;

- P. maintenance and repair of pavement, curbs, walkways, lighting facilities, landscaping, driveways, parking areas and drainage areas upon the Property;
- Q. real estate taxes assessed against the Building and the Property. The term "real estate taxes" shall mean any tax or assessment levied, assessed or imposed at any time by any governmental authority upon or against the Building or the Property, or any part thereof, any tax or assessment levied, or any franchise, income, profit or other tax or governmental imposition levied, assessed or imposed against or upon the Lessor in substitution in whole or in part for any tax or assessment against or upon the Building or the Property or any part thereof;
- R. assessments for public improvements imposed against the Building or the Property;
- S. the amortized portion of any cost or expense (based on the useful life of the improvement) for any capital expenditure which may be required by governmental authority for any reason, including without limitation, compliance with the laws referred to in Section 13.1 below, or which maybe required by Lessor's carrier;
- T all other costs and expenses (subject to Section 25) which would be considered customary and reasonable as an expense of maintaining, managing, operating or repairing the Building and the Property.
- U. Operating costs shall not include expenses for: legal fees, costs and expenses to compel full performance under leases with all prior, existing and prospective tenants; real estate brokerage and leasing commissions, consulting and marketing fees, vacancy costs, rent concessions and other tenant improvements expenses; Landlord's corporate income, excise and franchise taxes or income tax accounting; interest, depreciation, or amortization payments; general corporate overhead; replacements and capital improvements to the Building or Project except for capital improvements installed for the purpose of reducing or controlling expenses, to the extent of the reduction in operating costs, or required by any governmental or other authority having or asserting jurisdiction over the Building; resurfacing of parking lot or garage (customary resealing and restripping shall be included); advertising and promotional expenses; repair or

other work occasioned by fire, windstorm, or other insurable casualties; services, items or improvements for a particular tenant; management fees and services for management not conducted on site; any cost, fines, or penalties incurred due to violations by Landlord of any governmental rule or authority; costs for sculpture, paintings and other objects of art; and repairs or rebuilding necessitated by condemnation.

#### SECTION 28: INSPECTION OF PUBLIC RECORDS

At any time during the Term, Lessee shall have the right, under Florida's Sunshine Laws, to inspect and copy any public record relative to Operating Costs. If such inspection discloses that actual Operating Costs are at least three percent (3%) less than the amount shown on Lessee's statement for the period covered by such inspection, Lessee's payments, pursuant to this paragraph 7, shall be adjusted accordingly.

# **Section 29: ATTORNEYS**

If the services of an attorney are required by any party to secure the performance under the lease or otherwise upon the breach or default of the other party to the lease, each party shall be responsible for its own legal fees.

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to be executed by their respective and duly above.	authorized officers on the day and year first written
LESSEE:	Allstate Insurance Company, an Illinois corporation
	BY: William B. Moston
	Assistant Vice President
STATE OF: ILLINOIS	Corporate Real Estate & Construction
COUNTY OF:	
The foregoing instrument was	signed and acknowledged before me this 20th day
Of October 2004, by William	R. Moston who produced
the following as identification	or is personally know to me, and who
did/did not take an oath.	
[stamp or seal]	
"OFFICIAL SEAL" Ellen Allen Notary Public, State of Illinois My Commission Exp. 07/08/2008	[Signature of Notary]  ELLEN ALEN  [Typed or Printed Name]
LESSOR:	BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA
	BY:
ATTEST: CHARLIE GREEN	CHAIRMAN
CLERK OF COURTS	
	APPROVED AS TO FORM:
BY:	
Deputy Clerk	BY:
	Office of the County Attorney

IN WITNESS WHEREOF, the LESSOR and LESSEE have caused this Lease Agreement

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