

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

**Blue Sheet No. 20051831**

**1. ACTION REQUESTED/PURPOSE:** Authorize Chairwoman to approve and execute a lease agreement between Lee County and the Boca Grande Art Alliance to offer classes to the public, give lectures, and conduct art workshops and exhibits in a portion of the County owned Dishong Bowen Building.

**2. WHAT ACTION ACCOMPLISHES:** Enables the Boca Grande Art Alliance to offer classes to the public, give lectures, and conduct art workshops and exhibits in a portion of the County owned Dishong Bowen Building.

**3. MANAGEMENT RECOMMENDATION:** Approve and execute lease agreement.

**4. Departmental Category:** 11

**CIAA**

**5. Meeting Date:** 01-17-2006

**6. Agenda:**  
 Consent  
 Administrative  
 Appeals  
 Public  
 Walk-On

**7. Requirement/Purpose: (specify)**  
 Statute  
 Ordinance  
 Admin. Code  
 Other

**8. Request Initiated:**  
 Commissioner \_\_\_\_\_  
 Department Parks and Recreation  
 Division \_\_\_\_\_  
 By: John Yarbrough  
*John Yarbrough*

**9. Background:**

The Boca Grande Art Alliance is a not-for-profit corporation. The Boca Grande Art Alliance is comprised of artists, sculptors, and craftsmen that promote artistic awareness and learning. They will offer classes to the public, give lectures, and conduct art workshops and exhibits in a portion of the County owned Dishong Bowen Building. The initial term of this lease agreement is for a period of five years beginning January 1, 2006. There is a renewal clause for two additional terms of five years upon mutual agreement of the parties.

No funding will be required.

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>DM</i>				<i>KW</i> 12/21/05	<i>CA</i> 12/21/05	<i>WR</i> 11/4/06	<i>GR</i> 1/4/06	<i>MG</i> 1/5/06	<i>[Signature]</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

REC'D  
by CO. ATTY:  
12-29-05  
CO. ATTY.  
FORWARDED TO:  
C. H. H. H.  
12-29-05

RECEIVED BY  
COUNTY ADMIN:  
12-29-05  
4137  
COUNTY ADMIN  
FORWARDED TO:  
1-5-06  
4-14

**LEASE AGREEMENT  
BETWEEN  
LEE COUNTY AND BOCA GRANDE ART ALLIANCE**

**THIS LEASE AGREEMENT**, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, 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 BOCA GRANDE ART ALLIANCE, a Florida not-for-profit organization, hereinafter called "Lessee".

**WITNESSETH:**

**WHEREAS**, the Boca Grande Art Alliance is a not-for-profit organization comprised of artists, sculptors and craftsmen. The organization offers classes to the public, gives lectures and conducts art workshops and exhibits.

**WHEREAS**, the Boca Grande Art Alliance has been temporarily providing the community with lessons, shows and workshops designed to promote artistic awareness and learning at the Boca Grande Community Center but desires a more permanent site.

**PREMISES:**

That the Lessor, for and in consideration of the covenants and agreements herein 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, a certain portion of those premises in Lee County, Florida, described on the attached Exhibit "A" and as follows:

The exclusive right to use 1747 square feet in the Dishong Bowen Building located at 236 Banyan Street, Boca Grande, Florida, at a

rate of \$1.00 per year.

Lessor reserves the right to use the above described leased premises for County programs or purposes when Lessee is not actively using same.

**SECTION 1: TERM**

The initial term of this Lease begins on January 1, 2006, and ends on December 31, 2011. Lessee shall have the right to renew this Lease for two (2) additional terms of five (5) years, upon mutual agreement of the parties, provided that Lessee gives written notice of such intent to Lessor at least three (3) months prior to the expiration of the term.

**SECTION 2: HEATING, AIR CONDITIONING AND JANITORIAL SERVICES**

1. The Lessor agrees to furnish to the Lessee heating and air conditioning equipment and to 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.

2. Water, sewer, electricity, cable, telephone service, and other utilities are not furnished as a part of this Lease, unless otherwise indicated herein. Expenses of all utilities, not limited to the foregoing, are the responsibility of and shall be obtained at the expense of the Lessee. Lessors shall furnish trash collection, pest control and fire extinguisher services.

3. The Lessee agrees to furnish janitorial services and all necessary janitorial supplies for the leased premises during the term of the Lease.

**SECTION 3: 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 4: MAINTENANCE AND REPAIRS**

The Lessee 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, including landscaping, 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 5: ALTERATIONS BY LESSEE**

1. The Parties acknowledge that the leased property consists of a historic structure. Lessee shall make no alterations to the premises without the written approval of Lessors. Specifically, Lessee shall not allow: (a) any holes to be drilled or made in the walls, stone or brick work; (b) any placard to be placed on the outer wall; and (c) any signs to be erected on the premises, except such as the Lessors shall approve, and then only in such place and so affixed as the Lessors shall prescribe. Any heating or lighting apparatus which may be used on the premises shall be of such kind as the Lessors shall approve.

2. The Parties agree that the leased premises now conform with the requirements of Sections 255.21 and 255.211, Florida Statutes and ADA requirements and Lessee agrees to maintain the premises in such a manner.

3. The Lessee may 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.

**SECTION 6: 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 7: FIRE AND OTHER HAZARDS**

1. In the event that the stated premises, or the major part thereof, are destroyed by fire, lightning, hurricane, storm or other casualty, this lease shall be at an end.

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.

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

hazards caused by the use of asbestos.

4. The Lessee is responsible for following the Lee County policies and procedures for closing, preparation, assessment, clean-up and re-opening in the event of a hurricane or tropical storm.

**SECTION 8: SUITABILITY FOR USE**

The Lessor warrants that the premises are fit for the conduct of the business of the Lessee, to wit: the operation of an art center. 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.

**SECTION 9: EXPIRATION OF TERM**

At the expiration of the initial Lease Term, the Lessee will peaceably yield up the stated premises in good and reasonable 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 of a temporary nature 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. Lessee shall not remove any item affixed to the leased property, if removal would cause any damage to the structure.

**SECTION 10: SUBLETTING AND ASSIGNMENT**

The Lessee, shall not have the right to sublet any part of the leased premises, or to assign any part of the premises subject to this lease.

**SECTION 11: 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 12: 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 13: 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 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 any breach of the Lessee's covenants herein contained.

**SECTION 14: 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. Lessee is responsible for insuring its own property.

2. 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. The Lessee will be liable, and agree to be liable for, and will indemnify, defend and hold the County harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the Lessee's errors, omissions, and/or negligence relating to its operation of the thrift store.

4. Lessee agrees, covenants, certifies and warrants to Lessor that no portion of the rent payable as set forth above 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.

5. 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 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 15: 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 16: RIGHT TO INSPECT BOOKS AND RECORDS**

The County, its various Departments and all parties entering into agreements with the County that involve use of public funds, are subject to audit by the Lee County Clerk of Court. As such, the Lessee, who will collect donations are also subject to audit by the Clerk of the Court. The Lessee will comply with all local, state and federal laws, rules and regulations governing the payment of taxes, general accounting principles and charitable corporations. The Lessee will comply with all reasonable requests made by the Clerk of Court to examine the Lessee's books and records that are kept relative to this agreement in order to verify the payment of taxes, or fees and compliance with the by-laws of the corporation and the terms and obligations of this agreement. The County may terminate this Agreement if the Lessee refuses to permit such reasonable examinations by the Clerk of Court.

**SECTION 17: RIGHT TO TERMINATE**

Either party shall have the right to terminate this Lease, for good cause, upon the giving three (3) months advance written notice to the other party by Certified Mail, Return Receipt Requested.

**SECTION 18: 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: Parks & Recreation - Bob Green  
P. O. Box 429  
Boca Grande, Florida 33921

Lessee: Boca Grande Art Alliance  
Mrs. Carlene Stewart, Executive Director or designee  
P.O. Box 979  
Boca Grande, Florida 33921  
Phone: (941) 964-1700  
E-mail: [art@bocaaa.com](mailto:art@bocaaa.com)

## **SECTION 19: CONTACTS**

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

Lessor: Lee County Parks & Recreation  
Bob Green

Lessee: Boca Grande Art Alliance  
Mrs. Carlene Stewart, Executive Director or designee

## **SECTION 20: DEFINITION OF TERMS**

1. 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.
2. The terms "Lessor" and "Lessee" shall include the heirs, successors and assigns for the parties hereto.
3. The singular shall include the plural and the plural shall include the singular

whenever the context so requires or permits.

**SECTION 21: MISCELLANEOUS PROVISIONS**

1. Signs & Storage: It is hereby understood and agreed that any signs or advertising to be used, including awnings, in connection with the premises leased hereunder shall be first submitted to the Lessors and not used without the written approval of Lessors. Due to the historic nature of the Dishong-Bowen Home, no alterations of any kind or signage may be placed or erected on the premises without the prior written approval of Lessor. In addition, no items may be stored outside the premises by Lessee.

2. Parking Spaces: Parking is on a first come, first serve basis with no parking spaces being exclusively reserved for Lessee.

**SECTION 22: 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.

(This space was intentionally left blank.)

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

LESSEE:

BOCA GRANDE ART ALLIANCE

BY: Carlene P. Stewart  
Director

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_ who produced the following as identification \_\_\_\_\_ or is personally know to me, and who did/did not take an oath.

[stamp or seal]

\_\_\_\_\_  
[Signature of Notary]

\_\_\_\_\_  
[Typed or Printed Name]

LESSOR:

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Chairwoman

ATTEST: CHARLIE GREEN  
CLERK OF COURTS

BY: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Office of the County Attorney