

**SEALED BID FORM 2021002  
for Lease of 1929 U.S. Highway 1, Sebastian, FL**

Bidder/Lessee \_\_\_\_\_  
(Printed Name)

Hereby submits

TO: INDIAN RIVER COUNTY  
Purchasing Division  
1800 27<sup>th</sup> Street  
Vero Beach, Florida 32960

Project: Sealed Bid for the Lease of unit located at:  
1929 U.S. Highway One  
Sebastian, FL 32958

**Bid Due Date and Time: Friday, October 2, 2020 at 2:00 P.M.**

**Overview:**

The Leased Premises shall be used for a food service establishment (restaurant) that serves alcoholic beverages and for no other purpose. Tenant's monthly gross receipts from the sale of food and non-alcoholic beverages shall exceed its monthly gross receipts from the sale of alcoholic beverages. At no time shall tenant cease the sale of food and serve alcoholic beverages only during any time of the term of the lease or renewal.

The Leased Premises contain approximately 3,200 square feet of floor area (which floor area is determined by measuring from the exterior face of exterior walls and from the center of interior party walls). The dimensions of the Leased Premises are approximate.

The unit is open for viewing on Friday, September 25, 2020 from 9:30 a.m. until 11:30 a.m.

The undersigned declares that he/she has visited the premises to review existing conditions prior to the opening of Sealed Bids; that he/she has satisfied himself/herself relative to the condition of this property.

The BIDDER proposes and agrees, if this Bid is accepted, to contract with the County for the lease of the identified property for the amount of, per the terms and conditions of the Lease Agreement:

Original Term (5 years): \$ \_\_\_\_\_ / month

Renewal Term (5 years): \$ \_\_\_\_\_ / month

**Details of Use of Leased Property:**

Type/style of Restaurant	
Estimated percentage of sales from food and non-alcoholic beverages	
Estimated percentage of sales from alcohol	
Liquor license # to be transferred, if applicable	
Tenant's experience in applying for and/or operating under Florida liquor license	
Tenant's previous restaurant experience	
Tenant's references	

Additional sheets may be attached, if desired.

2021002 – Sebastian Corners Lease

**Bidder shall make no changes to the Agreement. Only the Agreement supplied by the County in the Bid Package will be accepted.**

**Submit** this Sealed Bid Form and two executed copies of the Agreement in a sealed envelope with the following written on the outside: "Bid 2021002 – Sealed Bid for the Lease of 1929 U.S. 1 in Sebastian"  
**by 2:00 P.M. on Friday, October 2, 2020** to  
the Purchasing Division, Room B1-301, **1800 27<sup>th</sup> Street** (Building B), Vero Beach, FL 32960.

Acceptance of Bid:

The BIDDER understands and agrees that the Owner reserves the right to accept or reject any or all Bids submitted and that acceptance of the winning bid will be determined by the Board of County Commissioners at its October 13, 2020 meeting.

Rent Commencement Date shall be November 1, 2020.

The undersigned hereby certifies that they have read and understand the contents of this solicitation and agree to the lease agreement as is. Failure to have read all the provisions of this solicitation shall not be cause to alter any resulting contract.

Respectfully Submitted,

_____ Name of Firm or Individual	_____ Address
_____ Authorized Signature	_____ City, State, Zip Code
_____ Title (If applicable)	_____ Phone
_____ Date Signed	

E-mail: \_\_\_\_\_

**Lease Agreement**  
(Return TWO signed copies with your bid)

## AGREEMENT OF LEASE

**THE AGREEMENT OF LEASE** (this "Lease") made and entered into as of the Lease Date by and between Landlord and Tenant.

### SECTION 1 BASIC LEASE PROVISIONS

1.01 The following basic lease provisions are an integral part of this Lease and as referred to in other Sections of this Lease.

- (a) Lease Date: \_\_\_\_\_, 2020 (which shall be the date on which the last party hereto executes this lease).
- (b) Landlord: Indian River County  
A Political Subdivision of the State of Florida
- (c) Tenant: \_\_\_\_\_
- (d) Tenant's Address: \_\_\_\_\_  
(or such other address as Tenant shall designate from time to time by notice of Landlord).

The Leased Premises contains approximately 3,200 square feet of floor area (which floor area is determined by measuring from the exterior face of exterior walls and from the center of interior party walls). The dimensions of the Leased Premises are approximate. The Leased Premises is located within the Center, and the Center is located at 1929 US Highway 1, Sebastian, Florida 32958.

- (e) County: Indian River County
- (f) Initial Term and Options: Original Term: Three (5) Years  
Renewal Term: Five (5) Years

(g) <u>Rental Terms</u> :	<u>TERM</u>	<u>PER SQ. FT</u>	<u>MONTHLY</u>	<u>ANNUALLY</u>
	Original	\$	\$	\$
	Renewal	\$	\$	\$

(h) Minimum Monthly Rent: Tenant shall pay Landlord rent by 1<sup>st</sup> calendar day of each month during the Term, the minimum monthly rent (“Minimum Monthly Rental”),

(i) Security:

Tenant shall post either a public construction bond, letter of credit or cash in the amount equal to the cost and labor for any improvements done to the leased premises.

(j) Trade Name: \_\_\_\_\_

(k) Guarantors: \_\_\_\_\_

(l) Broker: \_\_\_\_\_

If the word “none” is inserted herein, then references to “Broker” in the Lease shall be disregarded.

(m) Guaranty Agreement: That certain Guaranty and Suretyship Agreement by Guarantors to Landlord dated as of the date hereof, substantially in the form attached hereto as Exhibit “B”.

## SECTION 2 DEFINED TERMS

“Calendar Year” shall mean each calendar year wholly or partially within the Term.

“Center” shall mean the entire parcel of land, which is, labeled as Sebastian Corners Retail Center, LLC on Exhibit “A” hereto which is located at and includes 1919 - 1939 US Highway 1, Sebastian, Indian River County, Florida 32958 and which contains approximately eighteen thousand (18,000) square feet of leasable floor area.

“Commencement of the Term” shall mean the Lease Date.

“Common Areas” shall mean all of the automobile parking areas, driveways, and footways, landscaped areas, loading facilities and other areas and facilities in the Center which are designated as Common Areas from time to time by Landlord.

“Common Area Maintenance Expenses” Shall include all costs, expenses and expenditures (including capital expenses) of operating and maintaining the Common Areas and the Center in a manner deemed reasonable and appropriate by Landlord, including, but not limited to: all costs and expenditures incurred in repairing, lighting, cleaning, painting, striping, surfacing and resurfacing,

policing and providing security services; the costs and expenditures of insurance, including the Cost of insurance on the Center; the costs and expenditures of removal of snow, ice, rubbish, and debris; the costs and expenditures of regulating traffic; the costs and expenditures of the replacement of paving, curbs, walkways, landscaping, drainage and lighting facilities; the costs and expenditures for legal and accounting services, and for other professional and consulting services; the costs and expenditures for Utilities; the costs and expenditures of planting, replanting, and replacing flowers and shrubbery; the costs and expenditures, including counsel and appraisal fees, incurred in connection with any appeals of any Taxes; management fees paid by Landlord; costs associated with any restrictive covenant; and an administrative fee to Landlord relative to the operation of the Common Areas equal to fifteen percent (15%) of the foregoing costs.

“Cost of Insurance on the Center” shall be the sum of all premiums payable under all policies of insurance carried by Landlord in connection with the Center or which cover any one or more of the buildings or other improvements in the Center and the costs incurred by Landlord to repair any damage by fire or other casualty to the Center, to the extent that such cost was not covered by Landlord's insurance policies by reason of deductible amounts set forth therein. In the event that Landlord shall, at any time during the Term, insure the Center or any part thereof or any buildings or improvements therein under a "package policy" or a policy of "blanket coverage" insuring other property not in the Center in addition thereto, the amount of the premiums payable under such policy which are attributable to the Center and the buildings and improvements therein shall be determined by Landlord on an equitable basis and such amount shall be included in the Cost of insurance on the Center for the purposes hereof.

“Effective Rate”: shall mean the rate per annum which is the lesser of: (a) three hundred (300) basis points in excess of the Prime Rate or (b) the maximum rate permitted by law.

“Environmental Statutes” shall mean all Laws concerning the protection of public safety or the environment, including, but not limited to, those relating to the generation, use, handling, treatment, storage, transportation, release, emissions, disposal, remediation or presence of any material including Solid Waste, Hazardous Waste, Hazardous Substances or Hazardous Materials.

“Governmental Authorities” shall mean all federal, state, and municipal governmental entities and all departments, commissions, boards and officers thereof.

“Hazardous Substances, Solid Waste, Hazardous Waste, and Hazardous Materials” will have the meanings defined in any Environmental Statute and shall in this Lease collectively be called Hazardous Substances.

“Landlord’s Address for Notices” shall mean the following address:

Indian River County  
Board of County Commissioners  
Attn: Public Works Director  
1801 27<sup>th</sup> Street  
Vero Beach, FL 32960

“Landlord’s Address for Payment” shall mean the following address:

Indian River County

Board of County Commissioners  
Attention: Finance  
1801 27<sup>th</sup> Street  
Vero Beach, FL 32960

“Landlord’s Work” shall mean the work to be completed by Landlord as described in 6.01.

“Laws” shall mean all current and future federal, state, and municipal statutes, ordinances, regulations, order, directives, and other requirements of law or common law and of all departments, commissions, boards, and officers of Governmental Authorities (as amended from time to time).

“Lease” shall mean this Lease Agreement.

“Leased Premises” shall mean unit 1929 of the Center, (indicated as vacant or former Las Palmas on Exhibit A).

“Minimum Hours” shall mean the same hours and days that uses similar to the Authorized Use are conducted in the area of the Center, but in any event, no less than the Special Minimum Hours.

“Recorded Agreements” shall mean all agreements, covenants, easements, restrictions or other matters now of record or hereafter placed of record.

“Rent” shall mean all Minimum Monthly Rental, Additional rent and other sums payable by Tenant under this Lease.

“Rent Commencement Date” shall mean \_\_\_\_\_, 2020.

“Special Minimum Hours” shall mean eight (8) hours a day, six (6) days a week.

“Taxes” shall mean:

(a) All levies, taxes (including payments required to be made in lieu of taxes, including sales tax on rental payments), regular assessments, special assessments, charges, liens, licenses and permit fees, and charges for public utilities, imposed, assessed or charged on or with respect to Landlord or the Leased Premises or the Center by any Governmental Authority or under any Law or Recorded Agreement; and

(b) All other charges, imposts or burdens of whatsoever kind and nature, whether or not particularized by name and whether general or special, ordinary or extraordinary, foreseen or unforeseen, which at any time during the Term may be created, levied, assessed, imposed or charged upon or with respect to the Leased Premises, the Center, or any improvements made thereto, or on any part of the foregoing or any appurtenances thereto, or directly upon this Lease or the Rent, or amounts payable by any subtenant or other occupants of the Leased Premises or the Center, or upon or with respect to the leasing, operation, use or occupancy of the Leased Premises or the Center, or upon this transaction or any documents to which Tenant is a party or successor in interest, or against Landlord because of Landlord's estate or interest herein, by any Governmental



Authority, or under any Law, including, among others, all special tax bills, and general, special or other assessments and liens or charges made on local or general improvements or under any governmental or public power or authority whatsoever, and transit taxes, taxes based upon the receipt of Rent including gross receipts or sales taxes applicable to the receipt of Rent, and personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, furniture, and other personal property used in connection with the Leased Premises and/or the Center. The term "Taxes" shall not include any net income or excess profit taxes assessed against Landlord, or any corporation capital stock and franchise taxes imposed upon Landlord; provided, however, that, if at any time prior to the expiration of the Term, any net income tax, assessment, levy or charge shall be imposed upon Landlord or the Leased Premises or the Center in lieu of, in place of, or in addition to any other tax or other charge included in the definition of Taxes set forth above, and shall be measured by or based upon net income or profits derived from real estate (as distinguished from net income or profits generally), then such new tax, assessment, levy or charge shall be included in "Taxes" to the extent that such new tax, assessment, levy or charge would be payable if the Center were the only property of Landlord subject thereto and the income and profits received by Landlord from the Center were the only income and profits of Landlord.

"Tenant's Final Plans" shall mean the plans and specifications as approved by Landlord as described in Section 6.03(a).

"Tenant Permits" shall mean the applicable building permits required to commence construction of the Tenant's Work.

"Tenant's Pro Rata Share" shall mean a fraction, the numerator of which shall be the number of square feet of leasable floor area of the Leased Premises, and the denominator of which shall be the number of square feet of leasable floor area of the Center.

"Tenant's Pro Rata Share of Common Area Maintenance Expenses" for each Calendar Year shall be equal to the total amount of the Common Area Maintenance Expenses for such Calendar Year multiplied by Tenant's Pro Rata Share.

"Tenant's Pro Rata Share of Insurance" for each Calendar Year shall be equal to the total amount of the Cost of Insurance on the Center for such Calendar Year multiplied by Tenant's Pro Rata Share.

"Tenant's Pro Rata Share of Taxes" for each Calendar Year shall be equal to the total amount of Taxes for such Calendar Year multiplied by the Tenant's Pro Rata Share.

"Tenant's Work" shall mean the work to be completed by Tenant as described in Sections 6.02 and 6.03.

"Utilities" shall mean heat, sewer, water, electricity, and any other utilities provided to, or used or consumed in or on the Leased Premises.

SECTION 3  
GRANT; TERMS

3.01 Grant.

(a) Landlord hereby leases the Leased Premises to Tenant; and Tenant hereby rents the Leased Premises from Landlord.

(b) In addition, Tenant shall have the non-exclusive right to use the Common Areas, in common with all others designated from time to time by Landlord as being entitled to such use; subject, however, to the terms and conditions of this Lease and to rules and regulations for the use thereof as prescribed from time to time by Landlord. Landlord may at any time: withdraw or add areas to the Common Areas and/or the Center; alter the Common Areas and/or the Center; construct or remove buildings or other improvements upon or from the Common Areas and/or the Center; and grant easements within the Common Areas and/or the Center (provided that at all times adequate parking facilities are available for common use of, and access and visibility to, the Leased Premises is not obstructed in a material and substantial manner).

3.02 Term. The Term shall mean the Initial Term (as set forth in Section 1.01(f) herein) and any Renewal Term (as defined below). The Tenant shall notify the Landlord ninety (90) days prior to the termination date of the Lease of their decision to either exercise the renewal option or end the lease upon the original termination date (whether it be the Initial Term or a Renewal Term).

3.03 Original Termination Date. The Original Termination Date shall be five (5) years from the Rent Commencement Date.

3.04 Term Extension Options. Provided that Tenant is not in default hereunder beyond any applicable notice and cure period at the time of exercise, that Tenant has not been in default hereunder beyond any applicable notice and cure period during the preceding twenty-four (24) months and that the original Tenant hereunder has not assigned this Lease or sublet the Leased Premises, Tenant shall have and is hereby granted one (1) separate and consecutive option to extend the Term upon the terms, covenants, conditions and provisions set forth herein for one (1) consecutive period of five (5) years ("Renewal Term"); provided that at the time an option to renew is exercised, the Term shall be in effect. Notwithstanding anything to the contrary herein, Landlord reserves the right during the five (5) year Renewal Term to change the market rent pursuant to the Consumer Price Index (CPI) to match the market rent rate if Landlord determines that the then current market rental rate is different than the scheduled Rent of the Lease. Such Extension Option shall be exercisable by Tenant giving written notice to Landlord of its intention to exercise the same at least ninety (90) days prior to the expiration of the then current Term. Upon receipt by Landlord of such notice, provided that Tenant shall then have the right to exercise such option, the Term shall be extended in accordance with the provisions hereof, without the necessity of any further act or documentation by Landlord or Tenant. In no event shall Tenant have any right or option to extend or renew the Term beyond five (5) years from the expiration date of the Initial Term. In the event Tenant fails to exercise any such option within the timeframe and in the manner aforesaid (regardless of whether such failure shall be a result of Tenant's not having the right to exercise such option), then this right and option shall terminate and be null and void, and the Term shall terminate in accordance with the provisions set forth elsewhere herein.

3.05 Memorandum of Lease. If requested by Landlord, Tenant agrees to execute a Memorandum of Lease. Landlord shall prepare and may record the Memorandum, whereupon Tenant shall pay all costs, fees, taxes and other expenses of executing, delivering and recording the Memorandum. Tenant agrees not to record this Lease and in the event that Tenant records this Lease or any memorandum thereof, such recordation shall be deemed an event of default hereunder.

## SECTION 4 RENT

4.01 Minimum Monthly Rental. Tenant shall pay the Minimum Monthly Rental to Landlord during the Term. Tenant shall pay to Landlord a pro rata portion of the Minimum Monthly Rental for the partial month, if any, immediately following the Rent Commencement Date. The payment for the fractional month, if any, and for the first (1st) full month of the Term, shall be due and payable on the Rent Commencement Date, and without, any right of notice, demand, deduction or setoff, the subsequent installments of Minimum Monthly Rental shall be due and payable in advance on the first (1st) day of each month thereafter, commencing with the first (1st) day of the first (1st) full month after the Rent Commencement Date.

4.02 Pro Rata Share of Common Area Maintenance Expenses, Taxes and Insurance. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord throughout the Term, as additional rent, for each Calendar Year, upon presentation by Landlord to Tenant of bills for: (a) Tenant's Pro Rata Share of Common Area Maintenance Expenses; (b) Tenant's Pro Rata Share of Taxes; and (c) Tenant's Pro Rata Share of Insurance.

4.03 Installments. Landlord shall collect Tenant's Pro Rata Share of Common Area Maintenance Expenses, Tenant's Pro Rata Share of Taxes and/or Tenant's Pro Rata Share of Insurance (collectively, "Share") for any Calendar Year in monthly installments, in the following manner. Landlord may, at any time prior to or during a Calendar Year, submit to Tenant Landlord's reasonable estimate of the Share for such Calendar Year. Such estimate may be revised from time to time during such Calendar Year. If Landlord shall submit to Tenant such estimate, Tenant shall pay the amount of such estimate in equal monthly installments, in advance, on or before the first (1st) day of each calendar month during such Calendar Year so that the full amount of such estimate shall have been paid upon the expiration of such Calendar Year. If Landlord shall collect monthly estimated payments on account of the Share for any Calendar Year monthly, pursuant to this Section, then, within one hundred twenty (120) days following the expiration of such Calendar Year, Landlord shall furnish to Tenant a written statement showing the actual amount of the Share for such Calendar Year and the payments theretofore made by Tenant. If the payments made by Tenant shall exceed the Share, Tenant shall be entitled to a credit against the next due payments of Tenant's Pro Rata Share of Common Area Maintenance Expenses in the amount of such excess. If the Share shall exceed the payments made by Tenant, Tenant shall pay to Landlord the deficiency within ten (10) days after Landlord shall submit the aforesaid statement to Tenant.

4.04 Payment of Rentals. All Rent shall be paid by Tenant to Landlord in advance on the first (1<sup>st</sup>) day of each month at Landlord's Address for Payment, without any right of notice, demand, deduction or setoff. In case of controversy, Tenant shall have the burden of proving payment of the controverted item(s) of Rent.

4.05 Late Payments. If Tenant shall fail timely to pay to Landlord any installment of Rent on the date on which such sum is due (regardless of the provisions of Section 15.01(a), below), Tenant shall pay to Landlord either or both (at Landlord's option) of the following: (a) interest on such late payment from the due date thereof to the date of receipt of payment by Landlord at a rate per annum equal to the Effective Rate, and (b) a late charge of Five Cents (\$.05) for each dollar so overdue.

4.06 Security Deposit. The Security Deposit, if any, shall be collateral security for the performance by Tenant of its obligations under this Lease. The Security Deposit shall be returned to Tenant after the expiration of the Term, provided Tenant shall have timely performed all of Tenant's obligations under this Lease. Landlord may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any Rent as to which Tenant is in default or on account of any sum which Landlord may expend by reason of Tenant's default. In the event that Landlord shall apply all or any part of the Security Deposit on account of Tenant's default under this Lease, Tenant shall replenish the Security Deposit within three (3) days of any request by Landlord to do so. No interest shall be paid on the Security Deposit. In the event of a sale of the Leased Premises, Landlord shall have the right to transfer the Security Deposit to the purchaser; and Landlord shall thereupon be released from all liability for the return thereof; and Tenant agrees to look solely to the purchaser for the return of the Security Deposit.

## SECTION 5 USE OF PREMISES: OCCUPANCY

5.01 Use of the Leased Premises. The Leased Premises shall be used for a food service establishment (restaurant) that serves alcoholic beverages and for no other purpose. Tenant's monthly gross receipts from the sale of food and non-alcoholic beverages shall exceed its monthly gross receipts from the sale of alcoholic beverages. At no time shall tenant cease the sale of food and serve alcoholic beverage only during any time of the term of the lease or renewal.

### 5.02 Hazardous Substances.

(a) Compliance with Law. All operations and activity at the Leased Premises shall be conducted by Tenant in compliance with all Environmental Statutes. Tenant shall maintain all permits or approvals and shall timely submit all reports and other documents required by Environmental Statutes. Tenant, at its sole cost and expense, shall be responsible for and shall comply with all Environmental Statutes having jurisdiction over the Leased Premises and the Center with respect to the presence or removal of Hazardous Substances that were installed by, stored or brought on the Leased Premises or the Center by Tenant or its employees, subtenants, assignees, contractors, agents or customers.

(i) This is to include but not limited to compliance with Section 303 of the Indian River County Code for Grease Trap Interceptors. Section 303.22 of the Indian River County Code requires a grease trap interceptor be maintained at least once every six (6) months and cannot be altered unless determined by the environmental health director.

(b) Information Transfer. Tenant shall provide to Landlord: (i) all applications and other documents submitted to any governmental agency relating to Environmental Statutes; (ii) all permits, licenses and approvals obtained under Environmental Statutes; and (iii) any correspondence, notice of violation, or other document received by Tenant relating to

Environmental Statutes.

(c) Handling of Hazardous Substances. Tenant shall not cause or allow the use, generation, handling or storage of Hazardous Substances in, on or under the Leased Premises. Should any release of Hazardous Substances occur at the Leased Premises, the Tenant shall immediately take all measures necessary to contain, remove and dispose of the Leased Premises all materials released or contaminated by the release, and remedy and mitigate all threats to public health or the environment relating to such release. When conducting any such measures and when using and handling Hazardous Substances, the Tenant shall comply with Environmental Statutes

(d) Tanks. Tenant shall obtain prior written approval of the Landlord for the Installation of any storage tank, whether above or underground, at the Leased Premises, and will comply with all applicable laws and regulations concerning its installation, operation and closure. Upon termination of this Lease, Landlord shall have the option of requiring that Tenant, at Tenant's sole cost and expense, perform tests relating to and/or remove any tank installed by Tenant and any associated contaminated material.

(e) General Compliance. The provisions of this Section 5.02 shall not be construed as limiting in any respect the covenants and obligations of Tenant under Section 6.07 hereof.

(f) Landlord's Entry for Inspection. Tenant agrees to permit Landlord and its authorized representatives to enter, inspect and assess, the Leased Premises, at reasonable times, for the purpose of determining Tenant's compliance with the provisions of this Section 5.02. Such inspections and assessments may include obtaining samples and performing tests of soil, surface water, groundwater or other media.

5.03 Continuous Occupancy. Tenant shall: (i) occupy the Leased Premises promptly upon the Commencement of the Term; (ii) open for business to the public on or before the Rent Commencement Date; and (iii) thereafter throughout the Term, continuously use the entire Leased Premises under the Trade Name for the Authorized Use in an efficient, businesslike and reputable manner. Tenant shall conduct its business in the Leased Premises throughout the Term at least during the Minimum Hours.

5.04 Additional Agreements. Throughout the Term, Tenant agrees:

(a) Not to use or operate any machinery or equipment that is harmful to the Leased Premises.

(b) Not to do or Permit, or suffer to be done or permitted, any act or thing, or permit any noise, odor, sound, vibration or disturbance whereby, or in consequence whereof, the rights of other occupants of space in the Center will be obstructed or interfere with, or other tenants in the Center will in any other way be injured or annoyed.

(c) Not to install a satellite dish, antennae, or other object on any portion of the Center, the building in which the Leased Premises is located, the Leased Premises, including,

but not limited to, the roof of the Leased Premises, or in or around the Center without the prior written approval from the Landlord. Requests for any such installation should be made to Landlord in writing in accordance with Section 20.01 hereof.

(d) Not to install, affix or permit the installation of, any public telephones, newspaper machines, vending machines, signage, kiosks, outdoor selling areas (whether seasonal or permanent) or any other obstruction on the exterior walls of the Leased Premises or placed on the sidewalks in front of, or surrounding the Leased Premises or on any other portion of the Center.

(e) Not to use or permit to be used, any sign, banner or object for marketing purposes (i.e. GRAND OPENING or SALE), whether temporary or permanently affixed without Landlord's prior written consent which consent may be withheld in Landlord's sole discretion. Tenant shall pay and be solely responsible for any fine, charge, expense, liability or claim in connection with any violation of this Section 5.04(e).

5.05 Tenant's Exclusive Use. Except as otherwise specifically set forth in this Section 5.05, from and after the date of this Lease and for so long as Tenant is not in default under this Lease, Landlord shall not enter into any Lease for any space at the Center which permits the primary use of the premises leased therein for a Restaurant (the "Exclusive Use"). The provisions of this Section 5.05 are for the benefit of only Tenant. If this Lease is assigned, or if the Leased Premises are subleased or otherwise transferred by Tenant. Any assignment of this Lease or Sublease need to have prior written approval by landlord.

## SECTION 6 LANDLORD'S WORK AND TENANT'S WORK; MAINTENANCE, REPAIRS AND ALTERATIONS

6.01 Landlord's Work. Landlord shall be responsible for any repairs initially required for the HVAC system to be in good working order (the "Landlord's Work"). Landlord shall have the exclusive right to determine the structural, mechanical and other standard details and specifications of Landlord's Work, including but not limited to, the type of materials and the manufacturer and supplier thereof. Landlord's obligation to perform the Landlord's Work is conditioned upon receipt of all necessary permits and approvals therefor.

6.02 Tenant's Work. Tenant shall perform all work not specifically designated as Landlord's Work which is necessary to complete the Demised Premises in accordance with Tenant's Final Plans, in the manner set forth in this Lease, and which is necessary for the Demised Premises to be ready to open for business with the public by the Rent Commencement Date, and all such work shall be done by Tenant at Tenant's own cost and expense. All such work as well as any remodeling pursuant to Section 6.05 of this Lease and all other work, which is not specifically designated as Landlord's Work is herein collectively referred to as "Tenant's Work."

6.03 Construction Procedures. The Leased Premises shall be designed and installed in accordance with all requirements of all Laws, Landlord's fire insurance underwriter and the requirements of any Governmental Authorities having jurisdiction thereof. The design, character and materials of the storefront and all aspects of the design and construction of the interior of the Leased Premises shall

be subject to the approval of Landlord.

(a) Construction Schedule. Tenant shall initially construct the Leased Premises in accordance with the plans and specifications referred to below, such work to be completed by the Rent Commencement Date. Not later than thirty (30) days after the Lease Date, Tenant shall deliver to Landlord detailed plans and specifications of Tenant's Work (which shall include complete storefront and interior work design plans, building signage plans, a reflective ceiling plan, a fixture and merchandising layout plan, cooling and heating load calculations, electrical panel board schedules and loads and such other details as may be required by Landlord) prepared by Tenant's licensed architect. Landlord shall review such plans and specifications and advise Tenant of any changes required by Landlord within twenty (20) business days of Landlord's receipt of the plans and specifications. Tenant shall promptly revise such plans and specifications to incorporate Landlord's required changes and deliver revised plans to Landlord within twenty (20) days after being advised of Landlord's changes. Landlord may, within twenty (20) business days of Landlord's receipt of the revised plans and specifications, require further changes to such plans and Tenant shall similarly revise and resubmit the same to Landlord within an additional period of twenty (20) days, and this procedure shall continue until all of Tenant's plans and specifications have been approved by Landlord. Tenant's plans and specifications as completely approved by Landlord shall be referred to herein as "Tenant's Final Plans". Upon Tenant's receipt of any and all necessary permits and/or approvals, Tenant shall promptly commence Tenant's Work in accordance with Tenant's Final Plans. All of Tenant's Work shall be completed at Tenant's sole cost and expense. All such work shall be promptly commenced and thereafter continued with due diligence to the end that it shall be fully completed and the Leased Premises opened for business in accordance with the provisions of this Lease. Tenant shall perform no work in the Leased Premises until such plans and specifications have been approved by Landlord.

(b) Construction Procedures and Requirements. In performing Tenant's Work, Tenant shall (or cause its contractor to) comply with the following requirements:

(i) In addition to, and not in lieu of the other policies of insurance required by this Lease, at all times between the start and completion of Tenant's Work (such period is herein referred to as "Tenant's Construction Period"), Tenant, at its own cost and expense, shall cause Tenant's contractor to maintain in effect with a responsible insurance company, a policy of all risk builder's risk insurance in the standard form for the State of Florida. Said insurance shall cover the full replacement value of all work done and fixtures and equipment installed or to be installed at the Leased Premises by Tenant, without coinsurance and with a deductible clause not to exceed Five Thousand Dollars (\$5,000.00).

(ii) In addition to, and not in lieu of the other policies of insurance required by this Lease, at all times during Tenant's Construction Period, Tenant, at its own cost and expense, shall cause Tenant's contractor to maintain in effect with a responsible insurance company a policy of comprehensive liability insurance or (at Landlord's option) commercial general liability insurance (on an occurrence basis). Said insurance shall protect against claims for personal injury (including death) and property damage. With limits not less than Five Million Dollars (\$5,000,000.00) in respect of personal injury (including bodily injury and death) and Two Million Dollars (\$2,000,000.00) for property damage.

(iii) At all times during Tenant's Construction Period, Tenant's contractors and subcontractors shall maintain in effect worker's compensation insurance as required by the laws of the State of Florida.

(iv) Repair and/or reconstruction of all or any portion of Tenant's Work damaged or destroyed by any casualty occurring during Tenant's Construction Period shall be commenced by Tenant as soon as possible after such casualty; provided that if all or any portion of Landlord's Work is also damaged or destroyed by such casualty, Landlord shall notify Tenant when repairs or reconstruction of Landlord's Work is substantially completed and, upon receipt of such notice, Tenant shall promptly pursue such repair and/or reconstruction to completion.

(v) Any approval or consent by Landlord of any or all of Tenant's criteria, systems, plans, specifications or drawings shall neither constitute an assumption of responsibility by Landlord for any aspect of such criteria, systems, plans, specifications or drawings including, but not limited to, their accuracy or efficiency nor obligate Landlord in any manner with respect to Tenant's Work and Tenant shall be solely responsible for any deficiency in design or construction of all portions of Tenant's Work.

(vi) Subject to the terms of this Lease, Tenant shall obtain and pay for all necessary permits and shall pay all other fees required by public authorities or utility companies with respect to Tenant's Work.

(vii) Tenant shall maintain the Leased Premises and the Common Areas (as defined in the Lease) adjoining the same, to the extent used by Tenant, in a clean and orderly condition during construction and may not use any space within the Center (except the Leased Premises) for storage of material or equipment.

(viii) At any time and from time to time during the performance of Tenant's Work, Landlord, Landlord's agent, Landlord's architect and/or Landlord's general contractor may enter upon the Leased Premises and inspect the work being performed by Tenant and after ten (10) days' notice to Tenant (except in the case of emergency) take such steps as are required by Tenant's approved plans or by Laws to assure the proper performance by Tenant of Tenant's Work in accordance with the approved plans and/or to protect the building and/or any leased premises adjacent to the Leased Premises. In addition, Tenant's Work shall be performed in a thorough first-class and workmanlike manner, shall incorporate only new or like new materials as approved by Landlord on Tenant's plans and specifications as approved by Landlord, and new materials or like-new materials at any other time during the Term and shall be in good and usable condition at the date of completion.

(ix) Tenant's Work shall be coordinated with all work being performed or to be performed by Landlord and other occupants of the Center such that Tenant's Work will not interfere with the operation of the Center or interfere with or delay the completion of any other construction within the Center.

(c) Construction Information. Prior to opening the Leased Premises for business with the public, Tenant shall supply to Landlord the following:



(i) Properly issued permanent occupancy certificates, occupational licenses and any other certificates evidencing acceptance or approval of the Leased Premises by appropriate governmental authorities.

(ii) A set of as-built plans and specifications for Tenant's Work prepared and sealed by Tenant's architect, together with names and addresses of Tenant's electrical, plumbing, and other contractors.

(d) Construction Disputes. Any disagreement or dispute which arises between Landlord and Tenant concerning Tenant's Work and which cannot be settled without the involvement of a third party, the dispute shall be submitted to an independent architect, whose determination shall be final and binding in resolving such dispute; provided, in the event Landlord and Tenant are unable to agree upon the identity of such independent architect, then Landlord and Tenant shall each select one (1) architect (with each party being responsible for the cost of the architect selected by such party) and the two (2) selected architects shall select a third (architect and the decision of a majority of the architects shall control and be final and binding on both Landlord and Tenant Landlord and Tenant shall each be responsible for one-half (½) of the cost of said third (3<sup>rd</sup>) architect.

6.04 Maintenance and Repairs. Tenant shall at its own expense, throughout the Term take good care of the Leased Premises and keep it in good order, condition and repair and in compliance with all Laws and Recorded Agreements, and promptly make all repairs necessary to maintain such good order, condition, repair and compliance. The term "repairs" shall include replacements, renewals and additions. All repairs made by Tenant shall be equal to or exceed in quality and usefulness of the original building and such other original improvements as may from time to time be located upon the Leased Premises. Tenant shall keep and maintain the Leased Premises in a clean and orderly condition, and free of accumulations of dirt, rubbish, snow, ice and water; and shall promptly remove from the Leased Premises and from the Center all trash, which may accumulate in connection with any activity by Tenant. Tenant shall cause a reputable pest control service to regularly service the Leased Premises so as to protect the Leased Premises from infestations of pests, vermin, and rodents

6.05 Alteration and Remodeling. Tenant shall not, without first obtaining Landlord's prior written consent, make any alterations, improvements or additions to the Leased Premises; except that Tenant may, without the prior consent of Landlord, make minor non-structural interior alterations and improvements to the interior of the Leased Premises up to five hundred dollars (\$500) in cost; provided, however, that any alteration, improvement or addition made by Tenant, including both those that do and do not require Landlord's prior written consent, shall not affect or impair the structure of the building nor reduce its value, and shall not disturb or annoy the occupants of any adjoining stores; and Tenant shall give to Landlord at least thirty (30) days prior written notice of any such alteration, improvement or addition. Except as otherwise provided in this Section 6.05, all alterations, improvements, additions, repairs and other property attached to or used in connection with the Leased Premises or any part thereof made or installed by Tenant shall immediately upon completion or installation thereof be and become part of the Leased Premises and the property of Landlord without payment therefor by Landlord, and shall be surrendered to Landlord upon the expiration or earlier termination of the Term. Provided, however, that Tenant agrees that all removable trade fixtures and personal property installed by Tenant in the Leased Premises shall be removed by Tenant at the termination of the Term. Tenant agrees that it will at its own cost and expense forthwith repair any and all damage done by the removal of any fixtures, trade fixtures and personal property. Tenant shall

obtain a permit for all improvements, alteration, or additions to the Leased Premises that requires a permit even if under the five hundred dollar (\$500) amount and shall provide a copy of said permit to the Landlord.

6.06 Mechanic's Liens:

(a) Prior to the making of any alterations or changes or the performance of any construction or work performed or authorized by Tenant which may give rise to a mechanic's lien, Tenant shall provide to Landlord in form and substance acceptable to Landlord a public construction bond, letter of credit or cash escrow deposit in the amount of the cost of the work as assurance that payment for the same will be made by Tenant, and Tenant hereby completely and fully indemnifies Landlord, and agrees to defend (with counsel acceptable to Landlord) and hold Landlord harmless from and against, any mechanic's lien or other lien or claim in connection therewith

(b) No liens shall be filed against the Leased Premises for any work performed as the Landlord is a governmental entity.

(c) If the laws of the State of Florida provide a procedure for the limitation of the right of any contractor, subcontractor or materialman to file a lien against the Leased Premises for work performed, such as, but not limited to, the filing of the construction contract or performance or payment bond, Tenant shall, prior to the making of any alterations, additions or improvements to the Leased Premises, cause such procedure to be complied with.

6.07 Compliance. Tenant shall, throughout the Term, at Tenant's sole cost and expense, promptly comply with all Laws and Recorded Agreements and the recommendations or requirements of all insurance companies, relating to the Leased Premises, the use thereof the sidewalks, parking areas, curbs and access ways adjoining the Leased Premises. Without limiting the generality of the foregoing. Tenant shall keep in force all licenses, consents and permits necessary for the lawful use and occupancy of the Leased Premises for the Authorized Use and Tenant shall pay all personal property taxes, income taxes, license fees, and other impositions which are or may be assessed, levied or imposed upon Tenant in connection with Tenant's use and operation of its business at the Leased Premises.

SECTION 7  
TAXES

7.01 Personal Property Taxes. Tenant shall pay all personal property and non ad-velorem taxes levied by any Governmental Authority with respect to Tenant's property located on the Leased Premises. Tenant shall pay all sales taxes levied by any Governmental Authority with respect to the Leased Premises and/or Rent payable under this Lease, and hold the Landlord harmless with respect thereto.

SECTION 8  
Indemnity and Insurance

8.01 Indemnity and Release.

(a) Indemnification by Tenant. Tenant agrees to indemnify, defend (with counsel

acceptable to Landlord) and save harmless Landlord. from and against any and all claims by or on behalf of any party arising from the occupancy, conduct, operation or management of the Leased Premises or from any work or thing whatsoever done on or about the Leased Premises or the Center, or arising from any breach or default on the part of Tenant pursuant to the terms of this Lease, or under the provisions of any Law, or arising from any act, neglect or negligence of Tenant, or any of its agents, contractors, servants, employees, or licensees, or arising from any accident, injury or damage whatsoever caused to any party, occurring during the Term, in or about the Leased Premises or the Center or any part thereof, and from and against all costs, expenses and liabilities incurred in connection with any such claim or action or proceeding brought thereon (including, without limitation, the fees of attorneys, investigators and experts); and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord covenants at Tenant's cost and expense to resist or defend such action or proceeding or to cause it to be resisted or defended by an insurer. Tenant shall not, however, be liable for damages or injury occasioned by the gross negligence or willful misconduct of Landlord, or its agents, employees, or servants, unless such damage or injury arises from perils against which Tenant is required by this Lease to insure.

(b) Release. Landlord, its principals, agents, employees and contractors, shall not be liable for, and Tenant hereby releases Landlord, its principals, agents, employees and contractors from, all claims for loss of life, personal injury or damage to property or business sustained by Tenant or any person claiming by, through or under Tenant resulting from any fire, accident, occurrence or condition in or upon the Leased Premises or the Center or any part thereof including, but not limited to, any such claims for loss of life, personal injury or damage resulting from defect, latent or otherwise, in the Leased Premises or the Center, any defect in or any failure of any equipment, machinery, utilities, appliances, or apparatus in the Leased Premises or the Center, falling of fixtures or other items, leakage of water, snow or ice, broken glass, or any other similar event or any act of other tenants or occupants of the Center or any act or omission (including negligent acts or omissions) of Landlord, its principals, agents, servants and employees.

(c) Waiver of Subrogation. Each of the parties hereto hereby releases the other and the other's partners, agents and employees, to the extent of each party's insurance coverage, from any and all liability for any loss or damage which may be inflicted upon the property of such releasing party even if such loss or damage shall be brought about by the fault or negligence of the other party, its partners, agents or employees; provided, however, that this release shall be effective only with respect to loss or damage occurring during such time as the appropriate policy of insurance shall contain a clause to the effect that this release shall not affect said policy or the right of the insured to recover thereunder. If any policy does not permit such a waiver, and if the party to benefit therefrom requests that such a waiver be obtained, the other party agrees to obtain an endorsement to its insurance policies permitting such waiver of subrogation if it is available. If an additional premium is charged for such waiver, the party benefiting therefrom, if it desires to have the waiver, agrees to pay to the other the amount of such additional premium promptly upon being billed therefor.

#### 8.02 Insurance by Tenant

(a) Tenant shall keep in force, at Tenant's sole cost and expense, with responsible insurance companies acceptable to Landlord authorized to do business in the State of and throughout the Term and during such other times as Tenant occupies the Leased Premises or any part thereof:

(i) Insurance (on an occurrence basis) against claims for personal injury (including death) and property damage and with broad-form contractual liability coverage under a policy of comprehensive general liability insurance or (at Landlord's option) commercial general liability insurance, with limits not less than Five Million Dollars (\$5,000,000.00) in respect of personal injury (including bodily injury and death) and Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for property damage.

(ii) Workers' compensation or similar insurance affording statutory coverage and containing statutory limits.

(iii) Fire insurance, with such extended coverage endorsements including, but not limited to, vandalism, malicious mischief, sprinkler leakage, plate and other glass coverage, and other endorsements as Landlord may from time-to-time require, covering all of Tenant's stock in trade and other improvements to the extent of at least one hundred percent (100%) of their replacement cost. The property damage insurance required hereunder shall not contain the "care, custody and control" exclusion.

(iv) Business interruption insurance in an amount equal to one hundred (100%) percent of the Rent and, if requested by Landlord, products liability insurance in such amounts as Landlord may reasonably require.

(b) Tenant shall deposit with Landlord certificates of insurance evidencing the policies of insurance required under this Section, as well as copies of such policies, together with satisfactory evidence of the payment of the premium or premiums required thereunder, prior to the date Tenant first enters upon the Demised Premises (but in no event later than the Commencement of the Term). Said policies of insurance shall name as insured parties the Landlord (and, at Landlord's direction, any managing agent) and the holder of any Mortgage and shall provide that they shall not be cancelable without thirty (30) days prior written notice to Landlord and the holder of such Mortgage. At least fifteen (15) days prior to the expiration of any such policy, Tenant shall deposit with Landlord certificates of insurance evidencing a renewal policy, as well as a copy of any such renewal policy, together with satisfactory evidence of payment by Tenant of the premium or premiums required thereunder. Should the Tenant default on an insurance payment, the insurance company shall notify the Landlord upon said default. Should the Tenant fail to cure the default on the insurance payment causing cancellation of the insurance coverage the default shall constitute a breach of this lease and the Landlord at their sole discretion can terminate the Lease.

(c) The Landlord shall be listed as an additional insured on all policies of insurance required by this lease.

8.03 Increase in Insurance Rate. Tenant will not do or keep anything in the Leased Premises which will violate the provisions of any policy of insurance or which will prevent procuring insurance with companies acceptable to Landlord. If anything done, omitted to be done or suffered to be done by Tenant shall cause the insurance rate on any insurance for the Center to be increased, then Tenant shall pay the entire amount of any increase in premiums resulting therefrom on demand and as additional rent.

## SECTION 9 SIGNAGE

9.01 Signs. Tenant shall, at its sole cost and expense, construct all necessary signs in and upon the Leased Premises properly to conduct its marketing activities, provided that Tenant shall have first submitted to Landlord plans for each such sign and further provided that Landlord shall have approved such. Tenant shall be solely responsible for obtaining sign permits and for ensuring that all signs and the installation thereof conform to the requirements of all Laws and Recorded Agreements. The availability of signs and sign permits is not a condition to the obligations of Tenant under this Lease. Tenant shall, at Tenant's sole cost and expense, maintain its signs in good order, condition and repair throughout the Term. Tenant shall pay to Landlord upon demand Tenant's Pro Rata Share of the cost of maintaining any: pylon or monument sign at the Center. Tenant shall be permitted, at its sole cost and expense, to install a sign in compliance with this Section 9.01 on such pylon or monument sign at a location thereon to be determined by Landlord.

## SECTION 10 UTILITIES

10.01 Tenant's Responsibility for Utilities Consumed. Tenant shall make application for, be responsible for, and promptly pay all charges for all Utilities consumed at the Leased Premises.

10.02 Utility Interruption. Landlord shall not be liable for any interruption or impairment in the supply of Utility service, nor shall any interruption or impairment constitute a breach by Landlord of the terms and conditions of this Lease nor shall any interruption or impairment constitute a ground for an abatement of Rent. Tenant shall not at any time overburden or exceed the capacity of any Utility services which are supplied to the Leased Premises.

10.03 Alternative Billing. If the authority or authorities supplying Utilities servicing the Leased Premises provide that the bills therefor be rendered to Landlord, then Tenant shall reimburse Landlord for the amount of each such bill upon request by Landlord.

10.04 HVAC. Tenant shall, at its own expense maintain a heat, ventilation and air condition ("HVAC") maintenance contract with a third (3<sup>rd</sup>) party person or entity employed in the business of servicing HVAC units of the type serving the Leased Premises and which is fully licensed to repair such units in the State of Florida, which person or entity shall service the HVAC unit(s) at the Leased Premises on a regular basis (not less than quarterly), which service shall include, but shall not be limited to, changing belts, filters and all other parts as required. Such person or entity shall perform emergency repairs on the HVAC units(s) and keep a detailed record of all services performed and prepare a yearly service report to be furnished to the Tenant at the end of each Calendar Year. Tenant shall furnish to Landlord at the end of each Calendar Year a copy of such yearly service report. A copy of the HVAC maintenance contract described above shall be provided by Tenant to Landlord on or prior to the Commencement of the Term, together with proof that the annual premium for such contract has been paid. Tenant shall notify Landlord in writing of any person or entity contracted by Tenant to provide preventative maintenance or repairs to the HVAC unit(s) serving the Leased Premises.

SECTION 11  
ASSIGNMENT AND SUBLETTING

11.01 Assignment and Subletting

(a) Tenant shall not assign or encumber this Lease or sublet the Leased Premises, in whole or part without Landlord's prior written consent (which consent may be withheld for any reason whatsoever, reasonably or unreasonably). Notwithstanding any assignment or encumbrance of this Lease or subletting of all or any portion of the Leased Premises, with or without the consent of Landlord, Tenant shall, nevertheless, remain liable to Landlord for the performance of all of Tenant's obligations under this Lease; and any assignment, encumbrance, sublease or subletting made by Tenant shall be subject to the terms, conditions and provisions of this Lease.

(b) Tenant shall notify Landlord in writing at least thirty (30) days prior thereto if Tenant intends to sublease all or any portion of the Leased Premises or to assign or encumber this Lease. Landlord shall have the right, at Landlord's sole option, to terminate this Lease if Landlord has received from Tenant a notice pursuant to the preceding sentence; such termination to be effected by written notice from Landlord to Tenant given within fifteen (15) days after the receipt by Landlord of Tenant's notice of Tenant's intention to sublet or assign or encumber this Lease.

(c) The provisions of this Section 11.01 shall be equally applicable to an assignment by operation of law. The sale or transfer of stock or any other transfer of any beneficial interest in Tenant or any merger by Tenant or by any parent, subsidiary or affiliate of Tenant shall be considered for the purpose of this Lease to be an assignment hereunder

(d) If, with or without Landlord's consent, Tenant assigns this Lease, or sublets all or any portion of the Leased Premises, any profits derived by Tenant from the assignment or subletting shall be paid by Tenant to Landlord and Tenant shall deliver to Landlord a written agreement in which the assignee or subtenant agrees, for the benefit of Landlord, to assume, be bound by, and perform all of the obligations of Tenant under this Lease. Tenant agrees to use reasonable efforts to obtain the highest profit possible on any assignment or subletting. If, with or without Landlord's consent, Tenant assigns this Lease, or sublets all or any portion of the Leased Premises, any profits derived by Tenant from the assignment or subletting shall be paid by Tenant to Landlord and Tenant shall deliver to Landlord a written agreement in which the assignee or subtenant agrees, for the benefit of Landlord, to assume, be bound by, and perform all of the obligations of Tenant under this Lease. Tenant agrees to use reasonable efforts to obtain the highest profit possible on any assignment or subletting.

11.02 Violation. If this Lease were assigned, Landlord may collect Rent from the assignee. If the Leased Premises or any part thereof be sublet or occupied by any person other than Tenant and in the event of Tenant's uncured default, Landlord may collect Rent from such subtenant or occupant. Landlord's collection of Rent pursuant to the provisions of this Section 11.02 shall not in any event be deemed to be a waiver of any default by Tenant in having assigned this Lease or sublet all or any portion of the Leased Premises without the prior written consent of Landlord.

11.03 Bankruptcy Assignment. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act

or deed to have assumed all of the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

11.04 Bankruptcy Assignment - Payment of Consideration for Assignment. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. et seq., ninety percent (90%) of any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and promptly be paid or delivered to Landlord.

## SECTION 12 EASEMENTS, AND ESTOPPEL CERTIFICATES

12.01 Easements by Landlord. Landlord shall have the right to grant easements over the Center without the joinder of Tenant; and the rights of Tenant under this Lease shall be subject and subordinate thereto.

### 12.03 Tenant's Certificate: Additional Documents

(a) Tenant agrees at any time and from time to time, within ten (10) days after Landlord's written notice, to execute, acknowledge and deliver to Landlord a written instrument in recordable form certifying the commencement and ending dates of the Term, that this Lease is unmodified and in full force and effect (or if there have been modifications, that it is in full force and effect as modified and stating the modifications) and the dates to which Monthly Minimum Rental have been paid in advance, if any, and stating whether or not Landlord is in default in the performance of any agreement contained in this Lease and if so, specifying each such default and such other information as Landlord shall reasonably request; and agreeing that Tenant will give to the holder (or proposed holder) of any Mortgage a copy of any notice of default it sends to Landlord and will provide to such holder a reasonable time in which to effect a cure of same. Tenant agrees that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser of the fee or any mortgagee thereof or any assignee of Landlord's interest in this Lease or of any Mortgage

(b) Within ten (10) days after the date of the execution of this Lease, and within ten (10) days after the date of a request by Landlord to Tenant, Tenant shall deliver to Landlord (and Tenant shall cause the Guarantor, if any, to deliver to Landlord), the following documents in connection with Tenant and in connection with the Guarantor, if any:

(i) Financial statements for the three (3) fiscal annual periods most recently ended prior to the date of the request, which financial statements shall; be prepared, audited and certified to by Tenant's regularly engaged independent certified public accountants; be prepared in accordance with generally accepted accounting principles consistently applied; and contain a balance sheet of Tenant showing all assets and liabilities (both absolute and contingent) and a statement of Tenant's profits and loss.

(ii) If applicable, a Good Standing Certificate issued by the appropriate

governmental authority confirming that Tenant and/or the Guarantor is and remains a corporation, partnership or company (whichever, if any, are applicable) duly formed and in good standing under the laws of the State of its incorporation and/or formation.

(iii) If applicable, a copy of an appropriate resolution of the board of directors of Tenant and/or the Guarantor authorizing the proper officers to execute and deliver this Lease and the Guaranty for and on behalf of Tenant and/or the Guarantor; and an incumbency certificate confirming the duly authorized and elected officers and directors of Tenant and/or the Guarantor; both duly certified as being true, complete and correct by the Secretary of Tenant and/or the Guarantor.

(iv) If applicable, a copy (certified as true and correct) of the partnership agreement, by-laws and/or operating agreement of Tenant and/or the Guarantor reflecting the authorization of the parties executing this Lease and/or the Guaranty to execute and deliver this Lease and/or the Guaranty for and on behalf of Tenant and/or the Guarantor.

(c) At any time during the Term, Landlord may (by notice) furnish a statement to Tenant which sets forth all payments made by Tenant to Landlord during the period specified in such notice. Within twenty (20) days after receiving such statement, Tenant shall: (a) affirm such statement in writing to Landlord; or (b) if Tenant disputes such statement, notify Landlord thereof and specify in detail the basis of such dispute (including supplying reasonable written evidence in support thereof). Such statement shall be conclusively binding upon Tenant if Tenant fails to timely affirm or dispute such statement, or if Tenant's written evidence does not support its dispute.

### SECTION 13 CONDEMNATION

13.01 Whole or Partial Taking. In the event the whole or any portion of the Leased Premises shall be taken by any public authority under the power of eminent domain, this Lease shall terminate as of the date of such taking.

13.02 Sharing of Condemnation Proceedings. All compensation awarded for such taking of the fee and the leasehold shall belong to and be the property of the Landlord; provided, however, that the Landlord shall not be entitled to any portion of the award attributable to the Leased Premises made to the Tenant for the cost of moving or removal of its stock and fixtures (provided that such award to Tenant does not reduce the compensation which would otherwise be awarded to Landlord).

### SECTION 14 DAMAGE BY FIRE OR OTHER CASUALTY

#### 14.01 Destruction of Leased Premises

(a) If the Leased Premises shall be damaged or destroyed by fire or other casualty, then Tenant shall promptly give notice thereof to Landlord; and, except as hereinafter otherwise provided, Landlord shall, to the extent that rent insurance is received by Landlord and to the extent permitted by the holder of any Mortgage on the Leased Premises or the Center, within a reasonable time thereafter, repair or restore the Leased Premises to substantially the same condition it was in prior to the casualty. If Landlord is required to repair the Leased Premises pursuant to the provisions of this Section 14.01, its obligations shall be limited to Landlord's Work, excluding, however, all



work, alterations, fixtures, or signs installed by or for Tenant and all floor coverings, furniture, equipment and decorations; and Tenant shall, at Tenant's sole cost and expense, promptly perform all repairs and restoration to the Leased Premises not required to be done by Landlord and shall promptly reenter the Leased Premises and commence its business in all parts thereof upon its repair and restoration.

(b) If the damage to the Leased Premises should be so extensive as to render the whole or any portion thereof untenable and unsuitable for use and occupancy by Tenant, a just proportion of the Minimum Monthly Rental, according to the nature and extent of the injury to the Leased Premises, shall be suspended or abated until the Leased Premises shall be repaired or restored by Landlord as aforesaid; provided, however, that the amount of such abatement or suspension shall in no event exceed the amount of rent insurance paid to Landlord and the obligation of Tenant otherwise to perform under this Lease shall not be affected or abated by reason of such damage or destruction.

(c) If during the last two (2) years of the Term the Leased Premises shall be damaged or destroyed to the extent of twenty percent (20%) or more of its insurable value, or if the proceeds of Landlord's insurance as the result of any damage to the Leased Premises by fire or other casualty shall be insufficient fully to pay the cost of the repair thereto or if at any time the buildings in the Center shall be damaged or destroyed as to the extent of fifty percent (50%) or more of their insurable value, then in any such event, Landlord may terminate this Lease by notice to Tenant within thirty (30) days after such damage or destruction. In the event of any termination of this Lease pursuant to the provisions of this Section, the termination shall become effective on the fifteenth (15th) day after the giving of the notice of termination, a just proportion of the Minimum Monthly Rental, according to the nature and extent of the injury to the Leased Premises shall be suspended or abated until the time of termination and Minimum Monthly Rental shall be apportioned as of the time of termination.

## SECTION 15 EVENTS OF DEFAULT

### 15.01      In the event any of the following shall occur:

- (a) Tenant fails to pay any installment of Rent within five (5) days after it is due; or
- (b) Tenant is in default of any of its other obligations or is otherwise in breach under this Lease and Tenant fails to commence to cure any such default within fifteen (15) days after notice of the occurrence thereof from Landlord and thereafter fails to complete the cure of such default with due diligence within thirty (30) days after notice of the occurrence thereof from Landlord; or
- (c) Tenant or Guarantor is adjudicated a bankrupt; or
- (d) Tenant or Guarantor has a receiver in equity appointed for all or substantially all of its property and such appointment is not vacated within thirty (30) days; or
- (e) Tenant or Guarantor files a voluntary petition for reorganization or arrangement;  
or
- (f) Tenant or Guarantor has a trustee in reorganization appointed for its property; or
- (g) Tenant or Guarantor has a trustee in reorganization appointed for its property; or
- (h) Tenant or Guarantor files a voluntary petition in bankruptcy; or

(i) Tenant or Guarantor files an answer admitting bankruptcy or agreeing to reorganization or arrangement; or

(j) Tenant or Guarantor makes an assignment for the benefit of creditors; or

(k) Tenant permits its leasehold interest hereunder to be sold pursuant to execution; then and in any such event. Landlord may, in addition to such other rights and remedies, which are provided for by law or equity or elsewhere in this Lease:

(A) Accelerate the whole or any part of the Rent and other charges, payments, costs and expenses herein agreed to be paid by Tenant for the entire unexpired balance of the Term. Such amount if so accelerated shall, in addition to any Rent already due and payable, be deemed due and payable as if, by the terms and provisions of this Lease, such accelerated Rent and other charges, payments, costs and expenses were on that date payable in advance.

(B) If permissible under applicable laws, enter the Demised Premises and without further demand or notice, proceed to sale of the goods, chattels and personal property there found and levy the Rent; and Tenant shall pay all costs and officers' commissions, including watchmen's wages and sums chargeable to Landlord, and in such case all costs, officers' commissions and other charges shall immediately attach and become part of the claim of Landlord for Rent.

(C) Reenter the Leased Premises and remove all persons and all or any property therefrom, either by summary dispossession proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damages therefor, and repossess and enjoy the Leased Premises, together with all other installations of Tenant. Upon recovering possession of the Leased Premises by reason of or based upon or arising out of a default on the part of Tenant, Landlord may, at Landlord's option, either terminate this Lease or make such alterations and repairs as may be necessary in order to re-let the Leased Premises; and re-let the Leased Premises or any part or parts thereof, either in Landlord's name or otherwise, for a term or terms which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the Term and at such rent or rents and upon such other terms and conditions as in Landlord's sole discretion may seem advisable and to such person or persons as may in Landlord's discretion seem best; upon each such re-letting all rents received by Landlord from such re-letting shall be applied: first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such re-letting, including brokerage fees and attorneys' fees and all costs of such alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Rent as it may become due and payable hereunder. If such rentals received from such re-letting during any month shall be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such reentry or taking possession of the Leased Premises or the making of alterations and/or improvements thereto or the re-letting thereof shall be construed as an election on the part of Landlord to terminate this Lease unless written notice of such intention be given to Tenant. Tenant, for Tenant and Tenant's successors and assigns, hereby irrevocably constitutes and appoints Landlord, as their agent to collect the rents due and to become due under all subleases of the Leased Premises or any parts

thereof without in any way affecting Tenant's obligation to pay any unpaid balance of Rent due or to become due hereunder. Notwithstanding any such re-letting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

(D) To terminate this Lease and the Term hereby created without any right on the part of Tenant to waive the forfeiture by payment of any sum due or by other performance of any condition, term or covenant broken. Whereupon Landlord shall be entitled to recover, in addition to any and all sums and damages for violation of Tenant's obligations hereunder in existence at the time of such termination, damages for Tenant's default in an amount equal to the amount of the Rent reserved for the balance of the Term, as well as all other charges, payments, costs and expenses herein agreed to be paid by Tenant, all discounted at the rate of six percent (6%) per annum to their then present worth, less the fair rental value of the Leased Premises for the remainder of said Term, also discounted at the rate of six percent (6%) per annum to its then present worth, all of which amount shall be immediately due and payable from Tenant to Landlord

(E) To proceed as a secured party under the provisions of the Uniform Commercial Code against the property in which Landlord has been granted a security interest pursuant to this Section 15.01.

(F) In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if reentry, summary proceedings and other remedies were not herein provided for.

(G) No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law provided but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

(H) If permitted by applicable law, Tenant expressly waives:

1. The benefit of all laws, now or hereafter in force, exempting any goods on the Leased Premises or elsewhere from levy or sale in any legal proceeding taken by Landlord to enforce any rights under this Lease.

2. The right to delay execution on any real estate that may be levied upon to collect any amount which may become due under the terms and conditions of this Lease and any right to have the same appraised.

3. All of the following: (A) the requirement under Section 83.12 of the Florida Statutes that the plaintiff in his distress for rent action file a bond payable to the Tenant in at least double the sum demanded by the plaintiff, it being understood that no bond shall be required in any such action; (B) the right of Tenant under Section 83.14 of the Florida Statutes to replevy distrained property; (C) the right of counterclaim in any action brought by Landlord against Tenant for damages or for possession of the Leased Premises due to nonpayment of Rent; and (D) the notice requirement set forth in Section 83.20 of the Florida Statutes.

(I) For the purpose of calculating the "accelerated Rent" payable under paragraph (A) of this Section and the "Rent reserved for the balance of the Term" for the purposes of paragraph (D) of this Lease (but without discounting as provided therein), the amount payable as Tenant's Pro Rata Share of Taxes, Tenant's Pro Rata Share of Insurance and Tenant's Pro Rata Share of Common Area Maintenance Expenses for the balance of the Term shall be equal to the sum of the highest amount paid or payable by Tenant in any Calendar Year for each of the foregoing items multiplied by the number of Calendar Years (including any fractional Calendar Year) remaining in the Term.

(J)

(i) As security for the obligations of Tenant under this Lease, Tenant does hereby assign, transfer and set over unto Landlord all of the rights, title and interest of Tenant in and to any subleases of the Leased Premises. The assignment provided for in this paragraph shall in no event be deemed: to constitute consent by Landlord to any sublease by Tenant nor an agreement by Landlord to accept any subtenant as a tenant of Landlord in the event of a termination of this Lease nor in any manner as a waiver by Landlord of the provisions and limitations herein; or to constitute an agreement by Landlord to perform any of the obligations of Tenant under any sublease of the Leased Premises. Until the occurrence of an event of default by Tenant under this Lease, Tenant may continue to collect the rent and other sums payable under the sublease(s) assigned hereby; but from and after the occurrence of an event of default, all such rent and other sums shall be paid to Landlord and applied by Landlord on account of Rent and other sums due by Tenant to Landlord pursuant to this Lease. A statement by Landlord to any subtenant that an event of default by Tenant has occurred under this Lease shall be conclusive evidence of such fact and shall be (and may be) relied upon by the subtenant in making payments to Landlord. No subtenant shall be liable to Tenant for any payment made by the subtenant to Landlord pursuant to the paragraph. No sublease shall be valid or effective unless it shall expressly restate therein the provisions of this paragraph.

(ii) Tenant hereby grants to Landlord a security interest under the Uniform Commercial Code in all of tenant's good and property about the Leased Premises. Said Security interest shall secure unto Landlord the payment of all rent and charges collectible or reserved hereunder which shall become due under the provisions of this Lease. Tenant hereby agrees to execute, upon request of Landlord, such statements as may be required under the provision of the said Uniform Commercial Code to perfect Landlord's security interest in Tenant's goods and property about the Leased Premises.

(K) In the event of any default by Tenant of any of its obligations under this Lease, Tenant shall immediately pay to Landlord, upon demand, an amount equal to all reasonable attorneys' fees and court costs incurred by Landlord in enforcing its rights and remedies under this Lease, whether or not an administrative and/or judicial action is commenced by Landlord against Tenant by reason of such default.

15.02 Default by Landlord. Landlord shall not be in default of any of its obligations in this Lease unless Landlord or the holder of any Mortgage on the Center shall have failed to commence to perform such obligation within forty-five (45) days after notice by Tenant to Landlord and to such mortgagee properly specifying wherein Landlord has failed to perform any such obligation or shall have failed to proceed thereafter with reasonable diligence to complete such performance.

15.03 Curing Tenant's Defaults. If Tenant shall be in default of any of its obligations under this Lease, Landlord may (but shall not be obligated to do so), in addition to any other rights it may have in law or equity or under this Lease, cure such default on behalf of Tenant, and Tenant shall reimburse Landlord upon demand for any reasonable sums paid or costs incurred by Landlord in curing such default, together with interest at the Effective Rate from the respective dates of Landlord's making of the payments and incurring of the costs, on all sums advanced by Landlord as aforesaid, which sums and costs together with interest thereon shall be deemed additional rent payable under this Lease.

15.04 Waiver of Breach. The waiver by Landlord or Tenant of any breach of any term, covenant or conditions contained in this Lease, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained in this Lease.

## SECTION 16 INSPECTION RIGHTS

16.01 Landlord's Right to Inspect. Landlord and the holder of any Mortgage, and each of their agents, shall have the right to enter the Leased Premises at all times to examine same and to show them to prospective purchasers or tenants, and to make such repairs, alterations, improvements or additions as Landlord may deem necessary or desirable. At any time within one (1) year prior to the expiration of the Term, Landlord shall have the right to display on the exterior of the Demised Premises a customary "For Rent" sign.

## SECTION 17 Quiet Enjoyment

17.01 Landlord's Covenant of Quiet Enjoyment. Landlord covenants that upon Tenant complying with the terms, covenants and conditions of this Lease, Tenant may peaceably and quietly have, hold and enjoy the Leased Premises for the Term without hindrance or interruption by Landlord or by any other person or persons claiming under Landlord.

## SECTION 18 Holding Over

18.01 Rent for Holding Over Period. If Tenant shall continue to occupy the Leased Premises after the end of the Term without Landlord's written consent, then Landlord shall be entitled to recover from Tenant either damages to compensate Landlord for the losses suffered by Landlord as a result of such holding over or, at Landlord's option, compensation for such use and occupancy, at a rate per month equal to two hundred percent (200%) of the Rent in effect for the month immediately preceding such expiration or earlier termination, on the terms and conditions in effect immediately prior thereto. Neither Landlord's demand nor Landlord's receipt of the aforesaid compensation for use and occupancy shall be deemed to provide Tenant with any right to any use, occupancy or possession of the Leased Premises either for the period for which such compensation has been demanded or paid or for any time before or after such period. The provisions of this Section 18.01 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law.

## SECTION 19

## CONDITION AND RETURN OF PREMISES

19.01 Condition of Title and Leased Premises. Tenant agrees that the Leased Premises, the Common Areas and all other parts of the Center, the title to the Leased Premises and the Center, the zoning classification of the Leased Premises and the Center, and the uses of the Leased Premises permitted by applicable Laws have been examined by Tenant; that Tenant accepts the Leased Premises and the Common Areas in there "As-Is", "Where Is" state and condition; that Tenant accepts its rights under this Lease subject to all of the foregoing; and that Landlord has made no representation, covenant or warranty, express or implied, in fact or in law, with respect thereto.

19.02 Liability for Return of Leased Premises. At the expiration of the Term, Tenant shall surrender the Leased Premises in the same or better condition as the Leased Premises were in upon delivery of possession to the Tenant under this Lease, loss by condemnation and insured casualty excepted.

## SECTION 20 GENERAL

20.01 Notices. Any notice provided for in this Lease shall be given by written instrument, personally delivered or sent by United States certified or registered mail, return receipt requested or with a nationally recognized overnight carrier (such as Federal Express), each with postage and/or delivery charges prepaid, to Landlord at Landlord's Address for Notices and to Tenant at Tenant's Address (as set forth in Section 1.01(d) above). All notices shall be deemed to have been given when deposited in the United States mail or with such overnight carrier or when personally delivered, as aforesaid Any notice may be given on behalf of any party by its counsel.

20.02 Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

20.03 Entire Agreement. This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and all prior negotiations are merged into this Lease. Any amendment, change or addition to this Lease shall be made only in writing and signed by both parties.

20.04 Successors in Interest. The terms and conditions of this Lease shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns, subject however to the provisions of Section 11.01.

20.05 Headings. The section headings in this Lease are for convenience of reference only, and shall not be construed or held in any way to explain, modify, amplify or add to the interpretation, construction or meaning of this Lease.

20.06 Applicable Law. This Lease shall be governed by the laws of the state of Florida.

20.07 Definition of Landlord. The word "Landlord" is used herein to include the Landlord and any subsequent owner of the Leased Premises as well as their respective successors and assigns, each of whom shall have the same rights, remedies, powers, authorities and privileges as it would have had, had it originally signed this Lease as Landlord; but any Landlord, whether or not named herein, shall have no liability under this Lease after it ceases to hold title to the Leased Premises, except for obligations which may have theretofore accrued; or if it never acquires title to the Leased Premises. If Landlord is in breach or default with respect to Landlord's obligations or otherwise under this Lease, Tenant shall look solely to the interest of Landlord in the Center for satisfaction of Tenant's remedies. Neither Landlord, nor any partner in Landlord, shall have any personal liability with respect to any of the provisions of this Lease. Landlord's affiliated companies, officers, directors, agents or employees shall not be liable to the Tenant for indirect, special, incidental, consequential, punitive or reliance damages arising under or in connection with this Lease or the performance of Landlord's obligations hereunder, or from any breach or partial breach of the provisions of this Lease or arising out of any act or omission of employees, servants, agents or invitees of Landlord whether based on breach of contract, breach of warranty, negligence or any other theory of liability. It is expressly understood and agreed that Landlord's liability, and the liability of any partner in Landlord, under the terms, covenants, conditions, warranties, and obligations of this Lease shall in no event exceed the loss of Landlord's interest in the Center.

20.08 Maintenance Bond. If a maintenance bond is required to be maintained by any governmental authority for the maintenance of the Leased Premises, Tenant agrees, at its sole cost and expense, to obtain and maintain such bond, and to cause it to name Tenant and Landlord as the bonded parties.

20.09 Brokers in Connection with Lease. Tenant represents and warrants to Landlord that other than the Broker, if any, Tenant has had no dealings, negotiations or consultations with respect to the Leased Premises or this transaction with any broker or finder, and that no broker or finder called the Leased Premises to Tenant's attention for lease or took part in any dealings, negotiations or consultations with respect to the Leased Premises or this Lease. Tenant agrees to indemnify, defend and save the Landlord harmless from and against all costs, fees (including, without limitation, reasonable attorney's fees and court costs), expenses, liabilities and claims incurred or suffered as a result of breach of its representation and warranty set forth above.

20.11 No Partnership. Any intention to create a partnership or joint venture relationship between Landlord and Tenant is hereby expressly disclaimed; and no relationship other than that of Landlord and Tenant is intended between the parties hereto.

20.12 Effect of Statements Submitted by Landlord. Tenant's failure to object to any statement, invoice or billing rendered by Landlord within a period of thirty (30) days after receipt thereof shall constitute Tenant's acquiescence with respect thereto.

20.13 Documents and Instruments. In connection with a request by Tenant for Landlord to review, prepare, execute, deliver, consent to and/or approve a document or instrument, Tenant shall pay Landlord for Landlord's reasonable costs and expenses incurred therefor.

20.14 Counterparts. This Lease may be executed in one or more counterparts, all of which

shall be deemed to be an original.

20.15 Tenant's Signature. If Tenant consists of more than one (1) party, each such party's liability shall be joint and several.

20.16 Time of the Essence. Time is of the essences of the Lease and all provisions hereof.

20.17 Force Majeure. In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder (other than the payment of money) by reason of strikes, labor troubles, inability to procure materials, failure of power, riots, insurrection, terrorist activity, weather conditions, the failure to act or default of the other party, by war or other reason beyond its control, whether similar or dissimilar to any of the foregoing, then. The performance of any such act shall be extended for a period equivalent to the period of such delay. In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder (other than the payment of money) by reason of strikes, labor troubles, inability to procure materials, failure of power, riots, insurrection, terrorist activity, weather conditions, the failure to act or default of the other party, by war or other reason beyond its control, whether similar or dissimilar to any of the foregoing, then. The performance of any such act shall be extended for a period equivalent to the period of such delay.

20.18 OFAC Compliance.

(a) Tenant represents and warrants that (i) Tenant and each person or entity owning an interest in Tenant is (A) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and (B) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), (iii) no Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (iv) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and (v) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term "Embargoed Person" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law.

(b) Tenant covenants and agrees (i) to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, (ii) to immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached or if Tenant



has a reasonable basis to believe that they may no longer be true or have been breached, (iii) not to use funds from any "Prohibited Person" (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under the Lease and (iv) at the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant's compliance with the terms hereof.

(c) Tenant hereby acknowledges and agrees that Tenant's inclusion on the List at any time during the Lease Term shall be a material default of the Lease. Notwithstanding anything herein to the contrary, Tenant shall not permit the Leased Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material default of the Lease. Tenant hereby acknowledges and agrees that Tenant's inclusion on the List at any time during the Lease Term shall be a material default of the Lease. Notwithstanding anything herein to the contrary, Tenant shall not permit the Leased Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material default of the Lease.

20.19 Waiver of Certain Landlord Lien Rights. Tenant shall have the right to finance and to secure under the Uniform Commercial Code or otherwise, inventory, trade fixtures, furnishings, furniture, equipment, machinery, and other personal property located at the Leased Premises which is not owned or leased by Landlord. Landlord hereby waives any and all statutory and common law lien rights which Landlord may have relating to Tenant's personal property and all rights of distraint against such property. Landlord agrees to execute such written waiver and release of liens as Tenant may reasonably require. Notwithstanding the foregoing, if Tenant fails to remove any such items at the expiration or earlier termination of this Lease, such items shall become the property of Landlord.

**20.20 DRAFTS NOT BINDING. THE SUBMISSION OF A DRAFT, OR MARKED UP DRAFT, OF THIS LEASE BY ONE PARTY TO ANOTHER IS NOT INTENDED BY EITHER PARTY TO BE AN OFFER TO ENTER INTO A LEGALLY BINDING LEASE WITH RESPECT TO THE LEASED PREMISES. THE PARTIES SHALL BE LEGALLY BOUND WITH RESPECT TO THIS LEASE ONLY IF AND WHEN EACH OF LANDLORD AND TENANT HAS FULLY EXECUTED AND DELIVERED TO THE OTHER A COUNTERPART OF THIS LEASE.**

**[Balance of Page is Intentionally Left Blank; Signatures Appear on Next Page]**

IN WITNESS WHEREOF, the Landlord has executed this Agreement of Lease as of the Effective Date.

BOARD OF COUNTY COMMISSIONERS  
INDIAN RIVER COUNTY, FLORIDA

By: \_\_\_\_\_  
Susan Adams, Chairman

BCC Approved: \_\_\_\_\_

Attest: Jeffrey R. Smith, Clerk of Court and  
Comptroller

By: \_\_\_\_\_  
Deputy Clerk

Approved as to form and legal sufficiency

By: \_\_\_\_\_

William K. DeBaal  
Deputy County Attorney

Approved:

By: \_\_\_\_\_  
Jason E. Brown  
County Administrator

TENANT

By: \_\_\_\_\_

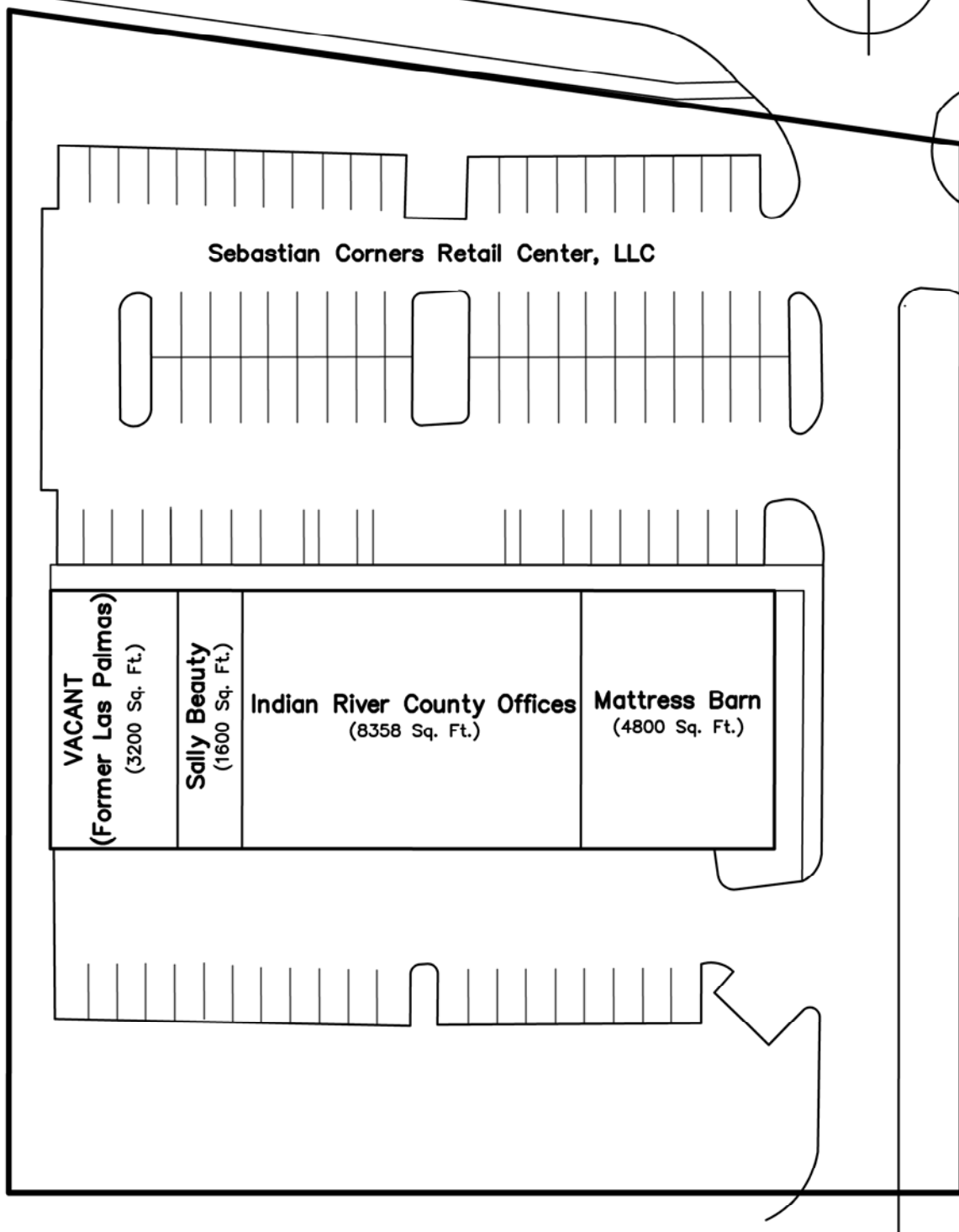
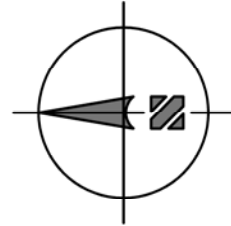
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

U.S. Highway No. 1



AGENCY: INDIAN RIVER COUNTY, FL  
PUBLIC WORKS DEPT./ENGINEERING DIVISION

DATE: 04/09/2020	DRAWN BY: R. INGLETT
SCALE: N/A	APPROVED BY: D. SCHRYVER
SHEET: 1 OF 1	JOB NO: 1744

Exhibit for:  
**INDIAN RIVER COUNTY**  
(Sebastian Corners Retail Center, LLC)