



January 25, 2023

Brooke Mosier
Director – Colliers
561-512-3488
Brooke.Mosier@Colliers.com

**RE: Five Guys LOI – Sebastian Corners
1919 US Hwy 1, Sebastian, FL 32958**

Dear Brooke:

We are pleased to submit the following proposal outlining some of the basic business terms and conditions under which Flowsmart Sebastian LLC d/b/a Five Guys (“Tenant”) is willing to negotiate a lease for the premises identified below:

- Landlord:** Indian River County, Florida, *Board of County Commissioners*
- Tenant:** *Flowsmart Sebastian LLC*, a Florida limited liability company
- Premises:** Approximately 3,200 sf on northern end cap. (the “Premises”), located at 1919 US Hwy 1, Sebastian, FL 32958 as further shown on Exhibit A attached hereto (“Site Plan”).
- Lease:** Five Guys Standard Lease
- Lease Term/Options:** Ten (10) year term with two (2) consecutive five (5) year options

Annual Rental:	Years	Rent/SF	Annual Rent
	1 - 5	\$15.00	\$48,000.00+sales tax
	6 - 10	\$16.50	\$52,800.00+ sales tax
	11 – 15 (1 st Option)	\$18.15	\$58,080.00+ sales tax
	16 – 20 (2 nd Option)	\$19.96	\$63,888.00 + sales tax

Additional Charges: Tenant’s Pro-Rata share of CAM, taxes and insurance, and any merchant’s association fees will not exceed \$4.03 per square foot for the first full lease year, with Tenant’s Pro-Rata Share being equal to the square footage of the Premises divided by the total square feet in the building/shopping center. Tenant’s Pro-Rata Share is estimated to be {17.77%}. The break down for these charges is as follows:

CAM	\$ 2.89- /SF
Taxes	\$ 0.37- /SF

Insurance	\$ 0.77/SF
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- Outdoor Patio:** If approved by City of Sebastian, Florida, which Tenant shall be responsible for obtaining approval, Tenant shall have the right to serve and seat its customers in the outdoor seating area depicted on the Exhibit A (the “Outdoor Seating Area”), which shall be reserved exclusively for Tenant, having space for the maximum number of customers allowable by local laws, municipal codes or ordinances. Tenant shall not be charged for the use of the Outdoor Seating Area nor shall the Outdoor Seating Area be included in the square footage measurement of the Premises.
- Use of Premises:** Operation of Five Guys®, a fast casual restaurant, with primary sale of hamburgers, hot dogs, and other menu items typical to a Five Guys restaurant, which cooks food for on- and off-premises consumption.
- Exclusive Use:** Tenant shall have the exclusive right to sell hamburgers, cheeseburgers, french fries and other complimentary items, for on- and off-premises consumption at the Shopping Center. Tenant’s exclusive shall not pertain to tenants whose sale of such items constitutes ten percent (10%) or less of their gross revenue. Full-service restaurants that take customers’ orders at their table and delivers food to their table are also exempt from Tenant’s exclusive.
- Building Plans:** Landlord shall provide building plans they have, if any, (including but not limited to structural, mechanical, engineering and plumbing, landscape, and elevation plans) to Tenant within thirty (30) days after execution of this Letter of Intent.
- Delivery Date:** Landlord shall give thirty (30) days prior written notice of Landlord’s delivery of the Premises to Tenant. The Delivery Date is estimated to be Q1 2023 (to be further defined). . If the Delivery Date is overdue by seven (7) days, Landlord will credit Tenant one (1) day’s rent for each day after the Delivery Date until such time as the Premises are delivered to Tenant. Tenant will have the right to terminate the Lease if Landlord fails to deliver the Premises within one hundred twenty (120) days after the estimated delivery date. If delivery of the premises occurs between October 1, 2023 and December 31, 2023, Tenant will have the option to delay acceptance of the premises until January 1, 2024.
- Lease Commencement** Upon unconditional approval and mutual execution of lease document (Board of County Commission approval) and delivery of space by Landlord to Tenant.
- Rent Commencement Date:** Base Rent shall commence on the date which is one hundred fifty (150) days the date that Tenant receives all permits, variances and governmental approvals necessary to construct Tenant’s store pursuant to Five Guys specifications and operate Tenant’s store in the Premises. Notwithstanding the foregoing, rent and all additional charges shall commence not later than the date on which Tenant opens

for business to the public. Tenant shall be responsible for all utilities at Lease Commencement and utilities and CAM starting at Rent Commencement.

Permit Contingency: Tenant will have the right to terminate the Lease if it is unable to obtain all permits, variances and governmental approvals (“Permits”) needed for the lawful construction of its store built pursuant to Five Guys specifications and operation of its store within one hundred twenty (120) days after the date Tenant’s plans have been approved by Landlord. So long as Tenant is diligently endeavoring to obtain all Permits, Tenant shall not be required to exercise its termination right until the applicable authority has made a final decision and all appeals of the decision have been exhausted. Landlord will cooperate with Tenant and will execute any necessary applications for such Permits. Tenant shall be required to submit plans for Landlord approval within 30 days from Lease Commencement. Tenant shall apply for permits within 30 days following Landlord’s approval of Tenants plans.

Rent Abatement: Tenant’s Base Rent shall abate for One-Hundred and Eighty (180) days following the Rent Commencement Date.

Delivery Condition: Landlord will deliver Premises in As-is condition however, Landlord to ensure all utilities and HVAC are in good working order at lease execution. Tenant shall be responsible for utilities and HVAC throughout the duration of the lease (from lease commencement).

Tree Coverage: Landlord shall, to the maximum extent trim the trees in front of Tenant’s proposed positioning prior to Tenant’s possession of the premises. To be further discussed.

Co-Tenancy: None

Signage: Landlord consents to Tenant's standard signage package attached hereto as **Exhibit C**. Tenant shall have the right to the top panel on the monument sign along US Hwy 1. Tenant shall be allowed to install maximum signage on the premises, as allowed by local municipality. If permitted, Tenant shall be permitted to establish signage on all sides of the building.

Parking: Landlord will provide all necessary parking for Tenant’s employees and customers at no additional cost to Tenant. Tenant shall have the right to reserve up to two dedicated parking stalls near the front of the store entrance for Tenant’s carryout and third party delivery. Tenant shall have the right to use the rear portion of the parking lot for additional delivery service pick up. Pending confirmation from City of Sebastian.

Permitted Transfers: Assignment and subletting to another entity will be subject to the exclusive use clauses in place at that time. Tenant shall not transfer the Premises in whole or in part, or permit occupancy of all or any part of the Premises by anyone other than

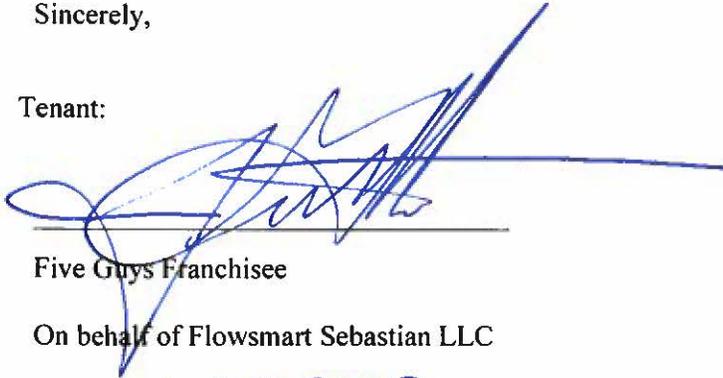
Tenant (the foregoing are referred to as "Transfer" or "Transfers") without first procuring the consent of the Landlord, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Tenant shall not be required to obtain Landlord's consent to assign this Lease to: (a) the parent of majority-owned subsidiary or affiliate of Tenant; (b) a person or entity acquiring the assets of at least twenty-five (25) stores of Tenant in a single transaction or (c) any entity resulting from a (i) merger (ii) consolidation, (iii) initial public offering, or (iv) sale of substantially all of Tenant's assets, or (d) a franchisee of Tenant or a franchisee of an affiliate of Tenant ("Franchisee") (each of the foregoing, a "Permitted Assignment"). In the event of a Permitted Assignment, Tenant shall be released from obligations throughout the Term of the Lease, and any renewal thereof. Any attempt to Transfer, without the Landlord's consent in such Transfer where such consent is required, shall be void and confer no rights upon any third person. All further language pertaining to this issue shall be discussed within the formal lease negotiations.

Agency: Landlord acknowledges that Kyle Mahoney & Tyler Peterson, Colliers International Florida LLC is acting as Tenant's broker. Landlord shall be responsible for payment of the commission due to Tenant's broker in accordance with a separate commission agreement.

This letter of intent is merely an expression of interest and shall be non-binding upon the parties hereto. Each party shall have the unilateral right to terminate negotiations at any time, for any reason or for no reason, without liability to the other party. If and when a lease has been negotiated and executed, the terms thereof shall supersede the terms of this letter of intent. This proposal shall expire on February 15, 2023.

Sincerely,

Tenant:



Five Guys Franchisee
On behalf of Flowsmart Sebastian LLC

DATE: 1-25-2023

Landlord: Indian River County Board of
County Commissioners

BY (Print): _____

TITLE: _____

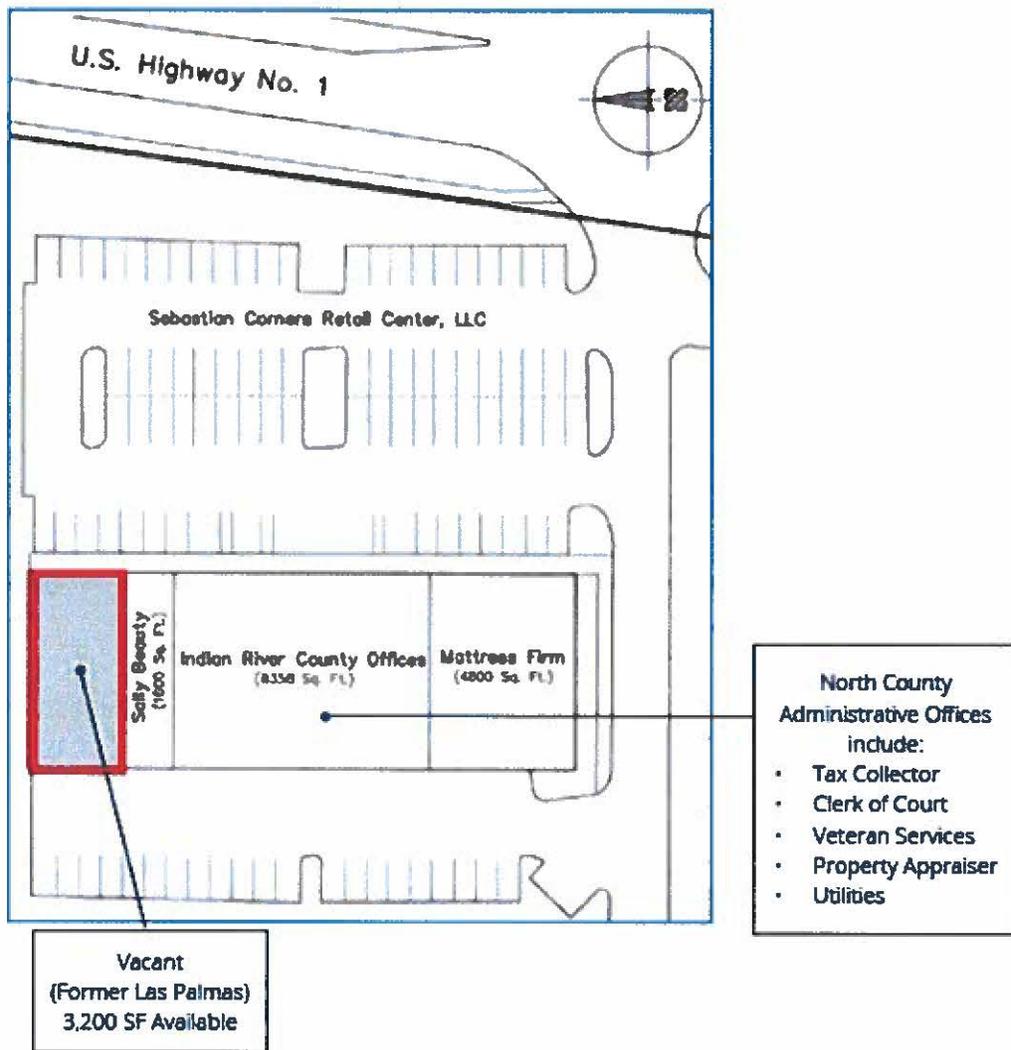
DATE: _____

cc: Jeff Rubino – Vice President Real Estate- North America

FIVE GUYS

BURGERS and FRIES

Exhibit A: The Premises



FIVE GUYS

BURGERS and FRIES

Exhibit B – Landlord's Work

Grey Box Landlord Work Exhibit

The construction work stated within this Exhibit is an enumeration of the work to be performed by both the Tenant and the Landlord. The work required to be performed by the Landlord shall be at no cost to the Tenant and it shall be per Tenants' specifications and all applicable code requirements (collectively "Landlords' Work"). Tenant shall be responsible for any additional work required to construct and operated a Five Guys Burgers and Fries restaurant with the Premises (collectively "Tenants' Work"). All Landlords' Work shall be complete prior to the space being turned-over to the Tenant.

HVAC:

~~Landlord will provide and install a complete HVAC system designed to condition the space to 72 degrees during the cooling season and 72 degrees during the heating season. 125 S.F. per ton.~~

~~or~~

~~If a water source or VAV system are required the Landlord shall provide the following:~~

- ~~1. Supply and return water/air to a point indicated by Tenant within the Premises.~~
- ~~2. Water and/ or air will be delivered at a temperature adequate to condition the space to Tenants' design requirements.~~
- ~~3. Supply the associated water and/ or air 24 hours per day, 7 days a week, year round.~~
- ~~4. Provide access to code required fresh air and exhaust to the Tenant premise per Tenants' design requirements.~~

ROOF PENETRATIONS:

~~Tenant will be responsible for any and all roof penetrations to Premises, Tenant agrees to use Landlords' roof contractor provided the cost is at industry standard~~

ELECTRICAL:

~~The Tenant shall be responsible for any electrical upgrades necessary to occupy the Premises.~~

PLUMBING:

~~The Tenant shall be responsible for any plumbing upgrades necessary to occupy the Premises.~~

RESTROOMS:

~~By Tenant~~

FIRE PROTECTION:

~~The tenant shall be responsible to any fire protection necessary to occupy the Premises.~~

PARTITIONS:

~~The Tenant shall be responsible for any improvements to the existing partitions and walls as necessary to occupy the Premises.~~

STOREFRONT (FOR END CAP OR INLINE UNIT, WHICHEVER IS APPLICABLE):

~~The Tenant shall accept the existing storefront and doors "as is". Any modification to the storefront shall be the responsibility of the Tenant.~~

DOORS:

~~The Tenant shall accept the existing doors "as is". Any modifications or replacement of the doors shall be the responsibility of the Tenant.~~

SIGNAGE:

- ~~1. Tenant shall provide a sufficient, uninterrupted, in color and architecture, sign band(s) for Tenant signage.~~
- ~~2. Tenant shall provide and install Tenant signage.~~

FLOOR:

~~The Tenant shall accept the existing floor in the "as is" condition.~~

CEILING and LIGHTS:

The Tenant shall accept the existing lighting in the "as is" condition.

DEMOLITION:

~~1. The Tenant shall demolish and remove all interior walls, ceilings, conduits, piping, ductwork, fixtures, wiring, flooring, rooftop equipment and all other items not salvaged in accordance with Tenants' construction drawings. The Landlord agrees to negotiate a reasonable cost for the Tenant's contractor to remove the above items.~~

DUMPSTER PAD:

- ~~1. Landlord will be responsible for any and all costs incurred with the installation of an additional dumpster pad and screening if necessary. The location shall be determined by the Landlord with approval by the City of Sebastian~~
- ~~2. Landlord shall provide a hose bib at the dumpster enclosure if required by municipal code.~~

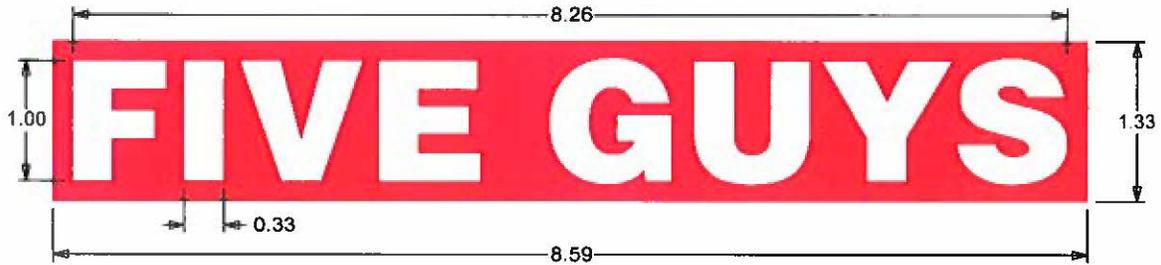
The Tenants design consultants shall verify that the existing structure will support any equipment necessary for the Tenants business.

Exhibit C:

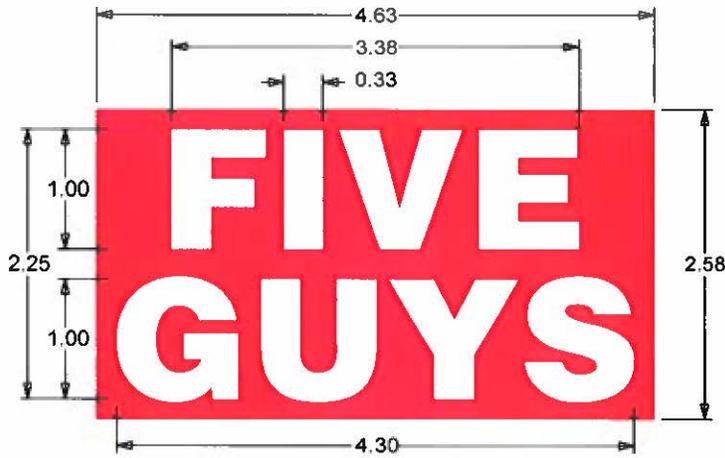
Exterior Sign Hotsheet

Exterior Sign Layout

The illustrations below show the aspect ratio for use in exterior sign applications.



Alternative Stacked Layout



Print/Paint Colors

Red: Bengal Red (MP 95959)

White

Face Colors

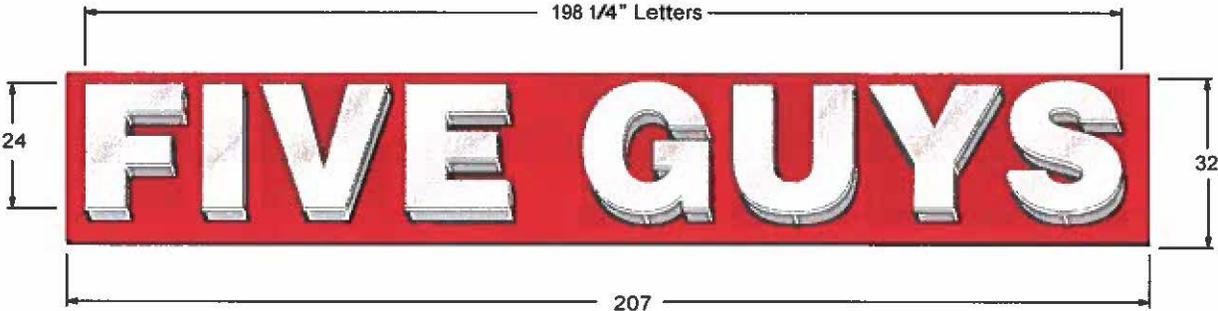
Acrylic Red Translucent 2793

Vinyl 3M Gerber Dark Red Translucent 230-73

Vinyl 3M Gerber Cardinal Red Opaque 220-53

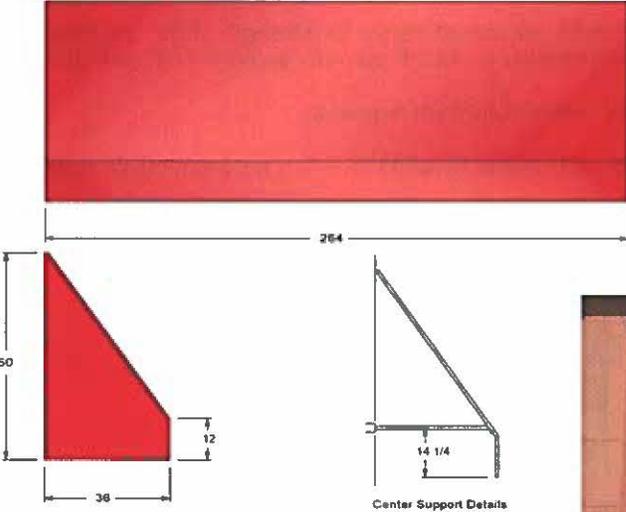
White

Typical Sign Dimensions



Preferred Awning Design

The illustrations below show the preferred awning proportions.



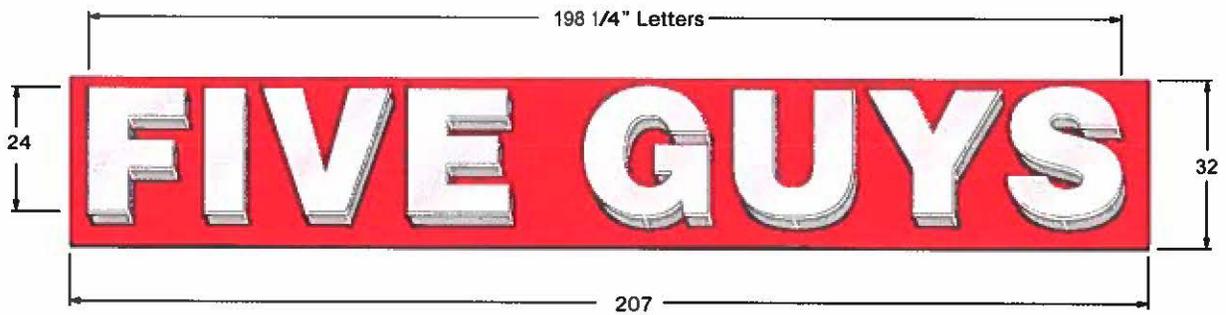
Color

Red: Sunbrella Logo Red Fabric

Frame

1" Square aluminum tube frame, welded construction, mill finish, closed sides, open bottom.

Typical Sign Specs Hotsheet



Scope of Work : Manufacture and install (1) new set of flush mounted channel letters as shown.

Letters : Routed .040" aluminum backs, .040" x 5" tall returns, "Flanged & Crimped" construction, seams sealed, drain holes.

Letter Finish : Letter interiors prefinished "White" enamel, exteriors prefinished Wrisco "White".

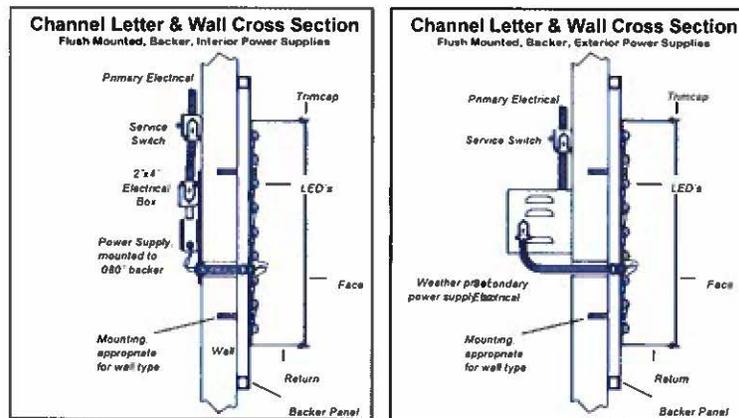
Letter Faces : Routed 3/16" translucent "White" (#7328) acrylic, finished with 1" White Jewelite trimcap.

Backer Panel : Fabricated 1" sq aluminum tube frame, vertical stringers for strength, .090" aluminum face bonded to face of tubing, panel exterior primed & painted "Bengal Red" (MP 95959).

Lighting : Letters lit internally using Hanley PF3120 "White" LED light modules.

Electrical : 120 volt, UL listed & labeled, Hanley 12v LED power supplies remotely mounted inside building.

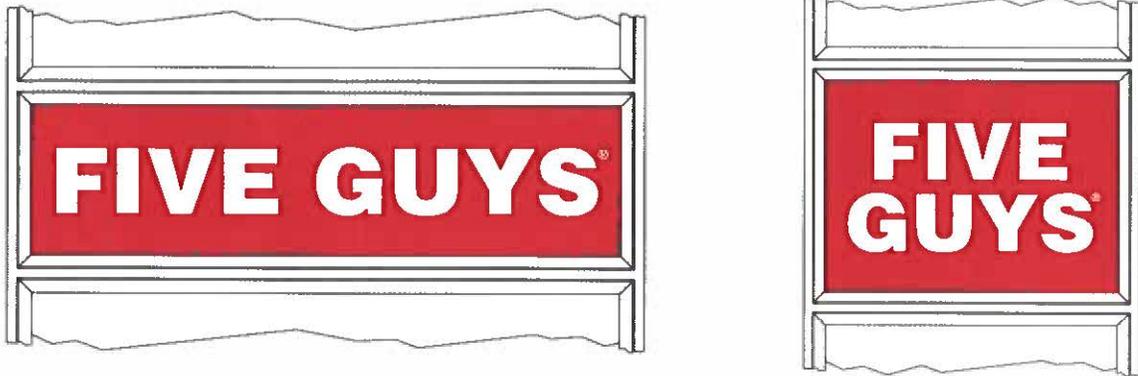
Location : Sign centered left to right on wall, up and down at same elevation as side elevation sign.



Typical Tenant Panel/Pole Sign Specs Hotsheet

Preferred Layout

Typical back-lit sign has Gerber Red 230-73 vinyl weeded to white.



Signage Colors

Translucent "White" (#7328) acrylic panel

Vinyl 3M Gerber Dark Red Translucent 230-73

Pole Signs

Preferred Layout

Typical back-lit sign has Gerber Red 230-73 vinyl weeded to white.



Signage Colors

Translucent "White" (#7328) acrylic panel

Vinyl 3M Gerber Dark Red Translucent 230-73

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

INDIAN RIVER COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

Joe Earman, Chairman

Approved by BCC _____

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

By: _____
Deputy Clerk

Approved:

Michael Zito, Interim County Administrator

Approved as to Form and Legal Sufficiency:

William K. DeBaal, Deputy County Attorney