

**INDIAN RIVER COUNTY, FLORIDA
MEMORANDUM**

TO: Michael C. Zito, Interim County Administrator
THROUGH: Richard B. Szpyrka, P.E., Public Works Director
FROM: Andrew Sechen, Land Acquisition Specialist
SUBJECT: Sebastian Corners - Five Guys Letter of Intent for Lease
DATE: January 25, 2023

DESCRIPTION AND CONDITIONS

The County purchased Sebastian Corners Retail Center, LLC located at 1919-1931 US Highway 1, Sebastian, Florida on September 5, 2017. The purchase was for the relocation of the North County Offices of the Tax Collector, Property Appraiser, Clerk of the Court, Utilities Department and Veteran Services. Staff has been listing the vacant property with Colliers International, a commercial real estate company, who has a contract with the County to represent us as our realtor for the vacant property.

Las Palmas Cuban Restaurant was a tenant at the retail center and they rented a 3,200 square foot unit. The lease term was a month-to-month at will lease that terminated on January 31, 2020. Flowsmart Sebastian LLC (Five Guys) has submitted a Letter of Intent to Lease Space (LOI) to lease the 3,200 sq. ft. that was formerly leased by Las Palmas. Five Guys proposes to remove all existing interior contents and remodel the unit for use as a Five Guys restaurant.

Five Guys has requested the following in the attached Letter of Intent.

- A lease for a (10) ten-year term with two (2) options to extend the term of the lease term for two (2) consecutive five (5) year periods.
- Tenant shall be responsible for all utility bills (water, sewer, electric, garbage etc.)
- Tenant shall pay \$15.00/Rentable square footage plus sales tax on a Triple Net (NNN) Basis (real estate taxes, building insurance and maintenance) with 3% annual increases. Option term rent shall be at Fair Market Value, with a minimum increase of 3% of prior years' rental.
- Tenant shall pay an annual additional Common Area Maintenance (CAM) charge estimated at \$4.03 per square foot to cover its pro rata share of lawn, parking lot, and other property operating expenses.
- 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.

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

FUNDING

The annual base rental income from Las Palmas was \$53,268 compared to the initial annual base rental income from Five Guys, which is \$51,360.

RECOMMENDATION

Staff recommends the Board approve the Letter of Intent as proposed for Five Guys Restaurant and authorize the Chairman to execute a final Lease Agreement on behalf of the Board once finalized and approved by the County Attorney's Office.

ATTACHMENTS

Letter of Intent

APPROVED AGENDA ITEM FOR: February 7, 2023