

USE OF PARKING SPACES AGREEMENT

27 THIS USE OF PARKING SPACES AGREEMENT (this "Agreement"), dated as of the day of September 2023, between FLOW SMART FIVE SEBASTIAN, LLC, a Florida limited liability company ("Flow Smart"); and INDIAN RIVER COUNTY, a political subdivision of the State of Florida (the "County"), recites and provides:

RECITALS:

WHEREAS, Flow Smart is the tenant under a certain Agreement of Lease dated April 13, 2023 (the "Lease"), with the County, for the premises containing approximately 3,200 square feet of floor area (the "Premises") located within Sebastian Corners Retail Center located at 1919 – 1939 US Highway 1, Sebastian, Indian River County, Florida 32958 (the "Center").

WHEREAS, in 2019, the County submitted a revised site plan for the Center that provided for 99 parking spaces, 31 of which are designated for the Premises, 42 of which are designated for County offices and 26 of which are designated for the remaining space, which is currently being used for a retail/mattress store.

WHEREAS, Flow Smart's building plans for the Premises require a total of 39 parking spaces (an additional 8, 2 of which are intended to be converted to outdoor dining space).

WHEREAS, based on revenue reports of similarly situated Five Guys Burgers & Fries restaurants, the busiest hours for the restaurants are from 4:00 p.m. to 10:00 p.m. during which 56% of their revenues are earned; accordingly, to accommodate its traffic flow, the Premises would need no more than 29 parking spaces (31 including the 2 spaces for outside dining) prior to 4:00 p.m. and 37 parking spaces (39 including the 2 spaces for outside dining) thereafter.

WHEREAS, the County's veterans services office offices located within the Center closes at 4:00 p.m. and the County's tax assessor's office offices located within the Center closes at 5:00 p.m., and the County desires to make up to 8 of its excess parking spaces available to the Premises following such hours of closing.

AGREEMENT:

For and in consideration of the mutual covenants contained herein, Flow Smart and the County hereby agree as follows:

1. Incorporation of Recitals. Flow Smart agrees that the Recitals are true to the best of its knowledge and the Recitals are incorporated in this Agreement.
2. Use of Parking Spaces. The County hereby grants permission to Flow Smart, its employees and guests at the Premises, to use up to 8 of the parking spaces in the Center that are designated for use by the County from and after 4:00 p.m. each day (the "Additional Parking Spaces").

2. Term. This Agreement shall be for a term from the date hereof through the termination of the Lease.


3. Acceptance. Flow Smart agrees to accept the Additional Parking Spaces in an "as is" condition and agrees to indemnify the County as provided in the Lease.

4. Notices. All notices and other communication hereunder shall made in accordance with the notice provision in the Lease.

IN WITNESS WHEREOF, Flow Smart and the County have caused this Agreement to be executed under seal by its duly authorized officers.

FLOW SMART:

FLOW SMART FIVE SEBASTIAN, LLC, a Florida limited liability company

By:  [SEAL]
Name: Jim Garrettson
Title: Site Manager

THE COUNTY:

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

Approved as to form and legal sufficiency

BY: _____
Joseph H. Earman, Chairman

BCC Approved: _____

Attest: Ryan L. Butler, Clerk of Court

By: _____
Deputy Clerk

William K. DeBaal
Deputy County Attorney

Approved:

By _____
John A. Titkanich, Jr.
County Administrator