



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures					
Operating Costs	\$-0-	\$123,525.00	\$127,848.38	\$132,323.07	\$136,954.38
External Revenues					
Program Income (County)					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	<b>\$-0-</b>	<b>\$123,525.00</b>	<b>\$127,848.38</b>	<b>\$132,323.07</b>	<b>\$136,954.38</b>
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Proposed Budget: Yes  No

Budget Account No: Fund 1300 Dept 440 Unit 4232 Object 4410  
 Program n/a

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

Rent increases 3.5% annually each 10/1. Operating expenses are funded from Fire Rescue's Rent Building account.

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development Comments:**

[Signature] 8/10/09  
 OFMB  
 (NO) CN 8/4/09

[Signature] 8/11/09  
 Contract Development and Control  
 B. Jones 8/11/09

**B. Legal Sufficiency:**

[Signature] 8/13/09  
 Assistant County Attorney

This Contract complies with our contract review requirements.

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**This summary is not to be used as a basis for payment.**

**Background and Justification, continued:**

Florida Statute Section 286.23 requires that a Disclosure of Beneficial Interests be obtained when a property held in a representative capacity is leased to the County. FWI 20 LLC, a Delaware limited liability company authorized to transact business in the State of Florida, provided the Disclosure attached hereto as Attachment No. 4. This Disclosure identifies: (i) FWI 21 LLC, a Delaware limited liability company, as the 100% beneficial interest holder in FWI 20 LLC, a Delaware limited liability company; (ii) FWI 22 LLC, a Delaware limited liability company, as the 20% beneficial interest holder in FWI 21 LLC and Kimco Preferred Investor XIII, Inc., a Delaware corporation as the 80% beneficial interest holder in FWI 21 LLC; (iii) Kimco Realty Corp., a Maryland corporation, as the 100% beneficial interest holder in Kimco Preferred Investor XIII, Inc.; (iv) Kimco Realty Corp, as a publicly traded company registered with the SEC; (v) Flagship Investment I LLC, a Delaware limited liability company, as the 100% beneficial interest holder in FWI 22 LLC; (vi) Gotham Associates I LLC, a Delaware limited liability company, as the 20% beneficial interest holder in Flagship Investment I LLC and Terravest, LLC, a Connecticut limited liability company, as the 80% beneficial interest holder in Flagship Investment I LLC; (vii) Thomas J. Cannon, III, as the 100% beneficial interest holder in Gotham Associates I LLC; and (viii) Daniel B. Tully as the 100% beneficial interest holder in Terravest, LLC.

T42

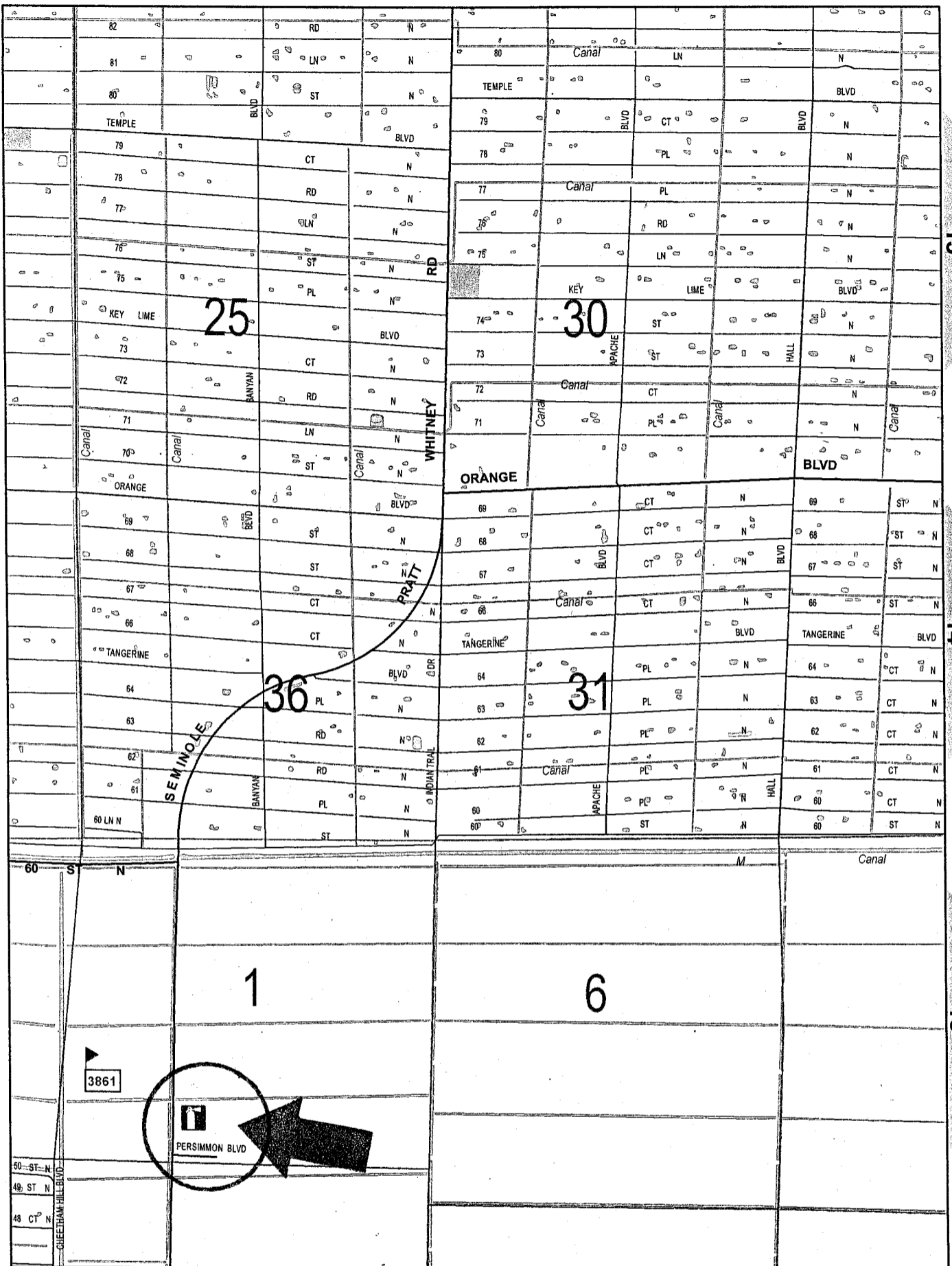
T44

T43

13

14

15



LOCATION MAP

ATTACHMENT # 1

Handwritten signature or initials.

\*\*\*\*\*

**LEASE AGREEMENT**

**between**

**FWI 20 LLC, A DELAWARE LIMITED LIABILITY COMPANY**

**(Landlord)**

**and**

**PALM BEACH COUNTY,**

**A POLITICAL SUBDIVISION OF THE**

**STATE OF FLORIDA**

**(County)**

\*\*\*\*\*

## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, is made and entered into \_\_\_\_\_, by and between **FWI 20 LLC**, a Delaware limited liability company, hereinafter referred to as "Landlord" and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, on behalf of Palm Beach County Fire-Rescue, hereinafter referred to as "County".

### WITNESSETH:

**WHEREAS**, Landlord is the owner of certain real property in Palm Beach County, Florida, known as the Grove Market Shopping Center (the "Shopping Center") located at 5060 Seminole Pratt Whitney Road, unincorporated Loxahatchee, Florida 33470; and

**WHEREAS**, County desires to lease from Landlord the premises hereinafter defined for the purpose of operating a temporary fire-rescue station; and

**WHEREAS**, Landlord is willing to lease such premises to the County for the purposes hereinafter defined.

**NOW THEREFORE**, in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the County to be observed and performed, the Landlord demises and leases to County, and the County rents from Landlord the premises as hereinafter defined upon the following terms and conditions:

### **ARTICLE I BASIC LEASE PROVISIONS**

#### **Section 1.01 Premises.**

The premises subject to this Lease shall consist of Space #5084 within the Shopping Center, consisting of approximately 4,050 total gross square feet of floor space as depicted on the floor plan on Exhibit "A" attached hereto and by reference made a part hereof (the "Premises"). Landlord hereby certifies that the Premises contain 4,050 gross square feet and 4,050 net useable square feet of space, as determined in accordance with BOMA building measurement standards.

#### **Section 1.02 Parking and Common Areas.**

The use and occupancy of the Premises by County shall include the right to non-exclusive use of the Shopping Center common areas depicted on Exhibit "B" attached hereto and by reference made a part hereof, including, without limitation, parking areas, driveways, loading docks, sidewalks and ramps of the Shopping Center (the "Common Areas"), together with exclusive use of the two areas depicted on Exhibit "B" for parking of County vehicles (the "Exclusive Parking Areas"). County may stencil "County Vehicles Only" on the parking space bumpers or affix a similarly-worded sign in front of the County parking spaces to designate exclusive use by County. County shall require its employees to park County vehicles, including fire rescue trucks, in the Exclusive Parking Areas and shall exercise reasonable efforts to minimize the effect on the front parking lot of the Shopping Center and to ensure that County vehicles do not obstruct normal usage of the drive lanes and loading areas within the Shopping Center. County shall be entitled to install signage at the Premises in accordance with the sign criteria attached hereto as Exhibit "C".

**Section 1.03 Length of Term and Commencement Date.**

The term of this Lease shall commence on October 1, 2009 (the "Commencement Date"), and shall extend for a period of five (5) years thereafter (the "Term"), unless sooner terminated pursuant to the provisions of this Lease.

**Section 1.04 Option to Extend.**

County shall have the right and option, provided it is not then in default under this Lease, to extend the Term for two (2) successive one (1) year option period(s). County shall exercise such option(s) by providing Landlord with notice of such election prior to the end of the then current Term.

The foregoing options to extend the Term are expressly conditioned upon the waiver or expiration of Winn-Dixie's option to expand into the Premises, and, notwithstanding County's written notice of its intent to exercise an option to extend, Landlord shall not be obligated to extend this Lease until such time as Winn-Dixie has waived its option to expand or said option to expand has expired. Landlord agrees to give County written notice of Winn-Dixie's intent to expand into the Premises at least five (5) months prior to the end of the Term or any extension thereof.

**Section 1.05 Termination.**

After the expiration of the first two (2) years of the Term, County shall have the right to terminate this Lease for any reason whatsoever and without penalty upon 180 days written notice to Landlord, whereupon the parties shall be relieved of all further obligation hereunder.

**ARTICLE II  
RENT**

**Section 2.01 Annual Gross Rent.**

County shall pay Landlord for the use and occupancy of the Premises an Annual Gross Rent of One Hundred Twenty-Three Thousand Five Hundred Twenty-Five and no/100 Dollars (\$123,525.00). The Annual Gross Rent shall be payable in equal monthly installments of Ten Thousand Two Hundred Ninety-Three and 75/100 (\$10,293.75) per month payable on the first day of each month in advance. The Annual Gross Rent shall be increased by 3.5% on each anniversary of the Commencement Date during the initial Term or any extension thereof. This Lease is intended to be a "gross" lease inclusive of all fees and expenses for common area maintenance, common area electric, water, and sewer utility, waste removal, insurance, ad valorem real property taxes, maintenance, and other similar charges assessed to tenants under net leases. County shall be responsible for no further rents, charges, or fees imposed by Landlord except as specifically provided herein.

**Section 2.02 Payment.**

All rent due hereunder shall be payable on or before the first day of each and every month of the Term of this Lease. If the Term hereof commences and/or expires on other than the first or last day of a calendar month, the Annual Gross Rent payable for such month shall be prorated. County is a tax-exempt entity as is evidenced by tax exemption #60-2211419753 C. No sales or use tax shall be included or charged with Annual Gross Rent. Payment of rent will be made upon the receipt of an invoice from Landlord mailed to the Palm Beach County Finance Department at P.O. Box 4036, West Palm Beach, Florida 33402. Each monthly invoice must be received at least fifteen (15) days but not more than thirty (30) days in advance of the date payment is due. Payment will be mailed to Landlord at the address set forth in Section 15.05 of this Lease.

**ARTICLE III**  
**CONDUCT OF BUSINESS AND USE OF PREMISES BY COUNTY**

**Section 3.01 Use of Premises.**

The Premises shall be used for the operation of (i) a temporary fire-rescue station and (ii) an office for the Palm Beach County Sheriff's Office (PBSO), for a total of no more than nine (9) employees at any given time, for the purpose of providing fire rescue operations to the community and administrative support for PBSO ("County's Intended Use"). As part of County's Intended Use, County shall be entitled to utilize the Premises for community enrichment and community services including, without limitation, blood pressure reading, burn permits, children's safe place, toys for tots and other similar programs. County shall not use, permit, or suffer the use of the Premises for any other purpose whatsoever without the prior written consent of Landlord which consent shall not be unreasonably withheld. Landlord acknowledges that County's Intended Use necessitates County's utilization of and access to the Premises twenty-four (24) hours a day, seven (7) days a week including utilization of the Premises by County employees for meal preparation and consumption and/or sleeping while employees are on duty. County's obligations under this Lease are contingent upon County's Intended Use being permitted under all applicable zoning laws, rules, and regulations affecting the Premises.

**Section 3.02 Conduct.**

County shall not commit waste upon the Premises, nor maintain, commit, or permit the maintenance or commission of a nuisance thereon, or use the Premises for any unlawful purpose. County acknowledges that its employees and the Premises shall, throughout the Term of this Lease, be in full compliance with all federal, state, county, and local statutes, laws, rules, and regulations respecting the use and occupancy of the Premises, provided County shall not be required to make alterations, additions, or improvements to the Premises in order to conform therewith.

**Section 3.03 Hazardous Substances.**

County shall comply with all applicable federal, state and local laws, regulations and ordinances protecting the environment and natural resources and regulating hazardous substances.

**Section 3.04 Surrender of Premises.**

Upon termination, expiration, or cancellation of this Lease, County, at its sole cost and expense, shall remove County's personal property and removable fixtures and equipment from the Premises, and shall surrender the Premises to the Landlord. Upon surrender of the Premises, title to any Alterations shall vest in Landlord.

**ARTICLE IV**  
**ALTERATION OF LEASED PREMISES**

**Section 4.01**

**(a) Alterations.** County shall be entitled to make alterations, improvements, or additions to the Premises (hereinafter, collectively "Alterations") at its sole cost and expense. County agrees and acknowledges that all of County's Alterations installed on the Premises by County, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit and convenience of County, and not for the benefit of Landlord, such Alterations being nevertheless subject to each and every provision of this Lease. Any Alterations to the Premises, the value of which exceeds Five Thousand Dollars (\$5,000), shall require the prior written approval of Landlord in each instance, which approval shall not be unreasonably withheld. County shall submit plans and specifications for all such Alterations to Landlord for Landlord's written approval prior to County commencing work on same. Landlord shall provide written response within thirty (30) days after receipt of request therefore by County, failing which Landlord shall be deemed to have consented to such plans and specifications. All



work done by County in connection with any Alterations, repairs, and maintenance on the Premises shall be done in a good and workmanlike manner.

**(b) Construction Liens.** In the event a construction lien is filed against the Premises in connection with any work performed by or on behalf of the Landlord or County, the party performing such work shall promptly cause such lien to be removed from the Premises.

## ARTICLE V REPAIRS AND MAINTENANCE OF PREMISES

### **Section 5.01 Responsibility of County.**

County shall maintain the following portions of the Premises in good repair and condition at County's sole cost and expense during the entire Term of this Lease: interior walls and partitions, interior painting, interior plumbing fixtures, interior electrical fixtures, HVAC maintenance and routine repair (not including equipment replacement), floor coverings, doors, janitorial services, phone, cable and TV. Notwithstanding the foregoing, County shall have no obligation to make modifications to the Premises required by law, nor have any responsibility for restoration of the Premises in the event of a casualty. Further, County shall have no obligation to repair any damage arising from any negligent or intentional act or omission of Landlord, its employees, agents, invitees or any third parties. In the event that maintenance activity is required and is not specifically assigned in this Section 5.01 to the County, it shall be the responsibility of the Landlord.

Landlord shall be responsible for providing and maintaining, at its sole cost and expense, the hurricane shutters and shutter installation system for the Premises. County will use reasonable efforts to install the hurricane shutters for the Premises at such time as County, in its sole discretion, decides that shutters should be installed.

### **Section 5.02 Responsibility of Landlord.**

**(a)** Except as provided in Section 5.01 above, Landlord shall maintain the Premises, the Common Areas, and all portions thereof in good repair and tenable condition during the Term of this Lease, except in the case of damage arising from County's negligent or intentional acts. If the Landlord fails to promptly repair any item in the Premises required to be repaired by Landlord under this Lease within fifteen (15) days of written notice from County of the need for such repair, the County may complete such repairs and the Landlord shall reimburse County for all expenses incurred by County in doing so, which reimbursement may, at County's sole option, be in the form of a deduction from any rent due to Landlord. Landlord shall be solely responsible for any equipment replacement (exclusive of County provided and owned equipment) required as a result of failure, age, or any other reason other than any negligent or intentional acts of County.

**(b)** Landlord shall be responsible for all costs and expenses to ensure that the Premises adheres to the most current version of the American Society of Heating, Refrigeration and Air-conditioning Engineers' ("ASHRAE") Standards on ventilation for acceptable indoor air quality throughout the Term of this Lease. Should building sickness symptoms materialize subsequent to the Commencement Date, Landlord shall perform at its sole cost and expense necessary air quality and environmental testing of the heating, ventilation and air-conditioning ("HVAC") system servicing the Premises by a certified and licensed environmental company within fifteen (15) days of the County's written notice of any adverse conditions, subject to the availability of such certified and licensed technicians. Landlord shall provide County with a copy of all such testing reports. If any such testing report reveals that the HVAC system fails to comply with the ASHRAE Standards and/or does not provide a healthy indoor air environment as required by applicable laws and regulations, Landlord shall remedy such non-compliance with due diligence at its sole cost and expense. If such non-compliance causes a portion or all of

the Premises to be untenable, all Annual Gross Rent due and payable for the untenable area of the Premises shall abate until such portion of the Premises is brought into compliance.

**Section 5.03 Hazardous Substance Indemnification by Landlord.**

Landlord hereby represents and warrants to County that there is not located in, on, upon, over, or under the Premises: (i) asbestos in any form; (ii) urea formaldehyde foam insulation; (iii) polychlorinated biphenyls; or (iv) any other chemical, material, or substance which is prohibited, limited, or regulated by federal, state, county, regional, or local authority. If said substance(s) exist, Landlord shall promptly remove said substance(s) at Landlord's sole cost and expense. County shall be fully responsible for any pollutants, odors, vapors, chemicals, and the like emitted by County's own furniture, fixtures, office machines, and equipment.

**ARTICLE VI  
INSURANCE**

**Section 6.01 Liability Insurance.**

County shall, during the entire Term hereof, provide Landlord with a certificate evidencing self-insurance coverage for comprehensive general liability in the amount of One Hundred Thousand Dollars (\$100,000) per person and Two Hundred Thousand Dollars (\$200,000) per incident or occurrence. In the event the Legislature should change the County's exposure by Statute above or below the sums insured against, the County shall provide insurance to the extent of that exposure.

**Section 6.02 Personal Property.**

All of County's personal property placed or moved in the Premises shall be at the risk of the County or the owner thereof. Except as otherwise provided herein, Landlord shall not be liable for any damage to such personal property, except to the extent caused by the Landlord, its agents', or its employees' willful or negligent acts or omissions.

**Section 6.03 Insurance by Landlord.**

Landlord shall, during the entire Term hereof, keep in full force and effect with an insurance company licensed to do business in the State of Florida and subject to the approval of the Risk Management Department of the County, one or more policies providing for the following coverage:

a. Liability Insurance: General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability. The General Liability policy shall include coverage for Premises-Operations, Contractual Liability, and Broad Form Property Damage Liability coverage. In no event shall the limits of said insurance policies be considered as limiting the liability of Landlord under this Lease.

b. Fire and Extended Coverage Insurance: Insurance covering the Premises and all Alterations made by or on behalf of County in an amount not less than eighty percent (80%) of their actual cash value, providing protection against any peril included within the standard classification of "Fire and Extended Coverage," together with insurance against sprinkler damage, vandalism, theft, and malicious mischief. The proceeds of such insurance, so long as this Lease remains in effect, shall be used to repair or replace the Premises and Alterations so insured.

c. Workers Compensation Insurance: Workers Compensation Insurance covering all of Landlord's employees in accordance with Chapter 440 Florida Statutes.

d. Additional Insured: Landlord agrees to endorse County as an Additional Insured with a CG026 Additional Insured - Designated Person or Organization

endorsement to the Commercial General Liability. The additional insured shall read "Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its Officers, Employees and Agents." Coverage shall be provided on a primary basis.

A Certificate of Insurance evidencing such insurance coverage shall be provided to the County within thirty (30) days of the date of County's execution of this Lease, such Certificate indicating at least thirty (30) days prior notice to County of cancellation or adverse material change in coverage. The Certificate of Insurance shall include the name and address of the Certificate Holder: Palm Beach County Board of County Commissioners c/o Property & Real Estate Management Division, 2633 Vista Parkway, West Palm Beach, FL 33411-5605.

#### **ARTICLE VII DAMAGE OR DESTRUCTION OF PREMISES AND/OR COUNTY'S ALTERATIONS**

In the event the Premises shall be destroyed or so damaged or injured by fire or other casualty during the Term of this Lease, or any extension thereof, whereby the same shall be rendered untenable, in whole or in part, County shall have the right to terminate this Lease, whereupon the parties shall be relieved of all further obligations hereunder occurring subsequent to the date of such casualty. In the event the County elects to terminate this Lease as provided in this Article, the Annual Gross Rent payable hereunder shall be prorated to the date of the casualty. In the event County does not exercise its right to terminate this Lease due to any such casualty, Landlord shall promptly commence restoration of the Premises and diligently pursue such restoration to completion using materials of like kind and quality or better. The rental due hereunder relating to the portion of the Premises rendered untenable shall be abated from the date of such casualty until completion of such restoration.

#### **ARTICLE VIII UTILITIES AND SERVICES**

Landlord shall provide water, sewer, electricity, gas and telephone utility service to the Premises boundary, at Landlord's sole cost and expense. Landlord shall be solely responsible for and promptly pay directly to the utility company or the provider of such services all charges or assessments for water, sewer, gas, and trash collection and removal. Landlord shall not be liable for an interruption or failure in the supply of such service to the Premises resulting from a failure of the utility company to provide service to the Premises. County shall be responsible for and promptly pay when due directly to the utility company or service provider, all service charges for electric and telephone utility service to County. County shall transfer the electrical meter back into Landlord's name upon expiration or termination of this Lease at County's sole cost and expense.

#### **ARTICLE IX ASSIGNMENT AND SUBLETTING**

County may not assign, mortgage, pledge, or encumber this Lease in whole or in part, nor sublet all or any portion of the Premises, without Landlord's prior written consent, which shall not be unreasonably withheld. In the event of an approved assignment, County shall be released from any further obligation hereunder. Any sale, mortgage, pledge, or encumbrance of the Shopping Center by Landlord shall be subject to the terms of this Lease.

## **ARTICLE X DEFAULT**

### **Section 10.01 Default by County.**

The occurrence of any one or more of the following shall constitute an Event of Default by County under this Lease: (i) failure by County to pay the Annual Gross Rent within thirty (30) days after receipt of notice from Landlord; (ii) failure by County to perform or observe any of the agreements, covenants, or conditions contained in this Lease on County's part to be performed or observed for more than thirty (30) days after notice from Landlord of such failure; (iii) County's vacating or abandoning the Premises; or (iv) County's leasehold estate being taken by execution, attachment, or process of law. If any Event of Default occurs, then, at any time thereafter while the Event of Default continues, Landlord shall have the right to give County notice that Landlord intends to terminate this Lease upon a specified date not less than thirty (30) days after the date notice is received by County, and this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within such period or within a reasonable period thereafter if the same cannot be cured within such period and County undertakes such cure within such period and the Landlord is so notified, this Lease will continue.

### **Section 10.02 Default by Landlord.**

Landlord shall be in default of this Lease if Landlord shall fail to observe or perform any term, covenant, or condition of this Lease on the Landlord's part to be observed or performed, and the Landlord fails to remedy the same within thirty (30) days after notice from County. In the event the default is of such a nature that it cannot be reasonably cured within the foregoing thirty (30) day period, Landlord shall be entitled to a reasonable period of time under the circumstances in which to cure said default, provided that Landlord diligently proceeds with the curing of the default. In the event that the default is not cured by Landlord within the foregoing time period, County, at County's option, may either cure said default and Landlord shall reimburse County for all expenses incurred by County in doing so, or County may give to the Landlord thirty (30) days notice specifying that the County intends to terminate this Lease. Upon receipt of said notice and expiration of the thirty (30) day period, this Lease and all obligations of County hereunder shall terminate and County shall thereupon be relieved of all further obligations hereunder.

## **ARTICLE XI ACCESS BY LANDLORD**

Landlord and Landlord's agents and employees shall have the right to enter upon the Premises at all reasonable times to examine the same, and to make any repairs which may be required or permitted hereunder. Landlord shall provide County with twenty four (24) hours advance notice prior to exercising such right except in an emergency in which event no notice shall be required and shall exercise such right in a manner which minimizes the impact upon County's use of the Premises.

## **ARTICLE XII ANNUAL BUDGETARY FUNDING/CANCELLATION**

This Lease and all obligations of County hereunder are subject to and contingent upon annual budgetary funding by the Board of County Commissioners of Palm Beach County. Notwithstanding anything in this Lease to the contrary, County shall have the right to cancel this Lease for budgetary reasons upon ninety (90) days prior written notice to Landlord, whereupon the parties shall be relieved of all further obligations hereunder.

### **ARTICLE XIII QUIET ENJOYMENT**

Upon the observance and performance of all the covenants, terms, and conditions on County's part to be observed and performed, County shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised and any extensions thereof without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through, or under the Landlord, subject, nevertheless, to the terms and conditions of this Lease.

### **ARTICLE XIV CONDEMNATION**

If all or part of the Premises shall be taken, condemned or conveyed pursuant to agreement in lieu of condemnation for public or quasi public use, the entire compensation or award therefore, including any severance damages, shall be apportioned between Landlord and County in proportion to the value of their respective interests and the rent shall be recalculated effective upon the date of vesting of title in the condemning authority to reflect the reduction in the Premises. County shall also be entitled to receive compensation for the value of any Alterations or other improvements made by County to the Premises and moving expenses. In addition, County may elect to terminate this Lease in which event this Lease shall terminate effective as of the date title is vested in the condemning authority, whereupon the parties shall be relieved of all further obligations occurring subsequent to the date of termination other than those relating to apportionment of the compensation for such condemnation. In the event the County elects to terminate this Lease as provided in this Article, the Annual Gross Rent payable hereunder shall be prorated to the date of termination. County will be allowed not less than sixty (60) days notice to remove its property from the Premises.

### **ARTICLE XV MISCELLANEOUS**

#### **Section 15.01 Waiver, Accord and Satisfaction.**

The waiver by Landlord of any default of any term, condition, or covenant herein contained shall not be a waiver of such term, condition, or covenant, or any subsequent default of the same or any other term, condition, or covenant herein contained. The consent or approval by Landlord to or of any act by County requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by County.

#### **Section 15.02 Criminal History Records Check**

Landlord shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), whenever Landlord's employees, agents, or contractors are required under this Lease to enter or work at the Premises. The Premises constitutes a "critical facility" as identified in Resolution R2003-1274, as modified. Landlord acknowledges and agrees that all employees, agents, and contractors who are to perform work in the Premises will be subject to a fingerprint check based criminal history check.

#### **Section 15.03 Public Entity Crimes.**

As provided in Florida Statutes 287.132-133, Landlord hereby certifies that neither Landlord nor its employees who will perform hereunder, have been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) month period immediately preceding the Effective Date of the Term of this Lease. This certification is required pursuant to Florida Statutes 287.133 (3)(a).

**Section 15.04 Entire Agreement.**

This Lease and any Exhibits attached hereto constitute all agreements, conditions, and understandings between Landlord and County concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change, or addition to this Lease shall be binding upon Landlord or County unless reduced to writing and signed by them.

**Section 15.05 Notices.**

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the Landlord at:  
FWI 20 LLC  
c/o Bruce Strumpf, Inc.  
Attn: Jill Strumpf, President  
2120 Drew Street  
Clearwater, FL 33765  
Fax: 727-449-2212
  
- (b) If to the County at:  
Property & Real Estate Management Division  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Telephone: 561-233-0217  
Fax: 561-233-0210

with a copy to:

Palm Beach County Attorney's Office  
Attention: Real Estate  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401  
Telephone: 561-355-2225  
Fax: 561-355-4398

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon three (3) days prior written notice to the other parties.

**Section 15.06 Disclosure of Beneficial Interest**

Landlord represents that simultaneously with Landlord's execution of this Lease, Landlord has executed and delivered to County, the Landlord's Disclosure of Beneficial Interests attached hereto as Exhibit "D", and made a part hereof, (the "Disclosure")

disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the Premises as required by Section 286.23 of the Florida Statutes unless Landlord is exempt under the statute. Landlord warrants that in the event there are any changes to the names and addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of the Premises after the date of execution of the Disclosure until the Effective Date of the Lease, Landlord shall immediately, and in every instance, provide written notification of such change to the County pursuant to Section 15.05 of this Lease.

**Section 15.07 Brokers' Commission.**

Each of the parties represents and warrants to the other that they have not dealt with any real estate salesperson, agent, finder, or broker in connection with this Lease.

**Section 15.08 Severability.**

If any term of this Lease, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application or such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 15.09 Captions.**

The captions in this Lease are included for convenience only and shall not be taken into consideration in any construction or interpretations of this Lease or any of its provisions.

**Section 15.10 Recording.**

County shall be entitled to record this Lease or a Memorandum of Lease in the public records of Palm Beach County for the purpose of providing public notice of County's interest in the Premises.

**Section 15.11 Waiver of Jury Trial.**

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTERCLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS LEASE.

**Section 15.12 Governing Law and Venue.**

This Lease shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in a state court of competent jurisdiction in Palm Beach County.

**Section 15.13 Time of Essence.**

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

**Section 15.14 Benefit and Binding Effect.**

This Lease shall be binding upon and inure to the benefit of the heirs, successors, legal representatives, and assigns of the parties hereto.

**Section 15.15 Radon.**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

**Section 15.16 Non-Exclusivity of Remedies.**

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Section 15.17 Non-Discrimination.**

The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, sexual orientation, or gender identity or expression, be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Lease.

**Section 15.18 Construction.**

No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any article, section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

**Section 15.19 Incorporation by Reference.**

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Lease by reference.

**Section 15.20 Effective Date of Lease.**

This Lease is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



IN WITNESS WHEREOF, Landlord and County have executed this Lease, or have caused the same to be executed, as of the day and year first above written.

WITNESS:

LANDLORD:

**FWI 20 LLC, a Delaware limited liability company**

By: FWI 21 LLC, a Delaware limited liability company, its sole Member

By: FWI 22 LLC, a Delaware limited liability company, its Managing Member

By: Flagship Investment I LLC, a Delaware limited liability company, its sole Member

By: Flag Wharf, Inc., a Delaware corporation, its independent Managing Agent

By: Tom  
Name: Thomas J. Cannon, III  
Title: President *And not in duty*

Donna Kinardo

Witness Signature

Donna Kinardo

Print Witness Name

Barbara Arocho

Witness Signature

Barbara Arocho

Print Witness Name

(SEAL)



ATTEST:

**SHARON R. BOCK  
CLERK & COMPTROLLER**

**PALM BEACH COUNTY, a political subdivision of the State of Florida**

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

By: \_\_\_\_\_  
John F. Koons, Chairman

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
Assistant County Attorney

By: Reet Armer Wolf  
Department Director

**SCHEDULE OF EXHIBITS**

**EXHIBIT "A" - PREMISES**

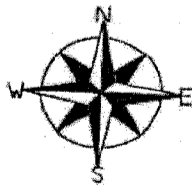
**EXHIBIT "B" - SHOPPING CENTER COMMON AREAS  
AND EXCLUSIVE PARKING AREAS**

**EXHIBIT "C" - SIGN CRITERIA**

**EXHIBIT "D" - LANDLORD'S DISCLOSURE OF  
BENEFICIAL INTERESTS**

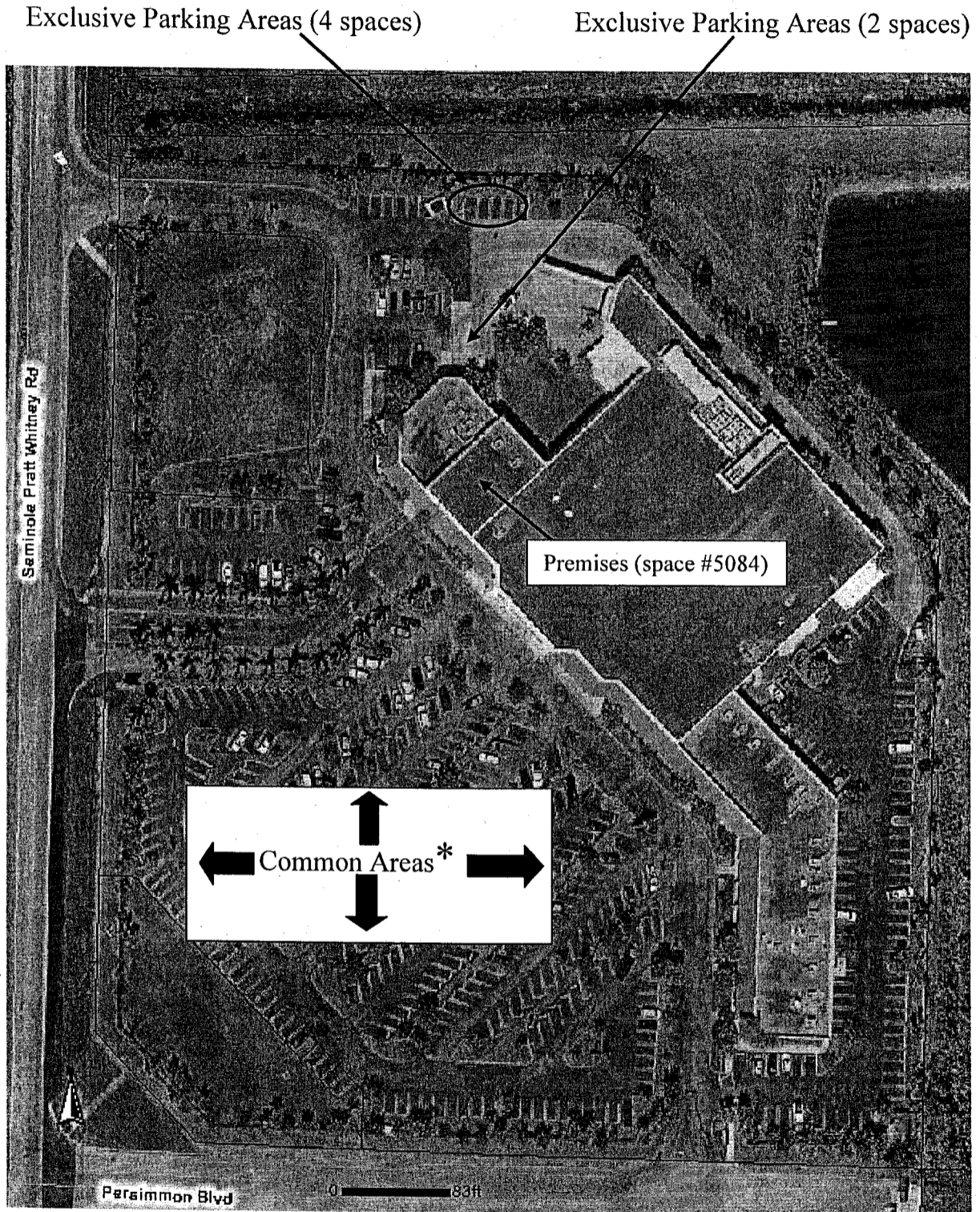
**EXHIBIT "A"**

**PREMISES**



**EXHIBIT "B"**

**SHOPPING CENTER COMMON AREAS  
AND EXCLUSIVE PARKING AREAS**



\* Common Areas include everything depicted, except for other leasehold interests.

**EXHIBIT "C"**

**SIGN CRITERIA**

(page 1 of 2)

**GROVE MARKET SHOPPING CENTER SIGN CRITERIA**

County shall be responsible for the installation and hook-up of County's sign. All work to be done by qualified and licensed sign contractors at County's expense.

Plans must be submitted to Landlord for approval prior to application for permit, but not later than ninety (90) days from execution of Lease by all parties.

Plans must include location, size and style of lettering, material, type of illumination, installation details, color selections and logo design.

Signs shall consist of internally illuminated individual letters with flat plastic faces in metal retainers mounted to aluminum or sheet metal type letters, all returns shall be dark bronze.

Color of the letter plastic faces shall be white with gold trim approved by landlord in accordance with sign codes and restrictions imposed by the governing municipality. No exposed raceway, crossovers, transformers, or conduit will be permitted.

The total length of the fascia sign shall not exceed the length listed below. The sign letter height shall be twenty-one (21") inches high or double line with a total height to equal twenty-one (21") inches and shall be centered on leased front area. The letters shall be five (5") inches deep. No wall sign shall have an area exceeding square foot/inch foot of bay frontage occupied by the licensed establishment.

Maximum Length of Sign

<u>Bay Frontage</u>	<u>Max Length</u>
0 - 25 feet	10' 0"
26 - 40 feet	12' 0"

All signage of County subject to Landlord's approval; window signs and any other paper signs are specifically prohibited, without the prior consent of the Landlord, which will not be unreasonably withheld.

All signage, installation and Landlord's approval thereof is subject to the codes and regulations of the governing municipality including building and electrical codes.

These standards have been carefully drafted after review of local sign ordinances. However, in case of conflict, the municipal ordinance shall prevail and these criteria shall be modified as needed to comply.

Tenants are required to place a "Coming Soon" sign in their store window and tenant must have sign fascia installed prior to tenant opening for business, and no later than 45 days after Landlord notified.

**EXHIBIT "C"**

**SIGN CRITERIA**

(page 2 of 2)

**UNDER CANOPY SIGN CRITERIA**

Individual business under canopy signs shall be required for each individual business within the Shopping Center.

Under canopy signs shall be perpendicular to the storefront and equidistant between the storefront and the canopy edge and centered in the store frontage.

Signs shall be no longer than fifty percent (50%) of the width of the canopy, up to a maximum of four feet (4') in width.

A minimum of eight foot (8') clearance from bottom sign to walkway shall be maintained. The maximum height of signs, exclusive of suspension devices, shall be one foot (1'). Length of suspension shall be six inches (6").

Signs shall be sandblasted wood (redwood or cedar) with raised white letter, with a Devoe #1 M49E – Glidden Paint – Smokey Beige painted field. The 1-1/2" wide X 1/2" raised wood border shall be painted Devoe #1 M44D – Glidden Paint – Rosario. Support rods and blocking shall also be painted Rosario.

See building materials criteria for specifications.

County acknowledges that in certain instances, County's sign shall not be directly above County's Premises because of subdivision or architectural reasons.

LANDLORD'S DISCLOSURE OF BENEFICIAL INTERESTS  
(REQUIRED BY FLORIDA STATUTES 286.23)

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY  
DESIGNATED REPRESENTATIVE

STATE OF New York  
COUNTY OF New York

BEFORE ME, the undersigned authority, this day personally appeared,  
Thomas J. Cannon, III, hereinafter referred to as "Affiant", who being by me first duly sworn,  
under oath, deposes and states as follows:

1. Affiant is the President of Flag Wharf, Inc., a Delaware corporation, independent Managing Agent of Flagship Investment I LLC, a Delaware limited liability company, sole Member of FWI 22 LLC, a Delaware limited liability company, Managing Member of FWI 21 LLC, a Delaware limited liability company, sole member of FWI 20 LLC, a Delaware limited liability company, (the "Landlord") which entity is the owner of the real property legally described on the attached Exhibit "A" (the "Property").

2. Affiant's address is: Flag Wharf, Inc.,  
888 Seventh Avenue  
New York, N.Y. 10106

3. Attached hereto, and made a part hereof, as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater beneficial interest in the Landlord and the percentage interest of each such person or entity.

4. Affiant acknowledges that this Affidavit is given to comply with Florida Statutes 286.23, and will be relied upon by Palm Beach County in its lease of the Property.

5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

Tom C, Affiant  
Thomas J. Cannon, III

The foregoing instrument was sworn to, subscribed and acknowledged before me this 23 day of July, 2009, by Thomas J. Cannon, III, as President of Flag Wharf, Inc., a Delaware corporation, in its capacity as independent Managing Agent of Flagship Investment I LLC, a Delaware limited liability company, in its capacity as sole Member of FWI 22 LLC, a Delaware limited liability company, in its capacity as Managing Member of FWI 21 LLC, a Delaware limited liability company, in its capacity as sole member of FWI 20 LLC, a Delaware limited liability company, on behalf of the limited liability company [] who is personally known to me or [] who has produced \_\_\_\_\_ as identification and who did take an oath.

DOMENICA RINAUDO  
State of New York No. 01RI6104357  
Qualified in Kings County  
Certificate Filed in Kings County  
Commission Expires Jan. 20, 2012

Domenica Rinaudo  
Notary Public

Domenica Rinaudo  
(Print Notary Name)

NOTARY PUBLIC  
State of New York at Large

My Commission Expires: JAN. 20, 2012

**EXHIBIT "A"**

**PROPERTY**

PCN 00-40-43-01-01-001-0010

**5060 Seminole Pratt Whitney Road  
Unincorporated Loxahatchee, Florida**

(as recorded in OR BOOK 15610, PG 0177, Palm  
Beach County, Florida, on July 30, 2003)

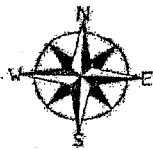
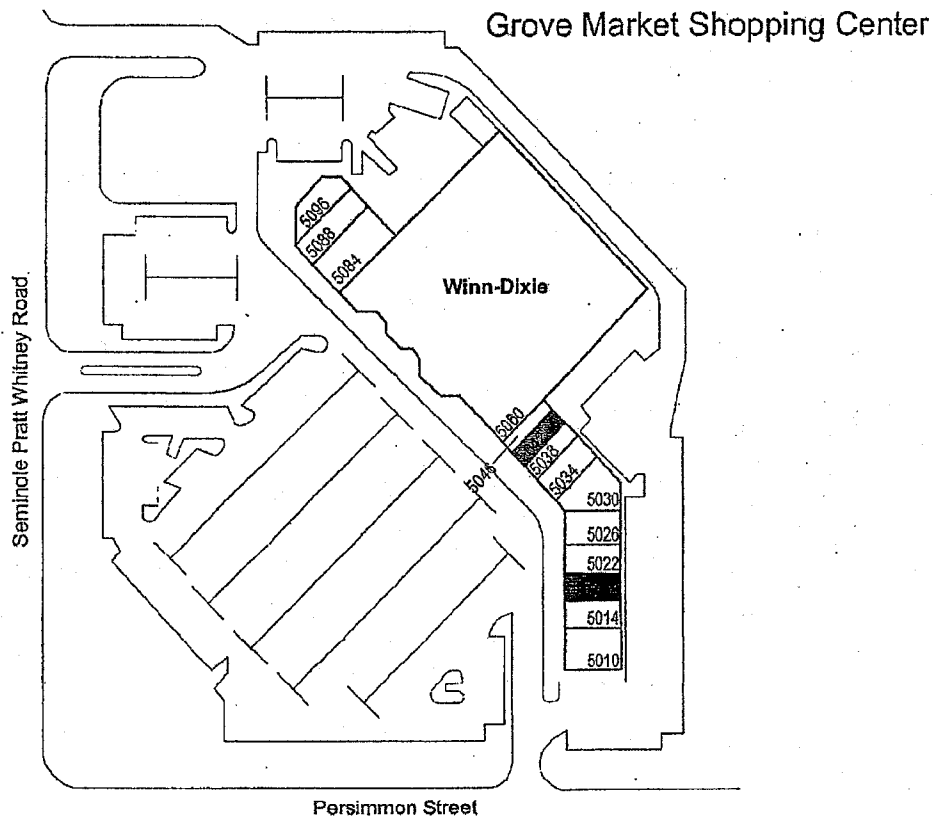




EXHIBIT "B"

SCHEDULE TO BENEFICIAL  
INTERESTS IN PROPERTY

Landlord is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Landlord must identify individual owners. If, by way of example, Landlord is wholly or partially owned by another entity, such as a corporation, Landlord must identify such other entity, its address and percentage interest, as well as such information for the individual owners of such other entity.

The Property is owned by **FWI 20 LLC**, whose address is 197 Eighth Street, Suite 800, Boston, MA 02129.

**FWI 20 LLC**

100% Beneficial Interest in FWI 20 LLC is held by **FWI 21 LLC**, whose address is 197 Eighth Street, Suite 800, Boston, MA 02129.

**FWI 21 LLC**

20% Beneficial Interest in FWI 21 LLC is held by **FWI 22 LLC**, whose address is 197 Eighth Street, Suite 800, Boston, MA 02129.

80% Beneficial Interest in FWI 21 LLC is held by **Kimco Preferred Investor XIII, Inc.**, whose address is 3333 New Hyde Park Rd, PO Box 5020, New Hyde Park, NY 11042.

**FWI 22 LLC**

100% Beneficial Interest in FWI 22 LLC is held by **Flagship Investment I LLC** whose address is c/o Flag Wharf, Inc., 197 Eighth Street, Suite 800, Boston, MA 02129.

**Kimco Preferred Investor XIII, Inc.** 100% Beneficial Interest in Kimco Preferred Investor XIII, Inc., is held by **Kimco Realty Corp.** whose address is 3333 New Hyde Park Rd, PO Box 5020, New Hyde Park, NY 11042.

**Flagship Investment I LLC**

20% Beneficial Interest in Flagship Investment I LLC is held by **Gotham Terravest, LLC**, whose address is c/o TCM/TCP, 301 Tresser Blvd., 13<sup>th</sup> Floor, Stamford, CT 06901.

**Kimco Realty Corp.** Kimco Realty Corp. is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public and is hereby exempt from Florida Statutes 286.23.

**Gotham Associates I LLC**

100% Beneficial Interest in Gotham Associates I LLC is held by **Thomas J. Cannon, III**, whose address is c/o Flag Wharf, Inc., 888 Seventh Ave., 34<sup>th</sup> Floor, New York, NY 10106.

**Terravest, LLC**

100% Beneficial Interest in Terravest LLC is held by **Daniel B. Tully**, whose address is c/o TCM/TCP, 301 Tresser Blvd., 13<sup>th</sup> Floor, Stamford, CT 06901.

# BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 4/30/2009

REQUESTED BY: Steven K. Schlamp  
Property Specialist, PREM

PHONE: 233-0239  
FAX: 233-0210

PROJECT TITLE: F-R #22 Grove Market New Lease

PROJECT NO.: 2009-5.002

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures					
Operating Costs	-0-	123,525.00	127,848.38	132,323.07	136,954.38
External Revenues					
Program Income (County)					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	<b>-0-</b>	<b>123,525.00</b>	<b>127,848.38</b>	<b>132,323.07</b>	<b>136,954.38</b>
# ADDITIONAL FTE POSITIONS (Cumulative)					

*\*\* By signing this BAS your department agrees to these staff costs and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed.*

**BUDGET ACCOUNT NUMBER**

FUND: 1300      DEPT: 440      UNIT: 4232      OBJ: 4410  
SUB OBJ: N/A

IS ITEM INCLUDED IN CURRENT BUDGET: YES  NO

**IDENTIFY FUNDING SOURCE FOR EACH ACCOUNT: (check all that apply)**

- Ad Valorem (source/type: \_\_\_\_\_)
- Non-Ad Valorem (source/type: \_\_\_\_\_)
- Grant (source/type: \_\_\_\_\_)
- Park Improvement Fund (source/type: \_\_\_\_\_)
- General Fund                       Operating Budget                       Federal/Davis Bacon
- \_\_\_\_\_                               \_\_\_\_\_                               \_\_\_\_\_

Department: Fire Rescue

BAS APPROVED BY: [Signature]      DATE: 4/30/09

MAY 4 2009

ENCUMBRANCE NUMBER:

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID S5  
FWI20-1  
DATE (MM/DD/YYYY)  
07/22/09

**PRODUCER**  
Brown & Brown Insurance  
17757 US Highway 19 N, Ste 660  
P.O. Box 2456  
Clearwater FL 33757-2456  
Phone: 727-461-6044 Fax: 727-442-7695

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**INSURED**  
  
FWI 20 LLC dba Grove Market  
c/o Bruce Strumpf, Inc.  
2120 Drew Street  
Clearwater FL 33765

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	American Zurich Insurance Co.	40142
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CPO5967295-01	04/17/09	04/17/10	EACH OCCURRENCE \$ 100000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100000 MED EXP (Any one person) \$ 5000 PERSONAL & ADV INJURY \$ 100000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000								
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$								
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATU-TORY LIMITS	OTH-ER													
E.L. EACH ACCIDENT	\$													
E.L. DISEASE - EA EMPLOYEE	\$													
E.L. DISEASE - POLICY LIMIT	\$													
		<b>OTHER</b>												

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
 Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its Officers, Employees and Agents are named as Additional Insured's per form CG 20 26 07 04. Coverage is provided on a primary basis

CERTIFICATE HOLDER	CANCELLATION
PALMB31  Palm Beach County, Board of County Commissioners c/o Property & Real Estate Mgmt Division 2633 Vista Pkwy West Palm Beach FL 33411-5605	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Maurice A. Connelly</i>

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID 55  
FWI20-1

DATE (MM/DD/YYYY)  
07/23/09

**PRODUCER**  
Brown & Brown Insurance  
17757 US Highway 19 N, Ste 660  
P.O. Box 2456  
Clearwater FL 33757-2456  
Phone: 727-461-6044 Fax: 727-442-7695

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**INSURED**  
  
FWI 20 LLC dba Grove Market  
c/o Bruce Strumpf, Inc.  
2120 Drew Street  
Clearwater FL 33765

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	American Zurich Insurance Co.	40142
INSURER B:	American Guarantee & Liab Ins.	26247
INSURER C:		
INSURER D:		
INSURER E:		

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CPO5967295-01	04/17/09	04/17/10	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100000 MED EXP (Any one person) \$ 5000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
B		<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	LRO0015000013	04/19/09	04/19/10	EACH OCCURRENCE \$ 15000000 AGGREGATE \$ 15000000 \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
 Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its Officers, Employees and Agents are named as Additional Insured's per form CG 20 26 07 04. Coverage is provided on a primary basis

CERTIFICATE HOLDER	CANCELLATION
PALMB31  Palm Beach County, Board of County Commissioners c/o Property & Real Estate Mgmt Division 2633 Vista Pkwy West Palm Beach FL 33411-5605	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Maura A. Connelly</i>

THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY.

<b>PRODUCER</b> Brown & Brown Insurance 17757 US Highway 19 N, Ste 660 P.O. Box 2456 Clearwater FL 33757-2456 Maureen Connelly, CIC		PHONE/FAX (A/C, No, Ext): 727-461-6044 727-442-7695	<b>COMPANY</b> American Zurich Insurance Co. Member Zurich Financial Svcs 1400 American Lane Schaumburg IL 60196-1056
CODE: 02091429	SUB CODE:		
AGENCY CUSTOMER ID #: FWI20-1			
<b>INSURED</b> FWI 20 LLC dba Grove Market c/o Bruce Strumpf, Inc. 2120 Drew Street Clearwater FL 33765	<b>LOAN NUMBER</b>	<b>POLICY NUMBER</b> CP05967295-01	
	EFFECTIVE DATE 04/17/09	EXPIRATION DATE 04/17/10	CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:			

**PROPERTY INFORMATION**

**LOCATION/DESCRIPTION**  
 001  
 Shopping Center - FWI 20 LLC Grove Market 15.8 Miles from the coast  
 5042 Seminole Pratt-Whitney Rd  
 Loxahatchee FL 33470

**COVERAGE INFORMATION**

COVERAGE/PERILS/FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Special Form, Replacement Cost BUILDING - Agreed Amount BUSINESS INC - Actual Loss Sustained 24 Hour BI Waiting Period on Named Storm	7000000 1059104	5000
Named Storm Deductible - Direct Damage - **All Other Perils Deductible		350000 5000

**REMARKS (Including Special Conditions)**

**CANCELLATION**

THE POLICY IS SUBJECT TO THE PREMIUMS, FORMS, AND RULES IN EFFECT FOR EACH POLICY PERIOD. SHOULD THE POLICY BE TERMINATED, THE COMPANY WILL GIVE THE ADDITIONAL INTEREST IDENTIFIED BELOW 10 DAYS WRITTEN NOTICE, AND WILL SEND NOTIFICATION OF ANY CHANGES TO THE POLICY THAT WOULD AFFECT THAT INTEREST, IN ACCORDANCE WITH THE POLICY PROVISIONS OR AS REQUIRED BY LAW.

**ADDITIONAL INTEREST**

NAME AND ADDRESS Palm Beach County Board of County Commissioners 2633 Vista Parkway West Palm Beach FL 33411-5605	MORTGAGEE	ADDITIONAL INSURED
	LOSS PAYEE	
LOAN #		
AUTHORIZED REPRESENTATIVE <i>Maureen A. Connelly</i>		

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID S5  
BRUCE-2

DATE (MM/DD/YYYY)  
07/23/09

**PRODUCER**  
Brown & Brown Insurance  
17757 US Highway 19 N, Ste 660  
P.O. Box 2456  
Clearwater FL 33757-2456  
Phone: 727-461-6044 Fax: 727-442-7695

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**INSURERS AFFORDING COVERAGE**

NAIC #

INSURER A: Zenith Insurance Company

13269

INSURER B:

INSURER C:

INSURER D:

INSURER E:

**INSURED**  
  
Bruce Strumpf, Inc.  
2120 Drew Street  
Clearwater FL 33765

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
		<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$								
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$								
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	Z067180604	04/01/09	04/01/10	<table border="1"> <tr> <td>WC STATUTORY LIMITS</td> <td>OTHER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$ 500000</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$ 500000</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$ 500000</td> </tr> </table>	WC STATUTORY LIMITS	OTHER	E.L. EACH ACCIDENT	\$ 500000	E.L. DISEASE - EA EMPLOYEE	\$ 500000	E.L. DISEASE - POLICY LIMIT	\$ 500000
WC STATUTORY LIMITS	OTHER													
E.L. EACH ACCIDENT	\$ 500000													
E.L. DISEASE - EA EMPLOYEE	\$ 500000													
E.L. DISEASE - POLICY LIMIT	\$ 500000													
		OTHER												

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Property Manager for FWI 20 LLC. Grove Market Shopping Center

**CERTIFICATE HOLDER**

PALMB-3  
Palm Beach County Board of County Commissioners c/o Property & Real Estate Mgmt Dv 2633 Vista Pkwy West Palm Beach FL 33411-5605

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Maurice A. Connelly*

LANDLORD'S DISCLOSURE OF BENEFICIAL INTERESTS  
(REQUIRED BY FLORIDA STATUTES 286.23)

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY  
DESIGNATED REPRESENTATIVE

STATE OF New York  
COUNTY OF New York

BEFORE ME, the undersigned authority, this day personally appeared,  
Thomas J. Cannon, III, hereinafter referred to as "Affiant", who being by me first duly sworn,  
under oath, deposes and states as follows:

1. Affiant is the President of Flag Wharf, Inc., a Delaware corporation, independent  
Managing Agent of Flagship Investment I LLC, a Delaware limited liability company, sole  
Member of FWI 22 LLC, a Delaware limited liability company, Managing Member of FWI 21  
LLC, a Delaware limited liability company, sole member of FWI 20 LLC, a Delaware limited  
liability company, (the "Landlord") which entity is the owner of the real property legally  
described on the attached Exhibit "A" (the "Property").

2. Affiant's address is: Flag Wharf, Inc.,  
888 Seventh Avenue  
New York, N.Y. 10106

3. Attached hereto, and made a part hereof, as Exhibit "B" is a complete listing of  
the names and addresses of every person or entity having a five percent (5%) or greater  
beneficial interest in the Landlord and the percentage interest of each such person or entity.

4. Affiant acknowledges that this Affidavit is given to comply with Florida Statutes  
286.23, and will be relied upon by Palm Beach County in its lease of the Property.

5. Affiant further states that Affiant is familiar with the nature of an oath and with  
the penalties provided by the laws of the State of Florida for falsely swearing to statements under  
oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this  
Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

Thomas J. Cannon, III, Affiant  
Thomas J. Cannon, III

The foregoing instrument was sworn to, subscribed and acknowledged before me this 23  
day of July, 2009, by Thomas J. Cannon, III, as President of Flag Wharf, Inc., a  
Delaware corporation, in its capacity as independent Managing Agent of Flagship Investment I  
LLC, a Delaware limited liability company, in its capacity as sole Member of FWI 22 LLC, a  
Delaware limited liability company, in its capacity as Managing Member of FWI 21 LLC, a  
Delaware limited liability company, in its capacity as sole member of FWI 20 LLC, a Delaware  
limited liability company, on behalf of the limited liability company [] who is personally  
known to me or [] who has produced \_\_\_\_\_ as identification and who did take an oath.

DOMENICA RINAUDO  
State of New York No. 01R16104357  
Qualified in Kings County  
Certificate Filed in Kings County  
Commission Expires Jan. 20, 2012

Domenica Rinaudo  
Notary Public

Domenica Rinaudo  
(Print Notary Name)

NOTARY PUBLIC  
State of New York at Large

My Commission Expires: JAN. 20, 2012

ATTACHMENT # 4

**EXHIBIT "A"**

**PROPERTY**

PCN 00-40-43-01-01-001-0010

5060 Seminole Pratt Whitney Road  
Unincorporated Loxahatchee, Florida

(as recorded in OR BOOK 15610, PG 0177, Palm  
Beach County, Florida, on July 30, 2003)

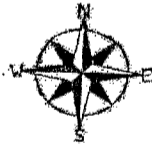




EXHIBIT "B"

SCHEDULE TO BENEFICIAL INTERESTS IN PROPERTY

Landlord is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Landlord must identify individual owners. If, by way of example, Landlord is wholly or partially owned by another entity, such as a corporation, Landlord must identify such other entity, its address and percentage interest, as well as such information for the individual owners of such other entity.

The Property is owned by **FWI 20 LLC**, whose address is 197 Eighth Street, Suite 800, Boston, MA 02129.

**FWI 20 LLC**

100% Beneficial Interest in FWI 20 LLC is held by **FWI 21 LLC**, whose address is 197 Eighth Street, Suite 800, Boston, MA 02129.

**FWI 21 LLC**

20% Beneficial Interest in FWI 21 LLC is held by **FWI 22 LLC**, whose address is 197 Eighth Street, Suite 800, Boston, MA 02129.

80% Beneficial Interest in FWI 21 LLC is held by **Kimco Preferred Investor XIII, Inc.**, whose address is 3333 New Hyde Park Rd, PO Box 5020, New Hyde Park, NY 11042.

**FWI 22 LLC**

100% Beneficial Interest in FWI 22 LLC is held by **Flagship Investment I LLC** whose address is c/o Flag Wharf, Inc., 197 Eighth Street, Suite 800, Boston, MA 02129.

**Kimco Preferred Investor XIII, Inc.**

100% Beneficial Interest in Kimco Preferred Investor XIII, Inc., is held by **Kimco Realty Corp.** whose address is 3333 New Hyde Park Rd, PO Box 5020, New Hyde Park, NY 11042.

**Flagship Investment I LLC**

20% Beneficial Interest in Flagship Investment I LLC is held by **Gotham Associates I LLC**, whose address is c/o Flag Wharf, Inc., 197 Eighth Street, Suite 800, Boston, MA 02129.

80% Beneficial Interest in Flagship Investment I LLC is held by **Terravest, LLC**, whose address is c/o TCM/TCP, 301 Tresser Blvd., 13<sup>th</sup> Floor, Stamford, CT 06901.

**Kimco Realty Corp.**

**Kimco Realty Corp.** is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public and is hereby exempt from Florida Statutes 286.23.

**Gotham Associates I LLC**

100% Beneficial Interest in Gotham Associates I LLC is held by **Thomas J. Cannon, III**, whose address is c/o Flag Wharf, Inc., 888 Seventh Ave., 34<sup>th</sup> Floor, New York, NY 10106.

**Terravest, LLC**

100% Beneficial Interest in Terravest LLC is held by **Daniel B. Tully**, whose address is c/o TCM/TCP, 301 Tresser Blvd., 13<sup>th</sup> Floor, Stamford, CT 06901.

AFFIDAVIT

STATE OF New York

COUNTY OF New York

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

1. The undersigned, Thomas J. Cannon, III, is the President of Flag Wharf, Inc., a Delaware corporation, the independent Managing Agent of Flagship Investment I LLC, a Delaware limited liability company, the sole Member of FWI 22 LLC, a Delaware limited liability company, the Managing Member of FWI 21 LLC, a Delaware limited liability company, the sole Member of FWI 20 LLC, a Delaware limited liability company (the "Company").
2. The Company is a duly organized, validly existing limited liability company in good standing under the laws of the State of Delaware and is duly authorized to transact business in the State of Florida. FWI 21 LLC, a Delaware limited liability company, is the sole Member of the Company. FWI 21 LLC, acting alone without the joinder of any manager of the Company or any other party, has the power and authority to execute the Lease Agreement as hereinafter defined, on behalf of and to duly bind the Company under the Lease Agreement.
3. FWI 21 LLC is a duly organized, validly existing limited liability company in good standing under the laws of the State of Delaware and is duly authorized to transact business in the State of Florida. FWI 22 LLC is the Managing Member of FWI 21 LLC. FWI 22 LLC acting alone without the joinder of any other member or manager of FWI 21 LLC or any other party has the power and authority to execute the Lease Agreement on behalf of and to duly bind FWI 21 LLC and the Company under the Lease Agreement.
4. FWI 22 LLC is a duly organized, validly existing limited liability company in good standing under the laws of the State of Delaware. FWI 22 LLC is not required to be qualified to do business in the State of Florida in order to validly perform its obligations under the Lease Agreement or otherwise. Flagship Investment I LLC, a Delaware limited liability company, is the sole Member of FWI 22 LLC. Flagship Investment I LLC acting alone without the joinder of any other manager of FWI 22 LLC or any other party has the power and authority to execute the Lease Agreement on behalf of and to duly bind FWI 22 LLC, FWI 21 LLC and the Company under the Lease Agreement.
5. Flagship Investment I LLC is a duly organized, validly existing limited liability company in good standing under the laws of the State of Delaware and is duly authorized to transact business in the State of Florida. Flag Wharf, Inc., a Delaware corporation is the independent Managing Agent of Flagship Investment I LLC. Flag Wharf, Inc., acting alone without the joinder of any other member or manager of Flagship Investment I LLC or any other party has the power and authority to execute the Lease Agreement on behalf of and to duly bind Flagship Investment I LLC, FWI 22 LLC, FWI 21 LLC and the Company under the Lease Agreement.
6. Flag Wharf, Inc., is a duly organized, validly existing corporation in good standing under the laws of the State of Delaware and is duly authorized to transact business in the State of Florida. Thomas J. Cannon, III, is the President of Flag Wharf, Inc. Thomas J. Cannon, III, acting alone without the joinder of any other officer, director or shareholder of Flag Wharf, Inc. or any other party has the power and authority to execute the Lease Agreement on behalf of and to duly bind Flag Wharf, Inc., Flagship Investment I LLC, FWI 22 LLC, FWI 21 LLC and the Company under the Lease Agreement.
7. Thomas J. Cannon, III, on behalf of Flag Wharf, Inc., Flagship Investment I LLC, FWI 22 LLC, FWI 21 LLC and the Company has the right and authority to enter into that certain Lease Agreement between Palm Beach County, a political subdivision of the State

of Florida and the Company, which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Lease Agreement.

8. Upon execution and delivery of the Lease Agreement and any other documents by Thomas J. Cannon, III, on behalf of Flag Wharf, Inc., Flagship Investment I LLC, FWI 22 LLC, FWI 21 LLC and the Company, all of the aforesaid shall be valid agreements of and be binding upon the Company.

9. The transactions contemplated herein will not violate any of the terms and conditions of Flag Wharf, Inc.'s, Flagship Investment I LLC's, FWI 22 LLC's, FWI 21 LLC's and the Company's member agreement, operating agreement, certificate of organization or of any other agreement and amendments thereto of whatever kind that Flag Wharf, Inc., Flagship Investment I LLC, FWI 22 LLC, FWI 21 LLC, and the Company are a party.

10. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Lease Agreement.

FURTHER AFFIANT SAYETH NAUGHT,

**FWI 20 LLC, a Delaware limited liability company**

- By: FWI 21 LLC, a Delaware limited liability company, its sole Member
- By: FWI 22 LLC, a Delaware limited liability company, its Managing Member
- By: Flagship Investment I LLC, a Delaware limited liability company, its sole Member
- By: Flag Wharf, Inc., a Delaware corporation, its independent Managing Agent

*Morna Rinaudo*  
 Witness Signature  
Downa Rinaudo  
 Print Witness Name

By: Tom  
 Name: Thomas J. Cannon, III  
 Title: President and not i/d

*Barbara Archo*  
 Witness Signature  
Barbara Archo  
 Print Witness Name

(SEAL)

The foregoing instrument was sworn to, subscribed and acknowledged before me this 23 day of July, 2009, by Thomas J. Cannon, III, as President of Flag Wharf, Inc., a Delaware corporation, in its capacity as independent Managing Agent of Flagship Investment I LLC, a Delaware limited liability company, in its capacity as sole Member of FWI 22 LLC, a Delaware limited liability company, in its capacity as Managing Member of FWI 21 LLC, a Delaware limited liability company, in its capacity as sole Member of FWI 20, LLC, a Delaware limited liability company, on behalf of the limited liability company [] who is personally known to me or [] who has produced \_\_\_\_\_ as identification and who did take an oath.

DOMENICA RINAUDO  
 State of New York No. 01RI6104357  
 Qualified in Kings County  
 Certificate Filed in Kings County  
 Commission Expires Jan. 20, 2012

*Domenica Rinaudo*  
 Notary Public  
Domenica Rinaudo  
 (Print Notary Name)

NOTARY PUBLIC  
 State of New York at Large

My Commission Expires: JAN. 20, 2012