

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

Agenda Item #:

6E-1

AGENDA ITEM SUMMARY

Meeting Date: March 23, 2010 [] Consent [X] Regular
[] Public Hearing
Department: Housing and Community Development
Submitted By: Housing and Community Development

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Lease and Lease Buyout Agreement in the amount of \$55,000, with Dr. Jackie Johns d/b/a Implant Dental Group of South Florida, LLC, and Esthetic and Implant Dentistry of South Florida, P.A., the tenant in Unit No. 3, in connection with the acquisition of Unit No. 3 of the commercial condominium property at 1000 45th Street in the City of West Palm Beach and its conversion into a homeless resource center.

Summary: On January 12, 2010 (R2010-0137), the Board of County Commissioners (BCC) approved the purchase of the commercial condominium complex at 1000 45th Street in the City of West Palm Beach for the establishment of a homeless resource center. More specifically, on such date, the BCC approved an Agreement for Purchase and Sale with Koral Saritas and Perran Saritas, for the purchase of Unit No. 3 at this complex. The current tenant in this unit is Dr. Jackie C. Johns d/b/a Implant Dental Group of South Florida, LLC, and Esthetic and Implant Dentistry of South Florida, P.A., (the Tenant). The proposed Lease and Lease Buyout Agreement will establish a tenant-landlord relationship between the County and the Tenant beginning on the date the County acquires Unit No. 3. Since Federal funds are being used for this project, the Tenant must be allowed to remain in the property at least 90 days after a notice is given to the Tenant in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). Accordingly, the lease will terminate 90 days after the County acquires Unit No. 3. The Tenant presently has a five year lease for Unit No. 3 which expires on June 30, 2014, thereby creating a leasehold interest in said unit. Since the Tenant is being required to vacate the property prior to the expiration of their lease they are due compensation in the form of the proposed lease buyout. Staff obtained two appraisals of this leasehold interest, and established just compensation for the leasehold interest at \$40,000. After negotiations with the Tenant and their attorney, the parties agreed on the recommended lease buyout amount of \$55,000, and on permitting them to remain in the property rent free for the 90 day period. The buyout payment is subject to the County first acquiring title to Unit No. 3. This transaction is not subject to the Property Review Committee's review because it involves the purchase of a leasehold interest in real estate (as opposed to the purchase of a fee simple interest) and is for less than the \$250,000 threshold amount requiring such review pursuant to Ordinance No. 2009-052. Funding for this Agreement will be derived from funds to be received under an Inter-Local Agreement with the City of West Palm Beach. District 7 (TKF)

Background and Justification: The commercial condominium complex at 1000 45th Street in the City of West Palm Beach has eight buildings with 34,035 square feet of improved space, on 3.83 acres of land, containing seventeen commercial condominium units. Fourteen of these units are vacant, one unit is owner-occupied, and two units are tenant-occupied. To date, the BCC has approved purchase and sale agreements for sixteen of these units. Closings on these units are being prepared. Negotiations are in progress with the owner of the seventeenth unit (Unit No. 2). The County Attorney's office has given notice of its intent to file a condemnation action, should negotiations fail to result in an amicable agreement on that unit. The BCC approved such condemnation action on January 12, 2010 (R2010-0137).

Attachments:

1. Lease and Lease Buyout Agreement with the Dr. Jackie Johns d/b/a Implant Dental Group of South Florida, LLC, and Esthetic and Implant Dentistry of South Florida, P.A.
2. Disclosure of Beneficial Interests for Implant Dental Group of South Florida, LLC
3. Disclosure of Beneficial Interests for Esthetic and Implant Dentistry of South Florida, P.A.
4. Affidavit of Professional Association for Esthetic and Implant Dentistry of South Florida, P.A.

Recommended by: Edmund P. Lopez 3/16/2010
Department Director Date

Approved By: Sharon J. B... 3/16/2010
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	55,000				
Operating Costs					
External Revenues	<55,000>				
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT					

# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
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Is Item Included In Current Budget? Yes XX No
 Budget Account No.: **3804-149-B452-4933**

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

Approval of this agenda item will allocate \$55,000 for the Lease and Lease Buyout Agreement with Dr. Jackie C. Johns d/b/a Implant Dental Group of South Florida, LLC, and Esthetic and Implant Dentistry of South Florida, P.A., to be provided by the City of West Palm Beach for the homeless resource center project.

C. Departmental Fiscal Review: Shym 3-11-10
 Shairette Major, Fiscal Manager I

III. REVIEW COMMENTS

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

[Signature]
 OFMB
 2/12/10
 3/12/10

[Signature] 3/15/10
 Contract Development and Control

B. Legal Sufficiency:
 See CDC comments
[Signature] 3/15/10
 Senior Assistant County Attorney

This Contract complies with our contract review requirements.
 At the time of our review, the contract was not executed.

C. Other Department Review:

 Department Director

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

LEASE AND LEASE BUYOUT AGREEMENT

THIS LEASE AND LEASE BUYOUT AGREEMENT (hereinafter Agreement) made and entered into by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "County" and Dr. Jackie Johns d/b/a Implant Dental Group of South Florida, LLC, and Esthetic and Implant Dentistry of South Florida, P.A., hereinafter referred to as "Tenant".

WITNESSETH:

WHEREAS, the County intends to acquire the Premises (Unit No. 3 of the 1000 Forty-Fifth Condominium, as further defined herein), from Koral Saritas and Perran Saritas; and

WHEREAS, after the County acquires the Premises, the County intends to convert the Premises for use in conjunction with a homeless resource center, and

WHEREAS, the County intends to begin such conversion of the Premises on or about June 30, 2010, and

WHEREAS, the County requires the Premises to be vacant in order to undertake said conversion, and

WHEREAS, the Tenant is in occupancy of the Premises pursuant to a Commercial Lease dated June 19, 2009 (the "Commercial Lease"), with Koral Saritas and Perran Saritas which lease expires on June 30, 2014, and

WHEREAS, upon conveyance of title to the Premises to the County, Koral Saritas and Perran Saritas intend to assign their interest in the Commercial Lease to the County, and

WHEREAS, upon the County's receipt of said assignment to the Commercial Lease, the County and the Tenant have agreed to terminate said Commercial Lease under threat of condemnation proceedings, and wish to establish a short term lease as set forth herein, and

WHEREAS, the Tenant is agreeable to an early termination of the Commercial Lease as set forth herein to allow the County to undertake the conversion of the Premises provided the Tenant is compensated for Tenant's leasehold interest in the Premises, and

WHEREAS, the County is agreeable to the Tenant's continued occupancy of the Premises as set forth herein and is agreeable to compensating the Tenant for an early termination of the Commercial Lease.

NOW THEREFORE, in consideration of Tenant's early termination of the Commercial Lease, the Tenant's continued occupancy of the Premises, the compensation described herein, the covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I BASIC AGREEMENT PROVISIONS

Section 1.00 Tenant

All references to Esthetic and Implant Dentistry of South Florida, P.A. shall mean collectively, Esthetic and Implant Dentistry of South Florida, P.A., The Implant Dental Group of South Florida LLC and Dr. Jackie Johns, individually.

Section 1.01 Premises.

The County hereby demises and leases to the Tenant, and the Tenant rents from the County, the real property legally described as Unit 3, 1000 FORTY-FIFTH CONDOMINIUM, according to the Declaration of Condominium thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Official Record Book 4413, Page 598, together with an undivided interest in the common elements declared in said Declaration of Condominium to be an appurtenance to the above described unit, together with all improvements located thereon (the "Premises").

Section 1.02 Length of Term and Commencement Date.

The term of the Tenant's leasehold pursuant to this Agreement shall commence upon the date of the Lease Buyout Closing (the "Commencement Date") and shall extend to the later of June 30, 2010, or ninety (90) days after the Commencement Date (the "Term"). Tenant shall have the option to extend the Term one time for an additional thirty (30) days. If Tenant elects to exercise such option, Tenant shall deliver written notice to County of such election fifteen (15) days prior to the expiration of the Term, together with payment of rental and sales tax in the amount of \$ 2982.00. Notwithstanding the foregoing, the Tenant, on providing the County with ten (10) days' prior written notice, may terminate this Agreement at any time during the term of this Agreement.

Section 1.03 County's Acquisition Funding and Associated Requirements.

The County intends to use Federal Community Development Block Grant Funds in connection with its acquisition of the Premises, the use of which requires compliance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). The Tenant acknowledges having been informed in writing by the County of the aforesaid. The County and Tenant agree, and it is a condition of this Agreement, that Tenant shall be eligible to receive certain relocation assistance and payments under URA. The County shall cooperate with Tenant in order to assist Tenant in processing its claims for payments under the URA.

Section 1.04 Provisions Subject to URA.

This Agreement shall be subject to the requirements of URA. Any provisions of this Agreement found by the County to be in conflict with the requirements of URA shall be superseded by such requirements. The Tenant may advise the County of any provisions of this Agreement that the Tenant believes are in conflict with URA upon which the County shall notify the Tenant of its determination regarding such conflict. If the County and the Tenant are not able to agree on any such determination, then the Tenant and the County shall abide by the determination of the United States Department of Housing and Urban Development on such matter. Notwithstanding the foregoing, certain fundamental covenants of this Agreement must remain as the underlying business transaction, (the "Fundamental terms"). Such Fundamental Terms are as follows: (i) Tenant shall receive the Lease Buyout Payment from the County; and (ii) Tenant shall qualify for relocation benefits under the URA.

Section 1.05 Termination of Pre-existing Lease as Pre-condition to Agreement.

On June 19, 2009, the Tenant entered into a Commercial Lease for the Premises with Koral Saritas and Perran Saritas which lease expires on June 30, 2014. As a condition for the sale of the Premises to the County, Koral Saritas and Perran Saritas shall, on the Commencement Date, assign their interest in said Commercial Lease to the County. As a precondition to this Agreement taking effect, the Tenant and the County (as the assignee of the Commercial Lease) hereby agree to terminate said Commercial Lease on the Commencement Date whereupon the Tenant shall receive from the County the Lease Buyout Payment set forth herein in exchange for Tenant's termination of the Commercial Lease.

Section 1.06 Disclosures of Beneficial Interests.

The Tenant represents that simultaneous with the Tenant's execution of this Agreement, the Tenant has executed and delivered to County, the Tenant's Disclosures of Beneficial Interests attached hereto as Exhibits "A-1" and "A-2" (the "Disclosures") disclosing the name and address of every person or entity having a 5% or greater

beneficial interest in the ownership of Implant Dental Group of South Florida, LLC and Esthetic and Implant Dentistry of South Florida, P.A., as required by Section 286.23 of the Florida Statutes. The Tenant warrants that in the event there are any changes prior to Closing to the names and addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of Implant Dental Group of South Florida, LLC and Esthetic and Implant Dentistry of South Florida, P.A., after the date of execution of the Disclosure, the Tenant shall immediately, and in every instance, provide written notification of such change to the County in the manner required by Section 15.02 of this Agreement. The Tenant warrants that at the below described closing, the Tenant shall provide County with Disclosures that accurately disclose the beneficial interests in the ownership of Implant Dental Group of South Florida, LLC and Esthetic and Implant Dentistry of South Florida, P.A., at the time of such closing regardless of whether or not the information contained therein has changed from the date of execution of the original Disclosures.

Section 1.07 Authority to Enter into Agreement.

The Tenant represents that simultaneous with the Tenant's execution of this Agreement, the Tenant has executed and delivered to the County the Affidavit of Professional Association attached hereto as Exhibit "B".

**ARTICLE II
LEASE BUYOUT PAYMENT**

Section 2.01 Lease Buyout Payment.

The County shall pay the Tenant a Lease Buyout Payment of Fifty Five Thousand Dollars (\$55,000.00) upon the County taking title to the Premises and upon the Tenant's delivery to the County of an executed Acknowledgement of Termination of Commercial Lease attached hereto as Exhibit "C". The Lease Buyout Payment shall be made at the Lease Buyout Closing described herein. In the event that the Lease Buyout Closing has not occurred by June 25, 2010, then either the County or Tenant shall have the right to terminate this Agreement by written notice to the other, whereupon this Agreement shall no longer be of any force or effect.

Section 2.02 Lease Buyout Closing.

The Lease Buyout Closing shall be held at the Palm Beach County Office of Property and Real Estate Management, 2633 Vista Parkway, West Palm Beach, FL 33411 as soon as administratively feasible following the County's acquisition of the Premises, but no later than fifteen (15) working days after said acquisition.

The Tenant shall deliver said Acknowledgement of Termination of Commercial Lease at the Lease Buyout Closing, and the executed Disclosures of Beneficial Interest, herein attached as Exhibit "A-1" and "A-2". The Disclosures of Beneficial Interests, as required by Section 286.23, Florida Statutes, shall accurately disclose the name and address of any person or entity having a 5% or greater beneficial interest in the ownership of Tenant as of the date of said closing. The foregoing shall be in addition to any Disclosures or notice of change thereto previously provided to County, and in the same form as previously provided to County. Furthermore, the Tenant shall also deliver and/or execute such other instruments as are necessary or reasonably required to consummate the transactions herein contemplated including, without limitation, if applicable, such documents as County may require evidencing the Tenant's existence, good standing, power and authority to enter into and consummate the transaction herein contemplated.

**ARTICLE III
RENT**

Section 3.01 Rent.

Tenant shall not be obligated to pay County any rent for the Premises for the Term of this Lease, except as otherwise provided herein.

Section 3.02 Unpaid Fees, Holdover.

In the event Tenant fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Agreement within ten (10) days after same shall become due and payable, interest at the rate of one and one-half percent (1 1/2 %) per month (or the highest rated permitted by law if lower) shall accrue against the delinquent payment(s) from the date due until the date payment is received by County. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in the payment of rentals, fees, charges, and payments due to County pursuant to this Agreement or from enforcing any other provisions contained herein or implied by law.

In the event Tenant shall holdover, refuse or fail to relinquish possession of the Premises at the expiration or termination of this Agreement, Tenant shall be liable to County for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to County during the entire period of such holdover, double rental, as provided for in Chapter 83.06, Florida Statutes in the amount of \$5,600 .

Section 3.03 Accord and Satisfaction.

In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Agreement or under the law.

**ARTICLE IV
CONDITION OF LEASED PREMISES, ALTERATIONS**

Section 4.01 Acceptance of Premises by Tenant.

Tenant has occupied the Premises for eight (8) months and acknowledges, agrees, and certifies that Tenant has inspected the Premises and accepts same "As Is", in its existing condition, together with all defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions and matters of record. Tenant further acknowledges that the County has made no warranties or representations of any nature whatsoever regarding the Premises including, without limitation, any relating to the physical condition of the Premises or any improvements or equipment located thereon, or the suitability of the Premises or any improvements for Tenant's intended use of the Premises. No repair work, alterations, or remodeling of the Premises is required to be done by County as a condition of this Agreement. Tenant agrees to perform any and all work at its own cost and expense which is necessary to fully equip and maintain the Premises for the lawful use of the Premises by Tenant as specified in Section 5.01 of this Agreement.

Section 4.02 Alterations.

Tenant shall not make any improvements, additions, modifications or alterations to the Premises.

Section 4.03 No Liens.

Tenant covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Agreement. If so requested by County, Tenant shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida stating that County's interest shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed against the Tenant's Premises or other County property in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within 30 days from the date of filing. In the event that Tenant fails to satisfy or transfer such claim within said 30 day period, County may do so and thereafter charge Tenant, and Tenant shall promptly pay to County upon demand, as Additional Rent, all costs

incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Tenant agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

ARTICLE V CONDUCT OF BUSINESS AND USE OF PREMISES BY TENANT

Section 5.01 Use.

Tenant shall use and occupy the Premises solely and exclusively for a dental facility and offices related thereto. Tenant shall not use, permit, or suffer the use of the Premises for any other use, business, or purpose whatsoever without the prior written consent of County, which consent may be granted or withheld in County's sole discretion.

Section 5.02 Waste or Nuisance.

Tenant shall not commit or suffer to be committed any waste upon the Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's fee interest in the Premises or which results in an unsightly condition. All refuse is to be removed from the Premises at Tenant's sole cost and expense and Tenant will keep such refuse in proper fireproof containers on the interior of the Premises until removed. Tenant will keep the access to the Premises, the parking areas and other contiguous areas to the Premises free and clear of obstruction. Tenant, at its sole cost and expense, will keep the Premises free of rodents, vermin and other pests.

Section 5.03 Governmental Regulations.

Tenant shall, at Tenant's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated there under of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Tenant or Tenant's use of the Premises, or the Premises generally. Tenant shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Tenant's failure to perform its obligations in this Section.

Section 5.04 Non-Discrimination.

Tenant shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, gender identity or expression, or disability with respect to any activity occurring on the Premises or under this Agreement. Tenant warrants that in the event the facilities constructed or operated upon the Premises are public facilities the same shall be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis as to residents of the municipality in which the Premises are located.

Section 5.05 Surrender of Premises.

Upon termination or expiration of this Agreement, Tenant, shall surrender the Premises to the County in the same condition the Premises were in as of the Commencement Date of this Agreement, reasonable wear and tear excepted. Upon surrender of the Premises, Tenant shall have removed Tenant's personal property, removable fixtures, and equipment from the Premises. After surrender of the Premises, title to any and all remaining improvements, alterations or personal property within the Premises shall vest in County.

County acknowledges that pursuant to this Agreement and the URA, Tenant shall be vacating the premises and in doing so, will be removing certain dental equipment and related fixtures, which tenant shall have the right to do so without further approval of the County.

Section 5.06 Hazardous Substance

Tenant shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Tenant's operations, on the Premises or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Tenant shall not cause or permit the Disposal of Hazardous Materials upon the Premises or upon adjacent lands and shall operate and occupy the Premises in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any medical waste, hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, whether by Tenant or any third party, shall be reported to County immediately upon the knowledge thereof by Tenant. Tenant shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the Premises or emanating from the Premises onto adjacent lands, as a result of the use and occupancy of the Premises by Tenant, or Tenant's agents, licensees, invitees, subcontractors or employees.

Tenant hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs, which may arise directly, indirectly or proximately as a result of any violation of the Disposal of any Hazardous Materials upon the Premises or violation of this provision. Tenant's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of Tenant, it shall not be deemed to alter or diminish any statutory or common law liability of Tenant. Tenant acknowledges that County would not have entered into this Agreement without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive expiration or termination of this Agreement.

**ARTICLE VI
REPAIRS AND MAINTENANCE OF PREMISES**

Section 6.01 Responsibility of County and Tenant.

County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Premises. Tenant shall keep and maintain all portions of the Premises, and all improvements in good condition and repair, at Tenant's sole cost and expense. Notwithstanding the foregoing, County shall maintain the structure of the building and common areas appurtenant thereto in which the Premises are located in such a manner that Tenant will receive quiet enjoyment and peaceful use of the Premises.

Section 6.02 County's Right to Inspect.

County or County's agents shall have the right, upon reasonable prior notice to Tenant (except that no notice need be given in case of emergency) to enter the Premises for the purpose of inspection of the Premises and the improvements located thereon. Any such entrance into the Premises shall be conducted by County in a manner calculated to minimize interference with or disruption of Tenant's operations within the Premises.

**ARTICLE VII
UTILITIES**

Tenant shall be solely responsible for and promptly pay directly to the utility company or the provider of such service all charges and assessments for any utility services provided including, without limitation, gas, electricity, trash collection and removal or any other utility used or consumed on the Premises. In no event shall County be liable for an interruption or failure in the supply of any such utility to the Premises.

ARTICLE VIII INSURANCE

Unless otherwise specified in this Agreement, Tenant shall maintain, at its sole expense, in full force and effect at all times during the life of this Agreement or the performance of work hereunder, insurance limits, coverages or endorsements required herein. Tenant hereby agrees the requirements contained herein, as well as County's review or acceptance of insurance, is not intended to and shall not in any manner limit nor qualify Tenant's liabilities and obligations under this Agreement.

Section 8.01 Commercial General Liability.

Tenant shall maintain: Commercial General Liability with limits of liability not less than \$1,000,000 Each Occurrence including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability; Fire Legal liability with a limit not less than \$100,000; and Medical Payments (when available) with a limit not less than \$5,000. Tenant shall ensure such coverage is provided on a primary basis.

Section 8.02 Workers' Compensation & Employers Liability.

Tenant shall maintain, if required by law, Workers' Compensation & Employers Liability in accordance with Chapter 440 Florida Statutes and applicable Federal Acts. Tenant shall ensure such coverage is provided on a primary basis.

Section 8.03 Additional Insured Endorsement.

Tenant shall cause each liability insurance policy required to be maintained by Tenant to be endorsed to add the County as an Additional Insured on, except for Worker's Compensation and Business Auto Liability. The CG 2011 Additional Insured - Managers or Lessors of Premises or CG 2026 Additional Insured - Designated Person or Organization endorsements, or their equivalent, shall be used to endorse the Commercial General Liability policy. The standard Additional Insured endorsement offered by the insurer shall be used to endorse the other policies, when required. Tenant shall ensure the Additional Insured endorsements provide coverage on a primary basis. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents", c/o Property & Real Estate Management Division, 2633 Vista Parkway, West Palm Beach, FL 33411-5605.

Section 8.04 Certificate of Insurance.

Ten (10) days prior to the Commencement Date, Tenant shall provide the County with a certificate of insurance evidencing limits, coverages and endorsements required herein. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or not renewed during the life of this Agreement, Tenant shall furnish thirty (30) days prior to, but in no case later than the expiration of such insurance, a new certificate of insurance evidencing replacement coverage. Should Tenant fail to maintain the insurance required herein, the County shall have the right, but not the obligation, to purchase or maintain said insurance, and Tenant shall promptly pay as Additional Rent, upon demand from County, all premiums and expenses incurred by County.

Section 8.05 Waiver of Subrogation.

Tenant hereby agrees to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not allow a pre-loss agreement to waive subrogation without an endorsement, Tenant shall notify its insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition prohibiting such an endorsement, or voiding coverage should Tenant enter into such an agreement on a pre-loss basis.

Section 8.06 Deductibles, Coinsurance, & Self-Insured Retention.

Tenant shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy term.

Section 8.07 No Representation of Coverage Adequacy.

The limits, coverages or endorsements identified herein primarily transfer risk and minimize liability for the County, and Tenant agrees not to rely upon such requirements when assessing risk or determining appropriate types or limits of coverage to protect Tenant against any loss exposures, whether as a result of this Agreement or otherwise.

**ARTICLE IX
INDEMNIFICATION**

Tenant shall indemnify, defend and save harmless the County from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Agreement for any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the Premises by reason, during, or as a result of the use and occupancy of the Premises by the Tenant, its agents, employees, licensees and invitees, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event County shall be made a party to any litigation commenced against Tenant or by Tenant against any third party, then Tenant shall protect and hold County harmless and pay all costs and reasonable attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Tenant recognizes the broad nature of this indemnification provision and specifically acknowledges that County would not have entered into this Agreement without Tenant's agreement to indemnify County and further acknowledges the receipt of good and valuable separate consideration provided by County in support hereof in accordance with the laws of the State of Florida. This provision shall survive expiration or termination of this Agreement.

**ARTICLE X
DESTRUCTION OF PREMISES**

In the event the Premises shall be destroyed or so damaged or injured by fire or other casualty during the Term of this Agreement or any extension thereof, whereby the same shall be rendered untenable, in whole or in part then either party shall have the right, at its option, to terminate this Agreement. County shall not be obligated to restore the Premises and shall retain all insurance proceeds payable on account of said casualty as County's sole property. In the event either party elects to terminate this Agreement, the parties shall be relieved of all further obligations hereunder arising after the date of such termination. The termination herein mentioned shall be evidenced in writing.

**ARTICLE XI
ASSIGNMENT AND SUBLETTING**

Tenant may not assign, mortgage, pledge or encumber this Agreement in whole or in part, nor sublet or rent all or any portion of the Premises nor grant any easements affecting the Premises, without prior written consent of County, which may be granted or withheld at County's absolute discretion. Any attempted assignment, mortgage, pledge, encumbrance or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of this Agreement. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

**ARTICLE XII
DEFAULT**

Section 12.01 Default by Tenant.

The occurrence of any one or more of the following shall constitute an Event of Default by Tenant under this Agreement: (i) Tenant's failure to pay any sum due hereunder within fifteen (15) days after the same shall become due; (ii) Tenant's failure to perform or observe any of the agreements, covenants or conditions contained in the Agreement on Tenant's part to be performed or observed if such failure continues for more than thirty (30) days after notice from County; (iii) Tenant's vacating or abandoning the

Premises; or (iv) Tenant's leasehold estate being taken by execution, attachment or process of law or being subjected to any bankruptcy proceeding. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to pursue such remedies as may be available to County under the law, including, without limitation, the right to give Tenant notice that County intends to terminate this Agreement upon a specified date not less than three (3) days after the date notice is received by Tenant, in which event this Agreement shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Agreement. If, however, the default is cured within the three (3) day period and the County is so notified, this Agreement will continue.

Section 12.02 Default by County.

County shall not be in default unless County fails to perform obligations required of County within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to County, specifying wherein County has failed to perform such obligations; provided, however, that if the nature of County's obligations is such that more than thirty (30) days are required for performance then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

**ARTICLE XIII
ANNUAL BUDGETARY FUNDING/CANCELLATION**

This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.

**ARTICLE XIV
QUIET ENJOYMENT**

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

**ARTICLE XV
MISCELLANEOUS**

Section 15.01 Entire Agreement.

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

Section 15.02 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 County at:

Property and 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

(b) If to the Tenant at:

Implant Dental Group of South Florida, LLC, or
Esthetic and Implant Dentistry of South Florida, P.A.,
Attn: Dr. Jackie Johns
1000 45th Street – Suite 3
West Palm Beach, FL 33407

With a copy to:

Barry Byrd, Esq.
Piniero Byrd PLLC
4600 Military Trail – Suite 212
Jupiter, FL 33458
Fax 561-799-9287

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

Section 15.03 Severability.

If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of 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 Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 15.04 Broker's Commission.

Tenant represents and warrants that they have not dealt with any real estate salesperson, agent, finder or broker in connection with this Agreement and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

Section 15.05 Recording.

Tenant shall not record this Agreement, or any memorandum or short form thereof, without the written consent and joinder of County, which may be granted or withheld at County's sole discretion.

Section 15.06 Waiver of Jury Trial.

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS, BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS AGREEMENT.

Section 15.07 Governing Law and Venue.

This Agreement shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a State court of competent jurisdiction in Palm Beach County, Florida.

Section 15.08 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 15.09 Time of Essence.

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

Section 15.10 Waiver, Accord and Satisfaction.

The waiver by County 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 County to or of any act by Tenant requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Tenant.

Section 15.11 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 15.12 Construction.

No party shall be considered the author of this Agreement 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 Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any 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 Agreement and the same shall remain in full force and effect.

Section 15.13 Incorporation by Reference.

Exhibits, if any, attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

Section 15.14 Survival.

Notwithstanding any early termination of this Agreement, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

Section 15.15 Effective Date of Agreement.

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

Section 15.16 Attorney's Fees

Each party shall bear its own attorney's fees and costs related to this transaction, including, without limitation, County's acquisition of the Premises, the termination of the Commercial Lease, Tenant's compensation pursuant to the URA, and the Lease and Lease Buyout Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

WITNESSES:



Witness Signature

Venetta Alfred

Print Witness Name




Witness Signature

NAOMIE RUSSELL

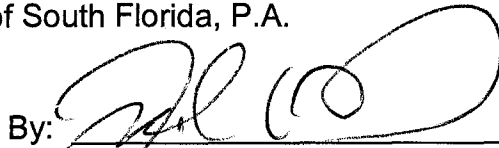
Print Witness Name

TENANT: Implant Dental Group of South Florida, LLC



By: Jackie C. Johns

TENANT: Esthetic and Implant Dentistry of South Florida, P.A.



By: Jackie C. Johns, President,

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER


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

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair
Board of County Commissioners

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: 
_____ County Attorney

By: 
_____ Department Director

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

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

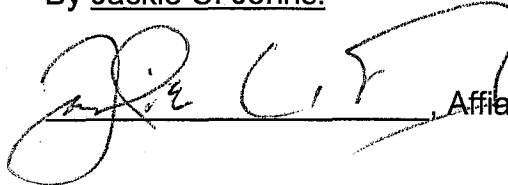
**STATE OF FLORIDA
COUNTY OF PALM BEACH**

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

1. Affiant has operated under a fictitious name of Implant Dental Group of South Florida, LLC, (the "Tenant") which entity has a leasehold interest in the real property legally described as: Unit 3, 1000 FORTY-FIFTH CONDOMINIUM, according to the Declaration of Condominium thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Official Record Book 4413, Page 598, together with an undivided interest in the common elements declared in said Declaration of Condominium to be an appurtenance to the above described unit (the "Property").
2. Affiant's address is 1000 45th Street, Unit #3, West Palm Beach, FL 33407.
3. Attached hereto, and made a part hereof, as Attachment "1" 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 Tenant 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 purchase of the Tenant's leasehold interest in 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.

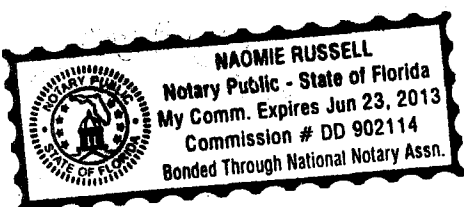
FURTHER AFFIANT SAYETH NAUGHT.

By Jackie C. Johns:

 Affiant

The foregoing instrument was sworn to, subscribed and acknowledged before me this 19 day of March, 2010, by Jackie C. Johns, as the owner of the fictitious name of Implant Dental Group of South Florida, LLC, who is personally known to me OR who produced FL DL J500423-53-2590 4/14/17 as identification and who did take an oath.

(NOTARY SEAL BELOW)



Notary Signature: Naomi Russell
Notary Name: Naomi Russell
Notary Public State of Florida

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

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

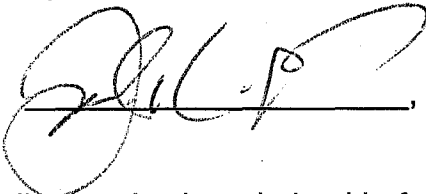
**STATE OF FLORIDA
COUNTY OF PALM BEACH**

BEFORE ME, the undersigned authority, this day personally appeared, Jackie C. Johns, 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 Esthetic and Implant Dentistry of South Florida, P.A., (the "Tenant") which entity has a leasehold interest in the real property legally described as: Unit 3, 1000 FORTY-FIFTH CONDOMINIUM, according to the Declaration of Condominium thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Official Record Book 4413, Page 598, together with an undivided interest in the common elements declared in said Declaration of Condominium to be an appurtenance to the above described unit (the "Property").
2. Affiant's address is 1000 45th Street, Unit #3, West Palm Beach, FL 33407.
3. Attached hereto, and made a part hereof, as Attachment "1" 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 Tenant 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 purchase of the Tenant's leasehold interest in 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.

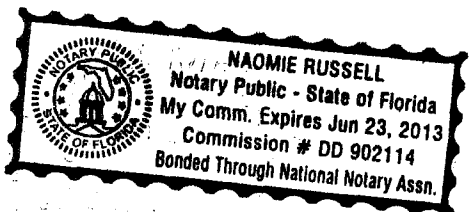
FURTHER AFFIANT SAYETH NAUGHT.

By Jackie C. Johns:

 Affiant

The foregoing instrument was sworn to, subscribed and acknowledged before me this 19 day of March, 2010, by Jackie C. Johns, as President of Esthetic and Implant Dentistry of South Florida, P.A., who is personally known to me OR who produced FLDL J580-123-53-2590 7/14/17 as identification and who did take an oath.

(NOTARY SEAL BELOW)



Notary Signature: Naomi Russell

Notary Name: Naomi Russell

Notary Public State of Florida

AFFIDAVIT OF PROFESSIONAL ASSOCIATION

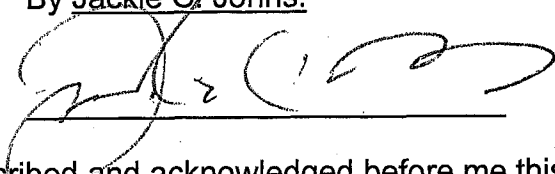
STATE OF FLORIDA
COUNTY OF PALM BEACH

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 is the President of Esthetic and Implant Dentistry of South Florida, P.A., a Professional Association organized and existing under the laws of the State of Florida (the "Company").
2. Articles of Organization of the Company have been filed, and are on-file with the Florida Department of State and such articles are incorporated herein by reference.
3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.
4. The undersigned is the President, Sole Director and Shareholder of the Company or has been authorized in his capacity as President by majority vote of the Directors and Shareholders to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.
5. The undersigned has the right and authority to enter into that certain LEASE AND LEASE BUYOUT AGREEMENT between Palm Beach County, a political subdivision of the State of Florida and the Company (the "Agreement"), 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 Agreement.
6. Upon execution, delivery of the Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.
7. The transactions contemplated herein will not violate any of the terms and conditions of the Company's bylaws, certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.
8. 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 Agreement.

FURTHER AFFIANT SAYETH NAUGHT.

By Jackie C. Johns:



The foregoing instrument was sworn to, subscribed and acknowledged before me this 19th day of July, 2010, by Jackie C. Johns, as President, Director and Shareholder of Esthetic and Implant Dentistry of South Florida, P.A., who is personally known to me OR who produced FL DL JS30-423-532590 as identification and who did take an oath.

(NOTARY SEAL BELOW)

Notary Signature: Naomie Russell
Notary Name: Naomie Russell
Notary Public State of Florida

