

Lease No: 574

5248 Red Cedar Drive, Unit 103
Fort Myers, FL 33907

**LEE COUNTY BOARD OF COUNTY COMMISSIONERS
LEASE AGREEMENT**

THIS LEASE AGREEMENT ("**Agreement**") is entered into this ____ day of _____, 2023, between **LEE COUNTY**, a political subdivision and charter county of the State of Florida, having an address of: Department of County Lands, 1500 Monroe Street, 4th Floor, Fort Myers, FL 33901 (the "**COUNTY**"), and **KELLY BROTHERS, INC.**, a Florida corporation, whose address is 15775 Pine Ridge Road, Fort Myers, FL 33908 ("**TENANT**").

Recitals:

A. **LEE COUNTY** is the owner of property located at **5248 Red Cedar Drive, Fort Myers, FL 33907** (the "**Property**"), including the office building thereon (the "**Building**").

B. **TENANT** currently occupies Unit 103 in the Building (the "**Premises**") and the **TENANT** would like to continue to occupy Unit 103, which is stipulated to be 4,425 rentable square feet.

NOW THEREFORE, the parties agree as follows:

1. **PREMISES.**

(A) Premises. Effective as of the Commencement Date (defined below) and thereafter throughout the Term, the **COUNTY** hereby leases the Premises to **TENANT**, and **TENANT** hereby leases the Premises from the **COUNTY** on the terms and conditions set forth in this Agreement. **TENANT** is currently in possession of the Premises and is leasing the same in "as is" condition.

(B) Common Areas. Throughout the Term, **TENANT** shall have the right to use the Common Areas, together with the other occupants of the Building. As used herein, "**Common Areas**" refers to the parking areas and other areas at the Property and inside the Building, if any, that the **COUNTY** makes available from time to time for the shared use of the occupants of the Building. **TENANT** shall abide by all reasonable rules and regulations of the **COUNTY** pertaining to the use of the Common Areas. **TENANT** shall not interfere with the use of the Common Areas by the **COUNTY** or other occupants of the Building.

2. **TERM.**

(A) Initial Term (thru Oct 31, 2024). The initial term (“**Term**”) of this Agreement shall commence on the Closing Date, as defined in the Agreement for Purchase and Sale of Real Estate entered into by and between Bushwood Land Development, LLC and Lee County on or about June 20, 2023 (also hereinafter referred to as the “**Commencement Date**”) and shall expire on **October 31, 2024**.

(B) 1-Year Renewal Option (thru Oct 31, 2025). Upon the expiration of the initial Term, and provided there is not then an uncured Event of Default (hereinafter defined) at the time TENANT notifies the COUNTY that TENANT is exercising the renewal option, TENANT shall have the option to extend the Term of this Agreement, for the period November 1, 2024 – **October 31, 2025** (the “**1-Year Renewal Period**”), by notifying the COUNTY thereof no later than April 30, 2024.

(C) 6-Month Renewal Option (thru April 30, 2026). Upon the expiration of the 1-Year Renewal Period, and provided there is not then an uncured Event of Default at the time TENANT notifies the COUNTY that TENANT is exercising the renewal option, TENANT shall have the option to extend the Term of this Agreement, for the period November 1, 2025 – **April 30, 2026** (the “**6-Month Renewal Period**”), by notifying the COUNTY thereof no later than April 30, 2025.

3. **RENT.**

(A) Gross Rent. Beginning on the Commencement Date and thereafter throughout the Term, TENANT shall pay the COUNTY monthly base rent in the amount set forth in the table below, plus applicable sales tax (“**Rent**”). Rent shall be payable in advance, on the first day of each month, without demand or set off, except that if the Commencement Date is not the first day of a month, the first monthly payment of Rent shall be due on the Commencement Date, and the Rent for such partial calendar month shall be prorated on a per diem basis amount of **\$292.66** plus applicable sales tax. If the Term expires or terminates on a day other than the last day of the calendar month, the monthly Rent for such partial calendar month shall likewise be prorated on a per diem basis, at the monthly Rent then in effect under this Agreement plus applicable sales tax. (For avoidance of doubt, this is a “gross lease”, meaning TENANT will not be charged CAM charges.)

Term		Monthly Base Rent (without sales tax)
Initial Term	Closing – Oct 31, 2024	\$8,779.94
1-Year Renewal Period	Nov 1, 2024 – Oct 31, 2025	\$9,043.34
6-Month Renewal Period	Nov 1, 2025 – April 30, 2026	\$9,314.64

(B) Address for Payment. TENANT shall pay Rent, payable to the “Lee COUNTY

Board of COUNTY Commissioners", at the COUNTY's address set forth in the introductory paragraph of this Agreement, or at such other address as the COUNTY may from time to time specify by giving TENANT written notice thereof at least 30 days in advance of the next Rent payment date.

(C) Past Due Rent (Section 83.06(2), Florida Statutes). If the COUNTY does not receive a Rent payment or other payment required to be made by TENANT to the COUNTY under this Agreement on the due date, TENANT shall pay interest on the past due amount at the rate of 18% per annum until paid, together with a late payment fee equal to 5% of the past due amount for processing of late fees.

4. SECURITY DEPOSIT.

The parties acknowledge that TENANT paid a security deposit of **\$5,900.00**. COUNTY shall hold the security deposit under the terms of this Agreement. In the event of a default, the COUNTY shall have the right to apply so much of the security deposit as is needed to cure TENANT's default. At the end of the Term, and within 60 days after the COUNTY's receipt of a written request for the return of the security deposit, and provided TENANT is not then in default under this Agreement, the COUNTY shall return the security deposit to TENANT (or balance thereof), together with an itemization of any deductions therefrom.

5. MAINTENANCE AND REPAIRS; ALTERATIONS.

(A) TENANT's Obligations. Throughout the Term, TENANT shall maintain the interior of the Premises in good, safe and sanitary condition and repair, including without limitation all lighting and electrical fixtures, plumbing fixtures, and the air-conditioning equipment if it exclusively serves the Premises, and including all wall, ceiling and floor coverings.

(B) COUNTY's Obligations. Throughout the Term, the COUNTY shall maintain the Building (excluding the interior of the Premises) in substantially the same condition as exists on the Commencement Date, in accordance with Lee County Facilities' normal maintenance standards; provided however that TENANT shall be responsible for paying for damage caused by TENANT, its employees, agents and contractors.

(C) Alterations. Throughout the Term, TENANT shall not paint the walls or make any other alterations to the Premises, or post any additional signs outside the Premises, without in each case the COUNTY's prior written consent. If TENANT desires to make alterations or erect additional signs, TENANT shall submit a written request to County Lands, together with professionally prepared drawings, plans and specifications if required by the COUNTY.

(D) No Liens. TENANT shall keep the Property free from liens arising out of work performed, materials furnished, or obligations incurred by or for TENANT. If any such lien

is filed, TENANT shall cause it to be released or bonded off within 30 days thereafter; and failure to do so shall constitute an Event of Default (defined below). No work performed by TENANT shall be deemed to be for the benefit of the COUNTY, and no construction lien or other lien shall be allowed against the COUNTY or Property by reason of the COUNTY's consent to such work. TENANT shall expressly state in any and all contracts entered into by TENANT or its agents that the COUNTY is not responsible for any work performed, materials furnished, or obligations incurred by TENANT.

6. UTILITIES; OTHER SERVICES.

(A) Utilities. Throughout the Term, TENANT shall pay for any and all separately metered utilities, telephone, internet and cable services furnished to the Premises. TENANT shall also pay for TENANT's janitorial service and any and all other services arranged for by TENANT. TENANT shall pay all charges directly to the providers of such services.

(B) COUNTY Services. Throughout the Term, the COUNTY shall pay for all non-separately metered utilities furnished to the Building. The COUNTY shall also pay for janitorial service for the interior Common Areas (if any) and any and all other services arranged for by the COUNTY that benefit the Property generally.

7. PERMITTED USE.

TENANT shall use the Premises as a professional office and for no other purpose. TENANT shall comply with all applicable federal, state and local laws, ordinances, rules and regulations governing TENANT's use of the Premises and Common Areas. TENANT shall not use or store any products in the Premises that are dangerous, flammable, or explosive or that might otherwise increase the danger of fire or be considered hazardous or extra hazardous for insurance purposes.

8. INSURANCE; INDEMNITY.

(A) TENANT's Insurance; Waiver of Claims and Subrogation. Throughout the Term, TENANT shall maintain: (i) property insurance on TENANT's furniture, trade fixtures and other personal property of TENANT kept at the Premises, in the amount of the full replacement cost thereof; (ii) Commercial General Liability insurance, in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, naming Lee County as an additional insured; and (iii) Workers Compensation insurance as required by Florida law; together with such other insurance as Lee County Risk Management may from time to time reasonably require. All property of TENANT shall be kept at the Premises at TENANT's sole risk, and TENANT hereby waives all claims, and on behalf of TENANT's insurers rights of subrogation, against the COUNTY arising from loss or damage to TENANT's property, no matter how caused; it being the agreement of the parties that TENANT shall at all times protect itself against such loss and damage by carrying adequate insurance. TENANT shall provide a Certificate of

Insurance to the COUNTY evidencing the required insurance upon the COUNTY's written request.

(B) County's Insurance. Throughout the Term, the COUNTY shall maintain insurance on the Building or shall self insure as determined from time to time by the Lee County Board of County Commissioners or Lee County Risk Management.

(C) Indemnity. TENANT shall defend, indemnify and hold the COUNTY harmless from and against all liability, claims, demands, actions, losses, damages, orders, judgments, costs and expenses, including, without limitation, reasonable attorney's fees and expenses (collectively, "**Claims**"), resulting from: (i) personal injury or property damage arising out of, or caused by, the negligent acts or omissions or willful misconduct of TENANT, its employees, agents or contractors while on the Property, except to the extent such Claims arise from the gross negligence or willful misconduct of the COUNTY, its employees, agents or contractors; or (ii) TENANT's breach of any covenants or provisions of this Agreement. Nothing in this Agreement shall be deemed as a waiver by the COUNTY of the protections afforded to governmental entities under Florida law.

9. CASUALTY DAMAGE.

(A) Damage to Premises. If, during the Term, the Premises are damaged by fire, hurricane or other casualty, or if damage to the Building renders the Premises unusable by TENANT for its normal business operations as determined by TENANT, TENANT shall have the right to terminate this Agreement by giving written notice thereof to the COUNTY. Upon such termination, Rent shall be payable through the date of the casualty. If TENANT does not terminate this Agreement, and provided the COUNTY does not terminate this Agreement under paragraph (B) below, Rent shall not abate and TENANT shall be responsible for repairing damage to TENANT's personal property and trade fixtures.

(B) Damage to Building. If, during the Term, the Building is damaged or destroyed by fire, hurricane or other casualty (and regardless of whether the Premises are damaged), the COUNTY shall have the right to terminate this Agreement by giving written notice thereof to TENANT. Upon such termination, Rent shall be payable through the date of the casualty. If the COUNTY does not terminate this Agreement, Rent shall not abate and the COUNTY shall undertake to repair the damage in accordance with the COUNTY's rules and procedures or as directed by the Board of County Commissioners.

10. SURRENDER; HOLDOVER; ABANDONMENT.

(A) Surrender. No later than the last day of the Term, TENANT shall remove all of TENANT's personal property and trade fixtures from the Premises, repair all damage to the Premises caused by the installation or removal thereof, and vacate and surrender the Premises to the COUNTY in good condition and repair.

(B) Holdover (Section 83.06, Florida Statutes). If TENANT fails to remove

TENANT's property and vacate and surrender the Premises by the last day of the Term, such holdover shall be deemed as creating a tenancy at sufferance. During each month or portion thereof during the holdover period, TENANT shall pay the COUNTY a monthly amount equal to 200% of the monthly Rent that was in effect under this Agreement as of the last day of the Term. In addition, TENANT shall be liable for all costs and damages suffered or incurred by the COUNTY caused by TENANT's failure to timely surrender possession.

(C) Abandonment. If TENANT vacates and abandons the Premises, the COUNTY shall have the right to recover possession of the Premises as provided by law, without liability to TENANT therefor and use the Premises as the COUNTY deems appropriate, but without releasing TENANT from its obligations under this Agreement through the remainder of the Term, including without limitation the obligation to pay Rent. Any personal property left in the Premises at the end of the Term shall be deemed abandoned, and the COUNTY may remove, discard, store or otherwise dispose of the same as the COUNTY sees fit, at TENANT's cost.

11. RIGHT TO INSPECT.

Throughout the Term, the COUNTY shall have the right, at all reasonable times and upon reasonable prior notice to TENANT, to enter the Premises for the purpose of viewing the Premises, making repairs required under this Agreement to be made by the COUNTY, and for any other reasonable purpose. In the event of an emergency, the COUNTY may enter the Premises without prior notice to TENANT but shall notify TENANT as soon thereafter as is reasonably practicable.

12. DEFAULT; REMEDIES.

(A) Event of Default by TENANT. The occurrence of each of the following events shall constitute an "Event of Default": (i) TENANT's failure to pay Rent or any other payment hereunder to the COUNTY within 10 days of the due date, if such failure to pay continues for a period of 5 days after the COUNTY notifies TENANT that such payment is past due (provided that after the third notice in any 12-month period, the COUNTY shall not be required to give any additional notices during such period); (ii) TENANT's filing for bankruptcy or admission of insolvency; or (iii) TENANT's failure to observe or perform any other covenant or provision of this Agreement if such failure continues for a period of 15 days after the COUNTY notifies TENANT of such failure. The foregoing notwithstanding, an Event of Default under clause (iii) of this paragraph (A) shall not be deemed to have occurred if, within such 15-day period, TENANT notifies the COUNTY that such failure can be cured but cannot with reasonable diligence be completed within 15 days provided TENANT commences to cure such failure within said 15-day period and thereafter diligently completes the cure.

(B) COUNTY's Default. The COUNTY shall be in default under this Agreement if the COUNTY fails to cure a breach under this Agreement within 30 days after receiving a

written notice and demand from TENANT specifying the breach. The foregoing notwithstanding, the COUNTY shall not be deemed in default if such failure can be cured but cannot with reasonable diligence be completed within 30 days provided the COUNTY commences to cure such failure within said 30-day period and thereafter diligently completes the cure in accordance with applicable County laws, regulations, policies and procedures.

(C) Remedies. Upon a default that is not cured within the applicable notice and cure periods provided for in this section, and in addition to any and all other rights and remedies available to the parties under this Agreement or at law or in equity, including without limitation the COUNTY's right to recover possession with or without terminating this Agreement and including the right to accelerate the Rent for the balance of the Term (all rights and remedies being cumulative), the non-defaulting party shall have the right to terminate this Agreement by written notice to the other party; whereupon this Agreement shall terminate effective as of the effective date specified in the termination notice. The prevailing party in any legal proceeding to enforce this Agreement shall be entitled to receive payment of all actual expenses incurred in connection therewith, including reasonable attorneys' fees and expenses, through all appeals, from the non-prevailing party as determined by the court. In no case shall either party be liable to the other for consequential or special damages of any kind whatsoever, regardless of a breach or default under this Agreement by the other party, including without limitation lost revenues, lost profits, or other unforeseen damages. The waiver by either party of any breach of this Agreement by the other party shall not be construed as a waiver of any subsequent breach of any duty or covenant by the party in breach. TENANT hereby waives trial by jury in all matters arising under this Agreement. Nothing contained in this Agreement shall be deemed a waiver by the COUNTY of any rights, immunities or other protections afforded to governmental entities under Section 768.28, Florida Statutes or other applicable laws.

13. NOTICES.

All notices given under this Agreement must be in writing and will be deemed sufficiently given if delivered by (i) personal delivery, (ii) Fed Ex, UPS or other traceable courier service, (iii) U.S. certified or registered mail, or (iv) email but only if the recipient acknowledges receipt; in each case to the parties at their respective addresses set forth below or such other address as they may specify from time to time by written notice to the other party. Notices will be deemed given on the day of delivery if delivered personally or by courier, three business days after deposit in the mail if mailed by U.S. certified or registered mail unless a different date of receipt is indicated on the return receipt, or on the date the recipient confirms receipt of the email if sent via email.

To COUNTY: Lee County, Department of County Lands
Attention: Director, Robert Clemens
1500 Monroe Street, 4th Floor
Fort Myers, FL 33901
Email: clemenrg@leegov.com

To TENANT: Kelly Brothers, Inc.
15775 Pine Ridge Road
Fort Myers, FL 33908
Email: bobd@kellybros.net

14. GENERAL PROVISIONS.

(A) Amendments. All amendments to this Agreement, including any changes to the exhibits hereto, if any, must be in writing and signed by both parties.

(B) Authority. TENANT represents that the person signing this Agreement on its behalf has the full right, power and authority to do so and to fully bind TENANT to this Agreement.

(C) Binding Effect. This Agreement shall be binding upon the parties and their respective successors and permitted assigns.

(D) Construction. The drafting of this Agreement has been a joint endeavor between the parties and shall not, solely as a matter of judicial construction, be interpreted more strictly or favorably against either party.

(E) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and no verbal agreements or understandings shall modify its terms.

(F) Governing Laws; Venue. This Agreement shall be construed in accordance with the laws of Lee County and the State of Florida. All disputes arising under this Agreement shall be resolved solely in the Circuit Court in Lee County, Florida, and the parties hereby agree that such venue is proper.

(G) No Assignment. This Agreement is personal to TENANT, and TENANT shall not assign any rights or interests under this Agreement to a third party without the COUNTY's prior written consent, which may be granted or denied in the COUNTY's sole discretion.

(H) No Brokers. The parties represent that neither party has dealt with any real estate broker or agent in connection with the execution of this Agreement.

(I) Radon Disclosure (Section 404.056(5)). Radon is a naturally occurring

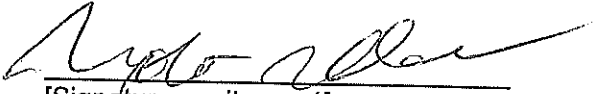
radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon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

(J) Severability. If any provision of this Agreement is determined by a court of law to be illegal or invalid, such provision shall be deemed severed from this Agreement and shall in no way affect or invalidate the remainder of this Agreement.

[*signature page follows*]

This Agreement is executed by the parties effective as of the date set forth in the introductory paragraph hereof.

TENANT:
KELLY BROTHERS, INC.



[Signature – witness 1]

ROBERT S. DEMEO
[Printed name – witness 1]

By: 

Printed name: Dane Kelly *6/13/23*

Title: President


[Signature – witness 2]

Angel Parks
[Printed name – witness 2]

Approved and accepted for and on behalf of Lee County, Florida, this ____ day of _____, 2023.

ATTEST:
KEVIN KARNES, CLERK

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

By: _____
Deputy Clerk

By: _____
Brian Hamman, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

County Attorney's Office