

Prepared by and return to:
 SANDRA RENNICK, ESQ.
 Gould Cooksey Fennell, P.A.
 979 Beachland Boulevard
 Vero Beach, FL 32963
 (772) 231-1100

— ABOVE SPACE FOR RECORDING INFORMATION —

**AGREEMENT FOR CROSS INGRESS/EGRESS EASEMENT
 AND RESTRICTIVE COVENANTS**

THIS AGREEMENT FOR CROSS INGRESS/EGRESS EASEMENT AND RESTRICTIVE COVENANTS (the "Agreement") is made this 21ST day of FEBRUARY, 2014 (the "Effective Date"), by MARY ALGENE RUTZ, Trustee of the Mary Algene Rutz Trust dated March 31, 2000 ("Rutz"), CUMBERLAND FARMS, INC., a Delaware Corporation ("Cumberland Farms" or "Cumberland"), and 27 OSLO VERO BEACH NNN, LLC, a Florida limited liability company ("27 Oslo").

RECITALS:

A. Rutz is the owner of certain real property, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Rutz Property").

B. As of the Effective Date, Rutz (a) has contracted to convey to Cumberland Farms, and Cumberland Farms has agreed to acquire, the portion of the Rutz Property more particularly described on Exhibit B attached hereto (the "Cumberland Farms Property"); and (b) has contracted to convey to 27 Oslo, and 27 Oslo has agreed to acquire, the portion of the Rutz property more particularly described on Exhibit C attached hereto (the "27 Oslo Property"), and (c) remains as the fee simple owner, for future development or sale, of the portion of the Rutz Property legally described on Exhibit D attached hereto (the "Rutz Remaining Lands").

C. As of the Effective Date, Cumberland Farms, 27 Oslo, and Rutz have jointly planned, designed, and approved (i) the driveway, drive aisles, access and curb cut improvements (the "Common Driveway Improvements") on the portions of the Cumberland Farms Property and the 27 Oslo Property as depicted on Exhibit E attached hereto (the "Common Easement Area"); and (ii) the seventy foot (70') wide cross-access, public utility, and private stormwater drainage easement area as depicted on the plat of the Rutz Property entitled *Rutz 27th Avenue SW Retail Center* as depicted on Exhibit F (the "Platted Easement Area").

D. At the time the Rutz Remaining Lands are developed, the Common Driveway Improvements shall be extended on, over, and across the driveways, drive aisles, access and curb cut improvements installed on the Rutz Remaining Lands lying within the Platted Easement Area (the "Future Driveway Improvements").

E. By this Agreement, the parties desire to establish those certain (i) mutual cross access, ingress/egress rights and obligations; (ii) mutual cross-drainage and utility rights; and (iii) the restrictive covenants regarding development and use, that are granted and more particularly set forth herein.

NOW, THEREFORE, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals**. The above Recitals, and the attached Exhibits are true and correct and are expressly incorporated by reference as if set forth in full herein.

2. **Easements Benefitting Cumberland Farms Property, 27 Oslo Property, and Rutz Remaining Lands**. Rutz hereby grants, transfers, conveys, and assigns to Cumberland for the benefit of the Cumberland Farms Property, the irrevocable, perpetual, non-exclusive easements for access and ingress/egress by, on, over, and across the Common Driveway Improvements, and the Future Driveway Improvements, as the same are constructed and operated within the Common Easement Area of the 27 Oslo Property and within the Platted Easement Area of the Rutz Remaining Lands. Rutz hereby grants, transfers, conveys, and assigns to 27 Oslo for the benefit of the 27 Oslo Property, the irrevocable, perpetual, non-exclusive easements for access and ingress/egress by, on, over, and across the Common Driveway Improvements, and the Future Driveway Improvements, as the same are constructed and operated within the Common Easement Area of the Cumberland Farms Property and within the Platted Easement Area of the Rutz Remaining Lands. Rutz hereby reserves for the benefit of the Rutz Remaining Lands the irrevocable, perpetual, non-exclusive easements for access and ingress/egress by, on, over, and across the portion of the Common Driveway Improvements as the same are constructed and operated within the Common Easement Area located within the Cumberland Farms Property and the 27 Oslo Property.

3. **Acknowledgements and Consents**.

A. By virtue of the acquisition and/or development of the Cumberland Farms Property by Cumberland, the 27 Oslo Property by 27 Oslo, and the Rutz Remaining Lands by any third party or parties respectively, Cumberland Farms, 27 Oslo, and such third party or parties shall be deemed to have acknowledged and agreed that their respective lands are subject to and burdened by the easements granted to the other parties pursuant to Section 2 above, and by the rights, restrictions and obligations set forth in Sections 4 and 5 below.

B. Rutz, Cumberland, and Oslo 27 acknowledge and agree that the Platted Easement Area consists of (i) a perpetual non-exclusive underground public utility easement within the western forty feet (40') of the Platted Easement Area for the purpose of permitting the installation and operation of public utility lines to serve the Cumberland Farms Property, the 27 Oslo Property, and/or the Rutz Remaining Lands; and (ii) a perpetual non-exclusive underground private drainage easement for the purpose of permitting the installation and operation of private stormwater drainage lines to serve the Cumberland Farms Property, the 27 Oslo Property, and/or

the Rutz Remaining Lands. Stormwater drainage for the Cumberland Farms Property and the 27 Oslo Property shall be served by a common stormwater drainage line at the location depicted on Exhibit G with repair and maintenance to be addressed in accordance with the stormwater drainage permits issued by the St. Johns River Water Management District. Stormwater drainage for the Rutz Remaining Lands shall be served by a separate stormwater drainage line to be located within the Platted Easement Area of the Rutz Remaining Lands with construction, repair, and maintenance costs to be allocated among the owners or operators of the Rutz Remaining Lands.

4. **Development and Use Restrictions.** In consideration of Cumberland acquiring the Cumberland Farms Property, and 27 Oslo acquiring the 27 Oslo Property, and for other good and valuable consideration between the parties, the sufficiency and adequacy of which is hereby acknowledged, the parties covenant and agree as follows: (i) Rutz covenants to and agrees with Cumberland and 27 Oslo that the Rutz Remaining Lands shall not be used, developed, or operated for the operation of a retail convenience store with gas pumps, or a facility that dispenses gasoline, or as a Family Dollar Store, Bill's Dollar Store, Fred's, Dollar Tree, Ninety-Nine Cents Only, Deals, Big Lots, Walgreens, CVS, Rite Aid, Wal-Mart, Wal-Mart Center, Wal-Mart Supercenter, or Wal-Mart Neighborhood Market stores; (ii) Cumberland covenants to and agrees with 27 Oslo that the Cumberland Farms Property shall not be used, developed, or operated as a Family Dollar Store, Bill's Dollar Store, Fred's, Dollar Tree, Ninety-Nine Cents Only, Deals, Big Lots, Walgreens, CVS, Rite Aid, Wal-Mart, Wal-Mart Center, Wal-Mart Supercenter, or Wal-Mart Neighborhood Market stores; and (iii) 27 Oslo covenants to and agrees with Cumberland that the 27 Oslo Property shall not be used, developed, or operated as a retail convenience store with gas pumps, or a facility that dispenses gasoline, or operated as a Family Dollar Store, Bill's Dollar Store, Fred's, Dollar Tree, Ninety-Nine Cents Only, Deals, Big Lots, Walgreens, CVS, Rite Aid, Wal-Mart, Wal-Mart Center, Wal-Mart Supercenter, or Wal-Mart Neighborhood Market stores (collectively the "**Development and Use Restrictions**").

The Development and Use Restrictions shall also include the prohibition of the following uses and activities by any Owner, including any tenant, occupant, or holder of any interest in the Cumberland Farms Property, the 27 Oslo Property, and/or the Rutz Remaining Lands:

- (a) for any unlawful purpose or in any way which would constitute a legal nuisance to an adjoining owner or occupant;
- (b) as a discotheque, dance hall or night club;
- (c) as a massage parlor;
- (d) funeral parlor;
- (e) bingo parlor;
- (f) car wash;
- (g) any use which emits a strong, unusual, offensive or obnoxious odor, fumes, dust or vapors;
- (h) any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;

- (i) any "second hand" store or liquidation outlet; however, antique stores and consignment shops shall be permitted;
- (j) any mobile home park, trailer court, labor camp, junk yard, recycling facility or stock yard;
- (k) any dumping, disposing, incineration or reduction of garbage (exclusive of garbage compactors located near the rear of any building);
- (l) any dry cleaners performing on-site cleaning services;
- (m) any automobile, truck, trailer or recreational vehicles sales, leasing, storage, display or body shop repair operation;
- (n) any living quarters, sleeping apartments or lodging rooms;
- (o) any veterinary hospital or animal raising facilities (except this provision shall not prohibit pet shops and shall not prohibit the provision of veterinary services in connection with pet shops or pet supplies business);
- (p) any establishment selling or exhibiting paraphernalia for use with unlawful drugs, and establishment selling or exhibiting materials or devices which are adjudicated to be pornographic by a court of competent jurisdiction, and any adult bookstore, adult video store or adult movie theater;
- (q) any bar or tavern; provided, however, a bar within a restaurant shall be permitted;
- (r) any pool or billiard hall, gun range or shooting gallery, or amusement or video arcade; and
- (s) any use which creates unlawful fire, unlawful explosives or other unlawful hazards.

The Development and Use Restrictions are covenants running with the Rutz Remaining Lands, the Cumberland Farms Property, and the 27 Oslo Property, respectively, and shall be binding on Rutz, Cumberland, and 27 Oslo, respectively, each as to their respective parcels of land, and on their successors, assigns and holders of any interest in, or title to such properties.

5. **Rights and Obligations.** The easements and restrictions granted in this Agreement are subject at all times to the following rights and obligations which shall be binding upon and applicable to the fee simple owners, and to the parties holding any leasehold, tenancy, or other real property interest therein (collectively, the "**Owner(s)**") of the Cumberland Farms Property, the 27 Oslo Property, and the Rutz Remaining Lands, respectively, (collectively, the "**Parcel(s)**") as follows:

(a) The access and ingress/egress easements granted in Section 2 above are intended to allow for the free passage of all forms of vehicular and pedestrian traffic by invitees, licensees, agents, customers, employees, and tenants of the owners and/or operators of business establishments within the Rutz Property. No fencing, walls, barriers, or other improvements shall be permitted or allowed within the Common Easement Area and/or the Platted Easement Area, if they create an impediment to the use and enjoyment by the Owners of the easements and rights granted herein. The foregoing notwithstanding, each Owner may construct improvements

within that portion of the Common Easement Area and/or the Platted Easement Area lying within such Owner's property, including, without limitation, parking, traffic access and circulation, utilities and stormwater improvements, provided that no impediment to the use and enjoyment of the easements and rights granted herein is thereby created.

(b) Each Owner, at its own expense, shall be responsible for the maintenance of the portions of the Common Driveway Improvements, Common Easement Area, the Platted Easement Area, and/or Future Improvements that are situated within their respective properties, which maintenance shall include but not be limited to (i) keeping their respective areas free and clear of all trash, litter, and debris at all times; (ii) the repair, replacement (including pot holes) of the paved areas; and (iii) the compliance with applicable state, county, and municipal codes.

(c) The construction of the Common Driveway Improvements within the Cumberland Farms Property shall be performed at the expense of Cumberland. The construction of the Common Driveway Improvements within the 27 Oslo Property shall be performed at the expense of 27 Oslo. At the time the Rutz Remaining Lands are developed, the construction of the Future Driveway Improvements shall be performed at the expense of Rutz, and upon completion the Future Driveway Improvements shall be included and incorporated within the Common Driveway Improvements.

(d) At the time each Owner completes the development of its Parcel, and no later than the time that a certificate of completion authorizing its opening for business is issued, the access and ingress/egress connection(s) and drive isles to and between the adjoining parcel(s) shall be simultaneously opened.

(e) The driveway aisles within each Parcel, and the common ingress/egress and access points along the common boundary lines of the Parcels shall be designed, constructed and operated as driveway aisles permitting two-way vehicular traffic.

(f) All improvements, renovations, repairs and replacements to the Common Driveway Improvements, the Common Easement Area, the Platted Easement Area, and the Future Driveway Improvements shall be undertaken in a manner to minimize interference with the conduct of business of other establishments, including the management and control of construction equipment, vehicles, and there shall be no fencing or other barriers constructed, erected, or installed which impair or impede the access and ingress/egress rights granted herein, nor shall any of the Common Driveway Improvements or the Future Driveway Improvements be altered in such a manner that would impair ingress or egress, to or from the parcels to the curb cuts and driveway access points to the public right-of-ways adjacent to the parcels.

(h) This Agreement shall be superior to any mortgage or other security/collateral interest granted by any Owner or lessee of any Parcel.

(i) No cross-parking privileges are intended to be created or granted hereby, and each Parcel shall be permitted, approved and developed to accommodate the requisite number of parking spaces (including handicapped or assisted parking spaces) mandated by the

applicable zoning and building codes for the business establishment to be constructed and operated thereon.

(j) In the event any Owner believes that another Owner is in violation or breach of this Agreement, the Owner shall provide written notice to the other Owner stating the nature of the alleged violation or breach, and providing said Owner an opportunity to cure said breach or violation, before initiating any legal action or proceeding to address or remedy the same. Additionally, if any Owner believes that a responsible Owner is in violation or breach of the responsible Owner's maintenance obligations set forth in Section 5(b) above, then said Owner, upon ten (10) business days advance written notice to the responsible Owner (after which period of time the responsible Owner has not performed, or commenced to perform, the applicable maintenance) shall have the right to perform such maintenance, and the responsible Owner shall reimburse the performing Owner for the reasonable costs and expenses incurred, said reimbursement to be made within then (10) business days of receiving a final invoice for the same.

(k) In the event that Cumberland Farms does not close on the acquisition of the Cumberland Farms Property, or takes title in an entity other than Cumberland Farms, Inc., the Owners hereby acknowledge and agree that the Cumberland Farms Property shall still be encumbered by the development and use restrictions set forth in Paragraph 4 above. The foregoing notwithstanding, in the event that Cumberland Farms does not close on the acquisition of the Cumberland Farms Property, or Cumberland Farms takes title to the Cumberland Farms Property in an entity other than Cumberland Farms, Inc. and that acquiring entity does not use, develop, lease or operate the Cumberland Farms Property as a "Cumberland Farms", then the Rutz Remaining Lands shall not be burdened by the following restriction found in Paragraph 4(i) above: "the Rutz Remaining Lands shall not be used, developed, or operated as a retail convenience store with gas pumps, or a facility that dispenses gasoline" and the 27 Oslo Property shall not be burdened by the following restriction found in Paragraph 4(iii) above: "the 27 Oslo Property shall not be used, developed, or operated as a retail convenience store with gas pumps, or a facility that dispenses gasoline". Otherwise, the covenants and restrictions set forth in Paragraph 4 above shall remain unchanged.

(l) In the event that 27 Oslo does not close on the acquisition of the 27 Oslo Property, or takes title in an entity other than 27 Oslo Vero Beach NNN, LLC, the Owners hereby acknowledge and agree that the 27 Oslo Property shall still be encumbered by the development and use restrictions set forth in Paragraph 4 above. The foregoing notwithstanding, in the event that 27 Oslo does not close on the acquisition of the 27 Oslo Property, or 27 Oslo takes title to the 27 Oslo Property in an entity other than 27 Oslo Vero Beach NNN, LLC, and that acquiring entity does not use, develop, lease or operate the 27 Oslo Property as a "Dollar General" then the Rutz Remaining Lands shall not be burdened by the following restrictions found in Paragraph 4(i) above: "The Rutz Remaining Lands shall not be used, developed, or operated as a Family Dollar Store, Bill's Dollar Store, Fred's, Dollar Tree, Ninety-Nine Cents Only, Deals, Big Lots, Walgreens, CVS, Rite Aid, Wal-Mart, Wal-Mart Center, Wal-Mart Supercenter, or Wal-Mart Neighborhood Market stores" and the Cumberland Farms Property shall not be burdened by the following restrictions found in Paragraph 4(ii) above: "The

Cumberland Farms Property shall not be used, developed, or operated as a Family Dollar Store, Bill's Dollar Store, Fred's, Dollar Tree, Ninety-Nine Cents Only, Deals, Big Lots, Walgreens, CVS, Rite Aid, Wal-Mart, Wal-Mart Center, Wal-Mart Supercenter, or Wal-Mart Neighborhood Market stores". Otherwise, the covenants and restrictions set forth in Paragraph 4 above shall remain unchanged.

6. **Miscellaneous Provisions.**

A. **Successors and Assigns.** All easements, restrictions, and covenants granted herein shall run with and be appurtenant to the lands described herein and shall run with said lands forever and be binding upon and inure to the benefit of, and be enforceable by the heirs, legal representatives, successors and assigns of the parties hereto.

B. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter hereof and may not be amended, waived or discharged except by an instrument in writing executed by the party against which the enforcement of such amendment, waiver or discharge is sought. Additionally, any amendment, waiver or discharge shall also require the written consent of any leasehold tenant of the 27 Oslo Property (eg. Dollar General Corporation), or the Cumberland Farms Property (if any), or the Rutz Remaining Lands (if any), so long as such leasehold tenant, its successors, assigns or assignees, is occupying the property in good standing under its lease.

C. **Covenants Running With the Land.** These easements and restrictions shall be covenants running with land (both as to burdens and benefits) and shall be binding upon and inure to the benefit of all parties with an interest therein and their respective successors.

D. **Counterparts.** This Agreement may be executed in counterparts.

E. **Partial Invalidity.** If any term of this Agreement shall be deemed to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

F. **Waiver.** No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein.

G. **Attorneys Fees and Costs.** In the event it shall be necessary for the parties to bring suit to interpret or enforce this Agreement, or to pursue a claim for relief or damages on the account of any breach of this Agreement, or of any warranty, covenant, condition, requirement, or obligation contained herein, the prevailing party shall be entitled to recover from the other, in addition, to its damages and any equitable relief, all reasonable costs, fees, and expenses, including expert fees, consultant fees, and attorney fees, whether in conjunction with a settlement, trial, and/or appeal of any proceeding resulting therefrom.

H. **Governing Law.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted in accordance with the laws of the State of Florida.

I. **Construction.** The parties to this Agreement and their respective advisors believe that this Agreement is the product of their efforts, that it expresses their agreement and that it should not be interpreted in favor of or against any one party.

J. **Recording.** This Agreement shall be recorded in the Public Records of Indian River County, Florida, immediately after the recordation of the deed conveying the Cumberland Farms Property to Cumberland Farms, or the 27 Oslo Property to 27 Oslo, whichever closing shall first occur.

K. **Captions.** The captions and paragraphs or letters appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of the sections or articles of this Agreement.

L. **No Public Rights.** No rights or benefits in and to the general public or any governmental authority are intended to be created or established by this Agreement.

M. **Insurance.** Each of the Owners, during their term of ownership and/or occupancy, shall maintain or cause to be maintained in full force and effect (i) comprehensive general liability insurance with a combined single limit of liability of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate for bodily injury to or personal injury or death of any person and consequential damages arising therefrom, and for property damage arising therefrom; (ii) comprehensive automobile liability insurance coverage in the single limit liability of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence; and (iii) a minimum excess or umbrella policy of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence. Each Owner shall name every other Owner as an additional insured(s) under such policy.

Such insurance shall be procured from a company licensed in the State of Florida. Such insurance shall provide that it shall not be cancelable without thirty (30) days prior, written notice to additional insureds. Upon request, each party shall provide a certificate of such insurance coverage to the other.

N. **Indemnification.** Each Owner shall indemnify, defend and hold harmless the other Owners, their affiliates, directors, officers, employees, shareholders, members, managers, agents and representatives (collectively, the "**Indemnified Owners**") from and against any and all liabilities, damages, losses, claims, causes of action, costs, liens, interest, penalties, fines and other charges and expenses (including, without limitation, reasonable attorneys' fees actually incurred and court costs), which may be imposed upon, incurred by, or asserted against any Indemnified Owner resulting from or arising out of the exercise by such Owner of its respective easements and rights created herein, except to the extent solely caused by the negligence or willful misconduct of any other Owner, or its respective employees, tenants,

contractors, agents or licensees. The indemnification provisions in this Section 6.N. shall survive any termination of this Agreement.

O. No Joint Venture or Partnership. This Agreement shall not create between the Owners any business enterprise, whether it appear to be a joint venture or partnership, or any other business venture.

IN WITNESS WHEREOF, the parties have executed this Agreement for Cross Ingress/Egress Easement and Restrictive Covenants as of the date set forth below.

Signed, sealed and delivered
in the presence of:

MARY ALGENE RUTZ, Trustee of the Mary
Algene Rutz Trust dated March 31, 2000

Dianne L. Williams
Print: Dianne L. Williams
James P. Walsh
Print: JAMES P. WALSH

By: Mary Algene Rutz
Print: MARY ALGENE RUTZ
Title: TRUSTEE

STATE OF Ohio
COUNTY OF Hamilton

The foregoing instrument was acknowledged before me this 21st day of February, 2014 by Mary Algene Rutz, Trustee of the Mary Algene Rutz Trust dated March 31, 2000. She is ☒ personally known to me or ☐ has produced Drivers License as identification.

My Commission Expires: 10-14-2017



Sandra L. Gallina
Notary Public, State of Ohio
My Commission Expires 10-14-2017

Sandra L. Gallina
Print: Sandra L. Gallina
Notary Public