MEMORANDUM

Agenda Item No. 11(A)(28)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 7, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution amending resolution No. R-512-15 regarding the sale of approximately 48.87 acres of vacant County-owned land located at the southwest corner of SW 127th Avenue and SW 272nd Street in Unincorporated Miami-Dade County to Suncap Property Group, LLC for the appraised market value of $4,446,778.00 pursuant to Section 125.045, Florida Statutes; amending certain provisions of deed, declaration of restrictions and purchase and sale contract; authorizing the Chairperson or Vice-Chairperson of this Board to execute such deed as amended, and authorizing the County Mayor to execute the declaration of restrictions as amended, to revise the purchase and sales contract in order to conform thereto, to exercise all provisions contained in the deed, declaration of restrictions, and purchase and sales contract, and to complete all acts necessary to effectuate the sale of the property

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Dennis C. Moss.

Abigail Price-Williams
County Attorney

APW/cp

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 7, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(28)

Please note any items checked.

_____	**"3-Day Rule" for committees applicable if raised**
_____	**6 weeks required between first reading and public hearing**
_____	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
_____	**Statement of fiscal impact required**
_____	**Statement of social equity required**
_____	**Ordinance creating a new board requires detailed County Mayor's report for public hearing**
✓	**No committee review**
_____	**Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**
_____	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(28)
6-7-16

RESOLUTION NO. _____

RESOLUTION AMENDING RESOLUTION NO. R-512-15 REGARDING THE SALE OF APPROXIMATELY 48.87 ACRES OF VACANT COUNTY-OWNED LAND LOCATED AT THE SOUTHWEST CORNER OF SW 127TH AVENUE AND SW 272ND STREET IN UNINCORPORATED MIAMI-DADE COUNTY TO SUNCAP PROPERTY GROUP, LLC FOR THE APPRAISED MARKET VALUE OF $4,446,778.00 PURSUANT TO SECTION 125.045, FLORIDA STATUTES; AMENDING CERTAIN PROVISIONS OF DEED, DECLARATION OF RESTRICTIONS AND PURCHASE AND SALE CONTRACT; AUTHORIZING THE CHAIRPERSON OR VICE-CHAIRPERSON OF THIS BOARD TO EXECUTE SUCH DEED AS AMENDED, AND AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE THE DECLARATION OF RESTRICTIONS AS AMENDED, TO REVISE THE PURCHASE AND SALES CONTRACT IN ORDER TO CONFORM THERETO, TO EXERCISE ALL PROVISIONS CONTAINED IN THE DEED, DECLARATION OF RESTRICTIONS, AND PURCHASE AND SALES CONTRACT, AND TO COMPLETE ALL ACTS NECESSARY TO EFFECTUATE THE SALE OF THE PROPERTY

WHEREAS, on June 2, 2015, pursuant to Resolution No. R-512-15, this Board approved the sale to SunCap Property Group, LLC ("SunCap Property") of approximately 48.87 acres of vacant County-owned land located at the southwest corner of S.W. 127th Avenue and S.W. 272nd Street (the "Property") as an economic development conveyance pursuant to Florida Statutes 125.045 for the appraised market value of $4,446,778.00; and

WHEREAS, in accordance with such Resolution, SunCap Property and the County entered into a Purchase and Sale Agreement, which also required compliance with certain covenants and restrictions set forth in an attached Deed and Declaration of Restrictions; and

WHEREAS, the Declaration of Restrictions allowed for assignment to an affiliate of SunCap Property upon consent by the County Mayor or Mayor's designee, and the Contract for Sale and Purchase was assigned by SunCap Property to SunCap Miami, LLC, a Delaware Limited Liability Company ("SunCap"); and

WHEREAS, the Deed and Declaration of Restrictions, among other conditions, required SunCap Property to expend $15,000,000.00 to construct a large industrial facility on the Property and to create and maintain certain jobs and salary levels, subject to a reverter of the Property in the event of noncompliance; and

WHEREAS, SunCap wishes to maintain the commitment to construct such facility, but has requested revisions to the job creation and reversion provisions, due to concerns expressed by its lenders, which have resulted in delay and potential inability to obtain reasonable financing; and

WHEREAS, in order to address such financing issues, SunCap has requested that the remedy of a reverter to the County should be limited to the time period prior to the completion of the improvements and certain lack of performance issues, while maintaining other remedies for noncompliance or breach at all times during the term of the Declaration of Restrictions; and

WHEREAS, in order to allow SunCap the opportunity to create the industrial facility, potentially resulting in the stimulation of economic growth and the creation of jobs, certain revisions to the Deed and Declaration of Restrictions would be required; and

WHEREAS, the creation of new jobs and the placement of the land and new building on the County's ad valorem tax roll will give rise to economic benefits to Miami-Dade County, and may also encourage relocation of other members of the industrial and distribution industries to Miami-Dade County; and

WHEREAS, the revised Deed and Declaration of Restrictions, in substantially the form attached hereto as Exhibits "1" and "2" respectively, and incorporated herein, would be recorded in the public records of Miami-Dade County in connection with this transaction, which amendments include, among other things: 1) the quantity of full time or full time equivalent jobs is reduced from 75 to 50; 2) the average annual salary is reduced from $35,000 to $30,000; 3) a monetary penalty is imposed if the jobs requirements are not met; 4) the time during which SunCap may not assign, lease, or convey the Property to non-affiliates without Board consent is reduced to the time prior to completion of the improvements; 5) the Property may revert to the County if the development is not substantially completed within five years of the date of recording of the Declaration or if the Property is improperly transferred; and 6) subordination of the reverter remedy and the assignment restriction to the rights of the financing lender, if any, provided however that all other restrictions and provisions of the Declaration must remain in full force and effect,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recitals are incorporated in this resolution and are approved.

Section 2. This Board authorizes the Chairperson or Vice-Chairperson of the Board to execute the County Deed in substantially the form attached hereto as Exhibit "1." This Board authorizes the County Mayor or Mayor's designee to execute the Declaration of Restrictions in substantially the form attached hereto as Exhibit "2," to exercise any rights conferred therein, and to take all actions necessary to effectuate the conveyance.

Section 3. This Board hereby authorizes the County Mayor or the Mayor's designee to revise the Contract for Sale and Purchase between the County and SunCap Property as necessary, in order to conform it to the terms approved herein, and to exercise any and all other rights conferred in the revised Contract for Sale and Purchase, and to complete all acts necessary to effectuate the sale and the conveyance of the Property.

Section 4. Pursuant to Resolution No. R-974-09, when the Property is conveyed, this Board: (a) directs the Mayor or designee to record the instrument of conveyance and Declaration of Restrictions in the Public Records of Miami-Dade County and to provide a recorded copy of the instrument to the Clerk of the Board within 30 days of execution of said instrument; and (b) directs the Clerk of the Board to attach and permanently store a recorded copy of the instrument together with this resolution.

Section 5. This Board directs the County Mayor or Mayor's designee to appoint staff to monitor compliance with the terms of this conveyance, and authorizes the County Mayor or Mayor's designee to review and approve of any reasonable and customary terms and documentation of any financing lender which are not otherwise inconsistent with this authorizing resolution, as well as to issue an estoppel letter within thirty days of such request by SunCap or its assigns, stating that the County is unaware of any defaults under the Declaration or if applicable, specifying any known defects.

Section 6. To the extent that any of the terms and provisions of Resolution No. R-512-15 conflict with this resolution, such terms and provisions are amended and superceded. All other terms and provisions of Resolution No. R-512-15 remain in full force and effect.

The Prime Sponsor of the foregoing resolution is Commissioner Dennis C. Moss. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman
Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of June, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman

EXHIBIT 1

Instrument prepared by and returned to:
Robert Warren, Real Estate Advisor
Miami-Dade County
111 N.W. 1 Street, 12th Floor
Miami, Florida 33128-1907

Folio No. : **30-6935-000-0052**

--------{SPACE ABOVE THIS LINE RESERVED FOR RECORDING DATA} ----------

COUNTY DEED

THIS COUNTY DEED, made this day of , 2016, by Miami-Dade County, Florida, a political subdivision of the State of Florida, party of the first part ("County"), whose address is: Stephen P. Clark Center, 111 N.W. 1st Street, Suite 2460, Miami, Florida 33128, and the SUNCAP MIAMI, LLC, a Delaware Limited Liability Company, party of the second part ("Grantee"), whose address is: 6101 Carnegie Boulevard, Suite 180, Charlotte, North Carolina 28209.

WITNESSETH:

That the said party of the first part, for and in consideration of the sum of Ten ($10.00) Dollars, to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged has granted, bargained and sold, except without the right to convey or assign, to the party of the second part, its successors and assigns forever, the following described lands lying and being in Miami-Dade County, Florida, ("Property"):

LEGAL DESCRIPTION

A portion of Section 35, Township 56 South, Range 39 East, Miami-Dade County, Florida, being more particularly described as follows:

Commencing at the East 1/4 corner of Section 35, Township 56 South, Range 39 East; thence run S89°11'32"W, along the north line of the SE 1/4 of said Section 35, 50.00 feet to the West right-of-way line of SW 127th Ave per Deed Book 2301, Page 306, and Deed Book 2302, Page 234, according to the Public Records of Miami-Dade County, Florida and the point of beginning; thence departing said North line, run S00°45'41" E along said West right-of-way line, 1344.62 feet to the South line of the North 1/2 of the SE 1/4 of Section 35; thence departing said West right-of-way line, run S89°14'03"W along said south line, 1632.06 feet to the East line of the West 3/4 of the NW 1/4 of the SE 1/4 of Section 35; thence departing said South line run N00°48'42"W along said East line, 1343.43' to the North line of the SE 1/4 of Section 35, also being the South right-of-way line of SW 272nd Street per the Plat of "Air Base ~~School~~ Schools Subdivision" as recorded in Plat Book 87, Page 91, and per the Plat of "H.U.D. Florida 5-72", as recorded in Plat Book 114, Page 14, according to the Plat thereof, as recorded in the Public Records of Miami-Dade County, Florida; thence run N89°11'32"E along said North line and South right-of-way line, 1633.24' to the point of beginning.

This grant conveys only the interest of the County and its Board of County Commissioners in the Property herein described and shall not be deemed to warrant the title or to represent any statement of facts concerning the same. This grant is made for the public purpose of constructing and maintaining an

industrial facility on the Property in furtherance of economic development for the benefit of all Miami-Dade County residents as defined in Florida Statute, Section 125.045.

This grant is subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances, whether or not of record.

This grant is subject to the reservations, conditions, covenants, requirements and rights of reverter set forth in the Indenture entered between the United States of America and the County recorded in the public records of Miami-Dade County at Official Records Book 22889, Pages 2565-2574.

This grant is also subject to that Declaration of Restrictions of even date herewith by Grantee in favor of County, which shall be recorded immediately after this Deed.

IN WITNESS WHEREOF Miami-Dade County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said Board, the day and year aforesaid.

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____

Approved for legal sufficiency: _____

The foregoing was authorized by Resolution No.: _____ approved by the Board of County Commissioners of Miami-Dade County, Florida, on the ____day of ___, 2016.

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

A portion of Section 35, Township 56 South, Range 39 East, Miami-Dade County, Florida, being more particularly described as follows:

Commencing at the East 1/4 corner of Section 35, Township 56 South, Range 39 East; thence run S89°11'32"W, along the north line of the SE 1/4 of said Section 35, 50.00 feet to the West right-of-way line of SW 127th Ave per Deed Book 2301, Page 306, and Deed Book 2302, Page 234, according to the Public Records of Miami-Dade County, Florida and the point of beginning; thence departing said North line, run S00°45'41" E along said West right-of-way line, 1344.62 feet to the South line of the North 1/2 of the SE 1/4 of Section 35; thence departing said West right-of-way line, run S89°14'03"W along said south line, 1632.06 feet to the East line of the West 3/4 of the NW 1/4 of the SE 1/4 of Section 35; thence departing said South line run N00°48'42"W along said East line, 1343.43' to the North line of the SE 1/4 of Section 35, also being the South right-of-way line of SW 272nd Street per the Plat of "Air Base Schools Subdivision" as recorded in Plat Book 87, Page 91, and per the Plat of "H.U.D. Florida 5-72", as recorded in Plat Book 114, Page 14, according to the Plat thereof, as recorded in the Public Records of Miami-Dade County, Florida; thence run N89°11'32"E along said North line and South right-of-way line, 1633.24' to the point of beginning.

EXHIBIT 2

This instrument was prepared by:
Robert Warren, Real Estate Advisor
Regulatory and Economic Resources Department
Miami-Dade County
111 N.W. 1st Street, 12th Floor
Miami, Florida 33128

Folio No.: **30-6935-000-0052**
(Space reserved for Clerk)

DECLARATION OF RESTRICTIONS

WHEREAS, Miami-Dade County (the **"County"**) has approved the conveyance to SunCap Miami, LLC (**"SunCap"** or **"Grantee"**) of real property located in Unincorporated Miami-Dade County, Florida, subject to the execution of this Declaration of Restrictions (**"Declaration"**), legally described as follows:

Folio No: Folio 30-6935-000-0052 (the **"Property"**) as further described in Exhibit **"A"**; and

WHEREAS, SunCap hereby acknowledges and agrees that this Declaration was an inducement and part of the consideration for the County to convey the Property to SunCap.

NOW THEREFORE, in order to assure the County that the representations made by SunCap will always be abided by, SunCap, for sufficient consideration, makes the following Declaration covering and running with the Property.

SunCap hereby agrees and stipulates as follows:

Requirements related to the Property

1. During the fifteen (15) year period beginning on the date of recording of this Declaration (the **"Term"**), the Property shall solely be used for the construction and operation of an industrial/distribution building with associated office space and ancillary uses of a minimum total of 150,000 square feet (the **"Improvements"**).

2. All available building and development permits needed for construction of the Improvements shall be obtained within 18 months of the date of the recordation of this Declaration in the official public records of Miami-Dade County, and construction of the Improvements shall thereafter be diligently pursued until completion (the **"Commencement Requirement"**).

3. A minimum of $15,000,000 shall be expended to construct the Improvements. The Improvements shall be substantially completed, as evidenced by a certificate of completion, a certificate of occupancy or its equivalent (a **"Completion Certificate"**), within 36 months of the date of the recordation of this Declaration in the official public records of Miami-Dade County (the **"Completion Requirement"**).

4. An average of at least 50 full-time or full time equivalent jobs with an average annual salary of $30,000.00 or more per job shall be created and maintained with respect to the Property and Improvements, to be tested every five years as provided in the Section titled "Jobs Penalty Assessment" on page 5 below. The requirements of this section shall run for the Term (the "**Job Requirement**").

Such requirements shall collectively be referred to as **"Declaration Requirements."**

Covenants.

1. Grantee is warned that the Property may contain current and former improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground that may contain Asbestos-Containing Materials (**"ACM"**). Grantee covenants that in its use and occupancy of the Property, it will comply with all applicable federal, state, and local laws relating to asbestos. Grantee shall use due care during property development activities that may uncover pipelines or other buried ACM. Grantee shall notify the County promptly of any potentially friable ACM that constitutes a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sections 9601 et seq.). County assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property arising after the Deed and conveyance to Grantee, whether the Grantee has properly warned, or failed to properly warn, the persons injured. This provision survives the termination of this Declaration.

2. Grantee shall, at its sole cost and expense, conduct surveys to determine the presence of the eastern indigo snake (which has the potential to inhabit the Property), prior to undertaking any construction on the Property. The Department of Interior, Fish and Wildlife Service may, for good cause, and with the concurrence of the General Services Administration, modify or cancel this restriction upon written application of Grantee.

3. Grantee shall not discriminate upon the basis of race, color, religion, national origin, sex, age, or handicap in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. Grantee shall comply with all applicable provisions of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act of 1975 in the use, occupancy, sale or lease of the Property.

4. Grantee shall be solely and exclusively responsible for the payment of all costs and expenses necessary to comply with the terms of this Declaration during the Term.

The provisions of subsection 1 above (regarding ACM), subsection 2 above to the extent not previously satisfied by SunCap, subsection 3 regarding discrimination, and subsection 4 regarding costs and expenses incurred during the Term, shall survive the termination of this Declaration.

Enforcement. The County is the beneficiary of these covenants and restrictions and as such may enforce these covenants and restrictions by an action in law or equity, and save and except for any exclusive rights of the United States of America as set forth in the Indenture recorded in the official records of Miami-Dade County at Official Records Book 22889, Page 2565-2574, including without limitation a decree of specific performance or mandatory or prohibitory injunction, against SunCap or any person or entity violating or attempting to violate the terms of this Declaration. This Declaration shall be governed by and construed under the laws of the State of Florida. Venue for any action arising out of this Declaration shall be Miami-Dade County.

County Inspection. It is hereby agreed that Miami-Dade County, or its duly authorized agents, shall have the right upon reasonable notice to inspect the Property, or SunCap's financial and accounting records, maintenance records, or other corporate documents related to the construction or maintenance of the Improvements to determine whether the requirements herein are being fully complied with, including but not limited to the expenditure of funds and the creation and maintenance of jobs.

Covenant Running with the Land. This Declaration shall constitute a covenant running with the land on the Property, and shall be recorded in the public records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon SunCap and its subsidiaries, successors and assigns for fifteen years from the date of recording of this Declaration, unless this Declaration is modified, amended or released by mutual agreement of the County and then owner and the County's approval of any such amendment, modification or release shall be in its sole and absolute discretion and shall be evidenced by resolution of Miami-Dade County. SunCap, its subsidiaries, successors and assigns, agree that acceptance of this Declaration is legally binding upon them, and does not in any way obligate or provide a limitation on the County. The fifteen year limitation set forth in this paragraph shall not apply to any term or provision of this Declaration that by its terms expressly survives the termination or expiration of this Declaration, as specified in this Declaration.

Assignment, Lease or Subsequent Conveyance. Prior to issuance of a Completion Certificate, SunCap shall not assign, lease, or convey the Property, to any person or entity other than FedEx Ground Package System, Inc. or an affiliate of FedEx Ground Package System, Inc. without the prior written consent of the County, as evidenced by a resolution of the Board of County Commissioners of Miami-Dade County in its sole and absolute discretion; provided however that SunCap may assign or convey the Property to a subsidiary and/or affiliate of SunCap with the prior written consent of the County Mayor or Mayor's designee. Notwithstanding anything to

the contrary herein, the foregoing restriction on assignment, lease or conveyance shall not apply to (a) an assignment, conveyance or other transfer in connection with any loan encumbering the Property, including without limitation a collateral assignment, deed of trust, mortgage, other security instrument, foreclosure, deed in lieu of foreclosure (collectively, the "Mortgage Documents"), or (b) sale, lease or other conveyance by any entity acquiring the Property pursuant to a foreclosure sale or deed in lieu of foreclosure (the "Permitted Transfer Rights") (collectively (a) and (b) above are referenced herein as the **"Financing Rights"**). The restrictions in this paragraph are referenced herein as the **"Transfer Restriction"**.

Supplemental Remedies. In the event that the Transfer Restriction is not complied with, the County may provide thirty (30) days written notice to SunCap or its successor or assignee to provide SunCap or its successor or assignee the opportunity to cure the breach of the Transfer Restriction (**"Grace Period"**). If after expiration of the thirty (30) day Grace Period, SunCap or its successor or assignee has not remedied the breach of the Transfer Restriction, then at the option of the County and upon ten (10) days' written notice, the Property shall then immediately revert to the County, along with any and all improvements thereon, without cost or expense to the County, but subject to the Financing Rights (the **"Transfer Reversion Right"**). This right shall be in addition to any other remedy that the County may have herein and/or at law or in equity. The Transfer Reversion Right and Transfer Restriction shall terminate and become null and void upon issuance of a Completion Certificate.

As an additional remedy, if the Completion Requirement (as defined above) is not satisfied, and the Improvements are not substantially completed within 60 months after the date of recording of this Declaration (i.e. 24 months after the deadline for satisfaction of the Completion Requirement), the County may provide ninety (90) days written notice to SunCap or its successor or assignee to provide SunCap or its successor or assignee the opportunity to substantially complete the Improvements (**"Additional Completion Period"**). If after expiration of the Additional Completion Period, SunCap or its successor or assignee has not substantially completed the Improvements, then at the option of the County and upon ten (10) days' written notice, the Property shall then immediately revert to the County, along with any and all improvements thereon, without cost or expense to the County, but subject to the Financing Rights (the **"Improvement Reversion Right"**). For purposes of this paragraph "**substantially completed**" shall mean that the following items are substantially completed, excluding punchlist items:

> Improvements shall be dried-in including completion of full building structure, roofing, wall panels and insulation; secured including functioning lockable doors; electricity in place with power energized at the main panel; and functioning light fixtures and sprinkler system in place.

The Improvement Reversion Right, and the Commencement Requirement shall terminate and become null and void upon issuance of a certificate of substantial completion (under the definition of "substantially completed" set forth above) by the architect engaged by SunCap or its successor assignee with respect to construction of the Improvements, after written approval by the Mayor or the Mayor's designee.

In the event of breach of any of the other terms or conditions herein, the County shall provide written notice to Grantee or its successor or assignee to provide Grantee or successor or assignee the Grace Period to cure the default. If after expiration of the thirty (30) day Grace Period, Grantee or its successor or assignee has not remedied the default, then at the option of the County and upon ten (10) days' written notice, the County may pursue any remedy that the County may have at law or in equity, provided that (i) no reversion right shall apply, and (ii) in the event of breach of the Job Requirement, County's remedy shall be to recover the Job Penalty, as defined below.

Jobs Penalty Assessment. County shall be entitled to receive a Jobs Penalty Assessment ("**JPA**") as follows. The number of full-time or full time equivalent jobs with an average annual salary per job of $30,000 or more maintained with respect to the Property and Improvements shall be calculated and recorded by Grantee or its successor or assign as of each anniversary of the date of recording of this Declaration (each an "**Anniversary Date**"). On the fifth (5th), tenth (10th) and fifteenth (15th) Anniversary Dates, Grantee or its successor or assign shall calculate the average number of full-time or full time equivalent jobs with an average annual salary per job of $30,000 or more as of such Anniversary Date and the prior four Anniversary Dates, provided that such calculation for the fifth (5th) Anniversary Date shall be made based solely on the averages for the third (3rd), fourth (4th) and fifth (5th) Anniversary Dates. The average number of full-time or full time equivalent jobs with an average annual salary per job of $30,000 or more for each of the fifth (5th), tenth (10th) and fifteenth (15th) Anniversary Dates as calculated above (the "**5-Year Average Jobs Number**"), shall be certified by an officer of the employer occupying the Improvements and delivered to Grantee or its successor or assign, which shall deliver it to County.

In calculating the 5-Year Average Jobs Number, a job with an average annual salary of less than $30,000 may be averaged with a job with an average annual salary of more than $30,000 to satisfy the Job Requirement. For example, if on the fifth (5th) Anniversary Date the JPA reflects 25 jobs with an average annual salary of $25,000 and 25 jobs with an average annual salary of $35,000, then the 5-Year Average Job Number will be 50, and the requirement of 50 full-time or full time equivalent jobs with an average annual salary of $30,000.00 or more per job will be satisfied for such Anniversary Date. As an additional example, if on the fifth (5th) Anniversary Date the JPA reflects 50 jobs with an average annual salary of $27,500, then the 5-Year Average Job Number will be 45.8 resulting in a job shortage of 5 jobs, calculated as follows: (i) multiply the required 50 jobs, times the actual average annual salary of $27,500 per job = $1,375,000; (ii) divide the result by the average annual salary of $30,000 = 45.8 as the 5-Year Average Job Number, which is rounded to a job shortage of 5. Under this second example the requirement of 50 full-time or full time equivalent jobs with an average annual salary of $30,000 or more per job will not be satisfied for such Anniversary Date, and a Job Penalty will be payable as provided below.

If the 5-Year Average Jobs Number on the fifth (5th), tenth (10th) or fifteenth (15th) Anniversary Date is less than 50, the Grantee, or its successor or assign, shall pay to the County a penalty (the "**Job Penalty**") equal to (i) $3,746.00 multiplied by the Job Shortage Number, as defined below, if the deficiency occurs on the fifth (5th) Anniversary Date, (ii) $3,937.27 multiplied by the Job

Shortage Number if the deficiency on the tenth (10th) Anniversary Date, and (iii) $4,138.11 multiplied by the Job Shortage Number if the deficiency occurs on the fifteenth (15th) Anniversary Date. The JPA shall be submitted within sixty (60) days after the fifth (5th), tenth (10th) and fifteenth (15th) Anniversary Dates on a form to be prepared by SunCap and agreed to by County, and any Job Penalty payable hereunder shall be paid within thirty (30) days after the applicable JPA is submitted.

The "**Job Shortage Number**" means (i) 50, minus, (ii) the applicable 5-Year Average Jobs Number. For example, if the 5-Year Average Jobs Number on the fifth (5th) Anniversary Date is 45, as under the second example above, the Job Shortage Number will be (i) 50, minus (ii) 45. In this example, the Job Penalty would be $3,746.00, multiplied by 5, or $18,730.00.

The County may enforce payment of any Job Penalty due under this Agreement by the filing of a special assessment lien by the County against the Property that shall remain a lien equal in rank and dignity to a lien of County ad valorem taxes and superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the Property, until the lien is fully paid, discharged, released, or barred by law.

Upon payment of all Job Penalty due to the County, this Declaration shall terminate as of the fifteenth (15th) Anniversary Date, and shall be cancelled of record upon request by Grantor or its successor or assign, save and except for any surviving provisions pursuant to the express terms of this Declaration. No Job Penalty shall be due or payable for any period after the 15th Anniversary Date.

Sovereign Rights. The County retains all of its sovereign prerogatives and rights as a county under State law with respect to the planning, design, construction, development and operation of the Property. It is expressly understood that notwithstanding any provisions of this Declaration and the County's status thereunder:

(a) The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature of general applicability which is applicable to the planning, design, construction and development of the Improvements, the Property, or the operation thereof, or be liable for the same, including any approvals needed under zoning hearings;

(b) The County shall not, by virtue of this Declaration, be obligated to grant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature of general applicability which is applicable to the planning, design, construction, development and/or operation of the Property and the Improvements; and

(c) Notwithstanding and prevailing over any contrary provision in this Declaration, nothing contained in this Declaration shall bind the Board of County Commissioners, the County's Planning and Zoning Division, or any other County, Federal or State department or authority, committee or agency to grant or leave in effect any zoning

changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power.

Force Majeure. Notwithstanding anything to the contrary herein, Grantee shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the terms and conditions of this Declaration when prevented from so doing by cause or causes beyond Grantee's control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, fire or other casualty, moratoriums, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of Grantee and/or its tenant. Grantee shall only be entitled an extension of time equal to the exact same period of the *force majeure* delay to complete its duty to perform under the terms and conditions of this Declaration.

Indemnification. Grantee or its successors or assigns shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from Grantor's conveyance of the Property to Grantee, or the performance of any act under this Declaration or compliance with the terms of this Declaration by the Grantee or its successors or assigns or their employees, agents, partners, principals or subcontractors. Grantee or its successors or assigns shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Grantee or its successors or assigns expressly understands and agrees that any insurance protection provided by Grantee or its successors or assigns shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. This provision survives the termination of this Declaration.

Community Small Business Enterprise ("CSBE"). SunCap hereby acknowledges and agrees that in accordance with the County's rules and regulations, all privately funded construction with a total value over $200,000.00 must comply with Sections 10-33.02 and 2-10.4.01 of the County Code of Miami Dade County (**"Code"**), which governs, respectively, the Seller's Community Small Business Enterprise (**"CSBE"**) program, and the Community Business Enterprise (**"CBE"**) Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services. As a result, SunCap shall timely submit, or cause to be submitted, any design and construction packages, to the Small Business Development Division of the Internal Services Department prior to advertisement, for review and determination of appropriate small business program measures, and the application of same. SunCap further agrees that all design and construction packages must be advertised and awarded with the applicable small business measures in accordance with the requirements of the above mentioned sections of the Code.

Election of Remedies. All rights, remedies, and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election

of remedies, nor shall it preclude the party exercising the same from exercising, at will, such other additional rights, remedies, or privileges, except as expressly provided herein.

Severability. Invalidation of any one of these covenants, by judgment of a court, shall not affect any of the other provisions which shall remain in full force and effect.

Recording. This Declaration shall be recorded by the County in the public records of Miami-Dade County, Florida at the cost of SunCap, on the date the Property is conveyed to SunCap, immediately following the conveyance of the Property to SunCap and the recordation of the County Deed of conveyance. This Declaration shall become effective immediately upon recordation.

Acceptance of Declaration. SunCap acknowledges that acceptance of this Declaration does not obligate the County in any manner, and does not entitle SunCap to favorable approval of any application, zoning or otherwise, and that the County retains its full power and authority to any application, in whole or in part.

Incorporation of Recitals. SunCap hereby agrees that the recitals in this Declaration are hereby true and correct, and are incorporated into this Declaration.

Subordination. Notwithstanding anything to the contrary herein, the Transfer Reversion Right and the Improvement Reversion Right shall each be subject and subordinate to all Mortgage Documents and to the Permitted Transfer Rights, it being acknowledged and understood that the rights given to the holder of the Mortgage Documents and the related Financing Rights shall at all times be superior to the Transfer Reversion Right or Improvement Reversion Right in the event that one or both are triggered under this Declaration. Notwithstanding the subordination of these two rights, all other terms and provisions in this Declaration, all of which run with the land, shall remain in full force and effect, and are not subordinated to the Mortgage Documents or Permitted Transfer Rights. The County's exercise of the Transfer Reversion Right and the Improvement Reversion Right are not the exercise of regulatory police powers.

IN WITNESS WHEREOF, the representatives of SunCap have caused this Declaration to be executed by their respective and duly authorized representative on this 10th day of May, 2016, and they intend to be legally bound hereby to all of the terms and conditions of this Declaration.

Witness/Attest:

Witness/Attest:

SUNCAP MIAMI, LLC, a Delaware limited liability company

By: SC Miami Investment, LLC, a Delaware limited liability company, Manager

By: _____
J. Flint McNaughton
Title: Manager

-Signature Page-

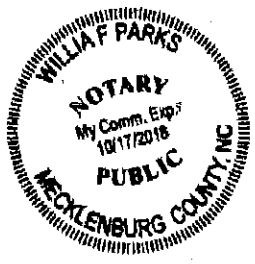
STATE OF North Carolina

SS:

COUNTY OF Mecklenburg

The foregoing instrument was acknowledged before me this 10th day of May, 2016, by J. Flint McNaughton, of SC Miami Investment, LLC, a Delaware limited liability company, whose title is Manager and s/he has produced NC Drivers License as identification.

(SEAL)



Willia F Parks
Willia F Parks

Notary Public-State of North Carolina

Commission Number: Expiration Date October 17, 2018

-Signature Page-

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of
Florida by its Board of County
Commissioners

By:_____

Name:_____

Title:_____

Date: _____

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____

Name: _____

Title: Assistant County Attorney

-Signature Page-

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

A portion of Section 35, Township 56 South, Range 39 East, Miami-Dade County, Florida, being more particularly described as follows:

Commencing at the East 1/4 corner of Section 35, Township 56 South, Range 39 East; thence run S89°11'32"W, along the north line of the SE 1/4 of said Section 35, 50.00 feet to the West right-of-way line of SW 127th Ave per Deed Book 2301, Page 306, and Deed Book 2302, Page 234, according to the Public Records of Miami-Dade County, Florida and the point of beginning; thence departing said North line, run S00°45'41" E along said West right-of-way line, 1344.62 feet to the South line of the North 1/2 of the SE 1/4 of Section 35; thence departing said West right-of-way line, run S89°14'03"W along said south line, 1632.06 feet to the East line of the West 3/4 of the NW 1/4 of the SE 1/4 of Section 35; thence departing said South line run N00°48'42"W along said East line, 1343.43' to the North line of the SE 1/4 of Section 35, also being the South right-of-way line of SW 272nd Street per the Plat of "Air Base Schools Subdivision" as recorded in Plat Book 87, Page 91, and per the Plat of "H.U.D. Florida 5-72", as recorded in Plat Book 114, Page 14, according to the Plat thereof, as recorded in the Public Records of Miami-Dade County, Florida; thence run N89°11'32"E along said North line and South right-of-way line, 1633.24' to the point of beginning.