MEMORANDUM

Agenda Item No. 11(A)(19)

TO:	Honorable Chairman Anthony Rodriguez and Members, Board of County Commissioners	**DATE:**	March 18, 2025
FROM:	Geri Bonzon-Keenan County Attorney	**SUBJECT:**	Resolution approving amendment to contract for sale and purchase and Declaration of Restrictions with respect to conveyance of approximately 17.32 acres of vacant County-owned land identified as folio numbers 30-6005-060-0060 and 30-6006-029-0010 located at SW 190th Street and SW 108th Avenue, Miami-Dade County to SG Cutler Bay LLC, a Florida limited liability company, for construction and maintenance of a Costco wholesale facility approved pursuant to Resolution No. R-413-24; providing for, among other amendments, a revised timeline to align with lease between SG Cutler Bay LLC and Costco; authorizing and directing the County Mayor to: (1) execute amendment and, at closing, revised declaration of restrictions and to exercise all provisions contained therein and take all actions to effectuate same; (2) execute estoppel letter; and (3) negotiate terms of a development agreement with Swerdlow Group, LLC, for development of 400 units of workforce housing on the WASD properties located at 11800 SW 208th Street and 20900 SW 117th Avenue and to present such agreement and any recommendation from the County Mayor with respect thereto to this Board, subject to certain conditions, or to present a report to this Board

Resolution No. R-309-25

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Vice Chairman Kionne L. McGhee.

Geri Bonzon-Keenan
County Attorney

GBK/uw

MEMORANDUM
(Revised)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

DATE: March 18, 2025

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 11(A)(19)

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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, majority plus one ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3) (h) or (4)(c) ____, CDMP 9 vote requirement per 2-116.1(4)(c) (2) ____) 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)(19)
3-18-25

RESOLUTION NO. R-309-25

RESOLUTION APPROVING AMENDMENT TO CONTRACT FOR SALE AND PURCHASE AND DECLARATION OF RESTRICTIONS WITH RESPECT TO CONVEYANCE OF APPROXIMATELY 17.32 ACRES OF VACANT COUNTY-OWNED LAND IDENTIFIED AS FOLIO NUMBERS 30-6005-060-0060 AND 30-6006-029-0010 LOCATED AT SW 190TH STREET AND SW 108TH AVENUE, MIAMI-DADE COUNTY TO SG CUTLER BAY LLC, A FLORIDA LIMITED LIABILITY COMPANY, FOR CONSTRUCTION AND MAINTENANCE OF A COSTCO WHOLESALE FACILITY APPROVED PURSUANT TO RESOLUTION NO. R-413-24; PROVIDING FOR, AMONG OTHER AMENDMENTS, A REVISED TIMELINE TO ALIGN WITH LEASE BETWEEN SG CUTLER BAY LLC AND COSTCO; AUTHORIZING AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO: (1) EXECUTE AMENDMENT AND, AT CLOSING, REVISED DECLARATION OF RESTRICTIONS AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN AND TAKE ALL ACTIONS TO EFFECTUATE SAME; (2) EXECUTE ESTOPPEL LETTER; AND (3) NEGOTIATE TERMS OF A DEVELOPMENT AGREEMENT WITH SWERDLOW GROUP, LLC, FOR DEVELOPMENT OF 400 UNITS OF WORKFORCE HOUSING ON THE WASD PROPERTIES LOCATED AT 11800 SW 208TH STREET AND 20900 SW 117TH AVENUE AND TO PRESENT SUCH AGREEMENT AND ANY RECOMMENDATION FROM THE COUNTY MAYOR WITH RESPECT THERETO TO THIS BOARD, SUBJECT TO CERTAIN CONDITIONS, OR TO PRESENT A REPORT TO THIS BOARD

WHEREAS, pursuant to Resolution No. R-413-24, the County entered into a Contract for Sale and Purchase ("Contract") with SG Cutler Bay, LLC ("Developer"), to develop a Costco wholesale facility to promote economic development, attract business, and create jobs for County residents on two vacant parcels of land totaling approximately 17.32 acres, located at SW 190th Street and SW 108th Avenue, identified by folio numbers 30-6005-060-0060 and 30-6006-029-0010 (collectively the "Property"); and

WHEREAS, under the Contract, and in accordance with the terms of the Declaration of Restrictions ("Declaration"), the Developer is required to make certain economic investments in the Property, including but not limited to: (i) construction and maintenance of a Costco facility of no less than 151,000 square feet; (ii) construction of infrastructure including but not limited to connection to the County's sanitary sewer system; (iii) the expenditure of a minimum investment of $39,000,000.00 in connection with the construction of the Costco and supporting facilities; and (iv) the creation and maintenance of at least 210 jobs within five years of the conveyance to the Developer, with an average annual salary of no less than the greater of $35,075.00 or the living wage then in effect; and

WHEREAS, the Developer has been diligently spending the months since the execution of the Contract, effective as of June 27, 2024, conducting its due diligence on the Property and negotiating a long-term ground lease with Costco Wholesale Corporation ("Costco"), a Washington corporation (the "Costco Lease"), to allow for the development of a Costco facility on the Property; and

WHEREAS, although the terms of the Costco Lease have been finalized between the Developer and Costco, the effectiveness of the lease is conditioned upon the approval by this Board of certain amendments to the existing Contract and Declaration to align with the timelines and provisions of the Costco Lease, including but not limited to Costco's due diligence and approval periods; and

WHEREAS, the Developer has requested an adjustment to the closing date to align with the Costco Lease, to take place the earlier of: (i) 25 days from the date Costco completes its due diligence and secures all necessary approvals, or (ii) April 1, 2027; and

WHEREAS, the amendments to the Contract and revised Declaration, attached hereto and incorporated herein as Exhibit "A" ("Amendment to Contract "), include: (i) extension of the timeline for Closing in the Contract from March 24, 2025 to the earlier of 25 days from the date Costco completes its due diligence and secures all necessary approvals, or April 1, 2027, which would also extend the timeframes set forth in the Declaration, including completion of construction and job creation, measured from the recordation of the Declaration; (ii) payment by the Developer to the County of an additional non-refundable deposit of $200,000.00 to be added to the original deposit, for a total non-refundable deposit of $500,000.00; (iii) permission for Costco to enter the Property to conduct due diligence upon the same terms and conditions allowed to the Developer under the Contract, including confirmation of insurance requirements set forth in the Contract prior to entry; and (iv) an additional requirement to provide notice to Costco when notice is provided to the Developer; and

WHEREAS, the Developer has also requested that the County execute an estoppel letter to provide certain assurances to Costco about the status of the Contract as of the date of the estoppel letter; and

WHEREAS, this Board desires to facilitate the effectiveness of the Costco Lease and to promote the intended use and economic development upon the Property, which will be accomplished through approval of the requested extension, contingent on the additional deposit; and

WHEREAS, as an additional benefit to the community, the Developer, through its affiliate Swerdlow Group, LLC (“Swerdlow”), has further proposed to develop 400 units of workforce housing for employees of the Water and Sewer Department (“WASD”), along with minimal, ancillary retail for the benefit of the residents (“Housing Project’) for a developer fee of three percent; and

WHEREAS, the Housing Project is proposed to be constructed, utilizing County funds, on a portion of 22 acres of County-owned land held by WASD and located at 11800 SW 208th Street (Folio Nos. 30-6007-000-0400 and 30-6912-003-0160) and 20900 SW 117th Avenue (Folio No. 30-6007-000-0420) (collectively referred to as the “WASD Properties”); and

WHEREAS, WASD is in the process of reviewing Swerdlow’s proposal to confirm its viability; and

WHEREAS, the County is in great need of affordable housing for its employees in order to retain and attract talented, dedicated public servants for this community; and

WHEREAS, this Board desires to have the County Mayor or County Mayor’s designee identify legally available funds in an amount sufficient to fund the design, construction, furnishing, equipping, and other development costs to construct the Housing Project at the WASD Properties; and

WHEREAS, this Board also desires to have the County Mayor or County Mayor’s designee investigate and confirm that the WASD Properties are not needed for any current, planned or anticipated water or sewer infrastructure needs or improvements in accordance with the requirements of Resolution No. R-1121-21; and

WHEREAS, this Board further desires to have the County Mayor or County Mayor's designee negotiate a development agreement with Swerdlow for the development of the Housing Project at the WASD Properties to include, at a minimum, a design concept and performance specifications for the project, deadlines for deliverables to the County for design and construction, reimbursement procedures for the Housing Project expenditures, and payment to Swerdlow for its services in an amount of not to exceed three percent of the County's costs for the design and construction of the Housing Project,

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

Section 1. The foregoing recitals are incorporated herein by reference and are approved.

Section 2. This Board approves the Amendment to Contract and the revised Declaration in substantially the form attached hereto and incorporated herein as Exhibit A, including the attachment of all exhibits from the original Contract other than those amended herein, and authorizes and directs the County Mayor or the County Mayor's designee to execute same, exercise all rights contained therein, and take all other actions necessary to effectuate same.

Section 3. This Board approves the provisions of and authorizes the County Mayor or County Mayor's designee to execute the estoppel letter in substantially the form attached hereto and incorporated herein as Exhibit "B" upon confirmation of the statements set forth therein.

Section 4. Subject to the satisfaction of the conditions precedent set forth in Sections 5 and 6, this Board directs the County Mayor or County Mayor's designee to negotiate the terms of a development agreement with Swerdlow for the development of the Housing Project at the WASD Properties ("Development Agreement") to include, at a minimum, a design concept and performance specifications for the Housing Project, deadlines for deliverables to the County for design and construction, reimbursement procedures for project expenditures, and a payment to Swerdlow for its services in an amount not to exceed three percent of the County's costs for the design and construction of the Housing Project, and to present such development agreement to this Board along with any written recommendation from the County Mayor regarding such Development Agreement upon completion.

Section 5. This Board directs the County Mayor or County Mayor's designee to confirm that no obstacles or impediments exist regarding the Development Agreement, including but not limited to: (i) confirmation that the WASD Properties are not needed for any current, planned or anticipated water or sewer infrastructure needs or improvements in accordance with the requirements of Resolution No. R-1121-21; and (ii) identification by the County Mayor or County Mayor's designee of legally available funds in an amount sufficient to fund the design, construction, furnishing, equipping and other development costs to construct the Housing Project at the WASD Properties.

Section 6. If the County Mayor or the County Mayor's designee identifies obstacles or impediments, is unable to identify legally available funds, is unable to reach agreement with Swerdlow on terms of the Development Agreement acceptable to the County Mayor or the County Mayor's designee in its sole discretion, or does not recommend approval of entry into the Development Agreement with Swerdlow in its sole discretion, the County Mayor or County Mayor's designee shall advise this Board of same by providing a written report after such determination, and such report shall be placed on an agenda of the full Board without committee review pursuant to rule 5.06(j) of the Board's Rules of Procedure.

<u>Section 7</u>. This Board directs the County Mayor or County Mayor's designee to appoint staff to monitor compliance with the terms of this transaction, and pursuant to Resolution No. R-974-09, (a) directs the County Mayor or County Mayor's designee to record the instruments creating or retaining a County interest in the Public Records of Miami-Dade County and to provide a copy of such instruments to the Clerk of the Board within 30 days of the execution of such instruments, and (b) directs the Clerk of the Board to attach and permanently store a recorded copy of such instruments together with this resolution.

The Prime Sponsor of the foregoing resolution is Vice Chairman Kionne L. McGhee. It was offered by Commissioner **Roberto J. Gonzalez**, who moved its adoption. The motion was seconded by Commissioner **Kionne L. McGhee** and upon being put to a vote, the vote was as follows:

Anthony Rodriguez, Chairman **aye**
Kionne L. McGhee, Vice Chairman **aye**

Marleine Bastien	**aye**	Juan Carlos Bermudez	**aye**
Kevin Marino Cabrera	**absent**	Sen. René García	**aye**
Oliver G. Gilbert, III	**aye**	Roberto J. Gonzalez	**aye**
Keon Hardemon	**aye**	Danielle Cohen Higgins	**aye**
Eileen Higgins	**aye**	Raquel A. Regalado	**aye**
Micky Steinberg	**aye**		

The Chairperson thereupon declared this resolution duly passed and adopted this 18th day of March, 2025. 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

COUNTY COMMISSIONERS MIAMI-DADE COUNTY FLORIDA

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman

EXHIBIT "A"

FIRST AMENDMENT TO CONTRACT FOR SALE AND PURCHASE

THIS First Amendment to Contract for Sale and Purchase ("**Amendment**") is made this _____ day of __________, 2025, by and between Seller, **Miami-Dade County**, a political subdivision of the State of Florida ("**SELLER**" or "**County**"), whose address is 111 N.W. 1st Street, 21st Floor, Miami, Florida 33128, and Buyer, **SG Cutler Bay, LLC**, a Florida Limited Liability Company, whose address is: 2901 Florida Avenue, Suite 806, Coconut Grove, FL 33133 ("**BUYER**").

WITNESSETH, that for and in consideration of the mutual covenants contained herein, BUYER and SELLER agree to amend the Contract for Sale and Purchase between them dated June 27, 2024 (the "**Original Agreement**"), with respect to the approximately 17.32 acres of real property, **Folio Number 30-6005-060-0060 and Folio Number 30-6006-029-0010,** which are more particularly described in **"Exhibit A"** to the Original Agreement (the " **County Property**") as follows:

1. In the event of any conflict between this Amendment and the Original Agreement, this Amendment shall control. All defined terms used in this Amendment shall have the meanings ascribed to them in the Original Agreement unless expressly defined herein. All terms and provisions of the Original Agreement remain in full force and effect unless specifically amended herein.

2. Section 8(g) of the Original Agreement is modified to correct Costco's name. The entity's correct name is Costco Wholesale Corporation, a Washington corporation ("**Costco**").

3. The parties acknowledge that SELLER timely elected to proceed with a Cash Transaction pursuant to Section 4 of the Original Agreement.

4. Within three (3) business days of the full execution of this Amendment, BUYER shall deposit an additional Two Hundred Thousand Dollars ($200,000.00) into the Closing Escrow (the "Second Deposit"), which shall be deemed part of the Deposit for all purposes. BUYER acknowledges that the Deposit (including the Second Deposit) which totals $500,000.00 is fully non-refundable, except in the event of a SELLER default or termination due to casualty loss or condemnation pursuant to Section 23 of the Original Agreement.

5. The parties acknowledge that the Buyer's Due Diligence Period expired and that BUYER delivered a Notice to Proceed and did not elect to terminate the Original Agreement.

6. Section 6(f) of the Original Agreement is modified and supeceded by the following language:

(f) **Insurance.** Prior to BUYER, its officers, employees, licensees, agents, tenant, and/or tenant's vendors entering upon or onto the County Property for any reason whatsoever prior to Closing, BUYER shall furnish the County with a certificate of insurance (from

BUYER or the relevant party accessing the County Property) that meets or exceeds the insurance requirements as found in the document entitled Approved Insurance Requirements, which is attached hereto, marked as **"Exhibit E"** and incorporated herein by reference. Such certificate of insurance may be furnished by the entities actually entering the County Property provided that such certificate of insurance meets the requirements set forth in this section. BUYER shall provide such certificate by email no less than five days prior to entering the County Property, and the SELLER shall confirm by email as to whether such certificate meets the requirements herein no more than five days from receipt. BUYER acknowledges that absent SELLER confirmation that the certificate meets the requirements herein, no person or entity shall enter the County Property.

7. Sections 8(b) and 8(e) of the Original Agreement are modified and superceded by the following language:

(b) **Time and Place.** Unless extended by mutual written agreement of the Parties, the consummation of the transaction(s) contemplated by this Contract, (the "Closing") shall be at a date, time, and place agreed to by the parties on the earlier of (i) April 1, 2027 and (ii) twenty-five (25) days after written notification by BUYER to SELLER that Costco has completed its due diligence and obtained its approvals from the County necessary to construct the Project. BUYER shall provide written notification to SELLER of the completion of due diligence and obtaining of approvals as set forth in (ii) no later than five days after same has occurred. At Closing, the $500,000.00 Deposit shall be applied to the Purchase Price and shall be released to SELLER. If the Closing does not occur on or before April 1, 2027, then at SELLER or BUYER's written election, this Contract shall terminate, be null and void, and be considered of no further force and effect, and the $500,000.00 Deposit shall be paid to the SELLER and released from escrow, and neither the BUYER nor the SELLER shall have any obligations or liabilities to each other, save and except for any express surviving obligations, and each shall bear their own costs, fees, and expenses, if any.

(e) At Closing, BUYER shall deliver to SELLER the sum of $1,000,000.00 for the Septic to Sewer Contribution.

8. Section 22 of the Original Agreement is modified to require both SELLER and BUYER to send copies of all notices (including but not limited to notices regarding an actual or potential breach or default under the Original Agreement or this Amendment) to Costco at the following address:

Jeremy Hilsman
Corporate Counsel
Costco Wholesale Corporation
45940 Horseshoe Drive
Sterling, VA 20166
jhilsman@costco.com

and a copy to:

David J. Rabinowitz
Director
Goulston & Storrs
730 Third Avenue
12th Floor
New York, New York 10017
drabinowitz@goulstonstorrs.com

9. The Declaration of Restrictions attached hereto shall supersede and replace Exhibit "G."

[*signatures on separate pages]*

[signature page for First Amendment to Contract for Sale and Purchase]

IN WITNESS WHEREOF, the BUYER and SELLER have duly executed this Contract as of the day and year above written.

BUYER: SG CULTER BAY, LLC,
A FLORIDA LIMITED LIABILITY COMPANY

Witness: ____________________
Witness Print Name: ALICIA SHERMAN-ANDERSON

Witness: ____________________
Witness Print Name: Michael M-E-Lia

____
By: ____________________
Printed Name Michael Swerdlow
Title: Manager

RICHARD SWERDLOW
Notary Public
State of Florida
Comm# HH582346
Expires 8/13/2028

Richard Swerdlow

SELLER: MIAMI-DADE COUNTY

ATTEST:

By: ____________________
Clerk

By: ____________________
Mayor

DATE: ____________________

Approved as to form
and legal sufficiency.

____
Assistant County Attorney

The foregoing was accepted and approved on the ______day of____________, 20___, by Resolution No. ________of the Board of County Commissioners of Dade County, Florida.

MDC014

EXHIBIT G

Instrument prepared by and returned to:

Internal Services Department
Miami-Dade County
111 N.W. 1 Street, 24th Floor
Miami, Florida 33128-1907

Folio Nos.: **30-6005-060-0060 and 30-6006-029-0010**

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

DECLARATION OF RESTRICTIONS

WHEREAS, Miami-Dade County (the "**County**") has approved the conveyance to SG Cutler Bay, LLC, a Florida Limited Liability Company ("**Owner**") of real property located in Unincorporated Miami-Dade County, Florida, subject to the execution of this Declaration of Restrictions ("**Declaration**"), legally described as follows:

See **Exhibit "A"** attached hereto and made a part hereof (the "**Property**"); and

WHEREAS, Owner hereby acknowledges and agrees that this Declaration was an inducement and part of the consideration for the County to convey the Property to Owner pursuant to that certain Sale and Purchase Agreement by and between the County as "Seller" and Owner as "Buyer"; and

WHEREAS, Owner hereby acknowledges and agrees that the County's conveyance of the Property to the Owner pursuant to section 125.045, Florida Statutes, for less than appraised value is a subsidy in exchange for the economic development package and benefits described and as set forth herein, including but not limited to the Economic Development Requirements set forth in Section 3; and

WHEREAS, the privately funded Project to develop, construct and maintain a Costco warehouse facility (as further defined below) to be constructed on the Property is anticipated to provide economic development in the area including but not limited to via the creation of new, permanent jobs for residents of Miami-Dade County and the attraction of a new business to the area; and

WHEREAS, the parties understand and agree that the Owner shall be entering into a lease for the Term of this Declaration with Costco Wholesale, Inc., a Washington corporation, ("Costco") which shall be operating and maintaining the Costco warehouse facility, that at all times such lease shall be subordinate to the terms of this Declaration, and that Owner may be satisfying its obligations hereunder by causing Costco to perform same, although Owner's obligations remain in full force and effect in the event of nonperformance of same, *NOW THEREFORE,* in order to assure the County that the representations made by Owner will be abided by, Owner, for sufficient consideration, makes the following Declaration covering and running with the Property, and the parties hereby agree and stipulate as follows:

1. **Incorporation of Recitals**. The parties hereby agree that the recitals in this Declaration are hereby true and correct and are incorporated into this Declaration.

2. **Permitted Use of the Property**. During the time period beginning on the date of recordation of this Declaration in the public records of Miami-Dade County, Florida ("**Effective Date**") and expiring fifteen years thereafter (the "**Term**"), the Property shall solely be used for the development, construction and maintenance of a Costco Warehouse facility of no less than 151,000 square feet with pharmacy, grocery store, vehicle fueling facility, associated parking, and infrastructure (the **"Improvements")**, all as shown on the attached conceptual site plan (**"Site Plan"**) included as "**Exhibit "B"** ("**Permitted Uses**") and collectively, (the **"Project").**

The Owner shall develop the Improvements in accordance with the Site Plan to accommodate the Permitted Use. The Project shall include all infrastructure necessary to connect to and effectuate the actual connection to Miami-Dade County's sanitary sewer system if the Property is not currently connected. To the extent that any extensions are provided or occur hereunder, there shall be an extension of the Term commensurate with any and each extension of time, and in no event shall the periods set forth herein for job creation and maintenance of a Costco facility be reduced by such extension.

3. **Economic Development Requirements**.

3.1 Within thirty-six (36) months from the Effective Date ("**Commencement Date**"), Owner shall: (i) obtain all development approvals and building permits needed for construction of the Improvements and submit the same to the County; and (ii) shall commence construction of such Improvements and thereafter diligently pursue the construction of the Improvements until completion thereof. For purposes of this Declaration, "commence construction" shall mean the later of: (i) the filing of a notice of commencement under Florida Statutes, Section 713.13; and (ii) the visible start of vertical construction of the Improvements but shall not include any groundbreaking or other ceremonial acts. In order to meet the definition of "commence construction" the filing of the notice of commencement or visible start of work must occur after Owner has secured the necessary building permits for the work and issued the notice to proceed to its prime contractor for the horizontal improvements.

3.2 On or before the date that is forty-eight (48) months from the Effective Date ("**Completion Deadline**"), Owner shall substantially complete the Improvements in accordance with the Site Plan (the "**Completion Requirement**"), as evidenced by: (i) a temporary certificate of occupancy or a certificate of occupancy or its equivalent (jointly referred to as a "**Completion Certificate**"), and (ii) the provision of substantially all equipment and furnishings necessary to operate the Property for the Permitted Uses, which together with the receipt of the Completion Certificate shall be "**Substantial Completion**".

3.3 The Owner shall invest and expend or cause to be invested and expended no less than Thirty-Nine Million Dollars ($39,000,000.00) (the "**Investment Commitment**") to construct the Improvements and for the acquisition of equipment and the installation of such equipment for the proper functioning and operation of the Project. Said amount shall be fully expended no later than 30 days after the Completion Deadline. The Investment Commitment may include no more than Six Million Seven Hundred and Fifty Thousand Dollars ($6,750,000.00), actually and demonstrably spent by Owner for soft costs associated with and necessary for the construction of the Improvements. The Investment Commitment specifically excludes costs for the acquisition of the land.

3.4 For the purposes of verifying Owner's expenditure of the Investment Commitment, within one hundred eighty (180) days of the Completion Deadline, the Owner shall submit to the People and Internal Operations Department ("**Department**") a sworn certification from a duly authorized officer of Costco that the Investment Commitment has been expended, which shall include a detailed itemization of such expenditures and the amount of the expenditures. In the event that the Owner fails to expend the Investment Commitment, then the Owner shall immediately pay to the County as liquidated damages twenty percent (20%) of the difference by which the Investment Commitment exceeds the amount actually spent.

3.5 The Project must be open to the public and commence operations no later than 120 days after the Completion Deadline as evidenced by the full functioning, operations and use by the public of the Improvements.

3.6 On or before six months after the Completion Deadline, Owner shall create, or shall cause to be created, (i) a minimum of One Hundred Seventy-Five (175) full-time or full-time equivalent permanent jobs on the Property which shall increase to Two Hundred and Ten (210) full-time or full-time equivalent permanent jobs on the Property commencing five years after the Effective Date ("**Job Amount**") with an average annual salary of no less than the greater of: (i) $35,075; or (ii) the then current Living Wage, as determined in accordance with Section 2-8.9 of the Code of Miami-Dade County, Florida (the "**Job Salary Amount**" and, together with the Job Amount, referred to herein as the "**Job Requirement**") and provide evidence to the County of the same using "**Exhibit C**", Job Certificate, and "**Exhibit C-1**. Owner shall maintain the Job Requirement during the remaining life of the Term and all such jobs shall remain with the positions filled for the remaining life of the Term, to be verified as provided in the Section titled "Liquidated Damages for Job Deficiencies" in Section 11 herein. For purposes of this Declaration, a "full-time" or "full-time equivalent" job shall mean a job position or a combination of job positions where an employee, or a combination of such employees, are employed at the Property and have the opportunity to work an average of 36 hours per week, e.g., two part-time jobs of 18 hours per week would equate to one "full-time" job in furtherance of the Job Amount. Construction and other temporary jobs arising in connection with the development and construction of the Improvements shall not be counted towards satisfaction of the Job Amount. A "full-time" or "full-time equivalent job" shall include a job position held by individuals employed by Owner, its affiliates, or contractors, or of any tenants (i) which individual is assigned to fulfill a majority of his/her job functions at the Property; and includes (ii) any individual who elects to take temporary unpaid leave, time off, is on short-term or long-term disability, provided such individual otherwise meets the definition of a full-time of full-time equivalent employee under this Declaration and the County receives evidence reasonably satisfactory to the County to evidence such continued employment.

3.7 Owner shall require all contractors and construction managers undertaking construction work on the Property to pay wages pursuant to the requirements of the Davis Bacon

Act, as if it applied, notwithstanding the absence of federal funding, provided however that such wages shall be adjusted on an annual basis pursuant to the rate then in effect.

3.8 Owner shall require that all construction contracts valued in excess of $1,000,000.00 include the requirements of the Miami-Dade County Residents First Training and Employment Program, which includes requirements that all persons employed by the construction contractor to perform construction shall have completed the OSHA 10 Hour safety training course established by the Occupational Safety and Health Administration of the United States Department of Labor, and that the Project Contractors and Subcontractors make their best reasonable efforts to promote employment opportunities for local residents and seek to achieve a project goal of having fifty-one percent (51%) of all construction labor hours performed by Miami-Dade County residents, all in accordance with Section 2-11.17 of the Code of Miami-Dade County, Florida and Implementing Order 3-61.

3.9 All construction and site development plans (inclusive of drainage) and dewatering plans for the Property for the Improvements and any other construction undertaken on the Property during the Term, shall require the review and approval from the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management ("**DERM**"), or successor agency, as it relates to environmental contamination issues. Furthermore, the Owner shall prepare and submit to DERM for review and approval a Soil Management Plan, Dust Control/Air Monitoring Plan, and Health and Safety Plan prior to site development and construction in any area of the Property where there is documented soil or groundwater contamination as determined by a Phase 2 Environmental Site Assessment and site investigation conducted in accordance with ASTM Standards and Chapter 24, Code of Miami-Dade County. Owner shall not itself use and shall not permit any third parties to use on-site groundwater or surface water without prior DERM review and approval.

3.10 Owner shall, on each anniversary of the Term of this Declaration through and until the 15th such anniversary, pay the County: (i) the sum of $50,000 as a contribution for the promotion of education and training in District 9, which shall be used for the benefit of not-for-profit local schools, athletic organizations, parent/teacher associations, or any other community interests deemed appropriate by the County; and (ii) the sum of $50,000 for septic to sewer and water infrastructure uses in District 9, for a total of $1,500,000.00 at the completion of the Term.

Such requirements in this Section 3 shall collectively be referred to as the "**Economic Development Requirements**."

4. Required Consultation; Compliance and Costs of Compliance.

4.1 Owner shall be solely responsible and liable for any and all costs, expenses, and liabilities arising out of or relating to the Owner's obligations and responsibilities under this Declaration and compliance therewith.

4.2 Owner shall provide proof to the County on an annual basis that the property taxes have been satisfied.

4.3 Owner shall provide quarterly notarized status reports to the County Mayor or County Mayor's designee with a copy to the District Commissioner in which the property lies at appropriate intervals regarding compliance with each required contractual obligation.

5. **Non-Discrimination**. Owner shall not discriminate upon the basis of race, color, religion, national origin, sex, age, ancestry, disability, marital status, pregnancy, sexual orientation, or veteran status against any person, either directly or indirectly: (a) in the use, occupancy, or lease of the Property; (b) from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Property; and (c) in the construction of any Improvements on, over, or under the Property and the furnishings of services thereon. Owner shall comply with applicable provisions of the Americans with Disabilities Act, including, but not limited to, provisions pertaining to employment.

6. **Governing Law; Venue**. 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.

7. **County Inspection and Audit Rights**. Owner shall have the obligation to retain and make available to the County and its representatives, upon ten (10) days' prior written notice from the County and without charge to the County, all such reasonable documentation which may include books, documents and records of Owner, which pertain to Owner's compliance with the terms and conditions of this Declaration. It is hereby agreed that the County, or its duly authorized agents, shall have the right upon ten (10) days' prior written notice to inspect the Property, or Owner's financial and accounting records, maintenance records, or other corporate documents reasonably 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 achievement of Substantial Completion, the Investment Commitment, and the Job Requirement ("**Audit Records**"). Any such audit shall take place at the Project and must not be disruptive to Owner's business and must take place at a mutually agreed time during Owner's normal business hours. Notwithstanding the foregoing or any other provision of this Declaration, Owner shall not be required to disclose, permit the inspection of or examination of, or discuss, any Audit Records that (a) in respect of which disclosure is prohibited by law, or (b) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product. In lieu of an audit of the Audit Records at the Project, Owner may provide such materials to County in a reasonably accessible electronic format.

8. **Covenant Running with the Land**. This Declaration shall constitute a covenant running with the land on the Property, shall be recorded in the public records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon Owner and its subsidiaries, successors and assigns for the Term of this Declaration, unless this Declaration is modified, amended or released by mutual agreement of the County and the Owner or the then-current owner of the Property. Notwithstanding anything to the contrary herein, the County's approval or denial of any such amendment, modification or release shall be granted, denied, conditioned or delayed in the County's sole and absolute discretion and shall be evidenced by resolution of the Board of County Commissioners of Miami-Dade County (the "**Board**"). Owner, its subsidiaries, successors, and assigns agree that acceptance of this Declaration shall be binding upon the Owner and shall inure to the benefit of the County. The time limitation set forth in this Section 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.

9. 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, including without limitation a decree of specific performance or mandatory or prohibitory injunction, against Owner or any person or entity violating or attempting to violate the terms of this Declaration including but not limited to the expenditure of funds and the creation and maintenance of jobs. No third party beneficiaries are intended to be created by the provisions contained in this Declaration.

10. Assignment, Lease or Subsequent Conveyance.

10.1. Owner shall not assign or transfer its interest in the Property or an ownership interest in Owner greater than fifty percent, for 5 years after the Completion Deadline (each an "Assignment") without the prior, written consent of the County Mayor or County Mayor's designee which shall be determined in the sole discretion of the County Mayor or County Mayor's designee, or the approval of the Miami-Dade County Board of County Commissioners. Thereafter, Owner can freely assign or transfer its interest but shall be required to provide 30 days' prior written notice to the County disclosing such transfer and the new Owner, including an Ownership Disclosure form. In the event of any transfer of an ownership interest in Owner greater than five percent (5%) at any time during the term of this Declaration, Owner shall, within thirty days of the transfer, notify the County that the transfer has occurred and provide a new Ownership Disclosure Form. Notwithstanding the foregoing, the parties understand and agree that the Owner is permitted to enter into a lease with Costco with respect to the Property and if Costco defaults after Substantial Completion, a successor single user retail lessee whose operation on the Property will be similar in size to Costco's operation and whose replacement lease will be substantially similar to the Costco lease in all material respects (a "Replacement Tenant"). Any such Replacement Tenant and its lease shall be subject to the prior approval of the County in the County's reasonable discretion. Owner shall provide written notice to the County within ten (10) days after Owner becomes aware of Costco's default after any notice and cure period provided for in the Costco lease. Owner shall provide the County with written notice of any proposed Replacement Tenant and a copy of its proposed lease and the County shall have sixty (60) days from submission of the Replacement Tenant and its lease to approve or disapprove of same. Any disapproval shall specifically identify the grounds for same to give Owner an opportunity to cure same. Any such lease shall be expressly subordinate and subject to, the provisions of this Declaration. Notwithstanding the foregoing, no Assignments shall be allowed hereunder if (i) the Owner is in default under any material provision of this Declaration, including but not limited to Substantial Completion or the Job Requirements, or (ii) Costco is in default as to its lease with the Owner and the County has not approved the Replacement Tenant.

10.2. Without limitation of the foregoing, in the event of any transfer of an ownership interest in Owner greater than five percent (5%) at any time during the term of this Declaration, Owner shall, within thirty (30) days of the transfer, notify the County that the transfer has occurred and provide a new Ownership Disclosure Form.

10.3. Notwithstanding anything to the contrary contained herein, and subject to the provisions of Section 24 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 or other security instruments or assignments required by Owner's lender, (b) sale, lease or other conveyance by any entity acquiring the Property pursuant to a foreclosure sale or deed in lieu of foreclosure, or (c) a lease with Costco for use and occupancy of the Property, all of which will be subject to the terms of this Declaration.

10.4. Notwithstanding any language to the contrary contained herein, Owner shall be prohibited from assigning its interest in the Property, or from transferring any portion of its ownership interest, to any person that: (i) is on any list issued by a governmental entity or agency of individuals and/or entities engaged in terrorist activities, (ii) is on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, Scrutinized Companies that Boycott Israel List, as those terms are used and defined pursuant to Sections 215.473, and 215.4725, Florida Statutes; (iii) is convicted of a Public Entity Crime or has been placed in the Convicted Vendors List pursuant to Florida Statute 287.133 or Suspended Vendor List pursuant to Florida Statute 287.1351; or (iv) is a Debarred Contractor under 10-38 of the Miami Dade County Code or a similar law, rule or regulation ("**Disqualified Person**"). Any request for the assignment of the Property or request for transfer of an ownership interest in Owner or notice of transfer of ownership interest in Owner required herein, shall be accompanied by a notarized affidavit confirming that the assignee or transferee, as applicable, is not a Disqualified Person.

10.5. Any third party mortgages, financing, refinancing, lien or encumbrance created by or on behalf of Owner or otherwise created after the Effective Date on the Property shall be subordinate and inferior to the interest of the County and this Declaration. All proceeds received from the initial mortgage or loan that encumbers the Property shall be (i) invested into the acquisition, development, maintenance and repair of the Project and/or (ii) used to fund customary loan closing costs and fees. Any funds from a refinancing that encumbers the Property shall be used to repay existing debt and equity related to the acquisition, development, maintenance and repair of the project. Any excess proceeds may be distributed to or by the Owner.

10.6. Notwithstanding anything contained herein to the contrary and provided that Owner has otherwise complied with and met, in all material respects, all other requirements and obligations of this Declaration, the foregoing restrictions on the proceeds of Owner's financing shall terminate and become null and void upon the first Reporting Date.

10.7. The restrictions in this Section 10 are referenced herein as the "**Transfer Restrictions**."

11. <u>Liquidated Damages for Job Deficiencies</u>.

11.1. It is acknowledged that there will be significant economic development and benefits that will accrue to the County and its residents from the development and operation of the Property for the Permitted Uses and Ancillary Permitted Uses. It is further acknowledged that: (a) a material inducement for the County's agreement to convey the Property is the Owner's satisfaction of the Economic Development job creation requirements in Subsection 3.6 of this Declaration; and (b) should Owner fail to comply with the Economic Development Requirements pertaining to job creation as set forth in Subsection 3.6 of this Declaration, the damages consequent upon such a breach are not readily ascertainable. Accordingly, should Owner fail to meet or satisfy the obligations contained in Subsection 3.6 of this Declaration, the Owner shall be required to pay, as liquidated damages ("LDs"), and not as a penalty, equal to the applicable amount(s) set forth in Section 11.4 below.

11.2. **Reporting Requirement**. For purposes of this Declaration, the determination of the Job Amount shall be certified by the Owner in the form of an annual report based upon the RT-6 filings with the State of Florida attached as "**Exhibit C**" ("**Job Certificate**") to this Declaration, to evidence the number of full-time and full-time equivalent jobs during the previous year and the average salary paid, prepared and certified by: (1) the Owner's Certified Public Accountant; (2) the Owner; or (3) an agent of the Owner who has been duly authorized to sign on behalf of the Owner, as evidenced by a corporate manager or officer. In conjunction with the Job Certificate, the Owner shall submit an affidavit or other written affirmation attesting that the Job Amount's certification in the Job Certificate true and correct to the best of the Owner's knowledge and belief. On the dates that are five (5) years from the Effective Date, ten (10) years from the Effective Date, and fifteen (15) years from the Effective Date (each a "**Reporting Date**" and cumulatively the "**Reporting Dates**"), Owner shall calculate and record the average number of full-time or full-time equivalent jobs, which shall be in no case less than the Job Amount, that were created and are being maintained on the Property for the five (5)-year period prior to each of the Reporting Dates and that have an average annual salary per job of no less than the Job Salary Amount. The calculations for each of the Reporting Dates shall be made based solely on the averages for the immediately preceding five (5) years. The average number of full-time or full-time equivalent jobs with an average annual salary per job equal to the Job Salary Amount or more for each of the Reporting Dates as calculated in this Section shall be at least the Job Amount. Owner shall provide the County with a written report setting forth the information on the Job Amount and the Job Salary Amount on each Reporting Date for the immediately preceding five (5) year period, which reports shall be certified as set forth in this Subsection 11.2, along with all pertinent supporting documentation. The County and Owner acknowledge and agree that it shall be the burden of Owner to establish, to the reasonable satisfaction of the County, that the Job Requirement has been met in accordance with the obligations contained in this Section. This Section survives the expiration of this Declaration.

11.3. **Calculations**. In calculating the average salaries of the full-time or full-time equivalent jobs in order to determine if the Job Requirement has been met, a job with an average annual salary of less than the Job Salary Amount may be averaged with a job with an annual salary of more than the Job Salary Amount to satisfy the Job Requirement. The "**Average Jobs Number**" shall be determined by: (i) multiplying the number of jobs created at a particular salary by the then-current salary for such jobs; (ii) adding all of the factors obtained from the multiplication of salary and jobs; and (iii) dividing by the then current Job Salary Amount. For example, if on the first Reporting Date, Owner reports that it has created 200 jobs with a salary of $26,000 (200 x $26,000 = $5,200,000.00) and 10 jobs with a salary of $36,000 (10 x $36,000 = $360,000) and the Job Salary Amount as of that date is $36,000, then the Average Jobs Number is [($5,200,000.00 + $360,000.00 = $5,560,000.00) / $36,000 = 154.44]. In this example, the Job Requirement has not been met because the Average Jobs Number at or above the Jobs Salary Amount is less than the Job Amount of 250 and there shall be a "**Job Shortage Number**" (as such term is defined below) of 154. The Average Jobs Number shall always be rounded down to the nearest whole number. Under this example, the Job Requirement of 250 full-time or full-time equivalent jobs with an average annual salary of no less than the Job Salary Amount will not be satisfied for such Reporting Date, and the LDs will be payable as provided in Subsection 11.4 below. "**Job Shortage Number**" means (i) the Job Amount minus (ii) the Average Jobs Number.

11.4. **LD Amounts**. If Owner fails to meet the 5-year Average Jobs Number for the Job Requirement on any Reporting Date, then Owner or its successor or assign shall pay to the County as the LDs, the amount equal to the following which shall then each be multiplied by five (to account for each year during the five-year period preceding the applicable Reporting Date) (i) \$6,400.00 multiplied by the Job Shortage Number, if the deficiency occurs on the first (1st) Reporting Date, (ii) \$8,000.00 multiplied by the Job Shortage Number if the deficiency on the tenth second (2nd) Reporting Date, and (iii) \$9,600.00 multiplied by the Job Shortage Number if the deficiency occurs on the third (3rd) Reporting Date. Any LDs due and owing shall be paid to the County within ninety (90) days after the applicable Reporting Date. For example, if the Average Jobs Number for the Job Requirement on the first Reporting Date (5 years after the Effective Date) is 154 and the then current Job Salary Amount is \$36,000, as under the example above, the Job Shortage Number will be (i) 250, minus (ii) 154. In this example, the LDs payable would be \$6,400.00 multiplied by 96 jobs, which is \$614,400.00 and then multiplied by five for each of the deficient years for a total amount of LDs payable to the County of \$3,072,000.00. The parties note that the examples in Sections 11.3 and 11.4 assume a total jobs target of 250, but that Section 3.6 only requires 175 such jobs or 210 jobs (depending upon the time frame in question) and that Section 3.6 controls in this regard, although the examples are accurate with respect to how the calculations in question are to be performed. The parties agree that if, notwithstanding Owner's commercially reasonable efforts, Costco permanently ceases operations at the Property, there will be no LDs imposed for the first six (6) months after such failure begins in order to give Owner an opportunity to find a Replacement Tenant in accordance with Section 10.1, provided that the Owner is in compliance with all other terms and conditions of this Declaration at the time that such notice is provided. This section survives the termination of this Declaration. Nothing contained in this section shall be construed as imposing liability for LDs upon the tenant at the Property.

11.5. **Enforcement of LDs**. In addition to all other remedies available to the County in law or in equity, the County may enforce payment of any LDs due under this Declaration 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 LDs due to the County for each Reporting Date, this Declaration shall terminate at the expiration of the Term and shall be cancelled of record upon request by the then-current owner, save and except for any surviving provisions pursuant to the express terms of this Declaration. No LDs shall be due or payable for any job shortages occurring after the expiration of the Term.

11.6. **Survivability.** Notwithstanding and prevailing over anything contained in this Declaration to the contrary, this Section 11 shall survive: (a) the expiration of the Term; and (b) shall instead expire only upon the satisfaction of the requirements for all three Reporting Dates and the payments of all LDs, if any, due hereunder.

12. <u>Remedies for Other Breaches</u>.

12.1. In the event that Owner violates or fails to comply with the Transfer Restriction, the County shall provide sixty (60) days' written notice to Owner or any approved successor or assignee of such breach in order to provide the opportunity to cure the breach of the Transfer Restriction ("**Grace Period**"). If after expiration of the Grace Period, Owner or its approved successor or assignee has not remedied said breach of the Transfer Restriction, then, at the option of the County and following ten (10) days' written notice, the Owner agrees to pay liquidated damages to the County in the amount of $2,000 a day until such violation is corrected. Additionally, Owner agrees that such violation constitutes irreparable harm to the County, that there is no adequate monetary remedy for such breach, and that the County shall have the right to seek a mandatory injunction and declaratory relief to remedy such violation, in addition to all other rights and remedies in law and equity. In the event of breach of any of the other terms or conditions in this Declaration following the issuance of a Completion Certificate, the County may, following a notice of default and applicable cure period (which, in the absence of a specified cure period shall be sixty (60) days), and if Owner or its successor or assignee has not remedied the default, pursue any enforcement mechanisms at the County may have at law or in equity, including specifically, seeking injunctive and declaratory relief, provided that (i) no reversion right shall apply except as expressly permitted in this Declaration, and (ii) in the event of a breach of the Job Requirement, the County's remedy shall be to recover LDs in accordance with Section 11 of this Declaration.

12.2. In the event that Owner, for whatever reason, fails to achieve Substantial Completion for the Improvements by the Completion Deadline, the Owner shall be in default. The County Mayor or County Mayor's designee may provide an additional one year extension of the Completion Date in their sole and absolute discretion. After such extension period, the County may provide written notice to the Owner of the default and breach and an opportunity to cure the breach and achieve Substantial Completion for the Required Improvements within a two (2) month period of time following the County's notice ("**Additional Completion Period**"). If after expiration of the Additional Completion Period, Owner has not achieved Substantial Completion for the Required Improvements, as determined in the County's sole discretion, at the option of the County, the County may revert the Property upon written notice by certified mail, and the Property shall immediately revert to the County free and clear, without encumbrances, along with any and all improvements thereon, without cost or expense to the County. The reverter will immediately become effective upon the date upon which the written notice from the County to the Owner is received by the Owner (the "**Effective Reverter Date**"). The County shall have the right to immediate possession on the Effective Reverter Date and may file a Notice of Reverter. In the event the County exercises the reverter, upon written request, Owner shall immediately provide the County with a deed of conveyance of the Property back to the County. However, failure to provide such deed of conveyance shall not impact the County's reverter, which becomes effective on the Effective Reverter Date. Alternatively, the County may impose an agreed penalty of $2,000 per day during which such violation continues, until Substantial Completion is achieved. Upon Substantial Completion, the County's right of reverter under this Section shall be terminated, without further required action.

12.3. If any other term of this Declaration is not complied with, Owner shall correct or cure the default/violation within thirty (30) days of notification of the default by the County as determined in the sole discretion of the County. If the default cannot be reasonably corrected in 30 days, Owner shall initiate correction within 30 days and shall diligently pursue such correction. If

Owner fails to remedy such default within 60 days of written notice, the County may pursue the $2,000 per day per violation agreed upon penalty set forth herein, or may pursue any other available legal right in law or in equity, but shall not include a right of reverter unless specifically provided herein.

12.4. **Rights of Mortgagee and Costco**. In the event that an unrelated third party ("**Mortgagee**") has recorded a mortgage lien on the Property ("**Mortgage**") to secure a loan to finance the development of the Property and a copy of such Mortgage has been furnished to the County at least ten (10) days prior to recordation, the provisions of this Section shall apply. To the extent set forth herein, the provisions of this Section shall also apply to Costco. No Owner default shall cause the Property to revert back to the County unless the County has first provided Mortgagee and Costco with at least ninety (90) days' prior written notice of the nature of the outstanding defaults and the County's intent to exercise its reversionary right free and clear of the Mortgage. If prior to the expiration of the 90-day period, (i) Mortgagee notifies the County in writing that Mortgagee intends to commence proceedings to foreclose its Mortgage and thereafter commences and files such proceedings within ninety (90) days of giving such notice, or (ii) Costco fully cures the default giving rise to the reversionary right as determined in the reasonable discretion of the County and provides written notice to the County within such 90-day period of the completion of such cure, then the County agrees that it will not exercise its right of reverter for the time period set forth in this Section. The provisions of this section regarding Costco shall cease to be effective if the lease with Costco is terminated. The provisions of this Section for the benefit of Mortgagee shall cease to be effective if Mortgagee voluntarily ceases to diligently pursue any foreclosure action in a timely manner, as determined in the reasonable discretion of the County Mayor or County Mayor's designee, but in no event shall any foreclosure action exceed a period of two years from the initial filing of the action at which time the County may exercise its reversionary right. Additionally in the event that a final judgment or other dispository order is entered against the Mortgagee, the County may exercise its reverter right. Owner agrees to provide the County with the Complaint within five days of service, as well as any final judgment or dispository order no later than five days after entry. Nothing contained in this Section shall be construed as impacting, affecting, or prohibiting the County from pursuing any other right or remedy set forth in this Declaration related to non-compliance under this Declaration, including but not limited to liquidated damages, and this Section shall be strictly construed to only apply to the County's right of reverter set forth in Section 12.2 herein.

13. 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:

13.1. 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;

13.2. 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

13.3. Notwithstanding and prevailing over any contrary provision in this Declaration, nothing contained in this Declaration shall bind the Board, 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.

14. <u>Inspector General Reviews/Audit & Compliance</u>.

14.1. **Independent Private Sector Inspector General Reviews**. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General ("**IPSIG**"), whenever the County deems it appropriate to do so. Subject to all applicable laws, upon thirty (30) days' prior written notice from the County, Owner shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Declaration for inspection and reproduction and the IPSIG may examine and audit such books and records of Owner reasonably related to the performance of Owner's obligations under this Declaration ("**Inspection Records**"). Any such audit shall take place at the Project and must not be disruptive to Owner's business and must take place at a mutually agreed time during Owner's normal business hours. In lieu of an audit of the Inspection Records at the Project, Owner may provide the Inspection Records to IPSIG in a reasonably accessible electronic format. Notwithstanding the foregoing or any other provision of this Declaration, Owner shall not be required to disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that (a) in respect of which disclosure is prohibited by law, or (b) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product. The terms of this provision herein, apply to Owner, its successors and assigns. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the obligations and performance of Owner in connection with, and as and when provided under, this Declaration.

14.2. **Miami-Dade County Inspector General Review**.

1. According to Section 2-1076 of the Code, as amended by Ordinance No. 99-63, the County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts.

2. Nothing contained above shall in any way limit the powers of the Miami-Dade County Inspector General to perform audits on all County contracts. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Miami-Dade County Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs, all at no cost or expense to Owner. Monitoring of an

existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Miami-Dade County Inspector General is empowered to retain, at no expense or cost to Owner, the services of an IPSIG to, subject to all applicable laws, audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement processes related to performance of the parties' obligations under this Declaration, including but not limited to project design, specifications, proposal submittals, activities of Owner, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with the Declaration and to detect fraud and corruption.

3. Upon thirty (30) days' prior written notice to Owner from the Inspector General or IPSIG retained by the Inspector General, Owner shall make the Inspection Records available to the Inspector General or IPSIG for inspection and copying, at no cost or expense to Owner. Any such audit shall take place at the Property and must not be disruptive to Owner's business and must take place at a mutually agreed time during Owner's normal business hours. In lieu of an audit of the Inspection Records at the Project, Owner may provide such materials to Inspector General or IPSIG in a reasonably accessible electronic format. The Inspector General and IPSIG shall have the right to inspect and, at no cost or expense to Owner, copy all such documents and records in the Owner's possession, custody or control which reasonably relate to Owner's performance of this Declaration, including, but not limited to, original estimate files, change order estimate files, worksheets, proposals and agreements from and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records. Notwithstanding the foregoing or any other provision of this Declaration, Owner shall not be required to, disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that (a) in respect of which disclosure is prohibited by law, or (b) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product.

15. **Commission Auditor**. The Commission Auditor shall have the right to inspect and audit the books, records, financial statements and operations of Owner as they reasonably relate to the performance of this Declaration ("**Examination Records**") all in accordance with Section 2-481 of the County Code and Owner agrees to comply with same. Any such audit shall take place at the Project and must (i) not be disruptive to Owner's business; (ii) take place during Owner's normal business hours; and (iii) take place on at least thirty (30) days' prior written notice. In lieu of an audit of the Examination Records at the Project, Owner may provide the Examination Records to the Commission Auditor in a reasonably accessible electronic format. Notwithstanding the foregoing or any other provision of this Declaration, Owner shall not be required to disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that (a) in respect of which disclosure is prohibited by law, or (b) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product.

16. **Force Majeure**. Notwithstanding anything to the contrary herein, Owner 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, specifically including but not limited to the Commencement Deadline, the Completion Deadline and the Completion Requirement, when prevented from so doing by events of "Force Majeure" or other acts of God, to include without limitation, acts of the public enemy, quarantine restriction, wars, insurrection, hostilities, terrorism, riots, revolutions or civil commotions, strikes, lock-outs, or labor controversies, freight embargoes, wide-spread and significant shortages of fuel, power, labor, materials or parts for which there is no other alternative, national or local emergencies, epidemic, fire, wind, hurricanes, earthquake, unusually severe weather, or flood, or any court orders, injunctions, temporary restraining orders, or other legal decisions materially affecting, limiting, restricting or prohibiting the development of the Required Improvements, or operations thereof. In order for this Force Majeure to apply: (i) the Force Majeure event must be unavoidable, unforeseeable, and not occurring as a result of an intentional act or omission by the Owner; and (ii) the Owner, within fifteen (15) days after it reasonably determines an event that constitutes a Force Majeure event has occurred, has given written notice to the County of such event and specifically including (a) the causes thereof, (b) the manner in which the Force Majeure event actually caused the delay, (c) the measures the Owner intends to take to mitigate the delay, and (c) the anticipated, reasonable time extension necessary to perform. The Owner 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 and any such extensions of time due to Force Majeure shall be agreed upon and memorialized in a written instrument, executed by the County and Owner. In addition, there shall be an extension of the Term commensurate with any and each extension of time for Force Majeure. Notwithstanding the foregoing, in no event shall a Force Majeure extension exceed a period of three (3) years, unless further extended, upon approval by the County Mayor or County Mayor's designee, in their sole discretion, for a time period not to exceed an additional one (1) year.

17. **Indemnification**. Except to the extent caused by the gross negligence or willful misconduct of the County or its officers, employees, agents or instrumentalities, Owner 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 reasonable 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 the County's conveyance of the Property to Owner, or the performance of any act under this Declaration or compliance with the terms of this Declaration by the Owner or its successors or assigns or their employees, agents, partners, principals or subcontractors. Owner 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 reasonable attorney's fees which may issue thereon. Owner or its successors or assigns expressly understands and agrees that any insurance protection provided by Owner 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.

18. **Limitation of Liability**. Notwithstanding anything to the contrary in this Declaration, neither Owner nor any Owner Affiliate nor the County shall be liable for any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Declaration.

19. **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.

20. **Notices**.

(a) All notices, demands, or other communications of any type provided for herein shall be sent in writing and delivered to the person to whom the notice is directed, either in person, by overnight delivery service, electronic mail with confirmed receipt, or by mail as a registered or certified item, return receipt requested. Notices delivered by mail will be deemed given upon the date when deposited in a post office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed, and notices delivered by other means will be effective when received by the party to whom the same is addressed, and such notices will be addressed as follows:

to the Owner at:	SG Cutler Bay, LLC Attn: Nicholas Swerdlow and Stephen Garchik 2901 Florida Street, Suite 806 Coconut Grove, Florida 33133 Email: n.swerdlow@swerdlow.com Email: sgarchik@sjmpartners.com
with a copy to:	Goodkind & Florio, P.A. Attn: Brian K. Goodkind 4121 La Playa Blvd. Coconut Grove, Florida 33133 Email: brian@goodkindandflorio.com
to the County at:	Miami-Dade County Internal Services Department Attn: Director 111 NW 1st Street, 24th Floor Miami, FL 33128 Email: Alex.Munoz@miamidade.gov
With copy to:	Miami-Dade County Attorney's Office Attn: County Attorney 111 N.W. 1st Street, Suite 2810 Miami, Florida 33128 Email: Atty@miamidade.gov

or to such other address as the receiving party shall have most recently forwarded to the sending party pursuant to the provisions of this Section 20. Notices must be sent to all required parties as stated herein and in Section 20(b) below in order to be effective.

(b) All notices given to any party pursuant to this Section 20 (including but not limited to notices regarding an actual or potential breach or default under this Declaration) shall also be sent to Costco at the following address, provided that Costco's lease has not been terminated:

Jeremy Hilsman
Corporate Counsel
Costco Wholesale Corporation
45940 Horseshoe Drive
Sterling, VA 20166
jhilsman@costco.com

and a copy to:

David J. Rabinowitz
Director
Goulston & Storrs
730 Third Avenue
12th Floor
New York, New York 10017
drabinowitz@goulstonstorrs.com

Owner shall provide written notice to the County if Costco's lease is terminated no later than five days from the date of such termination.

21. **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.

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

23. **Amendments**. This Declaration contains the entire agreement and all representations of the parties. No amendment will be effective except when reduced to writing signed by all parties.

24. **Subordination**. Notwithstanding anything to the contrary herein all terms and provisions in this Declaration, all of which run with the land, shall remain in full force and effect, and shall not, and are not, subordinated to any other person or entity.

25. **Construction**. This Declaration was drafted with equal input by the parties hereto, and shall not be construed against either party.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the representatives of Owner have caused this Declaration to be executed by their respective and duly authorized representative on this _____ day of ________, 20__, and they intend to be legally bound hereby to all of the terms and conditions of this Declaration.

SG Cutler Bay, LLC
a Florida Limited Liability Company

____
Witness/Attest:
Address

By:________________________________

____
Witness/Attest:
Address

Name:______________________________

Title:______________________________

Date:______________________________

STATE OF ____________________
COUNTY OF __________________

I HEREBY CERTIFY, that on this ___ day of _______________, 20__, before me, an officer duly authorized to administer oaths and take acknowledgments, appeared _____________ __________________, [ ] in person or [ ] via online notarization, who is personally known to me, or proven, by producing the following identification:_________________________, to be the _______________of _____________________________, an existing Limited Liability Company under the laws of the State of ________________, and whose name the forgoing instrument is executed and said officer severally acknowledged before me that he executed said instrument acting under the authority duly vested by said corporation and its Corporate Seal is affixed thereto.

WITNESS my hand and official Seal at ________________, in the County and State aforesaid, on this, the ___ day of _______________, 20__.

__________________________________(SEAL)
Notary Public

____
Print Name

NOTARY SEAL / STAMP

Notary Public, State of ______________________
My Commission expires:______________________

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

By:______________________________________

Name:____________________________________

Title:_____________________________________

Date:_____________________________________

ATTEST:

____________, CLERK

By:__________________________________
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:__________________________________

Name:________________________________

Title: Assistant County Attorney

EXHIBIT B

SELLER ACKNOWLEDGEMENT/ESTOPPEL LETTER

Re: Contract for for Sale and Purchase dated June __, 2024, as amended by that certain First Amendment to Contract for Sale and Purchase dated ______ __, 2025 (collectively the "Agreement") with respect to the conveyance by Seller to Buyer of approximately 17.32 acres of real property, Folio Number 30-6005-060-0060 and Folio Number 30-6006-029-0010 (as more particularly described in the Agreement, the "Property").

To Whom It May Concern:

The undersigned Seller, Miami-Dade County ("Seller") understands and acknowledges that Buyer, SG Cutler Bay, LLC, a Florida limited liability company ("Buyer") has entered into a ground lease with Costco Wholesale Corporation, a Washington corporation registered to do business in the State of Florida ("Tenant"), and that Tenant has requested this certification from Seller in connection with same.

Seller represents that:

1. Seller is the Seller under the Agreement with the Buyer for the Property.

2. The Agreement is in full force and effect, has not been terminated, and is binding and enforceable in accordance with its terms, and, along with all Exhibits thereto including the Declaration of Restrictions, represents the entire agreement between Seller and and Buyer with respect to the Owner's purchase of the Property.

3. A true and correct copy of the current Agreement is attached hereto as Exhibit "A."

4. To Seller's knowledge, as of the date of this Letter: (i) no default, and no condition which, with the giving of notice or passage of time or both, would be a default, currently exists under the Agreement; (ii) neither Seller nor Buyer has either given or received any notice of default under the Agreement; (iii) Buyer has paid all amounts due and owing to Seller under the Agreement; and (iv) other than Tenant's lease, Seller is not aware of any other agreements or understandings with any party other than what is set forth in the Agreement, to sell or transfer the Property or any interest therein.

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of Florida

By:______________________________________

Name:____________________________________

Title:_____________________________________

Date:_____________________________________

.