

**FIRST AMENDMENT TO ACT OF
DEDICATION OF SERVITUDES,
EASEMENTS AND RESTRICTIVE
COVENANTS**

UNITED STATES OF AMERICA

**BY: BSREP II CYPRESS COVINGTON
OWNER LLC and BSREP II
CYPRESS TRS LLC, ET AL**

STATE OF LOUISIANA

**AND: THE OWNERS OF 51% (OR MORE)
OF THE FLOWER ESTATES LOTS**

PARISH OF ST. TAMMANY

BE IT KNOWN, that effective this ____ day of _____, 2021;

PERSONALLY CAME AND APPEARED:

**BSREP II CYPRESS COVINGTON OWNER LLC and BSREP II CYPRESS TRS
LLC (collectively "BSREP"), ET AL;**

AND

THE OWNERS OF 51% (OR MORE) OF THE FLOWER ESTATES LOTS;

Hereinafter referred to individually as a "Party" or collectively referred to as "**Appearers**" or the "**Parties**", who do hereby declare as follows:

WHEREAS, in order to accommodate the development, construction, and operation of a Costco Facility or Business, as defined in Article IV below, Appearers wish to amend that certain ACT OF DEDICATION OF SERVITUDES, EASEMENTS AND RESTRICTIVE COVENANTS granted by Wainer Brothers, et. al., dated December 28, 2007 and recorded as Instrument No. 1661646 of the conveyance records of St. Tammany Parish, Louisiana, hereinafter referred to as the "**Restrictions Instrument**";

WHEREAS, Appearers hereby declare that the following terms used in this First Amendment to Act of Dedication of Servitudes, Easements and Restrictive Covenants (this "**First Amendment**") shall have the same meaning/definitions as found in the Restrictions Instrument, namely, Commercial Restricted Property, Flower Estates Lots, and Big Box Retailer; and

WHEREAS, Appearers wish to exclude the Exempt Property (as hereinafter defined) from the Big Box Retailer exclusion/restriction as found in Article IV (entitled "*Use Restriction*") of the Restrictions Instrument under the terms and conditions hereinafter set forth; and

WHEREAS, the Exempt Property, by virtue of this First Amendment, may be legally used for the development, construction, and operation of a Costco Facility or Business (as hereinafter defined), but only pursuant to those certain terms and conditions as enumerated herein, and this First Amendment shall not be construed to allow any other Big Box Retailer to use the Exempt Property.

NOW THEREFORE, Appearers do hereby amend and modify the Restrictions Instrument as to the Exempt Property (only) pursuant to this First Amendment, as follows:

**ARTICLE I.
RESTRICTIONS INSTRUMENT**

In connection with the Restrictions Instrument:

- A.** Article IV of the Restrictions Instrument entitled "*Use Restriction*", prohibits the following use within the Commercial Restricted Property, namely, "...b) Big Box Retailer; and

- B. Section 2 of Article IV of the Restrictions Instrument defines Big Box Retailer to include "...b) warehouse clubs typically 100,000 square feet or greater offering a limited number of product items in bulk to members. Examples include Costco Wholesale, Pace, BJ's Wholesale Club and Sam's Club."

**ARTICLE II.
EXEMPT PROPERTY**

The following described property and all rights and easements appurtenant thereto (herein the "**Exempt Property**") is within the Commercial Restricted Property. By virtue of this First Amendment, the Exempt Property may be used as a Costco Facility or Business. Under no circumstances shall any part of the Exempt Property be used for any other Big Box Retailer. If at any time the Exempt Property ceases to be used as a Costco Facility or Business (except for temporary cessation of business for reasons to accommodate repairs or reconstruction from fire, flood, casualty, or other repair, reconstruction, remodeling, or re-fixturing), the Exempt Property shall, thereafter, be subject to all of the restrictions set forth in the Restrictions Instrument, as if this First Amendment had not been effectuated. Subject to compliance with the terms and conditions set forth below, the Exempt Property is hereinafter:

- A. Described as more fully shown in the legal description annexed hereto as Exhibit "A"; and
- B. Shown on the current survey of Duplantis Design Group, PC, Project No. 20-380, dated 2/22/2021, a copy of which is annexed hereto as Exhibit "B".

**ARTICLE III.
TERMS AND CONDITIONS
IN CONNECTION WITH THE PERMITTED
USE OF EXEMPT PROPERTY AS A COSTCO FACILITY OR BUSINESS**

- A. The Exempt Property may be used as a Costco Facility or Business, provided that such use shall be subject to compliance with the following terms and conditions:
1. Costco Wholesale Corporation ("**Costco**") and BSREP, including its successors and assigns, agree:
 - a. There will be no cut through access-ways from any portion of the Exempt Property in, to, through and/or connecting with Flower Estates Subdivision.
 - b. Upon written request from the Flower Estates Civic Association, Costco and BSREP agree to formally oppose and object, in writing and otherwise, to any cut through access-ways or streets that may be proposed by the government or any third party to connect the Costco facility, or any other portion of the adjacent property owned by BSREP, with Flower Estates Subdivision, including but not limited to appearing at any public hearing to make its objection known to public or governmental officials.
 - c. Upon written request from the Flower Estates Civic Association, Costco and BSREP agree to file the necessary documents to request that the Parish Council, or other applicable governmental body, formally abandon any rights of way currently dedicated for construction of any street, drive or road that could be constructed to provide access from Flower Estates subdivision to the Exempt Property or other adjacent lands currently owned by BSREP;
 - d. The 100,000 or more square foot building on the Exempt Property (the "**Main Building**") will look substantially the same as depicted on Exhibit "C" annexed hereto.
 - e. The loading docks of the Main Building will be oriented to the south side of the Main Building (facing I-12).
 2. BSREP II Cypress Covington Owner LLC (the current owner of the Exempt Property and certain property adjacent to the Exempt Property), including its successors and assigns, agrees that concurrent with the time Costco commences dirt work for the foundation for its store or other facilities allowed under this First Amendment:

- a. An eight (8) foot high sound dampening barrier wall shall be constructed on and along the location shown on Exhibit "D".
 - b. A monument (type) sign shall be constructed at the La. Hwy. 21 entrance to Flower Estates South indicating "No Cut Through/Residential Only".
- B. With regard to the obligations recited in Section A of this Article III, all works/construction in connection therewith shall be completed on or before the issuance of a Certificate of Occupancy by the Parish of St. Tammany and (also) before Costco opens for business to the public.
- C. Certain "Design Elements" of the Main Building Costco intends to develop on the Exempt Property are depicted on Exhibit "C", annexed hereto, and are subject to such further revisions as may be required or permitted by governmental authorities having jurisdiction over the Exempt Property.

**ARTICLE IV.
COSTCO FACILITY OR BUSINESS**

A "Costco Facility or Business" shall mean any facility or business owned, leased, franchised, managed, operated or controlled by Costco or by any affiliate of or successor to Costco, including, without limitation, a Costco Wholesale warehouse club, Costco Wholesale business center, or any of the constituent or ancillary uses associated therewith, but shall not include an use as a distribution center or other similar facility. A Costco Facility or Business shall also include a facility or business that is owned or operated by a person or entity other than Costco, or any affiliate of or successor to Costco, but which facility or business is intended to be included as part of or otherwise integrated into a Costco Facility or Business, such as leased or licensed departments, or co-branded or ancillary uses. In no event shall the Costco Facility or Business be used for operation of a WalMart store or other Big Box Retail establishment otherwise prohibited by the Restrictions Instrument.

**ARTICLE V.
AMENDMENT PROVISION**

- A. Article V of the Restrictions Instrument requires that said Restrictions Instrument may be amended, modified or terminated at any time by an instrument, in writing, signed by all of the owners of the Commercial Restricted Property and the owners of fifty one (51%) percent of the Flower Estates Lots, recorded in the conveyance records of St. Tammany Parish, Louisiana. In connection therewith:
 - 1. Attached hereto is Exhibit "E", being a listing of all properties [including the current owners (as of _____, 202__) and addresses] constituting the Flower Estates Lots; and
 - 2. Attached hereto is Exhibit "F", being a map, and listing of all properties [including current owners (as of _____, 202__) and addresses] constituting the Commercial Restricted Property.
- B. Annexed hereto are signature pages evidencing the written consent of Appearers to this First Amendment, including:
 - 1. All current owners of the Commercial Restricted Property (except as signed below); and
 - 2. The current owners of not less than 51% of the Flower Estates Lots.
- C. Appearers declare that this document may be executed in multiple counterparts (i.e., each signature page) and thereafter compiled so as to constitute the original executed First Amendment to be recorded in the conveyance records of St. Tammany Parish, Louisiana.

**ARTICLE VI.
RATIFICATION, CROSS REFERENCE, AND ENFORCEMENT**

- A. Except as otherwise amended and modified by this First Amendment, all of the terms and conditions of the Restrictions Instrument shall remain in full force and effect.
- B. The Notary Public and Appearers herein do hereby authorize and request the Clerk of Court for St. Tammany Parish to make mention of this First Amendment in the margin of the official records at Instrument No. 1661646, to serve as occasion may require.
- C. In the event of alleged default and/or violation hereof, any owner of the Flower Estates Lots and/or the Flower Estates Civic Association shall have the right to enforce the provisions hereof pursuant to Sections 2 and 3 of Article V of the Restrictions Instrument, including the right to seek an injunction, without the requirement to post bond, and if the prevailing party, to recover reasonable attorney's fees, expert fees and court costs from the owners of the Exempt Property, or their successors and assigns, including but not limited to Costco Wholesale Corporation, and its subsidiaries or affiliates, in the event litigation, mediation or arbitration is required to enforce any provision or requirement of this First Amendment or the original Restrictions Instrument, which amounts shall be payable after final and non-appealable judgment or award.
- D. The parties agree to (a) furnish upon request to each other such further non-proprietary information, (b) execute, acknowledge and deliver to each other such other documents, and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement.
- E. **THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE LOUISIANA. VENUE FOR ANY CLAIM OR CAUSES OF ACTION BROUGHT UNDER THIS AGREEMENT SHALL BE IN ST. TAMMANY PARISH, STATE OF LOUISIANA AND THE PARTIES HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION AND VENUE IN ANY STATE COURT OF COMPETENT JURISDICTION LOCATED IN ST TAMMANY PARISH, AND SERVICE OF PROCESS UNDER THE LAWS OF SUCH STATE.**
- F. No course of dealing on the part of any Party, or their respective officers, employees, agents, board members or representatives, nor any failure by a Party to exercise any of its rights under this Agreement, shall operate as a waiver thereof or affect in any way the right of such Party at a later time to enforce the performance of such provision. No waiver by any Party of any condition, or any breach of any term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, or warranty. The rights of the Parties under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

**ARTICLE VII.
INTERVENTION OF COSTCO WHOLESALE CORPORATION**

As the prospective purchaser of the Exempt Property, Costco Wholesale Corporation acknowledges that it has reviewed, and does hereby approve, this First Amendment.

[see the following pages for signatures]

THUS DONE AND SIGNED, effective the date shown on Page 1 hereof, after due reading of the whole.

**BSREP II CYPRESS COVINGTON
OWNER LLC, a Delaware limited
liability company**

BY: _____
Authorized Signatory

Date: _____

**BSREP II CYPRESS TRS LLC, a
Delaware limited liability company**

BY: _____
Authorized Signatory

Date: _____

THUS DONE AND SIGNED, effective the date shown on Page 1 hereof, after due reading of the whole.

COSTCO WHOLESALE CORPORATION

BY: _____
Authorized Signatory
Intervenor

The undersigned hereby certify that it is the current owner of the below referenced parcel (being a Commercial Restricted Property) and that it hereby amends the Restrictions Instrument pursuant to this First Amendment.

THUS DONE this _____ day of _____, 2021.

**COMMERCIAL RESTRICTED
PROPERTY**

Parcel: _____

ABC, LLC

BY: _____

Authorized Signatory

***The final execution draft will include individual signature pages for each owner of each Commercial Restricted Property.**

The undersigned hereby certify that they are the current owners of the below referenced Flower Estates Lot(s) and that they hereby amend the Restrictions Instrument pursuant to the First Amendment as posted on the Flower Estates Civic Association website on July 9, 2021.

THUS DONE this _____ day of _____, 2021.

FLOWER ESTATES LOTS

Lot Number(s): _____

And/Or

Street Address(es):

X _____

Print Name: _____

X _____

Print Name: _____

X _____

Print Name: _____

X _____

Print Name: _____

All owners (if married, both Wife and Husband) should print their full names below the signature line and sign their full names above the signature line next to the "X".

Please fill in lot number(s), if known, and/or lot address(es).

EXHIBIT "A"

LEGAL DESCRIPTION OF EXEMPT PROPERTY

PROPOSED TRACT C-1-A-1-A-2

THAT CERTAIN PIECE OR PARCEL OF LAND, BEING TRACT C-4 AND A PORTION OF TRACT C-1-A-1-A OF THE COLONIAL PINNACLE NORD DU LAC SUBDIVISION, A RECORDED SUBDIVISION SITUATED IN SECTION 47, TOWNSHIP 7 SOUTH, RANGE 11 EAST, PARISH OF ST. TAMMANY, STATE OF LOUISIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CORNER COMMON TO SECTIONS 12, 13, & 46, TOWNSHIP 7 SOUTH, RANGE 10 EAST, ST. TAMMANY PARISH, LOUISIANA; THENCE N00°40'50"E FOR A DISTANCE OF 1423.63 FEET TO A POINT; THENCE N89°23'30"E FOR A DISTANCE OF 1109.12 FEET TO A POINT, THENCE N89°14'55"E FOR A DISTANCE OF 95.62 FEET TO A POINT; THENCE N89°17'06"E FOR A DISTANCE OF 700.84 FEET TO A POINT OF THE NORTH RIGHT-OF-WAY OF INTERSTATE 12 AND THE EAST RIGHT-OF-WAY OF LOUISIANA HIGHWAY 21; THENCE ALONG SAID NORTH RIGHT-OF-WAY OF INTERSTATE 12 S48°43'29"E FOR A DISTANCE OF 326.61 FEET TO A POINT; THENCE S10°45'52"E FOR A DISTANCE OF 243.47 FEET TO A POINT; THENCE N51°51'57"E FOR A DISTANCE OF 368.91 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF PINNACLE PARKWAY, SAID POINT BEING A POINT ON A CURVE TO THE RIGHT (CLOCKWISE & NON-TANGENT); THENCE ALONG SAID RIGHT-OF-WAY AND CURVE WITH A RADIUS OF 353.09 FEET, AND AN ARC LENGTH OF 448.26 FEET, A CHORD BEARING OF S33°52'00"E AND A CHORD LENGTH OF 418.76 FEET TO A POINT; THENCE LEAVING SAID RIGHT-OF-WAY, RUN S86°14'10"E FOR A DISTANCE OF 120.07 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF PINNACLE PARKWAY SAID POINT BEING ON A CURVE TO THE LEFT (COUNTERCLOCKWISE & NON-TANGENT); THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY AND CURVE WITH A RADIUS OF 451.09 FEET, AN ARC LENGTH OF 522.22 FEET, A CHORD BEARING OF N30°01'18"W AND A CHORD LENGTH OF 493.54 FEET TO A POINT; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY N65°54'56"W FOR A DISTANCE OF 91.00 FEET TO A POINT ON A CURVE TO THE RIGHT (CLOCKWISE & TANGENT); THENCE ALONG SAID CURVE WITH A RADIUS OF 360.00 FEET, AND AN ARC LENGTH OF 228.33 FEET, A CHORD BEARING OF N47°44'46"W AND A CHORD LENGTH OF 224.52 FEET TO A POINT; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY, N29°34'34"W FOR A DISTANCE OF 63.58 FEET TO A POINT; THENCE LEAVING SAID RIGHT-OF-WAY RUN N34°02'02"E FOR A DISTANCE OF 11.19 FEET TO A POINT; THENCE S29°34'34"E FOR A DISTANCE OF 68.57 FEET TO A POINT ON A CURVE TO THE LEFT (COUNTERCLOCKWISE & TANGENT); THENCE ALONG SAID CURVE WITH A RADIUS OF 350.0 FEET, AND AN ARC LENGTH OF 37.75 FEET, A CHORD BEARING OF S32°37'59"E AND A CHORD LENGTH OF 37.73 FEET TO A POINT; THENCE N89°15'56"E FOR A DISTANCE OF 1352.83 FEET TO A POINT; THENCE S21°01'52"W FOR A DISTANCE OF 395.34 FEET TO A 5/8" IRON ROD FOUND AND THE POINT OF BEGINNING:

THENCE N20°58'06"E A DISTANCE OF 160.36 FEET TO A CAPPED 5/8" IRON ROD SET; THENCE S69°01'50"E A DISTANCE OF 782.04 FEET TO A CAPPED 5/8" IRON ROD SET; THENCE S21°13'37"W A DISTANCE OF 635.58 FEET TO A CAPPED 5/8" IRON ROD SET; THENCE N69°01'43"W A DISTANCE OF 276.41 FEET TO A CAPPED 5/8" IRON ROD SET; THENCE S20°58'17"W A DISTANCE OF 191.99 FEET TO A CAPPED 5/8" IRON ROD SET; THENCE S13°05'22"W A DISTANCE OF 44.13 FEET TO A CAPPED 5/8" IRON ROD SET; THENCE S20°57'13"W A DISTANCE OF 222.90 FEET TO A CAPPED 5/8" IRON ROD SET ON THE NORTHEASTERLY RIGHT OF WAY LINE OF SAID PINNACLE PARKWAY; THENCE N68°57'43"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 391.95 FEET TO A 5/8" IRON ROD FOUND; THENCE, LEAVING SAID RIGHT OF WAY LINE, N 71°54'15"E A DISTANCE OF 46.30 FEET TO A 5/8" IRON ROD FOUND; THENCE N21°03'35"E A DISTANCE OF 213.28 FEET TO A 5/8" IRON ROD FOUND; THENCE ALONG A CURVE TO THE LEFT AN ARC DISTANCE OF 15.63 FEET TO A 5/8" IRON ROD FOUND, SAID CURVE HAVING A RADIUS OF 11.00 FEET AND A CHORD WITH A CHORD OS N19°39'11"W AND A LENGTH OF 14.35 FEET; THENCE N60°21'57"W A DISTANCE OF 79.98 FEET TO A 5/8" IRON ROD FOUND; THENCE N46°59'51"W A DISTANCE OF 145.90 FEET TO A 5/8" IRON ROD FOUND; THENCE N59°10'26"E A DISTANCE OF 112.99 FEET TO A 5/8" IRON ROD FOUND; THENCE N21°01'52"E A DISTANCE OF 524.41 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 15.89 ACRES AS SHOWN ON THE PLAT SHOWING RESUBDIVISION OF TRACTS C-1-A-1-A AND C-4-A INTO TRACTS C-1-A-1-A-1 AND C-1-A-1-A-2 OF COLONIAL PINNACLE NORD DU LAC SUBDIVISION, PREPARED BY DUPLANTIS DESIGN GROUP, PC, PROJECT NO. 20-380, DATED 02/22/2021.

EXHIBIT "B"
SURVEY OF EXEMPT PROPERTY
(See Attached)

EXHIBIT "C"
DESIGN ELEMENTS OF THE
COSTCO MAIN BUILDING
(See Attached)

EXHIBIT "D"

LOCATION OF THE SOUND DAMPENING WALL

EXHIBIT "E"

LISTING OF ALL LOTS, CURRENT OWNERS AND ADDRESSES

FOR THE FLOWER ESTATE LOTS

(See Attached)

EXHIBIT "F"

**LISTING OF ALL PROPERTIES, CURRENT OWNERS AND ADDRESSES
FOR THE COMMERCIAL RESTRICTED PROPERTY**

(See Attached)