

Execution Version 7/12/07

When recorded return to:

Stephen K. Christensen  
Nelson Christensen & Helsten  
68 South Main Street, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84101

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9/14/2007 4:15:00 PM \$30.00  
Book - 9515 Pg - 5087-5095  
Gary W. Ott  
Recorder, Salt Lake County, UT  
TALON GROUP  
BY: eCASH, DEPUTY - EF 9 P.

### DEVELOPER RIGHTS AGREEMENT

14<sup>th</sup> THIS DEVELOPER RIGHTS AGREEMENT ("**Agreement**") is made and entered into this day of September, 2007, by and between HARVEST VILLAGE CORP., a Utah corporation ("**Developer**") and COSTCO WHOLESALE CORPORATION, a Washington corporation ("**Costco**").

WHEREAS, Costco has acquired a certain tract of land in Salt Lake County, State of Utah, more particularly described on attached Exhibit A (the "**Costco Tract**"); and

WHEREAS, Developer has acquired a certain tract of land in Salt Lake County, State of Utah, more particularly described on attached Exhibit B (the "**Developer Tract**"); and

WHEREAS, Costco and Developer seek to develop the Costco and Developer Tracts in conjunction with each other so as to create a harmonious and efficient shopping center ("Shopping Center"); and

WHEREAS, Costco has agreed to grant to Developer certain options to purchase the Costco Tract, together with any improvements and appurtenances constructed thereon, exclusive of the movable equipment and fixtures, inventory, signs and other personal property owned by Costco (collectively, the "**Property**"), upon the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing, and good and valuable consideration given, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Failure to Complete Construction. In the event Costco fails to open a Costco Wholesale store on the Costco Tract prior to the date that is two years after the date of this Agreement (the "**Opening Deadline**"), Developer shall have the right to repurchase the Costco Tract upon the terms set forth herein.

2. Exercise of the Option. Should Costco fail to open a Costco Wholesale store by the Opening Deadline as set forth in Section 1 above, Developer may exercise its option to purchase the Property under Section 1 hereof as follows: (a) within thirty (30) days following the Opening Deadline, Developer shall deliver to Costco a notice of Developer's intent to exercise its repurchase option (the "**Intent Notice**"), (b) if Costco fails to open a Costco Wholesale store on the Costco Tract within sixty (60) days following receipt of the Notice of Intent (the "**Cure Deadline**"), and Developer still wishes to exercise its repurchase option, then within thirty (30) days following the Cure Deadline,

Developer shall deliver to Costco a notice of Developer's intent to exercise its repurchase option (the "**Exercise Notice**"). Except as otherwise provided herein, the delivery to Costco of the Exercise Notice shall immediately create an effective and binding contract by Costco to sell the Property to Developer and for Developer to purchase the Property from Costco on the terms and conditions set forth herein. The failure of Developer to deliver to Costco either the Intent Notice or the Exercise Notice within the applicable 30-day notice period described above shall result in such option expiring automatically. If Developer exercises its option to purchase pursuant to this Section 2, Developer shall, within ten (10) business days after Costco's receipt of the Exercise Notice, deposit earnest money in the amount of One Hundred Thousand Dollars (\$100,000.00) in escrow with the Seattle, WA National Accounts Division of First American Title Insurance Company ("**Escrow Agent**"), which earnest money deposit shall be non-refundable in all events (except for default by Costco), but applicable to the Purchase Price.

3. Purchase Price. If the option to purchase granted above is exercised, the purchase price for the Property (the "**Purchase Price**") shall be the price that Costco paid to purchase the Property from Developer, plus the amount of hard costs incurred by Costco for improvements which will benefit Developer as owner of the Property (the "**Beneficial Improvements**"), together with a six percent (6%) carrying fee on the price Costco paid to purchase the Property. For purposes of determining the Purchase Price, if the parties are unable to agree on the value of the Beneficial Improvements within thirty (30) days after Costco's receipt of the Exercise Notice, and if the parties are unable to agree on one or more commercial real estate professional(s) -- for example, a disinterested, experience commercial real estate broker -- to ascertain (for the parties) the value of the Beneficial Improvements within thirty (30) days after Costco's receipt of the Exercise Notice, then the applicable value shall be determined by one or more appraiser(s) as follows: The value shall be determined considering the highest and best lawful use of the Property. The parties shall attempt to agree upon an appraiser whose decision as to the value shall be binding; if the parties are unable to agree within seven (7) days upon an appraiser, each shall appoint an appraiser within three (3) days, and the two appraisers so selected shall appoint a third appraiser; if the two appraisers so selected are unable to agree within seven (7) days on a third appraiser, the third appraiser shall be appointed by the presiding chief judge of the Circuit Court in Salt Lake County, Utah, upon application of either party; a decision as to the value by a majority of the appraisers shall be binding upon both parties; provided, however, if a majority of the appraisers are unable to agree on a value, then the average of the appraisals of the two closest appraisers shall be binding on both parties. All appraisal decisions shall be rendered within thirty (30) days after the appointment of the necessary appraiser(s). Expenses of the appraisals shall be paid one-half (1/2) by Developer and one-half (1/2) by Costco. All appraisers appointed pursuant to this Section 3 shall be MAI appraisers or equivalent with at least ten (10) years experience in appraising commercial property in the greater Salt Lake City area.

4. Closing. Developer's purchase of Costco's interest in the Property shall be consummated through an escrow established with Escrow Agent within one hundred twenty (120) days after Costco's receipt of the Exercise Notice. The purchase price shall be payable by certified check made payable to Costco or by wire transfer of immediately available funds. Marketable and insurable title to the Property shall be conveyed by Costco to Developer by special warranty deed, subject to all real estate taxes and installments of special assessments not yet due or payable, exceptions to title which existed when Costco acquired the Property, and easements, restrictions, covenants and conditions of record that do not materially impair the use of the Property for retail sales, offices, restaurants and other commercial purposes. Current real property taxes and installments of special assessments shall be prorated as of the date of closing. Developer shall pay: (i) the cost of any title insurance coverage

desired, (ii) any transfer taxes imposed in connection with the sale, and (iii) all other closing costs typically paid by purchaser, including escrow fees.

5. Sole and Exclusive Remedy. Developer acknowledges and agrees that (a) Costco is under no obligation to open a Costco Wholesale store on the Costco Tract, (b) the repurchase rights described in this Agreement constitute Developer's sole and exclusive remedy for Costco's failure to timely open a Costco Wholesale store on the Costco Tract, (c) Developer hereby waives and relinquishes all other remedies available at law or in equity for Costco's failure to timely open a Costco Wholesale store on the Costco Tract to the maximum extent permitted by applicable law.

6. Miscellaneous.

- (a) The option to purchase granted herein shall automatically terminate upon the earliest of any of the following events:
  - (i) The failure of Developer to timely deliver the Intent Notice or the Exercise Notice in accordance with Section 2 hereof;
  - (ii) The opening of a Costco Wholesale store on the Costco Tract prior to the Opening Deadline, or prior to Costco's receipt of the Exercise Notice; or
  - (iii) Three (3) years after the date of this Agreement.

Upon termination of the option to purchase, Developer agrees to duly execute and deliver to Costco, without charge, a release (properly executed, acknowledged and in recordable form) of such option right and any interest of Developer in the Property arising out of such option right.

- (b) The rights arising under this Agreement are personal to Developer only and may not be assigned to any third party; provided, however, Developer may assign its rights under this Agreement to the original first mortgagee of the Developer Tract for security purposes.
- (c) Subject to the provisions hereof regarding assignment, this Agreement shall be binding upon and inure to the benefit of the owners of the Costco Tract and the Developer Tract (including, without limitation, successor owners of the Costco Tract and the Developer Tract).
- (d) Neither this Agreement nor any term or provision hereof may be changed, waived, discharged, amended or modified orally or in any manner other than by an instrument in writing signed by all of the parties hereto.
- (e) If either party hereto shall bring any suit or other action against the other for relief, declaratory or otherwise, arising out of this Agreement, the losing party shall pay the prevailing party's reasonable costs and expenses, including such sum as the court may determine to be a reasonable attorneys' fee.

- (f) Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally with a receipt requested therefor or sent by a recognized overnight courier service or by United States registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective (a) upon receipt or refusal if delivered personally; (b) one (1) business day after depositing with such an overnight courier service, or (c) two (2) business days after deposit in the mails if mailed. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to Costco:        Costco Wholesale Corporation  
                             999 Lake Drive  
                             Issaquah, Washington 98027  
                             Attention: Property Management/Legal Dept.  
                             Facsimile: (425) 313-8105

If to Developer:    Peterson Development Co.  
                             225 South 200 East, Suite 300  
                             Salt Lake City, Utah 84111  
                             Attention: Paul Stringham  
                             Facsimile: (801)532.7110

with a copy to:

Stephen K. Christensen, Esq.  
Nelson Christensen & Helsten, P.C.  
68 South Main, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84101  
Facsimile: (801) 363-3614

- (g) Time is of the essence with respect to the option term; provided, however, that if Costco is prevented at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of Costco from completing any act which, if completed, would preclude the occurrence of the option event, then the commencement date of the option event shall be postponed by the duration of the delay experienced by Costco.
- (h) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah, without given effect to principles and provisions thereof relating to conflict or choice of laws and irrespective of the fact that any one of the parties is now or may become a resident of a different state.
- (i) Each party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in

order to accomplish the intent and purpose of this Agreement and to carry out its provisions.

- (j) This Agreement (and the attached exhibits) contains the entire agreement and understanding of the parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein. Any and all prior discussions, negotiations, commitments and understandings relating thereto are merged herein. There are no conditions precedent to the effectiveness of this Agreement other than as stated herein, and there are no related collateral agreements existing between the parties that are not referenced herein.
- (k) This Agreement may be signed in counterparts, any one of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same instrument.
- (l) This Agreement shall not be recorded but a memorandum of this Agreement may be recorded to give third parties notice of the existence hereof.

IN WITNESS WHEREOF, Developer and have caused this Agreement to be executed effective as of the date first set forth above.

[Signature Page Follows]

**DEVELOPER:**

HARVEST VILLAGE CORP.,  
a Utah corporation



By: Paul Stringham  
Its: Vice President

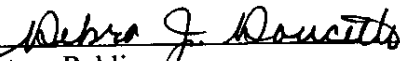
**COSTCO:**

COSTCO WHOLESALE CORPORATION,  
a Washington corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

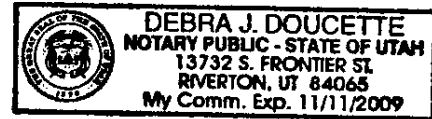
STATE OF UTAH  
COUNTY OF SALT LAKE

On the 13<sup>th</sup> day of SEPTEMBER, 2007 personally appeared before me Paul Stringham who duly acknowledged to me that he executed the foregoing Developer Rights Agreement as Vice President of HARVEST VILLAGE CORP., a Utah corporation.

  
Notary Public

STATE OF WASHINGTON  
COUNTY OF KING

SS.



I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Costco Wholesale Corporation, a Washington corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing  
at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

**DEVELOPER:**

HARVEST VILLAGE CORP.,  
a Utah corporation

By: Paul Stringham  
Its: Vice President

**COSTCO:**

COSTCO WHOLESALE CORPORATION,  
a Washington corporation

By: RICHARD J. OLIN  
Its: VP/ASST SECRETARY

STATE OF UTAH  
COUNTY OF SALT LAKE

On the \_\_\_\_ day of \_\_\_\_\_, 2007 personally appeared before me Paul Stringham who duly acknowledged to me that he executed the foregoing Developer Rights Agreement as Vice President of HARVEST VILLAGE CORP., a Utah corporation.

\_\_\_\_\_  
Notary Public

STATE OF WASHINGTON  
COUNTY OF KING

ss.

I certify that I know or have satisfactory evidence that RICHARD J. OLIN is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the VP/ASST SECRETARY of Costco Wholesale Corporation, a Washington corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this 13<sup>th</sup> day of SEPTEMBER, 2007.



Teri L. Finney  
(Signature of Notary)

TERI L. FINNEY  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing  
at 17 Apple Valley  
My appointment expires 6/9/10

**EXHIBIT A**  
Legal Description of Costco Tract

**Harvest Village**  
**A Commercial Subdivision**  
**A Part of the Northeast Quarter of Section 17**  
**Township 3 South, Range 1 West, SLB&M, U.S. Survey**  
**South Jordan City, Salt Lake County, Utah**  
**Lots: 6**

APN #s: 27-17-400-037-0000 and  
27-17-200-019-0000



**EXHIBIT B**  
Legal Description of Developer Tract

**Harvest Village  
A Commercial Subdivision  
A Part of the Northeast Quarter of Section 17  
Township 3 South, Range 1 West, SLB&M, U.S. Survey  
South Jordan City, Salt Lake County, Utah  
Lots: 1, 2, 4, and 5**

APN #'s: 27-17-400-037-0000 and  
27-17-200-019-0000