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David L. Lansky, Esq.  
Clark Hill PLC  
14850 North Scottsdale Road, Suite 500  
Scottsdale, Arizona 85254

FOURTH AMENDMENT TO CONSTRUCTION,  
OPERATION AND RECIPROCAL EASEMENT AGREEMENT

THIS FOURTH AMENDMENT TO CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (this "Amendment") is made and entered into as of the 21<sup>st</sup> day of October, 2019, by CF III SH VALLEY FAIR, LLC, a Delaware limited liability company ("Developer") and COSTCO WHOLESALE CORPORATION, a Washington corporation ("Costco").

RECITALS

A. VFM-ALC LC, a Utah limited liability company ("VFM-ALC"), VFM-CPZ LC, a Utah limited liability company ("VFM-CPZ"), River Ridge VFM, L.L.C., a Utah limited liability company ("River Ridge"), Hill Field Holding VFM, L.L.C., a Utah limited liability company ("Hill Field") and Costco previously executed and delivered that certain Construction, Operation and Reciprocal Easement Agreement dated July 14, 2006 and recorded July 17, 2006 in the official records of Salt Lake County, Utah at Book 9322, Pages 7622-7670 (the "Original COREA"), as amended by a First Amendment to Construction, Operation and Reciprocal Easement Agreement dated June 12, 2009 and recorded June 30, 2009 in the official records of Salt Lake County, Utah at Book 9741, Pages 6810-6819 (the "First Amendment"), as amended further by an Amendment to Construction, Operation and Reciprocal Easement Agreement dated June 6, 2011 and recorded June 9, 2011 in the official records of Salt Lake County, Utah at Book 9929, Page 9110 (the "Second Amendment"), as amended further by an Amendment to Construction, Operation and Reciprocal Easement Agreement dated October 31, 2018 and recorded December 14, 2018 in the official records of Salt Lake County, Utah at Book 10741, Page 888 (the "Third Amendment"). The Original COREA, the First Amendment, the Second Amendment and the Third Amendment are collectively referred to herein as (the "REA").

B. Developer is the successor in interest to VFM-ALC, VFM-CPZ, River Ridge and Hill Field.

C. Developer, and Costco wish to amend the REA, subject to and in accordance with the further terms, covenants and provisions of this Amendment.

NOW, THEREFORE, in consideration of the execution and delivery of the REA, the foregoing Recitals, the mutual agreements, covenants and promises contained in this Amendment and other good and valuable considerations, the receipt, sufficiency and validity of which are hereby acknowledged, Developer and Costco agree as follows:

1. Definitions. Capitalized terms used without definition in this Amendment shall have the meanings assigned to such terms in the REA, unless the context expressly requires otherwise.

2. Church Parcel.

a. Current Status of Church Parcel. Developer is the owner of the Church Parcel, which is legally described in Exhibit A, attached hereto. Pursuant to Section 4.7 of the Original COREA, the Church Parcel is subject to the terms and conditions of the REA, as amended herein. The Church Parcel is a part of the Costco Control Area and is subject to all restrictions to the Costco Control Area.

b. Proposed Development of the Church Parcel. Developer and Costco approve Developer's proposal to develop the Church Parcel for multi-family residential use (herein the "Church Parcel Project"), subject to all of the terms and conditions of the REA, including but not limited to all restrictions to the Costco Control Area. In addition, the Church Parcel Project shall be subject to the following:

i. Development Plans. The Church Parcel Project shall be developed substantially in accordance with the site plan and elevation plans attached hereto as Exhibit B.

ii. Number of Units. The Church Parcel Project shall have up to, but no more than 263 units, and no more than the following number of units based upon unit size:

(1) 1-Bedroom: 149 Maximum Units

(2) 2-Bedroom: 111 Maximum Units

(3) 3-Bedroom: 3 Maximum Units

iii. Parking. Section 4.7(a) of the Original COREA is hereby deleted and replaced with the following:

The Church Parcel Project shall include at least four hundred twenty four (424) parking spaces.

iv. Curb Cuts facing Costco Parcel. A maximum of one (1) curb cut shall be permitted facing east toward the Costco Parcel, in the location show on Exhibit B.

v. No Cross Parking Easements between the Church Parcel and Costco Parcel. Section 3.1(a) of the Original COREA shall not be applicable with respect to parking between the Church Parcel and the Costco Parcel. No cross parking shall be permitted between the Church Parcel and the Costco Parcel.

vi. Approval of Multi-Family Use. Notwithstanding anything to the contrary that may be contained in the REA (including without limitation Article 4, Section 4.7 and Section 5.1(n)), Developer and Costco hereby consent to and approve multi-family residential use on the Church Parcel, strictly in accordance with the provisions of this Fourth Amendment.

vii. Parking Management.

(1) Church Parcel Project Operator. The Owner of Church Parcel shall designate the operator of the Church Parcel Project (the "Church Parcel Operator"). The initial Church Parcel Operator shall be Developer.

(2) In the event that the owner or tenant (currently Costco) of the Costco Parcel determines that the cross-parking prohibition set forth in Section 2(b)(v) above has been violated, the owner or tenant of the Costco Parcel may provide written notice to the Church Parcel Operator of such violation (the "Parking Violation Notice"). Following delivery of a Parking Violation Notice, the Church Parcel Operator shall take all actions reasonably necessary to prohibit unauthorized cross parking on the Costco Parcel originating from the Church Parcel (such as residents, or guests of the Church Parcel). Such actions may include but shall not be limited to posting signs, ticketing vehicles and/or providing security personnel.

3. Traffic Improvements. The owner of the Church Parcel shall install a four-way stop at the intersection shown on Exhibit C, attached concurrently with development thereof.

4. Church Parcel Tenants. For the duration of the existence of the Church Parcel Project, the Owner of the Church Parcel Project must require that each tenant of the Church Parcel Project execute an agreement with the owner of the Church Parcel (or owner's successors and assigns) as a portion of their lease agreement:

a. acknowledging that the Costco store on the adjacent property has the right to operate 24 hours a day, which includes, but is not necessarily limited to, the following operational activities:

i. loading and unloading merchandise continuously at any and all hours throughout the night and day, through its truck wells located next to the Apartment Project,

ii. creating noise from snow plows, lot sweepers, trucks, including refrigerated truck trailers, entering, leaving and backing up from the Costco store,

iii. using forklifts to move merchandise in and out of the side of the Costco store creating additional noise throughout the night and day, and

iv. running refrigeration generators during the evening and early morning hours of the day.

b. notifying the tenant that, in the event tenant pursues any municipal, administrative or legal actions ("Action") related to Costco's operations, which Action includes, without limitation, complaining to the City or County concerning Costco's noise or hours of operations, the Owner of the Church Parcel (and such Owner hereby agrees and covenants to Costco to) indemnify, defend and hold Costco, its successors and assigns and permittees of the Costco Parcel, harmless from and against such Action; and

5. Noise Mitigation. The Owner of the Church Parcel shall construct all dwelling units on the Church Parcel facing the Costco Parcel using high quality sound proofing materials, including but not necessarily limited to windows facing the Costco Parcel having a Sound Transmission Class ("STC") rating of at least thirty-two (32) and opaque exterior walls facing the Costco Parcel having a STC rating of at least fifty (50).

6. Commercial Activities. The Church Parcel is currently zoned commercial and is situated directly south and west of existing commercial operations, including Valley Fair Mall and Costco Wholesale. Because the proposed residential use on the Church Parcel is located on commercially zoned property and is directly adjacent to existing commercial properties, and in close proximity to I-215, it is expected that individuals who choose to live at this location will have a higher tolerance for noises, sights and smells associated with commercial uses than individuals who live in traditional residential zones. Therefore, notwithstanding any other provisions in the City ordinances to the contrary, to the fullest extent permitted by law, any noise, sight or smell associated with existing and future commercial uses adjacent to the Church Parcel, including but not necessarily limited to Valley Fair Mall and Costco Wholesale (such as delivery vehicles, shipping and receiving, snow plowing, lot sweeping and related activities at any time of day or night), shall be permitted. The Owner of the Church Parcel shall include a disclosure concerning this provision in all residential rental agreements or sale agreements relating to the Church Parcel.

7. Full Force and Effect. Except as expressly modified by this Amendment, the REA remains unmodified and in full force and effect. All references in the REA to "this REA" shall be deemed references to the REA as modified by this Amendment.

8. Conflict or Inconsistency. In the event any conflict or inconsistency between the terms and conditions of this Amendment and the terms and conditions of the REA, the terms and conditions of this Amendment shall control and govern.

9. Counterparts. This Amendment may be signed in any number of counterparts with the same effect as if the signatures to any counterpart were upon the same instrument.

10. Effect of this Amendment. Except as modified by the terms of this Amendment, all the provisions of the REA shall remain unmodified and binding on and running with the land subject to the REA.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Developer and Costco have executed and delivered this Amendment as of the date and year first above written.

**DEVELOPER:**

**CF III SH VALLEY FAIR, LLC,**  
a Delaware limited liability company

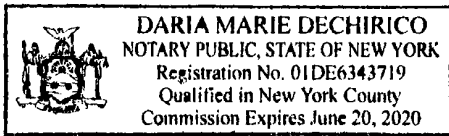
By: *Brian Moss*  
Name: Brian Moss  
Its: SVP

STATE OF New York )  
County of New York ) ss.

On October 22, 2019, before me, Daria DeChirico, a Notary Public in and for said state, personally appeared Brian Moss, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

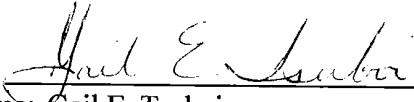
WITNESS my hand and official seal.

*Daria DeChirico*  
Notary Public in and for said State



**COSTCO:**

**COSTCO WHOLESALE CORPORATION,**  
a Washington corporation

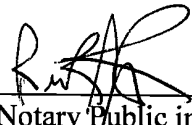
By:   
Name: Gail E. Tsuboi  
Its: Assistant Secretary

STATE OF WASHINGTON          )  
  ) ss.  
County of KING                  )

On October 21, 2019, before me, Rick Jerabek, a Notary Public in and for said state, personally appeared Gail E. Tsuboi, Assistant Secretary of Costco Wholesale Corporation, a Washington corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



  
\_\_\_\_\_  
Notary Public in and for said State

CONSENT AND SUBORDINATION

PFP IV Sub I, LLC, a Delaware limited liability company ("**Lender**"), is the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, recorded on February 5, 2015 as Instrument No. 11987744; Book 10293, Page 7917-7943 in the official records of Salt Lake County, Utah (the "**Mortgage**"). Lender hereby consents to and approves this Fourth Amendment to Construction, Operation and Reciprocal Easement Agreement to which this consent is attached (the "**Fourth Amendment**") and hereby acknowledges and agrees that the Mortgage and any other security instruments securing Lender's loan shall be subject to the terms and conditions of the Fourth Amendment.

DATED this 23<sup>rd</sup> day of September, 2019.

LENDER:

PFP IV SUB I, LLC,  
a Delaware limited liability company

By: [Signature]  
Name: Jon W. Brayshaw  
Its: Authorized Signatory

STATE OF New York )  
County of New York ) ss.  
On September 23<sup>rd</sup>, 2019, before me, Teodolinda Dushallari

Jon W. Brayshaw, a Notary Public in and for said state, personally appeared Jon W. Brayshaw, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]  
Notary Public in and for said State

TEODOLINDA DUSHALLARI  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01DU6208162  
Qualified in New York County  
Commission Expires June 22, 2021

**Exhibit A**

**Legal Description**

Beginning at a point on the North line of 3800 South Street which is 396 feet North 89°56'00" East along the Quarter Section line and North 30.00 feet from the center of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 630.31 feet (measured North 0°00'44" East 630.36 feet to a point on the South line of that property defined by a Special Warranty Deed found in Book 9555, Page 7461), thence East 253.08 feet (measured North 89°57'20" East 252.93 feet along said line to a point on the West property line as defined by said Special Warranty Deed), thence South 0°04'00" East 630.01 feet along an existing fence to the North right of way line of 3800 South Street (measured the following three calls as defined by said Special Warranty Deed South 0°04'00" East 330.16 feet, thence East 1.11 feet, thence South 0°04'00" East 300.83 feet), thence South 89°56'00" West 253.81 feet (measured 254.10 feet) along the North line of 3800 South Street to the point of beginning.

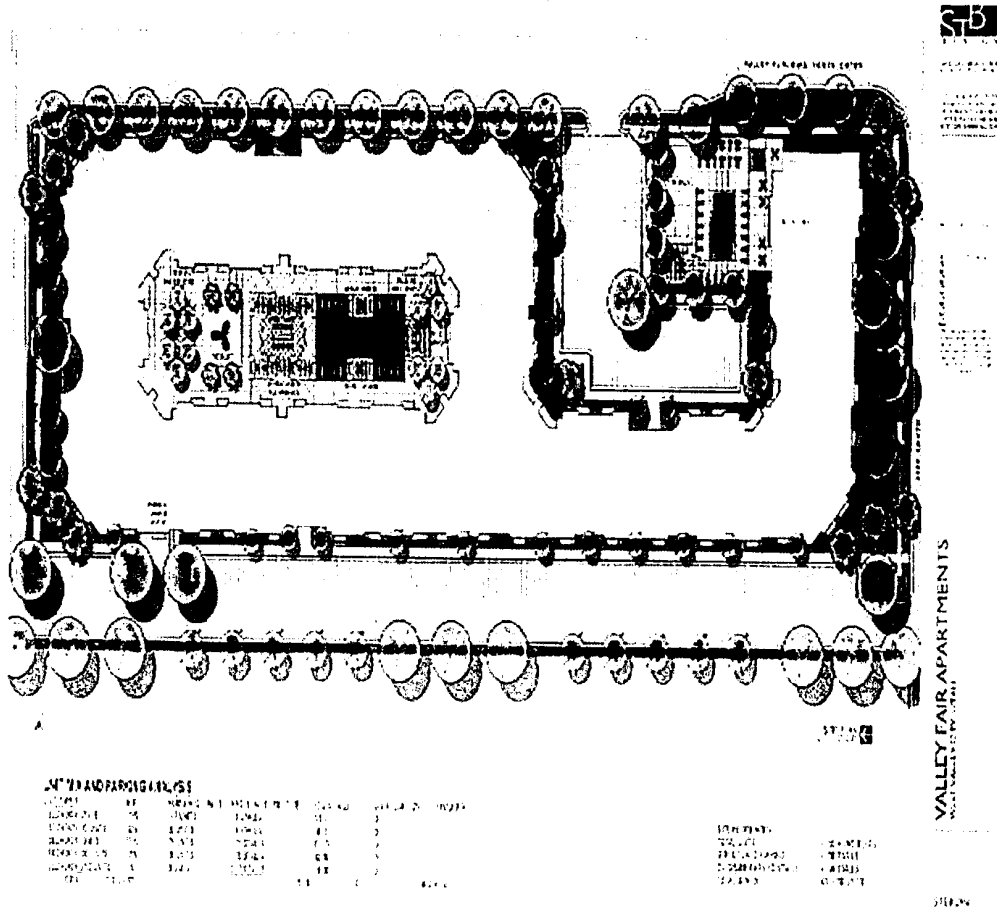
**Tax Parcel Numbers:** 15-33-251-008-0000 & 15-33-251-011-0000

**Street Address:** 2600 West 3800 South, West Valley City, UT 84119

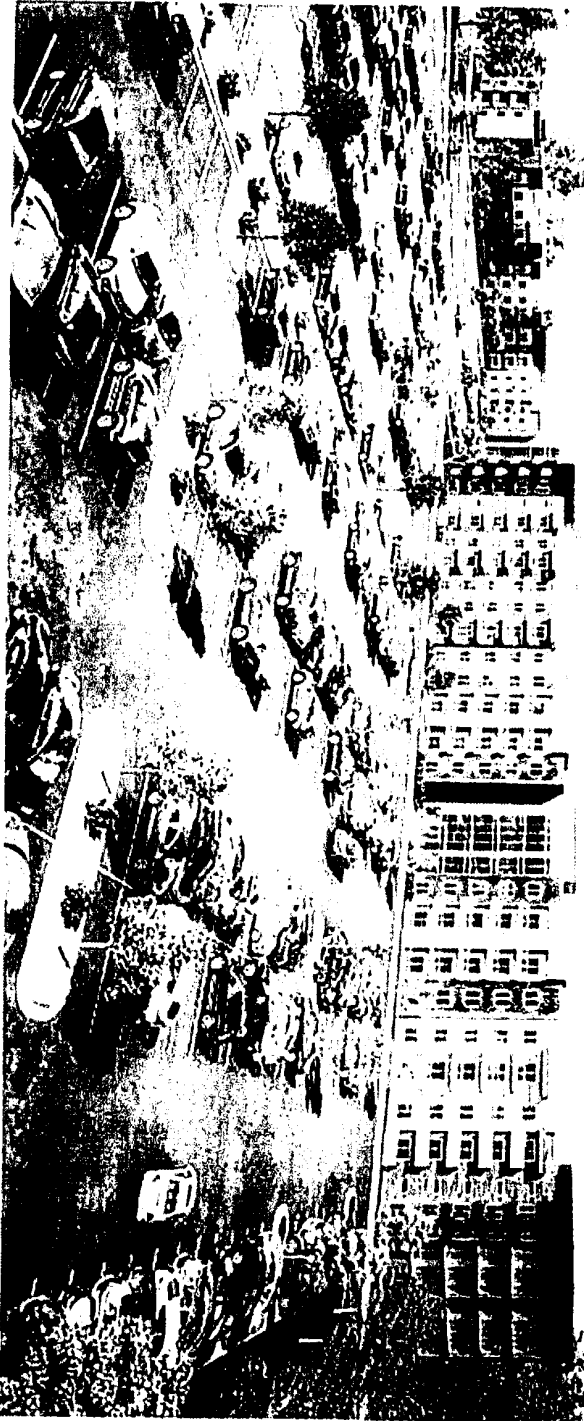


**Exhibit B**

**Development Plans**



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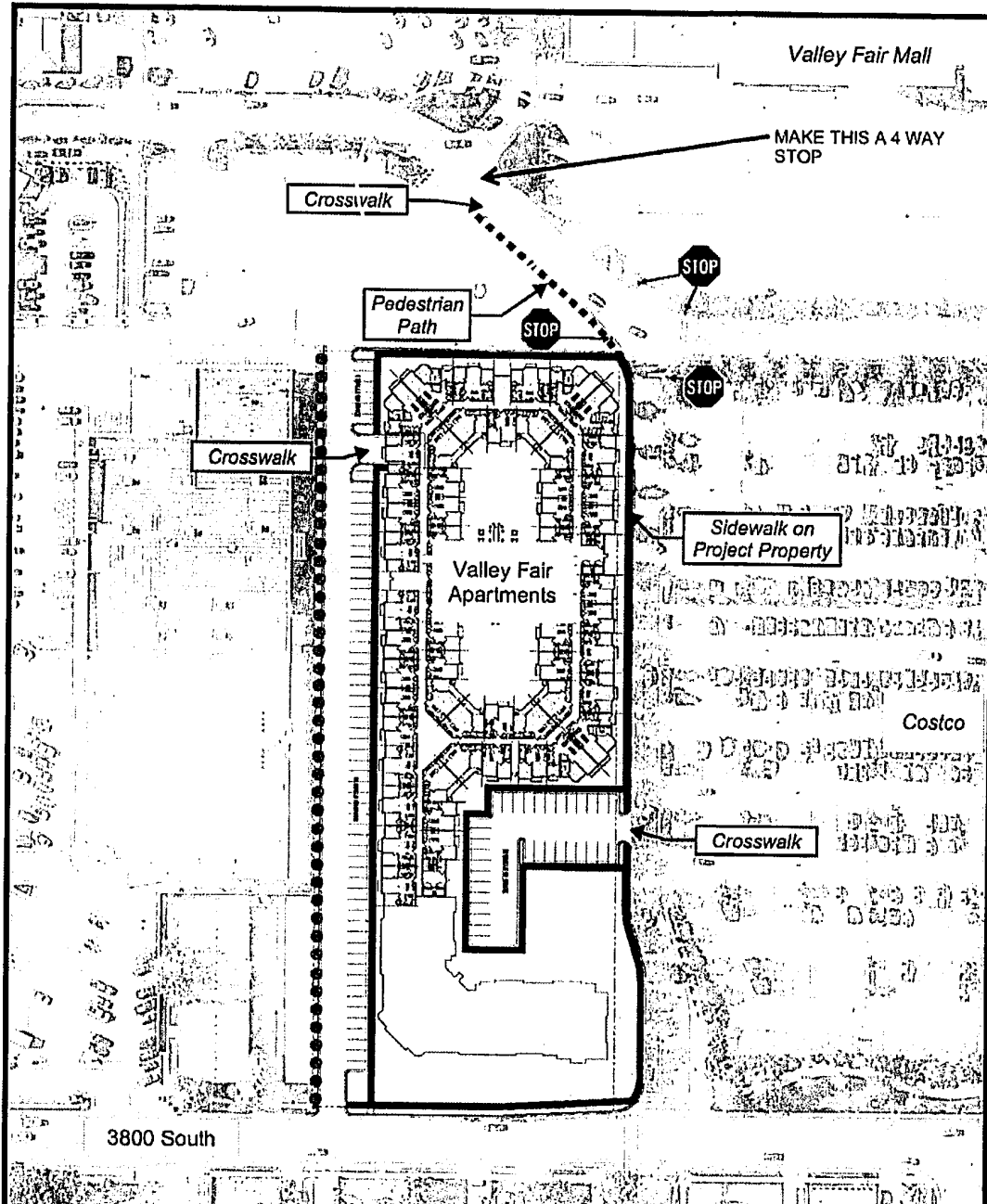






**Exhibit C**

**4 Way Stop Location**



<b>HALES ENGINEERING</b> innovative transportation solutions	Area Improvements Concept West Valley City Valley Fair Apartments	N 	DATE 08/19/2019
			PROJECT UT19-1480