

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, Washington 98027

Attn: Bruce Coffey

Space Above For Recorder's Use Only

CONSTRUCTION, OPERATION AND RECIPROCAL  
EASEMENT AGREEMENT

By and Between

Blue Spring Business Park LLC  
a Utah limited liability company

and

Costco Wholesale Corporation,  
a Washington corporation

Location of Property

Logan, Utah

Tax Parcel Nos.: 05-123-0001; 05-123-0002;  
05-123-0003; 05-123-0004; 05-123-0005

1ST AM  
NCS-1059592

**CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT**

**Site Location: Logan, UT**

THIS CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (the “**Agreement**”) is made and entered into as of May 26<sup>th</sup>, 2022 (“**Effective Date**”), by and between **BLUE SPRING BUSINESS PARK LLC**, a Utah limited liability company (“**Developer**”), and **COSTCO WHOLESALE CORPORATION**, a Washington corporation (“**Costco**”). Developer and Costco are referred to individually as a “**Party**” and collectively as the “**Parties**”.

**RECITALS:**

A. Developer is the owner of that certain real property, referred to herein as the “**Developer Parcels**”, located in the City of Logan, County of Cache, State of Utah, and more particularly described on Exhibit “A”, attached hereto and incorporated herein by this reference.

B. Costco is the tenant of one of the Developer Parcels commonly known as “**Lot 1**”, being referred to herein as the “**Costco Parcel**”, as more particularly described on Exhibit “B”, attached hereto and incorporated herein by this reference, pursuant to that certain Ground Lease, dated on or about the Effective Date (“**Ground Lease**”), between Developer, as landlord, and Costco, as tenant.

C. Developer intends to retain ownership of and all development rights to the Developer Parcels and to construct certain buildings and other improvements on the Developer Parcels in accordance with the provisions and limitations contained in this Agreement.

D. Costco intends to construct certain buildings on the Costco Parcel in accordance with the provisions and limitations contained in this Agreement.

E. The Parties agree, acknowledge, and recognize that for the optimum development and operation of the “**Project**” it is necessary that they agree to certain matters, including, but not limited to, matters relating to the construction and maintenance of facilities on, and the use and restrictions on the use of, their respective Parcels, and that in the absence of such agreements neither Party would be willing to undertake the development or operation of their respective Parcels, and the Parties desire that all “**Persons**” who acquire portions of the Project shall take subject to this Agreement in order that the development and operation of the Project will be in conformity herewith. Accordingly, Developer and Costco intend to establish certain reciprocal easements, covenants, and conditions with respect to their Parcels.

**ARTICLE I**  
**DEFINITIONS**

1.1. Definitions. In addition to terms defined within this Agreement, the following terms shall have the following meanings:

(a) “**Agreement**” shall mean this Construction, Operation and Reciprocal Easement Agreement, as such may be amended from time-to-time.

(b) “**Approving Owners**” shall mean, collectively, Developer (but only so long as Blue Spring Business Park LLC, a Utah limited liability company, or to any affiliate entity or partnership that is owned or controlled by Jason Larsen and Kris Larsen, so long as Blue Spring Business Park LLC (or any such affiliate entity or partnership that is owned or controlled by Jason Larsen and Kris Larsen) is an Owner of any portion of the land now comprising the Developer Parcels) and the Owner of the Costco Parcel. “**Approving Owner**” shall mean, individually, any one of the Approving Owners.

(c) “**Building**” or “**Buildings**” shall mean any building, structure, or other similar improvement from time-to-time existing on each Parcel.

(d) “**Costco**” shall mean the tenant, lessee, and user of the Costco Parcel and for purposes of this Agreement, Costco shall be deemed the Owner of the Costco Parcel. If there shall be more than one Owner of the land comprising the Costco Parcel, the term “Costco” shall refer: (1) to Costco Wholesale Corporation, so long as Costco Wholesale Corporation is an Owner or lessee of any portion of the land now comprising the Costco Parcel, and (2) to the Owner of the largest portion of the gross land area within the Costco Parcel if Costco Wholesale Corporation is no longer the Owner or lessee of any portion of the land now comprising the Costco Parcel.

(e) “**Costco Car Wash**” shall mean any structures, signage, lighting, curbing, pay stations, vending machines, underground water reclamation vaults, service islands or areas, or other incidental improvements associated with a car wash facility located on and within the Costco Parcel.

(f) “**Costco Fueling Station**” shall mean any service islands, structures, signage, lighting, curbing, pay stations, vending machines, or other incidental improvements associated with a fueling station on and within the Costco Parcel.

(g) “**Costco Parcel**” is defined in Recital B. If the Costco Parcel initially comprises or is later subdivided into more than one legal lot, then the term Costco Parcel shall collectively refer to all such legal lots.

(h) “**Default Interest Rate**” shall mean the lesser of: (i) five percent (5%) per annum in excess of the “Prime Rate,” and (ii) the highest lawful rate. The “**Prime Rate**” shall be the prime or reference rate of interest announced as such from time-to-time by Bank of America, N.A. or its successor for short-term, uninsured loans to its most creditworthy borrowers. If there shall be no such announced rate of such bank or its successor, then the “Prime Rate” shall be such equivalent rate as is charged from time-to-time by major money-center banks.

(i) “**Developer**” shall mean the Owner of the Developer Parcels. If there shall be more than one Owner of the land comprising the Developer Parcels, the term “Developer” shall refer: (1) to Blue Spring Business Park LLC, a Utah limited liability company, or to any affiliate entity or partnership that is owned or controlled by Jason Larsen and Kris Larsen, so long as Blue Spring Business Park LLC (or any such affiliate entity or partnership that is owned or controlled by Jason Larsen and Kris Larsen) is an Owner of any portion of the land now comprising the Developer Parcels, and (2) to the Owner of the largest portion of the gross land area within the Developer Parcels if Blue Spring Business Park LLC (or any such affiliate entity or partnership

that is owned or controlled by Jason Larsen and Kris Larsen) is no longer the Owner of any portion of the land now comprising the Developer Parcels.

(j) **“Developer Parcels”** are defined in Recital A. If the Developer Parcels are subdivided into additional legal lots, then the term “Developer Parcels” shall collectively refer to all of such legal lots. The Parties agree and acknowledge that the Developer Parcels shall not include “Lot 6” and “Lot 7” as contained in the Official Plat for the Blue Spring Subdivision (Phase 1) and that “Lot 6” and “Lot 7” are not subject to this Agreement and any of the terms, conditions, restrictions, and reciprocal easements, covenants, and conditions established under this Agreement.

(k) **“Floor Area”** shall mean the aggregate number of square feet of floor space in the Project, from time-to-time, of all floors in any Building, or other structure, whether roofed or not, whether or not actually occupied, including basement space and subterranean areas and balcony and mezzanine space, measured from the exterior faces or the exterior lines of the exterior walls (including basement walls) or other exterior points of demarcation. The term “Floor Area” shall not include any of the following:

(i) the upper levels of any multi-deck stock areas created for convenience to increase the usability of space for stock purposes;

(ii) all truck and/or loading dock areas or the concrete apron or ramp leading to such areas, truck tunnels, truck parking, and turn around areas;

(iii) the Costco Car Wash; or

(iv) the Costco Fueling Station.

(l) **“Governing Jurisdiction”** shall mean the City of Logan, and County of Cache in the State of Utah, and any other governmental or quasi-governmental agency exercising jurisdiction over the Project.

(m) **“Mortgage”** shall mean any first or second mortgage, indenture of first or second mortgage, or first or second deed of trust on the interest, whether fee or leasehold, of an Owner in a Parcel and, to the extent applicable, a “Sale and Leaseback” or “Assignment and Subleaseback” transaction as herein contemplated.

(n) **“Mortgagee”** shall mean a mortgagee, or trustee and beneficiary under a deed of trust and to the extent applicable, a fee owner or lessor or sublessor of any Parcel which is the subject of a lease under which any Owner becomes a lessee in a so-called “Sale and Leaseback” or “Assignment and Subleaseback” transaction.

(o) **“Occupant”** shall mean the Owners, all Persons from time-to-time entitled to the use and occupancy of Floor Area in the Project under any lease, deed, or other arrangement whereunder such Person has acquired a right to the use and occupancy of all or any portion of any Floor Area, and their respective officers, directors, employees, agents, and contractors.

(p) **“Official Records of the Recorder’s Office”** shall mean the official land records of the Cache County Recorder’s Office located in Cache County, Utah.

(q) **“Owner”** and **“Owners”** as used in this Agreement shall mean the Persons executing this Agreement, or their successors-in-interest as hereinafter provided, as shown by the Official Records of the Recorder’s Office, as of the date of the exercise of powers or rights or the performance by such Owners of obligations created by this Agreement. Such reference shall include any Person designated in writing by any of the Owners to act in the manner and at the time provided herein with complete authority and in the place of such Owner in the matter for which action is taken, powers exercised, or performance required, provided such written authority shall be recorded in the Official Records of the Recorder’s Office, and provided further that:

(i) Transfer of Interest. In the event of the assignment, transfer, or conveyance of the whole of the interest of any of the Owners in and to the Parcel or Parcels in which such Owner presently has an interest, without retaining any beneficial interest other than under the terms of a deed of trust or mortgage or without simultaneously acquiring a new interest by way of leasehold, life estate, or other possessory interest, then the powers conferred upon such Owner shall be deemed assigned, transferred, or conveyed and the obligations assumed with its interest in such Parcel or Parcels;

(ii) Sale Leaseback or Financing. In the event the whole of the interest of such Owner in and to the Parcel or Parcels in which it has a present interest is assigned, transferred, or conveyed but a new interest is created in such Owner simultaneously with such assignment, transfer, or conveyance by way of leasehold or similar possessory arrangement, or in the event such Owner shall convey its interest in said Parcel or Parcels or any part thereof by deed of trust or other security instrument as security for indebtedness, then the following shall apply: (A) said fee owner and party in possession may designate (in the manner described in subsection (iv) below) that either (but not both) of them shall have the powers and obligations of the Owner with respect to such Parcel or Parcels; (B) in the absence of such a designation all of said powers and obligations shall remain with the party retaining fee title ownership as shown by the Official Records of the Recorder’s Office; and (C) the interest of both such fee owner and holder of such possessory interest shall remain subject to all of the terms and conditions hereof. In the event the interest of such Owner referred to in this subsection shall cease and terminate, then upon such termination the powers and/or obligations of such Owner shall vest in accordance with subsections (i), (iii) or (iv) hereof, whichever is applicable;

(iii) Subdivision. In the event a Parcel is divided into one or more separate legal lots, each of such separate legal lots shall thereafter be considered to be a “Parcel” and the owners of each such legal lot shall be an “Owner”; and no Parcel may be subdivided into residential condominium units. Any Parcel or Parcels subdivided as aforesaid shall remain subject to all terms and conditions of this Agreement, including without limitation, the requirements and restrictions set forth in Article IV; or

(iv) Fractional Interests. In the event any of the Owners shall transfer its present interest in a Parcel or Parcels or a portion of such interest in such manner as to vest its present interest in such Parcel or Parcels in more than one Person other than by creation of a separate legal lot (e.g., by the creation of a tenancy-in-common, joint tenancy or the like), then not

less than a fifty-one percent (51%) interest of such transferees shall designate one of their number to act on behalf of all of such transferees in the exercise of the powers granted to such Owner under this Agreement. So long as such designation remains in effect, such designee shall be an Owner hereunder and shall have the power to bind such Parcel or Parcels and such transferees, and such transferees shall not be deemed to be Owners. Any such designation must be in writing and delivered to the other Owners hereto by registered or certified mail, and must be recorded in the Official Records of the Recorder's Office. In the absence of such written designation, the acts of the Owner whose interest is so divided with respect to the exercise of the powers vested by this instrument shall be binding upon all Persons having an interest in such Parcel or Parcels until such time as written notice of such designation is given and recorded in the Official Records of the Recorder's Office.

(r) **"Pad"** or **"Pads"** shall mean those areas generally depicted and designated as "Pads" on the Site Plan. In the absence of any designation of Pads on the Site Plan, the Parties agree and acknowledge that "Lot 2", "Lot 3", "Lot 4", and "Lot 5" of the Developer Parcels shall qualify as and each be considered a "Pad" and collectively as the "Pads" under this Agreement.

(s) **"Parcel"** or **"Parcels"** shall mean each legal lot within the Project.

(t) **"Permittees"** shall mean the Owners, all Persons from time-to-time entitled to the use and occupancy of Floor Area in the Project under any lease, deed, or other arrangement whereunder such Person has acquired a right to the use and occupancy of all or any portion of any Floor Area, and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires.

(u) **"Person"** or **"Persons"** shall mean and include individuals, partnerships, firms, associations, limited liability companies, government agencies, joint ventures, corporations, or any other form of business entity.

(v) **"Project"** shall mean the property consisting of the Developer Parcels, including the Costco Parcel. The Parties agree and acknowledge that "Lot 6" and "Lot 7" as contained in the Official Plat for the Blue Spring Subdivision (Phase 1) are not part of nor contained within the Project and are not subject to this Agreement and the terms, conditions, restrictions, and reciprocal easements, covenants, and conditions established under this Agreement.

(w) **"Site Plan"** shall mean that certain plan attached as Exhibit "C" and made a part hereof by this reference.

## **ARTICLE II**

### **CONSTRUCTION OBLIGATIONS**

2.1. Interference by Construction. Each Owner agrees that any construction work to be undertaken by it shall be performed (a) so as not to cause any increase in the cost of constructing the remainder of the Project or any part thereof, (b) so as not to unreasonably interfere with any construction work being performed on the remainder of the Project, or any part thereof, and (c) so as not to unreasonably interfere with and minimize disruptions of the access to, use, occupancy, or enjoyment of the remainder of the Project (including, the Permanent Access Easement (as defined

below)) or any part thereof by the other Owner and the Permittees of the other Owner. Further, in connection with any construction being performed on any of the Pads, the Owner of the applicable Pad shall use commercially reasonable efforts to ensure that all construction vehicles (including vehicles of workers) shall not enter upon the Costco Property during the period of construction. Except to the extent limited by Section 2.2, any damage occurring to any portion of the Project as a result of such construction work shall be the responsibility of the Owner performing such construction work or causing such construction work to be performed and shall be repaired by such Owner, at such Owner's sole cost and expense, to the same condition as existed immediately prior to such damage promptly upon the completion of such construction work.

2.2. Construction Indemnities. Each Owner covenants and agrees to indemnify, defend, protect, and hold harmless the other Parcels and the other Owners for, from, and against all claims and all costs, losses, damages, expenses, and liabilities (including reasonable attorneys' fees and costs) incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of any mechanic's liens, stop notices, or other claims regarding materials supplied or work performed, or the death of, or any accident, injury, loss, or damage whatsoever caused to any natural person, or to the property of any Person, as shall occur by reason of the performance of any construction, or of any Utility Use, or by or at the request of the indemnitor, except to the extent of claims caused by the negligence, recklessness, or willful misconduct of the indemnitee, its licensees, concessionaires, agents, servants, or employees, or any agents, servants, or employees of such licensees or concessionaires where the same may occur. The indemnitee shall give the indemnitor notice of any suit or proceeding entitling the indemnitee to indemnification pursuant to this Section 2.2 and the indemnitor shall defend the indemnitee in such suit or proceeding with counsel approved by the indemnitee.

2.3. Cost of Construction. Except as otherwise set forth in this Agreement or in any separate agreement between one or more Owners (including, the Ground Lease), each Owner shall be responsible for the cost and expense of all improvements to be constructed on its Parcel.

2.4. Signs.

(a) Building Signage. Each Owner may place such sign or signs on the exterior of the Building(s) on its Parcel(s) as shall be permitted by applicable governmental requirements of the Governing Jurisdiction.

(b) Directional Signage. Directional signage shall be permitted within the Project; *provided, however*, no such directional signage shall direct the Permittees of one Parcel to park on another Owner's Parcel, and *provided, further*, that no such directional signage shall exceed 4' in height (unless required by the Governing Jurisdiction) or shall materially impact the sight lines of any Buildings.

2.5. Staging and Storage Areas. In connection with any construction, reconstruction, repair, or maintenance on its Parcel or Parcels, each Owner reserves the right to create a temporary staging and/or storage area on and entirely within its own Parcel or Parcels ("**Staging Area**"), but on no other Parcel that is not owned or controlled by such Owner, at such location as will not unreasonably interfere with access between such Owner's Parcel or Parcels and the other areas of the Project. All parking of construction vehicles, including vehicles of workers, shall occur only

on the constructing Owner's Parcel or Parcels. Upon completion of such work, the constructing Owner shall restore the Staging Area to a condition equal to or better than that existing prior to commencement of such work and at all times to such condition required by the Governing Jurisdiction.

2.6. No Construction Covenant. Notwithstanding anything to the contrary contained herein, no provision of this Agreement shall be construed to contain a covenant, express or implied, by any Owner or Permittee to construct or reconstruct a Building on such Owner's Parcel or Parcels, regardless of whether a Building may be identified on the Site Plan or otherwise. Each Owner (for itself and any Permittees of such Owner) hereby acknowledges and agrees that it is not relying upon any other Owner or Permittee to construct a Building on such other Owner's Parcel or Parcels.

### **ARTICLE III** **EASEMENTS**

3.1. Easements. Each Owner hereby grants and conveys to each of the other Owners, for the benefit of the other Owners and their respective Parcels, the following easements in, to, over, and across each other Owner's Parcel and Parcels and hereby establishes the following restrictions on their respective Parcels:

(a) No Cross Parking. Unless otherwise agreed to in writing between the Owners, there shall be no cross parking easements in favor of any of the Parcels within the Project, and the Owners hereby specifically disclaim any intention to create shared parking areas among the Pads and the Costco Parcel, or any other Parcel in the Project.

(b) Permanent Access Easement. Each Parcel, Owner, and Permittee shall have a non-exclusive easement in, to, over and across those portions of the Developer Parcels (including, the Costco Parcel) depicted and labelled as "Permanent Access Easement" on the Site Plan for the purpose of the passage of vehicles and pedestrians for vehicular (including service vehicles) and pedestrian ingress and egress, and access, and the right of access between the public streets adjacent to the Project and each Owner's Parcel and/or Parcels ("**Permanent Access Easement**").

(c) Storm Drainage. Each Parcel and Owner shall have non-exclusive easements in, to, over, under and across the other Owners' Parcels for reasonable surface storm drainage purposes; *provided, however*, no Owner shall construct, alter, or operate or permit to be constructed, altered, or operated the surface of its Parcel or the drainage/retention system constructed and operated on its Parcel if such alteration or operation of the drainage/retention system would materially increase the flow of surface water onto an adjacent Parcel or overburden the drainage/retention system on an adjacent Parcel either in the aggregate or by directing the flow of surface storm drainage to a limited or concentrated area.

(d) Encroachment. Each Parcel shall have non-exclusive easements in, on, over and under the other Owner's Parcel for minor unintentional encroachments. The minor unintentional encroachment easements are easements in, on, over or under such Parcel as required from time-to-time for building overhangs, building support columns, canopies, eaves, foundations,



slabs, footings, pillars, and other minor encroachments. Such encroachments, however, shall be limited to a projection of no more than five (5) feet for footings and one (1) foot for other encroachments. Nothing contained in this subsection shall create easements for intentional encroachments without the written consent of the Owner whose Parcel has been encroached upon, which may be granted or withheld in such Owner's sole and absolute discretion.

(e) Utilities.

(i) Each Parcel and Owner shall have non-exclusive easements in, to, over, under, and across those portions of another Owner's Parcel (outside the envelope of any Building(s) located thereon) beneath the ground surface for the benefit of and appurtenant to the grantee's Parcel for the purposes of installation, repair, maintenance, removal, replacement, use and operation (individually and collectively herein referred to as "**Utility Use**") of sanitary sewers, storm drains, water and gas pipes and systems, electrical power conduits, telephone conduits, lines and wires, and other public utilities (individually and collectively "**Utility Lines**") at a location or locations reasonably approved in writing by the applicable Owner; *provided, however*, that in the performance of such Utility Use: (A) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (B) all work shall be completed as quickly as possible and the areas and facilities shall be replaced or restored promptly to the condition in which they were prior to the performance of such Utility Use; (C) all costs, fees, and expenses incurred as a result of such Utility Use shall be borne solely by the Owner which undertakes such Utility Use; (D) the other Owner shall be notified in writing not less than thirty (30) days prior to commencement of such Utility Use, except in the event of an emergency or other circumstances requiring immediate action; (E) the schedule for the performance of such Utility Use shall be subject to the reasonable approval of the other Owner; (F) any work performed pursuant to such easement rights shall also be subject to Sections 2.1 and 2.2 above (including, without limitation, the constructing Owner's obligations to minimize disturbances); and (G) to the greatest extent possible, the Parties desire and intend that as many Utility Lines and the operation and performance of any Utility Use be located within the Permanent Access Easement. Prior to the performance of any such work, the grantee Owner shall provide the grantor Owner with a certificate of insurance evidencing that its contractor has obtained the minimum insurance coverages required pursuant to Section 9.3 of this Agreement.

(ii) The grantee of any easement for Utility Use shall be responsible, at its sole cost and expense, for the installation, operation, maintenance, repair, replacement, relocation, and removal of all utility facilities installed by the grantee within the utility easements, as well as for all utility facilities installed by the grantee on its Parcel, unless the same are maintained by a utility company or governmental or quasi-governmental agency. After initial installation is completed, any installation, maintenance, repair, replacement, relocation and removal of utility facilities that is required to be performed by a grantee Owner must be performed by such Owner and then only after two (2) weeks' advance notice to the grantor of the grantee Owner's intention to do such work. However, in the case of an emergency, any such work may be immediately performed after such advance notice to the other Owners as is practicable under the circumstances. All such installation, maintenance, repair, replacement, relocation, and removal shall be performed in a manner that causes as little disturbance to the Parcels as may be practicable under the circumstances, and any and all portions of the surface area of a grantor Owner's Parcel (including, any portions of the Permanent Access Easement) which may have an excavated,

damaged, or otherwise disturbed as a result of such work shall be restored at the sole cost and expense of the Owner performing the work to essentially the same condition as the same were in prior to the commencement of any such work.

(iii) The grantor Owner shall have the right at any time to relocate any Utility Lines located upon its Parcel upon not less than thirty (30) days' prior written notice to the grantee Owner or Owners, provided that with respect to such relocation: (A) such work shall not interfere with or diminish the utility service to the grantee Owner or Owners during the grantee Owners' normal business hours; (B) such relocated Utility Lines shall not reduce or unreasonably impair or impact the usefulness or function of the Utility Use; (C) such work shall be performed without cost or expense to the grantee Owner or Owners; (D) such work shall be completed using materials and design standards which equal or exceed those used for the original Utility Lines; (E) such work shall not interfere with the grantee Owners' business operations on its Parcel; and (F) upon completion of such work, the grantor Owner shall provide reasonably satisfactory evidence to the grantee Owner or Owners of the relocated easement area, including, without limitation, an as-built legal description of such easement area.

3.2. Unimpeded Access Between Parcels. The Owners covenant that at all times free access between each Parcel and the remainder of the Project will not be impeded and will be maintained. Except as specifically depicted on the Site Plan or as may be approved in writing by Costco and Developer, no fence, division, partition, rail, or obstruction of any type or kind shall ever be placed, kept, permitted, or maintained between the legal lots comprising the Project or between any subsequent division thereof or upon or along any of the common property lines of any portion thereof, and except as may be required at any time and from time-to-time in connection with construction, maintenance, and repair activities.

3.3. Use by Permittees. The use of all easements provided for in this Article III will, in each instance, be non-exclusive and for the use and benefit of all Permittees.

3.4. Unauthorized Use and Closure as Required. Notwithstanding anything to the contrary contained herein, each Owner hereby reserves the right to eject or cause the ejection from its Parcel of any Person or Persons not authorized, empowered, or privileged to use such Parcel (or portion thereof) pursuant to this Agreement. Each Owner also reserves the right to close off portions of its Parcel for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; *provided, however*, that prior to closing off any portion its Parcel, such Owner shall give written notice to the other Owners of its intention to do so, and shall coordinate such closing with the other Owners so that no unreasonable interference with the operation of the Project shall occur; and, *provided, further*, no Owner of any Parcel in the Project may close off any portion of the Permanent Access Easement, or the points of access thereto, without the prior written consent of the Approving Owners and all other Owners of Parcels that adjoin such Permanent Access Easement.

3.5. Prohibition Against Granting Easements. No Owner, nor any Person not an Owner, shall grant an easement or easements of the type set forth in this Article III for the benefit of any property not within the Project at the time of such grant; *provided, however*, that the foregoing shall not prohibit an Owner from granting or dedicating underground utility easements on its Parcel to governmental or quasi-governmental authorities or to public utilities; and *provided, further*, that

the foregoing shall not prohibit Costco and Developer from granting separate access and utility easements to the owners, occupants, and permittees of "Lot 6" and "Lot 7" within the Blue Spring Subdivision (Phase 1), in those areas designated on the Official Plat for the Blue Spring Subdivision (Phase 1).

**ARTICLE IV**  
**PROJECT DEVELOPMENT RESTRICTIONS**

4.1. Site Plan.

(a) Initial Site Plan. The Site Plan attached hereto as Exhibit "C" includes the general Site Plan for the Costco Parcel, the Pads, and the Permanent Access Easement.

(b) Permanent Access Easement. No Owner of any Parcel in the Project may make any modification to the location of the Permanent Access Easement without the consent of the Approving Owners and all other Owners of Parcels that adjoin such Permanent Access Easement.

(c) Pad Curb Cuts. During Costco's construction of improvements to the Permanent Access Easement, Costco shall install the curb cuts to the Pads in the four (4) locations depicted on the Site Plan ("**Approved Curb Locations**"). No Owner of any Pad may make any additions or modifications to the Approved Curb Locations, without the prior written consent of the Owner of the Costco Parcel.

4.2. Separate Operation. Each Owner shall be responsible for its own grading and barriers on its Parcel or Parcels between the Project and any contiguous property so that the parking areas on the Project shall not be readily accessible to the users of any other property. Each Owner shall post such signs and implement such rules and regulations and enforcement means (applicable to each Owners' Parcel or Parcels only) as shall be reasonably necessary in order to restrict the use of the Project to the Project's customers and invitees of the Project, and the Owners shall cooperate with each other in enforcing such exclusive use of the Project.

4.3. Parking Ratio and Standards.

(a) Employee Parking. The employees of each occupant of one or more Pads shall be required to park on such respective Pads, and the employees of each occupant of the Costco Parcel shall be required to park on the Costco Parcel. Each Owner shall use all reasonable efforts to cause the employees of all occupants of its Parcel to comply with the foregoing employee parking requirements.

(b) Governmental Parking Requirements. There shall be maintained at all times on each Parcel a number of parking spaces at least equal to the number of spaces which would be legally required for the Building sizes and uses on such Parcel if such Parcel were not benefited by any parking rights over any other parcels and no variances or exemptions from legal requirements were applicable.

(c) Project Parking Requirements. Without limitation upon the preceding subsection, there shall be maintained at all times on each Parcel not less than the following number

of parking spaces for each one thousand (1,000) square feet of Floor Area utilized for the following uses on such Parcel:

- (i) retail uses of 50,000 square feet of Floor Area or less: 5:1;
- (ii) retail uses of more than 50,000 square feet of Floor Area, but less than 100,000 square feet of Floor Area: 4.75:1;
- (iii) retail uses of 100,000 square feet or more of Floor Area: 4.5:1;
- (iv) fast-food (i.e. fast food service, sandwich shops, coffee stores, and other food service facilities containing up to 4,500 square feet of Floor Area which do not serve wine beer or other alcoholic beverages and do not offer waiter or waitress services) and fast casual restaurants: 10:1 (except for incidental food service in the Costco Building and other Buildings on the Pads if such incidental use is not treated as a separate use for the purpose of parking requirements of the Governing Jurisdiction); and
- (v) full service restaurants (i.e. restaurants that are not fast-food restaurants or fast casual restaurants): 15:1.

4.4. Building Height Limitations. The Buildings on the Pads shall not contain more than one story, or exceed twenty-five feet (25') in height; provided, however, that architectural elements of the buildings may reach up to thirty-four feet (34') in height.

4.5. Certain Setbacks. Following the initial construction of the Building(s) on the Costco Parcel, no Building shall be constructed on any Pads which is within sixty feet (60') of the Building(s) on the Costco Parcel (*excluding, however, the Costco Fueling Station and the Costco Car Wash*). In connection with the foregoing limitation, Developer acknowledges that Costco proposes to construct on the Costco Parcel its typical facility which is classified as an "unlimited area" building under certain applicable building codes (i.e., a building of the type designated II-N or V N under the Uniform Building Code). Notwithstanding the foregoing, in the event Developer is the first to initiate construction of any Buildings on any of the Pads, Developer shall be required to cause such Buildings to be constructed compliant with any then applicable setback requirements imposed by the Governing Jurisdiction.

4.6. Drive-Up Stacking. Without limitation upon any other provisions of this Agreement, if a business use contains a drive-up service window or machine (such as a remote banking teller, automated teller machine, or food ordering/dispensing facility), then the Owner of the Parcel on which such use occurs shall (a) obtain Costco's approval of the location and orientation of the drive-up or drive-through lanes on such Parcel, which approval may only be withheld if the proposed location and orientation of the drive-up or drive-through lanes will impair Costco's ability to access, use, and enjoy the Costco Parcel and/or the Permanent Access Easement (and, in such event, Costco will provide reasonable input and recommendations on how to modify the proposed location and orientation of the drive-up or drive-through lanes to Costco's satisfaction); and (b) provide on such Parcel vehicle stacking lane(s) or aisle(s) that provides for the stacking of not less than five (5) automobiles for each drive-up unit, which automobile stacking lane or configuration shall not impair the access to or use of any parking spaces, driveways, or the Permanent Access Easement.

4.7. Operational Impacts of Costco Parcel. Each other Owner of any part of the Project acknowledges the general nature of the business intended to be conducted on the Costco Parcel (the “**Costco Operational Impacts**”). It is acknowledged that the Costco Operational Impacts may include, without limitation, the circulation of delivery trucks over and within the Costco Parcel; receiving activities at the loading docks and other locations at any time during the day or night; lighting; traffic congestion; noises, odors or other pollutants; and other aspects of the foregoing activities. Each other Owner acknowledges the presence of the Costco Operational Impacts on and about the Costco Parcel and waives any right to request or require the Costco Owner or any Owner of any part of the Costco Parcel to install a sound wall or other features or take any other actions to mitigate effects of the Costco Operational Impacts, provided that this shall not preclude any Owner from implementing mitigating features within such Owner’s Parcel or Parcels that do not impact or interfere with the operations on the Costco Parcel or of the Costco Owner, at such other Owner’s sole cost and expense and subject to the provisions of this Agreement.

## **ARTICLE V**

### **USE RESTRICTIONS**

5.1. Project Prohibited Uses. No part of the Project may be used for any of the following uses:

(a) any public or private nuisance; any adult cinema, massage parlor, video store or bookstore selling, renting or exhibiting primarily any pornographic, lewd, suggestive or “adult” newspaper, book, magazine, film, picture, representation or merchandise of any kind;

(b) any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness;

(c) any business or use which creates strong, unusual, or offensive odors;

(d) any excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to Costco’s or another Owner’s operation or to the operation of a home improvement or general merchandise store;

(e) any fire, explosion, or other damaging or dangerous hazard, including the storage, display, or sale of explosives or fireworks, but the foregoing shall not prohibit (i) the operation of a Costco Fueling Station or propane sales facility in accordance with applicable law; or (ii) the sale of fireworks on a temporary basis in connection with civic holidays conducted within the confines of a Building containing at least 25,000 square feet of Floor Area;

(f) any distillation (other than so-called micro-brewing of beer), refining, smelting, agriculture or mining operations;

(g) any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising. Notwithstanding the foregoing, pet shops shall be permitted within the Project;

(h) any drilling for and/or removal of subsurface substances;

(i) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose (but the same does not prohibit government-required consumer recycling facilities);

(j) any cemetery, mortuary, or similar service establishment, but the foregoing shall not prohibit the sale of caskets, urns, or other funerary equipment or products;

(k) any fire sale, bankruptcy sale (unless pursuant to a court order), or auction operation;

(l) any second-hand or thrift stores, or flea markets; and

(m) any dry-cleaning facilities utilizing hazardous substances with an on-premises plant.

5.2. Prohibited Uses on Pads. Except as otherwise set forth in this Agreement or in any separate agreement between Developer and Costco, no part of the Pads may be used for the following uses:

(a) any industrial use (other than an industrial use that is incidental or ancillary to the primary, non-industrial use of the applicable Pad) so long as the Costco Parcel is used for retail and/or wholesale sales. If the Costco Parcel is used for an industrial use, the Developer Parcels may be used for an industrial use subject, however, to the other terms of this Agreement;

(b) any self-storage use so long as the Costco Parcel is used for retail and/or wholesale sales. If the Costco Parcel is used for a self-storage use, the Developer Parcels may be used for a self-storage use;

(c) any bar, tavern, restaurant or other food service establishment which has more than forty percent (40%) of its gross sales derived from the sale of wine, beer or other alcoholic beverages;

(d) any theater or cinema;

(e) any entertainment, recreation, or amusement use, whether directed to children or adults. Such prohibited uses shall include, without limitation, any one or more of the following: skating rink, bowling alley, teenage discotheque, discotheque, dance hall, video game parlor, pool room, off-track betting facility, casino, card club, bingo parlor, facility containing gaming equipment, planned play environment, arcade games, amusement gallery, rides, video or redemption games, play for fun casino games, golf simulations, rodeo simulations, other sport simulations and carnival activities;

(f) any athletic club, health club, fitness center, gym, exercise studio, yoga or pilates studio, or any similar facilities;

(g) any school, training, educational or day care facility, including but not limited to: beauty schools, barber colleges, nursery schools, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers;

provided however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Project;

(h) any automobile, truck, trailer, recreational vehicle, boat or other motorized vehicle (collectively, “**Motor Vehicles**”) sales, leasing, renting or display which is not entirely conducted inside of a Building;

(i) any repairing, servicing or maintaining of any Motor Vehicles; any fuel or service stations; any tire sales, service or installation; any car washes; or any body and fender repair work;

(j) any apartment, home, or other residential use;

(k) any church, synagogue, mosque, or other place of worship; and

(l) any hotel, motel, or other lodging facility.

5.3. No Operating Covenant. Notwithstanding anything to the contrary contained herein, no provision of this Agreement shall be construed to contain a covenant, express or implied, by an Owner or Permittee to open or commence operations of a business on such Owner’s Parcel or to continuously operate a business on such Owner’s Parcel. Further, an Owner may, without prior notice or consent, cease operations of any business then being operated on its Parcel. Each Owner (for itself and any Permittees of such Owner) hereby acknowledges and agrees that it is not relying upon any other Owner or Permittee to open or operate a business on such other Owner’s Parcel.

## **ARTICLE VI**

### **MAINTENANCE OF IMPROVEMENTS**

6.1. Maintenance of Buildings. Each Owner shall at all times during the term of this Agreement, at its sole cost and expense, maintain and repair, or cause to be maintained and repaired, the exterior of Buildings from time-to-time located on such Owner’s Parcel, in good repair, clean condition, and free of trash and debris and graffiti, reasonable wear and tear excepted, subject to Article VII.

6.2. Maintenance of Non-Building Areas. Subject to the provisions of Section 6.3 and any separate agreements between Developer and Costco, including, the Ground Lease, each Owner shall at all times during the term of this Agreement, at its sole cost and expense, operate, maintain, repair, and replace the non-Building portions of such Owner’s Parcel and keep it in good condition and repair, clean, free of rubbish and other hazards to persons using such area, properly lighted, and landscaped (in accordance with landscaping and lighting plans approved by the Governing Jurisdiction). Any unimproved non-Building area shall be kept dust and litter-free. The minimum standard of maintenance for improved non-Building area shall be comparable to the standard of maintenance followed in similar first-class developments of comparable size in the Ogden, Utah metropolitan area and in compliance with all applicable governmental laws, rules, regulations orders and ordinances, and the provisions of this Agreement. All non-Building area improvements shall be maintained, repaired, or replaced with materials at least equal to the quality of the materials

being maintained, repaired, or replaced so as to maintain the architectural and aesthetic harmony of the Project as a whole.

6.3. Non-Building Area Maintenance Responsibilities. Except as otherwise set forth in this Agreement or in any separate agreement between Developer and Costco, the operation, maintenance, repair, and replacement obligations of each Owner hereunder with respect to its Parcel(s) shall be the following:

(a) Paved Surfaces. Maintaining, repairing, cleaning, and replacing all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, sweeping, resurfacing, and resealing parking lots and drive lanes, and restriping as necessary to maintain parking space designation and traffic direction; *provided, however*, the Parties agree and acknowledge that Costco shall be responsible for all costs, expenses, and obligations associated with the maintenance, repair, cleaning, and replacement of the Permanent Access Easement pursuant to and in accordance with the terms and conditions of the Ground Lease;

(b) Trash Removal. Periodically removing all papers, debris, filth, trash, and refuse, including, without limitation, sweeping to the extent necessary to keep the non-Building area in the condition required pursuant to Section 6.2, at appropriate intervals during such times as shall not interfere with the conduct of business or use of the non-Building area;

(c) Ice and Snow Removal. Performing all ice and snow removal or storage in the non-Building area, including paved surfaces and sidewalks; *provided, however*, the Parties agree and acknowledge that Costco shall be responsible for all snow and ice removal obligations in connection with the Permanent Access Easement pursuant to and in accordance with the terms and conditions of the Ground Lease;

(d) Sidewalk Maintenance. Maintaining, cleaning, and replacing all sidewalks, including those adjacent and contiguous to buildings located within the Project (other than Costco's Building), including, without limitation, pressure washing and sweeping at appropriate intervals during such time as shall not interfere with the conduct of business or use of the non-Building area; *provided, however*, the Parties agree and acknowledge that Costco shall be responsible for all maintenance, repair, cleaning, and replacement obligations for sidewalks located within the Permanent Access Easement pursuant to and in accordance with the terms and conditions of the Ground Lease;

(e) Building Signage. Placing, maintaining, cleaning, repainting, repairing, and replacing all signage permitted in accordance with Section 2.4(a) and, if any such signage is illuminated, maintaining in an operational standard all necessary components of such illumination systems;

(f) Directional Signage. Placing, maintaining, cleaning, repainting, repairing, and replacing all directional, stop, or handicapped parking signs or markers, including those permitted in accordance with Section 2.4(b), and keeping fire lanes, loading zones, no parking areas and pedestrian cross-walks clearly marked; *provided, however*, the Parties agree and acknowledge that Costco shall be responsible for all maintenance, repair, cleaning, and replacement obligations for all directional, stop, or handicapped parking signs or markers, fire



lanes, no parking areas, and pedestrian cross-walks, if and as applicable, located within the Permanent Access Easement pursuant to and in accordance with the terms and conditions of the Ground Lease;

(g) Lighting. Maintaining, cleaning, and replacing non-Building area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, and illuminating the non-Building area during the period from dusk to dawn; *provided, however*, the Parties agree and acknowledge that Costco shall be responsible for all maintenance, repair, cleaning, and replacement obligations for all lighting located within the Permanent Access Easement pursuant to and in accordance with the terms and conditions of the Ground Lease;

(h) Landscaping. Maintaining, irrigating, and replacing all landscaping in an attractive and thriving condition, trimmed and weed-free; and maintaining the landscape irrigations systems in good condition and repair; *provided, however*, the Parties agree and acknowledge that Costco shall be responsible for all maintenance, repair, cleaning, and replacement obligations for all landscaping located within the Permanent Access Easement pursuant to and in accordance with the terms and conditions of the Ground Lease;

(i) Retaining Walls. Maintaining and repairing all retaining walls;

(j) Stormwater Drainage Facilities. Maintaining, repairing, and replacing all stormwater drainage facilities within each Owner's respective Parcel or Parcels;

(k) Obstructions. Keeping the non-Building area free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Agreement;

(l) Other Improvements. Maintaining, repairing, and replacing the following additional items of non-Building area improvements: access ways, restrooms (if any), benches, cart corrals, building directories, pedestrian coverings, as necessary, in good condition and repair; *provided, however*, the Parties agree and acknowledge that Costco shall be responsible for all maintenance, repair, cleaning, and replacement obligations for any of the foregoing items or improvements located within the Permanent Access Easement pursuant to and in accordance with the terms and conditions of the Ground Lease; and

(m) Liability Insurance. Keeping in effect general commercial liability insurance covering the non-Building area in accordance with the standards set forth in Section 9.3.

**6.4. Permanent Access Easement**. Following Costco's construction of the improvements to the Permanent Access Easement substantially in accordance with Costco Wholesale – Warehouse, Logan, UT, Permit Set, February 2022, prepared by KM Engineering, dated 2/3/22 (a copy of which has been delivered to Developer), Costco shall at all times during the term of this Agreement and in accordance with the terms and conditions of the Ground Lease, maintain, repair, clean, and replace the Permanent Access Easement and any and all improvements therein, and keep the same in good condition and repair, clean and free of rubbish, ice, and snow accumulations in accordance with the maintenance standards set forth in Sections 6.2 and 6.3 and the Ground Lease. However, if any damage is caused to the Permanent Access Easement by

another Owner, or such Owner's Permittees, during delivery, construction, repair, maintenance, or other extraordinary use of such area, then such Owner shall pay the cost of repairing such damage. Each Owner of a Parcel adjacent to a Permanent Access Easement hereby grants to Costco and its contractors, materialmen, and laborers a temporary construction license for access and passage over and across the grantor's Parcel as shall be reasonably necessary to construct, maintain, repair, clean, and replace the Permanent Access Easement as provided in this Section 6.4.

## **ARTICLE VII**

### **DAMAGE TO IMPROVEMENTS**

7.1. Restoration of Non-Building Area. Except as otherwise set forth in this Agreement or in any separate agreement between Developer and Costco, including, the Ground Lease, in the event of any damage or destruction to the non-Building area on any Parcel, whether insured or uninsured, the Owner with respect to such Parcel shall restore, repair, or rebuild such damaged portion of the non-Building area with all due diligence as nearly as possible to at least as good a condition as it was in immediately prior to such damage or destruction.

7.2. Restoration of Buildings.

(a) In the event of damage to or destruction of the Building(s) on an Owner's Parcel, such Owner may, but shall not be obligated to restore and reconstruct such Building(s). In the event an Owner so elects, such Owner shall restore and reconstruct such Building(s) to at least as good a condition as it or they were in immediately prior to such damage or destruction. All such restoration and reconstruction shall be performed in accordance with the following requirements, as the same are applicable thereto:

(b) All work shall be performed in a good and workmanlike manner in accordance with Section 2.1, and shall be done such that the non-Building area and Buildings affected continue to conform to and comply with:

(i) all applicable requirements of laws, codes, regulations and rules imposed by the Governing Jurisdiction; and

(ii) all applicable requirements of this Agreement.

(c) All such work shall be completed with due diligence, and at the sole cost and expense of the Owner performing the same.

7.3. Clearing of Parcel. Whenever an Owner elects not to restore, repair, or rebuild its Building(s) that has or have been damaged or destroyed, such Owner, at its sole cost and expense, and as soon as reasonably possible, shall raze such Building(s) or such part thereof as has or have been damaged or destroyed, clear the Parcel(s) of all debris, and all areas not restored to their original use shall, at the expense of such Owner, be leveled, cleared and improved with, at the option of the Owner of such Parcel, either landscaping or parking area, of like standard and design as the non-Building area of the Project.

**ARTICLE VIII**  
**EMINENT DOMAIN**

8.1. **Eminent Domain.** Except as otherwise set forth in any separate agreement between Developer and Costco, including, the Ground Lease, in the event any part of the Project, including the non-Building area, shall be taken by eminent domain or any other similar authority of law, the entire award for value of the land and improvements so taken shall belong to the Owner whose property was so taken or its tenants, as their leases may provide, and the other Owner (or Owners, as the case may be) shall not claim any portion of such award by virtue of any interests created by this Agreement. However, the other Owner (or Owners, as the case may be) may file a claim with the condemning authority over and above the value of the property so taken to the extent of any damage suffered by such Owner (or Owners, as the case may be) resulting from the severance of such area taken. Except as otherwise set forth in any separate agreement between Developer and Costco, including, the Ground Lease, the Owner whose property was so condemned shall promptly repair and restore in accordance with this Agreement the remaining portion of its Parcel as nearly as practicable to the condition existing just prior to such condemnation without contribution from the other Owners.

**ARTICLE IX**  
**TAXES, INDEMNIFICATION AND INSURANCE**

9.1. **Realty Taxes and Assessments.** Each Owner shall, at its sole cost and expense, pay when due all real estate taxes and assessments which may be levied, assessed, or charged by any public authority against such Owner's Parcel, the improvements thereon or any other part thereof; provided that one or more Owners may have separate agreements between themselves (including, the Ground Lease) to allocate real estate taxes and assessments, which shall not be binding on any other Owner. In the event an Owner shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property) to be excessive or illegal, such Owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Section 9.1 shall require such Owner to pay any such real estate tax or assessment so long as (a) no other Owner's Parcel would be immediately affected by such failure to pay (or bond), and (b) the amount or validity thereof shall be contested in good faith. If the failure to pay (or bond) such tax would affect another Owner's Parcel, such other Owner shall have the right to pay such tax and shall have a lien on the nonpaying Owner's Parcel for the amount so paid until reimbursed for such payment. Any such lien shall be subject to and junior to, and shall in no way impair or defeat the lien or charge of any Mortgagee.

9.2. **Indemnification.** Subject to Section 2.2 and the terms and conditions of the Ground Lease, each Owner shall indemnify, defend, and save the other Owners harmless for, from and against any and all demands, liabilities, damages, expenses, causes of action, suits, claims, and judgments, including reasonable attorneys' fees and costs, arising from injury or death to person or damage to property that occurs on the indemnifying Owner's Parcel. An Owner shall not be entitled to such indemnification for any damage caused to such Owner by reason of the negligence, recklessness, or willful misconduct of such Owner or its agents, servants, contractors, or employees.

9.3. Liability Insurance. Except as otherwise set forth in any separate agreement between Developer and Costco, including, the Ground Lease, each Owner shall, severally, at all times during the term of this Agreement, maintain or cause to be maintained in full force and effect an "Occurrence Based" commercial general liability insurance policy covering its Parcel, with an insurance company or companies having a then current A. M. Best's rating of "A-", and a financial rating of "VII" or an equivalent rating, or better, and that are licensed, admitted or otherwise authorized to do business in the Governing Jurisdiction, including coverage for any accident resulting in bodily injury to or the death of any person and consequential damages arising therefrom, and property damage, in an amount not less than Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) general aggregate, as such amounts may be adjusted to pursuant hereto, and including coverage of the contractual liability contained in Section 9.2 above. Each Owner's commercial general liability policy with respect to its Parcel shall cause each other Owner to be an additional insured. With respect to each party who is an "additional insured" such policy shall: (a) provide that such policy shall not be canceled without the insurer endeavoring to provide the kind of notice that would be otherwise provided under the applicable ACCORD certificate; (b) provide for severability of interests; and (c) provide that an act or omission of one of the insureds or additional insureds that might otherwise void or reduce coverage shall not void or reduce the coverage as to the other insureds or additional insureds. A party that is to be named as an additional insured need not be named individually or by an endorsement to such policy, but may be named as part of a class or group of parties granted additional insured status under such policy. Each Owner shall furnish to each other Owner requesting the same in writing evidence that the insurance referred to in this Section 9.3 is in full force and effect. One example of reasonably acceptable evidence of such insurance is Costco's Memorandum of Insurance posted at [www.marsh.com/moi?client=0847](http://www.marsh.com/moi?client=0847). The aforesaid \$2,000,000 and \$4,000,000 coverage limits may be increased, but no more frequently than every three years, to be consistent with insurance carried by developments comparable to the Project in the area in which the Project is located if Costco and the other Approving Parties determine it is necessary.

9.4. Property Insurance; Release and Waiver of Subrogation.

(a) Property Insurance. To assure performance of their respective obligations under Article VII, the Owners of the respective Parcels shall cause to be carried "Causes of Loss – Special Form" property insurance at least as broad as the current ISO form in an amount determined prudent by such Owner, but, in all events, sufficient to provide full coverage for such Owner's obligations under Article VII above. The insurance referenced in this Section 9.4 may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies pursuant to Section 9.5, (iii) a plan of self-insurance satisfying the criteria set forth in Section 9.6, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with this Section 9.4, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed one percent (1%) of an Owner's net worth unless such Owner complies with the requirements regarding self-insurance pursuant to Section 9.6. The Owner's third-party property insurance shall be carried by an insurance company or companies licensed, admitted, or otherwise authorized to do business to do business in the Governing Jurisdiction with an A. M. Best's rating of "A-", and a financial

rating of "VII" or an equivalent rating, or better (or a comparable standard under an international rating system).

(b) Release and Waiver of Subrogation. Except as otherwise set forth in any separate agreement between Developer and Costco, including, the Ground Lease, each Owner for itself releases the other Owners from and, to the extent legally possible for it to do so on behalf of its insurer, hereby waives any liability for any loss or damage to its property located upon the Project, which loss or damage is of the type covered typically by a "Causes of Loss – Special Form" policy of property insurance or any comparable ISO form replacement or successor thereto. If the waiver of subrogation provided for in this Section 9.4 is not effective as to any insurer of an Owner, such Owner covenants that it will obtain for the benefit of the other Owners an express waiver of any right of subrogation which the insurer of such Owner may acquire against the other Owner by virtue of the payment of any such loss covered by such insurance. In the event any Owner (a "**Non-Waiver Owner**") is by law, statute, governmental regulation or otherwise unable to obtain a waiver of the right of subrogation for the benefit of the other Owners (including without limitation, an inability to obtain it at a commercially reasonable cost), then, during any period of time when such waiver is unobtainable, the Non-Waiver Owner shall be deemed not to have released any subrogated claim of its insurance carrier against the other Owner(s), and during the same period of time the other Owner(s) shall be deemed not to have released the Non-Waiver Owner from any claims they or their insurance carriers may assert which otherwise would have been released pursuant to this Section 9.4. If any Owner is unable to obtain such waiver of the right of subrogation for the benefit of another Owner, such Non-Waiver Owner shall, within thirty (30) days of receiving notice of such inability, give the other Owner written notice of such inability.

9.5. Blanket Insurance. Any insurance required to be carried pursuant to this Article IX may be carried under a policy or policies covering other liabilities and locations of an Owner; provided, however, that such policy or policies apply to the Parcels required to be insured by this Article IX in an amount not less than the amount of insurance required to be carried by such Owner with respect thereto, pursuant to this Article IX which shall contain a per location endorsement.

9.6. Self-Insurance. Except as otherwise set forth in any separate agreement between Developer and Costco, including, the Ground Lease, each Owner shall have the right to satisfy its insurance obligations hereunder by means of self-insurance to the extent of all or part of the insurance required hereunder, but only so long as (i) such Owner (or an affiliate providing the insurance) shall have a net worth of at least \$200,000,000; and (ii) such Owner (or an affiliate providing the insurance) shall, upon request, provide a financial statement, prepared in accordance with generally accepted accounting principles, showing the required net worth unless such Owner (or affiliate providing the insurance) is an entity whose stock is publicly held and traded through a national stock exchange or an entity subject to reporting requirements of the Securities Exchange Commission similar to those applicable to publicly-traded companies, and provided that such information is available to the public (e.g., without limitation, via the Securities Exchange Commission's website at [www.sec.gov](http://www.sec.gov)), then such Owner (or affiliate providing the insurance) shall not be required to provide another Owner with any financial statements. If an Owner self-insures any of the risks to which coverage is required under this Agreement, such Owner's self-insurance protection shall be deemed to include the waivers of subrogation required under Section 9.4 (except to the extent ineffective against a third party insurer) and such Owner (or affiliate providing such insurance) shall be personally liable for the defense and payment of any claims,

liabilities and causes of action to the extent to which, but only to the extent to which, that would have been payable by a hypothetical third-party insurer providing the insurance required under this Agreement, had such Owner obtained such insurance from a third party insurer.

9.7. Insurance Savings Clause. The Parties recognize that, over time, the insurance industry changes the scope and nature of insurance coverage that is available on commercially reasonable terms and pricing. Accordingly, if a party endeavors in good faith and after exercising commercially reasonable efforts to obtain the kind of insurance required to be carried by the terms of this Agreement, but cannot do so due to changes in the insurance industry that render the required scope and nature of insurance coverage unavailable or only available on terms and pricing that are not commercially reasonable (as opposed to any particular terms or pricing that are unusual due to any particular Owner or use of such Owner's Parcel), then provided that such Owner obtains the best available coverage then generally available (no less broad than the coverage that would be available pursuant to ISO standard forms or any successor or replacement thereof) on commercially reasonable terms and pricing, such party shall not be in default of its obligations under this Agreement. For a party to avail itself of the protection afforded by this Section 9.7, it shall have to provide prior written notice to the other Owners and the other Owners shall have a right to investigate whether such Owner has and is, in fact, exercised commercially reasonable efforts and is not able to procure the required insurance on commercially reasonable terms and pricing due to industry-wide changes. The Owner seeking the protections of this Section 9.7 shall cooperate with the inquiry of the other Owners and provide the other Owners with a description of the efforts that such Owner engaged in to attempt to acquire the required insurance coverage.

## **ARTICLE X** **REMEDIES**

10.1. Legal Action Generally. Subject to the terms of Article XI regarding disputes that are required to be resolved by arbitration, if any of any Owner or Occupant of the Project (a "**Defaulting Owner**") breaches any provision of this Agreement then any other Owner may institute court action or arbitration, as may be required pursuant to Article XI, against the Defaulting Owner for specific performance, injunction, declaratory relief, damages, or any other remedy provided at law. All remedies herein or at law shall be cumulative and not inclusive. As used herein, any reference to rights or remedies "at law" or "under applicable law" shall also include any rights or remedies "in equity".

10.2. Injunctive and Declaratory Relief. In the event of any violation or threatened violation by any Defaulting Owner of any of the terms, covenants, conditions, and restrictions herein contained, in addition to any other remedies provided for in this Agreement, any Owner shall have the right to enjoin such violation or threatened violation and to bring an action for declaratory relief.

10.3. Owner's Right to Cure or Abate. If any Defaulting Owner violates any covenant, condition, or restriction contained in this Agreement, or permits or suffers any Occupant to violate any covenant, condition, or restriction of this Agreement, then in addition to any other remedy provided for in this Agreement and any separate agreement between Developer and Costco, including, the Ground Lease, any Owner (the "**Creditor Owner**") may demand by written notice (the "**Default Notice**") that the violation be cured. Except for utility service interruptions or

similar emergencies which shall not require advance notice or cure periods hereunder, if the Defaulting Owner does not cure the violation within thirty (30) days after receipt of the Default Notice, or if such default is of a kind which cannot reasonably be cured within thirty (30) days, and the Defaulting Owner does not within such thirty (30) day period commence to cure such default and diligently thereafter prosecute such cure to completion, then the Creditor Owner (and its agents and employees) shall have the right to (i) pay any sum owed by the Defaulting Owner to the Person entitled thereto, (ii) enter upon the Parcel of the Defaulting Owner (or any portion thereof) and summarily abate, remove, or otherwise remedy any improvement, thing, or condition which violates the terms of this Agreement, and (iii) enter upon the Parcel of the Defaulting Owner (or any portion thereof) and perform any obligation of the Defaulting Owner to be performed thereon. The Defaulting Owner shall, within ten (10) days of written demand by the Creditor Owner, accompanied by appropriate supporting documentation, reimburse the Creditor Owner for all costs and expenses incurred by the Creditor Owner in undertaking any of the actions permitted by clauses (i) through (iii) in the preceding sentence, including, without limitation, wages, benefits, and overhead allocable to the time expended by any employee of the Creditor Owner in taking such actions, together with interest thereon at the rate equal to the Default Interest Rate, from the date such costs and expenses were advanced or incurred by the Creditor Owner.

10.4. Lien. Any Creditor Owner shall be entitled to a lien against the Parcel and the interests of Owner in such Parcel (for example, any leasehold interest of Costco) of the Defaulting Owner, which lien shall be created and foreclosed in accordance with this Section 10.4.

(a) Creation. A lien authorized by this Section 10.4 shall be created by recording a written instrument (the "**Claim of Lien**") in the Official Records of the Recorder's Office, which (i) references this Agreement by recording number, (ii) alleges a specific breach of this Agreement, (iii) states the amount owed by the Defaulting Owner through the recording date of the Claim of Lien, (iv) contains a legal description of the Parcel and the specific interests of the Owner in such Parcel of the Defaulting Owner (for example, any leasehold interest of Costco), and (v) is executed and acknowledged by the Creditor Owner.

(b) Amount. A lien created pursuant to this Section 10.4 shall include (i) the amount stated in the Claim of Lien, (ii) all costs and expenses incurred in creating and foreclosing such lien (including attorneys' fees and costs), (iii) all amounts which become due from the Defaulting Owner (or its successors or assigns) to the Creditor Owner after the date the Claim of Lien is recorded, whether such amounts arise from a continuation of the default alleged in the Claim of Lien or from some other default under this Agreement, and (iv) interest on all of the foregoing at the Default Interest Rate.

(c) Priority. The priority of a lien created pursuant to this Section 10.4 shall be established solely by reference to the date the Claim of Lien is recorded, and, accordingly, the same shall be junior to any deed of trust or similar security instrument recorded after the date of this Agreement and prior to the recordation of any such Claim of Lien.

(d) Extinguishment. If the Defaulting Owner cures its default, and pays all amounts secured by a lien created pursuant to this Section 10.4, the Creditor Owner shall record an instrument sufficient in form and content to clear title to the Parcel and the respective interests

in such Parcel (for example, any leasehold interest of Costco) of the Defaulting Owner from the Creditor Owner's lien.

(e) Foreclosure. A lien created pursuant to this Section 10.4 shall be foreclosed judicially or non-judicially, at the election of the Creditor Owner, in the same manner as provided for a judicial or non-judicial foreclosure of a mortgage or deed of trust of real property in the State of Utah.

10.5. Personal Obligation. Each Owner and Occupant, by acceptance of the deed to, lease of, or other conveyance or established interest of all or a portion of a Parcel or interest therein, shall be deemed to covenant and agree to be personally bound by this Agreement. Any sum not paid, or other obligation not performed when due, together with interest payable hereunder, including, the Default Interest Rate, and all costs and attorneys' fees incurred in connection with collection, shall be the personal obligation of the Person or Persons who were the Owners and/or Occupants of the Parcel at the time the payment or obligation became due. The personal obligation shall not be released by any transfer of the Parcel subsequent to the date such payment or obligation became due, but such obligation shall run with the land and/or the respective interests of the responsible Owner and shall be binding upon any successor Owner.

10.6. Remedies Cumulative. The remedies provided in this Article X are in addition to any remedies available elsewhere in this Agreement and any separate agreement between Developer and Costco, including, the Ground Lease, or under applicable law, whether such remedy is pursued through court action or arbitration, as may be required pursuant to Article XI. Exercise of one remedy shall not be deemed to preclude exercise of other remedies for the same default, and all remedies available to an Owner may be exercised cumulatively.

## **ARTICLE XI** **ARBITRATION**

11.1. Applicability. Except as otherwise set forth in any separate agreement between Developer and Costco, including, the Ground Lease, all disputes, controversies, actions, or claims ("**Claims**") that (a) are between any Owner or Occupant of the Project or such party's present, former or future subsidiaries, parents, affiliates, officers, directors and/or employees, and (b) that arise specifically out of and relate to this Agreement, or its subject matter, interpretation, performance, or enforcement, or relate to the Project (including without limitation any tort or statutory claims) ("**Disputes**") will be arbitrated under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), at the capital city of the State in which the Project is located, before one neutral arbitrator who shall be a member of the AAA's Large Complex Case Panel. Any issues about the arbitrability of a Claim or Dispute will be determined by the arbitrator. Notwithstanding the above, any Owner or Occupant of the Project may bring court proceedings for Claims against each other or such party's present, former or future subsidiaries, parents, affiliates, officers, directors and/or employees (i) solely as part of separate litigation commenced by an unrelated third party, (ii) if not first sought from the arbitrator, solely to obtain in the state or federal courts where the Project is located, temporary or preliminary injunctive relief or other interim remedies pending conclusion of the arbitration, or (iii) if an entity that is not an Owner or Occupant of the Project or such party's present, former or future subsidiaries, parents, affiliates, officers, directors and/or employees is a necessary or indispensable party to such Dispute. In the



case of contradiction between the provisions of this Article XI and the Commercial Arbitration Rules of AAA, this Article XI shall prevail. As between Costco and Developer, in the case of contradiction between the provisions of this Article XI and the Ground Lease, the Ground Lease shall prevail. The limitations on remedies described above may be deemed inoperative to the extent necessary to preserve the enforceability of the agreement to arbitrate. If any provision of this Article XI and the Parties agreement to arbitrate is held invalid or unenforceable, it shall be so held to the minimum extent required by law and all other provisions shall remain valid and enforceable.

11.2. **Agreement to Arbitrate.** Each Owner and Occupant, by acceptance of the deed to, lease of, or other conveyance of all or a portion of a Parcel or interest therein, shall be deemed to have covenanted and agreed that (i) these arbitration and dispute provisions are valid, and that it has freely and voluntarily accepted them as part of its negotiations to be a part of the Project, (ii) it has given and received consideration for agreeing to arbitrate under these terms, (iii) it has had the opportunity to consult with counsel as to whether or not to agree to arbitration, (iv) it waives any Claim it may have to immunity from arbitration, (v) any defense to arbitrability or enforcement, including but not limited to sufficiency of notice, deficiencies in the proceeding and public policy concerns is waived if not raised in the arbitration proceeding or the first opportunity for appeal, and (vi) it consents to the enforcement and execution of any arbitration award, against it and any of its assets and interests, subject to the terms of this Agreement. If for any reason this agreement to arbitrate is held invalid or unenforceable with respect to any Claim or Dispute, then the exclusive forum for that Claim or Dispute will be the federal or state courts in which the Premises are located.

11.3. **Arbitration Process.** Except as otherwise set forth in any separate agreement between Developer and Costco, including, the Ground Lease, all documents and information relevant to the Claim or Dispute in the possession of any Party shall be made available to the other party not later than sixty (60) days after the demand for arbitration is served, and the arbitrator may permit such depositions or other discovery deemed necessary for a fair hearing. The arbitrator shall have the power to require discovery of third parties (including testimony and documents) to the fullest extent allowed by federal law or the laws of the state where the Premises is located. The hearing may not exceed two days. The arbitrator's award shall be rendered within 120 days of the demand. The arbitrator may award interim and final injunctive relief, specific performance and other equitable remedies to the extent permitted under this Agreement. The arbitrator may award damages, including, but not limited to special, consequential, incidental and indirect damages, but may not award punitive, exemplary, treble or other enhanced damages or damages in excess of those provided for in Article X above whether under contract, tort, statute, or any other basis for liability unless they are required by statute as determined by the arbitrator. The arbitrator in his or her discretion may award attorneys' fees and costs to the more prevailing party. Other parties may be joined as necessary to resolve a Dispute. No time limit herein is jurisdictional. Any award of the arbitrator (including awards of interim or final remedies) may be confirmed or enforced in any court having jurisdiction.

## **ARTICLE XII**

### **MISCELLANEOUS**

12.1. **Notices.** Any notices, payments, demands, consents, approvals, offers, or other

writings or communications required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if sent by (a) personal delivery, (b) delivery by a nationally recognized overnight delivery service, (c) mailing or depositing same in the United States mail, registered or certified, return receipt requested, postage prepaid, or (d) electronic transmission (for example, by e-mail, telecopy, or fax machine), and in all cases shall be properly addressed to the Parties at the following addresses:

To Developer: Blue Spring Business Park, LLC  
Attention: Jason Larsen  
1075 North Main Street, Suite 120  
Logan, Utah 84341  
Phone: (435) 760-7446  
E-Mail: [jason@als.com](mailto:jason@als.com)

With a copy to: Brian P. Rosander  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Telephone: (801) 532-1234  
E-Mail: [brosander@parsonsbehle.com](mailto:brosander@parsonsbehle.com)

To Costco: Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, WA 98027  
Attn: Property Management  
E-Mail: [gsuboi@costco.com](mailto:gsuboi@costco.com)

With a copy to: Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, Washington 98027  
Attention: Bruce A. Coffey  
Fax No.: 425.313.8114  
E-Mail: [bcoffey@costco.com](mailto:bcoffey@costco.com)

Any such notice shall be deemed to be given on the first date on which it is received or receipt thereof is refused.

12.2. Binding Effect. All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to and run with the Developer Parcels and the Costco Parcel, and shall, except as otherwise set forth herein, benefit or be binding upon the successors and assigns of the respective Owners; *provided, however*, that, such limitations, covenants, conditions, easements, and restrictions shall be binding upon, enforceable against, and enforceable by each Owner only with respect to the respective successive periods in which each of Developer and Costco is an Owner and with respect to obligations which accrue during their respective period of ownership or leasing and occupancy. This Agreement and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitudes in favor of said Parcels and any portion thereof. Except as otherwise set forth in any separate agreement between

Developer and Costco, including, the Ground Lease, whenever the rights, powers, and obligations conferred upon any of the Owners are vested in another Owner or Owners pursuant to the provisions of subsections 1.1(o), the transferor shall, subject to the terms of Section 1.1(o), be released or discharged from the obligations thereafter accruing under the terms of this Agreement, and the transferee(s) of such interest shall be bound by the covenants and restrictions herein contained.

12.3. Attorneys' Fees. In the event of any action between the Owners or Parties to this Agreement for a breach of or to enforce any provision or right hereunder, including, any Claims and Disputes handled in an arbitration proceeding pursuant to Article XI, the non-prevailing Owner or Party in such action shall pay to the prevailing Owner or Party all costs and expenses, expressly including, but not limited to, reasonable attorneys' fees and costs incurred by the successful Owner or Party in connection with such action, Claims, and/or Disputes, including, without limitation, all fees and costs incurred on any appeal from such action or proceeding.

12.4. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Agreement shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement, and such limitations shall not affect in any manner any of the rights or remedies which the Owners may have by reason of any breach of this Agreement.

12.5. Breach - Effect on Mortgagee and Right to Cure. A breach by any Owner of any of the limitations, covenants, conditions, easements, and restrictions contained in this Agreement shall not defeat or render invalid the lien of any Mortgage made in good faith, but all of the foregoing provisions, limitations, covenants, conditions, easements, and restrictions shall be binding and effective against any Owner of any portion of the Project, or any part thereof, who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale.

Notwithstanding any other provision in this Agreement for notices of default, the Mortgagee of any Owner in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Agreement; provided, however, that said Mortgagee shall have, prior to the time of the default, delivered written notice to the Owner(s) giving said notice of default of the Mortgagee's mailing address. In the event that any notice shall be given of the default of an Owner and such Defaulting Owner has failed to cure or commence to cure such default as provided in this Agreement, then and in that event the Owner giving such notice of default covenants to give such Mortgagee (which has previously given the above stated notice to such Owner) under any Mortgage affecting the Parcel of the Defaulting Owner an additional notice, given in the manner provided above, that the Defaulting Owner has failed to cure such default and such Mortgagee shall have thirty (30) days after said additional notice to cure any such default, or, if such default cannot be cured within thirty (30) days, diligently to commence curing within such time and diligently pursue such cure to completion within a reasonable time thereafter. Giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Owner so declaring a default.

12.6. Effect on Third Parties. Except for Section 12.5, which is for the benefit of a Mortgagee, the rights, privileges, or immunities conferred hereunder are for the benefit of the Owners and not for any third party.

12.7. No Partnership. Neither this Agreement nor any acts of the Owners shall be deemed or construed by the Parties, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Owners.

12.8. Modification. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by the Approving Owners; provided, however that no modification or amendment of this Agreement that would, individually or in the aggregate, impose any additional building restrictions or requirements, increase the parking ratio requirements or impose additional use restrictions or add (or adversely modify the terms of) any easement on any Parcel, or materially and adversely affect or add or increase any obligations on the Owner of any Parcel, financial or operational, or eliminate any rights of the Owner of any Parcel under this Agreement may be made without the prior written consent of such Owner of such affected Parcel. Except as expressly provided herein, no consent or approval of any Owner other than the Approving Owners shall be required in order to modify or amend any provisions of this Agreement.

12.9. Severability. In the event any term, covenant, condition, provision, or agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any other term, covenant, condition, provision, or agreement contained herein.

12.10. Governing Law. This Agreement and the obligations of the Owners hereunder shall be interpreted, construed, and enforced in accordance with the Governing Jurisdiction, without regard to its conflicts of law provisions.

12.11. Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and vice versa.

12.12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one Agreement.

12.13. Captions. Article and section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provisions hereof.

12.14. Consent. In any instance in which Costco or any Owner (including, the Approving Owners) shall be requested to consent to or approve of any matter with respect to which Costco or such Owner's consent or approval is required by any of the provisions of this Agreement, such consent or approval or disapproval shall be given in writing, and shall not be unreasonably withheld, conditioned, or delayed, unless the provisions of this Agreement with respect to a particular consent or approval shall expressly provide otherwise.

12.15. Estoppel Certificate. Each Owner hereby severally agrees that within thirty (30) days of the written request of any other Owner it will issue to such other Owner or to any prospective Mortgagee or purchaser of such Owner's Parcel an estoppel certificate stating: (a)

whether, to such Owner's actual knowledge, the Owner to whom the request has been directed knows of any default under this Agreement (or if any circumstance or event exists which, with the passage of time or giving of notice, or both, may constitute a default under this Agreement) and specifying the nature thereof; (b) whether, to such Owner's actual knowledge, this Agreement has been assigned, modified, or amended in any way (and if it has, then stating the nature thereof); and (c) whether, to such Owner's actual knowledge, this Agreement as of that date is in full force and effect. Any such estoppel certificate may only be used to estop the Owner providing such certificate from asserting facts inconsistent with such Owner's statements against the parties expressly benefitted by such certificate, if such benefitted parties are acting in reasonable reliance of such statements and without knowledge of any facts to the contrary.

12.16. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project (including, but not limited to, the Permanent Access Easement) to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Owners and the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

12.17. Release. If an Owner shall sell, transfer, or assign its entire Parcel or its interest therein (for example, Costco's leasehold interest in the Costco Parcel), it shall, except as provided otherwise in this Agreement, be released and discharged from its unaccrued obligations hereunder from and after the date of such sale, transfer, or assignment. It shall be a condition precedent to the release and discharge of any grantor or assignor Owner that the following conditions are satisfied: (a) such grantor or assignor shall give notice to the other Owners of any such sale, transfer, conveyance or assignment promptly following the filing for record of the instrument effecting the same; and (b) the transferee shall execute and deliver to the other Owners a written statement in a form suitable for recording in the Official Records of the Recorder's Office in which: (i) the name and address of the transferee shall be disclosed; and (ii) the transferee shall acknowledge its obligation hereunder and agree to be bound by this Agreement and perform all obligations hereunder in accordance with the provisions of this Agreement. Failure to deliver any such written statement shall not affect the running of any covenants herein with the land, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement, but such failure shall constitute a default by the transferee hereunder.

Notwithstanding anything in this Section 12.17 to the contrary, it is expressly understood and agreed that no such sale, transfer, or assignment shall effectuate a release or discharge pursuant to this Section 12.17 until such successor-in-interest to the transferor Owner has executed and recorded in the Official Records of the Recorder's Office an instrument whereby such successor-in-interest agrees to be fully bound under the provisions of this Agreement in the place and stead of the transferor Owner.

12.18. Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

12.19. Entire Agreement. This Agreement and the exhibits hereto contain all the representations and the entire agreement between the Owners with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are superseded in total by this Agreement and exhibits hereto. The provisions of this Agreement shall be construed as a whole

according to their common meaning and not strictly for or against any Owner or Party. This Agreement is not, however, intended to supersede the provision of any lease as between an Owner and its tenant. As between Costco and Developer, in the case of any conflict, inconsistency, or contradiction between the provisions of this Agreement and the Ground Lease, the Ground Lease shall govern and prevail.

12.20. Force Majeure. In the event that any Owner or Party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes; lockouts; labor troubles; shortages of labor or materials generally applicable to the locality of the Project after due diligence in obtaining the same; power failure; riots; insurrection; civil disorder; war; terrorist acts, fire, flooding or other casualty; condemnation; acts of God; unusually adverse weather conditions in the locality of the Project; governmental restrictions; the inability to obtain governmental approvals or permits despite the exercise of due diligence and good faith by such party; temporary or permanent injunction or other court order; or by reason of any other cause beyond the exclusive and reasonable control of the party delayed in performing work or doing acts required of it under this Agreement after the exercise of due diligence, including diligence in contracting, and the exercise of rights under contracts with contractors and suppliers (each, an “**Event of Force Majeure**”), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Except as otherwise provided in this Agreement, the provisions of this clause shall not operate to excuse an Owner or Party from prompt payment of any assessment or other amounts may be due from it hereunder. The Owner or Party claiming a delay due to the occurrence of an Event of Force Majeure shall give notice to the other Owners and Parties affected by its delay in performance of the circumstances supporting such claim within five (5) business days after the occurrence of a purported Event of Force Majeure. Failure of such Owner or Party to timely make a claim of the existence of an Event of Force Majeure shall be deemed to be a waiver by such Owner or Party of any claim of the existence of a permitted excuse arising from such Event of Force Majeure. Delays caused by an Owner or Party’s lack of or inability to obtain funds, materials, or governmental approvals necessary to complete work shall not be deemed an Event of Force Majeure, nor shall delays arising under circumstances in which the performance of such work is possible albeit at a cost higher than such Owner or Party may have anticipated or budgeted.

12.21. Mechanics’ Liens. In the event any mechanics’ liens are filed against the Parcel of any Owner, the Owner permitting or causing such lien to be filed hereby covenants either to pay the same and have it discharged of record, promptly, or to take such action as may be required to reasonably and legally object to such lien, or to have the lien removed from such Parcel, and in all events agrees to have such lien discharged prior to the entry of judgment for foreclosure of such lien.

12.22. Duration. This Agreement and each term, easement, covenant, restriction and undertaking of this Agreement will remain in effect for a term of eighty nine (89) years from the recordation date hereof and shall be renewed for successive ten (10) year periods if Costco and Developer elect by written notice to the other Owners to so renew. following easements and restrictions granted under the following sections shall survive any termination of this Agreement: Section 3.1(b) (captioned “Permanent Access Easement”), Section 3.1(c) (captioned “Storm Drainage”), Section 3.1(d) (captioned “Encroachment”), and Section 3.1(e) (captioned “Utilities”).

12.23. Waiver of Default. No waiver of any default by any Owner or Party shall be implied from any omission by any Owner or Party to take any action in respect of such default if such default continues or is repeated. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any term, provision, or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision, or covenant or any other term, provision, or covenant contained in this Agreement. The consent or approval by any Owner or Party to or of any act or request by any other Owner or Party requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent or similar acts or requests. The rights and remedies given to any Owner or Party by this Agreement shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or if any other right or remedy at law or in equity which any such Owner or Party might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any Owner or Party shall not impair such Owner or Party's standing to exercise any other right or remedy.

12.24. Limitation on Liability. Except as otherwise set forth in any separate agreement between Developer and Costco, including, the Ground Lease, each Owner and Party to this Agreement agrees to look solely to each other Owner or Party's respective interest in the Project and the rents, issues, and profits derived therefrom for the recovery of damages for any breach of this Agreement. Notwithstanding the foregoing, the foregoing limitations shall not apply to any claims based upon intentional torts (including, without limitation, fraud or misrepresentation) committed by any Owner or Party; and, provided further, that this provision shall not limit an Owner or Party's ability to obtain equitable relief, and to obtain a personal judgment necessary to implement such equitable relief. As used herein, "equitable relief" does not include a claim for damages even if based on equitable grounds. Except as set forth in this Section 12.24, no other assets of an Owner or Party shall be subject to levy, execution, or other procedures for the satisfaction of any remedies that in any way arise out of or are related to this Agreement.

12.25. Exhibits. The following are attached to this Agreement.

Exhibit "A"	Legal Description of Developer Parcels
Exhibit "B"	Legal Description of Costco Parcel
Exhibit "C"	Site Plan

***[Intentionally Blank – Signature and Acknowledgement Pages to Follow]***

**SIGNATURE AND ACKNOWLEDGEMENT PAGES**

IN WITNESS WHEREOF, Developer has caused this Agreement to be executed as of the Effective Date.

**DEVELOPER:**

**BLUE SPRING BUSINESS PARK, LLC,**  
a Utah limited liability company

By: *Jason Jensen*  
Print Name: Jason Jensen  
Title: Manager

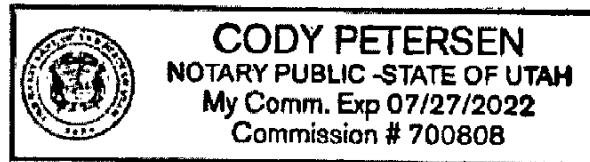
**ACKNOWLEDGMENT OF DEVELOPER**

STATE OF UTAH )  
 : ss.  
COUNTY OF CACHE )

The foregoing Construction, Operation and Reciprocal Easement Agreement was acknowledged before me this 25 day of May, 2022, by JASON JENSEN, the MANAGER of Blue Spring Business Park, LLC, a Utah limited liability company.

*[Signature]*  
NOTARY PUBLIC  
Residing at: UTAH, UT

My Commission Expires:  
7.27.22





SIGNATURE AND ACKNOWLEDGEMENT PAGES (CONTINUED)

IN WITNESS WHEREOF, Costco has caused this Agreement to be executed as of the Effective Date.

**COSTCO:**

**COSTCO WHOLESALE CORPORATION,**  
a Washington corporation

By: PC PC  
Print Name: PAT CAULANS  
Title: EVP

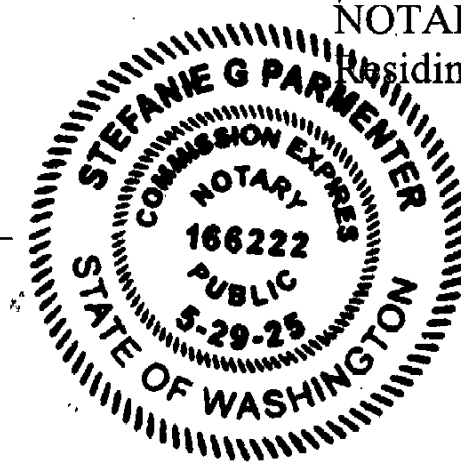
**ACKNOWLEDGMENT OF COSTCO**

STATE OF WA )  
  ) : ss.  
COUNTY OF King )

The foregoing Construction, Operation and Reciprocal Easement Agreement was acknowledged before me this 23<sup>rd</sup> day of May, 2022, by Pat Caulans, the Executive VP of Costco Wholesale Corporation, a Washington corporation.

Stefanie G. Parmenter  
NOTARY PUBLIC  
Residing at: Sammamish

My Commission Expires:  
5/29/25



**EXHIBIT "A"**  
**TO**  
**SITE DEVELOPMENT AGREEMENT**

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**LEGAL DESCRIPTION OF DEVELOPER PARCELS**

The real property referenced in the foregoing Agreement as the "Developer Parcels" are located in the County of Cache, State of Utah and are more particularly described as follows:

LOT 1, LOT 2, LOT 3, LOT 4, AND LOT 5, AS SET FORTH ON THE FINAL, OFFICIAL PLAT OF BLUE SPRING SUBDIVISION (PHASE 1), RECORDED ON MAY 3, 2022, IN THE OFFICIAL RECORDS OF THE CACHE COUNTY RECORDER, AS ENTRY NO. 1318875, IN BOOK 2022, AT PAGE 3608.

**EXHIBIT "B"**  
**TO**  
**SITE DEVELOPMENT AGREEMENT**

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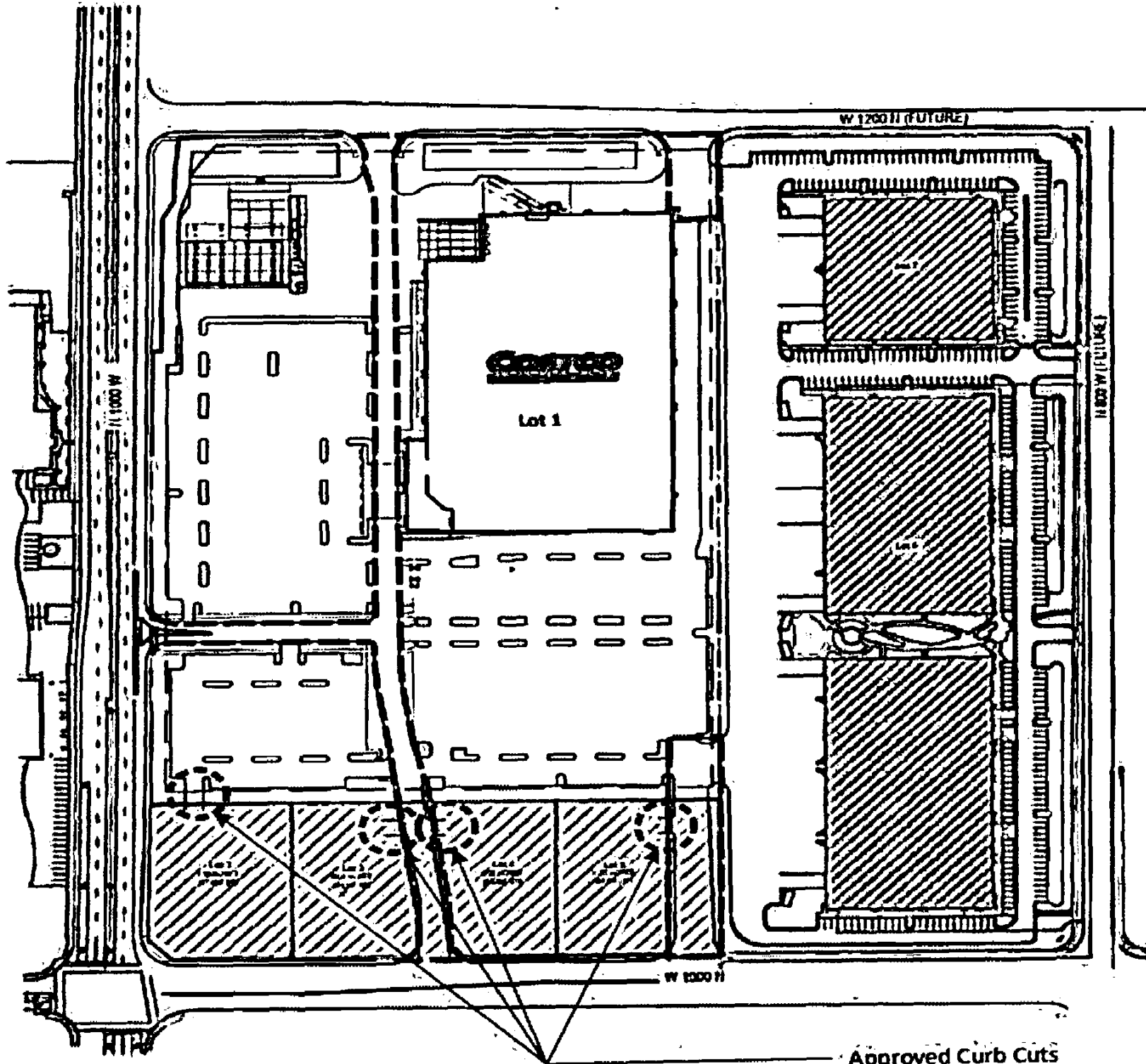
LEGAL DESCRIPTION OF COSTCO PARCEL




The real property referenced in the foregoing Agreement as the "Costco Parcel" is located in the County of Cache, State of Utah and is more particularly described as follows:

LOT 1, AS SET FORTH ON THE FINAL, OFFICIAL PLAT OF BLUE SPRING SUBDIVISION (PHASE 1), RECORDED ON MAY 3, 2022, IN THE OFFICIAL RECORDS OF THE CACHE COUNTY RECORDER, AS ENTRY NO. 1318875, IN BOOK 2022, AT PAGE 3608.

**EXHIBIT "C"**  
**TO**  
**SITE DEVELOPMENT AGREEMENT**

SITE PLAN



-  Costco Property
-  Developer Parcels/Pads
-  Permanent Access Easements & Drives