



CITY OF COLLEGE STATION  
Home of Texas A&M University\*

# CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 21300491 PROJECT#: \_\_\_\_\_ BID/RFP/RFQ#: \_\_\_\_\_

**Project Name / Contract Description:** Economic Development Agreement between City of College Station and Costco Wholesale Corporation

**Name of Contractor:** Costco Wholesale Corporation

**CONTRACT TOTAL VALUE:** \$ N/A **Grant Funded**  Yes  No  
If yes, what is the grant number:

**Debarment Check**  Yes  No  N/A **Davis Bacon Wages Used**  Yes  No  N/A  
**Section 3 Plan Incl.**  Yes  No  N/A **Buy America Required**  Yes  No  N/A  
**Transparency Report**  Yes  No  N/A

**NEW CONTRACT**  **RENEWAL #** \_\_\_\_\_  **CHANGE ORDER #** \_\_\_\_\_  **OTHER** \_\_\_\_\_

**BUDGETARY AND FINANCIAL INFORMATION** (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)

Per Agreement, City of College Station agrees to discount purchase of property, reimburse Costco for development related permit fees and credit 5% of purchase price at closing of sale.

**CRC Approval Date\*:** NA *(If required)\** **Council Approval Date\*:** 04/22/21 **Agenda Item No\*:** \_\_\_\_\_

*--Section to be completed by Risk, Purchasing or City Secretary's Office Only--*

**Insurance Certificates:** NA **Performance Bond:** NA **Payment Bond:** NA **Info Tech:** NA

**SIGNATURES RECOMMENDING APPROVAL**

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

4/15/21  
DATE

LEGAL DEPARTMENT

4-19-21  
DATE

ASST CITY MGR - CFO

4-15-21  
DATE

**APPROVED & EXECUTED**

CITY MANAGER

4/22/21  
DATE

MAYOR (if applicable)

\_\_\_\_\_  
DATE

CITY SECRETARY (if applicable)

\_\_\_\_\_  
DATE

# THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

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MONTERREY  
PARIS

April 16, 2021

Mary Ann Powell  
Deputy City Attorney  
City of College Station  
1101 Texas Ave.  
College Station, TX 77842

RECEIVED  
LEGAL DEPARTMENT

APR 19 2021

CITY OF  
COLLEGE STATION

Re: Property Purchase Agreement and Chapter 380 Economic Development Program and Agreement between Costco Wholesale Corporation and The City of College Station

Dear Mary Ann:

Enclosed please find 2 original counterparts each of the Property Purchase Agreement and the Chapter 380 Agreement executed by Costco. Upon approval by the City at the Council meeting April 22, 2021, please have the Agreements executed by the City and return an original fully executed counterpart of each to me.

Thank you for your assistance. Please contact me if you have any questions.

Very truly yours,



Ray T. Khirallah

Enclosures

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT**  
**BETWEEN COSTCO WHOLESALE CORPORATION AND**  
**THE CITY OF COLLEGE STATION**

This Agreement (the "Agreement") is entered into to be effective as of the Effective Date (as defined herein) by and between the City of College Station, Texas, a Texas home-rule municipal corporation (the "City"), and Costco Wholesale Corporation, a Washington corporation ("Costco").

RECITALS:

WHEREAS, Costco intends on acquiring approximately 18.670 acres of unimproved land located at the southeast corner of the intersection of Corporate Parkway and the northbound frontage road of State Highway 6 in College Station, Texas pursuant to that one certain Property Purchase Agreement which is attached hereto and made a part hereof marked as **Exhibit "A"** (the "Purchase Agreement") and as more particularly identified and described in a map and survey set forth in **Exhibit "B"** to be attached hereto and to which the final survey of the Property will be added upon approval of such survey by Costco (the "Property") on which Costco intends to construct and own a membership wholesale and retail general merchandise facility containing approximately one hundred sixty thousand (160,000) square feet of space, more or less, as shown on the site plan attached as **Exhibit "C"** (the "Site Plan"), which is attached hereto and made a part hereof; and

WHEREAS, Costco has requested that the City authorize and provide certain economic development grants as provided herein; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code and for the public purpose of promoting economic development and diversity, increasing employment, reducing unemployment and underemployment, expanding commerce and stimulating business and commercial activity in the State of Texas, Brazos County and the City, the City desires to offer certain economic development grants to Costco as more particularly described in this Agreement;

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the City and Costco agree as follows:

1. **Project.** Costco intends to construct and operate a membership wholesale and retail general merchandise facility containing approximately one hundred sixty thousand (160,000) square feet of space, more or less, as shown on the Site Plan, with a consumer fueling facility with multiple pumps, required parking, landscaping and other associated required and ancillary facilities owned by Costco and located on the Property (collectively, the "Project"). Additionally, Costco also intends to construct offsite public drainage facilities which will serve both the Property and adjacent areas, which drainage facilities will be more particularly described in a public infrastructure participation agreement (the "Participation Agreement") between the City and Costco, the form and substance of which will be agreed to between the City and Costco as provided in the Purchase Agreement. The costs of such offsite public drainage facilities will be shared pro rata with the City in accordance with the Participation Agreement. The Project shall be as further described in the submittals filed with the City in order to obtain various required permits under applicable City ordinances, and generally in accordance with the Site Plan, as such Site Plan may be modified during the approval process with the City.
2. **Economic Development Grant.** Subject to the terms and conditions of this Agreement generally, and specifically upon satisfaction of the conditions in the manner, timeframe and other qualifying criteria by Costco as set forth in Paragraph 3 below, the City agrees to provide and shall provide to Costco economic development grants as follows:

- a. A reduced purchase price for the Property in the amount of FOUR DOLLARS and 50/100 U.S. DOLLARS (US \$4.50) per square foot (the “Purchase Price”), which is less than the appraised value determined pursuant to that one certain Appraisal Report of Midtown Business Park Sub-District A prepared by CBRE Valuation & Advisory Services dated December 3, 2020 (inspection date September 18, 2020) conducted pursuant to the City’s request.
- b. Reimbursement of the development fees itemized in **Exhibit “D”** attached hereto and made a part hereof (the “Development Fees”).
- c. A credit against the Purchase Price in the amount of five percent (5%).

3. **Schedule and Conditions of Incentives.** The following schedule and conditions shall be met by Costco in order to qualify for the associated incentives as set forth below:

- a. Purchase of Property. (i) The price, terms and conditions under which Costco purchases the Property pursuant to the Purchase Agreement is a part of the incentives in this Agreement. Such incentive shall remain in place provided Costco has achieved Completion of Construction (as hereinafter defined) by December 31, 2023 (the “Completion of Construction Deadline”). The Completion of Construction Deadline may be extended by delays caused by Force Majeure (as hereinafter defined) as provided for under this Agreement. “Completion of Construction” shall mean that a certificate of occupancy for the Project has been issued to Costco (or that a temporary certificate of occupancy has been issued for the Project under which Costco is permitted to and does, open for business) and Costco shall have opened the Project for at least one (1) day fully stocked for business to its members.

(ii) The City has the right to repurchase the Property for the Purchase Price paid by Costco under the Purchase Agreement in the event Costco fails to achieve Completion of Construction by the Completion of Construction Deadline (as the same may have been extended by Force Majeure). The City may exercise this right to repurchase by giving written notice to Costco at least ninety (90) days prior to the date the City desires to close on such repurchase (“Repurchase Notice”). This right to repurchase shall remain in effect and the City shall have the right to deliver a Repurchase Notice so long as Completion of Construction has not occurred. The City’s right to repurchase under this Paragraph 3.a.(ii) shall terminate upon the earlier to occur of (i) the occurrence of Completion of Construction prior to Costco’s receipt of a Repurchase Notice, and (ii) the date that is ninety (90) days after the Completion of Construction Deadline.

(iii) This Agreement shall be conditioned upon the acquisition of the Property by Costco pursuant to the terms of the Purchase Agreement. A termination of the Purchase Agreement by Costco pursuant to the terms of the Purchase Agreement or a failure of the conditions for purchase of the Property to be satisfied shall not constitute an act of default by Costco under this Agreement. Furthermore, a failure to achieve Completion of Construction by the Completion of Construction Deadline (as the same may have been extended by Force Majeure) shall not constitute an act of default by Costco under this Agreement.

- b. Reimbursement of Development Fees. As conditions to reimbursement of the Development Fees, (i) Completion of Construction shall have occurred and (ii)

Costco shall deliver to the City, along with a written request for reimbursement, a certificate from an authorized officer of Costco certifying to the City that Costco has expended at least Ten Million Dollars (\$10,000,000.00) in the Project.

The City shall have ninety (90) days within which to reimburse Costco the Development Fees actually paid by Costco relating to the Project if the criteria set forth above has been met. The term "Development Fees" refers specifically to those fees itemized in **Exhibit "D"** attached hereto and made a part hereof. The amount for each category of Development Fees as set forth in **Exhibit "D"** is an estimate only and reimbursement shall be based upon actual amounts. Eligible reimbursement of Development Fees shall be pursuant to this Agreement and for a maximum amount not to exceed \$300,000.

If the foregoing conditions for reimbursement have not been met, there shall be no reimbursement of Development Fees; however, Costco shall not be considered to be in default of this Agreement.

- c. Compliance with Laws and Regulations. This Agreement is entered into subject to and controlled by the City charter and its regulations and ordinances, including those related to development of property, as well as all applicable State and Federal laws, rules, and regulations. The City is not aware of anything in the foregoing prohibiting the City from entering into this Agreement nor from being bound by its terms and conditions. During the course of performance under this Agreement, Costco agrees to not knowingly violate any applicable City codes and ordinances, as amended, or applicable State and Federal laws, rules and regulations, as amended (provided, however, Costco retains the right to timely and properly seek variances from any such codes, ordinances, laws, rules or regulations and the right to timely and properly contest any alleged violation and the benefits of any notice any cure rights relating to any alleged violation).
- d. Payment of Taxes. Costco shall not be delinquent in the payment of ad valorem taxes then owed by Costco on the Property (provided, however, Costco retains the right to timely and properly protest and contest any such taxes or fees).

4. Term of the Agreement. The term of this Agreement shall begin as of the Effective Date and shall expire upon the earlier to occur of (i) the date upon which all of the following has occurred (A) acquisition of the Property pursuant to the terms of the Purchase Agreement, (B) Completion of Construction, (C) the City's reimbursement of the Development Fees in accordance with the terms of this Agreement, or (ii) five years from the Effective Date, unless terminated earlier pursuant to other provisions set forth in this Agreement.

5. Default.

- a. The following shall constitute a default (sometimes hereinafter referred to as "Event of Default") under this Agreement:
  - i. Upon the expiration of the notice and cure period set forth in Paragraph 5(b) or 5(c) below, as applicable, the failure of either party to timely and fully perform one or more of their respective obligations under this Agreement except where expressly stated otherwise in this Agreement, and except where same may have been extended pursuant to the Force Majeure provisions or as otherwise mutually agreed upon in writing by the parties.
  - ii. Any statement or representation by either party that was false in any material respect when made.

- b. Except as provided in Paragraph 5(c) below, in the event of the occurrence of a failure to perform as described above, the non-defaulting party shall have the right to give written notice to the other party of such failure, and the defaulting party shall have thirty (30) days thereafter to cure said failure or if the defaulting party is diligently pursuing to cure such failure but such failure is not reasonably curable within thirty (30) days, then the defaulting party shall have such additional amount of time as is reasonably necessary to cure such failure but in no event exceeding a total of one hundred eighty (180) days without mutual written agreement of the parties. Should said failure remain uncured after such cure period and the non-defaulting party is not otherwise in default hereunder, an Event of Default shall be deemed to have occurred.
- c. Upon the occurrence of an Event of Default the non-defaulting party shall have the right to give the defaulting party a notice (the "Second Notice") that this Agreement shall immediately terminate if such Event of Default is not cured within fifteen (15) business days after the Second Notice is given and, if such failure is not cured within such additional 15-business day period, regardless of the amount of time reasonably necessary to cure, then this Agreement shall terminate without further action by either party unless mutually agreed upon otherwise in writing by the parties.
- d. If the City fails to pay Costco any amounts owed to Costco as provided in this Agreement and the City fails to cure such failure within ninety (90) days after written notice from Costco, it shall be deemed an Event of Default under this Agreement and Costco has the right to bring any action to recover any such amounts owed to it under this Agreement.

Notice under this Paragraph 5 shall be in accordance with Paragraph 14.g/Notice provisions hereof.

**6. Termination.**

- a. Agreement shall terminate upon the occurrence of any one of the following:
  - i. The failure by Costco to acquire the Property in accordance with the Purchase Agreement.
  - ii. The execution by both parties of a written agreement terminating this Agreement;
  - iii. The expiration of the term of this Agreement;
  - iv. Pursuant to the express provisions set forth in this Agreement; and
  - v. At the option of the non-defaulting party subject to the notice, cure and other provisions of the default provisions of this Agreement after an Event of Default.

**7. Remedies; Limited Waiver.**

- a. The sole and exclusive remedies of Costco for a breach by the City under this Agreement, and the City's sole and exclusive remedies for a breach by Costco

under this Agreement, shall be those expressly provided for in Paragraphs 3a.(ii), 5 above, **Exhibit “E”** hereto and elsewhere in this Agreement. Further, either Party shall have the right to bring an action for a declaratory judgment. Costco and the City each hereby waives any other remedies under law or in equity. Without limiting the foregoing, no action nor recoverability shall lie for damages by either party for punitive, special or consequential damages. Nothing in this Agreement shall limit in any way the parties’ rights and remedies under the Purchase Agreement for a default by the other party thereunder.

- b. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY COSTCO SEEKING ONLY THE REMEDIES SPECIFIED IN PARAGRAPHS 3A.(II), 5 ABOVE, **EXHIBIT “E”** HERETO AND ELSEWHERE IN THIS AGREEMENT. THE CITY DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HERE GRANTED IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT.

- 8. **Force Majeure.** For purposes of this Agreement, the term “Force Majeure” shall mean and refer to any contingency or cause beyond the reasonable control of a Party including, without limitation, (a) war, riots, acts of terrorism, acts of the public enemy, insurrections, civil commotion; (b) labor disputes, a general inability to obtain labor or materials or reasonable substitutes for either, unusual delay in transportation, strikes, slowdowns or work stoppages; (c) acts of God, casualties, explosions, floods, fire, earthquake, tornado, hurricane or other severe and adverse weather conditions; (d) pandemics, epidemics, infectious disease outbreaks, public health emergencies, health and safety circumstances that require individual isolation, quarantine or quarantine-like restrictions, or other methods of social distancing that delay or detrimentally impact the performance of the Party in question, (e) delays caused by actions or inactions, or other acts or omissions on the part of any public utility or local, state, or federal government, government official or their respective agents or employees (including, but not limited to, any government-mandated or suggested work stoppages or slowdowns (such as, by way of example and not limitation, any reduction in the number of workers allowed to work at one time, or any limitation on the allowable working hours) and/or the closing or slowing of governmental offices or procedures (such as, by way of example and not limitation, any significant change in the time required to file or obtain permits or record documents), (f) delays caused by governmental restrictions, regulations or controls, including without limitation, any moratoriums (i.e. zoning, platting, building or similar moratoriums), and (g) an inability to obtain funds if directly caused by one or more of the events specifically described in (a) – (f) above.

- 9. **Indemnity.** COSTCO COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY AND ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES (“CITY PARTIES”) FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY LOSS OR PROPERTY DAMAGE AND/OR BODILY INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH COSTCO’S PERFORMANCE, ATTEMPTED PERFORMANCE, OR NONPERFORMANCE OF THIS AGREEMENT AND/OR THE OPERATIONS, ACTIVITIES, AND SERVICES OF THE PROJECT DESCRIBED HEREIN, INCLUDING COSTCO OFFICERS,

**MEMBERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR LICENSEES.**

**THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

10. **Compliance with Ch. 2264.** In accordance with Chapter 2264, Texas Government Code, Costco certifies by signing the Chapter 2264 Certification statement attached hereto as **Exhibit “E”** that its business, including all branches, divisions or departments of its business, does not and will not knowingly employ an undocumented worker.
11. **Timing.** Except as provided for in this Agreement with respect to extensions for Force Majeure or as may be mutually allowed under the default provisions in Paragraph 5 above, time is of the essence with respect to the parties’ obligations hereunder. This includes Costco’s timely Completion of Construction, and compliance by both parties with respect to all the terms and conditions of this Agreement.
12. **City Council.** Costco acknowledges and agrees that, except as provided in this Agreement with respect to extensions of time pursuant to Force Majeure, any material change in this Agreement will require City Council approval and written amendment to this Agreement.
13. **Assignment.**
  - a. Except as hereinafter provided, this Agreement may not be assigned by any party without the written consent of the other parties.
  - b. So long as no Event of Default under this Agreement exists and remains uncured, Costco shall have the right, without the City’s consent to transfer or assign this Agreement to an Affiliate (as hereinafter defined) of Costco, provided that the operations of such Affiliate on the Project are not materially different than those conducted by Costco or its Affiliates nationally and Costco notifies the City in writing of such transfer or assignment promptly after the effective date thereof. “Affiliate” shall mean (i) any entity that controls, is controlled by or is under common control with Costco; (ii) a successor corporation related to Costco by merger, consolidation, non-bankruptcy reorganization, or government action; (iii) a joint venture or partnership in which Costco or another entity satisfying the criteria of an Affiliate set forth in (i)-(ii) of this definition is a general partner; or (iv) a purchaser of substantially all of the assets of Costco in the State of Texas.
  - c. The transfer or assignment of this Agreement to an entity which does not satisfy the requirements of Paragraph 14(b) above shall require the City’s consent as evidence by a Resolution duly enacted by the City Council after receipt by the City of Costco’s written notification of such proposed transfer at least sixty (60) days before the effective date thereof. The City’s consent may be withheld, conditioned, or delayed in its sole and absolute discretion and may be conditioned upon the express assumption by such transferee/assignee of all of Costco’s obligations set forth in this Agreement. An Assignment of this Agreement executed by the City and recorded in the real property records where the Property is located shall be conclusive evidence of the City’s consent to such assignment.



- d. Any attempted transfer or assignment of this Agreement by Costco in violation of the terms set forth in this Paragraph shall be void ab initio, and shall entitle the City to terminate this Agreement by written notice to Costco; provided, however, that such termination shall not be effective if, within ten (10) days after its receipt of the City's termination notice, Costco shall notify the City that Costco has rescinded such attempted transfer or assignment.
- e. Nothing in this Agreement shall prohibit Costco from conveying or leasing any interest in the Property; provided however that if Costco conveys or leases all of its interest in the Property or the Project to any party other than (i) an Affiliate as permitted in Paragraph 14(b) above or (ii) any facility or business that is owned or operated by a person or entity other than Costco or any Affiliate of Costco, but which facility or business is intended to be included as part of or otherwise integrated into the Project, such as leased or licensed departments, or co-branded or ancillary uses, then, unless an assignment of this Agreement executed by the City has been recorded in the real property records where the Property is located at the time of such conveyance or lease, this Agreement shall terminate automatically and immediately without any further action required on the part of either party. To memorialize such termination, the City shall execute a confirmation of such termination which shall be recorded in the real property records where the Property is located.

**14. Miscellaneous.**

- a. No Partnership or Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. It is further understood and agreed between the parties that Costco and the City, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibilities or liabilities to third parties in connection with these actions.
- b. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon provisions hereof or by the mutual written agreement of the parties hereto.
- c. Law and venue. This Agreement shall be construed in accordance with the laws of the State of Texas except for its choice of law provisions, and shall be performed in Brazos County, Texas.
- d. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successor and assigns.
- e. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date.

- f. Sufficiency of Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- g. Notice. Any notice sent under this Agreement, shall be sent (i) by depositing such notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or (iii) sent by electronic transmission confirmed by mailing (certified or with other confirmation of delivery) written confirmation at substantially the same time as such electronic transmission, or (iv) personally delivered to the receiving party at the following addresses:

If to City:	City of College Station, Attn: Interim City Manager PO Box 9960 College Station, Texas 77842 Phone: (979) 764-3527 Email <a href="mailto:nruiz@cstx.gov">nruiz@cstx.gov</a>
With required copies to:	City Attorney City Attorney's Office City of College Station P.O. Box 9960 1101 Texas Ave. College Station, TX 77842 Phone: (979) 764-3521 Email: <a href="mailto:mpowell@cstx.gov">mpowell@cstx.gov</a>
If to Costco:	Costco Wholesale Corporation 999 Lake Drive Issaquah, WA 98027 Attn: Property Management Phone: ( ) _____ Email: _____
With required copies to:	Thompson & Knight L.L.P. 1722 Routh Street, Suite 1500 Dallas, Texas 75201 Attn: Ray T. Khirallah Phone: (214) 969-1370 Email: <a href="mailto:ray.khirallah@tklaw.com">ray.khirallah@tklaw.com</a>

Each Party may change its address by written notice to the other Parties in accordance with this section. Any communication addressed and mailed or delivered to a national courier in accordance with this section shall be deemed to be given when received or when delivery is refused, any notice so sent by electronic transmission shall be deemed to be given the earlier of when receipt of such transmission is acknowledged by the recipient by electronic transmission or when the mailed written confirmation is received or delivery is refused, and any

communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, the Party. Telephone numbers are provided for convenience purposes only.

- h. Multiple Originals. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- i. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement or any part hereof invalid or illegal the parties agree to terminate (or if feasible, modify) this Agreement and to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible.
- j. Confer with Legal Counsel. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its legal counsel.
- k. Waiver. Failure of either party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, nor any part hereof, nor the right of any party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach unless expressly so stated therein.
- l. Recitals. The recitals to this Agreement are incorporated herein for all purposes.
- m. Vesting. Nothing in this Agreement shall be implied to vest any right in the parties. In addition, nothing contained in this Agreement shall constitute a “permit” as defined in Chapter 245, Texas Local Government Code. **COSTCO WAIVES ANY STATUTORY CLAIM THAT THE AGREEMENT ESTABLISHES VESTED RIGHTS UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.**
- n. Effective Date. This Agreement shall go into effect commencing upon the date being duly approved by both the City and Costco (the “Effective Date”) but it shall be a condition precedent for Costco to acquire the Property before the parties are subject to its terms and conditions.
- o. Exhibits. The following exhibits are attached to this Agreement and incorporated by reference herein for all purposes:

- Exhibit “A”** – Purchase Agreement
- Exhibit “B”** – Description of the Property
- Exhibit “C”** – Site Plan
- Exhibit “D”** – Development Fees

**COSTCO WHOLESALE CORPORATION**

**CITY OF COLLEGE STATION**

BC By: David Messner  
Printed Name: David Messner  
Title: SVP Real Estate  
Date: 4-12-21

By: \_\_\_\_\_  
City Manager  
Date: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

\_\_\_\_\_  
Assistant City Manager/CFO  
Date: \_\_\_\_\_

COSTCO WHOLESALE CORPORATION

CITY OF COLLEGE STATION

BC By: David Messner  
 Printed Name: David Messner  
 Title: SVP Real Estate  
 Date: 4-12-21

Deputy

By: [Signature]  
 City Manager  
 Date: 4/12/21  
 APPROVED:  
[Signature]  
 City Attorney  
 Date: \_\_\_\_\_  
[Signature]  
 Assistant City Manager/CFO  
 Date: \_\_\_\_\_

**EXHIBIT "A"**  
**PURCHASE AGREEMENT**

**PROPERTY PURCHASE AGREEMENT**

**by and between**

**COSTCO WHOLESALE CORPORATION,  
a Washington corporation, Purchaser,**

**and**

**CITY OF COLLEGE STATION, TEXAS,  
a Texas Home Rule City, Seller**

**for property located at  
Southeast corner of Hwy 6 and Corporate Drive in College Station, Texas**

**Dated: \_\_\_\_\_, 2021  
(for reference purposes only)**

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## PROPERTY PURCHASE AGREEMENT

THIS PROPERTY PURCHASE AGREEMENT (the "**Agreement**"), dated for reference purposes only as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021, is made by and between CITY OF COLLEGE STATION, TEXAS, a Texas Home Rule City ("**Seller**"), and COSTCO WHOLESALE CORPORATION, a Washington corporation ("**Purchaser**"). This Agreement shall become effective as of the Effective Date, as set forth in Section 17 hereof.

### RECITALS

A. Seller is the owner of that certain parcel of unimproved land located in Subdistrict "A" of the Midtown Business Park development in College Station, Texas, containing approximately 18.670 acres, legally described on Exhibit A to be attached to this Agreement as soon as such legal description is established and shown on the sketch attached to this Agreement as Exhibit B (the "**Property**").

B. Contemporaneously herewith, Seller and Purchaser have entered into a Chapter 380 Economic Development Agreement (the "**380 Agreement**") pursuant to which, among other things, Seller has agreed to sell the Property to Purchaser for the Purchase Price defined in Section 2.a below and upon the terms and conditions set forth in this Agreement.

C. Purchaser intends to purchase from Seller, and Seller intends to sell to Purchaser, the Property. Purchaser shall be permitted to use the Property for any lawful use and initially intends to develop, construct and operate on the Property, in accordance with Purchaser's requirements, a wholesale and retail general merchandise facility, which facility also may include, without limitation, a pharmacy, liquor sales, photo processing, butcher, deli and bakery services, optometry services, a tire sales and installation center, a propane sales and fueling center, a vehicle fueling facility, a car wash, related office space, related parking and other improvements (collectively, the "**Project**").

C. All terms used in this Agreement with their initial letter capitalized shall have the meanings ascribed thereto on the page shown in the foregoing Index of Defined Terms.

### AGREEMENT

To provide for the purchase and sale of the Property, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and Seller agree as follows:

#### **1. PROPERTY TO BE CONVEYED; ACCESS.**

a. Purchase and Sale. Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, upon the terms and conditions hereinafter set forth, the Property (including the rights described in Section 1.b hereof).

b. Property Included. The Property shall include the real property described in Exhibit A and/or shown on Exhibit B and all rights, privileges, easements, tenements, hereditaments, improvements, licenses, appurtenances and other rights and benefits appurtenant to said real property, including, without limitation: (i) any land lying in the bed of any street, road, highway or avenue, open or proposed, in front of or adjoining all or any part of the real property; (ii) all strips, gores, easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the real property or in front of or adjoining all or any part of the Property; (iii) all shrubs, trees and plants thereon; (iv) all consents, authorizations, variances, waivers, licenses, permits and approvals from any federal, state, county, municipal or other governmental or quasi-governmental agency, department, board, commission, bureau or other entity or instrumentality with respect to the real property; (v) all of Seller's right, title and interest in and to all minerals, oil, gas and other hydrocarbon substances on and under the real property and all rights related thereto; (vi) all development rights, air rights, water, water rights, riparian rights and water stock relating to the real property; and (vii) all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the real property as owner of the Property and all right, title and interest, if any, of Seller in and to any award made or to be made in lieu thereof and in and to any award for damage to the real property by reason of any change of grade in any street, road, avenue, way or boulevard.

c. Property Information.

(i) If not already provided by Seller to Purchaser, within ten (10) days following the Effective Date, Seller shall deliver to Purchaser copies of the following materials (the "**Property Information**") which Seller or any affiliate of Seller has in its possession, or to which Seller or any affiliate of Seller has access through the exercise of commercially reasonable efforts:

(A) Copies of any existing title policy/commitment and any existing survey in Seller's possession or control that relate to the Property, including complete and legible copies of all instruments referred to in the title policy or commitment as conditions or exceptions to the title of the Property;

(B) Copies of the most recent tax bills for the Property;

(C) All surveys, topographical surveys, environmental reports, engineering studies, soil-bearing test data, traffic studies and any similar reports and studies with respect to the Property;

(D) All existing documents relating to the development rights pertaining to the Property, including, without limitation, zoning, site plan, concurrency and other developmental governmental permits and approvals; pending applications for approvals and permits and materials in support of any such applications; and developer agreements or other agreements with governmental entities;

(E) Any declarations of easements, covenants and restrictions and/or property owners' association documents which pertain to the Property and any drafts of any easements or declarations proposed to affect any portion of the Property; and

(F) Such other items in Seller's possession or under Seller's control that Purchaser may reasonably request in connection with its inspection of the Property and determination of the feasibility of the Project.

(ii) Upon Purchaser's receipt of any Property Information, Purchaser shall have the unrestricted right to use such information, including reports and studies, in connection with Purchaser's review of the Property and Purchaser's efforts to obtain its permits and approvals. Purchaser shall have the right to make copies of same at Purchaser's expense and to distribute the same to its attorneys and consultants.

(iii) To the extent that any new or updated information pertaining to the Property is received by Seller or any of its agents or employees while this Agreement is in effect, Seller promptly shall deliver a true, correct and complete copy of such new and/or updated information to Purchaser.

d. Access.

(i) From and after the Effective Date, at any time prior to the Closing (the "**Access Period**"), provided that this Agreement has not been terminated pursuant to its terms, Purchaser, its agents and representatives shall be entitled to enter upon the Property for all lawful purposes, including, without limitation, to conduct such tests, inspections, examinations, surveys, analyses, investigations and inquiries with respect to the physical condition of the Property and the economic feasibility of the Project as Purchaser, in its sole and absolute discretion, deems necessary or desirable, including, without limitation, soil tests, borings and Hazardous Substance studies. Purchaser shall pay all costs incurred in making any inspections, tests, analyses and investigations of the Property. If Purchaser terminates this Agreement, Purchaser shall restore the Property to substantially the same condition as existed prior to Purchaser's entry onto the Property.

(ii) During the Access Period, Seller shall furnish to Purchaser all information concerning the Property that Purchaser may reasonably request, including, without limitation, the Property Information as required by Section 1.c hereof. Seller grants Purchaser free and complete access during normal business hours to all documentation, agreements and other information in the possession of Seller or any employee, agent or independent contractor of Seller pertaining to the ownership, use or operation of the Property; and Purchaser shall have the right to make copies of same at the expense of Purchaser.

(iii) Purchaser shall indemnify Seller against and defend and hold Seller harmless from any liens, claims, losses or liabilities (collectively, "**Costs**") arising out of Purchaser exercising its right and privilege to go upon the Property; provided, however, that this

indemnity shall not apply to the extent such Costs arise in connection with Seller's negligence or willful misconduct. Notwithstanding the foregoing indemnity, Purchaser shall have no liability to Seller or to any other person or entity by reason of, nor shall Purchaser have any duty to indemnify, defend or hold any person or entity harmless from or against, any Costs, including, without limitation, any claim for diminution in value of the Property or for environmental remediation or clean-up costs, arising out of or in connection with the mere fact of having discovered and/or reported (as may be required by law) any adverse physical condition, title condition, environmental condition or other defect with respect to the Property and Purchaser shall not be deemed a generator or operator with respect to any environmental condition found or existing on the Property prior to Closing and Seller shall release Purchaser for any liability for the same, which Seller agrees to assume. Any claim for indemnification under this Section 1.d must be made within one (1) year after the date of Closing or termination of this Agreement.

2. **PURCHASE PRICE; EARNEST MONEY; ESCROW PROVISIONS; 1031 EXCHANGE.**

a. Purchase Price. The purchase price for the Property shall be FOUR AND 50/100 U.S. DOLLARS (US \$4.50) per square foot of Net Acreage contained in the Property, subject to the adjustments and prorations as provided for herein (the "**Purchase Price**"). It is estimated that the Property contains approximately 813,282 gross square feet of land (assuming that all of the land will be usable) and that the purchase price shall be approximately THREE MILLION SIX HUNDRED FIFTY-NINE THOUSAND SEVEN HUNDRED SIXTY-NINE AND NO/100 U.S. DOLLARS (US \$3,659,769.00). The term ("**Net Acreage**") means each usable square foot of the Property, net of any areas which are not available for Purchaser's exclusive use as building, fueling facility, parking lot and associated improvements, including (without limitation) lighting, drive aisles, cart corrals, curb, gutters, sidewalks, drainage, utilities, and required landscape areas pursuant to applicable laws, rules and regulations. The amount of square footage of Net Acreage contained in the Property and the total amount of the Purchase Price shall be determined by the Survey to be obtained pursuant to Section 3 hereof. The Purchase Price shall be payable at the Closing in immediately available funds.

b. Earnest Money. Within five (5) business days following the Effective Date, the parties shall open an interest-bearing account with Seattle Commercial Services Division of First American Title Insurance Company (Attn: Rachel Norambuena; Facsimile No. 866-495-0221, Email: rnorambuena@firstam.com) ("**Title Company**") and Purchaser shall deposit therein FIFTY THOUSAND AND NO/100 U.S. DOLLARS (US \$50,000.00) (the "**Earnest Money**"). All interest earned on the Earnest Money shall accrue to Purchaser and shall be disbursed as directed by Purchaser. If Purchaser terminates this Agreement in accordance with its terms, then the Earnest Money promptly shall be returned to Purchaser. If this transaction does not close for any reason other than default by Purchaser, Title Company shall, upon demand by Purchaser, promptly return the Earnest Money to Purchaser.

c. Escrow Provisions.

(i) Escrow Agent. Seller and Purchaser each severally designate and appoint Title Company to act as escrow agent hereunder. Title Company, by executing this Agreement, accepts such appointment and acknowledges receipt of the Earnest Money and agrees to hold and apply the Earnest Money and accrued interest as provided in this Agreement; provided, however, that this Agreement (and any written amendment or modification of this Agreement otherwise signed by Seller and Purchaser unless this Section 2.c is amended or modified thereby) shall be binding upon Purchaser and Seller if Title Company fails to so execute this Agreement (or such written amendment or modification otherwise signed by Seller and Purchaser). The Earnest Money shall be paid to and shall be held in escrow by Title Company. Title Company shall deposit the Earnest Money in an interest-bearing account designated by Purchaser or shall invest the Earnest Money as otherwise directed by Purchaser. Purchaser shall deliver a W-9 Form to Title Company prior to or simultaneously with disbursement of any interest or earnings hereunder by Title Company. Purchaser and Seller shall each pay one-half of any fees and expenses charged or incurred by Title Company in its capacity as escrow agent hereunder.

(ii) Disbursements. Title Company shall not disburse or otherwise take any action with respect to the Earnest Money or the accrued interest except (A) upon joint instructions from Seller and Purchaser, which Seller and Purchaser shall deliver as provided in this Agreement; (B) upon ten (10) days' written notice from Seller to Purchaser and to Title Company, so long as Title Company shall not have received any written objections from Purchaser to such disbursement within said ten (10) days after receipt by Purchaser of such notice; (C) upon ten (10) days' written notice from Purchaser to Seller and to Title Company, so long as Title Company shall not have received any written objections from Seller to such disbursement within said ten (10) days after receipt by Seller of such notice; or (D) upon notice from Purchaser that Purchaser has terminated this Agreement pursuant to its terms.

(iii) Liability Limitation. Title Company shall have no liability to any party on account of its failure to disburse the Earnest Money when done in accordance with this Agreement, and, in the event of any dispute as to who is entitled to receive the Earnest Money, Title Company shall have the right to retain the Earnest Money and disburse it in accordance with the final order of a court of competent jurisdiction or to deposit the Earnest Money with said court pending a final decision of such controversy. Title Company shall not be liable for failure of the depository and shall only be otherwise liable in the event of its gross negligence or willful misconduct.

d. Exchange of Properties.

(i) Seller, at Purchaser's request, shall cooperate with Purchaser in structuring this transaction as a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. Accordingly, in such event: (A) Purchaser (or an affiliate of Purchaser to whom this Agreement may be assigned) may hereafter execute and enter into an



exchange agreement with a qualified intermediary (“**Purchaser’s Exchange Agreement**”), and/or a trust agreement (“**Purchaser’s Trust Agreement**”), which pertain to the disposition by Purchaser or such affiliate of Purchaser of certain property, and the acquisition by Purchaser or such affiliate of Purchaser of replacement or exchange property, in transactions that are intended to qualify as a tax deferred exchange of like-kind property under said Section 1031 of the Internal Revenue Code of 1986, as amended; (B) Purchaser or such affiliate of Purchaser may acquire the Property as replacement or exchange property under Purchaser’s Exchange Agreement or Purchaser’s Trust Agreement; and (C) in connection therewith, the right to this Agreement may be assigned to another entity, as exchangor, pursuant to an assignment agreement (“**Purchaser’s Exchange Assignment**”). Seller and Purchaser shall cooperate with each other, or their affiliates, as shall be reasonably requested in consummating the acquisition of the Property in a manner that will qualify as such a tax deferred exchange of like-kind property, including, without limitation, execution of Purchaser’s Exchange Assignment as and when requested and conveying the Property in accordance with the instructions set forth therein; provided, however, that Seller shall not be required to incur any additional cost or expense or assume or incur any liability or potential liability in connection therewith.

(ii) Purchaser, at Seller’s request, shall cooperate with Seller in structuring this transaction as a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. Accordingly, in such event: (A) Seller (or an affiliate of Seller to whom this Agreement may be assigned) may hereafter execute and enter into an exchange agreement (“**Seller’s Exchange Agreement**”) and/or a trust agreement (“**Seller’s Trust Agreement**”), which pertain to the disposition by Seller or such affiliate of Seller of the Property, and the acquisition by Seller or such affiliate of Seller of replacement or exchange property, in transactions that will qualify as a tax deferred exchange of like-kind property under said Section 1031 of the Internal Revenue Code of 1986, as amended; (B) Seller or such affiliate of Seller may sell the Property under Seller’s Exchange Agreement or Seller’s Trust Agreement; and (C) in connection therewith, the right to this Agreement may be assigned to another entity, as exchangor, pursuant to an assignment agreement (“**Seller’s Exchange Assignment**”). Seller and Purchaser shall cooperate with each other, or their affiliates, as shall be reasonably requested in consummating the acquisition of the Property in a manner that will qualify as such a tax deferred exchange of like-kind property, including, without limitation, execution of Seller’s Exchange Assignment as and when requested and conveying the Property in accordance with the instructions set forth therein; provided, however, that Purchaser shall not be required to incur any additional cost or expense or assume or incur any liability or potential liability in connection therewith.

e. Independent Consideration. Seller acknowledges that Purchaser will expend significant time and material sums of money in connection with negotiating and executing this Agreement, conducting its due diligence investigations, pursuing the Project Approvals and preparing for the Closing, all in reliance on Seller’s obligations under this Agreement. Further, Seller acknowledges that Purchaser would not have entered into this Agreement without having the opportunity to perform such investigations and procure the Project Approvals and without having the right to terminate this Agreement in accordance with

the provisions of Section 4 of this Agreement. A portion of the Earnest Money in the amount of One Hundred and No/100 Dollars (\$100.00) (the "**Independent Consideration**") shall be non-refundable to Purchaser as independent consideration for the rights and options granted to Purchaser hereunder, including without limitation, the right and option to terminate this Agreement as provided herein. The Independent Consideration shall be disbursed to Seller immediately following Purchaser's deposit thereof into escrow. In all instances under this Agreement in which Purchaser elects to terminate or is deemed to have terminated this Agreement and the Earnest Money is returned to Purchaser, Seller shall retain the Independent Consideration when the Earnest Money is returned to Purchaser. The Independent Consideration shall not be applicable towards the Purchase Price or treated as consideration given by Purchaser for any purpose other than as stated in this Section 2e.

### **3. TITLE AND SURVEY.**

a. Title Commitment and Title Policy. Purchaser shall obtain, at Purchaser's expense, a current title commitment (the "**Title Commitment**") for the owner's policy of title insurance satisfying the conditions set forth in Section 8.g below (the "**Title Policy**"), to be issued by Title Company at its then current standard rates without any special premium, in an aggregate amount of not less than the Purchase Price, with copies of all exceptions and encumbrances to title shown therein, committing Title Company to issue such Title Policy to Purchaser. Purchaser shall deliver a copy of the Title Commitment to Seller. Purchaser's obligation to consummate the purchase and sale herein contemplated shall be subject to and conditional upon Purchaser's receipt at the Closing of the Title Policy, together with such endorsements thereto as Purchaser shall reasonably request (or of Title Company's irrevocable commitment to issue the Title Policy with such requested endorsements), subject only to those exceptions expressly approved in writing by Purchaser, if any, or otherwise expressly deemed to be approved by Purchaser hereunder, if any (collectively, the "**Permitted Exceptions**"). The Title Policy shall insure Purchaser that, upon consummation of the purchase and sale herein contemplated, Purchaser will be vested with good, fee simple, indefeasible and insurable title to the Property, subject only to the Permitted Exceptions, and Seller covenants to convey such title to Purchaser at the Closing. Seller agrees to furnish Title Company with such customary affidavits and indemnities as may be required by Title Company in order to issue the Title Policy as aforesaid, without any exception for unfiled and unrecorded materialmen's and mechanics' liens and parties in possession.

b. Survey. Purchaser shall obtain, at Purchaser's expense, an American Land Title Association ("**ALTA**") survey of the Property, dated no earlier than thirty (30) days prior to the date of delivery to Purchaser (the "**Survey**"), certified to Purchaser and Title Company, prepared by a surveyor licensed in the state where the Property is located who is selected by Purchaser ("**Surveyor**"). Surveyor shall certify to Purchaser and Seller the total number of gross square feet in the Property and the total number of square feet of Net Acreage contained in the Property. The number of square feet of Net Acreage certified shall conclusively establish the basis for determining the Purchase Price absent a showing by either party of perceptible mistake or fraud on the part of Surveyor. Purchaser may, at Purchaser's expense, cause the Survey to be updated (the "**Updated Survey**") no earlier than thirty (30) days prior to the Closing, which

Updated Survey shall be in form and substance sufficient to permit Title Company to issue the Title Policy without boundary, encroachment or survey exceptions (except to the extent that the same have been approved by Purchaser as Permitted Exceptions), and to delete from the Title Policy the standard exceptions as to unrecorded easements, visible and apparent easements and other matters which would be disclosed by an inspection of the Property.

c. Review of Title Commitment and Survey. Purchaser shall have until 5:00 p.m. local time in the Governing Jurisdiction on the date which is twenty (20) days prior to the expiration of the Feasibility Period (the “**Title Inspection Period**”) to review and comment on the exceptions and matters contained in or disclosed by the Title Commitment and Survey. Purchaser shall be entitled, in its sole and absolute discretion, to terminate this Agreement if Purchaser objects to any of the matters disclosed by the Title Commitment or Survey (each an “**Objection**” and collectively, the “**Objections**”). In addition, Purchaser shall be entitled, in its sole and absolute discretion, to condition its acquisition of the Property upon the release, discharge or removal of each Objection prior to the Closing Date, and the deletion of each Objection from the Title Policy to be issued at the Closing. Prior to the expiration of the Title Inspection Period, Purchaser shall provide written notice to Seller (the “**Objection Notice**”) of each Objection which Purchaser requires to be released, discharged or removed prior to the Closing Date. Any matters revealed by the Title Commitment and/or Survey to which Purchaser does not object before the end of the Title Inspection Period shall be deemed to be Permitted Exceptions. Following Purchaser’s initial title examination, Purchaser shall have until the Closing Date to reexamine title to the Property and to give Seller notice of any additional Objections (other than the Permitted Exceptions previously approved by Purchaser) disclosed by such reexamination and which were not filed and indexed of record as of the date of the initial examination or not otherwise reflected in the Title Commitment. In addition, Purchaser shall have the right to object, in the same manner set forth herein, to any matter shown on the Updated Survey not previously shown on the preliminary Survey or approved as a Permitted Exception by Purchaser.

d. Seller’s Right to Cure Title Objections. If Purchaser raises any Objections in accordance with the procedures of Section 3.c of this Agreement, then Seller shall have ten (10) days after the receipt of the Objection Notice to give Purchaser written notice either that (i) Seller shall remove any Objections prior to the Closing at no cost to Purchaser, and Seller shall promptly provide Purchaser with evidence satisfactory to Purchaser of Seller’s ability to so remove such Objections; or (ii) Seller elects not to cause such Objections to be removed. If Seller fails to respond to the Objection Notice, Seller shall be deemed to have agreed to cause all of the Objections set forth in the Objection Notice to be removed on or before the Closing Date. If Seller gives Purchaser notice under clause (ii), then Purchaser may either waive those Objections which Seller has elected not to remove, in which event the waived Objections shall be deemed to be Permitted Exceptions and this Agreement shall continue in full force and effect, or terminate this Agreement by notice delivered to Seller on or before the Closing Date. If, by the Closing Date, Purchaser fails to respond to Seller’s election to proceed under clause (ii), then Purchaser shall be deemed to have terminated this Agreement.

e. Monetary Encumbrances. The phrase "**Monetary Encumbrances**" as used herein means encumbrances or defects to title which by their terms require the payment of money (in an ascertainable amount), whether in installments or at a fixed time or otherwise, including, without limitation, mortgages, deeds of trust, mechanic's or materialmen's liens, liens associated with public improvement districts and special assessments. Notwithstanding anything herein to the contrary, Seller shall not have the right under Section 3.d to elect not to cure any Monetary Encumbrances affecting title to the Property. Seller covenants to remove all Monetary Encumbrances prior to or at the Closing, whether or not Purchaser has identified the same as an Objection.

f. Title Fees. In the event this Agreement is terminated pursuant to this Section 3 or any other provision of this Agreement other than by reason of a default by any party under this Agreement, any cancellation fee or other costs of Title Company shall be borne in equal shares by the parties. In the event this Agreement is terminated pursuant to this Section 3 or any other provision of this Agreement by reason of a default by any party under this Agreement, any cancellation fee or other costs of Title Company shall be borne by the defaulting party.

#### 4. CONTINGENCIES.

a. Satisfaction of Contingencies. Purchaser's obligation to purchase the Property is contingent upon the conditions set forth in this Section 4 being satisfied or waived, in either case in Purchaser's sole and absolute discretion, on or before the dates set forth herein. If Purchaser determines, in Purchaser's sole and absolute discretion, that any of the conditions set forth in this Section 4 will not be satisfied by the date provided herein for the satisfaction of such condition, Purchaser may terminate this Agreement on or prior to the applicable date by written notice to Seller and the Earnest Money promptly shall be returned to Purchaser. The conditions provided for in this Section 4 shall be deemed not to be satisfied unless Purchaser, by the date by which the particular condition is required to be satisfied, notifies Seller in writing that such condition has been satisfied or waived. In the event any condition is deemed not satisfied, this Agreement shall automatically terminate and the Earnest Money promptly shall be returned to Purchaser pursuant to the disbursement provisions set forth in Section 2.c (ii) above. Upon the termination of this Agreement (either by reason of affirmative action by Purchaser or automatically), neither party shall have any further rights or obligations hereunder except for those which are expressly stated to survive the termination of this Agreement.

b. Feasibility Period Contingencies. Purchaser shall have until 5:00 p.m. local time in the Governing Jurisdiction on the date which is ninety (90) days after the Effective Date (the "**Feasibility Period**") to determine, in Purchaser's sole and absolute discretion, that the following contingencies are satisfactory or, in Purchaser's sole and absolute discretion, to waive same: Purchaser shall have the right, in its sole and absolute discretion, to extend the Feasibility Period and Purchaser's related termination right for an additional thirty (30) days in the event Purchaser determines, in its sole and absolute discretion, that additional studies are required or

desirable or that additional time is necessary to satisfy or waive any of the contingencies to be satisfied or waived during the Feasibility Period.

(i) Project Feasibility. During the Feasibility Period, Purchaser shall have the right to inspect the Property, evaluate the transaction which is the subject of this Agreement and terminate this Agreement for any reason or for no reason. Purchaser's right to inspect the Property and evaluate the transaction shall include, without limitation, the right to (A) conduct such soils, engineering, hazardous waste, geotechnical, wetlands and other studies in connection with the Property and Purchaser's proposed Project as Purchaser, in its sole and absolute discretion, deems necessary or desirable, and (B) determine in Purchaser's sole and absolute discretion, that, without limitation, the site plan, parking plan and access plan for the Property are acceptable, utilities of adequate capacity serve the Property, construction of the improvements contemplated by Purchaser will not require extraordinary, excessive or unusually costly design elements or construction techniques, drainage of both surface and subsurface water can be accomplished by ordinary construction techniques not involving unusual or excessive costs, the Property will satisfy Purchaser's financial and competitive objectives in the trade area, and the Property is economically and otherwise feasible for Purchaser's intended use.

(ii) Environmental Compliance. In the event that Purchaser determines that the Property is impacted by Hazardous Substances at, on, in, under or adjacent to the Property, then, subject to Purchaser's right to terminate this Agreement at any time during the Feasibility Period, Seller shall be obligated to remove or otherwise remediate the same at its sole cost and expense in accordance with Environmental Laws and pursuant to a remediation plan and schedule approved by Purchaser and all applicable authorities. In the event that remediation shall be required, Seller agrees to proceed diligently and in good faith to obtain all applicable approvals and to promptly commence and thereafter complete all remediation in compliance with all Environmental Laws and the remediation plan and schedule approved by Purchaser. Purchaser may, in its sole election, extend the Closing under this Agreement to accommodate the approved remediation schedule. As soon as such remediation is completed, Seller shall provide Purchaser with evidence satisfactory to Purchaser (including, without limitation, closure documentation from applicable governmental authorities) that all of the Hazardous Substances have been removed, transported and stored or otherwise remediated in accordance with the approved remediation plan and all Environmental Laws. In the event that Seller shall elect not to perform the required remediation or shall fail to perform as required hereunder, Purchaser may either (A) terminate this Agreement, in which event the Earnest Money shall be returned to Purchaser and thereafter, neither party shall have any further rights or obligations hereunder except for those which are expressly stated to survive the termination of this Agreement, or (B) proceed to the Closing and receive a credit against the Purchase Price in an amount equal to the cost of the remediation, less any amount already expended by Seller for the remediation.

(iii) Participation Agreement. As consideration for and a part of the transactions contemplated in this Agreement, by no later than the end of the Feasibility Period, Purchaser and Seller shall have agreed upon (and confirmed in writing) the form and substance

of an agreement (**the “Infrastructure Participation Agreement”**) pertaining to construction of certain public storm water drainage facilities as more particularly described therein, other than the final exhibits and cost estimates, which will be agreed to by Purchaser and Seller prior to Closing.

(iv) Shared Access Agreement. No later than the end of the Feasibility Period, Purchaser and Seller shall have agreed upon (and confirmed in writing) the form and substance of a shared access agreement (the **“Shared Access Agreement”**) providing for the terms and conditions of the construction, maintenance and use of the shared drive depicted on Exhibit C, other than the final exhibits, which will be agreed to by Purchaser and Seller prior to Closing.

(v) Declaration of Restrictive Covenants. No later than the end of the Feasibility Period, Purchaser and Seller shall have agreed upon (and confirmed in writing) the form and substance of the Declaration of Restrictive Covenants described in Section 5 below.

c. Project Approvals. Purchaser (except as otherwise specifically provided herein) shall have until 5:00 p.m. local time in the Governing Jurisdiction on the date that is one hundred eighty (180) days after Purchaser’s waiver of the Feasibility Period contingency (the **“Approvals Period”**) to obtain issuance of all zoning approvals, public financing or incentive agreements/approvals (if any) that are required or desired by Purchaser, site plan approvals, subdivision approvals, environmental approvals, construction permits, signage permits, use permits and any other governmental approvals and permits necessary for Purchaser to develop, construct and operate its Project on the Property (the **“Project Approvals”**), all of which shall be in final and unappealable form. Project Approvals will not include certificates of occupancy or other similar occupancy permits, which require completion of construction. Purchaser shall obtain the Project Approvals at its sole cost and expense and shall pay all fees relating thereto. If Purchaser has not obtained the Project Approvals by the end of the Approvals Period, then Purchaser shall have the right, on or before such date (or the extended deadline, if applicable), to extend the Approvals Period for up to two (2) additional periods of thirty (30) days each by notifying Seller in writing of Purchaser’s desire to extend such date. If Purchaser has not obtained the Project Approvals by the expiration of the Approvals Period or, if at any time during the Approvals Period, Purchaser determines, in Purchaser’s sole and absolute discretion, that it will not obtain Project Approvals satisfactory to Purchaser, then Purchaser may terminate this Agreement, in which event the Earnest Money and all accrued interest thereon shall be returned to Purchaser and, thereafter, this Agreement shall be of no further force or effect.

(i) All conditions contained in the Project Approvals and all requirements for on-site and off-site improvements or services, in-lieu fees or payments, dedication or reservation requirements, water rights acquisition costs, local improvement district costs, connection charges, assessments, mitigation fees, impact fees, permit fees and any other similar requirements, fees or charges imposed on the Project by any governmental entity or

utility service provider in connection with the Project Approvals must be acceptable to Purchaser in its sole and absolute discretion to satisfy this contingency.

(ii) For purposes of this Agreement, the Project Approvals shall not be deemed to have been "obtained" or "issued" until the period of time (if any) to contest or appeal any such issuance has passed without the filing of a contest or appeal or, if a contest or appeal has been filed, after the issuance of a final and non-appealable order, decision or judgment (a "Final Judgment") confirming the issuance of the relevant Project Approvals without modifications or conditions that are unacceptable to Purchaser. Purchaser shall have the right, but not the obligation, to extend the Approvals Period in increments of thirty (30) days each until the issuance of a Final Judgment in the event that there is an outstanding appeal, objection or challenge respecting one or more of the Project Approvals pending at the expiration of the initial Approvals Period, but in no event more than one (1) year beyond the initial Approvals Period set forth above in the first paragraph of this Section 4.c. All of the terms and conditions of this Agreement shall continue to apply during such extension of the Approvals Period.

(iii) Seller agrees to cooperate, either directly or through its authorized agents, in all reasonable respects to facilitate the procurement of the Project Approvals, which cooperation shall include, but not be limited to, promptly (A) responding in writing to all reasonable inquiries, (B) executing all applications or submissions necessary to obtain the Project Approvals so long as the same are in accordance with the terms of this Agreement, and (C) upon prior notice by Purchaser, attending and actively participating in hearings, agency meetings or the like.

(iv) Purchaser acknowledges that Seller is a municipality and political subdivision of the State of Texas with regulatory authority over land use and building applications, including subdivision, zoning, development and construction on real property within the city limits of the City of College Station, including the Property. Furthermore, Seller has regulatory authority and jurisdiction over municipal streets, public utility easement, and the Seller's utility systems. ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, SELLER IS NOT OBLIGATED BY VIRTUE OF THIS AGREEMENT TO APPROVE ANY APPLICATION OR REQUEST FOR GOVERNMENTAL APPROVALS WHICH PURCHASER MAY SUBMIT, AND CERTIFIES AND ACKNOWLEDGES THAT SELLER HAS NOT MADE ANY REPRESENTATIONS TO OR AGREEMENTS WITH PURCHASER THAT SELLER WILL GRANT ANY GOVERNMENTAL APPROVALS SUBMITTED BY BUYER

**5. DECLARATION OF RESTRICTIVE COVENANTS.**

a. Declaration of Restrictive Covenants.

(i) Seller acknowledges that a primary inducement to Purchaser for its execution and delivery of this Agreement is Seller's obligation to enter into the restrictive covenants set forth in Exhibit E to this Agreement. Accordingly, at the Closing, Seller covenants

to execute and deliver to Purchaser a document, in recordable form, setting forth the restrictive covenants in Purchaser's favor set forth in Exhibit E (the "**Declaration of Restrictive Covenants**") which shall be recorded at Closing against the Restricted Property (as defined in Exhibit E) owned by Seller or any of the other Seller Entities (as defined in Exhibit E) as of the Effective Date and as of the Closing Date. At Closing, Seller shall cause the holder(s) of all deeds of trust, mortgages and similar instruments and, to the degree allowed by applicable law, assessments and other liens encumbering the Restricted Property to subordinate the same to the rights of Purchaser under the Declaration of Restrictive Covenants.

(ii) Within ten (10) days after the Effective Date, Seller shall provide Purchaser with a list of the Restricted Property currently owned by Seller or any of the other Seller Entities. Seller further agrees to notify Purchaser in writing of any Restricted Property acquired by Seller or any of the other Seller Entities (as defined in Exhibit E) prior to Closing. After Closing, Seller shall notify Purchaser prior to acquiring any additional Restricted Property ("**Future Restricted Property**") and shall record the Declaration of Restrictive Covenants against such Future Restricted Property at the time of the acquisition of such Future Restricted Property by Seller or other Seller Entity. Seller shall cause the holder(s) of all deeds of trust, mortgages and similar instruments and, to the degree allowed by applicable law, assessments and other liens encumbering the Restricted Property and any Future Restricted Property to subordinate the same to the rights of Purchaser under the Declaration of Restrictive Covenants at Closing, with respect to the Restricted Property, and, at the closing of the acquisition of any Future Restricted Property.

## 6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

a. Seller's Representations, Warranties and Covenants. Seller represents, warrants and covenants to Purchaser:

(i) Power and Authority. Seller is duly formed and validly existing Home Rule City under the laws of the State of Texas. Seller has the authority and power, and has taken all necessary actions, to enter into this Agreement and to consummate the transaction provided for herein. This Agreement and all other documents executed and delivered by Seller constitute legal, valid, binding and enforceable obligations of Seller, and there are no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Agreement. The person executing this Agreement on behalf of Seller has been duly authorized to do so.

(ii) No Violations or Actions. The execution, delivery and performance by Seller of its obligations under this Agreement will not conflict with or result in a breach of any law, governmental rule, regulation, judgment, decree or order by which Seller or the Property is bound, or any contract to which Seller is a party or by which Seller or the Property is bound or, if Seller is not an individual, Seller's articles of organization, declaration of trust, certificate of incorporation, bylaws, partnership agreement or other organizational documents, as the case may be. There is no action, suit, proceeding or investigation pending, or



to Seller's knowledge threatened, before any agency, court or other governmental authority which relates to the Property or the use thereof.

(iii) Condemnation; Moratorium. There are no condemnation or eminent domain proceedings pending, or to Seller's knowledge threatened or contemplated, against the Property or any part thereof, and Seller has not received any notice, oral or written, of the desire of any public authority or other entity to take or use the Property or any part thereof. Seller shall give Purchaser prompt written notice of any actual, or if known to Seller any threatened or contemplated, condemnation or eminent domain proceeding against any part of the Property. No moratorium, statute, order, regulation, ordinance, legislation, judgment, ruling or decree of any court or governmental agency has been enacted, adopted, issued, entered or is pending or in effect that could materially and adversely affect the Property and/or Purchaser's ability to develop, open and operate the Project.

(iv) Compliance. The Property complies with all applicable governmental requirements in respect of the use, occupation and construction thereof, including, without limitation, environmental, zoning, platting and other land use requirements, and Seller has received no notice of and has no knowledge of any violations or investigations relating thereto. Any violations thereof that occur before the Closing relating to Seller's ownership of the Property and not Purchaser's actions or omissions to act during the Access Period, whether now noted or issued, shall be complied with by Seller, so that the Property shall be conveyed free of the same at the Closing. There is no default or breach by Seller under any covenant, condition, restriction, right-of-way or easement which may affect the Property or any portion thereof.

(v) Zoning and Use. No part of the Property is subject to any building or use restriction which will restrict or prevent the contemplated use of the Property for the Project. The Property is currently zoned General Commercial. The Property is not located in any conservation or historic district. No buildings or other improvements of any kind encroach on the Property.

(vi) Utilities. Gas, electric power, sanitary and storm sewer, telephone and water service and facilities and all other utilities necessary for Purchaser's intended development, use and operation of the Property are, or by the Closing will be, available to and servicing the Property in quantities satisfactory to service the Property for the intended use. Purchaser may connect with all such utilities by the payment of normal tap-on or connection fees. No condition exists which would result in discontinuation of necessary sewer, water, electric, gas, telephone or other utilities.

(vii) Work. No work has been performed or is in progress at, and no materials have been furnished to, the Property which have not been paid for or will not be paid for in full by Seller prior to the Closing Date.

(viii) Assessments. No special or general assessments have been levied, other than as shown in the Title Commitment, or to Seller's knowledge are threatened, against all or any part of the Property.

(ix) Access and Street Dedication. The streets, roads, highways and avenues in front of or adjoining any part of the Property have been dedicated to and accepted by the proper governmental authority and such governmental authority has the responsibility to maintain such streets, roads, highways or avenues. The right of ingress and egress from the public roadways to and from the Property is not restricted or limited in any manner. No condition exists which would result in the termination or impairment of access to the Property.

(x) Leases; Contracts; Agreements; Obligations. There are no leases affecting any part of the Property. There are no management agreements, service contracts or other agreements affecting the Property or the operation or maintenance thereof which will be binding upon Purchaser after the Closing. There are no other obligations in connection with the Property, including, without limitation, easements, declarations, use restrictions or other similar agreements, which will be binding upon Purchaser after the Closing, except for those matters which have been approved by Purchaser as Permitted Exceptions.

(xi) Hazardous Substances.

(A) Attached to this Agreement as Exhibit D is a list of all reports, correspondence or tests prepared for Seller or in Seller's possession or control with respect to the compliance of the Property with the Environmental Laws or the presence or use of Hazardous Substances on the Property. All such reports, correspondence and tests listed on Exhibit D have been provided to Purchaser for Purchaser's review.

(B) Except as disclosed in the reports listed on Exhibit D, Seller warrants and represents that:

(I) the Property does not contain, and has not contained, any Hazardous Substance;

(II) neither Seller nor, to Seller's knowledge, any prior owner, user or occupant of the Property, has conducted or authorized the generation, transportation, storage, treatment or disposal at or near or from the Property of any Hazardous Substance;

(III) there is no pending, or to Seller's knowledge threatened, litigation or proceeding before any court or any governmental or administrative agency in which any person or entity alleges the presence, release, threat of release, placement on, in or from the Property or any adjacent property, or the generation,

transportation, storage, treatment or disposal at the Property or any adjacent property of any Hazardous Substance;

(IV) Seller has not received any notice of, and has no actual or constructive knowledge that, any governmental authority or employee or agent thereof is investigating, has determined or threatens to determine the presence of, release or threat of release or placement on, in or from the Property or any adjacent property, or the generation, transportation, storage, treatment or disposal at the Property or any adjacent property, of any Hazardous Substance;

(V) there are no actions, communications or agreements with any governmental authority or agency (federal, state or local) or any private entity, including, without limitation, any prior owners of the Property, relating in any way to the remediation, presence, release, threat of release or placement on, in or from the Property or any adjacent property, or the generation, transportation, storage, treatment or disposal at the Property or any adjacent property, of any Hazardous Substance;

(VI) Seller has owned and operated the Property in compliance with all Environmental Laws, has obtained all necessary permits under the Environmental Laws for Seller's operations on the Property and has not has incurred any liability under any Environmental Laws with respect to the Property; and

(VII) there are no underground storage tanks located on the Property and no underground storage tanks have been removed from the Property.

(C) Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(I) **“Environmental Laws”** means all federal, state and local environmental, hazardous waste or substance, health and/or safety laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances and regulations or common law doctrines issued by any governmental authorities and in effect as of the Effective Date with respect to or which otherwise pertain to or affect the Property or any portion thereof, the use, ownership, occupancy or operation of the Property or any portion thereof, as same have been amended, modified or supplemented from time to time prior to the date of the Closing,

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended by the Hazardous and Solid Wastes Amendments of 1984, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), the Superfund Amendment Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), the National Environmental Policy Act (42 U.S.C. § 4321 et seq.), the Clean Water Act (33 U.S.C. § 1321 et seq.), and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), comparable state and local laws, and any and all rules and regulations which have become effective prior to the date of the Closing under any and all of the aforementioned laws.

(II) "**Hazardous Substances**" means all (1) urea formaldehyde foam insulation and transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls, (2) any solid, liquid, gaseous or thermal contaminant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste, petroleum products or byproducts or fractions thereof, asbestos, asbestos containing materials, radioactive materials, PCBs, phosphates, lead or other heavy metals, chlorine, mold, radon gas and any indoor air contaminant, (3) any solid or liquid wastes (including hazardous wastes), hazardous air pollutants, hazardous substances, hazardous chemical substances and mixtures, toxic substances, pollutants and contaminants, as such terms are defined in any Environmental Law, and (4) any other chemical, material or substance, the use or presence of which, or exposure to the use or presence of which, is prohibited, limited or regulated by any Environmental Laws.

(xii) Soil Conditions; Flood and Mud Slide Hazard; Wetlands. There is not any soils condition adversely affecting the Property. The Property is not in an area identified by any agency or department of the federal, state or local government as having specific flood or mud-slide hazards, or as containing wetlands, endangered species or any other protected environmental condition which may impair or otherwise adversely affect the development of the Property and Seller does not know of any state of facts which could cause any portion of the

Property to be designated as containing any such wetlands, endangered species or other protected environmental condition.

(xiii) Foreign Person or Entity. Seller is not a foreign person, nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and the Income Tax Regulations promulgated thereunder.

(xiv) Bankruptcy Matters. Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts as they come due or made an offer of settlement, extension or compromise to its creditors generally.

(xv) Indefeasible Title. Seller has, as of the Effective Date, good and indefeasible title to the Property. Without in any way limiting the generality of the foregoing representation, Seller further represents and warrants to Purchaser that (A) no understanding, agreement (either express or implied) or reasonable expectancy of agreement with respect to sale, lease or other transfer of the Property exists between Seller and any third party, and (B) Seller is in no way restricted from negotiating and entering into this Agreement with Purchaser and selling the Property to Purchaser.

(xvi) Terrorism Laws. Seller is not, and shall not become, a person or entity with whom Purchaser is restricted from doing business under, without limitation, Executive Order No. 13224 (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), the list of Specially Designated and Blocked Persons promulgated by the Department of Treasury Office of Foreign Assets Control or any other similar laws, orders, regulations or other directives (collectively, the “**Terrorism Laws**”).

(xvii) Misrepresentation and Adverse Facts. Seller has made no untrue statements or representations in connection with this Agreement, and all items delivered to Purchaser on or before the Closing are true, correct and complete copies of what they purport to be. Said items have not been amended or modified, other than as also delivered to Purchaser, and no items that should have been set forth as exhibits thereto or delivered to Purchaser on or before the Closing have not been so set forth or delivered. Seller has not failed to state or disclose any material fact in connection with the transaction contemplated by this Agreement. Seller knows of no fact, nor has Seller failed to disclose any fact, which would prevent Purchaser from using and operating the Property after the Closing in the manner in which it is intended to be operated by Purchaser.

b. Purchaser’s Representations, Warranties and Covenants. Purchaser represents, warrants and covenants to Seller:

(i) Power and Authority. Purchaser is a corporation in good standing, duly formed and validly existing under the laws of the State of Washington. Purchaser has the authority and power to enter into this Agreement and to consummate the transaction provided for herein. This Agreement and all other documents executed and delivered by Purchaser constitute legal, valid, binding and enforceable obligations of Purchaser, and there are no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Agreement. The person executing this Agreement on behalf of Purchaser has been duly authorized to do so.

(ii) No Violations or Actions. The execution, delivery and performance by Purchaser of its obligations under this Agreement will not conflict with or result in a breach of any law, governmental rule, regulation, judgment, decree or order by which Purchaser is bound, or any contract to which Purchaser is a party or by which Purchaser is bound, or Purchaser's certificate of incorporation or bylaws.

i) Terrorism Laws. Purchaser is not, and shall not become, a person or entity with whom Seller is restricted from doing business under any of the Terrorism Laws.

c. Survival. All of the representations, warranties and covenants of Seller and Purchaser contained in this Agreement shall be true and correct as of the Effective Date and shall, as a condition to Closing, be true and correct in all material respects as of the Closing Date. The parties' rights to enforce such representations, warranties and covenants shall survive the Closing and such rights to enforce shall not be merged into any documents delivered at the Closing. It is expressly agreed and understood that no examination or investigation of the Property by or on behalf of Purchaser prior to the Closing shall in any way modify, affect or diminish Seller's obligations under Seller's representations, warranties, covenants and agreements contained in this Agreement.

## **7. SELLER'S OBLIGATIONS PENDING CLOSING.**

From and after the Effective Date until the Closing or termination of this Agreement as herein provided, Seller covenants to perform in accordance with the following obligations:

a. Sell or Encumber Property. Seller shall not sell, assign or convey any right, title or interest whatever in or to the Property to any third party or create or permit to exist any lien, encumbrance or charge on the Property which will not be paid in full at the Closing. To the extent that any easements or declarations are proposed that will affect the Property, Seller shall neither execute said easements and declarations, nor suffer the execution of same by or on behalf of Seller, without Purchaser's prior written consent, which consent may be withheld by Purchaser in its sole discretion.

b. Representations and Warranties. Seller shall not take any action, or omit to take any action, which action or omission would have the effect of violating or rendering untrue any representation, warranty, covenant or agreement contained herein. Seller shall give

Purchaser prompt written notice of any change in any of Seller's representations or warranties set forth in Section 6.

c. Existing Financing. Seller shall continue to make all payments required under the terms of any existing financing on the Property and shall not suffer or permit a default to arise thereunder.

d. Payments. Seller shall make any and all payments due and owing with respect to the Property, including, without limitation, real estate taxes, assessments, charges, fees, levies and impositions, insurance premiums, service contracts, management fees and payments for materials and materialmen, prior to the due date for such payment and will, upon Purchaser's request, deliver to Purchaser evidence reasonably satisfactory to Purchaser of payment thereof.

e. No Change in Physical Condition. Seller will keep and maintain the Property in good order and condition and will not permit any waste with respect thereto. Seller will not make any change to the physical condition of the Property except as contemplated by this Agreement or as otherwise approved by Purchaser.

f. Governmental Orders; Compliance with Laws. Seller shall not violate any lawful order or directive of a governmental agency with respect to the Property and shall at all times comply with all laws applicable to the Property. Seller shall promptly, and in any event prior to Closing, correct any violation of which Seller becomes aware.

g. Legally Subdivided Lot; Separate Tax Parcel. Prior to the Closing, Seller, shall assist Purchaser in Purchaser subdividing the Property at Purchaser's sole cost and expense and upon Purchaser making proper application for same. This includes Seller taking any action required to confirm that the Property is, or to cause the Property to be, established as a legally subdivided lot and as a separate tax parcel, subject to Purchaser's review and approval of the configuration and any conditions, restrictions or easements granted or imposed in connection therewith.

h. Memorandum of Agreement. Purchaser may record a memorandum of this Agreement which Seller shall execute if Purchaser so requests.

i. Sign. Seller shall, upon request by Purchaser, permit Purchaser, at Purchaser's sole cost and expense, to erect a sign on the Property advertising the proposed development of the Project.

j. No Bribery. Seller acknowledges that Purchaser's Code of Ethics prohibits Purchaser's employees from giving or receiving, or offering to give or receive, gratuities, kickbacks, or bribes of any kind or amount, whether legal or illegal, whether involving public or private parties, in connection with Purchaser's business. Seller agrees that it shall not give or receive, or offer to give or receive, any gratuities, kickbacks, or bribes of any kind or

amount, whether legal or illegal, whether involving public or private parties, in connection with the transaction contemplated by this Agreement.

k. Exclusive Agreement. So long as this Agreement remains in full force and effect, Seller shall not negotiate with third parties for the transfer of any interest in the Property, whether as a back-up offer or otherwise.

l. Notice of Title. Purchaser has been and is hereby advised that Purchaser should have the abstract covering the Property examined by an attorney of Purchaser's selection or that Purchaser should be furnished with a policy of title insurance. By Purchaser's execution of this Agreement, Purchaser acknowledges that Purchaser has been so advised in compliance with The Texas Real Estate License Act.

## **8. CONDITIONS TO CLOSING.**

The obligation of Purchaser to close the transaction set forth in this Agreement is subject to the fulfillment of the following conditions on or prior to the Closing Date, each of which shall continue as a condition until the Closing unless waived by Purchaser. Purchaser may, in Purchaser's sole and absolute discretion, terminate this Agreement at any time by written notice to Seller if Purchaser determines that any of the conditions set forth in this Section 8 will not be satisfied by the Closing Date. In the event of such termination, the Earnest Money and accrued interest promptly shall be returned to Purchaser and, thereafter, neither party shall have any further rights or obligations hereunder except for those which are expressly stated to survive the termination of this Agreement.

a. Approval by Purchaser. Purchaser shall have received and approved all items and documentation provided in this Agreement to be delivered to Purchaser.

b. Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing.

c. Performance by Seller. Seller shall have performed all agreements, undertakings and obligations and complied with all conditions required by this Agreement to be performed and/or complied with by Seller.

d. No Change to Property. As of the date of the Closing there shall have been no material adverse change in the condition of the Property or in Purchaser's ability to develop, construct, open and operate the Project in accordance with Purchaser's schedule.

e. Contingencies Satisfied. The contingencies set forth in Sections 3 and 4 shall have been fulfilled or waived on or before the dates provided for in Sections 3 and 4, as applicable.



f. Absence of Moratorium. No litigation, referendum, moratorium, statute, order, regulation, ordinance, legislation, judgment, ruling or decree shall have been enacted, adopted, issued or entered, or shall be pending or in effect, that could adversely affect the Property, the Project Approvals or Purchaser's ability to develop, construct, open and operate its Project in accordance with Purchaser's schedule.

g. Title Policy. Title Company shall be committed to provide to Purchaser, subject only to payment of the premium therefor, an Owner's Policy of Title Insurance (on the form prescribed by the State Board of Insurance of the State of Texas) issued through the Title Company by an underwriter acceptable to Purchaser insuring that fee title to the Property (and any appurtenant easements) is vested in Purchaser subject only to (i) the lien of real property taxes for the current year not yet due and payable (which shall be prorated as of the Closing Date as provided in Section 11.a hereof), and (ii) the Permitted Exceptions that were approved (or waived) by Purchaser as provided in Section 3 hereof; and (iii) the standard exceptions, provided that such standard exceptions shall be modified as follows: (A) the standard exception for restrictive covenants affecting the Property shall be modified to refer to only those restrictive covenants which have been approved or waived by Purchaser as provided in Section 3 hereof; (B) the standard exception for standby fees, taxes and assessments shall be modified to refer to standby fees, taxes and assessments for the year of the Closing and subsequent years and subsequent taxes and assessments for prior years; and (C) at Purchaser's sole cost and expense and at its option, the standard exception for any discrepancies, conflicts or shortages in area or in boundary lines, or any encroachments, or any overlapping of improvements shall be deleted except for "shortages in area". Seller shall have satisfied (or shall satisfy at the Closing from the Purchase Price) all Monetary Encumbrances except for prorated taxes, as required by Section 3 hereof.

h. Legally Subdivided Lot; Separate Tax Parcel. The Property shall have been established as a legally subdivided lot and a separate tax parcel.

## **9. CLOSING DELIVERIES.**

Drafts of all documents to be executed and delivered at the Closing shall be prepared by Purchaser's counsel and submitted to Seller's counsel for review prior to the date of the Closing. At the Closing, the following documents and items shall be delivered as indicated below:

a. Seller's Deliveries. Seller shall deliver the following items to Purchaser or to Title Company, duly executed and acknowledged by Seller, as applicable:

(i) Special Warranty Deed. A special warranty deed (or the equivalent thereof in the jurisdiction in which the Property is located) conveying to Purchaser fee title to the Property subject to no encumbrances or defects except for the lien of real property taxes for the current year prorated to the Closing Date and the Permitted Exceptions approved (or waived) by Purchaser as provided in Section 3 hereof.

(ii) FIRPTA Certificate. A certificate of nonforeign status in form required by federal income tax regulations and reasonably acceptable to Purchaser. In the event Seller does not deliver such certificate to Purchaser at the Closing, or does not otherwise sufficiently evidence Seller's exemption from withholding requirements, Purchaser may withhold such amounts as may be required under applicable law in order for Purchaser to avoid any liability for Seller's tax obligations.

(iii) Authority Documents. Certificates, duly adopted resolutions, incumbency certificates, good standing certificates and other evidence satisfactory to Title Company of the authorization of the sale of the Property to Purchaser and of the authority of the person(s) executing and delivering documents at the Closing on behalf of Seller.

(iv) Seller's Certificate. A certificate certifying that each and every warranty and representation made by Seller in this Agreement is true and correct in all material respects as of the Closing as if made by Seller at such time, except as shall have been disclosed to and waived by Purchaser in writing.

(v) Owner's Affidavit. An affidavit in form satisfactory to Title Company for the issuance of the Title Policy without exception for mechanics', materialmen's or other statutory liens, parties in possession and other standard title exceptions.

(vi) Quitclaim Deed. If the legal description of the Property prepared from the Survey differs from the legal description by which Seller acquired title to the Property as provided for in the Title Commitment, then Seller shall also execute and deliver to Purchaser at the Closing a quitclaim deed, in recordable form, conveying the Property to Purchaser using the Survey legal description.

(vii) Closing Statement. An executed counterpart of the Closing Statement.

(viii) Additional Documents. Copies of all other surveys, plans and specifications, permits and approvals and other similar documents which pertain to the Property and/or the Project Approvals which may be in Seller's possession or under its control.

(ix) Miscellaneous. Such other items, documents, affidavits, real property transfer tax returns, legal opinions, instruments and certificates as Purchaser reasonably requires or as may be necessary or desirable to consummate the sale of the Property and to induce Title Company to issue the Title Policy, including, if applicable, documentation to effectuate Purchaser's 1031 exchange.

ii) Declaration of Restrictive Covenants. The Declaration of Restrictive Covenants set forth in Section 5 hereof.

iii) 380 Agreement. The 380 Agreement set forth in Section 4.b hereof.

iv) Infrastructure Participation Agreement. The Infrastructure Participation Agreement set forth in Section 4.b hereof.

v) Broker's Lien Waiver Affidavit. Broker's lien waiver affidavits, duly executed by Brokers, in a form satisfactory to Title Company for the issuance of the Title Policy without exception for brokers' liens.

b. Purchaser's Deliveries. Purchaser shall deliver at the Closing the Purchase Price (as adjusted pursuant to Sections 2.a and 11 hereof), an executed counterpart of the Closing Statement, executed counterparts of the 380 Agreement and Infrastructure Participation Agreement, an executed copy of any necessary real property transfer tax return, Purchaser's authority documents and, if applicable, documentation to effectuate Purchaser's 1031 exchange.

c. Closing Statement. A single, combined closing statement setting forth in reasonable detail the financial transaction of Seller and Purchaser contemplated by this Agreement, including, without limitation, the Purchase Price, all prorations, the allocation of costs, charges, credits and debits specified herein and the source, application and disbursement of all funds (the "**Closing Statement**").

d. Title Policy. Title Company shall deliver the Title Policy (or an irrevocable commitment to issue same) to Purchaser, in form and substance as required pursuant to Section 8.g hereof.

e. Possession. Seller shall deliver full, sole, vacant and exclusive possession of the Property to Purchaser, subject to no tenancies, leasehold interests or other similar interests that are not Permitted Exceptions (as described in Section 3 hereof).

## **10. TIME AND PLACE OF CLOSING.**

a. Closing Date. Subject to Section 8 of this Agreement, the closing of the transaction set forth in this Agreement (the "**Closing**") shall take place on a date (the "**Closing Date**") selected by Purchaser which is no later than fifteen (15) days after all the conditions in Sections 3 and 4 have been satisfied or waived in writing by Purchaser. If the Closing does not occur by the Closing Date for any reason other than default by Purchaser, the Earnest Money and all accrued interest thereon shall be returned to Purchaser.

b. Closing Procedure. The Closing shall occur at the office of Title Company or other party mutually agreed to in writing by Purchaser and Seller ("**Closing Agent**"), or at such other location as the parties may select at a time selected by Purchaser. All documents and instruments required for the Closing shall be delivered to Closing Agent, or at such other location(s) as Closing Agent may select, on or before the Closing Date. Funds required for the Closing shall be delivered to Closing Agent by 12:00 p.m. on the Closing Date. Each party agrees to execute and deliver to Closing Agent closing escrow instructions to implement and coordinate the Closing in accordance with the terms of this Agreement.

c. Closing Date Extension. Notwithstanding any provision of this Agreement to the contrary, in the event that Purchaser is prepared to close this transaction pursuant to the terms of this Agreement, and if Seller has not fully performed its obligations hereunder, then Purchaser, in its sole and absolute discretion, and in addition to all other rights and remedies it may have, may, from time to time, notify Seller that Purchaser extends the Closing Date to such date or dates as Purchaser may elect to provide Seller with the additional time necessary for Seller to fully perform its obligations hereunder. In such event, Purchaser may defer making Purchaser's Closing deliveries (including deposit of the balance of the Purchase Price) pending Seller's performance. Seller's failure to fully perform by such extended Closing Date(s) shall constitute a default by Seller under this Agreement.

d. Additional Documents. Seller agrees that prior to, at or after the Closing, for a reasonable period of time, Seller will duly execute and deliver to Purchaser any additional documents and instruments that Purchaser may reasonably determine are necessary in connection with the consummation of the purchase and sale of the Property and the development thereof as contemplated in this Agreement.

## **11. APPORTIONMENTS AND CLOSING COSTS.**

a. Proration of Income and Expenses. The following items shall be adjusted or prorated between Seller and Purchaser at the Closing, in the manner set forth herein:

b. Ad valorem and similar taxes relating to the Property ("**Taxes**") shall be prorated in accordance with this Section 11.b. Seller advises Purchaser that Seller is exempt from paying Taxes. The parties recognize that (A) currently the Property is not a separate tax parcel; and (B) Seller is a tax-exempt entity and as a result Taxes may not have been assessed against the Property. Seller will not be responsible for any additional taxes and interest that becomes, or will become, due as a penalty or otherwise because of (A) the transfer of the Property; or (B) a subsequent change in the use of the Property (i.e. "rollback taxes"). Purchaser will be responsible for payment of Purchaser's prorated share of Taxes for the current year based on the number of days following the Closing Date. To the extent the Property is assessed with other parcels of land for tax purposes ("**Current Tax Parcels**"), Seller and Purchaser each agree to cooperate and to use reasonable efforts after Closing to cause the Property to be designated a separate tax parcel. Until the Property is separately assessed, Seller and Purchaser agree that the Taxes for the Property shall be allocated as to each Current Tax Parcel such that Purchaser shall pay its prorata share based upon the proportion that the square footage of the Property within each Current Tax Parcel bears to the total acreage within such Current Tax Parcel (land only, excluding improvements) and Seller agrees to reasonably cooperate with Purchaser to permit Purchaser to timely pay Taxes on its respective portions of the Current Tax Parcels. **PURCHASER AGREES TO ASSUME FULL RESPONSIBILITY FOR PAYMENT OF ANY TAXES THAT ARE PURCHASER'S RESPONSIBILITY UNDER THIS SECTION 11.b AND PURCHASER AGREES TO HOLD SELLER HARMLESS FROM THE PAYMENT OF ANY SUCH TAXES, AND ANY LATE FEES OR PENALTIES DUE AS A RESULT OF PURCHASER'S BREACH OF ITS OBLIGATIONS TO PAY TAXES**

**UNDER THIS SECTION 11.b.** The obligations, terms and conditions set out in this Section 11.b shall survive Closing.

(i) All unpaid charges associated with public improvement districts, and all other special assessments, if any, existing as of the Closing Date and affecting the Property, whether due and payable before or after such date and whether or not otherwise payable in installments, shall be paid in full by Seller in cash at the Closing to the assessing entity.

(ii) All other income and operating expenses for or pertaining to the Property, including, without limitation, public utility charges, shall be prorated, with Seller responsible for payment through and including the Closing Date and Purchaser responsible for payment thereafter.

c. Post-Closing Adjustments. To the extent items are prorated, adjusted, charged or credited at the Closing on the basis of estimates, or are not prorated, adjusted, charged or credited at the Closing pending actual receipt of information upon which such proration, adjustments, charges and/or credits are to be based, Purchaser and Seller will, upon a proper accounting, pay to the other such amounts as may be necessary such that Seller will pay all expenses of the Property for the period on and prior to the Closing Date and all other expenses to be paid by Seller pursuant to this Agreement, and Purchaser will pay all expenses of the Property for the period after the Closing Date and all other expenses to be paid by Purchaser pursuant to this Agreement. If either party receives any bill or invoice which relates to the period or to an expense for which the other party is responsible, the receiving party will refer such bill to the responsible party and the responsible party agrees to pay, promptly upon receipt, such portion of the bill or invoice as relates to the period or expense for which it is responsible. If the responsible party does not pay such bill in a timely manner, the receiving party may, at its option, pay such bill or invoice and the responsible party shall become liable to the receiving party for the full amount of such payment, together with interest at the rate of five percent (5%) per annum in excess of the Prime Rate. The "**Prime Rate**" shall be the rate announced as such from time to time by Bank of America, N.A. or its successor. 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.

d. Closing Costs.

(i) Seller shall pay the following costs in connection with the Closing: (A) all real estate excise or transfer, recording, documentary stamp or similar taxes, fees or expenses imposed in connection with the conveyance of the Property; (B) the basic premium for the Title Policy for coverage in the amount of the Purchase Price (excluding fees for the modification of the "survey exception" or any endorsements or additional coverage requested by Purchaser or any amounts insured over the Purchase Price); (C) recording fees; and (D) one-half of Title Company's escrow fee.

(ii) Purchaser shall pay (A) the costs of the modification of the “survey exception”, if desired by Purchaser, any portion of the premium for the Title Policy for coverage in excess of the amount of the Purchase Price and any endorsements to the Title Policy desired by Purchaser (except as otherwise agreed in writing by Seller in connection with curing an Objection); and (B) one-half of Title Company’s escrow fee.

(iii) Each party shall pay the fees of its own attorneys, accountants consultants, and other professionals incurred in connection with the transaction contemplated by this Agreement.

**12. CASUALTY LOSS AND CONDEMNATION.**

a. Casualty or Condemnation. If, prior to the Closing, all or any portion of the Property is damaged as the result of fire or other casualty or there is a loss or threatened loss of all or any portion of the Property by condemnation (a “**Casualty**”), Seller shall promptly notify Purchaser in writing of such event. Upon the occurrence of a Casualty, Purchaser, in its sole discretion, shall have the option to (i) accept title to the Property without any abatement of the Purchase Price, in which event at the Closing all of the insurance proceeds or condemnation awards shall be assigned by Seller to Purchaser and any monies theretofore received by Seller in connection with such Casualty shall be paid over to Purchaser; or (ii) terminate this Agreement, in which event the Earnest Money and all accrued interest thereon shall be returned to Purchaser, and thereafter neither party shall have any further liability to the other.

b. Settlement. During the existence of this Agreement, Seller shall not settle any casualty loss claim or agree to any award or payment in condemnation or eminent domain or any award or payment in connection with the change in grade of any street, road, highway or avenue in respect of or in connection with the Property without obtaining Purchaser’s prior written consent in each case.

**13. TERMINATION.**

If the Closing has not occurred within three years after the Effective Date for any reason other than a default by either Seller or Purchaser or the termination of this Agreement by either Seller or Purchaser pursuant to a right under this Agreement, then this Agreement will terminate following the date that is three years from the Effective Date upon sixty (60) days advance written notice of termination from one party to the other.

**14. SELLER’S REMEDY.**

**SELLER AND PURCHASER AGREE THAT THE DAMAGES THAT WOULD BE SUFFERED BY SELLER IN THE EVENT OF A DEFAULT BY PURCHASER HEREUNDER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO ASCERTAIN, AND THAT THE EARNEST MONEY REPRESENTS THE REASONABLE ESTIMATE BY THE PARTIES OF THE AMOUNT OF THE DAMAGES THAT SELLER WOULD SUFFER BY REASON OF PURCHASER’S**

**DEFAULT. PURCHASER AND SELLER UNDERSTAND AND AGREE THAT THE VALUE OF THE PROPERTY IS SUBJECT TO CHANGE BY REASON OF GENERAL ECONOMIC CONDITIONS, THE LOCAL REAL ESTATE MARKET, THE AVAILABILITY OF MORTGAGE FINANCING AND OTHER FACTORS BEYOND THE CONTROL OF PURCHASER AND SELLER, AND THAT THE EARNEST MONEY IS A REASONABLE LIQUIDATED DAMAGE AMOUNT UNDER THE EXISTING CIRCUMSTANCES. ACCORDINGLY, IN THE EVENT OF A DEFAULT BY PURCHASER HEREUNDER, SELLER SHALL RECEIVE AND RETAIN THE EARNEST MONEY THEN HELD BY TITLE COMPANY AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY OR FORFEITURE. RETENTION OF THE EARNEST MONEY SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY FOR PURCHASER'S DEFAULT AT LAW OR IN EQUITY UNDER THIS AGREEMENT, SELLER HEREBY WAIVING ANY OTHER REMEDY; PROVIDED, HOWEVER, THIS SECTION SHALL NOT LIMIT PURCHASER'S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 1.d (iii) and 16.d(vi). UPON RECEIPT OF SUCH AMOUNT BY SELLER, THIS AGREEMENT SHALL AUTOMATICALLY TERMINATE AND PURCHASER AND SELLER SHALL BE RELIEVED OF ANY FURTHER OBLIGATIONS OR LIABILITY HEREUNDER. PURCHASER AND SELLER SHALL SIGN BELOW THIS PARAGRAPH INDICATING THEIR AGREEMENT TO THE LIQUIDATED DAMAGE CLAUSE HEREIN CONTAINED.**

In the event of Seller's breach of this Agreement, Purchaser shall have the right to pursue all rights and remedies now or hereafter available at law or in equity or by statute, including, without limitation, enforcing specific performance of this Agreement and bringing suit for monetary damages. Additionally, in the event of such breach by Seller and without waiving any other rights or remedies, Purchaser shall have the right to terminate this Agreement by notice to Seller, and upon such notice of termination the Earnest Money and all accrued interest thereon shall be returned to Purchaser. Each remedy available to Purchaser shall be cumulative and shall be in addition to any other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. Purchaser, at its option, may elect to waive the performance of any condition, contingency or provision in Purchaser's favor set forth in this Agreement.

#### **15. NOTICES.**

All notices, demands, consents, approvals and other communications (each, a "**Notice**") which are required or desired to be given by either party to the other under this Agreement shall be in writing and shall be (a) hand delivered, (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested, (c) sent by reputable overnight courier service, or (d) transmitted by facsimile machine (with a copy, including the transmission sheet indicating successful transmission of the Notice by facsimile machine, to follow by regular mail), addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by Notice to the other. Notices shall be deemed given when delivered, if delivered by hand, by U.S. mail or by overnight courier, or at the time and on the date of machine transmittal, if given by facsimile. Rejection or other refusal by the addressee to accept a

Notice or the inability to deliver the Notice because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. Notice addresses for the parties are as follows:

To Seller: Natalie Ruiz, AICP | Director  
Economic Development  
City of College Station  
P.O. Box 9960  
College Station, TX 77842-9960  
Facsimile No.: 979-764-6377

With a copy to: City Attorney  
City Attorney's Office  
City of College Station  
P.O. Box 9960  
1101 Texas Ave.  
College Station, TX 77842  
Facsimile No.: 979-764-3481

To Purchaser: Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, Washington 98027  
Attention: Bruce Coffey, Corporate Counsel  
Facsimile No.: 425-313-8114

With a copy to: Thompson & Knight L.L.P.  
1722 Routh Street, Suite 1500  
Dallas, Texas 75201  
Attention: Ray T. Khirallah  
Facsimile No.: 214-969-1751

Notice may be given by counsel for the parties, and such Notice shall be deemed given by Seller or Purchaser, as the case may be, for all purposes under this Agreement.

**16. MISCELLANEOUS.**

a. Entire Agreement; No Oral Modifications; Waiver. This Agreement and the exhibits to this Agreement constitute the final and complete agreement between the parties with respect to the transaction contemplated herein, and supersede all prior correspondence, memoranda and agreements (oral or written) between the parties relating to the subject matter hereof, including, without limitation, that certain letter of intent dated August 27, 2020. This Agreement cannot be changed or modified other than by a written agreement executed by both



parties. No waiver of any of the provisions of this Agreement shall constitute or be deemed to constitute a waiver of any other provision (whether or not similar), nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

b. Successors Bound. Subject to the restrictions on assignment contained in Section 17.c hereof, the provisions of this Agreement shall extend to, bind and inure to the benefit of the parties to this Agreement and their respective personal representatives, heirs, successors and assigns.

c. Assignment.

(i) Seller shall not assign this Agreement, or any rights or obligations under or relating to this Agreement, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Purchaser, and any such purported assignment shall be void.

(ii) Purchaser shall not assign Purchaser's interest under this Agreement without the prior written consent of Seller, except that Purchaser shall have the right to assign Purchaser's interest under this Agreement without Seller's consent to an Affiliate, so long as such Affiliate assumes the obligations of Purchaser under this Agreement, and provided, however, that Purchaser shall not be released, but shall remain liable for the performance of Purchaser's obligations under this Agreement. For the purpose of this Section, the sale or transfer of Purchaser's capital stock through a public exchange, or redemption or issuance of additional stock of any class shall not be deemed an assignment.

(iii) For purposes of this Agreement, the term "**Affiliate**" shall mean (A) a subsidiary, affiliate, parent or other entity which controls, is controlled by or is under common control with Purchaser; (B) a successor corporation related to Purchaser by merger, consolidation, non-bankruptcy reorganization, or government action; (iii) a purchaser of substantially all of Purchaser's assets in the state where the Property is located.

d. Closing Expenses Credit; Brokers.

(i) Seller agrees to give Purchaser a credit against the Purchase Price in the amount of five percent (5%) of the Purchase Price ("**Closing Expenses Credit**") in accordance with the terms and conditions set forth in the 380 Agreement to be entered into by the parties which Purchaser may use to pay any brokerage fee and/or other consultant fees for which Purchaser shall be solely responsible.

(ii) Seller acknowledges that Shelby Estus Real Estate Group ("**Purchaser's Broker**") has acted as Purchaser's broker in connection with this transaction.

(iii) Seller acknowledges that Intrepid Properties, Inc./NWAP II, Inc. ("**NWAP**") has provided consulting services to Purchaser.

(iv) Purchaser acknowledges that, as provided for in Section 253.014 Texas Local Government Code, Seller has a licensed broker who has listed the Property on a multiple-listing service for a minimum of thirty (30) days. Seller shall be responsible for payment of all fees or other compensation owed to such licensed broker in connection with this transaction.

(v) Seller and Purchaser each represent and warrant to the other that except as provided in this Section, no real estate agent or broker was involved in negotiating the transaction contemplated herein.

(vi) In the event any claims for real estate commissions, fees or compensation (collectively "**Compensation**") arise in connection with this transaction, the party so incurring or causing such claims agrees to indemnify, defend and hold harmless the other party from any loss or damage, including attorneys' fees, which said other party suffers because of said claims.

e. Governing Law; Governing Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Property is located (the "**Governing Jurisdiction**") applicable to agreements made or to be performed in such jurisdiction without regard to any conflicts of law.

f. Electronic Signatures; Counterparts. This Agreement shall be executed only by a pen and ink signature, but may be delivered by facsimile or email with a pdf attachment of a signed counterpart. It may be signed in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

g. Intentionally Omitted.

h. Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

i. Captions. The captions of this Agreement are inserted solely for convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any term hereof.

j. Construction. Seller and Purchaser acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement (including the exhibits) or any amendments hereto, and the same shall be construed neither for nor against Seller or Purchaser, but shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the parties.

k. Purchaser's Approval Rights. Whenever in this Agreement Purchaser is deemed to disapprove of a particular matter, or a condition is deemed not to be satisfied by reason of Purchaser's failure to approve of the same or to acknowledge that the same is satisfied, Seller shall have no right to conclusively deem Purchaser to have disapproved of such matter or to deem such condition not satisfied, unless and until Seller gives written notice to Purchaser that Seller intends to deem such matter disapproved or to deem such condition not satisfied, as of the date which is five (5) days after Purchaser receives such notice. If Purchaser fails to approve of or waive the matter in question or fails to acknowledge that the condition in question is satisfied, as the case may be, within such five (5) day period, the matter or condition in question shall thereafter be conclusively deemed to be disapproved or not satisfied.

l. Computation of Time. If the time for performance of any provision of this Agreement ends on a Saturday, Sunday or federal, state or legal holiday in the Governing Jurisdiction, then such date shall automatically be extended until 5:00 p.m. on the next day which is not a Saturday, Sunday or federal, state or legal holiday in the Governing Jurisdiction.

m. Survival of Terms. The terms and provisions of this Agreement shall survive the Closing and shall remain in full force and effect thereafter unless otherwise specifically provided in this Agreement.

n. Recitals. The recitals set forth at the beginning of this Agreement are true and correct, and are incorporated herein by this reference.

o. Exhibits. All exhibits attached to this Agreement are incorporated into this Agreement by this reference and made a part of this Agreement as if fully set forth herein. The following constitute the exhibits to this Agreement:

Exhibit A	Legal Description of Property
Exhibit B	Sketch of Property and Detention Pond
Exhibit C	Depiction of Shared Drive
Exhibit D	Environmental Reports
Exhibit E	Restrictive Covenants

## 17. EFFECTIVE DATE.

In the event Purchaser and Seller do not sign this Agreement simultaneously, this Agreement shall be considered an offer made by the party first duly approving, executing and delivering this Agreement to the other party. In such event, said offer shall expire at 5:00 p.m. local time in the Governing Jurisdiction on the fourteenth (14<sup>th</sup>) day following execution and delivery by the offering party, unless prior to such deadline the party to which the offer was made shall have delivered one copy of this Agreement, executed without change, to the party making the offer. If the party receiving the offer changes the terms of the offer, the original offer shall be deemed rejected and a new offer shall be deemed made by the party making such changes. The date on which this Agreement shall be effective (the "**Effective Date**") is the date

upon which this Agreement is accepted without change, which date is presumed to be the later of the date of the formal approval of this Agreement by Seller's City Council, the date of Seller's execution of this Agreement as set forth following its signature set forth on this Agreement and the date of Purchaser's execution of this Agreement as set forth following its signature set forth on this Agreement.

[Balance of this page intentionally left blank; signatures appear on the following pages.]

SIGNATURE PAGE  
FOR  
PROPERTY PURCHASE AGREEMENT  
BETWEEN  
THE CITY OF COLLEGE STATION, TEXAS  
AND  
COSTCO WHOLESALE CORPORATION

IN WITNESS WHEREOF, the parties have executed this Property Purchase Agreement, intending to be legally bound hereby as of the Effective Date.

SELLER:

**THE CITY OF COLLEGE STATION, TEXAS**  
a Texas Home Rule City

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
Assistant City Manager/CFO

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

[Signatures continue on following page.]

SIGNATURE PAGE  
FOR  
PROPERTY PURCHASE AGREEMENT  
BETWEEN  
THE CITY OF COLLEGE STATION, TEXAS  
AND  
COSTCO WHOLESALE CORPORATION

IN WITNESS WHEREOF, the parties have executed this Property Purchase Agreement,  
intending to be legally bound hereby as of the Effective Date.

PURCHASER:

**COSTCO WHOLESALE CORPORATION,**  
a Washington corporation

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

[Signatures continue on following page.]

SIGNATURE PAGE  
FOR  
PROPERTY PURCHASE AGREEMENT  
BETWEEN  
THE CITY OF COLLEGE STATION, TEXAS  
AND  
COSTCO WHOLESALE CORPORATION

The undersigned Title Company executes this Agreement solely for the purposes of agreeing to act as Title Company hereunder, to hold and disburse the Earnest Money in accordance with the provisions of this Agreement, and otherwise to acknowledge and agree to the provisions of Section 2.c of this Agreement. The execution or consent of Title Company shall not be necessary to establish the Effective Date of this Agreement or for a written amendment or modification of this Agreement otherwise signed by Seller and Purchaser unless Section 2.c is amended or modified thereby. Any Notice to be given to Title Company under this Agreement shall be given at the address set forth below.

TITLE COMPANY:

FIRST AMERICAN TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

First American Title Insurance Company  
Seattle National Commercial Services Division  
920 Fifth Ave., Suite 1200  
Seattle, WA 98104  
Attention: Rachel Norambuena  
Facsimile No.: 866-495-0221

**EXHIBIT A  
TO PROPERTY PURCHASE AGREEMENT**

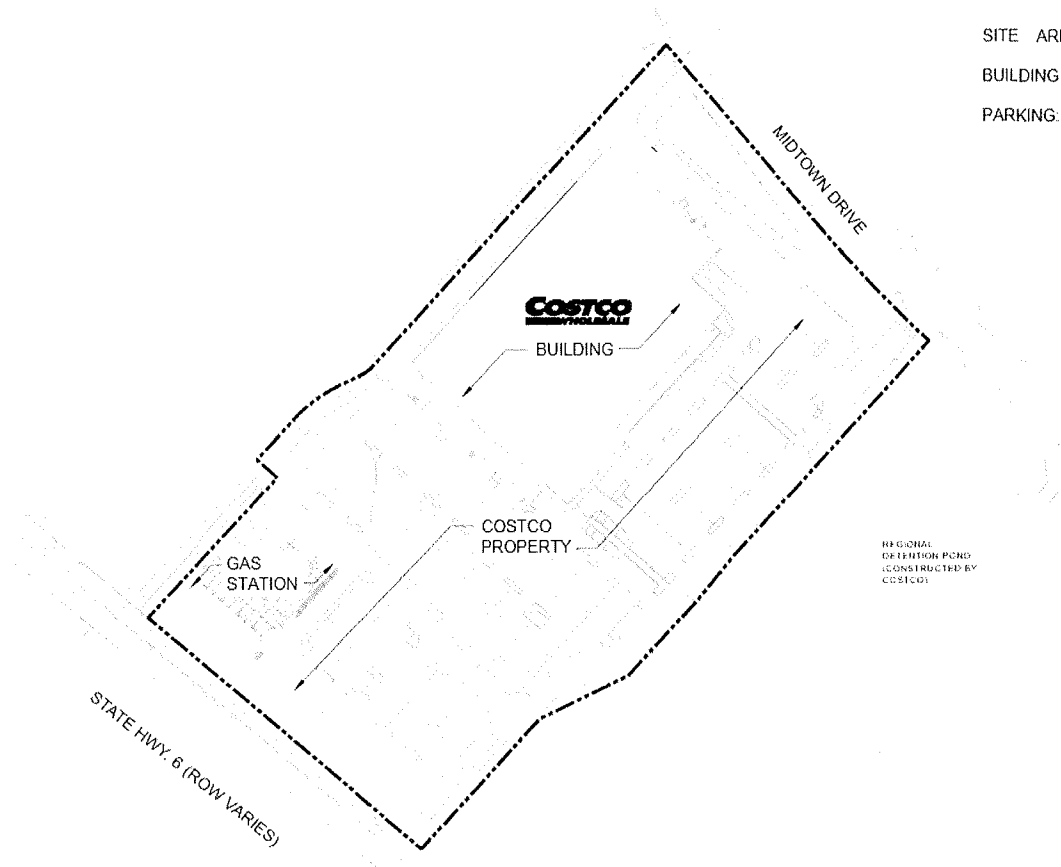
**LEGAL DESCRIPTION OF PROPERTY**

[TO BE ATTACHED AS SOON AS SUCH LEGAL DESCRIPTION IS ESTABLISHED]



**EXHIBIT B  
TO PROPERTY PURCHASE AGREEMENT**

**SKETCH OF PROPERTY AND DETENTION POND**



SITE AREA: 18.67 ACRES

BUILDING AREA: 160,534 SF

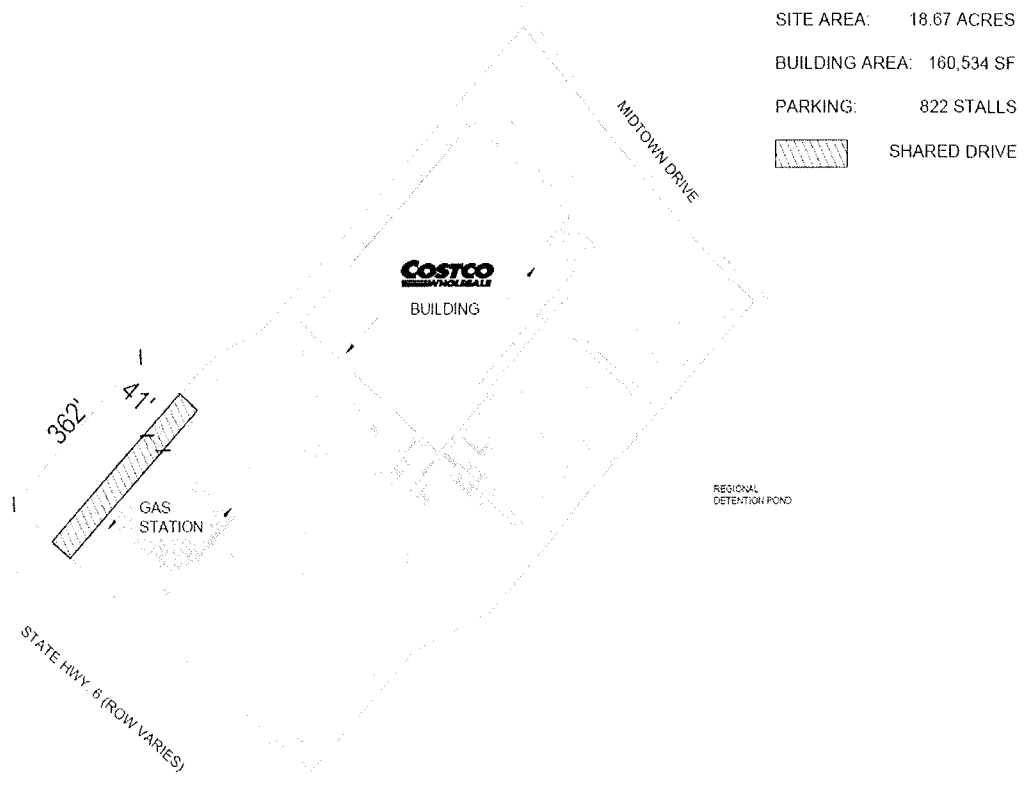
PARKING: 822 STALLS

**EXHIBIT B SKETCH OF PROPERTY**



**EXHIBIT C  
TO PROPERTY PURCHASE AGREEMENT**

**SKETCH OF SHARED DRIVE**



**EXHIBIT C SHARED DRIVE**



**EXHIBIT D  
TO PROPERTY PURCHASE AGREEMENT**

**LIST OF ENVIRONMENTAL REPORTS**

1. Threatened & Endangered Species Evaluation – Performed by Alan Plummer Associates, Inc. project #1004-007-01, dated September 24, 2018 for the 400 acre tract known as Midtown Business Park.
2. Preliminary Jurisdictional Determination of Waters of the United States – Performed by Alan Plummer Associates, Inc. dated September 24, 2018 for the 400 acre tract known as Midtown Business Park.
3. Phase I Environmental Site Assessment – Performed by Alan Plummer Associates, Inc. dated September 24, 2018 for the 400 acre tract known as Midtown Business Park.
4. Jurisdictional Determination Letter by the Department of the Army, Project Number SWF-2018-00407 signed by Chief Stephen L. Brooks, Regulatory Division and dated May 28, 2019 for the 400 acre tract known as Midtown Business Park.

**EXHIBIT E**  
**TO PROPERTY PURCHASE AGREEMENT**

**RESTRICTIVE COVENANTS**

**Exclusive Use Provision.** Subject to the exclusion described below for a Costco Facility or Business (as defined below), Seller hereby covenants and agrees for itself and Seller's Entities (as defined below) that:

(a) No portion of any Restricted Property (as defined below) shall be used or operated: (i) as a wholesale or retail general merchandise facility that has a merchandising concept based upon a relatively limited number of stock keeping units in a large number of product categories (the "**Merchandising Concept**"); (ii) as a grocery store or supermarket, including, without limitation, a grocery store or supermarket that forms a part of or is otherwise integrated into a larger retail store, such as the business concepts commonly referred to as a "supercenter" or "hypermarket" (a "**Grocer**"); (iii) as a wholesale or retail establishment selling wine, beer, spirits or other alcoholic beverages intended for off-premises consumption (a "**Alcoholic Beverage Retailer**"); (iv) as a "Wal-Mart" store or "Wal-Mart Supercenter" or any other store operated under the "Wal-Mart" brand (a "**Wal-Mart**"); or (v) to support a facility operating under the Merchandising Concept, as a Grocer, as an Alcoholic Beverage Retailer or as a Wal-Mart (i.e., for parking or other necessary improvements for such a facility). The Merchandising Concept restriction includes, but shall not be limited to: (vi) any business that operates as a warehouse club; (vii) any business operated under the tradenames of Sam's, BJ's, Price Smart, Jetro or Smart and Final; and (viii) any business similar to those operated under the tradenames Costco, Sam's, BJ's, Price Smart, Jetro or Smart and Final. The Merchandising Concept restriction does not prohibit any of the following uses on any Restricted Property: (ix) a specialty retail store that primarily sells goods in a few specific product categories, such as pet food, sporting goods, office supplies, home goods, home improvements, books, toys, party supplies, craft supplies, apparel, shoes, furniture, appliances or electronics; or (x) a traditional department store, discount department store or junior department store, such as Kohl's, Target or K Mart.

(b) No portion of the Restricted Property shall be used or operated as a car wash, motor vehicle fuel or service station, or motor vehicle tire sales, service or installation facility; provided that any motor vehicle tire sales, service or installation facility that is operated by and in connection with a general merchandise retail store or a traditional department store shall not be prohibited by this restriction.

(c) Notwithstanding anything to the contrary contained herein, in no event shall any of the prohibitions set forth in paragraphs (a) or (b) above prohibit the Property or the Restricted Property from being used for or as a Costco Facility or Business.

(d) As used herein, the following terms shall have the following meaning:

(i) “**Restricted Property**” shall mean any commercially zoned property of ten (10) acres in size or greater and available for private development within two (2) miles in any direction from the exterior boundaries of the Property that is currently or in the future owned by Seller or Seller’s Entities.

(ii) “**Seller’s Entities**” means Seller and any subsidiary, affiliate, parent or other entity that controls, is controlled by, or is under common control with Seller.

(iii) “**Costco Facility or Business**” shall mean any facility or business owned, leased, franchised, managed, operated or controlled by Costco Wholesale Corporation or by any Affiliate of Costco Wholesale Corporation, including, without limitation, a Costco Wholesale warehouse club, Costco Wholesale business center, or any of the constituent or ancillary uses associated therewith. A Costco Facility or Business shall also include a facility or business that is owned or operated by a person or entity other than Costco Wholesale Corporation, or any Affiliate of Costco Wholesale Corporation, but which facility or business is intended to be included as part of or otherwise integrated into a Costco Facility or Business, such as leased or licensed departments, or co-branded or ancillary uses.

(e) These restrictive covenants shall run with the title to the Restricted Property and shall be binding upon successors and assigns of Seller and the applicable Seller Entities with respect to the Restricted Property. Notwithstanding the foregoing, if once the Project (as defined in the 380 Agreement) is constructed and begins operation on the Property, the Owner (or lessee) of the Property fails to operate a Costco Facility or Business on the Property for more than 365 consecutive days (excluding periods of Permitted Closure), then any Owner of the Restricted Property shall have the right to send written notice to the then Owner of the Property that the restrictive covenants will terminate unless a Costco Facility or Business is reopened on the Property and if the then Owner (or lessee) of the Property fails to reopen and operate a Costco Facility or Business on the Property within 180 days after receipt of such written notice, then these restrictive covenants shall terminate on the date that is 181 days after such written notice and thereafter be of no further force or effect. The term “**Permitted Closure**” shall mean any period of time during which a Costco Facility or Business on the Property is closed for reasons due to fire, earthquake, flood or other casualty, condemnation or other exercise by a governmental authority of the power of eminent domain, repairs, renovations, alterations or modifications made with the intention of recommencing operations, or for causes of force majeure, pandemic, governmental shutdown, act of war, terrorism or other cause beyond the reasonable control of then Owner (or lessee) of the Property.

(f) Purchaser shall have the right to record a document containing these restrictive covenants against the Restricted Property (whether currently owned or acquired after the date of the Purchase Agreement by Seller or any other of Seller’s Entities) and Seller (or other Seller’s Entities, as applicable) shall cooperate with Purchaser in recording such document. Accordingly, at the Closing, Seller covenants to execute and deliver to Purchaser a document, in recordable form mutually agreed to between Seller and Purchaser during the Feasibility Period, setting forth these restrictive covenants, which shall be recorded at Closing by Purchaser against

the Restricted Property. During the Feasibility Period, Seller covenants to provide Purchaser with a list of the Restricted Property. Seller further agrees to update the list of Restricted Property owned by Seller Entities from time to time and to promptly record these restrictive covenants against such Restricted Property promptly upon the acquisition of the same by a Seller Entity.

(g) Seller, on its own behalf and on behalf of each of Seller's Entities, acknowledges that the breach of the foregoing restrictive covenants may cause immediate and irreparable harm for which damages are not an adequate remedy and that, to protect against such harm, Purchaser may seek and obtain from a court of competent jurisdiction the issuance of a restraining order or injunction to prohibit any actual or threatened breach. Such an action for a restraining order or injunction is in addition to and does not limit any and all other remedies provided by law or equity.

**EXHIBIT "B"**  
**DESCRIPTION OF PROPERTY**

SITE AREA: 18.67 ACRES  
BUILDING AREA: 160,534 SF  
PARKING: 822 STALLS

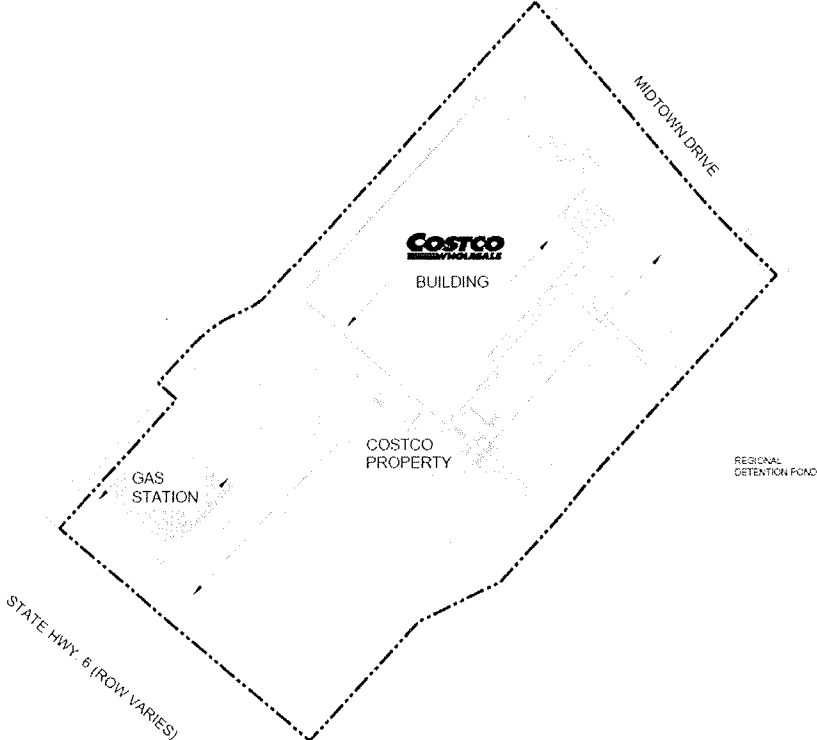
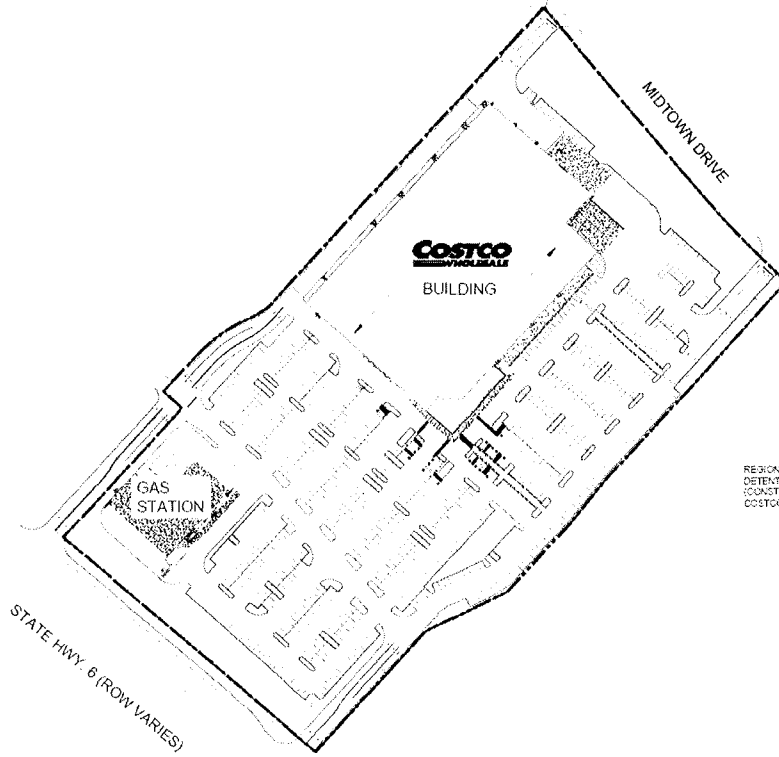


EXHIBIT B SKETCH OF PROPERTY



# EXHIBIT "C" SITE PLAN



SITE AREA: 18.67 ACRES  
BUILDING AREA: 160,534 SF  
PARKING: 822 STALLS

EXHIBIT C SITE PLAN





## Exhibit "D" Development Fees



6750 Hiestrich Plaza Dr., Suite 215  
Dallas, TX 75230  
TEXAS ENGINEERING FIRM REGISTRATION NO. 89  
TEXAS SURVEYOR FIRM REGISTRATION NO. 10986600

EXHIBIT "D"  
City of College Station Dev. Fee Types Estimates  
Updated March 25, 2021

COSTCO-COMMERCIAL BUILDING	
Site Plan	\$ 1,055.00
Preliminary Plan	\$ 1,055.00
Final Plat	\$ 1,321.00
Development Permit and Public Infrastructure Review and Inspection (1.6% of Cost Estimate (e.g., based on \$2,000,000.00 CF))	\$ 32,000.00
Roadway Impact Fee (Warehouse)	\$ 90,000.00
Roadway Impact Fees (Fuel)	\$ 10,000.00
Water Connection (3")	\$ -
Water Impact (3")	\$ 13,350.00
Water Connection Inspection Fee	\$ 100.00
Irrigation Connection (2")	\$ 3,138.66
Irrigation Impact (2")	\$ 5,350.00
Sanitary Sewer Connection Fee	\$ -
Sanitary Sewer Impact (3" water meter)	\$ 40,050.00
Sanitary Sewer Connection Inspection Fee	\$ 100.00
Contractor Registration	\$ 64.00
Building Permit Warehouse (based on construction value) \$1,784.00 for 1" \$500,000.00 + \$2.25 per \$1,000.00 valuation (e.g., \$13,200,000 valuation)	\$ 30,359.00
Building Permit Fuel (400,000 Est.)	\$ 1,784.00
Mechanical Permit (based valuation) \$32.00 for 1" \$1,000.00 + \$8.00 per \$1,000.00 valuation (e.g., \$100,000.00 valuation = \$32.00 + \$495.00)	\$ 1,000.00
Plumbing Permit (based on # of fixtures) \$32.00 base fee + \$5.00 per fixtures (e.g., 30 fixtures = \$32.00 + \$150.00)	\$ 182.00
Electrical Permit \$43.00 for 1" 1,000 square feet + \$0.02 per square feet over 1,000 square feet (e.g., 160,500 square feet building = \$3,190.00)	\$ 3,233.00
Mechanical Vent Hood (3)	\$ 235.00
Mechanical Walk-In Cooler (9)	\$ 675.00
Temporary Power Pole	\$ 80.00
Sign Permit (2)	\$ 324.00
Banner Permit	\$ 224.00
Fire Flow Testing (per hydrant) (2)	\$ 700.00
Health Permit (County)	\$ 5,000.00
<b>TOTAL</b>	<b>\$ 241,369.66</b>

## Exhibit “E”

### Chapter 2264 Certification

#### UNDOCUMENTED WORKER CERTIFICATION

This Undocumented Worker Certification is being delivered by Costco Wholesale Corporation (“Costco”) in connection with that certain Chapter 380 Economic Development Agreement by and between the City of College Station, Texas and Costco, dated \_\_\_\_\_, 2021 (the “Agreement”).

The undersigned authorized officer of Costco hereby acknowledges and certifies, to the best of his or her knowledge and belief, that:

(1) The business receiving any public subsidies provided pursuant to the Agreement, or a branch, division or department of the business, does not and will not knowingly employ undocumented workers. For the purpose of this certification, “Public Subsidies” means incentives, loans, loan guarantees, reimbursement of fees, benefits relating to an enterprise, or an empowerment zone, fee waivers or rebates, land price subsidies, infrastructure development or improvements designed to benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates or tax abatements. For purposes of this certification, “Undocumented Worker” means an individual, who at the time of employment, is not:

- (a.) Lawfully admitted for permanent residence to the United States; or
- (b.) Authorized under law to be employed in the United States.

(2) Pursuant to V.T.C.A. Government Code §2264.052, if, after receiving the Public Subsidies provided herein, the business entity or branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the business shall repay the amount of the Public Subsidy with interest accruing from the date of the violation on which the conviction is based, at the prime rate as published in the Wall Street Journal on the date of the College Station’s City Council’s initial approval of the Agreement. Repayment shall be made not later than the 120<sup>th</sup> day after the day the City notifies the business of the violation. As provided by Section §2264.101(c) of the Texas Government Code, Costco shall not be liable for a violation by a subsidiary, affiliate, or franchisee of Costco or by a person with whom Costco contracts. It is agreed that for purposes of this paragraph 2, but only if permissible under V.T.C.A. Government Code §2264.052, (i) neither Costco nor its business, or branch, division, or department thereof, shall be deemed to have been “convicted of a violation” until all appeals have been exhausted and/or the time for all appeals has expired; and (ii) the date that “City notifies Costco of the violation” may not be earlier than the date that Costco has been “convicted of a violation” as provided in the immediately preceding subsection.

This Certification is a material representation of fact upon which reliance was placed when the Agreement was made or entered into. Submission of this Certification is a prerequisite for making or entering into this transaction by V.T.C.A. Government Code §2264.052.

COSTCO WHOLESALE CORPORATION

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

Name-Signature

\_\_\_\_\_  
Name-Printed

\_\_\_\_\_  
Title

Date \_\_\_\_\_