

**EXHIBIT 2**

**Option to Lease, executed December 9, 2014**

CN 13478 FS

**OPTION TO GROUND LEASE**

(Auburn, California)

by and between

PLACER COUNTY

and

**COSTCO WHOLESALE CORPORATION,**  
a Washington corporation

Dated: December 9, 2014

**Table of Contents**

ARTICLE I	TERMS AND CONDITIONS OF OPTION.....	1
1.1	Grant of Option.....	1
1.2	Consideration.....	2
1.2.1	Non-Cash Option Consideration .....	2
1.2.2	Deposit.....	2
1.2.3	Independent Consideration .....	2
1.3	Term of Option .....	3
(a)	Term.....	3
(b)	Extended Option Term .....	3
(c)	Possession Date .....	3
(d)	Litigation Extension .....	4
(e)	Termination .....	5
1.4	Exercise of Option .....	6
(a)	Conditions to Exercise of Option .....	6
(b)	Use Approvals .....	6
1.5	Governmental Review .....	7
(a)	Generally.....	7
(b)	Use Approvals Application .....	7
(c)	Permits .....	8
1.6	Environmental Review .....	8
1.7	Indemnification.....	9
ARTICLE II	COSTCO'S REVIEW OF PREMISES.....	9
2.1	Costco's Review of Title.....	9
2.2	Documents and Materials .....	10
2.3	Inspection.....	10
2.4	Entitlements .....	11
2.5	Square Footage of the Premises .....	12
2.6	License to Inspect .....	12
2.7	Hold Harmless/Insurance .....	13
ARTICLE III	TERMS AND CONDITIONS OF GROUND LEASE.....	14
3.1	Execution of Ground Lease .....	14
3.2	Title.....	14
3.3	Transfer/Recording Taxes and Fees .....	15
3.4	Title and Survey Costs.....	15
3.5	Vacant Possession .....	15

3.6	Memorandum of Ground Lease.....	15
3.7	County Work .....	15
ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS.....		16
4.1	County's Warranties.....	16
4.1.1	Power and Authority.....	16
4.1.2	No Violations and Actions .....	16
4.1.3	Liens and Encumbrances .....	16
4.1.4	Condemnation; Moratorium .....	17
4.1.5	Work .....	17
4.1.6	Hazardous Substances .....	17
4.1.7	Knowledge.....	19
4.2	Costco's Warranties .....	19
4.2.1	Power and Authority.....	19
4.2.2	No Violations or Actions.....	20
4.2.3	OFAC Compliance .....	20
ARTICLE V GENERAL PROVISIONS.....		20
5.1	Memorandum of Option.....	20
5.2	Limitation on Right to Lease or Encumber .....	20
5.3	Brokerage Commissions.....	20
5.4	Notices .....	20
5.5	Authority and Execution.....	22
5.6	Further Assurances .....	22
5.7	Entire Agreement.....	22
5.8	Amendments.....	22
5.9	Binding Effect .....	23
5.10	Not a Partnership .....	23
5.11	Interpretation .....	23
5.12	Assignment .....	23
5.13	Severability .....	23
5.14	Attorneys' Fees .....	24
5.15	Costco's Approval Rights .....	24
5.16	Counterparts; Facsimile Signatures .....	24
5.17	Exhibits.....	24
5.18	Option Effective Date.....	25

## OPTION TO GROUND LEASE

THIS OPTION TO GROUND LEASE (this "**Agreement**") is entered into by and between PLACER COUNTY, a political subdivision of the State of California ("**County**") and Costco Wholesale Corporation, a Washington corporation ("**Costco**"). County and Costco are sometimes hereinafter each singularly referred to as a "**Party**" and collectively referred to as the "**Parties**".

### R E C I T A L S:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. County is the owner of that certain real property located in Placer County, California, more particularly described in Exhibit "A" attached hereto (the "**Premises**").

B. County desires to grant to Costco and Costco desires an option to lease the Premises on the terms and conditions contained in that ground lease attached hereto as Exhibit "C" (the "**Ground Lease**"). County desires to grant Costco an option to lease for the purpose of development of 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 vehicle fueling facility, related office space, related parking and other improvements (collectively, "**Costco's Intended Use**").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

### ARTICLE I TERMS AND CONDITIONS OF OPTION

1.1 Grant of Option. Subject to the terms and conditions set forth in this Agreement, County hereby grants to Costco the exclusive option (the "**Option**") to lease the Premises pursuant to and on the terms and conditions contained in the Ground Lease.

## 1.2 Consideration.

1.2.1 Non-Cash Option Consideration. Costco shall provide non-cash consideration in the form of a copy of any final reports or studies related to the physical condition of the Premises, such as surveys, geotechnical reports, or environmental assessments studies prepared for use by Costco in conjunction with Costco's application for the "Use Approvals" (as defined in Section 1.4(a), below) and the "Permits" (as defined in Section 1.5(c), below) (the "**Non-Cash Option Consideration**") in the event this Agreement terminates pursuant to Section 1.3(e) or Section 1.5(a), below. Any use of such reports or studies by County shall be made without representation or warranty by Costco and in accordance with the terms, provisions and limitations of such reports or studies by the applicable consultants who prepared such reports or studies. In no event shall Costco be obligated to provide County any confidential or proprietary information (such as market studies, demographics, sales data or membership information), or any information provided to Costco by Northwest Atlantic Partners. In addition, in the event Costco has been granted the Use Approvals and Permits, and fails to exercise the Option and this Agreement terminates, then upon request of County, Costco shall assign to County, without any warranty, all of its rights and interest in the Use Approvals and Permits.

1.2.2 Deposit. Within ten (10) business days following the "Option Effective Date" (as defined in Section 5.18, below), the Parties shall open an escrow with the Title Company (as defined in Section 2.1, below) and the Parties shall execute and deliver to the Title Company the Escrow Agreement in the form of Exhibit "F" attached hereto and incorporated herein by this reference (the "**Escrow Agreement**"). Costco shall deposit the sum of Five Hundred Thirty Thousand Dollars (\$530,000) (the "**Deposit**") with the Title Company to be held and disbursed pursuant to the terms of the Escrow Agreement. If the Option terminates for any of the reasons provided in this Option or Costco does not exercise the Option or if the Ground Lease is not entered into for any reason other than a material default by Costco, County shall pay directly to Costco, within thirty (30) days of written demand therefor the full amount of the Deposit. This obligation shall survive the termination of this Agreement. County's obligation to pay such amount shall be a general fund obligation of County.

1.2.3 Independent Consideration. Concurrently with the execution and delivery of this Agreement, Costco shall deliver to County the sum of One Hundred Dollars (\$100) (the "**Independent Consideration**"). The Independent Consideration shall be non-refundable to Costco as independent consideration for the rights and options extended to Costco hereunder, including, without limitation, the right and option to terminate this Agreement as provided herein. In addition, County acknowledges that Costco shall expend significant time and material sums of money in connection with negotiating and executing this Agreement, conducting its due diligence investigations, pursuing the Use Approvals and Permits and preparing for the exercise of the Option, all

in reliance on County's obligations under this Agreement. Further, County acknowledges that Costco would not have entered into this Agreement without having the opportunity to perform such investigations and procure the Use Approvals and Permits without having the right to terminate this Agreement in accordance with the provisions of Sections 1.3(e) and 1.5(a) of this Agreement. Accordingly, County and Costco acknowledge and agree that consideration exists to support County's obligations hereunder, notwithstanding Costco's right to terminate this Agreement, and that neither party will take a contrary position in any dispute or proceeding involving this Agreement.

### 1.3 Term of Option.

(a) Term. The term of the Option shall commence upon the Option Effective Date and shall terminate at 8:00 p.m., Pacific Time, on the thirtieth (30<sup>th</sup>) monthly anniversary of the Option Effective Date, unless sooner terminated or extended as provided herein (the "**Initial Option Term**"). As used herein, the defined term "**Option Term**" includes the Initial Option Term, any Extended Option Term or the Possession Date Option Term (as those terms are defined in Sections 1.3(b) and 1.3(c) below), and any Litigation Extension Period (as that term is defined in Section 1.3(d) below).

(b) Extended Option Term. In the event that after exercising its commercially reasonable efforts Costco has not received its Use Approvals and Permits, Costco may elect to extend the Initial Option Term for two (2) separate additional six (6) month periods without cost to Costco (each, an "**Extended Option Term**") by giving written notice (an "**Extension Notice**") to the County at least thirty (30) days prior to the expiration of the Initial Option Term and at least thirty (30) days prior to the expiration of the first Extended Option Term, if applicable. If Costco fails to give to the County the Extension Notice within the aforesaid time limit, Costco's right to extend the Initial Option Term shall nevertheless continue until thirty (30) days after County has given Costco written notice of County's election to terminate the Option, and Costco may give the Extension Notice to the County at any time until the expiration of such thirty (30) day period. In the event that County gives the aforesaid notice to Costco and Costco gives the Extension Notice during such thirty (30) day period, then the Extended Option Term shall be deemed to have commenced as of the day following the expiration of the Initial Option Term.

(c) Possession Date. Within twelve (12) months of the Option Effective Date, County shall provide to Costco a notice in writing (the "**Possession Date Notice**") which contains the date (the "**Possession Date**") County estimates that it will be able to deliver the Premises to Costco with all work required to be completed by County under Sections 2.3(e) and 3.7, to have been completed such that Costco is able to quietly and peaceably hold, possess and enjoy the Premises for the term of the Ground Lease, and any extension thereof, without any hindrance or molestation in accordance with the terms

of the Ground Lease, but in no event shall the Possession Date be any earlier than the later of: (a) March 1, 2016, or (b) the date which is ninety (90) days after Costco has received the Use Approvals, unless the Parties mutually agree in writing to a different Possession Date. In the event that Costco has received the Use Approvals and Permits, but the Possession Date has not yet actually occurred, Costco may elect to extend the Initial Option Term (or Extended Option Term, as applicable) for up to an additional twelve (12) months, the exact amount of time not to exceed that necessary for the County to provide Costco with possession (a "**Possession Date Option Term**") without cost to Costco by giving written notice (a "**Possession Date Extension Notice**") to the County at least thirty (30) days prior to the expiration of the Initial Option Term (or prior to the expiration of the any Extended Option Term) and within thirty (30) days after receiving the Use Approvals and Permits. If Costco fails to give to County the Possession Date Extension Notice within the aforesaid time limit, Costco's right to extend the Initial Option Term (or Extended Option Term, as applicable) shall nevertheless continue until thirty (30) days after County has given Costco written notice of County's election to terminate the Option, and Costco may give the Possession Date Extension Notice to the County at any time until the expiration of such 30-day period. In the event that County gives the aforesaid notice to Costco and Costco gives the Possession Date Extension Notice during such thirty (30) day period, then the Possession Date Option Term shall be deemed to have commenced as of the day following the expiration of the Initial Option Term (or Extended Option Term, as applicable).

(d) Litigation Extension. In the event that any action (including, without limitation, any judicial proceeding, administrative proceeding, or non-judicial dispute resolution proceeding) is brought within sixty (60) days of the date the Use Approvals or Permits are approved by County pursuant to Section 1.4(b) below (the "**Challenge Period**"), and subject to extension pursuant to Section 1.6 below, with respect to: (i) any of the Use Approvals or Permits, or (ii) any action taken by County with respect to the transactions contemplated by this Agreement or the Use Approvals or Permits, then Costco, at its option, may extend the Option Term for up to five (5) additional periods of one (1) year each (each, a "**Litigation Extension Period**"). With respect to the first Litigation Extension Period, Costco shall give County written notice (a "**Litigation Extension Notice**") of such election within ten (10) business days of the later to occur of (A) the expiration of the Initial Option Term, any Extended Option Term, or any Possession Date Option Term, as applicable, or (B) the expiration of the Challenge Period. If Costco desires to extend the Option Term for any additional Litigation Extension Period, then within three (3) business days prior to the expiration of the Litigation Extension Period then in effect, Costco shall give County a subsequent Litigation Extension Notice. In order to avoid a forfeiture, in the event that Costco shall fail to give timely a Litigation Extension Notice pursuant to the terms of this Section 1.3(d), Costco's ability to extend the Option Term shall nevertheless continue until thirty (30) days after County shall have given Costco written notice of County's election to terminate the Option, and Costco may give the Litigation Extension Notice at any time

until the expiration of such thirty (30) day period. In the event that County gives the aforesaid notice to Costco and Costco gives the Litigation Extension Notice during such thirty (30) day period, then the Litigation Extension Period shall be deemed to have commenced as of the day following the expiration of the immediately preceding Option Term.

(e) Termination. This Agreement shall terminate if any one of the following events occurs: (i) Costco fails to exercise the Option during the Option Term and such failure continues for ten (10) business days after Costco's receipt of written notice of proposed termination from County as described in Section 1.4(a) below; (ii) Costco fails to obtain the Use Approvals, in a form acceptable to Costco in its sole and absolute discretion, by the end of the Option Term; (iii) Costco fails to obtain the Permits, in a form acceptable to Costco in its sole and absolute discretion by the end of the Option Term; (iv) Costco fails to deliver the Extension Notice and such failure continues for thirty (30) days after Costco's receipt of written notice from County as described in Section 1.3(b) above; (v) Costco fails to deliver the Possession Date Extension Notice and such failure continues for thirty (30) days after Costco's receipt of written notice from County as described in Section 1.3(c) above; (vi) Costco fails to deliver a Litigation Extension Notice to County and such failure continues for thirty (30) days after Costco's receipt of written notice from County as described in Section 1.3(d) above; (vii) prior to its exercise of the Option, Costco notifies County of Costco's election to terminate this Agreement; (viii) Costco withdraws its application for the Use Approvals, or abandons its application for the Use Approvals, or fails to take action to process its application for the Use Approvals for a period of one hundred and twenty (120) days or more; (ix) Costco withdraws its applications for the Permits, or abandons its applications for the Permits, or fails to take action to process its applications for the Permits for a period of one hundred and twenty (120) days or more after receipt of the Use Approvals, (x) Costco fails to give its "Exercise Notice," as defined in Section 1.4, below, within the later of the time specified in Section 1.4(a) and the date fifteen (15) days after Costco has obtained the Use Approvals and Permits in a form acceptable to Costco, or (xi) County fails to cause all conditions to the effectiveness of the Ground Lease as specifically provided in Article III herein to be satisfied within thirty (30) days after the exercise of the Option by Costco. Upon termination of the Option as described in this Section 1.3(e), County shall be entitled to the Non-Cash Consideration and Independent Consideration as provided in Sections 1.2.1 and 1.2.3, respectively, above, and this Agreement shall terminate and County shall pay directly to Costco, within thirty (30) days of written demand therefor the full amount of the Deposit. The County's obligation to pay such amounts shall be a general fund obligation of County. Nothing herein shall limit Costco's remedies for a breach of County's covenants under the terms of this Agreement.

1.4 Exercise of Option.

(a) Conditions to Exercise of Option. Costco may exercise the Option only by delivery to County, within the time periods provided in subsections (1) and (2) of this Section 1.4(a), below, of: (i) a written notice to exercise the Ground Lease (the "**Exercise Notice**"), (ii) two (2) copies of the Ground Lease fully executed by Costco, and (iii) one (1) copy of the Memorandum to Ground Lease fully executed by Costco.

(1) Costco may not exercise its Option any earlier than the later of:

(i) the date of Costco's receipt of the following approvals: a conditional use permit, design review approval, and Subdivision Map Act approval creating the Premises into two legal parcels (the "**Parcel Map**"), and any and all other discretionary land use approvals required under the ordinances of Placer County, together with any associated approvals required under the California Environmental Quality Act ("**CEQA**"--Public Resources Code section 21000 et seq.), necessary or desirable to allow Costco to develop, construct and operate for Costco's Intended Use on the Premises (collectively, the "**Use Approvals**"), or

(ii) the Possession Date.

(2) Costco may not exercise its Option any later than thirty (30) days after the later of:

(i) the date of Costco's receipt of all Permits necessary to allow the commencement of construction of a membership warehouse club store for Costco's Intended Use in accordance with the conditions of the Use Approvals, or

(ii) the Possession Date.

If Costco should fail to give its Exercise Notice to County within the applicable time period, Costco's right to exercise its Option shall continue until ten (10) days after County has given Costco notice of County's election to terminate the Option, and Costco may deliver its Exercise Notice at any time until the expiration of such ten (10) day period.

(b) Use Approvals. For the purposes of this Section 1.4, the Use Approvals shall be deemed to have been approved by County after a final vote of approval shall have been taken by its Planning Commission or, in the event the decision of the Planning Commission is appealed to the Board of Supervisors, a final vote of approval has been taken by the Board of Supervisors to approve the Use Approvals. In the event litigation is filed within the Challenge Period which challenges any of the actions of County with

respect to the Use Approvals, then Costco shall have the right to extend the Option as provided in Section 1.3(d) above. If Costco has not obtained and approved the Use Approvals during the Option Term (as same may have been extended), Costco may, in its sole and absolute discretion, terminate this Agreement and, thereafter, this Agreement shall be of no further force or effect and neither party shall have any further rights or obligations hereunder except for those which are expressly stated to survive the termination of this Agreement. All conditions contained in the Use Approvals, and all requirements for on-site and off-site improvements or services, in-lieu fees or payments, development charges, 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 Use Approvals shall be subject to Costco's approval in its sole and absolute discretion.

#### 1.5 Governmental Review.

(a) Generally. Costco acknowledges that approval of this Agreement shall not obligate County to enter into the Ground Lease unless and until Costco has obtained the Use Approvals and exercised the Option in accordance with Section 1.4, above. Costco further acknowledges that the decision by County to enter into this Agreement is made by County in its role as the owner of the Premises and is a decision made by County in its proprietary role, independent of and unrelated to any review of any decision on the Use Approvals or Permits which County may subsequently undertake. Costco acknowledges that County is a political subdivision of the State of California and has adopted certain ordinances and regulations governing the use and development of property which will apply to Costco's proposed use of the Premises. Costco expressly agrees that nothing in this Agreement or the Ground Lease to the contrary shall limit, or be inferred to limit, the exercise of discretion by County with respect to County's duties and obligations under the Placer County Code and/or state law arising out of or relating to the granting of the Use Approvals or any other type of regulatory approval or action which may affect the use of the Premises by Costco. Execution by County of this Agreement shall in no way constitute approval of the Use Approvals or Permits and County expressly reserves the right to condition and approve of or deny the same in accordance with applicable law. In the event County denies the Use Approvals or Permits applied for by Costco, this Agreement and the Escrow Agreement shall terminate without further obligation on either Party and each Party shall bear its own costs as of such termination date except as provided in Section 1.3, above.

(b) Use Approvals Application. Within thirty (30) days of the Option Effective Date, if it has not yet done so, Costco shall apply to the County for its Use Approvals and shall diligently and in good faith, exercising commercially reasonable efforts, pursue the application for the Use Approvals during the Initial Option Period and any Extension of the Agreement.

(c) Permits. Within ninety (90) days of final approval of the Use Approvals, Costco shall apply for and shall diligently and in good faith, exercising commercially reasonable efforts, pursue all other building, use and operational permits, approvals and licenses from all applicable governmental authorities necessary for Costco to construct and operate Costco's Intended Use on the Premises, which are expected to include, without limitation, all vertical construction permits, all attached building signage permits, occupational business licenses, beer, wine and liquor sales licenses and licenses and permits necessary to operate the fuel facility (e.g., underground storage tank permits) (individually, a "Permit" and collectively, the "Permits"); provided, however, such Permits shall not include permits that cannot be obtained until after the completion of the proposed improvements. If Costco has not obtained the Permits during the Option Term (as same may have been extended, by Costco in its sole and absolute discretion), terminate this Agreement and, thereafter, this Agreement shall be of no further force or effect and neither party shall have any further rights or obligations hereunder except for those which are expressly stated to survive the termination of this Agreement. Costco shall use commercially reasonable, good faith efforts to obtain the Permits promptly after the date the last of the Use Approvals are obtained. Costco shall obtain the Permits at its sole cost and expense and shall pay all fees, costs and charges related thereto. All conditions contained in the Use Approvals or Permits and all requirements for on-site and off-site improvements or services, in-lieu fees or payments, development charges, 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 Use Approvals or Permits shall be subject to Costco's approval in its sole and absolute discretion. To the extent of any conflict regarding whether an approval is a "Use Approval" governed by Section 1.4(b) or a "Permit" governed by this Section 1.5(c), the approval shall be deemed a Permit.

1.6 Environmental Review. Costco acknowledges that this Agreement and the Use Approvals, are subject to separate and independent review by County in compliance with CEQA. Costco acknowledges that County has certain duties and obligations under CEQA as the public agency which will consider the Use Approvals and that nothing in this Agreement shall limit or be inferred to limit the exercise of discretion by County in that regard. County acknowledges that the Challenge Period with respect to CEQA actions could be one hundred eighty (180) days if County fails to file a notice of determination in compliance with CEQA. Therefore, County hereby agrees to file a notice of determination within five (5) business days following the date that this Agreement and the Use Approvals are deemed approved by the County. If any applicable CEQA appeal periods have not expired during the Challenge Period due to the County's failure to file timely a notice of determination which complies with CEQA, then

the term "**Challenge Period**" as used in this Agreement shall include any remaining appeal period under CEQA.

1.7 Indemnification. Costco and County recognize the possibility that the approval of this Agreement may require a CEQA determination and therefore may be subject to legal challenge under CEQA. As a material condition of and additional consideration for this Agreement, upon demand of County, Costco shall defend, indemnify and hold harmless the County of Placer, its officials, agents, and employees from all claims, lawsuits, costs, expenses and damages, including reasonable attorneys' fees and costs as may be awarded to an opposing party, arising from an approval by County of this Agreement requiring a CEQA determination. The duties set forth herein shall include, upon demand of County, the duty to provide, at Costco's own cost and expense, counsel reasonably acceptable to County. Costco's obligations set forth in this Section 1.7 shall not apply to any lawsuit or legal challenge brought against County by Costco with respect to any legal challenge made by Costco under CEQA in connection with the approvals or denial of same or in connection with this Agreement or to a challenge by another party alleging breach of contract, tort or other wrongful action by County as owner of the Premises (e.g., wrongful termination of a right of occupancy). In the event of a legal challenge under CEQA, Costco shall have the right to terminate this Agreement at any time upon ten (10) days' prior written notice to County. Notwithstanding the foregoing, should Costco terminate this Agreement effective upon the date of such termination Costco's indemnity obligation shall terminate; provided, however, Costco shall be liable for legal and other costs incurred by County prior to the termination date, and any legal and other costs incurred by County associated with obtaining dismissal of any legal challenge(s), including, but not limited to, attorney fees and costs, if awarded to a petitioner or plaintiff, as the prevailing party in such action(s). This indemnity is intended only to apply to actions taken by the County utilizing its governmental powers and authority and not in its capacity as landowner, landlord, or contracting party.

## ARTICLE II COSTCO'S REVIEW OF PREMISES

2.1 Costco's Review of Title. During the Option Term, Costco shall review the condition of title to the Premises and shall notify County as to whether Costco approves or disapproves the condition of title to the Premises. Within ninety (90) days of the Option Effective Date, Costco shall have an ALTA survey prepared at its cost in accordance with Costco's Site Survey Requirements. Within ninety (90) days from the Option Effective Date, Costco shall notify County in writing as to whether Costco approves or disapproves the condition to title of the Premises, the survey, or the legal description for the Premises. If Costco disapproves the condition of title to the Premises, the survey, or the legal description for the Premises, then within ten (10) days after such notice of disapproval, County shall notify Costco as to whether County will agree to

eliminate the title or survey matters to which Costco objected. If County and Costco agree upon the timing and manner of eliminating such objectionable title or survey matters, then County shall be obligated to deliver a leasehold title to the Premises in the condition agreed upon. Prior to the expiration of the Option Term, County shall have provided Costco, at Costco's cost, a commitment from First American Title Insurance Company, 818 Stewart St., Suite 800, Seattle, Washington 98101, Attn: Chantale Stiller-Anderson ("**Title Company**") to issue a leasehold title policy, insuring Costco's leasehold interest, and showing only the title exceptions and survey matters and endorsements in a form as may be approved by Costco pursuant to this Section 2.1 (the "**Title Policy**"). County shall cure any objections to title that County has elected or is obligated to cure pursuant to this Section 2.1, and shall deliver all documentation reasonably required of County by the Title Company (including, without limitation, an affidavit in form satisfactory to the Title Company) so that the Title Company is in a position to issue the Title Policy prior to the effectiveness of the Ground Lease, in the form, and with such endorsements, as may be approved by Costco.

2.2 Documents and Materials. Upon request from Costco, County shall make available to Costco copies of all surveys, reports, studies, licenses, maps, contracts and other documents and materials within County's possession or control pertaining to the Premises and/or the leasehold estate to be created by the Ground Lease.

(a) Where the County has made investigation of the Premises conditions in areas where studies and analysis are to be performed or in other areas, or where the County possesses report(s) of such investigations, such investigations were made only for the purpose of that particular study and design.

(b) The records of such investigations are made solely for the convenience of Costco and its representatives. It is expressly understood and agreed by Costco that the County does not assume any responsibility whatsoever with respect to the sufficiency of accuracy of the investigations thus made, the records thereof, or of the interpretation set forth therein or made by the County in its use thereof and there is no representation, warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are correct or representative of those existing throughout such areas or any part thereof, or that unanticipated developments may not occur or that materials other than, or in proportions different from, those indicated may not be encountered. County does, however, represent and warranty to Costco that any such documents provided by the County are complete copies of what they purport to be.

2.3 Inspection. During the Option Term, Costco may review or obtain, and approve or accept, in its sole and subjective discretion, any of the following matters:

(a) An ALTA survey, reports and studies made available by County pursuant to Section 2.2 above, and any other appraisals, reports, inspections or tests desired by Costco to determine whether the Premises is suitable for the purpose of constructing and operating for Costco's Intended Use;

(b) That certain Phase I Environmental Site Assessment Report, dated September 2002, prepared by URS Corporation (the "**Existing Environmental Reports**") regarding the presence of Hazardous Substances (as defined in Section 4.1.6.3(b), below). Costco is aware of the presence of Hazardous Substances on the Premises as described in the Existing Environmental Reports and may agree to accept the condition of the Premises as disclosed in the Existing Environmental Reports. Notwithstanding the foregoing, due to the passage of time which has occurred since the date of the Existing Environmental Reports, Costco may obtain further environmental reports as part of its diligence to investigate acceptance of the environmental condition of the Premises;

(c) Evidence that soil conditions will satisfactorily support the improvements planned by Costco; and

(d) Any other information needed to determine that in all other respects the Premises are suitable for Costco's Intended Use.

(e) In the event that the Premises is impacted by Hazardous Substances, then, County 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 reasonably approved by Costco and all applicable authorities, and such remediation shall be completed in no event later than the end of the Option Term as it may be extended as permitted herein. In the event that County shall fail to perform as required hereunder, Costco may either (a) terminate this Agreement 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 exercise the Option under Section 1.4 of this Agreement, remediate in accordance with the terms of the Ground Lease, and receive a credit against "Base Rent" payable under the Ground Lease first coming due in an amount equal to the cost to complete the required remediation as provided in the Ground Lease. Further, in the event that during the course of construction Costco discovers Hazardous Substances, Costco may remediate such conditions in accordance with the Ground Lease and receive a credit against "Base Rent" payable under the Ground Lease in an amount equal to the cost to complete any such remediation as provided in the Ground Lease.

2.4 Entitlements. During the Option Term, Costco shall apply for and diligently and in good faith, exercising commercially reasonable efforts, pursue to obtain from the County of Placer the Use Approvals and Permits in order to permit use of the

Premises only as follows: (i) the construction of an approximately 148,000 square foot building (the "**Building**"), fueling station and a parking lot and related improvements generally in accordance with the Auburn Concept Site Plan version 5.4d prepared by David Babcock and Associates, attached hereto as Exhibit "B", (ii) use of the Building as a store by Costco for Costco's Intended Use, (iii) staging and temporary storage of merchandise around the perimeter of the Building, (iv) unloading merchandise and delivery rights, and (v) signage. As the owner of the Premises, County shall sign applications upon request of Costco which may be required to allow Costco to apply for the Use Approvals and Permits. County's signature upon any such application shall be strictly for the purposes of allowing Costco to submit such applications as Costco may need to obtain the necessary land use approvals, and shall in no event be deemed a waiver by County of its duties and obligations as set forth in Sections 1.4 and 1.5 above. Costco, at its sole cost and expense, shall prepare, process and submit all appropriate applications to all applicable governmental bodies and agencies.

In order to provide coordination and compatibility of County's existing infrastructure on its property with the utilities and roadways that are required by the Use Approvals and Permits to allow Costco's Intended Use on the Premises, Costco shall submit for review and comment to County's Property Manager any improvement plans for the Premises or for public infrastructure improvements at least thirty (30) days prior to submission thereof to the approving authority, together with Costco's estimated construction schedule therefor. County shall, within twenty (20) days of receipt of such improvement plans, notify Costco whether it has any questions, comments, or suggestions about the improvement plans or schedule. If County does not notify Costco of any questions, comments or suggestions within such time, Costco may proceed to submit plans to the approving authority.

2.5 Square Footage of the Premises. Within one hundred and twenty (120) days after the Option Effective Date, the square footage of the Premises shall be determined by Costco's licensed civil engineer, who shall certify in writing to Costco and County the square footage of the Premises and provide the calculations therefor so County may, at its option and own cost, review the calculations to verify the square footage.

2.6 License to Inspect. During the Option Term, Costco and its agents, employees, contractors and subcontractors shall have the right to enter upon the Premises to make any and all surveys, inspections and tests (collectively, "**Inspections**") which Costco deems desirable in its sole discretion, including, without limitation, those described in this Article II. Costco acknowledges that portions of the Premises are occupied by private tenants and Costco will work with the County to obtain access to such facilities as may be necessary and minimize interference with the present occupants and business operations. Following the Inspections, Costco shall restore the Premises to

substantially its condition prior to the Inspections, to the extent reasonably practicable. Costco shall remove and discharge any liens resulting from the Inspections.

2.7 Hold Harmless/Insurance. Costco hereby agrees to protect, defend, indemnify, and hold County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of Costco's investigations pursuant to Section 2.6 above on the Premises. Costco agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Costco. Costco also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Costco or County or to enlarge in any way the Costco's liability but is intended solely to provide for indemnification of County from liability for damages or injuries to third persons or property arising from Costco's performance of investigations pursuant to Section 2.6 above on the Premises.

Notwithstanding the foregoing, (i) this indemnification and hold harmless provided by Costco shall not apply to the extent such liability arises in connection with the negligence or willful misconduct of the County or any of its officers, employees, agents or contractors, and (ii) Costco shall have no liability to County or to any other person or entity by reason of, nor shall Costco have any duty to indemnify, defend or hold any person or entity harmless from or against, any claim, demand, damage, loss, action, liability, cause of action or judgment, including, without limitation, any claim for diminution in value of the Premises 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, or other defect with respect to the Premises.

As used in this Section 2.7, the term County means Placer County or its officers, agents, employees, and volunteers.

Costco's Memorandum of Insurance, which outlines the limits and types of insurance Costco maintains to satisfy the Hold Harmless provisions as outlined above, is attached hereto as Exhibit "E".

**ARTICLE III  
TERMS AND CONDITIONS OF GROUND LEASE**

3.1 Execution of Ground Lease.

(a) If Costco exercises the Option, then the Parties shall execute and deliver the Ground Lease in exactly the form attached hereto as Exhibit "C" except that the appropriate dates shall be inserted into any blanks. Notwithstanding the foregoing, Costco and County agree (1) to make nonmaterial changes to the Ground Lease as may be approved by Costco to reflect requirements imposed in connection with the Use Approvals and Permits, and (2) to modify the Base Rent amounts set forth in Section 1.3 of the Ground Lease proportionate to any change in the square footage of the Premises from that was determined in Section 2.5, above, to be the final square footage as determined by the Parcel Map approved by County and Costco as part of the Use Approvals and Permits; provided, however, in no event shall the roadway referred to as "D Avenue" on Exhibit "B" be included in the square footage utilized to calculate Base Rent.

(b) The Parties agree that the intention of the Ground Lease is to provide for the leasing to Costco only of that certain property consisting of the two separate legal parcels as shown in Exhibit "B" and consisting of a "warehouse site parcel" and a "vehicle fueling facility parcel". As provided in Section 1.4(a), above, Costco will be applying for the Parcel Map in order to create these two new legal parcels. These proposed new legal parcels are separated by certain other County property that is currently utilized for roadway purposes and is referred to as "D Avenue" in Exhibit "B". It is the belief and understanding of the Parties as of the Option Effective Date that in order to create the warehouse site parcel and the vehicle fueling facility parcel as two new legal parcels, it will be necessary to include in the application for the Parcel Map that portion of County property shown as D Avenue to create a three lot parcel map, consisting of (1) the warehouse site parcel, (2) the vehicle fueling facility parcel, and (3) a parcel for D Avenue. The Parties agree that, in the event that a separate parcel is required for D Avenue in order to create the store site parcel and the gas station site parcel, the County shall cooperate with Costco in the submission of the application to include D Avenue. The Parties further agree that it is not the intention of the Parties to create any leasehold interest or fee ownership interest by Costco in D Avenue or to include it in the property leased to Costco as the Premises, and the Parties shall cooperate to execute such documents as may be necessary to effectuate such intention prior to the exercise of the Option by Costco.

3.2 Title. County shall deliver leasehold title to the Premises subject only to those title exceptions and other matters approved by Costco pursuant to Section 2.1 above. The Premises shall be delivered to Costco free and clear of all encumbrances or defects in 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, and liens associated with public improvement districts and special assessments. The issuance of the Title Policy in this form shall be a condition to the effectiveness of the Ground Lease.

3.3 Transfer/Recording Taxes and Fees. County shall pay any transfer and/or recording fees and/or taxes resulting from this transaction and/or the recordation of the Memorandum of Option, and Memorandum of Ground Lease. The payment of such fees and costs shall be a condition to the effectiveness of the Ground Lease.

3.4 Title and Survey Costs. County shall pay one-half (1/2) of the total cost for the standard Title Policy. The payment of such costs shall be a condition to the effectiveness of the Ground Lease. Costco shall pay one-half (1/2) of the total cost for the standard Title Policy and the extra cost for an extended Title Policy, if desired by Costco.

3.5 Vacant Possession. County shall deliver sole, vacant and exclusive possession of the Premises to Costco, subject to no tenancies, leasehold interests or other similar interests that are not permitted exceptions to the Title Policy. The satisfaction of the foregoing shall be a condition to the effectiveness of the Ground Lease.

3.6 Memorandum of Ground Lease. If Costco exercises the Option, then the Parties shall execute and deliver a memorandum of ground lease in exactly the form attached hereto as Exhibit "G" attached hereto ("**Memorandum of Ground Lease**") except that the appropriate dates and Exhibits shall be inserted into any blanks. County shall have executed and delivered to the Title Company the Memorandum of Ground Lease for public recordation purposes, so that public notice is given of the term of the Ground Lease and any other information required by the relevant provisions of the laws of the governing jurisdiction. County shall cause the Title Company to record the Memorandum of Ground Lease, at County's sole cost and expense. The satisfaction of the foregoing shall be a condition to the effectiveness of the Ground Lease.

3.7 County Work. County agrees to use its commercially reasonable efforts to demolish existing buildings, fixtures, improvements such as paved parking areas, and roadways on the Premises, including capping of all wet and dry utilities, and perform any environmental remediation required pursuant to Section 2.3(e) above, including signing any manifests related to any environmental remediation, on or before the end of the Option Term (the "**County's Work**"). The completion of the County's Work to Costco's satisfaction including, without limitation, the abatement of any known environmental conditions related to the underground utility infrastructure, shall be a condition to the effectiveness of the Ground Lease; provided, however, in the event that County shall fail to perform as required hereunder, Costco may either (a) terminate this Agreement 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 exercise the Option under Section 1.4 of this Agreement, demolish any remaining existing improvements and receive a credit against "Base Rent" payable under the Ground Lease first coming due in an amount equal to the cost to complete the required demolition as provided in the Ground Lease.

#### **ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS**

4.1 County's Warranties. County represents, warrants and covenants that as of the date of execution of this Agreement and as of the date of the execution of the Ground Lease:

4.1.1 Power and Authority. County is a governmental entity, validly existing and in good standing under the laws of the State of California. County has the authority and power to enter into this Agreement and the Escrow Agreement and to consummate the transactions provided for therein. No consent or approval of any third party is required for the execution or consummation of the transactions contemplated by the terms of this Agreement. This Agreement, the Escrow Agreement and all other documents executed and delivered by County have been duly authorized, executed and delivered by County and constitute legal, valid, binding and enforceable obligations of County. The person executing this Agreement on behalf of County has been duly authorized to do so. County's obligation to reimburse Costco the Deposit is a general fund obligation of County and constitutes the legal, valid and binding obligation of County enforceable in accordance with the terms hereof.

4.1.2 No Violations and Actions. The execution, delivery and performance by County of its obligations under this Agreement, the Escrow Agreement and the Ground Lease will not conflict with or result in a breach of any law, judgment, decree or order by which County or the Premises is bound, or the provisions of any contract or other agreement to which County is a party or by which County or the Premises is bound or County's organizational documents. As of the date of execution hereof, there is no action, suit, proceeding (including, without limitation, any condemnation proceeding) or investigation pending before any agency, court or other governmental authority which relates to the Premises or the use thereof.

4.1.3 Liens and Encumbrances. The Premises are not subject to any monetary liens or encumbrances, including without limitation, mortgages, deeds of trust, materials liens, materialmen's liens and liens associated with public improvements, and County covenants and agrees to remove any and all monetary liens prior to the effective date of the Ground Lease.

4.1.4 Condemnation; Moratorium. There are no condemnation or eminent domain proceedings pending, or to County's knowledge threatened or contemplated, against the Premises, or any part thereof. County has not received any notice, oral or written, of the desire of any public authority or other entity to take or use the Premises, or any part thereof. No moratorium or other law, 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 Premises or Costco's ability to develop and operate Costco's Intended Use on the Premises.

4.1.5 Work. No work has been performed or is in progress at, and no materials have been furnished to, the Premises which has not been paid for in full by County or which will not be paid for in full by County by the effective date of the Ground Lease.

4.1.6 Hazardous Substances.

4.1.6.1 Attached to this Agreement as Exhibit "H" is a list of all reports, correspondence or tests prepared for County or in County's possession or control with respect to the compliance of the Premises with Environmental Laws or the presence or use of Hazardous Substances on the Premises. All such reports, correspondence and tests listed on Exhibit "H" have been provided to Costco for Costco's review.

4.1.6.2 Except as disclosed in the reports listed on Exhibit "H", County warrants and represents that:

(a) the Premises does not contain and, to County's knowledge, has not contained, any Hazardous Substance;

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

(c) there is no pending, or to County'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 Premises or any adjacent property, or the generation, transportation, storage, treatment or disposal at the Premises or any adjacent property of any Hazardous Substance;

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

(e) 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 Premises, relating in any way to the remediation, presence, release, threat of release or placement on, in or from the Premises or any adjacent property, or the generation, transportation, storage, treatment or disposal at the Premises or any adjacent property, of any Hazardous Substance;

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

(g) County has not placed any underground storage tanks on the Premises. To County's knowledge, there are no underground storage tanks located on the Premises.

4.1.6.3 Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Environmental Laws" means all environmental, hazardous waste or substance, health and/or safety laws issued by any governmental authorities and in effect as of the Option Effective Date with respect to or which otherwise pertain to or affect the Premises or any portion thereof, the use, ownership, occupancy or operation of the Premises or any portion thereof, or Costco, as same have been amended, modified or supplemented from time to time prior to the effective date of the Ground Lease, 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 effective date of the Ground Lease under any and all of the aforementioned laws.

(b) "**Hazardous Substances**" means all (i) electromagnetic waves, urea formaldehyde foam insulation and transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls, (ii) 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, (iii) 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 (iv) 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.

4.1.7 Knowledge. The term "knowledge" as used in Section 4.1.6 shall mean the knowledge of the principals of County. As of the date of this Agreement these persons are Mary Dietrich, Director of Facility Services, of County and Laurie Morse, Property Manager, the senior personnel of County charged with the day-to-day management of the Premises. County represents, warrants, and covenants that the persons holding the above-referenced positions are the persons most likely to have knowledge of the facts contained in the representations and warranties set forth in Section 4.1.6 and are the most likely to receive notices and other communications concerning the Premises.

4.2 Costco's Warranties. Costco represents and warrants that:

4.2.1 Power and Authority. Costco is a corporation in good standing, duly formed and validly existing under the laws of the State of Washington. Costco is qualified to do business in the governing jurisdiction. Costco 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 Costco constitute legal, valid, binding and enforceable obligations of Costco in accordance with the terms thereof. The person executing this Agreement on behalf of Costco has been duly authorized to do so.

4.2.2 No Violations or Actions. The execution, delivery and performance by Costco of its obligations under this Agreement will not conflict with or result in a breach of any law, judgment, decree or order by which Costco is bound, or any contract or other agreement to which Costco is a party or by which Costco is bound, or Costco's certificate of incorporation or bylaws.

4.2.3 OFAC Compliance. Costco is not, and shall not become, a person or entity with whom County is prohibited or restricted from doing business under any of the terrorism laws. Costco consents, acknowledges and agrees that County may take any necessary or appropriate action under the terrorism laws.

## ARTICLE V GENERAL PROVISIONS

5.1 Memorandum of Option. No later than ten (10) days after the execution of this Agreement, the Parties shall record, in the Official Records of Placer County, the Memorandum of Option attached hereto as Exhibit "D".

5.2 Limitation on Right to Lease or Encumber. During the Option Term, County shall not: (i) lease all or any portion of the Premises, with the exception of buildings already under a lease agreement with the County, or (ii) encumber the Premises with any lien, easement or encumbrance. Costco acknowledges that some portions of the Premises are currently occupied by private tenants and County reserves the right to modify terms and conditions of such leased facilities as may be necessary during the normal course of business during the Option Term, but not to extend any right to possession beyond the effective date of the Ground Lease.

5.3 Brokerage Commissions. County and Costco each represent and warrant to the other that no real estate agent or broker was involved in negotiating the transaction contemplated in this Agreement except for Jason Gallelli and NWAP II, Inc. ("NWAP", and collectively with Jason Gallelli, the "**Brokers**"). Costco shall pay a commission to Brokers on the effective date of the Ground Lease pursuant to the terms of the Ground Lease. In the event any other claims for real estate commissions, fees or 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. Neither County nor Costco shall have any liability to the Brokers if the Option is not exercised.

5.4 Notices. "**Notice**" means any notice, demand, request or other communication or document to be provided under this Agreement to a party to this Agreement. The Notice shall be in writing and shall be given to the party at its address or facsimile number set forth below, or such other address, or facsimile number as the party

may later specify for that purpose by Notice to the other Party. Each Notice shall, for all purposes, be deemed given and received:

- i. If given electronically by facsimile when the document is transmitted to the Parties facsimile number as specified below and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next business day if not confirmed during normal business hours;
- ii. If hand-delivered to a Party against receipted copy, when the copy of Notice is receipted;
- iii. If given by a nationally-recognized and reputable overnight delivery service, the day on which the Notice is actually received by the Party; or
- iv. If given by any other means, or if given by certified mail, return receipt requested, postage prepaid, two business days after it is posted with the United States Postal Service, at the address of the Party specified below:

If to County:  
County of Placer  
Department of Facility Services  
Mailing Address:                      Physical Address:  
11476 C Avenue                      2855 Second Street  
Auburn, CA 95603                      Auburn, CA 95603  
Attention: Property Manager

Fax: (530) 889-6857

If to Costco:  
Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, Washington 98027  
Attention: Corporate Counsel (SSK)

Fax: (425) 313-8114

with a copy to:  
Voss, Cook & Thel LLP  
895 Dove Street, Suite 450  
Newport Beach, CA 92660  
Attention: David A. Lurker, Esq.

Fax: (949) 435-0226

If any Notice is sent by facsimile, the transmitting Party shall send a duplicate copy of the Notice to the other Party by regular mail. In all events, however, any Notice sent by electronic transmission shall govern all matters dealing with delivery of the Notice, including the date on which the Notice is deemed to have been received by the other Party.

The provisions above governing the date on which a Notice is deemed to have been received by a Party to this Agreement shall mean and refer to the date on which a Party to this Agreement, and not its counsel or other recipient to which a copy of the Notice may be sent, is deemed to have received the Notice.

If Notice is tendered under the provisions of this Agreement and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been given and shall be effective as of the date provided in this Agreement. The contrary notwithstanding, any Notice given to either Party in a manner other than that provided in this Agreement that is actually received by the noticed party, shall be effective with respect to such Party on receipt of the Notice.

5.5 Authority and Execution. Each person executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity which it purports to bind and, if such Party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

5.6 Further Assurances. Each Party, whenever and as often as shall be requested by the other Party, shall perform or cause to be performed, all acts, and execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all instruments and documents, as may be reasonably required to carry out the intent and purpose of this Agreement.

5.7 Entire Agreement. This Agreement and the attached exhibits contain all of the terms of the Option and shall supersede all prior correspondence, memorandum, or other agreements, whether written or oral, respecting the Option as related to the subject matter hereof, including, without limitation, any letters of intent entered into between the Parties.

5.8 Amendments. This Agreement shall not be modified by either Party by oral representations made before or after the execution of this Agreement; all amendments to this Agreement must be in writing and signed by Costco and County.

5.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective assignees, heirs, successors and legal representatives of each Party.

5.10 Not a Partnership. The provisions of this Agreement are not intended to create nor shall they be in any way interpreted or construed to create a joint venture, partnership or any other similar relationship between the Parties. Each Party shall be considered a separate party, and no Party shall have the right to act as an agent for the other.

5.11 Interpretation. Each Party and its counsel have reviewed this Agreement. Any rule of construction holding that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement. The captions of this Agreement are for convenience or reference only, and shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement. This Agreement shall be construed and interpreted under, and governed and enforced according to, the laws of the State of California. If any provisions of this Agreement are held to be unenforceable or invalid, it is the specific intent of the Parties that the remainder of the provisions of this Agreement shall remain in full force and effect. Unless otherwise expressly stated to the contrary, the word "including" shall be construed in its nonexclusive sense, whether or not words of nonlimitation (such as "but not limited to" or "without limitation") are used. Any time periods in this Agreement which are calculated in terms of "months" shall be calculated by using the same dates of the months being counted, regardless of the number of days in each month (for example, the period from April 15 to June 15 would be counted as two months, the period from April 15 to July 15 would be counted as three months, etc.).

5.12 Assignment. County 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 Costco, and any such purported assignment shall be void. Costco shall be entitled to assign Costco's interest under this Agreement on the same terms as provided in the Ground Lease.

5.13 Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

5.14 Attorneys' Fees. In any proceeding or controversy associated with or arising out of this Agreement or a claimed or actual breach hereof, or in any proceeding to recover the possession of the Premises, the substantially prevailing party shall be entitled to recover from the other party as a part of the substantially prevailing party's costs, reasonable attorney's fees and court costs, the amount of which shall be fixed by the court or arbitrator and shall be made a part of any judgment rendered.

5.15 Costco's Approval Rights. Except as otherwise provided in this Agreement, whenever in this Agreement Costco is deemed to disapprove of a particular matter, or a condition is deemed not to be satisfied by reason of Costco's failure to approve of the same or to acknowledge that the same is satisfied, County shall have no right to conclusively deem Costco to have disapproved of such matter or to deem such condition not satisfied unless and until County gives Costco Notice that County intends, as of the date which is fifteen (15) days after Costco receives such Notice, to deem such matter disapproved or to deem such condition not satisfied. If Costco 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 fifteen (15) day period, the matter or condition in question shall thereafter be conclusively deemed to be disapproved or not satisfied.

5.16 Counterparts; Facsimile Signatures. This Agreement may be executed 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. Facsimile signatures on this Agreement or any Notice given hereunder shall constitute original signatures of the Parties.

5.17 Exhibits. All Exhibits referenced in this Agreement are incorporated into and made a part of this Agreement as if fully set forth herein. The Exhibits to this Agreement are:

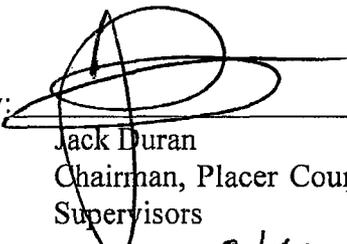
<u>Exhibit</u>	<u>Description</u>	<u>Section Reference</u>
A	Legal Description of Premises	Recital A
B	Site Plan Version 5.4d	Section 2.4
C	Ground Lease	Recital B
D	Memorandum of Option	Section 5.1
E	Memorandum of Insurance	Section 2.7
F	Escrow Agreement	Section 1.2.2
G	Memorandum of Ground Lease	Section 3.6
H	Documents Re: Hazardous Substances	Section 4.1.6

5.18 Option Effective Date. The "**Option Effective Date**" of this Agreement shall be the date this Agreement is approved by the Board of Supervisors for Placer County, which is agreed to be the date under the signature of the Chairman as set forth below.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

"COUNTY"

PLACER COUNTY

By:   
\_\_\_\_\_  
Jack Duran  
Chairman, Placer County Board of  
Supervisors

Date: December 9<sup>th</sup>, 2014

"COSTCO"

COSTCO WHOLESALE  
CORPORATION, a Washington  
corporation

By:   
\_\_\_\_\_  
Name: **Richard J. Olin**  
Title: **SVP/Asst. Secretary**

Date: December 2, 2014

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
County Counsel

Date: December 10, 2014

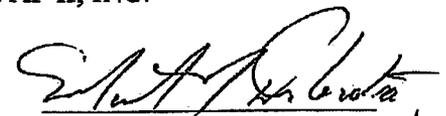
SIGNATURE PAGE  
FOR  
AGREEMENT TO GROUND LEASE  
BETWEEN  
COUNTY OF PLACER  
AND  
COSTCO WHOLESALE CORPORATION

The undersigned Brokers execute this Agreement solely for the purpose of acknowledging the provisions of Section 5.3 hereof. The execution or consent of the Brokers 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 County and Costco unless Section 5.3 is amended or modified thereby. Any Notice to be given to the Brokers under this Agreement shall be given at the addresses set forth below.

LOCAL BROKER

NWAP II, INC.

By:   
Name: Jason Gallelli  
Title:

By:   
Name: MICHAEL N. Dobrota  
Title: Vice President

Address: 2237 Douglas Blvd  
Suite 100  
Roseville, CA 95661  
Attention: Jason Gallelli  
Fax No.: 916-284-8046

Address: 9 Corporate Park  
Ste. 230  
IRVINE, CA. 92606  
Attention:  
Fax No.: (714) 978-5021

\\Client\Folders\Costco (04210)\Auburn Lease (038)\Docs\Agreement to Lease\Option to Ground Lease-12.docx

284

**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

An approximate 16 acre parcel of land the approximate location of which is depicted on Exhibit A-1 attached hereto. The Premises is a portion of the following:

Real property in the County of Placer, State of California, described as follows:

ALL THAT PROPERTY LYING WITHIN THE NORTHEAST QUARTER, THE EAST HALF OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 NORTH, RANGE 8 EAST, MOUNT DIABLO BASE & MERIDIAN, IN THE COUNTY OF PLACER, STATE OF CALIFORNIA, LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE CORNER COMMON TO SECTIONS 28, 29, 32 AND 33, TOWNSHIP 13 NORTH, RANGE 8 EAST, MOUNT DIABLO BASE & MERIDIAN, RUNNING THENCE WESTERLY ALONG THE NORTHERLY LINE OF SECTION 32 TO A POINT, 208.7 FEET EASTERLY OF THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER, RUNNING THENCE SOUTHERLY PARALLEL AND DISTANT 208.7 FEET AT RIGHT ANGLES FROM THE EASTERLY LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER SAID SECTION 32, A DISTANCE OF 313 FEET, RUNNING THENCE WESTERLY PARALLEL TO THE NORTH LINE OF SECTION 32 A DISTANCE OF 208.7 FEET TO A POINT ON THE EASTERLY LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 32, RUNNING THENCE NORTHERLY ALONG SAID EASTERLY LINE TO A POINT 39.6 FEET SOUTHERLY OF THE NORTHERLY LINE OF SAID SECTION 32, RUNNING THENCE WESTERLY PARALLEL AND DISTANT SOUTHERLY 39.6 FEET AT RIGHT ANGLES TO THE NORTHERLY LINE OF SAID SECTION 32 TO A POINT ON THE WESTERLY LINE OF THE NORTHEAST QUARTER OF SAID SECTION 32, RUNNING THENCE NORTHERLY ALONG SAID QUARTER SECTION LINE TO THE NORTH QUARTER CORNER THEREOF, RUNNING THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID SECTION 32 TO THE NORTHWEST CORNER OF THE EAST HALF OF THE EAST HALF OF NORTHEAST QUARTER OF NORTHWEST QUARTER OF SAID SECTION 32, RUNNING THENCE SOUTHERLY ALONG THE WESTERLY LINE OF THE SAID EAST HALF OF THE EAST HALF OF NORTHEAST QUARTER OF NORTHWEST QUARTER TO THE SOUTHWEST CORNER THEREOF, RUNNING THENCE WESTERLY ALONG THE NORTHERLY LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER TO THE NORTHWEST CORNER OF EAST HALF OF SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32, RUNNING THENCE SOUTHERLY ALONG THE WESTERLY LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF NORTHWEST QUARTER TO A POINT 19.80 FEET NORTHERLY OF THE SOUTH LINE OF THE NORTHWEST QUARTER, RUNNING THENCE EASTERLY PARALLEL AND DISTANT 19.8 FEET AT RIGHT ANGLES FROM THE SOUTHERLY LINE OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF SAID SECTION 32 TO A POINT ON THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF NORTHEAST QUARTER, RUNNING THENCE SOUTHERLY ALONG SAID WESTERLY LINE TO THE SOUTH LINE OF THE NORTHEAST QUARTER, RUNNING THENCE EASTERLY ALONG THE SOUTHERLY LINE OF THE NORTHEAST QUARTER TO A POINT 330 FEET WESTERLY OF THE EAST QUARTER CORNER, SAID POINT BEING THE SOUTHWEST CORNER OF THE LANDS NOW OR FORMERLY OWNED BY R.H. FRANKLAND, RUNNING THENCE NORTHERLY ALONG SAID LANDS PARALLEL AND DISTANT 330 FEET AT RIGHT ANGLES FROM THE EASTERLY LINE OF SECTION 32 A DISTANCE OF 660 FEET, RUNNING THENCE EASTERLY

285

PARALLEL AND DISTANT 660 FEET AT RIGHT ANGLES FROM THE SOUTHERLY LINE OF THE NORTHEAST QUARTER A DISTANCE OF 330 FEET TO A POINT ON THE EASTERLY LINE OF SECTION 32, RUNNING THENCE NORTHERLY ALONG THE EASTERLY LINE OF SECTION 32 TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 13 NORTH, RANGE 8 EAST, MOUNT DIABLO BASE & MERIDIAN, IN THE COUNTY OF PLACER, STATE OF CALIFORNIA, MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A 3/4 INCH DIAMETER IRON PIN SET ON THE SOUTH LINE OF THE TRACT OF LAND DESCRIBED HEREBY, A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF COUNTY ROAD PE 7092 (ATWOOD ROAD) AND FROM SAID POINT, THE ONE-INCH IRON PIPE FOUND SET FOR THE QUARTER SECTION CORNER ON THE EAST LINE OF SECTION 32, TOWNSHIP 13 NORTH, RANGE 8 EAST, MOUNT DIABLO BASE & MERIDIAN, BEARS SOUTH 83° 55' EAST, 645.55 FEET; THENCE SOUTH 88° 31' 30" WEST FROM THE POINT OF BEGINNING ALONG SAID ROAD RIGHT OF WAY LINE FOR A DISTANCE OF 10.00 FEET TO A POINT ON THE APPROXIMATE CENTERLINE OF A NEVADA IRRIGATION DISTRICT DITCH; THENCE ALONG THE APPROXIMATE CENTERLINE OF SAID DITCH ON THE FOLLOWING THIRTEEN (13) CONSECUTIVE COURSES: (1) NORTH 30° 50' EAST, 38.03 FEET, (2) NORTH 33° 45' EAST, 36.50 FEET, (3) NORTH 38° 45' EAST, 71.50 FEET, (4) NORTH 27° 35' EAST, 15.00 FEET, (5) NORTH 16° 00' EAST, 111.00 FEET, (6) NORTH 11° 15' EAST, 26.00 FEET, (7) NORTH 06° 15' EAST, 108.00 FEET, (8) NORTH 14° 10' WEST, 16.00 FEET, (9) NORTH 69° 30' EAST, 46.50 FEET, (10) NORTH 74° 5' EAST, 40.00 FEET, (11) NORTH 81° 25' EAST, 53.00 FEET, (12) NORTH 83° 4' EAST, 54.81 FEET, AND (13) NORTH 50° 50' EAST, 15.26 FEET TO A POINT THAT IS DISTANT 330.00 FEET, WESTERLY OF AND MEASURED AT RIGHT ANGLES FROM THE EAST LINE OF SAID SECTION 32; THENCE SOUTH 01° 34' 36" WEST ALONG A LINE PARALLEL WITH AND DISTANT 330.00 FEET WESTERLY OF AND MEASURED AT RIGHT ANGLES FROM THE EAST LINE OF SAID SECTION 32 FOR A DISTANCE OF 430.03 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE ABOVE MENTIONED COUNTY ROAD; THENCE SOUTH 88° 31' 30" WEST ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 314.02 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 13 NORTH, RANGE 8 EAST, MOUNT DIABLO BASE & MERIDIAN, IN THE COUNTY OF PLACER, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EAST LINE OF SAID SECTION 32, FROM WHICH POINT THE NORTHEAST CORNER THEREOF BEARS NORTH 01° 33' 20" EAST, 563.45 FEET AND NORTH 01° 33' 20" EAST, 60.06 FEET, SAID POINT OF COMMENCEMENT BEING THE SOUTHEAST CORNER OF THAT CERTAIN PROPERTY AS CONVEYED TO AUBURN-BELL INVESTORS ON FEBRUARY 19 1981 BY DEED RECORDED IN BOOK 2358 AT PAGE 373, OFFICIAL RECORDS OF PLACER COUNTY; THENCE FROM SAID POINT OF COMMENCEMENT RUNNING PARALLEL TO THE NORTH LINE OF SAID NORTHEAST QUARTER SOUTH 88° 59' 25" WEST, 355.00 FEET ALONG THE SOUTHERLY LINE OF SAID AUBURN-BELL INVESTORS PROPERTY; THENCE LEAVING SAID PARALLEL LINE AND CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 53° 10' 00" WEST, 211.80 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM SAID TRUE POINT OF BEGINNING LEAVING SAID SOUTHERLY LINE AND RUNNING PARALLEL TO THE NORTH LINE OF SAID NORTHEAST QUARTER SOUTH 88° 59' 25" WEST, 462.05 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID AUBURN-BELL INVESTORS PROPERTY, BEING A POINT WHICH LIES 197.65 FEET NORTHEASTERLY AT RIGHT ANGLES FROM THE FENCE ON THE WESTERLY SIDE OF THE NEVADA IRRIGATION DITCH; THENCE LEAVING SAID PARALLEL LINE ALONG A LINE 197.65 FEET DISTANT FROM AND PARALLEL TO SAID FENCE, ALSO BEING THE

**EXHIBIT A**

SOUTHWESTERLY LINE OF SAID AUBURN-BELL INVESTORS PROPERTY SOUTH 37° 06' 02" EAST, 270.44 FEET TO THE MOST SOUTHERLY CORNER THEREOF, THENCE LEAVING SAID LINE NORTH 53° 10' 00" EAST, 373.38 FEET ALONG THE SOUTHERLY LINE OF SAID AUBURN BELL INVESTORS PROPERTY TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THOSE PORTIONS OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 NORTH, RANGE 8 EAST, MOUNT DIABLO BASE & MERIDIAN, IN THE COUNTY OF PLACER, STATE OF CALIFORNIA, AS CONVEYED TO AUBURN-BELL INVESTORS IN DEEDS RECORDED FEBRUARY 19, 1981 IN BOOK 2358, PAGE 373 AND OCTOBER 22, 1981 IN BOOK 2445, PAGE 81, BOTH OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL MINERAL DEPOSITS, AS DEFINED IN SECTION 6407 OF THE PUBLIC RESOURCES CODE, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE, AND REMOVE SUCH DEPOSITS AS RESERVED BY THE STATE OF CALIFORNIA IN DEED RECORDED JULY 18, 1979, IN BOOK 2147, PAGE 22, OF OFFICIAL RECORDS.

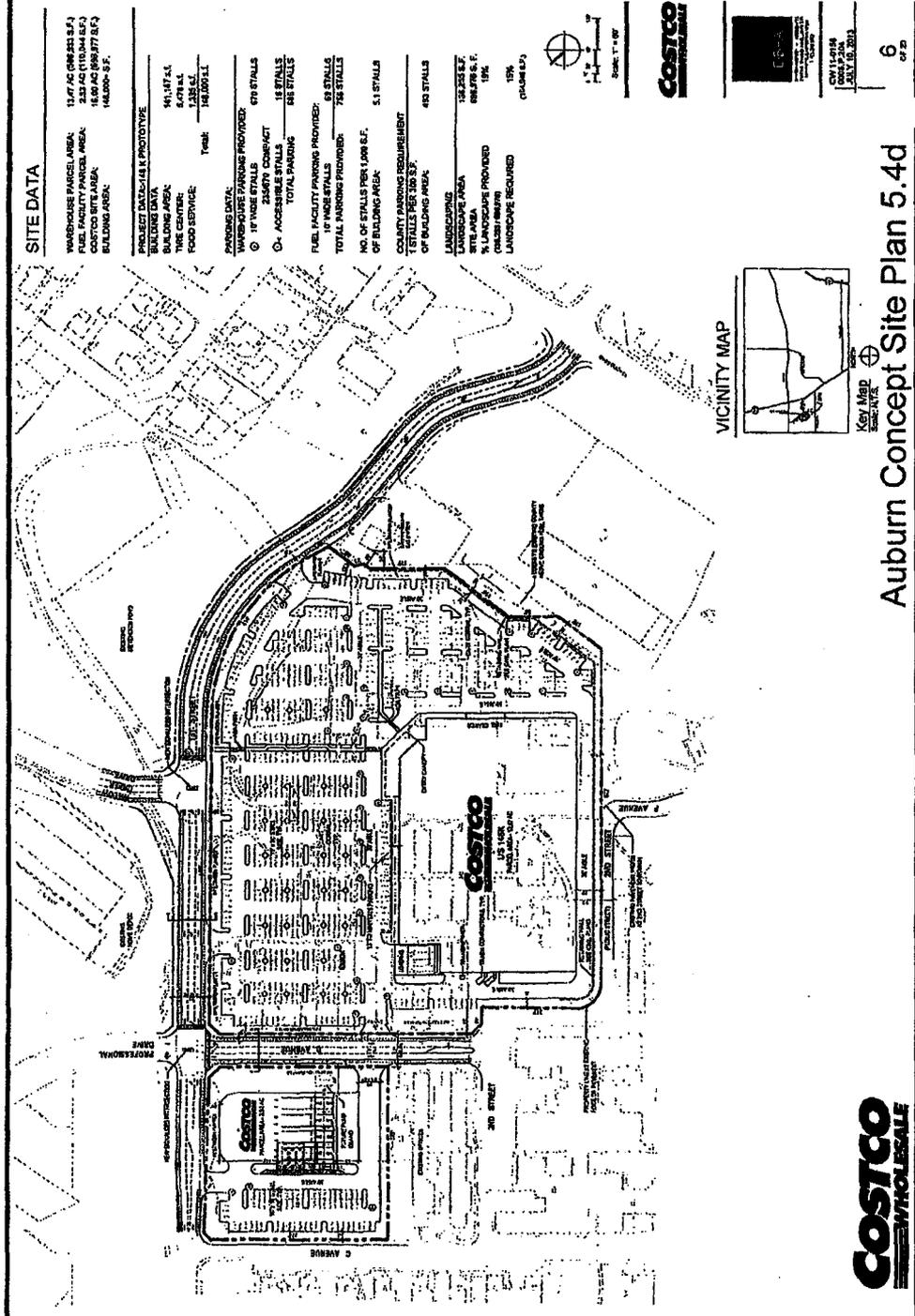
ALSO EXCEPTING THEREFROM PARCEL ONE AND ALL THOSE PORTIONS OF THE DEDICATED ROADWAYS SHOWN AS 1ST STREET, PROFESSIONAL STREET AND WILLOW CREEK ROAD, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP DPM 20060173," FILED FOR RECORD MAY 28, 2008 IN BOOK 34 OF PARCEL MAPS, PAGE 71, PLACER COUNTY OFFICIAL RECORDS. APN(s): 051-120-010, 051-120-061, 051-120-064 & 051-120-065

**EXHIBIT A**



**EXHIBIT B**

**SITE PLAN**



**SITE DATA**

WAREHOUSE PARCEL AREA: 11.77 AC (808,283 S.F.)  
 FUEL FACILITY PARCEL AREA: 2.55 AC (173,044 S.F.)  
 TOTAL PARCEL AREA: 14.32 AC (981,327 S.F.)  
 BUILDING AREA: 142,874 S.F.

**PROJECT DATA: (18) E. PROTOTYPE**

BUILDING DATA: 142,874 S.F.  
 FUEL FACILITY: 6,784 S.F.  
 TRUCK SERVICE: 1,281 S.F.  
 FOOD SERVICE: 18,200 S.F.

**PARKING DATA:**

WAREHOUSE PARKING PROVIDED: 670 STALLS  
 18 WIDE STALLS  
 25470 COMPACT STALLS  
 ACCESSIBLE STALLS: 18 STALLS  
 TOTAL PARKING: 6818 STALLS

**FUEL FACILITY PARKING PROVIDED:**

17 WIDE STALLS  
 TOTAL PARKING PROVIDED: 728 STALLS

**NO. OF STALLS PER 1,000 S.F. OF BUILDING AREA:**

5.1 STALLS

**COUNTY PARKING REQUIREMENT OF BUILDING AREA:**

493 STALLS

**LANDSCAPING**

18,200 S.F.

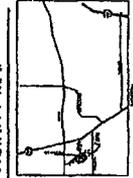
**LANDSCAPE ZONE**

18% PLANTING PROVIDED

**LANDSCAPE ZONE**

15% PLANTING PROVIDED

**VICINITY MAP**



Key Map  
 1/2" = 1 MILE

**Auburn Concept Site Plan 5.4d**



6  
 OF 2

**EXHIBIT B**

**EXHIBIT C**  
**GROUND LEASE**

**GROUND LEASE**

Tenant: Costco Wholesale Corporation

Landlord: Placer County

Facility: Auburn, California

Date: \_\_\_\_\_  
(for reference purposes only)

**TABLE OF CONTENTS**

	Page
<b>SECTION 1 BASIC TERMS</b> .....	1
1.1 Demise; Premises.....	1
1.1.1 The Premises.....	1
1.1.2 The Improvements. ....	1
1.2 Term.....	2
1.2.1 Initial Term. ....	2
1.2.2 Renewal Periods.....	2
1.2.3 Renewal Period Terms.....	3
1.2.4 Term to be Inclusive. ....	3
1.3 Rent.....	3
1.3.1 Definitions.....	3
1.3.2 Rent.....	4
1.3.3 Rent Payments. ....	4
1.3.4 Pro Rata Portions of a Month or Year. ....	5
1.3.5 Rent Commencement Date. ....	5
1.3.6 Payment for Improvements.....	5
1.3.7 Rent Credits. ....	5
1.4 Landlord's Warranties. ....	6
1.4.1 Power and Authority.....	6
1.4.2 No Violations and Actions.....	6
1.4.3 Condemnation; Moratorium.....	6
1.4.4 Compliance. ....	6
1.4.5 Work. ....	7

1.4.6	Assessments.....	7
1.4.7	Leases; Contracts; Agreements; Obligations.....	7
1.4.8	Hazardous Substances.....	7
1.4.9	Title; Legally Subdivided Lot.....	9
1.4.10	Insolvency Matters.....	9
1.4.11	Sale of the Property.....	9
1.4.12	Misrepresentation and Adverse Facts.....	9
1.5	Tenant's Warranties.....	9
1.5.1	Power and Authority.....	9
1.5.2	No Violations or Actions.....	10
1.5.3	OFAC Compliance.....	10
1.6	Use.....	10
1.7	Quiet Enjoyment.....	10
1.7.1	Generally.....	10
1.7.2	Declarations.....	10
1.8	Tenant's Exclusive Use.....	11
1.8.1	Restrictive Covenant.....	11
1.8.2	Exceptions.....	11
1.9	Use Restrictions.....	12
1.10	No Operating Covenant.....	12
1.11	Landlord's Covenants.....	12
1.11.1	Liens and Encumbrances.....	13
1.11.2	Representations and Warranties.....	13
1.11.3	Payments.....	13

<b>SECTION 2 UTILITIES; TAXES; PERMITTED CONTESTS.....</b>	<b>13</b>
2.1    Utilities.....	13
2.2    Taxes.....	13
2.2.1    Impositions.....	13
2.2.2    Installments.....	14
2.2.3    Separate Assessment.....	15
2.2.4    Not Separately Assessed.....	15
2.2.5    Placer County Government Center Road Costs.....	15
2.3    Permitted Contests.....	16
2.3.1    Separate Tax Statement.....	16
<b>SECTION 3 CONSTRUCTION; ALTERATIONS; OWNERSHIP; MAINTENANCE.....</b>	<b>16</b>
3.1    Tenant's Construction.....	16
3.2    Permits; Compliance With Codes.....	16
3.3    Demolition/Hazardous Materials Cleanup Work.....	17
3.4    Extraordinary Development Costs.....	18
3.5    Ownership of Improvements.....	19
3.6    Control.....	19
3.7    Maintenance.....	19
3.8    Surrender Upon Termination.....	19
3.8.1    Obligation to Remove Equipment.....	19
3.8.2    No Obligation to Repair.....	20
3.8.3    Abandoned Equipment.....	20
3.9    Mechanic's Liens.....	20
3.10   Signage.....	21

<b>SECTION 4 ALTERATIONS, ADDITIONS AND REPAIRS</b> .....	21
4.1 Alterations.....	21
4.2 Maintenance and Refuse Disposal.....	21
<b>SECTION 5 TENANT FINANCING</b> .....	21
5.1 Definitions.....	21
5.1.1 Institutional Investor.....	21
5.1.2 Leasehold Estate.....	22
5.1.3 Leasehold Mortgage.....	22
5.1.4 Leasehold Mortgagee.....	22
5.1.5 Purchase Money Leasehold Mortgage.....	22
5.1.6 Foreclosure.....	22
5.2 Leasehold Mortgages Authorized.....	22
5.2.1 Leasehold Mortgages Authorized.....	22
5.2.2 No Mortgage on Fee.....	22
5.3 Notice to Landlord.....	23
5.3.1 Required Notice.....	23
5.3.2 Acknowledgement of Notice.....	23
5.3.3 Amendments to Leasehold Mortgage.....	23
5.4 Protection of Leasehold Mortgagees.....	23
5.4.1 Consent.....	23
5.4.2 Notice of Default.....	23
5.4.3 Notice to Leasehold Mortgagee.....	24
5.4.4 Procedure on Default.....	24
5.5 New Lease.....	26
5.5.1 Request.....	26

5.5.2	Procedure .....	26
5.5.3	Cure.....	27
5.5.4	Priority .....	27
5.6	New Lease Priorities .....	27
5.7	Certain Defaults .....	27
5.8	Eminent Domain .....	28
5.9	Insurance.....	28
5.10	No Merger.....	28
5.11	Notices .....	28
5.12	Erroneous Payments.....	28
5.13	Bankruptcy.....	28
5.13.1	Rejection of Lease by Tenant .....	28
5.13.2	Termination of Lease by Landlord .....	29
5.14	Leasehold Mortgagee as Trustee .....	29
5.15	Rights Against Tenant.....	29
5.16	Lease Amendments Requested by Leasehold Mortgagee .....	29
<b>SECTION 6 DAMAGE OR DESTRUCTION.....</b>		<b>30</b>
6.1	Tenant's Improvements .....	30
6.1.1	Repair or Restoration of Tenant's Building.....	30
6.1.2	Repair or Restoration of Fuel Facility and Other Improvements .....	31
6.1.3	Performance of Repair or Razing .....	31
6.1.4	Tenant's Determinations.....	31
6.2	During Last Ten (10) Years of Term.....	31
6.3	No Termination of Lease .....	32
6.4	Acquisition of Insurance Policies .....	32

6.5	Tenant's Insurance.....	32
6.5.1	Commercial General Liability Insurance.....	32
6.5.2	Automobile Liability Insurance.....	32
6.5.3	Workers Compensation and Employer's Liability.....	32
6.5.4	Umbrella Liability Insurance.....	33
6.5.5	Property Insurance.....	33
6.5.6	Builder's Risk Insurance.....	33
6.5.7	Pollution Liability Insurance.....	33
6.6	Landlord's Insurance.....	33
6.7	Terms of Insurance.....	34
6.7.1	Evidence of Insurance.....	34
6.7.2	Terms of Tenant's Insurance.....	34
6.7.3	Terms of Landlord's Insurance.....	34
6.7.4	Deductibles and Self-Insurance.....	35
6.7.5	Limitation of Liability.....	35
6.8	Insurance Proceeds.....	35
6.8.1	Liability Insurance Proceeds.....	35
6.8.2	Property Insurance Proceeds-Application to Restoration.....	36
6.8.3	Property Insurance Proceeds-No Restoration.....	36
6.9	Releases and Waiver of Subrogation.....	37
6.9.1	Property Insurance.....	37
6.9.2	Liability Insurance.....	37
6.9.3	Insurance Standards.....	37
6.9.4	Applicable Laws.....	38
6.10	Insurance Determinations.....	38

<b>SECTION 7 CONDEMNATION</b> .....	38
7.1 Total Taking.....	38
7.1.1 Termination of Lease.....	38
7.1.2 Removal of Improvements.....	38
7.1.3 Landlord's and Tenant's Shares.....	38
7.2 Partial Taking.....	38
7.2.1 Rent Reduction.....	38
7.2.2 Termination Right.....	39
7.2.3 Award.....	39
7.2.4 Restoration.....	39
7.2.5 Successive Takings.....	39
7.3 Temporary Taking.....	39
<b>SECTION 8 COMPLIANCE WITH LAWS</b> .....	40
<b>SECTION 9 INSPECTION BY LANDLORD</b> .....	40
9.1 Inspection of Premises.....	40
9.2 Rights of Subtenants.....	40
<b>SECTION 10 HOLD HARMLESS AND INDEMNIFICATION</b> .....	40
10.1 Landlord to Indemnify Tenant.....	40
10.1.1 Acts or Omissions Prior to Effective Date.....	41
10.1.2 Non-Monetary Covenants.....	41
10.1.3 Landlord Negligence.....	41
10.1.4 Landlord Work and Construction.....	41
10.1.5 Limitation.....	41
10.1.6 Legal Proceedings.....	41
10.2 Tenant to Indemnify Landlord.....	41

10.2.1	Work .....	42
10.2.2	Use .....	42
10.2.3	Accident, Injury or Damage.....	42
10.2.4	Negligence .....	42
10.2.5	Non-Monetary Covenants.....	42
10.2.6	Limitations .....	42
10.2.7	Legal Proceedings.....	42
10.2.8	Tenant Not Deemed a Generator or Operator.....	43
<b>SECTION 11 SUBLETTING AND ASSIGNMENT .....</b>		<b>43</b>
11.1	Subletting and Assignment.....	43
11.2	Assignee Obligations.....	43
11.3	Sublease/Assignment Premium.....	43
11.4	Permitted Assignment.....	44
11.5	Non-Disturbance of Subtenants.....	44
<b>SECTION 12 LANDLORD AND TENANT TO FURNISH STATEMENT.....</b>		<b>45</b>
12.1	Landlord's Statement.....	45
12.2	Tenant's Statement.....	45
<b>SECTION 13 DEFAULT .....</b>		<b>46</b>
13.1	Tenant Default.....	46
13.2	Landlord's Remedies.....	47
13.2.1	Landlord's Remedies.....	47
13.2.2	Termination of Lease.....	47
13.3	Effect of Termination.....	47
13.4	Landlord Default.....	48
13.4.1	Payments to Tenant.....	48

13.4.2	Breach of Other Covenants.....	48
13.4.3	Insolvency.....	48
13.5	Tenant’s Remedies.....	49
13.6	Notice and Cure Periods.....	49
13.7	No Waivers.....	49
13.8	Self-Help.....	49
13.9	No Personal Liability.....	50
<b>SECTION 14 RESERVED.....</b>		<b>50</b>
<b>SECTION 15 RECAPTURE RIGHTS.....</b>		<b>50</b>
15.1	Landlord Recapture Rights.....	50
15.1.1	Recapture Right for Failure to Commence Construction or Open for Business.....	50
15.1.2	Recapture Right if Tenant Goes Dark.....	51
<b>SECTION 16 MISCELLANEOUS.....</b>		<b>52</b>
16.1	No Partnership.....	52
16.2	Time of the Essence.....	53
16.3	Captions.....	53
16.4	Meaning of Terms.....	53
16.5	Lease Construed as a Whole.....	53
16.6	Severability.....	53
16.7	Survival.....	53
16.8	Memorandum of Lease.....	53
16.9	Transfer Tax.....	53
16.10	Entire Agreement; Amendment.....	54
16.11	Commissions.....	54

16.12	Notices .....	54
16.13	Attorneys' Fees .....	55
16.14	Holding Over .....	55
16.15	Consents and Approvals .....	55
16.16	Tenant's Approval Rights.....	56
16.17	Governing Law .....	56
16.18	Force Majeure .....	56
16.19	Counterparts; Facsimile Signatures .....	56
16.20	Exhibits .....	57
16.21	Post-Acquisition Tenant.....	57
16.22	Authority of Director .....	57
16.23	Effective Date of Lease.....	57
16.24	Lease Term Information Statement .....	57

INDEX

Act..... 57

Base Rent ..... 4

Brokers ..... 54

business day ..... 53

commence construction ..... 50

Compensation ..... 54

complete construction ..... 50

Costco Facility ..... 11

Costs..... 42

day ..... 53

Declaration ..... 11

Declarations ..... 10

designee..... 22

Effective Date ..... 57

Environmental Laws ..... 8

Event of Default..... 46

Event of Force Majeure ..... 56

Expiration Date ..... 2

foreclosure..... 22

Foreclosure..... 22

Fuel Facility ..... 2

Go Dark Recapture Date..... 51

Go Dark Recapture Notice..... 51

302

Go Dark Recapture Price .....	52
Go Dark Recapture Termination Date .....	52
Governing Jurisdiction.....	6
Government Center .....	15
Government Center Road System.....	15
Hazardous Substances.....	9
Impositions.....	13
Improvements .....	2
Initial Improvements .....	2
Initial Term .....	2
Institutional Investor .....	21
Landlord .....	1
Landlord Affiliate .....	11
Landlord Affiliates.....	11
Landlord Entities.....	11
Landlord Event of Default .....	48
Landlord Indemnified Parties .....	41
Landlord Indemnified Party.....	41
Landlord's Reminder Notice.....	2
Lease .....	1
Lease Year .....	3
Leasehold Estate .....	22
Leasehold Mortgage.....	22
Leasehold Mortgagee.....	22
Merchandising Concept .....	11

Month.....	3
New Lease.....	26
New Lease Notice.....	26
Non-Permitting Party.....	20
Notice.....	54
NWAP.....	54
Option Agreement.....	1
Partial Taking.....	38
Permitted Exceptions.....	13
Permitting Party.....	20
Pre-existing Improvements.....	17
Premises.....	1
Property.....	1
Purchase Money Leasehold Mortgage.....	22
Recapture Date.....	50
Recapture Notice.....	50
Recapture Price.....	51
Recapture Termination Date.....	51
Renewal Period.....	2
Renewal Periods.....	2
Rent.....	4
Rent Commencement Date.....	5
Restricted Property.....	11
Road Costs.....	15
Self-Insurance.....	35

Special Purpose Lender.....	22
Sublease/Assignment Premium .....	44
Subordination Agreement.....	13
Subsequent Assignee .....	26
Tenant .....	1
Tenant Indemnified Parties.....	40
Tenant Indemnified Party .....	40
Tenant's Building.....	2
Tenant's Intended Use .....	1
Tenant's Reminder Period .....	2
Tenant's Share of Government Center Road Costs.....	16
Term.....	3
Total Taking.....	38
Wholesale Grocer.....	11

305

## GROUND LEASE

**Facility: Auburn, CA**

THIS GROUND LEASE (the "Lease"), dated for reference purposes only as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, is made by and between PLACER COUNTY, a political subdivision of the State of California ("Landlord"), and COSTCO WHOLESALE CORPORATION, a Washington corporation ("Tenant"). This Lease shall become effective as of the Effective Date, as determined in accordance with Section 16.23 hereof.

Tenant desires to lease from Landlord, and Landlord agrees to lease to Tenant, certain real property located in Auburn, California, upon which Tenant may, for Tenant's account, develop, construct, operate and maintain, in accordance with Tenant's requirements and on the conditions set forth herein, 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 vehicle fueling facility, related office space, related parking and other improvements ("Tenant's Intended Use").

This Lease has been entered into pursuant to the terms of that certain Option to Ground Lease by and between Landlord and Tenant, dated December \_\_\_\_\_, 2014 (the "Option Agreement").

NOW, THEREFORE, Landlord and Tenant hereby agree:

### **Section 1 BASIC TERMS**

#### **1.1 Demise; Premises.**

1.1.1 The Premises. For and in consideration of Tenant's covenant to pay the rental and other sums provided for herein, and the performance of the other obligations of Tenant hereunder, Landlord leases to Tenant and Tenant leases from Landlord (a) that certain real property situated in the County of Placer, State of California, legally described on Exhibit A attached hereto (the "Property") and depicted on Exhibit B attached hereto, and (b) the non-exclusive right to use all rights, privileges, easements, tenements, hereditaments, improvements, licenses, appurtenances and other rights and benefits appurtenant to said real property. The Property and Tenant's non-exclusive right to use the appurtenances and all Improvements now or hereafter located on the Property are hereinafter collectively referred to as the "Premises".

1.1.2 The Improvements. Tenant may construct, maintain and operate on the Property, among other things lawfully permitted, improvements consisting of a building (including, without limitation, the sidewalks, loading docks, ramps, landscaping and curbing

immediately adjacent to such building) to accommodate Tenant's Intended Use (collectively, "**Tenant's Building**"), Tenant's vehicle fueling facility (the "**Fuel Facility**"), Tenant's parking, lighting, cart corrals, landscaping and all other improvements and facilities, appurtenant fixtures, machinery and equipment necessary for the operation of Tenant's Building and Fuel Facility (the "**Initial Improvements**"), and all alterations and additions thereto and substitutions therefor now or hereafter located on the Property necessary or desirable for Tenant's use of the Property (all improvements and facilities from time to time existing on the Property, collectively with Tenant's Building, the Fuel Facility, and all alterations and additions thereto and substitution therefor, the "**Improvements**").

## 1.2 Term.

1.2.1 Initial Term. The initial term of this Lease (the "**Initial Term**") shall commence on the "Effective Date," as defined in Section 16.23, below. The Initial Term shall end on the last day of the twentieth (20<sup>th</sup>) Lease Year after the Effective Date (the "**Expiration Date**"). Landlord and Tenant shall confirm the Effective Date, Rent Commencement Date and Expiration Date in writing once such dates have been established.

### 1.2.2 Renewal Periods.

1.2.2.1 Tenant's Renewal Rights. Tenant shall have the right to extend the Term at the end of the Initial Term for three (3) successive periods of ten (10) years each (each a "**Renewal Period**" and collectively the "**Renewal Periods**"), by giving Notice to Landlord of the exercise of such right to extend no later than six (6) months prior to expiration of the then existing Term. Notwithstanding the foregoing, in the event Tenant has assigned its interest in this Lease or subleased to a third party who is not a permitted assignee as provided in Section 11.4, below, and that third party is operating (a) in less than 50% of the land area of the Premises, or (b) in less than 50% of the square footage of Tenant's Building, and an Event of Default by such third party exists under this Lease as of the date such party gives notice of exercise of the extension, then such third party shall not have the right to extend the Term as provided herein.

1.2.2.2 Landlord's Reminder Notice. Notwithstanding the foregoing, in the event Tenant timely fails to exercise an extension for any Renewal Period, and Tenant has not otherwise notified Landlord in writing of its intention not to extend the Term, neither the Term nor Tenant's right to extend the Term for the next succeeding Renewal Period shall expire, and the Term shall be deemed automatically extended, until the earlier to occur of:

(i) Landlord having given Tenant written notice that Tenant failed to exercise the extension for such Renewal Period ("**Landlord's Reminder Notice**") and Tenant having failed, within thirty (30) days after receipt of Landlord's Reminder Notice ("**Tenant's Reminder Period**"), to exercise its option to extend the Term for such Renewal Period. If Tenant exercises its right to extend the Term for the applicable Renewal Period prior to the expiration of Tenant's Reminder Period, then the applicable Renewal Period shall be deemed to have commenced on the first day of the applicable Renewal Period as if Tenant

had timely exercised such right to extend the Term for such Renewal Period. If Tenant fails to exercise its right to extend the Term for the applicable Renewal Period prior to the expiration of Tenant's Reminder Period, then the Lease shall terminate sixty (60) days after the expiration of Tenant's Reminder Period (provided, however, that if such termination would occur during the Initial Term, in no event shall the Lease terminate prior to the scheduled Expiration Date of the Initial Term); and

(ii) Tenant having given Landlord at least sixty (60) days prior written notice of its intention to terminate the Lease (provided, however, that if such termination would occur during the Initial Term, in no event shall the Lease terminate prior to the scheduled Expiration Date of the Initial Term).

1.2.2.3 Further Renewal Periods. In no event shall Tenant's failure to exercise the right to extend the Term for any Renewal Period prevent Tenant from exercising its right to extend the Term for the next succeeding Renewal Period if such further exercise is timely as required by Section 1.2.2.1 or 1.2.2.2, as applicable. Notwithstanding the foregoing, in no event shall the Term ever extend (or be deemed to extend) beyond the last day of the final Renewal Period calculated as if Tenant timely had exercised each right to extend the Term.

1.2.3 Renewal Period Terms. Tenant's occupancy during the Renewal Periods (whether by extension or deemed extension) shall be upon the same terms and conditions as provided in this Lease, including, without limitation, the right to exercise its renewal options for the subsequent Renewal Periods. The Rent that Tenant shall pay during any Renewal Period (whether exercised by extension or deemed extension) shall be the Rent set forth in Section 1.3.2 of this Lease allocated to the Renewal Period that would then be in effect if Tenant had timely exercised its option to extend the Term.

1.2.4 Term to be Inclusive. Whenever the word "Term" is used in this Lease, it shall be deemed to include the Initial Term and any Renewal Periods exercised by Tenant (or deemed exercised as set forth in Section 1.2.2 hereof).

### 1.3 Rent.

1.3.1 Definitions. The following terms shall have the following meanings when used in this Lease:

1.3.1.1 "Lease Year" shall mean (a) for the first Lease Year, the period of time commencing on the Rent Commencement Date and ending on the last day of the Month in the next succeeding calendar year in which the Rent Commencement Date occurred, and (b) for each succeeding Lease Year, the twelve (12) Month period following the expiration of the preceding Lease Year. As defined above, the "Initial Term" of the Lease shall commence on the Effective Date, but the "Lease Year" for purposes of determining the Rent shall be calculated from the Rent Commencement Date.

1.3.1.2 "Month" shall mean the calendar month.

1.3.2 Rent. From and after the Rent Commencement Date, Tenant covenants and agrees to pay Landlord the following rent (collectively, "**Rent**"):

1.3.2.1 Base Rent.

(a) Initial Term. Tenant shall pay the following amounts as base rent ("**Base Rent**") calculated from and after the Rent Commencement Date during the Initial Term:

Lease Years 1 – 10	325,000/per year
Lease Years 11 – end of the Initial Term, if the Term is not extended for Renewal Periods or Lease Year 20 if the Term is extended	357,500/per year

(b) Renewal Periods. Tenant shall pay the following amounts as Base Rent calculated from the Rent Commencement Date during the Renewal Periods:

Lease Years 21 – 30	393,250/per year
Lease Years 31 – 40	432,575/per year
Lease Year 41 – Expiration Date	475,832/per year

(c) The parties acknowledge that the Initial Term is twenty (20) years from the Effective Date and that Tenant's Rent commences from the Rent Commencement Date, which date will occur sometime after the Effective Date. As such, the Lease Years referenced above used for calculating the Base Rent are not contemporaneous with the Lease Years used for the Term of the Lease. Landlord and Tenant have agreed that Tenant shall be given the benefit of a full ten (10) years based upon the schedule of Base Rent set forth above, and that, to the extent that the Term of the Lease expires before the end of the applicable period set forth above, that this is understood and is contemplated by the parties. The net effect is to give Landlord the benefit of a Lease Term that commences on the Effective Date and Tenant the benefit of the lower rental for each ten (10) year period following the Rent Commencement Date.

1.3.2.2 Other Amounts. All Impositions and other amounts due and payable by Tenant hereunder as a consequence of, or associated with, any Event of Default.

1.3.3 Rent Payments. Tenant shall pay Base Rent hereunder in equal monthly installments, in advance, on or before the first (1<sup>st</sup>) day of each Month. Rent and other sums to be paid by Tenant shall be payable in lawful money of the United States of America. Unless otherwise provided in this Lease, all payments of Rent shall be made by Tenant to Landlord without notice or demand at the place provided in Section 16.12. If Tenant fails to pay Base Rent within ten (10) days after the date on which it is due, then Tenant shall pay to Landlord interest on any such unpaid amount at the rate of ten percent (10%) per annum. Notwithstanding the foregoing, if Tenant fails to pay Base Rent when due, Landlord shall promptly provide Tenant notice of such failure and the first time this occurs in any calendar year, interest shall not be payable unless the failure to pay extends beyond the date thirty (30) days from the due date.

The provisions of this Section 1.3.3 in no way relieve Tenant of its obligation to pay Base Rent on or before the day it is due nor do the terms of this Section 1.3.3 in any way affect Landlord's remedies under this Lease in the event any Base Rent is unpaid after the due date.

1.3.4 Pro Rata Portions of a Month or Year. If the date upon which an obligation to make payments of Rent hereunder commences or terminates, or if there is to be an adjustment or partial abatement of Rent pursuant hereto, or if there is to be an end to such adjustment or abatement, effective on a date other than at the end or start of a Month or a Lease Year, as applicable, the Rent for such partial Month or Lease Year shall be prorated for the Month or Lease Year involved on the basis of the actual number of days in such Month or Lease Year.

1.3.5 Rent Commencement Date. Base Rent shall commence on the earlier to occur of the following (the "**Rent Commencement Date**"): (a) the date Tenant opens to its members for business on the Premises, and (b) the date that is one (1) year after the Effective Date. As provided in Section 1.2.1 hereof, Landlord and Tenant shall confirm the Rent Commencement Date in writing once such date has occurred. Notwithstanding the foregoing, in the event that Tenant contends that the critical path of Tenant's development or construction has been delayed due to the failure of County to complete the "County's Work," as defined in Section 3.7 of the Option Agreement, required to be completed by Landlord as provided in Sections 1.3.7.2 and 3.3 below, and Tenant can demonstrate such delay has occurred by utilizing actual job records, the Rent Commencement Date shall be extended for the number of days of the delay, with such extension to be effective commencing after approval of such documentation by County. County shall approve or disapprove the period of delay within twenty (20) days of the submittal by Costco of the back-up documentation to the County. If County disapproves or in any way limits its approval, the County shall provide its objections with reasonable specificity. Any resubmittals by Costco shall be approved or disapproved in the same time and manner.

1.3.6 Payment for Improvements. Within ten (10) days of the date of this Lease, Tenant shall pay to Landlord Six Hundred Fifty Thousand Dollars (\$650,000) as additional Rent to partially compensate Landlord for the extraordinary cost incurred by Landlord in having to relocate certain government operations affected by Tenant's lease of the Premises and for the value of existing improvements on the Premises to be demolished by Landlord.

1.3.7 Rent Credits. Notwithstanding the provisions of this Lease, Tenant shall be entitled to credits to be applied against Rent as follows:

1.3.7.1 Extraordinary Costs. Tenant shall be entitled to a credit against Rent equal to One Million Dollars (\$1,000,000) to compensate Tenant for anticipated extraordinary site costs, which include, without limitation, the relocation of existing Landlord utility infrastructure, offsite utility improvements to service the Premises, retaining walls, canal encasements and other extraordinary costs. The credit shall be applied Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33) per month until such credit is fully utilized (one hundred twenty (120) months from the Rent Commencement Date).

1.3.7.2 Demolition Costs. Tenant shall be entitled to a credit against Rent equal to the actual cost incurred by Tenant to reimburse Tenant for all costs and expenses incurred by Tenant for the demolition of existing improvements on the Premises and environmental remediation as required to be completed by Landlord pursuant to the provisions of Section 2.3(e) and Section 3.7 of the Option Agreement, which have not completed by Landlord prior to the Effective Date of the Lease and the remediation of any pre-existing Hazardous Substances discovered during the course of construction by Tenant including, without limitation, any environmental condition related to the underground utility infrastructure. The credit shall be applicable to Rent remaining to be paid after the application of the credit provided in Section 1.3.7.1 until the credit provided herein is fully utilized.

1.4 Landlord's Warranties. Landlord represents, warrants and covenants that as of the Effective Date:

1.4.1 Power and Authority. Landlord is a governmental entity, duly formed, validly existing and in good standing under the laws of the State of California. Landlord is qualified to do business in the state in which the Premises is located (the "**Governing Jurisdiction**"). Landlord has the authority and power to enter into this Lease and to consummate the transaction provided for herein. This Lease and all other documents executed and delivered by Landlord have been duly authorized, executed and delivered by Landlord and constitute legal, valid, binding and enforceable obligations of Landlord. The person executing this Lease on behalf of Landlord has been duly authorized to do so.

1.4.2 No Violations and Actions. The execution, delivery and performance by Landlord of its obligations under this Lease will not conflict with or result in a breach of any law, judgment, decree or order by which Landlord or the Property is bound, or the provisions of any contract or other agreement to which Landlord is a party or by which Landlord or the Property is bound and, if Landlord is not an individual, Landlord's articles of organization, declaration of trust, certificate of incorporation, bylaws, partnership agreement, operating agreement or other organizational documents, as the case may be. There is no action, suit, proceeding (including, without limitation, any condemnation proceeding) or investigation pending, or to Landlord's knowledge threatened, before any agency, court or other governmental authority which relates to the Property or the use thereof.

1.4.3 Condemnation; Moratorium. There are no condemnation or eminent domain proceedings pending, or to Landlord's knowledge threatened or contemplated, against the Property, or any part thereof. Landlord 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. No moratorium or other law, 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 or Tenant's ability to develop and operate Tenant's Intended Use on the Premises.

1.4.4 Compliance. Landlord has received no notice of and has no knowledge of any violations of any laws or investigations relating thereto. Any violations thereof that occur before the Effective Date, whether now noted or issued, shall be complied with by Landlord, so

that the Property shall be conveyed to Tenant free of the same at the Effective Date. There is no default or breach by Landlord under any covenant, condition, restriction, right-of-way or easement which may affect the Premises, or any portion thereof.

1.4.5 Work. No work has been performed or is in progress at, and no materials have been furnished to, the Property which has not been paid for in full by Landlord or which will not be paid for in full by Landlord by the Effective Date.

1.4.6 Assessments. No special or general assessments have been imposed or levied on the Property other than as shown on Exhibit C, and to Landlord's knowledge none are threatened against the Property or any part thereof other than as provided in Section 2.2.5 herein below.

1.4.7 Leases; Contracts; Agreements; Obligations. All leases, management agreements, contracts and other agreements or obligations affecting the Property, including, without limitation, easements, declarations, use restrictions or other similar agreements, are set forth on Exhibit C. There are no leases, management agreements, service contracts or other agreements or obligations affecting the Property or the operation or maintenance thereof, including, without limitation, those set forth on Exhibit C, which will be binding upon Tenant after the Effective Date. There are no provisions in any leases, occupancy agreements or other agreements with any other occupants or with any other party which would affect or restrict Tenant's use of or operations within the Premises or any other rights or obligations of Tenant under this Lease.

1.4.8 Hazardous Substances.

1.4.8.1 Attached to this Lease as Exhibit D is a list of all reports, correspondence or tests prepared for Landlord or in Landlord's possession or control with respect to the compliance of the Property with 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 Tenant for Tenant's review.

1.4.8.2 Except as disclosed in the reports listed on Exhibit D, Landlord warrants and represents that:

(a) the Property does not contain and, to Landlord's knowledge, has not contained, any Hazardous Substance;

(b) neither Landlord nor, to Landlord'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;

(c) there is no pending, or to Landlord'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;

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

(e) 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;

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

(g) Landlord has not placed any underground storage tanks on or removed any underground storage tanks from the Property. To Landlord's knowledge, there are no underground storage tanks located on the Property and no underground storage tanks have been removed from the Property.

1.4.8.3 Definitions. For purposes of this Lease, the following terms shall have the following meanings:

(a) "Environmental Laws" means all environmental, hazardous waste or substance, health and/or safety laws 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, or Tenant, as same have been amended, modified or supplemented from time to time prior to the Effective Date, 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 Effective Date under any and all of the aforementioned laws.

(b) "**Hazardous Substances**" means all (i) electromagnetic waves, urea formaldehyde foam insulation and transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls, (ii) 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, (iii) 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 (iv) 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.

1.4.9 Title; Legally Subdivided Lot. Fee simple title to the Property is vested in Landlord, subject to no defects or encumbrances except as set forth on Exhibit C attached hereto. 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 Landlord and any third party. Landlord is in no way restricted from negotiating and entering into this Lease with Tenant and leasing the Property to Tenant. The Property is a legally subdivided lot or will become a legally subdivided lot pursuant to the Project Approvals.

1.4.10 Insolvency Matters. No insolvency Landlord Event of Default (as set forth in Section 13.4.3 hereof) has occurred.

1.4.11 Sale of the Property. Landlord agrees that, prior to offering to sell or selling the Property, Landlord will endeavor to give Tenant at least thirty (30) days' prior notice of such actions so Tenant can participate in the process.

1.4.12 Misrepresentation and Adverse Facts. Landlord has made no untrue statements or misrepresentations in connection with this Lease. All items delivered, or to be delivered, to Tenant are, or if delivered after the Effective Date will be, complete, true and correct copies of what they purport to be, including any amendments or modifications thereto. Landlord knows of no facts, nor has Landlord failed to disclose any fact, which would prevent or materially impair Tenant from developing, using or operating the Premises for Tenant's Intended Use.

**1.5 Tenant's Warranties.** Tenant represents and warrants that:

1.5.1 Power and Authority. Tenant is a corporation in good standing, duly formed and validly existing under the laws of the State of Washington. Tenant is qualified to do business in the Governing Jurisdiction. Tenant has the authority and power to enter into this Lease and to consummate the transaction provided for herein. This Lease and all other

documents executed and delivered by Tenant constitute legal, valid, binding and enforceable obligations of Tenant. The person executing this Lease on behalf of Tenant has been duly authorized to do so.

1.5.2 No Violations or Actions. The execution, delivery and performance by Tenant of its obligations under this Lease will not conflict with or result in a breach of any law, judgment, decree or order by which Tenant is bound, or any contract or other agreement to which Tenant is a party or by which Tenant is bound, or Tenant's certificate of incorporation or bylaws.

1.5.3 OFAC Compliance. Tenant is not, and shall not become, a person or entity with whom Landlord is prohibited or restricted from doing business under any of the Terrorism Laws. Tenant consents, acknowledges and agrees that Landlord may take any necessary or appropriate action under the Terrorism Laws.

1.6 Use. The Premises are leased to Tenant to be used for any lawful purpose including, without limitation, Tenant's Intended Use.

1.7 Quiet Enjoyment.

1.7.1 Generally. Landlord covenants and warrants that Landlord is the true and lawful owner of the Premises, subject only to those matters set forth in Exhibit G, and has good right and full power to lease the same. Landlord agrees that Tenant shall quietly and peaceably hold, possess and enjoy the Premises for the Term of this Lease, and any extension thereof, without any hindrance or molestation. Landlord shall defend title to the Premises and the use and occupancy of the same against the claims of all persons, except those claiming by or through Tenant. Without limiting the generality of the foregoing, Landlord acknowledges that a material inducement to Tenant in entering into this Lease is an assurance that Tenant's customers, employees and visitors shall have continuous access to the Premises, and to the extent that any such access is interrupted other than by reason of temporary closure, the correction of which Landlord must diligently pursue, such interruption shall constitute a breach of Landlord's covenant and warranty to Tenant of quiet enjoyment. There are no agreements, restrictions, covenants, encumbrances or easements affecting the Premises which will diminish any of Tenant's rights or increase any of Tenant's obligations under this Lease.

1.7.2 Declarations. Landlord hereby represents and warrants that Landlord, its successors or assigns, shall not enter into or agree to modify, amend, revise or change any documents, including any declarations, easements, restrictions or other similar instruments ("Declarations") that are or may be recorded against the Premises, or otherwise affect the Premises, or the rights and/or obligations of Tenant, without first obtaining the prior written consent of Tenant, which consent may be withheld in Tenant's sole and absolute discretion. Landlord covenants that it will not agree or consent to any rules or regulations applicable to the Premises without the consent of Tenant, which consent Tenant may withhold in its sole and absolute discretion. Landlord shall not amend any such Declarations, easements or restrictive agreements in any manner that would adversely affect Tenant's rights under the Lease, adversely affect Tenant's business, or impose any obligations on Tenant without the consent of Tenant, which consent Tenant may withhold in its sole and absolute discretion.

## 1.8 Tenant's Exclusive Use.

1.8.1 Restrictive Covenant. Neither Landlord, nor any subsidiary, parent or other entity that controls, is controlled by or is under common control with Landlord (each such entity, a "**Landlord Affiliate**" and collectively, the "**Landlord Affiliates**"), nor any successors or assigns of Landlord or the Landlord Affiliates (collectively with Landlord and the Landlord Affiliates, the "**Landlord Entities**") shall, directly or indirectly, with respect to any property currently or in the future owned, leased or otherwise controlled by any of the Landlord Entities within one (1) mile in all directions from the exterior boundaries of the Premises (the "**Restricted Property**"), sell, lease or otherwise transfer all or any portion of the Restricted Property to, or for use as, (a) a wholesale or retail general merchandise facility which has a merchandising concept based upon a relatively limited number of stock keeping units in a large number of product categories (the "**Merchandising Concept**"), (b) a grocery store or supermarket that primarily sells food products in bulk quantities (a "**Wholesale Grocer**"), or (c) support for any facility operating under the Merchandising Concept, as a Wholesale Grocer (i.e., for parking or other necessary improvements for such a facility); provided, however, that in no event shall any of the foregoing prohibitions prohibit the Restricted Property from being used for or as a Costco Wholesale warehouse club or any other facility then operated by Tenant or by any successor to Tenant (collectively, a "**Costco Facility**"). The foregoing prohibitions include, but shall not be limited to any business which operates as a warehouse club (other than a Costco Facility). This restrictive covenant shall run with the Restricted Property and Tenant shall have the right, on or after the Effective Date, to record a document containing this restrictive covenant (the "**Declaration**") against any Restricted Property (whether currently owned or acquired after the Effective Date by Landlord or any other of the Landlord Entities) and Landlord shall cooperate, and shall cause the other Landlord Entities to cooperate, with Tenant in recording such document. Landlord, on its own behalf and on behalf of each other of the Landlord Entities, acknowledges that the breach of the foregoing restrictive covenant may cause immediate and irreparable harm for which damages are not an adequate remedy and that, to protect against such harm, Tenant 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.

1.8.2 Exceptions. Notwithstanding the foregoing, this restrictive covenant is not intended (and shall not be construed) to prohibit any of the following uses on any Restricted Property: (A) a traditional neighborhood grocery store operation similar to that conducted on the Effective Date by retail grocers; (B) a specialty retail store which sells primarily 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 (C) a traditional department store, discount department store or junior department store.

Further, notwithstanding the foregoing, Landlord may lease premises within one (1) mile of the Premises to non-profit organizations for the sale of goods. The right granted in the foregoing sentence is personal to the County of Placer and cannot be assigned apart from or with this Lease to any other party.

Landlord acknowledges that the covenants and warranties set forth in this Section 1.8 were a material inducement to Tenant's entering into this Lease, and agrees that Tenant shall have the right to enforce the provisions of this Section 1.8 by appropriate injunctive or other equitable relief in addition to any and all remedies at law, and should the matter proceed to court, the prevailing party shall be entitled to recover reasonable attorneys' fees.

Tenant acknowledges that the Landlord entered into a ground lease agreement with Home Depot U.S.A., Inc. a Delaware Corporation dated October 16, 2006 (Home Depot Lease) which restricts certain uses in an area which includes Tenant's Premises. Tenant acknowledges that it has been provided a copy of the Home Depot Lease and has read the restrictions in Section 8.2 therein. Tenant acknowledges and agrees to adhere to the Home Depot Lease restrictions unless the Landlord or Tenant receives a written waiver of the restrictions or modification of the restrictions from Home Depot that releases or modifies the restrictions.

Landlord represents and warrants to Tenant that Landlord has not granted or entered into any other exclusive or restrictive use agreements affecting Tenant or the Premises. At no time shall Landlord grant any exclusive or other use restriction which would encumber or apply to Tenant or the Premises, which would in any way abrogate or viciate the terms of this Lease or Tenant's Intended Use.

For purposes of this Section 1.8, the term "Landlord" includes not only Landlord, but also all persons and business entities which Landlord controls, or by which Landlord is controlled.

**1.9 Use Restrictions.** No oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any portion of the Premises, nor shall oil wells, oil tanks, tunnels, or mineral excavation or shafts be permitted upon the surface of any portion of the Premises, or within 500 feet below the surface of any portion of the Premises. No derrick or other structure designed for use in boring for water, oil, natural gas or other minerals shall be erected, maintained or permitted on any portion of the Premises. Notwithstanding the foregoing, nothing herein shall limit the construction and operation of a fueling facility and car wash including all above ground or underground tanks, fuel lines, utility lines and improvements.

**1.10 No Operating Covenant.** Notwithstanding anything to the contrary in this Lease, no provision of this Lease shall be construed to contain a covenant, express or implied, by Tenant to build or stock Tenant's Building and/or Fuel Facility or to commence operations of or continuously to operate a business on the Premises. Tenant may, at any time, without prior notice or consent, fail to commence construction on the Property, or fail to open for business, or cease operations of any business then being operated on the Premises; provided, however, Landlord shall have the right to terminate the Lease and recapture the Premises under circumstances as provided in Section 15, below.

**1.11 Landlord's Covenants.** From and after the Effective Date, Landlord covenants to perform in accordance with the following obligations:

1.11.1 Liens and Encumbrances. Except for liens or encumbrances created by or through Tenant, or based upon Impositions which are the responsibility of Tenant under this Lease, Landlord shall not, and shall not agree to, create, permit or suffer to be created any liens, restrictions, encumbrances or Impositions on the Premises without Tenant's prior written consent, which consent may be withheld by Tenant in its sole and absolute discretion. Notwithstanding the foregoing, Tenant will not unreasonably withhold its consent to a lien securing the payment of money (other than the lien for real estate taxes and assessments) if the holder of such lien and Landlord deliver to Tenant a Consent, Subordination and Attornment Agreement in the form attached hereto as Exhibit E (the "**Subordination Agreement**"). Tenant may record the Subordination Agreement, at its sole cost, at any time after the receipt thereof. Landlord shall, at or prior to the Effective Date, cause the Premises to be free of all liens, restrictions, encumbrances and Impositions except the "**Permitted Exceptions**" set forth in Exhibit G, attached hereto and incorporated herein by this reference. To the extent that any easements or declarations are proposed that will affect the Premises, Landlord shall neither execute nor suffer the execution of same by or on behalf of Landlord without Tenant's prior written consent, which consent may be withheld by Tenant in its sole and absolute discretion.

1.11.2 Representations and Warranties. Landlord shall not take any action, or omit to take any action, which would have the effect of violating or rendering untrue any representation, warranty, covenant or agreement contained herein. Landlord shall give Tenant prompt written notice of any change in any of Landlord's representations or warranties set forth in Section 1.4.

1.11.3 Payments. Except as otherwise set forth in this Lease, Landlord shall make any and all payments due and owing with respect to the Premises, including, without limitation, real estate taxes, assessments, charges, fees, levies and impositions, and will, upon Tenant's request, deliver to Tenant evidence reasonably satisfactory to Tenant of payment thereof.

## **Section 2**

### **UTILITIES; TAXES; PERMITTED CONTESTS**

2.1 Utilities. Beginning on the Effective Date, Tenant shall pay or cause to be paid, and shall indemnify, defend and hold harmless Landlord and the Premises from, all charges for public or private utility services to or for the Premises during the Term, including, without limitation, all charges for heat, light, electricity, water, gas, telephone service, garbage collection, sewage, drainage service and other services and utilities used or contracted for by Tenant. Landlord shall not take, or permit any person claiming under Landlord to take, any action which would interrupt or interfere with any electric, gas, water, sewage or cable, data, telephone service to the Premises.

#### **2.2 Taxes**

2.2.1 Impositions. Beginning on the Rent Commencement Date, Tenant shall pay prior to delinquency each and every one of the following arising during the Term (collectively, the "**Impositions**"):

(a) All real property taxes or payments in lieu thereof due with respect to the Property and Improvements or any portion thereof, except so-called "rollback" taxes, which shall be the responsibility of Landlord;

(b) All taxes imposed on or with respect to Tenant's personal property, inventory and intangibles;

(c) All assessments for public improvements or benefits which are assessed or payable during the Term with respect to the Property; and

(d) All other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges (including interest and penalties thereon), which at any time during the Term may be assessed, levied, confirmed or imposed on or in respect of or right or interest in the Property, or any occupancy, use or possession of or activity conducted thereon or any part thereof, expressly excluding, however, any such items arising directly or indirectly out of any act or omission of Landlord or any of Landlord's predecessors in title or of any person (including Landlord) occurring prior to the Effective Date.

(e) Notwithstanding the foregoing, the term Impositions shall not include any federal, state, or local tax measured by net or gross income, any estate, succession, inheritance or transfer tax, any gross receipts tax, any business and occupation tax, any withholding, profit or revenue tax, any charge levied upon the Rent payable to Landlord under the terms of this Lease (except to the extent any such tax or charge is imposed on Landlord in lieu of real property ad valorem taxes on the Property or Improvements), any franchise, capital or doing business tax or license fee or any similar obligation that may be levied upon or against Landlord or any successor landlord by any governmental body.

(f) Tenant acknowledges that its interest in this Lease may be subject to taxation as a possessory interest in publicly owned property as described in Revenue and Taxation Code Section 107.6, a copy of which is attached as Exhibit F. For every year that this Lease is in effect on January 1<sup>st</sup>, Tenant acknowledges that it will be required to pay possessory taxes for that year as required by law. Failure of Tenant to pay any such taxes shall constitute a material breach of this Lease.

(g) If Landlord shall sell or otherwise transfer its interest in the Premises and, as a result thereof, the Premises are reassessed for purposes of real estate or possessory taxes, Tenant shall not be required to pay any portion of the increase in real estate or possessory taxes due to such reassessment; Landlord shall be responsible for and shall pay such increase in real estate or possessory taxes.

2.2.2 Installments. If by law any Imposition may at the option of the taxpayer be paid in installments, Tenant, if obligated to pay such Impositions by the terms of this Lease, may exercise such option, and shall pay all such installments (and interest, if any) becoming due during the Term following the Effective Date. At the end of the Term, Tenant shall deposit with Landlord an amount sufficient to pay Tenant's pro rata share of all Impositions for the Lease

Year in which this Lease expires or sooner terminates. All Impositions payable by Tenant shall be prorated as of the Effective Date and the expiration or sooner termination of the Term based upon a 365 day tax year.

2.2.3 Separate Assessment. If the tax statement in respect of any Impositions covers only the Premises, Landlord and Tenant shall use commercially reasonable efforts to have the tax statement sent directly to Tenant. If the tax statement is sent directly to Tenant, then Tenant will furnish a copy of such statement to Landlord promptly following Landlord's written request therefor. In the event such tax statement is not sent directly to Tenant, then Landlord shall promptly forward such tax statement to Tenant.

2.2.4 Not Separately Assessed. If, on the Effective Date, the Premises does not constitute a separate tax parcel, Landlord and Tenant shall cooperate to obtain a separate tax parcel identification for the Premises so that the Impositions relating thereto may be separately assessed and governed by Section 2.2.3 hereof.

2.2.5 Placer County Government Center Road Costs. Tenant acknowledges that the Premises is a portion of a larger approximately 220 acre property owned by Landlord commonly referred to as the Placer County Government Center (the "**Government Center**"). The Government Center consists of vacant property, property with buildings constructed by Landlord for governmental purposes and property leased to private persons. The Government Center is served by a system of internal roads which are, depending upon the nature of the road, maintained by Landlord with funding obtained from the County maintained mileage road system fund or from other funding sources. Roads within the Government Center which as of November 1, 2014, are not part of the County maintained mileage system, together with any associated sidewalks, road related lighting, and landscaping, are shown on Exhibit H and shall referred to as the "**Government Center Road System**".

As of the Effective Date, Landlord is developing a cost plan to establish an equitable allocation among the properties within the Government Center for the funding of ongoing maintenance for the Government Center Road System so each property is responsible for and pays for its pro rata fair share of the costs of maintenance of the Government Center Road System. Pro rata fair share costs will be determined through the development of an equitable plan for the properties within the Government Center, such as a comparative ratio of the total land square footage of the Property with the total square footage of all land within the Government Center, a comparative ratio of the total square footage of Tenant's Building with the total square footage of all buildings within the Government Center, or such other reasonable and equitable apportionment of costs as may be utilized by Landlord to ensure that no single property is unfairly burdened; provided, however, regardless of which methodology is utilized by Landlord, in no event may Tenant's share of the costs exceed fifteen percent (15%) of the total costs of maintenance in any year. Maintenance shall include the actual reasonable costs of operation, preventative maintenance, resurfacing, repair and replacement of roadway, sidewalks, road related lighting and landscaping (the "**Road Costs**").

Landlord agrees that any such cost allocation system shall not result in a disproportionate cost to Tenant based upon usage of the Government Center Road System, and prior to the final adoption

of any cost plan, Landlord shall provide Tenant with written notice of the amount of Tenant's share of costs ("**Tenant's Share of Government Center Road Costs**") and the basis for such allocation. Tenant shall be provided with an opportunity to review Tenant's Share of Government Center Road Costs and provide Landlord with any comments thereon or objections thereto prior to its adoption. Following formal adoption of a cost plan, Tenant shall pay to Landlord Tenant's Share of Government Center Road Costs as provided in the cost plan or as otherwise agreed to by the Parties.

After initial adoption of the cost plan, Landlord may, as needed based upon the circumstances, adjust and reallocate the amount of costs to properties within the Government Center. In the event Landlord changes the amount of Tenant's Share of Government Center Road Costs, Landlord shall provide Tenant with written notice of the adjusted amount as provided in the cost plan.

Nothing herein shall limit the right of Tenant to audit the amounts of the Road Costs and to contest or object to any of such amounts for any such adjustment.

### **2.3 Permitted Contests.**

2.3.1 Separate Tax Statement. If the tax statement covers only the Premises, Tenant, at its sole cost and expense, may by appropriate legal proceedings conducted in good faith and with reasonable diligence, contest the amount or validity or application, in whole or in part, of any Imposition or of any lien therefor imposed upon the Premises. Tenant shall give Landlord reasonable notice of the commencement and final disposition of such proceedings. Any refunds obtained pursuant to any contest conducted by Tenant shall be payable to Tenant, and Tenant is authorized to collect the same.

## **Section 3**

### **CONSTRUCTION; ALTERATIONS; OWNERSHIP; MAINTENANCE**

3.1 Tenant's Construction. Tenant shall have no obligation to construct any Initial Improvements or other Improvements on the Property; provided, however, Landlord shall have the right to terminate the Lease and recapture the Premises under circumstances as provided in Section 15, below. In the event that Tenant commences construction of any Improvements on the Property, all construction shall be performed in a good and workmanlike manner, and in substantial compliance with all applicable laws of all governmental agencies having jurisdiction over such work. If Tenant commences construction of any Improvements on the Property, Tenant shall diligently pursue such construction to completion. Until such time as Tenant is prepared to commence construction of the Initial Improvements on the Premises, Tenant shall permit the continued use of 1<sup>st</sup> Street by Landlord and the public as it is being used as of the Effective Date.

3.2 Permits; Compliance With Codes. Tenant, at its sole cost and expense, shall obtain all project approvals/permits and other licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements and any subsequent Improvements, repairs, replacements or

renewals to the Premises as required by applicable laws. As the owner in fee of the Premises, Landlord shall sign applications upon request of Tenant which may be required to facilitate Tenant's construction, maintenance and operation of the Premises and to allow Tenant to apply for any necessary project approvals/permits and entitlements, easements and other similar matters. Landlord's signature upon any such application shall be strictly for the purposes of allowing Tenant to submit such applications, and shall in no event be deemed a waiver by Landlord of its duties and obligations as a public entity and regulatory body. Landlord agrees to cooperate reasonably with Tenant and all governmental authorities having jurisdiction to facilitate Tenant's construction, maintenance and operation of the Premises, including, without limitation, Landlord's joinder in documents relating to the granting of the project approvals/permits and entitlements, easements and other similar matters.

**3.3 Demolition/Hazardous Materials Cleanup Work.** Tenant is fully aware and informed that the Premises had certain buildings, fixtures, improvements such as paved parking areas, and roadways ("**Pre-existing Improvements**") located thereon that may not have been removed by Landlord prior to the Effective Date and which will need to be demolished and removed for Tenant to construct its Improvements. To the extent that Landlord has not itself demolished and removed the Pre-existing Improvements prior to the Effective Date, Tenant may demolish and remove any remaining Pre-existing Improvements on the Premises, and may remove any "**Hazardous Substances**" (as defined in Section 1.4.8.3(b)) present on the Premises, at Landlord's cost and expense. Tenant shall provide Landlord for its review and approval its plan and schedule for demolition of the remaining Pre-existing Improvements together with the estimated costs associated with such plan within (60) days of the Effective Date. Landlord shall have thirty (30) days to review the plan and shall notify Tenant whether it approves the plan or if it has any questions, comments, or suggestions for change in scope to the plan. Tenant shall incorporate into the work such reasonable recommendations as Landlord may propose to the extent that such recommendations reduce the costs of demolition and remediation to Landlord without unreasonably impacting the progress of the work or delaying the construction of the Improvements, increasing the liability of Tenant, or affecting the quality of the construction.

All actual costs and expenses as verified by Landlord which are incurred by Tenant in performing the demolition and removal set forth in this Section 3.3 shall be credited against the Rent due under this Lease as provided in Section 1.3.7.2, above, below until Tenant shall have recaptured all of its costs and expenses in performing such demolition and removal. To the extent it results in a cost-savings compared to off-site disposal, is practical and is consistent with Tenant's scheduling, Improvements plans, and geotechnical recommendations, so long as such use of the materials meets all permissible state and federal standards for disposal, Tenant agrees to dispose of any concrete or any material not containing Hazardous Substances by pulverizing such materials and using such materials as in-fill on the Premises.

The demolition work, but not the on-site Improvements or construction of Tenant's Building, is subject to the payment of not less than prevailing wages in accordance with Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing with Section 1720). Tenant shall notify its contractors and/or subcontractors that the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of

worker needed to perform the demolition work under the contract which will be awarded to the successful bidder. Tenant shall keep, or cause to be kept, all records and make all payments, of any kind, that may be required for compliance with said laws and regulations.

Tenant is aware of and has received a copy of that certain Phase I Environmental Site Assessment Report, dated September 2002, prepared by URS Corporation. If any Hazardous Substances are discovered on the Premises prior to or during Tenant's demolition or construction work, then Tenant shall remediate such Hazardous Substances as required by applicable law, at Landlord's sole cost and expense, pursuant to a mitigation plan reasonably acceptable to both Tenant and Landlord, and Landlord shall otherwise be responsible for such Hazardous Substances. Any Hazardous Substances which must be transported and disposed by Tenant under this Section 3.3 shall be transported and disposed of in Landlord's name and at Landlord's cost. Landlord shall sign all manifests as the generator of such Hazardous Substances. Landlord shall review, comment on, accept, or reject any plan and cost estimate prepared by or for Tenant with respect to the remediation of Hazardous Substances within ten (10) days of receipt thereof.

Tenant shall submit to Landlord copies of costs, payments, receipts, invoices, manifests, receipts, permits, plans, reports, letters and other pertinent information that Landlord may request to verify the costs and total reimbursement amount and to verify the process and procedure of the demolition and cleanup work. Demolition costs shall not include any costs for demolition and realignment of 1<sup>st</sup> Street or the associated roundabout, or any site development work for which Tenant will receive credit pursuant to Section 3.4, below.

**3.4 Extraordinary Development Costs.** In order to construct its Improvements on the Premises in accordance with Tenant's development approvals, Tenant will be required to incur certain additional development costs which are unique to the Premises and which the Parties agree exceed those that would ordinarily be necessary for development of a project of this nature, including, but not limited to, removal and relocation of utilities on the Premises which serve the Placer County Government Center, construction of additional infrastructure to meet fire flow requirements due to inadequate water pressure serving the Premises, encasement of canals on or adjacent to the Premises, construction of retaining walls due to grade differences on the Premises, and construction of additional necessary roadway improvements on and off the Premises. Tenant shall submit to Landlord copies of its costs, payments, receipts, invoices, permits, plans, and other pertinent information that Landlord may request to verify amounts paid by Tenant for the aforementioned work. The actual costs and expenses incurred by Tenant and approved by Landlord shall be credited against the Base Rent coming due under this Lease as provided in Section 1.3.7.1, above, in a total amount not to exceed One Million Dollars (\$1,000,000.00). The total dollar limitation in this Section 3.4 shall not apply to work performed by Tenant pursuant to Section 3.3. Tenant shall be responsible for all other costs and expenses incurred to construct its Improvements on the Premises in accordance with Tenant's development approvals.

In order to provide coordination and compatibility of Landlord's existing infrastructure on its property with the utility and roadway improvements that are required by Tenant's development approvals to permit Tenant's Use of the Premises, Tenant shall submit for

other personal property), and (ii) in those instances where any such equipment was anchored to the floor, cause any anchoring bolts or similar connectors to be ground down flush with the flooring; and

(c) in connection with the Fuel Facility, Tenant shall remove all fuel tanks, product piping, fuel dispensers and other equipment, and shall backfill any areas from which the fuel tanks were removed, but shall not be obligated to remove the canopy, columns, kiosk or curbing in the Fuel Facility area. Tenant shall leave the Premises free and clear of any Hazardous Substances on the Premises arising as a result of Tenant's use of the Property that is required to be remediated by applicable authorities and Tenant's obligation to indemnify Landlord pursuant to Section 10.2, below, for any violation of any Environmental Law or for the later-incurred costs of remediating the presence of Hazardous Substances on the Property which arises out of Tenant's use of the Premises, including operation of the Fuel Facility, shall survive the termination of this Lease.

3.8.2 No Obligation to Repair. Except as expressly provided for in this Section 3.8, Section 6.1, or Section 6.2, Tenant shall not be responsible to (a) remove any other fixtures, (b) level the floor slab (and Landlord hereby expressly acknowledges that upon removal of Tenant's equipment there will be holes, channels and differences in grade between the former location of equipment and the floor slab); (c) replace any capital items, including, without limitation, any HVAC equipment, electrical panels, roof, windows or skylights, which may be or may become dysfunctional prior to delivery of possession of the Premises to Landlord; or (d) perform any other repairs or make any improvements to the Premises; provided, however, Tenant shall leave Tenant's Building in a condition such that it is not in violation of applicable building codes and all openings, including but not limited to any doors, windows and the roof, shall be secured so that the Building is fully closed and does not constitute an attractive nuisance.

3.8.3 Abandoned Equipment. Tenant's machinery, equipment and personal property not removed by Tenant at expiration or sooner termination of this Lease or within a reasonable time thereafter shall be considered abandoned and Landlord may dispose of such property, in accordance with applicable laws governing abandoned property in effect at the time of abandonment, with all costs thereof to be paid by Tenant.

3.9 Mechanic's Liens. In the event any mechanic's lien is filed against the Premises, the party permitting or causing such lien to be filed (the "**Permitting Party**") hereby covenants promptly either (a) to pay the same and have it discharged of record, (b) to take such action as may be required to reasonably and legally object to such lien, or (c) to have the lien removed from the Premises, and in all events agrees to have such lien discharged prior to the entry of judgment for foreclosure of such lien. Upon request of the other party (the "**Non-Permitting Party**"), the Permitting Party agrees to furnish such security or indemnity as may be required, to and for the benefit of the Non-Permitting Party, to permit an endorsement to the Non-Permitting Party's title policy to be issued relating to the Non-Permitting Party's property without showing thereon the effect of such lien. If Landlord or Tenant fails to comply with the foregoing provisions, the Non-Permitting Party is hereby granted the right, but not the obligation, to bond against or otherwise discharge any such lien and, if the Non-Permitting Party exercises this right, the Permitting Party promptly shall reimburse the Non-Permitting Party upon demand for any

and all costs and expenses incurred, including, without limitation, court costs and attorneys' fees, in connection therewith.

**3.10 Signage.** Tenant shall have the unrestricted right to place, construct, locate and relocate on any portion of the Premises and/or the Tenant's Building, from time to time and at any time, any and all signs which Tenant deems appropriate in its sole discretion, subject to applicable law. Landlord shall sign applications required to allow Tenant to apply for any necessary sign variances desired by Tenant.

#### **Section 4 ALTERATIONS, ADDITIONS AND REPAIRS**

**4.1 Alterations.** From time to time, in its sole and absolute discretion, Tenant shall have the right, subject to compliance with all applicable regulatory requirements, to make any and all repairs, alterations and additions to the Premises and the Improvements, whether interior, exterior, structural or non-structural, including the right to relocate all exterior customer and loading doors and entry ways in the Building, without obtaining Landlord's consent. Without limiting the generality of the foregoing, Tenant shall be permitted to install telecommunications equipment on the Premises and/or the Building related to the conduct of Tenant's business so long as Tenant first coordinates with Landlord, to design and construct such equipment in a manner to ensure that the telecommunication equipment will not interfere with the County of Placer's governmental telecommunications operations, such as emergency services and law enforcement. Once installed, Tenant agrees to modify such equipment should Costco's use of its equipment interfere with the County of Placer's governmental operations. Landlord agrees to execute any and all instruments necessary to obtain licenses and permits from the applicable governmental authorities in order to make such repairs, alterations and additions.

**4.2 Maintenance and Refuse Disposal.** Tenant shall maintain and keep clean the Premises, Improvements and the Building in good condition and repair, ordinary wear and tear and damage by Casualty or Condemnation excepted. Landlord shall have no obligation to maintain the Premises, Improvements or the Building. Tenant shall maintain and be responsible for the costs of regular refuse and garbage disposal service and shall not allow the accumulation of refuse, garbage or litter on the Premises. Tenant shall maintain all landscaping on Premises including routine mowing, weeding, and other treatments to maintain landscaping.

#### **Section 5 TENANT FINANCING**

##### **5.1 Definitions.**

**5.1.1 Institutional Investor.** The term "Institutional Investor" as used in this Lease shall refer to a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, college, university, state or local governmental authority, real estate investment trust, pension fund and any other financial institution that is actively engaged in commercial real estate financing and that has assets in excess of One

Hundred Million Dollars (\$100,000,000) at the time the Leasehold Mortgage loan is made, and subsidiaries of any of the foregoing that are regularly engaged in the business of making real estate mortgage loans. In addition to the foregoing, an Institutional Investor may also be any partnership, corporation, trust or other legally recognized entity (a “**Special Purpose Lender**”) formed for the purpose of issuing debt, securities or other obligations, the proceeds of the sale of which shall be used to make a loan to be secured by, inter alia, a Leasehold Mortgage.

5.1.2 Leasehold Estate. The term “**Leasehold Estate**” as used in this Lease shall mean the estate of Tenant created by this Lease upon and subject to all the terms and conditions of this Lease.

5.1.3 Leasehold Mortgage. The term “**Leasehold Mortgage**” as used in this Lease shall include a mortgage, a deed of trust, and any other security instrument or instruments by which Tenant’s Leasehold Estate is mortgaged, conveyed, assigned, or otherwise transferred to secure a debt or other obligation, including, without limitation, a Purchase Money Leasehold Mortgage.

5.1.4 Leasehold Mortgagee. The term “**Leasehold Mortgagee**” as used in this Lease shall refer to a holder of a Leasehold Mortgage who has given notice to Landlord and whose notice has been received by Landlord as provided in Section 5.3. A “**designee**” of a Leasehold Mortgagee shall mean a subsidiary or other entity designated by a Leasehold Mortgagee to acquire any interest in the Leasehold Estate as contemplated by this Section 5.

5.1.5 Purchase Money Leasehold Mortgage. The term “**Purchase Money Leasehold Mortgage**” as used in this Lease shall mean a Leasehold Mortgage taken back, retained by, or granted to Tenant upon a sale and assignment of the Leasehold Estate to secure payment of any portion of the purchase price or any other obligations of the purchaser and assignee in connection with such sale and assignment.

5.1.6 Foreclosure. The term “**Foreclosure**” or “**foreclosure**” as used in this Lease with respect to a Leasehold Mortgage shall include a judicial sale, nonjudicial sale, trustee’s sale or other similar realization proceedings.

## 5.2 Leasehold Mortgages Authorized.

5.2.1 Leasehold Mortgages Authorized. On one or more occasions Tenant may take back a Purchase Money Leasehold Mortgage upon a sale and assignment of the Leasehold Estate or may mortgage or otherwise encumber Tenant’s Leasehold Estate to an Institutional Investor under one or more Leasehold Mortgages and assign this Lease as security for such Leasehold Mortgage or Leasehold Mortgages.

5.2.2 No Mortgage on Fee. Tenant shall not place or create any mortgage, deed of trust, or other lien or encumbrance affecting Landlord’s fee interest in the Premises or Landlord’s interest in this Lease, and all financing of the Premises by Tenant shall, to the extent the same is secured by the Premises, be secured by one or more Leasehold Mortgages pursuant to the terms of this Section 5.

### **5.3 Notice to Landlord.**

5.3.1 Required Notice. Each time Tenant shall take back a Purchase Money Leasehold Mortgage upon a sale and assignment of the Leasehold Estate or shall mortgage Tenant's Leasehold Estate to an Institutional Investor, the holder of such Leasehold Mortgage shall provide Landlord with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. Following receipt of such notice by Landlord, the provisions of this Section 5 shall apply in respect to such Leasehold Mortgage. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgagee, notice of the new name and address shall be provided to Landlord.

5.3.2 Acknowledgement of Notice. If requested by the terms of such notice, Landlord shall promptly upon receipt of a communication purporting to constitute the notice provided for by Section 5.3.1 hereof acknowledge in writing receipt of such communication as constituting the notice provided for by Section 5.3.1 hereof, or in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 5.3.1 and specify the basis of such rejection.

5.3.3 Amendments to Leasehold Mortgage. After Landlord has received the notice provided for by Section 5.3.1 hereof, Tenant, upon being requested to do so by Landlord, shall with reasonable promptness provide Landlord with copies of the Leasehold Mortgage. Tenant shall thereafter upon request of Landlord also provide Landlord from time to time with a copy of each material amendment, modification or supplement to such instruments.

5.4 Protection of Leasehold Mortgagees. If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 5, then so long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

5.4.1 Consent. No cancellation, surrender or modification of this Lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee, except that such consent shall not be required with respect to a termination in accordance with this Section 5 or Section 7 upon condemnation.

5.4.2 Notice of Default. Landlord, upon providing Tenant any Notice of (a) any Event of Default under this Lease, (b) a termination of this Lease, or (c) a matter on which Landlord may predicate or claim a default, shall at the same time provide a copy of such Notice to every Leasehold Mortgagee of which Landlord has been provided notice in accordance with Section 5.3 hereof. Landlord shall have no liability for the failure to give any such Notice, except that no such Notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Leasehold Mortgagee of which Landlord has been provided notice in accordance with Section 5.3 hereof. From and after such Notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such Notice upon it, for remedying any default or acts or omissions which are the subject matter of such Notice, or causing the same to be remedied, as is given

Tenant after the giving of such Notice to Tenant, plus in each instance, the additional periods of time specified in Sections 5.4.3 and 5.4.4 hereof to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are specified in such Notice. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose.

5.4.3 Notice to Leasehold Mortgagee. Anything contained in this Lease to the contrary notwithstanding, if any Event of Default shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such Event of Default or the act or omission which gave rise to such Event of Default, Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination if the nature of such Event of Default is the failure to pay a sum of money to Landlord and at least ninety (90) days in advance of the proposed effective date of such termination in the event of any other Event of Default. The provisions of Section 5.4.4 hereof shall apply only if, during such thirty (30) or ninety (90) day termination notice period, any Leasehold Mortgagee shall:

(a) Notify Landlord of such Leasehold Mortgagee's desire to nullify such Notice; and

(b) Pay or cause to be paid all Rent and other payments (i) then due and in arrears as specified in the termination Notice to such Leasehold Mortgagee and (ii) any of the same which become due during such thirty (30) or ninety (90) day period as and when they become due; and

(c) Comply or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee; provided, however, that such Leasehold Mortgagee shall not be required during such thirty (30) or ninety (90) day period to cure or commence to cure any Event of Default consisting of (i) Tenant's failure to satisfy and discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgagee, or (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee, such as, by way of example only, the bankruptcy of Tenant.

5.4.4 Procedure on Default.

(a) If Landlord shall elect to terminate this Lease by reason of any Event of Default, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 5.4.3, this Lease shall not be deemed terminated so long as such Leasehold Mortgagee shall:

(i) Pay or cause to be paid the Rent and other monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease excepting (A) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Leasehold Estate junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee, and (B) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee, such as, by way of example only, the bankruptcy of Tenant; and

(ii) If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same with due diligence.

Nothing in this Section 5.4.4(a), however, shall be construed to extend this Lease beyond the original Term hereof, nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If the Event of Default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(b) If a Leasehold Mortgagee is complying with Section 5.4.4(a), upon the acquisition of the Leasehold Estate herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise and the discharge of any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or the Leasehold Estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. Notwithstanding the foregoing, the purchaser at any sale of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the Leasehold Estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, including, without limitation, a Leasehold Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section 5.4.4 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment only for as long as such purchaser or assignee is the holder of this Leasehold Estate. If the Leasehold Mortgagee or its designee shall become holder of the Leasehold Estate and if the Premises shall have been or become materially damaged on, before or after the date of such purchase and assignment, the Leasehold Mortgagee or such designee shall be obligated to repair, replace or reconstruct the Improvements only to the extent Tenant is required to do so by the terms of Section 6 of this Lease and then only to the extent of the insurance proceeds received by the Leasehold Mortgagee

or such designee by reason of such damage. Should such net insurance proceeds be insufficient to repair, replace or reconstruct the Improvements and should the Leasehold Mortgagee or such designee choose not to fully reconstruct the Improvements, such failure shall entitle Landlord to terminate this Lease pursuant to Section 13 hereof, and the net insurance proceeds shall be distributed to the parties as provided in Section 6.8 hereof; provided, however, that the Leasehold Mortgagee shall not be entitled to receive insurance proceeds in excess of the then outstanding balance of the debt secured by the Leasehold Mortgage.

(d) Notwithstanding any other provision of this Lease, any sale of this Lease and of the Leasehold Estate hereby created in any proceedings for the Foreclosure of any Leasehold Mortgage, or the assignment or transfer of this Lease and of the Leasehold Estate hereby created in lieu of the Foreclosure of any Leasehold Mortgage, shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the Leasehold Estate hereby created.

(e) Any Leasehold Mortgagee or other acquirer of the Leasehold Estate pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings, and any tenant under a New Lease, may, upon acquiring the Leasehold Estate, without further consent of Landlord, sell and assign the Leasehold Estate on such terms and to such persons and organizations (each, a "**Subsequent Assignee**") as are acceptable to such Leasehold Mortgagee or acquirer and thereafter be relieved of all obligations under this Lease provided such Subsequent Assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease.

**5.5 New Lease.** In the event of the termination of this Lease as a result of an Event of Default, Landlord shall promptly, within a reasonable time, provide each Leasehold Mortgagee with written notice that the Lease has been terminated (the "**New Lease Notice**"), together with a statement of all sums which would at that time be due under this Lease but for such termination and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease (the "**New Lease**") of the Premises with such Leasehold Mortgagee or its designee for the remainder of the Term of this Lease, effective as of the date of termination, at the same Rent and upon the terms, covenants and conditions of this Lease; provided:

5.5.1 Request. Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives Landlord's New Lease Notice given pursuant to this Section 5.5.

5.5.2 Procedure. Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination, including interest as allowed by law, and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees and costs of any mortgagee title insurance policy, which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or any other party in interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to tenant named therein, as an offset against the sums otherwise due under this Section 5.5.2 or under the New Lease, an amount equal to the net income received by Landlord

from the Premises during the period from the date of termination of this Lease to the date of the beginning of the term of such New Lease, if any. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 5.5.2, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy upon execution of the New Lease, the Leasehold Mortgagee or such designee shall agree to pay any additional sum ultimately determined to be due, plus interest on such sum as provided in this Lease, and such obligation shall be adequately secured. The parties shall cooperate promptly to determine any disputed amount.

5.5.3 Cure. Such Leasehold Mortgagee or such designee shall agree to remedy any of Tenant's defaults of which such Leasehold Mortgagee was notified by Landlord's New Lease Notice and which are reasonably capable of being so cured by Leasehold Mortgagee or such designee.

5.5.4 Priority. Any New Lease made pursuant to this Section 5.5 shall have the same priority with respect to any mortgage or other lien, charge or encumbrance on the Premises as this Lease, and tenant under such New Lease shall have the same right, title and interest in and to the Premises and the Improvements as Tenant had under this Lease as of the date of the New Lease.

5.6 New Lease Priorities. If more than one Leasehold Mortgagee shall request a New Lease pursuant to Section 5.5, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. Landlord, without liability to Tenant or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business in the state where the Premises is located as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

5.7 Certain Defaults. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of rights hereunder to cure any Event of Default which by its terms is not reasonably susceptible of being cured by such Leasehold Mortgagee or such designee in order to comply with the provisions of Sections 5.4.3 or 5.4.4 or as a condition of entering into the New Lease provided for in Section 5.5. The financial condition of any Leasehold Mortgagee or successor to Tenant's interest under this Lease or a New Lease shall not be a consideration in the determination of the reasonable susceptibility of cure of such Event of Default. No Event of Default, the cure of which, and no obligation of Tenant, the performance of which, requires possession of the Premises shall be deemed reasonably susceptible of cure or performance by any Leasehold Mortgagee or successor to Tenant's interest under this Lease or a New Lease not in possession of the Premises, provided such holder is complying with the requirements described in Section 5.4.4(a)(ii) hereof and, upon obtaining possession, promptly proceeds to cure any such Event of Default then reasonably susceptible of cure by such Leasehold Mortgagee or successor. No Leasehold Mortgagee shall be required to cure the bankruptcy, insolvency or any related or similar condition of Tenant.

**5.8 Eminent Domain.** Tenant's share, as provided in Section 7 of this Lease, of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions of Section 8, be disposed of as provided for by any Leasehold Mortgage.

**5.9 Insurance.** A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder. The Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, or for Tenant's interest in such proceeds, and in such event the Leasehold Mortgage shall control.

**5.10 No Merger.** So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Premises and the Leasehold Estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold Estate by Landlord or by Tenant or by a third party, by purchase or otherwise.

**5.11 Notices.** Notices from Landlord to the Leasehold Mortgagee shall be mailed to the address furnished Landlord pursuant to Section 5.3.1 and those from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 16.12 hereof. All Notices from any Leasehold Mortgagee or Landlord shall be given in the manner described in Section 16.12 and shall in all respects be governed by the provisions of that section.

**5.12 Erroneous Payments.** No payment made to Landlord by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and any Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken Notice or demand shall be entitled to the return of any such payment or portion thereof provided the Leasehold Mortgagee shall have made demand therefor not later than twelve (12) months after the date of its payment.

**5.13 Bankruptcy.** In the event of any proceeding by either Landlord or Tenant under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect:

**5.13.1 Rejection of Lease by Tenant.** If this Lease is rejected in connection with a bankruptcy proceeding by Tenant or a trustee in bankruptcy for Tenant, such rejection shall be deemed an assignment by Tenant to the Leasehold Mortgagee (or if there is more than one Leasehold Mortgagee, to the one highest in priority) of the Leasehold Estate and all of Tenant's interest under this Lease, in the nature of an assignment in lieu of foreclosure, and this Lease shall not terminate and the Leasehold Mortgagee shall have all the rights of the Leasehold Mortgagee under this Section 5 as if such bankruptcy proceeding had not occurred, unless such Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Landlord within thirty (30) days following the later of (a) rejection of the Lease by Tenant or Tenant's trustee in bankruptcy or (b) approval of such rejection by the bankruptcy court. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Tenant or the trustee in connection with any such proceeding, the rights of any Leasehold Mortgagee to a New Lease from Landlord pursuant to Section 5.5 hereof shall not be affected thereby.

5.13.2 Termination of Lease by Landlord. If this Lease is rejected or otherwise terminated in connection with a bankruptcy proceeding by Landlord or by Landlord's trustee in bankruptcy:

(a) Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of all Leasehold Mortgagees and the right to treat this Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee, whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and each Leasehold Mortgagee shall be required as a condition to treating this Lease as terminated in connection with such proceeding.

(b) Unless this Lease is treated as terminated in accordance with Section 5.13.2(a) hereof, this Lease shall continue in effect upon all the terms and conditions set forth herein, including Rent, but excluding requirements that are not then applicable or pertinent to the remainder of the Term. Thereafter, Tenant or its successors shall be entitled to any offsets against Rent payable hereunder for any damages arising from such rejection or other termination and, notwithstanding any provision of this Lease to the contrary, any such offset properly made shall not be deemed a default under this Lease. Only after Tenant fails to pay Landlord any amount previously offset within ten (10) business days after a final and nonappealable judgment finding that Tenant is required to pay such amount to Landlord shall Landlord have, subject to all other terms and conditions of this Lease, the rights and remedies provided in this Lease with respect to the nonpayment of Rent. The lien of any Leasehold Mortgage then in effect shall extend to the continuing possessory rights of Tenant following such rejection or other termination with the same priority as it would have enjoyed had such rejection or other termination not taken place.

(c) If, in any bankruptcy or similar proceeding in which Landlord is the debtor, the Premises are sold or proposed to be sold free and clear of the interests of Tenant under this Lease, each of Tenant and any Leasehold Mortgagee shall be entitled to: (i) receive prior written notice of such proposed sale not less than ten (10) business days prior to the earliest date such sale or proposed sale is to or could occur; (ii) contest such sale or proposed sale; and (iii) petition for and receive adequate protection of their respective interests under this Lease, it being acknowledged and agreed that monetary damages are not, and will not be, adequate protection thereof.

**5.14 Leasehold Mortgagee as Trustee.** A Leasehold Mortgagee (other than Tenant under a Purchase Money Leasehold Mortgage) may hold and disburse any funds received as the proceeds of hazard insurance or condemnation.

**5.15 Rights Against Tenant.** The rights of a Leasehold Mortgagee hereunder shall not diminish any right or claim of Landlord against Tenant for damages or other monetary relief under this Lease.

**5.16 Lease Amendments Requested by Leasehold Mortgagee.** In the event Tenant seeks to obtain or modify a Leasehold Mortgage, and the applicable Leasehold Mortgagee requires amendments to this Section 5, then Landlord agrees to amend this Lease from time to

time to the extent requested by the Leasehold Mortgagee, provided that the form and content of such amendments are not unreasonable and that such proposed amendments do not reduce the Rent or other obligations of Tenant hereunder or similarly materially and adversely affect the rights of Landlord hereunder or its interest in the Premises. All reasonable expenses incurred by Landlord in connection with any such amendment shall be paid by Tenant.

## Section 6 DAMAGE OR DESTRUCTION

**6.1 Tenant's Improvements.** In the event of damage to or destruction of Tenant's Improvements:

### 6.1.1 Repair or Restoration of Tenant's Building.

6.1.1.1 Tenant Obligated. In the event of any damage to or destruction of Tenant's Building, Tenant shall only be obligated repair or reconstruct Tenant's Building if: (i) the cost of repairing or reconstructing Tenant's Building to the condition and form immediately prior to such damage or destruction, as reasonably determined by Tenant, is twenty percent (20%) or less of the then full replacement cost of Tenant's Building (using new materials), (ii) repairing or reconstructing any such damage or destruction as required hereby may, as reasonably determined by Tenant, be performed under then existing laws (or may be performed with minor and non-material changes to Tenant's Building as reasonably determined by Tenant), and (iii) the event or circumstance which caused such damage or destruction is the type of peril typically insured against by the then current industry standard broad form of "all-risk" property insurance (i.e. as of the date hereof, the "Causes of Loss-Special Form" of property insurance) which Tenant shall be required to carry in accordance with Section 6.5.5, below. If Tenant shall be so obligated, then Tenant shall effect such repair and reconstruction of Tenant's Building to substantially its condition prior to such damage or destruction, with such alterations thereto as Tenant shall reasonably determine prudent or valuable under the circumstances, taking into account, without limitation, applicable laws, then-prevailing construction and engineering practices and market conditions.

6.1.1.2 Tenant Not Obligated. In the event of any damage to or destruction of Tenant's Building that Tenant is not obligated to repair or reconstruct pursuant to Section 6.1.1.1, Tenant, with the prior written consent of any Leasehold Mortgagee, may elect to: (i) terminate this Lease, (ii) permit this Lease to continue in full force and effect, without Tenant being obligated to repair, replace, reconstruct or rebuild Tenant's Building, but subject to Tenant's obligation to raze Tenant's Building in accordance with Section 6.1.3, or (iii) reconstruct Tenant's Building in such size and configuration as Tenant shall reasonably determine to be prudent or valuable under the circumstances, taking into account, without limitation, applicable laws, then-prevailing construction and engineering practices, and market conditions. Tenant shall provide Notice to Landlord of its election within one hundred fifty (150) days after the determination by Tenant of the reasonable costs of such repair or restoration. If Tenant fails to timely provide Landlord such Notice, Tenant's right to make such an election shall not expire until Landlord notifies Tenant in writing that Tenant failed to make such an election and Tenant fails, within thirty (30) days from receipt of Landlord's Notice, to so make

an election. If Tenant fails to provide Landlord with Notice of Tenant's election prior to the expiration of such 30-day period, Tenant shall be deemed to have elected to proceed under clause "i" above.

**6.1.2 Repair or Restoration of Fuel Facility and Other Improvements.** Notwithstanding the provisions of Section 6.1.1 hereof, in no event shall Tenant be obligated to repair or reconstruct the Fuel Facility or any other Improvements, other than Tenant's Building and site improvements, following damage or destruction to same. If Tenant elects not to repair or reconstruct the Fuel Facility or any other Improvements (other than Tenant's Building and site improvements), Tenant shall, at its sole cost and expense and as soon as reasonably possible after making the applicable election, raze, clear and improve the applicable portions of the Fuel Facility or other improvements not to be reconstructed in accordance with the standards set forth in Section 6.1.3 hereof. Except as may be otherwise provided for herein, no damage to or destruction of such Improvements shall permit Landlord or Tenant the right to terminate this Lease.

**6.1.3 Performance of Repair or Razing.** If Tenant, pursuant to the terms hereof, is obligated to or otherwise elects to repair, replace, reconstruct or rebuild Tenant's Building or Fuel Facility, or any portion thereof, the same shall be effected at Tenant's cost and expense (which may be paid from insurance proceeds made available pursuant to Section 6.8.2). Tenant shall diligently commence and continuously carry out such repair, replacement, reconstruction or rebuilding to full completion using commercially reasonable efforts, taking into account, without limitation, time for planning and engineering, obtaining governmental approvals, ordinary constructions means and methods and delays due to any Event of Force Majeure. If the terms of any Leasehold Mortgage require any material portion of any property insurance proceeds to be applied to reduce obligations secured by the Leasehold Mortgage, then Tenant shall have a reasonable period of time to obtain alternative financing to effect such repairs, but the Rent shall not abate. If Tenant elects to terminate this Lease or elects to continue this Lease without repairing, replacing, reconstructing or rebuilding Tenant's Building, Fuel Facility or other Improvements, Tenant shall, at its sole cost and expense and as soon as reasonably possible after making the applicable election, raze Tenant's Building, Fuel Facility or other Improvements (as applicable) or such parts thereof that have been damaged or destroyed, clear the Premises of all debris and level, clear and improve all areas not restored to their original use with, at the option of Tenant, either landscaping or parking area of like standard and design.

**6.1.4 Tenant's Determinations.** The determinations required under this Section 6.1 shall be made by Tenant acting reasonably or, if a Leasehold Mortgage shall then be in effect, by the Leasehold Mortgagee acting reasonably or by an independent qualified insurance appraiser selected by the Leasehold Mortgagee.

**6.2 During Last Ten (10) Years of Term.** Notwithstanding anything to the contrary set forth in this Section 6, in the event of any damage to or destruction of any of the Improvements located on the Premises (including, without limitation, Tenant's Building and/or Improvements) during the last ten (10) years of the Initial Term or at any time during a Renewal Period, if the cost of repairing, restoring, replacing or rebuilding such Improvements to substantially the same condition as existed immediately prior to such damage or destruction

exceeds Five Hundred Thousand Dollars (\$500,000), as reasonably determined by Tenant, then Tenant may elect to terminate this Lease and shall at its sole cost and expense and as soon as reasonably possible after making the election, raze Tenant's Building, Fuel Facility or other Improvements (as applicable) or such parts thereof that have been damaged or destroyed, clear the Premises of all debris and level, clear and improve all areas not restored with, at the option of Tenant, either landscaping or parking area of like standard and design. Tenant shall provide Notice to Landlord of its election to terminate within one hundred fifty (150) days after the determination by Tenant of the reasonable costs of such repair or restoration. If Tenant fails to timely provide Landlord such Notice, Tenant's right to elect to terminate shall not expire until Landlord notifies Tenant in writing that Tenant failed to make such an election and Tenant fails, within thirty (30) days from receipt of Landlord's Notice, to elect to terminate. If Tenant fails to provide Landlord with Notice of Tenant's election to terminate prior to the expiration of such 30-day period, Tenant shall be deemed to have elected to terminate this Lease.

**6.3 No Termination of Lease.** This Lease and the Term shall not terminate or be terminated because of damage to or destruction of any Improvements on or in the Premises, except under and in accordance with the provisions of this Section 6 or Section 15.1.2, below.

**6.4 Acquisition of Insurance Policies.** Each party, as applicable, shall procure and maintain, or cause to be procured and maintained, the insurance coverages described in this Section 6. The party that is obligated to obtain any such insurance shall do so at its sole cost and expense, subject to reimbursement as may be otherwise agreed.

**6.5 Tenant's Insurance.** Tenant shall procure and maintain, or cause to be procured and maintained, the following types of insurance with respect to any improvements thereon that Tenant is obligated to maintain pursuant to Section 3.7 hereof:

**6.5.1 Commercial General Liability Insurance.** Commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) general aggregate, insuring against claims for bodily injury, personal injury and property damage sustained in, on or about the Property, operations on the Property, independent contractors, products/completed operations, personal and advertising injury and contractual liability.

**6.5.2 Automobile Liability Insurance.** Commercial automobile liability insurance insuring against claims for bodily injury, personal injury and property damage arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles with a combined single limit of not less than Two Million Dollars (\$2,000,000) for each occurrence.

**6.5.3 Workers Compensation and Employer's Liability.** Workers Compensation insurance in accordance with applicable governmental requirements. Employer's liability insurance insuring against claims alleging employer negligence that result in work-related injuries, illness or death that are not covered under applicable workers compensation statutes in an amount not less than Two Million Dollars (\$2,000,000) for each accident or disease.

6.5.4 **Umbrella Liability Insurance.** Umbrella/excess liability insurance that applies in addition to and in excess of the insurance required pursuant to Sections 6.5.1, 6.5.2 and 6.5.3, in the amount of not less than Eight Million Dollars (\$8,000,000) for each occurrence and general aggregate.

6.5.5 **Property Insurance.** Property insurance insuring Tenant's Building (other than property paid for by subtenants or paid for by Tenant for which subtenants have reimbursed Tenant) against loss or damage caused by the insured perils listed below in an amount substantially equal to the full replacement cost of Tenant's Building (excluding footings, foundations and excavations). Such insurance shall (a) provide coverage for damage or destruction caused by those perils insured against by the then current industry standard broad form of "all-risk" property insurance except as hereinafter provided, which as of the date hereof is generally known as the "Causes of Loss-Special Form" of property insurance, (b) include "Boiler and Machinery Coverage" insuring against loss or damage caused by explosion of steam and pressure boilers and similar apparatus located on the Property and (c) include demolition coverage. Tenant shall not be required to maintain insurance for hurricane, earthquake, earth movement, flood, terrorist acts or war risks.

6.5.6 **Builder's Risk Insurance.** During construction of Tenant's Building and during any subsequent restorations, alterations or changes in Tenant's Building that involve work costing in excess of One Hundred Thousand Dollars (\$100,000), contingent liability and builder's risk insurance insuring against claims of physical loss to buildings and building materials on the Property and in transit caused by any of the perils insured against pursuant to Section 6.5.5 hereof in an amount substantially equal to the full replacement cost thereof.

6.5.7 **Pollution Liability Insurance.** So long as a Fuel Facility is being operated on the Premises or an underground storage tank is located on the Premises, and so long as such insurance is available on a commercially reasonable basis, pollution liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence covering liability arising from the sudden and accidental release of pollution on the Premises; provided, however, such insurance shall only be required if Tenant is not Costco Wholesale Corporation or a corporation which is controlled by, controls, or is under common control with Costco Wholesale Corporation, for which Costco Wholesale Corporation fully assumes the responsibilities of Tenant hereunder.

**6.6 Landlord's Insurance.** From and after the Effective Date, Landlord shall maintain at its sole cost and expense, with no right for reimbursement from Tenant, commercial general liability insurance for bodily injury, personal injury and damage to property, naming Tenant as an additional insured, with minimum limits of \$5,000,000.00 combined single limit per occurrence and in the aggregate, with an annual deductible not to exceed \$10,000.00. So long as Landlord is the County of Placer, Landlord shall have the right to self-insure. If Landlord is not the County of Placer or any other political subdivision of the State of California or the State of California, then Landlord shall be required to maintain workers' compensation insurance for Landlord's employees or such similar insurance as then is required by law.

**6.7 Terms of Insurance.**

6.7.1 Evidence of Insurance. Each party, upon written request of the other party, shall provide such other party with evidence of the insurance required of such party hereunder. Such evidence may include a certificate of insurance, a memorandum of insurance or a statement from a licensed insurance broker or insurance company as to the coverage provided. Tenant shall be deemed to satisfy its obligation to provide Landlord with evidence of Tenant's insurance by providing Landlord with on-demand access to Tenant's memorandum of insurance for the insurance coverages indicated thereon. As of the date hereof, Tenant's memorandum of insurance may be viewed at the following website address: [www.marsh.com/moi?client=0847](http://www.marsh.com/moi?client=0847). Unless otherwise agreed, no party shall have the right to review the other party's actual policy documentation.

6.7.2 Terms of Tenant's Insurance. All policies of insurance described in Section 6.5.7: (a) with respect to the coverage required therein, shall be written as primary policies and any other policies maintained by Landlord that may provide overlapping, duplicative or additional coverage shall be deemed excess and non-contributing; (b) shall be written by insurance companies that have a then current A. M. Best's rating of "B+", "VII" or an equivalent rating, or better, and that are licensed, admitted or otherwise authorized to do business in the Governing Jurisdiction; (c) may be provided by group or blanket policies carried by Tenant, provided such group or blanket policies substantially fulfill the requirements specified herein; and (d) with respect to liability insurance, shall be written on an "occurrence based" form and provide contractual liability coverage with respect to any indemnity obligation set forth in this Lease. For the insurance required under Sections 6.5.1, 6.5.2, 6.5.3 and 6.5.4, Landlord and, if requested in writing by Landlord, any mortgagee of Landlord shall be named as an "additional insured". With respect to any party identified as an "additional insured" such policy shall: (a) provide that such policy shall not be canceled without the insurer endeavoring to provide at least thirty (30) days prior written notice to the party identified as an additional insured; (b) provide for severability of interests; and (c) provide that an act or omission of one of the insureds or additional insureds that might otherwise void or reduce coverage shall not void or reduce the coverage as to the other insureds or additional insureds. A party that is to be named as an additional insured need not be named individually or by an endorsement to such policy, but may be named as part of a class or group of parties granted additional insured status under such policy.

6.7.3 Terms of Landlord's Insurance. All policies of insurance described in Section 6.5.7: (a) with respect to the coverage required therein, shall be written as primary policies and any other policies maintained by Tenant that may provide overlapping, duplicative or additional coverage shall be deemed excess and non-contributing; (b) shall be written by insurance companies that have a then current A. M. Best's rating of "B+", "VII" or an equivalent rating, or better, and that are licensed, admitted or otherwise authorized to do business in the Governing Jurisdiction; (c) may be provided by group or blanket policies carried by Landlord, provided such group or blanket policies substantially fulfill the requirements specified herein; and (d) with respect to liability insurance, shall be written on an "occurrence based" form and provide contractual liability coverage with respect to any indemnity obligation set forth herein. For the insurance required under Section 6.5.7, Tenant and, if requested in writing by Tenant,

any subsidiary, proprietary company or corporation, partnership or joint venture of Tenant shall be named as an "additional insured". With respect to any party identified as an "additional insured" such policy shall: (a) provide that such policy shall not be canceled without the insurer endeavoring to provide at least thirty (30) days prior written notice to the parties identified as additional insureds; (b) provide for severability of interests; and (c) provide that an act or omission of one of the insureds or additional insureds that might otherwise void or reduce coverage shall not void or reduce the coverage as to the other insureds or additional insureds. A party that is to be named as an additional insured need not be named individually or by an endorsement to such policy, but may be named as part of a class or group of parties granted additional insured status under such policy.

**6.7.4 Deductibles and Self-Insurance.** Either party shall have the right to have deductibles and/or self-insured retentions as such party determines to be prudent, provided that no party shall have a deductible or self-insured retention exceeding Fifty Thousand and No/100 Dollars (\$50,000.00) unless such party shall have the right to utilize Self-Insurance (as hereinafter defined). If a party (or its Affiliate that is providing the insurance) shall have a net worth of greater than One Hundred Million and No/100 Dollars (\$100,000,000.00), then such party shall have the right to satisfy any or all of its insurance obligations by means of self-insurance, including, without limitation, insurance provided by Affiliates of such party ("**Self-Insurance**"). If a party elects to utilize Self-Insurance, the other party shall have the right to request evidence that the party electing to utilize Self-Insurance satisfies the net worth requirement. If a party is a corporation with publicly traded securities or is otherwise required to file financial statements with the Securities and Exchange Commission, the public filing of such financial statements shall be deemed to satisfy the requirement to provide evidence of such party's net worth. Alternatively, a party shall provide the other party with a copy of its most current quarterly and annual financial reports, certified by an officer of the company. For purposes of the releases and mutual waiver of subrogation and claims provided for in Section 6.9, the amount of any deductible, self-insured retention or proceeds that would have been paid if a party had obtained the insurance required herein from a third party (as opposed to utilizing Self-Insurance) shall be deemed to be a part of the insurance proceeds obtained by such party.

**6.7.5 Limitation of Liability.** The insurance required by this Lease shall not be deemed to limit, release or diminish the liability of Landlord or Tenant, as applicable, including, without limitation, any liability pursuant to the indemnities set forth in Section 10 hereof. The damages recoverable by a party shall not be limited by the amount or scope of coverages required by this Lease.

**6.8 Insurance Proceeds.** All insurance proceeds due from the insurance policies procured pursuant to the provisions of this Lease shall be distributed as specified below, or if not so specified, to the party who acquired such insurance.

**6.8.1 Liability Insurance Proceeds.** If the proceeds of any liability insurance are not paid directly to the claimant and/or to the third party vendors incurring fees and expenses in connection with such claim, then, in absence of any particular itemization or requirement on the use or application of such proceeds, such proceeds shall be paid as follows:

(a) First, to reimburse the party that paid the financial obligations pursuant to any order, judgment or settlement of such claim;

(b) Second, to reimburse the party that incurred any other reasonable third party financial liability in connection with or arising out of such claim, including, without limitation, reasonable third party fees and expenses; and

(c) Third, to the party who acquired the insurance for which the claim was paid, subject to, in the case of Tenant, the terms of any Leasehold Mortgage then in effect, and, in the case of Landlord, the terms of any financing or mortgage of Landlord.

**6.8.2 Property Insurance Proceeds-Application to Restoration.** In the event of any damage to or destruction of any Improvements, if Tenant is required to, or otherwise elects to, repair, replace, reconstruct or rebuild any or all of such Improvements, the proceeds of the insurance collected with respect to such damage or destruction shall be applied to the cost of such repair, replacement, reconstruction or rebuilding. Any proceeds received from Tenant's insurance shall be held by Tenant, unless the provisions of any Leasehold Mortgage currently in effect require the proceeds to be held by such Leasehold Mortgagee. The party to whom such proceeds are distributed shall hold such proceeds in trust pending distribution of such proceeds in accordance with the terms of this Lease. With respect to work performed by Tenant, such proceeds may be distributed in multiple draws upon satisfaction of typical construction loan disbursement requirements, including without limitation, certificate of satisfactory progress or completion, as applicable, by the licensed architect or engineer in charge of the work and conditional or final lien waivers, as applicable. Any amounts payable to Tenant, as applicable, or any Affiliate of such party for work or services performed or materials provided as part of any such repair, replacement, reconstruction or rebuilding shall not exceed competitive rates for such services or materials. Upon completion of such repair, replacement, reconstruction or rebuilding in accordance with the provisions of this Lease, and the full payment of the costs therefor, any insurance proceeds received by a party with respect to such damage or destruction that are not so used shall remain the property of the party that procured such insurance.

**6.8.3 Property Insurance Proceeds-No Restoration.** In the event of any damage to or destruction of any Improvements at the Property and if Tenant is not required to and does not proceed with repair, replacement, reconstruction or rebuilding, or if Tenant elects to terminate this Lease on account of such damage or destruction pursuant to the terms of Section 6 hereof, any such property insurance proceeds received and held by Tenant (or by the Leasehold Mortgagee if the Property is then encumbered by a Leasehold Mortgage and the Leasehold Mortgagee so requires) and not used for repair, replacement, reconstruction or rebuilding shall be disposed of as follows:

(a) First, unless Tenant has already satisfied its obligation to raze pursuant to Section 6.1.2 or Section 6.2 hereof, Landlord shall be awarded an amount reasonably estimated to satisfy such obligation. Such amount may be paid directly to Landlord by the insurance company or otherwise paid to Landlord and, upon receipt, Tenant shall be deemed to have fully satisfied its obligation to so raze.

(b) Second, to Tenant, subject to the terms of any Leasehold Mortgage then in effect.

## **6.9 Releases and Waiver of Subrogation.**

6.9.1 Property Insurance. Landlord hereby releases Tenant, its agents, employees, contractors, officers, directors, members, partners and shareholders, from any and all liability or responsibility to Landlord, or anyone claiming by, through or under Landlord, by way of subrogation or otherwise, for any injury to or death of persons, or damage to or loss of real or personal property caused by or resulting from any peril insured against by any property insurance policy required of, or otherwise carried by, Landlord hereunder, even if such injury, death, damage or loss was caused by the negligence (sole or contributory) of Tenant, or anyone for whom Tenant may be responsible. Tenant hereby releases Landlord, its agents, employees, contractors, officers, directors, members, partners and shareholders, from any and all liability or responsibility to Tenant, or anyone claiming by, through or under Tenant, by way of subrogation or otherwise, for any injury to or death of persons, or damage to or loss of real or personal property caused by or resulting from any peril insured against by any property insurance policy required of, or otherwise carried by, Tenant hereunder, even if such injury, death, damage or loss was caused by the negligence (sole or contributory) of Landlord, or anyone for whom Landlord may be responsible. Landlord and Tenant shall each procure insurance policies with either an acknowledgement of such release or affirmative waiver of subrogation, and with a clause or endorsement to the effect that any such release shall not adversely affect or impair such party's rights under such policies or prejudice the right of the releasor to recover thereunder.

6.9.2 Liability Insurance. Each party shall cause its respective liability insurance policies to prohibit the insurer thereunder from pursuing a claim against an additional insured, its agents, employees, contractors, officers, directors, members, partners and shareholders related to or arising out of a loss that is totally or partially the fault of the acts or omissions of such additional insured, its agents, employees, contractors, officers, directors, members, partners or shareholders. The party that is named as an additional insured shall be afforded coverage regardless of whether the named insured is at fault or a party to any such dispute (i.e. such coverage shall not be limited to vicarious or derivative liability).

6.9.3 Insurance Standards. If insurance policies with the releases and waivers set forth in this Section 6.9 (or a commercially reasonable substantial equivalent) are not obtainable or are obtainable only at a substantial premium over that chargeable without such waiver, the party who is attempting to acquire such release or waiver shall notify the party that is the beneficiary of such release or waiver, and the beneficiary party shall have thirty (30) days thereafter to either: (a) procure such insurance with companies reasonably satisfactory to the other party or (b) agree to pay such additional premium. If the beneficiary party does not timely proceed under clause "(a)" or "(b)" above, then the obligation of the acquiring party to grant such release and obtain such waiver shall be null and void and have no force or effect, but only for the period of time that such release or waiver is not able to be obtained or for the period of time that the beneficiary party elects not to pay the additional cost thereof. If policies with such provisions shall at any time thereafter be obtainable at no substantial additional cost, neither

party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other party.

6.9.4 Applicable Laws. The releases and waivers set forth in this Section 6.9 shall be subject to the applicable laws of the Governing Jurisdiction. In the event that the releases and/or waivers set forth in this Section 6.9 are broader than what is permissible under applicable laws of the Governing Jurisdiction, then the releases and waivers set forth in this Section 6.9 shall be interpreted to be only as broad as is legally permissible.

6.10 Insurance Determinations. The determinations required under this Section 6 shall be made by Tenant acting reasonably, or if a Leasehold Mortgage shall then be in effect by the Leasehold Mortgagee acting reasonably. A Leasehold Mortgagee may select a qualified independent insurance appraiser to make such determinations.

## Section 7 CONDEMNATION

7.1 Total Taking. In the event of the taking or condemnation by any competent authority of the whole or materially all of the Premises at any time during the Term (a "**Total Taking**"), the right of Landlord and Tenant to share in the proceeds of any award for the Premises, the Improvements and damages upon any such Total Taking shall be as follows:

7.1.1 Termination of Lease. The Term shall cease as of the date of possession by the condemnor and all Rent shall be apportioned as of the date of possession.

7.1.2 Removal of Improvements. There shall be paid from the condemnation award any expenses required with respect to the demolition or removal of any remaining Improvements on the Property upon termination of the Lease.

7.1.3 Landlord's and Tenant's Shares. Landlord and Tenant shall each receive the present value of their respective interests in the Leasehold Estate and Improvements, together with interest thereon from the date of taking to the date of payment at the rate paid on the award, and attorney's fees and other costs to the extent awarded. The present values of Landlord's and Tenant's respective interests in the Leasehold Estate and Improvements shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award. Such value shall be determined without regard to any early termination of this Lease due to any taking or condemnation and shall assume that all Renewal Periods have been exercised.

7.2 Partial Taking. In the event of a partial taking or condemnation of the Premises, e.g., a taking or condemnation that is not a Total Taking or a temporary taking (a "**Partial Taking**"):

7.2.1 Rent Reduction. Except as provided in Section 7.2.2, the Term of this Lease shall continue but the annual Base Rent to be paid by Tenant under Section 1.3 shall thereafter be reduced in the ratio that the rental value of the portion of the Premises taken or

condemned (determined on a square footage or other equitable basis) bears to the rental value of the entire Premises at the time of the Partial Taking.

7.2.2 Termination Right. If (a) the remaining part of the Premises not so taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete functional unit of property of substantially the same usefulness, design and construction as immediately before such Partial Taking, capable of providing Tenant with a facility that meets its then current requirements (including, without limitation, parking and access), as reasonably determined by Tenant, or (b) the Partial Taking occurs during the last ten (10) years of the Initial Term or during and Renewal Period, then Tenant (with the consent of any Leasehold Mortgagee) shall have the right, to be exercised by Notice to Landlord within sixty (60) days after the date of the Partial Taking, to terminate this Lease as to such remaining part of the Premises not so taken on a date to be specified in said Notice not earlier than the date of such Partial Taking. In such case Tenant shall pay and satisfy all Rent and other charges due and accrued hereunder up to the date of termination and shall perform all of the obligations of Tenant hereunder to such date.

7.2.3 Award. Any award paid in respect of a Partial Taking, whether this Lease continues or is terminated, shall be divided and shared by Landlord and Tenant as provided in Section 7.1.3 hereof.

7.2.4 Restoration. If the Lease is not terminated as provided in Section 7.2.2, and if such Partial Taking occurs prior to the last ten (10) years of the Initial Term, then, as to the Premises not taken in such condemnation proceeding, Tenant shall proceed diligently, to the extent the portion of the condemnation award paid to Tenant is sufficient for such purpose, to restore, repair or reconstruct the Premises, to the extent practicable, to a functional unit of substantially the same usefulness, design, construction and quality as existed prior to such Partial Taking.

7.2.5 Successive Takings. In case of a second or any other additional Partial Taking from time to time, the provisions of this Section 7.2 shall apply to each such Partial Taking.

7.3 Temporary Taking. If the whole or any part of the Premises or of Tenant's interest under this Lease is taken or condemned by any competent authority for its temporary use or occupancy, (a) Tenant shall continue to pay, in the manner and at the times herein specified, the full amounts of the Base Rent and all Impositions and other charges payable by Tenant hereunder, (b) this Lease shall continue and, (c) except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Tenant to be performed and observed as though such taking or condemnation had not occurred. In the event of any such temporary taking or condemnation, Tenant shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend to or beyond the expiration date of the Term of this Lease, in which case such award shall be apportioned between Landlord and Tenant as of such date of expiration of the Term.

**Section 8**  
**COMPLIANCE WITH LAWS**

From and after the Effective Date, Tenant shall at all times during the Term of this Lease, at Tenant's sole cost and expense, comply in all material respects with local, state and federal laws now or hereafter enacted or promulgated which are applicable to the Premises and the business of Tenant conducted on the Premises. Upon request of Tenant, Landlord shall reasonably cooperate, at Tenant's sole cost and expense, to facilitate Tenant's compliance with such laws. Tenant acknowledges that Landlord is a political subdivision of the State of California and has adopted certain ordinances and regulations governing the use and development of property which may apply to Tenant's use of the Premises. Tenant expressly agrees that nothing in this Lease shall limit, or shall be inferred to limit, the exercise of discretion by Landlord with respect to Landlord's duties and obligations under the Placer County Code and/or State law arising out of or related to the granting of a conditional use permit, a subdivision map, a grading permit, a building permit or any other regulatory approval and action which may affect the use of the Premises by Tenant.

**Section 9**  
**INSPECTION BY LANDLORD**

**9.1 Inspection of Premises.**

9.1.1 Landlord and Landlord's agents and representatives shall be entitled, from time to time, upon reasonable notice to Tenant, to go upon and into the Premises during Tenant's business operating hours for the purpose of inspecting the same or inspecting the performance by Tenant of the agreements and conditions of this Lease. Landlord shall assume no duty or liability with respect to the Premises or their maintenance as a result of such inspection.

9.1.2 During the last twelve (12) months of the Term of this Lease, Tenant shall permit inspection of the Premises at reasonable times and for reasonable periods by or on behalf of prospective tenants and prospective purchasers.

**9.2 Rights of Subtenants.** Notwithstanding the provisions of Section 9.1, the rights of Landlord to enter into any portion of the Premises which are subject to a sublease from Tenant to any subtenant shall be subject to reasonable restrictions contained in such sublease which are applicable to Tenant and any provisions of applicable law.

**Section 10**  
**HOLD HARMLESS AND INDEMNIFICATION**

**10.1 Landlord to Indemnify Tenant.** Notwithstanding that joint or concurrent liability may be imposed upon Tenant by law, Landlord shall upon demand indemnify, defend, hold harmless and reimburse Tenant, its shareholders, officers, partners, members, employees and agents (individually, a "**Tenant Indemnified Party**" and collectively, the "**Tenant Indemnified Parties**") from and against and for any and all Costs which may be imposed upon

or asserted against any of the Tenant Indemnified Parties arising during the Term of the Lease by reason of:

10.1.1 Acts or Omissions Prior to Effective Date. Any matters occurring prior to the Effective Date of this Lease except to the extent caused by the acts or omissions of any of the Tenant Indemnified Parties.

10.1.2 Non-Monetary Covenants. Any failure on the part of Landlord to perform or comply with any non-monetary terms, provisions, covenants, or conditions contained in this Lease which are to be performed or complied with by Landlord.

10.1.3 Landlord Negligence. Any negligence or wrongful act or omission on the part of Landlord or any of its agents, contractors, employees, invitees or anyone claiming through any of them acting in their capacity as landowner or landlord, or contracting party, as opposed to their governmental capacity, and which occurs during such party's authorized presence on the Premises as allowed under this Lease.

10.1.4 Landlord Work and Construction. Any work or thing done by or for Landlord in, on or about the Premises or any part thereof, including all claims and liability arising by virtue of the completion of all work required to be completed by Landlord under Sections 2.3(e) and 3.7 of the Option Agreement, unless performed by any of the Tenant Indemnified Parties.

10.1.5 Limitation. The foregoing indemnity shall not apply to (a) any costs to the extent caused by a breach of this Lease by any of the Tenant Indemnified Parties or their contractors, invitees or anyone claiming through any of them, or (b) the negligence or willful misconduct of any of the Tenant Indemnified Parties or their contractors, invitees or anyone claiming through any of them.

10.1.6 Legal Proceedings. If Landlord is required to defend any action or proceeding pursuant to this Section 10.1.6 to which any Tenant Indemnified Party is made a party, such Tenant Indemnified Party shall also be entitled to appear, defend or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent such Tenant Indemnified Party is indemnified under this Section 10.1, Landlord shall bear the cost of such Tenant Indemnified Party's defense, including reasonable attorney's fees actually incurred; provided, however, Landlord shall be liable for attorney's fees of separate counsel selected by Landlord and reasonably approved by such Tenant Indemnified Party only if a single legal counsel (or a single firm of legal counsel) cannot represent both Landlord and such Tenant Indemnified Party without there arising an actual conflict of interest.

**10.2 Tenant to Indemnify Landlord.** Notwithstanding that joint or concurrent liability may be imposed upon Landlord by any law, Tenant shall, upon demand, indemnify, defend, hold harmless and reimburse Landlord, its shareholders, officers, partners, members, employees and agents (individually, a "**Landlord Indemnified Party**" and collectively, the "**Landlord Indemnified Parties**") from and against and for any and all liabilities, obligations, penalties, fines, suits, claims, demands, actions, costs and expenses of any kind or nature

including, without limitation, reasonable attorneys' fees actually incurred (collectively, "Costs"), which may be imposed upon or asserted against any of the Landlord Indemnified Parties arising during the Term of the Lease by reason of:

10.2.1 Work. Any work or thing done in, on or about the Premises and the Improvements thereon or any part thereof, including, without limitation, the construction of any Improvements or any sublessee Improvements by or at the direction of Tenant.

10.2.2 Use. Any use, non-use (though nothing herein shall be deemed an operating covenant), possession, occupation, condition, operation, maintenance or management of the Premises and the Improvements thereon or any part thereof, including but not limited to a violation of or an alleged violation of the Home Depot Lease restrictions as described in Section 1.8.

10.2.3 Accident, Injury or Damage. Any accident, injury or damage to any person or property occurring in or about the Premises and the Improvements thereon or any part thereof.

10.2.4 Negligence. Any negligence on the part of Tenant or any of its agents, contractors, servants, employs, subtenants, operators, licensees or invitees.

10.2.5 Non-Monetary Covenants. Any failure on the part of Tenant to perform or comply with any of the non-monetary terms, provisions, covenants or conditions contained in this Lease which are to be performed or complied with by Tenant.

10.2.6 Limitations. The foregoing indemnity shall not apply to (a) any costs to the extent caused by a breach of this Lease by any of the Landlord Indemnified Parties or any of their contractors, invitees or anyone claiming through any of them; (b) the negligence or willful misconduct by any of the Landlord Indemnified Parties or any of their contractors, invitees or anyone claiming through any of them; or (c) 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, or other defect with respect to the condition of the Property in connection with the investigations made by Tenant.

10.2.7 Legal Proceedings. If Tenant is required to defend any action or proceeding pursuant to this Section 10.2.7 to which any Landlord Indemnified Party is made a party, such Landlord Indemnified Party shall also be entitled to appear, defend or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent such Landlord Indemnified Party is indemnified under this Section 10.2, Tenant shall bear the cost of such Landlord Indemnified Party's defense, including reasonable attorney's fees actually incurred; provided, however, Tenant shall be liable for attorney's fees of separate counsel selected by Tenant and reasonably approved by such Landlord Indemnified Party only if a single legal counsel (or a single firm of legal counsel) cannot represent both Tenant and such Landlord Indemnified Party without there arising an actual conflict of interest.

10.2.8 Tenant Not Deemed a Generator or Operator. Notwithstanding any indemnity set forth in this Lease, Tenant shall not be deemed a generator or operator with respect to any pre-existing environmental condition found on the Property and Landlord shall indemnify Tenant against same.

This obligation shall include, upon presentation of a written request by Landlord, the obligation to defend Landlord, its officers, employees or agents, with counsel selected by Tenant and subject to consent and approval by Landlord, which consent may not be unreasonably withheld, in any proceeding brought against Landlord or its officers, employees or agents by reason of an allegation of any of the foregoing. Nothing herein shall be deemed to preclude Landlord from retaining separate counsel at its own expense.

## Section 11 SUBLETTING AND ASSIGNMENT

11.1 Subletting and Assignment. Tenant may assign any interest in this Lease or sublet the whole or any part of the Premises without the consent of Landlord to any assignee or sublessee who will utilize the Premises for any of the following uses: a wholesale general merchandise facility, retail, restaurant, entertainment, or recreational (including, but not limited to, a theatre, bowling alley, skating rink, dance hall, game arcade, health facility, or sports facility); provided, however, such uses shall specifically exclude (i) any exterior use which would create excessive and obnoxious noise affecting adjacent properties, or (ii) any adult cinema, bookstore or other use specializing in the display, performance, rental, or sale of pornographic acts or materials. In addition, Tenant may assign any interest in this Lease or sublet the whole or any part of the Premises without the consent of Landlord to any assignee or sublessee provided that the assignee or sublessee has a net worth in excess of One Hundred Million Dollars (\$100,000,000) as determined in accordance with generally accepted accounting practices as of the date of such assignment. Otherwise, Tenant may assign any interest in this Lease or sublet the whole or any part of the Premises only with the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Upon any assignment of this Lease, Tenant shall, if Tenant so requests, be released from all further liability accruing under the Lease from and after the date of the assignment provided that the assignee has a net worth in excess of One Hundred Million Dollars (\$100,000,000) as determined in accordance with generally accepted accounting practices as of the date of such assignment. Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreements upon execution by Tenant.

11.2 Assignee Obligations. Any assignee shall assume in writing all obligations of Tenant under this Lease accruing from and after the date of the assignment in form reasonably acceptable to Landlord.

11.3 Sublease/Assignment Premium. Notwithstanding the provisions of Section 11.1 above, in the event Tenant subleases (a) 10% or more of the land area of the Premises not improved with Tenant's Building, or (b) 50% or more of the square footage of Tenant's Building, unless such sublease or assignment is a "Permitted Assignment," as defined in Section 11.4 below, then Landlord shall be entitled to payment by Tenant of a "Sublease/Assignment

Premium" in addition to the Base Rent. The term "**Sublease/Assignment Premium**" means one-half of the amount of all rent and other consideration as determined to be for use of the land, but not for the Improvements or goodwill (provided, however, that prepaid rent shall not be deemed goodwill and provided further that any goodwill to be excluded from the calculation of the Sublease/Assignment Premium must be paid at the time of the execution of such sublease or assignment), payable by such sublessee or assignee to Tenant less the sum of all reasonable and customary third-party costs and expenses incurred by Tenant in connection with subletting or assignment, as applicable, including, but not limited to, brokerage commissions, tenant improvement allowances, attorneys' fees and similar such expenses and less that amount of the Base Rent payable by such sublessee or assignee which is proportionate to the amount of Base Rent payable by Tenant under this Lease for the portion of the land being subleased to the sublessee or assigned to the assignee. Tenant shall pay the Sublease/Assignment Premium on a monthly basis, together with the Base Rent. The parties shall exercise a good faith effort to agree upon the amount of the Sublease/Assignment Premium. If the parties cannot agree, the Sublease/Assignment Premium shall be determined by an MAI appraiser jointly selected by the parties. Expenses of the appraiser shall be paid one-half (1/2) by Landlord and one-half (1/2) by Tenant. Tenant shall pay the Sublease/Assignment Premium on a monthly basis, together with the Base Rent. In no event shall any Sublease/Assignment Premium be payable in connection with a Permitted Assignment.

**11.4 Permitted Assignment.** A foreclosure and sale by a Leasehold Mortgagee permitted by Section 5, and any assignment or sublease of this Lease in its entirety or partially to Costco Wholesale Corporation, or a corporation which is controlled by, controls, or is under common control with Costco Wholesale Corporation, in which Costco Wholesale Corporation fully assumes the responsibilities of Tenant hereunder shall be deemed a "Permitted Assignment" of this Lease which shall not require Landlord's consent or the payment of a Sublease/Assignment Premium. A "Permitted Assignment" shall also include any subleases, licenses, occupancy agreements or similar arrangements between Tenant, any assignee permitted under this Section 11.4, or any assignee who has been approved by Landlord, with any third parties providing services consistent with the business operations of the then primary tenant. As for Tenant, this would include, without limitation, optical services, pharmacies, food services, tire services, fueling facilities, etc.; provided, however, Section 11.5 below, shall not apply to such a Permitted Assignment.

**11.5 Non-Disturbance of Subtenants.** Upon the request of Tenant or any Leasehold Mortgagee as provided in Section 5 hereof, but subject to the last sentence of this Section 11.5, Landlord shall, within a reasonable time following receipt thereof, execute, acknowledge and deliver a non-disturbance agreement with any subtenant of space in the Premises to the effect that, in the event of termination of this Lease prior to the expiration date for any reason, (a) such subtenant shall be entitled to continued occupancy in the Premises in accordance with its sublease with Tenant as long as such sublease is not terminated in accordance with its terms (including termination for default upon expiration of all applicable periods to cure), and (b) such subtenant agrees to attorn to Landlord under the applicable sublease (including the payment of all rental and other charges without offset for prepayments previously made other than rental and other charges paid not more than one month in advance) and agrees not to effect the termination of the same due to any termination of this Lease, and upon such other terms and conditions as are

customary in similar circumstances. Notwithstanding the foregoing, Landlord shall not be obligated to deliver any non-disturbance agreement with respect to any subtenant unless Tenant has delivered a copy of the sublease to Landlord and Landlord has approved the sublease, such approval not to be unreasonably withheld, conditioned or delayed.

**Section 12**  
**LANDLORD AND TENANT TO FURNISH STATEMENT**

**12.1 Landlord's Statement.** Landlord, within twenty-one (21) days after written request to Landlord from Tenant or any Leasehold Mortgagee or prospective Leasehold Mortgagee, will furnish a written statement, duly acknowledged, as to the following items:

- (a) The amount of Rent due, if any;
- (b) Whether or not the Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the Lease is in full force and effect as modified and identifying the modifications);
- (c) Whether or not, to Landlord's actual knowledge, an Event of Default has occurred and specifying the nature of such Event of Default, if any;
- (d) Whether or not, to Landlord's actual knowledge, any circumstances or events exist which, with the passage of time or giving of Notice or both, may constitute an Event of Default hereunder; and
- (e) Such other matters as Tenant or the Leasehold Mortgagee may reasonably request and which relate to the actual knowledge of Landlord.

**12.2 Tenant's Statement.** Tenant, within twenty-one (21) days after written request from Landlord, will furnish a written statement, duly acknowledged, as to:

- (a) Whether or not the Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the Lease is in full force and effect as modified and identifying the modifications);
- (b) Whether or not, to Tenant's actual knowledge, a Landlord Event of Default has occurred and specifying the nature of such Landlord Event of Default, if any;
- (c) Whether or not, to Tenant's actual knowledge, any circumstances or events exist which, with the passage of time or giving of Notice or both, may constitute a Landlord Event of Default hereunder; and
- (d) Such other matters as Landlord may reasonably request and which relate to the actual knowledge of Tenant.

**Section 13**  
**DEFAULT**

**13.1 Tenant Default.** The occurrence of any of the following shall constitute an event of default on the part of Tenant under this Lease (an “**Event of Default**”):

(i) If Tenant at any time during the Term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings in law, in equity or before any administrative tribunal which have or might have the effect of preventing Tenant from complying with the terms of this Lease) shall fail to make payment, when such payment is due, of any installment of Base Rent, rent, additional rent or of any other payment Tenant is required to pay pursuant to this Lease and such failure continues for ten (10) days following receipt of written notice thereof from Landlord to Tenant; or

(ii) Tenant fails to observe or perform any of Tenant's covenants, agreements or obligations under this Lease other than those set forth in subsection (i) above and such default is not cured within thirty (30) days after receipt of written notice thereof by Tenant or, as to any curable default which cannot with diligence be cured within such 30-day period, if Tenant shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended in connection with a default not susceptible of being cured with diligence within such period of thirty (30) days, that the time within which to cure the same shall be extended for such period as may be reasonably necessary to complete the curing of the same with the diligence; or

(iii) If Tenant shall file a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated as bankrupt or insolvent or shall make an assignment for the benefit of its creditors, or if a petition or answer proposing the adjudication of Tenant as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within one hundred twenty (120) days after the filing thereof; or

(iv) If a receiver, trustee or liquidator of Tenant or of all or substantially all of the property of Tenant, including the Premises or the Improvements on the Premises, shall be appointed in any proceeding brought by Tenant, or if such receiver, trustee or liquidator shall be appointed in any proceeding brought by a third party against Tenant and if such receiver, trustee or liquidator shall not be discharged within one hundred twenty (120) days after such appointment.

### **13.2 Landlord's Remedies.**

13.2.1 Landlord's Remedies. Subject to the provisions and limitations of this Section 13.2, Landlord shall have all rights and remedies available at law or in equity in respect of any Event of Default under this Lease. Such rights and remedies shall include, without limitation, (a) equitable relief by temporary or permanent injunction or restraining order for the breach, (b) the right to exercise self-help as set forth in Section 13.8 hereof, and (c) in the case of any Event of Default that may be cured by the payment of money, the right to set off the amount due against any amounts due Tenant. Notwithstanding anything to the contrary contained in this Lease or any provision of applicable law, Landlord and Tenant hereby agree that, from and after the Effective Date, Landlord shall be permitted to terminate this Lease or Tenant's right of possession hereunder only for Tenant's failure to pay Rent and only after Landlord has received a final, non-appealable monetary judgment against Tenant for the failure to pay Rent which remains unsatisfied for a period of ten (10) days.

13.2.2 Termination of Lease. If Landlord is entitled pursuant to Section 13.2.1 hereof to terminate this Lease, Landlord may, at any time after such termination right accrues, give Notice to Tenant of its intention to terminate this Lease, in which case, unless within fifteen (15) days after the giving of such Notice, Tenant has satisfied the judgment for Rent obtained by Landlord, this Lease shall terminate as of the expiration of such fifteen (15) days and Landlord may reenter upon the Premises and have possession thereof. Notwithstanding the provisions of Section 13.2.1 or this Section 13.2.2, if the existence of such Event of Default is being contested in a legal proceeding by Tenant, if and so long as Tenant is acting in good faith to complete the legal proceeding with respect thereto, the time for curing such Event of Default, and Landlord's right to terminate the Lease if Tenant fails to cure such Event of Default, shall be stayed until ten (10) days after the first to occur of the rendering of a final and non-appealable decision with respect to such Event of Default or other resolution thereof.

**13.3 Effect of Termination.** Subject to the provisions of Section 5 (relating to the rights of Leasehold Mortgagees) and Section 11.5 (relating to the rights of subtenants), upon termination of this Lease under this Section 13, all rights and privileges of Tenant and all duties and obligations of Landlord hereunder shall terminate. Immediately upon such termination, and without further notice to any other party, but subject to the provisions of Section 5 and Section 11.5, Landlord shall have the right to assert, perfect, establish and confirm all rights reverting to Landlord by reason of such termination by any means permitted by Law, including the right to take possession of the Premises together with all Improvements thereto, subject to Tenant's rights to remove its property as provided herein, and to remove all persons occupying the same and to use all necessary lawful force therefor and in all respects to take the actual, full and exclusive possession of the Premises and every part thereof as Landlord's original estate, thereby wholly terminating any right, title, interest or claim of or through Tenant as to the Premises or the Improvements or fixtures and alterations to the Improvements, and all personal property located on the Premises, all without incurring any liability to Tenant or to any person occupying or using the Premises for any damage caused or sustained by reason of such entry or such removal, except for damage resulting from Landlord's negligence or willful misconduct in effecting such removal. Notwithstanding the foregoing, Landlord shall use commercially reasonable efforts to mitigate its damages.

Should Landlord elect to terminate this Lease pursuant to the provisions of Section 13.2.2 above, Landlord may recover from Tenant, as damages:

(i) The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom.

(v) As used in subsections (i) and (ii) above, the term "worth at the time of award" is computed by allowing interest from the date such amount becomes due and payable at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution.

As used in subsection (iii) above, the term "worth at the time of award" is computed by discounting the amount determined pursuant to subsection (iii) at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus two percent (2%).

**13.4 Landlord Default.** The occurrence of any of the following shall constitute an event of default on the part of Landlord under this Lease (a "Landlord Event of Default"):

13.4.1 Payments to Tenant. Failure of Landlord to pay, within thirty (30) days after written notice is given by Tenant to Landlord, any payment which is due Tenant from Landlord in accordance with this Lease.

13.4.2 Breach of Other Covenants. Landlord being in breach of or failing to perform, comply with or observe any term, covenant, warranty, condition, agreement or undertaking of Landlord contained in or arising under this Lease other than those referred to in Section 13.4.1 and such failure continuing for a period of thirty (30) days after Notice thereof is given by Tenant to Landlord; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period, such thirty (30) day period shall be extended until such cure is complete so long as Landlord diligently and continuously prosecutes such cure.

13.4.3 Insolvency.

13.4.3.1 Landlord making an assignment for the benefit of creditors, filing (or having filed against it) a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver or any trustee for it or a substantial part of its assets,

or commencing (or having commenced against it) any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation Law of any jurisdiction, whether now or hereafter in effect, in which an order for relief is entered or which remains undismissed for a period of ninety (90) days or more; or Landlord by any act or omission indicating its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its properties, or suffering any such custodianship, receivership or trusteeship to continue undischarged for a period of ninety (90) days or more;

13.4.3.2 Landlord being generally unable to pay its debts as such debts become due; or

13.4.3.3 Landlord having concealed, removed or permitted to be concealed or removed any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or making or suffering a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or suffering or permitting, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint which is not vacated within ninety (90) days from the date thereof.

**13.5 Tenant's Remedies.** Tenant shall have all rights and remedies available at Law or equity for any Landlord Event of Default. Such rights and remedies shall include, without limitation, (a) equitable relief by temporary or permanent injunction or restraining order for the breach of, without limitation, Sections 1.7 and 1.8 hereof, (b) the right to exercise self-help as set forth in Section 13.8 hereof, and (c) in the case of any Landlord Event of Default that may be cured by the payment of money, the right to set off the amount due against the Base Rent next accruing.

**13.6 Notice and Cure Periods.** Landlord and Tenant acknowledge and agree that no Event of Default or Landlord Event of Default shall have occurred under this Lease unless and until any and all applicable Notice shall have been given and cure or grace periods shall have expired.

**13.7 No Waivers.** No failure by any party hereto to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent to any breach thereof, and no waiver of any such breach, or the acceptance of full or partial Rent or other payment during the continuance thereof, shall constitute a waiver of any such breach or of any such provision. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of any party hereto with respect to any other then existing or subsequent breach.

**13.8 Self-Help.** In case of an Event of Default or a Landlord Event of Default constituting a failure to pay any money or to do any act to satisfy any of the obligations or covenants which a party is required to pay, do, or satisfy under the provisions of this Lease, the non-defaulting party may, at its option, after Notice to the defaulting party, pay any or all such sums, do any or all such acts or incur any expense whatsoever to remedy the failure to perform any one or more of the covenants herein contained. The defaulting party shall repay the same on

demand, together with interest at the rate allowed by law calculated from the date payment is made by the non-defaulting party. If Landlord shall fail to pay any such amounts due Tenant within thirty (30) days after written demand therefor, Tenant shall have the right to offset such sums from Base Rent next accruing hereunder.

**13.9 No Personal Liability.** No persons comprising Landlord or Tenant (whether partners, members, shareholders, officers, directors, members, trustees, employees, beneficiaries or otherwise) shall ever be personally liable for any judgment obtained against the other for breach of any obligation hereunder.

**Section 14**  
**RESERVED**

**Section 15**  
**RECAPTURE RIGHTS**

**15.1 Landlord Recapture Rights.** Tenant acknowledges that the construction of the Initial Improvements by Tenant upon the Premises is a material inducement to the leasing of the Premises by Landlord to Tenant. Therefore, Landlord shall have the following recapture rights with respect to the Premises:

**15.1.1 Recapture Right for Failure to Commence Construction or Open for Business.**

**15.1.1.1 Recapture Date.** If (i) Tenant fails to commence construction on the Property by the date that is two (2) years after the Effective Date (subject to casualty, condemnation, Force Majeure and delays in Tenant's construction caused by Landlord), (ii) Tenant gives Landlord written notice it has decided that, effective as of a date certain, it does not intend to commence construction on the Property, (iii) Tenant completes construction on the Property, but does not open for business to its members for at least one (1) day within three (3) years after the Effective Date (subject to casualty, condemnation, Force Majeure and delays caused by Landlord), or (iv) Tenant gives Landlord written notice it has decided that, effective as of a date certain, it does not intend to open for business to its members (each, a "**Recapture Date**"), Landlord shall have the right to recapture the Premises upon written Notice to Tenant (the "**Recapture Notice**") given within one hundred twenty (120) days after the Recapture Date; provided, however, that if Tenant commences construction within such one hundred twenty (120) day period, and thereafter diligently proceeds to complete construction or if Tenant completes construction and opens for business to its members within one hundred twenty (120) days after the Recapture Date, Landlord's election to recapture shall be nullified. For purposes of this Section 15.1.1, "**commence construction**" shall mean the pouring of the foundation for Tenant's Building on the Property, and "**complete construction**" shall mean the substantial completion of Tenant's Building on the Property.

15.1.1.2 Failure to Exercise Recapture Right. In the event Landlord timely fails to exercise its recapture right set forth in this Section 15.1.1, then Landlord's right to recapture the Premises pursuant to this Section 15.1.1 shall terminate.

15.1.1.3 Exercise of Recapture Right. If Landlord timely elects to recapture the Premises pursuant to this Section 15.1.1, this Lease shall terminate (the "**Recapture Termination Date**") on the one hundred twentieth (120<sup>th</sup>) day after the Recapture Date, unless Tenant has nullified such Recapture Notice pursuant to Section 15.1.1.1. On the Recapture Termination Date, Tenant shall surrender the Premises to Landlord and Landlord shall accept same in an "as is, where is" condition, without representation or warranty by Tenant.

15.1.1.4 Recapture Price. If Landlord timely elects to recapture the Premises pursuant to this Section 15.1.1, Landlord shall be obligated to pay Tenant a recapture price equal to the aggregate costs incurred by Tenant with respect to (1) Tenant performing any demolition and hazardous cleanup work in accordance with Section 3.3, above, (2) Tenant's construction of roadway improvements and other public improvements which benefit Landlord's property and for which Tenant would receive rent credit in accordance with Section 1.3.7.1 and Section 3.4, above, and (3) the Deposit made under the Option Agreement (the "**Recapture Price**"), less any credits actually utilized by Tenant for extraordinary costs allowed pursuant to Section 1.3.7.1. Within thirty (30) days of the Recapture Date, Landlord shall deliver to Tenant a written request for the Recapture Price, and within thirty (30) days of receipt of such written request, Tenant shall provide Landlord with the Recapture Price, together with Tenant's supporting documentation for the calculation thereof. Landlord shall pay the Recapture Price within ten (10) days of the Recapture Termination Date; provided, however, if Landlord disputes any portion of the costs of the Recapture Price, Landlord shall be obligated to pay only such portions which are not in dispute and shall request Tenant provide such additional documentation as Landlord may reasonably request to verify the costs were actually incurred by Tenant. The obligations of Landlord and Tenant under this Section 15.1.1.4 shall survive the termination of this Lease.

15.1.2 Recapture Right if Tenant Goes Dark.

15.1.2.1 Go Dark Recapture Date. If (a) Tenant has opened for business on the Premises and (b) Tenant closes its business on the Premises and (c) either Tenant or an allowed third party fails to reopen for business on the Premises by that date which is twenty-four (24) months after Tenant closed its business (subject to casualty, condemnation, Force Majeure and delays caused by Landlord), or if Tenant gives Landlord written notice that, effective as of a date certain, it intends to close its business and not reopen or sublease (each, a "**Go Dark Recapture Date**"), then Landlord shall have the right to recapture the Premises upon written notice to Tenant (a "**Go Dark Recapture Notice**") within one hundred twenty (120) days after the Go Dark Recapture Date. In the event Tenant closes its business and then decides not to seek to reopen or to sublease the Property, Tenant shall use reasonable efforts to give Landlord written notice of any such decision.

15.1.2.2 Failure to Exercise Recapture Right. If Landlord timely fails to exercise its recapture right set forth in this Section 15.1.2, then Landlord's right to recapture the

Premises pursuant to this Section 15.1.2 shall terminate for that specific Go Dark Recapture Date and Landlord shall not have the right to give a subsequent Go Dark Recapture Notice until after the date five (5) years from the prior Go Dark Recapture Date, but only if the Premises have been vacant for 24 months or Tenant has given Landlord written notice that it intends to close the business then operating on the Premises and not reopen or sublease. There may be more than one Go Dark Recapture Date during the Term of this Lease depending on the circumstances of Tenant's operation of its business.

15.1.2.3 Exercise of Recapture Right. If Landlord timely delivers a Recapture Notice to Tenant and Tenant or a third party opens for business on the Premises within one hundred twenty (120) days after the Go Dark Recapture Date, Landlord's Recapture Notice shall be null and void and this Lease shall continue in full force and effect. If Landlord timely delivers such Go Dark Recapture Notice to Tenant and Tenant or a third party fails to open for business on the Premises within such one hundred twenty (120) day period, then this Lease shall terminate on the expiration of such one hundred twenty (120) day period (the "**Go Dark Recapture Termination Date**"). On the Go Dark Recapture Termination Date, Tenant shall surrender the Premises to Landlord and Landlord shall accept same in the condition set forth in Section 3.8 hereof.

15.1.2.4 Recapture Price. If Landlord timely elects to recapture the Premises pursuant to this Section 15.1.2, Landlord shall be obligated to pay Tenant a go dark recapture price, equal to Tenant's unamortized costs of the Improvements (using a twenty-seven (27) year amortization schedule) as of the Go Dark Termination Date (excluding furniture, fixtures specific to Tenant's use, removable equipment, and Tenant's business inventory) (the "**Go Dark Recapture Price**"). Within sixty (60) days of the Go Dark Recapture Date, Landlord shall deliver to Tenant a written request for the Go Dark Recapture Price, and within thirty (30) days of receipt of such written request, Tenant shall provide Landlord with the Go Dark Recapture Price, together with Tenant's accounting records for the calculation thereof. For the purposes of this Section 15.1.2.4, the cost of the Improvements shall be equal to the actual cost of the Tenant Improvements, including off-site work, if any, as reflected in Tenant's books and records utilizing generally accepted accounting principles. Landlord shall pay the Go Dark Recapture Price within ten (10) days of the Go Dark Recapture Termination Date; provided, however, if Landlord disputes any portion of the costs of the Go Dark Recapture Price, Landlord shall be obligated to pay only such portions which are not in dispute and shall request Tenant provide such additional documentation as Landlord may reasonably request to verify the costs were actually incurred by Tenant. The obligations of Landlord and Tenant under this Section 15.1.2.4 shall survive the termination of this Lease.

## Section 16 MISCELLANEOUS

**16.1 No Partnership.** Nothing contained herein or in any instrument relating hereto shall be construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for debts or obligations of Tenant or any other party.

**16.2 Time of the Essence.** Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof. The word “day” means calendar day as used for computation of time periods herein and the computation of time shall include Saturdays, Sundays and holidays in Placer County. The phrase “business day” means any day on which commercial banks are generally open for business in Placer County (other than a Saturday, Sunday or legal holiday in Placer County). Any period of time calculated in days which would otherwise end on a non-business day shall be extended to the next following business day.

**16.3 Captions.** The captions of this Lease and the table of contents preceding this Lease are for convenience and reference only, are not a part of this Lease and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

**16.4 Meaning of Terms.** Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

**16.5 Lease Construed as a Whole.** The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Landlord or Tenant.

**16.6 Severability.** If any provision of this Lease (other than those relating to payment of Rent) or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**16.7 Survival.** Each provision of this Lease which may require the payment of money by, to or on behalf of Landlord or Tenant or third parties after the expiration of the Term hereof or its earlier termination shall survive such expiration or earlier termination.

**16.8 Memorandum of Lease.** Landlord agrees to execute and acknowledge and deliver to Tenant at the Effective Date (a) a memorandum of this Lease for public recordation purposes, so that public notice is given of the Term of the Lease and the existence of the rights set forth in Section 11 and Section 15 hereof and any other information required by the relevant provisions of the laws of the Governing Jurisdiction, and (b) a memorandum acknowledging the provisions of Section 1.8. Tenant shall have the right to record the memorandum of lease and memorandum of the provisions of Section 1.8, each at its sole cost and expense, at any time on or after the Effective Date.

**16.9 Transfer Tax.** Landlord shall pay any transfer tax or other tax payable to any governmental taxing authority, including the County in which the Premises are located, by reason of the execution of this Lease and/or the recordation of a memorandum thereof.

**16.10 Entire Agreement; Amendment.** This Lease, the exhibits hereto and any documents delivered hereof, the Option to Ground Lease, dated December \_\_\_\_, 2014 by and between Landlord and Tenant, the Escrow Agreement dated December \_\_\_\_, 2014 by and between Landlord, Tenant and First American Title Insurance Company 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, any letters of intent entered into between the parties. In the event of any conflict between the terms and provisions in the Ground Lease and in the Option to Ground Lease, or in the Ground Lease and in the Escrow Agreement, the terms and provisions of the Ground Lease shall control. This Lease may be amended only in a writing signed by both Landlord and Tenant.

**16.11 Commissions.** Landlord and Tenant each represent and warrant to the other that no real estate agent or broker was involved in negotiating the transaction contemplated in this Lease except for Jason Gallelli and NWAP II, Inc. ("NWAP", and collectively with Jason Gallelli, the "Brokers"). On the Effective Date, Tenant shall pay Jason Gallelli a commission in the amount of One Hundred Fifty Thousand Dollars (\$150,000) and NWAP a commission in the amount of One Hundred Thousand Dollars (\$100,000). In the event any other 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. Neither Landlord nor Tenant shall have any liability to the Brokers if the Effective Date does not occur. The Brokers (a) waive any rights to any other Compensation from Landlord or Tenant in connection with the lease of the Premises and (b) shall execute this Lease in the place provided on the signature pages solely to evidence their agreement to the terms of this Section 16.11; provided, however, that this Lease and any amendment or modification to this Lease shall be binding upon Landlord and Tenant even if any of the Brokers fail to execute this Lease or such amendment or modification.

**16.12 Notices.** All notices, demands, requests, or other writings (each a "Notice") provided by the terms of this Lease to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, or by any Leasehold Mortgagee to either party, shall be in writing, shall be given by (a) personal delivery, (b) delivery by a nationally recognized overnight delivery service, (c) mailing or depositing same in the United States mail, registered or certified, return receipt requested, postage prepaid, or (d) facsimile (if a copy of such notice also is delivered by any other permitted method of delivery along with evidence that the facsimile was transmitted successfully), and in all cases shall be properly addressed to the parties at the following addresses:

Landlord: County of Placer  
11476 C Avenue  
Auburn, CA 95603  
Attention: Property Manager  
Facsimile No.: (530) 889-6809

Tenant: Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, Washington 98027  
Attention: Property Management (Legal Dept.)  
Facsimile No.: (425) 313-8105

with a copy to: Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, Washington 98027  
Attention: Corporate Counsel (SSK)  
Facsimile No.: (425) 313-8114

with a copy to: Voss, Cook & Thel LLP  
895 Dove Street, Suite 450  
Newport Beach, CA 92660  
Attention: David A. Lurker, Esq.  
Facsimile No.: (949) 435-0226

or to such other address as either party may from time to time designate by Notice to the other or to any Leasehold Mortgagee. All Notices shall be deemed duly given upon actual receipt or refusal to accept delivery. Notices may be sent by the parties' respective counsel.

**16.13 Attorneys' Fees.** In any proceeding or controversy associated with or arising out of this Lease or a claimed or actual breach hereof, or in any proceeding to recover the possession of the Premises, the substantially prevailing party shall be entitled to recover from the other party as a part of the substantially prevailing party's costs, reasonable attorney's fees and court costs, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

**16.14 Holding Over.** In the event of Tenant's continued occupancy of the Premises after the expiration of the Term or any Option Term, or any earlier termination provided or permitted by this Lease, with the consent of Landlord, such tenancy shall be deemed a month-to-month tenancy and such continued occupancy shall not defeat Landlord's right to possession of the Premises. Any continued occupancy of the Premises after the expiration of the Term or any Option Term shall be on all of the terms and conditions of this Lease; provided, however, that Base Rent shall increase for the first six (6) months to one hundred and ten percent (110%) of the Base Rent then in effect and thereafter to one hundred twenty-five percent (125%) of the Base Rent in effect at the commencement of the holdover period, unless the Parties agree in writing to a different Base Rent. All other covenants, provisions, obligations and conditions of this Lease shall remain in full force and effect during such month-to-month tenancy.

**16.15 Consents and Approvals.** Whenever the consent or approval of Landlord or Tenant is required hereunder, such consent or approval shall not be unreasonably withheld, conditioned or delayed unless expressly set forth in this Lease otherwise.

**16.16 Tenant's Approval Rights.** Whenever in this Lease Tenant is deemed to disapprove of a particular matter, or a condition is deemed not to be satisfied by reason of Tenant's failure to approve of the same or to acknowledge that the same is satisfied, Landlord shall have no right to conclusively deem Tenant to have disapproved of such matter or to deem such condition not satisfied unless and until Landlord gives Tenant Notice that Landlord intends, as of the date which is ten (10) business days after Tenant receives such Notice, to deem such matter disapproved or to deem such condition not satisfied. If Tenant 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 ten (10) business day period, the matter or condition in question shall thereafter be conclusively deemed to be disapproved or not satisfied.

**16.17 Governing Law.** This Lease shall be construed according to and governed by the laws of the State of California. The Parties agree that any action concerning this Lease or the Parties' obligations hereunder shall be brought in the Superior Court for the State of California in and for the County of Placer, regardless of wherever else venue may lie, and the Parties specifically waive the provisions of Section 394 of the Code of Civil Procedure governing change of venue.

**16.18 Force Majeure.** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes; lockouts; labor troubles; shortages of labor or materials generally applicable to the locality of the Property after due diligence in obtaining the same; unavailability or excessive price of fuel; power failure; riots; insurrection; civil disorder; war; terrorist acts; acts of the public enemy; fire or other casualty; condemnation; acts of God; unusually adverse weather conditions in the locality of the Property; unforeseeable governmental restrictions not in effect as of the Effective Date; temporary or permanent injunction or other court order; or by reason of any cause beyond the exclusive and reasonable control of the party delayed in performing work or doing acts required under the terms of this Lease after the exercise of due diligence, including diligence in contracting, and the exercise of rights under contracts with contractors and suppliers (each, an "Event of Force Majeure"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Except as otherwise provided in this Lease, the provisions of this clause shall not operate to excuse Tenant from prompt payment of Rent or either party from the prompt payment of any other payments required by the terms of this Lease. The party claiming a delay due to the occurrence of an Event of Force Majeure shall give Notice to the other party of the circumstances supporting such claim within two (2) business days after the occurrence of the Event of Force Majeure. Failure by such party to timely provide notice of an event of Force Majeure shall be deemed a waiver by such party of any claim of the existence of a permitted excuse arising from such Event of Force Majeure. Delays caused by a party's lack of, or inability to obtain, funds, materials or governmental approvals necessary to complete work shall not be deemed an Event of Force Majeure, nor shall delays arising under circumstances in which the performance of such work is possible albeit at a cost higher than such party may have anticipated or budgeted.

**16.19 Counterparts; Facsimile Signatures.** This Lease may be executed 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. Facsimile signatures on this Lease or any Notice given hereunder shall constitute original signatures of the parties.

**16.20 Exhibits.** All exhibits referenced in this Lease are incorporated into and made a part of this Lease as if fully set forth herein. The exhibits to this Lease are:

<u>Exhibit</u>	<u>Description</u>	<u>Section Reference</u>
A	Legal Description of Property	Section 1.1.1
B	Sketch of Property	Section 1.1.1
C	Property Encumbrances	Sections 1.4.6; 1.4.7; 1.4.9
D	Environmental Reports	Section 1.4.8.1
E	Subordination Agreement	Section 1.11.1
F	Taxation Code Section 107.6	Section 2.2.1
G	Permitted Exceptions	Section 1.11.1
H	Government Center Road System	Section 2.2.5

**16.21 Post-Acquisition Tenant.** Tenant acknowledges and agrees that it is a “post-acquisition tenant” within the meaning of the California Relocation Assistance Act (Government Code section 7260 et. seq.—the “Act”) and the State Guidelines promulgated thereunder. Tenant hereby knowingly and voluntarily waives any and all eligibility and rights for relocation costs as a “displaced person” as defined in the Act upon termination of this Lease. Tenant agrees and acknowledges that it has reviewed this Section 16.21, and the entirety of this Lease, with legal counsel of Tenant’s own choosing.

**16.22 Authority of Director.** The Director of Facility Services, or his or her designee, shall administer this Lease on behalf of Landlord. Unless otherwise provided herein or as otherwise required by applicable law, the Director shall be vested with all rights, powers and duties of Landlord hereunder.

**16.23 Effective Date of Lease.** The date on which this Lease shall be effective (the “Effective Date”) is the seventh (7<sup>th</sup>) day following execution and delivery by the Landlord and Tenant.

**16.24 Lease Term Information Statement.** As soon as such information becomes available, the Parties agree to cooperatively work and prepare a joint written statement setting forth (i) the Effective Date and the Rent Commencement Date, (ii) the dates for the increases in Base Rent, (iii) the expiration date of the Initial Term and the last dates by which Tenant must give notice of the exercise of its Renewal Periods in accordance with Section 1.2.2.1, and (iv) such other matters as the Parties may agree will assist with establishing other important dates or information associated with the administration of this Lease which could not have been determined before its execution; provided, however, the enforceability of this Lease shall not be affected if either Party fails or refuses to execute such statement.

[Balance of this page intentionally left blank.]