

DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

COSTCO WHOLESALE CORPORATION

Relating to COSTCO DEVELOPMENT

Dated as of _____, 2020

DEVELOPMENT AGREEMENT

THIS AGREEMENT, approved on the ____ day of _____, 2020, by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "**City**", and COSTCO WHOLESALE CORPORATION, a corporation created and existing under the laws of the State of Washington, hereinafter referred to as "**Developer**."

RECITALS:

WHEREAS, Developer proposes to develop an approximately 160,000 square foot retail development with an associated approximately 725 car parking lot and associated road and utility improvements, including public road and utility improvements (the hereinafter-described "**Costco Development**") on property owned by it described in Exhibit A hereto (the "**Costco Warehouse Property**") and on public rights-of-way adjacent thereto; and

WHEREAS, the County of St. Louis, Minnesota, and the City have indicated their willingness to agree to the abatement of real estate taxes as set forth on Exhibits B and C attached hereto to fill gaps in the available funding for the Public-Eligible elements of the Costco Development as depicted on Exhibit D attached hereto (hereinafter called "**Project**"), thereby making the Costco Development financially feasible; and

WHEREAS, Developer has agreed to make available sufficient monies that, when combined with the tax abatement, will be sufficient to complete the Costco Development, including the Project.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

ARTICLE I.

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

Abatement Amount means the lesser of the (a) the actual final Project Costs incurred by Developer, and (b) \$2,000,000.00, which amount is to be abated pursuant to

the Abatement Resolutions with respect to the real property taxes levied upon the Costco Warehouse Property from time to time until the Abatement Amount has been reached.

Abatement Resolutions means the City Abatement Resolution and the County Abatement Resolution.

Agreement means this Development Agreement and its exhibits as may be amended, restated, supplemented or otherwise modified from time to time.

Architect means the firm of MG2 together with a sub-consultant, if necessary, to provide civil engineering services necessary to the design of the Project and a traffic engineer to provide traffic engineering services necessary to the design of the Project.

City Abatement Resolution means a resolution approved by the Duluth City Council, substantially in the form of that attached hereto as Exhibit B, authorizing the abatement of a portion of the real property taxes on the Costco Warehouse Property and the Costco Development owed to the City for a term of 20 years commencing with taxes payable in 2021 in the total amount of not to exceed \$1,350,000 as provided for in the City Abatement Resolution and this Agreement and subject to adjustment as described in Article VI, Section C.

Community Benefits Program means the Community Benefits Program Contract Specifications on file with the City of Duluth Workforce Development Director.

Construction Costs means, without intending thereby to limit or restrict any proper definition of such costs under any applicable laws or sound accounting practices, the following costs for construction of the Project:

- A. Obligations incurred for labor and to contractors, builders and materialmen in connection with the acquisition, construction and installation of the Project;
- B. Site improvement and off-site improvement costs required for the construction of the Project;
- C. Fees and expenses of the Construction Manager/Contractor, the Architect, legal counsel and other professionals for surveys and estimates and other preliminary investigations, preparation of plans, drawings and specifications, assistance with bidding, and supervising construction, as well as for the performance of all other duties of the Construction

Manager/Contractor, the Architect and other professionals in relation to the acquisition and betterment of the Project.

Construction Manager/Contractor means Jackson Dean Construction, Inc., or any successor construction management firm or a general contractor who enters into a contract with Developer to construct the Project in accordance with the Construction Plans.

Construction Plans: shall mean the Plans, Specifications and Elevations approved pursuant to Article III hereof.

County: shall mean St. Louis County, Minnesota.

County Abatement Resolution means a resolution approved by the County Board of Commissioners, substantially in the form of that attached hereto as Exhibit C, authorizing the abatement of portion of the real property taxes on the Costco Warehouse Property and the Costco Development owed to the County for a term of 20 years commencing with taxes payable in 2021 in the amount of not to exceed \$650,000 as provided for in the County Abatement Resolution and this Agreement and subject to adjustment as described in Article VI, Section C.

Director means the City's Director of Economic Development or their designee.

Documents means this Agreement, the Construction Plans and any other documents given to the City to evidence, effect, secure or modify the obligations of the parties under this Agreement.

Duluth City Code means the Duluth City Code, 1959 as amended, and the City of Duluth Home Rule Charter, 1912, as amended.

Event of Default means an event which, with notice or passage of time or both, would constitute an Event of Default under this Agreement

Project is defined in the second Recital of this Agreement; the Project shall have a Construction Cost of approximately Two Million Dollars (\$2,000,000).

Project Costs means the total cost of constructing the Project which will consist of the Construction Costs and to the extent not included in the definition of Construction Costs, shall include costs of fees and expenses of the Construction Manager/Contractor, the Architect, legal counsel and other professionals for surveys and estimates and other preliminary investigations, preparation of plans, drawings and specifications, assistance

with bidding, and supervising construction, as well as for the performance of all other duties of the Construction Manager/Contractor, the Architect and other professionals in relation to the acquisition and betterment of the Project,

Project Labor Agreement or PLA means a Project Labor Agreement conforming to Section 2-29 (b) of the Duluth City Code.

Public Investment and Living Wage Ordinance means Article XXVI of Chapter 2 of the Duluth City Code.

Title means First American Title Insurance Company.

ARTICLE II.

Preconditions to Project Construction

Prior to the commencement of construction of the Project and as a precondition to the commencement thereof, Developer shall provide to the City the following items:

A. **Deed.**

Evidence that the Costco Warehouse Property is owned by Developer in fee simple absolute and that an appropriate policy of title insurance has been issued in the name of Developer.

B. **Construction Permit.**

Developer shall have obtained all construction permits applicable to the construction and installation of the Project (the "**Project Approvals**"). In addition,

1. **Union Trades:**

The Construction Manager/Contractor shall have entered into contracts with union trades to perform work on the Project, which contracts provide for payment to such trades of not less than fifty-one (51%) percent of the estimated Project Costs.

2. **Project Labor Agreement:**

The Construction Manager/Contractor shall have entered into Project Labor Agreement for the construction of the Project.

ARTICLE III.
Construction Plans

A. Plans, Specifications and Elevations.

The City acknowledges that it has received, and has reviewed and approved, or will be reviewing and approving, the working drawings, specifications and elevations for the Project, together with detailed site grading, utility and landscaping plans and elevations, for purposes of issuance of the Project Approvals.

ARTICLE IV.
Construction

A. Construction.

Upon the fulfillment of the preconditions to construction provided for in Article II and upon award of the construction of the Project, Developer shall be entitled, but not obligated, to commence construction of the Project and if Developer elects to so commence, then such construction shall be in conformance with the Construction Plans approved pursuant to Article III.

B. Developer to Bear All Costs.

Developer specifically agrees that, if Developer undertakes construction of the Costco Development, including the Project, Developer will bear all costs related to the construction of the Project and any modifications thereto utilizing its funds.

C. Prevailing Wage.

The Construction Manager/Contractor shall, at all times during the construction of the Project, follow a prevailing wage policy that complies with federal and Minnesota law, and the City of Duluth Code. Payroll reports must be submitted periodically upon request of the Director.

D. Community Benefits Program.

The Construction Manager/Contractor shall, at all times during the construction of the Project, comply with the Community Benefits Program.

E. Access to the Project.

Starting with the commencement of construction and continuing until construction of the entire Project has been completed, Developer agrees that it will permit the City access to the Costco Warehouse Property and the Project to ascertain the progress of the Project.

ARTICLE V.

Records Retention

Project records relating to Project Costs shall be kept and maintained by Developer for a period of six years following issuance of the Certificate of Completion as provided for in Article VI.

ARTICLE VI.

Completion of the Project

A. Certificate of Completion.

Upon completion by Developer of the construction of the Project in accordance with this Agreement, the City through its Director, shall within 30 days of written request from Developer, furnish to Developer an appropriate certificate certifying completion of construction of the Project, (the "**Certificate of Completion**") substantially in the form of that attached hereto as Exhibit F. A Certificate of Completion shall not be issued until all elements of the Project have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction by Developer of the construction obligations undertaken by Developer pursuant to this Agreement. In the event the Director refuses or denies Developer's request to provide a Certificate of Completion, the Director will, within said 30-day period, provide Developer a written statement indicating the reasons for such refusal or denial and what measures or actions are required in order to obtain a Certificate of Completion.

B. Final Construction Certification.

At the same time as Developer submits its request for a Certificate of Completion, Developer shall also provide to the Director the Certificate of Occupancy for the Costco Development and an affidavit from the Construction Manager/Contractor covering the following:

1. Construction Plans.

Certifying, in which certification Costco shall join, that the construction of the Project has been completed in accordance with the Construction Plans.

2. Construction Costs.

Certifying the amount of the final Project Costs actually incurred in completing the Project, including substantiation of the final Project Costs (such as invoices, contractor sworn statements, etc.).

3. Union Trades.

Certifying the percentage of the final Project Costs that were paid to union trades, and confirming that not less than fifty one (51%) of the Project Costs was paid to union trades.

C. Adjustment of Abatement Amount.

In the event that the certification of final Project Costs to be provided under Section B.2. of Article VI indicates that said final Project Costs are less than \$2,000,000.00, then the total amount of the abatement shall be reduced by the amount by which \$2,000,000.00 exceeds said final Project Costs (hereinafter called the “**Shortfall**”) with the amount of the City abatement to be reduced by sixty-seven and one-half percent (67.5%) of the amount of Shortfall and the amount of the County abatement to be reduced by thirty-two and one-half (32.5%) of the amount of the Shortfall.

ARTICLE VII.

Tax Abatement Assistance

A. Generally.

As a part of the financial assistance provided to this Project to make it feasible, the City and St. Louis County have agreed to provide tax abatement assistance as more particularly set forth in the Abatement Resolutions. The terms and conditions of that assistance shall be those set forth in the Abatement Resolutions; provided that the breach by Developer of any of the terms, covenants or conditions of this Agreement, or of either of the Abatement Resolutions that remains uncured after a reasonable period of time to cure such breach shall constitute a breach of the requirements of both or the other, as the case may be, of the Abatement Resolutions.

ARTICLE VIII.

Developer Covenants

Developer agrees that, during the Term of this Agreement, Developer's operations and use of the Costco Development and the Costco Warehouse Property, shall comply with industry standards and Developer shall:

A. Maintenance.

To the extent not maintained or operated by the City or the applicable local utility service provider, (1) cause the Costco Development and the Costco Warehouse Property to be maintained in a neat, orderly condition, (2) maintain, preserve and keep in good repair, working order and condition the Costco Development and the Costco Warehouse Property and (3) perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Costco Development and the Costco Warehouse Property shall include but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings and all roofing systems as well as outside maintenance including snow removal, grass cutting and landscape maintenance, and all other exterior maintenance to the Costco Development and the Costco Warehouse Property.

B. Utilities.

Unless disputed, pay or cause to be paid any and all charges for utilities furnished to the Costco Development and the Costco Warehouse Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power.

C. Licenses and Permits.

Preserve the existence of all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs at all times when its business and affairs are operating on the Costco Development and the Costco Warehouse Property and to be qualified to do business in the State of Minnesota.

D. Obey All Laws.

Conduct its affairs and carry on its business and operations with respect to the Costco Development and the Costco Warehouse Property in such a manner as to comply with any and all applicable laws of the United States, the State of Minnesota, and the Duluth City Charter including all laws related to unlawful discrimination and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Costco Development and the Costco Warehouse Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Costco Development and the Costco Warehouse Property.

E. Payment of Taxes and Assessments.

Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Costco Development and the Costco Warehouse Property, excluding that

portion of the real property taxes on the Costco Development and the Costco Warehouse Property owed to the City and the County pursuant to the Abatement Resolutions, subject to the right to contest in good faith in accordance with Minnesota law.

F. Fees and Charges.

Pay or cause to be paid when due or payable all fees, charges and rentals for utilities, service or extensions for the Costco Development and the Costco Warehouse Property and all other charges lawfully made by any governmental body for public improvements.

G. Obligations and Claims.

Promptly to pay or otherwise satisfy and discharge all other obligations and indebtedness and all demands and claims against the Costco Development and the Costco Warehouse Property as and when the same become due and payable other than any thereof whose validity, amount or collectability is being contested in good faith by appropriate proceedings.

H. Living Wage Ordinance.

Comply with Living Wage Ordinance.

I. Project Labor Agreement.

Cause the Construction Manager/Contractor to comply solely in connection with the construction of the Project.

J. Community Benefits Program.

Cause the Construction Manager/Contractor to comply solely in connection with the construction of the Project.

ARTICLE IX.

Provision against Liens

A. Provision against Liens.

Except for encumbrances permitted pursuant to Paragraph B below, Developer shall not, during the Term of this Agreement, create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Costco Development, the Costco Warehouse Property or any part thereof which would materially or adversely affect the City's interest in this Agreement, provided that if Developer shall first notify the City of its intention to do so and post such security as the City reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as the City does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

B. Provision against Assignments, Transfers or Change in Identity of Developer.

Developer recognizes that, in view of the importance of the development of the Costco Development to the general welfare of the community and the fact that any act or transaction involving or resulting in a change in the identity of the parties in control of Developer is of particular concern to the community, the City is relying upon the qualifications and identity of Developer to build and operate the Costco Development. Therefore, except for the purposes of obtaining financing or as otherwise allowed by this Agreement, Developer represents and agrees for itself, its successors and assigns that it has not made or created, and during the Term of this Agreement, will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, and has not and during the Term of this Agreement, will not otherwise transfer in any other way all or any portion of the Costco Development, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and except for the financing, Developer will not, prior to Developer obtaining a Certificate of Completion, make or create or suffer to be

made any such transfer of Developer's rights hereunder without the prior approval of the City. Notwithstanding the above, Developer may sell or transfer its interest in the Costco Development to a related or affiliated entity or as part of an organizational acquisition or merger without the prior approval of the City. An entity acquiring or accepting an interest in the Costco Development as part of an organizational acquisition or merger shall be required to execute a Guaranty. Developer shall give written notice of such sale or transfer and provide copies of the sale or transfer documentation, and well as any Guaranty required above to the Director within 30 days of the event of sale or transfer.

ARTICLE X.
Indemnification

A. Generally.

Developer will to the fullest extent permitted by law, protect, indemnify and save the City and its officers, agents, servants, employees and any person who controls the City within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from any of the following, except to the extent that same result from the sole negligence by the City, its officers, agents or employees, in which case Developer' indemnification and hold harmless shall not apply:

1. Any injury to or death of any person or damage to the Project or the Costco Warehouse Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Costco Development or the Costco Warehouse Property or any part thereof and also, without limitation, any and all acts or operations related to the construction or installation of the Costco Development on any portion of the Costco Warehouse Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Developer customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;

2. Any Breach of this Agreement by Developer;
3. Any violation of any contract, agreement or restriction related to Developer's use of the Costco Development or the Costco Warehouse Property which contract, agreement or restriction shall have existed at the commencement of the Term of this Agreement or shall have been approved by Developer;
4. Any violation, or alleged violation by Developer, or any employee or agent of Developer or any contractor of Developer, of state, federal or local law, rule or regulation affecting the Costco Development, the Costco Warehouse Property or the ownership, occupancy or use thereof; and
5. Any mechanic's liens or similar liens.

B. Environmental Indemnification.

In addition to the generality of the foregoing, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save the City and its officers, agents, servants and employees and any person who controls the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition of the Costco Development or the Costco Warehouse Property attributable to Developer's use and occupancy of the Costco Warehouse Property or the Costco Development or both which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence on the Costco Warehouse Property of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof in quantities in excess of that permitted by applicable law, which causes injury or death to persons or damage to the Costco Development or the Costco Warehouse Property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before any court of law or administrative agency, including

attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans, as defined by the foregoing agencies, as may be necessary to meet the requirements of said agencies and any other costs and expenses of any kind whatsoever arising out of the presence of any of the aforementioned items on the Project or the Costco Warehouse Property.

The indemnification set forth in this Article shall survive any termination of this Agreement, foreclosure or deed in lieu transfer of the Costco Development or the Costco Warehouse Property.

C. Indemnification Procedures.

Promptly after receipt by Developer from the City of notice of the commencement of any action with respect to which Developer is required to indemnify a party under this Article and subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of counsel reasonably satisfactory to the indemnitee and the payment of expenses. Insofar as such action shall relate to any alleged liability of the City with respect to which indemnity may be sought against Developer, the City shall have the right, if it should determine in its commercially reasonable judgment that to do so is necessary, to employ separate counsel in any such action to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Developer.

ARTICLE XI

Insurance

Developer shall procure and continuously maintain insurance covering all risks of injury to or death of persons or damage to the Costco Development or the Costco Warehouse Property arising in any way out of or as a result of Developer's occupancy of or use of the Costco Development or the Costco Warehouse Property.

A. Insurance During Construction.

Developer, prior to entering on the Costco Warehouse Property for construction of the Project, shall procure or cause to be procured and maintain or require the Construction Manager/Contractor and all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. "All-Risk" Insurance.

"All Risk" builders' risk insurance on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed \$50,000 per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Costco Development and shall be maintained in effect until property coverage as provided for hereinafter is in force.

2. Commercial Liability Insurance.

Commercial Liability Insurance written on an "occurrence" basis in limits of not less than \$2,000,000 per occurrence and in the aggregate for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The Construction Manager/Contractor shall also require such liability coverage of its contractors and subcontractors unless they are insured under the Construction Manager/Contractor's policies. The Construction Manager/Contractor's, contractors' and subcontractors' liability coverages shall include:

- (a) Contractors' general liability--premises and operations;
- (b) Independent contractors' vicarious liability;
- (c) Personal injury;

- (d) Owned, non-owned, and hired vehicles;
- (e) Contractual liability covering customary construction contract and subcontract indemnity provisions; and
- (f) Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employer's liability coverage shall be maintained in limits of \$100,000 per employee.

B. Property Insurance. Prior to the expiration of the builders' risk coverage specified above and during the entire Term of this Agreement, the Costco Development, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$25,000 per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer hereby waives any and all claims or causes of action against the City for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss. In time of war in which the United States of America is a belligerent, Developer will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the Costco Development and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable.

C. Requirements for All Insurance.

All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

D. Policies.

Developer shall be required to supply to the City certification of all policies required under this Agreement. In the event that an ACORD form of certification

is used, the words, “endeavor to” shall be stricken from the notification provisions thereof.

E. Fire or Other Casualty Loss.

In the event the Costco Development or the Costco Warehouse Property or any portion thereof is, during the Term of this Agreement, destroyed by fire or other casualty covered by insurance, Developer shall, at its option, either (1) elect not to restore, repair or rebuild the portion(s) of the Costco Development and Costco Warehouse Property that has or have been damaged or destroyed, and, at its sole cost and expense, and as soon as reasonably possible, shall raze such Costco Development or Costco Warehouse Property or such part thereof as has or have been damaged or destroyed, clear the Costco Warehouse Property of all debris, and all areas of the Costco Warehouse Property not restored to their original use shall, at the expense of Developer, be leveled, cleared and improved with, at the option of Developer, either landscaping or parking area, of like standard and design as existed prior to such fire or other casualty (Developer recognizing that by making this election, real property taxes shall be reduced and the amounts available for abatement will be accordingly reduced) or (2) forthwith repair, reconstruct, and restore the Costco Development and the Costco Warehouse Property to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. If Developer elects to undertake to repair, reconstruct and/or restore, Developer shall complete the repair, reconstruction and restoration of the Costco Development and the Costco Warehouse Property whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction. In the alternative, and only with the prior written consent of the City, Developer may construct a building of a new design having utility to the City equal to or greater than the Costco Development, approved by the City as a replacement to the Costco Development, at its own cost and at no cost to the City.

F. Self-Insurance.

Developer shall have the right to satisfy its insurance obligations under this Article XI by means of self-insurance to the extent of all or part of the insurance required under Article XI, but only so long as (i) Developer (or an affiliate providing the insurance) shall have a net worth of at least \$200,000,000; and (ii) Developer (or an affiliate providing the insurance) shall, upon request, provide a financial statement, prepared in accordance with generally accepted accounting principles, showing the required net worth unless such Developer (or affiliate providing the insurance) is an entity whose stock is publicly held and traded through a national stock exchange or an entity subject to reporting requirements of the Securities Exchange Commission similar to those applicable to publicly-traded companies, and provided that such information is available to the public (e.g., without limitation, via the Securities Exchange Commission's website at www.sec.gov), then Developer (or affiliate providing the insurance) shall not be required to provide any financial statements.

ARTICLE XII

Developer Defaults and Remedies Therefor

A. Events of Default.

The following shall be deemed to be Events of Default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Paragraph B below shall be applicable as otherwise set forth in this Agreement. Except as otherwise specifically provided herein, following notice of a default, Developer shall have 30 days to cure such default and provide evidence of such cure to the City, unless such cure cannot reasonably be accomplished within said thirty (30) day period in which event so long as Developer commences the cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion, Developer shall have up to an additional sixty (60) days to effect the cure.

1. Developer shall permit any liens on the Project or the Costco Warehouse Property except as expressly provided for in the Documents, including without limitation, the provisions of Section IX A. above.
2. Any of the following shall occur: (i) Developer shall seek relief in bankruptcy, or make a general assignment for the benefit of creditors, or (ii) there is filed by or against Developer a petition in bankruptcy or for the appointment of a receiver which petition remains un-dismissed for more than ninety (90) days after being filed, or (iii) any creditor commences under any bankruptcy or insolvency law proceedings for relief against Developer which proceedings remain un-dismissed for more than ninety (90) days after being filed, or (iv) an action is sought for the composition, extension, arrangement or adjustment of Developer's obligations which action remains un-dismissed for more than ninety (90) days after being filed, or (v) Developer defaults on any other obligation to the City beyond any applicable notice and cure periods, or (vi) Developer's business is taken over or control is assumed by any government or governmental agency.
3. Any of the following shall occur:
 - i. Any warranty, representation or statement made by Developer in any Document, is untrue or misleading in any material respect.
 - ii. Any financial information provided by or on behalf of Developer is untrue or misleading in any material respect.
 - iii. Any of the Documents ceases to be in full force and effect (including failure of a collateral document to create a valid and perfected security interest or lien) at any time and for any reason.
 - iv. Developer defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially and adversely affect any of Developer's property or Developer's ability to perform its obligations under any of the Documents.
 - v. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by

any creditor of Developer or by any governmental agency against any collateral securing financing. However, this Event of Default shall not apply if there is a good faith dispute by Developer as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Developer gives the City written notice of the creditor or forfeiture proceeding and deposits with the City monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by the City, in its sole discretion, as being an adequate reserve or bond for the dispute.

- vi. Developer fails to perform any other obligation required under the Documents and such failure is not cured within 30 days after delivery of written notice by the City to Developer describing the failure and the act required to cure the failure.
- vii. Developer fails to pay prior to becoming delinquent any real estate tax payment or legally-imposed assessment with regard to the Costco Warehouse Property or the Costco Development.

B. General Remedies

Except as otherwise set forth in this Agreement, the City shall have the following remedies in the case of an Event of Default by Developer (provided, however, that in no event shall Developer be liable for more than an aggregate of \$2,000,000 upon the occurrence of any one or more Event(s) of Default – hereinafter called “**Developer’s Liability Limitation**”):

- 1. Terminate this Agreement.
- 2. Any of the various remedies provided in any of the Documents.
- 3. Seek and be entitled to monetary damages from Developer for any damages incurred by the City as a result of Developer’s default.
- 4. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Developer’s violation of the terms and conditions of this Agreement or to compel Developer’s performance of its obligations hereunder.

C. Non-Waiver.

The waiver by the City of any Event of Default on the part of Developer or the failure of the City to declare default on the part of Developer of any of its obligations pursuant to this Agreement or the other Documents shall not be deemed to be a waiver of any subsequent Event of Default on the part of Developer of the same or of any other obligation of Developer under this Agreement or the other Documents. To be effective, any waiver of any Event of Default by Developer hereunder shall be in a writing signed by the City.

D. Remedies Cumulative.

Subject to Developer's Liability Limitation, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of an Event of Default hereunder.

ARTICLE XIII

ARTICLE XI. Representations, Covenants and Warranties

A. Representations, Covenants and Warranties of the City.

The City represents, covenants and warrants as follows:

1. The City is a duly formed and validly existing municipal corporation and political subdivision of the State of Minnesota, governed by the Constitution and laws of the State of Minnesota and its home rule charter.
2. The officers of the City executing this Agreement have been duly authorized to execute and deliver this Agreement and perform its obligations hereunder pursuant to the terms and provisions of a resolution of the Council of the City.
3. This Agreement is binding and enforceable against the City in all respects.

B. Representations, Covenants and Warranties of Developer.

Developer represents, covenants and warrants as follows:

1. Developer is a duly formed and validly existing corporation under the laws of the State of Washington, is qualified to do business in Minnesota, is not in violation of its organizational documents, has power to enter into this Agreement and to perform its obligations hereunder, and has duly authorized the execution, delivery, and performance of this Agreement and the other Documents by proper corporate action.

2. Developer is not in violation of any provision of its organizational documents, or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule or regulation to which it is a party or by which it or its properties are bound or affected, other than violations and defaults which would not, individually or in the aggregate, have a material adverse effect on the financial position or results of operation of Developer.
3. The execution and delivery by Developer of this Agreement; compliance with the provisions thereof by Developer; and the performance by Developer of its agreements, covenants, and obligations under this Agreement, do not, in any material respect, constitute on the part of Developer a breach or violation of, or default under, its organizational documents, will not violate any law or regulation applicable to Developer, or result in the breach of, or constitute a default under, any indenture or loan, credit, or other agreement or instrument to which Developer is a party or by which it or its property is bound or affected.
4. There are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any premises leased or owned by Developer in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Developer, could have a material adverse effect upon Developer, any premises leased or owned by Developer, the financial position of Developer, or the operation of Developer, and that Developer is not in default of any order of any court or governmental agency.
5. Except as permitted in this Agreement or any other Document, Developer will not sell, encumber, transfer or otherwise pledge the Costco Development or the Costco Warehouse Property to any other person for any purpose whatsoever except with the prior written consent of the City.
6. Developer will perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the other Documents, and in all other instruments and agreements between

Developer and the City. Developer shall notify the City immediately in writing of any default in connection with this Agreement, any other Document or in any other agreement between Developer and the City promptly upon Developer becoming aware of such default.

7. Developer shall not enter into any agreement containing any provisions which would be violated or breached by the performance of Developer's obligations under this Agreement or in connection herewith.
8. If Developer elects to undertake construction and development of the Project, (a) Developer shall be responsible for constructing the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, and federal Davis-Bacon) and (b) Developer shall obtain, in a timely manner, all required permits, licenses and approvals, and shall meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed, including, all of the permits and licenses necessary for construction and operation of the Project.
9. The execution of this Agreement has been duly and fully authorized by Developer's governing body or board, that the officer of Developer who executed this Agreement on its behalf is fully authorized to do so, and that this Agreement when thus executed by said officer on its behalf will constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.
10. This Agreement is binding and enforceable against Developer in all respects.

ARTICLE XIV

Term

The term of this Agreement (herein referred to as the "**Term**") shall commence upon execution by the parties hereto and shall continue until all tax abatement payments

provided for in the Abatement Resolutions have been paid, unless this Agreement is terminated earlier as provided for herein.

ARTICLE XV

Runs with the Land

This Agreement shall be deemed to run with the Costco Warehouse Property and shall inure to the benefit of the parties hereto and to their respective successors and assigns.

ARTICLE XVI

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City: City of Duluth
 Attn: Director of Economic Development
 City Hall Room 402
 411 West First Street
 Duluth, MN 55802

In the case of Developer: Costco Wholesale Corporation
 Attn.: Property Management (Legal Department)
 999 Lake Drive
 Issaquah, WA 98027

ARTICLE XVII

[Reserved]

ARTICLE XVIII

Disclaimer of Relationships

Developer acknowledges that nothing contained in this Agreement nor any act by the City or Developer shall be deemed or construed (a) to make any party a third party beneficiary of any provision of this Agreement or (b) to create any relationship of principal and agent, limited or general partner, or joint venture between the City and Developer.

ARTICLE XIX

Applicable Law

This Agreement (together with all of its Articles, Paragraphs, terms and provisions) is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

ARTICLE XX

Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

ARTICLE XXI

Title of Articles

Any title, Articles and Paragraphs in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE XXII

Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

ARTICLE XXIII

Unavoidable Delays

Neither party shall be held responsible for, and neither party shall be in considered in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions, judicial actions by third parties, strikes or embargoes, pandemics and other health crises, adverse weather conditions and any other occurrence or matter not within the reasonable control of the party affected by such occurrence or matter, except for delays caused by government and judicial actions which could have been avoided by compliance with publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

ARTICLE XXIV

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

ARTICLE XXV

Counterparts

This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

ARTICLE XXVI

Attorney's Fees

In the event that Developer is in default of any of the terms and conditions of this Agreement and the City shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the City shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder. In the event City is in default of any of the terms and conditions of this Agreement, and Developer shall successfully take legal action to enforce said rights herein, in addition to any other right or remedy, Developer shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XII. Remainder of page left blank intentionally. Signature page follows.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH, a Minnesota
Municipal Corporation

COSTCO WHOLESALE CORPORATION,
a Washington corporation

By _____
Emily Larson
Its Mayor

By _____

Attest:

By _____
Its City Clerk

Date: _____

Countersigned:

Its Auditor

Approved:

Its City Attorney

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, the _____ of Costco Wholesale Corporation, a Washington corporation, on behalf of the company.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Emily Larson and Chelsea Helmer, the Mayor and City Clerk of the City of Duluth, a Minnesota Municipal corporation, on behalf of the City.

Notary Public

EXHIBIT A

Legal Description of the Costco Warehouse Property

REAL PROPERTY IN THE CITY OF DULUTH, COUNTY OF ST. LOUIS, STATE OF MINNESOTA, DESCRIBED AS FOLLOWS:

THE NORTH HALF OF THE NORTH HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTH HALF OF THE NORTH HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, THE NORTH HALF OF THE SOUTH HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTH HALF OF THE SOUTH HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, ALL IN SECTION 7, TOWNSHIP 50, RANGE 14, ST. LOUIS COUNTY, MINNESOTA.

AND

THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, EXCEPT THE SOUTH 400.00 FEET OF THE WEST 400.00 FEET THEREOF, ALL IN SECTION 7, TOWNSHIP 50, RANGE 14.

EXHIBIT B

City Abatement Resolution

..Title

RESOLUTION GRANTING A TAX ABATEMENT FOR THE COSTCO DEVELOPMENT PROJECT, AUTHORIZING A TAX ABATEMENT AGREEMENT WITH ST. LOUIS COUNTY AND FURTHER AUTHORIZING A TAX ABATEMENT DEVELOPMENT AGREEMENT WITH COSTCO WHOLESALE CORPORATION.

..Body

CITY PROPOSAL:

BE IT RESOLVED, by the City Council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Purpose and Authorization.

1.01 The city, pursuant to the provisions of Minnesota Statutes, Sections 469.1812 to 469.1815, as amended (the "Act"), is authorized to grant an abatement of the property taxes imposed by the City on a parcel of property, if certain conditions are met, through the adoption of a resolution specifying the terms of the abatement.

1.02 COSTCO WHOLESALE CORPORATION ("Developer") proposes to develop an approximately 160,000 square foot retail development with an associated approximately 725 car parking lot and associated road and utility improvements, including public road and utility improvements (the hereinafter-described "Costco Development") on property owned by it and described on Exhibit A hereto (the "Costco Warehouse Property"). In connection with the Costco Development, Costco will be making Public Eligible roadway and other public improvements (the "Project") on the Costco Warehouse Property and public rights-of-way located adjacent to the Costco Warehouse Property.

1.03 Pursuant to the Act, on the date hereof, the City Council conducted a public hearing on the desirability of granting an abatement of property taxes on the Costco Warehouse Property. Notice of the public hearing was duly

published as required by law in the Duluth News Tribune, the official newspaper of the City, on July 9, 2020, which date is no fewer than 10 and no more than 30 days prior to the date hereof.

Section 2. Findings. On the basis of the information compiled by the City and elicited at the public hearing referred to in Section 1.03, it is hereby found, determined and declared:

2.01 The Costco Development is in the public interest because it will increase and preserve tax base in the City, provide jobs, and will develop unused or underutilized real property.

2.02 The City expects that the benefits of the proposed abatement are not less than the costs of the proposed abatement. The public benefits that the City expects to result from the abatement are the increase in property taxes created by the Costco Development, the creation of jobs, and the redevelopment of unused or underutilized real property.

2.03 The Costco Warehouse Property is not located in a tax increment financing district.

2.04 The granting of the proposed abatement will not cause the aggregate amount of abatements granted by the City under the Act in any year to exceed the greater of (i) 10% of the City's net tax capacity for the taxes payable in the years to which the abatement applies or (ii) \$200,000.

2.05 It is in the best interests of the City to grant the tax abatement authorized in this resolution.

2.06 Under Section 469.1813, subdivision 9 of the Act, it is not necessary for the City to obtain the consent of any owner of any of the properties to grant an abatement.

Section 3. Granting of Tax Abatement.

3.01 A property tax abatement (the "Abatement") is hereby granted in respect of property taxes levied by the City on the Costco Warehouse Property for 20 years, commencing with taxes payable in 2021 and concluding with

taxes payable in 2041 unless the maximum amount of the Abatement is provided prior to that date in which case the Abatement shall thereafter cease. The Abatement will reduce all of the City's portion of the taxes for the Costco Warehouse Property, and the Abatement will not exceed a total aggregate amount of \$1,350,000. Abatement payments will be made only from property tax proceeds received by the City from the Costco Warehouse Property.

3.02 The City shall remit the Abatement amounts to the Developer only when, if and as property tax payments are received by City from the Costco Warehouse Property and only to reimburse for the costs of constructing the Project. City shall remit said semiannual Abatement amounts no later than July 31 and December 31 in each year until both the (1) City's abatement payment total of \$1,350,000 is satisfied, and (2) St. Louis County's total abatement payment of \$650,000 (pursuant to Section 4) is satisfied.

Section 4. Authorizing Agreements with St. Louis County and Developer

4.01. The proper city officials are hereby authorized to enter into a Tax Abatement Agreement with St. Louis County, substantially in the form of that attached as Exhibit 1, pursuant to which the County agrees to abate taxes in an amount not to exceed \$650,000 and provide the same to the City for reimbursement of Developer's eligible costs associated with the construction of the Project, payable into Fund 310-030-4654-02 (Debt Service, Finance, Other Reimbursement and Refunds).

4.02. The proper City officials are hereby authorized to enter into a Tax Abatement Development Agreement with Developer, substantially in the form of that attached as Exhibit 2, pursuant to which the City agrees to assist the Project with abatement of City and County real estate taxes in an amount not to exceed \$1,350,000 for the City and \$650,000 for the County for a total of \$2,000,000, payable from Fund 310-030-5479 (Debt Service, Finance, Tax Abatement).

Section 5. Approvals Contingent on County Board Approval.

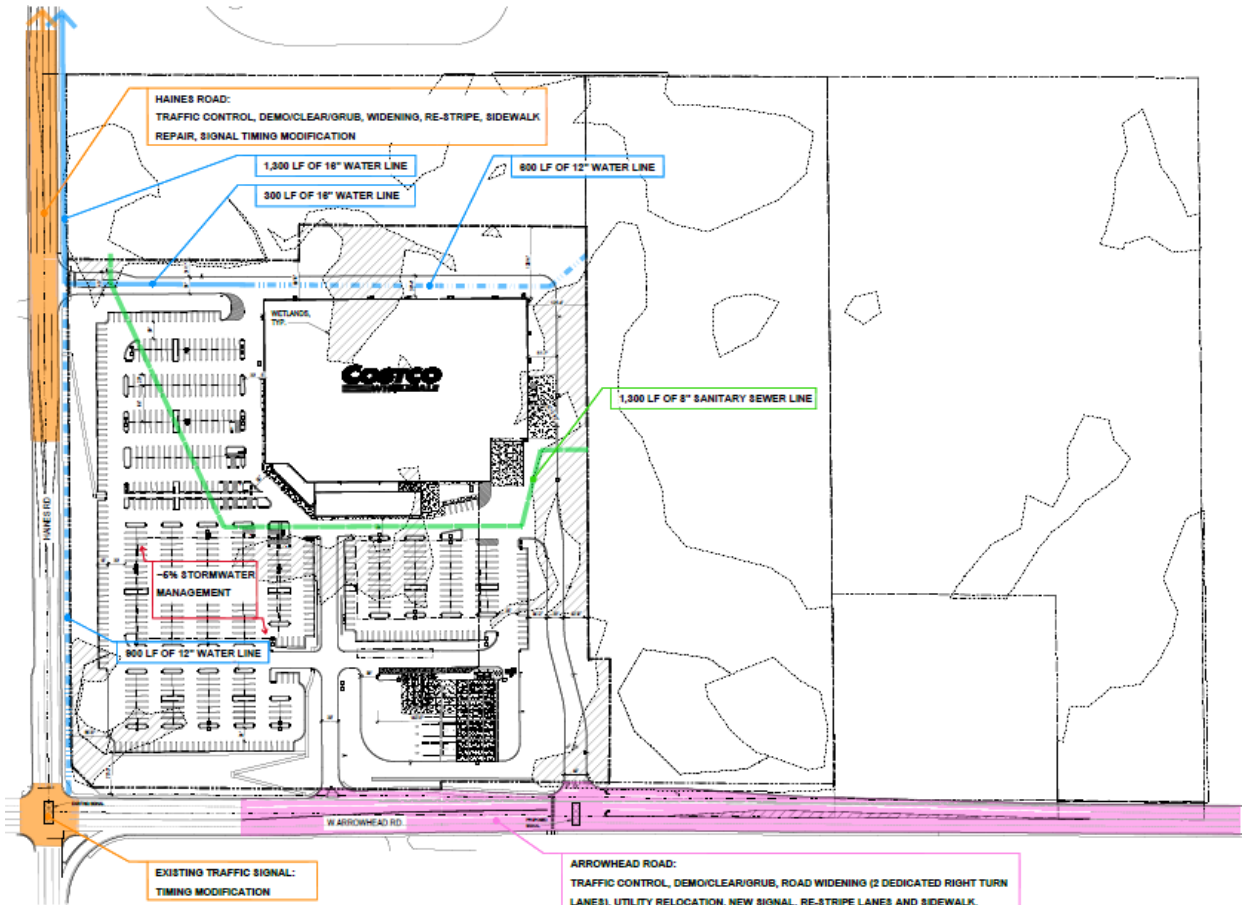
5.01 The grant of the city tax abatement and the authorizations approving the tax abatement agreement and development agreement are

contingent upon the county granting the county tax abatement and authorizing the tax abatement agreement with the city.

EXHIBIT C

County Abatement Resolution

EXHIBIT D Depiction of the Project



COSTCO WHOLESALE
DULUTH, MINNESOTA

PUBLIC IMPROVEMENTS
JUNE 24, 2020

+



DULUTH, MN



17-0589-01
JUNE 24, 2020
PUBLIC IMPROVEMENTS
EXHIBIT

Exhibit E
Estimate of Project Costs

Duluth, MN
 Costco Wholesale
 6.24.20
 Public Infrastructure and Associated Site Development Costs

Public Roadway Improvements		
Arrowhead Road (Traffic Control, Road Widening, Striping , Utility Relocation, New Signal)		\$1,048,828
Haines Raod (Traffic Control, Road Widening, Striping , Sidewalk Repair, Signal Timing Modification)		\$310,251
	15% GC,OH&P	Included
	Tax	Included
	Subtotal	\$1,359,079
Public Water Main		
3,100 LF 12" and 16" Pipe		\$341,781
Hardrock Excavation		\$100,850
	15% GC,OH&P	Included
	Tax	Included
	Subtotal	\$442,631
Public Sewer Main		
1,300 LF		\$163,837
	15% GC,OH&P	Included
	Tax	Included
	Subtotal	\$163,837
Stormwater Management Associated with Public Improvements		
5% of the Underground Stormwater Manangement System		\$41,649
	15% GC,OH&P	Included
	Tax	Included
	Subtotal	\$41,649
	TOTAL	\$2,007,196

Exhibit F
Certificate of Completion

CERTIFICATE OF COMPLETION

RECITALS:

A. On _____, 2020, the City of Duluth, a home rule charter city and political subdivision of the State of Minnesota (“**City**”), and COSTCO WHOLESALE CORPORATION, a corporation created and existing under the laws of the State of Washington (“**Developer**”), entered into a Tax Abatement Development Agreement (the “**Agreement**”), relating to property located in St. Louis County, Minnesota, and legally described as:

REAL PROPERTY IN THE CITY OF DULUTH, COUNTY OF ST. LOUIS, STATE OF MINNESOTA, DESCRIBED AS FOLLOWS:

THE NORTH HALF OF THE NORTH HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTH HALF OF THE NORTH HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, THE NORTH HALF OF THE SOUTH HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTH HALF OF THE SOUTH HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, ALL IN SECTION 7, TOWNSHIP 50, RANGE 14, ST. LOUIS COUNTY, MINNESOTA.

AND

THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, EXCEPT THE SOUTH 400.00 FEET OF THE WEST 400.00 FEET THEREOF, ALL IN SECTION 7, TOWNSHIP 50, RANGE 14.

B. Capitalized terms used in this Certificate of Completion but not defined herein shall have the meanings ascribed to them in the Agreement.

C. Article VI of the Development Agreement provides that a Certificate of Completion be issued by City through its Director upon completion by Developer of the construction of the Project.

D. Developer has completed construction of the Project in a manner deemed sufficient by City to permit execution of this Certificate of Completion.

NOW, THEREFORE:

1. Construction of the Project, pursuant to the Agreement, has been completed and those requirements under the Agreement which relate solely to Project construction have been fulfilled, but all other conditions, provisions and restrictions contained in the Agreement shall remain in effect.

CITY OF DULUTH

By: _____
Chris Fleege, Director of Planning and
Economic Development

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____ 202____, by Chris Fleege, the Director of Planning and Economic Development of the City of Duluth, a home rule charter city and political subdivision of the State of Minnesota, on behalf of the City.

Notary Public

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