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**CONSTRUCTION, OPERATION AND RECIPROCAL  
EASEMENT AGREEMENT**

**By and Between**

**The Parties Listed on Schedule 1 Attached Hereto**

**and**

**Costco Wholesale Corporation,  
a Washington corporation**

**Omaha, Nebraska**

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CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT

(Omaha, Nebraska)

This Construction, Operation and Reciprocal Easement Agreement (hereinafter referred to as either "REA" or "Agreement") is made and entered into as of this 12<sup>th</sup> day of July, 2007, by and between the parties listed on Schedule 1 attached hereto and made a part hereof ("Developer"), and Costco Wholesale Corporation, a Washington corporation ("Costco").

RECITALS:

A Developer is the owner of that certain real property, referred to herein as the "Developer Parcels", located in the City of Omaha, County of Douglas, State of Nebraska. The Developer Parcels are comprised of (i) those certain subdivided lots designated as Lot 2 and Outlot A created by that certain subdivision plat (the "Subdivision Plat") filed as ~~Document~~ *Inst.* Number 2007079695, Map Book     , Page     , in the Office of the County Recorder of Douglas County, State of Nebraska (the "Recorder's Office"), such subdivided lots being shown as Phase I/Lot 2 and Outlot A on the replat map (the "Replat Map") attached hereto as Exhibit "A-1" and incorporated herein by this reference, and (ii) those certain proposed lots designated as Phase II/Lot 1, Phase II/Lot 2 and Phase II/Lot 3 on the proposed subdivision plat attached hereto as Exhibit "A-2" and incorporated herein by this reference (the "Proposed Replat Map"). The Developer Parcels are legally described on Exhibit "A-3" attached hereto and incorporated herein by this reference.

B Costco is the owner of that certain real property located in the City of Omaha, County of Douglas, State of Nebraska, designated as Lot 1 on the Subdivision Plat and shown as Phase I/Lot 1 on the Replat Map and referred to herein as the "Costco Parcel". *Lot 1, Candewood Hills, Subdivision, Douglas County NE SH*

C The parties hereto recognize that for the optimum development and operation of the "Project" (as defined in Section 1.1(gg) below) it is necessary that they agree to certain matters, including, but not limited to, matters relating to the construction and maintenance of facilities on, and the use and restrictions on the use of, their respective Parcels, and that in the absence of such agreements neither party hereto would be willing to undertake the development or operation of their respective Parcels, and the parties desire that all "Persons" (as defined in Section 1.1(cc) below) who acquire portions of the Project shall take subject to this Agreement in order that the development and operation of the Project will be in conformity herewith. Accordingly, Developer and Costco intend to establish certain reciprocal easements, covenants and conditions with respect to their Parcels.

## ARTICLE 1

### DEFINITIONS

#### 1.1 Definitions.

(a) “**Access Drives**” shall mean those certain access drives and roads located in the Project which are delineated on the “Site Plan” (as defined in Section 1.1(mm) below), as the same may change from time to time in accordance with this Agreement.

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

(c) “**Building**” or “**Buildings**” shall mean the building(s) on each Parcel.

(d) “**City**” shall mean the City of Omaha, Nebraska.

(e) “**Common Area**” shall mean the Access Drives, as shown on the Site Plan and the Common Area Plan, and the Shared Sign Areas and Outlot A, all as shown on the Common Area Plan.

(f) “**Common Area Plan**” shall mean that certain plan attached hereto as Exhibit “B-1” and made a part hereof by this reference. Any revisions, modifications or other changes to the Common Area Plan requested by an Owner shall require the prior approval of Costco and a Majority of the Developer Parcels Owners, which approval may be granted or withheld in the sole and absolute discretion of such parties. No approval shall be necessary for revisions, modifications or other changes to the Costco Parcel on the Common Area Plan (except with respect to the Costco Main Access Drive and Costco Secondary Access Drive, as to which any revisions, modifications or other changes shall be subject to the immediately preceding sentence) provided that such revisions, modifications or other changes are otherwise in compliance with this Agreement.

(g) “**Costco Building**” shall mean the building or buildings now or hereafter located on the Costco Parcel.

(h) “**Costco Common Area**” shall mean the Common Area within the Costco Parcel, excluding any Shared Sign Areas located on the Costco Parcel, as the same may change from time to time in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Costco have any responsibilities with respect to the Shared Sign Areas or the Shared Sign(s) (except for any reimbursement obligations set forth in Section 2.6).

(i) “**Costco Main Access Drive**” shall mean that portion of the Access Drive located on the Costco Parcel which is identified as such on the Common Area Plan, as the same may change from time to time in accordance with this Agreement.

(j) “**Costco Parcel**” is defined in Recital B. If the Costco Parcel initially comprises or is later subdivided into more than one legal lot, then the term Costco Parcel shall collectively refer to all such legal lots. The Detention Pond may be expanded pursuant to the provisions of Section 4.1(b) below.

(k) “**Costco Secondary Access Drive**” shall mean that portion of the Access Drive identified as such on the Common Area Plan, as the same may change from time to time in accordance with this Agreement.

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

(m) “**Detention Pond**” shall mean the Detention Pond depicted on the Common Area Plan and Site Plan, and located on Outlot A. As of the date hereof, the Detention Pond is comprised of an existing low-lying area, into which Phase I/Lot 1 and Phase I/Lot 2 have been permitted to discharge stormwater pursuant to the Drainage Permit (as defined in Section 1.1(s) below).

(n) “**Developer**” and “**Costco**” as used in this Agreement respectively refer to such Owners and their respective successors and assigns, and shall, so far as the terms, covenants, provisions and conditions of this Agreement to be kept, performed, observed and enforced by them are concerned, refer only to the Person who at the time in question is the Owner with respect to the respective Developer Parcel or Costco Parcel, as may be appropriate, provided that to the extent there is more than one Owner of the Developer Parcel or the Costco Parcel, respectively, the term “Developer” and/or the term “Costco” shall have the meanings as further provided in this Section 1.1(n). Except as otherwise provided below, if the Developer Parcel is subdivided, the term “Developer” shall refer to the entity which is the original “Developer” hereunder so long as such entity or an individual successor or assignee so designated in a recorded instrument is the owner of any land within the Project and thereafter the term “Developer” shall be deemed to refer to the Owner of Phase II/Lot 3 of the Developer Parcels. At any time that the Owner of Phase II/Lot 3 is deemed to be the Developer pursuant to the immediately preceding sentence, and Phase II/Lot 3 is subdivided, then the term “Developer” shall be deemed to refer to the Owner of the largest subdivided tract of the real property which currently constitutes Phase II/Lot 3.

If there shall be more than one Owner of the land now comprising the Costco Parcel, the term “Costco” shall refer: (1) to Costco Wholesale Corporation, so long as Costco Wholesale Corporation is an Owner or lessee of any portion of the land now comprising the Costco Parcel, and (2) to those Owners collectively owning not less than 50.1% of the gross land area within the Costco Parcel if Costco Wholesale Corporation is



no longer the Owner or lessee of any portion of the land now comprising the Costco Parcel.

(o) “**Developer Access Drive**” shall mean the Access Drive(s) located on the Developer Parcels, as the same may change from time to time in accordance with this Agreement.

(p) “**Developer Access Drive Plans**” shall mean those plans for the construction of the Developer Access Drive which conform to the Site Plan and the City’s approved design standards and which are approved pursuant to Section 2.3 below.

(q) “**Developer Common Area**” shall mean all Common Area within the Project, other than the Costco Common Area, as the same may change from time to time in accordance with this Agreement.

(r) “**Developer Parcels**” are defined in Recital A. If the Developer Parcels are subdivided into additional legal lots, then the term “Developer Parcels” shall collectively refer to all of such legal lots.

(s) “**Drainage Permit**” shall mean Section 404, NWP 7 permit no. NE 2007-872-WEH issued by the U.S. Army Corps of Engineers, which permit authorizes the discharge of stormwater from Phase I/Lot 1 and Phase I/Lot 2 into the existing low-lying area located on Outlot A.

(t) “**Floor Area**” shall mean the aggregate number of square feet of floor space in the Project, from time to time, of all floors in any structure, whether roofed or not, whether or not actually occupied, including basement space and subterranean areas, except as provided below in this Section 1.1(t), and balcony and mezzanine space, measured from the exterior faces or the exterior lines of the exterior walls (including basement walls) and the actual number of square feet of any outdoor area appropriated for use to display and/or sell merchandise as permitted hereunder. The term “Floor Area” shall not include any of the following:

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

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

(iii) all Common Area;

(iv) any service islands, structures, vending machines, or other incidental improvements associated with a fueling station on the Costco Parcel (collectively, “**Costco Fueling Station**”);

(v) any sidewalk uses, outdoor sales areas, outdoor dining areas, or other uses on the Costco Parcel permitted under Section 5.2 below; or

(vi) subterranean parking areas.

(u) “**Homeowners Association**” shall mean any entity (and its successors and assigns) formed for the purpose of governing Phase II/Lot 1 and/or Phase II/Lot 2, if either such Parcel is subjected to a Residential Subdivision. Prior to subjecting Phase II/Lot 1 or Phase II/Lot 2 to a Residential Subdivision, the Owner of such Parcel shall be required to form a Homeowners Association. The documentation creating and governing such Homeowners Association shall contain the terms required by Section 7.2(b) below and shall be subject to the reasonable prior approval of the Owner(s) of the other Parcels.

(v) “**Majority of the Developer Parcel Owners**” shall mean those Owners collectively owning not less than 50.1% of the gross land area within the Developer Parcels in the aggregate. For example, if there are 30 acres in the Developer Parcels, then a Majority of the Developer Parcel Owners would be those Owners owning not less than an aggregate of 15.03 acres.

(w) “**Master Association**” shall mean the “Candlewood Hills Property Owners Association”, a Nebraska not-for-profit corporation (and its successors and assigns), which was formed for the purpose of maintaining Outlot A, including the operation of the Detention Pond and Storm Drainage System located thereon, and for performing the obligations set forth herein or other purposes specified in this Agreement.

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

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

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

(i) **Sale.** In the event of the assignment, transfer or conveyance of the whole of the interest of any of the Owners in and to the Parcel in which such Owner presently has an interest, without retaining any beneficial interest other

than under the terms of a deed of trust or mortgage or without simultaneously acquiring a new interest by way of leasehold, life estate or other possessory interest, then the powers conferred upon such Owner shall be deemed assigned, transferred or conveyed and the obligations assumed with its interest in such Parcel;

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

(iii) **Subdivision; Condominium Regime.** In the event a Parcel is divided into one or more separate legal lots, each of such separate legal lots shall thereafter be considered to be a "Parcel" and the owners of each such legal lot shall be an "Owner". Notwithstanding anything contained herein to the contrary, if Phase II/Lot 1 or Phase II/Lot 2 is divided into separate legal lots intended for individual residential use and/or ownership or if Phase II/Lot 1 or Phase II/Lot 2 is submitted to a condominium regime so as to create individual units which are subject to a condominium form of ownership (collectively and individually, a "**Residential Subdivision**"), such Parcel shall remain subject to all terms and conditions of this Agreement and each Person who shall become the owner of any such individual residential lot or individual condominium unit shall be subject to all of the obligations imposed upon an "Owner" under this Agreement; provided, however, (A) no new "Parcels" shall be deemed created by any such Residential Subdivision, (B) the owners of each such subdivided residential lot and/or condominium unit shall not be deemed to be an "Owner" under this Agreement (notwithstanding the fact that each such owner shall be subject to all of the obligations imposed upon an "Owner" under this Agreement), and (C) the Owner subjecting the Parcel to the Residential Subdivision (the "**Subdividing Owner**") or the applicable Homeowners Association, subject to Section 7.2(b) below, shall be deemed to be the "Owner" of such Parcel(s) for all purposes of this Agreement; and

(iv) **Fractional Interests.** In the event any of the Owners shall transfer its present interest in a Parcel or a portion of such interest in such manner as to vest its present interest in such Parcel in more than one Person other than by creation of a separate legal lot (e.g., by the creation of a tenancy-in-common, joint tenancy or the like), then not less than a fifty-one percent (51%) interest of such transferees shall designate one of their number to act on behalf of all of such transferees in the exercise of the powers granted to such Owner under this Agreement. So long as such designation remains in effect, such designee shall be an Owner hereunder and shall have the power to bind such Parcel and such transferees, and such transferees shall not be deemed to be Owners. Any such designation must be in writing and served upon the other Owners hereto by registered or certified mail, and must be recorded in the Recorder's Office. In the absence of such written designation, the acts of the Owner whose interest is so divided with respect to the exercise of the powers vested by this instrument shall be binding upon all Persons having an interest in such Parcel until such time as written notice of such designation is given and recorded in the Recorder's Office.

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

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

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

(dd) **"Phase II/Lot 1"** shall mean that portion of Developer's Parcel designated as "Phase II/Lot 1" on the Proposed Replat Map.

(ee) **"Phase II/Lot 2"** shall mean that portion of Developer's Parcel designated as "Phase II/Lot 2" on the Proposed Replat Map.

(ff) **"Phase II/Lot 3"** shall mean that portion of Developer's Parcel designated as "Phase II/Lot 3" on the Proposed Replat Map.

(gg) **"Project"** shall mean the property consisting of the Developer Parcels and the Costco Parcel.

(hh) **"Proposed Replat Map"** is defined in Recital A. The final replat map for that portion of Developer's Parcel that is the subject of the Proposed Replat Map may not deviate in any respect from the Proposed Replat Map if such deviation (i) affects (A) any lot designation for Phase II/Lot 1, Phase II/Lot 2 or Phase II/Lot 3 or (B) results in any

change to the boundaries of Phase II/Lot 1, Phase II/Lot 2 or Phase II/Lot 3 or (ii) conflicts in any way with the Site Plan.

(ii) “**Replat Map**” is defined in Recital A. References herein to Phase I/Lot 1, Phase I/Lot 2 or Outlot A shall be deemed to refer to the lot bearing the corresponding number or letter on the Replat Map.

(jj) “**Residential Subdivision**” is defined in Section 1.1(z)(iii) above.

(kk) “**Shared Sign Areas**” shall mean the areas in which the “Shared Signs” shall be located, as delineated on the Common Area Plan.

(ll) “**Shared Signs**” shall mean the free-standing signs for the Project. The conditions for the use of the Shared Sign(s) are provided for in Section 2.7.

(mm) “**Site Plan**” shall mean that certain plan attached as Exhibit “B-2” and made a part hereof by this reference. Any revisions, modifications or other changes to the Site Plan requested by an Owner shall require the prior approval of Costco and a Majority of the Developer Parcels Owners, which approval may be granted or withheld in the sole and absolute discretion of such parties. No approval shall be necessary for revisions, modifications or other changes to the Costco Parcel on the Site Plan (except with respect to the Costco Main Access Drive and the Costco Secondary Access Drive, as to which any revisions, modifications or other changes shall be subject to the immediately preceding sentence) provided that such revisions, modifications or other changes are otherwise in compliance with this Agreement.

(nn) “**Subdividing Owner**” is defined in Section 1.1(z)(iii) above.

(oo) “**Subdivision Plat**” is defined in Recital A.

## ARTICLE 2

### CONSTRUCTION OBLIGATIONS

2.1 **Site Development Agreement.** Developer and Costco hereby acknowledge that, concurrently herewith, they have entered into a Site Development Escrow Agreement (“**SDA**”) providing for the construction and development of certain improvements at the Project by Costco (the “**SDA Work**”). Accordingly, notwithstanding anything to the contrary contained herein, Costco and Developer acknowledge and agree that the construction and development of the SDA Work shall not be governed by this Agreement but rather shall be governed by the SDA.

2.2 **Developer Construction.** Prior to the use or occupancy of any Building on the Developer Parcels, Developer shall (a) as to Phase II/Lot 3 only, construct, or cause to be constructed, the Developer Access Drive and (b) as to all Parcels comprising the Developer Parcels, excluding Phase I/Lot 2, construct or cause to be constructed, and dedicate to the City of Omaha, Nebraska, the street identified as 125th Street on the Proposed Replat Map.

2.3 **Developer Access Drive Plans.** Prior to commencing construction of the Developer Access Drive, Developer shall deliver to Costco three (3) copies of the proposed Developer Access Drive Plans. The proposed Developer Access Drive Plans shall conform to the Site Plan and the City's approved design standards and guidelines, if any. Within fifteen (15) days following delivery of the Developer Access Drive Plans, Costco shall deliver written notice to Developer (a "**Plan Approval Notice**") whereby Costco shall either approve the Developer Access Drive Plans or request reasonable revisions. Any Plan Approval Notice requesting revisions shall contain the reasons for any request for revision of the Developer Access Drive Plans. Costco and Developer shall act in good faith and use reasonable efforts to agree on the final form of the Developer Access Drive Plans incorporating any revisions requested by Costco. On reaching agreement on such plans, Costco and Developer shall sign such plans as approved and Developer shall promptly submit such plans for approval by the appropriate governmental entity. If such governmental entity requires changes to the approved Developer Access Drive Plans, Developer shall resubmit the changed plans to Costco for its approval in accordance with the terms of this Section 2.3. The final approved plans for which the appropriate governmental entity issues construction permits shall be the final Developer Access Drive Plans.

2.4 **Interference by Construction.** Each Owner agrees that any construction work to be undertaken by it (excluding the SDA Work) shall be performed (a) so as not to cause any increase in the cost of constructing the remainder of the Project or any part thereof, (b) so as not to unreasonably interfere with any construction work being performed on the remainder of the Project, or any part thereof, and (c) so as not to unreasonably interfere with and so as to minimize disruptions of the access to, use, occupancy or enjoyment of the remainder of the Project or any part thereof by the other Owner and the Permittees of the other Owner. Except to the extent limited by Section 2.5, any damage occurring to any portion of the Project, including any Common Area, as a result of such construction work shall be the responsibility of the Owner performing such construction work or causing such construction work to be performed and shall be repaired by such Owner, at such Owner's sole cost and expense, to the same condition as existed immediately prior to such damage promptly upon the completion of such construction work. No construction or maintenance vehicle traffic relating to improvements to be constructed on the Developer Parcels shall be permitted to access the Developer Parcels by use of the Costco Main Access Drive or Costco Secondary Access Drive; provided, however, that construction or maintenance vehicle traffic relating to the construction of improvements on Phase I/Lot 2 shall be permitted to use the Costco Secondary Access Drive, subject to regulations that may be prescribed by Costco relating thereto. Excluding Phase II/Lot 1 and Phase II/Lot 2, any construction work on the Developer Parcels (other than emergencies) which is proposed to be accomplished after the Costco Building has opened for business (including any grand opening events) and during the period from October 15 to January 1 of any year, shall be subject to Costco's prior approval, which approval shall not be unreasonably withheld but may be conditioned upon reasonable measures to minimize interference with the business operations on the Costco Parcel. In addition, any construction work performed on the Developer Parcels after the Costco Building has opened for business (including any grand opening events) shall be subject to the following conditions: (i) Developer or any other Owner performing such work shall minimize any silt run-off onto the Costco Parcel, and any such silt run-off shall not interfere with Costco's operation as a wholesale club; (ii) Developer or any other Owner

performing such work shall perform any necessary dust abatement to minimize the dust settling on the Costco Parcel; and (iii) for the duration of such construction, construction fencing shall be maintained around the portion of the Developer Parcels upon which construction work is being performed. During the course of such construction, Developer or any other Owner performing such work shall, as often as is necessary to keep clean the Costco Parcel and the Access Drives, at such party's expense, clean the Costco Parcel and any Access Drives leading to the Costco Parcel of any such silt or dust caused by such construction, provided that such cleaning shall not interfere with the operation of Costco's business.

**2.5 Construction Indemnities.** Each Owner covenants and agrees to indemnify, defend, protect and hold harmless the other Owner for, from and against all claims and all costs, losses, damages, expenses and liabilities (including reasonable attorneys' fees and costs) incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of any mechanic's liens, stop notices, or other claims regarding materials supplied or work performed, or the death of, or any accident, injury, loss or damage whatsoever caused to any natural person, or to the property of any Person, as shall occur by reason of the performance of any construction, or of any Utility Use as defined in Section 3.1(d) below, or of any entrance onto another Owner's Parcel in connection with the rights granted in Section 3.1(b) below, by or at the request of the indemnitor, except to the extent of claims caused by the negligence, recklessness or willful misconduct of the indemnitee, its licensees, concessionaires, agents, servants or employees, or any agents, servants or employees of such licensees or concessionaires where the same may occur.

The indemnitee shall give the indemnitor notice of any suit or proceeding entitling the indemnitee to indemnification pursuant to this Section 2.5 and the indemnitor shall defend the indemnitee in such suit or proceeding with counsel approved by the indemnitee.

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

**2.7 Signs.** Each Owner may place such sign or signs on the exterior of the Building(s) on its Parcel(s) as shall be permitted by applicable governmental requirements. In addition, subject to the terms of this Agreement, each Owner may place such free-standing signs on its Parcel as shall be permitted by applicable governmental requirements. No free-standing signs shall be permitted in the Project other than the Shared Signs as shown on Exhibit "C" and located within the Shared Sign Areas. The Shared Signs shall be constructed by Developer. Costco shall have the right to use, but shall in no event be obligated to use, the panel labeled "Costco" on each Shared Sign (the "Costco Panel"). Developer shall have the right to use all panels on each Shared Sign other than the Costco Panel. Notwithstanding the foregoing, Costco acknowledges that it does not currently desire to utilize the Costco Panel and accordingly, Developer shall have the right to use the Costco Panel on each Shared Sign until such time as Costco provides Developer with written notice that Costco desires to use one or more of the Costco Panels for its signage, at which time Developer shall immediately remove any signage or decorative panel from the relevant Costco Panel(s), at Developer's sole cost and expense, and provide Costco with the use thereof. Costco shall not be required to pay any portion of the cost

of the construction of the Shared Sign(s), so long as Costco has not theretofore elected to use the Costco Panel; provided, however, that, upon Costco's making the election to use the Costco Panel, Costco shall reimburse Developer for Costco's Signage Pro Rata Portion of the cost of initially constructing the Shared Sign(s). Developer shall maintain the Shared Sign(s) and each Owner shall reimburse Developer for its respective Signage Pro Rata Portion of the cost of maintaining the Shared Sign(s) provided each party shall pay the cost of repairing or replacing its own panel. Costco shall have no obligation to contribute toward the cost of maintaining the Shared Sign(s) unless and until Costco elects to include its panel on the Shared Sign(s). As used in this Agreement, "**Signage Pro Rata Portion**" shall mean a percentage converted from a fraction, the numerator of which is the area of each Owner's panel(s) on the Shared Sign(s), the denominator of which is the aggregate area of all of the panels on the Shared Sign(s).

## 2.8 Staging and Storage Areas.

(a) **Staging Area.** In connection with any construction, reconstruction, repair or maintenance on its Parcel, each Owner shall have the right to create a temporary staging and/or storage area on its Parcel ("**Staging Area**"), but on no other Parcel, at such location as will not unreasonably interfere with access between such Owner's Parcel and the other areas of the Project. Without the prior written consent of all of the other Owner(s), no Owner shall be permitted to establish a Staging Area in any portion of the Project described on Exhibit "D" (the "**Prohibited Staging Area**"), attached hereto and incorporated herein by this reference. It shall be reasonable for the relevant Owner to withhold such consent if the Staging Area would be established or would remain in place during the period from October 15 to January 1 of any year, if the Owner withholding its consent has, or intends to have, an operating business on its Parcel during any portion of such period. All parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Owner's Parcel and shall not occur on any portion of the Prohibited Staging Area unless such parking has been approved in the same manner as the approval of use of a portion of the Prohibited Staging Area pursuant to this provision. Upon completion of such work, if any Prohibited Staging Area was used, the constructing Owner shall restore the affected area to a condition equal to or better than that existing prior to commencement of such work.

(b) **Temporary License.** Subject to the limitations contained in Section 2.4 above, each Owner hereby grants to each other Owner and its respective contractors, materialmen and laborers a temporary license for access and passage over and across the Common Area of the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Parcel; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed, and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by others. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the same liability insurance as each Owner is required to carry pursuant to Section 10.3 of this Agreement. Any Owner availing itself of the temporary license shall promptly pay all costs and



expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area and restore the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

### **ARTICLE 3**

#### **EASEMENTS**

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

(a) **Access Easement.** Each Parcel and Owner shall have nonexclusive easements in, to, over and across the Access Drives on each other Owner's Parcel for vehicular (including service vehicles) and pedestrian ingress and egress, and access and the right of access between the public streets adjacent to the Project and each Owner's Parcel. In furtherance of the foregoing, Developer shall be entitled to construct (i) three (3) curb cuts from Phase II/Lot 3 onto the Costco Main Access Drive in the locations depicted on the Site Plan, and (ii) two (2) curb cuts from Phase I/Lot 2 onto the Costco Secondary Access Drive in the locations depicted on the Site Plan.

(b) **Drainage.**

(i) The initial storm water drainage system for the Project (the "**Initial Storm Drainage System**") has been designed in accordance with the requirements of, and approved by, the City of Omaha, and complies with the requirements of the Drainage Permit. The Initial Storm Drainage System is comprised of the Detention Pond (currently comprised of an existing low-lying area into which stormwater runoff from Phase I/Lot 1 and Phase I/Lot 2 is permitted to be placed pursuant to the Drainage Permit) and storm sewer piping to connect Phase I/Lot 1 and Phase I/Lot 2 to the Detention Pond.

(ii) At such time as development commences on any of Phase II/Lot 1, Phase II/Lot 2 or Phase II/Lot 3, the Detention Pond shall be expanded in accordance with Section 4.1(b) below and the Initial Storm Drainage System shall be expanded to include additional storm sewer piping connecting Phase II/Lot 1, Phase II/Lot 2 and Phase II/Lot 3 with the Detention Pond (the Initial Storm Drainage System, as so expanded, is herein referred to as the "**Expanded Storm Drainage System**"; the Initial Storm Drainage System and the Expanded Storm Drainage System are sometimes generically referred to herein as the "**Storm Drainage System**").

(iii) Each Owner shall have nonexclusive easements in, to, over, under and across each other Owner's Parcel for reasonable drainage purposes and nonexclusive easements in, to, over, under and across each other Parcel for the

installation, repair, maintenance and replacement of storm water piping from its Parcel to the Detention Pond; provided, however, that (i) the location of any such piping over, under or through another Owner's Parcel shall be subject to such grantor Owner's prior written consent and (ii) no such easement is hereby granted over the Costco Parcel and no Owner may enter upon the Costco Parcel pursuant to this Section 3.1(b) or install any such storm water piping on the Costco Parcel without the prior written consent of Costco, which consent may be withheld in Costco's sole and absolute discretion.

(iv) The location of the storm water piping connecting the Costco Parcel with the Detention Pond is depicted on Exhibit "E-1" attached hereto and by this reference made a part hereof (the "**Costco Storm Water Plan**"). The Costco Storm Water Plan is hereby approved by Developer and Costco is hereby authorized to install storm water piping generally in the locations depicted on the Costco Storm Water Plan. No Owner may utilize or tap into any piping constructed by Costco to connect the Costco Parcel to the Detention Pond; provided, however, the Owner of Phase II/Lot 3 shall be entitled to tap into the Costco storm water piping at the locations more specifically depicted on the Costco Storm Water Plan.

(v) Any alteration of the natural water flow which may occur as a natural consequence of normal construction activities and the existence of improvements substantially as shown on the Site Plan (including, without limitation, buildings, curbs, drives and paving) shall be permitted, provided that the same is in accordance with the requirements of Section 4.1(b) below and does not cause or permit water to settle or pool within another Owner's Parcel (except within the Detention Pond). Each Owner shall maintain the portion of any storm water piping running on its property; provided, however, that to the extent any maintenance, repair or replacement of such storm water piping is necessary due to the activities of another Owner (or such Owner's Permittees) or the drainage into such piping from another Parcel, then the cost of such maintenance, repair or replacement shall be chargeable to such other Owner.

(c) **Encroachment.** Each Parcel shall have nonexclusive easements in, on, over and under the other Owner's Parcel for minor unintentional encroachments. The minor unintentional encroachment easements are easements in, on, over or under such Parcel as required from time to time for building overhangs, building support columns, canopies, eaves, foundations, slabs, footings, pillars and other minor encroachments. Such encroachments, however, shall be limited to a projection of no more than five (5) feet for footings and one (1) foot for other encroachments. Nothing contained in this subsection shall create easements for intentional encroachments without the written consent of the Owner whose Parcel has been encroached upon, which may be granted or withheld in such Owner's sole and absolute discretion.

(d) **Utilities.**

(i) Each Parcel and Owner shall have nonexclusive easements in, to, over, under and across those portions of the Common Area beneath the ground surface within each other Owner's Parcel for the benefit of and appurtenant to the grantee's Parcel for the purposes of installation, repair, maintenance, removal, replacement, use and operation (individually and collectively herein referred to as "Utility Use") of sanitary sewers, storm drains, water and gas pipes and systems, electrical power conduits, telephone conduits, lines and wires, and other public utilities (individually and collectively "Utility Lines") at a location or locations reasonably approved in writing by the applicable Owner; provided that in the performance of such Utility Use: (A) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (B) all work shall be completed as quickly as possible and the areas and facilities shall be replaced or restored promptly to the condition in which they were prior to the performance of such Utility Use; (C) all costs, fees and expenses incurred as a result of such Utility Use shall be borne solely by the Owner which undertakes such Utility Use; (D) the other Owner shall be notified in writing not less than thirty (30) days prior to commencement of such Utility Use except in the event of an emergency or other circumstances requiring immediate action; (E) the schedule for the performance of such Utility Use shall be subject to the reasonable approval of the other Owner (it being acknowledged that it shall be reasonable for the other Owner to disapprove any Utility Use constituting installation, repairs or maintenance during the months of October, November and December which is not occasioned by an emergency, if the disapproving Owner has, or intends to have, an operating business on its Parcel during any such month, and such Utility Use would result in disruption of the access to, use, occupancy or enjoyment of the disapproving Owner's Parcel); and (F) any work performed pursuant to such easement rights shall also be subject to Sections 2.4 and 2.5 above (including, without limitation, the constructing Owner's obligations to minimize disturbances). Prior to the performance of any such work, the grantee Owner shall provide the grantor Owner with a certificate of insurance evidencing that its contractor has obtained the minimum insurance coverages required pursuant to Section 10.3 of this Agreement. Notwithstanding anything to the contrary contained above in this Section 3.1(d)(i), any Utility Lines which serve more than one Parcel are herein referred to as "Common Utility Lines" and each Owner shall maintain the portion of any Common Utility Line running on its property; provided, however, that any Owner maintaining Common Utility Lines located on its Parcel shall be entitled to equitable reimbursement from any other Owner benefited by said Common Utility Line. Notwithstanding the foregoing, if any Utility Line or Common Utility Line is publicly dedicated, then such Utility Line or Common Utility Line shall be maintained in accordance with the terms of the documents governing said public dedication.

(ii) The grantee of any easement for Utility Use shall be responsible, at its sole cost and expense, for the installation, maintenance, repair and removal of

all utility facilities installed by the grantee within the utility easements, as well as for all utility facilities installed by the grantee on its Parcel, unless the same are maintained by a utility company or governmental agency. After initial installation is completed, any installation, maintenance, repair, replacement, relocation and removal of utility facilities that is required to be performed by a grantee Owner must be performed by such Owner and then only after two (2) weeks' advance notice to the grantor of the grantee Owner's intention to do such work. However, in the case of an emergency, any such work may be immediately performed after such advance notice to the other Owners as is practicable under the circumstances. All such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to the Parcels as may be practicable under the circumstances, and any and all portions of the surface area of a grantor Owner's Parcel which may have an excavated, damaged or otherwise disturbed as a result of such work shall be restored at the sole cost and expense of the Owner performing the work to essentially the same condition as the same were in prior to the commencement of any such work.

3.2 **Parking Easements.** Each Owner acknowledges and agrees that no cross-parking easements between the Parcels are intended or created by this Agreement.

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

3.4 **Use by Permittees.** The use of all easements provided for in this Article, and the use of the entire Common Area will, in each instance, be nonexclusive and irrevocable, and for the use and benefit of all Permittees.

3.5 **Unauthorized Use and Closure of Common Area.** Each Owner hereby reserves the right to eject or cause the ejection from the Common Area on its Parcel of any Person or Persons not authorized, empowered or privileged to use the Common Area pursuant to this Agreement. Each Owner also reserves the right to close off the Common Area on its Parcel for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Area, such Owner shall give written notice to the other Owners of its intention to do so, and shall coordinate such closing with the other Owners so that no unreasonable interference with the operation of the Project shall occur.

3.6 **Prohibition Against Granting Easements.** No Owner, nor any Person not an Owner, shall grant an easement or easements of the type set forth in this Article 3 for the benefit of any property not within the Project at the time of such grant; provided, however, that the

foregoing shall not prohibit an Owner from granting or dedicating underground utility easements on its Parcel to governmental or quasi-governmental authorities or to public utilities.

## ARTICLE 4

### PROJECT DEVELOPMENT RESTRICTIONS

#### 4.1 Common Area.

(a) Access Drives. No improvements may be built or maintained in the Access Drives other than driveways, lights, signs, landscaping, underground utilities and improvements normally found in a roadway.

(b) Outlot A/Detention Pond.

(i) No improvements may be built or maintained on Outlot A other than improvements which are necessary or desirable for the operation of the Storm Drainage System; provided, however, that improvements intended to improve the aesthetics of Outlot A may be constructed on Outlot A provided that the party desiring to construct such improvements does so at its sole cost and expense and such improvements do not in any way adversely affect the operation of the Storm Drainage System.

(ii) The parties hereto acknowledge and agree that the Initial Storm Drainage System has been designed, and the Drainage Permit has been issued, based upon the property information for Phase I/Lot 1 and Phase I/Lot 2 set forth Exhibit "E-2" attached hereto and by this reference made a part hereof.

(iii) In no event shall (a) an Owner of Phase I/Lot 1 or Phase I/Lot 2 be entitled to place into the Initial Storm Drainage System stormwater flows in excess of those projected to be produced if the applicable Parcel were improved or developed in a manner or with improvements as described on Exhibit "E-2" or (b) any Owner of Phase II/Lot 1, Phase II/Lot 2 or Phase II/Lot 3 be entitled to place any stormwater flows into the Initial Storm Drainage System. Notwithstanding the foregoing, (A) the Owner(s) of Phase II/Lot 1, Phase II/Lot 2 and/or Phase II/Lot 3 shall be entitled to develop such Parcel(s) and place stormwater flows into the Storm Drainage System so long as the applicable Owner, with the consent of Costco (which consent may be withheld in Costco's reasonable discretion), expands or re-engineers the Storm Drainage System accordingly and performs all work necessary to implement such re-engineered Storm Drainage System, at such Owner's sole cost and expense; (B) the Owner of Phase I/Lot 2 shall be entitled to develop Phase I/Lot 2 in a manner and with improvements that exceed the limits described on Exhibit "E-2" and place stormwater flows into the Storm Drainage System which exceed the limits described on Exhibit "E-2" so long as such Owner re-engineers the Storm Drainage System accordingly and performs all work necessary to implement such

re-engineered Storm Drainage System, at such Owner's sole cost and expense; and (C) Costco shall be entitled to develop the Costco Parcel in a manner and with improvements that exceed the limits described on Exhibit "E-2" and place stormwater flows into the Storm Drainage System which exceed the limits described on Exhibit "E-2" so long as Costco re-engineers the Storm Drainage System accordingly and performs all work necessary to implement such re-engineered Storm Drainage System, at Costco's sole cost and expense, and Costco is hereby granted a nonexclusive easement in, to, over, under and across each Parcel to permit Costco to perform such work. The Owner causing the expansion or re-engineering of the Storm Drainage System shall also be solely responsible for obtaining all necessary governmental permits and approvals for same.

(iv) No such modifications to the Storm Drainage System shall require the approval of the Master Association.

(c) **Shared Sign Areas.** No improvement may be built or maintained in the Shared Sign Areas other than the Shared Signs and underground improvements which will not impair the use of the Shared Signs.

4.2 **Separate Operation.** There shall be differences in grade, barriers (except for emergency vehicle access points) between the Project and any contiguous property so that the parking areas on the Project shall not be readily accessible to the users of any other property. Each Owner shall post such signs and implement such rules and regulations and enforcement means as shall be reasonably necessary in order to restrict the use of the Project to the Project's customers and invitees of the Project, and the Owners shall cooperate with each other in enforcing such exclusive use of the Project.

4.3 **Parking Ratio and Standards.**

(a) Each Owner shall take all such actions as may be reasonably necessary to ensure that their respective Permittees do not park on any other Owner's Parcel. In furtherance of the foregoing: (i) an Owner shall be permitted to install signage on its Parcel indicating that the parking area on such Owner's Parcel is for the exclusive use of Owner or the Permittees of such Owner; (ii) an Owner may elect to ticket and tow (or cause to be ticketed and towed) any Person parking on such Owner's Parcel if the Person using such parking area is not a Permittee of such Owner and (iii) notwithstanding anything contained herein to the contrary, Costco may construct a fence or other barrier along the northern and eastern boundaries of the Costco Secondary Access Drive so as to discourage the Permittees of Phase I/Lot 2 from parking on the Costco Parcel.

(b) Without limitation upon each Owner's obligation to comply with applicable governmental requirements, there shall be maintained at all times on the Developer Parcels not less than the following number of parking spaces for each one thousand (1,000) square feet of Floor Area utilized for the following uses (or such other metric as specified below) on such Parcel:

(i) office use: 4:1;

(ii) retail uses: 5:1;

(iii) fast-food (i.e. fast food service, sandwich shops, coffee stores and other food service facilities containing up to 4,500 square feet of Floor Area which do not serve wine, beer or other alcoholic beverages and do not offer waiter or waitress services): 10:1 (except for incidental food service if such incidental use is not treated as a separate use for the purpose of City parking requirements);

(iv) sit-down restaurants: 15:1; provided, however that (A) any sit-down restaurant located (1) more than 300 feet from the closest exterior boundary of the Costco Parcel or (2) in any building in the Project located west of the western boundary line of the Costco Main Access Drive and south of the southern boundary line of the Developer Access Drive shall be permitted a parking ratio of 10:1 and (B) for purposes of this Section 4.3(b)(iv), "Floor Area" shall be deemed to mean any dining or bar area or other area made available for patron dining or imbibing;

(v) church, synagogue, mosque or other place of worship (to the extent permitted by Section 5.1 below): 1 parking space per 4-person capacity;

(vi) hotel, motel or other lodging facility (to the extent permitted by Section 5.1 below): 1 parking space per unit, and 1 parking space per 4-person capacity of conference/banquet areas;

(vii) theater or cinema (to the extent permitted by Section 5.1 below): 1 parking space per 3.5 theater or cinema seats;

(viii) day-care facilities, nursery schools and pre-schools (to the extent permitted by Section 5.1 and 5.2 below): 10 parking spaces, plus 1 parking space per 4-person licensed capacity; and

(ix) residential dwelling units (to the extent permitted by Section 5.1 and Section 5.2 below): 2 parking spaces per unit.

(c) Without limitation upon Costco's obligation to comply with applicable governmental requirements, there shall be maintained at all times on the Costco Parcel not less than four (4) parking spaces for each one thousand (1,000) square feet of Floor Area developed on the Costco Parcel.

4.4 **Building Height Limitations.** The heights of the buildings or structures on Phase II/Lot 3 shall not exceed thirty-five (35) feet in height and the heights of the buildings or structures on Phase I/Lot 2 shall not exceed twenty-five (25) feet in height or contain more than one story.

4.5 **Certain Setbacks.** No Building shall be constructed on any Developer Parcel which is within sixty feet (60') of the Building(s) initially constructed on the Costco Parcel. In connection with the foregoing limitation, Developer acknowledges that Costco proposes to construct on the Costco Parcel its typical facility which is classified as an "unlimited area" building under certain applicable building codes (i.e., a building of the type designated II-N or V-N under the Uniform Building Code). This Section 4.5 shall only apply to the Costco Building(s), as such Building(s) are shown on the Site Plan; provided, however, that for the purposes of this Section 4.5, "Building" shall not include any structure constructed in connection with the Costco Fueling Station.

4.6 **Drive-Up Stacking.** Without limitation upon the Site Plan approval or other provisions of this Agreement, if a business use contains a drive-up service window or machine (such as a remote banking teller, automated teller machine or food ordering/dispensing facility), then the Owner of the Parcel on which such use occurs shall provide in such Parcel a vehicle stacking lane or aisle which provides for the stacking of not less than five (5) automobiles for each drive-up unit, which automobile stacking lane or configuration shall not impair the access to or use of any parking spaces or driveways. Nothing in this Section 4.6 shall be deemed to apply to fuel islands or pumps located in any vehicle fueling station in the Project; provided, however, notwithstanding anything to the contrary contained in this Section 4.6, any stacking for the Costco Fueling Station shall not interfere with or impede ingress to, or egress from, the Costco Main Access Drive or the Costco Secondary Access Drive.

4.7 **Access to Phase II/Lot 2.** Vehicular traffic may access Phase II/Lot 2 only by use of the street to be constructed by Developer pursuant to Section 2.2(b) above (i.e., 125th Street).

## **ARTICLE 5**

### **USE RESTRICTIONS**

5.1 **Prohibited Uses.** No part of the Project may be used for other than retail and/or wholesale sales and services, restaurants, residential to the extent permitted pursuant to Section 5.1(o), offices to the extent permitted pursuant to Sections 5.1(s) or 5.1(t), and for industrial uses to the extent permitted by Section 5.1(t). Phase II/Lot 2 may *only* be used for the uses specified in Section 5.2 below. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Project, which use or operation is obnoxious to, or out of harmony with, the development or operation of retail or wholesale facilities, including but not limited to, the following:

- (a) any public or private nuisance;
- (b) any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (c) any obnoxious odor;



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

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

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

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

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

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

(j) any cemetery, mortuary or similar service establishment;

(k) any automobile, truck, trailer, or recreational vehicle sales, leasing or display which is not entirely conducted inside of a Building, except as provided in Section 5.3(c)(v) or (vii);

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

(m) any bar or tavern;

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

(o) any apartment, home or other residential use, provided that residential uses shall be permitted on Phase II/Lot 1;

(p) any body and fender repair work;

(q) any church, synagogue, mosque or other place of worship, provided that such use shall be permitted on Phase II/Lot 1 so long as said use as a church, synagogue, mosque or other place of worship on Phase II/Lot 1 does not in any way interfere with

Costco's business operations on the Costco Parcel, including, without limitation, the sale of alcoholic beverages;

(r) any hotel, motel or other lodging facility, provided that such use shall be permitted on Phase II/Lot 1;

(s) any business offices (except as an incidental use to a permitted retail or commercial business or as allowed by Section 5.1(t)). Notwithstanding the foregoing (i) retail offices (e.g., consumer banks, brokerage offices, small medical offices and the like) shall not be prohibited; and (ii) business office use shall be permitted on Phase I/Lot 1, Phase II/Lot 1 and Phase II/Lot 3.

(t) any industrial use so long as the Costco Parcel is used for retail and/or wholesale sales; provided, however, that the Costco Parcel may be used for industrial use. If the Costco Parcel is used for an industrial use, the Developer Parcels may be used for an industrial use subject, however, to the other terms of this REA. If the Costco Parcel is used for a mixed office and industrial use, then the Developer Parcels may be used for a mixed office and industrial use; provided such uses are in substantially the same proportion on the Developer Parcels as on the Costco Parcel, and subject to the other terms of this REA. If the Costco Parcel is used for a self-storage use, the Developer Parcels may be used for a self storage use;

(u) any theater or cinema, except on Phase II/Lot 1;

(v) any entertainment, recreation or amusement use, whether directed to children or adults (except, as to Phase II/Lot 1, such prohibition shall not apply to an entertainment venue used for the performing arts or the fine arts). Such prohibited uses shall include, without limitation, any one or more of the following: skating rink, bowling alley, teenage discotheque, discotheque, dance hall, video game parlor, pool room, massage parlor (provided massage facilities associated with and ancillary to a first-class salon or day-spa shall be permitted), off-track betting facility, casino, card club, bingo parlor, facility containing gaming equipment, planned play environment, arcade games, amusement gallery, rides, video or redemption games, play for fun casino games, golf simulations, rodeo simulations, other sport simulations and carnival activities;

(w) any school, training, educational or day care facility, including but not limited to: beauty schools, barber colleges, nursery schools, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided however, this prohibition shall not be applicable to (i) on-site employee training by an occupant incidental to the conduct of its business at the Project, (ii) day-care facilities, nursery schools and pre-schools on Phase II/Lot 1, and (iii) educational facilities or diet centers, so long as no educational facility or diet center individual space and/or operation exceeds 2,000 square feet and, in the aggregate, space used as educational facilities and diet centers in the Project may not exceed 4,000 square feet;

(x) any car washes, motor vehicle fuel or service stations, or the displaying, repairing, renting, leasing, or sale of any motor vehicle, boat, or trailer except for a so-called "Quick Oil Change" specialist and except for any such operation within the Project associated with the occupant of the Costco Parcel, including, without limitation, the Costco Fueling Station;

(y) any business with drive-up or drive-through lanes on Phase I/Lot 2 (unless the existence, location and orientation are approved in advance by Costco);

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

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

5.2 **Permitted Uses on Phase II/Lot 2.** Without limitation of the restrictions contained in Section 5.1 above and the other provisions and requirements of this Agreement, the following uses are the only uses that shall be permitted on Phase II/Lot 2:

(a) apartment, home or other residential use;

(b) so-called "assisted living" facilities, subject to the following limitations:

(i) no such assisted living facility shall be permitted prior to the date that is two (2) years after the date on which Costco first obtains all necessary licenses and approvals for the sale of alcoholic beverages from the Costco Parcel; and

(ii) an assisted living facility shall only be permitted on Phase II/Lot 2 so long as said use as an assisted living facility on Phase II/Lot 2 does not in any way interfere with Costco's business operations on the Costco Parcel, including, without limitation, the sale of alcoholic beverages. If an assisted living facility is located on Phase II/Lot 2 and thereafter, there is a change in applicable law which causes there to be a conflict between Costco's business operations on the Costco Parcel (including, without limitation, the sale of alcoholic beverages) and the operation of an assisted living facility on Phase II/Lot 2, the assisted living facility shall be required to cease operations for so long as such conflict shall exist; and

(c) a day-care facility, nursery school or pre-school, subject to the following limitations:

(i) no such day-care facility, nursery school or pre-school shall be permitted prior to the date that is two (2) years after the date on which Costco first obtains all necessary licenses and approvals for the sale of alcoholic beverages;

(ii) a day-care facility, nursery school or pre-school shall only be permitted on Phase II/Lot 2 so long as said use as a day-care facility, nursery school or pre-school on Phase II/Lot 2 does not in any way interfere with Costco's

business operations on the Costco Parcel, including, without limitation, the sale of alcoholic beverages. If a day-care facility, nursery school or a pre-school is located on Phase II/Lot 2 and thereafter, there is a change in applicable law which causes there to be a conflict between Costco's business operations on the Costco Parcel (including, without limitation, the sale of alcoholic beverages) and the operation of a day-care facility, nursery school or pre-school on Phase II/Lot 2, the day-care facility, nursery school or pre-school shall be required to cease operations for so long as such conflict shall exist; and

(iii) a fence or similar barrier is maintained between Phase II/Lot 2 and the Costco Parcel, so as to discourage and prevent children from crossing from Phase II/Lot 2 onto the Costco Parcel.

5.3 **Non-Interference.** In order to provide for the orderly development and operation of the Project:

(a). Except as provided in Section 5.3(c) below, no Owner shall permit any display or sale of merchandise, or any storage or placement of merchandise, portable signs or other objects belonging to an occupant of said Owner's Parcel outside the defined exterior walls, roof and permanent doorways of any Building.

(b) No Owner shall permit any occupant of said Owner's Parcel to carry any merchandise or substance or to perform any activity in relation to the use of such Owner's Parcel which would (i) cause or threaten the cancellation of any insurance covering any portion of the Project or (ii) increase the insurance rates applicable to the Common Area or the Buildings on the other Owner's Parcel over the rates which would otherwise apply unless such occupant shall pay the increased insurance cost on demand.

(c) The restrictions set forth in this Agreement shall not be deemed to prohibit (i) the use by Costco or any other Owner of the sidewalk area on its Parcel adjacent to its Building for food or merchandise sales or as an outdoor dining area; (ii) the use by an Owner of the sidewalks on its Owner's Parcel for the storage of its shopping carts; (iii) the use by an Owner of the parking areas on its Parcel for the storage of shopping carts, so long as such cart storage does not reduce the number of parking spaces on such Parcel below the minimum parking ratio requirements under Section 4.3 above; (iv) the use by Costco of any portion of its Parcel for one or more permanent outdoor sales areas so long as such permanent outdoor sales areas do not reduce the number of parking places on the Costco Parcel below the minimum parking ratio requirements under Section 4.3 above; (v) the use by Costco or any other Owner of the parking areas on the Costco or other Owner's Parcel, as applicable, for one or more temporary outdoor sales areas so long as such temporary outdoor sales areas do not reduce the number of parking places available on the Costco or other Owner's Parcel, as applicable, below ninety-five percent (95%) of the minimum number of parking spaces legally required for the building sizes and uses on the Costco or other Owner's Parcel, as applicable; (vi) the operation of a Costco Fueling Station on the Costco Parcel; (vii) the use by Costco of any portion of its Parcel for a vehicle sales or brokerage program including the display for sale by

Costco on the Costco Parcel of up to five (5) vehicles for sale; and (viii) the use by Costco or any other Owner of any portion of its respective Parcel for other temporary promotional activities which do not, together with any temporary outdoor sales referred to in clause (v) above, reduce the available parking on the Costco or other Owner's Parcel, as applicable, below ninety-five percent (95%) of the minimum number of parking spaces legally required for the building sizes and uses on the Costco or other Owner's Parcel, as applicable.

5.4 **Exclusive Use.** No portion of the Project (or any real property that in the future may become part of the Project) shall be used or operated (i) as 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**"), (ii) as a grocery store or supermarket that primarily sells food products in bulk quantities (a "**Wholesale Grocer**"), (iii) to support a facility operating either under the Merchandising Concept or as a Wholesale Grocer (i.e., for parking or other necessary improvements for such a facility), (iv) any business which operates as a warehouse club (other than a Costco Facility), (v) any business operated under the trade names of Sam's, Gordon's Food Service, BJ's, Jetro, Price Smart or Smart and Final, or (vi) any business (other than a Costco Facility) similar to those operated under the same or similar trade names as Wal-Mart (including, without limitation, operations under a supercenter, general merchandise or neighborhood grocery format), Costco, Sam's, Gordon's Food Service, BJ's, Price Smart, Jetro or Smart and Final; provided, however, that in no event shall any of the foregoing prohibitions prohibit the Costco Parcel and any other property within the Project (or within any real property that in the future may become part of the Project) utilized by Costco or any of Costco's successors, from being used for or as a Costco Wholesale warehouse club or any other facility then operated by Costco or by any successor to Costco (collectively, a "**Costco Facility**"). This exclusive use provision is intended to bind the entirety of the Project (including any real property that in the future may become a part of the Project) and Developer shall cooperate in recording any additional document(s) Costco deems necessary or desirable to evidence the fact that the Project (and any real property that in the future may become a part of the Project) are subject to such exclusive use provision. Each person who currently owns or in the future acquires title to property subject to this exclusive use provision acknowledges that the breach of the foregoing exclusive use provision may cause immediate and irreparable harm for which damages are not an adequate remedy and that, to protect against such harm, any party benefited by this exclusive use provision 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.

Notwithstanding the foregoing, this exclusive use restriction is not intended (and shall not be construed) to prohibit any of the following uses in the Project: (A) a traditional neighborhood grocery store operation similar to that conducted on the date of this Agreement by retail grocers such as Baker's on HyVee; (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) other than those expressly enumerated above, a traditional department store, discount department store or junior department store, such as Kohl's, Target or K Mart.

The foregoing exclusive use restriction shall be in effect for a period commencing on the date hereof and expiring on the twentieth (20th) anniversary of the date on which Costco fails or ceases to operate any Costco-related business on the Costco Parcel for a period in excess of two (2) years; provided, however, that for purposes of this Section 5.4, Costco shall not be deemed to have failed or ceased to have operated its business on the Costco Parcel if such failure or cessation is a result of (i) damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, restrictive governmental regulations, shortage of material or fuel, acts of God, unusually adverse weather conditions, any temporary or permanent injunction or other court order or other cause beyond Costco's reasonable control which renders the continuing operation of the business operations on the Costco Parcel infeasible, or (ii) Costco's renovation of its warehouse club.

## ARTICLE 6

### MAINTENANCE OF IMPROVEMENTS

6.1 **Maintenance of Buildings.** Each Owner shall at all times during the term of this Agreement, at its sole cost and expense, maintain, or cause to be maintained, the exterior of Buildings from time to time located on such Owner's Parcel, in good repair, clean condition and free of trash and debris and graffiti, reasonable wear and tear excepted, subject to Article 8.

6.2 **Maintenance of Common Area.** Each Owner shall at all times during the term of this Agreement, at its sole cost and expense, maintain and repair the Common Area located on such Owner's Parcel and keep it in good condition and repair, clean, free of rubbish and other hazards to persons using such area, properly lighted and landscaped (in accordance with City approved landscaping plans); provided, however, that Developer shall be responsible for the maintenance of the Shared Sign Areas and the Shared Signs, even if such Shared Sign Areas and Shared Signs are located on the Costco Parcel. Further, prior to the conveyance of Outlot A to the Master Association, Developer shall be responsible for the operation, maintenance, repair, replacement and insuring of Outlot A, including the Detention Pond and Storm Drainage System improvements located thereon, and for compliance with any maintenance or other requirements contained in the Drainage Permit. Any unimproved Common Area shall be kept dust and litter-free. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first-class developments of comparable size in the Omaha, Nebraska metropolitan area and in compliance with all applicable governmental laws, rules, regulations orders and ordinances, and the provisions of this Agreement. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being replaced or replaced so as to maintain the architectural and aesthetic harmony of the Project as a whole.

6.3 **Certain Maintenance Responsibilities.** The maintenance and repair obligations of each Owner hereunder with respect to its Parcel(s) shall include, but shall not be limited to, the following:

(a) **Drive and Parking Areas.** Maintaining, cleaning and replacing all paved surfaces and curbs in a smooth and evenly covered condition; such work shall include, without limitation, sweeping, restriping, resealing and resurfacing.

(b) **Debris and Refuse.** Periodic removal of all papers, debris, filth, refuse, ice and snow, including sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by persons intending to conduct business with occupants of the Project.

(c) **Sign and Markers.** Placing, cleaning, keeping in repair, replacing and repainting any appropriate directional signs or markers, including any handicapped parking signs.

(d) **Lighting.** Maintaining, cleaning and replacing Common Area lighting facilities, including lamps, ballasts and lenses.

(e) **Obstructions.** Keeping the Common Area free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Agreement.

(f) **Sidewalks.** Maintaining, cleaning and replacing of all sidewalks, including those adjacent and contiguous to buildings located within the Project. Sidewalks shall be cleaned and swept at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area.

(g) **Landscaping.** Maintaining, irrigating and replacing landscaping and keeping landscape irrigation systems in good condition and repair.

6.4 **Intentionally Omitted.**

6.5 **Operator of Developer Parcels.** If Developer shall separately convey any of the Developer Parcels to another Owner or Owners so that there is more than one Owner with respect to the Developer Parcels, the Developer shall enter into an agreement with each such Owner or Owners reasonably satisfactory to Costco pursuant to which one of the Owners owning the Developer Parcels (the “**Operator**”) shall be delegated the day to day responsibility to perform the Common Area maintenance on all of the Developer Parcels. Such delegation, however, shall not limit or impair the obligation of each such Owner to Costco to perform all of such Owner’s obligations hereunder with respect to its respective Developer Parcel.

**ARTICLE 7**

**MASTER ASSOCIATION**

7.1 **Ownership of Outlot A.** Promptly after the incorporation of the Master Association, Developer shall convey to the Master Association title to Outlot A and all improvements located thereon; provided, however, that in no event shall the conveyance occur

prior to the completion of the Common Work (as such term is defined in that certain Site Development Escrow Agreement entered into by and between Costco and Developer dated of even date herewith. Notwithstanding Developer's conveyance of Outlot A to the Master Association as contemplated herein, Developer shall remain solely liable for the cost to construct any sidewalks on Outlot A that may be required by the City or any other governmental authority. Until such time as Outlot A is conveyed to the Master Association, Developer shall have the rights and obligations of the Master Association under this Agreement (except the provisions of this Article 7 which relate to the Master Association itself).

## 7.2 Membership.

(a) **Generally.** Every Owner shall be a member of the Master Association ("**Member**"). Membership shall be appurtenant to, and may not be separate from, the ownership of a Parcel. Ownership of a Parcel shall be the sole qualification for membership in the Master Association. Every Owner, by acceptance of a deed thereto or other instrument granting said Owner title to same, covenants and agrees to be a Member of the Master Association whether or not it shall be so expressed in any such deed or other instrument. Notwithstanding anything contained herein to the contrary, the fee owner of any Parcel encumbered by a leasehold interest (and not the holder of the leasehold interest) shall be a Member. Membership in the Master Association shall not be transferable in any way except upon the conveyance of a Parcel and then only to the successor in title to such Parcel. Any attempt to transfer a membership in the Master Association in violation of such provisions shall be null and void and of no force or effect.

(b) **Homeowners Association.** If Phase II/Lot 1 or Phase II/Lot 2 should be subjected to a Residential Subdivision, the obligations of the Owner(s) of Phase II/Lot 1 and/or Phase II/Lot 2, as applicable, under this Agreement (including, without limitation, this Article 7) shall remain with the Subdividing Owner until such time as the first residential lot/condominium unit is conveyed to a Person other than the Subdividing Owner, at which point, (i) the obligations of the Owner(s) of Phase II/Lot 1 and/or Phase II/Lot 2, as applicable, shall be vested in the applicable Homeowners Association, (ii) such Homeowners Association shall be a Member in the Master Association and shall administer the payment to the Master Association of any monetary sum due and owing from the Owner(s) of Phase II/Lot 1 and Phase II/Lot 2, (iii) the Master Association shall accept payment of said amounts from the Homeowners Association and (iv) in giving notices under this Agreement, the Master Association shall only be required to give notice to the applicable Homeowners Association. The documentation establishing each Homeowners Association shall expressly acknowledge the Homeowners Association's obligations hereunder (including the obligation to pay any monetary sum due and owing from the Owner(s) of Phase II/Lot 1 or Phase II/Lot 2, as applicable, irrespective of the failure of any constituent member of the Homeowners Association to pay such member's share thereof to the Homeowners Association) and the Master Association's lien rights against the entirety of Phase II/Lot 1 and Phase II/Lot 2, as applicable (expressly including in such case the individual owners of individual residential lots and individual condominium units), in the event of any nonpayment of all or any portion of any



monetary sum due and owing from the Owner(s) of Phase II/Lot 1 or Phase II/Lot 2, as applicable, or the nonpayment of any other sums due to the Master Association hereunder.

7.3 **Powers and Duties of Board of Directors.** A board of directors (hereinafter referred to as the “**Board**”) composed of three (3) individuals (hereinafter referred to as the “**Directors**”) shall exercise the powers and duties of the Master Association and the Members and shall pay all costs required or permitted to be paid pursuant to this Agreement from assessments or charges levied in accordance with the terms hereof. The Members shall appoint the initial Board promptly upon the incorporation of the Master Association. Throughout the term of this Agreement, Costco shall be entitled to appoint one (1) Director and Developer shall be entitled to appoint two (2) Directors; provided, however, that upon the conveyance by Developer to an Owner of Phase II/Lot 3 or more than fifty percent (50%) of the land area of Phase II/Lot 3, the Owner of Phase II/Lot 3 (or, if Phase II/Lot 3 is owned by more than one (1) Owner, the Owner who owns the largest portion of Phase II/Lot 3) shall be entitled to appoint one (1) Director, in which event, Developer shall be entitled to appoint only one (1) Director. The Directors shall be appointed annually, which appointments shall be made in writing and filed with the minute book of the Master Association. The Directors shall serve without compensation for services performed. Vacancies in the Board shall be filled by the Member who appointed the departing Director. The Board shall meet from time to time as necessary but in no event shall the Board meet less than once a year. No action of the Board shall be effective or taken except by majority vote of the Directors at a meeting or by unanimous written consent of the Directors in the absence of a meeting (if permitted by law); provided, however, that a unanimous vote of the Directors shall be required to approve the annual budget for the Master Association. The Board shall be obligated to prepare (or to have prepared on its behalf) and approve an annual budget for each year during the term of this Agreement.

7.4 **Powers and Duties of Officers.** The Board shall elect from among its members, to serve, without compensation for services performed, for the term of one (1) year (A) a President who shall preside over the Board’s and the Master Association’s meetings, who shall be the chief executive officer of the Master Association and who shall be designated to mail and receive all notices and execute all documents on behalf of the Master Association herein; (B) a Secretary who shall keep the minutes of all meetings of the Board and of the Master Association and who shall, in general, perform all the duties incident to the office of the Secretary, (C) a Treasurer who shall keep the financial records and books of account, and (D) such additional officers as the Board shall see fit to elect, with duties as the Board shall specify or as may be authorized or conferred by law. Vacancies in any office shall be filled by the Board by a majority vote of the members of the Board. Any officer elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds.

7.5 **Master Association’s Rights and Obligations.** The Master Association shall perform such obligations as shall have been assigned to it under this Agreement and shall exercise the powers and rights of the Master Association granted in this Agreement. In addition to the powers of the Master Association set forth in this Agreement, the Master Association, to the extent the Board deems necessary and appropriate, shall have the power: to buy, own and sell real and personal property; to open bank accounts; to take such action, legal or otherwise,

necessary to enforce this Agreement as herein provided; to contract for architectural, engineering, legal, accounting and similar professional services or consultants; to borrow funds; to employ the services of a manager and to delegate to such manager the responsibility to prepare the annual budget and to perform other duties and responsibilities under this Agreement; to employ employees directly or through the manager, to otherwise do that which it believes necessary to protect or defend the Master Association and those portions of the Project and the property owned by the Master Association or for which the Master Association is responsible from loss or damage by suit or otherwise; to take other actions as required by the terms of this Agreement; and to pay the costs of the foregoing from assessments levied against the Owners. The Master Association may employ contractors, managers, agents or employees who are related to or affiliated with an Owner or its beneficiary, agent, employee, or with any Director.

#### 7.6 Assessments.

(a) **Generally.** All costs and expenses paid, sustained or incurred by the Master Association in connection with the exercise and performance of its powers, rights and duties under this Agreement shall be paid by the Owners through the assessment procedure described herein. The Assessments (as hereinafter defined) levied by the Master Association shall be used for the purpose of insuring the proper maintenance of Outlot A, including the maintenance and operation of the Detention Pond and Storm Drainage System improvements located thereon. Such uses may include, but are not limited to, the cost to the Master Association of all taxes, insurance, maintenance, repairs and replacements and other charges required by this Agreement, or that the Board shall determine to be necessary or desirable to meet the purposes of this Master Association, including the establishment and maintenance of one or more reserves for repairs, maintenance, replacements, taxes and other charges. The Master Association shall have the power to engage an Owner or any agent, contractor or affiliate thereof to perform some or all of the management responsibilities in connection with the Outlot A, which Owner shall be entitled to receive a negotiated fee from the Master Association for its services. Notwithstanding anything to the contrary contained in this Section 7.6, in no event shall the Master Association include in the Assessments levied against Costco (i) any costs incurred in connection with the construction, replacement or repair of sidewalks constructed adjacent to Outlot A (the Master Association, may, however include in the Assessments levied against Costco any costs incurred in connection with the routine maintenance of such sidewalks) or (ii) any special assessments or additional taxes that may be imposed upon Outlot A as a result of the inclusion of Outlot A, without the prior written consent of Costco, within a special assessment district or other special taxing district.

(b) **Regular Assessments.** Regular assessments under this Agreement shall be imposed upon the Owners by the Master Association on an annual basis (“**Regular Assessments**”), and shall be paid by the Owners to the Master Association in advance. The Board shall fix the amount of each Regular Assessment based on each Owner’s Proportionate Share (hereinafter defined) of an annual budget prepared by or on behalf of the Board and in lieu thereof, the amount of the Regular Assessment for any year shall be the amount that was fixed for the preceding year.

(c) **Special Assessments.** In addition to the Regular Assessments described above, the Master Association may at any time levy one or more special assessments upon the Owners, for the purpose of defraying, in whole or in part, any unexpected costs or expenses to be paid by the Master Association pursuant to this Agreement (“**Special Assessments**”; Regular Assessments and Special Assessments are sometimes collectively referred to herein as “**Assessments**”). Without limiting the foregoing, Special Assessments may also be levied upon the Owners in order to defray any difference between the costs and expenses sustained, incurred or paid by the Master Association in any year, and the amount of the Regular Assessments collected by the Master Association with respect to such year.

(d) **Proportionate Share.** Assessments shall be levied against each Owner based on its “**Proportionate Share**”, which shall be calculated by dividing the land area of such Owner’s Parcel by the total land area of the Project. All Assessments shall be due from an Owner within thirty (30) days after a written invoice for the same has been delivered to such Owner by or on behalf of the Master Association. Any Assessments which are not paid when due shall be delinquent, and the Master Association shall be entitled to exercise and enforce the rights and remedies described in Section 11.4 with respect thereto. The Proportionate Share for Phase II/Lot 1 and/or Phase II/Lot 2, if a Subdivision were to occur, shall be calculated as if the Subdivision did not occur and the applicable Homeowners Association shall be responsible for such Proportionate Share of the Assessments.

(e) **Deemed Covenant.** Each Owner, by acceptance of a deed or other instrument of conveyance to a Parcel, shall automatically, and without necessity of further notice or action of any kind, be deemed to have covenanted and agreed to pay to the Master Association all Assessments contemplated by this Agreement. The Assessments, together with interest thereon and costs of collection thereof (including reasonable attorneys’ fees), as provided herein, shall be a charge on the land and shall be a continuing lien upon the portion of the Project with respect to which each such Assessment is made, as more particularly set forth in Section 11.4 hereof. Each Assessment, together with such interest and costs, shall also constitute the personal obligation of any Person which is the Owner of a Parcel at the time when the Assessment became due.

(f) **No Third-Party Beneficiary.** This Section 7.6 is for the benefit of the Owners only and not for the benefit of any third party. Further, no creditor of any Owner shall have the right to cause the Association to levy assessments pursuant to this Section 7.6.

**7.7 Director and Officer Liability.** Neither the Directors nor the officers of the Master Association shall be personally liable for any judgment or for any other acts or omissions of any nature whatsoever made, taken or omitted to be taken as such Directors, officers or committee members except for claims for which such persons are not entitled to be indemnified as set forth below. The Master Association and its Members (each to the extent of its Proportionate Share) shall indemnify and hold harmless the aforesaid Directors and officers,

their heirs, personal representatives, successors and assigns from and against all contractual and other liabilities to others arising out of contracts made by, or acts or omissions of, the said Directors, officers and committee members on behalf of the Owners or the Master Association or arising out of their status as Directors, officers or committee members and all costs and expenses (including, but not limited to, reasonable attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such Director or officer may be involved by virtue of being or having been such Director or officer; provided, however, that such indemnity shall not be operative with respect to: (i) any matter as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for malicious, illegal or willful misconduct or fraud in the performance of his duties as such Director or officer or (ii) any claim for malicious, illegal or willful misconduct or fraud that is settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is no reasonable ground for such person being adjudged liable for such malicious, illegal or willful misconduct or fraud in the performance of his duties as such director, officer or committee member. The foregoing provision shall be in addition to and not in lieu of any other provision of law providing for limitation of liability of directors and officers.

7.8 **By-Laws.** The Board shall adopt by-laws consistent with the provisions of this Declaration (the "**By-Laws**"). No modification, waiver, amendment, discharge or change of the By-Laws shall be valid unless the same is in writing and signed by the Director appointed by Costco. Any change, modification, amendment or rescission which is made without the written consent of the Director appointed by Costco shall be null and void and of no effect.

7.9 **Dissolution of Master Association.** Upon any dissolution of the Master Association, obligations of the Master Association under this Agreement shall become the obligation of the Owners jointly and rights shall be exercisable by such Owners jointly and Outlot A shall be owned by the Owners, as tenants-in-common, in accordance with each Owner's Proportionate Share. Expenses incurred in the performance of the obligations of the Master Association as contemplated herein shall continue to be allocated in the same manner as if such Master Association still existed.

7.10 **Master Association Insurance.** The Master Association shall procure and maintain the following insurance coverages:

- (a) commercial general liability in broad form, including coverage for bodily injury and property damage liability, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and other liability insurance as it may deem desirable, insuring the Master Association from liability in connection with its operations at the Project. Such policy shall name the Owners (and their respective mortgagees and property managers) as additional insureds; provided, however, that if a Subdivision occurs with respect to Phase II/Lot 1 or Phase II/Lot 2, only the applicable Homeowners Association need be named as an additional insured;

(b) if the Master Association has employees, (i) workers' compensation as required by law, with a waiver of subrogation in favor of the Owners (and their respective mortgagees) and (ii) employer's liability insurance with limits as reasonably determined by the Master Association;

(c) directors' and officers' liability insurance in the amount of One Million Dollars (\$1,000,000) per claim; and

(d) if the Master Association uses automobiles, non-owned or hired automobile insurance, with limits as reasonably determined by the Master Association.

The Master Association may also obtain or require such other kinds of insurance as the Board shall from time to time deem prudent or necessary, in such amounts as shall be deemed to be desirable or increase limits or amounts of specified coverages. Prior to conveyance to the Master Association of Outlot A, Developer shall procure and maintain the insurance required by this Section 7.10.

## ARTICLE 8

### DAMAGE TO IMPROVEMENTS

8.1 **Restoration of Common Area.** In the event of any damage or destruction to the Common Area on any Parcel, whether insured or uninsured, the Owner with respect to such Parcel shall restore, repair or rebuild such Common Area with all due diligence as nearly as possible to at least as good a condition as it was in immediately prior to such damage or destruction. Following the conveyance of Outlot A to the Master Association, in the event of any damage or destruction to the Detention Pond or any Storm Drainage System improvements located thereon, whether insured or uninsured, the Master Association shall restore, repair or rebuild the Detention Pond and Storm Drainage System improvements with all due diligence as nearly as possible to at least as good a condition as it was in immediately prior to such damage or destruction. The Master Association shall have no obligation to restore, repair or rebuild any aesthetic improvements that may be made to Outlot A pursuant to Section 4.1(b)(i) above and the Owner constructing such aesthetic improvements shall retain responsibility therefor.

8.2 **Restoration of Buildings.** In the event of damage to or destruction of the Building(s) on an Owner's Parcel, such Owner may, but shall not by the terms of this Declaration be obligated to, restore and reconstruct the same Building(s) that were on such Parcel prior to damage or destruction, or substitute Building(s), as otherwise permitted herein. In the event an Owner so elects, such Owner shall perform such restoration, reconstruction or construction of substitute Building(s) to cause such Building(s) to be in at least as good condition as it or they were immediately prior to such damage or destruction. All such restoration and reconstruction shall be performed in accordance with the following requirements, as the same are applicable thereto:

(a) No such work shall be commenced which would alter the Common Area from the plans originally approved therefor unless the Owner desiring to perform the

same has in each instance complied with the appropriate provisions of Article 2 with respect to plan approval;

(b) All work shall be performed in a good and workmanlike manner in accordance with Section 2.4, and shall be done such that the Common Areas and Buildings affected continue to conform to and comply with:

- (i) the plans and specifications prepared therefor as aforesaid;
  - (ii) all applicable requirements of laws, codes, regulations and rules;
- and
- (iii) all applicable requirements of this Agreement.

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

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

## **ARTICLE 9**

### **EMINENT DOMAIN**

In the event any part of the Project, including the Common Area, shall be taken by eminent domain or any other similar authority of law, the entire award for value of the land and improvements so taken shall belong to the Owner whose property was so taken or its tenants, as their leases may provide, and the other Owner (or Owners, as the case may be) shall not claim any portion of such award by virtue of any interests created by this Agreement. However, the other Owner (or Owners, as the case may be) may file a claim with the condemning authority over and above the value of the property so taken to the extent of any damage suffered by such Owner (or Owners, as the case may be) resulting from the severance of such area taken. The Owner whose property was so condemned shall promptly repair and restore in accordance with this Agreement the remaining portion of its Parcel as nearly as practicable to the condition existing just prior to such condemnation without contribution from the other Owners; provided, however, that if the portion of such Parcel remaining after the taking cannot be economically restored to the condition which immediately preceded the condemnation, then (i) the "repair and restore" provisions of this Article 9 shall not apply to any portion of a Parcel that is not Common Area, (ii) any affected structures shall be leveled and cleared, and (iii) any affected areas of a Parcel shall be improved with either landscaping or parking, of like standard and design as exist

throughout the Project. For the purposes of this Article 9, in the event that the part of the Project taken includes all or part of Outlot A, the term "Owner" shall be deemed to include the Master Association.

## ARTICLE 10

### GENERAL PROVISIONS

10.1 **Realty Taxes and Assessments.** Each Owner shall, at its sole cost and expense, pay when due all real estate taxes and assessments which may be levied, assessed, or charged by any public authority against such Owner's Parcel, the improvements thereon or any other part thereof including, without limitation, the Common Area on its Parcel. The Master Association shall, at its sole cost and expense, pay when due all real estate taxes and assessments which may be levied, assessed or charged by any public authority against Outlot A or any part thereof. In the event an Owner or the Master Association shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property) to be excessive or illegal, such Owner or the Master Association, as applicable, shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this section shall require such Owner or the Master Association, as applicable, to pay any such real estate tax or assessment so long as (a) no other Owner's Parcel would be immediately affected by such failure to pay (or bond), and (b) the amount or validity thereof shall be contested in good faith. If the failure to pay (or bond) such tax would affect another Owner's Parcel, such other Owner shall have the right to pay such tax and shall have a lien on the nonpaying Owner's Parcel for the amount so paid until reimbursed for such payment. Any such lien shall be subject to and junior to, and shall in no way impair or defeat the lien or charge of any Mortgagee.

#### 10.2 **Indemnification.**

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

(b) **Hazardous Materials.** Each Owner shall indemnify, defend protect and hold harmless the other Owners from any losses, damages, judgments, claims, expenses, costs and liabilities of any nature whatsoever, known or unknown, contingent or otherwise (including, without limitation, reasonable attorneys' fees, litigation, arbitration and administrative proceedings costs, expert and consultant fees and laboratory costs) in connection with all claims, including any action or proceedings brought thereon, which arise from or as a result of any materials or waste introduced by such Owner into the Detention Pond or the Storm Drainage System. Further, in the event that any Owner introduces any materials or waste into the Detention Pond or Storm Drainage System, the

Master Association shall have the right to take all necessary action to remove and remediate such contamination, which removal and remediation shall be at the sole cost and expense of whichever Owner(s) caused the introduction of said materials or waste.

10.3 **Liability Insurance.** Each Owner (and contractors as required pursuant to Section 2.8(b) above, and in such event the provisions in this Section 10.3 shall apply fully to such contractors) shall, severally, at all times during the term of this Agreement, maintain or cause to be maintained in full force and effect an "Occurrence Based" commercial general liability insurance policy covering its Parcel, with an insurance company or companies having an A.M. Best (or equivalent) rating of B+/VII or better, including coverage for any accident resulting in bodily injury to or the death of any person and consequential damages arising therefrom, and a comprehensive property damage insurance policy, each in an amount not less than \$5,000,000, as such amount is adjusted pursuant hereto, per occurrence and including coverage of the contractual liability contained in Section 10.2 above. Each Owner's commercial general liability policy with respect to the Common Area on its Parcel shall name each other Owner as an additional insured. Each Owner shall furnish to each other Owner requesting the same in writing evidence that the insurance referred to in this Section 10.3 is in full force and effect. Such insurance shall provide that the same may not be canceled, reduced below the required minimum or materially amended without at least thirty (30) days prior written notice being given by the insurer to all other Owners. The aforesaid \$5,000,000 coverage limit shall be reviewed, and if appropriate, adjusted, on each fifth anniversary of the date of recordation of the REA by the change in the Consumer Price Index for all urban consumers (the "CPI-U") (or comparable successor index) for the area in which the Project is located.

10.4 **Blanket Insurance.** Any insurance required to be carried pursuant to this Article 10 may be carried under a policy or policies covering other liabilities and locations of an Owner; provided, however, that such policy or policies apply to the Parcels required to be insured by this Article 10 in an amount not less than the amount of insurance required to be carried by such Owner with respect thereto, pursuant to this Article 10 which shall contain a per location endorsement.

10.5 **Release and Waiver of Subrogation.** Each Owner for itself releases the other Owner from and, to the extent legally possible for it to do so on behalf of its insurer, hereby waives any liability for any loss or damage to its property located upon the Project, which loss or damage is of the type covered by fire and extended coverage insurance described in this Article 10, irrespective of any negligence on the part of the other Owner which may have contributed to or caused such loss; provided, however, that the foregoing release and waiver shall not apply to (a) any damage caused in connection with construction undertaken by or on behalf of an Owner, as to which the terms of Section 2.4 shall apply and (b) any damage caused to any Common Area. If the waiver of subrogation is not effective, each Owner covenants that it will obtain for the benefit of the other Owner an express waiver of any right of subrogation which the insurer of such Owner may acquire against the other Owner by virtue of the payment of any such loss covered by such insurance.

In the event any Owner (a "Non-Waiver Owner") is by law, statute or governmental regulation unable to obtain a waiver of the right of subrogation for the benefit of the other



Owner, then, during any period of time when such waiver is unobtainable, the Non-Waiver Owner shall be deemed not to have released any subrogated claim of its insurance carrier against the other Owner, and during the same period of time the other Owner shall be deemed not to have released the Non-Waiver Owner from any claims they or their insurance carriers may assert which otherwise would have been released pursuant to this Section 10.5. If any Owner is unable to obtain such waiver of the right of subrogation for the benefit of the other Owner, such Non-Waiver Owner shall, within thirty (30) days of receiving notice of such inability, give the other Owner written notice of such inability.

10.6 **Self-Insurance.** Each Owner shall have the right to satisfy its insurance obligations hereunder by means of self-insurance to the extent of all or part of the insurance required hereunder, but only so long as (i) such Owner (or an affiliate providing the insurance) shall have a net worth of at least \$200,000,000; and (ii) such Owner (or an affiliate providing the insurance) shall, upon request, provide a financial statement, prepared in accordance with generally accepted accounting principles, showing the required net worth.

## **ARTICLE 11**

### **REMEDIES**

11.1 **Legal Action Generally.** If any of the Owners breaches any provision of this Agreement, then any other Owner may institute legal action against the defaulting Owner for specific performance, injunction, declaratory relief, damages, or any other remedy provided at law or in equity. All remedies herein, at law or in equity shall be cumulative and not inclusive.

11.2 **Injunctive and Declaratory Relief.** Without limitation of the provisions of Section 11.1, in the event of any violation or threatened violation by any Owner, tenant, or occupant of the Project (or any portion thereof) of any of the terms, covenants, conditions, and restrictions herein contained, in addition to any other remedies provided for in this Agreement, any Owner shall have the right to seek to enjoin such violation or threatened violation and to bring an action for declaratory relief in a court of competent jurisdiction.

11.3 **Owner's Right to Cure or Abate.** If any Owner or the Master Association (a "Defaulting Owner") violates any covenant, condition or restriction contained in this Agreement, or permits or suffers any occupant of its Parcel or Building Area to violate any covenant, condition or restriction of this Agreement, then in addition to any other remedy provided for in this Agreement, any Owner or the Master Association (the "Creditor Owner") may demand by written notice (the "Default Notice") that the violation be cured. Except for utility service interruptions or similar emergencies which shall not require advance notice or cure periods hereunder, if the Defaulting Owner does not cure the violation within thirty (30) days after receipt of the Default Notice, or if such default is of a kind which cannot reasonably be cured within thirty (30) days, and the Defaulting Owner does not within such thirty (30) day period commence to cure such default and diligently thereafter prosecute such cure to completion, then the Creditor Owner (and its agents and employees) shall have the right to (i) pay any sum owed by the Defaulting Owner to the Person entitled thereto, (ii) enter upon the Parcel of the Defaulting Owner (or any portion of the Common Area owned by the Defaulting

Owner) and summarily abate, remove or otherwise remedy any improvement, thing or condition which violates the terms of this Agreement, and (iii) enter upon the Parcel of the Defaulting Owner (or any portion of the Common Area owned by the Defaulting Owner) and perform any obligation of the Defaulting Owner to be performed thereon. The Defaulting Owner shall, within ten (10) days of written demand by the Creditor Owner, accompanied by appropriate supporting documentation, reimburse the Creditor Owner for all costs and expenses incurred by the Creditor Owner in undertaking any of the actions permitted by clauses (i) through (iii) in the preceding sentence, including without limitation, wages, benefits and overhead allocable to the time expended by any employee of the Creditor Owner in taking such actions, together with interest thereon at the rate equal to the Default Interest Rate, from the date such costs and expenses were advanced or incurred by the Creditor Owner.

11.4 **Lien.** Any Creditor Owner shall be entitled to a lien against the Parcel of the Defaulting Owner, which lien shall be created and foreclosed in accordance with this Section 11.4.

(a) **Creation.** A lien authorized by this Section 11.4 shall be created by recording a written instrument (the "**Claim of Lien**") in the records of Douglas County, Nebraska, which (i) references this Agreement by recording number, (ii) alleges a specific breach of this Agreement, (iii) states the amount owed by the Defaulting Owner through the recording date of the Claim of Lien, (iv) contains a legal description of the Parcel or Building Area of the Defaulting Owner, and (v) is executed and acknowledged by the Creditor Owner.

(b) **Amount.** A lien created pursuant to this Section 11.4 shall include (i) the amount stated in the Claim of Lien, (ii) all costs and expenses incurred in creating and foreclosing such lien (including attorneys' fees and costs), (iii) all amounts which become due from the Defaulting Owner (or its successors or assigns) to the Creditor Owner after the date the Claim of Lien is recorded, whether such amounts arise from a continuation of the default alleged in the Claim of Lien or from some other default under this Agreement, and (iv) interest on all of the foregoing at the Default Interest Rate.

(c) **Priority.** The priority of a lien created pursuant to this Section 11.4 shall be established solely by reference to the date the Claim of Lien is recorded, and, accordingly, the same shall be junior to any deed of trust or similar security instrument recorded after the date of this Agreement and prior to the recordation of any such Claim of Lien.

(d) **Extinguishment.** If the Defaulting Owner cures its default, and pays all amounts secured by a lien created pursuant to this Section 11.4, the Creditor Owner shall record an instrument sufficient in form and content to clear title to the Parcel or Building Area of the Defaulting Owner from the Creditor Owner's lien.

(e) **Foreclosure.** A lien created pursuant to this Section 11.4 shall be foreclosed judicially, in the same manner as provided for foreclosure of a mortgage or deed of trust of real property in the State of Nebraska.

11.5 **Personal Obligation.** Each Owner and Permittee, by acceptance of the deed to, lease of or other conveyance of all or a portion of a Parcel or Building or interest therein, shall be deemed to covenant and agree to be personally bound by this Agreement. Any sum not paid, or other obligation not performed when due, together with interest payable hereunder, and all costs and attorneys' fees incurred in connection with collection, shall be the personal obligation of the Person or Persons who were the Owners and/or Permittees of the Parcel at the time the payment or obligation became due, so long as the claimant notifies the person so obligated in writing within three (3) years of the amount and nature of the claim. Other than through written documentation evidencing the release of a claim subject to the personal obligation as set forth in this 11.5, the personal obligation shall not be released by any transfer of the Parcel subsequent to the date such payment or obligation became due, but such obligation shall run with the land and shall be binding upon any successor Owner.

11.6 **Remedies Cumulative.** The remedies provided in this Article 11 are in addition to any remedies available elsewhere in this Agreement or under applicable law. Exercise of one remedy shall not be deemed to preclude exercise of other remedies for the same default, and all remedies available to an Owner may be exercised cumulatively.

## **ARTICLE 12**

### **MISCELLANEOUS**

12.1 **Notices.** Any notice, payment, demand, offer, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if sent by registered or certified mail (return receipt requested), postage and charges prepaid, or by Federal Express or other reputable overnight delivery service requiring a signature upon receipt, addressed as follows:

To Developer:	Marks Clare & Richards, L.L.C. 11605 Miracle Hills Drive, Suite 300 Omaha, Nebraska 68154 Attention: Richard S. McMillin, Esq. Fax No.: (402) 492-9336
To Costco:	Costco Wholesale Corporation 999 Lake Drive Issaquah, Washington 98027 Attn: Property Management (Legal Department) Fax No.: (425) 313-8105
with a copy to:	DLA Piper US LLP 203 North LaSalle Street, Suite 1900 Chicago, Illinois 60601 Attention: David L. Reifman, Esq. and Grace Poe, Esq. Fax No.: (312) 236-7516

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

12.2 **Binding Effect.** All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to and run with the Developer Parcels and the Costco Parcel, and shall, except as otherwise set forth herein, benefit or be binding upon the successors and assigns of the respective Owners; provided, however, that, such limitations, covenants, conditions, easements and restrictions shall be binding upon, enforceable against, and enforceable by each Owner only with respect to the respective successive periods in which each of Developer and Costco is an Owner and with respect to obligations which accrue during their respective period of ownership. This Agreement and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitudes in favor of said Parcels and any portion thereof. Whenever the rights, powers and obligations conferred upon any of the Owners are vested in another Owner or Owners pursuant to the provisions of subsections 1.1(z), (i), (ii), (iii) or (iv) above, the transferor shall, subject to the terms of Section 1.1(z), be released or discharged from the obligations thereafter accruing under the terms of this Agreement, and the transferee(s) of such interest shall be bound by the covenants and restrictions herein contained.

12.3 **Attorneys' Fees.** In the event of any action between the Owners for a breach of or to enforce any provision or right hereunder, the non-prevailing Owner in such action shall pay to the prevailing Owner all costs and expenses, expressly including, but not limited to, reasonable attorneys' fees and costs incurred by the successful Owner in connection with such action, including without limitation all fees and costs incurred on any appeal from such action or proceeding.

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

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

Notwithstanding any other provision in this Agreement for notices of default, the Mortgagee of any Owner in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Agreement; provided, however, that said Mortgagee shall have, prior to the time of the default, delivered written notice to the Owner(s) giving said notice of default of the Mortgagee's mailing address. In the event that any notice shall be given of the default of an Owner and such Defaulting Owner has failed to cure or commence to cure such default as provided in this Agreement, then and in that event the Owner giving such notice of default covenants to give such Mortgagee (which has previously given the above stated notice to such Owner) under any Mortgage affecting the Parcel of the

Defaulting Owner an additional notice, given in the manner provided above, that the Defaulting Owner has failed to cure such default and such Mortgagee shall have thirty (30) days after said additional notice to cure any such default, or, if such default cannot be cured within thirty (30) days, diligently to commence curing within such time and diligently pursue such cure to completion within a reasonable time thereafter. Giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Owner so declaring a default.

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

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

12.8 **Modification.** No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by Costco and Developer. Any change, modification, amendment or rescission which is made without the written consent of Costco and Developer shall be null and void and of no effect. No consent or approval of any Owner other than Costco and Developer shall be required in order to modify or amend any provisions of this Agreement.

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

12.10 **Governing Law.** This Agreement and the obligations of the Owners hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Nebraska.

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

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

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

12.14 **Consent.** In any instance in which any Owner shall be requested to consent to or approve of any matter with respect to which such Owner's consent or approval is required by any

of the provisions of this Agreement, such consent or approval or disapproval shall be given in writing, and shall not be unreasonably withheld, conditioned or delayed, unless the provisions of this Agreement with respect to a particular consent or approval shall expressly provide otherwise.

12.15 **Estoppel Certificate.** Each Owner hereby severally covenants that within thirty (30) days of the written request of any other Owner or the Master Association it will issue to such other Owner, the Master Association or to any prospective Mortgagee or purchaser of such Owner's Parcel an estoppel certificate stating: (a) whether the Master Association or the Owner to whom the request has been directed knows of any default under this Agreement and if there are known defaults specifying the nature thereof; (b) whether to its knowledge this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and (c) whether to the Master Association's or the Owner's knowledge this Agreement as of that date is in full force and effect. In addition, any such estoppel certificate issued by the Master Association shall state whether the Assessments on a specified Parcel have been paid to date.

12.16 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Owners that this Agreement shall be strictly limited to and for the purposes herein expressed.

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

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

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

12.19 **Entire Agreement.** This Agreement and the exhibits hereto contain all the representations and the entire agreement between the Owners with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and Exhibits hereto. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Owner. This Agreement is not, however, intended to supersede the provision of any lease as between an Owner and its tenant.

12.20 **Excuse for Non-Performance.** Each Owner and the Master Association shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sums of money under the applicable provisions hereof (unless such payment is conditioned upon performance of any obligation or undertaking excused by this Section), in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the ordinary course on the open market; failure of normal transportation; strikes, lockouts, action of labor unions; condemnation, requisition; laws, orders of governmental authority; inability to obtain governmental approvals or permits despite the exercise of due diligence and best efforts by an Owner or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, other than the lack of or inability to obtain funds.

12.21 **Mechanics' Liens.** In the event any mechanics' liens are filed against the Parcel of any Owner, the Owner permitting or causing such lien to be filed hereby covenants either to pay the same and have it discharged of record, promptly, or to take such action as may be required to reasonably and legally object to such lien, or to have the lien removed from such Parcel, and in all events agrees to have such lien discharged prior to the entry of judgment for foreclosure of such lien. Upon request of any other Owner, the Owner permitting or causing such lien to be filed against any other Owner's Parcel agrees to furnish such security or indemnity conforming to this Agreement as may be required, to and for the benefit of such other Owner, to permit a title endorsement to such Owner's title policy to be issued relating to such Owner's Parcel without showing thereon the effect of such lien.

12.22 **Duration.** This Agreement and each term, easement, covenant, restriction and undertaking of this Agreement will remain in effect for a term of eighty nine (89) years from the recordation date hereof and shall be renewed for successive ten (10) year periods if Costco and Developer elect by written notice to the other Owners to so renew. The access easement granted over the Developer Access Drive in Section 3.1(a) (captioned "Access Easement"), the easements under 3.1(b) (captioned "Drainage") and Section 3.1(d) (captioned "Utilities") and the restrictions under Section 4.5 (captioned "Certain Setbacks") shall survive the termination of this Agreement.

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

12.24 **Exhibits.** The following are attached to this Agreement.

- Exhibit "A-1" - Replat Map
- Exhibit "A-2" - Proposed Replat Map
- Exhibit "A-3" - Legal Description of Developer Parcels
- Exhibit "B-1" - Common Area Plan
- Exhibit "B-2" - Site Plan
- Exhibit "C" - Shared Signs
- Exhibit "D" - Prohibited Staging Areas
- Exhibit "E-1" - Costco Storm Water Plan
- Exhibit "E-2" - Initial Storm Drainage System



IN WITNESS WHEREOF, the parties hereto have caused this Construction, Operation and Reciprocal Easement Agreement to be executed by their duly authorized officers as of this 18<sup>th</sup> day of July, 2007.

**COSTCO:**

**COSTCO WHOLESALE CORPORATION**, a Washington corporation

By: Margaret McCulla

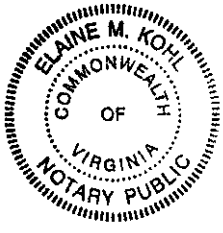
Name: Margaret McCulla

Its: Asst. Secretary

STATE OF Virginia ) SS  
COUNTY OF Loudoun

I certify that I know or have satisfactory evidence that Margaret McCulla signed this instrument, on oath stated that he/she was authorized to execute the instrument as the Asst. Secretary of Costco Wholesale Corporation, a Washington corporation, and acknowledged it to be the free and voluntary act and deed of said corporation, for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal hereto affixed on June 20<sup>th</sup>, 2007.



ELAINE M. KOHL  
NOTARY PUBLIC  
COMMONWEALTH  
OF VIRGINIA  
My Commission Expires  
December 31, 2008

Elaine M. Kohl (printed name)  
Notary Public in and for the  
State of Virginia  
My appointment expires 12-31-08

[signature page to Construction, Operation and Reciprocal Easement Agreement, continued]

**Blumkin Family Limited Partnership**, a Nebraska limited partnership

By: Irv Blumkin Administrative General Partner, LLC

By: *Irv Blumkin*  
Irvin Blumkin, Sole Member

STATE OF Nebraska )  
 ) ss:  
COUNTY OF Douglas )

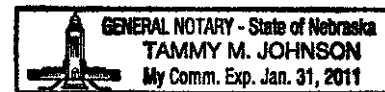
BE IT REMEMBERED, that on this 13 day of June, 2007, before me, the undersigned, a notary public in and for said county and state, came Irvin Blumkin, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same as the sole member of Irv Blumkin Administrative General Partner, LLC, the general partner of the Blumkin Family Limited Partnership, a Nebraska limited partnership.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal the day and year last above written.

*Tammy M. Johnson*  
Type name:  
Notary Public

My Commission Expires:

[Seal]



[signature page to Construction, Operation and Reciprocal Easement Agreement, continued]

*Cynthia Schneider*

**Cynthia Schneider**, as Trustee of the Cynthia Schneider (Grantor) Revised and Restated Revocable Trust Agreement (UA 10/15/86), as the same may have been subsequently amended, restated or substituted

STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF DOUGLAS    )

BE IT REMEMBERED, that on this 12<sup>th</sup> day of June, 2007, before me, the undersigned, a notary public in and for said county and state, came Cynthia Schneider, who is personally known to me to be the same person who executed the within instrument in writing, and duly acknowledged the execution of the same as the Trustee of the Cynthia Schneider (Grantor) Revocable Trust, (UA 10/15/86).

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal the day and year last above written.

*Linda R. Bales*

Type name:  
Notary Public

My Commission Expires:

[Seal]



[signature page to Construction, Operation and Reciprocal Easement Agreement, continued]

*Sylvia Cohn TTEE*

Sylvia Cohn, as Trustee of the Sylvia Cohn (Grantor) Amended and Restated Revocable Trust Agreement (UA 9/12/85), as the same may have been subsequently amended, restated or substituted

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF DOUGLAS )

BE IT REMEMBERED, that on this 12<sup>th</sup> day of June, 2007, before me, the undersigned, a notary public in and for said county and state, came Sylvia Cohn, who is personally known to me to be the same person who executed the within instrument in writing, and duly acknowledged the execution of the same as the Trustee of the Sylvia Cohn (Grantor) Revocable Trust, (UA 9/12/85).

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal the day and year last above written.

*Linda R. Bales*

Type name:  
Notary Public

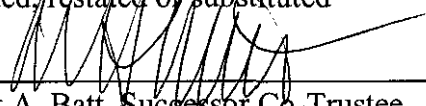
My Commission Expires:

[Seal]



[signature page to Construction, Operation and Reciprocal Easement Agreement, continued]


**Robert A. Batt**, Successor Co-Trustee of the **Frances Batt**, (Grantor) Revocable Trust (UA 12/22/89), as the same may have been subsequently amended, restated or substituted

  
\_\_\_\_\_  
Robert A. Batt, Successor Co-Trustee

STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF DOUGLAS    )

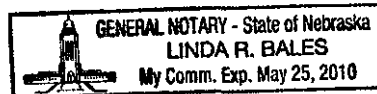
BE IT REMEMBERED, that on this 1<sup>st</sup> day of June, 2007, before me, the undersigned, a notary public in and for said county and state, came Robert A. Batt, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same as the successor co-trustee of the Frances Batt (Grantor) Revocable Trust, (UA 12/22/89).

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal the day and year last above written.

  
\_\_\_\_\_  
Type name:  
Notary Public

My Commission Expires:

[Seal]



[signature page to Construction, Operation and Reciprocal Easement Agreement, continued]

Ellen G. Batt, Successor Co-Trustee of the Frances Batt, (Grantor) Revocable Trust (UA 12/22/89), as the same may have been subsequently amended, restated or substituted

Ellen G. Batt  
Ellen G. Batt, Successor Co-Trustee

STATE OF NEW YORK )  
                                  ) ss:  
COUNTY OF New York

BE IT REMEMBERED, that on this 13 day of June, 2007, before me, the undersigned, a notary public in and for said county and state, came Ellen G. Batt, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same as the successor co-trustee of the Frances Batt (Grantor) Revocable Trust, (UA 12/22/89).

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal the day and year last above written.

Henry B. Trattner  
Type name:  
Notary Public

HENRY B. TRATTNER  
NOTARY PUBLIC, State of New York  
No. TR-01-4689385  
Qualified in Nassau County  
Certificate Filed in New York County  
Commission Expires October 31, 20 09

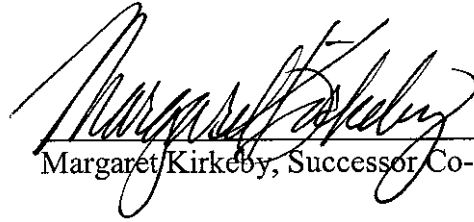
My Commission Expires:

[SEAL]

**NOTARIAL SEAL  
REGISTER OF DEEDS**

[signature page to Construction, Operation and Reciprocal Easement Agreement, continued]

**Margaret Kirkeby**, Successor Co-Trustee of the **Frances Batt**, (Grantor) Revocable Trust (UA 12/22/89), as the same may have been subsequently amended, restated or substituted

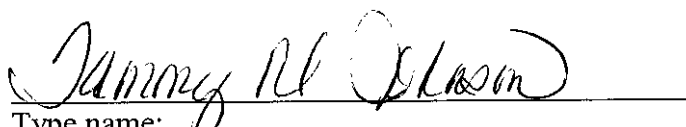
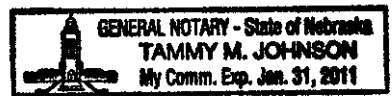


Margaret Kirkeby, Successor Co-Trustee

STATE OF NEBRASKA            )  
  ) ss:  
COUNTY OF DOUGLAS         )

BE IT REMEMBERED, that on this 13<sup>th</sup> day of June, 2007, before me, the undersigned, a notary public in and for said county and state, came Margaret Kirkeby, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same as the successor co-trustee of the Frances Batt (Grantor) Revocable Trust, (UA 12/22/89).

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal the day and year last above written.

  
Type name:  
Notary Public

My Commission Expires:

[SEAL]

**RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:**

Grace Poe  
DLA Piper US LLP  
203 North La Salle Street  
Suite 1900  
Chicago, Illinois 60601-1293

**RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:**

Grace Poe  
DLA Piper US LLP  
203 North La Salle Street  
Suite 1900  
Chicago, Illinois 60601-1293



**SCHEDULE 1**

**PARTIES COMPRISING SELLER**

**Blumkin Family Limited Partnership**, a Nebraska limited partnership, (owns 25% TIC interest in the Property),

**Cynthia Schneider**, as Trustee of the Cynthia Schneider (Grantor) Revised and Restated Revocable Trust Agreement (UA 10/15/86), as the same may have been subsequently amended, restated or substituted (owns 25% TIC interest in the Property);

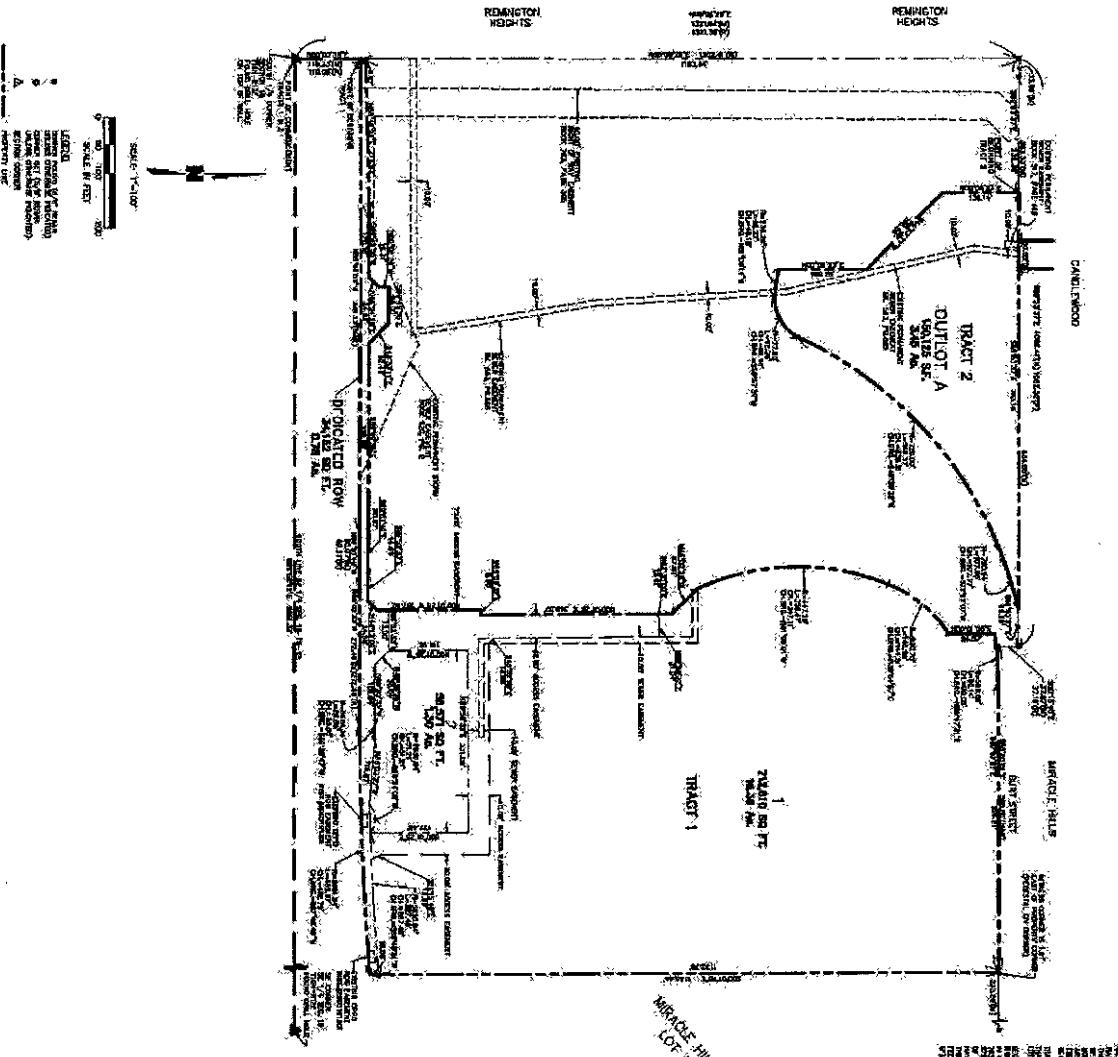
**Sylvia Cohn**, as Trustee of the Sylvia Cohn (Grantor) Amended and Restated Revocable Trust Agreement (UA 9/12/85), as the same may have been subsequently amended, restated or substituted (owns 25% TIC interest in the Property); and

**Robert A. Batt, Ellen G. Batt and Margaret Kirkeby**, Successor Co-Trustees of the **Frances Batt**, (Grantor) Revocable Trust (UA 12/22/89), as the same may have been subsequently amended, restated or substituted (owns 25% TIC interest in the Property).

**EXHIBIT A-1**

**REPLAT MAP**

**CANDLEWOOD HILLS - PHASE I**  
 PHASE 1 (LOT 1 AND PHASE 1/LOT 2, INCLUSIVE, AND OUTLOT A, BEING A PARTING OF THAT PART OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE 5TH P.M., BOULDER COUNTY, NEBRASKA



SCALE: 1"=100'  
 NORTH  
 LEGEND  
 1. EXISTING LOT LINES  
 2. EXISTING EASEMENTS  
 3. EXISTING UTILITY LINES  
 4. EXISTING ROW (RIGHT-OF-WAY)  
 5. EXISTING CURBS  
 6. EXISTING DRIVEWAYS

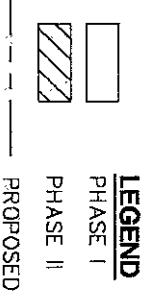
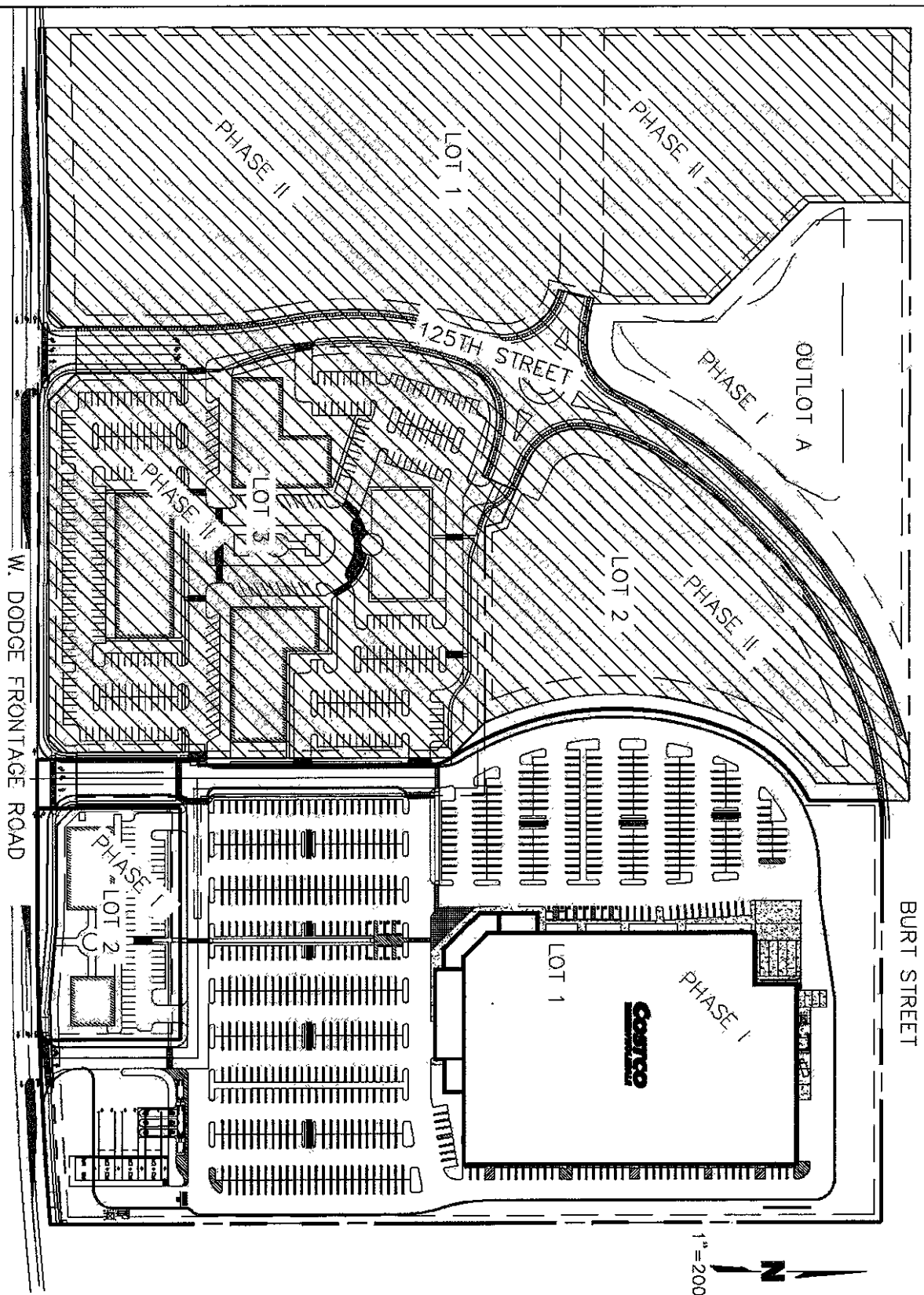
THIS PLAN IS THE PROPERTY OF OLSON ASSOCIATES, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF OLSON ASSOCIATES, INC. THE USER OF THIS PLAN ASSUMES ALL LIABILITY FOR ANY ERRORS OR OMISSIONS. OLSON ASSOCIATES, INC. MAKES NO WARRANTY, EXPRESS OR IMPLIED, FOR THE ACCURACY OR COMPLETENESS OF THE INFORMATION PROVIDED HEREON. THE USER OF THIS PLAN SHOULD CONSULT WITH A PROFESSIONAL ENGINEER OR SURVEYOR FOR A COMPLETE ANALYSIS OF THE SITE AND THE NECESSARY PERMITS AND REGULATIONS. OLSON ASSOCIATES, INC. IS NOT RESPONSIBLE FOR ANY DAMAGE TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS PLAN. THE USER OF THIS PLAN SHOULD CONSULT WITH A PROFESSIONAL ENGINEER OR SURVEYOR FOR A COMPLETE ANALYSIS OF THE SITE AND THE NECESSARY PERMITS AND REGULATIONS. OLSON ASSOCIATES, INC. IS NOT RESPONSIBLE FOR ANY DAMAGE TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS PLAN.

**EXHIBIT A-1**  
 Replat Map

<p>PROJECT NO: 08-114                  SHEET NO: 1 OF 1                  DATE: 08-11-14                  DRAWN BY: J. J. JENSEN                  CHECKED BY: J. J. JENSEN</p>	<p>FINAL PLAT                  CANDLEWOOD HILLS                  SE 1/4 SEC. 16 - T15N - R12E</p>		<p>REVISIONS</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		NO.	DATE	DESCRIPTION																<p>OLSON ASSOCIATES                  ENGINEERS - PLANNERS - ARCHITECTS - SURVEYORS                  1000 N. 17th Street, Suite 100, Omaha, NE 68111                  Phone: (402) 442-2200                  Fax: (402) 442-2201                  Website: www.olsonassoc.com</p>
	NO.	DATE	DESCRIPTION																				
<p>ONAHIA, NEBRASKA</p>	<p>2008</p>	<p>2008</p>																					

**EXHIBIT A-2**

**PROPOSED REPLAT MAP**



PROPOSED REPLAT MAP

CANDLEWOOD HILLS

OMAHA, NE

2006

REVISIONS	
NO.	DESCRIPTION

EXHIBIT A-2

**MOLSSON ASSOCIATES**

2000 West 72nd Street, Suite 1400  
Omaha, NE 68128-0000

TEL: 402.941.4100  
FAX: 402.941.4099

PLAT

**EXHIBIT A-3**

**LEGAL DESCRIPTION OF DEVELOPER PARCELS**

LOT 2, CANDLEWOOD HILLS, A PLATTED AND RECORDED SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE 6<sup>TH</sup> P.M., DOUGLAS COUNTY, NEBRASKA. 59-05683

OUTLOT A, CANDLEWOOD HILLS, A PLATTED AND RECORDED SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE 6<sup>TH</sup> P.M., DOUGLAS COUNTY, NEBRASKA. 59-05683

THAT PART OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION 18, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE SIXTH P.M., DOUGLAS COUNTY, NEBRASKA, AND LOT "A" AND PART OF LOTS "B" AND "C", MIRACLE HILLS SUBDIVISION, AS PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

01-60000

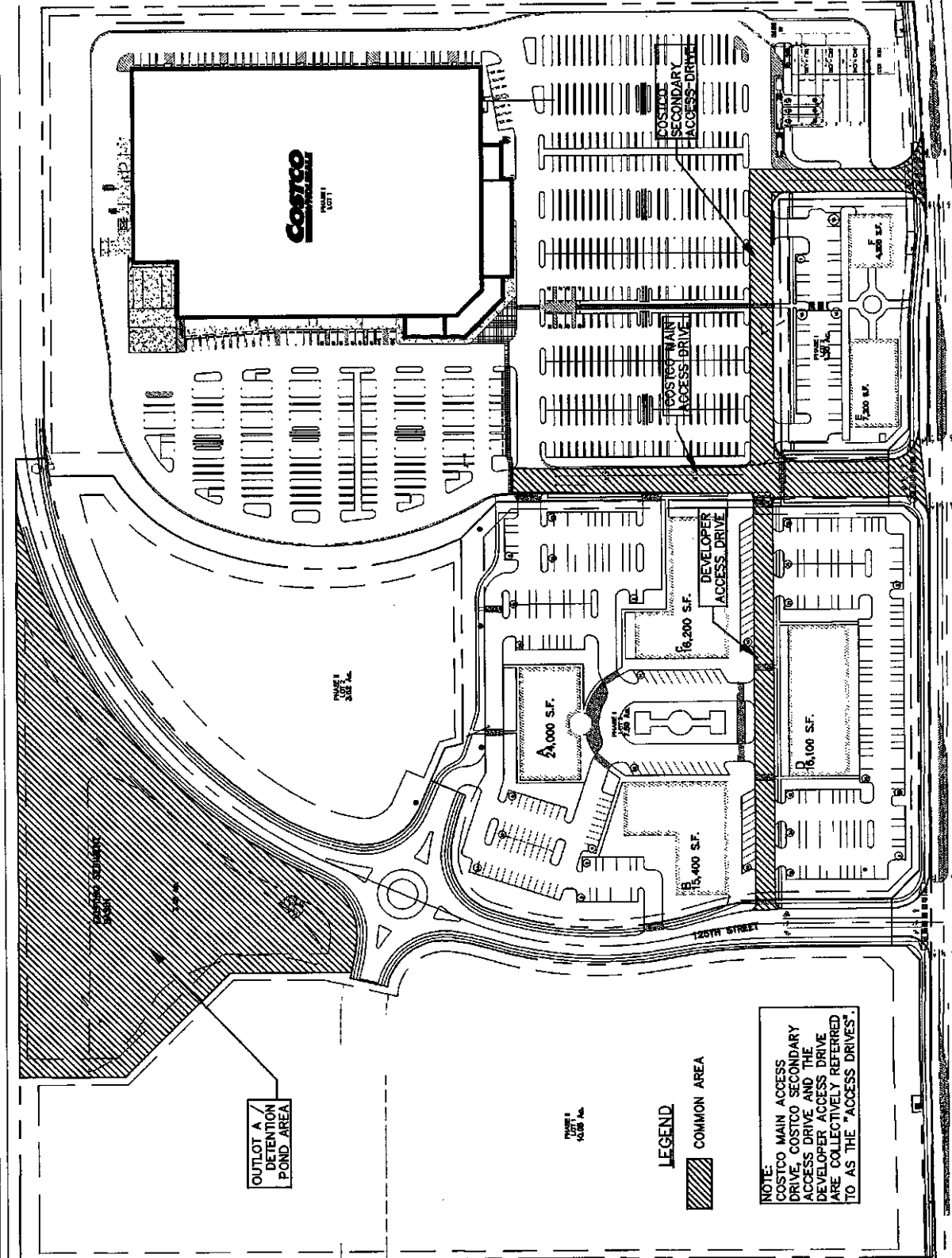
59-25680

COMMENCING AT THE SOUTH QUARTER CORNER (S1/4) OF SAID SECTION 18, THENCE N00°02'38"E ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER (SE1/4), 119.23 FEET TO THE NORTH RIGHT OF WAY LINE OF WEST DODGE ROAD; THENCE N00°06'26"E ALONG SAID WEST LINE, 8.87 FEET TO THE POINT OF BEGINNING; THENCE ON THE WEST LINE OF SAID SOUTHEAST QUARTER (SE1/4), N00°06'26"E, 1193.54 FEET TO THE SOUTH LINE OF CANDLEWOOD, A PLATTED AND RECORDED SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA; THENCE ON THE SOUTH LINE OF SAID CANDLEWOOD, S89°53'37"E, 239.36 FEET; THENCE S00°06'23"W, 139.14 FEET; THENCE S44°53'37"E, 196.58 FEET; THENCE S00°06'23"W, 160.25 FEET; THENCE ON A 239.29 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 49.27 FEET (LONG CHORD BEARS S81°00'14"E, 49.18 FEET) TO A POINT OF COMPOUND CURVATURE; THENCE ON A 77.50 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 92.35 FEET (LONG CHORD BEARS N58°57'39"E, 86.98 FEET) TO A POINT OF REVERSE CURVATURE; THENCE ON A 720.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 548.37 FEET (LONG CHORD BEARS N46°38'35"E, 535.21 FEET) TO A POINT OF COMPOUND CURVATURE; THENCE ON A 790.94 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 107.85 FEET (LONG CHORD BEARS N72°22'07"E, 107.77 FEET) TO THE SOUTH LINE OF SAID CANDLEWOOD; THENCE ON SAID SOUTH LINE, S89°53'37"E, 69.89 FEET; THENCE S00°15'40"E, 37.07 FEET; THENCE S89°53'51"E, 66.59 FEET; THENCE ON A 599.06 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 90.14 FEET (LONG CHORD BEARS S85°47'31"W, 90.05 FEET); THENCE S00°01'06"W, 84.07 FEET; THENCE ON A 230.70 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 146.99 FEET (LONG CHORD BEARS S39°54'57"W, 144.51 FEET) TO A POINT OF COMPOUND CURVATURE; THENCE ON A 447.26 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 356.47 FEET (LONG CHORD BEARS S01°09'01"E, 347.11 FEET); THENCE S45°02'26"E,

67.61 FEET; THENCE S00°01'28"E, 349.07 FEET; THENCE S89°58'32"W, 8.95 FEET; THENCE S00°01'28"E, 187.52 FEET; THENCE S44°12'09"W, 24.55 FEET TO THE NORTH RIGHT OF WAY LINE OF WEST DODGE ROAD; THENCE ON SAID NORTH RIGHT OF WAY LINE FOR THE NEXT 9 COURSES; 1.) N89°52'33"W, 46.59 FEET; 2.) N89°51'49"W, 80.07 FEET; 3.) N89°49'56"W, 339.65 FEET; 4.) N45°33'11"W, 52.49 FEET; 5.) N89°49'56"W, 64.00 FEET; 6.) S00°02'26"E, 19.31 FEET; 7.) S45°24'28"W, 24.62 FEET; 8.) N89°49'56"W, 120.15 FEET; 9.) S88°46'22"W, 272.43 FEET TO THE POINT OF BEGINNING, CONTAINING 26.70 ACRES MORE OR LESS

**EXHIBIT B-1**  
**COMMON AREA PLAN**





OUTLOT A /  
DETENTION  
POND AREA

120TH STREET

**LEGEND**  
COMMON AREA

**NOTE:**  
COSTCO MAIN ACCESS DRIVE, COSTCO SECONDARY ACCESS DRIVE AND THE DEVELOPER ACCESS DRIVE ARE COLLECTIVELY REFERRED TO AS THE "ACCESS DRIVES".

PROJECT NO: 2006--2095  
DRAWN BY: DJG  
DATE: 06/14/07

**COMMON AREA PLAN**

2120 South 72nd Street  
Suite 1400  
Omaha, NE 68124-8316  
TEL 402.341.1116  
FAX 402.341.5885

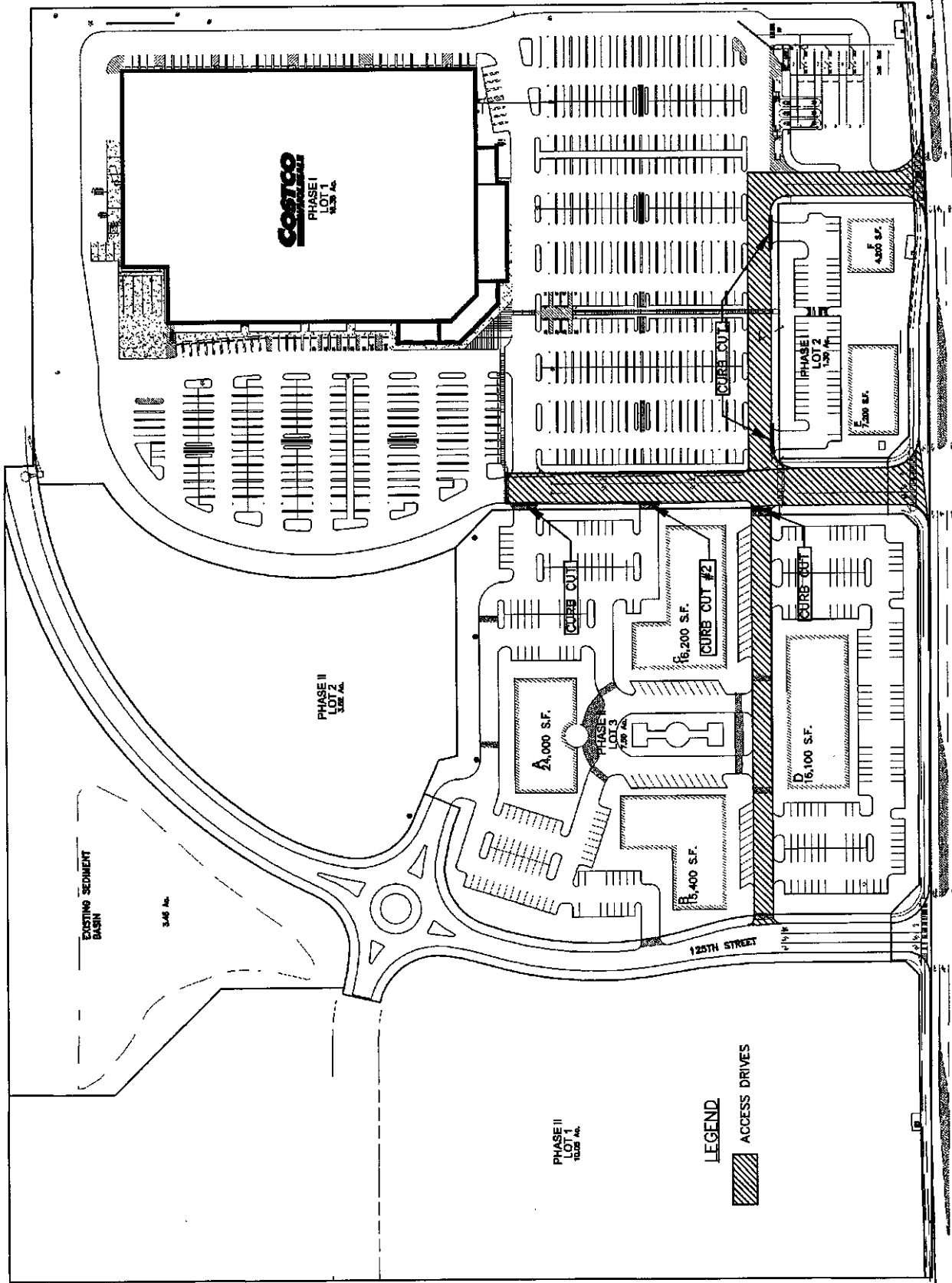
EXHIBIT  
**B-1**



**EXHIBIT B-2**

**SITE PLAN**

B-2-1



2120 South 72nd Street  
 Suite 1400  
 Omaha, NE 68124-8316  
 TEL 402.341.1118  
 FAX 402.341.5885

**OLSSON**  
 ASSOCIATES

**SITE PLAN**

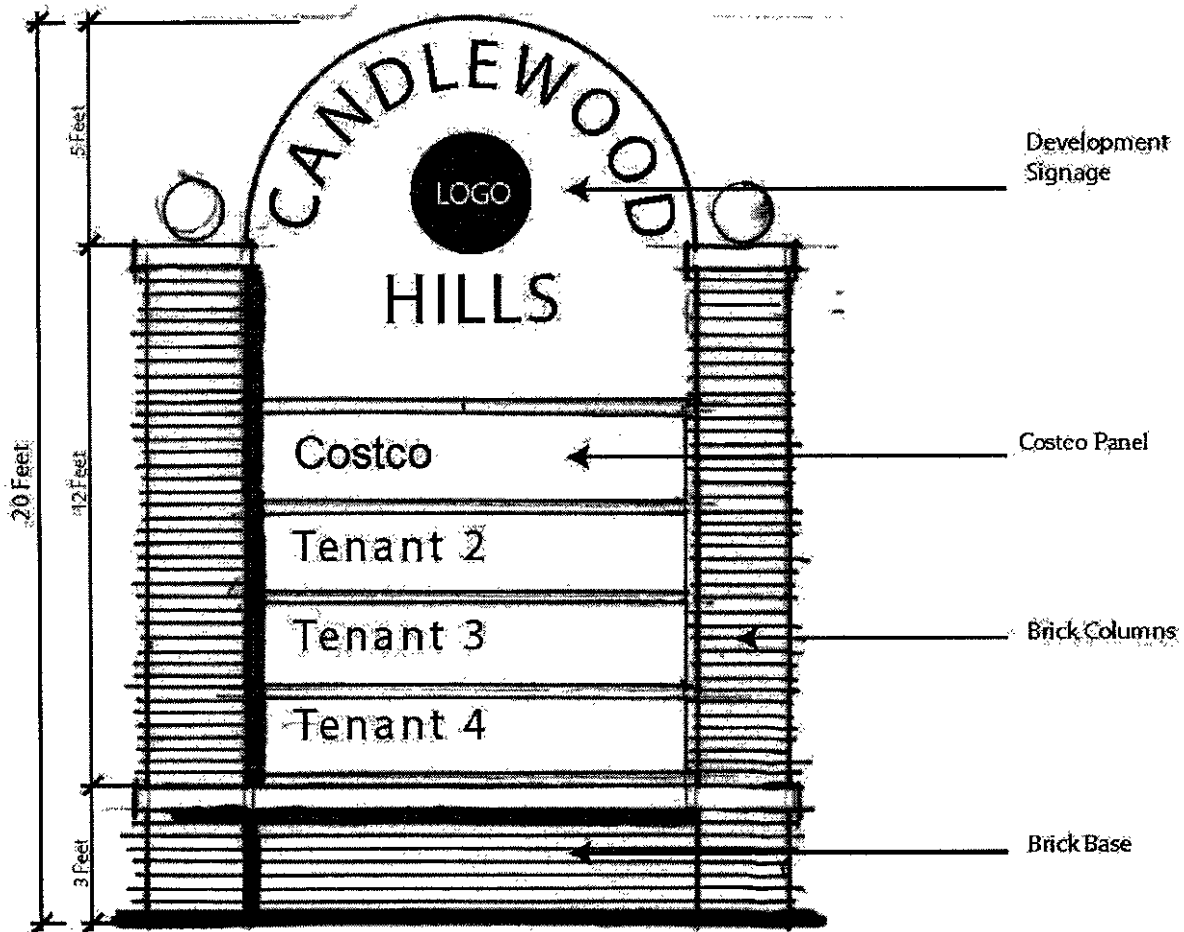
PROJECT NO: 2006-2095  
 DRAWN BY: DJG  
 DATE: 06/14/07

EXHIBIT  
**B-2**

**EXHIBIT C**  
**SHARED SIGNS**

SIGNAGE

CANDLEWOOD HILLS DEVELOPMENT



PROJECT #25105-00



**EXHIBIT D**

**PROHIBITED STAGING AREAS**

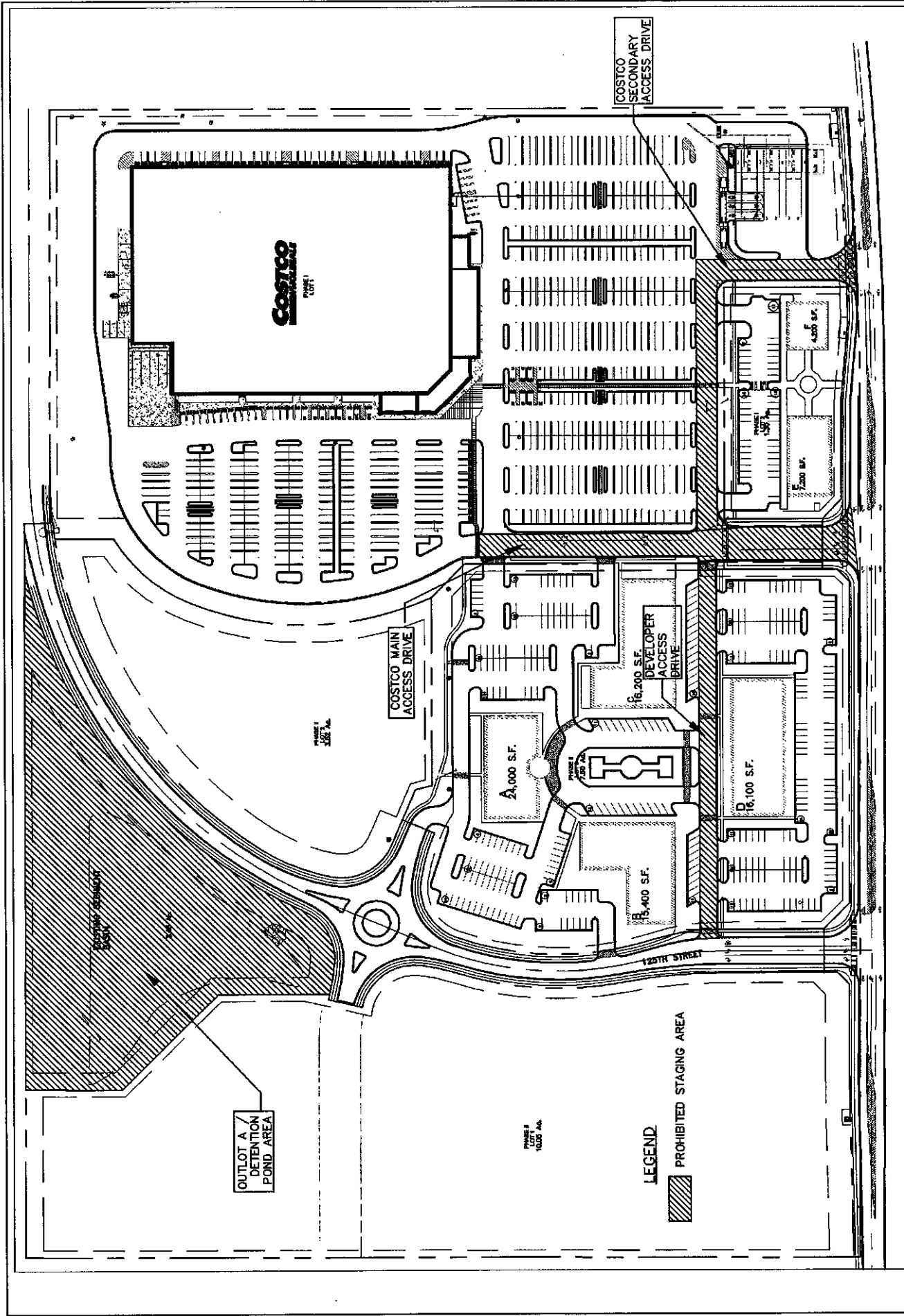


EXHIBIT  
D

2120 South 72nd Street  
 Suite 1400  
 Omaha, NE 68124-8316  
 TEL 402.341.1116  
 FAX 402.341.5885

**OLSSON**  
 ASSOCIATES

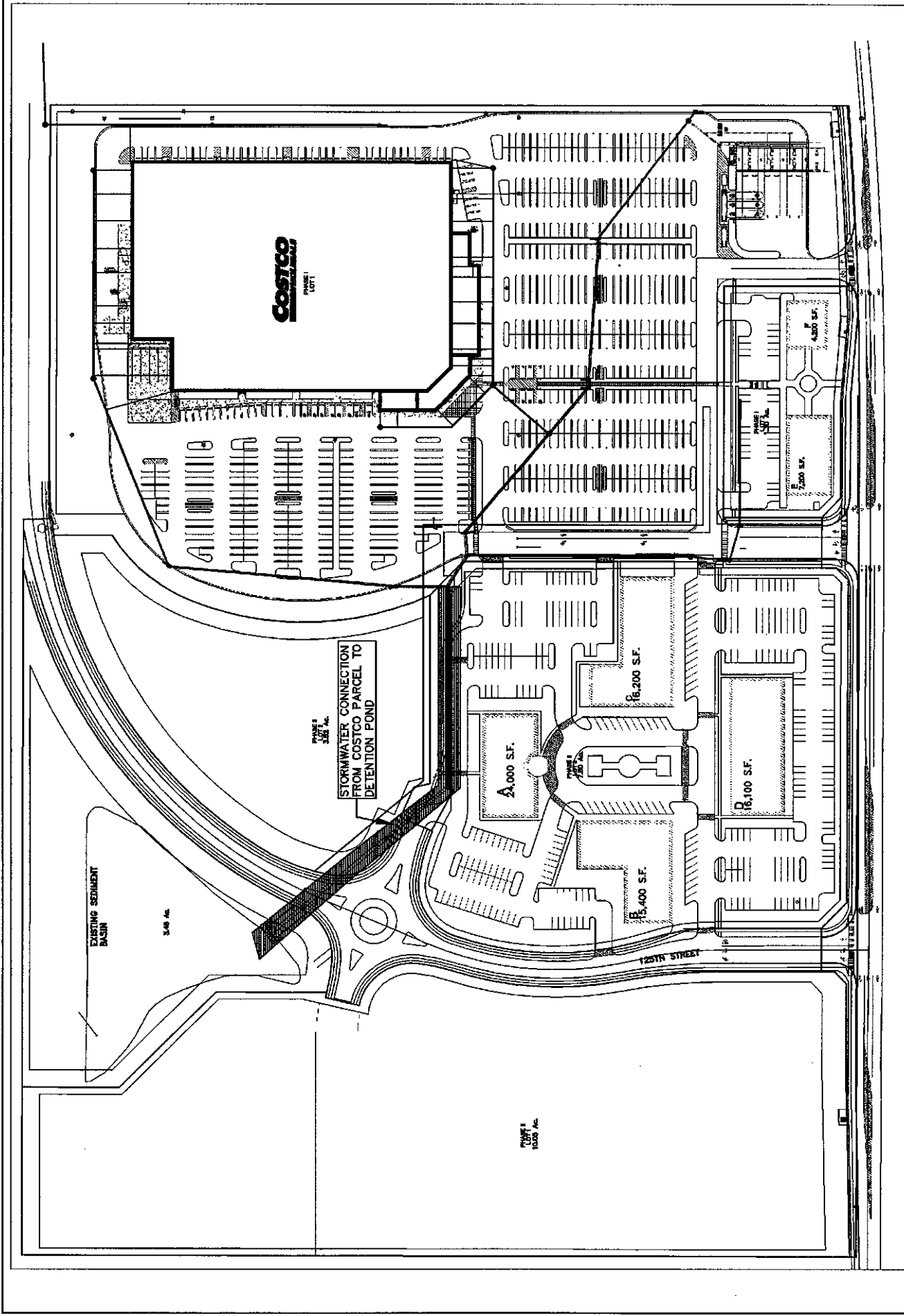
**PROHIBITED STAGING AREAS**

PROJECT NO: 2006-2095  
 DRAWN BY: DJG  
 DATE: 06/14/07

**EXHIBIT E-1**

**COSTCO STORM WATER PLAN**





PROJECT NO: 2006-2095  
 DRAWN BY: DJG  
 DATE: 06/14/07

**COSTCO STORM WATER PLAN**

**OLLSSON**  
 ASSOCIATES

2120 South 72nd Street  
 Suite 1400  
 Omaha, NE 68124-6818  
 TEL 402.341.1116  
 FAX 402.341.5895

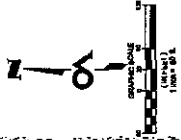
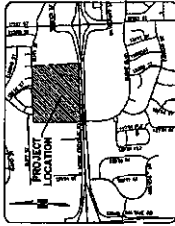
EXHIBIT  
**E-1**

**EXHIBIT E-2**

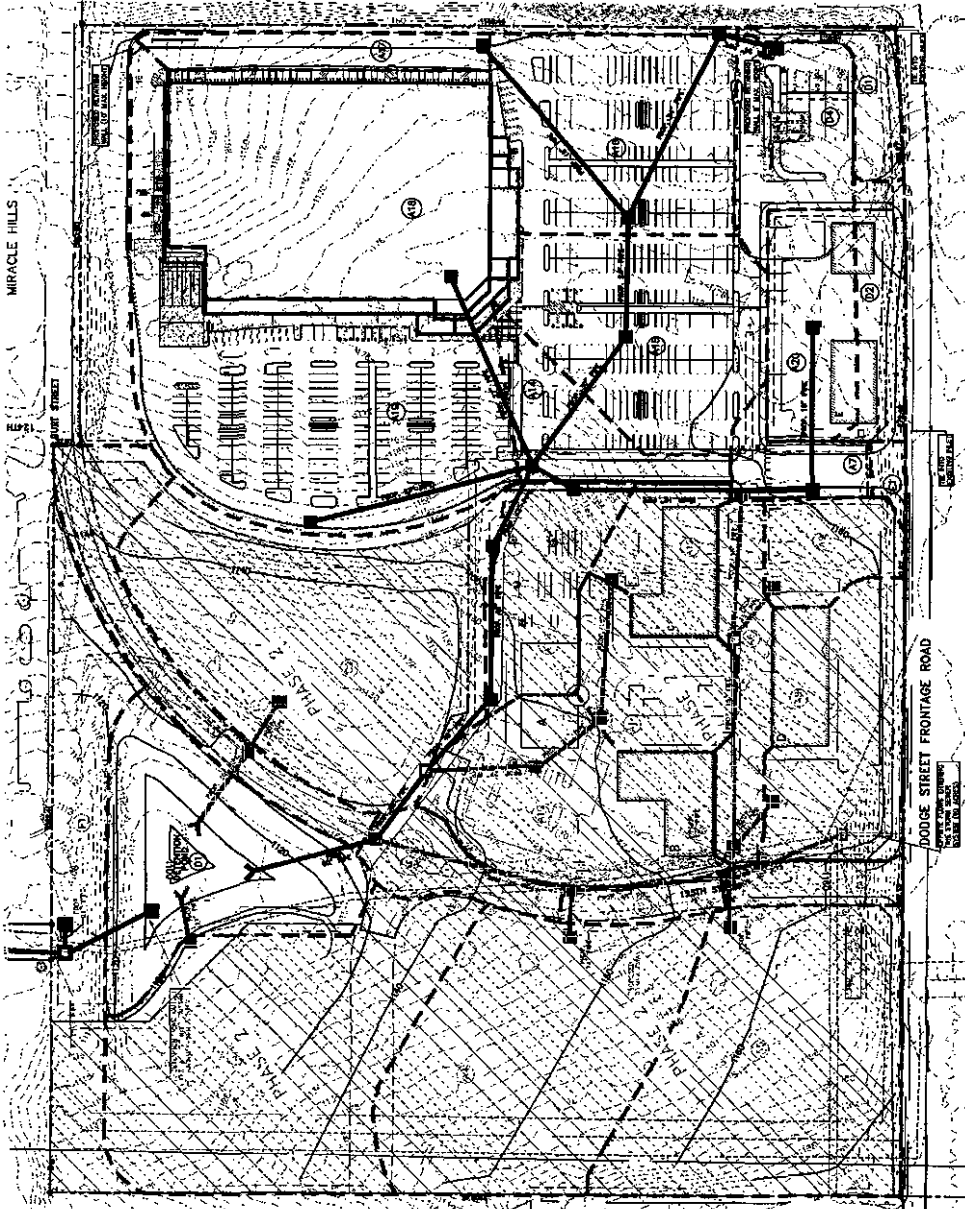
**INITIAL STORM DRAINAGE SYSTEM**

**CANDLEWOOD HILLS**

**DAVID B. J. PREDAK**  
 CIVIL ENGINEER  
 1250 N. UNIVERSITY  
 SUITE 100  
 CHICAGO, ILL. 60642  
 PHONE (312) 344-1414



- LEGEND**
- 1. EXISTING AND PROPOSED PROPERTY LINES
  - 2. EXISTING AND PROPOSED EASEMENTS
  - 3. EXISTING AND PROPOSED DRIVEWAYS
  - 4. EXISTING AND PROPOSED DRIVEWAYS
  - 5. EXISTING AND PROPOSED DRIVEWAYS
  - 6. EXISTING AND PROPOSED DRIVEWAYS
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  - 9. EXISTING AND PROPOSED DRIVEWAYS
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  - 17. EXISTING AND PROPOSED DRIVEWAYS
  - 18. EXISTING AND PROPOSED DRIVEWAYS
  - 19. EXISTING AND PROPOSED DRIVEWAYS
  - 20. EXISTING AND PROPOSED DRIVEWAYS



DODGE STREET FRONTAGE ROAD

MIRACLE HILLS

EIGHT STREET

SEVEN STREET

SIX STREET

FIVE STREET

FOUR STREET

THREE STREET

TWO STREET

ONE STREET

0

1

2

3

4

5

6

7

8

9

DEVELOPED DRAINAGE CONDITIONS  
 RETURN FREQUENCY: 10 YEARS

Location	Area	Coefficient	A+C	Sum A+C	Time of Concentration in minutes	Intensity in/hr	Runoff of cfs	Pipe Slope ft/ft	Pipe Length ft	Pipe Diameter in	Pipe Capacity Op cfs	Pipe Velocity ft/sec	Time in Section minutes	Comments
A20	0.83	0.85	0.79	0.79	5.00	8.90	7.04	0.0100	135	18	11.38	6.44	0.35	O.K.
A19	4.09	0.85	3.48	3.48	5.00	8.90	30.84	0.0100	325	27	33.55	8.44	0.64	O.K.
A18	3.48	1	3.48	3.49	5.00	8.90	31.08	0.0100	290	27	33.55	8.44	0.57	O.K.
A17	0.58	0.85	0.49	0.49	5.00	8.90	4.39	0.0100	317	18	11.38	6.44	0.82	O.K.
A16	2.14	0.85	1.82	2.31	5.82	8.90	20.39	0.0100	165	24	24.51	7.80	0.36	O.K.
A15	2.07	0.85	1.76	4.07	6.18	8.90	36.24	0.0100	222	30	44.44	9.05	0.41	O.K.
A14	0.72	0.85	0.61	11.85	6.59	8.90	103.69	0.0100	127	42	108.99	11.33	0.19	O.K.
MH	1.01	0.85	0.88	12.51	6.77	8.90	103.69	0.0100	213	42	108.99	11.33	0.31	O.K.
A13	0.72	0.85	0.61	5.00	7.09	8.90	11.33	0.0100	115	48	155.51	12.38	0.15	O.K.
A12	0.90	0.85	0.77	1.38	5.58	8.90	5.45	0.0100	200	15	7.00	5.70	0.58	O.K.
A11	0.90	0.85	0.77	1.38	5.58	8.90	12.26	0.0100	108	21	17.17	7.14	0.25	O.K.
A10	1.95	0.85	1.66	3.03	5.84	8.90	27.01	0.0100	138	27	33.55	8.44	0.27	O.K.
MH	0.00	0.00	0.00	15.54	7.24	8.90	138.33	0.0100	103	48	155.51	12.38	0.14	O.K.
A9	0.81	0.85	0.52	0.52	5.00	8.90	4.61	0.0100	178	15	7.00	5.70	0.23	O.K.
A7	0.45	0.85	0.37	0.37	5.00	8.90	3.25	0.0100	194	15	7.00	5.70	0.58	O.K.
MH	0.00	0.00	0.00	0.00	5.38	8.90	7.87	0.0100	253	18	11.38	6.44	0.73	O.K.
A8	1.89	0.85	1.44	7.44	5.00	8.90	12.78	0.0100	70	27	33.55	8.44	0.06	O.K.
A6	0.78	0.85	0.66	2.98	5.29	8.90	26.35	0.0100	68	27	33.55	8.44	0.11	O.K.
A5	0.28	0.85	0.23	2.79	5.00	8.90	6.50	0.0100	158	48	155.51	12.38	0.21	O.K.
Driveway	0.00	0.00	0.00	0.00	5.00	8.90	89.00	0.0100	217	48	155.51	12.38	0.39	O.K.
A3	0.37	0.85	0.31	15.09	5.05	8.90	19.30	0.0100	34	24	24.51	7.80	0.12	O.K.
A4	3.08	0.85	2.62	2.92	5.00	8.90	23.30	0.0100	54	24	24.51	7.80	0.12	O.K.

Location	Area	Coefficient	A+C	Sum A+C	Time of Concentration in minutes	Intensity in/hr	Runoff of cfs	Pipe Slope ft/ft	Pipe Length ft	Pipe Diameter in	Pipe Capacity Op cfs	Pipe Velocity ft/sec	Time in Section minutes	Comments
A2	0.28	0.85	0.24	18.94	5.84	8.90	168.58	0.0100	284	54	213.04	13.38	0.35	O.K.
A1	0.51	0.85	0.43	34.92	7.38	8.90	310.77	0.0100	175	60	345.58	17.80	0.17	O.K.
B1	3.53	0.85	3.00	3.00	5.00	8.90	26.70	0.0100	85	27	33.55	8.44	0.11	O.K.
C2	3.79	0.85	3.22	3.22	5.00	8.90	28.67	0.0100	95	27	33.55	8.44	0.19	O.K.
C1	1.11	0.85	0.94	4.17	5.19	8.90	37.07	0.0100	114	30	44.44	9.05	0.21	O.K.
D2	0.60	0.85	0.51	1.30	5.35	8.90	11.87	0.0100	216	21	17.17	7.14	0.50	O.K.
D4	0.99	0.85	0.84	0.84	5.00	8.90	7.49	0.0100	68	18	11.38	6.44	0.18	O.K.
D1	0.40	0.85	0.34	1.64	5.85	8.90	14.60	0.0100	55	21	17.17	7.14	0.13	O.K.
MH	0.00	0.00	0.00	2.48	5.98	8.90	22.09	0.0100	10	24	24.51	7.80	0.02	O.K.
E1	0.10	0.85	0.09	0.09	5.00	8.90	0.76	0.0100	57	15	7.00	5.70	0.17	O.K.
F1	1.81	0.85	1.37	1.37	5.00	8.90	12.18	0.0100	28	21	17.17	7.14	0.08	O.K.