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**SECOND AMENDMENT TO CONSTRUCTION,  
OPERATION AND RECIPROCAL EASEMENT AGREEMENT**

THIS SECOND AMENDMENT TO CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (this "Second Amendment") is made this 26<sup>th</sup> day of August, 2022, by and among ROYCE CANDLEWOOD, LLC, a Nebraska limited liability company (collectively, "Developer"), PARK 125 WDODGE, LLC, a Nebraska limited liability company ("Park 125"), RAY ANDERSON, INC., a Nebraska corporation ("Anderson"); and COSTCO WHOLESALE CORPORATION, a Washington corporation ("Costco"; which together with Developer, Anderson, and Park 125 are each a "Party" and may collectively be referred to herein as the "Parties").

**RECITALS**

A. On July 12, 2007, Blumkin Family Limited Partnership, Cynthia Schneider as Trustee of the Cynthia Schneider Revised and Restated Revocable Trust Agreement, Sylvia Cohn as Trustee of the Sylvia Cohn Amended and Restated Revocable Trust Agreement and Robert A. Batt, Ellen G. Batt and Margaret Kirkeby, Successor Co-Trustees of the Frances Batt Revocable Trust (collectively "Original Developer") and Costco entered into that certain instrument entitled Construction, Operation and Reciprocal Easement Agreement dated July 12, 2007, which was recorded on July 18, 2007 in the office of the Register of Deeds of Douglas County, Nebraska, as Instrument No. 2007081387 (the "Original REA").

B. Robert A. Batt, Ellen G. Batt and Margaret Kirkeby, Successor Co-Trustees of the Frances Batt Revocable Trust subsequently transferred its interest in the Developer Parcel to Four B Ranch, LLC, a Nebraska limited liability company.

C. Original Developer and Costco entered into a First Amendment to Construction, Operation and Reciprocal Easement Agreement dated December 4, 2014, which was recorded in the office of the Register of Deeds of Douglas County, Nebraska, on February 3, 2015, as

Return to:  
James D. Buser  
Pansing, Hogan, Ernst & Bachman, LLP  
10250 Regency Circle, Suite 300  
Omaha, NE 68114-3728

NCS-1120867  
1ST AM

Instrument No. 2015007941 (the "First Amendment"). The Original REA, together with the First Amendment are hereafter referred to as the ("COREA").

D. At the time of the Original REA, Original Developer was the owner of Lot 2 and Outlot A as shown on the Subdivision Plat recorded as instrument number 2007079695 (the "Subdivision Plat"), as well as additional unplatted property.

#### **LOT 1 RECITALS**

E. At the time of the Original REA, Costco was the owner of Lot 1 of the Subdivision Plat. Costco continues to own Lot 1. Lot 1, Candlewood Hills, an addition to the City of Omaha, Douglas County, Nebraska may be hereinafter referred to as "Lot 1/Phase I" or the "Costco Parcel".

#### **LOT 2 RECITALS**

F. On December 14, 2007, Original Developer sold Lot 2 of the Subdivision Plat to Midwest Green Partners 1, LLC, pursuant to a transfer deed recorded as instrument number 2007138384.

G. On September 2, 2015, Chick-Fil-A Inc. purchased Lot 2 from Midwest Green Partners, I, LLC, pursuant to a transfer deed recorded on September 10, 2015 as instrument number 2015076649.

H. Lot 2, Candlewood Hills, an addition to the City of Omaha, Douglas County, Nebraska may be hereinafter referred to as "Lot 2/Phase I" or the "Chick-Fil A Parcel".

#### **PHASE II RECITALS**

I. On December 11, 2014, Outlot A and adjacent unplatted property of the Subdivision Plat were replatted pursuant to a subdivision plat recorded on December 11, 2014 as instrument number 2014096454 (herein the "Phase II Plat"), pursuant to which Outlot A and adjacent unplatted property were replatted into Lots 3, 4, 5, 6, 7 of Candlewood Hills and Outlot A-1 of Candlewood Hills.

J. On February 3, 2015 there was recorded a quitclaim deed pursuant to which a 0.0093 acre piece of the Costco Parcel was conveyed to Original Developer, as instrument number 2015007935 (the "Quitclaim Parcel").

K. On February 3, 2015, Lot 6 of Phase II and the Quitclaim Parcel were replatted as Lot 1, Candlewood Hill Replat 1 (herein the "First Replat"), which was recorded on February 3, 2015 as instrument number 2015007937.

L. On February 3, 2015, by four separate deeds from the constituents of the Original Developer, Developer acquired title to Lots 3, 4, 5 and 7 and Outlot A-1, Candlewood Hills and Lot 1, Candlewood Hills Replat 1, being all of the Phase II Property.

M. By that Assignment and Assumption of Developer Rights, recorded with the Douglas County, Nebraska Register of Deeds on February 3, 2015, as Instrument No. 2015007942, Original Developer transferred the Original Developer's interests under the COREA to Developer.

N. On July 7, 2016, Developer filed an administrative plat, recorded as instrument number 2016053456, replatting Lot 3, Candlewood Hills and Lot 1, Candlewood Hills Replat 1, as Lots 1 and 2, Candlewood Hills Replat 2 (the "Second Replat").

O. On July 22, 2016, Developer conveyed to Park 125 Lot 7, Candlewood Hills and Lot 1, Candlewood Hills Replat 2 by special warranty deed recorded as instrument number 2016058644 (the "Park 125 Parcels").

P. On July 26, 2021, Developer filed an administrative plat, recorded as instrument number 2021098147, replatting Lot 3 of Phase II, as Lots 1 and 2, Candlewood Hills Replat 3 (the "Third Replat").

Q. On December 15, 2021, Anderson acquired Lot 1 and Lot 2 of Candlewood Hills Replat 3, and as of the date hereof Anderson retains ownership of Lot 2 of Candlewood Hills Replat 3 (the "Anderson Parcel").

R. On or about the date hereof, Costco acquired Lot 1 of Candlewood Hills Replat 3 from Anderson.

S. Developer, Anderson, Park 125 and Costco have agreed to amend the COREA, as set forth below and as permitted by Section 12.8 of the COREA.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the Parties hereby amend the COREA as follows:

1. Definitions. All capitalized terms used in this Second Amendment shall have the meanings set forth in the COREA except as otherwise defined herein (including the Recitals above).

2. Amendment to Exhibit A-1. The Replat Map attached to the COREA as Exhibit A-1 is deleted in its entirety and replaced with the Replat Map attached hereto as Exhibit A-1. All references in the COREA to the Replat Map shall hereafter refer to Exhibit A-1 attached hereto.

3. Amendment to Exhibit A-2. The Proposed Replat Map attached to the First Amendment as Exhibit A-2 is deleted in its entirety and replaced with Exhibit A-2 attached hereto.

4. Amendment to Exhibit A-3. The legal description of Developer Parcels attached to the COREA as Exhibit A-3, is hereby deleted in its entirety and replaced with the legal description attached hereto as Exhibit A-3. All references in the COREA to the Developer Parcels shall refer to the Developer Parcels identified on Exhibit A-3.

5. New Exhibit A-4. The legal description of the Park 125 Parcels are legally described on Exhibit A-4 attached hereto.

6. New Exhibit A-5. The legal description of the Anderson Parcel is provided on Exhibit A-5 attached hereto.

7. Amendment to Exhibit B-1. The Common Area Plan attached to the First Amendment as Exhibit B-1 is deleted in its entirety and replaced with the Common Area Plan attached hereto as Exhibit B-1. All references in the COREA to the Common Area Plan shall hereafter refer to Exhibit B-1 attached hereto.

8. Amendment to Exhibit B-2. The Site Plan attached to the First Amendment as Exhibit B-2 is deleted in its entirety and replaced with the Site Plan attached hereto as Exhibit B-2. All references in the COREA to the Site Plan shall hereafter refer to Exhibit B-2 attached hereto.

9. Amendment to Exhibit D. The Prohibited Staging Area diagram attached to the First Amendment as Exhibit D is deleted in its entirety and replaced with Prohibited Staging Area diagram attached hereto as Exhibit D. All references in the COREA to Exhibit D shall hereafter refer to Exhibit D attached hereto.

10. Amendment to Exhibit E-1. The Costco Storm Water Plan attached to the First Amendment as Exhibit E-1 is deleted in its entirety and replaced with the Costco Storm Water Plan attached hereto as Exhibit E-1. All references in the COREA to the Costco Storm Water Plan shall hereafter refer to Exhibit E-1 attached hereto.

11. Amendment to Section 1.1(n). The second and third sentences of Section 1.1(n) of the Original REA are hereby deleted in their entirety and replaced with the following:

“For so long as Royce Candlewood, LLC or its affiliates, including, without limitation, Royce Candlewood WR, LLC and Royce Candlewood ER, LLC (each a “Royce Entity” and collectively, the “Royce Entities”) own any land within the Project, the term “Developer” shall be deemed to refer to Royce Candlewood, LLC and its assigns. In the event no Royce Entity owns any land within the Project, the term “Developer” shall refer to the Owner of Outlot A.

12. Amendment to Section 1.1(ee). Section 1.1(ee) of the Original REA, as amended by Section 10 of the First Amendment, is hereby deleted in its entirety and replaced with the following:

“(ee) **“Phase II/Lot 1, Replat 2”** shall mean Lot 1 Candlewood Hills Replat 2.”

13. Amendment to Section 1.1(ff). Section 1.1(ff) of the Original REA, as amended by Section 11 of the First Amendment, is hereby deleted in its entirety and replaced with the following:

“(ff) **“Phase II/Lot 3”** shall mean Lots 1 and 2, Candlewood Hills Replat 3.”

14. Amendment to Section 1.1(hh). Section 1.1(hh) of the Original REA, as amended by Section 12 of the First Amendment, is hereby deleted in its entirety.

15. Amendment to Section 4.3(b)(ix). Section 4.3(b)(ix) of the Original REA is hereby deleted and replaced in its entirety as follows:

“(ix) residential dwelling units (to the extent permitted by Section 5.1 and 5.2 below): two (2) parking spaces per unit if single family residential or not less than the minimum per unit requirements under the Omaha Municipal Code of Ordinances if multi-family residential units.”

16. Amendment to Section 5.1(o). Section 5.1(o) of the Original COREA is hereby deleted in its entirety and replaced with the following:

“(o) any apartment, home, or other residential use, provided that residential uses shall be permitted on Phase II/Lot 7 and Phase II/Lot 1, Replat 2.”

17. Amendment to Section 5.1(x). Section 5.1(x) of the Original COREA is hereby deleted in its entirety and replaced with the following:

“(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; provided that a car wash use shall be permitted on Lot 2, Replat 3;”

18. New Section 5.5. New Section 5.5 shall be added to the COREA as follows:

“5.5 Restrictions on Costco Parcel. Until the earlier to occur of (a) following the initial opening of a car wash thereon, Lot 2, Replat 3 no longer

being used for a car wash or no longer having a car wash operating thereon, or (b) ten (10) years from the date of recording of this Second Amendment, the Costco Parcel and Lot 1, Replat 3 shall not be used for a car wash nor have a car wash operating thereon.”

19. Amendment to Section 12.1. The address for copies of notices to Costco shall be deleted in its entirety and replaced with the following:

“Meltzer, Purtill & Stelle LLC  
125 South Wacker Drive, Suite 2900  
Chicago, Illinois 60606  
Attention: Reuben C. Warshawsky  
Fax No.: 312-987-9854”

20. No Other Amendment. Except as specifically set forth herein, the COREA shall remain in full force and effect. In the event of a conflict between the terms of the COREA and this Second Amendment, the terms of this Second Amendment shall control.

21. Counterparts. This Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

**[Remainder of page left intentionally blank; execution pages follow.]**

IN WITNESS WHEREOF, the undersigned has executed this Second Amendment on the day and year first above written.

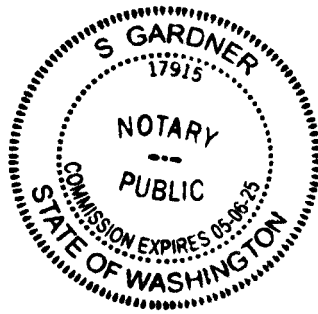
**COSTCO:**

COSTCO WHOLESALE CORPORATION,  
a Washington corporation

pc By: *David Messner*  
Name: DAVID MESSNER  
Its: SVP

STATE OF WASHINGTON )  
  )ss.  
COUNTY OF King )

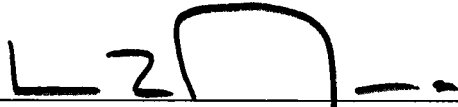
The foregoing instrument was acknowledged before me on this 19 day of August, 2022,  
by David Messner, SVP of Costco Wholesale Corporation, a Washington corporation, on behalf of said corporation.



*S. Gardner*  
Notary Public

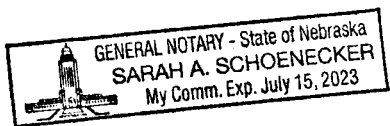
**DEVELOPER:**

ROYCE CANDLEWOOD, LLC, a Nebraska limited liability company

By:   
Lawrence R. James, II, Manager

STATE OF NEBRASKA    )  
  )ss.  
COUNTY OF DOUGLAS    )

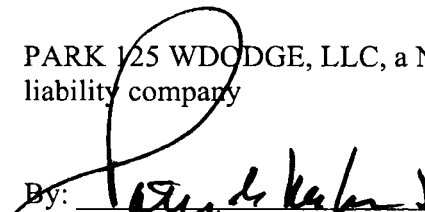
The foregoing instrument was acknowledged before me on this 11<sup>th</sup> day of August, 2022, by Lawrence R. James, II, Manager of Royce Candlewood, LLC, a Nebraska limited liability company, on behalf of said company.



  
Notary Public

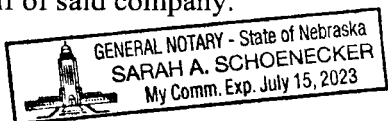



PARK 125 WDODGE, LLC, a Nebraska limited liability company

By:   
Patrick G. McNeil, Manager


STATE OF NEBRASKA    )  
                                  )ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on this 25<sup>th</sup> day of August, 2022, by Patrick G. McNeil, Manager of Park 125 WDodge, LLC, a Nebraska limited liability company, on behalf of said company.



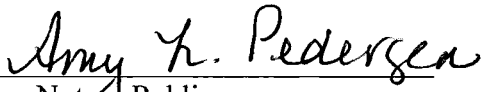
  
Notary Public

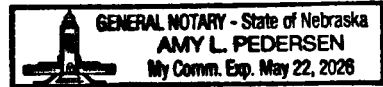
RAY ANDERSON, INC.

By   
Name Raymond D. Anderson III  
Title President

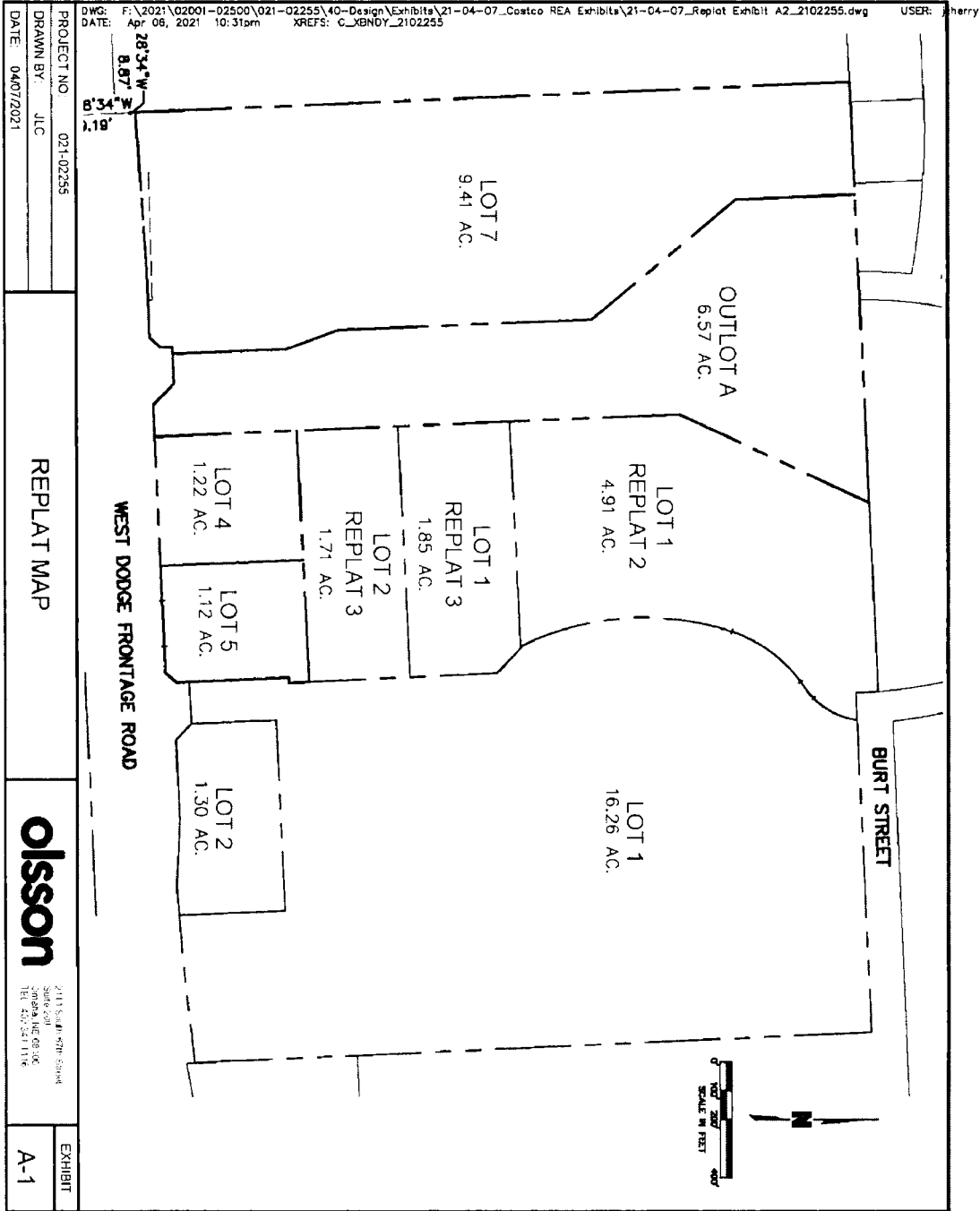
STATE OF NEBRASKA    )  
  )ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on this 16 day of August, 2022, by Raymond D. Anderson III the President of Ray Anderson, Inc., a Nebraska corporation, on behalf of said corporation.

  
Notary Public



## EXHIBIT A-1 Replat Map



**EXHIBIT A-2**  
Proposed Replat Map

Intentionally Omitted.

**EXHIBIT A-3**  
Legal Description of Developer Parcels

Lots 4 and 5, and Outlot A1, Candlewood Hills, an addition to the City of Omaha, Douglas County, Nebraska; and

**EXHIBIT A-4**  
Legal Description of Park 125 Parcels

Lot 7, Candlewood Hills an addition to the City of Omaha, Douglas County, Nebraska; and

Lot 1, Candlewood Hills Replat 2, an addition to the City of Omaha, Douglas County, Nebraska.

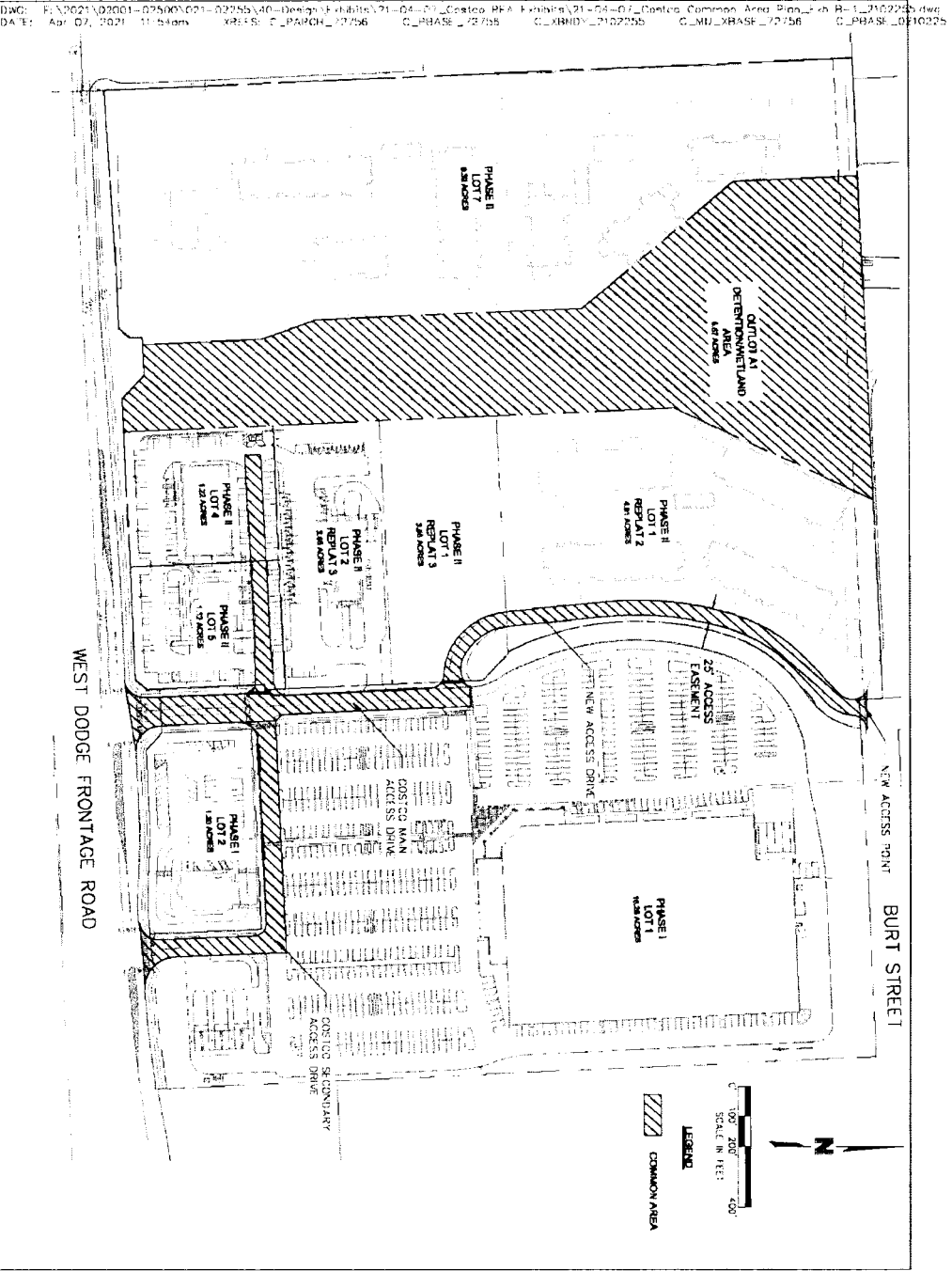
**EXHIBIT A-5**  
Legal Description of the Anderson Parcel

Lot 2, Candlewood Hills Replat 3, an addition to the City of Omaha, Douglas County, Nebraska.

## EXHIBIT B-1 Common Area Plan

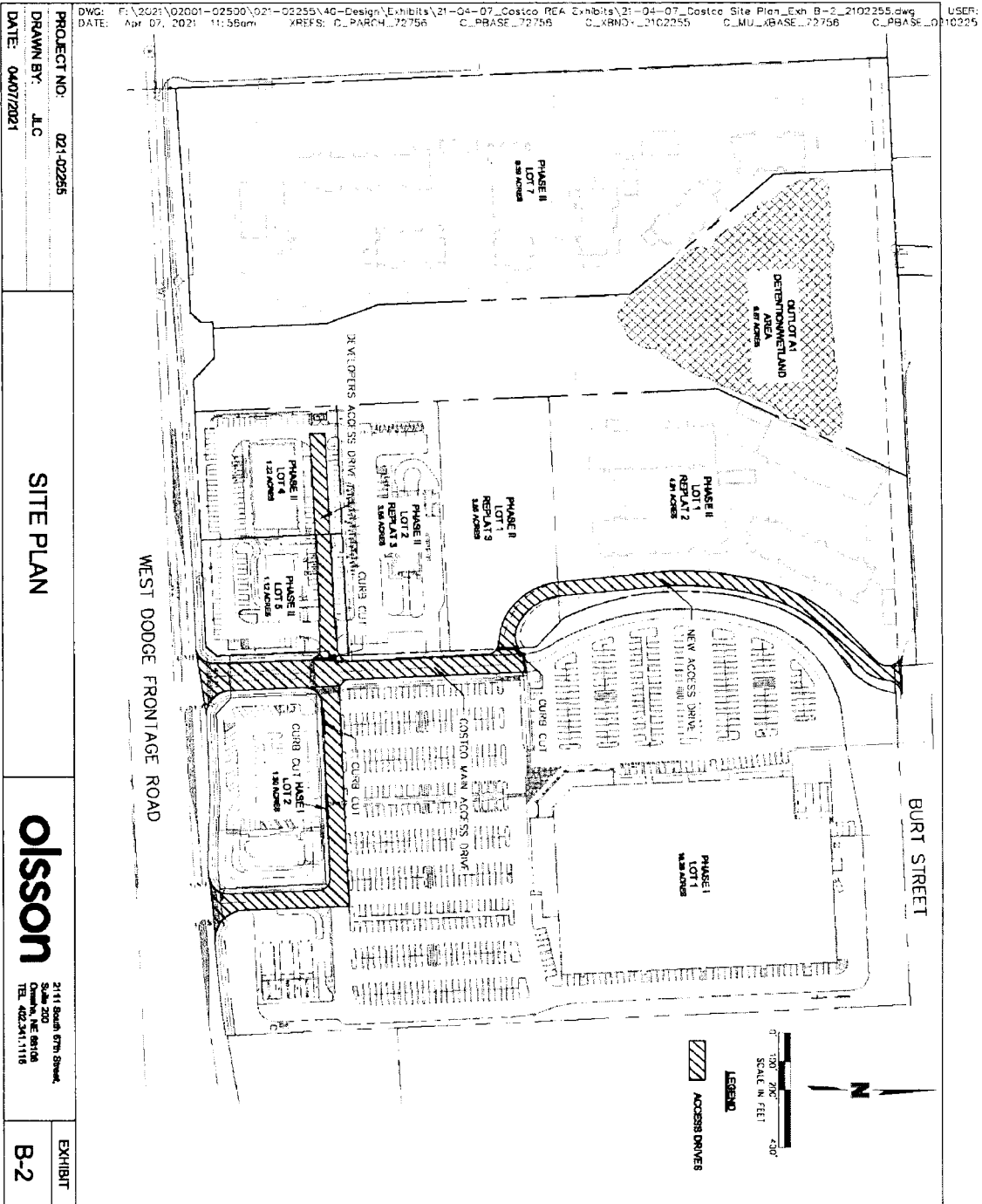
DWG: F:\2021\22001-02500\021-02255\40-Design\Final\021-04-01\_Coastal\_PFA\_Finals\021-04-01\_Coastal\_Common\_Area\_Plan\_16-B-1\_210225.dwg  
 DATE: Apr 07, 2021 11:54am XREFS: C\_PARCH\_12756 C\_PHASE\_12755 C\_XREFD\2102255 C\_MU\_XBASE\_12756 C\_PHASE\_0810225

PROJECT NO: 021-02255 DRAWN BY: J.C DATE: 04/07/2021	<b>COMMON AREA PLAN</b>
	2111 South 67th Street Suite 200 Omaha, NE 68118 TEL: 402.541.1718
EXHIBIT <b>B-1</b>	



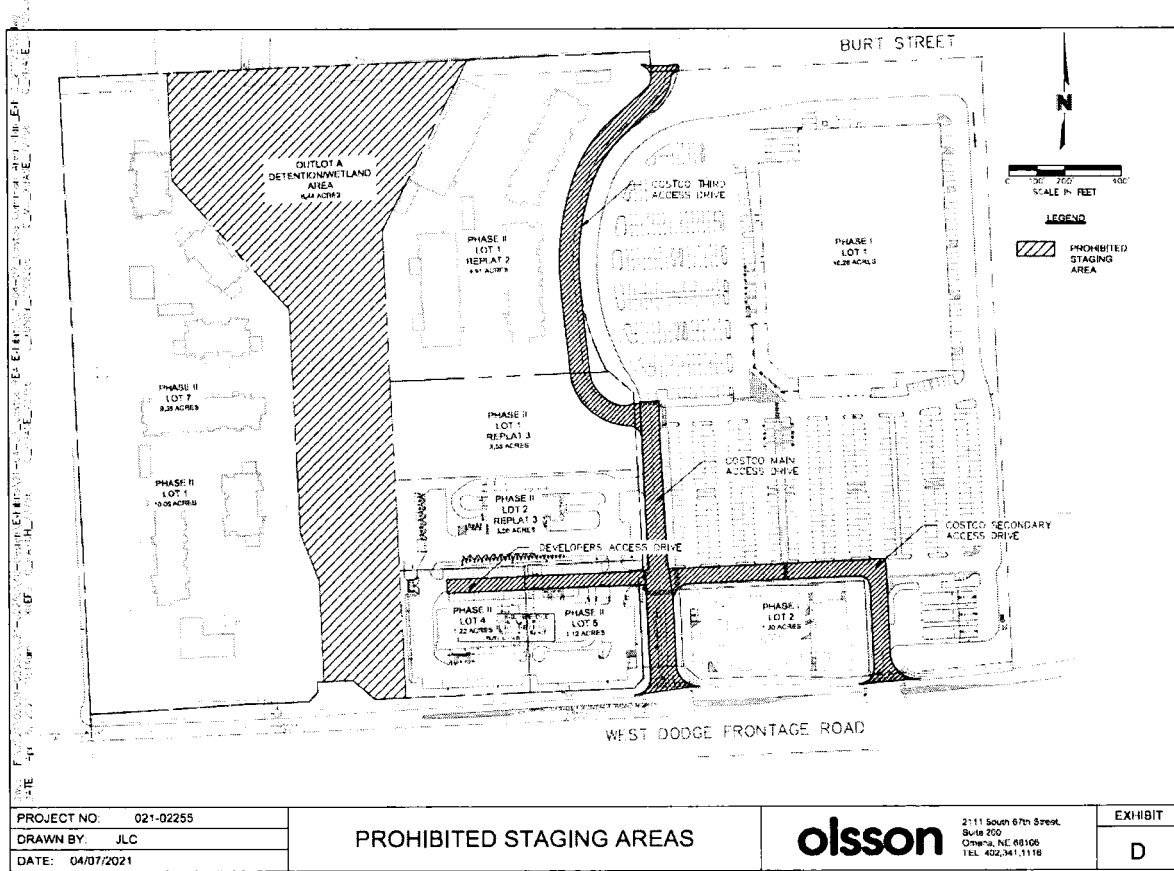


### EXHIBIT B-2 Site Plan



## EXHIBIT D

### Prohibited Staging Areas



## EXHIBIT E-1 Costco Storm Water Plan

