City *of* Escondido

Council Meeting Agenda

Wednesday, August 12, 2026

4:00 PM - Closed Session (City Attorney Conference Room)
5:00 PM - Regular Session
Escondido City Council Chambers, 201 North Broadway, Escondido, CA 92025

Welcome to Your City Council Meeting

We welcome your interest and involvement in the legislative process of Escondido. This agenda includes information about topics coming before the City Council and the action recommended by City staff.

Mayor
Dane White

Deputy Mayor
Joe Garcia (District 2)

Councilmembers
Consuelo Martinez (District 1)
Christian Garcia (District 3)
Judy Fitzgerald (District 4)

City Manager
Sean McGlynn

City Attorney
Michael McGuinness

City Clerk
Zack Beck

How to Watch

The City of Escondido provides three ways to watch a City Council meeting:

In Person	On TV	Online
201 N. Broadway	Cox Cable Channel 19 and U-verse Channel 99	www.escondido.gov

CITY *of* ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, AUGUST 12, 2026

HOW TO PARTICIPATE

The City of Escondido provides three ways to communicate with the City Council during a meeting:

In Person

Fill out Speaker Slip and Submit to City Clerk

In Writing

escondido-ca.municodemeetings.com

Online

https://publiccomment.escondido.gov/

ASSISTANCE PROVIDED

If you need special assistance to participate in this meeting, please contact our ADA Coordinator at 760-839-4869. Notification 48 hours prior to the meeting will enable to city to make reasonable arrangements to ensure accessibility. Listening devices are available for the hearing impaired – please see the City Clerk.

CITY *of* ESCONDIDO

COUNCIL MEETING AGENDA

Wednesday, August 12, 2026

CLOSED SESSION
4:00 PM

CALL TO ORDER

1. Roll Call: Fitzgerald, C. Garcia, J. Garcia, Martinez, White

ORAL COMMUNICATIONS

In addition to speaking during particular agenda items, the public may address the Council on any item which is not on the agenda provided the item is within the subject matter jurisdiction of the City Council. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. Speakers are limited to only one opportunity to address the Council under Oral Communications.

CLOSED SESSION

I. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Government Code § 54956.9(d)(2))**

a. City of Escondido Claim No. 6070
AAA as subrogee of Elisa Jones

II. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Government Code § 54956.9(d)(2),(e)(1))**

a. One item

ADJOURNMENT

CITY *of* ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, AUGUST 12, 2026

REGULAR SESSION
5:00 PM Regular Session

MOMENT OF REFLECTION

FLAG SALUTE

The City Council conducts the Pledge of Allegiance at the beginning of every City Council meeting.

CALL TO ORDER

Roll Call: Fitzgerald, C. Garcia, J. Garcia, Martinez, White

CLOSED SESSION REPORT

ORAL COMMUNICATIONS

In addition to speaking during particular agenda items, the public may address the Council on any item which is not on the agenda provided the item is within the subject matter jurisdiction of the City Council. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. Speakers are limited to only one opportunity to address the Council under Oral Communications.

CONSENT CALENDAR

Items on the Consent Calendar are not discussed individually and are approved in a single motion. However, Council members always have the option to have an item considered separately, either on their own request or at the request of staff or a member of the public.

1. **AFFIDAVITS OF PUBLICATION, MAILING, AND POSTING (COUNCIL/RRB)**

2. **APPROVAL OF WARRANT REGISTER**
   Request the City Council approve the City Council and Housing Successor Agency warrants issued between July 27, 2026 to August 02, 2026.

   Staff Recommendation: Approval (Finance Department: Christina Holmes, Director of Finance)

3. **APPROVAL OF MINUTES: Regular meeting of July 29, 2026**

4. **WAIVER OF READING OF ORDINANCES AND RESOLUTIONS**

CURRENT BUSINESS

5. **GROUND LEASE BETWEEN THE CITY OF ESCONDIDO AND COSTCO WHOLESALE CORPORATION**
Request City Council adopt Resolution No. 2026-139, authorizing the Mayor and/or Authorized Officers to execute a lease agreement and related documents for a lease term of twenty years with seven, five-year options for Costco Wholesale Corporation ("Costco"). The property is Parcel 1 of the 8 distinct parcels comprising the North County Mall site at 272 East Via Rancho Parkway, Escondido. The property is currently leased to Transform Operating Stores LLC ("Transformco") as successor-in-interest to Sears, Roebuck and Co. ("Sears").

Staff Recommendation: Approval (City Manager's Office: Christopher McKinney, Deputy City Manager)

Presenter: Christopher McKinney, Deputy City Manager

a) Resolution No. 2026-139

6. **RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND LOVE ESCO, INC. TO EXPLORE A POTENTIAL FUTURE DONATION OF DESIGN SERVICES, CONSTRUCTION SERVICES, AND MATERIAL FOR CITY PARK FACILITIES AT "HERITAGE GARDEN" POCKET PARK IN DOWNTOWN ESCONDIDO**
Request the City Council adopt Resolution No. 2026-77 approving a Memorandum of Understanding ("MOU") with Love Esco, Inc. ("Love Esco") a registered 501(c)(3) non-profit organization, to explore a potential future donation of design services, construction services, and materials for City park facilities on City owned property at the corner of East Grand Avenue and North Juniper Street in downtown Escondido ("Heritage Garden").

Staff Recommendation: Approval (City Manager's Office: Christopher McKinney, Deputy City Manager)

Presenter: Christopher McKinney, Deputy City Manager

a) Resolution No. 2026-77

WORKSHOP

7. **ESCONDIDO 2040 - GENERAL PLAN UPDATE**
Request the City Council receive a presentation on the Escondido 2040 General Plan update.

Staff Recommendation: Receive and File (Development Services Department: Kevin Snyder, Director of Development Services)

Presenter: Garrett Smith, City Planner

FUTURE AGENDA

8. **FUTURE AGENDA**
The purpose of this item is to identify issues presently known to staff or which members of the City Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions, brief announcements, or requests for factual information in connection with an item when it is discussed.

Staff Recommendation: None (City Clerk's Office: Zack Beck)

COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS

CITY MANAGER'S REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety, and Community Development.

ORAL COMMUNICATIONS

In addition to speaking during particular agenda items, the public may address the Council on any item which is not on the agenda provided the item is within the subject matter jurisdiction of the City Council. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. Speakers are limited to only one opportunity to address the Council under Oral Communications.

ADJOURNMENT

UPCOMING MEETING SCHEDULE

Wednesday, August 26, 2026	4:00 & 5:00 PM	Closed Session, Regular Meeting, *Council Chambers*
Wednesday, September 02, 2026	4:00 & 5:00 PM	Closed Session, Regular Meeting, *Council Chambers*

SUCCESSOR AGENCY

Members of the Escondido City Council also sit as the Successor Agency to the Community Development Commission, Escondido Joint Powers Financing Authority, and the Mobilehome Rent Review Board.

CEQA STATEMENT

Unless stated otherwise on the agenda, every item on the agenda is exempt from CEQA under Guideline Sections 15060(c), 15061(b), 15273, 15378, 15301, 15323 and/or Public Resources Code Section 21065

Consent Item No. 1 **August 12, 2026**

A F F I D A V I T S

OF

I T E M

P O S T I N G – NONE

STAFF REPORT

August 12, 2026
File Number 0400-40

SUBJECT

APPROVAL OF WARRANT REGISTER

DEPARTMENT

Finance

RECOMMENDATION

Approval for City Council and Housing Successor Agency warrants issued between July 27, 2026 to August 02, 2026

Staff Recommendation: Approval (Finance Department: Christina Holmes)

ESSENTIAL SERVICE – Internal requirement per Municipal Code Section 10

COUNCIL PRIORITY –

FISCAL ANALYSIS

The total amount of the warrants for the following periods are as follows:

Dates	07/27/2026 to 08/02/2026
Total	$5,609,706.34
Number of Warrants	245

BACKGROUND

The Escondido Municipal Code Section 10-49 states that warrants or checks may be issued and paid prior to audit by the City Council, provided the warrants or checks are certified and approved by the Director of Finance as conforming to the current budget. These warrants or checks must then be ratified and approved by the City Council at the next regular Council meeting.

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

CLOSED SESSION
4:00 PM

CALL TO ORDER

1. Roll Call: Fitzgerald, C. Garcia, J. Garcia, Martinez, White

ORAL COMMUNICATIONS

None

CLOSED SESSION

I. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Government Code § 54956.8)**

a. Property: 340 N. Escondido Blvd., Escondido (California Center for the Arts, Escondido)
Agency negotiator: Sean McGlynn, City Manager, or designees
Negotiating Party: California Center for the Arts Foundation
Under Negotiation: Terms of Management Agreement

b. Property: 272 E. Via Rancho Pkwy., Escondido (Mershops North County Mall)
Agency Negotiator: Sean McGlynn, City Manager, or designees
Negotiating Party: Costco Wholesale Corporation
Under Negotiation: Price and Terms of Ground Lease and REA

ADJOURNMENT

Mayor White adjourned the meeting at 4:45 p.m.

_______________________________ _______________________________

MAYOR CITY CLERK

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

REGULAR SESSION
5:00 PM Regular Session

MOMENT OF REFLECTION

FLAG SALUTE

The City Council conducts the Pledge of Allegiance at the beginning of every City Council meeting.

CALL TO ORDER

Roll Call: Fitzgerald, C. Garcia, J. Garcia, Martinez, White

PRESENTATION

Certificate of Recognition - Officer Jesus Vea

CLOSED SESSION REPORT

ORAL COMMUNICATIONS

Stephen Wheeler – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

Ruth Weber – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

John Weber – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

Joe Houde – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

CONSENT CALENDAR

Motion to approve items 1-11, 14-16, 18-19: White; Second: Fitzgerald; Approved: 5-0

1. **AFFIDAVITS OF PUBLICATION, MAILING, AND POSTING (COUNCIL/RRB)**

2. **APPROVAL OF WARRANT REGISTER**
   Request the City Council approve the City Council and Housing Successor Agency warrants issued between June 15, 2026 to July 19, 2026.

   Staff Recommendation: Approval (Finance Department: Christina Holmes, Director of Finance)

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

3. **APPROVAL OF MINUTES: Regular meeting of June 24, 2026**

4. **WAIVER OF READING OF ORDINANCES AND RESOLUTIONS**

5. **SETTING SPECIAL TAX LEVY FOR COMMUNITY FACILITIES DISTRICT NO. 2022-1 (ECLIPSE/MOUNTAIN HOUSE)**
   Request the City Council adopt Resolution 2026-124, setting the Special Tax Levy for Community Facilities District No. 2022-1(Eclipse/Mountain House) (the "District") for Fiscal Year 2026/27. (File Number 0685-10)

   Staff Recommendation: Approval/Receive and File (Finance Department: Christina Holmes, Director of Finance)

   Presenter: Christina Holmes, Director of Finance

   a) Resolution No. 2026-124

6. **SETTING SPECIAL TAX LEVY FOR COMMUNITY FACILITIES DISTRICT NO. 2006-01 (EUREKA RANCH)**
   Request the City Council adopt Resolution 2026-122, setting the Special Tax Levy for Community Facilities District No. 2006-01 (Eureka Ranch) (the "District") for Fiscal Year 2026/27. (File Number 0685-10)

   Staff Recommendation: Approval (Finance Department: Christina Holmes, Director of Finance)

   Presenter: Christina Holmes, Director of Finance

   a) Resolution No. 2026-122

7. **SETTING SPECIAL TAX LEVY FOR COMMUNITY FACILITIES DISTRICT NO. 2000-01 (HIDDEN TRAILS)**
   Request the City Council adopt Resolution 2026-121, setting the Special Tax Levy for Community Facilities District No. 2000-01 (Hidden Trails) (the "District") for Fiscal Year 2026/27. (File Number 0685-10)

   Staff Recommendation: Approval (Finance Department: Christina Holmes, Director of Finance)

   Presenter: Christina Holmes, Director of Finance

   a) Resolution No. 2026-121

8. **SETTING SPECIAL TAX LEVY FOR COMMUNITY FACILITIES DISTRICT NO. 2020-2 (THE VILLAGES)**

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Request the City Council adopt Resolution 2026-123, setting the Special Tax Levy for Community Facilities District No. 2020-2 (The Villages) (The “District”) for Fiscal Year 2026/27. (File Number 0685-10)

Staff Recommendation: Approval (Finance Department: Christina Holmes, Director of Finance)

Presenter: Christina Holmes, Director of Finance

a) Resolution No. 2026-123

9. ESTABLISHING THE PROPERTY TAX RATE AND FIXED CHARGE ASSESSMENTS FOR GENERAL OBLIGATION BONDED INDEBTEDNESS

Request the City Council adopt Resolution No. 2026-125 to establish the property tax rate and fixed charge assessments for bonded indebtedness for Fiscal Year 2026/27. (File Number 0480-40; 0440-35)

Staff Recommendation: Approval (Finance Department: Christina Holmes, Director of Finance)

Presenter: Christina Holmes, Director of Finance

a) Resolution No. 2026-125

10. REJECT ALL BIDS FOR THE JOHN MASSON MEMORIAL BIKE PARK PROJECT AND AUTHORIZE STAFF TO RE-BID

Request the City Council adopt Resolution No. 2026-129 rejecting all bids for the John Masson Memorial Bike Park Project and authorizing staff to re-bid the project. (File Number 0470-45)

Staff Recommendation: Approval (Development Services Department: Kevin Snyder, Development Services Director)

Presenters: Jason Christman, Interim City Engineer and Michael Tully, Project Manager

a) Resolution No. 2026-129

11. FINAL MAP UNDER CONSIDERATION FOR APPROVAL

Request the City Council receive and file notice that a Final Map for Tract Nos. SUB18-0005 and SUB20-0007 located on both sides of North Nutmeg Street, between North Centre City Parkway and Interstate 15, has been filed for approval. (File Number 0800-10)

Staff Recommendation: Receive and File (Development Services Department: Kevin Snyder, Director of Development Services, and Jason Christman, Interim City Engineer)

Presenter: Leia Cabrera, Engineering Manager

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

12. **APPROVE A BUDGET ADJUSTMENT FOR THE GRAND AVENUE VISION PHASE III PROJECT**
Request the City Council adopt a $2,000,000 budget adjustment for the Grand Avenue Vision Phase III project. This budget adjustment appropriates $2,000,000 in Smart Growth Incentive Program (SGIP) grant funding within Fund 1230 to the Grand Avenue Vision Phase III project account. (File Number 0430-80)

Staff Recommendation: Approval (Development Services Department: Kevin Snyder, Director of Development Services and Jason Christman, Interim City Engineer)

Presenters: Christopher Hudson, Project Manager and Jason Christman, Interim City Engineer

Truth Tonix – Expressed opposition to this item.

Motion: White; Second: J. Garcia; Approved: 5-0

13. **APPROVE THIRD AMENDMENT TO CONSULTING SERVICES AGREEMENT WITH HR GREEN PACIFIC, INC. FOR ON CALL ENGINEERING SERVICES**
Request the City Council adopt Resolution 2026-109 authorizing the Mayor to execute, on behalf of the City, the Third Amendment to a consulting services agreement with HR Green Pacific, Inc., for on call engineering services for the SiFi FiberCity project. (File Number 0600-10; A-3484-3)

Staff Recommendation: Approval (Development Services Department: Kevin Snyder, Director of Development Services)

Presenter: Leia Cabrera, Engineering Manager

a) Resolution No. 2026-109

Truth Tonix – Expressed opposition to this item.

Motion: White; Second: C. Garcia; Approved: 5-0

14. **LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT – FINAL ENGINEER’S REPORT FOR ZONES 1-38 FOR FISCAL YEAR 2026/2027**
Request the City Council adopt Resolution No. 2026-37, Assessment Engineer’s Report for the annual levy and collection of assessments for the City of Escondido Landscape Maintenance Assessment District (“LMD”) (Attachment “1”, LMD Map) for Zones 1 through 38 for Fiscal Year 2026/2027. (File Number 0685-10)

Staff Recommendation: Approval (Public Works Department: Joseph Goulart, Public Works Director)

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Presenter: Jen Conway, Management Analyst II

a) Resolution No. 2026-37

15. CALRECYCLE GRANT APPLICATION AUTHORIZATION FOR BEVERAGE CONTAINER RECYCLING CITY/COUNTY PAYMENT PROGRAM

Request the City Council adopt Resolution 2026-120, authorizing the Director of Utilities or his/her designee to complete and submit an application to CalRecycle for Beverage Container Recycling funds, the Used Oil Payment Program, and other eligible CalRecycle grants, payments, and funding opportunities to support all citywide recycling education, infrastructure, and programs. (File Number 1340-70)

Staff Recommendation: Approval (Utilities Department: Daniel Peterson, Director of Utilites)

Presenter: Daniel Peterson, Director of Utilities

a) Resolution No. 2026-120

16. AWARD PURCHASE OF FUELS FOR FISCAL YEAR 2027

Request the City Council adopt Resolution No. 2026-128, authorizing the Mayor to execute an agreement for the purchase of unleaded gasoline and renewable diesel fuel from Mansfield Oil in the amount of $1,550,000 utilizing a Cooperative Purchase Agreement between Sourcewell and Mansfield Oil. Contract No. 121522-MNF, pursuant to Escondido Municipal Code Chapter 10, Article 5, Section 10-91. (File Number 0600-10; A-3606)

Staff Recommendation: Approval (Public Works Department: Joseph Goulart, Director of Public Works)

Presenter: Jeramiah Jennings, Fleet Maintenance Manager

a) Resolution No. 2026-128

17. CARNEGIE FOUNDATION GRANT BUDGET ADJUSTMENT

Request the City Council authorize a budget adjustment to allocate the Carnegie Foundation Grant funds on behalf of the Escondido Public Library. (File Number 0430-80)

Staff Recommendation: Approval (Public Works Department: Joseph Goulart, Director of Public Works)

Presenter: Robert Rhoades, Assistant Director of Community Services

Truth Tonix – Expressed opposition to this item.

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Motion: White; Second: Fitzgerald; Approved: 5-0

CONSENT RESOLUTIONS AND ORDINANCES (COUNCIL/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/RRB at a previous City Council/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

18. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING AMENDMENTS TO ARTICLE 1 AND ARTICLE 70 OF THE ESCONDIDO ZONING CODE

Approved on June 24, 2026 with a vote of 5/0.

a) Ordinance No. 2026-13R (Second Reading and Adoption)

19. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO THE CONSULTING AGREEMENT WITH HROD, INC. DBA MMO PARTNERS AND AUTHORIZING THE CITY MANAGER TO APPROVE FUTURE CONTRACT AMENDMENTS WITH HROD, INC. DBA MMO PARTNERS FOR FEDERAL LOBBYING SERVICES THROUGH JUNE 30, 2027 IN A TOTAL AMOUNT NOT TO EXCEED $109,000

Approved on June 24, 2026 with a vote of 5/0.

a) Ordinance No. 2026-14R (Second Reading and Adoption)

PUBLIC HEARING

20. BATTERY ENERGY STORAGE SYSTEMS WITHIN THE CITY OF ESCONDIDO
Request the City Council adopt Ordinance No. 2026-09, adopting the County of San Diego Battery Energy Storage System (BESS) guidelines as a local amendment to the California Fire Code. (File Number 0680-50)

Staff Recommendation: Approval (Fire Department: Tyler Batson, Deputy Fire Chief)

Presenter: La Vona Koretke, Fire Marshall

a) Ordinance No. 2026-09 (First Reading and Introduction)

Jason Anderson – Expressed support for this item.

Christina Marquez – Expressed support for this item.

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Serena Pelka– Expressed support for this item.

Cori Schumacher – Expressed support for this item.

Truth Tonix – Expressed opposition to this item.

Motion to approved staff recommendation with the inclusion C10 Licensed Contractor requirements for the Workforce Standards: White; Second: J. Garcia; Approved: 5-0

CURRENT BUSINESS

21. AUTHORIZATION TO SUBMIT AN APPLICATION ON BEHALF OF HILL VALLEY, LLC FOR A GENERAL PLAN AMENDMENT RELATED TO A MULTI-FAMILY DEVELOPMENT PROJECT

Request the City Council consider adoption of Resolution No. 2026-101 authorizing City staff to intake and process a General Plan Amendment application to amend the adopted 2012 General Plan to facilitate construction of 125 multi-family units on a site with an existing General Plan land use designation of Estate I (E1). (File Number 0830-20)

Staff Recommendation: Provide Direction (Development Services Department: Kevin Snyder, AICP, Director of Development Services)

Presenter: Esteban Danna, Principal Planner

a) Resolution No. 2026-101

Laura Hunter – Expressed opposition to this item.

Truth Tonix – Expressed opposition to this item.

Motion: White; Second: Fitzgerald; Approved: 5-0

22. DESIGNATION OF VOTING DELEGATE – LEAGUE OF CALIFORNIA CITIES CONFERENCE

Request the City Council designate the voting delegate and up to two alternates for the 2026 League of California Cities Annual Conference and Expo, Sept. 23-25, 2026 at the Anaheim Convention Center. (File Number 0610-55)

Staff Recommendation: Approval (City Clerk’s Office: Zack Beck, City Clerk)

Presenter: Zack Beck, City Clerk

Truth Tonix – Expressed opposition to this item.

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Motion to designate Councilmember Martinez as the voting delegate, Mayor White as first alternate and Councilmember J. Garcia as second alternate: White; Second: C. Garcia; Approved: 5-0

FUTURE AGENDA

23. FUTURE AGENDA

The purpose of this item is to identify issues presently known to staff or which members of the City Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions, brief announcements, or requests for factual information in connection with an item when it is discussed.

Staff Recommendation: None (City Clerk's Office: Zack Beck)

COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS

CITY MANAGER'S REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety, and Community Development.

City Manager clarified that the language for item 20 BESS that was approved will be updated prior to its second reading.

ORAL COMMUNICATIONS

Merrillyn Carpenter – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

Barbara Aguilar – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

Dori Fiamor – Provided background of the Bahai Faith.

Tracy Henchbarger – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

Melissa Petri – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

Ann Lievers – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

Farhad Razmi – Expressed concern regarding chemical runoff from SDG&E poles. Reported possible runoff

Martha Tucker – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Bonnie Wagner – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

Stuart Reyes – Requested the City Council build more benches throughout the City

Eleni Tignor – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

Robin Weistruck – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

Tedi Jackson – Expressed concern regarding the proposed Aldea project

Truth Tonix – Expressed opposition to the proposed Rinks Project at Kit Carson Park.

ADJOURNMENT

Mayor White adjourned the meeting at 7:25 p.m.

________________________________ ________________________________

MAYOR CITY CLERK

STAFF REPORT

ITEM NO. 4

SUBJECT

WAIVER OF READING OF ORDINANCES AND RESOLUTIONS –

ANALYSIS

The City Counci/RRB has adopted a policy that is sufficient to read the title of ordinances at the time of introduction and adoption, and that reading of the full text of ordinances and the full text and title of resolutions may be waived.

Approval of this consent calendar item allows the City Council/RRB to waive the reading of the full text and title of all resolutions agendized in the Consent Calendar, as well as the full text of all ordinances agendized in either the Introduction and Adoption of Ordinances or General Items sections. **This particular consent calendar item requires unanimous approval of the City Council/RRB.**

Upon approval of this item as part of the Consent Calendar, all resolutions included in the motion and second to approve the Consent Calendar shall be approved. Those resolutions removed from the Consent Calendar and considered under separate action may also be approved without the reading of the full text and title of the resolutions.

Also, upon the approval of this item, the Mayor will read the titles of all ordinances included in the Introduction and Adoption of Ordinances section. After reading of the ordinance titles, the City Council/RRB may introduce and/or adopt all the ordinances in one motion and second.

RECOMMENDATION

Staff recommends that the City Council/RRB approve the waiving of reading of the text of all ordinances and the text and title of all resolutions included in this agenda. Unanimous approval of the City Council/RRB is required.

Respectfully Submitted,

Zack Beck
City Clerk

STAFF REPORT

August 12, 2026
File Number 0600-10; A-3609

SUBJECT

GROUND LEASE BETWEEN THE CITY OF ESCONDIDO AND COSTCO WHOLESALE CORPORATION

DEPARTMENT

City Manager's Office

RECOMMENDATION

Request City Council adopt Resolution No. 2026-139, authorizing the Mayor and/or Authorized Officers to execute a lease agreement and related documents for a lease term of twenty years with seven, five-year options for Costco Wholesale Corporation ("Costco"). The property is Parcel 1 of the 8 distinct parcels comprising the North County Mall site at 272 East Via Rancho Parkway, Escondido. The property is currently leased to Transform Operating Stores LLC ("Transformco") as successor-in-interest to Sears, Roebuck and Co. ("Sears").

Staff Recommendation: Approval (City Manager's Office: Christopher McKinney, Deputy City Manager)

Presenter: Christopher McKinney, Deputy City Manager

ESSENTIAL SERVICE – Yes, Land Use/Development

COUNCIL PRIORITY –Be Business Friendly; Drive Community and Land Development

FISCAL ANALYSIS

The current Lessee, Transformco, pays annual rent of $98,000 for the former Sears property at the North County Mall. Under the terms of the proposed lease, Costco would pay $100,000 per year through the entire lease term. Annual sales tax revenue realized by the City is project to be more than $2 million per year with more than 300 created jobs.

PREVIOUS ACTION

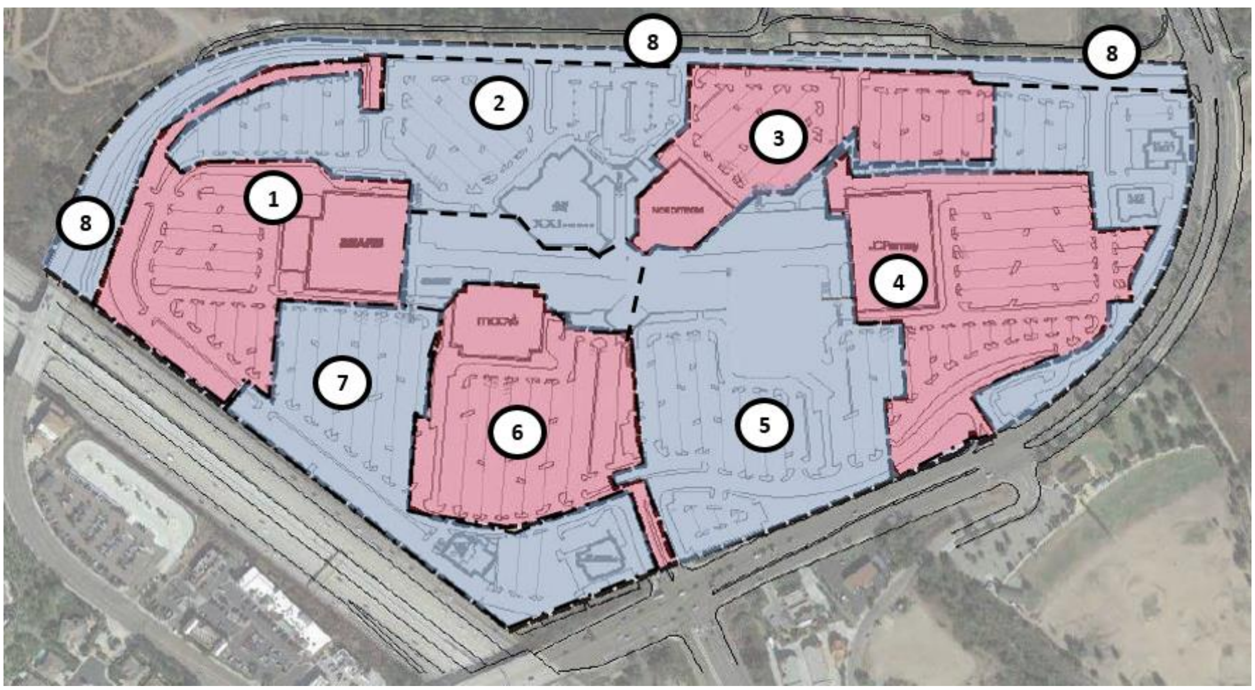
On June 27, 2022, the City Council adopted Resolution No. 2022-94, authorizing the Mayor and/or Authorized Officers to execute, among other documents, a Lease Amendment and related documents for a lease of the same property to Costco with similar terms to those proposed here. These lease amendments were never executed because Costco and Transformco were unable to come to mutually agreeable terms to transfer the leasehold from Transformco to Costco.

CITY of ESCONDIDO

STAFF REPORT

BACKGROUND

Escondido's North County Mall ("Mall") is located southern Escondido, near the intersection of Interstate 15 and East Via Rancho Parkway. It is comprised on 8 parcels totaling approximately 83 acres. The City owns 7 of the eight parcels – Parcels 1 through 5, Parcel 7, and Parcel 8 – totaling an area of approximately 74 acres. Parcel 6 is owned by Macy's, Inc. with an area of approximately 8 acres (*see site diagram below*). It was originally developed by Ernest Hahn and designed by architect Jon Jerde in the mid-1980's on land owned primarily by the City. The Mall development includes approximately 1.2 million square feet of retail commercial space and at the time of development was touted as the largest enclosed mall in the San Diego region.



Westfield / North County Shopping Mall Parcel Map
Parcel numbers correspond to those used in this report. Red parcels denote ground leases with anchor stores. Blue parcels denote ground leases with Westfield. Parcel boundaries approximate.

The Mall came about pursuant to Proposition A in June 1979. The voters approved the sale of an undeveloped 75.5-acre portion of Kit Carson Park abandoning it as park use and both specifying the planned development of a retail center and replacing the previous park property by acquiring 77.5 acres of adjacent property and dedicating that newly acquired property for park purposes.

CITY of ESCONDIDO

STAFF REPORT

The ground lease between the City and the then-developer (Hahn) was for a term of 55 years. The ground lease provided for a combination of fixed rent and percentage rent. Beginning in calendar year 2016, the fixed rent amount is equal to $1,390,000 with annual increases of 2.5% or CPI, whichever is less. Four anchor stores pay a fixed amount of $98,000 and the fifth location, J.C. Penney, pays an annual rent of $10. Since 2016, the rent paid to the City has been an average of $1,382,000 annually.

The six major department stores at the time the Mall opened in 1985 included Sears, J.C. Penney, Nordstrom, Robinsons, Broadway and May Company. Five of these stores were not part of the mall ground lease but were on their own parcels, leased directly from the City. The sole exception was May Company, which owned the parcel on which their store was situated. The term of each department store ground lease is similar to the primary ground lease, which is 55 years. Cooperation between the department stores and the shopping center is assured through a Reciprocal Easement Agreement ("REA").

The department stores were seen as "anchors" for the shopping center and thus desirable tenants. Rents for the department stores were set very low to induce theses stores to locate in the mall. With the exception of J.C. Penney, rents for each department store lease was fixed at $98,000 per year. J.C. Penney pays virtually no rent at $10.00 per year. However, all department stores provide significant sales tax revenues to the City and have "anchored" the shopping center since its opening.

There has been significant consolidation in the department store market sector since the shopping center was first developed. May Company consolidated with Robinsons, resulting in two anchors being owned by a single company. The Broadway was then acquired by Federated Department Stores, now known as Macy's Inc., subsequently acquired Robinsons-May. More recently, Sears and Nordstrom discontinued operations at the shopping center. Thus, of the original six independent anchors at the shopping center in 1985, there are now two department store ownerships: J.C. Penney and Macy's.

In 1994, the corporation now known as Unibail-Rodamco-Westfield ("Westfield") acquired the leases for Parcel 2, Parcel 5, Parcel 7, and Parcel 8, which are the parcels of the Mall not including the anchor stores and much of the car parking field. In 2012, a renovation project at the Westfield Property was completed, including a new Target store; improvements to the mall common areas and entrances; resurfacing of the parking lot; new restaurants and a remodel of the food court. In association with the renovation project, terms of the original lease were revised, which included a lease extension and an increased ground rent. The original ground lease term was extended for an additional 15 years, as requested by Westfield, and will now expire on June 30, 2053.

In 2023, Westfield sold its lease to Bridge Group Investments and Steerpoint Capital ("Steerpoint").

PROPOSED GROUND LEASE

The proposed Lease Agreement and related documents for this item pertain to the City-owned Parcel 1 at the Mall, the former Sears site now leased to Transformco. Transformco is successor-in-interest to

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Sears, Roebuck and Co. ("Sears"), with an original lease dated November 26, 1986. This lease was amended and renewed by an Assignment and Assumption of Lease dated May 13, 2019, between Transformco and Sears. This lease will be reference as the "Transformco Lease" for the remainder of this report.

For the proposed Lease Agreement to be executed, the Transformco Lease must be terminated. The City is not a party to any agreements between Transformco and Costco, however an agreement between those parties is anticipated, which would allow the City to terminate that lease and execute the new Lease Agreement. If the parties do not enter into an agreement or otherwise obtain the rights to terminate the Transformco Lease, the authorization provided by Resolution No. 2026-139 will become moot, similarly to Resolution No. 2022-94.

The proposed Lease Agreement for the benefit of Costco has a term of 20 years, with Costco having 7 successive options to extend the term for additional periods of five years each, bringing the total term to a period not to exceed 55 years.

There are several important terms in the proposed Costco Lease Agreement. The minimum base rent is $100,000 annually beginning in the first year of operation. No rent will be charged by the City for a period of up to 36 months from Costco's obtaining the necessary development entitlements to account for the predevelopment and construction period. Additionally, Costco (or its sub-tenants) will be responsible for environmental remediation related to the proposed gas station, as required, when the use of the space is changed or on expiration of the lease.

Staff recommend this Lease Agreement to provide certainty to Costco as to the term length of a potential leasehold, and enable Costco to submit development applications, to be considered at a future date by the City Council, for a Costco store on Parcel 1 The length of the term would likely encourage additional investment in the Mall by other leaseholders, thus increasing rent revenues and sales tax revenues for the City. These revenues are unrestricted General Fund revenues which can be used for the benefit of the residents of the City.

Staff analysis has determined that no further notices, hearings or competitive bidding for this Lease is required under State law or the Escondido Municipal Code because the proposed term of the agreement is not to exceed 55 years.

Importantly, this action has no effect on, and provides no right to, the City's Planning Commission or City Council's decisions in their future review of any entitlements package, including permits, authorizations and approvals, to allow for the construction of any improvements on the former Sears site. Resolution No. 2026-139 includes specific language and findings related to the City's obligation as a governing body reviewing entitlements, including environmental review, to not pre-approve any such applications and it reserves the right, is legally obligated to, and will undertake an independent, vigorous and fully lawful examination of any redevelopment project for this site. It has therefore been determined by staff that the

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lease is not a "project" under the California Environmental Quality Act ("CEQA") because it will not result in a direct or reasonably foreseeable indirect physical change in the environment.

The California Department of Housing and Community Development (HCD) has concurred with the City's determination that this lease is not a disposition of surplus land and is thus not subject to the Surplus Land Act.

The City understands that Costco's intent is to submit the necessary applications for development of a Costco store on Parcel 1. However, approval of the Ground Lease does not issue or grant any permissions, approvals or rights to Costco Wholesale Corporation for the construction of any improvements until Costco has obtained all Project Approvals referred to in the attached Exhibit "A". Additionally, no approvals are deemed given and no rights to the lease shall be enjoyed, until the period for any interested party to contest or appeal any such issuance has passed after the issuance of relevant and required Project Approvals.

Staff recommend adoption of Resolution No. 2026-139 authorizing the Mayor to execute, subject to final negotiation and approval as to form by the City Attorney, the Costco Ground Lease and a termination of the Transformco Lease.

RESOLUTION

a. Resolution No. 2026-139
b. Resolution No. 2026-139 Exhibit "A" Costco Ground Lease

RESOLUTION NO. 2026-139

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND AUTHORIZED OFFICERS TO EXECUTE, ON BEHALF OF THE CITY, A GROUND LEASE WITH COSTCO WHOLESALE CORPORATION FOR PARCEL 1 AT THE NORTH COUNTY MALL (THE FORMER SEARS SITE)

WHEREAS, this Resolution is being adopted for the purpose of authorizing the Mayor, the City Manager, and/or a Deputy City Manager, and others as permitted by law to execute, on behalf of the City of Escondido ("City"), a ground lease and related documents, including a termination of the existing lease, for Parcel 1 of the North County Mall ("Mall"), which is located on land owned by the City (the former Sears site at the Mall); and

WHEREAS, the City Council has considered the proposal, the staff report, and any public comment; and

WHEREAS, the City Council hereby finds and determines that the Ground Lease with Costco Wholesale Corporation ("Costco") will enable Costco to submit development applications with the City of Escondido so that the City may consider, at a future date, a proposed Costco store; and

WHEREAS, the City Council hereby finds and determines that the leasehold interest for the terms specified in the lease document would provide certainty to the tenants and subtenants on other Parcels at the Mall, and enable and encourage additional investment by private parties in the Mall property which will produce increased sales tax revenues for the City, which funds can be used for the benefit of the residents of the City; and

WHEREAS, the City Council hereby further finds and determines that the specific legislative action related to lease of City property taken by this Resolution involves only the approval of a ground lease with Costco, for a period of not more than fifty-five (55) years and, as a result, no further notices, hearings or competitive bidding are required under State law or the Escondido Municipal Code; and

WHEREAS, the lease provided for herein requires the lessee to make application for all required permits, approvals, and authorizations ("Project Approvals") from various government and permitting agencies including without limitation, environmental approvals pursuant to applicable law, and no action taken herein constitutes any approval, agreement, obligation, permission, promise, warranty or representation that any such Project Approvals will be forthcoming by the City Council or City's Planning Commission; and

WHEREAS, the City Council and City's Planning Commission shall have the sole, complete, absolute and unqualified right to approve, reject in whole or in part, or modify any Project Approvals applications before the reviewing bodies as required by applicable law, and will in fact provide such independent review; and

WHEREAS, the lessee further agrees that no Project Approvals are deemed to be issued or obtained, and no rights to the leases herein shall be enjoyed, until the period of time for any interested party to contest or appeal any such issuance has passed after the issuance of a final and non-appealable order, decision or judgment confirming the issuance of relevant and required Project Approvals; and

WHEREAS, the City Council finds and determines, on the basis that no Project Approvals are deemed to be issued or obtained, that approval of this lease is not a "project" under the California Environmental Quality Act ("CEQA") because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, the California Department of Housing and Community Development ("HCD") has concurred with the City's determination that this lease is not a disposition of surplus land.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true and are incorporated herein.

2. That the Mayor and all Authorized Officers are hereby authorized to execute, subject to final negotiation and approval as to form by the City Attorney, certain documents and others as may be required to implement the intent of this City Council action, including a termination of the existing lease, and entering a new lease the form of which is attached to this Resolution as Exhibit "A", identified as the "Costco Ground Lease"

3. That no actions, permissions, approvals or rights are issued or granted to Costco Wholesale Corporation for the construction of any improvements on the City-owned Parcel 1 of the Mall unless and until the lessee has been issued or obtained all Project Approvals as described herein and referred to in the attached Exhibit "A".

4. That no approvals are deemed given and no rights to the lease herein shall be enjoyed, until the period for any interested party to contest or appeal any such issuance has passed after the issuance of a final and non-appealable order, decision or judgment confirming the issuance of relevant and required Project Approvals.

Location #___
Escondido, California

GROUND LEASE

by and between

CITY OF ESCONDIDO,

Lessor,

and

COSTCO WHOLESALE CORPORATION,

Lessee

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EXHIBITS

GROUND LEASE

THIS GROUND LEASE ("Lease"), made and entered into as of as of the last signature date set forth below ("Effective Date"), by and between the CITY OF ESCONDIDO, (hereinafter called "Lessor"), and COSTCO WHOLESALE CORPORATION, a Washington corporation (hereinafter called "Lessee") (collectively, referred to herein as the "parties").

RECITALS:

A. Lessor is the owner of certain real property ("City Parcel") consisting of approximately 75 acres located in the County of San Diego, State of California. Lessor has heretofore entered into a Ground Lease of the City Parcel dated February 2, 1981 with EWH 1979 Development Company, L.P., a limited partnership, predecessor in interest to EWH Escondido Associates, L.P., a Delaware limited partnership ("EWH"), as amended by Amendment No. 1 to Ground Lease dated August 24, 1982. Prior to the execution of this Lease, Lessor will enter into a Termination Agreement with Transform Operating Stores LLC, current tenant of a portion of the City Parcel hereinafter identified as the "Costco Parcel."

B. Macy's Retail Holdings, LLC ("Macy's") is the owner of certain real property located adjacent to the City Parcel, as shown on Exhibit B.

C. EWH, Carter Hawley Hale Stores, Inc., Sears Roebuck and Co. ("Sears"), J.C. Penney Properties, Inc. ("Penney"), The May Department Stores Company ("May"), Nordstrom, Inc., and Adcor Realty Corporation entered into that certain Construction, Operation and Reciprocal Easement Agreement dated November 26, 1986, recorded on November 26, 1986, as Document No. 86-549267, in the Official Records of San Diego County, California (the "Official Records") (the "Original REA"), as amended by that certain First Amendment to Construction, Operation and Reciprocal Easement Agreement dated March 12, 2013, recorded on March 14, 2014, as Document No. 2014-0100990, in the Official Records, by and between EWH and North County Fair LP (collectively, "Developer"), Macy's (as successor-in-interest to May), Sears, Penney, Nordstrom and Target Corporation ("Target") (the "First Amendment to REA", and together with the Original REA, collectively, the "REA"). Lessor has since that time entered into a Lease with R1 Escondido Investment, LLC ("R1") for the property that was formerly leased by Nordstrom, Inc., and R1 has assumed the rights and obligations of Nordstrom, Inc., under the REA for that parcel. Developer, Macy's, Penney, Target, Lessor and Lessee intend to enter into a Second Amendment to Construction, Operation and Reciprocal Easement Agreement ("Second Amendment to REA"). The REA establishes certain reciprocal easements, covenants and conditions with respect to the construction, maintenance and operation of the Shopping Center, including, without limitation, the Tracts (as defined in the REA) and the Common Area (as defined in the REA). Once the Second Amendment to REA is fully executed and effective, the references herein to the REA shall include the Second Amendment to REA.

D. On the terms and conditions hereinafter set forth, Lessee desires to lease from Lessor a portion of the Shopping Center Site, which portion is legally described on Exhibit A attached hereto and designated as "Costco Parcel" on the Plot Plan attached hereto as Exhibit B, said Exhibits being incorporated herein by this reference and made a part hereof.

IT IS MUTUALLY COVENANTED AND AGREED BY AND BETWEEN LESSOR AND LESSEE AS FOLLOWS:

DEFINITIONS:

For purposes of this Lease, the following terms, as used in the singular or the plural, shall have the following meanings:

A. Unless otherwise specifically defined in this Lease, capitalized terms used in this Lease shall have the same meanings as given to said terms in the REA.

B. "Improvements" shall mean all buildings, structures and improvements constructed by Lessee and/or owned by Lessee upon the Demised Premises during the term of this Lease, and any restoration, addition or replacement thereof.

C. "Major Department Store" shall mean Lessee, Macy's, Penney and Target.

D. "Opening Date" shall mean with reference to Lessee, the date on which the Costco Store shall initially open for business to the public.

E. "Shopping Center" shall mean the Improvements constructed on the Demised Premises as well as the improvements constructed on the remainder of the Shopping Center Site, including but not limited to Developer Mall Stores, Developer Non-Mall Stores, the Enclosed Mall, the Major Department Store buildings, Automobile Parking Area, landscaped areas, and other improvements of a type customarily found in a first class enclosed-mall regional shopping center in Southern California and all of the land within the Shopping Center Site.

ARTICLE I

PREMISES

Lessor hereby demises and leases unto Lessee, and Lessee hereby leases from Lessor, for the consideration and upon and subject to the terms and conditions herein set forth, the real property legally described on Exhibit A and designated as "Costco Parcel" on Exhibit B together with all and singular the Improvements, appurtenances, rights, licenses, privileges and easements thereunto belonging or in anywise appertaining ("Demised Premises")

ARTICLE II

TERM

2.1 Term. The term of this Lease (hereinafter sometimes referred to as the "Lease Term" or the "Term of this Lease"), shall commence and be fully effective as of the date of this Lease and shall expire at midnight on the twentieth (20^{th}) anniversary of the Effective Date or the date, if any, to which the Lease Term has been extended pursuant to Section 2.2 hereof, unless sooner terminated, as hereinafter provided. As used herein, the term "Lease Term" or "Term of this Lease" shall include any option periods, if exercised.

2.2 Options to Extend. Provided that Lessee, in the case of any particular option, has exercised all preceding options, Lessee shall have seven (7) successive options to extend the Term of this Lease, from the date upon which the Lease Term would otherwise expire, upon the same terms and conditions as those herein specified, for seven (7) separate additional periods of five (5) years duration each; provided, that in no event shall the options to extend the term of this Lease extend beyond the date that is the fifty-fifth (55th) anniversary of the Effective Date. If Lessee elects to exercise any of said options, it shall do so by giving Lessor written notice of each such election at least one hundred eighty (180) days before the beginning of each additional period for which the term hereof is to be extended by the exercise of each such option. If Lessee exercises its option by giving appropriate notice, the Term of this Lease shall be automatically extended for the additional period of years covered by the option so exercised without execution of an extension or renewal Lease or any other document. If requested by Lessee, Lessor shall execute such documents as Lessee shall from time to time reasonably request to evidence the dates of the extended term.

ARTICLE III

RENT

3.1 Fixed Rent. Lessee agrees to pay to Lessor as net minimum rent ("Fixed Rent"), the sum of One Hundred Thousand and 00/100 Dollars ($100,000.00) throughout the Lease Term, including during any option periods, if exercised. Lessee's payment of Fixed Rent shall commence on the earlier to occur of the following (the "Rent Commencement Date"): (i) the Opening Date of the Costco Building (as hereinafter defined) and (ii) the Opening Covenant Date (as hereinafter defined). It is acknowledged that Lessee may open the Fuel Facility (as hereinafter defined) on the Demised Premises prior to opening the Costco Building for business, and that such opening of the Fuel Facility shall not trigger the Rent Commencement Date unless Lessee has also opened the Costco Building for business. Lessor and Lessee shall confirm the Rent Commencement Date in writing once such date has occurred.

3.2 Fixed Rent; Manner of Payment. The Fixed Rent shall be payable to Lessor in lawful money of the United States, at the following address: The City of Escondido, 201 N. Broadway, Escondido, California 92025, in twelve (12) equal monthly installments, in advance, on the first (1st) day of each calendar month, without setoff or deduction except as may be permitted by law and without any prior notice. Should the obligation to pay Fixed Rent commence on a day of the month other than the first day of such month, then the Fixed Rent for the first fractional month shall be prorated on a daily basis for the period from such date to the end of such calendar month at the rate of one-three hundred sixty-fifth (1/365) of the annual Fixed Rent for each day. Should the obligation to pay Fixed Rent expire on a day of the month other than the last day of such month, then the Fixed Rent for such fractional month shall be prorated on a daily basis for the period from the first day of such month until the expiration date at the rate of one-three hundred sixty-fifth (1/365) of the annual Fixed Rent for each day. Fixed Rent for the first (1st) fractional month shall be paid within ten (10) days after the Opening Date.

ARTICLE IV

USE OF DEMISED PREMISES

4.1 Use. Lessee may use the Demised Premises for any purpose not prohibited by the REA; provided, however, Lessor's use of the Demised Premises for the "Costco Development" (as defined below) shall be permitted under the Lease, subject to Section 6.3 hereof. Lessee's use of the Demised Premises shall be in accordance with all laws, statutes, codes, acts, ordinances, orders, rules and regulations of any governmental authority having jurisdiction, applicable to the Demised Premises or Improvements located thereon; and in accordance with the terms of insurance policies covering or applicable to the Demised Premises or Improvements located thereon, or any part thereof, to the extent required to be maintained by Lessee hereunder. As used herein, "Costco Development" shall mean a membership wholesale and retail general merchandise store, which store also may include, without limitation, a pharmacy, tire sales and installation center, liquor sales, a vehicle fueling facility, a car wash, photo processing, butcher, deli and bakery services, optometry services, related office space ancillary to the operation of the foregoing uses, related parking, and other improvements.

4.2 Permitted Contests. Lessee, at its sole cost and expense, may contest, after prior written notice to Lessor, the amount or validity or application, in whole or in part, of any of the items enumerated in Section 4.1 hereof, provided that (a) Lessee shall first make all contested payments, under protest if it desires, unless such proceedings shall suspend the collection thereof, (b) neither the Demised Premises or Improvements located thereon would be in any danger of being sold, forfeited, lost or interfered with, and (c) Lessee shall furnish such security, if any, as may be required in any such proceedings. Lessor, at the sole expense of Lessee, will join in or lend its name to any such contest if (i) requested so to do by Lessee, and (ii) Lessor's failure to so join would bar or prevent Lessee's right to prosecute any such contest.

ARTICLE V

CONDITION OF TITLE

5.1 Covenant of Title. Lessor warrants, covenants and represents that it holds fee simple title to the Demised Premises, and that Lessor shall deliver the Demised Premises to Lessee free and clear of all recorded or unrecorded liens, encumbrances, covenants, conditions, restrictions, assessments, easements, leases, taxes and other exceptions to title, except for those items which are set forth in Exhibit C attached hereto and made a part hereof ("Permitted Exceptions"), which have been approved and accepted by the Lessee.

5.2 Mortgage Subordination. This Lease is not and shall not be subject or subordinate to any mortgage made by Lessor and that this Lease or a memorandum thereof shall be recorded ahead of any mortgage to be placed on Lessor's interest in the Demised Premises or any part thereof by Lessor.

5.3 Title Insurance. Upon execution of this Lease, Lessor shall arrange for the payment of and cause to be delivered to Lessee a leasehold title insurance policy, issued by Chicago Title Insurance Company, including all standard and general exceptions and exclusions raised in such form of leasehold title insurance policy and with all endorsements requested by Lessee, insuring Lessee in the amount of $13,500,000.00 that the Demised Premises are free of liens, claims, charges, encumbrances, covenants, restrictions, easements, or adverse interest of any kind whatsoever, except as set forth in Exhibit C. Lessee, at Lessee's cost, shall have the right to obtain an extended coverage endorsement to such title insurance policy to cover the value of Lessee's improvements.

ARTICLE VI

IMPROVEMENTS

6.1 Lessor's Non-Responsibility for Improvements. Lessor shall not under any circumstances whatsoever be required to build any improvements on the Demised Premises, or to maintain or make any repairs, replacements, alterations or renewals of any nature or description to the Improvements; provided, however, that nothing contained in this Section 6.1 is intended to or shall (i) impose upon Lessor any obligations with respect to the construction or maintenance of the Improvements not expressly set forth in this Lease, or (ii) prevent Lessee from enforcing any rights or pursuing any remedies it may have at law, in equity or under this Lease arising from the negligence or willful misconduct of Lessor with respect to the construction or maintenance of the Improvements.

6.2 Construction by Lessee.

(a) Lessee shall have the right to construct, or arrange for the construction of, the improvements upon the Demised Premises in accordance with the standards set forth in the REA ("Improvements"). Without limiting the foregoing, Lessee intends to develop construct and operate on the Demised Premises, in accordance with Lessee's requirements and the REA, Improvements consisting of a wholesale and retail general merchandise building (the "Costco Building"), which may also include, without limitation, a pharmacy, tire sales and installation center, liquor sales, photo processing, butcher, deli and bakery services, optometry services, and related office space; a vehicle fueling facility (the "Fuel Facility"); a car wash; and related parking, and other improvements (collectively, the "Project"). Lessee shall have no obligation to demolish the existing, or construct any new, improvements on the Demised Premises or to commence operations of or continuously operate a business on the Demised Premises. Notwithstanding the foregoing, in the event that Lessee does not construct the Costco Building and open for one (1) day (the "Opening Covenant") on or before the third (3rd) anniversary after the date of the Project Approvals Notice (subject to force majeure, as set forth in Section 28.4) (such date, the "Opening Covenant Date"), then Lessor shall have the right to terminate this Lease, as Lessor's sole and exclusive remedy if Lessee fails to satisfy the Opening Covenant, within sixty (60) days after the Opening Covenant Date by delivering written notice to Lessee (the "Termination Notice"), *time being of the essence*. If Lessor fails to timely deliver such Termination Notice, then Lessor waives the right to terminate. If Lessor delivers to Lessee the Termination Notice, then this Lease shall terminate on the date that is sixty (60) days following the date of the Termination Notice, Lessee shall have the right (but not obligation) to raze any or all improvements that Lessee may have constructed failing which Lessor shall accept the Demised Premises in its "as-where is" condition, and upon such termination, neither party shall have any further rights or obligations under this Lease except for those which are expressly stated to survive the termination of this Lease. Lessee may override the Termination Notice if Lessee (x) delivers to Lessor notice within such sixty (60) day period that Lessee intends to construct and open the Project (the "Project Development Notice"); (y) continues construction of the Project, or, if Lessee discontinued construction, Lessee re-commences construction of the Project within one hundred eighty (180) days after delivery of the Project Development Notice (subject to force majeure, as set forth in Section 28.4); and (z) thereafter, diligently proceeds to complete the construction of the Project and open for business (subject to force majeure, as set forth in Section 28.4. Title to any and all Improvements on the Demised Premises shall remain in Lessee until termination of this Lease, whether by expiration or by earlier termination of this Lease, at which time all of the Improvements then located on the Demised Premises (if any) shall be surrendered to Lessor with the Demised Premises.

(b) Nothing herein contained shall be construed to require that there be a certain type of Improvement or any Improvement on the Demised Premises at the expiration or earlier termination of this Lease.

(c) All construction undertaken or caused to be undertaken by Lessee pursuant to this Section 6.2 shall be in accordance with the construction requirements of the REA.

6.3 Project Approvals.

(a) Lessee shall apply for and obtain, at its sole cost and expense, all governmental, quasi-governmental, and utility provider(s) approvals, permits, licenses and the like necessary or desirable to permit Lessee to develop, construct and operate the Project on the Demised Premises. The approvals and permits shall include, without limitation, zoning approvals, site plan approvals, conditional use permits, liquor licenses, subdivision approvals, environmental approvals (including any required pursuant to any applicable environmental laws), signage approvals, utility relocation and/or connection approvals and permits, building permits and operating permits and licenses (collectively, the "Project Approvals").

(b) All work upon and improvements to the Demised Premises shall be constructed in compliance with all applicable governmental regulations, laws and restrictions. Lessee acknowledges that any government approved entitlements required under federal, state or local law made by the City of Escondido in its role as a governmental agency will be made in the public interest and according to applicable legal requirements. Nothing herein shall in any manner affect the City Planning Commission's or City Council's review and consideration of any applications for entitlements and the Planning Commission and City Council shall have sole and absolute discretion to approve, disapprove, modify or otherwise take any action regarding an application or request for entitlements. The City of Escondido makes no promise, warranty or representation as to the outcome of such review or the approval of any such application.

(c) All conditions contained in the Project Approvals and all requirements for on-site and off-site improvements or services, in-lieu fees or payments, dedication or reservation requirements, water rights acquisition costs, local improvement district costs, connection charges, assessments, mitigation fees, impact fees, permit fees and any other similar requirements, fees or charges imposed on the Project by any governmental entity or utility service provider in connection with the Project Approvals shall be subject to Lessee's approval in its sole and absolute discretion.

The design, construction and implementation of the Improvements shall be the responsibility of Lessee.

(d) For purposes of this Lease, the Project Approvals shall not be deemed to have been “obtained” or “issued” until the period of time (if any) to contest or appeal any such issuance has passed without the filing of a contest or appeal or, if a contest or appeal has been filed, after the issuance of a final and non-appealable order, decision or judgment confirming the issuance of the relevant Project Approvals without modifications or conditions that are unacceptable to Lessee. Lessee shall deliver notice to Lessor (the “Project Approvals Notice”) promptly after Lessee has obtained all of the Project Approvals.

(e) Lessor agrees, in its capacity as owner of the Demised Premises, to comply with all reasonable requests of Lessee with regard to the Project Approvals (including, without limitation, executing, or causing to be executed, all applications or submissions necessary to obtain the Project Approvals so long as the same are in accordance with the terms of this Lease and required by applicable law). Nothing in this clause (e) is intended to require Lessor, in its capacity as a governmental entity, to take any action that is prohibited by applicable law.

ARTICLE VII

TAXES AND ASSESSMENTS

7.1 Payment of Taxes and Assessments By Lessee. Lessee shall pay, or cause to be paid, all real property taxes and assessments which are levied or assessed against the Demised Premises and the Improvements located thereon during the Term of this Lease. The amount of such real property taxes and assessments shall be prorated on a daily basis between Lessor and Lessee with respect to any fiscal tax year only a part of which falls within the Term of this Lease. Any real property taxes and assessments pertaining to a period of time prior to the Commencement Date and subsequent to the expiration or sooner termination of this Lease shall be the obligation of Lessor. For purposes of this Lease, “real property taxes” shall include any possessory interest or similar tax, and any taxes which are based on the receipt of rent by Lessor, and which are levied as an alternative to or as an addition to general real estate taxes and are payable because of Lessor’s ownership of the Demised Premises. Lessee shall have no obligation to pay any tax upon or pertaining to the income of Lessor. Lessee shall have the right to exercise the benefit of any provisions of any statute or ordinance permitting such taxes and assessments to be paid in installments over a period of time, and Lessor agrees to execute any instruments which may be required by the taxing authority in connection with the election to take advantage of such installment payments. Lessee’s obligation to pay real property taxes and assessments shall be limited to taxes and assessments uniformly imposed upon all taxable real property within the jurisdiction of the taxing authority and at rates which are uniformly applied.

Lessee shall have the right to contest any taxes or assessments or the increases in any taxes or assessments which Lessee is obligated to pay under this Lease; provided, however, Lessee shall (i) give Lessor notice of any such intention to contest, (ii) indemnify and save Lessor harmless from all liability on account of said contest, and (iii) in the event of a final determination adverse to Lessee, prior to enforcement, foreclosure or sale, and expiration of the redemption period, pay the amount involved together with all penalties, fines, interest, costs and expenses which may have accrued.

It is agreed that nothing herein contained shall be construed to require Lessee to pay any inheritance, franchise, corporation, income or excess profits taxes or surtaxes, imposed upon or against Lessor, its legal representatives, successors or assigns.

In the event Lessee shall fail to comply with its obligations as set forth in this Article VII, after thirty (30) days prior written notice from Lessor to Lessee and failure to cure by Lessee, Lessor may pay such taxes or assessments, and penalties and interest thereon, and Lessor shall be entitled to prompt reimbursement from the Lessee for the sums so expended, with interest thereon at the rate of two percent (2%) per annum, over the lending reference rate being charged from time to time by Bank of America, NT & SA, San Francisco main branch.

7.2 Non-Segregation of Demised Premises. Lessor undertakes and agrees to diligently attempt to obtain from the taxing authorities a separate tax bill for the Demised Premises or a segregation of the real estate taxes attributable thereto and otherwise to cooperate with Lessee in the obtaining of such information from such taxing authorities as will facilitate an accurate determination of taxes attributable to the Demised Premises. Lessor further agrees not to make any application to the taxing authorities which, if granted, would change the manner in which the Demised Premises and the Improvements thereon are being or will be assessed or which would have the effect of increasing the assessed valuation of the Demised Premises and the Improvements thereon.

In the event the Demised Premises are not separately assessed but are part of a larger parcel which includes the Demised Premises for assessment purposes (hereinafter referred to as the “larger parcel”), the parties hereto shall use assessor’s work sheets, if available to determine the real estate taxes applicable to the Demised Premises, if such assessor’s work sheets are not available, then real estate taxes applicable to the Demised Premises shall be determined as follows:

(a) A fractional portion of the real estate taxes assessed, in any tax fiscal year during the term hereof, against the land comprising the larger parcel, the numerator of which shall be the number of square feet of land area underlying the Demised Premises and the denominator of which shall be the number of square feet of land area in the larger parcel, plus

(b) A fractional portion of the real estate taxes assessed, in any tax fiscal year during the term hereof, against all Improvements upon the larger parcel, the numerator of which shall be the Floor Area of buildings located on the Demised Premises and the denominator of which shall be the Floor Area of the building located on the larger parcel, provided that equitable adjustments shall be made for: (1) buildings which are only partially completed on the date that such real estate taxes become a lien, taking into effect cost figures and stages of construction throughout the Shopping Center; and (2) the estimated cost of the several buildings.

Notwithstanding the foregoing, in the event the Demised Premises are not separately assessed but are part of a larger parcel for such assessment purposes, and the valuation of the assessed parcel is based on the capitalization of income therefrom, the fractional portion of the impositions attributable to the Demised Premises shall not exceed an amount determined by applying the tax rate fixed by the taxing authority to a value computed by capitalizing the Fixed Rent payable by Lessee under this Lease at the capitalization rate used by the assessor in fixing the value of the larger parcel.

Lessor shall within thirty (30) days after receipt by Lessor of the assessed valuations of the land and Improvements included within such larger parcel, furnish Lessee a statement setting forth the amounts of such assessments and describing the land and Improvements with respect to which such assessments have been made. If Lessor shall fail to furnish Lessee the aforesaid statement of assessed valuations within said thirty (30) day period, the amount which Lessee shall be required to reimburse Lessor shall be limited to the amount of the taxes applicable to Demised Premises and the Improvements thereon for the preceding tax fiscal year.

Lessor will pay or cause to be paid all real estate taxes assessed with respect to such larger parcel and the Improvements thereon. Lessee shall in such case reimburse Lessor for the real estate taxes applicable to the Demised Premises prior to the date said larger parcel taxes are delinquent, but in no event sooner than thirty (30) days following Lessee's receipt of all applicable tax bills, invoices and the statement from Lessor described below. Lessor shall deliver to Lessee semi-annually, at least forty-five (45) days prior to the date that each installment of taxes would be delinquent if not paid, a statement setting forth the amount of taxes applicable to the Demised Premises and the Improvements thereon for the tax fiscal year and showing in reasonable detail how Lessor has arrived at the amounts so set forth, a photostatic copy or copies of a receipted tax bill or bills showing payment of the real estate taxes for said tax fiscal year and Lessee shall pay to Lessor Lessee's share of the installment then due not later than the date such installment would become delinquent.

Lessee shall, upon notice to Lessor, have the right to contest on behalf of Lessor any and all such real estate taxes assessed with respect to such larger parcel and the Improvements thereon; provided, however, that Lessor and any other parties having an interest in such larger parcel may join in such contest at their own cost and expense, in which event Lessee shall cooperate with such other parties in such contest. In the event the Demised Premises are separately assessed, Lessee alone shall have the sole right to contest any increase in the assessed valuation of the Demised Premises or the Improvements thereon. If any such proceedings are undertaken solely by Lessee, such proceedings shall be at the cost and expense of Lessee and conducted by counsel selected by Lessee, and if Lessee deems it appropriate such measures shall be taken in the name of Lessee. Lessor shall lend its name to such proceedings, if requested by Lessee, without charge or cost to Lessee. If the result of any such contest shall be a reduction in the amount of the real estate taxes so contested, such refund or recovery from the taxing authorities with respect to such real estate taxes shall be divided between Lessee and Lessor, after Lessee reimburses itself from such recovery for Lessor's proportionate share of all costs and expenses incurred by Lessee in such proceedings, in such manner as will result in each of them having paid only such party's proportionate share of the contested taxes as so reduced.

If Lessor shall contest the amount of such real estate taxes without participation by Lessee in the cost and expenses of such proceedings, such refund or recovery arising therefrom shall be divided between Lessor and Lessee, after Lessor reimburses itself from such recovery for Lessee's proportionate share of all costs and expenses incurred by Lessor in such proceedings, in such manner as will result in each of them having paid only such party's proportionate share of the contested taxes as so reduced. Lessor shall give Lessee prior written notice of its intent to contest the assessment of such real estate taxes.

Lessor shall not, without the prior approval of Lessee, make, enter into, or agree to any settlement, compromise or other disposition of any contest, or discontinue or withdraw from any contest, or accept any refund, adjustment or credit with respect to any real estate taxes which Lessee shall have contested.

If a contest shall be entered into jointly between Lessor and Lessee, each party's proportionate share of the costs and expenses incurred in such proceedings shall be determined by multiplying such costs and expenses by a fraction having as its numerator such party's proportionate share of the contested taxes as reduced by reason of such proceedings and as its denominator the entire amount of such taxes as so reduced.

ARTICLE VIII

INSURANCE

8.1 Casualty Insurance. Subject to the provisions of Section 8.7, Lessee shall keep, or cause to be kept, the Improvements on the Demised Premises insured during the period Lessee is required to operate pursuant to the REA, against loss or damage by fire and such risks embraced by coverage of the type customarily included in extended coverage endorsements in the State of California. Lessee shall not be required to obtain earthquake insurance.

8.2 General Liability Insurance. During the Term of this Lease, Lessee, at its sole cost and expense, shall maintain public liability and property damage insurance of the type, coverage and amount set forth in the REA.

8.3 Policy Form. All policies of insurance provided for in this Lease shall (a) be in such forms and amounts as provided in the REA, and (b) shall be issued by insurers of recognized responsibility as provided in the REA. Upon delivery of the Demised Premises by Lessor to Lessee and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Article VIII or Article XIX hereof, Lessee shall deliver to Lessor a certificate evidencing the existence of each policy of insurance required hereunder.

8.4 Notice of Cancellation. Each such policy or certificate therefor issued by the insurer shall to the extent reasonably obtainable contain an agreement by the insurer that such policy shall not be cancelled for non-payment without at least thirty (30) days prior notice to Lessee, Lessor and to Lessee's Mortgagee and/or Leasehold Mortgagee, if any.

8.5 Blanket Insurance and Self-Insurance. Any insurance provided for in this Article VIII, or in Article XIX hereof, may be effected by a policy or policies of blanket or loss limit-type insurance covering other risks and liabilities of Lessee, provided, however, that the amount of the total insurance allocated to the Improvements shall be such as to furnish protection which is equivalent to the protection furnished by the separate policies in the amounts herein required, and provided further that in all other respects, any such policy or policies shall comply with the other provisions of this Lease. In any such case it shall not be necessary to deliver the original of any such blanket policy to Lessor, but Lessee shall deliver to Lessor, upon request, a certificate evidencing the existence of such insurance. Notwithstanding anything to the contrary contained in this Article VIII or in Article XIX hereof, the insurance requirements of Lessee under this Article VIII and under Article XIX may be satisfied in whole or in part under any plan of self-insurance from time to time maintained by Lessee, or its subsidiary, successor, affiliate or controlling corporation maintaining such self-insurance plan for Lessee's benefit on condition that Lessee or its subsidiary, successor, affiliate or controlling corporation has and maintains a net worth of $200,000,000 or more and net current assets of $100,000,000 or more, and that Lessee or its said subsidiary, successor, affiliate or controlling corporation, maintaining such self-insurance plan, shall furnish to Lessor upon request evidence of said net worth and net current assets. If Lessee, or such Person maintaining the self-insurance plan for Lessee, has a net worth and net current assets less than the foregoing amounts, it shall not be permitted to self-insure. The annual report of Lessee (or of such Person maintaining the self-insurance plan on behalf of Lessee) which is a publicly held corporation that is audited by an independent certified public accountant shall be sufficient evidence of its net worth and its net current assets. The provisions of Sections 8.3 and 8.4 shall not apply to the extent that Lessee is self-insured in accordance with this Section 8.5.

8.6 Inability to Obtain Insurance. In the event that Lessee, after reasonable and diligent efforts, is unable to obtain any of the insurance provided for in this Lease, and if Lessee shall in such case obtain the maximum insurance reasonably obtainable and promptly give notice to Lessor of the extent of Lessee's inability to obtain any insurance required to be maintained hereunder, then the failure of Lessee to procure and maintain such insurance as is not reasonably obtainable shall not be hereunder.

8.7 Application of REA. So long as the REA is in full force stated and effect, the insurance requirements therein as to the Improvements on the Costco Parcel shall be applicable and the provisions of this Article VIII shall be of no force and effect. In the event of the termination of the REA and the election by Lessee not to terminate this Lease, then all of the provisions of the REA referred to in this Article VIII shall be incorporated herein by reference and shall continue to be performed by Lessee during the balance of the Lease Term, it being understood that all insurance proceeds Lessee shall receive pursuant to this Article VIII shall belong to Lessee.

ARTICLE IX

UTILITIES

Lessee shall pay, or cause to be paid, during the Term of this Lease, all charges for water, gas, electrical power, telephone, sewage, trash collection and all other utilities and services supplied to or for the Improvements at the instance of Lessee (hereinafter referred to as "Utilities"), and agrees to hold Lessor harmless with respect to any charges for said Utilities.

Lessee shall also procure, or cause to be procured, without cost to Lessor, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance within the Improvements of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any Utilities to and upon the Improvements. Lessor, upon request of Lessee, will join with Lessee in any application required for obtaining or continuing any Utilities.

ARTICLE X

MECHANICS' LIENS

During the Term of this Lease, Lessee, at its sole cost and expense, shall be responsible for the discharge of, prior to foreclosure thereupon, all liens, encumbrances and charges (other than liens, encumbrances and charges created by Lessor and the liens and encumbrances which Lessee is permitted to impose upon the Demised Premises pursuant to Article XI of this Lease) upon the Demised Premises, subject to a contest of any such liens as hereinafter set forth. Lessee shall, however, have the right to contest the validity or amount of any lien or claimed lien, provided that upon final determination of the lien or claim for lien, Lessee shall immediately pay any judgment rendered with all proper costs and charges and shall have the lien released or judgment satisfied at Lessee's expense, and if Lessee shall fail to do so, Lessor may at its option, following twenty (20) days prior written notice to Lessee, pay any such final judgment and any such amount shall become immediately due and payable to Lessor by Lessee with interest thereon at the rate of two percent (2%) per annum, over the lending reference rate from time to time being charged by Bank of America.

Lessor or its representatives shall have the right to post upon the Demised Premises notices of non-responsibility in compliance with applicable law. Lessee shall, before the commencement of any work estimated to cost in excess of One Hundred Thousand Dollars ($100,000.00), which might result in any such lien, give to Lessor written notice of its intention to do so in sufficient time to enable the posting of such notices of non- responsibility; provided, however, the requirement of the giving of such notices of intention to perform such work shall not be required if Lessee, or the sublessee which is to perform such work or cause such work to be performed (or its guarantor), has a net worth in excess of One Hundred Million Dollars ($100,000,000.00).

ARTICLE XI

LESSEE'S FINANCING

11.1 Fee Subordinated to Mortgage. Lessor agrees for itself and its successors and assigns to join in the execution, as trustor, in any mortgage or deed of trust which Lessee may, at any time and from time to time during the Term of this Lease, cause to be recorded against the Demised Premises and the Improvements located thereon. Such mortgage, and the mortgagee thereunder, are hereinafter referred to as "Lessee's Mortgage" and "Lessee's Mortgagee", respectively. Lessor shall subordinate its fee interest in the Demised Premises to the lien of the Lessee's Mortgage if the following conditions are satisfied:

(i) The Lessee's Mortgagee shall be an institutional lender (but the assignee/sublessor in an assignment and leaseback transaction need not be an institutional lender);

(ii) The Lessee's Mortgage shall secure a loan, the proceeds of which shall be used to pay for the cost of construction of the Improvements located on the Demised Premises and the financing thereof and Lessee's share of the cost of common improvement work for the Shopping Center Site (including, without limitation, the actual cost of all materials and labor used directly in the construction of the Improvements located on the Demised Premises, and all Improvements required or permitted to be made thereon or related thereto; architectural, engineering legal and similar fees directly related or properly allocated solely to this transaction; building permits, premiums for fire, public liability and builders risk insurance during construction; title charges; commitment fees, standby fees and other fees and expenses incurred in connection with the making of Lessee's Mortgage; interest costs; mortgage taxes, land taxes, transfer taxes, survey costs and recording charges), or to reimburse Lessee for the cost thereof, and shall be used for no other purpose;

(iii) The Lessee's Mortgage shall be for a term which shall not extend beyond the expiration date of the Term of this Lease;

(iv) The Lessee's Mortgage shall specifically provide that Lessor shall not be liable for the payment of the sums secured by such mortgage, nor for any expenses in connection therewith, and neither such Lessee's Mortgage nor any instrument collateral thereto shall contain any covenant or obligation on Lessor's part to pay such debt or any part thereof, or to take any affirmative action of any kind whatsoever and shall expressly provide that the mortgagor and the mortgagee thereunder will seek no monetary judgment against Lessor in connection with Lessee's Mortgagee.

Lessor shall not be required to sign or execute the note to be secured by the Lessee's Mortgage, but shall execute the Lessee's Mortgage itself, and all other documents reasonably and customarily required by the Lessee's Mortgagee or by the title company insuring the Lessee's Mortgage or by any combination of them in order to subject Lessor's interest in the Demised Premises to the lien of the Lessee's Mortgage, provided the Lessee's Mortgage is in accordance with the terms and conditions enumerated above.

The Lessee's Mortgage shall contain provisions that all notices of default under the Lessee's Mortgage must be sent to Lessor and Lessee and that Lessor shall have the right to cure any default if Lessee fails to do so and Lessee shall diligently attempt to obtain a provision in any Lessee's Mortgage that Lessor shall have ten (10) days more time, in the case of any monetary default, and thirty (30) days more time, in the case of a non-monetary default, than is given to Lessee to remedy such default.

11.2 Leasehold Mortgage. Lessee and every successor and assignee of Lessee permitted hereunder (including, but not limited to, any sublessee of Lessee or of its permitted assignees) is hereby given the right (exercisable at any time and from time to time) by Lessor, in addition to any other rights herein granted, without Lessor's prior written consent, to mortgage its interest in this Lease or any part or parts thereof, and/or its interest in any sublease(s), under one or more leasehold mortgage(s) ("Leasehold Mortgage") and to assign such interest in this Lease, or any part or parts thereof, and/or in any sublease(s), as collateral security for such Leasehold Mortgage(s) (or to assign its interest in same in connection with an assignment and leaseback transaction), upon the condition that all rights acquired under such Leasehold Mortgage(s) shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interests of Lessor herein. None of such covenants, conditions or restrictions is or shall be waived by Lessor by reason of the right given so to mortgage such interest in this Lease, except as expressly provided herein.

The holder of any first mortgage or deed of trust upon the leasehold estate created by this Lease and Lessee's Improvements shall be the Leasehold Mortgagee referred to herein and shall be entitled to the rights and benefits as provided herein ("Leasehold Mortgagee").

(a) Provided that the Leasehold Mortgagee shall have notified Lessor in writing of its status as a Leasehold Mortgagee and its name and address, Lessor thereafter shall give to such Leasehold Mortgagee a copy of each notice of default at the same time as and whenever such notice shall be given by Lessor to Lessee, such copy to be addressed to the Leasehold Mortgagee at the address last furnished to Lessor as hereinabove provided. Lessor shall not serve a notice of cancellation or termination upon Lessee unless a copy of any prior notice of default shall have been given to the Leasehold Mortgagee as hereinabove provided and the time as hereinafter specified for the curing of such default shall have expired without the same having been cured. Lessor agrees to notify the Leasehold Mortgagee in writing of the failure of Lessee to cure a default within any applicable grace period and of the curing of any default by Lessee. The performance by the Leasehold Mortgagee of any condition or agreement on the part of Lessee to be performed hereunder will be deemed to have been performed with the same force and effect as though performed by Lessee.

(b) Lessor will accept performance by the Leasehold Mortgagee within the following periods of any obligation on Lessor's part to be performed hereunder, with the same force and effect as though timely performed by Lessee:

(i) as to any rent and other sums payable hereunder, within ten (10) days after written notice from Lessor that Lessee has not cured such default within the period provided in Article XIII; and

(ii) As to all other defaults, within thirty (30) days more time than is given Lessee to remedy or cause to be remedied the defaults complained of, or, if within such period such default cannot be cured, to commence to so cure within such period and diligently and continuously proceed therewith to completion.

(iii) As to any default which Leasehold Mortgagee is without the legal power to cure by payment or performance, Leasehold Mortgagee shall have thirty (30) days after receipt of written notice from Lessor of such default within which to give Lessor written notice that the Leasehold Mortgagee or a wholly owned subsidiary or affiliate of Leasehold Mortgagee elects to become the tenant under this Lease in the place and stead of the then Lessee upon all the terms, covenants and conditions provided in this Lease.

(c) Lessor shall not exercise its right to terminate this Lease as provided in Article XIII during the time that the Leasehold Mortgagee shall require to complete its remedies under its mortgage or deed of trust upon the leasehold estate of Lessee hereunder, provided, however, and upon condition:

(i) That the Leasehold Mortgagee proceeds, promptly and with due diligence, with the remedies under its mortgage or deed of trust on the leasehold estate and thereafter prosecutes and completes the same with all due diligence; and

(ii) That the Leasehold Mortgagee shall pay to Lessor the rent and all other charges required to be paid by Lessee hereunder which have accrued and those which shall become due and payable during said period of time.

Upon the completion of any foreclosure proceedings or acquisition of Lessee's interest in this Lease by the Leasehold Mortgagee, any default not reasonably curable by the Leasehold Mortgagee shall be deemed waived by Lessor as to the Leasehold Mortgagee and any purchaser at a foreclosure sale or their respective successors and assigns.

(d) Lessor shall also be obligated to give any notice of cancellation and termination to the Leasehold Mortgagee, simultaneously with such notice given to Lessee; provided, however, that nothing contained in this Section 11.2(d) shall grant to Lessor any right to terminate this Lease not expressly set forth in Section 13.3 hereof. No such notice to Lessee shall be effective with respect to termination of this Lease unless the Leasehold Mortgagee shall also have been so notified as aforesaid. The Leasehold Mortgagee shall then have the right to notify Lessor in writing, within thirty (30) days after receipt by the Leasehold Mortgagee of such notice of cancellation and termination, that (1) Leasehold Mortgagee, or any designee or nominee which Leasehold Mortgagee may designate or name in such notice (hereinafter called the "approved nominee"), elects to lease the Demised Premises from the date of termination of this Lease for the remainder of the Term of this Lease, at the rent and other charges herein reserved and otherwise upon the same terms, covenants and conditions as are herein set forth, with the same relative priority in time and in right as this Lease (to the extent possible) and having the benefit of and vesting in the Leasehold Mortgagee, or the approved nominee, all of the rights, title, interest, powers and privileges of Lessee hereunder, and (2) Leasehold Mortgagee further obligates itself to (and in fact does) within ten (10) days after delivery to Lessor of such election:

(i) Cure the default upon which such termination was based, or in respect to any default not capable of curing within such ten (10) days, or which cannot be cured without entry into possession, proceed and effect cure with due diligence following delivery of possession;

(ii) Pay to Lessor all rent and other charges due under this Lease up to and including the date of commencement of the term of such new lease less any net rental income received by Lessor for such period; and

(iii) Pay to Lessor all expenses and reasonable attorneys' fees incurred by Lessor in connection with any such default with the preparation, execution and delivery of such new lease.

(e) After such cancellation and termination of this Lease and upon compliance by Leasehold Mortgagee, or the approved nominee, within such time, Lessor shall thereupon execute and deliver such new lease to Leasehold Mortgagee or the approved nominee, having the same relative priority in time and right as this Lease (to the extent possible) and having the benefit of all of the right, title, interest, powers and privileges of Lessee hereunder in and to the Demised Premises, including specific assignment of Lessor's interest in and to any then existing sublease where the subtenant may have attorned to Lessor or which, at the time of cancellation or termination of this Lease, was prior in right to the Leasehold Mortgage or which by separate agreement or by its terms had been granted non-disturbance privileges. Lessor hereby agrees that with respect to any such sublease so assigned, it will not modify or amend any of the terms or provisions thereof, during the period between the expiration or termination of this Lease and the execution and delivery of the new lease. Lessor agrees that it will not terminate any sublease while foreclosure of the leasehold estate of Lessee is pending or while the Leasehold Mortgagee has the right to receive a replacement lease.

(f) Upon the execution and delivery of the new lease, title to all improvements within the Demised Premises, as well as all equipment, fixtures and machinery thereunder, shall automatically vest in the Leasehold Mortgagee or the approved nominee until the expiration of the term of the new lease, unless the new lease shall thereafter sooner be terminated.

(g) In the event that Leasehold Mortgagee exercises its right under Section 11.2(d) to enter into a new lease (or to designate its nominee to enter into a new lease), Leasehold Mortgagee or the approved nominee shall have the right to assign such lease without the consent of Lessor.

(h) Anything herein contained to the contrary notwithstanding, Lessor and Lessee mutually agree that so long as there exists an unpaid Leasehold Mortgage on the leasehold estate of Lessee, this Lease or any renewal thereof shall not be modified, amended or altered and Lessor shall not accept a surrender of the Demised Premises or a cancellation of this Lease (provided the Leasehold Mortgagee remedies any default and keeps this Lease current, all as hereinbefore provided) prior to the expiration or sooner termination thereof as hereinbefore provided, without the prior written consent of the Leasehold Mortgagee.

(i) So long as any debt secured by a Leasehold Mortgagee upon the leasehold created by this Lease shall remain unpaid, unless the Leasehold Mortgagee shall otherwise consent in writing, the fee title to the Land and the leasehold estate in the Demised Premises shall not merge but shall always be kept separate estates, notwithstanding the union of such estates either in Lessor or in Lessee or in a third party by purchase or otherwise.

(j) Lessor agrees for the benefit of any Leasehold Mortgagee that at any time, and from time to time, upon not less than twenty (20) days' prior notice from Lessee or from a Leasehold Mortgagee, to deliver a certificate in recordable form to Lessee and to the Leasehold Mortgagee stating that this Lease is unmodified (or, if there have been modifications, setting them forth) and in full force and effect, the dates to which rental and other charges have been paid, and that either Lessee is not in default in the performance of any of the terms and provisions of this Lease (or, if there are defaults, specifying the nature thereof with sufficient particularity that Lessee and the Leasehold Mortgagee will know the nature of the acts which must be performed and the amounts of the payments which must be made to cure any such default), it being agreed that any such statement delivered pursuant to this Section 11.2 may be relied upon by any prospective assignee of Lessee's interest in this Lease or by any Leasehold Mortgagee or prospective Leasehold Mortgagee.

(k) Lessee agrees that it shall obtain from any Leasehold Mortgagee an agreement to the effect (i) that such Leasehold Mortgagee shall notify Lessor of any default by Lessee under the Leasehold Mortgage in favor of such Leasehold Mortgagee at the time that the Leasehold Mortgagee serves upon Lessee any notice of such default required by law, (ii) that Lessor shall have the right, but not the obligation, to cure any default under such Leasehold Mortgagee on Lessee's behalf within the time permitted by law for Lessee to cure such default, and (iii) that if Lessor recovers possession of the Demised Premises by reason of a default by Lessee under this Lease as provided in Article XIII, such Leasehold Mortgagee shall not take any action to foreclose upon its Leasehold Mortgage so long as Lessor shall cure any default thereunder within the time permitted by law for Lessee to cure such default and shall thereafter timely satisfy the obligations of Lessee under such Leasehold Mortgage as they accrue.

11.3 Mortgage. As used in this Lease, all references to a "mortgage" shall be deemed to include a deed of trust and an assignment of this Lease in an assignment and leaseback transaction, and all references to the "holder(s)" of a mortgage or to a "mortgagee" shall be deemed to include the beneficiary and/or trustee under a deed of trust and the assignee/sublessor in an assignment and leaseback transaction.

11.4 Loss Payable Endorsement. Lessor agrees that the name of any mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee hereunder, and that, subject to the terms of the REA, all insurance and/or condemnation proceeds to which Lessee may be entitled hereunder for purposes of restoration of the Improvements on the Demised Premises may be made available jointly to the Lessee and such mortgagee.

ARTICLE XII

EASEMENTS

Lessor covenants and agrees as to its fee interest in the Demised Premises that it will execute any instruments which may be reasonably requested by Lessee in connection with the granting of easements for installation, maintenance and repair and replacement of Utilities, or which may be provided for pursuant to the REA.

Neither Lessor or Lessee shall grant or otherwise convey any type of easement or easements affecting the Demised Premises or the Shopping Center Site for the benefit of any property not within the Shopping Center Site.

ARTICLE XIII

DEFAULT

13.1 Performance by Lessor on Lessee's Default. In the event that Lessee shall fail or neglect to do or perform any act or thing herein provided for it to be done or performed, and Lessee shall not have commenced to perform within forty-five (45) days after receipt by Lessee of written notice from Lessor specifying the nature of the act or thing to be done or performed, and thereafter complete performance with due diligence, then Lessor may, but shall not be required to, do or perform or cause to be done or performed such act or thing (entering upon the Demised Premises for such purposes, if Lessor shall so elect), and Lessee shall repay as additional rent to Lessor upon demand, the entire cost and expense thereof. Any act or thing done by Lessor, pursuant to the provisions of this paragraph shall not be, or be construed as, a waiver of any covenant, term or condition herein contained, or of the performance thereof.

13.2 Event of Default. Any of the following shall constitute an event of default (hereinafter called "Event of Default") on the part of Lessee:

(i) The failure to pay the rent set forth herein, subject to the following condition: In the event Lessee fails to pay the rent herein reserved, or any part thereof, within the time periods provided herein, Lessor shall provide Lessee written notice of such default. In the event Lessee has not cured such default within fifteen (15) days following the receipt by Lessee of such notice, Lessor shall deliver to Lessee a second notice of such default. In the event Lessee has not cured such default within fifteen (15) days following receipt of such second notice from Lessor, such failure shall constitute an Event of Default hereunder;

(ii) The failure, for a period of more than forty-five (45) days after Lessee's receipt of notice from Lessor, to do, observe, keep and perform any of the terms, covenants, conditions, agreements and provisions of this Lease which Lessee is required to observe, keep or perform, subject to the provisions of Section 28.4;

(iii) The abandonment of the Demised Premises by Lessee.

(iv) The adjudication of Lessee as bankrupt, the filing of any involuntary petition in bankruptcy against Lessee which is not withdrawn or otherwise disposed of in favor of Lessee within one hundred twenty (120) days, the filing of a voluntary petition in bankruptcy, or for reorganization or arrangement, by Lessee, or if Lessee shall make a general assignment for the benefit of creditors or voluntarily take the benefit of or claim to be insolvent under any of the provisions of the Bankruptcy Act, or the appointment of a permanent receiver or trustee for Lessee or Lessee's property, or if a temporary receiver or trustee of Lessee or Lessee's property shall be appointed and such permanent or temporary receiver or trustee shall not be discharged within one hundred twenty (120) days from the date of appointment.

For the purposes of Subparagraph (ii) of this Section 13.2, if the default complained of be a default other than one which may be cured by the payment of money, no Event of Default on the part of Lessee in the performance of work or acts to be done or conditions to be met shall be deemed to exist if steps to cure the same shall have been commenced by Lessee within forty-five (45) days after receipt by Lessee of written notice from Lessor, which notice shall set forth the nature of such default, and shall be prosecuted to completion, with due diligence and continuity.

Notwithstanding the foregoing, Lessee shall be excused from failure to perform any term, covenant, condition or agreement under this Lease during the time and to the extent such performance or delay is excused pursuant to Section 13.6 hereof or the terms of the REA.

13.3 Remedies of Lessor. It is expressly agreed that in no event shall Lessor have the right to terminate this Lease as long as Costco Wholesale Corporation is Lessee under this Lease and continues to maintain a corporate net worth of no less than One Hundred Million Dollars ($100,000,000) while Lessee hereunder (the "Net Worth Condition") unless, following an Event of Default hereunder, Lessor obtains a final damage judgment or final court order against Lessee in connection with such Event of Default (the "Default Condition"). Notwithstanding the foregoing, Lessor shall not have the right to terminate as a result of a Default Condition if Lessee satisfies the final damage judgement within thirty (30) days or cures any final court order within sixty (60) days (or such longer period of time as is reasonably required, provided, that Lessee is diligently pursuing such cure), in either case, after receipt of a notice thereof from Lessor. Upon the earlier to occur of (a) the failure of the Net Worth Condition, or (b) the occurrence of the Default Condition, the restriction on termination set forth in this Section 13.3 shall be of no further force or effect, and Lessor shall have the right, following the earlier to occur of (A) any future Event of Default under Section 13.2(i), or (B) any subsequent Default Condition, which subsequent Default Condition results from an Event of Default under Section 13.2(ii), (iii) or (iv), and subject to the rights of a mortgagee pursuant to Article XI, to terminate this Lease in the manner provided by law as of a date specified in the notice to Lessee, which date shall not be less than sixty (60) days after the date of serving such notice, except in the case of a breach for non-payment of rent under the provisions of Section 13.2(i), in which of event such date of termination shall be not less than thirty (30) days after the expiration of any notice given under said Subparagraph (i) (unless, in either event such default is cured or such final damage judgment is satisfied by Lessee, as the case may be, prior to such date). In the event such termination shall occur, Lessor shall have the right to eject all parties in possession thereof therefrom and repossess and enjoy the Demised Premises together with all additions, alterations, and improvements thereto, and Lessor shall thereupon be entitled to recover from Lessee the worth at the time of such termination, of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the balance of the term over the greater of (i) the then reasonable or obtainable rental value of the Demised Premises for the same period, or (ii) the amount of rent actually received by Lessor for the same period from the lease of the Demised Premises to a third person.

The remedies of Lessor as hereinabove provided are in addition to, and not exclusive of any other remedy of Lessor herein given or which may be permitted by law. Any re-entry, as provided for herein, shall be allowed by Lessee without hindrance, and Lessor shall not, except for Lessor's negligence or willful misconduct, be liable in damages or guilty of trespass because of any such re-entry.

13.4 Waiver. If either party fails or neglects, for any reason, to take advantage of any of the terms hereof providing for the termination of this Lease or the declaration of any default by the other party, or if either party having the right to declare this Lease terminated or the estate hereby demised terminated or forfeited or to exercise any other default remedy, shall fail so to exercise same, any such failure or neglect shall not be or be deemed to be construed to be a waiver of any cause for the termination or forfeiture of the estate hereby demised or other default subsequently arising, or as a waiver of any of the covenants, terms or conditions of this Lease or of the performance thereof. None of the covenants, terms or conditions of this Lease can be waived except by the written consent of Lessor or Lessee, as applicable.

13.5 Remedies of Lessee. If Lessor shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by Lessor pursuant to this Lease, or if Lessor should fail to make any payment which Lessor agrees to make, and any such failure shall remain uncured for a period of thirty (30) days after Lessee shall have served upon Lessor notice of such failure, then Lessee may at Lessee's option, at any time prior to commencement of Lessor's acting to cure such failure and thereafter if Lessor fails to diligently perform the curing of such failure, perform any such term, provision, covenant or condition or to make any such payment, as Lessor's agent, and in Lessee's sole discretion as to the necessity therefor, and Lessee shall not be liable or responsible for any loss or damage resulting to Lessor or anyone holding under Lessor on account thereof. The full amount of the cost and expense entailed, or payment so made shall immediately be owing and payable by Lessor to Lessee, and Lessee shall have the right to deduct the amount thereof, together with interest at the maximum legal rate thereon from the date of payment, without liability or forfeiture, from rents then due or thereafter coming due hereunder, and irrespective of who may own or have any interest in the Demised Premises at the time such deductions are made. The option given in this Section 13.5 is for the sole protection of Lessee, and its existence shall not release Lessor from the obligation to perform the term, provisions, covenants and conditions herein provided to be performed by Lessor or deprive Lessee of any rights or remedies at law or in equity which Lessee may have by reason of any such default by Lessor.

13.6 Delays in Performance. The time within which either party hereto shall be required to perform any act under this Lease, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an event of Force Majeure as defined in Section 28.4. Unless the party entitled to such extension shall give notice to the other party hereto of its claim to such extension and the nature thereof with five (5) days after the event of Force Majeure giving rise to such claim shall have occurred, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days in excess of five (5) which shall have elapsed between the occurrence of such event of Force Majeure and the actual giving of such notice.

ARTICLE XIV

ATTORNEYS' FEES

If any action or suit is instituted by either party against the other to enforce the provisions of this Lease, the prevailing party in said action or suit shall be entitled to receive from the other party, court costs incurred in such action and reasonable attorneys' fees in an amount determined by the court.

ARTICLE XV

NOTICES

Any and all notices by the Lessor to the Lessee, or by the Lessee to the Lessor, shall be in writing and sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the respective addresses below stated:

in the case of Lessor to:	CITY OF ESCONDIDO 201 N. Broadway Escondido, California 92025 Attention: City Attorney
with a copy to:	CITY OF ESCONDIDO 201 N. Broadway Escondido, California 92025 Attention: City Manager
in the case of Lessee to:	Costco Wholesale Corporation 999 Lake Drive Issaquah, Washington 98027 Attention: Property Management (Legal Dept.) Re: Location #____ (Escondido, California)
with a copy to:	Costco Wholesale Corporation 999 Lake Drive Issaquah, Washington 98027 Attention: Corporate Counsel Re: Location #____ (Escondido, California)
and with a copy to:	Goulston & Storrs 730 Third Avenue, 12th Floor New York, New York 10017 Attention: Costco—Escondido, CA CW #[__]

The foregoing parties may at any time change the address by notice to the other parties in writing. Rent shall be payable by check sent by ordinary mail by Lessee to Lessor at the address set forth in Section 3.2 above, or any change thereof pursuant to this paragraph.

Notwithstanding any of the foregoing, the date of receipt shall be the third (3rd) day after transmission and shall constitute the initial day of notice in computing the elapsed time as specified in any notice requirement in this Lease if said notice is given in accordance with the above requirements. If notice is given in any other fashion, such notice shall be deemed effective only upon receipt by each of the above named recipients as to such party. In the event fee title to the Property and all rights of Lessor under this Lease are transferred or conveyed to a third party, then if Lessee is not advised of such transfer, Lessee may continue to send all Notices to Lessor at the address set forth above (or, if applicable, such other address for Lessor set forth in a Notice given by Lessor to Lessee pursuant to this Article XV) or at the address for the owner of the Property on file with the governmental entity in charge of assessing real property taxes.

ARTICLE XVI

ESTOPPEL CERTIFICATE

Lessor and Lessee agree at any time and from time to time and within thirty (30) days after written request from the other party, to execute, acknowledge and deliver to the other party a statement in writing, stating that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect, as modified, and stating the modifications), and the dates to which the Fixed Rent and other charges have been paid in advance, if any, and whether or not there is any existing default or Event of Default in any of the requesting party's obligations under the terms of this Lease, or notice of default served by the party requested to deliver such estoppel certificate. If any such statement shall allege non-performance by the other party, the nature and extent of such non-performance shall, insofar as actually known by the party providing such estoppel certificate, be summarized therein. Any such estoppel certificate to be delivered by Lessee shall be in the form attached hereto as Exhibit D, and shall contain the following provision:

"This statement shall act as a waiver of any claim to the extent such claim is based on facts contrary to those asserted in this statement and to the extent said claim is asserted against a bona fide encumbrancer or purchaser for value, without knowledge of facts to the contrary to those contained in this statement. This statement shall in no event subject the undersigned to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of the undersigned to disclose correct and/or relevant information."

ARTICLE XVII

QUIET POSSESSION

Lessor covenants that it has full power and authority to enter into this lease transaction, and to grant the leasehold estate for the period provided in this Lease, and that Lessee and its successors and assigns shall and may at all times peaceably and quietly have, hold, occupy and enjoy the Demised Premises during the Term of this Lease, free from any hindrance or encumbrance by Lessor, or any person or persons claiming through or under the Lessor; provided, however, that nothing contained in this Article XVII shall impair in any manner the ability of Lessor to avail itself of the remedies of Lessor following a breach of the terms of this Lease by Lessee, as set forth in Article XIII.

ARTICLE XVIII

TITLE TO IMPROVEMENTS

It is agreed between Lessor and Lessee that during the term of this Lease, all Improvements to be erected, attached, or used in connection with the Demised Premises shall remain the property of Lessee, but upon termination of this Lease, either by expiration of its term or otherwise, the Improvements then located on the Demised Premises shall become the property of Lessor. On the date of such termination, Lessee shall surrender to Lessor the Demised Premises and the Improvements, if any, located thereon in their then existing condition and repair free and clear of all financing encumbrances created by Lessee. During the term of this Lease, Lessee alone shall be entitled to depreciation and all tax credits relating to the Improvements located on the Demised Premises.

On the date of such termination, any furniture, furnishings, trade fixtures, fixtures or business equipment on the Demised Premises may be removed by Lessee where furnished by or at the expense of Lessee.

ARTICLE XIX

ALTERATIONS AND ADDITIONS

Subject to the REA, Lessee shall have the right at its expense from time to time to make alterations or additions to the Improvements to be situated on the Demised Premises. Lessee shall give Lessor prior written notice of any such alterations or additions under circumstances which would require notice under Article X hereof. Upon termination of the Lessee's leasehold estate, such alterations or additions, if any, then remaining on the Demised Premises, shall be considered as Improvements and shall not be removed by the Lessee but shall become a part of the Demised Premises. Any such work shall be performed and done strictly in accordance with the laws and ordinances relating thereto and in compliance with the REA.

ARTICLE XX

ASSIGNMENT AND SUBLETTING

Lessee may sublet all or any part of the Demised Premises (including, without limitation, subleases and sub-subleases of portions of the Demised Premises as is customary in Lessee's business such as, by way of example only, subleases and/or sub-subleases of a portion(s) of the Demised Premises to independent optometrists) or assign all its rights and interests under this Lease, provided, that each such sublease or assignment shall be subject to the provisions of this Lease and the REA. If Lessee assigns or subleases all of its rights and interests under this Lease, the assignee or sublessee under such assignment or sublease shall expressly assume all of the obligations of Lessee hereunder in a written instrument delivered to Lessor within ten (10) days after the execution and delivery of any such assignment or sublease.

No assignment or sublease shall release or reduce any of the obligations of Lessee hereunder, and all such obligations shall continue in full effect as obligations of a principal and not as obligations of a guarantor or surety, to the same extent as though no assignment or subletting had been made, except that Lessee shall be relieved of and released from all of its obligations under this Lease if Lessee receives written approval from Lessor to assign this Lease. Such written approval shall not be unreasonably withheld, conditioned or delayed. Lessor shall respond to any request for approval within thirty (30) days after Lessor's receipt of Lessee's written request therefor, together with such information as Lessor may reasonably require with respect to the proposed assignee. If Lessor fails to respond within such thirty (30)-day period, Lessor's approval shall be deemed granted. The parties acknowledge and agree that Lessor's failure to provide written approval shall be deemed unreasonably withheld if the proposed assignment satisfies the following criteria: (i) the assignee is an entity which has a net worth of $50,000,000 or more at the time of the proposed assignment, (ii) the assignee delivers to Lessor written confirmation expressly assuming the obligations of Lessee hereunder for the benefit of Lessor, and (iii) the proposed use of the Demised Premises by the assignee is a retail use that complies with the provisions of this Lease and the REA.

Notwithstanding the foregoing, Lessee shall not be required to obtain Lessor's consent in connection with any of the following assignments: (a) an assignment to an affiliate or related party of Lessee, (b) an assignment in connection with the sale of all or substantially all of Lessee's assets or equity, or (c) an assignment in connection with a portfolio sale, merger, consolidation, acquisition or other similar transaction, including, without limitation, a "going private" transaction.

ARTICLE XXI

CONDEMNATION

21.1 Definitions. Whenever used in this Article, the following words shall have the following respective meanings:

(i) "Condemnation" or "condemnation proceedings" shall mean any action or proceeding brought by authority of competent jurisdiction for the purpose of any Taking of the Demised Premises or any part thereof as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of or in lieu of condemnation or while such action or proceeding is pending.

(ii) "Taking" shall mean the delivery of possession of the Demised Premises or any part thereof to the authority of competent jurisdiction pursuant to condemnation.

(iii) "Vesting Date" shall mean the date of the Taking.

21.2 Total Taking. In case of a Taking of all of the Demised Premises, this Lease shall terminate as of the Vesting Date and the rent under this Lease shall abate as of, and be apportioned to the date of termination.

21.3 Partial Taking. In case of a Taking of less than all of the Demised Premises (other than for a temporary use) Lessee shall determine, in its discretion, prior to or within one hundred eighty (180) days after the Vesting Date, whether the remaining portion of the Demised Premises (after Restoration as referred to in Section 21.5) can economically and feasibly be used by Lessee.

If it is determined by Lessee that the remaining portion of the Demised Premises cannot be economically and feasibly used by Lessee, Lessee, at its election, may terminate this Lease on at least ten (10) days but not more than one hundred eighty (180) days notice to Lessor to such effect provided that such election to terminate is exercised prior to the earlier to occur of (i) thirty (30) days after such determination, or (ii) two hundred ten (210) days following such Taking. Upon any such termination, Lessee shall have no obligation to repair or restore any improvement located on the Demised Premises, and the rent shall be apportioned to the date of termination.

If Lessee does not elect to terminate this Lease within the period aforementioned, it shall continue in full force and effect as to the remaining portion of the Demised Premises subject to a reduction in the rent as provided in Section 21.6.

21.4 Allocation of Award; Total Taking. If this Lease shall terminate, pursuant to the provisions of Sections 21.2 or 21.3, the total award in the condemnation proceedings shall be apportioned and paid, to the extent available, in the following order of priority:

(i) The Lessee's Mortgagee and/or Leasehold Mortgagee, if any, shall first be entitled to have its mortgage loan satisfied, including such unpaid principal and accrued interest which is not past due and any pre-payment premium or penalty.

(ii) Lessor, Lessee and the Lessee's Mortgagee and/or Leasehold Mortgagee shall next be entitled to their expenses and charges, including, without limitation, reasonable attorneys' fees incurred in connection with the Taking.

(iii) Lessor shall be entitled to an amount equal to the value, on the Vesting Date, of the land taken as if vacant and unimproved and without this Lease, after the payment to Lessee from the proceeds of such award of the value of Lessee's leasehold interest in the land constituting the Demised Premises, determined with reference to the unexpired portion of the Term of this Lease, including all option periods, whether or not exercised. If the condemnation award separately specifies the amount allocable to Lessor and Lessee, as above described, then such amount shall govern and be deemed the value thereof; otherwise, Lessor and Lessee shall agree upon such value and if they cannot agree, it shall be determined by arbitration under the provisions of Article XXIII.

(iv) The balance of the award shall be paid over to Lessee less, however, the value of Lessor's reversionary interest in the Improvements located on the Demised Premises, which shall be paid over to Lessor, such reversionary interest being determined with reference to the remaining Term of this Lease.

21.5 Allocation of Award; Partial Taking. If this Lease shall not terminate as provided in Section 21.3, it is agreed that Lessee's obligation to restore hereunder shall be determined only to the extent of Lessee's obligation to restore pursuant to the REA.

The total award in the condemnation proceedings, in the event of such partial taking, shall be apportioned and paid, to the extent available, in the following order of priority:

(i) Lessee shall first be entitled to an amount equal to the cost of Restoration.

(ii) Lessor, Lessee and any Lessee's Mortgagee and/or Leasehold Mortgagee shall next be entitled to their expenses and charges, including, without limitation, reasonable attorneys' fees incurred in connection with the Taking.

(iii) Lessor shall be entitled to an amount equal to the value, on the Vesting Date, of the land taken as if vacant and unimproved and without this Lease, after the payment to Lessee from the proceeds of such award of the value of Lessee's leasehold interest in the land which is taken, determined with reference to the unexpired portion of the Term of this Lease, including all option periods, whether or not exercised. If the condemnation award separately specifies the amount allocable to Lessor and Lessee, as above described, then such amount shall govern and be deemed the value thereof.

(iv) Lessee, subject to the rights of any Lessee's Mortgagee and/or Leasehold Mortgagee, shall be entitled to the balance of the award, less, however, the value of Lessor's reversionary interest in the Improvements located on that portion of the Demised Premises as taken and not restored, which shall be paid over to Lessor, such reversionary interest being determined with reference to the remaining Term of this Lease.

21.6 Rent Reduction. Upon any Taking which does not result in a termination of this Lease, the Fixed Rent payable by Lessee under this Lease immediately prior to the Taking shall be reduced in the proportion that the amount of land taken bears to the Demised Premises.

21.7 Temporary Taking. In the event of a Taking of all or any portion of the Demised Premises for temporary use (which shall mean a period of ninety [90] days or less), the foregoing provisions of this Article, except Section 21.6, shall be inapplicable thereto, this Lease shall continue in full force and effect and Lessee shall be entitled to make claim for, recover and retain any award recoverable in respect of such temporary use whether in the form of rental or otherwise. If the award is made in a lump sum covering a period beyond the expiration of the Lease Term, Lessor also shall be entitled to make claim for and participate in the award proportionately.

If any portion of the award for such temporary use is intended to cover the cost of restoring the Improvements located on the Demised Premises to the condition they were in prior to such temporary use or to make repairs occasioned by or resulting from such temporary use, such portion shall be used by Lessee to cover the cost of such restoration and repair, and any balance remaining shall belong to and be paid to Lessee. Lessee shall have no obligation to restore or repair except as provided in the REA, and Lessee's right to receive a portion of the award, as above provided, shall not be affected thereby.

In the event of a Taking of all or any portion of the Demised Premises for temporary use which is for a period longer than ninety (90) days, Lessee shall have the right to terminate this Lease, which option must be exercised by Lessee giving written notice thereof to Lessor within said ninety (90) day period. If said right to terminate is so exercised by Lessee, any award recoverable in respect of such temporary use as to the Demised Premises shall be allocated between Lessor and Lessee as if it was a Taking under Section 21.4. In the event said right to terminate is not exercised by Lessee within the aforesaid time period, then the provisions of this Section 21.7 shall apply.

21.8 Settlement. Without the consent of Lessee and Lessee's Mortgagee and/or Leasehold Mortgagee, Lessor shall not make any settlement with the condemning authority or convey any portion of the Demised Premises to such authority in lieu of condemnation or consent to any Taking.

21.9 Application of REA. In the event the Demised Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between Lessor, Lessee and those authorized to exercise such right, and if at such time the REA has not terminated or expired as to the Demised Premises, then, as between the REA parties, the provisions of the REA shall control the collection, application and distribution of awards resulting from a Taking of all or a portion of the Shopping Center, and as between Lessor and Lessee, the Lease shall control the collection, application and/or distribution of that portion of the award which Lessor or Lessee is entitled to receive as a result of a Taking. Any provision herein to the contrary notwithstanding, if at the time of any such Taking the REA is no longer in force or effect, or if as a result of such Taking the REA is terminated, or the REA is terminated as to the Demised Premises, Lessee may, at its election, terminate this Lease by giving Lessor at least thirty (30) days prior written notice of its intention to do so. In such event, the foregoing provisions of Section 21.4 shall control said collection, application and/or distribution of awards resulting from such Taking.

ARTICLE XXII

DESTRUCTION AND RESTORATION

22.1 Obligations of Lessee. In the event of damage to or destruction of the Improvements located on the Demised Premises, Lessee shall be obligated to repair and restore the same only to the extent required to do so as a Party to the REA.

22.2 Destruction Not A Release. Except as expressly provided in Section 22.3 hereof, no destruction of, or damage to the Improvements located on the Demised Premises or any part thereof by fire or any other cause shall permit Lessee to surrender this Lease or shall relieve Lessee from its obligation to pay the full rent under this Lease or from any of its other obligations under this Lease, and Lessee waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this Lease or the Demised Premises or any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage.

22.3 Termination of Lease. In the event the Improvements located on the Demised Premises shall be substantially damaged or destroyed (as defined in this Section 22.3) by fire or any other cause whatsoever, or such damage or destruction shall materially impair the usefulness of the Demised Premises, in the opinion of Lessee, and if pursuant to the REA Lessee is not required to restore Improvements located on the Demi-sed Premises, Lessee shall have the right to terminate this Lease at any time within one (1) year from the date of such damage or destruction, such termination to be effective upon at least thirty (30) days prior notice to Lessor. If Lessee elects to terminate the Lease, Lessee shall, at Lessor's request, raze the Improvements or portion thereof so damaged. If Lessee does not so terminate, or if such damage or destruction is not substantial, Lessee will construct such Improvements as Lessee shall deem appropriate so long as the usage for which such construction is undertaken is not prohibited by the REA. If Lessee elects not to terminate the Lease and not to so repair or reconstruct alternative Improvements, Lessee shall, at Lessor's request, raze the damaged Improvements and remove all debris from the Demised Premises in accordance with Section 12.7 of the REA. Lessee may exercise its option to terminate this Lease under this Section 22.3 by serving such notice upon Lessor, without any liability on the part of Lessee to Lessor except for the payment of the Fixed Rent and all additional sums required to be paid by Lessee under the terms of this Lease up to the date of such termination and performance by Lessee of the razing and removal of debris obligations of Lessee above set forth in this Section 22.3. Any insurance proceeds Lessee shall receive as a result of such damage or destruction shall belong to Lessee.

For the purposes of this Section 22.3 the Improvements which constitutes a single architectural unit shall be deemed substantially damaged or destroyed if the estimated cost of restoring the Improvements as nearly as possible to their value, condition and character immediately prior to such damage or destruction is twenty-five percent (25%) or more of the estimated total replacement cost of the Improvements.

22.4 Application of REA. So long as the REA is in full force and effect as to the Demised Premises, the reconstruction obligations hereunder shall be performed in compliance with and pursuant to the reconstruction provisions of the REA. Upon termination of the REA and the election by Lessee not to terminate this Lease, said REA provisions governing the manner in which repair or reconstruction is performed shall, for the remaining term of this Lease, continue as if incorporated herein and made a part hereof.

ARTICLE XXIII

INTENTIONALLY OMITTED

ARTICLE XXIV

RIGHT OF FIRST REFUSAL

24.1 Receipt of Offer. In the event Lessor shall at any time during the Term of this Lease receive from any Person an offer to purchase all or any portion of Lessor's fee interest in the Demised Premises which offer Lessor desires to accept, Lessor shall give to Lessee written notice of the price and a copy of the document containing the terms and conditions of such offer, and of Lessor's willingness to sell for such price and on such terms and conditions, and Lessee shall have the option and privilege of purchasing such property for said price and upon the terms of such offer. Lessee shall notify Lessor in writing, within thirty (30) days of receipt of notice from Lessor, whether or not it desires to accept the terms of such offer of sale. Should Lessee accept said offer, Lessor shall convey such property to Lessee in accordance with the offer terms. Failure to send such notification within said thirty (30) day period shall constitute an election by the Lessee to reject the offer.

24.2 Right to Sell to Offeror. In the event Lessee shall reject said offer to purchase upon such terms and conditions, or shall fail to send Lessor written notice within said period of thirty (30) days of its election to purchase said interest upon the price and terms specified in said offer, Lessor may thereafter sell its fee interest or portion thereof to the Person making the offer, only at the price and on the terms stated in the offer. Any variation in said price, and/or terms and conditions shall require a new notice from Lessor to Lessee setting forth all of the changes to said price, terms and/or conditions and Lessee shall have an additional thirty (30) day period to accept said offer on such new or different price, terms and conditions. In the event Lessor does not enter into a binding agreement for the sale of such interest to such Person at the price and on the terms stated in the offer within thirty (30) days after the earlier to occur of (i) rejection of same by Lessee, or (ii) in the event Lessee fails so to notify Lessor of its election to purchase said interest, the expiration of the applicable thirty (30) day period set forth above, or if the sale is not consummated, Lessor shall not sell its interest without a new notice to Lessee in accordance with this Article XXIV, and Lessor shall give Lessee notice in writing of any subsequent proposal to sell Lessor's interest or offer acceptable to Lessor, and Lessee shall have the right of first refusal to purchase such interest upon the price and terms of such subsequent proposal or offer, in the same manner as hereinabove provided for the original offer.

24.3 Surplus Land Act. For the avoidance of doubt, this Article XXIV shall be subject to the California Surplus Land Act (Government Code sections 54220-54234), as the same may be amended from time to time.

ARTICLE XXV

REA

25.1 Second Amendment to REA. This Lease and Lessor's interest in the Demised Premises shall be subject to the REA, and in the event of any conflict between the provisions of this Lease and the provisions of the REA while both documents are in full force and effect, the provisions of the REA shall control, except as between Lessor and Lessee, in which event the provisions of this Lease shall control. ~~In~~ Without intending to limit the foregoing, Lessee may enter into this Lease prior to finalizing the Second Amendment to REA with the required parties thereto, which Second Amendment to REA would, among other things, effectuate those changes to the REA that are necessary to accommodate Lessee's proposed development, construction, use and operation of and on the Demised Premises of the Costco Development. In such event, Lessor agrees that the Costco Development shall be permitted under this Lease. In no event shall Lessee be obligated to develop, construct, use or operate a Costco Development at the Demised Premises.

25.2 Easements; No Amendment. Unless and until Lessee becomes a "Party" and "Major" (as such terms are defined in the REA) under the REA by virtue of the Second Amendment to REA or is otherwise recognized as a Party and Major by the other Parties to the REA prior to the effective date of the Second Amendment to REA, Lessor, in its capacity as the Party for the "Sears Tract" (as defined in the REA), (a) shall not amend or terminate (or agree to any amendment or termination of the REA) or grant any approval or consent under the REA, without first obtaining the approval of Lessee, which approval may be withheld in Lessee's sole business judgment, and (b) shall permit and designate Lessee, as a "Permittee" (as defined in the REA) of Lessor under the REA, to use any and all easements and licenses granted to a Party, and use and enjoy the benefits of any other applicable provisions benefitting a Permittee, under the REA.

25.3 Lease Termination. In addition to the rights of Lessee set forth in Sections 21.9 and 22.3, Lessee shall have the right to terminate this Lease upon ninety (90) days written notice to Lessor given within one hundred eighty (180) days after the REA shall expire or terminate as to the Costco Tract (as such term is defined in the REA), provided that if Lessee, after the termination of the REA, thereafter shall exercise an option to extend the Term of this Lease, then the right to terminate this Lease contained in this Article XXV shall be of no further force and effect.

ARTICLE XXVI

INTENTIONALLY OMITTED

ARTICLE XXVII

INDEMNIFICATION BY LESSEE

Lessee agrees to indemnify, defend and save harmless Lessor against and from any and all claims by or on behalf of any Person arising from conduct or management of or from any work or thing done in the Demised Premises and will further indemnify, defend and save Lessor harmless against and from any and all claims by or on behalf of any Person arising during the Term of this Lease from any condition of any Improvements located thereon, or arising from any breach or default on the part of Lessee in the performance of any covenant or agreement on the part of Lessee to be performed pursuant to the terms of this Lease, or arising from any act of negligence of Lessee, or any of its agents, contractors, servants, employees, sublessees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the Term of this Lease, on the Demised Premises, and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in or about any such claim, action or proceeding brought thereon, except to the extent any of the same shall result from the negligence or intentional wrongdoing of servants or employees.

ARTICLE XXVIII

MISCELLANEOUS

28.1 Successors and Assigns. Each of the terms, covenants and conditions of this Lease shall extend to and be binding on and inure to the benefit of not only Lessor and Lessee, but each of their respective successors, legal representatives and assigns. Whenever in this Lease reference is made to either Lessor or Lessee, the reference shall be deemed to include, wherever applicable, the successors, legal representatives and assigns, of such parties with the same force and effect as if in every case expressed.

28.2 Language. The words “Lessor” and “Lessee” wherever used herein shall be applicable to one or more persons as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one, the obligations hereof shall be joint and several. The word “person” wherever used shall include individuals, firms, partnerships, associations and corporations. The language in all parts of this Lease shall be in all cases construed as a whole and according to its fair meaning and not strictly for or against Lessor or Lessee.

28.3 Short Form Lease. The parties agree to execute and record a short form lease substantially in the form attached to this Lease as Exhibit E at any time on or after the Effective Date.

28.4 Force Majeure. Each party shall be excused from performing any obligation or undertaking provided in this Lease, except any obligation to pay any sums of money under applicable provisions hereof unless such payment is for an obligation or undertaking excused, delayed or extended by the provisions of this Section 28.4, in the event but only so long as the performance of any such obligation or undertaking 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 labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, any declared, actual, or threatened public emergency, including, without limitation, any public health emergency, epidemic, pandemic, infectious disease outbreaks or health and safety circumstances that require individual isolation, quarantine or quarantine-like restrictions, or other methods of social distancing, or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of such party (other than the lack or inability to procure monies to fulfill its commitments and obligations or undertakings provided in this Lease).

Notwithstanding any specific references in certain other provisions of this Lease to this Section 28.4, the absence of such specific reference in any other provisions of this Lease shall not be deemed to diminish the general applicability of this Section 28.4.

28.5 Correction of Legal Description of Demised Premises. It is recognized that by reason of construction errors, the Improvements located on the Demised Premises may not be precisely constructed within the Demised Premises as described in Exhibit A hereof. In the event the Improvements of Lessee have not been precisely constructed within the Demised Premises, Lessor and Lessee will join in the execution of an agreement, in recordable form, amending Exhibit A to this Lease, so as to revise the description of the Demised Premises to include any portion of the Improvements encroaching upon other land owned by Lessee, provided that if there is an encroachment onto a tract of land owned by Lessor and leased to a third party, Lessor shall arrange with such third party to join in said agreement amending Exhibit A. Nothing herein contained shall be deemed to relieve or excuse Lessee from exercising all due diligence to construct its Improvements within its Tract as described on Exhibit A hereof and as shown on Exhibit B hereof.

28.6 California Law to Govern. This Lease shall be construed and enforced in accordance with the laws of the State of California.

28.7 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

28.8 Invalidity. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

28.9 No Agency. It is understood and agreed that nothing contained in this Lease nor in any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee.

28.10 Effect of Lessor's Conveyance. If during the term of this Lease, Lessor shall sell its interest in the Demised Premises, then from and after the effective date of such sale, Lessor shall be released and discharged from any and all obligations and responsibilities under this Lease except those already accrued, provided that Lessor's successor shall have delivered to Lessee a written instrument expressly assuming the obligations of Lessor hereunder for the benefit of Lessee.

28.11 Waste. Lessee shall not commit, or cause to be committed, any waste or nuisance upon the Demised Premises.

ARTICLE XXIX

LOOP ROAD PARCEL

Lessor shall convey to Developer under the Developer Lease (as defined in the REA) a perpetual non-exclusive easement for a vehicular roadway over, on and across a portion of the Developer Tract shown on Exhibit B as "Loop Road Parcel".

It is hereby agreed between Lessor and Lessee that so long as this Lease is in full force and effect, Lessee, its customers, employees, business visitors and invitees shall have access to and from the Demised Premises and the Loop Road Parcel including access points shown on Exhibit B as well as the use of the Loop Road Parcel for motor vehicle traffic from Via Rancho Parkway south of the Shopping Center Site to the new access road to Interstate 15 north of the Shopping Center Site.

Lessee's access and use rights described in this Article XXIX shall become perpetual and non-exclusive upon Lessee's exercise of the first right of refusal pursuant to and in accordance with Article XXIV and the grant of such perpetual and non-exclusive access and use rights shall be incorporated in the grant deed given by Lessor to Lessee under Article XXIV.

ARTICLE XXX

PROFIT SHARE ON SALE OF LEASEHOLD INTEREST

If Lessee shall sell or assign the entirety of its interest in this Lease to a third party, and provided that the assignment is not a Permitted Transfer (as hereinafter defined), then upon the closing of such assignment, Lessee shall pay to Lessor one and a quarter percent (1.25%) of the assignment price for the assignment of such leasehold interest (the "Profit Share"). Notwithstanding the foregoing, in no event shall Lessee be required to pay to Lessor a Profit Share in connection with (a) an assignment less than the entirety of Lessee's leasehold interest, (b) an assignment to an affiliate or related party of Lessee, (c) an assignment in connection with the sale of all or substantially all of Lessee's assets or equity, or (d) an assignment in connection with a portfolio sale, merger, consolidation, acquisition or other similar transaction, including, without limitation, a "going private" transaction (each, a "Permitted Transfer").

ARTICLE XXXI

LEAK DETECTION AND SURRENDER OBLIGATIONS FOR THE FUEL FACILITY

Upon the surrender of the Demised Premises to Lessor and provided Lessee has constructed a Fuel Facility, Lessee shall remove all fuel tanks, product piping, fuel dispensers and other equipment, and shall backfill any areas from which the fuel tanks were removed, and may (but shall not be obligated to) remove the canopy, columns, kiosk or curbing in the Fuel Facility. Such work shall be performed by a licensed contractor experienced in engagements of this type and in accordance with all government and permitting agency laws, regulations, orders and requirements. If at any time during the Lease Term, or successive optional extensions of the Lease Term, there is evidence that the Fuel Facility tanks and related appurtenances are experiencing any leakage, then Lessee shall notify Lessor as provided herein and engage in any required testing and/or remediation necessary to comply with applicable laws and to obtain the "closure approvals" referenced below. Any such remediation work shall be performed in accordance with sound engineering practices and the requirements of applicable laws. Lessee shall diligently pursue and obtain any applicable "closure" approvals required by the applicable government agencies in connection with such tank removal and the completion of any applicable remediation work. The obligations under this Article XXXI shall survive the expiration or sooner termination of this Lease.

[Remainder of Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day, month and year first above written.

CITY OF ESCONDIDO

By:____

By:____

"LESSOR"

COSTCO WHOLESALE CORPORATION

By:____

By:____

"LESSEE"

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1 OF ESCONDIDO MAP NO. 85-08, in the City of Escondido, County of San Diego, State of California, according to Parcel Map No. 14270, filed in the Office of the County Recorder of San Diego County, May 1, 1986.

EXHIBIT B

PLOT PLAN OF SHOPPING CENTER

[TO BE ATTACHED]

EXHIBIT C

PERMITTED TITLE EXCEPTIONS

(attached behind)

EXHIBIT D

FORM OF LESSEE'S ESTOPPEL CERTIFICATE

The City of Escondido
201 N. Broadway
Escondido, California 92025

Re: North County Fair
Escondido, California

Costco Wholesale Corporation, a Washington corporation ("Lessee") is the Lessee under that certain Ground Lease dated ______________ 2025 (the "Lease"), by and between the City of Escondido, California ("Lessor") and Lessee. Lessee hereby states that, to the best of its knowledge, as of the date of this Estoppel Certificate:

(i) There is no default under the Lease nor has any notice of default been delivered by Lessee to Lessor;

(ii) There has not been any assignment, modification or amendment of the Lease (except by _________________________);

(iii) The Lease is in full force and effect; and

(iv) No Fixed Rent or other charges payable by Lessee to Lessor under the Lease have been paid in advance.

This statement shall act as a waiver of any claim to the extent such claim is based on facts contrary to those asserted in this statement and to the extent said claim is asserted against a bona fide encumbrancer or purchaser for value, without knowledge of facts contrary to those contained in this statement. This statement shall in no event subject the undersigned to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of the undersigned to disclose correct and/or relevant information.

Dated: ________________________

Costco Wholesale Corporation,
a Washington corporation

By:_______________________________

EXHIBIT E

FORM OF SHORT FORM LEASE

Recording Requested by and when Recorded Return to: Costco Wholesale Corporation 999 Lake Drive Issaquah, WA 98027-5367 Attention: Rick Jerabek	THE UNDERSIGNED PARTIES DECLARE: DOCUMENTARY TRANSFER TAX is: $ __________________. Computed on full value of property leased City of Escondido

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this “Memorandum”) is made this ____ day of ____________, 2025 by and between THE CITY OF ESCONDIDO (“Lessor”), and COSTCO WHOLESALE CORPORATION, a Washington corporation (“Lessee”), with reference to the following:

1. Lease. Lessor and Lessee have executed that certain Lease, dated as of ____________ __, 2025 (the “Lease”), which provides for the lease by Lessor to Lessee of that certain real property located in the City of Escondido, County of San Diego, State of California, which real property (the “Premises”) is more particularly described on Exhibit A attached hereto and made a part hereof. As such, Lessor hereby leases the Premises to Lessee.

2. Term. The term of the Lease continues as of the date of the Lease Amendment and, except as provided below, shall expire at midnight of the day twenty (20) years after the Effective Date (as such term is defined in the Lease).

3. Extension Options. Under the terms of the Lease, Lessor has granted to Lessee seven (7) successive options to extend the term of the lease, each for an additional five (5) year period, upon the same terms and conditions as those applicable to the primary term of the Lease.

4. Mortgage / Deed of Trust. Pursuant to Article XI of the Lease, Lessor has agreed to join in the execution of any mortgage or deed of trust which Lessee may cause to be recorded against the Premises and the improvements located thereon, subject to the satisfaction of certain conditions set forth in the Lease with respect to such mortgage or deed of trust.

5. Right of First Refusal. Pursuant to Article XXIV of the Lease, Lessor has granted to Lessee a right of first refusal to purchase all or any portion of Lessor’s fee interest in the Premises.

6. REA. Pursuant to Article XXV of the Lease, Lessor has (i) agreed not to take certain actions under the REA (as defined in the Lease) without Lessee’s consent and (ii) permitted and designated Lessee, as its Permittee (as defined in the REA), to use any and all easements and

licenses granted to a Party, and use and enjoy the benefits of any other applicable provisions benefitting a Permittee, under the REA, all as more particularly set forth in the Lease.

7. <u>Miscellaneous Provisions.</u>

(a) If any provision of this Memorandum or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, then the remainder of this Memorandum, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Memorandum; and each provision of this Memorandum shall be valid and enforceable to the fullest extent permitted by law.

(b) This Memorandum shall be construed in accordance with the laws of the State of California.

(c) This Memorandum shall be binding upon and inure to the benefit of the successors and assigns of Lessor and Lessee.

(d) In the event action is instituted to enforce any of the provisions of this Memorandum, the prevailing party in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs.

(e) This Memorandum may be executed in more than one counterpart, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[Signature Page Immediately Follows]

All rights and obligations of Lessor and Lessee hereunder are governed by the terms, covenants, conditions, limitations and restrictions contained in the Lease.

ATTEST:
OFFICE OF THE CITY ATTORNEY

____

"LESSOR":
THE CITY OF ESCONDIDO

By: ______________________________
Name: ______________________________
Title: ______________________________

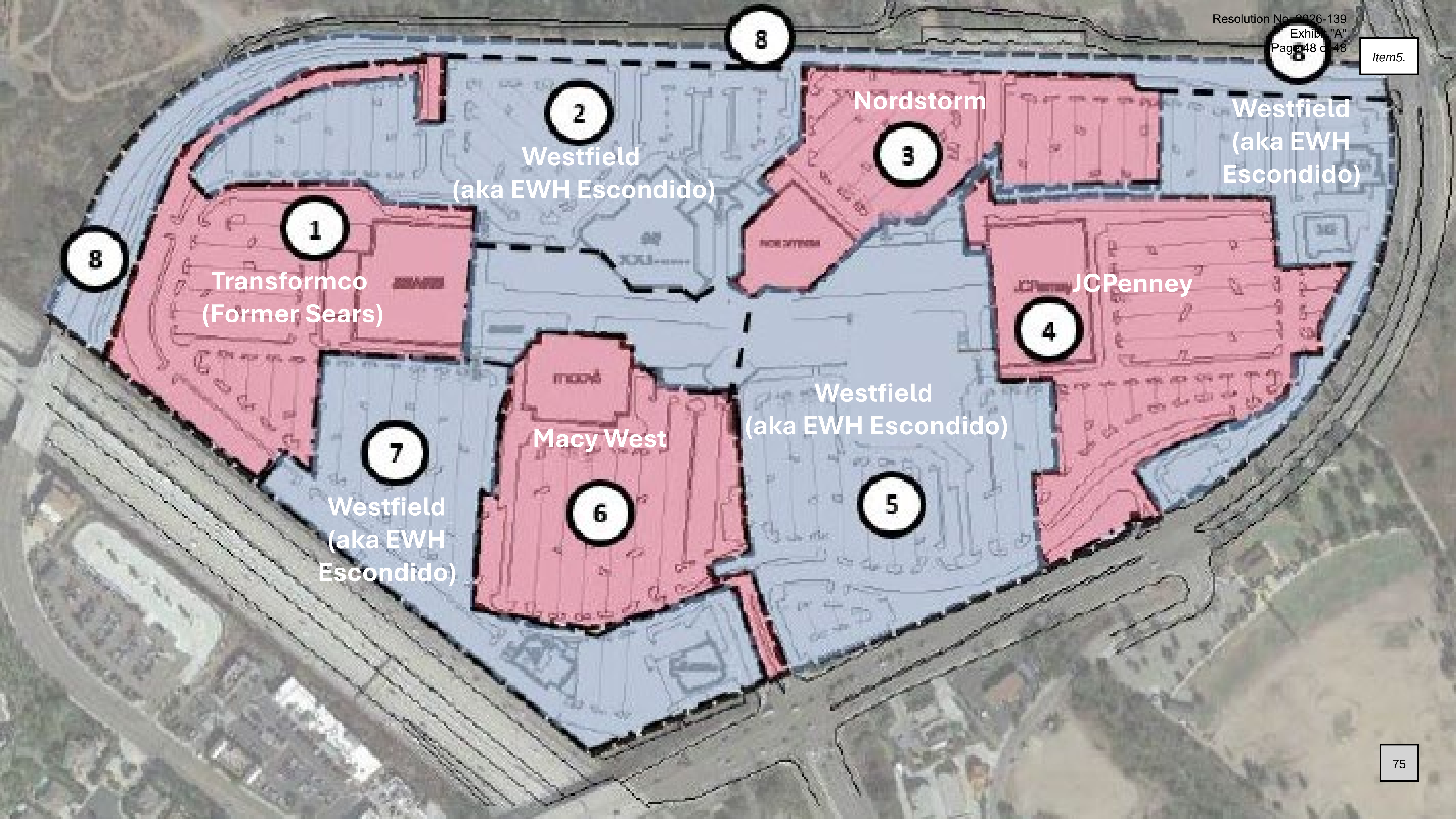
"LESSEE":

COSTCO WHOLESALE CORPORATION,
a Washington corporation

By: ______________________________
Name: ______________________________
Title: ______________________________

Exhibit A

Legal Description of the Premises


8
2
Westfield
(aka EWH Escondido)
Nordstorm
3
Westfield
(aka EWH
Escondido)
8
1
8
Transformco
(Former Sears)
JCPenney
4
Westfield
(aka EWH Escondido)
Macy West
7
6
5
Westfield
(aka EWH
Escondido)

STAFF REPORT

August 12, 2026
File Number 0680-20

SUBJECT

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND LOVE ESCO, INC. TO EXPLORE A POTENTIAL FUTURE DONATION OF DESIGN SERVICES, CONSTRUCTION SERVICES, AND MATERIAL FOR CITY PARK FACILITIES AT "HERITAGE GARDEN" POCKET PARK IN DOWNTOWN ESCONDIDO

DEPARTMENT

City Manager's Office

RECOMMENDATION

Request the City Council adopt Resolution No. 2026-77 approving a Memorandum of Understanding ("MOU") with Love Esco, Inc. ("Love Esco") a registered 501(c)(3) non-profit organization, to explore a potential future donation of design services, construction services, and materials for City park facilities on City owned property (APN #'s 229-432-24, -25, and -26) at the corner of East Grand Avenue and North Juniper Street in downtown Escondido ("Heritage Garden").

Staff Recommendation: Approval (City Manager's Office: Christopher McKinney, Deputy City Manager)

Presenter: Christopher McKinney, Deputy City Manager

ESSENTIAL SERVICE – Yes, Public Works/Infrastructure; Maintenance of Parks facilities/Open Spaces

COUNCIL PRIORITY –Drive Community and Land Development

FISCAL ANALYSIS

Love Esco obtained preliminary cost estimates of $1.2 million dollars for all costs of certain improvements it has proposed for Heritage Garden, including design, construction, and materials procurement. Love Esco is ready to begin fundraising, primarily through soliciting contributions from the public. The funds raised through this effort will be donated to the City of Escondido for public use. Love Esco has proposed that, at the time of the future donation, the City assume maintenance costs of the public park for a minimum period of ten years, at an estimated cost of $50,000 annually, including periodic play structure inspections and water costs. Possible additional City costs include a Phase 2 Environmental Review, if it is necessary, at a maximum estimated one-time cost of $100,000, and unknown cost for potential mitigation and/or monitoring if a Phase 2 Environmental Review is necessary.

CITY of ESCONDIDO

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If the cost of the project exceeds Love Esco's $1.2 million estimated, Love Esco plans to engage in further fundraising efforts for the additional amount.

Per the City's Donation Policy, after Love Esco has completed its fundraising efforts and is ready to begin work on the project, the City Council will consider at a future meeting formal acceptance of the donation and agreements with Love Esco for the City's maintenance responsibilities.

PREVIOUS ACTION

On February 13, 2013, the City entered into an "Adopt-a-Lot" Property Use Agreement with the Escondido Heritage Garden Project, a group formed by George W. Weir Asphalt Construction, Inc. and Grangetto's Farm and Garden Supply, to "create a community garden and public gathering space" on the City's property (APN #'s 229-432-24, -25, and -26).

On April 8, 2026, the City Council adopted Resolution No. 2026-45, adopting the City of Escondido Donation Policy.

BACKGROUND

Love Esco submitted the last version of a proposal to the City for a "Heritage Garden Pocket Park" in March 2026. That proposal is attached as Exhibit 1 of Exhibit "A" to Resolution No. 2026-77. City staff from the Public Works Department helped refine the original proposal with expertise on the selection, installation, and maintenance of playground equipment. Love Esco proposes "a privately funded, citizen-led project designed to activate a key portion of Grand Avenue with a family-friendly playground, shaded gathering areas, and a small concessionaire." Among their stated goals is increasing foot traffic on downtown's Grand Avenue, thus helping support local businesses and continue the efforts of the Escondido Heritage Garden Project to improve these parcels downtown. Through public fundraising, Love Esco proposes to donate design and construction services at no cost to the City. Love Esco would manage public outreach, receipt of funds, and use of funds raised for the park. Love Esco is requesting development of a formal partnership with the City of Escondido that clarifies roles, responsibilities, and long-term commitments, toward which approval of the MOU (Exhibit "A" to Resolution No. 2026-77), through adoption of Resolution No. 2026-77, would be a first step.

Love Esco proposes to solicit public donations to fully fund design and construction, with a fundraising target of $1.2 million. Love Esco's commitment includes all aspects of project management, including permitting, bidding, construction sequencing, and construction management. Love Esco also understands that it must comply with all applicable laws including those related to prevailing wage and environmental review. As part of the community engagement and fundraising effort, Love Esco plans to build a public information website and maintain engagement with Grand Avenue businesses and residents.

Environmental History and Proposed Oversight

The Heritage Garden site was a filling station until 1979, with the underground gasoline storage tanks removed about one year later. The San Diego County Department of Environmental Health and Quality coordinated monitoring of the site and closed the monitoring case in 2015 with no further action required. City staff believe that additional environmental study may be required for the site before further construction can be done on site.

Renderings - Playground Design and Safety/ADA Compliance (Courtesy of Coast Recreation of Fontana)

Terms of the MOU

The MOU is a nonbinding agreement to negotiate in good faith in the hope of reaching a future agreement. It contains the following terms:

1. The City and Love Esco agree to continue to engage in good-faith negotiations for a potential future agreement related to the improvement of Heritage Park.

2. Love Esco's Proposal.

    a) Love Esco proposes to solicit public donations to fully fund design and construction of the improvements contemplated in Exhibit 1 of Exhibit "A" to Resolution No. 2026-77, with a fundraising target of $1.2 million. Love Esco's commitment includes all aspects of project

CITY *of* ESCONDIDO

STAFF REPORT

management, including permitting, bidding, construction sequencing, and construction management. Love Esco understands that it must comply with all applicable laws, including those related to procurement, prevailing wage, and environmental review. As part of the community engagement and fundraising effort, Love Esco will build a public information website and maintain engagement with Grand Avenue businesses and residents.

b) Love Esco obtained preliminary cost estimates of $1.2 million dollars for all costs of the Heritage Garden project, including design, construction, and materials procurement. Love Esco is ready to begin fundraising, primarily through soliciting public contributions from the public. The benefits of funds raised through this effort will be donated to the City of Escondido for public use consistent with the City's Donation Policy.

c) The Love Esco team engaged a California-licensed Professional Geologist to evaluate site conditions. The geologist developed a Soil Management Plan ("SMP") that includes on-site monitoring during construction by a qualified geologist to screen soil during excavation. Love Esco believes the SMP is a prudent alternative to a Phase II assessment for the shallow, limited-scope construction associated with the Heritage Garden Pocket Park. Therefore, as detailed later, Love Esco is requesting that, as a condition of the City's future acceptance of the donation, the City will fund and manage any environmental studies it deems necessary beyond the SMP.

d) If the cost of the project exceeds Love Esco's $1.2 million estimated, Love Esco will engage in further fundraising efforts for the additional amount.

3. Potential City Obligations.

Love Esco, to provide confidence to donors and ensure the long-term maintenance of the donated park assets, has requested the following commitments from the City be part of the future agreement:

a) That the City agree to a ten-year commitment from the time the new park is open to the public that the Heritage Garden lot will remain an active public park;

b) That the City agree to mutually terminate the current Adopt-a-Lot agreement with George Weir and Kevin Grangetto and the City assume full responsibility for the park's ongoing maintenance;

c) That the City waive all City fees related to permitting, plan checks, engineering reviews, and construction approvals;

d) That the City pay any costs associated with further environmental study, mitigation, and/or monitoring beyond the SMP if the City determines, during the design review process, that additional work is necessary; and

e) That the City expedite processing during the permitting and review processes to maintain project momentum and donor confidence.

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If after adoption of Resolution No. 2026-77 and before formal donation acceptance, the City determines that these conditions cannot be met due to escalating costs, the City will notify Love Esco as soon as possible.

Anticipated City Permits and Approvals for the Proposed Heritage Garden Pocket Park

As Love Esco and/or its design consultants design the Heritage Garden Pocket Park, the following City permits and design approval will be required before various stages of construction can begin:

- Staff Level Design Review (primarily focused on site landscaping)
- CEQA – Class 32 Infill Categorical Exemption document
- Building/Fire Permits for new structures
- Grading Permit
- Engineering Approval (stormwater, water, sewer)
- Public Improvements Permit (for any work done in the public right-of-way such as a water line installation)
- Encroachment Permit (for use of public right-of-way during construction)

If adopted, the MOU commits the City to expedite, to the extent possible, the review processes needed to issue the permits and grant the approvals listed above.

Summary

Adoption of Resolution No. 2026-77 will not formally accept any donation or commit to any future maintenance costs but will indicate the City's support for the proposed concept so that Love Esco can confidently begin fundraising efforts.

RESOLUTIONS

a. Resolution No. 2026-77
b. Resolution No. 2026-77—Exhibit "A"— Proposed Memorandum of Understanding (including Exhibit 1)

RESOLUTION NO. 2026-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH LOVE ESCO, INC. TO EXPLORE A POTENTIAL DONATION FOR CITY PARK FACILITIES AT "HERITAGE GARDEN" POCKET PARK IN ESCONDIDO

WHEREAS, in 2013 the City entered into an "Adopt-a-Lot" Property Use Agreement with the Escondido Heritage Garden Project to create a community garden and public gathering space on the City's property at the corner of East Grand Avenue and North Juniper Street (APN #'s 229-432-24, -25, and -26), now known as "Heritage Garden"; and

WHEREAS, Love Esco is a registered 501(c)(3) non-profit corporation that has expressed its desire to raise funds to assist the City in improving the facilities at Heritage Garden Park; and

WHEREAS, Love Esco obtained preliminary cost estimates of $1.2 million dollars for all costs of the improvements they would like to see at the park; and

WHEREAS, Love Esco has advised the City that it is ready to begin fundraising, primarily through soliciting public contributions from the public; and

WHERAS, Love Esco has expressed its desire to donate to the City at a future date, design services, construction services, and materials funded by this fundraising effort, in a manner consistent with all applicable laws; and

WHEREAS, the City anticipates that after Love Esco has completed its fundraising efforts, the group would bring the donation proposal to the City Council at a future meeting where the City Council would consider, in accordance with the City's Donation Policy, formal acceptance of the donation and any accompanying agreements with Love Esco.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. That the Mayor is authorized to execute, on behalf of the City, the Memorandum of Understanding with Love Esco, which is attached hereto and incorporated into this Resolution as Exhibit "A," and subject to final approval as to form by the City Attorney.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into between the City of Escondido, a California municipal corporation ("City"), and Love Esco, Inc. ("Love Esco"), a California nonprofit public benefit corporation, for the mutual benefit of the Parties. The City and Love Esco may each be referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. In 2013 the City entered into an "Adopt-a-Lot" Property Use Agreement with the Escondido Heritage Garden Project to create a community garden and public gathering space on the City's property at the corner of East Grand Avenue and North Juniper Street (APN #'s 229-432-24, -25, and -26), now known as "Heritage Garden."

B. Love Esco is a registered 501(c)(3) non-profit corporation that has shared with the City a conceptual proposal for future donation of design services, construction services, and materials directly or through affiliate a copy of which is attached hereto as Exhibit 1. Love Esco is advocating for a privately funded, citizen-led project designed to activate a key portion of Grand Avenue with a family-friendly playground, shaded gathering areas, and a small concessionaire. One of their goals is increasing foot traffic on downtown's Grand Avenue, thus helping support local businesses and continuing the efforts of the Escondido Heritage Garden Project to improve these parcels downtown.

C. City staff from the Public Works Department has worked with Love Esco to provide input on the selection, installation, and maintenance of potential playground equipment.

D. Through public fundraising, Love Esco proposes to donate design and construction services at no cost to the City. Love Esco proposes to manage public outreach, receipt of funds, and use of funds raised for the park.

E. The Heritage Garden site was a filling station until 1979, with the underground gasoline storage tanks removed about one year later. The San Diego County Department of Environmental Health and Quality coordinated monitoring of the site and closed the monitoring case in 2015 with no further action required. City staff believe that additional environmental study may be required for the site before further construction can be done on site.

F. This MOU is conditioned on compliance with the California Environmental Quality Act (CEQA); it represents a preliminary expression of cooperation; and is not an approval of any proposed project by the City..

G. This MOU is further conditioned on compliance with all relevant laws including those related to procurement, prevailing wage, and expenditures of funds.

H. On April 8, 2026, the City Council adopted Resolution No. 2026-45, adopting the City of Escondido Donation Policy. Any future action related to the donation contemplated herein will comply with the City's Donation Policy.

TERMS AND CONDITIONS

With the above Recitals in place, the Parties agree to the following:

1. The City and Love Esco agree to continue to engage in good-faith negotiations for a potential future agreement related to the improvement of Heritage Park.

2. Love Esco's Proposal.

a) Love Esco proposes to solicit public donations to fully fund design and construction of the improvements contemplated in Exhibit 1, with a fundraising target of $1.2 million. Love Esco's commitment includes all aspects of project management, including permitting, bidding, construction sequencing, and construction management. Love Esco understands that it must comply with all applicable laws, including those related to procurement, prevailing wage and environmental review. As part of the community engagement and fundraising effort, Love Esco will build a public information website and maintain engagement with Grand Avenue businesses and residents.

b) Love Esco obtained preliminary cost estimates of $1.2 million dollars for all costs of the Heritage Garden project, including design, construction, and materials procurement. Love Esco is ready to begin fundraising, primarily through soliciting public contributions from the public. The benefits of funds raised through this effort will be donated to the City of Escondido for public use consistent with the City's Donation Policy.

c) The Love Esco team engaged a California-licensed Professional Geologist to evaluate site conditions. The geologist developed a Soil Management Plan ("SMP") that includes on-site monitoring during construction by a qualified geologist to screen soil during excavation. Love Esco believes the SMP is a prudent alternative to a Phase II assessment for the shallow, limited-scope construction associated with the Heritage Garden Pocket Park. Therefore, as detailed later, Love Esco is requesting that, as a condition of the City's future acceptance of the donation, the City will fund and manage any environmental studies it deems necessary beyond the SMP.

d) If the cost of the project exceeds Love Esco's \$1.2 million estimated, Love Esco will engage in further fundraising efforts for the additional amount.

3. <u>Potential City Obligations</u>.

Love Esco, to provide confidence to donors and ensure the long-term maintenance of the donated park assets, has requested the following commitments from the City be part of the future agreement:

a) That the City commit that, from the time the new park is open to the public, the Heritage Garden lot will remain an active public park for a minimum of ten years and up to a maximum of twenty-five years, with a commitment of more than ten years being necessary to secure grant funding for the park;
b) That the City agree to mutually terminate the current Adopt-a-Lot agreement with George Weir and Kevin Grangetto and the City assume full responsibility for the park's ongoing maintenance;
c) That the City waive all City fees related to permitting, plan checks, engineering reviews, and construction approvals;
d) That the City pay any costs associated with further environmental study, mitigation, and/or monitoring beyond the SMP if the City determines, during the design review process, that additional work is necessary; and
e) That the City expedite processing during the permitting and review processes to maintain project momentum and donor confidence.
f) That the City cooperate with Love Esco on any available grants for the projects, and assist with applications for such grants where needed, including supporting any grant applications by affirming, to the extent the City is able to, Love Esco's right to apply for grants for property owned by the City, and affirming the "site control" needed for these applications.

4. Further Agreements: The Parties agree to negotiate in good faith in the hope of reaching a future agreement. If before formal donation acceptance, the City determines that these conditions cannot be met due to escalating costs, the City will notify Love Esco as soon as possible. The City does not have the ability to make any guarantee of ultimate approval of any development application for the Project.

5. Further Assurances: The City agrees to provide staff support to pursue a potential future agreement such that negotiations move forward expeditiously.

6. Entitlement: Love Esco and the City will comply with all applicable City processes for entitlement of the Improvements including all required environmental reviews and any required permit processes.

7. CEQA: This MOU is conditioned on compliance with CEQA and the State CEQA Guidelines. The Parties acknowledge that this MOU does not bind any Party, or commit any Party, to any definite course of action, prior to CEQA compliance. Further, nothing in this MOU restricts the City from considering, if applicable, any feasible mitigation measures or alternatives associated with any proposed future agreement, including a “no project” alternative.

8. Non-Approval: This MOU is a preliminary expression of cooperation and intent and not an approval of any proposed improvement, agreement, or development application by the City or Love Esco.

9. Termination: The Parties can cancel the MOU and its terms and conditions at any time. The Parties’ stated intent is that the MOU is a preliminary non-binding understanding that is not intended to be “enforced” against either Party. Nonetheless, the Parties mutually agree that their representative signing below have the authority to enter into this MOU.

This MOU is effective on the date signed below.

Dated: ________________ CITY OF ESCONDIDO

____
Dane White, Mayor

Dated: ________________ LOVE ESCO, INC.

____

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, CITY ATTORNEY

BY: __________________________

Attachments:

Exhibit A: Love Esco's Improvement Proposal

Exhibit 1

Heritage Garden Pocket Park

Building a Beautiful Destination for Work & Play on Grand Avenue

Overview

The Heritage Garden Pocket Park is a privately funded, citizen-led project designed to activate a key portion of Grand Avenue with a family-friendly playground, shaded gathering areas, and a small concessionaire. The project will increase foot traffic, support local businesses, improve public safety, and revitalize a highly visible downtown parcel at no cost to the City for design or construction.

To provide donor confidence and administrative accountability, the Initiative Team has engaged **LoveEsco** to manage public outreach and the receipt and use of all funds raised for the park.

To advance the project, we are requesting a **formal partnership with the City of Escondido** that clarifies roles, responsibilities, and long-term commitments. This summary outlines the proposed structure for that partnership.

Objective

To drive business growth and foot traffic on Grand Avenue by transforming the Heritage Garden lot into a vibrant, family-friendly pocket park and outdoor meeting venue—fully designed and built through a **citizen-led, privately funded initiative**.

Key Results

The park's success will be measured by obtaining these results:

1. **Boost revenue for nearby Grand Avenue businesses** by creating a destination that invites remote residents and visitors to linger, explore, and spend at Grand Avenue restaurants and shops.

2. **Attract consistent foot traffic from nearby residential communities**—including Marlowe, Old Escondido, Creekside neighborhood, and 3 senior communities—by offering a welcoming, family-oriented playground and senior-accessible patio and concessionaire.
3. **Establish a comfortable outdoor gathering space** that encourages both professional meetings and casual personal meetups.
4. **Generate sustainable revenue to offset ongoing park maintenance** through a concession stand operated in a repurposed gazebo.
5. **Improve Grand Avenue's safety and image** by creating a well-lit, active space that discourages loitering and use by the unhoused. This will respond to concerns outlined in the CEDS and curb the negative family outlook on the downtown identified in the February 2024 focus group.

Initiative Leadership

- **George and Cynthia Weir -** Current co-tenants and patrons since 2012 of the existing Heritage Garden project under the City's Adopt-a-Lot program. George is a LoveEsco board member, organizer of the Measure I ballot initiative, and is soliciting donor support for the park.
- **LoveEsco / Steve Nelson -** Recent LoveEsco board member, local attorney and real estate broker, and original author of the current Heritage Garden Adopt-a-Lot agreement. As a local non-profit, LoveEsco is putting support behind the project to increase fundraising visibility, to provide accountability in the use of the funds collected from interested donors, and directing those funds toward the design and construction of the park.
- **Mark Skovorodko -** Principal of Westpine Design Studio and organizer of the Measure I ballot initiative. Mark is the designer and project manager for the park improvements.
- **Dustin Steeve -** Escondido Planning Commissioner, Chair of the Commission's Grand Avenue Revitalization Sub-Committee, and principal at the Escondido-based business growth agency Inaltum. Dustin is facilitating collaboration with City staff and leadership to ensure all applications are well-prepared, strategically aligned, and streamlined for efficient processing.

Park Renderings

Playground Design and Safety/ADA Compliance by Coast Recreation of Fontana, CA

Initiative Team Commitments

The Initiative Team commits to:

- **Fully Funding Construction**: Funding soft and hard costs for park design and construction, with private fundraising targeted up to $1.2 million based on public contributions.
- **Prevailing Wage Compliance**: Paying all contracted labor at California prevailing wage standards.
- **Environmental Compliance**: Funding and implementing the Soil Management Plan (SMP) prepared by licensed geologist Danny Oliver to safely manage soils during construction.
- **Project Management**: Overseeing design, permitting preparation, contractor selection, construction sequencing, and delivery.
- **Community Engagement**: Building a public information website and maintaining engagement with Grand Avenue businesses, residents, and nearby neighborhoods.

These commitments eliminate the need for City financial resources in the design and construction phases and minimize demands on City staff.

Requests of the City

To ensure donor confidence and long-term success, we respectfully request the following:

- **10-Year Park Commitment**
  A City commitment that the Heritage Garden lot will remain an active public park for **at least 10 years**, giving donors certainty that their investment will have lasting value.
- **Ownership & Maintenance**
  Upon completion, the current Adopt-a-Lot signatories (George Weir and Kevin Grangetto) will transfer the lot to the City, and the **City will assume full responsibility for the park's ongoing maintenance**.
- **Fee Waivers**
  Waiver of all City-issued fees related to permitting, plan checks, engineering reviews, and construction approvals.
- **Environmental Costs Beyond the SMP**
  Should the City determine that additional environmental investigation or remediation is necessary beyond the SMP, we request that **the City fund all additional environmental work**, including Phase II studies, mitigation, or monitoring.
- **Expedited Processing**
  A request that City Management seek Council approval to **expedite all permitting and review processes** to maintain project momentum and donor confidence.

Environmental History

Background

The Heritage Garden site formerly operated as a gas station from 1959–1979. The underground storage tanks were removed in approximately 1980, and the site underwent extensive investigation and monitoring by Tesoro Refining & Marketing in coordination with the San Diego County Department of Environmental Health and Quality (DEHQ). After nearly two decades of monitoring, the County closed the case in 2015 with **No Further Action Required**.

Despite this closure, the City expressed a need for additional environmental assurance. In response, the Initiative Team engaged **Danny Oliver**, a California-licensed Professional Geologist with 35+ years of experience, to evaluate current site needs and propose an appropriate level of environmental oversight.

The Soil Management Plan

Danny Oliver's **Soil Management Plan (SMP)** provides a clear, practical, and industry-standard method for safely handling any soils encountered during construction activities—especially shallow excavation associated with playground installation.

Key Components of the SMP

- **On-Site Monitoring:** A qualified geologist will be present to visually and instrumentally screen soils as they are excavated.
- **PID Screening:** All exposed soils will be tested using a calibrated photoionization detector (PID) to identify vapor emissions consistent with gasoline VOCs.
- **Segregation Protocol:** Any soil showing discoloration, odor, or elevated PID readings will be isolated in separate stockpiles.
- **Disposal/Assessment:** If suspect soil is encountered, it will be transported to an approved disposal facility or evaluated further as needed.
- **Professional Oversight:** All SMP activities are conducted under the supervision of a licensed Professional Geologist (PG 4781).

This is a standard and widely accepted approach used across California for construction on former fuel sites that have already been remediated and officially closed by regulatory agencies.

Why the SMP Is a Safe and Appropriate Alternative to a Phase II

1. Regulatory Confidence Already Exists

The County and the Regional Water Quality Control Board already reviewed groundwater and soil conditions for nearly 20 years and closed the case in 2015. There is **no existing regulatory mandate** for a Phase II.

2. Construction Is Shallow and Low-Impact

The planned park improvements involve **limited earth disturbance**—mostly shallow excavation for playground equipment and irrigation. The SMP is precisely tailored for this type of work.

3. Risk Is Contained and Manageable

The SMP actively manages soil risks **during** construction rather than assuming conditions ahead of time. This provides real-time safety and compliance, not theoretical forecasting.

4. Professional Geological Oversight

A licensed geologist is present during excavation, ensuring immediate identification, segregation, and proper handling of any suspect soils.

5. Cost-Effective Without Compromising Safety

A Phase II study would add cost and delay without producing materially different outcomes for shallow construction activities. The SMP achieves safety objectives at a fraction of the cost and within the necessary timeline.

6. Public and City Protection

The SMP ensures the City can confidently explain to the public and to Council that:

- The site was previously investigated and closed by regulatory authorities
- Professional oversight will occur during construction
- Any unexpected issues will be handled safely and transparently

This provides the City with clear, defensible protection from environmental liability while avoiding unnecessary expenditures.

Conclusion

The Soil Management Plan offers a responsible, safe, and professionally supervised approach that meets the needs of the City, protects public health, and ensures the project can proceed efficiently. It is a prudent alternative to a Phase II assessment for the shallow, limited-scope construction associated with the Heritage Garden Pocket Park.

Why This Partnership Works

This partnership structure provides:

- A fully built, high-impact public asset requiring little to no City capital investment in construction
- Compliance with prevailing wage and environmental safety standards
- A predictable and minimal administrative burden for City staff
- A long-term commitment that respects both donor intent and community benefit
- Rapid activation of a previously underutilized downtown parcel

We believe this partnership offers a model for efficient, community-driven downtown revitalization and represents a highly favorable opportunity for the City of Escondido.

August 12, 2026

Item No. 7: WORKSHOP - ESCONDIDO 2040 - GENERAL PLAN UPDATE

- **No materials available. Presentation and Council discussion only.**

KEY-
CONSENT CALENDAR CURRENT BUSINESS
PUBLIC HEARING WORKSHOP PROCLAMATION

CITY of ESCONDIDO

FUTURE AGENDA

8/19/2026 - NO MEETING