



CITY of ESCONDIDO

SPECIAL COUNCIL MEETING AGENDA

MONDAY, JUNE 27, 2022

4:00 PM – Special Meeting

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

Paul McNamara

DEPUTY MAYOR

Tina Inscoe (District 2)

COUNCILMEMBERS

Consuelo Martinez (District 1)

Joe Garcia (District 3)

Michael Morasco (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



201 N. Broadway

On TV



Cox Cable Channel 19 and U-verse Channel 99

Online



www.escondido.org



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MONDAY, JUNE 27, 2022

HOW TO PARTICIPATE

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

In Person



Fill out Speaker Slip and Submit to City Clerk

In Writing



<https://escondido-ca.municodemeetings.com>

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 the city to make reasonable arrangements to ensure accessibility. Listening devices are available for the hearing impaired – please see the City Clerk.





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COUNCIL MEETING AGENDA

MONDAY, JUNE 27, 2022

SPECIAL MEETING

4:00 PM Special Meeting

MOMENT OF REFLECTION

City Council agendas allow an opportunity for a moment of silence and reflection at the beginning of the evening meeting. The City does not participate in the selection of speakers for this portion of the agenda, and does not endorse or sanction any remarks made by individuals during this time. If you wish to be recognized during this portion of the agenda, please notify the City Clerk in advance.

FLAG SALUTE

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

CALL TO ORDER

Roll Call: Garcia, Inscoc, Martinez, Morasco, McNamara

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 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.)



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

MONDAY, JUNE 27, 2022

CURRENT BUSINESS

1. WESTFIELD / NORTH COUNTY SHOPPING CENTER GROUND LEASE AMENDMENTS -

Request City Council adopt Resolution No. 2022-94, authorizing the Mayor and/or Authorized Officers to execute lease amendments and related documents to (1) extend the Westfield / North County Shopping Center Ground Lease for a period of twenty-four years from the current expiration date of June 30, 2053 to June 20, 2077, and (2) authorize a lease term of twenty years with seven five-year options for Costco Wholesale Corporation ("Costco") and, declare the leasehold interests as Exempt Surplus Land pursuant to Government Code section 54221(f)(1)(G).

Staff Recommendation: Approval (City Manager's Office: Jennifer Schoeneck, Deputy Director of Economic Development)

Presenter: Christopher McKinney

a. Resolution No. 2022-94

FUTURE AGENDA

2. 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 WEEKLY ACTIVITY REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety, and Community Development. This report is also available on the City's website, www.escondido.org.

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



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MONDAY, JUNE 27, 2022

UPCOMING MEETING SCHEDULE

Wednesday, July 13, 2022 4:00 & 5:00 PM Regular Meeting, *Council Chambers*
Wednesday, July 20, 2022 4:00 & 5:00 PM 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.



STAFF REPORT

June 27, 2022
File Number 0600-10

SUBJECT

WESTFIELD / NORTH COUNTY SHOPPING CENTER GROUND LEASE AMENDMENTS

DEPARTMENT

City Manager's Office

RECOMMENDATION

Request City Council adopt Resolution No. 2022-94, authorizing the Mayor and/or Authorized Officers to execute lease amendments and related documents to (1) extend the Westfield / North County Shopping Center Ground Lease for a period of twenty-four years from the current expiration date of June 30, 2053 to June 20, 2077, and (2) authorize a lease term of twenty years with seven five-year options for Costco Wholesale Corporation ("Costco") and, declare the leasehold interests as Exempt Surplus Land pursuant to Government Code section 54221(f)(1)(G).

Staff Recommendation: Approval (City Manager's Office - Jennifer Schoeneck, Deputy Director of Economic Development)

Presenter: Christopher McKinney, Deputy City Manager and Utilities Director

FISCAL ANALYSIS

The current Lessee for most of the Westfield Property is North County Fair, LP and EWH Escondido Associates, LP (referred to throughout this Report for convenience as "Westfield") which agrees to make capital investments in the Westfield property of at least \$64,000,000 prior to the exercise of its Second Option and the Lessee, Costco, upon satisfactory application for entitlements, will be making approximately \$35,000,000 in capital investments in the existing Sears property. In addition to fixed rent payments, projected annual sales tax revenue in the first year of stabilized operation for Costco is anticipated to be approximately \$1,500,000 and the business is projected to produce 314 total jobs.

PREVIOUS ACTION

On January 11, 2012, Ordinance 2012-02 was adopted by Council, authorizing the execution of a Lease Amendment and related documents to provide an option to extend the ground lease for the Westfield North County shopping mall for an additional 15 years.

Westfield proposed a major renovation project that included the renovation and releasing of the May tract (formerly Robinsons-May South) as a new, three-story Target store; improvements to the mall common areas and entrances; resurfacing of the parking lot; new restaurants; and a remodel of the food



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court. The total value of the project, including acquisition costs of the May tract, was approximately \$56,000,000. The proposal also included an increase in the fixed and percentage rent payable to the City of Escondido ("City"). Upon successful completion of the project, Westfield requested that the City extend the Ground Lease term for an additional 15 years.

BACKGROUND

Escondido's Westfield North County shopping mall ("Westfield Property") is located on approximately 83 acres at the south end of the City. The City owns approximately 74 acres and the Macy's Tract of approximately 8 acres is under separate ownership. 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 Westfield Property 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.

The Westfield Property 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.

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 Westfield Property 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 these 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 Macy's. Federated Department Stores, which



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owns Macy's, 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 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 addition, the City arranged to trade the City-owned Broadway tract for the Federated-owned May tract. This exchange enabled Macy's to continue operating on land they own while transferring the previous Macy's tract to the City, with leasehold interests to Westfield. Westfield then sub-leased a portion of the property for the development of a Target store.

PROPOSED GROUND LEASE AMENDMENTS

The proposed series of lease amendments and related documents for this item pertain to the City-owned parcels at the Westfield Property.

Currently, the City has multiple ground leases related to the Westfield Property. The map on the following page shows approximate parcel boundaries on the Westfield Property. For reference, these parcels have been numbered 1 through 8. A brief description of these parcels follows. The City owns all parcels with the exception of Parcel 6.

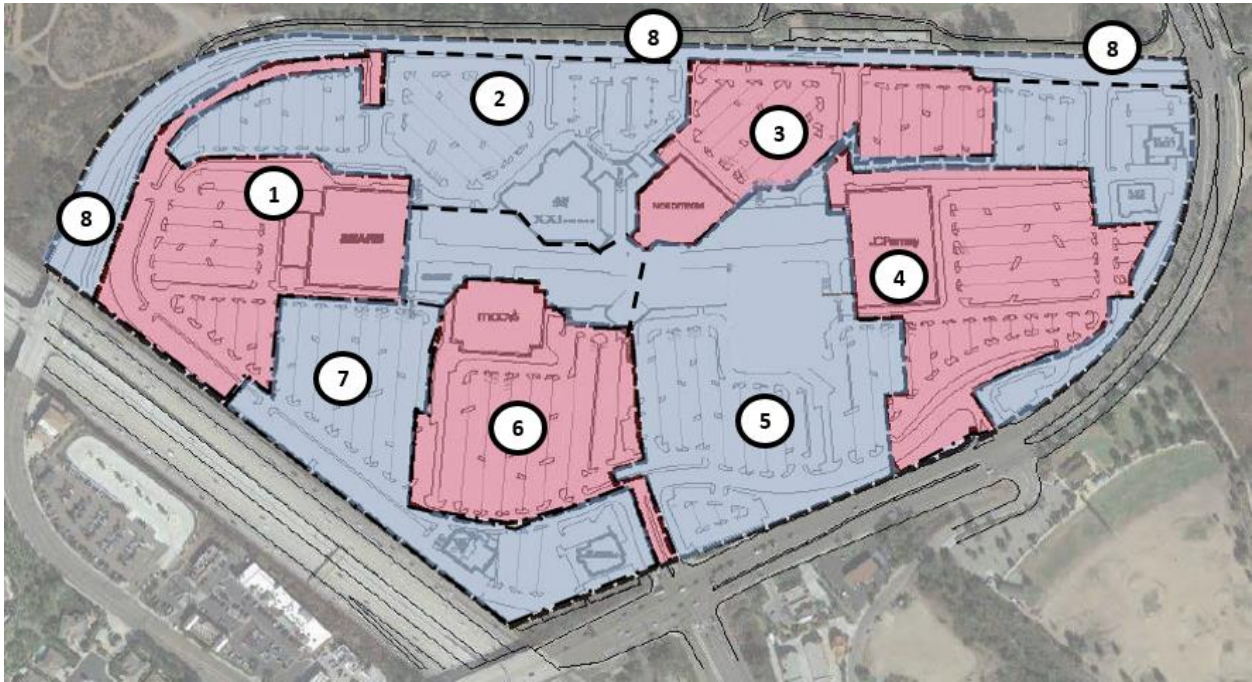
Parcel 1	– Leased to Transformco a.k.a. Sear site
Parcels 2, 5, 7, 8	– Leased to Westfield
Parcel 3	– Currently no lease
Parcel 4	– Leased to J.C. Penny
Parcel 6	– Owned by Macy's West

The leases for Parcels 1, 2, 5, 7, and 8 are all under consideration here for amendment. The details of these leases and the proposed amendments follow.



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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.

First, the City has a ground lease with Westfield dated February 2, 1981 for **Parcels 7 and 8**. The term of this lease has been amended four times over the years, the last being dated February 13, 2012. This lease currently expires on June 30, 2053.

Second, the City has a ground lease with Westfield for **Parcel 2** dated November 26, 1986, amended once on February 13, 2012.

Third, the City assumed a ground lease for **Parcel 5** between the City's predecessor-in-interest, Macy's West Store, Inc., and Developer/Lessee's predecessor-in-interest Macy's Escondido Inc. dated October 5, 2011, amended once on April 30, 2014. These first three leases are referenced collectively as the "Westfield Leases."

Finally, the City has a ground lease for **Parcel 1** with Transform Operating Stores LLC ("Transformco") as successor-in-interest to Sears, Roebuck and Co. ("Sears") 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 is referenced as the "Transformco Lease."



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Westfield holding the “Westfield Leases” has sought, and the City is obligated to grant pursuant to the lease, an option to extend the current lease terms for a period of twenty-four (24) years from the current expiration date of June 30, 2053, to June 30, 2077 (“Second Option”) given the new term for the Costco Lease discussed below. Under the proposed terms of the extension, the City has sought and Westfield has agreed to make, capital investments into the Westfield Property of at least \$64,000,000 if and when they give the City written notice to exercise the Second Option, on or before June 30, 2052.

Transformco has agreed to enter into an Assignment and Assumption Agreement with Costco. Under the terms of this agreement, Transformco will assign all of its interests under the Transformco Lease to Costco (“Costco Lease”). Costco will accept the assignment and assume the liabilities and obligations under the Transformco Lease. The proposed agreements under consideration here by the City Council include a First Amendment to the underlying Ground Lease for the benefit of Costco. The term of this First Amendment is 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 amendment. 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. The City will be entitled to 1.25% of the gross proceeds from the sale of Costco’s interest in the property, as long as that sale is at least half of Costco’s interest.

Staff recommend these lease amendments because they provide certainty to the tenant and subtenants. This certainty will encourage additional investment in the Westfield Property, 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 these leases are required under State law or the Escondido Municipal Code because the proposed term of the agreements is not to exceed 55 years. In any case, such competitive bidding would be impractical and not in the City’s interests given that the existing Westfield Leases and Transformco lease do not expire until June 30, 2053.

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. 2022-94 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.



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Staff analysis has also found that the Westfield Property, and the parcels subject to the proposed lease amendments are Exempt Surplus Land pursuant to Government Code section 54221(f)(1)(G). Proposition A, passed by Escondido voters on June 5, 1979, restricts use of the Westfield Property for “the planned development of a retail center,” thus prohibiting its use for housing.

Staff recommend adoption of Resolution 2022-94 authorizing the Mayor, subject to final negotiation and approval as to form by the City Attorney, the following documents:

- a. Exhibit “A” – Amendment No. 5 to Ground Lease (Parcels 7 and 8)
- b. Exhibit “B” – Amendment No. 2 to Ground Lease (Parcel 2)
- c. Exhibit “C” – Amendment No. 2 to Ground Lease (Parcel 5)
- d. Exhibit “D” – First Amendment to Ground Lease (Transformco/Costco)

RESOLUTION

- a. Resolution 2022-94
- b. Resolution 2022-94 Exhibit “A” Amendment No. 5 to Ground Lease (Parcels 7 and 8)
- c. Resolution 2022-94 Exhibit “B” Amendment No. 2 to Ground Lease (Parcel 2)
- d. Resolution 2022-94 Exhibit “C” Amendment No. 2 to Ground Lease (Parcel 5)
- e. Resolution 2022-94 Exhibit “D” First Amendment to Ground Lease (Transformco/Costco)

RESOLUTION NO. 2022-94

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, CERTAIN LEASE AMENDMENTS AND RELATED DOCUMENTS TO PROVIDE AN EXTENSION AND/OR OPTION TO EXTEND GROUND LEASES AT THE WESTFIELD/NORTH COUNTY SHOPPING CENTER AND DECLARING THE SUBJECT PROPERTY AS EXEMPT SURPLUS PROPERTY

WHEREAS, this Resolution is being adopted for the purpose of authorizing the Mayor, the City Manager, a Deputy City Manager and/or the Real Property Manager (“Authorized Officers”) and others as permitted by law to execute, on behalf of the City of Escondido (“City”), a series of lease amendments and related documents for the Westfield/North County Shopping Center, which is located on land owned by the City (“Westfield Property”). The City Council has considered the proposal, the staff report, and any public comment; and

WHEREAS, there currently exists (a) a ground lease between the City and North County Fair LP, a Delaware limited partnership, and EWH Escondido Associates, L.P., a Delaware limited partnership, as tenants-in-common (“Developer/Lessee”) dated February 2, 1981, for a period of 55 years and since amended four times with the last amendment by Amendment No. 4, dated February 13, 2012; (b) a ground lease between the City and Developer/Lessee dated November 26, 1986, and amended by Amendment No. 1 on February 13, 2012; (c) a ground lease between the City’s predecessor-in-interest, Macy’s West Store, Inc., and Developer/Lessee’s predecessor-in-interest Macy’s Escondido Inc. dated October 5, 2011, as amended by Amendment No. 1 dated April 30, 2014 (collectively “Westfield Leases”); and (d) a ground lease between the City and Transform Operating Stores LLC (“Transformco”) as successor-in-interest to Sears, Roebuck and Co. (“Sears”) dated November 26, 1986, by and between City

and Sears, and as amended and renewed thereafter and as affected by that certain Assignment and Assumption of Lease dated May 13, 2019 between Transformco and Sears ("Transformco Lease"); and

WHEREAS, Developer/Lessee is the current Ground Lessee on the Westfield Leases related to a portion of the Westfield Property and pursuant to the current leases has sought, and the City is obligated to grant, an option to extend the current lease terms for a period of twenty-four (24) years from the current expiration date of June 30, 2053, to June 30, 2077 ("Second Option"). In consideration therefore, Developer/Lessee has agreed that upon the written notice of its election to exercise such Second Option on or before June 30, 2052, it shall make capital investments into the Westfield Property in an amount of not less than sixty-four million dollars (\$64,000,000); and

WHEREAS, Transformco has or will enter into an Assignment and Assumption Agreement of the Transformco Lease with Costco Wholesale Corporation, a Washington corporation ("Costco"), whereby Transformco will assign all of its rights, title, interest, benefits, privileges, obligations and liabilities under the Transformco Lease to Costco and Costco has or will accept such assignment and assume the liabilities and obligations under the Transformco Lease. Thereafter or concurrent therewith, the City will execute a First Amendment to Ground Lease with Costco ("Costco Lease") for a period of twenty (20) years and Costco shall have seven (7) successive options to extend the term of that Costco Lease for additional periods of five years each, and not more than fifty-five (55) years; and

WHEREAS, the City Council hereby finds and determines that the proposed lease extensions and related agreements authorized by this Resolution, which shall be periodically reviewed to consider current market conditions, offer the greatest economic return and public benefit to the City, particularly in light of the existing state of the Westfield Property, the declination of sales tax and rent revenue generated from the Westfield Property and leases, uncertainty of Westfield Property revenues during the terms of the current leases, and the remaining lengthy terms on said Transformco and Westfield Property leases.

The City Council further finds and determines that based on all of the circumstances, including but not limited to various analyses by Keyser Marston and Associates, and community support for new opportunities at the Westfield Property, the lease extensions are also justified for the purpose of attracting the necessary capital investments required to achieve the public's best interests and promote a successful regional asset; and

WHEREAS, the City Council hereby further finds and determines that the extensions of the leasehold interests for the terms specified will provide certainty to the tenant and subtenants and enable and encourage additional investment by private parties in the Westfield Property which will produce increased rent revenues and 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 leases of City property taken by this Resolution involves only the approval of (a) a contractually-required extension of the Westfield Leases for a period of not more than fifty-five (55) years pursuant to Article II, Section 2.2, and (b) a ground lease with a new entity, 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. Even if competitive bidding were required, such actions would be futile, impractical, and not in the best interests of the City given the length of the current Westfield and Transformco leasehold rights to June 30, 2053; and

WHEREAS, the leases provided for herein require the lessees 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 shall be deemed to constitute, and does not in fact constitute, 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 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 lessees further agree 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 nonappealable order, decision or judgment confirming the issuance of relevant and required Project Approvals; and

WHEREAS, the City Council hereby further finds and determines that the Westfield Property, and the parcels subject to the lease amendments provided for herein, are Exempt Surplus Land pursuant to Government Code section 54221(f)(1)(G) and Proposition A passed by the voters on June 5, 1979 approving and requiring this entire Westfield Property to be used for "the planned development of a retail center" and thereby constituting a valid legal restriction not imposed by the City making housing prohibited.

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

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 the forms of which are attached to this Resolution as Exhibits "A" through "D", and as identified as follows:

Exhibit "A" – Amendment No. 5 to Ground Lease (Parcels 7 and 8)

Exhibit "B" – Amendment No. 2 to Ground Lease (Parcel 2)

Exhibit "C" – Amendment No. 2 to Ground Lease (Parcel 5)

Exhibit "D" – First Amendment to Ground Lease (Transformco/Costco)

3. That no actions, permissions, approvals or rights are issued or granted to Developer/Lessee or Costco for the construction of any improvements on the Demised Premises unless and until these lessees have been issued or obtained all Project Approvals as described herein and referred to in the attached Exhibits and no approvals are deemed given 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 nonappealable order, decision or judgment confirming the issuance of relevant and required Project Approvals.

AMENDMENT NO. 5 TO GROUND LEASE

(PARCELS 7 and 8)

This AMENDMENT NO. 5 TO GROUND LEASE ("**Amendment**") is made and entered into as of the ____ day of June, 2022 (the "**Effective Date**"), by and between the CITY OF ESCONDIDO, a municipal corporation ("**Lessor**"), and NORTH COUNTY FAIR LP, a Delaware limited partnership, and EWH ESCONDIDO ASSOCIATES, L.P. a Delaware limited partnership, as tenants-in-common (collectively, "**Lessee**").

R E C I T A L S :

A. This Amendment is made with respect to that certain Ground Lease dated as of February 2, 1981 between the City of Escondido, as landlord/lessor, and EWH 1979 Development Company, L.P., as tenant/lessee, relating to certain premises currently known as Westfield North County located on land described in Exhibit A hereto, a memorandum of which was recorded on July 21, 1983 as File No. 83-250262 in the Office of the Recorder of San Diego County ("**Recorder's Office**"), as amended by Amendment No. 1 to Ground Lease dated August 24, 1982, Amendment No. 2 to Ground Lease dated February 12, 1986, recorded on March 5, 1986 as File No. 86-087687 in the Recorder's Office, Amendment No. 3 to Ground Lease dated November 26, 1986, recorded on November 26, 1986 as File No. 86-549261 in the Recorder's Office, and Amendment No. 4 to Ground Lease dated February 13, 2012 (collectively and as amended from time to time, the "**Lease**"). Lessee is the current "Lessee" under the Lease. Terms not otherwise defined in this Amendment are defined in the Lease.

B. Lessor and Lessee desire to amend the Lease to grant Lessee an option to extend the Lease Term, together with such other matters as set forth herein.

A G R E E M E N T:

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Existing Term. Lessor and Lessee acknowledge and agree that the Lease Term expires on June 30, 2053.

2. Second Option to Extend Lease Term. Lessor hereby grants to Lessee the option to extend the Lease Term (the "**Second Option**") for a period of twenty-four (24) years commencing upon July 1, 2053 and ending on June 30, 2077 (the "**Second Option Term**"). Lessee may exercise the **Second Option** by giving Lessor written notice of its election to exercise such Second Option any time following the satisfaction of the condition described on Exhibit B hereto (the "**Condition**") and no later than June 30, 2052. At any time following the satisfaction of the Condition, Lessee may request from Lessor, and Lessor shall promptly provide, a written acknowledgement that the Condition has been satisfied in accordance with this Amendment. Upon Lessee's exercise of the Second Option, all references in the Lease to the "Lease Term" shall include the Second Option Term. At any time following Lessee's exercise of the Second Option, Lessor and Lessee shall, at either party's request, enter into an amendment of the Lease to evidence the exercise of the Second Option; provided, however, such amendment of the Lease is not

required to effectuate Lessee's exercise of the Second Option. The parties acknowledge that the Condition is a condition precedent to Lessee exercising the Second Option, and not an obligation of Lessee.

3. Fixed Rent During Second Option Term. The amount of Fixed Rent payable during the Second Option Term shall initially be the same amount of Fixed Rent payable immediately prior to the Second Option Term. On each Adjustment Date that occurs during the Second Option Term, the entirety of the Fixed Rent in effect immediately prior to such Adjustment Date shall increase by the lesser of (a) two and one-half percent (2.5%) or (b) the percentage increase, if any, between the Index in effect on the date that is fourteen (14) months prior to such Adjustment Date and the Index in effect on the date that is two (2) months prior to such Adjustment Date.

4. Costco at the Sears Tract. Lessee agrees to approve Costco as a new tenant at the Sears Tract, subject to Costco's compliance with the terms of the REA.

5. No Other Amendments. Except as amended hereby, all of the provisions of the Lease shall remain in full force and effect.

6. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute but one and the same instrument.

7. Memorandum. At Lessee's request, Lessor and Lessee shall execute, acknowledge and record in the Recorder's Office a memorandum of this Amendment.

8. Successors and Assigns. The provisions of this Amendment shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date first above written.

"Lessor"

CITY OF ESCONDIDO, municipal corporation

By: _____

Name: _____

Title: _____

"Lessee"

NORTH COUNTY FAIR, LP,
a Delaware limited partnership,
as tenants-in-common

By: Westfield America GP LLC,
a Delaware limited partnership,
its general partner

By: Westfield America Limited Partnership,
a Delaware limited liability company,
its sole member

By: Westfield U.S. Holdings, LLC,
a Delaware limited liability company,
its general partner

By: _____

Name: _____

Title: _____

[Signatures Continue On Next Page]

EWB ESCONDIDO ASSOCIATES, L.P.,
a Delaware limited partnership,
as tenants-in-common

By: North County Fair LP,
a Delaware limited partnership,
its general partner

By: Westfield America GP LLC,
a Delaware limited liability company,
its general partner

By: Westfield America Limited Partnership,
a Delaware limited partnership,
its sole member

By: Westfield U.S. Holdings, LLC,
a Delaware limited liability company,
its general partner

By: _____

Name: _____

Title: _____

EXHIBIT A

Legal Description of Demised Premises

PARCELS 7 AND 8 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

Description of Condition

The Condition is Lessee's making a capital investment in the Demised Premises, the Target Tract and/or the Robinson's Tract (as such terms are defined in the REA) in the aggregate amount of at least \$64,000,000 (the "**Investment**"). The Investment may consist one or more projects made at any time following the Effective Date and no later than June 30, 2052, and includes, without limitation, land acquisition costs, construction and development costs, tenant build-out costs, tenant improvement allowances and landlord work costs. Satisfaction of the Condition shall be evidenced by a written certification by Lessee to Lessor stating the amount of the Investment and a general description of the projects comprising the Investment, together with back-up documentation substantiating the amount of the Investment.

AMENDMENT NO. 2 TO GROUND LEASE

(PARCEL 2)

This AMENDMENT NO. 2 TO GROUND LEASE ("**Amendment**") is made and entered into as of the ____ day of June, 2022, by and between the CITY OF ESCONDIDO, a municipal corporation ("**Lessor**"), and NORTH COUNTY FAIR LP, a Delaware limited partnership, and EWH ESCONDIDO ASSOCIATES, L.P. a Delaware limited partnership, as tenants-in-common ("**Lessee**").

R E C I T A L S :

A. This Amendment is made with respect to that certain Ground Lease dated as of November 26, 1986, between the City of Escondido, as landlord/lessor, and Adcor Realty Corporation, as tenant/lessee, relating to certain premises described in Exhibit A attached hereto located with the shopping center currently known as Westfield North County, a memorandum of which was recorded on November 26, 1986 as File No. 86-549263 in the Office of the Recorder of San Diego County ("**Recorder's Office**"), as amended by Amendment No. 1 to Ground Lease dated February 13, 2012 (collectively and as amended from time to time, the "**Lease**"). Lessee is the current "Lessee" under the Lease. Terms not otherwise defined in this Amendment are defined in the Lease.

B. Lessor and Lessee desire to amend the Lease as set forth herein.

A G R E E M E N T :

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Existing Term. Lessor and Lessee acknowledge and agree that the Lease Term expires on June 30, 2053.

2. Second Option to Extend Lease Term. Lessor hereby grants to Lessee the option to extend the Lease Term to June 30, 2077 (the "**Second Option**"). Lessee may exercise the Second Option by giving Lessor written notice thereof currently with, or within ninety (90) days following the date that the "Lessee" under the Developer Lease exercises its second option to extend the term of the Developer Lease. At any time following Lessee's exercise of the Second Option, Lessor and Lessee shall, at either party's request, enter into an amendment of the Lease to evidence the exercise of the Second Option; provided, however, such amendment of the Lease is not required to effectuate Lessee's exercise of the Second Option.

3. No Other Amendments. Except as amended hereby, all of the provisions of the Lease shall remain in full force and effect.

4. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute but one and the same instrument.

5. Memorandum. At Lessee's request, Lessor and Lessee shall execute, acknowledge and record in the Recorder's Office a memorandum of this Amendment.

[Signatures continue on following pages]

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date first above written.

"Lessor"

CITY OF ESCONDIDO, a municipal corporation

By: _____

Name: _____

Title: _____

"Lessee"

NORTH COUNTY FAIR, LP,
a Delaware limited partnership,
as tenants-in-common

By: Westfield America GP LLC,
a Delaware limited partnership,
its general partner

By: Westfield America Limited Partnership,
a Delaware limited liability company,
its sole member

By: Westfield U.S. Holdings, LLC,
a Delaware limited liability company,
its general partner

By: _____

Name: _____

Title: _____

EWB ESCONDIDO ASSOCIATES, L.P.,
a Delaware limited partnership,
as tenants-in-common

By: North County Fair LP,
a Delaware limited partnership,
its general partner

By: Westfield America GP LLC,
a Delaware limited liability company,
its general partner

By: Westfield America Limited Partnership,
a Delaware limited partnership,
its sole member

By: Westfield U.S. Holdings, LLC,
a Delaware limited liability company,
its general partner

By: _____

Name: _____

Title: _____

EXHIBIT A

Legal Description of Demised Premises

PARCEL 2 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.

AMENDMENT NO. 2 TO GROUND LEASE

(PARCEL 5)

This AMENDMENT NO. 2 TO GROUND LEASE ("**Amendment**") is made and entered into as of the ____ day of June, 2022, by and between the CITY OF ESCONDIDO, a municipal corporation ("**Lessor**"), and NORTH COUNTY FAIR LP, a Delaware limited partnership, and EWH ESCONDIDO ASSOCIATES, L.P. a Delaware limited partnership, as tenants-in-common ("**Lessee**").

R E C I T A L S

A. This Amendment is made with respect to that certain Ground Lease dated as of October 5, 2011, between Lessor's predecessor-in-interest, Macy's West Store, Inc., and Lessee's predecessor-in-interest, Macy's Escondido, Inc., relating to certain premises described on Exhibit A attached hereto located within the Shopping Center currently known as Westfield North County, a memorandum of which was recorded on November 8, 2011 as File No. 2011-595389 in the Office of the Recorder of San Diego County ("**Recorder's Office**"), as amended by Amendment No. 1 to Ground Lease dated April 30, 2014 (collectively and as amended from time to time, the "**Lease**"). Terms not otherwise defined in this Amendment are defined in the Lease.

B. Lessor and Lessee desire to amend the Lease as set forth herein.

A G R E E M E N T

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Existing Term. Lessor and Lessee acknowledge and agree that the Lease Term expires on June 30, 2053.

2. Second Option to Extend Lease Term. Lessor hereby grants to Lessee the option to extend the Lease Term to June 30, 2077 (the "**Second Option**"). Lessee may exercise the Second Option by giving Lessor written notice thereof currently with or following the date that the "Lessee" under the Developer Lease exercises its second option to extend the term of the Developer Lease. At any time following Lessee's exercise of the Second Option, Lessor and Lessee shall, at either party's request, enter into an amendment of the Lease to evidence the exercise of the Second Option; provided, however, such amendment of the Lease is not required to effectuate Lessee's exercise of the Second Option.

3. No Other Amendments. Except as amended hereby, all of the provisions of the Lease shall remain in full force and effect.

4. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute but one and the same instrument.

5. Memorandum. At Lessee's request, Lessor and Lessee shall execute, acknowledge and record in the Recorder's Office a memorandum of this Amendment.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date first above written.

"Lessor"

CITY OF ESCONDIDO, a municipal corporation

By: _____
Name: _____
Title: _____

"Lessee"

NORTH COUNTY FAIR, LP,
a Delaware limited partnership,
as tenants-in-common

By: Westfield America GP LLC,
a Delaware limited partnership,
its general partner

By: Westfield America Limited Partnership,
a Delaware limited liability company,
its sole member

By: Westfield U.S. Holdings, LLC,
a Delaware limited liability company,
its general partner

By: _____
Name: _____
Title: _____

EWB ESCONDIDO ASSOCIATES, L.P.,
a Delaware limited partnership,
as tenants-in-common

By: North County Fair LP,
a Delaware limited partnership,
its general partner

By: Westfield America GP LLC,
a Delaware limited liability company,
its general partner

By: Westfield America Limited Partnership,
a Delaware limited partnership,
its sole member

By: Westfield U.S. Holdings, LLC,
a Delaware limited liability company,
its general partner

By: _____

Name: _____

Title: _____

EXHIBIT A

Legal Description of Demised Premises

PARCEL 5 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.

[LG Draft 6.21.22]

FIRST AMENDMENT TO GROUND LEASE

This FIRST AMENDMENT TO GROUND LEASE (this "First Amendment") is made and entered into as of the ____ day of July, 2022 (the "Effective Date"), by and between the CITY OF ESCONDIDO ("Lessor") and COSTCO WHOLESALE CORPORATION, a Washington corporation ("Lessee") (collectively referred to herein at times as "Parties.").

RECITALS

A. Lessor leased to Transform Operating Stores LLC ("Transformco") (as successor-in-interest to Sears, Roebuck and Co. ("Sears")) the Demised Premises, consisting of approximately 9.957 acres in the Center, pursuant to that certain Ground Lease dated November 26, 1986 by and between Lessor and Sears, as amended by that certain Notice of Extension of Lease dated August 31, 2005, Renewal Letter dated August 18, 2010, Renewal Letter dated August 21, 2015, Renewal Letter dated August 17, 2020, as affected by that certain Short-Form Lease dated November 26, 1986 and recorded November 26, 1986 as Instrument No. 86-549262 in the Official Records, and as affected by that certain Assignment and Assumption of Lease dated May 13, 2019 between Transformco and Sears (collectively, the "Original Lease").

B. On or about the date hereof, Transformco and Lessee entered into that certain Assignment and Assumption of the Original Lease, whereby Transformco assigned all of its rights, title, interest, benefits, privileges, obligations and liabilities, claims and demands in, to and under the Original Lease to Lessee and Lessee accepted such assignment and assumed the liabilities and obligations of Transformco under the Original Lease.

C. Lessor and Lessee desire to amend the Original Lease as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Recitals; Capitalized Terms. The Recitals are hereby incorporated by reference and made a substantive part of this First Amendment. All capitalized terms not otherwise defined in this First Amendment shall have the meanings ascribed to them in the Original Lease. The Original Lease, as amended by this First Amendment, shall be deemed to be the "Lease".

2. Substitution of Costco for Sears. All references in the Original Lease to "Sears", the "Sears Tract", and "Sears, Roebuck & Co." are deleted and replaced with "Costco", the "Costco Tract", and "Costco Wholesale Corporation", respectively. All references in the Original Lease to the "TBA", and any applicable provisions related thereto, are deleted.

3. Amendments to the Original Lease.

(a) Recital C is hereby deleted and replaced with the following:

“EWH, Carter Hawley Hale Stores, Inc., Sears, The May Department Stores Company (“Macy’s”), Nordstrom 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 “Original REA”), as amended by (i) that certain First Amendment to Construction, Operation and Reciprocal Easement Agreement dated March 12, 2013, recorded on March 14, 2014 in the Official Records, by and between Developer, Macy’s, Sears, J.C. Penney Properties, Inc. (“Penney”), Nordstrom, Inc. (“Nordstrom”) and Target Corporation (“Target”) (the “First REA Amendment”); and (ii) that certain Second Amendment to Construction, Operation and Reciprocal Easement Agreement dated on or about the date hereof between Developer, Macy’s, Penney, Target and Costco (the “Second REA Amendment”, and together with the Original REA and the First REA Amendment, collectively, the “REA”); pursuant to which the parties thereto established certain reciprocal easements, covenants and conditions with respect to the construction, maintenance and operation of the Shopping Center.”

(b) Definition C is hereby deleted and replaced with the following:

““Major Department Store” shall mean Lessee, Penney, Macy’s and Target.”

(c) Definition D, clause (ii) is hereby deleted.

(d) With respect to Section 2.1 and Section 2.2:

(i) for the avoidance of doubt, notwithstanding the existing Original Lease and the exercise of the extension options by Sears and Transformco, as applicable:

- (A) the Term of this Lease shall continue such that the Lease term is extended as of the Effective Date of this First Amendment and shall expire, as set forth in Section 2.1, at midnight of the day twenty (20) years after the Rent Commencement Date (as hereinafter defined) or the date, if any, to which the Lease Term has been extended; and
- (B) For the avoidance of doubt, notwithstanding that Transformco has exercised certain options to extend the Term of the Original Lease, the parties hereby agree that Lessee shall have seven (7) successive options to extend the Term of this Lease for additional periods of five (5) years each, pursuant to and in accordance with the provisions of Section 2.2 (as amended pursuant to this clause (d)). The first (1st) of such option to extend shall, if exercised by Lessee, commence on the day immediately following the last day of the twenty (20) year period referenced in clause (A) above.

(ii) Section 2.2 is hereby revised as follows:

(a) in the first sentence, the following is hereby deleted: “provided, however, that except as set forth below, in no event shall the option(s) to extend the term of this Lease extend beyond June 30, 2041”; and

(b) the last paragraph is hereby deleted.

(e) Section 3.1 is hereby deleted and replaced with the following:

“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.” The Fixed Rent shall be payable to Lessor in lawful money of the United States at the following address:

City of Escondido

201 N. Broadway

Escondido, California 92025

(f) Section 5.3 is hereby revised as follows:

(i) the reference to “a CLTA leasehold standard coverage form of title insurance policy issued by Transamerica Title Insurance Company” is hereby deleted and replaced with “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”; and

(ii) the reference to “\$1,400,000.00” is hereby deleted and replaced with “\$13,500,000.00”.

(g) Section 6.2 is hereby revised as follows:

(i) the following sentence is hereby deleted: “The Improvements to be initially constructed or initially caused to be constructed by Lessee shall connect to the Enclosed Mall as provided in the REA which will be a part of, and the Improvements will similarly be a part of, the Shopping Center to be known as North County Fair.” and;

(ii) the following is added immediately following the first sentence:

“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 “Project” or “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 the 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.”

(h) Section 6.3 is hereby deleted and of no further force and effect, and the following is added in lieu thereof:

“6.3 Project Approvals.

(i) 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").

(ii) 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. City makes no promise, warranty or representation as to the outcome of such review or the approval of any such application.

(iii) 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 the Lessee. .

(iv) 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.

(v) 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 (v) is intended to require Lessor, in its capacity as a governmental entity, to take any action that is prohibited by applicable law.

- a. Section 13.3 is hereby amended by adding the following sentence immediately after the first sentence therein ending with "(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.”

- b. For purposes of clarification, the first sentence of Article XX is amended to delete “Lessee may sublet the Demised Premises...” and replace it with the following: “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)...”
- c. Section 28.4 is hereby amended by adding the following after “orders of governmental or civil military or naval authorities,”:

“any declared, actual, or threatened public emergency, including, without limitation, any public health emergency, epidemic, pandemic, infection disease outbreaks or health and safety circumstances that require individual isolation, quarantine or quarantine-like restrictions, or other methods of social distancing,”.

4. Notices. The addresses for notices in Article XV for Lessor and Lessee are hereby updated as follows:

in the case of Lessor to: CITY OF ESCONDIDO _____
201 N. Broadway

Escondido, CA 92025 _____
Attn: City Attorney _____

with a copy to: CITY OF ESCONDIDO 201 N. Broadway
Escondido, CA 92025 Attn: City Manager

in the case of Lessee to: Costco Wholesale Corporation
999 Lake Drive
Issaquah, Washington 98027
Attention: Property Management (Legal Dept.)

with a copy to: Costco Wholesale Corporation
999 Lake Drive
Issaquah, Washington 98027
Attention: Corporate Counsel

and with a copy to:

Goulston & Storrs
885 Third Avenue
New York, New York 10022
Attention: David J. Rabinowitz, Esq.

5. Profit Share on Sale of Leasehold Interest. If Lessee shall sell or assign the entirety of its interest in the 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**”).

6. 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 Section 6 shall survive the expiration or sooner termination of the Lease.

7. Estoppel. Lessor hereby represents that (a) the Original Lease is unmodified and in full force and effect (except as expressly set forth herein); (b) Fixed Rent and other charges have been paid by Transformco through and including _____; (c) real estate taxes have been paid by Transformco through and including _____; and (d) and there exists no default or Event of Default (or any event with the passage of time would result in a default or Event of Default) by Lessor or Transformco under the terms of the Lease.

8. Short Form of Lease. Pursuant to the provisions of Section 28.3, the parties agree to execute and record the short form lease substantially in the form attached to this First Amendment as Exhibit A at any time on or after the Effective Date of this First Amendment.

9. Miscellaneous.

a. Ratification; Conflicts. All terms, conditions, provisions and covenants contained in the Original Lease shall remain unaltered and in full force and effect except as expressly modified or amended by this First Amendment, and all references to the Original Lease shall mean the Original Lease, as amended by this First Amendment. If any provision of this First Amendment conflicts with the Original Lease, then the provisions of this First Amendment shall control.

b. Binding Effect. This First Amendment shall be binding on, and shall inure to the benefit of, the heirs, legal representatives, successors and permitted assigns of the parties hereto.

c. Further Modification. This First Amendment may not be changed, amended, modified, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcements of such change, amendment, modification, waiver, discharge or termination is sought.

d. Entire Agreement. This First Amendment constitutes the entire agreement and understanding between the parties hereto respecting the subject matter hereof and there are no other agreements, understandings, undertakings, representations or warranties among the parties hereto with respect to the subject matter hereof except as set forth herein.

e. Authority. The person signing this First Amendment on behalf of Lessor is duly qualified and an appointed representative of Lessor, and has all requisite power and authority on behalf of Lessor to enter into this First Amendment as the valid, binding and enforceable obligation of Lessor.

f. Counterparts. This First Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original Amendment, but all of which shall constitute but one and the same First Amendment. The parties may rely on signed counterparts delivered by way of facsimile or pdf as if same was an original.

[Remainder of Page Intentionally Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day and year first written above.

ATTEST:
OFFICE OF THE CITY ATTORNEY

“LESSOR”:
THE CITY OF ESCONDIDO

By: _____
Name: _____
Title: _____

“LESSEE”:

COSTCO WHOLESALE CORPORATION
a Washington corporation

By: _____
Name: _____
Title: _____

TRUE COPY CERTIFICATION

(Government Code 27361.7)

Place of Execution

I certify under penalty of perjury that this material is a true copy of the original material contained in this document.

Date

Signature of Declarant

Type or Print Name

EXHIBIT A

Form of Short Form Lease

[Note: We have used substantially the same form of the Short Form Lease recorded in connection with the Sears Lease, with a few updates.]

Recording Requested by
and when Recorded Return to:

Costco Wholesale Corporation
999 Lake Drive
Issaquah, WA 98027-5367
Attention: Rick Jerabek

SHORT FORM LEASE

THIS MEMORANDUM OF LEASE (this “Memorandum”) is made this ____ day of _____, 2022 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 First Amendment to Lease, dated as of _____, 2022 (the “Lease Amendment”), an amendment to that certain Ground Lease dated November 26, 1986, by and between Lessor and Sears, Roebuck and Co. (as amended, collectively with the Lease Amendment, 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.

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 first day of the month following the Opening 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. Miscellaneous Provisions.

(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: _____

NOTARIAL ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARIAL ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of the Demised Premises

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.



CITY of ESCONDIDO

FUTURE AGENDA

7/13/2022

CONSENT CALENDAR - (J. GOULART) - ANNUAL FUEL PURCHASE - Request the City Council adopt Resolution 2022-67 authorizing the City Council to approve the purchase of unleaded and diesel fuels from SC Fuels.

CONSENT CALENDAR - (J. PROCOPIO) - SANDAG SMART GROWTH INCENTIVE PROGRAM GRANT AGREEMENT - Request the City Council City Council authorize the City Manager or their designee to execute the Smart Growth Inceptive Program Grant (SGIP) Agreement

CONSENT CALENDAR - (C. HOLMES) - COMMUNITY FACILITIES DISTRICT (CFD) 2006-01 (EUREKA RANCH) ANNUAL SPECIAL TAX LEVY - Request the City Council adopt Resolution No.2022-85 that will set the Special Tax Levy for Community Facilities District No. 2006-01 (Eureka Ranch) (the "District") for Fiscal Year 2022-23

CONSENT CALENDAR - (C. HOLMES) - COMMUNITY FACILITIES DISTRICT (CFD) 2000-01 (HIDDEN TRAILS) ANNUAL SPECIAL TAX LEVY - Request the City Council adopt Resolution No.2022-86 that will set the Special Tax Levy for Community Facilities District No. 2000-01 (Hidden Trails) for Fiscal Year 2022-23

CONSENT CALENDAR - (C. HOLMES) - COMMUNITY FACILITIES DISTRICT (CFD) 2020-01 (PUBLIC SERVICES) ANNUAL SPECIAL TAX LEVY - Request the City Council adopt Resolution No.2022-87 that will set the Special Tax Levy for Community Facilities District No. 2020-01 (Public Services) for Fiscal Year 2022-23

CONSENT CALENDAR - (C. HOLMES) - COMMUNITY FACILITIES DISTRICT (CFD) 2020-02 (THE VILLAGES) ANNUAL SPECIAL TAX LEVY - Request the City Council adopt Resolution No.2022-88 that will set the Special Tax Levy for Community Facilities District No. 2020-02 (The Villages) for Fiscal Year 2022-23

CONSENT CALENDAR - (J. MURDOCK) - FY2022 CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES (Cal OES) HIGH FREQUENCY COMMUNICATIONS GRANT PROGRAM AND BUDGET ADJUSTMENT - Request the City Council authorize the Escondido Fire Department to accept FY 2022 Cal OES Grant funds in the amount of \$55,516; authorize the Fire Chief or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds.

CONSENT CALENDAR - (J. PROCOPIO) - OUT-OF-AGENCY SERVICE AGREEMENT FOR 2314 FELICITA AVENUE - PL22-0196

CONSENT RESOLUTIONS AND ORDINANCES - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE DEPUTY CITY MANAGER TO EXECUTE CDBG, HOME, AND ESG CONTRACTS, INCLUDING THOSE INVOLVING NON-SUBSTANTIAL CHANGES - Ordinance No. 2022-11 (2nd reading and adoption)

CURRENT BUSINESS - (Z. BECK) - DESIGNATION OF VOTING DELEGATE – League of California Cities Conference

CURRENT BUSINESS - (J. AXELROD) - REVIEW AND CONSIDERATION OF POLL RESULTS

7/20/2022

PRESENTATION: Clean Energy Alliance Update

CONSENT CALENDAR - (C. MCKINNEY) - AMENDMENT TO EXHIBIT B OF MWD EXCHANGE AGREEMENT - Request the City Council adopt Resolution No. 2022-XX, authorizing an amendment to Exhibit B of the 2003 Agreement Relating to Supplemental Water Among the Metropolitan Water District of Southern California, the San Luis Rey Settlement Parties, and the United States.

CONSENT CALENDAR - (J. PROCOPIO) - AUTHORIZATION TO PROCESS A TEXT AMENDMENT TO THE GENERAL PLAN LAND USE DESIGNATION PLANNED OFFICE (PO) TO INCLUDE EDUCATIONAL FACILITIES

CONSENT CALENDAR (J. PROCOPIO) - FINAL MAPS UNDER CONSIDERATION FOR APPROVAL

CONSENT CALENDAR - (J. PROCOPIO) - REQUEST TO INITIATE AN ANNEXATION FOR A 5.09 ACRE PARCEL LOCATED AT 0 ASH STREET (PLANNING CASE NO. 22-0154)

CURRENT BUSINESS - (J. PROCOPIO) - ADOPTION ORDINANCE 2022-10 - UPDATES TO CALIFORNIA VEHICLE CODE SECTION 22358.8 TO RETAIN EXISTING SPEED LIMITS ON CERTAIN STREET SEGMENTS (first reading and introduction)