

**AGREEMENT REGARDING RELOCATION AND
ABANDONMENT OF THREE SPECIFIED EASEMENTS**

This Agreement Regarding Relocation and Abandonment of Three Specified Easements (this “**Agreement**”) is executed as of _____, 2017 (the “Effective Date”) by and among the City of McKinney, a Texas municipal corporation (“**City**”), McKinney SH I, Ltd., a Texas limited partnership (“**MSHI**”), and Costco Wholesale Corporation, a Washington corporation (“**Costco**”).

RECITALS:

A. The City is the grantee under:

- (i) that certain Sanitary Sewer Easement (the “**Existing Sanitary Sewer Easement Agreement**”) in favor of the City dated October 7, 2002 recorded as Clerk’s Document No. 20021007001476970 in Volume 05273, Page 00516 of the real property records of Collin County, Texas (the “**Real Property Records**”) establishing a sanitary sewer easement over approximately 0.4742 acres of land situated in the William Hunt Survey, Abstract No. 450 in the City of McKinney, Collin County, Texas more particularly described therein (the “**Existing Sanitary Sewer Easement**”);
- (ii) that certain Drainage Easement (the “**Existing Drainage Easement Agreement**”) in favor of the City dated October 7, 2002 recorded as Clerk’s Document No. 20021011001476950 in Volume 05273, Page 0497 of the Real Property Records establishing a drainage easement comprised of four separate parcels of land situated in the William Hunt Survey, Abstract No. 450 in the City of McKinney, Collin County, Texas containing approximately 0.7447 acres, 0.5298 acres, 1.655 acres and 0.1569 acres of land, respectively, as more particularly described therein (the “**Existing Drainage Easement**”); and
- (iii) that certain Detention Pond Easement (the “**Existing Detention Pond Easement Agreement**”) in favor of the City dated October 7, 2002 recorded as Clerk’s Document No. 20021011001476960 in Volume 05273, Page 00510 of the Real Property Records establishing a detention pond easement over approximately 1.894 acres of land situated in the William Hunt Survey, Abstract No. 450 in the City of McKinney, Collin County, Texas more particularly described therein (the “**Existing Detention Pond Easement**”).

The Existing Sanitary Sewer Easement, Existing Drainage Easement and Existing Detention Pond Easement may be collectively referred to herein as the “**Existing Easements**”.

- B. MSHI proposes to acquire land encumbered by the Existing Easements and is under contract to then sell a portion of such land to Costco (the “**Costco Property**”; the remainder of the land being acquired by MSHI being herein referred to as the “**MSHI Property**”). MSHI and Costco intend to develop the Costco Property and the MSHI Property as an integrated project. MSHI desires to relocate the Existing Sanitary Sewer Easement and to modify the boundaries of the Existing Drainage Easement and Existing Detention Pond

Easement to accommodate MSHI's and Costco's proposed development on the Costco Property and the MSHI Property (collectively, the "**Project**").

- C. The Existing Sanitary Easement contains a sanitary sewer main that serves the residential neighborhood adjacent to the northern property line of the Costco Property and the MSHI Property and which sanitary sewer main traverses the Project in a southerly direction to connect to an east-west sanitary sewer main along U.S. Highway 380 (West University Drive).
- D. The Existing Sanitary Sewer Easement Agreement provides that all or parts of the Existing Sanitary Sewer Easement and Facilities (as defined therein) may be replaced or relocated upon City's approval (as so relocated, the "**New Sanitary Sewer Easement**") at the sole expense of the Grantor or its successors and assigns. Both the Existing Drainage Easement Agreement and the Existing Detention Pond Easement Agreement contain similar provisions allowing for all or parts of each such easement and the Facilities (as defined therein) to be replaced or relocated upon City's approval at the sole expense of the Grantor or its successors and assigns. The term "**Existing Facilities**" as used hereinafter shall mean (i) any existing Facilities as defined in the Existing Sanitary Sewer Easement Agreement and Existing Drainage Easement Agreement and (ii) the existing Detention Pond as defined in the Existing Detention Pond Easement Agreement.
- E. MSHI and Costco have requested City to enter into this Agreement to provide some assurances that the Existing Easements will be abandoned and released, subject to and upon satisfaction of the conditions set forth in this Agreement, upon which MSHI and Costco shall rely in acquiring the MSHI Property and Costco Property, respectively.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, MSHI and Costco hereby agree as follows:

AGREEMENT

1. MSHI has submitted to the City and the City has approved a preliminary/final plat for the Project (the "**Preliminary/Final Plat**"). The current location of the Existing Sanitary Sewer Easement is depicted on Exhibit A-1 attached hereto. Exhibit A-1 also depicts the proposed location of the New Sanitary Sewer Easement, as shown on the approved Preliminary/Final Plat. The current locations of the Existing Drainage Easement and Existing Detention Pond Easement are depicted on Exhibit A-2 attached hereto. Exhibit A-2 also depicts the proposed modifications to and the relocation of the Existing Drainage Easement and Existing Detention Pond Easement as shown on the approved Preliminary/Final Plat (as so modified and relocated, the "**New Drainage/Detention Pond Easements**"). The New Sanitary Sewer Easement and New Drainage/Detention Pond Easements may be collectively referred to herein as the "**New Easements**". City acknowledges and agrees that the final locations of the New Easements will be as provided in the civil engineering plans submitted by MSHI and/or Costco and approved by City. The final location of the New Easements as shown on the "Record Plat" (defined below) may deviate from the proposed final locations depicted in Exhibits A-1 and A-2. Any such deviation shall not affect the validity of this Agreement.

2. City hereby agrees to execute a Release of the Existing Easements in the form attached hereto as Exhibit B upon satisfaction of the following conditions:

(a) The New Easements shall be dedicated to the City by and through the record plat for the Project in accordance with and pursuant to the Subdivision Regulations of the City, Chapter 142 of the Code of Ordinances, City of McKinney, Texas (“**Record Plat**”).

(b) Completion of design and construction of new sanitary sewer facilities within the New Sanitary Sewer Easement and completion of design and construction of modifications to the Existing Facilities and/or new drainage and detention facilities within the New Drainage/Detention Pond Easements (“**New Facilities**”) in accordance with civil engineering plans approved by City and in compliance with the requirements of all applicable federal, state and local statutes, codes, ordinances, rules and regulations at no cost to City.

(c) City has inspected and finally accepted the New Facilities in accordance with City’s standard procedures.

(d) City’s recording of the Record Plat in the Real Property Records in accordance with City’s standard procedures.

3. MSHI shall be responsible for paying all costs and expenses of releasing the Existing Easements, granting of the New Easements, constructing the New Facilities and removing, modifying and/or abandoning in place the Existing Facilities, including, by way of example and not limitation, all costs and expenses of the following: any and all necessary surveys; filing fees; design or re-design costs; permit fees; performance, payment and maintenance bonds; insurance; the removal of any and all then-existing Facilities and the remediation or restoration of the work site, and construction of New Facilities.

4. MSHI hereby agrees to indemnify, defend and hold City harmless from and against any claims or liabilities by reason of the performance of any construction or related work in connection with the release of the Existing Easements, grant of the New Easements, construction of the New Facilities and removal, modification or abandonment in place of the Existing Facilities.

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

**SIGNATURE PAGE TO AGREEMENT REGARDING RELOCATION AND
ABANDONMENT OF THREE SPECIFIED EASEMENTS
BY AND AMONG THE CITY OF MCKINNEY,
McKINNEY SH I, LTD. AND COSTCO WHOLESALE CORPORATION**

Executed and effective as of the Effective Date.

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

Printed Name: _____
Title: _____
Office of the City Attorney

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

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on this date by PAUL G. GRIMES, City Manager of the City of McKinney, a Texas municipality, who acknowledged to me that s/he executed same for the purposes and consideration, and in the capacity therein expressed, as the act and deed of such municipality.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this __ day of _____, 2017.

Notary Public in and for The State of Texas

**SIGNATURE PAGE TO AGREEMENT REGARDING RELOCATION AND
ABANDONMENT OF THREE SPECIFIED EASEMENTS
BY AND AMONG THE CITY OF MCKINNEY,
McKINNEY SH I, LTD. AND COSTCO WHOLESALE CORPORATION**

Executed and effective as of the Effective Date.

COSTCO WHOLESALE CORPORATION,
a Washington corporation

By: _____
Name: _____
Title: _____]

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2017, by _____, the _____ of COSTCO WHOLESALE CORPORATION, a Washington corporation, on behalf of such corporation.

Notary Public, State of _____]

**SIGNATURE PAGE TO AGREEMENT REGARDING RELOCATION AND
ABANDONMENT OF THREE SPECIFIED EASEMENTS
BY AND AMONG THE CITY OF MCKINNEY,
McKINNEY SH I, LTD. AND COSTCO WHOLESALE CORPORATION**

Executed and effective as of the Effective Date.

McKINNEY SH I, LTD.,
a Texas limited partnership

By: McKinney SH I, GP, LLC,
a Texas limited liability company
the general partner

By: _____
Name: _____
Title: _____]

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2017, by _____, the _____ of McKinney SH I, GP, LLC, a Texas limited liability company, the general partner of MCKINNEY SH I, LTD., a Texas limited partnership, on behalf of such limited liability company and limited partnership.

Notary Public, State of _____]

EXHIBIT A-1

*Depiction of Existing Sanitary Sewer Easement and
Proposed Location of New Sanitary Sewer Easement*

[To Be Attached]

EXHIBIT A-2

*Depiction of Existing Drainage Easement and Existing Detention Pond Easement and Proposed
Location of the New Drainage Easement and Detention Pond Easement*

[To Be Attached]

EXHIBIT B

FORM OF RELEASE OF THREE SPECIFIED EASEMENTS

AFTER RECORDING, RETURN TO:

City Secretary
CITY OF MCKINNEY
P.O. Box 517
McKinney, Texas 75070

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

RELEASE OF THREE SPECIFIED EASEMENTS

STATE OF TEXAS
KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COLLIN

THIS RELEASE OF THREE SPECIFIED EASEMENTS ("**Release of Easement**") is made by the City of McKinney, a Texas municipal corporation ("**City**") to be effective as of the _____ day of _____, 2017 (the "**Effective Date**").

RECITALS:

A. The City is the grantee under:

- (i) that certain Sanitary Sewer Easement (the "**Existing Sanitary Sewer Easement Agreement**") in favor of the City dated October 7, 2002 recorded as Clerk's Document No. 20021007001476970 in Volume 05273, Page 00516 of the real property records of Collin County, Texas (the "**Real Property Records**") establishing a sanitary sewer easement over approximately 0.4742 acres of land situated in the William Hunt Survey, Abstract No. 450 in the City of McKinney, Collin County, Texas more particularly described therein (the "**Existing Sanitary Sewer Easement**");
- (ii) that certain Drainage Easement (the "**Existing Drainage Easement Agreement**") in favor of the City dated October 7, 2002 recorded as Clerk's Document No. 20021011001476950 in Volume 05273, Page 0497 of the Real Property Records establishing a drainage easement comprised of four separate parcels of land situated in the William Hunt Survey, Abstract No. 450 in the

City of McKinney, Collin County, Texas containing approximately 0.7447 acres, 0.5298 acres, 1.655 acres and 0.1569 acres of land, respectively, as more particularly described therein (the “**Existing Drainage Easement**”); and

- (iii) that certain Detention Pond Easement (the “**Existing Detention Pond Easement Agreement**”) in favor of the City dated October 7, 2002 recorded as Clerk’s Document No. 20021011001476960 in Volume 05273, Page 00510 of the Real Property Records establishing a detention pond easement over approximately 1.894 acres of land situated in the William Hunt Survey, Abstract No. 450 in the City of McKinney, Collin County, Texas more particularly described therein (the “**Existing Detention Pond Easement**”).

The Existing Sanitary Sewer Easement, Existing Drainage Easement and Existing Detention Pond Easement may be collectively referred to herein as the “**Existing Easements**”; and the Existing Sanitary Sewer Easement Agreement, Existing Drainage Easement Agreement and Existing Detention Pond Easement Agreement may be collectively referred to herein as the “**Existing Easement Agreements**”.

- B. McKinney SH I, Ltd., a Texas limited partnership (“**MSHI**”), and Costco Wholesale Corporation, a Washington corporation (“**Costco**”), own property subject to the Existing Easements and have requested that the City abandon the Existing Easements and the hereinafter defined “Existing Facilities” contained therein and to release its right, title and interest in the property encumbered by the Existing Easement Agreements, which property is more particularly described in Exhibit A attached hereto (the “**Released Property**”). The term “**Existing Facilities**” as used hereinafter shall mean (i) any existing Facilities as defined in the Existing Sanitary Sewer Easement Agreement and Existing Drainage Easement Agreement and (ii) the existing Detention Pond as defined in the Existing Detention Pond Easement Agreement.
- C. A “New Sanitary Sewer Easement” and “New Drainage/Detention Pond Easements”, as those phrases are defined in that certain Agreement Regarding Relocation and Abandonment of Three Specified Easements dated ____, 2017 by and among Costco, MSHI and City (the “**New Easements**”) have been granted to City by [MSHI][Costco][MSHI and Costco] by and through a record plat of the Costco Property and the MSHI Property in accordance with and pursuant to the Subdivision Regulations of the City, Chapter 142 of the Code of Ordinances, City of McKinney, Texas (“**Record Plat**”).
- D. New sanitary sewer facilities and new construction and modifications to the existing storm drainage and positive overflow facilities and detention pond have been constructed at no cost to City by, or at the direction of, [MSHI][Costco][MSHI and Costco] within the New Easements and finally accepted by City; and City no longer has a use for the Existing Easements that run in, on and across the Released Property save and except to the extent only that portions of the Existing Easements are contained within the New Easements.
- E. City desires to release any and all right, title and interest City possesses in the Existing Easements, Existing Facilities and Existing Easement Agreements as it relates to the

Released Property save and except to the extent only that portions of the Existing Easements and Existing Facilities are contained within the New Easements.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City agrees to the following:

1. Release. City hereby releases any and all right, title and interest City possesses in the Existing Easements, Existing Facilities and the Released Property save and except to the extent only that portions of the Existing Easements and Existing Facilities are contained within the New Easements. The Existing Easement Agreements are hereby terminated and released of record and are of no further force or effect. The Existing Easements and the Existing Facilities therein are released in their "AS IS" "WHERE AS" condition and City makes no representations or warranties as to the fitness of the Released Property for use by MSHI, Costco or any subsequent owner(s) of the Released Property or any other use.

2. No Liability. Any and all costs, expenses and liabilities associated with removing any of the Existing Facilities from the Released Property shall be the responsibility of the current owner(s) of record title to the Released Property and City shall have no obligations or liabilities with respect to the same.

3. Authority. The Existing Easements released hereby shall not be deemed to constitute the grant or conveyance of any interest therein to any privately-owned adjacent tract or parcel of land.

4. Choice of Law. This Release of Three Specified Easements shall be subject to and governed by the laws of the State of Texas.

Executed and effective as of the Effective Date.

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

Printed Name: _____
Title: _____
Office of the City Attorney

STATE OF TEXAS

COUNTY OF COLLIN

This instrument was acknowledged before me on the ____ day of _____, 2017 by
PAUL G. GRIMES, City Manager of the CITY OF MCKINNEY, a Texas municipal corporation,
on behalf of said municipal corporation.

Notary Public in and for the State of Texas

(Remainder of page intentionally left blank.)

**SIGNATURE PAGE TO
FORM OF RELEASE OF THREE SPECIFIED EASEMENTS
BY AND AMONG THE CITY OF MCKINNEY,
MCKINNEY SH I, LTD. AND COSTCO WHOLESALE CORPORATION**

ACCEPTED BY COSTCO WHOLESALE CORPORATION:

Executed and effective as of the Effective Date.

COSTCO WHOLESALE CORPORATION,
a Washington corporation

By: _____
Name: _____
Title: _____]

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2017, by _____, the _____ of COSTCO WHOLESALE CORPORATION, a Washington corporation, on behalf of such corporation.

Notary Public, State of _____]

**SIGNATURE PAGE TO
 FORM OF RELEASE OF THREE SPECIFIED EASEMENTS
 BY AND AMONG THE CITY OF MCKINNEY,
 MCKINNEY SH I, LTD. AND COSTCO WHOLESALE CORPORATION**

ACCEPTED BY MCKINNEY SH I, LTD.:

Executed and effective as of the Effective Date.

MCKINNEY SH I, LTD.
 A Texas limited partnership

By: McKinney SH I, GP, LLC,
 a Texas limited liability company
 the general partner

By: _____
 Name: _____
 Title: _____]

STATE OF _____ §
 §
 COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2017, by _____, the _____ of McKinney SH I, GP, LLC, a Texas limited liability company, the general partner of MCKINNEY SH I, LTD., a Texas limited partnership, on behalf of such limited liability company and limited partnership.

 Notary Public, State of _____]

EXHIBIT "A"
Legal Description of the Released Property
(To Be Attached)