

**PROPERTY ADDRESS:**

1187 E. OGDEN AVENUE  
1255 E. OGDEN AVENUE  
1283 E. OGDEN AVENUE  
1291 E. OGDEN AVENUE  
1295 E. OGDEN AVENUE  
NAPERVILLE, IL 60563

**P.I.N.**

08-08-100-025

**RETURN TO:**

CITY OF NAPERVILLE  
CITY CLERK'S OFFICE  
400 SOUTH EAGLE STREET  
NAPERVILLE, IL 60540

**OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT  
FOR KIRKLAND OGDEN SUBDIVISION  
(COSTCO WHOLESALE WAREHOUSE)**

This Owner's Acknowledgement and Acceptance Agreement for Kirkland Ogden Subdivision ("**Agreement**") located at 1187 E., 1255 E., 1283 E., 1291 E. and 1295 E. Ogden Avenue, Naperville, IL 60563, is entered into by and between the City of Naperville, a home rule unit of local government under the Constitution and laws of the State of Illinois ("**City**" or "**City of Naperville**"), with an address of 400 South Eagle Street, Naperville, Illinois 60540, and Norcor Naperville Associates, LLC ("**OWNER**" and also "**Developer-Norcor**"), with offices at 1030 West Higgins Road, Suite 360, Park Ridge, IL 60068; and with Costco Wholesale Corporation ("**Developer-Costco**") with offices at 999 Lake Drive, Issaquah, WA 98027. The City, OWNER/Developer-Norcor, and Developer-Costco are together hereinafter referred to as the "**Parties**" and sometimes individually as "**Party**".

**RECITALS**

A. This Agreement pertains to certain real property located within the corporate limits of the City of Naperville with common addresses of 1187 E., 1255 E., 1283 E., 1291 E., and 1295 E. Ogden Avenue, Naperville, IL 60563, having the parcel identification number of 08-08-100-025 (hereinafter referred as the "**SUBJECT PROPERTY**"). OWNER/Developer-Norcor is the owner of the SUBJECT PROPERTY.

B. The SUBJECT PROPERTY is subject to the terms and conditions set forth in the following ordinances ("**Kirkland Ogden Subdivision Ordinances**"), approved for the SUBJECT PROPERTY by the Naperville City Council on May 19, 2020:

Ordinance 20-052      An ordinance approving the Preliminary Plat of  
Subdivision for Kirkland Ogden Subdivision (Costco);

- Ordinance 20-053      An ordinance approving a conditional use for an automobile service station in the B2 zoning district for the subject property located at 1255 E. Ogden Avenue (Costco);
- Ordinance 20-054      An ordinance granting parking lot lighting and wall signage variances for the subject property located at 1255 E. Ogden Avenue (Costco).

D.      Developer-Costco has petitioned the City for approval of a Final Plat of Subdivision for the Kirkland Ogden Subdivision (“**Final Subdivision Plat**”) in order to subdivide the SUBJECT PROPERTY into two commercial lots (herein “**Lot 1**” which shall be developed by Developer-Costco, and “**Lot 2**” which is currently developed, and is owned by Developer-Norcor). In order to develop Lot 1, certain improvements along the common lot line between Lots 1 and 2 are proposed for Lot 2, which will be performed by Developer-Costco. Developer-Costco also has petitioned the City for approval of a plat of vacation in order to vacate the Diehl Road right-of-way located in the northwest corner of the SUBJECT PROPERTY. Lot 1 is comprised of the following addresses: 1187 E. Ogden & 1255 E. Ogden Avenue. Lot 2 is comprised of the following addresses: 1283 E. Ogden, 1291 E. Ogden, and 1295 E. Ogden Avenue.

E.      By entering into this Agreement, the City is acting pursuant to its home rule authority under the Constitution and laws of the State of Illinois.

**NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:**

1. **Recitals Incorporated.** The foregoing Recitals are incorporated herein as though fully set forth in this Section 1.
2. **Ongoing Compliance.** In the development and operation of the SUBJECT PROPERTY, OWNER/Developer-Norcor and Developer-Costco shall be subject to and shall fulfill all conditions set forth or referenced herein associated with the SUBJECT PROPERTY, as to Lot 1 (Developer-Costco) and Lot 2 (Developer-Norcor), including but not limited to: (i) the terms of this Agreement; (ii) the provisions of the Naperville Municipal Code, as amended from time to time; and (iii) all ordinances and resolutions passed or adopted by the Naperville City Council related thereto, including but not limited to the Kirkland Ogden Subdivision Ordinances.
3. **Development of the SUBJECT PROPERTY.** Developer-Costco shall construct all improvements related to the development of the SUBJECT PROPERTY in compliance with final engineering plans prepared by MG2 and V3 Companies, dated June 5, 2020, last revised July 15th, 2020, which engineering plans are subject to and pending final review and approval (“**Final Engineering Plans**”) at its sole cost unless otherwise provided herein.



4. **Fees Due.** Developer-Norcor and Developer-Costco shall pay all fees applicable to their respective Lots (which fees shall not be paid under protest or otherwise objected to) set forth herein and required by the Naperville Municipal Code as amended from time to time, including but not limited to the following:
  - 4.1 **Infrastructure Availability Charges and User Fees.** Upon a request for connection and service to the City's water or sanitary system, the applicable Developer, according to ownership of each Lot, shall pay for all infrastructure availability charges and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
  - 4.2 **Facility Installation Charges and User Fees.** Upon a request for connection and service to the City of Naperville electric system, Developer-Norcor shall pay for all Facility Installation Charges (FIC) and user fees for Lot 2 and Developer-Costco shall pay for all FIC and user fees for Lot 1 in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
  - 4.3 **Northeast Waterworks Pump Station.** A recapture fee of \$33,370.95 (\$1,761.00/per acre) shall be paid by the DEVELOPER-Costco for Lot 1 for the Northeast Waterworks Pump Station prior to the recordation of the Final Plat of Subdivision.
  - 4.4 **Legal Notice Reimbursement.** Developer-Costco is required to pay \$195.50 to reimburse the cost of publishing the legal notice for the public hearing for the proposed vacation of the Diehl Road Right-of-Way in the July 31, 2020 issue of the Daily Herald. Developer-Costco shall reimburse the City prior to recordation of the Final Plat of Subdivision.
5. **Financial Surety.** Financial surety in a form and from a source acceptable to the City Attorney shall be provided and maintained in the amount of 110% of the approved engineer's cost estimate, which guarantees the completion of public improvements and soil erosion and sedimentation control for Lot 1 and Lot 2 of the SUBJECT PROPERTY ("Public Improvements"), as will be shown in the Final Engineering Plans. Said sureties shall be received and approved prior to issuance of a site development permit for Lot 1 and Lot 2 of the SUBJECT PROPERTY respectively. Notwithstanding provision of said surety, until the Public Improvements have been accepted by the City, Developer-Costco shall remain obligated for completion of said Public Improvements on Lot 1 and Lot 2, as will be shown in the Final Engineering Plans, and/or (at the City's sole discretion) Developer-Costco shall be obligated to pay any costs for said Public Improvements as will be shown in the Final Engineering Plans to the extent that the surety is not

sufficient to pay the same, or in the event of any denial, or partial denial of coverage by the surety, or failure of the surety to timely respond to a demand for payment.

Prior to acceptance by the City of the Public Improvements on Lot 1 and Lot 2 of the SUBJECT PROPERTY as will be shown in the Final Engineering Plans, Developer-Costco shall provide the City with a maintenance surety for the Public Improvements on Lot 1 and Lot 2 in a form and from a source approved by the City Attorney and in conformity with the Naperville Municipal Code then in effect.

As to any surety, or maintenance surety, provided by Developer-Costco hereunder, Developer-Costco agrees, as to the sureties that: (1) at no time shall the City be liable for attorneys' fees with respect thereto; (2) Developer-Costco shall be liable to pay the City's reasonable attorneys' fees and costs (in-house or outside counsel) in enforcement thereof; and (3) the list of circumstances set forth in such surety (including any exhibit thereto) as bases for default thereunder shall entitle the City to draw on said surety.

6. **Building Permits.** No building permits shall be issued for either Lot 1 or Lot 2 of the SUBJECT PROPERTY, or any portion thereof, until the Final Subdivision Plat has been recorded and until the City has determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public.
7. **Traffic Improvements – Developer-Costco.** Upon recordation of the Subdivision Plat, the SUBJECT PROPERTY will be comprised of Lot 1 and Lot 2. Lot 1 shall be owned by Developer-Costco and Lot 2 shall be owned by Developer-Norcor. Because it is anticipated that there will be additional traffic generated by the development proposed by Developer-Costco, Developer-Costco shall, at its sole cost, perform the following traffic related improvements as indicated in the Traffic Impact Study prepared by V3 Companies, dated January 13, 2020, last revised on May 7, 2020, and as approved by Illinois Department of Transportation ("IDOT") and the DuPage County Department of Transportation:

7.1 Traffic Signal Improvements at the Corner of Ogden Avenue and Iroquois Avenue.

- 7.1.1 The traffic signals located at the intersection of Ogden Avenue and Iroquois Avenue shall be re-timed to provide more green time for Iroquois Avenue phases as approved by the DuPage County Department of Transportation and IDOT. Developer-Costco shall submit a request to IDOT and the DuPage County Department of Transportation seeking re-timing of the signals. If said re-timing is approved by IDOT and the DuPage County Department of Transportation, Developer-Costco shall cause the re-timing to be



accomplished. If re-timing of the traffic signals as generally described above is not approved by IDOT and the DuPage County Department of Transportation, the Developer-Costco shall undertake the improvements described in 7.1.2 below instead

7.1.2 If the option described in 7.1.1 above is not approved by IDOT and the DuPage County Department of Transportation, then the Developer-Costco shall be required to modify phasing to provide a protected-permitted left turn phase for northbound and southbound Iroquois traffic, and to undertake all other traffic signal equipment upgrading and improvements for the entire intersection at Iroquois and Ogden as directed by IDOT.

7.2 Re-Striping. Developer-Costco has submitted a request to IDOT to maintain the existing striping of the eastbound left turn storage and taper at the intersection of Ogden Avenue and Iroquois Avenue. If the request is not approved by IDOT, the Developer-Costco shall re-stripe the left turn lane in order to provide for an increased left turn queue in a manner approved by IDOT. Said restriping shall be completed by Developer-Costco within seven (7) months of IDOT's approval of the re-striping.

7.3 Installation of a "Do Not Block Intersection" Sign. Developer-Costco shall install a Do Not Block Intersection sign for southbound traffic on Iroquois Drive at driveway 3 as specified in the Traffic Impact Study prepared by V3 Companies in a manner and at a location approved by the City Engineer prior to issuance of a final occupancy permit for the Lot 1 of the Kirkland Subdivision.

7.4 Illinois Department of Transportation Permitting. The CITY, Developer-Costco, and OWNER/Developer-Norcor acknowledge that the improvements described in this Section 7 are critical to the orderly development and operation of the SUBJECT PROPERTY and the properties adjacent thereto; however, the CITY will not delay issuance of building or occupancy permits on the SUBJECT PROPERTY due to any permitting delays with either IDOT or the DuPage County Department of Transportation.

7.5 Surety. If Developer-Costco desires to occupy Lot 1 of the Kirkland Subdivision prior to completion and implementation of the improvements described in Section 7.1.1 or Section 7.1.2 above, as applicable, Developer-Costco shall, prior to City issuance of an occupancy permit for Lot 1, provide the City with surety from a source and in an amount approved by the City Engineer for the improvements contemplated in Section 7.1.2. Notwithstanding the foregoing, if IDOT and the DuPage Department of

Transportation have approved the improvements contemplated in Section 7.1.1, then the surety shall be based upon the cost of those improvements.

If the 7.1.1 improvements been approved by IDOT and the DuPage Department of Transportation, said improvements shall be approved and implemented by Developer-Costco within six (6) months of said approval by IDOT and the DuPage Department of Transportation.

If IDOT or the DuPage Division of Transportation direct the improvements contemplated in Section 7.1.2 above, those improvements must be constructed and approved by Developer-Costco within twelve (12) months of IDOT and DuPage Department of Transportation approval.

The specified timeframes for performance set forth in this Section 7.5 may be modified with the written agreement of the City Engineer.

The provisions of this Section 7.5 are in addition to the surety provisions set forth in Section 5 above.

8. **Vacation of Diehl Road Right-of-Way.** By separate ordinance (herein "Vacation Ordinance") the Developer-Costco seeks vacation of a portion of the Diehl Road Right-of-Way abutting the Subject Property. If said Vacation Ordinance is approved, it shall be recorded prior to recordation of the Final Plat of Subdivision for the SUBJECT PROPERTY.
9. **General Conditions.**
  - 9.1 **Binding Effect.** The Parties hereto acknowledge and agree that the terms contained herein shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, and transferees, and any subsidiary, affiliate or parent of Developer-Norcor and Developer-Costco.
  - 9.2 **Severability.** It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.
  - 9.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the parties hereto.
  - 9.4 **Assignment.** This Agreement may not be assigned by any Party without the written consent of the other Parties.



- 9.5 **Choice of Law and Venue.** This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- 9.6 **Ambiguity.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that any Party did or did not write it.
- 9.7 **Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.
- 9.8 **Term.** This Agreement shall be effective upon the Effective Date set forth in Section 9.14 hereof and shall terminate, without further action by either Party, upon the later of ten (10) years from the Effective Date or issuance of all final certificates of occupancy for the SUBJECT PROPERTY.
- 9.9 **Automatic Expiration.** If the final plat of subdivision for the SUBJECT PROPERTY is not recorded within five (5) years of the date of approval of the ordinance approving the final plat of subdivision and this Agreement by the City Council, the final plat of subdivision and this Agreement shall automatically lapse and become null and void without further action by the City.
- 9.10 **Survival.** Unless the final plat of subdivision and this Agreement have lapsed and become null and void pursuant to the provisions of Subsection 9.9 above, the terms and conditions set forth in the following Sections and Subsections of this Agreement shall survive the expiration or termination of this Agreement: 3, 4 (and each subpart thereof), 5, 6, 7 (and each subpart thereof), and 9.1, 9.2, 9.3, 9.5, 9.6., and 9.10.
- 9.11 **Authority to Execute-OWNER/Developer-Norcor.** The undersigned warrants that he/she is the owner of the SUBJECT PROPERTY, or is the duly authorized representative of the owner of the SUBJECT PROPERTY, and has full power and authority to sign this Agreement and voluntarily agrees to the provisions set forth herein.
- 9.12 **Authority to Execute/Developer-Costco.** The undersigned warrants that he/she is the authorized representative of Developer-Costco, the contract purchaser of Lot 1 of the SUBJECT PROPERTY, and has full power and authority to sign this Agreement and voluntarily agrees to the provisions set forth herein.
- 9.13 **Authority to Execute/City.** The undersigned City Manager warrants that he has been directed to, and has the authority to, execute this Agreement.

The undersigned City Clerk warrants that she has been directed to, and has the authority to, attest the signature of the City Manager on this Agreement.

- 9.14 **Effective Date.** The effective date of this Agreement ("**Effective Date**") shall be the date upon which it is fully executed by all Parties hereto.

/SIGNATURES ON FOLLOWING PAGES/



OWNER/Developer - Norcor Naperville Associates, LLC:

[Handwritten Signature]  
[Signature]

JOHN E. GROSS  
[Printed name]

Manager Member  
Its [Title]

State of Illinois     )  
  ) ss  
County of DuPage    )

The foregoing instrument was acknowledged before me by [Handwritten Signature]  
this 10 day of August, 2020.

[Handwritten Signature]  
Notary Public

Deborah Powell Gross  
Print Name

Given under my hand and official seal this 10 day of August, 2020.

-Seal-

[Handwritten Signature]  
Notary Public  
My Commission Expires: June 3, 2023



Developer-Costco: Costco Wholesale Corporation:

DC David Messner  
[Signature]

David Messner  
[Printed name]

SVP- Real Estate  
Its [Title]

State of Washington )  
  ) ss  
County of King        )

The foregoing instrument was acknowledged before me by David Messner  
as the SVP-Real Estate of Costco Wholesale Corporation, to  
be its free and voluntary act for the uses and purposes mentioned in this instrument.

Wanda Jorgensen  
Notary Public

Wanda Jorgensen  
Print Name

Given under my hand and official seal this 6<sup>th</sup> day of August, 2020.

-Seal-



Wanda Jorgensen  
Notary Public  
Print Name: Wanda Jorgensen

My Commission Expires: July 9, 2021



**CITY OF NAPERVILLE**

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

**ATTEST:**

By: \_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk

Date: \_\_\_\_\_

[https://cityofnaperville-my.sharepoint.com/personal/lordp\\_naperville\\_il\\_us/Documents/Costco OAA Draft 7-27-2020.docx](https://cityofnaperville-my.sharepoint.com/personal/lordp_naperville_il_us/Documents/Costco%20OAA%20Draft%207-27-2020.docx)