

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, WA 98027  
Attn: Legal Department

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(Space Above For Recorder's Use)

**CONSENT AND ATTORNMENT AGREEMENT**

THIS CONSENT AND ATTORNMENT AGREEMENT ("**Agreement**") is made as of July 15, 2015, by and among UNIVERSITY MALL SHOPPING CENTER, L.C., a Utah limited liability company, owner of the real property hereinafter described ("**Mortgagor**"), COSTCO WHOLESALE CORPORATION, a Washington corporation ("**Tenant**") and WELLS FARGO BANK, NATIONAL ASSOCIATION (collectively with its successors or assigns, "**Lender**").

**RECITALS**

- A. By that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing ("**Mortgage**"), Mortgagor mortgaged its interest in the property described therein to Lender, as beneficiary under the Security Agreement (as used herein, the term "Mortgage" means the Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing and all amendments, supplements, extensions, replacements and other modifications thereof now or hereafter in effect).
- B. Pursuant to the terms of that certain Lease Agreement dated as of June 28, 1999, between University Mall Shopping Center, a general partnership, as assigned to Mortgagor pursuant to an assignment, as landlord, and Tenant, as tenant, Landlord leases the Property legally described on Exhibit "A" attached hereto (the "**Premises**" or the "**Property**") to Tenant for an initial term of twenty-five (25) years and five (5) optional renewal periods of five (5) years each, as provided in the Lease (as used herein, the term "**Lease**" means such Lease Agreement and all amendments, supplements, extensions, replacements and other modifications thereof and the term "**Lease Term**" means the initial term and any renewal periods under the Lease).
- C. Lender's interest in the Mortgage is subordinate to the Lease and Lender has requested that Tenant agree with Lender as to certain matters set forth herein.

NOW THEREFORE, in consideration of the foregoing, Mortgagor, Lender and Tenant agree as follows:

- 1. **CONSENT TO ENCUMBRANCE.** Notwithstanding Section 15.2 of the Lease, which would otherwise require Mortgagor to keep the Property free and clear of all mortgage and trust deed encumbrances after Mortgagor's receipt of prepaid rent for the Initial Term (as defined in the Lease), Tenant hereby consents to Mortgagor's encumbrance of the Property and agrees not to assert that Mortgagor's encumbrance of the Property by the recordation of the Mortgage is a default under the Lease.

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2. **APPROVAL OF LEASE; OWNERSHIP OF MORTGAGE.** Lender acknowledges that prior to the execution hereof it has had the opportunity to examine the terms and conditions of the Lease and consents thereto. Lender represents and warrants it is the sole owner and holder of the Mortgage.
3. **TENANT ATTORNMENT.** Lender acknowledges the lien of the Mortgage and the obligations set forth therein are absolutely and unconditionally subordinate to the Lease and Tenant's rights thereunder. Lender further agrees that in any action to foreclose the Mortgage, Tenant will not be named as a party defendant unless Lender is legally required to do so (provided that any such action to foreclose the Mortgage shall not seek to disturb the Lease), nor will any other action be taken which would terminate the Lease, except for any action taken pursuant to and in accordance with the terms and conditions set forth in the Lease. Notwithstanding the foregoing, if Lender or any other person or entity acquires Mortgagor's interest in the Premises pursuant to the exercise of any remedy provided for in, or otherwise available with respect to, the Mortgage or by any conveyance in lieu of foreclosure (Lender (including Lender as a mortgagee in possession), a purchaser at a foreclosure sale, a receiver appointed prior to or in connection with a foreclosure or any such other person being hereinafter referred to as "**Mortgagee Landlord**"), Tenant shall attorn to Mortgagee Landlord as its new landlord, and the Lease shall continue in full force and effect as a direct lease between Mortgagee Landlord and Tenant upon all of the terms, covenants, conditions and agreements set forth in the Lease. The foregoing attornment shall be effective upon the transfer of Mortgagor's interest in the Lease to Mortgagee Landlord; provided, however, Tenant shall be under no obligation to pay any unpaid rent to Mortgagee Landlord until Tenant receives written notice from Mortgagee Landlord requiring payment to Mortgagee Landlord (which notice Mortgagor irrevocably authorizes Tenant to rely on without any duty on the part of Tenant to confirm, controvert or challenge same). All such payments made to Lender shall be subject to any right of set-off, abatement, defense or counterclaim of Tenant under the Lease. Tenant shall receive full credit against amounts owed to Mortgagee Landlord under the Lease for all such payments made to Lender to the same extent as if such payments had been made directly to Mortgagor. The foregoing attornment shall be self-operative; however, Tenant shall execute and deliver such documents that Mortgagee Landlord may reasonably request to evidence the foregoing attornment
4. **LIMITATION ON LIABILITY:**
  - 4.1 Notwithstanding anything to the contrary in the Lease or this Agreement, if Mortgagee Landlord succeeds to the interest of Mortgagor under the Lease (whether by virtue of a direct lease pursuant to Section 3 above or pursuant to the exercise of any remedy provided for in or otherwise available with respect to the Mortgage or by any conveyance in lieu of foreclosure), such Mortgagee Landlord:
    - a. shall not be bound by any payment of rent or additional rent made by Tenant to Mortgagor for more than one month in advance except as required or permitted by the terms of the Lease, it being acknowledged that Tenant has prepaid to Mortgagor all Base Rent for the Initial Term of the Lease as permitted by Section 3.1(b) of the Lease, i.e., all Base Rent through November 30, 2024;
    - b. shall not be liable for any security or other deposit under the Lease, except to the extent actually received by Mortgagee Landlord;

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- c. shall not be liable for any default by Mortgagor under the Lease or for any other act or omission of Mortgagor existing as of the date Mortgagee Landlord acquires title to the Premises except for defaults of an ongoing or continuing nature of which Lender has been given notice pursuant to Section 5, and except for defaults arising after such acquisition of title;
- d. shall not be obligated to restore any part of the Premises in the event of damage thereto or destruction thereof by fire or other casualty, or in the event of a partial condemnation; provided, however, Mortgagee Landlord (to the extent it has any interest therein) shall make the proceeds of any insurance or condemnation available for restoration or repair as provided in the Lease, including without limitation, the insurance and condemnation provisions in Sections 11 and 12 of the Lease; and
- e. shall not be personally liable under or with respect to the Lease, this Agreement or the Premises beyond Mortgagee Landlord's interest in the Premises and any judgment against Mortgagee Landlord relating to the Lease, this Agreement or the Premises shall be enforced against Mortgagee Landlord solely out of the proceeds of the sale of its interest in the Premises or other realization proceedings against Mortgagee Landlord's interest in the Premises, provided that the foregoing provisions shall not be deemed to limit Mortgagee Landlord's obligations under the Lease as modified by this Agreement, but only to limit the personal liability of Mortgagee Landlord in case of enforcement thereof against Mortgagee Landlord, nor shall the foregoing provisions of this clause be deemed to limit Tenant's rights subject to the provisions of this Agreement to obtain injunctive relief or to specific performance.

4.2 Tenant agrees that, as long as the Mortgage is in effect:

- a. Tenant shall not pay any rent or other amount payable under the Lease more than one month in advance except as required or permitted by the terms of the Lease and except for prepaid Base Rent as provided in Section 4.1(a) above; and
- b. Lender shall have the benefit of each provision of the Lease that benefits Mortgagor's mortgagee and all notices of default to be given to Mortgagor under the Lease shall also be given to Lender as provided in Section 5 hereof.

5. **NOTICES OF DEFAULT.**

- 5.1 Before any termination due to a breach under the Lease shall be declared by Tenant, Tenant shall give notice in writing to Lender of the specific breach(es) of the Lease. Notice shall be given at least thirty (30) days (or such longer period as provided in the Lease for Mortgagor or provided in this Section 5.1 below for Lender to cure the default) before Tenant shall terminate the Lease. Within thirty (30) days after receipt of such notice from Tenant, Lender may, in addition to any other remedies provided in the Mortgage, elect to make such payments and cure such defaults on behalf of Mortgagor and in connection therewith, do all work and make all payments necessary to cure such default.

Notwithstanding anything in the Lease, in this Agreement or under applicable law to the contrary, Tenant shall not exercise any right it may have to terminate the Lease by reason of any monetary default by Mortgagor under the Lease, provided that, within thirty (30) days after Lender's receipt of notice from Tenant of such default, Lender or a Mortgagee Landlord holding under Lender pays the amount in question.

Notwithstanding anything in the Lease, in this Agreement or under applicable law to the contrary, Tenant shall not exercise any right it may have to terminate the Lease by reason of any other (non-monetary) default by Mortgagor under the Lease, provided that (a) within thirty (30) days after Lender's receipt of notice from Tenant of such default, Lender gives Tenant notice of Lender's intention to obtain possession of the property and agrees thereafter to cure the default in question, (b) within thirty (30) days after giving such notice, subject to any applicable stay under applicable law, Lender commences proceedings to obtain possession of the Property, (c) thereafter, subject to any such stay, Lender diligently continues such proceedings to conclusion, and (d) after obtaining possession Lender or a Mortgagee Landlord holding under Lender, promptly cures such default.

- 5.2 Upon the occurrence of an event of default under the Mortgage, and at any time thereafter during the continuance thereof, Lender may, at its option, send a notice to Tenant, which notice shall: (i) indicate that an event of default has occurred and that Lender has revoked Mortgagor's right or license to collect rent under the Lease; (ii) indicate that Lender has elected to exercise its right under this Section; (iii) direct Tenant thereafter to make all payments of rent and to perform all obligations under the Lease to or for the benefit of Lender or as Lender shall direct; and (iv) contain the Lender's employer identification number. Following receipt of any such notice from Lender, Tenant shall comply with the provisions of such notice, make all payments of rent and perform all obligations under the Lease to and for the benefit of Lender or as Lender shall direct. Such notice and direction shall remain effective until the first to occur of: (A) the receipt by Tenant of a subsequent notice from Lender to the effect that such event of default has been cured, (B) the receipt by Tenant of a subsequent notice that Lender has appointed another person to act as agent for Lender, in which event Tenant shall thereafter make payments of rent and perform all obligations under the Lease as may be directed by such other person, (C) the appointment of a receiver, in which event Tenant shall thereafter make payments of rent and perform all obligations under the Lease as may be directed by such receiver, or (D) the issuance of a court order directing Tenant to pay rent and perform obligations in a manner not consistent with the notice. Tenant shall be entitled to rely upon any notice from Lender and shall be protected with respect to any payment made pursuant to such notice, irrespective of whether a dispute exists between Mortgagor and Lender with respect to the existence of any event of default or the rights of Lender hereunder. If Tenant receives a notice from Lender pursuant to this Section 5, Tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this Agreement. Lender hereby agrees to indemnify, defend and hold Tenant harmless from and against any and all loss, claims, damage or liability arising from or related to any payment of rent or performance of obligations under the Lease by Tenant made in good faith in reliance on and pursuant to such notice. The provisions of this Section 5.2 may be exercised by Lender exercising its rights under any assignment of leases or rents held by it, by Lender as a mortgagee in possession or by a receiver appointed prior to or in connection with the foreclosure.

## 6. **MISCELLANEOUS.**

- 7.1 **Recordation.** Mortgagor agrees that Mortgagor (i) shall promptly cause this Agreement to be recorded in each office where the Mortgage is recorded, and (ii) shall indemnify Lender and Tenant against any expenses including taxes in connection with such recording.
- 7.2 **Notices.** All notices, demands, or other communications under this Agreement and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all

other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) Business Days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	University Mall Shopping Center, L.C. c/o Woodbury Corporation 2733 E. Parleys Way #300 Salt Lake City, Utah 84109 Attn: Scott Bishop
With a copy to:	Woodbury Corporation 2733 E. Parleys Way #300 Salt Lake City, Utah 84109 Attn: Office of General Counsel
Tenant:	Costco Wholesale Corporation 999 Lake Drive Issaquah, Washington 98027 Attn: Property Management (Legal Dept.) Re: Costco Location #484 Orem
With a copy to:	Costco Wholesale Corporation 999 Lake Drive Issaquah, WA 98027 Attn: Legal Department Re: Costco Location # 484 Orem
Lender:	Wells Fargo Bank, National Association (for overnight or hand delivery) 299 South Main Street, 6 <sup>th</sup> Floor Salt Lake City, Utah 84111 (for U.S. mail) PO Box 45490 Salt Lake City, Utah 84145-0490 Attention: Erik W. Bengtzen Loan No.: 1012464
With a copy to:	Wells Fargo Bank, National Association Minneapolis Loan Center 608 2 <sup>nd</sup> Avenue South, 11 <sup>th</sup> Floor Minneapolis, Minnesota 55402 Attn: Kyle Schwanke Loan No.: 1012464

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

- 7.3 **Heirs, Successors and Assigns.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Agreement shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto.
- 6.1 **Entire Agreement; Modification.** This Agreement shall be the whole and only agreement between the parties hereto with regard to the subject matter herein, and shall supersede and cancel any prior agreements as to such. This Agreement shall not be modified, waived or terminated except by an agreement in writing executed by the Party against whom enforcement of such modification, waiver or termination is sought. Terms not otherwise defined herein shall have the meaning set forth in the Lease.
- 6.4 **Headings.** All article, section or other headings appearing in this Agreement are for convenience of reference only and shall be disregarded in construing this Agreement.
- 6.5 **Governing Law.** This Agreement shall be governed by and construed with the law of the Commonwealth of Utah.
- 6.6 **No Merger.** The parties hereto agree that in the event the ownership of the fee and leasehold interests in the Premises become vested in the same person or entity, then so long as the Mortgage shall remain outstanding, such occurrence shall not result in a merger of title. Rather, the Lease and the Mortgage lien on Mortgagor's interest therein shall remain in full force and effect.
- 6.7 **Counterparts.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 6.8 **Exhibits, Schedules and Riders.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Agreement by such attachment for all purposes.

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

*[Signature Pages Follow]*

Tenant's Signature Page:

"TENANT"

COSTCO WHOLESALE CORPORATION,  
a Washington corporation

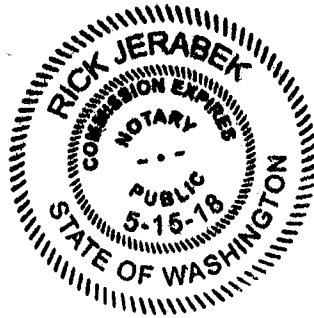
By: Gail E. Tumbon  
Name: Gail E. Tumbon  
Title: Assistant Secretary

STATE OF WASHINGTON )  
  :SS  
COUNTY OF KING )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of July, 2015, by GAIL E. TUMBON, ASSISTANT SECRETARY of Costco Wholesale Corporation, a Washington corporation.

Rick Jerabek Rick Jerabek  
NOTARY PUBLIC  
Residing at: SEATTLE, WA

My commission expires: 5-15-18



Mortgagor's Signature Page:

"MORTGAGOR"

UNIVERSITY MALL SHOPPING CENTER, L.C.,  
a Utah limited liability company

By: Woodbury Management Company, L.C.,  
a Utah limited liability company  
Its Manager

By: [Signature]  
W. Richards Woodbury, Manager

By: [Signature]  
O. Randall Woodbury, Manager

STATE OF UTAH )  
 )  
 ) :SS  
COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 17 day of July, 2015, by W. Richards Woodbury, Manager of Woodbury Management Company, L.C., a Utah limited liability company, Manager of University Mall Shopping Center, L.C., a Utah limited liability company.



[Signature]  
NOTARY PUBLIC  
Residing at: Woodbury Corporation

My commission expires: January 6, 2019

STATE OF UTAH )  
 )  
 ) :SS  
COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 17 day of July, 2015, by O. Randall Woodbury, Manager of Woodbury Management Company, L.C., a Utah limited liability company, Manager of University Mall Shopping Center, L.C., a Utah limited liability company.



[Signature]  
NOTARY PUBLIC  
Residing at: Woodbury Corporation

My commission expires: January 6, 2019



Lender's Signature Page:

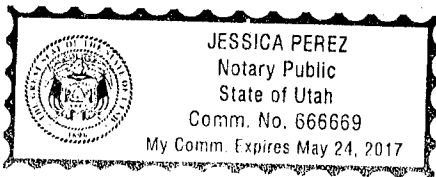
"LENDER"

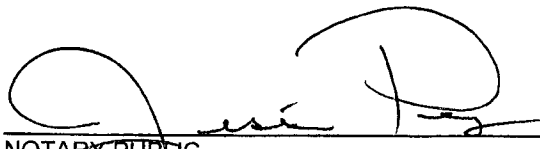
WELLS FARGO BANK, NATIONAL ASSOCIATION

By:   
Erik W. Bengtzen, Vice President

STATE OF UTAH            )  
  :SS  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of July, 2015, by Erik W. Bengtzen, Vice President of Wells Fargo Bank, National Association.



  
NOTARY PUBLIC  
Residing at:

My commission expires: May 24, 2017

**EXHIBIT A - DESCRIPTION OF PREMISES**

Exhibit A to that certain Consent and Attornment Agreement entered into by and among UNIVERSITY MALL SHOPPING CENTER, L.C., a Utah limited liability company, as Mortgagor, COSTCO WHOLESALE CORPORATION, a Washington corporation, as Tenant, and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Lender, dated as of July 15, 2015.

All that certain real property located in the County of Utah, State of Utah, described as follows:

Parcel 3 (Serial No. 57:043:0017)

Lot 17, Plat "A", University Mall Subdivision, according to the official plat thereof, recorded March 1, 2001, as Entry No. 19427:2001 and Map Filing No. 8962, in the office of the Utah County Recorder.