

DIAMOND G CONCRETE COMPANY
CONTRACT TO BUY AND SELL REAL ESTATE

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1 SELLER DEFINED. As used in this Contract, the term, Seller, includes, jointly and severally, every person named below as a Seller. Singular references to Seller include the plural and plural references to Sellers include each individual Seller.

2 RECEIPT & PROPERTY. The Parties acknowledge that the purchase and sale of the Property described below arises from the Public/Private Partnership Agreement Regarding Longmont Redevelopment and Costco Warehouse Project By and Among Diamond G Concrete Company, Costco Wholesale Corporation, and the City of Longmont Dated December 1, 2020 (the “P3 Agreement”). The P3 Agreement establishes the purchase price, payment method, escrow procedures, and closing process as described below for the following described real estate in the County of Boulder, Colorado, to wit:

Lot 5, Irwin Thomas First Filing
Longmont, Colorado

See Exhibit A for the unplatted legal description of the Property.

together with all easements and rights of way appurtenant to the Property, and all improvements on the Property; together with all minerals of whatever kind or character in, under, and upon or that might be produced from the Property (including any rights and royalties under any mineral leases).

3 PURCHASE AND SALE. Subject to the following provisions, Purchaser agrees to buy, and Seller agrees to sell the Property on the terms and conditions stated in this Contract, for non-park purposes.

4 PRICE. The purchase price shall be \$1,470,150.00, payable as set forth in the P3 Agreement and the Public Improvements Escrow Agreement to be entered into by the Purchaser, Seller and the Costco Wholesale Corporation, a Washington Corporation ("PIEA").

5 CLOSING. The parties shall close this Contract on the date set forth in the P3 Agreement and PIEA, or another date to which the parties may agree. Purchaser shall set the hour and place of closing. Except as otherwise agreed, the Purchaser shall pay any closing costs or fees, including costs of drafting the deed of conveyance, documentary stamps and recordation.

6 TITLE INSURANCE. At least twenty (20) days before closing, Purchaser shall secure, from a title insurer of Purchaser's choosing, and at Purchaser's sole expense (including any necessary surveying expenses), a current ALTA owner's title insurance commitment for the Property, accompanied by copies of all instruments and documents identified as creating insurance exceptions (Title Documents), and a current Treasurer's Certificate of Taxes due on the Property. The title insurer shall commit to delete from the policy its standard printed insurance exceptions concerning interests or claims not of record; easements or encumbrances not of record; unpatented mining claims, reservations or exceptions; liens for labor, service, or materials not of record; details reflected by a survey and inspection of the Property; and defects or encumbrances created or appearing of record after the title insurance commitment. Purchaser shall give Seller written notice of unmerchantable title or of any other unsatisfactory title condition shown by any new, revised or updated title insurance commitment or Title Documents within 10 days after receiving the title insurance commitment and any referenced Title Document.

6.1 RIGHT TO CURE. If Purchaser gives notice of unmerchantable title or any other unsatisfactory title condition as provided above, Purchaser, at Purchaser's sole option, may either terminate this Contract or require Seller to use reasonable efforts to correct said unsatisfactory title condition(s) before the closing date. If Seller, after notice that Purchaser requires it, fails to cure unsatisfactory title condition(s) by the closing date, this Contract shall terminate, unless Seller receives Purchaser's written notice, by the closing date, that Purchaser waives its objection, and elects to close this Contract. If Purchaser terminates this Contract under this paragraph, Seller and closing agent shall promptly refund all amounts paid by Purchaser toward the Purchase price, and the parties shall have no further

obligation or liability to each other. Purchaser may, at its sole option and its sole expense, either purchase or decline the title insurance under this paragraph.

7 TITLE AND EXCEPTIONS. Except as stated in this Contract, Title shall be good and merchantable in Seller. Subject to Purchaser's payment or tender, as above provided, and Purchaser's compliance with the other terms of this Contract, Seller shall execute and deliver to Purchaser a good and sufficient special warranty deed, in a form acceptable to the Purchaser by the closing date, conveying the Property free and clear of all taxes and liens (including liens for special improvements installed as of the date of Purchaser's signature on this Contract, whether assessed or not) and other encumbrances, but subject to applicable building and zoning regulations.

8 ENCUMBRANCES. Closing agent may use the proceeds of this transaction or any other Seller's funds to remove any encumbrance not permitted by this Contract at closing. However, if the total obligations secured by liens or encumbrances exceed the purchase price, then this Contract, at the election of Purchaser, shall become void and of no effect. Such election shall release each party from their respective obligations to buy and sell, and Seller and closing agent shall return to Purchaser all payments and other things of value given under this Contract.

9 CLOSING ADJUSTMENTS. The closing agent shall apportion general taxes for the year of closing (based on the most recent levy and the most recent assessment) to date of delivery of deed. Closing agent shall deduct from Seller's funds, and pay to the County Treasurer under C.R.S. 39-3-132, Seller's prorated share, based on the prior year's taxes. The proration shall be a final settlement of taxes. Purchaser shall be responsible for any sales and use tax that may accrue because of this transaction.

10 POSSESSION. Purchaser shall take possession of the Property upon closing.

11 DEFAULT. Time is of the essence. If any note or check given as earnest money or any other payment due under this Contract is not paid, honored or tendered when due, or if any party fails to perform any other obligation under this Contract, the parties shall have the following remedies:

11.1 IF PURCHASER DEFAULTS, then Purchaser shall forfeit to Seller all payments and things of value given under this Contract, including interest accrued on the escrowed earnest money and part payment, and both parties shall then be released from all further obligations under this Contract. Such payments and things of value forfeited are LIQUIDATED DAMAGES and not a penalty and, except as this Contract otherwise expressly states, are Seller's SOLE AND ONLY REMEDY for the Purchaser's failure to perform under this Contract. Seller expressly WAIVES THE REMEDIES OF SPECIFIC PERFORMANCE AND ADDITIONAL DAMAGES.

11.2 IF SELLER DEFAULTS, Purchaser may, in its sole discretion: (1) treat this Contract as terminated, in which case Seller and closing agent shall return all payments and things of value given hereunder (including interest accrued on the escrowed earnest money and part payment) to Purchaser and Purchaser may pursue and recover such damages as may be proper; (2) treat this Contract as in full force and effect, in which case

Purchaser shall have the right to specific performance or damages, or both; or (3) begin eminent domain proceedings and claim full credit against any just compensation award for any payments or things of value given under this Contract. If the Purchaser pursues eminent domain, this Contract shall conclusively establish good faith negotiations between the parties, and Purchaser's inability to obtain the Property through such good faith negotiations. The entire just compensation for taking the subject property, including any damages to any remainder of Seller's property, shall be the purchase price in this Contract and, upon deposit of that price, Purchaser shall have immediate possession of the property.

12 SELLER'S WARRANTIES. Except as this Contract otherwise expressly states, Seller represents and warrants, as of Seller's signature, and as of the closing date, that the following are true and correct:

12.1 AUTHORITY. Seller has the full right, power and authority to transfer and convey the Property, as provided in this Contract, and to carry out Seller's obligations under this Contract and Seller, if not a natural person, is a corporation, partnership, limited partnership, limited liability company or other entity validly existing and in good standing under the laws of the State of Colorado, and that Seller's signature below is fully authorized and binding upon Seller;

12.2 CONTRACT NOT PROHIBITED. To the best of Seller's knowledge, neither the execution of this Contract nor its consummation constitutes, or will result in, any breach of any of the terms, conditions or provisions of, or is a default under, any indenture, charter, bylaw, mortgage, loan agreement, lien, lease, license, judgment, decree, order, instrument or other verbal or written agreement, covenant or restriction to which Seller is a party or is subject or to which the Property is subject;

12.3 TITLE. Seller has good and merchantable title to the Property and all the assets, properties, rights and interests pertaining to the Property, free and clear of all liens and encumbrances, except as provided herein, and there exist no restrictions on the right of Seller to transfer the Property and to convey good title to Purchaser according to this Contract;

12.4 DOCUMENTS. To the best of Seller's knowledge, every document, schedule, item and other information Seller has delivered or will deliver or make available to the Purchaser for inspection under this Contract will be true, accurate and correct;

12.5 NO SPECIAL ASSESSMENTS. To the best of Seller's knowledge, no special assessments now burden or encumber the Property and Seller knows of no special assessments currently proposed for the Property;

12.6 NO LEASES. Except as provided in this Contract, no leases, tenancies or rental agreements cover any part of the Property that Seller cannot lawfully terminate before the closing date provided in this Contract;

12.7 NO EASEMENTS. Except as provided in Section 26, Seller has not granted or created, and has no knowledge of any third parties who may have the right to claim or assert any easement, right-of-way or claim of possession not shown of record, whether by grant, prescription, adverse possession or otherwise, as to any part of the Property;

12.8 NO LITIGATION. There is no litigation pending (or to Seller's knowledge threatened) against or concerning any part of the Property; nor does Seller know of or have reasonable grounds to know of any basis for any such action;

12.9 NO CONDEMNATION. Seller has no knowledge of any pending or threatened condemnation or eminent domain proceeding concerning any part of the Property, except by Purchaser;

12.10 NO VIOLATIONS OF LAW. Seller has received no notice of, and to the best of Seller's knowledge, there are no violations of any laws, orders, regulations or requirements of any governmental authority affecting any part of the Property;

12.11 NO COVENANT VIOLATIONS. Seller has received no notice of default or breach under any covenant, condition, restriction, right-of-way or easement affecting any portion of the Property; no such default or breach now exists or will exist on the date of closing; and no event has occurred and is continuing which, with or without notice or the passage of time, will constitute such a default or breach.

13 INDEMNIFICATION. Seller will indemnify, defend, and hold Purchaser harmless from and against all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses and expenses (including, without limitation, attorney fees) arising or resulting (directly or indirectly) from the untruth or inaccuracy of any representations or warranties or the breach of any covenants or warranties. Purchaser will, to the full extent allowed by law, indemnify, defend, and hold Seller harmless from and against any claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses, and expenses (including, without limitation, attorney fees) arising or resulting from, or suffered, sustained or incurred by Purchaser as a result (direct or indirect) of Purchaser's occupancy of the Property before title vests in Purchaser.

14 CASUALTY. In case of substantial damage to the Property by fire, flood or casualty between the date of this Contract and the date of closing, Purchaser may declare this Contract void and of no further force or effect; and the parties to this Contract shall be released from all obligations under this Contract; and Seller and closing agent shall refund to Purchaser the full amount paid to Seller.

15 TERMINATION. Besides all other rights and remedies of the Purchaser and Seller, as stated in this Contract, Purchaser shall have the right to terminate this Contract, if any representations or warranties of Seller stated in this Contract are not true and correct as of the closing date.

16 REAL ESTATE COMMISSION. Purchaser shall incur no real estate commission due upon closing, or as a condition of closing.

17 PROPERTY TO REMAIN UNENCUMBERED. Seller will not, while this Contract is effective, encumber or burden any part of the Property.

18 CONTRACT TO SURVIVE CLOSING. Except such of the terms, conditions, covenants and agreements under this Contract which are, by their very nature, fully and completely performed upon the closing of the purchase and sale, all of the terms, conditions, representations, warranties, covenants and agreements stated in this Contract shall survive the closing and shall continue, after closing, to be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.

19 ADDITIONAL DOCUMENTS. The parties agree to execute any additional documents necessary to carry out the purposes of this Contract, consistent with its terms, including, but not limited to assignments of all rents and royalties under any existing mineral or other leases. In addition, for any lease permitted under this Contract, Seller will furnish Purchaser, before closing, with estoppel certificates from each tenant, verifying the terms of the lease, that the lease is in good standing, and that neither party to the lease is in default.

20 TIME FOR ACCEPTANCE. If Seller accepts this proposal in writing and Purchaser receives notice of such acceptance, and the Longmont Mayor, for the Purchaser, signs this proposal, this document shall become a Contract between Seller and Purchaser and shall inure to the benefit of the heirs, successors and assigns of the parties. Otherwise, Seller shall promptly return the earnest money tendered with this document.

21 GOVERNING LAW. The law of the State of Colorado shall govern interpretation, construction and enforcement of this Contract.

22 CONSTRUCTION. In this Contract, words of the masculine gender include the feminine and neuter gender and words of the neuter gender refer to any gender. Words in the singular include the plural and *vice versa*. This Contract shall be construed according to its fair meaning, as if prepared by both parties, and not in favor of or against either party. This document and any other documents incorporated by reference contain the entire understanding and agreement between the parties. There are no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning the subject of this Contract unless stated in writing and signed by both parties.

23 INSPECTION. The Purchaser or any person Purchaser designates may make inspections of the physical condition of the Property and the improvements, at Purchaser's expense. Such inspections may include, but are not limited to, inspections for appraisal and compliance with environmental protection, pollution or land use laws, ordinances, rules, and regulations and for the disposal or existence, in or on the Property, of any pollution or hazardous substance. Such inspections may include reasonable sub-surface boring and excavation. If Purchaser gives written notice of unsatisfactory condition of the physical condition of the Property and any improvements, as determined in Purchaser's sole discretion, by five days before closing, Seller shall either cure such conditions, or this Contract shall then terminate. Upon such termination, Seller and closing agent shall return to Purchaser all payments and things of value received hereunder by Seller,

including interest accrued on the escrowed earnest money and part payment. Purchaser is responsible and shall pay for any physical damage to the Property and the improvements as a result of such inspections.

24 APPRAISAL. Purchaser shall have the sole option and election to terminate this Contract if the purchase price exceeds the Property's valuation, as determined by an appraiser engaged by Purchaser. This Contract shall terminate if Purchaser causes Seller to receive written notice of termination and either a copy of such appraisal or a written statement from the appraiser confirming valuation less than the purchase price by the closing date. In case of termination under this paragraph, Seller and any closing agent shall promptly return to Purchaser all payments and things of value given under this Contract.

25 SELLER'S WARRANTIES SUBJECT TO PURCHASER'S ACTIONS. Seller's warranties are subject to any encumbrances, restrictions, and rights to possession or exceptions to title created by Purchaser.

26 ADDITIONAL PROVISIONS.

26.1 PLATTING. Notwithstanding the provisions of Paragraphs 12.7 and 17, Seller is currently in the process of obtaining approval of a Final Plat and Final Planned Unit Development plan for the Property, which Final Plat and PUD may create certain easements and encumbrances. Purchaser shall be given the opportunity to review the proposed Plat and PUD prior to Closing and may provide objections pursuant to Paragraph 6.

Dated this _____ day of _____ 2021.

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CITY OF LONGMONT, COLORADO

CITY MANAGER

CITY OF LONGMONT, COLORADO

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

CA File: 21-001280

SELLER'S ACCEPTANCE

Seller accepts the above proposal this _____ day of _____, 2021.

DIAMOND G CONCRETE COMPANY, INC.,
a Colorado corporation

By: _____
Reginald V. Golden, President

Seller's mailing address: PO Box 54, Longmont, Colorado 80503

ACKNOWLEDGMENT

State of _____)
) ss:
County of _____)

The foregoing instrument was acknowledged before me by Reginald V. Golden, as President of Diamond G Concrete Company, Inc., a Colorado corporation, on behalf of the corporation, this _____ day of _____, 2021.

Witness my hand and official Seal.

My Commission expires _____.

Notary Public

EXHIBIT A

A PARCEL OF LAND LOCATED IN SECTION 11, TOWNSHIP 2 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN; CITY OF LONGMONT, COUNTY OF BOULDER, STATE OF COLORADO; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER-WEST 1/16TH CORNER OF SAID SECTION 11 AND ASSUMING THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER (E $\frac{1}{2}$ SW $\frac{1}{4}$) OF SECTION 11, BEING MONUMENTED ON THE NORTH END BY A #6 REBAR WITH A 3.25" ALUMINUM CAP STAMPED LS 34993 AND ON THE SOUTH END BY A #6 REBAR WITH A 3.25" ALUMINUM CAP STAMPED LS 20685, HEREON IS ASSUMED TO BEAR N00°23'38"E A DISTANCE OF 2618.53 FEET;

THENCE S00°23'38"W ALONG SAID WEST LINE A DISTANCE OF 1107.44 FEET TO THE POINT OF BEGINNING.

THENCE N 89°56'49" E A DISTANCE OF 570.89 FEET;

THENCE S 0°22'25" W A DISTANCE OF 696.98 FEET;

THENCE N 89°39'38" W A DISTANCE OF 505.84 FEET;

THENCE N 54°41'43" W A DISTANCE OF 38.24 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF MARTIN STREET; THENCE ON SAID EASTERLY RIGHT OF WAY THE FOLLOWING TWO (2) COURSES

(1) THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 636.00 FEET, A CENTRAL ANGLE OF 4°49'23", AN ARC LENGTH OF 53.54 FEET AND A CHORD THAT BEARS N 06°39'25" W A DISTANCE OF 53.52 FEET;

(2) THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 730.50 FEET, A CENTRAL ANGLE OF 11°17'51", AN ARC LENGTH OF 144.04 FEET AND A CHORD THAT BEARS N 10°34'16" W A DISTANCE OF 143.81 FEET TO THE WEST LINE OF SAID E $\frac{1}{2}$ SW $\frac{1}{4}$;

THENCE N 0°23'38" E ALONG SAID WEST LINE A DISTANCE OF 476.83 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 9.00 ACRES MORE OR LESS.



STEVEN PARKS, PROFESSIONAL LAND SURVEYOR
COLORADO NO. 38348
AND ON BEHALF OF MAJESTIC SURVEYING, LLC

EXHIBIT A
DATE: JULY 2021
JOB NO. 1241.0001.00
SHEET 1 OF 2



TST, INC. CONSULTING ENGINEERS



748 Whalers Way, Suite 200
Fort Collins, Colorado
Phone: 970.226.0557

K:\1241\0001\05 Drawings\Exhibits\20210712 - 9 Acre Legal for City\Irwin Thomas Lot 5

EXHIBIT A

CENTER-WEST 1/16TH CORNER
SEC. 11, T2N R69W
FOUND #6 REBAR W/3.25" ALUM CAP LS 34993
(POINT OF COMMENCEMENT)

NOTICE:
ACCORDING TO COLORADO LAW
YOU MUST COMMENCE ANY LEGAL
ACTION BASED UPON ANY DEFECT
IN THIS SURVEY WITHIN THREE
YEARS AFTER YOU FIRST DISCOVER
SUCH DEFECT. IN NO EVENT MAY
ANY ACTION BASED UPON ANY
DEFECT IN THIS SURVEY BE
COMMENCED MORE THAN TEN
YEARS FROM THE DATE OF THE
CERTIFICATION SHOWN HEREON.
(13-80-105 C.R.S. 2012)

NOTE:
THIS DRAWING DOES NOT
REPRESENT A MONUMENTED
LAND SURVEY. ITS SOLE
PURPOSE IS A GRAPHIC
REPRESENTATION OF THE
ACCOMPANYING WRITTEN
DESCRIPTION.

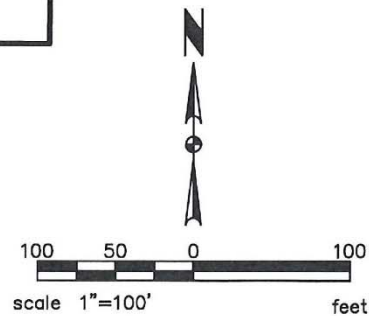
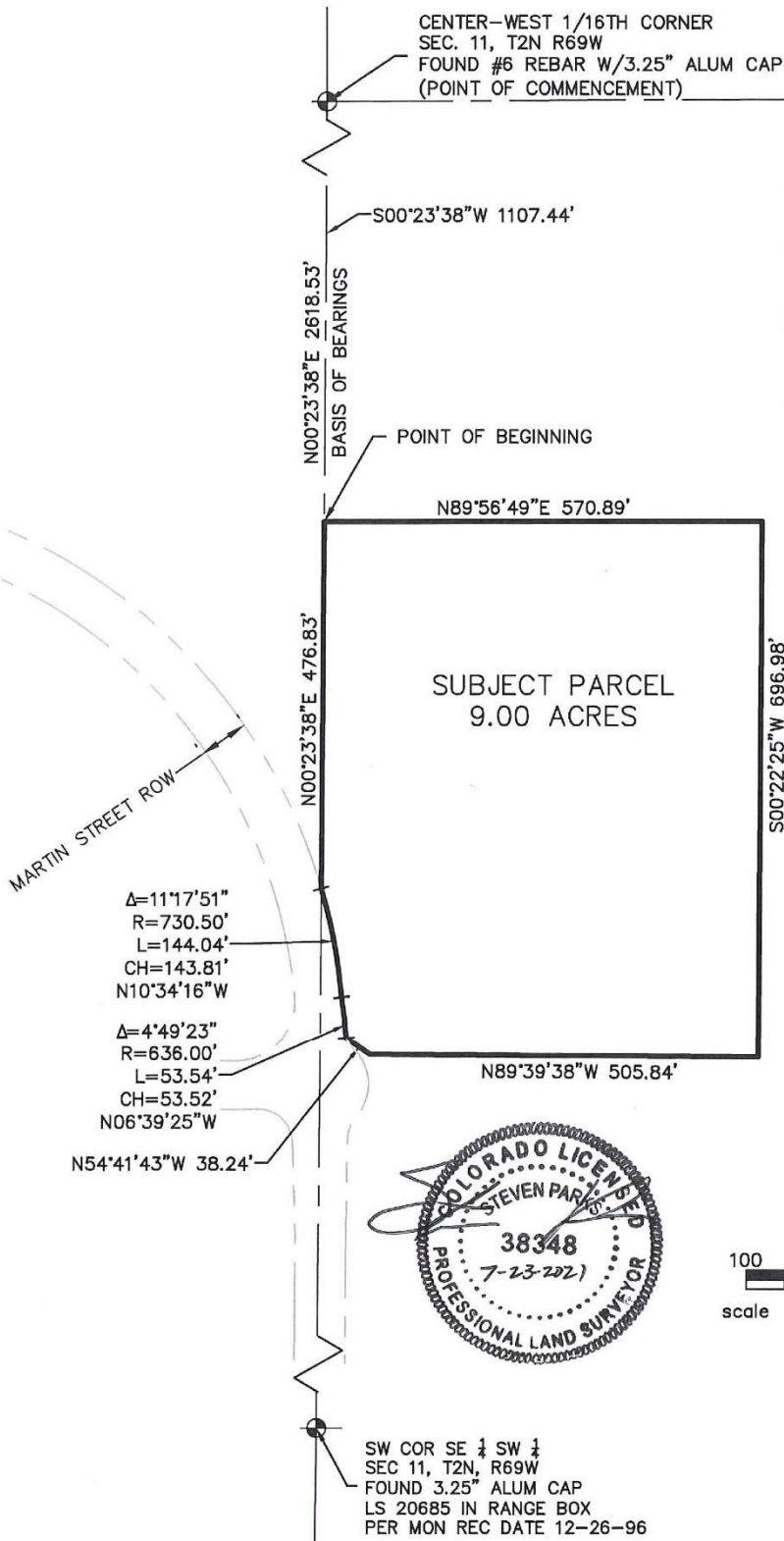


EXHIBIT A
DATE: JULY 2021
JOB NO. 1241.0001.00
SHEET 2 OF 2

TST TST, INC. CONSULTING ENGINEERS

748 Whalers Way, Suite 200
Fort Collins, Colorado
Phone: 970.226.0537