

DOM03HRZ

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF CONTRACTOR: DOMINICK'S FINER FOODS LLC

SUBJECT/PROJECT: SAFEWAY AT HORIZON PARK

LOCATION: 681 HORIZON DRIVE

TAX PARCEL #: 2945-012-50-003

FILE #: SS-2001-211

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2003

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

13

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Dominick's Finer Foods, Inc. ("Developer") and the **City of Grand Junction**, Colorado ("City").

For valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Community Development Director, which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

RECITALS

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as Safeway at Horizon Park has been reviewed and approved under Community Development file # SS-2001-211 ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than

litigation, this agreement and/or the approved development plan. Making disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys' / litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee. The Developer is required to post security in an amount of \$ 80,000.00 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash X Letter of Credit (LOC) _____ Disbursement Agreement _____
to escrow account held by Meridian Land Title

5. **Standards:** The Developer shall construct the Improvements according to the City's standards and specifications.

6. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 59,326 (Line G2, Exhibit B, City Security).

6b. The Maintenance Guarantee shall be secured by a letter of credit, cash escrow or other form acceptable to the City.

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

7c. The Commencement date and the Completion Date are as follows:

Commencement Date: January 5, 2004

Completion Date: June 30, 2004

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

9. **Notice of Defect:** The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

10. **Acceptance of Improvements:** The City shall not accept and/or approve any or all of the Improvements until the Developer presents a document or documents for the benefit of the City showing that the Developer owns the Improvements in fee simple, or as accepted by the City Attorney, and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

11. **Reduction of Security:** Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of ~~\$20,674~~ (Line G1, Exhibit B, Total Improvement Costs).

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

12. Use of Proceeds: The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

13. Events of Default: The following conditions, occurrences or actions shall constitute a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer. In such event the City may immediately declare a default without prior notification to the Developer;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. Measure of Damages: The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to

contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

15. City's Rights Upon Default: When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. The Developer grants to the City, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with or on account of the performance or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

20. **Vested Rights:** This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire Agreement between the parties. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

22. **Third Party Rights:** No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

23. **Time:** For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. **Severability:** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or

unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall be construed as if the part, term or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

25a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement shall be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer:	<u>Dominick's Finer Foods, LLC</u>	Name -Developer/Company
	<u>5918 Stoneridge Mall Road</u>	Address (Street and Mailing)
	<u>Attn: Real Estate Law</u>	
	<u>Pleasanton, CA 94588</u>	City, State & Zip Code
	<u>(925) 467-3234</u>	Telephone and Fax Numbers
	<u>(925) 467-3224</u>	
	<u>linda.macdonald@safeway.com</u>	E-mail

Cc: Safeway Inc.
6900 South Yosemite Street
Englewood, CO 80112
Attn: Jim Marlow - Construction Dept.

If to City: Office of the City Attorney
250 North 5th Street
Grand Junction, CO 81501

Cc: Community Development Department
250 North 5th Street
Grand Junction, CO 81501

27. **Recordation:** Developer shall pay the costs to record a memorandum of this Agreement (Exhibit D) in the records of the Mesa County Clerk and Recorder's Office. The Developer may, at his/her/its option record the entire agreement.

28. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

29a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

30. **Liability before Acceptance:** The City shall have no responsibility or liability with respect to any street or other Improvement(s), notwithstanding the use of the same by the public, unless the street or other Improvement shall have received Acceptance by the City.

30a. If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(i) furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;

(ii) provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and
(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By: Dominick's Finer Foods, LLC

Linda S. MacDonald 12/31/03
Developer Date

Name (printed) Linda S. MacDonald
Its Asst. Vice President

Corporate Attest:

Marilyn K. Beardsley 12/31/03
Name Marilyn K. Beardsley Date
Its Asst. Secretary *LSM*

City of Grand Junction
250 North Fifth Street
Grand Junction, CO 81501

Pat Cecil 1/28/04
Community Development Dept. *KCA* Date

6/13/2003

**EXHIBIT A
TO DEVELOPMENT IMPROVEMENTS AGREEMENT**

LEGAL DESCRIPTION

Lots 1, 2 and 6, Safeway at Horizon Park, a Replat of Lots 1 – 5, Horizon Park Meadows,
City of Grand Junction, County of Mesa, State of Colorado.



City of Grand Junction
Department of Public Works and Utilities
Engineering Division
250 North Fifth Street
Grand Junction, CO 81501-2668
FAX: (970) 256-4031

October 9, 2003

EXHIBIT B

TO

DEVELOPMENT IMPROVEMENTS AGREEMENT

Jim Marlow
Safeway, Inc.
6900 South Yosemite Street
Englewood, CO 80112-1412

Regarding: SS-2001-211: Safeway at Horizon Drive
Safeway Store #2625 (Grand Junction, CO)

Jim,

Martinez concrete has finished the turn lane concrete. They still have a little work in the bus lane to complete. Mark Barslund and I have walked the site to inspect the punch list. There are still several items remaining. There are also a few new items. Completion of this project is taking entirely too long and the City is getting very frustrated.

EXISTING PUNCH LIST

Please see the letter dated January 17, 2002. The following items are numbered the same and have not been completed.

6. The grate is too high on the inlet on 12th just north of roundabout on east side.
9. The striping on Horizon, on the left turn lanes, Budlong, and at the Horizon entrances is wearing badly. Repaint the areas that are bad. *The only item left is the striping on Budlong.*
11. Install trash racks on both pond outlets. *There was a grate installed on the southern pond outlet but someone must have pulled it off and understandably so, it would have plugged. The trash rack must be installed according to the detail on sheet 36 of the drawings on both ponds.*
15. The top of curb along a portion of the bus stop drains back to the sidewalk. Grind down the reverse sloped curb and put a synthetic finish on it. The finish shall have the appearance of concrete and be slip resistant. *This work is still in progress.*

21. 12th Street pond
 - Grade pond bottom to get the design 2% slope
 - Trash rack on outlet structure. *See above.*
 - Seed per plan or landscape

NEW ITEMS

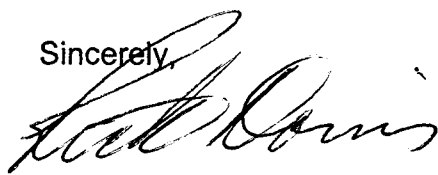
1. The bike path at the fuel station sign is cracked for at least two stones and must be replaced.
2. The north east handicap ramp at 12th street is cracked and must be replaced.
3. At least 3 stones in the center of the Bus lane are cracked and must be replaced.
4. The concrete behind the walk replaced along 12th street, south of the entrance, was not backfilled against when it was replaced. Consequently, there is a dangerous 4" drop off. There is also some waste concrete in this area that will keep vegetation from growing well. The waste concrete must be removed and the walk backfilled.

Also please refer to the bottom of the January 17, 2003 letter for the required testing, agreement, and guarantee information yet to be completed.

Jim, Safeway has been open almost a year and the completion of the remaining items is moving at a snails pace. Can you please take this bull by the horns and get everything, including all paperwork completed? I will be on vacation until October 27th. I want all items, including testing paperwork, resolved or completed by November 14th. If this doesn't occur, the City will have to take other measures.

Please call Kristen Ashbeck or Laura Lamberty at 970-244-1430 or Mark Barslund at 970-201-1362 if you have any questions.

Sincerely,



Rick Dorris, PE

Cc: Mike McDill, City Engineer
Mark Barslund, Development Inspector
Dan Wilson, City Attorney
Kristen Ashbeck, Senior Planner

MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("Guarantee") are Dominick's Finer Foods, LLC ("the Developer") and the City of Grand Junction, Colorado ("City"). Collectively the Developer and the City may be referred to as the Parties.

FOR valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Guarantee will be the date that it is signed and accepted by the City.

RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements") which were made necessary by virtue of development on property within the City. The Property, known as Safeway at Horizon Park, more specifically described in the attached Exhibit A which is incorporated herein as if fully rewritten, has been reviewed and approved under Community Development file #SS-2001-211 and as necessary or required to construe this Guarantee, that file is incorporated by this reference.

The City seeks to protect the health, safety and general welfare of the community by requiring that the Improvements, once constructed, be maintained. The purpose of this Guarantee is to protect the City from having to repair the Improvements at its cost. The Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants and obligations contained in this Guarantee are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer or its successor(s) or assign(s) shall maintain and guarantee the Improvements, at its own expense, against defects in workmanship and materials for a period of one year from the date of City acceptance of the Improvements. The Developer's obligation is and will be independent of any obligations of the City. The Improvements are set forth in Exhibit B which is attached hereto and incorporated herein as if fully rewritten.

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of \$ 59,326.00.

4a. The Developer shall post security to guarantee the Improvements in an amount, form and with terms acceptable to the City.

4b. In addition to that security all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) are hereby assigned to the City.

4c. The Developer shall to the extent necessary or required by the City take whatever action is necessary or required to assign all warranties and/or guarantees (those incident to construction

or as provided by the contractor and/or manufacturer of installed equipment) to the City. A copy of those warranties or a memorandum of the same is attached as Exhibit C.

4d. The Developer for itself, its successors and assigns agrees that if the Improvements are not maintained to City standards that the City shall notify the Developer in writing of the defect(s) in accordance with paragraph 8 hereof.

5. **Standards:** The Developer shall maintain the Improvements according to the standards and specifications required by the City or as otherwise established by the City Engineer.

6. **Warranty:** The Developer hereby warrants that the Improvements, each and every one of them, will be maintained in accordance with the Standards in paragraph 5 for the period of this Guarantee.

7. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this Guarantee. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after acceptance of the Improvements.

8. **Notice of Defect/Default:** The City shall provide timely notice to the Developer whenever routine inspection reveals that an Improvement and/or maintenance of the same does not conform to City standards and any specifications approved or required in or by the development or that an Improvement(s) is otherwise defective.

8a. As provided herein, the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

8b. The Developer will have twelve (12) calendar days from the date of the notice to correct the defect.

8c. The City may grant reasonable extensions in writing to the time for correction of defect(s), however, it is not obligated to do so nor is it obligated to provide any notice of a defect(s) if it becomes aware of the defect(s) in or during an emergency. Furthermore, the City is not obligated to inspect the Improvements but may do so as it would any other improvement.

9. **Acceptance:** Prior to acceptance of any Improvement(s), the Developer shall demonstrate in writing to the satisfaction of the City Attorney that it owns the Improvements in fee simple or that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement or maintenance of the same that is detected or which occurs after approval and/or acceptance. All warranties and/or guarantees shall be for a period of no less than 12 months from the date of acceptance of the Improvements.

10. **Funds:** Funds drawn, guaranteed or collected by the City under this Agreement shall be used for the purpose of correcting defects in and/or repairing or replacing failure(s) of the Improvement(s).

11. **Defect/Default Events:** The following conditions, occurrences or actions will constitute a defect and/or default:

11a. Developer's failure to maintain each and every one of the Improvements in conformance with this Guarantee and/or as required by code, law, rule, ordinance or regulation;

11b. Developer's failure to correct defective construction of any Improvement within the applicable guarantee period;

11c. Developer's failure to maintain security in a form and amount required/provided by this Guarantee.

11d. As provided herein, the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

12. **Measure of Cost/Expenses:** The measure of costs and or expenses chargeable by the City under this Guarantee will be the reasonable cost of satisfactorily repairing and/or replacing the Improvements plus reasonable City administrative expenses (in the amount of 20% of the repair, replacement and/or warranty work) all of which may exceed the amount of the security provided for in paragraph 4. The amount of the security provided for in paragraph 4 does not set, limit, establish or provide the Developer's maximum financial obligation.

12a. City administrative expenses for which the Developer is obligated to pay include but are not limited to personnel costs, including benefits, overtime, callback, standby and other extraordinary compensation, materials, equipment, third-party contracting costs, collection costs and the value of engineering, legal and administrative staff time devoted to the repair and/or replacement of the Improvements and/or enforcement of this Guarantee and all initial warranty(ies) or guarantee(s) assigned to the City by the Developer.

13. **City's Rights:** When any defect or default occurs, the City may after notice and the Developer's failure and/or refusal to repair or replace the Improvements, proceed to collect the amount of the cost or expense incidental or necessary to affect the repair or replacement of the Improvements. The City will have the right to reconstruct, rebuild or otherwise maintain Improvements itself or it may contract with a third party for completion and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. This remedy is cumulative in nature and is in addition to any other remedy the City has at law or in equity.

14. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance or nonperformance of work at the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance or nonperformance of work pursuant to this Guarantee. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Guarantee except where such suit is brought by the Developer against the City. The Developer is, however, not an agent or employee of the City.

15. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed to or constitute a waiver of any other provision, nor will it be deemed to or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor will the waiver of any defect or default under this Guarantee be deemed a waiver of any subsequent defect(s) or default(s) of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any defect(s), defaults(s) or Improvement(s).

16. **Amendment or Modification:** The Parties may amend or modify the Agreement only by written instrument executed on behalf of the City by the Public Works and Utilities Director or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

17. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Guarantee, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision-maker. The value of the City's in-house legal counsel is agreed to be \$125.00 per hour.

18. **Integration:** This Guarantee, together with the exhibits and attachments thereto constitutes the entire agreement between the Parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

19. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

20. **Severability:** If any part, term or provision of this Guarantee is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the right of the parties will be construed as if the part, term or provision was never part of the agreement.

21. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any Developer or lender who obtains the Property; however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement.

22. **Notice:** Any notice required or permitted by this Agreement will be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: Dominick's Finer Foods, LLC
5918 Stoneridge Mall Road
Attn: Real Estate Law
Pleasanton, CA 94588
(927) 467-3234

Name -Developer/Company
Address (Street and Mailing)

City, State & Zip Code
Telephone and Fax Numbers

(927) 467-3224
Linda.macdonald@safeway.com E-mail

cc: Safeway Inc.
6900 South Yosemite Street
Englewood, CO 80112
Attn: Jim Marlow – Construction Department

If to City: Office of the City Attorney
250 North 5th Street
Grand Junction, CO 81501

cc: Public Works and Utilities Department
250 North 5th Street
Grand Junction, CO 81501

23. **Recordation:** Developer will pay for all costs to record a memorandum of this Guarantee in the Clerk and Recorder's Office of Mesa County, Colorado.

24. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

25. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

26. **Termination of Maintenance Guarantee:** This Maintenance Guarantee and the terms, covenants, conditions and obligations set forth herein shall terminate and be of no further force or effect one (1) year after the date of acceptance of the Improvements by the City. The City's acceptance of the Improvements shall be provided to Developer in writing so as to establish the effective date of such acceptance. Upon such termination, the Parties agree to execute and notarize such additional documents as may be reasonably necessary to remove this Maintenance Guarantee from the public record.

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Signatures on the following page.

Maintenance Guarantee
Safeway at Horizon Park
Grand Junction, CO

Developer:

Dominick's Finer Foods, LLC
a Delaware limited liability company

By: Dominick's Supermarkets, Inc.
a Delaware corporation

By: Linda S. Macdonald
Name (printed): LINDA S. MACDONALD
Title (position): Assistant Vice President

1/21/04
Date

Corporate Attest:

[Signature]
Name: Dana Walters
Title: Assistant Secretary

1/21/04
Date

Form Approved: LSM

City of Grand Junction

Project Planner

Date

Dept. of Public Works and Utilities

Date

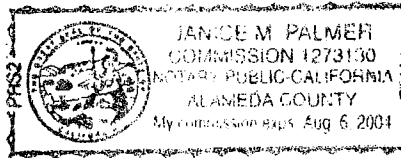
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On January 21, 2004, before me, Janice M. Palmer, Notary Public, personally appeared Linda S. MacDonald and Dana Waller, personally known to me (or proved on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Janice M. Palmer
Signature



(Seal)

**EXHIBIT A
TO DEVELOPMENT IMPROVEMENTS AGREEMENT**

LEGAL DESCRIPTION

Lots 1, 2 and 6, Safeway at Horizon Park, a Replat of Lots 1 – 5, Horizon Park Meadows,
City of Grand Junction, County of Mesa, State of Colorado.

IMPROVEMENTS LIST/DETAIL

DATE: February 28, 2002

NAME OF DEVELOPMENT:

Safeway at Horizon Park

LOCATION:

12th Street and Horizon Drive

PRINTED NAME OF PERSON PREPARING:

Brian Hart, LANDesign

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1 Clearing and Grubbing	LS			\$ -
2 Cut and remove Asphalt	SY			\$ -
3 PVC Sanitary Sewer main ((Include trenching, bedding and backfill) 8" SDR 35 PVC	LF	628	\$ 18.00	\$ 11,304.00
4 Sewer Services (include trenching bedding and backfill)	LF			\$ -
5 Sanitary Sewer Manhole(s)	EA	4	\$ 1,650.00	\$ 6,600.00
6 Connection to existing manhole(s)	EA	2	\$ 2,000.00	\$ 4,000.00
7 Aggregate Base Course	SY			\$ -
8 Pavement replacement	SY			\$ -
9 Driveway restoration	SY			\$ -
10 Utility adjustments	LS	1	\$ 5,000.00	\$ 5,000.00
SUBTOTAL SANITARY SEWER				\$ 26,904.00
II. DOMESTIC WATER				
1 Clearing and Grubbing	LS			\$ -
2 Cut and remove asphalt	LS	1	\$ 500.00	\$ 500.00
3 Water main (include excavation, bedding backfill, valves and appurtenances) 8" C-900 CL 150 PVC Elbows, Tees, Reducers, Etc. Gate Valves Fire Hydrants	LF	65	\$ 22.00	\$ 1,430.00
	EA			\$ -
	EA	1	\$ 750.00	\$ 750.00
	EA			\$ -
4 Water Services (include excavation, bedding, backfill, valves and appurtenances)	LF			\$ -
5 Connect to existing water line	EA	2	\$ 1,500.00	\$ 3,000.00
6 Aggregate Base Course	LS	1	\$ 500.00	\$ 500.00
7 Pavement replacement	LS	1	\$ 750.00	\$ 750.00
8 Utility adjustments	LS			\$ -
SUBTOTAL DOMESTIC WATER				\$ 6,930.00

RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION

III. STREETS

1	Cleaning and Grubbing	LS	1	\$ 3,000.00	\$ 3,000.00
2	Earthwork, including excavation and embankment construction	CY	4000	\$ 2.50	\$ 10,000.00
3	Utility relocations	LS	1	\$ 2,500.00	\$ 2,500.00
4	Subgrade Preparation	SY	3625	\$ 2.25	\$ 8,156.25
5	Aggregate base course	SY			\$ -
6	Sub-grade stabilization (ost.)	SY	750	\$ 6.00	\$ 4,500.00
7	7.75' & 9.25' Asphalt pavement (ave. unit cost)	SY	2395	\$ 14.00	\$ 33,530.00
8	Curb and gutter	LF	1384	\$ 11.00	\$ 15,224.00
9	5' Detached Sidewalk	SF	4260	\$ 4.50	\$ 19,170.00
10	10' Horizon Drive Concrete Path	SF	6470	\$ 5.00	\$ 32,350.00
11	Handicap Ramps, Crosspans and fillets	SF	2840	\$ 5.00	\$ 14,200.00
12	Headwall/Wingwall	LS	1	\$ 8,500.00	\$ 8,500.00
13	Storm drainage system				
	18" RCP	LF	215	\$ 35.00	\$ 7,525.00
	24" RCP	LF	28	\$ 46.00	\$ 1,288.00
	Single area Inlet	EA	3	\$ 1,500.00	\$ 4,500.00
	Single curb inlet	EA	2	\$ 1,500.00	\$ 3,000.00
	Double curb inlet	EA	1	\$ 1,500.00	\$ 1,500.00
	Rip-Rap	LS	1	\$ 2,000.00	\$ 2,000.00
	60" Manhole	LS	1	\$ 2,250.00	\$ 2,250.00
14	Type 3, W-Beam Guardrail	LF	379	\$ 18.00	\$ 6,864.00
15	Signs, traffic control devices, striping	LS	1	\$ 3,500.00	\$ 3,500.00
16	Construction staking	LS			\$ -
17	Dust control	LS			\$ -
18	Street lights (each)	EA	2	\$ 2,200.00	\$ 4,400.00
	SUBTOTAL STREETS				\$ 187,157.25

IV. LANDSCAPING

1	Design/Architecture	LS			\$ -
2	Earthwork (includes top soil, fine grading, and berming)	LS			\$ -
3	Hardscape features (includes walls, fencing and paving)	LS			\$ -
4	Plant material and planting (Seed and blanket on slopes)	LS	1	\$ 10,000.00	\$ 10,000.00
5	Irrigation System	LS			\$ -
6	Other features (includes playground equipment)	LS			\$ -
	Handrail	LF	647	\$ 20.00	\$ 12,940.00
7	Curbing	LF			\$ -
8	Retaining walls and structures	SF	2100	\$ 12.00	\$ 25,200.00
9	One year maintenance agreement	LS			\$ -
	SUBTOTAL LANDSCAPING				\$ 48,140.00

V. MISCELLANEOUS

1	Design/Engineering/As-Builts	LS	1	\$ 6,500.00	\$ 6,500.00
2	Surveying	LS	1	\$ 6,500.00	\$ 6,500.00
3	Developer's inspection costs	LS	1	\$ 8,000.00	\$ 8,000.00
4	Quality control testing	LS	1	\$ 2,000.00	\$ 2,000.00
5	Construction traffic control	LS	1	\$ 2,500.00	\$ 2,500.00
6	Rights-of-way/Easements	LS			\$ -
7	City inspection fees	LS	1	\$ 2,000.00	\$ 2,000.00
8	Permit fees	LS			\$ -
9	Recording fees	LS			\$ -
10	Bonds	LS			\$ -
11	Newsletters	LS			\$ -
12	General Construction Supervision	LS			\$ -
13	Other:	LS			\$ -
14	Other:	LS			\$ -
	SUBTOTAL MISCELLANEOUS				\$ 27,500.00
	TOTAL ESTIMATED COST OF IMPROVEMENTS:				\$ 298,631.25
	20% CONTINGENCY				\$ 59,326.25
	TOTAL ESTIMATED COST OF IMPROVEMENTS:				\$ 355,957.50

SS-2001-211

ESCROW RECEIPT AND INSTRUCTIONS

This Agreement is entered into by and among the **City of Grand Junction** (hereinafter referred to as "City"), **Dominick's Finer Foods, LLC** (hereinafter referred to as "Developer") and **Land Title Guarantee Company, LLC** (herein after referred to as "Escrow Agent") as of February 20, 2007, collectively referred to herein as the "Parties."

RECITALS:

Developer was required by the City to construct certain improvements to the Safeway at Horizon Park development in accordance with the City of Grand Junction Zoning and Development Code, a Development Improvements Agreement ("DIA"), and subdivision approval. A copy of the DIA is attached hereto as Exhibit 1 and incorporated herein by this reference as if fully set forth. The Developer was further required to guarantee all the improvements for the development. A copy of the Maintenance Guarantee is attached hereto as Exhibit 2 and incorporated herein by this reference as if fully set forth. The improvements were to be completed and maintained on-site and off-site at the Safeway at Horizon Park (hereinafter referred to as "Property") which is more fully described in Exhibit A to the DIA.

The City requires a one year warranty period following the City's initial acceptance of the Improvements (defined below) for the Developer's repair or replacement of the Improvements before it will finally accept the Improvements. The Developer agreed to guarantee its obligation to warrant and maintain all the improvements for the development which are listed in Exhibit B of the Maintenance Guarantee (the "Improvements") with \$59,326.00 (hereinafter referred to as the "Guarantee Funds"). The purpose of this Agreement is to secure the full and complete performance of the Developer's obligations under the Maintenance Guarantee during the one-year warranty period specified therein.

NOW THEREFORE THE PARTIES AGREE:

For purposes of this Agreement and the Maintenance Guarantee, the initial acceptance date of the Improvements as described in Section 26 of the Maintenance Guarantee is December 1, 2006.

The Developer or its successor(s) or assign(s) shall maintain and guarantee the Improvements at its own expense against defects in workmanship and materials for a period of one year from December 1, 2006 (from December 1, 2006 through and including November 30, 2007) in accordance with the Maintenance Guarantee.

As of the date of this Agreement, Developer has deposited the Guarantee Funds with the Escrow Agent.

This Agreement shall be binding on the heirs, successors, receivers and assigns of the Parties.

This Agreement may be executed in counterparts. Counterpart signatures may be exchanged by facsimile.

APPROVED AND ACCEPTED:

ESCROW AGENT:
Land Title Guarantee Company

CITY OF GRAND JUNCTION

BY: [Signature]

BY: [Signature]

Printed name: Jennifer Bonnell

Printed name: RICK DORRIS

Title: Operations manager

Title: DEVELOPMENT ENGR.

DEVELOPER:
Dominick's Finer Foods, LLC
a Delaware Limited Liability Company

BY: Dominick's Supermarkets, Inc.,
a Delaware corporation
Its: Member

BY: [Signature]

Printed name: Jerome P. Harrison

Title: Assistant Vice President

BY: [Signature]

Printed name: Wendee Mitchell

Title: Assistant Secretary

FORM APPROVED: [Signature]