

SAF02HOR

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: DOMINICK'S FINER FOODS,
INC., A DELAWARE CORPORATION ("THE DEVELOPER")

PROJECT/SUBDIVISION: SAFEWAY STORE – SIMPLE SUBDIVISION

LOCATION: 681 HORIZON DRIVE

PARCEL NO. 2945-012-50-003

FILE NO. : SS-2001-211

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2002

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

2945-012-50-003

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are **DOMINICK'S FINER FOODS, INC.**, a Delaware corporation ("the Developer") and **THE CITY OF GRAND JUNCTION, Colorado** ("the City" or "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 will be the date that this agreement is fully executed 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 within the City to be known as Safeway #2625, which property is more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Property and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and 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 Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will 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 ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per hour. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others. The Developer's obligation to complete the improvements is and will 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 in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

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

6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves the last Improvement completed by the Developer.

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement 5/01/02 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 6th month from the Effective Date of this Agreement 11/01/02 (set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period"). The Commencement, Completion and Abandonment period are subject to *force majeure* delays.

8. **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 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 final development approval.

9. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications approved in the development application or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct the defect. The City may grant reasonable extensions.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of Improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the Improvements in fee simple and that there are no liens, encumbrances or other restrictions 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 that is detected or which occurs after approval and/or acceptance.

11. **Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to 90 percent of the estimated cost of the Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of the warranty period, after which time it

will be returned to Developer if not called, claimed, encumbered in accordance with this Agreement, the Code or the security is the subject of litigation.

12. **Use of Proceeds:** The City will use funds deposited with it, drawn or guaranteed pursuant to any written agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

13. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;
- c. 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;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure.

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid. The time to cure a default shall be 14 days.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative 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 will be prima facie evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

15. **City's Rights Upon Default:** When any event of default occurs, which default is not cured within 14 days after receipt of written notice thereof, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all Improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete 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. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the Improvements are completed or accepted. 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 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 or the Property being developed 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 non-performance of work 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 of work pursuant to this Agreement except where such suit is brought by the Developer against the City. The Developer is not an agent or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will 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 will 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 will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify the Agreement only by written instrument executed on behalf of the City by the City Manager 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.

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, 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.

20. **Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development 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 and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

22. **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.

23. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

24. **Severability:** If any part, term, or provision of this Agreement 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 rights of the parties will 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. 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 right of 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. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will 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 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, Inc.
 c/o Safeway Inc.
 Real Estate Law Division
 5918 Stoneridge Mall Road
 Pleasanton, CA 94588-3229

If to City: City of Grand Junction
 Community Development Director
 250 N. 5th Street
 Grand Junction, Colorado 81501

27. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

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, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security 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.

30. a. **Conditions of 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 improvements shall have been finally accepted by the City.

b. **Phased Development:** 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 his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish 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) provide 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 improvements have been constructed, or which are necessary for the improvements, are free from toxic,

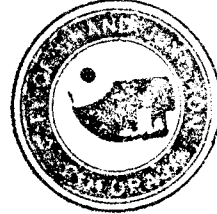
hazardous or other regulated substances or materials: (iii) provide written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney.

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

Ralph Blanchard 4/18/02
Director of Community Development ^{KHX} date

Attest:

Stephanie Tuun 4/18/02
City Clerk date



Dominick's Finer Foods, Inc.
a Delaware corporation

By: Linda S. MacDonald 4/15/02
Its Assistant Vice President date

Attest: Wendee Whitehead 4/15/02
Assistant Secretary date

LSM

ACKNOWLEDGMENT

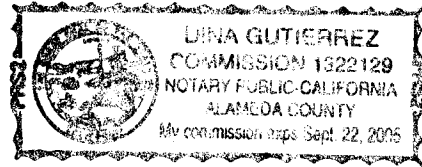
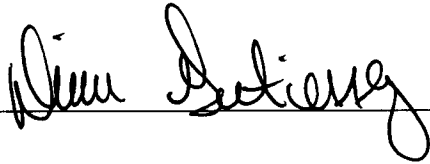
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STATE OF CALIFORNIA)
County of Alameda) ss.

On April 15, 2002 before me, Dina Gutierrez, Notary Public, personally appeared Linda S. MacDonald and Wendall Mitchell personally known to me (or proved to me 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.

Signature _____



(Seal)

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 through 6, inclusive, Safeway at Horizon Park, a Replat of Lots 1 – 5, Horizon Park Meadows, City of Grand Junction, Mesa County, 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	LF	65	\$ 22.00	\$ 1,430.00
Elbows, Tees, Reducers, Etc.	EA			\$ -
Gate Valves	EA	1	\$ 750.00	\$ 750.00
Fire Hydrants	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	\$ 16.00	\$ 6,064.00
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

SCHEDULE OF IMPROVEMENTS:

I. SANITARY SEWER:	\$	26,904.00
II. DOMESTIC WATER:	\$	6,930.00
III. STREETS:	\$	187,157.25
IV. LANDSCAPE:	\$	48,140.00
V. MISCELLANEOUS:	\$	27,500.00

I have reviewed the estimated costs and time schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above.

Dominick's Finer Foods, Inc., a Delaware corporation

By: Linda S. McDowd 4/15/02

SIGNATURE OF DEVELOPER Asst. Vice Pres. date

(If corporation, to be signed by president and attested to by secretary together with the corporate seals)

By: Wendee Mitchell
Asst. Secretary

Reviewed and approved

[Signature]
CITY ENGINEER

4-18-02
date

[Signature]
COMMUNITY DEVELOPMENT
KKA

4/18/02
date

STANDBY CREDIT

DATE: APRIL 12, 2002

MAIL

Book3067 PAGE858

CITY OF GRAND JUNCTION
COMMUNITY DEVELOPMENT CENTER
250 N. 5TH ST.
GRAND JUNCTION, CO 81501

DRAFTS DRAWN MUST BE MARKED:
WITH OUR REF NO: 10164002
OPENER'S REFERENCE NO:
10164002

GENTLEMEN:

BY THE ORDER OF:

SAFEWAY INC.
5918 STONERIDGE MALL ROAD
PLEASANTON, CA 94588

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE CREDIT NO: 10164002 FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE US DOLLARS 357,957.50 (THREE HUNDRED FIFTY SEVEN THOUSAND NINE HUNDRED FIFTY SEVEN AND 50/100 US DOLLARS) AVAILABLE BY YOUR DRAFTS AT SIGHT ON BANK ONE, NA EFFECTIVE APRIL 12, 2002 AND EXPIRING AT OUR OFFICE ON APRIL 15, 2003.

FUNDS UNDER THIS CREDIT ARE AVAILABLE AGAINST YOUR DRAFT(S) MENTIONING OUR CREDIT NUMBER.

THE BELOW-MENTIONED DOCUMENTS MUST BE PRESENTED AT SIGHT ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

BENEFICIARY'S SIGNED AND DATED STATEMENT STATING THAT:

"SAFEWAY HAS FAILED TO PERFORM ITS OBLIGATIONS UNDER THE DEVELOPMENT IMPROVEMENTS AGREEMENT COVERING THE DEVELOPMENT KNOWN AS SAFEWAY AT HORIZON PARK LOCATED AT 12TH STREET AND HORIZON DRIVE".

ACTING THROUGH THE CITY ATTORNEY YOU WILL NOTIFY US WHEN THE IMPROVEMENTS HAVE BEEN TIMELY COMPLETED AND THE WARRANTY PERIOD HAS TERMINATED AND THE CREDIT MAY BE RELEASED.

WE ENGAGED WITH YOU THAT DRAFTS DRAWN UNDER AND IN CONFORMITY WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED ON PRESENTATION IF PRESENTED ON OR BEFORE THE EXPIRY DATE. THE ORIGINAL LETTER OF CREDIT MUST ACCOMPANY THE DOCUMENTS REQUIRED UNDER THIS CREDIT.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500

ORIGINAL

VERY TRULY YOURS

Book3067

PAGE859

PREPARED AUTHORIZED SIGNER

AUTHORIZED SIGNER

ORIGINAL

Safeway on
Horizon

**EXTENSION OF
DEVELOPMENT IMPROVEMENTS AGREEMENT**

Pursuant to a Development Improvements Agreement by and between the parties of:
DOMINICK'S FINER FOODS, INC., a Delaware corporation and the CITY OF GRAND
JUNCTION recorded in Book 3067 Pages 846 through 859 of the Mesa County,
Colorado Records, the parties hereby agree to amend section 7 as follows:

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement 5/01/02 (the "Commencement Period") and the Improvements, each and every one of them, shall be completed by the middle of the 11th month from the Effective Date of this agreement 4/15/03 (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days (the "Abandonment Period"). The Commencement, Completion and Abandonment period are subject to *force majeure* delays.

City of Grand Junction
250 North 5th Street
Grand Junction CO 81501

Kathleen Stawhard 10/22/02
Director of Community Development date

Attest:

Stephanie Tuin 10/22/02
City Clerk date



Dominick's Finer Foods, Inc.
A Delaware Corporation

By: Linda S. Macdonald 10/18/02
Its Assistant Vice President date

Attest: Die F. R. 10/18/02
Assistant Secretary date

lsm

RELEASE OF IMPROVEMENTS AGREEMENT
Grand Junction Community Development Department
FILE SS-200I-211

This memorandum relates to a certain recorded Development Improvements Agreement dated April 18, 2002 and recorded at Book 3067, Pages 846 through 859 of the land records of Mesa County, Colorado, by and between Dominick's Finer Foods, Inc. (Developer) and the City of Grand Junction (City) pertaining to Safeway #2625. Legal Description:

Lots 1 through 6, inclusive, Safeway at Horizon Park, a Replat of Lots 1 • 5, Horizon Park Meadows, City of Grand Junction, Mesa County, Colorado.

Whereas, Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement, and

Whereas, the City of Grand Junction and the Developer have entered into a new Development Improvements Agreement concerning the Project,

NOW THEREFORE, officials of the City of Grand Junction and other officials duly representing their agencies, possessing and representing by their signatures, affixed thereto, that they possess sufficient authority to accept the new Development Improvements Agreement and release the portion of the guarantee pertaining to the improvements under their jurisdiction, do accept, sign and release this Development Improvements Agreement dated April 18, 2002.

CITY OF GRAND JUNCTION

By: City Engineer *Pat Cecil* Date 1-29-04

City Utilities Manager *N/A* Date _____

In accordance with the above signatures, I hereby certify that the Development Improvements Agreement and the recording evidencing the same at Book 3067, Pages 846 through 859 of the Mesa County land records, is hereby released subject to the new Development Improvements Agreement entered into on January 28, 2004, and the required warranty period.

Community Development *Pat Cecil* Date 1/29/04

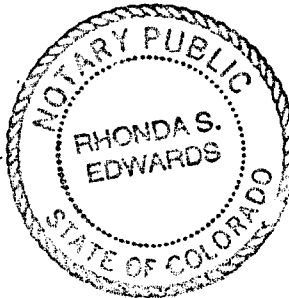
The foregoing instrument was executed before me this 29th day of January 2004 by Pat Cecil, of Community Development for the City of Grand Junction, Colorado.

Witness my hand and official seal.

Rhonda S. Edwards

Notary Public

My commission expires November 28, 2005



June 4, 2008

Jennifer Brownell
Meridian Land Title, LLC
2454 Patterson Road, Suite 110
Grand Junction, CO 81505

Re: Release of Escrow Funds
File No. SS-2001-211

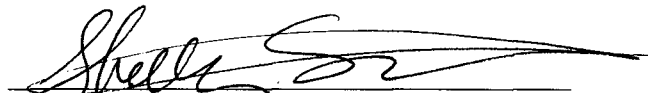
Dear Ms. Brownell:

Enclosed please find the Escrow Receipt and Instructions (original) for Dominick's Finer Foods, LLC. As beneficiary, the City of Grand Junction informs you that it releases the escrow and authorizes the return of remaining funds to the Developer pursuant to the Instructions. This letter is being provided at the direction of the Director of Public Works and Planning for the City of Grand Junction.

If you have any questions, please feel free to contact me.

Sincerely,

OFFICE OF THE CITY ATTORNEY



Shelly S. Dackonish, Senior Staff Attorney

Enclosures: Escrow Receipt and Instructions

Pc: Greg Moberg, Planning Manager
Rick Dorris, Development Engineer
Jerome P. Harrison, Dominick's Supermarkets, Inc.
Wendell Mitchell, Dominick's Supermarkets, Inc.



PUBLIC WORKS & PLANNING

May 12, 2008

Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attention: Ms. Ann Elliott, Senior Counsel

RE: Notice of Final Acceptance -
Project Name: Safeway
Project Number: SS-2001-211

The City has conducted a warranty inspection of the project and any needed follow-up inspections. The public infrastructure improvements have been found to be in satisfactory condition. All requirements for the final acceptance for the Project have been fulfilled.

The Developer's warranty obligation, for all materials and workmanship, has concluded and all warranty obligations are hereby released.

The following improvements within the public right-of-way are accepted for future maintenance by the City:

Public streets:

- All public streets as shown on the Project plans.

Storm drainage system:

- Storm drain pipes, inlets and manholes within the public right of way.
- Maintenance of the on-site storm sewer and the detention pond and outlet works is the responsibility of the property owners association.

Water distribution system:

- N/A - Served by Ute Water

Sanitary sewer:

- Sewer mains, manholes in public right of way or public easements.

I will contact the Planner for release of the Development Improvements Agreement, the Maintenance Agreement and any financial security attached to the Project.

Sincerely,

Rick
Dorris

Digitally signed by Rick Dorris, DN: cn=Rick Dorris, o=City of Grand Junction, ou=Public Works and Planning, email=rick.dorris@cityofgj.com, c=US

Rick Dorris, PE, CFM
Development Engineer

Electronic copy:

Beth Costello, Land Title
Greg Mober, Planning Services Supervisor
Peggy Sharpe, Administrative Assistant
David Van Wagoner - Street System

Mark Barslund, Development Inspector
Chris Spears - Storm Drainage System
Larry Brown - Sewage Collection System

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Public Works & Planning Department
FILE: SS-2001-211

This Release relates to a Recording Memorandum dated 1-29-04, by and between Dominick's Finer Foods LLC (Developer) and the City of Grand Junction, pertaining to Safeway (Project), located at 681 Horizon Dr. recorded at Book 3578, Page 286-298, Mesa County Clerk and Recorders Office. Project is more particularly described as

WHEREAS, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement and/or Maintenance Guarantee and provision of a Guarantee, and;

WHEREAS, the City of Grand Junction and other agencies possessing authority over the Project, and/or the improvements, have inspected the improvements and have accepted the same.

NOW THEREFORE, officials of the City of Grand Junction, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Development Improvements Agreement and/or Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Development Improvements Agreement and/or Maintenance Guarantee.

CITY OF GRAND JUNCTION:

City Engineer: [Signature] Date: 5-23-08

Planner: Ronnie Edwards Date: 5-23-08

In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby released, subject to the required warranty period.

[Signature]
Public Works & Planning Department

5.23.08
Date

The foregoing instrument was executed before me this 23rd day of May, 2008, by Greg Moberg, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Gayleen Henderson
Notary Public

My commission expires on 10/29/2009

