

SWY01HOR

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF CONTRACTOR: SAFEWAY INC., A DELAWARE CORPORATION

SUBJECT/PROJECT: AGREEMENT FOR SATISFACTION OF PLATTING CONDITIONS

LOCATION: HORIZON DRIVE TO 12TH STREET, LOT 3 HORIZON PARK SUBDIVISION

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2001

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT FOR SATISFACTION OF PLATTING CONDITIONS

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THIS AGREEMENT FOR SATISFACTION OF PLATTING CONDITIONS is made as of November 29, 2001 between the **CITY OF GRAND JUNCTION**, a Colorado municipal corporation (the "**City**") and **SAFEWAY INC.**, a Delaware corporation ("**Safeway**").

RECITALS

A. As of the date of this Agreement, HPM, LLC, a Colorado limited liability company ("**HPM**") is the fee owner of certain real property located in the City of Grand Junction, Mesa County, Colorado, legally described as Lot 3, Horizon Park Subdivision, Mesa County, Colorado (the "**Subject Property**"). By Agreement of Purchase and Sale dated June 26, 2000, as amended from time to time, Safeway is the contract purchaser of the Subject Property. HPM has submitted to the City a proposed plat for the Subject Property (the "**HPM Plat**"), which HPM Plat divides the Subject Property into five (5) separate legal lots. The City has approved the HPM Plat, subject to satisfaction of certain conditions.

B. The City has completed construction of certain improvements to Horizon Drive in the City of Grand Junction (the "**Street Improvements**"), which Street Improvements benefit the Subject Property and property adjacent thereto. Prior to development of the Subject Property, the City requires that it be reimbursed for a portion of the cost of the Street Improvements by the owner, or prospective owner, of the Subject Property.

C. The City has agreed that certain of the HPM Plat conditions and acceptance of the HPM Plat by the City for recording in the Land Records of Mesa County, Colorado, will be satisfied upon the performance by Safeway, its successors and assigns, of the terms set forth in this Agreement. A list of the conditions to the HPM Plat is attached to and made a part of this Agreement as Exhibit A.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

TERMS

1. Horizon Drive Improvements. Upon delivery of the HPM Plat to the City for recording, Safeway shall pay to the City, by check or draft, the sum of One Hundred Eighty-five Thousand One Hundred Eight and 50/100 Dollars (\$185,108.50) in full satisfaction of the obligation of HPM to reimburse the City for the Street Improvements made to Horizon Drive. Upon such payment, the owner of the Subject Property (whether HPM, Safeway or their respective successors or assigns) shall be released and relieved from any further obligation to pay for the Street Improvements made by the City to Horizon Drive. In addition, upon such payment, the conditions set forth on the HPM Plat numbered 3 and 7 shall be deemed satisfied for all purposes and the City shall promptly record the Plat in the Land Records of Mesa County, Colorado.

2. Development Improvements Agreement. Upon request by Safeway for approval by the City of certain revisions to the HPM Plat (the "**Final Plat**"), Safeway agrees to enter into a Development Improvements Agreement ("**DIA**") with the City for the construction of additional improvements to 12th Street and/or Horizon Drive. The terms, covenants and conditions of the DIA shall be mutually acceptable to Safeway and the City. Upon execution of the DIA, the condition set forth on the HPM Plat numbered 8 shall be deemed to be satisfied. The parties

agree that the anticipated cost of the improvements required to be made to 12th Street will be approximately \$135,000.00. In the event Safeway does not seek approval of the Final Plat within one (1) year after the date of this Agreement, the terms of this Agreement shall be, become and constitute a lien against the Subject Property in the amount of \$135,000.00, or such other amount as the City reasonably determines will constitute the actual cost of the 12th Street improvements that were required as a condition of the HPM Plat.

3. Recording of Agreement. This Agreement, or a memorandum hereof, shall be recorded in the Land Records of Mesa County, Colorado. The cost of recording shall be borne by Safeway.

4. Interpretation. Whenever used in this Agreement, the term "including" shall be deemed to be followed by the words "without limitation". Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. The captions and headings of the Articles and Sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions of this Agreement.

5. Execution and Change. It is understood and agreed that until this Agreement is fully executed and delivered by the authorized officers, agents or persons, as applicable, there is not and shall not be an agreement of any kind between the parties upon which any commitment, undertaking or obligation can be founded. It is further agreed that once this Agreement is fully executed and delivered that it contains the entire agreement between the parties and that, in executing it, the parties do not rely upon any statement, promise, or representation not expressed in this Agreement and this Agreement once executed and delivered shall not be modified, changed or altered in any respect except by a writing executed and delivered in the same manner as required for this Agreement.

6. Governing Law. This Agreement shall be governed and enforced by, and construed in accordance with the laws of the State of Colorado.

7. Severability. If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, such illegality or unenforceability will not affect the validity of any other part, term or provision hereof and the rights of the parties to this Agreement shall be construed as if the part, term or provision was never part of this Agreement.

8. Attorneys' Fees. In the event either party to this Agreement employs legal counsel to bring an action at law or other proceedings against the other party to enforce any of the terms, covenants or conditions of this Agreement, the prevailing party in such action or proceeding shall be paid its reasonable attorneys' fees, as determined by the court and in the event any judgment is secured by such prevailing party, all such attorneys' fees shall be included in any such judgment in such action or proceedings. The payment of attorneys' fees includes the value of services performed by in-house counsel.

9. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same agreement.

10. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

SIGNED on the date first written above.

CITY:

SAFEWAY:

CITY OF GRAND JUNCTION
a Colorado municipal corporation

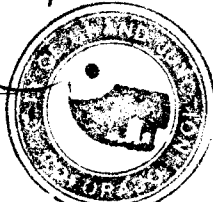
SAFEWAY INC.
a Delaware corporation

By: *Robert R. Rowland*
Its Director of Community Development

By: *Linda S. McDonald*
Its Assistant Vice President

By: *Stephanie Turner*
Its _____

By: *[Signature]*
Its Assistant Secretary



LSM

NOTARIAL ACKNOWLEDGMENTS ATTACHED

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On November 27, 2001, 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 name 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)

1. Address all remaining staff comments regarding the Final Plat and covenants prior to recording the Final Plat.
2. Address all remaining comments from the City Development Engineer dated November 1, 1999 prior to approval of final construction drawings.
3. Staff's approval of the cost estimate for the amount of cash to be collected in lieu of half-street improvements along Horizon Drive.
4. Provide evidence of formation of a property owners' association prior to recording the Final Plat.
5. The building height be restricted to 40 feet on lots 1, 3 and 5. (Lots 2 and 4 allowed 65 feet under the former H.O. zoning).
6. The minimum rear and side yard setbacks for all interior property lines be 30 feet.
7. The applicant shall pay the reimbursement to the City of Grand Junction for improvements made to Horizon Drive in the amount of \$185,108.50 at the time of recording the Final Plat for Horizon Park Meadows.
8. The applicant shall execute a Development Improvements Agreement and Guarantee for the required 12th Street improvements prior to recording the Final Plat.
9. A subsequent application to replat the Horizon Park Meadows subdivision shall not be accepted until the Horizon Park Meadows subdivision plat has been recorded.

Conditions 5 and 6 would be enforced at the time of subsequent Site Plan Review, but shall be void if the property is subsequently replatted.