

Appendix 3A

Downtown Shared Parking Agreement between Safeway, Inc. and the City of Los Altos

DOWNTOWN SHARED PARKING AGREEMENT

BETWEEN

SAFEWAY INC., A DELAWARE CORPORATION

&

CITY OF LOS ALTOS, A CALIFORNIA MUNICIPAL CORPORATION

DATE: March 21, 2012

DOWNTOWN SHARED PARKING AGREEMENT

This DOWNTOWN SHARED PARKING AGREEMENT (“**Agreement**”) is dated March 21, 2012 for reference purposes only and is entered into by and between Safeway Inc., a Delaware corporation (“**Safeway**”), and the City of Los Altos, a California municipal corporation (“**City**”).

RECITALS

A. Safeway is the owner of that real property located in the City of Los Altos, State of California, which real property is shown on the site plan attached hereto as **Exhibit A** (the “**Site Plan**”) and more fully described on **Exhibit A-1** hereto (the “**Safeway Parcel**”); and

B. Safeway wishes to redevelop the Safeway Parcel and City has requested to use the parking facilities located on the Safeway Parcel for general downtown area parking; and

C. Safeway and City desire to enter into an agreement whereby members of the public may use the Safeway Parcel for parking purposes, under such terms and conditions as are more particularly set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties hereto do agree as follows:

ARTICLE 1 GENERAL PROVISIONS

The following capitalized terms used in this Agreement shall have the definitions set forth in this Article 1 unless otherwise defined herein.

1.1 “**Affiliate**” means (a) any Person which, directly or indirectly (including through one or more intermediaries), controls or is controlled by or is under common control with any other Person, including any subsidiary of a Person, and (b) shall include, without limitation, Property Development Centers, a Delaware limited liability company. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of such Person, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

1.2 “**Baseline Parking Count**” is defined in **Exhibit D** hereto.

1.3 “**Building**” is any structure now or hereafter constructed on the Safeway Parcel with interior space enclosed by exterior walls, floor and roof that is designed for human occupancy and the conduct of the business therein by the Safeway Parcel Owner and/or Occupants of the Safeway Parcel, or any portion thereof, as well as any service, warehouse, and/or loading areas to be used in connection with any Building and any canopies or other architectural treatments of any Building.

1.4 “**Building Areas**” shall mean those portions of the Safeway Parcel on which any (i) Buildings, (ii) outdoor seating areas, (iii) trash enclosures, (iv) signage, or (v) similar improvements exist from time to time. Building Areas shall also include any utility lines and lighting facilities.

1.5 “**City**” is the City of Los Altos as referenced above.

1.6 “**Certificate of Occupancy**” means the certificate of occupancy required to be issued by the City after the Project is constructed to allow the same to be lawfully occupied and operated.

1.7 “**Common Area(s)**” is comprised of all portions of the Safeway Parcel, including, without limitation, all Parking Areas, landscape areas, sidewalks, designated walkways, access drives and lanes, driveways or curb cuts, and/or other improvements, that are not Building Areas as such may exist from time to time. Subject to applicable Laws and the rights of City to the Public Parking Spaces, in its sole and absolute discretion, the Safeway Parcel Owner shall be entitled to change and modify the Common Area, including, without limitation, eliminating portions thereof, and/or constructing any Building or other improvements thereon, at any time during the Term.

1.8 “**Commercial Uses**” means all uses permitted under the City’s Zoning Code for the Downtown Adjacent Area, except for those uses that are designated solely for residential use as specified thereunder.

1.9 “**Constant Dollars**” is defined in Section 8.2.

1.10 “**Downtown Adjacent Area**” means that area adjacent to the Safeway Parcel, and which is located within the borders of Main Street to the South, Second Street to the East, Foothill Expressway to the West, and Shasta Street to the North extending through to Second Street, as shown on **Exhibit B** hereto.

1.11 “**Effective Date**” is the first date on which this Agreement has been fully executed and delivered to each Party.

1.12 “**Hazardous Material**” is any hazardous or toxic substance, material or waste which is or becomes regulated by, subject to or governed under any local governmental authority, any agency of the State of California or any agency of the United States, including, without limitation, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” “restricted hazardous waste,” “hazardous substance,” “hazardous material,” “toxic material” or “toxic substance” under any Law, (ii) petroleum and any petroleum

by-products, (iii) asbestos, (iv) urea formaldehyde foam insulation, or (v) polychlorinated biphenyl.

1.13 “**Index**” is defined in Section 8.2.

1.14 “**Laws**” are any federal, state or local statute, rule, regulation, requirement, initiative, ordinance, court order, and common law.

1.15 “**Memorandum**” is defined in Article 11.

1.16 “**Mortgage**” is any duly recorded deed of trust encumbering the Safeway Parcel.

1.17 “**Mortgagee**” is a beneficiary under a Mortgage.

1.18 “**Occupant**” is any Person, together with all officers, directors, partners, employees and agents of such Person, entitled by fee ownership, leasehold interest or license to the exclusive occupancy of all, or any portion of, a Building.

1.19 “**Off-Street Parking Requirements**” is defined in Section 8.4.

1.20 “**Party**” or “**Parties**” means Safeway and/or City, and, when the context so indicates, their Successors and assigns.

1.21 “**Parking Areas**” are all portions of the Common Area designated for vehicular parking from time to time. Subject to applicable Laws and the rights of City to the Public Parking Spaces, in its sole and absolute discretion, the Safeway Parcel Owner shall be entitled to change or modify the Parking Areas, including, without limitation, by eliminating portions thereof, and/or constructing any Building or other improvements thereon, at any time during the Term.

1.22 “**Peak Demand Days**” is defined in Article 14.

1.23 “**Person**” is any individual, partnership, firm, joint venture, association, corporation or any other form of business entity.

1.24 “**Project**” is defined in Article 10.

1.25 “**Project Contingency**” is defined in Article 10.

1.26 “**Public Parking Spaces**” is defined in Section 2.1.

1.27 “**Public Permittees**” means members of the general public that are visiting or shopping in the downtown area of the City, except as otherwise specified or as set forth below. Further, except to the extent such activity is protected under applicable Laws, no Persons engaging in the following activities on the Common Area will be considered Public Permittees:

- (a) exhibiting any placard, sign or notice;

- (b) distributing any circular, handbill, placard, or booklet;
- (c) soliciting memberships or contributions in or for any organization;
- (d) parading, picketing or demonstrating; and
- (e) failing to follow Rules and Regulations relating to the use of the

Common Area.

Separate and apart from the above, if any Person or Person(s) are repeatedly using any portion of the Safeway Parcel to park while said Person works, or Persons work, at any business(es) located outside the boundaries of the Safeway Parcel, then the Safeway Parcel Owner shall be entitled to so notify the City, and propose that the Parties adopt appropriate measures to preclude such use, or otherwise mitigate any problems caused by the same, which proposal the City shall consider in good faith.

1.28 “**Rules and Regulations**” are any reasonable rules or regulations promulgated from time to time by the Safeway Parcel Owner regarding the use of the Common Area, as specified more fully below, provided no such Rules and Regulations shall be inconsistent herewith.

1.29 “**Safeway Exclusive Parking Spaces**” has the meaning set forth in Section 2.1(a).

1.30 “**Safeway Parcel**” is the land defined in the Recitals. The Safeway Parcel shall also include all legal lots or parcels consisting of such land described on **Exhibit A** and **Exhibit A-1** into which the same may be further subdivided in the future pursuant to the California Subdivision Map Act and other applicable Laws.

1.31 “**Safeway Parcel Owner**” is the fee owner of the Safeway Parcel as shown by the official records of the County of Santa Clara. Notwithstanding the above, if Safeway, or an Affiliate thereof, is an Occupant pursuant to a sale leaseback transaction whereby Safeway or its Affiliate is not the fee owner of the Safeway Parcel (the “**Safeway Tenant Party**”), then the Safeway Tenant Party shall be deemed to be the Safeway Parcel Owner for as long as the Safeway Tenant Party is leasing all or part of the Safeway Parcel. Safeway represents and warrants that as of the Effective Date hereof its fee interest in the Safeway Parcel is not encumbered by any deed of trust or mortgage.

1.32 “**Safeway’s Permittees**” means any Person designated by the Safeway Parcel Owner now or in the future, including, without limitation, any and all customers, suppliers, employees, and invitees of said owner or any Occupant of the Safeway Parcel, or any portion thereof.

1.33 “**Site Plan**” is defined in the Recitals.

1.34 “**Successor(s)**” is defined in Article 7.

1.35 “Term” means the term of this Agreement as specified more fully in Article 8.

1.36 “Zoning Code” means Title 14 of the City’s Municipal Code or any successor title or section thereof.

ARTICLE 2 INGRESS, EGRESS, AND PARKING LICENSE

2.1 During the Term, the Safeway Parcel Owner hereby agrees for the benefit of City to allow on a non-exclusive basis Public Permittees to (a) enter and exit the Safeway Parcel for the automobile, bicycle, and pedestrian passage over and across those portions of the Common Area improved with driveways, access drives and lanes and Parking Areas, and, with respect to pedestrian and bicycle use only, sidewalks or designated walkways, as such may exist from time to time and (b) the use of not less than one hundred twenty nine (129) parking spaces in the Parking Areas (except as otherwise specified below and not including any of the Safeway Exclusive Parking Spaces), as the same may exist from time to time (the “Public Parking Spaces”). (Notwithstanding the above, after the occurrence of the Project Contingency and the lawful completion of further improvements on the Safeway Parcel, the number of Public Parking Spaces may be reduced without violating this Agreement to no less than one hundred twenty-four (124) parking spaces.) Such rights shall be subject to the following reservations as well as other applicable provisions contained in this Agreement.

(a) Twenty-five (25) parking spaces in the Parking Areas (the “Safeway Exclusive Parking Spaces”) shall be for the sole use of Safeway’s Permittees. Initially, the Safeway Exclusive Parking Spaces shall be those parking spaces in the Parking Areas so marked or designated on the Site Plan (second page thereof) or otherwise selected by Safeway subject to the City’s reasonable approval. Upon notice to the City, no more than once annually during the Term, the Safeway Parcel Owner shall be entitled in its sole discretion to change the specific parking spaces included within the Safeway Exclusive Parking Spaces beyond those shown on the Site Plan, provided in no event shall the number of such exclusive parking spaces exceed twenty-five (25). No Public Permittees shall use, or be entitled to use, such Safeway Exclusive Parking Spaces. The Safeway Exclusive Parking Spaces may be designated by such signage or curb markings as the Safeway Parcel Owner may deem appropriate. Without limiting the rights set forth above, the Safeway Parcel Owner may also post signs specifying that any unauthorized vehicles parking in the Safeway Exclusive Parking Spaces will be towed.

(b) The Safeway Parcel Owner may limit the number of consecutive minutes (but in no event shall such limitation be less than ninety (90) minutes) that a vehicle may be parked in the Parking Areas.

(c) The Safeway Parcel Owner may temporarily erect or place barriers in and around the Common Area, including, without limitation, Parking Areas, which are being constructed and/or repaired in order to insure either safety of persons or protection of property.

(d) The Safeway Parcel Owner may temporarily close portions of the Common Area, including, without limitation, Parking Areas, for purposes of allowing repairs and/or other maintenance of the same to occur.

(e) The Safeway Parcel Owner may close off any portion of the Common Area, including, without limitation, Parking Areas, for such reasonable period of time as may be legally necessary, in the opinion of its counsel, to prevent the acquisition of prescriptive or other permanent rights by anyone; provided, however, that prior to closing-off any portion of its Parcel, the Safeway Parcel Owner shall give written notice to City of its intention to do so.

(f) The Safeway Parcel Owner may post and record such notices and signage, in a manner consistent with the approved master signage program (but only to the extent applicable), as said Owner and/or its counsel believes is necessary, or desired, so as to preclude or prevent any claim that (i) any portion of the Common Area, including, without limitation, Parking Areas, are subject to any prescriptive easement or (ii) public dedication has occurred. Such posting and recording may include, among other things, notices authorized by California Civil Code Sections 813 and 1009. The entrance to the Common Area will have signage specifying the Public Parking Spaces are available for public use as provided for hereunder. Said signage shall be reasonably approved by the Director of Community Development.

(g) Except as otherwise specified herein, the use of the Common Areas and Parking Areas shall be in common with the Safeway Permittees, and any other Person authorized to use the same by the Safeway Parcel Owner.

2.2 Notwithstanding anything herein to the contrary, in no event shall any motor home or recreational vehicle (RV), non-passenger truck or vehicle, or any other vehicle that does not readily fit into a single parking space be allowed to use the Parking Areas without the consent of the Safeway Parcel Owner. Additionally, the Safeway Parcel Owner may at any time preclude any Person, even if such Person is otherwise a Public Permittee, from using any portion of the Common Area (including the Parking Areas) if the Safeway Parcel Owner reasonably believes that such Person is releasing or permitting any Hazardous Materials to be released on or around the Safeway Parcel.

2.3 All Public Permittees shall be required to use the Common Areas, including, without limitation, the Parking Areas, in compliance with all applicable Laws and the Rules and Regulations.

2.4 Provided it acts in accordance with applicable Laws, the Safeway Parcel Owner shall be entitled to enforce the rights reserved to itself pursuant to Sections 2.1(a) through 2.1(g), inclusive, including, by way of example only, the towing of any vehicles parked in violation of, or without the permission of the Safeway Parcel Owner as specified herein or otherwise.

ARTICLE 3
MAINTENANCE AND ALTERATIONS OF COMMON AREA

3.1 At no cost to the City, the Safeway Parcel Owner shall cause the Common Area, including the Parking Areas, to be maintained in good condition and repair during the entire Term.

3.2 Regardless of this Agreement or any provision hereof, subject to applicable Laws, the Safeway Parcel Owner shall have the sole and exclusive control of the Common Area, including the Parking Areas, and the right to make changes to the Common Area. Such rights shall include, but not be limited to, the right to (a) utilize from time to time any portion of the Common Area for promotional, entertainment and related matters; (b) place permanent or temporary kiosks, displays, carts and stands in the Common Area (including the Parking Areas) and to lease same to tenants; (c) restrain the use of the Common Area by unauthorized persons that are not Safeway Permittees or Public Permittees; (d) temporarily close any portion of the Common Area (including the Parking Areas) as specified more fully in Article 1; and (e) renovate, upgrade or change the shape and size of the Common Area (including the Parking Areas) or add, eliminate or change the location of improvements to the Common Area (including the Parking Areas) including, without limitation, to construct any Building on the Common Area. City expressly acknowledges and agrees that the Safeway Parcel Owner may, at any time, subject to applicable Laws, change the shape, size, location, number and extent of the improvements shown on the Site Plan. The rights provided to the Safeway Parcel Owner as contained in this section, however, shall not be exercised so as to decrease the total number of Public Parking Spaces, except on a temporary basis (e.g. for repaving, restriping of parking spaces and similar occurrences) or as otherwise provided in Section 2.1.

3.3 Nothing in this Agreement shall grant City or any Public Permittee any right to make any change or alterations to any portion of the Common Area (including the Parking Areas) or any other portion of the Safeway Parcel. Nothing in this Agreement shall grant City any right to alter the improvements or penetrate the surface of the parking lot within the Safeway Parcel

3.4 The Safeway Parcel Owner shall pay, or cause to be paid, at no expense to City, when due, all real estate taxes (general and special) and assessments which may be levied, assessed, or charged by any public authority against the Safeway Parcel and the improvements thereon. In the event the Safeway Parcel Owner shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property) to be excessive or illegal, the Safeway Parcel Owner shall have the right, at its own costs and expense, to contest the same by appropriate proceedings, and nothing contained in this Section shall require the Safeway Parcel Owner to pay any such real estate tax or assessment as long as (a) no use of the Common Area and/or Parking Area would be immediately affected by such failure to pay (or bond); and (b) the amount or validity thereof shall be contested in good faith.

ARTICLE 4
PARTICIPATION IN DOWNTOWN PARKING PERMIT PROGRAM AND
MONETARY PARKING CONTRIBUTION

4.1 The employees of any business operated on the Safeway Parcel shall not be entitled to participate in City's downtown parking permit program as such may exist from time to time during the Term.

4.2 If and when the Project Contingency is satisfied and Safeway obtains the Certificate of Occupancy, Safeway shall pay to the City the sum of Five Hundred Thousand Dollars (\$500,000) as a parking fee or contribution for public parking to assist in the City's implementation of a comprehensive parking solution for the City's downtown. Safeway shall make such payment as a condition of the issuance of the Certificate of Occupancy.

ARTICLE 5
INSURANCE

During the Term, the Safeway Parcel Owner shall secure and maintain, or cause to be secured and maintained by any non-owner Occupant, at no expense to City, a policy of commercial general liability insurance. The Safeway Parcel Owner's liability policy shall provide coverage with respect to the Safeway Parcel. The coverage limits for such liability insurance shall not be less than Three Million Dollars (\$3,000,000) for a combined single limit for bodily injury, personal injury, death and property damage liability per occurrence. All policies of insurance required above shall be obtained from an insurance company admitted to do business in California. Notwithstanding the above, the Safeway Parcel Owner or any non-owner Occupant shall be entitled to provide the insurance coverage specified above, in whole or in part, through a regularly maintained self-insurance program subject to the limitations set forth in the following paragraph. Nothing herein shall be construed to render or cause either Party hereto to be liable for the negligence or other actions or omissions of the other Party with respect to the Safeway Parcel or otherwise.

If the Safeway Parcel Owner is not Safeway, then the Safeway Parcel Owner's right to self-insure under such circumstances and right to continue to self-insure is conditioned upon: (a) the Safeway Parcel Owner or non-owner Occupant, or a Self-Insurance Affiliate (as defined below) of either, having a net worth of at least One Hundred Million Dollars (\$100,000,000) and (b) such self-insurance providing for loss reserves that are actuarially derived in accordance with acceptable standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. With respect to the above, if the Successor, Safeway Parcel Owner, non-owner Occupant or any Self-Insurance Affiliate thereof, as applicable, is not a publicly traded company, then said Person shall, upon request, provide an audited financial statement, prepared in accordance with generally accepted accounting principles, showing the required net worth. As used above, "**Self-Insurance Affiliate**" means an Affiliate of the Safeway Parcel Owner or non-owner Occupant that provides self-insurance on behalf of the Safeway Parcel Owner or non-owner Occupant, as applicable, which covers occurrences on the Safeway Parcel. If Safeway is not the Safeway Parcel Owner, then said

Safeway Parcel Owner's right to self-insure shall terminate hereunder if the above conditions are not satisfied.

ARTICLE 6 NOT A PUBLIC DEDICATION

Nothing herein contained shall be deemed a gift or dedication, express or implied, of any portion of the Safeway Parcel or portion thereof to the general public or City for any public use or purpose whatsoever.

ARTICLE 7 SUCCESSORS AND ASSIGNS; COVENANTS RUNNING WITH THE LAND

During the Term, this Agreement and all of the rights, duties, powers, covenants, conditions, restrictions and obligations contained in this Agreement shall (a) burden the Safeway Parcel and are binding upon the Safeway Parcel Owner and its Occupants, if any, and their respective heirs, successors (by merger, consolidation or otherwise), assigns, devisees, administrators, representatives, and all other Persons acquiring any interest in the Safeway Parcel, or portion thereof or interest therein, whether by operation of law or in any manner whatsoever; (b) benefit City and the Safeway Parcel and inure to the benefit of the Safeway Parcel Owner and any Occupants, and their respective heirs, successors (by merger, consolidation, reorganization, purchase (including the purchase of all or substantially all of the applicable Party's assets), merger, consolidation, reorganization or otherwise (each a "Successor" and collectively "Successors")), and assigns; and (c) are enforceable as equitable servitudes and/or constitute covenants running with the land pursuant to applicable Law.

ARTICLE 8 TERM OF AGREEMENT

8.1 Unless sooner terminated pursuant to Section 8.2, the term of this Agreement (the "Term") shall begin on the first date on which each of the following has occurred: (1) a fully executed original or copy of this Agreement is delivered to each of the Parties hereto and (2) the Project Contingency has been satisfied, and shall continue in full force and effect for a period of thirty (30) years after the commencement of the Term. (The date on which the Term actually commences, if any, shall be included in the Memorandum, or if there is no Memorandum, in a letter agreement executed by the parties hereto.) However, unless within one (1) year prior to thirty (30) years from the date hereof, there shall be recorded an instrument directing the termination of this Agreement, signed by both authorized representatives of the Safeway Parcel Owner and City, this Agreement, as in effect immediately prior to the expiration date, shall be continued automatically without any further notice for an additional period of ten (10) years and thereafter for successive periods of ten (10) years unless, within one (1) year prior to the expiration of any such period, this Agreement is terminated as set forth above in this section, or as set forth in Sections 8.2, 8.3 or 8.4, as applicable.

8.2 For and at any time during the first five (5) years of the Term (as defined in Section 8.1), upon no less than one hundred eighty (180) days prior notice thereof delivered to

City, the Safeway Parcel Owner may revoke and terminate, in its sole discretion, this Agreement by paying to City a termination fee of Two Million Eight Hundred Eighty Thousand (\$2,880,000) in Constant Dollars (less the \$500,000 payment provided in Section 4.2) (the “**Termination Fee Period 1**”). After such five (5) year period, upon no less than one hundred eighty (180) days prior notice, the Safeway Parcel Owner may revoke and terminate, in its sole discretion, this Agreement by paying to City a termination fee of One Million Five Hundred Thousand Dollars (\$1,500,000) (less the \$500,000 payment provided in Section 4.2) (the “**Termination Fee Period 2**”). Notwithstanding the foregoing, the Termination Fee Period 1 or Termination Fee Period 2 shall be Five Hundred Thousand Dollars (\$500,000) without any credit for any prior payment in the event that the number of parking spaces within the Downtown Adjacent Parking Area is less than ninety-five percent (95%) of the Baseline Parking Count (as defined in **Exhibit D**) at the time the 180-day termination notice is provided as more fully specified in **Exhibit D**. In no event, however, shall a loss of any parking spaces within the Downtown Adjacent Area on a temporary basis (i.e. for a period of less than one hundred eighty (180) days) as a result of any capital improvement project of the City or maintenance of any City-owned improvements result in a reduction of the Baseline Parking Count so as to allow for the termination of this Agreement as specified above. In the event of a termination pursuant to this Section 8.2, this Agreement shall terminate immediately on the later of (i) the one hundred eighty-first (181st) day after the delivery of the termination notice or (ii) the payment of the applicable termination fee to the City. For purposes of this Agreement, “**Constant Dollars**” means that the amount of dollars to which such phrase refers shall be increased or decreased on the fifth (5th) year after the occurrence of the Project Contingency and the issuance of a Certificate of Occupancy, and every fifth (5th) year thereafter during the Term in proportion to the increase or decrease in the Consumer Price Index for All Urban Consumers-All Items, published monthly by the United States Department of Labor (base year 1982-84=100) (the “**Index**”), or any successor index thereto as hereinafter provided. If the base year of the Index is changed, then all calculations pursuant to this Agreement, which require the use of the Index, shall be made by using the appropriate conversion factor published by the Department of Labor (or successor agency) to correlate to the base year of the Index herein specified. If no such conversion factor is published, then City or the Safeway Parcel Owner shall make the necessary calculation to achieve such conversion. Should the Department of Labor discontinue the publication of the Index, or publish the same less frequently, or alter the same in some manner, then City will adopt a substitute index or procedure, which reasonably reflects and monitors consumer prices.

8.3 City reserves the right, in its absolute discretion, to terminate this Agreement at any time by delivering a one-year notice of such termination to the Safeway Parcel Owner, provided no such termination shall affect the validity of any permits, approvals, or other entitlements granted to Safeway for the Project.

8.4 Notwithstanding any provision herein to the contrary, if, after the first five (5) years after the Term (as defined in Section 8.1) has commenced, the Safeway Parcel is further developed or redeveloped so that the number of parking spaces thereon equals or exceeds the number of off-street parking spaces required by the Zoning Code as such then exists (the “**Off-Street Parking Requirements**”) without the finding of any exception pursuant to Section 14.48.180 of the Zoning Code (as such section was in effect as of the Effective Date) or any successor similar section or provision thereof, the granting of any variance, or the use of any

common parking facility to satisfy such Off-Street Parking Requirements pursuant to Sections 14.48.100 and 14.74.170 of the Zoning Code (as such sections were in effect as of the Effective Date) or any successor or similar sections or provisions, then this Agreement shall automatically terminate without further notice or the payment of any fee on the first date that such Off-Street Parking Requirements are so satisfied.

8.5 Upon the expiration of the Term or this Agreement, neither Party shall have any further duties or obligations hereunder, except with respect to any obligation hereunder that is expressly stated to survive the termination of this Agreement.

ARTICLE 9 NOTICES

Any notice, request, demand, instruction or other communication required by this Agreement to be given to any Party hereto shall be in writing and shall be either (a) personally delivered to the Parties named below, or the Party otherwise entitled thereto, by a commercial messenger service regularly retaining receipts for such delivery, (b) sent by registered or certified mail, return receipt requested, or (c) delivered by a recognized overnight carrier that provides proof of delivery, and such notice shall be effective upon delivery thereof to the Party being given notice, and shall be addressed to the parties as listed below:

If to Safeway:	5918 Stoneridge Mall Road Pleasanton CA 94588-3229 Attention: Real Estate Law Division
with a copy to:	5918 Stoneridge Mall Road Pleasanton, California 94588-3229 Attention: Northern California Division Real Estate Department
If to City:	City of Los Altos One North San Antonio Road Los Altos, CA 94022 Attention: City Manager / City Attorney

ARTICLE 10 CONDITIONS

This Agreement is conditioned on, and the Term hereof shall only commence upon, each of the following occurring: Safeway (a) obtaining all necessary permits and approvals from City and any other applicable governmental entity permitting the construction and operation of a new supermarket under the Safeway brand name (or any successor thereto) containing approximately 45,265 square feet of net building area, and on-site parking and other improvements, all as substantially shown on the Site Plan, or as otherwise acceptable to Safeway in its sole and unfettered discretion (the "Project") and (b) constructing the Project and opening for business to

the public therein (collectively the “**Project Contingency**”). If the Project Contingency has not occurred or been satisfied within thirty-six (36) months after the Effective Date, then Safeway may, but shall not be required, to terminate this Agreement upon notice thereof to City. Such a termination shall render this Agreement null and void, and treated for purposes of any applicable Project entitlement condition as if the Agreement was never executed. Nothing set forth herein shall require City to approve the Project or any portion thereof, and/or Safeway to construct the Project, open for business to the public therein, or continue such business for any period of time. No termination of this Agreement or rights granted pursuant to Article 2 shall constitute a basis for revoking, modifying, or changing in any material and adverse manner any permits or other governmental approvals previously granted by City for the Project, unless such termination was solely caused by a default under this Agreement by the Safeway Parcel Owner.

ARTICLE 11 RECORDATION

This Agreement shall not be recorded. However, upon the request of City made on or after the Project Contingency has been satisfied, Safeway shall duly execute and acknowledge a memorandum of this Agreement in substantially the form attached hereto as **Exhibit C** (the “**Memorandum**”), and deliver the same to City for recordation, provided in no event shall the Memorandum be recorded until and unless the Term commenced hereunder. (If no such **Exhibit C** is attached, then the Memorandum shall be in a form prepared by the City, subject to the approval of the Safeway Parcel Owner, which approval shall not be unreasonably withheld, conditioned, or delayed.) Upon any termination of this Agreement, City shall cooperate with the Safeway Parcel Owner to cause any such recorded Memorandum to be removed from record title to the Safeway Parcel.

ARTICLE 12 DEFAULT

No Party shall be in default hereunder unless and until said Party shall have not performed any of its promises, covenants or agreements herein contained for more than fifteen (15) days (provided, however, if the default cannot be rectified or cured within such fifteen (15) day period, the default shall be deemed to be rectified or cured if said Party, within such fifteen (15) day period, shall have commenced to rectify or cure the default and shall thereafter diligently and continuously prosecute same to completion) after written notice thereof from the other Party. Upon the occurrence of such default, the non-defaulting Party shall be entitled to all remedies allowed pursuant to applicable Law, including, without limitation, injunctive or equitable relief. Notwithstanding the above, in no event shall any default hereunder entitle either Party hereunder to terminate this Agreement.

ARTICLE 13 MORTGAGEE PROTECTION

No breach of the covenants, conditions or restrictions herein contained shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering the Safeway Parcel or any portion thereof, provided that any Mortgagee that obtains title to the Safeway Parcel (or any portion thereof) and any other Safeway Parcel Owner

whose title is derived therefrom shall be bound by the provisions hereof from and after the date said Mortgagee or such Safeway Parcel Owner, as applicable, obtains title to all or part of the Safeway Parcel.

ARTICLE 14 TRANSPORTATION DEMAND MANAGEMENT PRACTICES

Solely with respect to the Peak Demand Days (as defined below), the Safeway Parcel Owner shall implement parking demand management strategies or practices, which shall include one or more of the following components: (i) employee incentives not to commute to work by car or automobile (e.g. incentives to encourage the use of bicycles to commute to work, providing bus passes, and/or facilitating employee car pooling), (ii) causing employees not to park in the Parking Areas and to utilize parking spaces located outside of the City's downtown; and (iii) the use of a valet parking service. The "**Peak Demand Days**" mean and are limited to Halloween, the day before Thanksgiving, Christmas Eve, New Year's Eve, Valentine's Day, and Super Bowl Sunday.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 If either Party brings an action of law or in equity to interpret or enforce this Agreement, the prevailing party as determined by the Court in such action shall be entitled to recover reasonable attorney's fees and court costs for all stages of litigation, including but not limited to, appellate proceedings, in addition to any other remedy granted.

15.2 The relationship of Safeway and City is that of contractual parties, and it is expressly understood and agreed that nothing contained in this Agreement shall be interpreted or construed to make the parties partners, landlord-tenant, joint venturers or participants in any other legal relationship.

15.3 The Safeway Parcel Owner shall have the right upon notice thereof to delegate all or part of its rights and duties hereunder to any Occupant or Occupants, provided that no such delegation shall serve to relieve the Safeway Parcel Owner for non-compliance with the terms hereof.

15.4 This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement and supersedes all other negotiations, understandings and agreements between the parties. This Agreement may not be modified or amended except for a written agreement signed by the Parties.

15.5 Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, terrorism, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes (except financial) beyond the reasonable control of the Party obligated to perform, shall excuse the performance by that Party for a period equal to the prevention, delay or stoppage.

15.6 This Agreement may be executed in counterparts, each of which when taken together, shall constitute but one original.

15.7 The Article and Section headings used herein are inserted for convenience only.

15.8 The failure of any Party to enforce any covenant, condition or restriction herein contained, by reference or otherwise, shall in no event be deemed a waiver of the right to do so thereafter, nor of the right to enforce any other covenant, condition or restriction.

15.9 If any provision (by reference or otherwise) of this Agreement is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

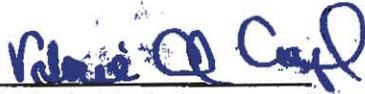
15.10 Except as otherwise provided in Section 15.3, the provisions of this Agreement are and will be for the benefit of the Parties hereto only and are not for the benefit of any third-party; and, accordingly, no third-party shall have the right to enforce the provisions of this Agreement.

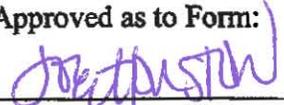
15.11 This Agreement and the obligations of the Parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California. Subject to the above, the provisions of the Agreement shall be construed according to the normal meaning and tenor (unless the context indicates otherwise) thereof without regard to the general rule that contractual provisions are to be construed narrowly against the Party which drafted the same.

15.12 All exhibits and recitals referred to in this Agreement constitute part of this Agreement and are incorporated in this Agreement by this reference as if fully set forth in this Agreement.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date or dates set forth below.

CITY:
CITY OF LOS ALTOS, a California municipal corporation

By: 
Valorie Cook Carpenter, Mayor

Approved as to Form:

Jolie Houston, City Attorney

SAFEWAY:
SAFEWAY INC., a Delaware corporation

By: _____
Assistant Vice President

By: _____
Assistant Secretary

Date: _____

Form Approved: _____

15.6 This Agreement may be executed in counterparts, each of which when taken together, shall constitute but one original.

15.7 The Article and Section headings used herein are inserted for convenience only.

15.8 The failure of any Party to enforce any covenant, condition or restriction herein contained, by reference or otherwise, shall in no event be deemed a waiver of the right to do so thereafter, nor of the right to enforce any other covenant, condition or restriction.

15.9 If any provision (by reference or otherwise) of this Agreement is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

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15.12 All exhibits and recitals referred to in this Agreement constitute part of this Agreement and are incorporated in this Agreement by this reference as if fully set forth in this Agreement.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date or dates set forth below.

CITY:
CITY OF LOS ALTOS, a California municipal corporation

By: 

SAFEWAY:
SAFEWAY INC., a Delaware corporation

By: 
Assistant Vice President

By: 
Assistant Secretary

Date: April 6, 2012

Form Approved: 

SAFeway EXCLUSIVE
PARKING SPACES



CITY OF LOS ALTOS
PUBLIC PARKING

FIRST ST.



STATE ST.

FOOTHILL EXPY.

EXHIBIT A-1

LEGAL DESCRIPTION FOR SAFEWAY PARCEL

All that certain Real Property in the City of Said Land, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

A portion of Section 30, Township 6 South, Range 2 West, Mount Diablo Base and Meridian, and described as follows:

Beginning at a point on the Southwesterly line of First Street, distant thereon North 32 deg. 03' West 645 feet from the intersection thereof with the Southwesterly prolongation of the Northwesterly line of Main Street as shown on Map No. 1 of Los Altos filed in Book I of Maps, Page 99, Santa Clara County Records; thence North 32 deg. 03' West along said Southwesterly line of First Street, 207.3 feet to the intersection thereof with the Southeastery line of the Parcel of Land described in memo of lease by Southern Pacific Company, Lessor, and Small Holders Associated Real Estate, Inc., Lessee, Recorded March 31, 1964 in Book 6444 Official Records, Page 446, Santa Clara County Records; thence South 57 deg. 57' West along the Southeastery line of said last mentioned Parcel of Land, 127.21 feet to the Northeastery line of Parcel KK as shown on the Map of Record of Survey of Foothill Expressway on File in Book 175 of Maps, Pages 5 to 9, Santa Clara County Records; thence South 32 deg. 03' 48" East along the Northeastery line of said Parcel KK, 207.3 feet to a point which bears South 57 deg. 57' West from the Point of Beginning; thence North 57 deg. 57' East 127.16 feet to the Point of Beginning.

Excepting therefrom: all minerals and mineral rights, interest, and royalties, including without limiting, the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the Property, however, Grantor or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith, as reserved in the Corporate Grant Deed from Southern Pacific Transportation Company, a Delaware Corporation, to Safeway, Inc., a Delaware Corporation, dated October 20, 1997 and recorded December 23, 1997 as Instrument No. 13987339.

PARCEL TWO:

Commencing at the Point of Intersection of the Southwesterly line of First Street with the Southwesterly Prolongation of the Northwesterly line of Main Street as shown on Map No. 1 of Los Altos, recorded in Book "1" of Maps, at Page 99, Records of Santa Clara County, California, thence N. 32 deg 03' W. along said Southwesterly line of First Street 455 feet to the actual Point of Beginning of the Parcel of Land to be described; thence continuing N. 32 deg 03' W. along said Southwesterly line of First Street 190 feet to a point, thence S. 57 deg 57' W. 122 feet to a point on a line that is parallel with and distant 30 feet Northeastery measured at right angles from the center line of Main Track of Southern Pacific Company's Railroad; thence S. 32 deg 03' E. along said parallel line 39.21 feet; thence S. 41 deg 27' 48" E. 152.85 feet; thence N. 57 deg 57' E. 97 feet to the Point of Beginning, and being a portion of the S. E. 1/4 of Section 30, T. 6 S. R. 2 W. M.D.B. B. M.

PARCEL THREE:

Beginning at a point from which the intersection of the Southwesterly line of First Street with the Northwesterly line of Main Street as said intersection is shown upon the Map hereinabove referred to, (Record of Survey, Foothill Expressway, filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on March 12, 1964 in Book 175 of Maps, at Pages 5 to 9 inclusive) bears North 57 deg 58' 56" East, 96.99 feet and South 32 deg 02' 04" East, 455.00 feet. Thence from said Point of Beginning North 41 deg 26' 06" West, 152.85 feet; thence North 32 deg 01' 04" West, 39.21 feet; thence South 57 deg 58' 56" West to a point in the Northeastery line of Parcel "KK" as said Parcel is shown and delineated upon the hereinabove referred to Map; thence along last said Northeastery line South 32 deg 02' 28" East, 190.00 feet; thence North 57 deg 58' 56" East to the Point of Beginning.

PARCEL FOUR:

A portion of Section 30, Township 6 South, Range 2 West, Mount Diablo Base and Meridian, and described as follows:

Beginning at a point on the Southwesterly line of First Street, distant thereon North 32 deg 03' West 285 feet from the intersection thereof with the Southwesterly prolongation of the Northwesterly line of Main Street as shown on Map No. 1 of Los Alboe on file in Book L of Maps, Page 99, Santa Clara County Records; thence North 32 deg 03' West along said Southwesterly line of First Street, 170 feet to the Easterly corner of the Parcel of Land conveyed to Alton L. Burdhart, et al, by Deed recorded January 8, 1947, Book 1426 Official Records, Page 135, Santa Clara County Records; thence South 57 deg 57' West along the Southeastery line of said Parcel of Land conveyed to Alton L. Burdhart, et al, and its Southwesterly prolongation, 127.12 feet to the Northeastery line of Parcel KK, as shown on the Map of Record of Survey of Foothill Expressway on file in Book 175 of Maps, Pages 5 to 9, Santa Clara County Records; thence South 32 deg 03' East along the Northeastery line of said Parcel KK, 170 feet; thence North 57 deg 57' East 127.08 feet to the Point of Beginning.

Excepting therefrom: All minerals and mineral rights, interests, and royalties, including without limiting, the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the Property, however, Grantor or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the Property in connection therewith, as reserved in the Corporation Grant Deed from Southern Pacific Transportation Company, a Delaware Corporation, to Safeway Inc., a Delaware Corporation, dated October 20, 1997 and recorded December 23, 1997 as Instrument No. 13987339.

APN: 167-39-107, 108, 135

EXHIBIT C
FORM OF MEMORANDUM

[Attached]

MEMORANDUM OF AGREEMENT

RECORDATION REQUESTED BY:
AFTER RECORDATION RETURN TO:

City of Los Altos
One North San Antonio Road
Los Altos, CA 94022
Attention: City Manager / City Attorney

RETURN BY: MAIL (X) PICK UP ()

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Memorandum") is made as of this ____ day of _____, 201_, between Safeway Inc., a Delaware corporation ("**Safeway**"), and the City of Los Altos, a California municipal corporation ("**City**"), with reference to the following facts:

A. Safeway and City have entered into that Downtown Shared Parking Agreement, dated March 21, 2012 (the "Agreement").

B. The Agreement concerns the improved real property located in the City of Los Altos on which Safeway is currently operating a supermarket (the "Property"). The Property is more fully described in **Exhibit A** hereto.

C. The Agreement provides for the parties thereto to enter into this Memorandum and to have the same recorded at the City's request.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

The Agreement grants to the City the right to permit public parking on portions of the Property under such terms and conditions as are more particularly set forth in the Agreement.

The Term of the Agreement is for ten years, subject to extension and termination as specified more fully therein, and commenced on _____, 20__.

The purpose of this Memorandum is to give record notice of the Agreement and of the terms thereof and the rights created thereby. It is not intended to amend or modify any of the rights and obligations set forth in the Agreement. To the extent that any provisions of this Memorandum and the Agreement conflict, the provisions of the Agreement shall control.

This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

<p>CITY OF LOS ALTOS, a municipal corporation</p> <p>By: _____</p>	<p>SAFEWAY INC., a Delaware corporation</p> <p>By: _____ Assistant Vice President</p> <p>By: _____ Assistant Secretary</p> <p>Date: _____</p> <p>Form Approved: _____</p>
--	---

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____ before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____ before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____ before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain Real Property in the City of Los Altos, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

A portion of Section 30, Township 6 South, Range 2 West, Mount Diablo Base and Meridian, and described as follows:

Beginning at a point on the Southwesterly line of First Street, distant thereon North 32 deg. 03' West 645 feet from the intersection thereof with the Southwesterly prolongation of the Northwesterly line of Main Street as shown on Map No. 1 of Los Altos filed in Book L of Maps, Page 99, Santa Clara County Records; thence North 32 deg. 03' West along said Southwesterly line of First Street, 207.3 feet to the intersection thereof with the Southeasterly line of the Parcel of Land described in memo of lease by Southern Pacific Company, Lessor, and Small Holders Associated Real Estate, Inc., Lessee, Recorded March 31, 1964 in Book 6444 Official Records, Page 446, Santa Clara County Records; thence South 57 deg. 57' West along the Southeasterly line of said last mentioned Parcel of Land, 127.21 feet to the Northeasterly line of Parcel KK as shown on the Map of Record of Survey of Foothill Expressway on File in Book 175 of Maps, Pages 5 to 9, Santa Clara County Records; thence South 32 deg. 03' 48" East along the Northeasterly line of said Parcel KK, 207.3 feet to a point which bears South 57 deg. 57' West from the Point of Beginning; thence North 57 deg. 57' East 127.16 feet to the Point of Beginning.

Excepting therefrom: all minerals and mineral rights, interest, and royalties, including without limiting, the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the Property, however, Grantor or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith, as reserved in the Corporation Grant Deed from Southern Pacific Transportation Company, a Delaware Corporation, to Safeway, Inc., a Delaware Corporation, dated October 20, 1997 and recorded December 23, 1997 as Instrument No. 13987339.

PARCEL TWO:

Commencing at the Point of Intersection of the Southwesterly line of First Street with the Southwesterly Prolongation of the Northwesterly line of Main Street as shown on Map No. 1 of Los Altos, recorded in Book "L" of Maps, at Page 99, Records of Santa Clara County, California, thence N. 32 deg 03' W. along said Southwesterly line of First Street 455 feet to the actual Point of Beginning of the Parcel of Land to be described; thence continuing N. 32 deg 03' W. along said Southwesterly line of First Street 190 feet to a point, thence S. 57 deg 57' W. 122 feet to a point on a line that is parallel with and distant 30 feet Northeasterly measured at right angles from the center line of Main Track of Southern Pacific Company's Railroad; thence S. 32 deg 03' E. along said parallel line 39.21 feet; thence S. 41 deg 27' 48" E. 152.85 feet; thence N. 57 deg 57' E. 97 feet to the Point of Beginning, and being a portion of the S. E. 1/4 of Section 30, T. 6 S. R. 2 W. M.D.B. & M.

PARCEL THREE:

Beginning at a point from which the intersection of the Southwesterly line of First Street with the Northwesterly line of Main Street as said intersection is shown upon the Map hereinabove referred to, (Record of Survey, Foothill Expressway, filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on March 12, 1964 in Book 175 of Maps, at Pages 5 to 9 inclusive) bears North 57 deg 58' 56" East, 96.99 feet and South 32 deg 01' 04" East, 455.00 feet. Thence from said Point of Beginning North 41 deg 26' 06" West, 152.85 feet; thence North 32 deg 01' 04" West, 39.21 feet; thence South 57 deg 58' 56" West to a point in the Northeasterly line of Parcel "KK" as said Parcel is shown and delineated upon the hereinabove referred to Map; thence along last said Northeasterly line South 32 deg 02' 28" East, 190.00 feet; thence North 57 deg 58' 56" East to the Point of Beginning.

PARCEL FOUR:

A portion of Section 30, Township 6 South, Range 2 West, Mount Diablo Base and Meridian, and described as follows:

[Continued on next page]

Beginning at a point on the Southwesterly line of First Street, distant thereon North 32 deg 03' West 285 feet from the intersection thereof with the Southwesterly prolongation of the Northwesterly line of Main Street as shown on Map No. 1 of Los Altos on file in Book L of Maps, Page 99, Santa Clara County Records; thence North 32 deg 03' West along said Southwesterly line of First Street, 170 feet to the Easterly corner of the Parcel of Land conveyed to Alton L. Burkhardt, et al, by Deed recorded January 8, 1947, Book 1426 Official Records, Page 135, Santa Clara County Records; thence South 57 deg 57' West along the Southeasterly line of said Parcel of Land conveyed to Alton L. Burkhardt, et al, and its Southwesterly prolongation, 127.12 feet to the Northeasterly line of Parcel KK, as shown on the Map of Record of Survey of Foothill Expressway on file in Book 175 of Maps, Pages 5 to 9, Santa Clara County Records; thence South 32 deg 03' East along the Northeasterly line of said Parcel KK, 170 feet; thence North 57 deg 57' East 127.08 feet to the Point of Beginning.

Excepting therefrom: All minerals and mineral rights, interests, and royalties, including without limiting, the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the Property, however, Grantor or its successors and assigns, shall not have the right for any pupose whatsoever to enter upon, into or through the surface of the Property in connection therewith, as reserved in the Corporation Grant Deed from Southern Pacific Transportation Company, a Delaware Corporation, to Safeway Inc., a Delaware Corporation, dated October 20, 1997 and recorded December 23, 1997 as Instrument No. 13987339.

APN: 167-39-107, 108, 135

EXHIBIT D

BASELINE PARKING COUNT

Pursuant to the Parking Agreement approved by City Council on January 24, 2012 the available parking spaces adjacent to Safeway shall not be less than ninety-five percent (95%) of the Baseline Parking Count.

The Baseline Parking Count is determined by the available parking identified within the area adjacent to Safeway from Main Street to the South, Second Street to the East, Foothill Expressway to the West, and Shasta to the North extending through to Second Street, as represented in Exhibit B of the Parking Agreement, which area is referred to in the Parking Agreement as the Downtown Adjacent Area.

The Baseline Parking Count excludes the twenty (20) parking spaces known to be eliminated within the Downtown Adjacent Area as a result of the First Street Streetscape improvements. Excluding those spaces, below are the current parking counts for the Downtown Adjacent Area:

	Parking Spaces
North Side of Main Street	17
State Street	23
West Side of Second Street	11
South Side of Shasta Street	6
Private On-Site Parking within Boundary Area (Excluding 160 and 230 First Street)	
<u>Residential</u>	
80 Second Street	26
100-102 Second Street	8
110 Second Street	3
124 Second Street	19
130-140 Second Street	12
<u>Commercial</u>	
101 First Street	13
110 First Street	60
121 First Street	7
127 First Street	6
129 First Street	8
139 First Street	5
141 First Street	5
145 First Street	4
151 First Street	10
Parking Plaza Four	64

Parking Plaza Seven

126

TOTAL

433

The 433 spaces are referred to herein and in the Parking Agreement as the "Baseline Parking Count." A five percent (5%) reduction in the Baseline Parking Count would be a net loss of 22 parking spaces or more (a "5% or More Reduction"). A 5% or More Reduction shall occur if either (1) at any time 22 or more parking spaces are lost or removed from the Downtown Adjacent Area for any reason (except on a temporary basis as further specified in the Parking Agreement) and not then replaced with additional parking so that the number of parking spaces remains at or above the Baseline Parking Count, or (2) the further development or redevelopment of existing buildings / land within the Downtown Adjacent Area results in an unmet parking demand of 22 or more parking spaces for the Downtown Adjacent Area as a whole. The number of parking spaces needed for the Downtown Adjacent Area shall be based on the City's Off-Street Parking Requirements (as defined in the Parking Agreement) calculated without the granting of (i) any variance or (ii) the use of any common parking facility (beyond that specified above for Parking Plazas Four and Seven) pursuant to Sections 14.48.100 and 14.74.170 of the Zoning Code (in effect as of the Effective Date) or any successor or similar sections or provisions. By way of example only, if 101 First Street is redeveloped in the future such that 43 parking spaces are required pursuant to the City's Off-Street Parking Requirements and only 20 parking spaces are installed at the completion of such project with no other changes within the Downtown Adjacent Area, then there would be a shortage of 23 parking spaces and a resulting 5% or More Reduction.

Notwithstanding the above, in no event shall the City's Off-Street Parking Requirements within the Downtown Adjacent Area for purposes of determining whether a 5% or More Reduction has occurred be deemed to be less than (x) five (5) spaces per thousand (1,000) square feet of "net building area" as defined in the City Zoning Code as of the Effective Date for retail uses or (y) 3.3 spaces per thousand (1,000) square feet of net building area for office uses, except as follows: In the event that Parking Plaza Four or Seven is sought to be redeveloped and governmentally entitled in a manner that could accommodate either retail or office space, or a combination thereof, based on market demand, then the minimum Off-Street Parking Requirements for purposes of determining whether a 5% or More Reduction has occurred shall be reasonably agreed upon by Safeway and City (i) acting in good faith and (ii) taking into account the parking requirements imposed on substantially similar projects, if any, that were actually constructed in the San Francisco Bay Area after the Effective Date and otherwise known to said parties.