

## RESOLUTION NO. SA-21

### **A RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY AUTHORIZING THE EXECUTIVE DIRECTOR OF THE SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY TO SIGN THAT CERTAIN SALE AND PURCHASE AGREEMENT BETWEEN THE SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY AND PROPERTY DEVELOPMENT CENTERS, LLC FOR THE SALE OF CERTAIN REAL PROPERTY LOCATED ALONG MT HERMON ROAD AND KINGS VILLAGE ROAD (APN NO'S. 022-231-03)**

**WHEREAS**, the City of Scotts Valley (the "City") adopted its General Plan in 1994 which provided for the development of a Town Center on property located between Mt. Hermon Road and Kings Village Road; and

**WHEREAS**, the City approved a Town Center Specific Plan in December 2008, which further refined the design and plans for the Town Center; and

**WHEREAS**, the former Redevelopment Agency of the City of Scotts Valley acquired a certain property located within the Town Center Specific Plan Area to facilitate the development of the Town Center

**WHEREAS**, the formed Redevelopment Agency of the City of Scotts Valley was eliminated and the Successor Agency of the Scotts Valley Redevelopment Agency is now charged with winding down the obligations of the former Redevelopment Agency; and

**WHEREAS**, part of the winding down process requires the sale of certain parcels of land owned by the former Redevelopment Agency, including that certain parcels identified as Assessor Parcel No. (APNs) 022-231-03 located on the north side of and abutting Mt. Hermon Road and West of Kings Village Road in the City of Scotts Valley (the "Property"); and

**WHEREAS**, the California Department of Finance recently approved the Agency's Long Range Property Management Plan which provided for the sale of the Property for the appraised value; and

**WHEREAS**, Property Development Centers, LLC ("PDC"), is interested in acquiring the Property for its appraised value to develop the Town Center in accordance with the City's General Plan and the Town Center Specific Plan; and

**WHEREAS**, Government Code Section 65402(a) requires that prior to the sale of such real property by the Successor Agency and the City, the location, purpose, and extent of the acquisition shall be submitted to, and reported upon, by the planning agency as to conformity with the adopted General Plan; and

**WHEREAS**, the planning agency for the City for the purpose of Government Code Section 65402(a) is the Planning Commission of the City of Scotts Valley (the "Planning Commission"); and

**WHEREAS**, on August 28, 2014, the Planning Commission, by resolution determined that the sale of the Property was consistent with the General Plan in accordance with Government Code Section 65402(a); and

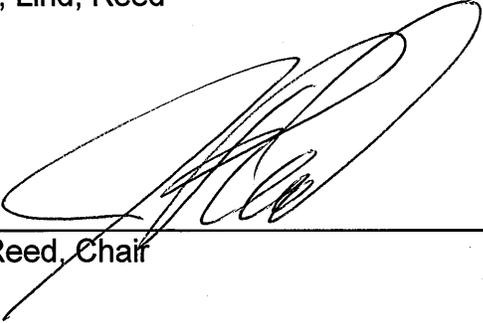
**WHEREAS**, the City Council previously approved an Environmental Impact Report for the Town Center Specific Plan and any development of the Property must be consistent with the Town Center Specific Plan.

**NOW THEREFORE**, the Board of the Successor Agency of the Scotts Valley Redevelopment Agency, hereby resolves as follows:

1. That the aforementioned findings are approved.
2. That the sale of the Property is consistent with the Long Range Property Management Plan.
3. That the property is being sold for the appraised value.
4. That the Executive Director is authorized to execute those certain purchase agreements for the sale of the Property.

**PASSED, APPROVED, AND ADOPTED** this 24<sup>th</sup> day of September, 2014, by the following vote:

AYES:	Aguilar, Bustichi, Johnson, Lind, Reed
NOES:	None
ABSENT:	None
ABSTAIN:	None

  
\_\_\_\_\_  
Jim Reed, Chair

ATTEST:

  
\_\_\_\_\_  
Tracy Ferrara, Agency Secretary

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is dated as of Sept 24, 2014 for reference purposes and is entered into by and between the SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY, a body politic, ("Seller"), and PROPERTY DEVELOPMENT CENTERS LLC, a Delaware limited liability company, ("Purchaser").

### RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

A. Seller is the owner of the certain real property located at the northwest intersection of Kings Village Road and Mt. Hermon Road in Scotts Valley, California, bearing Assessor's Parcel Number 022-231-03, and as more particularly described in Exhibit A attached hereto (the "Real Property").

B. Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, the Property, as defined in Section 1.2 below, on the terms and conditions set forth herein.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants of the parties herein contained and other valuable consideration, the parties agree as follows:

#### 1. PURCHASE AND SALE

**1.1 General.** Subject to the terms, covenants and conditions contained in this Agreement, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all of the Property, as defined in Section 1.2 below.

**1.2 Definition of "Property".** As used in this Agreement, the term "Property" includes the Real Property described in Exhibit A attached hereto together with the following:

**1.2.1. Improvements and Fixtures.** All of Seller's transferable right, title and interest in and to any improvements, if any, to the Real Property and all fixtures attached or related to any such improvements (collectively, the "Improvements").

**1.2.2 Rights and Privileges.** All of Seller's transferable right, title and interest in and to all rights, privileges, tenements, hereditaments, rights-of-way, easements, appurtenances, mineral rights, development rights, air rights and riparian rights belonging or appertaining to the Real Property.

**1.2.3 Personal Property.** All of Seller's transferable interests, if any, in and to all personal property, tangible or intangible (including, without limitation, trade names, contract rights, warranties, guarantees, plans, specifications and architects', engineers', and all

other consultants' reports relating to the Property or the construction of the Improvements) on or related to the Property, and used exclusively in the ownership or operation of the Property (the "Personal Property"). Such personal property shall be conveyed by a Bill of Sale in the form attached hereto as Exhibit B (the "Bill of Sale") and an Assignment of Contracts in the form attached hereto as Exhibit C (the "Assignment of Contracts"), as appropriate.

**1.2.4 Leases.** All of Seller's interest in, to and under any and all leases, subleases, ground leases or other agreements providing third parties with a right to occupy a portion of the Real Property that are in effect as of the Closing (as defined below), if any, (the "Leases"). A list of the Leases in effect as of the Effective Date (as defined below) is attached hereto as Exhibit D. The Leases shall be terminated as of the Closing; however, if Seller is unable to terminate any Lease despite its best efforts to terminate the Lease, it shall be assigned by Seller to Purchaser and assumed by Purchaser pursuant to an Assignment and Assumption of Leases in the form attached hereto as Exhibit E (the "Assignment and Assumption of Leases").

**1.3 Title Company.** The purchase and sale of the Property shall be handled through an escrow (the "Escrow Holder") that Seller will establish with First American Title ("Title Company") at its office located at 1850 Mt. Diablo Way, #300, Walnut Creek, California, Attn.: Kathy Schlesinger, Telephone No.: (925) 927-2154; Fax No.: (925) 927-2180, email: kschlesinger@firstam.com. Seller and Purchaser agree to execute such escrow instructions as are reasonably required by Title Company to consummate the transaction. The escrow instructions shall not be deemed to modify the provisions of this Agreement unless any modifications are specifically identified as such and are executed by both Seller and Purchaser.

## **2. PAYMENT OF PURCHASE PRICE; LIQUIDATED DAMAGES.**

**2.1 Amount.** The purchase price (the "Purchase Price") to be paid by Purchaser to Seller for the Property shall be Eight Hundred Seventy-Five Thousand and no/100ths Dollars (\$875,000.00), subject to closing costs and prorations as provided in Sections 10.6 and 10.7 below.

**2.2 Terms of Payment.** Purchaser shall pay the Purchase Price to Seller as follows:

**2.2.1 Deposit.** Purchaser shall deposit with the Escrow Holder, within five (5) business days after the date on which the latter of the parties hereto has executed this Agreement and returned it to the other party (the "Effective Date"), the sum of Fifty Thousand and no/100ths Dollars (\$50,000.00) in immediately available funds as an earnest money deposit on account of the Purchase Price (which sum, including all interest accrued thereon while held in escrow, is hereafter referred to as the "Initial Deposit"). A portion of the Initial Deposit in the amount of One Hundred and no/100ths Dollars (\$100.00) (the "Non-Refundable Amount") shall be paid to Seller in consideration of Seller's entry into this Agreement. The Non-Refundable Amount shall be paid to Seller promptly upon receipt by Escrow Holder, shall be non-refundable in all circumstances, and shall be applicable to the Purchase Price if Closing occurs. The Initial Deposit (less the Non-Refundable Amount) shall be invested by Title Company in an interest-bearing account designated by Purchaser. If Purchaser elects to proceed with this purchase pursuant to Section 4.3 below, the Initial Deposit, together with all interest accrued thereon, shall thereafter remain with the Escrow Holder in the interest-bearing account but shall be nonrefundable to Purchaser except as expressly provided herein, and Purchaser shall deposit in

escrow with Title Company within five (5) business days after delivery of the Purchaser's Approval (as defined in Section 4.3 below) to Seller, an additional Fifty Thousand and no/100ths Dollars (\$50,000.00) in immediately available funds as an additional deposit (the "Additional Deposit"). The Additional Deposit shall become non-refundable only in the event Purchaser approves or waives in writing all conditions set forth in Section 6 before the expiration of the Final Approval Period (as defined in Section 6). If Purchaser elects not to approve or waive all of the conditions set forth in Section 6, the Additional Deposit, together with all interest accrued thereon, shall be returned to Purchaser in accordance with Section 6. The Initial Deposit, including the Non-Refundable Amount, and the Additional Deposit, together with all interest accrued thereon (collectively, the "Deposit"), shall be credited against the Purchase Price at Closing.

**2.2.2. Payment of Balance.** The balance of the Purchase Price shall be paid in full, in cash, through the Escrow Holder at Closing as provided in Section 10 below.

### **2.3 LIQUIDATED DAMAGES.**

**PURCHASER ACKNOWLEDGES THAT THE CLOSING OF THE SALE OF THE PROPERTY TO PURCHASER, ON THE TERMS AND CONDITIONS AND WITHIN THE TIME PERIOD SET FORTH IN THIS AGREEMENT, IS MATERIAL TO SELLER. PURCHASER ALSO ACKNOWLEDGES THAT SELLER WILL SUFFER SUBSTANTIAL DAMAGES IF SUCH TRANSACTION IS NOT SO CONSUMMATED DUE TO PURCHASER'S DEFAULT UNDER THIS AGREEMENT. PURCHASER FURTHER ACKNOWLEDGES THAT, AS OF THE DATE OF THIS AGREEMENT, SELLER'S DAMAGES WOULD BE EXTREMELY DIFFICULT OR IMPOSSIBLE TO COMPUTE IN LIGHT OF THE UNPREDICTABLE STATE OF THE ECONOMY AND OF GOVERNMENTAL REGULATIONS, THE FLUCTUATING MARKET FOR REAL ESTATE AND REAL ESTATE LOANS OF ALL TYPES, AND OTHER FACTORS WHICH DIRECTLY AFFECT THE VALUE AND MARKETABILITY OF THE PROPERTY. IN LIGHT OF THE FOREGOING AND ALL OF THE OTHER FACTS AND CIRCUMSTANCES SURROUNDING THIS TRANSACTION, AND FOLLOWING NEGOTIATIONS BETWEEN THE PARTIES, PURCHASER AND SELLER AGREE THAT THE AMOUNT OF THE DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WOULD SUFFER BY REASON OF PURCHASER'S DEFAULT HEREUNDER. ACCORDINGLY, PURCHASER AND SELLER HEREBY AGREE THAT, IN THE EVENT THAT THE CLOSING FAILS TO OCCUR DUE TO THE DEFAULT OF PURCHASER UNDER THIS AGREEMENT, SELLER'S SOLE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT BY GIVING NOTICE TO PURCHASER AND TITLE COMPANY AND TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES IN LIEU OF ANY OTHER CLAIM SELLER MAY HAVE IN LAW OR IN EQUITY (INCLUDING, WITHOUT LIMITATION, SPECIFIC PERFORMANCE) ARISING BY REASON OF PURCHASER'S DEFAULT. SUCH RETENTION OF THE DEPOSIT BY SELLER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTION 3275 OR 3369 OF THE CALIFORNIA CIVIL**

**CODE OR ANY SIMILAR PROVISION. THE PARTIES HAVE INITIALED THIS SECTION 3 TO ESTABLISH THEIR INTENT SO TO LIQUIDATE DAMAGES.**

**SELLER'S INITIALS:**   *JA*  

**PURCHASER'S INITIALS:**   *NE WKB*  

**3. DOCUMENTS PROVIDED BY PURCHASER.** Purchaser shall provide to Seller within sixty (60) days following the Effective Date a schematic site plan depicting the proposed general layout and design of Purchaser's Project, including proposed residential types and estimated sizes, which types and sizes may be subject to future modification. Purchaser shall provide to Seller within ninety (90) days following the Effective Date a proposed draft development agreement for the development of Purchaser's Project.

**4. REVIEW OF THE PROPERTY; INSPECTION PERIOD.** During the period commencing on the Effective Date and expiring at 5:00 p.m. (California time) on the date that is One Hundred Eighty (180) calendar days after the Effective Date (the "Inspection Period"), Seller shall allow Purchaser and Purchaser's engineers, architects and other employees and agents reasonable access to the Property for the purpose of inspecting the Property.

**4.1 Document Review.**

**4.1.1 Seller's Due Diligence Materials.** Within five (5) calendar days of the Effective Date, Seller shall deliver to Purchaser, and Purchaser shall acknowledge receipt of the items listed below ("Seller's Due Diligence Materials"), to the extent such items are in the possession or control of Seller:

- (a) The most recent ALTA survey of the Real Property and Improvements, if any;
- (b) A copy of all Leases, if any, together with amendments and modifications thereto;
- (c) Copies of all contracts regarding the Property entered into by Seller or on behalf of Seller, including but not limited to maintenance contracts, management contracts, service contracts and utility contracts, together with all amendments and modifications thereto (collectively, the "Contracts");
- (d) A list of the Personal Property;
- (e) Copies of all permits affecting the Property;
- (f) Copies of all reports, studies, documents and other information relating to the environmental or physical condition of the Property, including without limitation any soils reports, seismic reports, asbestos reports, and any Phase I or Phase II reports in Seller's possession or control;

(g) Copies of any licenses held by Seller in connection with the ownership of the Property;

(h) Income and expense statements for the Property for calendar years 2012 and 2013 and a year-to-date statement through February 2014;

(i) Copies of all certificates of occupancy for the Improvements; and

(j) Copies of all as-built plans and specifications for the Improvements, including plans and specifications for any anticipated tenant improvement work not yet completed.

**4.1.2 Representation and Warranty Regarding Seller's Due Diligence Materials and other Information, Documents and Records.** To Seller's knowledge, there has been no misleading or untrue statement of material fact in the Seller's Due Diligence materials or as otherwise provided to Purchaser in connection with this transaction. This includes all statements, representations and warranties made within this Agreement and within all information, documents and records provided to Purchaser or to be provided to Purchaser until the Closing Date. Moreover, to Seller's knowledge, no such statement, representation or warranty omits or will omit to state any material fact.

**4.2 Access to Real Property.** During the Inspection Period, Purchaser and its representatives, agents, employees, contractors, architects and engineers, and each of their respective officers, directors, agents, employees, representatives, and designees (collectively, the "Purchaser Parties") shall have access to the Property at any time and from time to time during regular business hours, at Purchaser's sole cost and expense: (i) to show the Property to third parties (including, without limitation, contractors, engineers, architects, attorneys, insurers, banks and other lenders or investors), and (ii) to perform any inspections, Phase I environmental site assessments and measurements that Purchaser reasonably deems necessary or appropriate; provided, however, that Purchaser shall not conduct any intrusive or destructive tests on the Property without Seller's prior consent, which consent shall not be unreasonably withheld, delayed or conditioned. Purchaser hereby agrees to hold harmless, protect, defend and indemnify Seller and its officers, directors, managers, members, partners, employees, contractors, agents, subsidiaries and affiliates, and its and their respective successors and assigns (collectively, the "Indemnitees") and the Property from and against any and all claims, demands, causes of action, losses, liabilities, liens, encumbrances, costs or expenses (including without limitation reasonable attorneys' fees and litigation costs) (collectively, "Damages") arising out of, connected with or incidental to: (a) any injuries to persons (including death) or property (real or personal), or (b) any mechanics', workers' or other liens on the Property caused by the work or activities conducted on the Property by Purchaser or the Purchaser Parties; provided, however, that the foregoing indemnity shall not apply to (i) any diminution in value of the Property caused solely by the disclosure to Purchaser, Seller or the employees, agents, contractors, attorneys or consultants of either Purchaser or Seller of information regarding the discovery of any pre-existing Hazardous Materials on, at or under the Property, (ii) any release on, at or under the Property of any pre-existing Hazardous Materials, except and to the extent such release was caused by the negligence or willful misconduct of Purchaser or any of the Purchaser Parties, (iii) any conditions on, at or under the Property in existence as of the Effective Date except and to the extent such conditions are aggravated by the negligence or willful misconduct of Purchaser or

any of the Purchaser Parties; or (iv) any Damages caused by the negligence or willful misconduct of Seller or Seller's employees, agents or representatives. Before any of the Purchaser Parties enter onto the Property pursuant to this Section 4.2, Purchaser shall deliver to Seller an original certificate of Purchaser's commercial general liability insurance, which may be provided under a blanket policy, with blanket contractual obligations endorsement, a minimum limit of at least \$1,000,000, and which shows Seller as an additional named insured. Purchaser's indemnification obligations under this Section 4.2 shall survive Closing or the termination of this Agreement. Purchaser agrees that in conducting any survey, inspections, investigations or tests of the Property, Purchaser and Purchaser Parties shall (i) not unreasonably interfere with the operation and maintenance of the Property, (ii) not contact any tenant of the Property unless Purchaser has provided a representative of Seller with reasonable notice prior to such contact and provides such representative with reasonable opportunity to be present at such meeting, (iii) not unreasonably disturb any tenant or unreasonably interfere with its use of the Property pursuant to its lease, (iv) not damage any part of the Property or any personal property owned or held by any tenant or any third party, (v) not injure or otherwise cause bodily harm to Seller or its guests, agents, invitees, contractors or employees, or any tenant or its guests or invitees, (vi) maintain insurance as provided above, (vii) promptly pay when due the costs of all tests, investigations and examinations done with regard to the Property, (viii) not permit any liens to attach to the Real Property by reason of the exercise of Purchaser's rights hereunder, and (ix) on completion of each such test or inspection, restore the Property to the condition in which the same was found before any such inspection or test was undertaken.

**4.3 Inspection Period and Purchaser's Right to Terminate.** On the Effective Date, Purchaser shall have the right to promptly commence and actively pursue its due diligence of matters pertaining to the Property, and Seller shall cooperate in such due diligence as required, including but not limited to the following: (i) review of the condition of title to the Real Property as described in Section 5 below; (ii) review and proceed with regard to environmental matters as set forth in Section 4.4 below; and (iii) approvals, to the satisfaction of both Purchaser and the Title Company, of the sale of the Real Property to Purchaser from Seller by the Oversight Board for the Successor Agency (the "Oversight Board") and the State of California Department of Finance (the "DOF"), if such approvals are required by the DOF; provided, however, if the approvals in (iii) are required but cannot be obtained during the Inspection Period, Purchaser shall have the right to extend the Inspection Period for an additional twelve (12) months in order to obtain such approvals. In the event that Purchaser's due diligence (including title review, review and process regarding environmental matters and approvals by Oversight Board and DOF) shall reveal any matters that are not acceptable to Purchaser in Purchaser's sole and absolute discretion for any reason or for no reason, Purchaser may elect not to proceed with this purchase, in which event this Agreement shall terminate, the Initial Deposit shall be returned to Purchaser (less the Non-Refundable Amount which shall remain in Seller's possession) and this Agreement shall be null and void without recourse to either party hereto (except to the extent such recourse arises in connection with a provision of this Agreement that is intended to survive termination). In the event Purchaser in its sole discretion is satisfied with and/or waives any objections to its due diligence inspection of the Property (including title review, review and process regarding environmental matters and approvals by Oversight Board and DOF) and desires to proceed with the purchase of the Property pursuant to this Agreement, Purchaser shall, prior to the expiration of the Inspection Period, send written notice of approval ("Purchaser's Approval") to Seller by facsimile or electronic transmission, with a copy thereof to Title Company. If Purchaser timely provides Purchaser's Approval in accordance with the foregoing,

the Initial Deposit shall become nonrefundable for any reason (except as expressly otherwise provided in this Agreement) and shall thereafter constitute liquidated damages as set forth in Section 3. If Purchaser fails for any reason to timely provide Purchaser's Approval in strict accordance with the foregoing, then Purchaser shall be deemed to have elected not to proceed with this purchase and the Initial Deposit shall be promptly returned to Purchaser (less the Non-Refundable Amount which shall remain in Seller's possession).

*la* **4.4 Environmental Work; Site Remediation and Escrow Agreement.** No later than ~~sixty (60)~~ <sup>90</sup> calendar days prior to the expiration of the 180 calendar day Inspection Period (including any extension thereof pursuant to this Section 4.4), Purchaser's environmental consultant shall determine, and deliver in writing to Seller, an anticipated scope and estimated costs (the "Estimated Environmental Work Costs") of the work (the "Environmental Work") of any applicable remediation and/or removal of environmental contamination and/or Hazardous Materials (as defined in Section 8.1.6) located on, in, under or about the following four (4) parcels of real property: the Property and the parcels in the immediate vicinity of the Property bearing Assessor Parcel Numbers 022-721-06, 022-211-36 and 022-601-01 (collectively, the "Four Parcels") (including the soils and groundwater on and the under the Four Parcels), known or unknown, discovered or undiscovered (the "Contamination"). Seller and Purchaser acknowledge and agree that the Estimated Environmental Costs of the Environmental Work shall include all costs, expenses and fees associated with the investigation, study, examination, permitting, remediation, clean-up and removal of all Contamination, including but not limited to all remediation mandated by all applicable regulatory agencies and governmental authorities, such as monitoring wells, extraction wells and all other requirements; provided, however, the Estimated Environmental Costs of the Environmental Work does not include the cost of a Phase I environmental investigation of the Four Parcels, which cost shall be borne by Purchaser. Seller and Purchaser acknowledge and agree that the Estimated Environmental Costs of the Environmental Work must be designed to achieve (i) a "No Further Action Letter", or other equivalent approval and "sign-off", from any and all applicable governmental authorities, including but not limited to the California Regional Water Quality Control Board, for unrestricted use (and without deed restrictions, engineering controls or land use controls); and (ii) remediation and restoration of the Four Parcels to Purchaser's satisfaction, in its sole discretion. As used herein, the "Maximum Seller Environmental Work Costs" shall mean one hundred twenty percent (120%) of the Estimated Environmental Work Costs; provided, however, such Maximum Seller Environmental Work Costs shall not exceed Two Million, Five Hundred Twenty-Five Thousand Dollars (\$2,525,000). Within ~~thirty (30)~~ <sup>60</sup> days after receipt of Purchaser's Estimated Environmental Work Costs, Seller shall notify Purchaser in writing whether Seller will accept or reject Purchaser's Estimated Environmental Work Costs (but Seller shall have no right to terminate this Agreement therefor). If Seller provides written notice that it accepts Purchaser's Estimated Environmental Work Costs, or Seller provides a counter-estimate, then the parties shall proceed in good faith to negotiate a mutually-agreeable estimated cost (and once agreed to, such cost shall then be referred to as the "Estimated Environmental Work Costs"), and scope of work and remediation strategy (to Purchaser's standard and satisfaction, in its sole discretion), and thereafter enter into a separate site remediation and escrow agreement (the "Site Remediation and Escrow Agreement") among Seller, Purchaser and the City of Scotts Valley (the "City"), which shall survive the Closing. The execution of the Site Remediation and Escrow Agreement by Seller, Purchaser and the City shall be a condition to be satisfied prior to expiration of the Inspection Period, provided that the Inspection Period shall be extended, at Purchaser's option, for an additional twelve (12) months during which time Seller, Purchaser and

the City shall continue in good faith to negotiate a mutually-agreeable Site Remediation and Escrow Agreement; however, Purchaser may elect, by written notice to Seller at any time prior to the expiration of the Inspection Period (and any extension thereof) to terminate this Agreement, which election shall be in Purchaser's sole and absolute discretion. If the parties reach agreement and execute the Site Remediation and Escrow Agreement, and if this Agreement is not terminated prior to the Closing, then upon the Closing of the Purchase and Sale Agreement between the City and Purchaser for Purchaser's purchase of the real property bearing the Assessor's Parcel Number 022-721-06 (the "City Property Closing") and the Closing of the Purchase and Sale Agreement between the City and Purchaser for Purchaser's purchase of the real property bearing the Assessor's Parcel Numbers 022-211-36 and 022-601-01 (the "City Housing Authority Property Closing"), and pursuant to the Site Remediation and Escrow Agreement, a separate escrow account (the "Holdback Escrow") shall be established with Escrow Holder, and a portion of the Purchase Price otherwise payable to the City at the City Property Closing and to the City at the City Housing Authority Closing, in an amount equal the Maximum Seller Environmental Work Costs, shall be withheld from the City, on an allocation between the parcels as determined by the Seller and the City (so long as the combined total withheld equals the Maximum Seller Environmental Work Costs), and such amounts shall be deposited in the Holdback Escrow. Following the Closing, Purchaser shall have the right to perform the Environmental Work at the Four Parcels, and Escrow Holder shall reimburse Purchaser for the costs of performance of such Environmental Work on a monthly basis, as such costs are incurred, from the Holdback Escrow. If the actual costs of the Environmental Work exceed the Maximum Seller Environmental Work Costs, then Purchaser shall be responsible for the amount of such excess. Following completion of the Environmental Work and payment in full of the costs thereof, any remaining amount in the Holdback Escrow shall be disbursed by Escrow Holder to City. Purchaser shall retain its own consultants to perform the Environmental Work and shall control the remediation process while keeping Seller informed as to its activities and the progress of the work. Seller shall be advised if the remediation strategy and/or scope of work materially changes from that contemplated in the Site Remediation and Escrow Agreement.

If any time prior to Closing, Seller, at its election and expense, decides to or is required to engage in any investigation, study, examination, remediation, clean-up or removal of any Contamination on the Property, Seller shall consult with Purchaser and obtain Purchaser's prior written approval, which approval shall not be unreasonably withheld.

## **5. TITLE; TITLE OBJECTIONS.**

**5.1 Title Policy.** Within three (3) business days after the Effective Date, Purchaser shall order a preliminary report on the Property from Title Company (the "Preliminary Report") that will form the basis of Title Company's issuance of its CLTA standard coverage or ALTA extended coverage (as determined by Purchaser) owner's title insurance policy ("Owner's Title Policy") in the amount of the Purchase Price, together with a legible copy of all documents of record and all exceptions to title described therein. Seller shall provide to the Title Company an affidavit/indemnity in the form typically required by the Title Company regarding leases and other rights to occupy the Property and payment of mechanics and materialmen so that the Owner's Title Policy will be issued without exception for unrecorded leases and agreements and mechanics' and materialmen's liens. Purchaser may, at its option and expense, obtain and provide to Title Company, a current ALTA survey of the Real Property and Improvements (the "Survey").

**5.2 Title.** Title to the Real Property and the Improvements shall be conveyed from Seller to Purchaser by grant deed (the "Deed"), in the form of Exhibit E hereto, free and clear of all liens and encumbrances except the following, which title shall be taken subject to: (i) liens to secure payment of non-delinquent real estate taxes and assessments; (ii) applicable zoning and use laws, ordinances, rules and regulations of any municipality, township, county, state or other governmental agency or authority; (iii) any exceptions or matters created by Purchaser, its architect or civil engineer, or its agents, employees and/or representatives; and (iv) all other exceptions of record appearing in the Preliminary Report to which Purchaser does not object in writing prior to expiration of the review periods set forth in Section 5.3 below. The foregoing exceptions to title are collectively referred to as the "Permitted Exceptions". Conclusive evidence of delivery of title in accordance with the foregoing shall be the willingness of Title Company to issue to Purchaser at Closing, upon payment of its regularly scheduled premium, the Owner's Title Policy in the amount of the Purchase Price, showing fee title to the Property vested of record in Purchaser, subject only to the Permitted Exceptions (and the standard printed exceptions and conditions in the policy of title insurance).

**5.3 Title Objections.** If the Preliminary Report, the underlying documents referenced therein, or the Survey disclose any title or survey exceptions to which Purchaser objects, Purchaser shall notify Seller in writing (the "Title Objections Notice") of its objections (each, a "Title Objection") not later than 5:00 p.m. (California time) on the fifth (5<sup>th</sup>) business day prior to the expiration of the Inspection Period. Seller shall have three (3) business days from the receipt of the Title Objections Notice to notify Purchaser in writing whether Seller commits to cause any or all of the title or survey exceptions to which Purchaser has objected to be removed or insured against at Closing. If Seller commits to remove or provide insurance against any Title Objection, then the removal of or insurance against such item(s) shall be a condition to Purchaser's obligation to Close and Purchaser shall be deemed to have approved title to and the Survey of the Property, provided, however, that if Seller elects to insure over a Title Objection, then Purchaser shall have the right in its reasonable discretion to approve the manner in which Seller proposes to insure over said Title Objection. If Seller does not so commit to remove or insure over each of the Title Objections, Purchaser's sole remedy shall be either (i) to proceed with this transaction and purchase the Property, subject to any Title Objections that Seller has not committed to remove or insure over, by giving notice of same to Seller prior to the expiration of the Inspection Period, or (ii) to elect not to proceed with this purchase and terminate this Agreement, in which event this Agreement shall terminate, the Initial Deposit shall be returned to Purchaser (less the Non-Refundable Amount which shall remain in Seller's possession) and neither Seller nor Purchaser shall have any further obligations under this Agreement, except such obligations of the parties that expressly survive the termination of this Agreement. In the event that Purchaser fails to give notice of its intent to proceed with the Closing in accordance with the immediately preceding sentence, then this Agreement shall be deemed terminated and the Initial Deposit shall be promptly returned to Purchaser (less the Non-Refundable Amount which shall remain in Seller's possession).

**5.4 Discharge of Liens.** Prior to the Closing, Seller shall discharge all monetary liens (including, without limitation, all tax and assessment liens, deeds of trust and mechanics' liens) encumbering the Property, except for liens for real property taxes and assessments that are not yet due. Seller may use moneys that otherwise would be paid to it from escrow to satisfy its obligations under this Section 5.4 as long as all conditions to the Closing have been satisfied or will be satisfied by payment of those moneys.

## 6. FINAL APPROVAL PERIOD.

From and after the date that Purchaser provides Purchaser's Approval to Seller under Section 4.3 of this Agreement, Purchaser shall have a period of eighteen (18) months, which time period may be extended by Purchaser, in Purchaser's sole discretion, for two (2) additional periods of one (1) year each, (collectively, the "Final Approval Period") in which to satisfy or waive the following conditions, in Purchaser's sole discretion:

(a) **Approvals.** Obtain Approval (as defined below) of all discretionary actions and permits, including from the City of Scotts Valley (the "City") and any and all other local, regional, state and federal agencies with jurisdiction, including without limitation, necessary conditional use permits for the sale of alcohol from the Safeway store anticipated to be part of the Purchaser's Project (as defined herein) (but no other conditional use permits for the sale of alcohol), to allow Purchaser to use the Property and adjacent properties owned or to be acquired by Purchaser for Purchaser's intended mixed use development ("Purchaser's Project," which term shall include all phases thereof), in general conformity with and consistent with the primary goals of the Specific Plan (as defined below) for the proposed development commonly known as the "Town Center Project." The government approvals and permits required for Purchaser's Project shall be those which Purchaser deems, in Purchaser's sole discretion, are necessary or desirable for Purchaser's intended use of the Property and shall be subject only to those conditions and terms that are acceptable to Purchaser in Purchaser's sole discretion. The parties acknowledge and agree that there is currently a specific plan for the Town Center Project governing this Property (the "Specific Plan") and that the existing Specific Plan by itself shall not be deemed to satisfy the condition set forth in this Section 6 (a). For purposes of this Section 6 (a), "Approval" shall mean all approvals of the City or any other local, regional, state, federal or other governing agency with jurisdiction over the Property and/or the development of the Property for Purchaser's Project, including without limitation, any amendment to the General Plan or Specific Plan, zoning ordinance, other specific plan or EIR currently applicable to the Property or any planned development permit, design review approval, tentative subdivision map or parcel map, development agreement (including but not limited to mutual approval by the City and Purchaser to a comprehensive development agreement between City and Purchaser to be executed at Closing) or interpretation of pertinent regulations. No Approval shall be deemed to be issued, received or obtained if (i) there exist any unexpired appeal, contest, challenge or review periods at an administrative or judicial level for the issuance of such permit, (ii) an appeal, contest, challenge or review has been filed at an administrative or judicial level with respect to such Approvals and has not been resolved on terms satisfactory to Purchaser in its sole discretion.

(b) **CEQA Compliance.** In December 2008, the City certified an environmental impact report for the Town Center Specific Plan ("Specific Plan EIR"). Seller and Purchaser agree that, in general, this Agreement and Purchaser's Project are consistent with the environmental analysis contained in the Specific Plan EIR. Seller and Purchaser understand that prior to Closing, the City shall undertake environmental review pursuant to the California Environmental Quality Act ("CEQA"), as needed, to ensure that the Specific Plan EIR continues to pertain and contains a full, fair and complete consideration of potential environmental impacts of Purchaser's Project. Seller and Purchaser acknowledge and agree that the obligations of Purchaser under this Agreement are conditioned on the City completing these proceedings under CEQA in connection with Purchaser's Project, and the expiration of the applicable period for any challenge to the adequacy of City's compliance with CEQA without any challenge being filed.

Seller does not commit to or otherwise endorse Purchaser's Project by entering into this Agreement. Purchaser's Project remains subject to review by the City, and the City retains full and complete discretion to approve, conditionally approve, or disapprove Purchaser's Project. Nothing in this Agreement precludes the City from considering and implementing any and all mitigation measures and alternatives when taking action on Purchaser's Project, including, but not limited to the no project alternative. Seller and Purchaser acknowledge that any modifications to Purchaser's Project resulting from City's compliance with CEQA may necessitate amendments to this Agreement in a mutually acceptable manner.

(c) **Lot Line Adjustment.** Completion and approval by the City, with all necessary administrative approvals, and approval of the Title Company of any and all lot line adjustments Purchaser deems necessary or appropriate for Purchaser's Project, including but not limited to the following: (i) a lot line adjustment between that certain property having the Assessor's Parcel Number of 022-271-06, also located within the area of Purchaser's Project and the adjacent City-owned property, in accordance with the specifications of Purchaser, in its sole discretion; (ii) recordation of the grant deeds in the official records of the County of Santa Cruz, at Closing, to make the necessary real property transfers to effectuate such lot line adjustment; and (iii) commitment of the Title Company to provide, at Closing, a title insurance policy on the reconfigured parcel bearing Assessor's Parcel Number of 022-271-06, in a form acceptable to Purchaser in its sole discretion.

(d) **Development Agreement.** Purchaser and Seller shall have agreed upon the terms and conditions and form of the development agreement between Purchaser and Seller for the development of Purchaser's Project (the "Development Agreement"), to be executed by Purchaser and Seller at Closing.

If any of the foregoing are not satisfied or waived in writing by Purchaser prior to the expiration of the Final Approval Period, Purchaser shall have the right, but not the obligation, to terminate this Agreement, in which event the Additional Deposit, together with all interest accrued thereon, shall be refunded to Purchaser within three (3) business days of the expiration of the Final Approval Period, or the date of Purchaser's written notification to Seller that Purchaser has elected to terminate this Agreement, whichever occurs first, and thereafter neither party shall have any further obligations hereunder except such obligations that expressly survive the termination of this Agreement. In the event that Purchaser fails to give, prior to the expiration of the Final Approval Period, written notification that the foregoing conditions are satisfied or waived by Purchaser, then this Agreement shall be deemed terminated and the Additional Deposit shall be promptly returned to Purchaser. If Purchaser elects to terminate this Agreement at any time during the first one hundred and twenty (120) days following the Effective Date, within fifteen (15) days after the date of such termination, Purchaser shall deliver to Seller, at no cost to Seller, a copy of the Phase I and Phase II Environmental Reports commissioned by Purchaser pertaining to the Property (the "Phase I and II"), if such delivery will not violate the terms or conditions of any agreements or contracts to which Purchaser is bound. In providing copies of the Phase I and Phase II to Seller, Purchaser makes no representation or warranty, express or implied, as to the contents of the Phase I and II, and Purchaser shall have no liability arising from or connected in any way with any use by Seller of the Phase I and II, or their contents. The foregoing obligations of the parties and terms and conditions with regard to the Phase I and II shall survive the termination of the Agreement.

7. **CASUALTY.**

In the event of damage to the Property or any portion thereof prior to Closing this Agreement shall remain in full force and effect provided Seller promptly commences to perform any and all necessary repairs, and Seller diligently continues such repairs, using its best efforts to complete such repairs prior to the Closing Date. If Seller does not promptly commence the repairs, does not diligently continue the repairs, does not use its best efforts, or does not complete all of the repairs prior to the Closing Date, Purchaser shall have the right, in its sole discretion, to terminate the Agreement. If Purchaser terminates this Agreement pursuant to this Section 7, then the entire Deposit shall be returned promptly to Purchaser (less the Non-Refundable Amount which shall remain in Seller's possession) and neither Seller nor Purchaser shall have any further obligations under this Agreement, except such obligations of the parties that expressly survive the termination of this Agreement. If Seller has not completed the repairs as required in this Section 7, but Purchaser nonetheless elects to proceed to Closing, the Purchase Price shall be reduced by an amount equal to the cost of the repairs, as estimated by Purchaser, in its reasonable discretion.

8. **REPRESENTATIONS AND WARRANTIES.**

**8.1 Seller's Representations and Warranties.** Seller hereby makes the following representations and warranties as of the date of this Agreement and as of the Closing Date:

**8.1.1 Legal Proceedings.** There are no legal actions or proceedings pending or, to Seller's knowledge, threatened against Seller that may affect the Property. Seller shall notify Purchaser promptly of any such actions or proceedings of which Seller becomes aware.

**8.1.2 Leases.** There are no leases or other occupancy agreements or arrangements of any kind or nature, whether written or oral, that give any person or entity the right to use or occupy any portion of the Property for any duration whatsoever, other than the following the Leases listed on Exhibit D. True and complete copies of all of the leases and other agreements, if any, and all amendments and modifications thereto have been or will be delivered to Purchaser within five (5) calendar days of the Effective Date. As of the Closing Date, the Property shall be vacant, with no parties or entities in possession or occupation of the Property, or if any party or entity does occupy the Property at Closing, it shall only be pursuant to a lease that has been approved and assumed by Purchaser, in its sole discretion, or a written agreement that has been approved by Purchaser, in its sole discretion.

**8.1.3 Ownership; Due Authorization.** Seller is the sole owner of fee simple title to the Property. Seller is a public body, duly organized and validly existing and in good standing under the laws of the State of California. Seller has the legal authority and capacity to enter into this Agreement and to sell the Property. Seller has been duly authorized to execute and perform its obligations under this Agreement. The persons signing this Agreement on behalf of Seller have the power and authority to do so and to bind Seller to this Agreement. All the instruments, agreements and other documents executed by Seller that are to be delivered to Purchaser at Closing are and at the time of Closing will be duly authorized, executed and delivered by Seller, and will be the valid and binding agreements and obligations of Seller enforceable in accordance with their respective terms.

**8.1.4 Non-Foreign Person.** Seller is not a foreign person as defined in Internal Revenue Code Section 1445(0(3)).

**8.1.5 No Conflict.** The execution and delivery of this Agreement, and the sale and conveyance of the Property contemplated hereby, do not and will not (a) violate the terms of any order, writ or decree of any court or judicial or regulatory authority or body binding upon Seller, or the charter or governing instruments of Seller, (b) conflict with or result in a breach of any condition or provision or constitute a default under or pursuant to the terms of any contract, mortgage, lien, lease, agreement, debenture or instrument to which Seller is a party, or which is or purports to be binding upon Seller or upon the Property, or (c) to Seller's knowledge, violate any rule, regulation, statute or law applicable to Seller.

**8.1.6 Hazardous Materials.** "Hazardous Materials" means, with respect to the Property, any petroleum or petroleum-related product, any asbestos-containing materials (whether or not friable), PCBs, formaldehyde foam, radioactive substances, toxic mold, biologically hazardous wastes or any other substance defined as "hazardous waste," "hazardous substance," "hazardous material," "toxic substance," "toxic waste," "carcinogenic," "mutagenic," "pollutant," "contaminant" or any other variant of such terms in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., the Toxic Substance Control Act, 15 U.S.C. §2601 et seq., the Hazardous Materials Transportation Act, 49. U.S.C. §1802, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., or other applicable federal, state or local applicable laws regulating the generation, storage, transportation, discharge, disposal, release or removal of environmentally hazardous substances at, in, on or under the Property. Seller has disclosed to Purchaser all information, records and studies in Seller's possession or control in connection with the Property concerning Hazardous Materials, and Purchaser has disclosed to Seller all information, records and studies in Purchaser's possession or control in connection with the Property concerning Hazardous Materials, and except as so disclosed to Purchaser by Seller and as so disclosed by Purchaser to Seller, to Seller's knowledge, the Property has not been used for the production, storage, deposit or disposal of Hazardous Materials, hazardous waste, hazardous substance contamination or other contaminants in violation of any applicable environmental laws; no above ground or below ground storage tank is located on the Property. Seller has not received any written notice from any applicable governmental authority that any such Hazardous Material, waste, substance, contaminant or storage tank has been placed or located on or under the Property in violation of applicable environmental laws.

**8.1.7 Obligations and Commitments.** There are no obligations in connection with the Property that will be binding upon the Purchaser or will affect the Property after Closing, and there are no assessments or bonds assessed or prepared to be assessed against the Property except for the Permitted Exceptions. Seller has made no commitments to any governmental authority, utility company, school board, homeowners' association or any other organization, group or individual relating to the Property that would impose an obligation upon Purchaser to make any contribution or dedication of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Property.

**8.1.8 Governmental Actions.** There are no plans, studies or efforts (including, without limitation, with respect to any zoning changes) by any governmental authorities or agencies or by any other persons or entities that could materially affect the use of the Property or

any portion thereof, and there is no existing, proposed or contemplated plan to widen, modify or realign any street or highway contiguous to the Real Property.

**8.1.9. Full Disclosure.** Seller has disclosed to Purchase all facts concerning the operation, development and condition of the Property, including all defects pertaining to the Property.

**8.2 Survival.** The representations and warranties of Seller set forth in this Agreement shall survive the Closing.

**8.3 Purchaser's Representations and Warranties.** Purchaser hereby makes the following representations and warranties as of the date of this Agreement and as of the Closing Date:

**8.3.1 Due Authorization.**

Purchaser has been duly authorized to execute and perform its obligations under this Agreement. The persons signing this Agreement on behalf of Purchaser have the power and authority to do so and to bind Purchaser to this Agreement. All the instruments, agreements and other documents executed by Purchaser that are to be delivered to Seller at Closing are and at the time of Closing will be duly authorized, executed and delivered by Purchaser.

**8.3.2 Legal Proceedings.**

Purchaser has not received written notice of any legal actions or proceedings in any court pending against Purchaser that affect Purchaser's ability to purchase the Property.

**8.3.3 No Consents.** No consent to the sale and conveyance of the Property by Seller to Purchaser is required to be obtained from any governmental agency or public administrative body or any other person or entity.

**8.3.4 No Conflict.** The execution and delivery of this Agreement, and the purchase of the Property contemplated hereby, do not and will not (a) violate the terms of any order, writ or decree of any court or judicial or regulatory authority or body binding upon Purchaser or the charter or governing instruments of Purchaser, (b) conflict with or result in a breach of any condition or provision or constitute a default under or pursuant to the terms of any contract, mortgage, lien, lease, agreement, debenture or instrument to which Purchaser is a party, or that is or purports to be binding upon Purchaser, or (c) violate any rule, regulation, statute or law applicable to Purchaser.

**9. "AS IS" PURCHASE; INDEMNIFICATION.**

**9.1 "As Is" Purchase.** Purchaser acknowledges that it will have had an opportunity to conduct due diligence inspections of the Property and will acquire the Property in its current condition based on its due diligence inspections and subject to the Site Remediation and Escrow Agreement. Purchaser acknowledges and agrees that the Property is to be conveyed by Seller to Purchaser "as is, with all faults," and substantially in its current condition, but subject to the terms and conditions of the Site Remediation and Escrow Agreement. Purchaser further acknowledges and agrees that, except for the express representations and warranties by Seller set

forth in this Agreement and except for the terms and conditions contained in the Site Remediation and Escrow Agreement, the sale of the Property to Purchaser is made without any warranty or representation of any kind by Seller, either express or implied or arising by operation of law, and Seller shall have no liability with respect to the value, uses, habitability, merchantability, condition, design, operation, rents, financial condition or prospects, or fitness for purpose or use of the Property (or any part thereof), or any other aspect, portion or component of the Property, including: (i) the physical condition, nature or quality of the Property, including the quality of the soils on and under the Property and the quality of the labor and materials included in any improvements, fixtures, equipment or personal property comprising a portion of the Property; (ii) the fitness of the Property for any particular purpose; (iii) the presence or suspected presence of Hazardous Materials on, in, under or about the Property (including the soils and groundwater on and under the Property); and (iv) existing or proposed governmental laws or regulations applicable to the Property or the further development or change in use thereof, including environmental laws and laws or regulations dealing with zoning or land use.

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## **9.2 Indemnification.**

Seller covenants and agrees to indemnify, defend, protect, exculpate and hold the Purchaser and each of Purchaser's officers, directors, shareholders, members, partners (general and limited), employees, beneficial owners, employees, agents and affiliates (collectively, "Purchaser Indemnified Parties") free and harmless from and against, and covenants and agrees to promptly defend the Purchaser Indemnified Parties from and reimburse the Purchaser Indemnified Parties for, any and all liabilities (including, but not limited to, claims, actions, causes of action, demands, liabilities for losses, damages, costs, expenses, obligations, penalties, interest and claims of any kind, including, without limitation, costs of investigation, reasonable attorneys' fees and costs, statutory and non-statutory costs and expenses), whether direct or indirect, known or unknown, foreseeable or unforeseeable (collectively, "Purchaser Indemnified Liabilities") brought, suffered or asserted against Purchaser Indemnified Parties for personal injury, death, property damage or monetary damages arising out of or relating to or caused by any of the following: (i) the breach of any contract or agreement affecting the Property occurring prior to the Closing Date; (ii) any claim or cause of action based on any acts or omissions of Seller, or Seller's agents, employees, contractors or representatives, occurring prior to the Closing Date; (iii) any violation of any applicable law by Seller, or Seller's agents, employees, contractors or representatives occurring prior to the Closing Date; (iv) the presence or release in, under on or about the Property (including the soils, groundwater, gas and vapor on and the under the Property) of any Hazardous Materials or Contamination which presence or release occurs prior to the Closing Date, whether discovered prior to or after the Closing Date. Provided, however, Seller shall have no indemnity obligations pursuant to this Section 9.2 to the extent the Purchaser Indemnified Liabilities result from the negligence or willful misconduct of any of the Purchaser Indemnified Parties. Seller's indemnification obligations under this Section 9.2 shall survive the Closing.

## **10. CLOSING.**

**10.1 Closing.** The transaction contemplated by this Agreement shall be consummated through Escrow Holder on or prior to the date (the “Closing Date”) that is thirty (30) calendar days following the delivery to Seller of Purchaser’s written approval or waiver, in Purchaser’s sole discretion, of all Final Approval Conditions set forth in Section 6 of this Agreement. Purchaser hereby acknowledges that Purchaser may be required by Title Company to wire funds into escrow on the business day before the Closing Date. For purposes of this Agreement, the term “Closing” shall mean the consummation of the sale and conveyance of the Property to Purchaser as evidenced by recordation of the Deed.

**10.2 Seller’s Deliveries to Escrow.** Prior to Closing, Seller shall deliver the following items to Escrow Holder, each of which shall be duly executed and acknowledged as appropriate:

- (a) **Deed.** The Deed, duly executed and acknowledged by Seller. The transfer tax shall not appear on the face of the Deed.
- (b) **Bill of Sale.** The Bill of Sale, duly executed by Seller.
- (c) **Assignment of Contracts.** The Assignment of Contracts, if any, duly executed by Seller.
- (d) **[Termination of Leases] or [Assignment and Assumption of Leases].** Termination of Leases, or if Seller is unable to obtain a termination of any lease, then as to any such lease, two counterparts of the Assignment and Assumption of Leases, duly executed by Seller.
- (e) **Site Remediation and Escrow Agreement.** Three counterparts of the Site Remediation and Escrow Agreement, each duly executed by Seller, and the City.
- (f) **Development Agreement.** Two counterparts of the Development Agreement, duly executed by Seller.
- (g) **Affidavit of Non-Foreign Status.** An Affidavit of Non-Foreign Status in the form attached hereto as Exhibit H, duly executed by Seller.
- (h) **Real Estate Withholding Exemption Certificate.** A California Franchise Tax Board Form 593-C (or any then applicable equivalent form), duly executed by Seller.
- (i) **[If Applicable] Notice to Tenants.** A written notice to the tenant under each of the Leases in the form attached hereto as Exhibit I, duly executed by Seller.
- (j) **[If Applicable] Tenant Estoppel Certificates.** The Estoppel Certificates, as defined in Section 10.4 below.

(k) **Other Documents.** Such other documents or instruments as may be reasonably required to consummate this transaction in accordance with the terms and conditions of this Agreement, such as appropriate escrow instructions to Title Company.

**10.3 Purchaser's Deliveries to Escrow.** Purchaser shall deliver the following items to the Escrow Holder:

(a) **Cash.** Immediately available funds in the following amounts: (i) the balance of the Purchase Price; (ii) such amount, if any, as is necessary for Purchaser to pay Purchaser's share of the closing costs and prorations specified in Sections 10.6 and 10.7 below; and (iii) any other amounts required to close escrow in accordance with the terms of this Agreement.

(b) **Assignment of Contracts.** The Assignment of Contracts, if any, duly executed by Purchaser.

(c) **Site Remediation and Escrow Agreement.** Three counterparts of the Site Remediation and Escrow Agreement, duly executed by Purchaser.

(d) **Development Agreement.** Two counterparts of the Development Agreement, duly executed by Purchaser.

(e) **[If Applicable] Assignment and Assumption of Leases.** Two counterparts of the Assignment and Assumption of Leases, duly executed by Purchaser.

(f) **Other Documents.** Such other documents and instruments as may be reasonably required in order to consummate this transaction in accordance with the terms and conditions of this Agreement, such as appropriate escrow instructions to Title Company.

**10.4 [If Applicable] Estoppel Certificates.** Seller shall deliver to Purchaser at least five (5) calendar days prior to the Closing an estoppel certificate with respect to each of the Leases, dated within thirty (30) calendar days prior to the Closing, duly executed by the tenant under each of the Leases, substantially in the form of Exhibit J hereto or such other form as may be required under the Leases (the "Estoppel Certificates"). If Seller fails to timely obtain the Estoppel Certificates as provided in this Section 10.4, or delivers one or more Estoppel Certificates containing substantial and materially adverse claims or allegations, Purchaser shall have the right to terminate this Agreement, in which event the Deposit shall be promptly returned to Purchaser (less the Non-Refundable Amount which shall remain in Seller's possession), and thereafter neither party shall have any further obligations hereunder except such obligations that expressly survive the termination of this Agreement.

**10.5 Conditions to Closing.** In addition to the other terms and provisions of this Agreement that give Purchaser the right to terminate this Agreement, Purchaser's obligation to purchase the Property from Seller shall be subject to the occurrence and/or satisfaction of the following conditions (or Purchaser's written waiver thereof, it being agreed that Purchaser may waive any or all of such conditions):

(a) **Title.** Title Company is unconditionally prepared and committed to issue the Owner's Title Policy (with CLTA standard coverage or ALTA extended coverage, as

determined by Purchaser) in the amount of the Purchase Price insuring fee title to the Real Property and Improvements vested in Purchaser, subject only to the Permitted Exceptions;

(b) **No Default.** As of the Closing Date, Seller shall have complied with all of Seller's duties and obligations contained in this Agreement, and Seller shall not be in default of any term or provision of this Agreement;

(c) **Representations and Warranties.** All representations and warranties made by Seller to Purchaser in this Agreement shall be true and correct as of the Closing Date;

(d) **Instruments and Documents Delivered.** Seller shall have delivered all instruments and documents, fully executed by Seller, to be delivered to the Escrow Holder at the Closing pursuant to this Agreement, including but not limited to the Site Remediation and Escrow Agreement;

(e) **No Material Adverse Change.** After the expiration of the Inspection Period and prior to the Closing, there shall be no material adverse change in the physical condition of the Property or the matters reviewed and approved by Purchaser during the Inspection Period;

(f) **Final Approval Conditions.** All of the Final Approval Conditions set forth in Section 6 of this Agreement have been fully satisfied or waived in writing by Purchaser, in its sole discretion;

(g) **Property is Vacant.** The Property is vacant, with no parties or entities in possession or occupation of the Property, or if any party or entity does occupy the Property, it shall only be pursuant to a lease that has been approved and assumed by Purchaser, in its sole discretion, or a written agreement that has been approved by Purchaser, in its sole discretion.

(h) **Purchaser's Approval.** Purchaser has obtained all necessary approvals for the purchase of the Property under the terms and conditions of this Agreement, including approval from Purchaser's real estate committee; and

(i) **Conditions to Closing on Other Properties.** All conditions to Closing set forth in these two purchase and sale agreements have been fully met to Purchaser's satisfaction, in its sole discretion: (1) the Purchase and Sale Agreement between Purchaser and the City for Purchaser's purchase of the real property bearing Assessor's Parcel Numbers 022-211-36 and 022-601-01, also located within the area of Purchaser's Project; and (2) the Purchase and Sale Agreement between Purchaser and the City of Scotts Valley for Purchaser's purchase of the real property bearing the Assessor's Parcel Number 022-721-06, also located within the area of Purchaser's Project.

If all of the foregoing conditions have been satisfied or waived in writing by Purchaser, with the exception that condition (f) (Final Approval Conditions) has not been satisfied or waived in writing by Purchaser, Purchaser shall have the right, but not the obligation, to terminate this Agreement, in which event the Additional Deposit shall promptly be refunded to

Purchaser and thereafter neither party shall have any further obligations hereunder except such obligations that expressly survive the termination of this Agreement.

If any of the foregoing conditions (with the exception of condition (f) (Final Approval Conditions)) is not satisfied or waived in writing by Purchaser, Purchaser shall have the right, but not the obligation, to terminate this Agreement, in which event the entire Deposit shall promptly be refunded to Purchaser (less the Non-Refundable Amount which shall remain in Seller's possession) and thereafter neither party shall have any further obligations hereunder except such obligations that expressly survive the termination of this Agreement.

**10.6 Closing Prorations.** At Closing, the items of income and expense of the Property set forth below shall be prorated on the basis of a 365-day year, actual days elapsed for the month in which Closing occurs, as of midnight on the day immediately preceding the Closing Date. Income and expenses attributable to the period prior to the Closing Date shall be for the account of Seller, and income and expenses attributable to the period on and after the Closing Date shall be for the account of Purchaser. The following items shall be prorated through escrow as described above:

(a) All current real property taxes, non-delinquent bonds or improvement assessments, general and special, non-delinquent public or governmental charges or assessments affecting the Property (including current assessments, liens or encumbrances for sewer, water, drainage or other public improvements whether completed or commenced on or prior to the date of this Agreement). If the Closing Date occurs before the tax rate or assessment is fixed, the proration of such taxes and assessments by Title Company shall be made at Closing based upon the most recent tax bills available; and

(b) All collected income from the Property and all current utilities, maintenance and service contract charges and similar expenses of the Property, determined using the accrual method of accounting, shall be prorated between Seller and Purchaser as of the Closing Date and, to the extent of information then available, such prorations shall be made at the Closing.

Seller and Purchaser shall use their best efforts prior to the Closing Date to agree upon a schedule of prorations for the items detailed in (a) and (b) above. Prorations of income and expenses of the Property shall be adjusted, if necessary, and completed after the Closing as soon as final information becomes available. Seller and Purchaser agree to cooperate and to use their best efforts to complete such prorations no later than sixty (60) days after the Closing Date. The income and expenses of the Property for the period before the Closing Date shall be for the account of Seller, and the income and expenses for the period on and after the Closing Date shall be for the account of Purchaser. Security deposits, other refundable deposits and prepaid rent under any of the Leases shall be credited to Purchaser and charged to Seller at Closing. Monthly income and expense items shall be prorated on the basis of the actual number of days in the month in which the Closing occurs.

**10.7 Closing Costs.** Seller shall be responsible for the payment of all city and county documentary transfer taxes, the premium for a CLTA standard coverage Owner's Title Policy, the cost of any title endorsements obtained by Seller to remove or insure against a Title Objection, and one-half of any escrow fees. Purchaser shall be responsible for the payment of any additional premium due if Purchaser elects to obtain ALTA extended coverage on its

Owner's Title Policy, the cost of any title endorsements requested by Purchaser other than to remove or insure against a Title Objection, the cost to record the Deed and one-half of any escrow fees. Each party shall pay its own attorneys' fees incurred in connection with this Agreement and the transaction contemplated herein.

**10.8 Closing Procedure.** Title Company shall close escrow when it is in a position to: (i) record the Deed; (ii) pay to Seller, by wire transfer in immediately available funds, the amount of the Purchase Price (less the funds to be retained by Escrow Holder in the Holdback Escrow pursuant to the Site Remediation and Escrow Agreement), as such amount may be increased or decreased as a result of the allocation of the closing costs and prorations as specified in Sections 10.6 and 10.7; and (iii) issue to Purchaser the Owner's Title Policy in accordance with Section 5.2.

**10.9 Possession.** On the Closing Date, Seller shall transfer possession of the Property to Purchaser, subject to any Leases approved and assumed by Purchaser. On the Closing Date or as soon thereafter as practicable, Seller and Purchaser shall send notices to all vendors and contractors under any Contracts informing them that Seller sold the Property to Purchaser on the Closing Date.

**11. PURCHASER'S REMEDIES.** If the sale of the Property is not consummated because of a breach or default under this Agreement by Seller, Purchaser may, as Purchaser's sole and exclusive remedy exercise one and only one of the following:

(i) Terminate this Agreement by delivery of notice of termination to Seller whereupon the Deposit (less the Non-Refundable Amount which shall remain in Seller's possession) shall be returned to Purchaser, and Seller shall reimburse Purchaser for all out-of-pocket expenses incurred by Purchaser in connection with the prospective transaction contemplated hereunder, provided Purchaser submits to Seller evidence reasonably satisfactory to Seller that Purchaser has incurred and paid for such expenses, and all parties hereto shall be relieved of all further obligations hereunder (other than obligations which by their terms survive such a termination); or

(ii) Proceed with the Closing in accordance with this Agreement and waive the applicable breach or default; or

(iii) Pursue the remedy of specific performance, provided that the action for specific performance shall be commenced no later than one hundred eighty (180) calendar days after the date of the scheduled Closing.

**12. BROKERS.**

Seller and Purchaser each warrant and represent to the other that no person, firm or entity is in a position to claim a real estate brokerage commission, due diligence fee or finder's fee as a procuring cause of this transaction based upon contacts with such party or the Property. Each party shall indemnify, defend, protect and hold the other party harmless from and against any and all claims, actions, causes of action, demands, liabilities, damages, costs and expenses (including attorneys' fees and costs) arising as a result of a breach of the foregoing warranty and representation.

**13. MAINTENANCE AND OPERATION OF THE PROPERTY.** Seller shall, between Seller's execution of this Agreement and the Closing Date, at Seller's sole cost and expense, maintain the Property in substantially the same condition and repair as on the Effective Date, reasonable wear and tear excepted, and otherwise operate the Property as before the making of this Agreement; provided, however, that in the event of any damage to the Property by any casualty, then the provisions of Section 7 shall apply, except to the extent such damage is caused by Purchaser or its agents, contractors, employees or officers. Prior to Closing, Purchaser shall have the right to approve any proposed improvements, renovations, new leases, lease extensions or modifications, and all other agreements or arrangements with regard to the Property, which approval may be withheld in Purchaser's sole discretion.

**14. MISCELLANEOUS.**

**14.1 Notices.** All notices, demands or other communications of any type given by either party to the other, whether required by this Agreement or in any way related to this transaction, shall be in writing and be delivered: (i) by hand, Federal Express or other nationally-recognized overnight courier service; or (ii) by United States Mail, certified mail, return receipt requested, with proper postage affixed. Notice by facsimile may also be provided as an additional means of notice as long as (i) or (ii) above is also provided. Each notice to a party shall be addressed as follows:

To Seller:

Successor Agency of the Scotts Valley  
Redevelopment Agency  
One Civic Center Drive  
Scotts Valley.CA 95066  
Attn: City Manager  
Telephone No.: (831) 440-5600  
Facsimile No.: (831) 438-2793

With a copy to:

Kirsten M. Powell  
Agency Counsel  
15466 Los Gatos Blvd., Suite 109  
Los Gatos, CA 95032  
Telephone No.: (408) 402-9542  
Facsimile No.: (408) 402-8441

To Purchaser:

Property Development Centers LLC  
c/o Safeway Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588-3229  
Attn: Thomas Fitzpatrick  
Telephone No.: (925) 738-1320  
Facsimile No.: (925) 738-1206

With a copy to:

Safeway Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588-3229  
Attn: Natacha Epley. Esq.

Telephone No.: (925) 226-5121

Facsimile No.: (925) 467-3224

Any notice delivered by hand or Federal Express or similar courier service shall be deemed to be delivered when actual delivery is made. Any notice delivered by facsimile shall be deemed to be delivered when sent, provided that confirmation of effective transmission is received by the sender. Any notice deposited in the United States Mail in the manner required above shall be deemed to be delivered three (3) business days after the date of such deposit, and any time periods provided for herein during which a party may act shall not commence until such notice is deemed to be so delivered. Either party hereto may change its address by notice given as provided herein to the other party and Title Company.

**14.2 Rules of Construction.** Where required for proper interpretation, words in the singular shall include the plural, the masculine gender shall include the neuter and the feminine, and vice versa. The headings of the Sections, Subsections and paragraphs contained in this Agreement are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. This Agreement has been fully negotiated at arms' length between the parties, after advice by counsel and other representatives chosen by the parties, and the parties are fully informed with respect thereto. No party shall be deemed the scrivener of this Agreement and, accordingly, the provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party. Use in this Agreement of the words "including" or "such as", or words of similar import, following any general term, statement or matter shall not be construed to limit such term, statement or matter to the enumerated items, whether or not language of non-limitation (such as "without limitation" or "but not limited to") are used with reference thereto, but rather shall refer to all items or matters that could reasonably fall within the broadest scope of such term, statement or matter.

**14.3 Amendments; Waivers.** This Agreement may not be modified or amended except by an agreement in writing signed by the parties hereto. A party may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

**14.4 Time of the Essence.** Time is of the essence of this Agreement and each provision hereof.

**14.5 Attorneys' Fees.** If either party brings an action or proceeding at law or in equity to interpret or enforce this Agreement or any provisions thereof, or to seek damages or other redress for a breach, the prevailing party shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and costs (including but not limited to court costs) incurred in connection with such action or proceeding.

**14.6 Applicable Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of California.

**14.7 Entire Agreement.** This Agreement, including the exhibits hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection

therewith. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

**14.8 Assignment; Successors and Assigns.** Purchaser shall not have the right to assign this Agreement or any of Purchaser's rights hereunder without obtaining the prior written consent of Seller; however, nothing shall prevent Purchaser from assigning this Agreement or any of Purchaser's rights hereunder to an entity which acquires at least eighty percent (80%) interest in, or eighty percent (80%) assets of, Purchaser. This Agreement, and the terms, covenants and conditions herein contained, shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs and assigns.

**14.9 Section 1031 Cooperation.** In the event either party desires to engage in a tax-deferred exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, the other party shall reasonably cooperate with such exchange by executing such documents and instruments as shall be customarily used by the exchanging party's qualified exchange intermediary, so long as the other party assumes no obligations and incurs no cost or expense in connection therewith.

**14.10 Exhibits.** The exhibits to which reference is made in this Agreement are deemed incorporated into this Agreement in their entirety by such reference. The exhibits to this Agreement are the following:

- A Legal Description of Real Property
- B Bill of Sale
- C Assignment of Contracts
- D List of Leases
- E Assignment and Assumption of Leases
- F Deleted
- G Grant Deed
- H Affidavit of Non-Foreign Status
- I Form of Tenant Notice
- J Form of Estoppel Certificate

**14.11 Definition of Business Day.** For purposes of this Agreement, the term "business day" shall mean Monday through Friday, inclusive, but excluding any day on which banks are authorized to be closed by the State of California or the United States. If any of the dates specified in this Agreement shall fall on a non-business day, then the date of such action shall be deemed to be extended to the next business day.

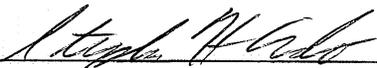
**14.12 Counterparts.** This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

*[signatures appear on next page]*

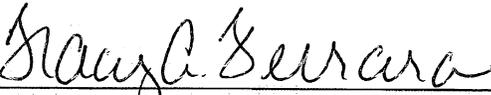
IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

**SELLER:**

SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY, a body politic

By:   
Stephen H. Ando, Executive Director

ATTEST:

By:   
Tracy A. Ferrara, Secretary

APPROVED AS TO FORM:

By:   
Kirsten Powell, Agency Counsel

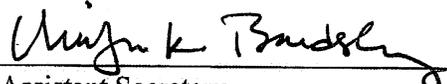
Dated: 9-24-14

**PURCHASER:**

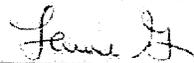
PROPERTY DEVELOPMENT CENTERS LLC, a Delaware limited liability company

By: Safeway Inc.,  
Its Sole and Managing Member

By:   
Assistant Vice President

By:   
Assistant Secretary

Dated: 9/24/14

FORM APPROVED:   
Laurie Gustafson, Sedgwick LLP

Dated: 9/24/14

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL PROPERTY**

The land referred to herein is situated in the City of Scotts Valley, County of Santa Cruz, State of California and is described as follows:

TRACT A

BEING A PORTION OF PARCEL 3 OF LANDS DESCRIBED IN THE DEED FROM GRAHAM TO GRAHAM, RECORDED AUGUST 09, 1957, IN VOLUME 1143, PAGE 333, OFFICIAL RECORDS OF SANTA CRUZ COUNTY, AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON PIPE, R. E. 11, 423, STANDING ON THE NORTHERLY LINE OF MOUNT HERMON ROAD, AS SHOWN ON SHEET 1 OF A RECORD OF SURVEY MAP FILED APRIL 18, 1958 IN MAP BOOK 32, PAGE 61, RECORDS OF SANTA CRUZ COUNTY, FROM WHICH A 1/2 INCH IRON PIPE STANDING AT THE SOUTHEAST CORNER OF FIRST SAID PARCEL 3, BEARS SOUTH 56° 58' 10" EAST 239.89 FEET DISTANT; THENCE ALONG SAID NORTHERLY LINE, NORTH 56° 58' 10" WEST 10.42 FEET TO A POINT OF TANGENCY; THENCE ALONG A CURVE TO THE LEFT THROUGH AN ANGLE OF 8° 59' 50" WITH A RADIUS OF 1030.00 FEET, AN ARC LENGTH OF 161.74 FEET TO A 1/2 INCH IRON PIPE, R. E. 11,423; THENCE LEAVING SAID NORTHERLY LINE, NORTH 0° 29' 10" WEST 491.43 FEET TO A 1/2 INCH IRON PIPE, R. E. 11,423; STANDING ON THE NORTHERLY BOUNDARY OF SAID PARCEL 3; THENCE ALONG LAST SAID NORTHERLY BOUNDARY, SOUTH 39° 49' 10" EAST 236.66 FEET TO A 1/2 INCH IRON PIPE, R. E. 11,423; THENCE LEAVING LAST SAID NORTHERLY BOUNDARY SOUTH 0° 29' 10" EAST 392.55 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL RIGHTS AS RESERVED IN THE DEED FROM J. JACKSON GRAHAM, ET UX., TO PAJARO VANGAS, RECORDED MAY 18, 1961 IN VOLUME 1395, PAGE 19, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

ALSO EXCEPTING THEREFROM THE LAND DESCRIBED IN THE DEED TO THE COUNTY OF SANTA CRUZ, RECORDED DECEMBER 05, 1966, IN VOLUME 1796, PAGE 109, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

APN: 022-231-03

**EXHIBIT B**

**BILL OF SALE**

For valuable consideration, receipt of which is acknowledged, the SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY, a body politic ("Seller"), hereby sells, assigns, transfers and delivers "as is" without warranty or recourse and only to the extent of Seller's interest, to PROPERTY DEVELOPMENT CENTERS LLC, a Delaware limited liability company, ("Purchaser"), all of the personal property described in Exhibit A attached hereto and made a part hereof.

**SELLER:**

SUCCESSOR AGENCY OF THE SCOTTS  
VALLEY REDEVELOPMENT AGENCY,  
a body politic

By: \_\_\_\_\_  
Stephen H. Ando, Executive Director

ATTEST:

By: \_\_\_\_\_  
Tracy A. Ferrara, Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kirsten Powell, Agency Counsel

Dated: \_\_\_\_\_

**EXHIBIT C**

**ASSIGNMENT OF CONTRACTS**

THIS ASSIGNMENT, made as of \_\_\_\_\_, 2014, by and between the SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY, a body politic (“Seller”), and PROPERTY DEVELOPMENT CENTERS LLC, a Delaware limited liability company (“Purchaser”).

**WITNESSETH:**

For valuable consideration, receipt of which is acknowledged, Seller and Purchaser agree as follows:

**1. ASSIGNMENT AND ASSUMPTION.**

(a) Seller hereby assigns and transfers to Purchaser all right, title and interest of Seller in, to and under the contracts (the “Contracts”) described in **Exhibit A** attached hereto and made a part hereof.

(b) Purchaser hereby accepts the foregoing assignment, and assumes and agrees to perform all of the covenants and agreements in the Contracts to be performed by Seller thereunder that arise or accrue from and after the date of this Assignment as long as Purchaser owns the real property subject to the Contracts.

**2. INDEMNIFICATION.** Purchaser agrees to protect, indemnify, defend and hold Seller harmless from and against all claims, obligations, losses, damages, liabilities and expenses (including, without limitation, attorneys’ fees and costs) that Seller may incur or that may be asserted against Seller arising out of or in any way connected with, directly or indirectly, the Contracts from and after the date hereof. Seller agrees to protect, indemnify, defend and hold Purchaser harmless from and against all claims, obligations, losses, damages, liabilities and expenses (including, without limitation, attorneys’ fees and costs) that Purchaser may incur or that may be asserted against Purchaser arising out of or in any way connected with, directly or indirectly, the Contracts prior to the date hereof.

**3. FURTHER ASSURANCES.** Seller and Purchaser agree to execute such other documents and perform such other acts as may be reasonably necessary or proper and usual to effect this Assignment.

**4. SUCCESSORS AND ASSIGNS.** This Assignment shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective personal representatives, heirs, successors and assigns.

**5. GOVERNING LAW.** This Assignment shall be construed under and enforced in accordance with the laws of the State of California.

6. **ATTORNEYS' FEES.** If either party brings an action or proceeding at law or in equity to interpret or enforce this Agreement or any provisions contained herein, or to seek damages or other redress for a breach, the prevailing party shall be entitled to recover in addition to all other remedies or damages, reasonable attorneys' fees and costs incurred in such action or proceeding.

7. **COUNTERPARTS.** The parties may execute this Assignment in one or more counterparts. All counterparts shall be construed together and shall constitute one agreement.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Assignment as of the date first hereinabove written.

**SELLER:**

SUCCESSOR AGENCY OF THE SCOTTS  
VALLEY REDEVELOPMENT AGENCY,  
a body politic

By: \_\_\_\_\_  
Stephen H. Ando, Executive Director

ATTEST:

By: \_\_\_\_\_  
Tracy A. Ferrara, Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kirsten Powell, Agency Counsel

**PURCHASER:**

PROPERTY DEVELOPMENT CENTERS LLC, a  
Delaware limited liability company

By: Safeway Inc.,  
Its Sole and Managing Member

By: \_\_\_\_\_  
Assistant Vice President

By: \_\_\_\_\_  
Assistant Secretary

Dated: \_\_\_\_\_

**EXHIBIT D**  
**LIST OF LEASES**

**EXHIBIT E**

**ASSIGNMENT AND ASSUMPTION OF LEASES**

THIS ASSIGNMENT, made as of \_\_\_\_\_, 2014, by and between the SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY, a body politic (“Seller”), and PROPERTY DEVELOPMENT CENTERS LLC, a Delaware limited liability company (“Purchaser”).

**WITNESSETH:**

For valuable consideration, receipt of which is acknowledged, Seller and Purchaser agree as follows:

**1. ASSIGNMENT AND ASSUMPTION.**

Seller hereby assigns and transfers to Purchaser all right, title and interest of Seller in, to and under the leases (the “Leases”) described in **Exhibit A** attached hereto and made a part hereof.

Purchaser hereby accepts the foregoing assignment, and assumes and agrees to perform all of the covenants and agreements in the Leases to be performed by the landlord thereunder that arise or accrue from and after the date of this Assignment.

**2. INDEMNIFICATION.** Purchaser agrees to protect, indemnify, defend and hold Seller harmless from and against all claims, obligations, losses, damages, liabilities and expenses (including, without limitation, attorneys’ fees and costs) that Seller may incur or that may be asserted against Seller arising out of or in any way connected with, directly or indirectly, the landlord’s obligations, duties and liabilities under the Leases from and after the date hereof. Seller agrees to protect, indemnify, defend and hold Purchaser harmless from and against all claims, obligations, losses, damages, liabilities and expenses (including, without limitation, attorneys’ fees and costs) that Purchaser may incur or that may be asserted against Purchaser arising out of or in any way connected with, directly or indirectly, the landlord’s obligations, duties and liabilities under the Leases prior to the date hereof.

**3. FURTHER ASSURANCES.** Seller and Purchaser each agree to execute and deliver to the other party, upon demand, such further documents, instruments and conveyances, and shall take such further actions as are necessary or desirable to effect this Assignment.

**4. SUCCESSORS AND ASSIGNS.** This Assignment shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective personal representatives, heirs, successors and assigns.

**5. GOVERNING LAW.** This Assignment shall be construed under and enforced in accordance with the laws of the State of California.

6. **ATTORNEYS' FEES.** If either party brings an action or proceeding at law or in equity to interpret or enforce this Agreement or any provisions contained herein, or to seek damages or other redress for a breach, the prevailing party shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and costs incurred in such action or proceeding.

7. **COUNTERPARTS.** The parties may execute this Assignment in one or more counterparts. All counterparts shall be construed together and shall constitute one agreement.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Assignment as of the date first hereinabove written.

**SELLER:**

SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY, a body politic

By: \_\_\_\_\_  
Stephen H. Ando, Executive Director

ATTEST:

By: \_\_\_\_\_  
Tracy A. Ferrara, Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kirsten Powell, Agency Counsel

**PURCHASER:**

PROPERTY DEVELOPMENT CENTERS LLC, a Delaware limited liability company

By: Safeway Inc.,  
Its Sole and Managing Member

By: \_\_\_\_\_  
Assistant Vice President

By: \_\_\_\_\_  
Assistant Secretary

**EXHIBIT F**

**OMITTED**

**EXHIBIT G**

Recorded at Request of and:  
When Recorded Mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mail Tax Statements to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GRANT DEED**

For valuable consideration, receipt of which is acknowledged, the SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY, a body politic, hereby grants to PROPERTY DEVELOPMENT CENTERS LLC, a Delaware limited liability company, the real property in the City of Scotts Valley, County of Santa Cruz, State of California, described in Exhibit A attached hereto and incorporated herein by reference.

SUCCESSOR AGENCY OF THE SCOTTS  
VALLEY REDEVELOPMENT AGENCY, a body  
politic

By: \_\_\_\_\_  
Stephen H. Ando, Executive Director

ATTEST:

By: \_\_\_\_\_  
Tracy A. Ferrara, Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kirsten Powell, Agency Counsel

Dated: \_\_\_\_\_



**EXHIBIT A  
TO  
GRANT DEED**

All of the real property in the City of Scotts Valley, County of Santa Cruz, State of California, described as follows:

**SEPARATE STATEMENT OF  
DOCUMENTARY TRANSFER TAX**

**NOT TO BE RECORDED**

County Recorder  
Santa Cruz County, California

*Ladies/Gentlemen:*

In accordance with Revenue and Taxation Code Section 11932, it is requested that this statement of documentary transfer tax due not be recorded with the attached Deed, but affixed to the Deed after recordation and before return as directed on the Deed.

The Grant Deed names the SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY, a body politic, as Grantor, and PROPERTY DEVELOPMENT CENTERS LLC, a Delaware limited liability company, as Grantee. The property being transferred is located in the City of Scotts Valley, County of Santa Cruz, State of California.

The amount of documentary transfer tax due on the attached deed is \_\_\_\_\_ Dollars (\$\_\_\_\_\_), computed on the full value of the property [(less the value of any liens and encumbrances remaining on the property at the time of sale)].

Very truly yours,

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT H**

**AFFIDAVIT OF NON-FOREIGN STATUS**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by the SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY, a body politic ("Seller"), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Seller's Tax Identification Number is \_\_\_\_\_.
3. Seller's address is \_\_\_\_\_; and
4. Seller is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii) of the Internal Revenue Code Regulations.

Seller understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

Dated: \_\_\_\_\_, 2014

SUCCESSOR AGENCY OF THE SCOTTS  
VALLEY REDEVELOPMENT AGENCY, a body  
politic

By: \_\_\_\_\_

Stephen H. Ando, Executive Director

ATTEST:

By: \_\_\_\_\_  
Tracy A. Ferrara, Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kirsten Powell, Agency Counsel

**EXHIBIT I**

**TENANT NOTICE**

\_\_\_\_\_, 2014

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Sale of \_\_\_\_\_  
Scotts Valley, California ("**Property**")

Dear Tenant:

Please be advised that:

1. The Successor Agency of the Scotts Valley Redevelopment Agency, a body politic ("**Seller**"), has sold the Property to Property Development Centers LLC, a Delaware limited liability company ("**Purchaser**").

2. In connection with such sale, Seller has transferred your security deposit in the amount of \$ \_\_\_\_\_ ("**Security Deposit**") to Purchaser. Purchaser acknowledges receipt of and sole responsibility for the return of the Security Deposit.

3. All rental and other payments that become due subsequent to the date of this notice should be paid to Purchaser at the address shown on Exhibit A attached to this letter.

**SELLER:**  
SUCCESSOR AGENCY OF THE SCOTTS VALLEY  
REDEVELOPMENT AGENCY, a body politic

By: \_\_\_\_\_  
Stephen H. Ando, Executive Director

ATTEST:

By: \_\_\_\_\_  
Tracy A. Ferrara, Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kirsten Powell, Agency Counsel

**PURCHASER:**  
PROPERTY DEVELOPMENT CENTERS LLC, a  
Delaware limited liability company

By: Safeway Inc.,  
Its Sole and Managing Member

By: \_\_\_\_\_  
Assistant Vice President

By: \_\_\_\_\_  
Assistant Secretary

Dated: \_\_\_\_\_

**Exhibit A to Tenant Notice**

*[Insert address(es) for notices and payments]*

**EXHIBIT J**

**TENANT ESTOPPEL CERTIFICATE**

The undersigned ("Tenant") hereby certifies to the Successor Agency of the Scotts Valley Redevelopment Agency ("Landlord") and Property Development Centers LLC ("Purchaser") as follows:

1. Attached hereto is a true, correct and complete copy of that certain Leases dated \_\_\_\_\_ between Landlord and Tenant (the "Lease"), which demises Premises located in \_\_\_\_\_, California as shown on Exhibit A attached hereto. The Lease is now in full force and effect and has not been amended, modified or supplemented, except as set forth in Paragraph 6 below.

2. The term of the Lease commenced on \_\_\_\_\_.

3. The term of the Lease is scheduled to expire on \_\_\_\_\_.

4. Tenant has no option to renew or extend the Term of the Lease except: \_\_\_\_\_.

5. Tenant has no preferential right to purchase the Premises or any portion of the building in which the Premises are located ("Building") or the property upon which the Building is located ("Property"), and Tenant has no rights or options to expand into other space in the Building except: \_\_\_\_\_.

6. The Lease has: (Mark one of the following)

not been amended, modified, supplemented, extended, renewed or assigned.

been amended, modified, supplemented, extended, renewed or assigned by the following described agreements, copies of which are attached hereto:

\_\_\_\_\_.

7. Tenant has accepted and is now in possession of the Premises and has not sublet, assigned or encumbered the Lease, the Premises or any portion thereof except as follows:

\_\_\_\_\_.

8. The current Base Monthly Rent is \$ \_\_\_\_\_.

9. The amount of security deposit (if any) held by Landlord under the Lease is \$ \_\_\_\_\_. No other security deposits have been made by Tenant.

10. All rental payments payable by Tenant have been paid in full as of the date hereof. No rent under the Lease has been paid for more than thirty (30) days in advance of its due date. Tenant is current in the payment of any taxes, utilities, common area maintenance payments, or other charges required to be paid by Tenant under the Lease.

11. All work required to be performed by Landlord under the Lease has been completed and has been accepted by Tenant, and all tenant improvement allowances have been paid in full.

12. To the best of Tenant's knowledge, as of the date hereof, there are no defaults on the part of Landlord or Tenant under the Lease.

13. Tenant has no defense as to its obligations under the Lease and claims no set-off or counterclaim against Landlord.

14. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies, except as expressly provided in the Lease.

15. All insurance required of Tenant under the Lease has been provided by Tenant and all premiums have been paid.

16. There has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof, or any other action brought pursuant to such bankruptcy laws with respect to Tenant.

17. Tenant pays rent due Landlord under the Lease to Landlord and does not have any knowledge of any other person who has any right to such rents by collateral assignment or otherwise.

18. The undersigned signatory hereto hereby warrants that he/she has full and valid legal power and authority to make and deliver this certificate and to bind the Tenant to the statements and certifications made herein.

The foregoing certification is made with the knowledge that Purchaser is about to purchase the Property from Landlord and that Purchaser is relying upon the representations herein made in purchasing such Property.

Dated: \_\_\_\_\_, 2014.

"TENANT"

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_