

THIRD AMENDMENT TO LEASE AND AGREEMENT

This Third Amendment to Lease and Agreement (this “**Third Amendment**”) is made and entered into as of the Effective Date, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for the use and benefit of the Denver Motor Vehicle Division of the Department of Revenue (the “**City**”), and **SAFeway INC.**, a Delaware corporation (“**Lessor**”). The City and Lessor are sometimes collectively referred to herein as the “**Parties**” or individually as a “**Party**.”

WITNESSETH:

WHEREAS, by Lease and Agreement dated March 24, 1994, as amended by that certain First Amendment to Lease and Agreement (the “**First Amendment**”) dated November 15, 2001 and that certain Second Amendment to Lease and Agreement (the “**Second Amendment**”) dated August 8, 2006 (collectively, the “**Lease**”), Lessor subleases to the City a portion of that certain real property and improvements known as the Safeway Center (the “**Shopping Center**”), located at 3698 West 44th Avenue, Denver, Colorado for the use of the Denver Motor Vehicle Division of the Department of Revenue (the “**Leased Premises**”); and

WHEREAS, the Lease expired on December 31, 2010 and the City has remained in possession of the Leased Premises with the Lessor’s consent on a month-to-month basis as of January 1, 2011 (the “**Month-to-Month Tenancy**”); and

WHEREAS, the term of the Primary Lease currently expires on November 30, 2036; and

WHEREAS, the Parties wish to revive the Lease, to extend the term of the Lease and to increase the rent to be paid to the Lessor, all on the terms and conditions set forth in this Third Amendment.

NOW, THEREFORE, in consideration of the Leased Premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. **Extension of the Term:** The term of the Lease is hereby extended for a period of five (5) years (the “**Extended Term**”), commencing on January 1, 2019 (the “**Extended Term Commencement Date**”) and terminating on December 31, 2023 (the “**Extended Term Expiration Date**”).
2. **Fixed Rent During the Extended Term:** Subject to Section 6 below, the City agrees to pay fixed rent to Lessor, on the first day of each month during the Extended Term, beginning on the Extended Term Commencement Date and continuing to and including the Extended Term Expiration Date, in the following amounts:

Extended Term	Monthly Fixed Rent	Annual Fixed Rent	\$/SF/Year
1/1/2019 – 12/31/2019	\$7,201.76	\$86,421.12	\$19.57
1/1/2020 – 12/31/2020	\$7,418.88	\$89,026.56	\$20.16
1/1/2021 – 12/31/2021	\$7,639.68	\$91,676.16	\$20.76
1/1/2022 – 12/31/2022	\$7,867.84	\$94,414.08	\$21.38
1/1/2023 – 12/31/2023	\$8,107.04	\$97,284.48	\$22.03

3. **Grant of Additional Extended Terms:**

3.1. **Grant of Additional Extended Terms:** Lessor hereby grants to the City unilateral options to extend the Term of the Lease for up to two (2) additional extended terms (together, the “**Additional Extended Terms**”) as follows:

(i) The first Additional Extended Term shall commence on January 1, 2024 and terminate on December 31, 2030 (the “**First Additional Extended Term**”); and

(ii) The second Additional Extended Term shall commence on January 1, 2031 and terminate on November 29, 2036, which is one (1) day prior to the expiration of the Primary Lease term (the “**Second Additional Extended Term**”).

Subject to Section 6 below, each Additional Extended Term to renew shall be exercised, if at all, by letter from the Director of Real Estate at least 30 days prior to the current lease end date.

3.2. Fixed Rent During the Additional Extended Terms: Subject to Section 6 below, the City agrees to pay fixed rent to Lessor, on the first day of each month during the applicable Additional Extended Term, if exercised, in the following amounts:

First Additional Extended Term	Monthly Fixed Rent	Fixed Rent for Period	\$/SF/Year
1/1/2024 – 12/31/2024	\$8,349.92	\$100,199.04	\$22.69
1/1/2025 – 12/31/2025	\$8,600.16	\$103,201.92	\$23.37
1/1/2026 – 12/31/2026	\$8,857.76	\$106,293.12	\$24.07
1/1/2027 – 12/31/2027	\$9,122.72	\$109,472.64	\$24.79
1/1/2028 – 12/31/2028	\$9,395.04	\$112,740.48	\$25.53
1/1/2029 – 12/31/2029	\$9,678.40	\$116,140.80	\$26.30
1/1/2030 – 12/31/2030	\$9,969.12	\$119,629.44	\$27.09

Second Additional Extended Term	Monthly Fixed Rent	Fixed Rent for Period	\$/SF/Year
1/1/2031 – 12/31/2031	\$10,267.20	\$123,206.40	\$27.90
1/1/2032 – 12/31/2032	\$10,576.32	\$126,915.84	\$28.74
1/1/2033 – 12/31/2033	\$10,892.80	\$130,713.60	\$29.60
1/1/2034 – 12/31/2034	\$11,220.32	\$134,643.84	\$30.49
1/1/2035 – 12/31/2035	\$11,555.20	\$138,662.40	\$31.40
1/1/2036 – 10/31/2036	\$11,901.12	\$119,011.20	\$32.34
11/1/2036 – 11/29/2036		\$11,504.12	\$32.34

4. City’s Payment of Common Area Maintenance Costs and Taxes: Notwithstanding anything to the contrary contained in the Lease, Lessor and the City agree to the following:

4.1. Definitions:

4.1.1. “**Common Area**” shall mean all areas and facilities within the Shopping Center not appropriated to the exclusive occupancy of tenants, including all parking area of the Common Area, sidewalks, pedestrian ways, driveways, signs, service delivery facilities, common storage areas, common utility facilities and all other areas in the Shopping Center established by Lessor for non-exclusive use.

4.1.2. “**Common Area Maintenance Costs**” shall mean the total of all costs and expenses paid or incurred by Lessor in connection with the operation, maintenance, ownership and repair of the Common Area. Without limiting the generality of the foregoing, Common Area Maintenance Costs include all costs of and expenses for: (i) maintenance and repairs of the Common Area; (ii) resurfacing, resealing, remarking, painting or restriping the parking area of the Common Area; (iii) maintenance and repair of all public or common facilities and installations such as public toilets, music program equipment and loudspeakers, customer accommodation facilities and similar installations; (iv) maintenance,

repair and replacement of sidewalks, curbs, paving, walkways, parking area, Shopping Center signs, landscaping, planting and irrigation systems, trash facilities (including any trash compactors), loading and delivery areas, lighting, drainage and common utility facilities, directional or other signs, markers and bumpers; (v) the charges of all independent contractors retained by Lessor for the maintenance, repair, management and/or supervision of the Shopping Center, and of security personnel retained by Lessor in connection with the operation and maintenance of the Common Area (although Lessor shall not be required to obtain security services); (vi) maintenance and repair of security systems and alarms; (vii) depreciation or amortization (or in lieu thereof, rental payments) on all tools, equipment and machinery used in the operation and maintenance of the Common Area; (viii) premiums for the insurance carried by Lessor pursuant to the Lease (and any deductible under such insurance which Lessor incurs or pays following an insured casualty) and for comprehensive general liability insurance or commercial general liability insurance, property insurance, workers compensation insurance or other insurance on the Common Area or Shopping Center, or any portion thereof or interest therein; (ix) taxes and all personal property or real property taxes and assessments levied or assessed on the Shopping Center, or any portion thereof or interest therein ("**Taxes**"); (x) cleaning, collection, storage and removal of trash, rubbish, dirt and debris, and sweeping and cleaning the Common Area; (xi) maintenance, repair and replacement of Christmas and other seasonal decorations and lighting (including the annual installation and removal of such decorations and lighting); (xii) servicing and maintaining and monitoring any fire sprinkler system; (xiii) any alterations, additions or improvements required to be made to the Common Area in order to comply with applicable governmental laws, ordinances, rules, regulations and orders including the maintenance, repair and/or replacement of the common grease interceptor, if any; and (xiv) any other cost or expense which the Lease and/or this Third Amendment expressly characterize as a Common Area Maintenance Cost. For purposes of Common Area Maintenance Costs, the cost of any capital improvements to or for the benefit of the Common Area, plus interest at the rate of ten percent (10%) per annum (or the maximum rate allowed by law, whichever is less), shall be amortized over the useful life of the improvement and only such amortized amount shall be included in Common Area Maintenance Costs for each year over which such costs are amortized.

However, notwithstanding the foregoing, Common Area Maintenance Costs shall not include the cost of or expenses for the following: (A) leasing commissions, attorneys' fees or other costs or expenses incurred in connection with negotiations, disputes or eviction proceedings with other tenants of the Shopping Center, or legal fees incurred in connection with the Lease and/or this Third Amendment; (B) depreciation of buildings in the Shopping Center; (C) payments of principal, interest, late fees, prepayment fees or other charges on any debt secured by a mortgage covering the Shopping Center, or rental payments under any ground lease or underlying lease; (D) any interest, fines and penalties incurred due to Lessor's violation of any governmental rule or authority (but not excluding the cost of compliance therewith, if such cost is chargeable to the City pursuant to the Lease and/or this Third Amendment); (E) fees paid to any third party manager(s); (F) any capital improvement costs incurred by Lessor to repair or improve any buildings and/or other building-type structures in the Shopping Center, including costs to construct building additions; (G) costs incurred by Lessor for the repair of damage to the Common Area to the extent that Lessor is reimbursed by insurance or other proceeds (including repair or replacement of any item covered by warranty); (H) dues, costs, fees or expenses arising in connection with any "merchants' association" or "tenants' association" for the Shopping Center; (I) any costs for preparing space for any other tenant in the

Shopping Center or repairing space vacated by another tenant in the Shopping Center, as well as any leasing commissions, advertising expenses and other costs incurred in leasing or procuring new tenants; (J) costs incurred to benefit exclusively another tenant or group of other tenants in the Shopping Center, items and services supplied exclusively to another tenant or group of other tenants of the Shopping Center, including the costs of any "tap fees," "impound fees" or any sewer or water connection fees for such tenant or group of tenants, and costs of repairs or improvements to the Common Area made exclusively for the benefit of another tenant or group of other tenants in the Shopping Center; (K) payments of principal, interest, late fees, prepayment fees or other charges on any debt secured by a mortgage covering the Shopping Center, or fixed rental payments under any ground lease or underlying lease for the Shopping Center; (L) costs incurred by Lessor in selling, syndicating, financing, refinancing, mortgaging, or hypothecating any of Lessor's interest in the Shopping Center; (M) any costs associated with the operation of the business of the entity which constitutes Lessor as distinguished from the costs of operation of the Shopping Center including accounting and legal matters; (N) charitable or political contributions made by Lessor; and (O) reserves for all or any of the foregoing costs described in this Section 4.1.2.

- 4.1.3. **"Gross Leasable Area"** shall mean the number of square feet of all areas in the Shopping Center appropriated to the exclusive use or occupancy of Shopping Center tenants or owner/occupants, whether or not such areas are actually leased or occupied, measured from the exterior surface of exterior walls (and extensions thereof for openings) and/or from the center line of party or common walls or demising partitions.
- 4.1.4. **"Lease Year"** shall mean each period during the term of the Lease commencing on January 1 and ending on December 31 next succeeding, except that the last Lease Year of the term shall end on the last day of the Extended Term, as the same may be extended.
- 4.1.5. **"Management Fee"** shall mean a fee equal to ten percent (10%) of the City's Proportionate Share of the total Common Area Maintenance Costs for the Lease Year in question, as payment to Lessor for either (i) Lessor's internal administration and overhead costs incurred in the operation and management of the Common Area; or (ii) Lessor's share of the cost of a third party's or co-owner's charges for the operation, management and/or supervision of the Common Area. Notwithstanding anything to the contrary contained in the Lease and/or this Third Amendment, for purposes of calculating the Management Fee only, the total of Common Area Maintenance Costs shall exclude Taxes; premiums for any insurance carried by Lessor for the Leased Premises, the Building (as such term is defined in Section 4.1.6 below), the Common Area or the Shopping Center; and fees for any utilities serving the Leased Premises, the Building, the Common Area and/or the Shopping Center.
- 4.1.6. **"Proportionate Share"** shall mean, whenever the City is required to pay its pro rata share, unless otherwise specified in the Lease or this Third Amendment, as follows:
- (i) With respect to a Common Area Maintenance Cost related to the Shopping Center, the ratio (expressed as a percentage) which the number of square feet of Gross Leasable Area in the Leased Premises bears to the total number of square feet of constructed Gross Leasable Area in the Shopping Center. If the Shopping Center is expanded or contracted, then as of the date of completion of such expansion or contraction, the City's Proportionate Share shall

be adjusted, pursuant to the foregoing formula, to reflect any increased or decreased amount of Gross Leasable Area contained in the Shopping Center; or

(ii) With respect to a Common Area Maintenance Cost related to the building in which the Leased Premises are a part (“**Building**”) only, the ratio (expressed as a percentage) which the number of square feet of Gross Leasable Area in the Leased Premises bears to the total number of square feet of constructed Gross Leasable Area in the Building. If the Building is expanded or contracted, then as of the date of completion of such expansion or contraction, the City’s Proportionate Share shall be adjusted, pursuant to the foregoing formula, to reflect any increased or decreased amount of Gross Leasable Area contained in the Building.

4.1.7. “**Rent**” shall mean fixed rent and all other sums and amounts payable by the City hereunder as additional rent.

4.2. Maintenance and Repair of the Common Area: Lessor shall maintain in good order, condition and repair (ordinary wear and tear, damage due to casualty and condemnation excepted) all Common Area. Lessor may at any time delegate such maintenance, or any portion thereof, to any third party, affiliated or non-affiliated, upon such terms and conditions as Lessor deems appropriate.

4.3. Payment by City of City’s Proportionate Share of Common Area Maintenance Costs: Subject to Section 6 below, the City shall pay to Lessor in the manner hereinafter provided, the Management Fee and the City’s Proportionate Share of Common Area Maintenance Costs as follows:

4.3.1. Method of Payment: On the first day of each month during each Lease Year, the City shall pay in advance one-twelfth (1/12th) of the amount which Lessor estimates as the Management Fee and the City’s Proportionate Share of Common Area Maintenance Costs for such Lease Year. Within ninety (90) days after the end of each Lease Year, Lessor shall furnish to the City a statement of the actual amount of the City’s Proportionate Share of Common Area Maintenance Costs for such Lease Year. If the amount paid by the City during such Lease Year is less than the City’s Proportionate Share of Common Area Maintenance Costs as shown by Lessor’s statement, then the City shall pay the difference within thirty (30) days after the date of Lessor’s statement, up to the maximum amount set forth herein; if the amount paid by the City during such Lease Year is more than the City’s Proportionate Share of Common Area Maintenance Costs as shown by such statement, then the City shall receive a credit against future payments of Common Area Maintenance Costs hereunder for the amount of such excess or, after the expiration or termination of the Lease, a refund for such excess.

Notwithstanding anything to the contrary contained in the Lease, Common Area Maintenance Costs, including Management Fees, billed to the City under the Lease for each Lease Year shall not exceed the amounts set forth in the following tables:

Lease Year During Extended Term	Common Area Maintenance Cost Cap for Period	Common Area Maintenance Cost Cap (\$/PSF/Lease Year)
2019	\$26,628.48	\$6.03
2020	\$27,423.36	\$6.21
2021	\$28,262.40	\$6.40
2022	\$29,101.44	\$6.59

2023	\$29,984.64	\$6.79
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Lease Year During First Additional Extended Term	Common Area Maintenance Cost Cap for Period	Common Area Maintenance Cost Cap (\$/PSF/Lease Year)
2024	\$30,867.84	\$6.99
2025	\$31,795.20	\$7.20
2026	\$32,766.72	\$7.42
2027	\$33,738.24	\$7.64
2028	\$34,753.92	\$7.87
2029	\$35,813.76	\$8.11
2030	\$36,873.60	\$8.35

Lease Year During Second Additional Extended Term	Common Area Maintenance Cost Cap for Period	Common Area Maintenance Cost Cap (\$/PSF/Lease Year)
2031	\$37,977.60	\$8.60
2032	\$39,125.76	\$8.86
2033	\$40,318.08	\$9.13
2034	\$41,510.40	\$9.40
2035	\$42,746.88	\$9.68
1/1/2036 – 10/31/2036	\$36,689.60	\$9.97
11/1/2036 – 11/29/2036	\$3,546.66	\$9.97

4.3.2. Adjustments During Lease Year: If at any time it appears that Common Area Maintenance Costs for any Lease Year will exceed Lessor's estimate thereof, then Lessor shall have the right by written notice to the City to revise the estimated monthly amount payable by the City hereunder and subsequent payments of the City's estimated Proportionate Share of Common Area Maintenance Costs hereunder shall be increased based upon such revised statement, subject to the Common Area Maintenance Cost caps in the tables of Section 4.3.1 above.

4.3.3. Prorations: For any partial Lease Year occurring during the term of the Lease, Common Area Maintenance Costs shall be prorated based on the number of days of the calendar year the term of the Lease is in effect.

5. Lessor's Rent Payment Address: The City agrees to pay Rent as set forth in this Third Amendment to Lessor at the following address:

Safeway Inc.
c/o Bank of America Lockbox Services
Albertsons Companies Inc.
Surplus Facility #05-0244-15-05
4834 Collections Center Drive
Chicago, IL 60693

6. Maximum Amount Payable: It is expressly understood and agreed between the Parties that the City's maximum obligation for fixed rent and the City's Proportionate Share of Common Area Maintenance Costs, including Management Fees, under this Third Amendment shall not exceed the total sum of Six Hundred Thousand Two Hundred Twenty-two and 72/100 Dollars (\$600,222.72) during the Extended Term; One Million Four Thousand Two Hundred Eighty-six and 72/100 Dollars (\$1,004,286.72) during the First Additional Extended Term; and One Million Twenty-six Thousand Five Hundred Seventy-two and 68/100 Dollars (\$1,026,572.68) during the

Second Additional Extended Term. In addition, the Parties agree that the City's payment obligation, whether direct or contingent, shall extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Third Amendment. The Parties agree that (i) the City does not, by this Third Amendment, irrevocably pledge present cash reserves for payment or performance in future fiscal years; (ii) this Third Amendment is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City; and (iii) in the event the City does not appropriate funds sufficient to pay the financial obligation incurred under this Third Amendment for the next ensuing calendar year, then the Lease shall terminate effective as of December 31st of the year in which the Denver City Council fails to appropriate such funds. Upon such termination, the City shall vacate the Leased Premises and surrender the same to Lessor in the condition required by the Lease, and upon such surrender, the Parties shall be released and relieved of their respective obligations under the Lease, as amended, not accrued as of the date of termination.

<u>Lease Period</u>	<u>Total Rent for Period</u>
Original term plus original renewals (1/1/2006 – 12/31/2010)	\$844,868.75
Month-to-Month Tenancy (1/1/2011 – 12/31/2018)	\$680,064.00
<u>Extended Term (1/1/2019 – 12/31/2023)</u>	<u>\$600,222.72</u>
Total Including All Amendments (1/1/2006 – 12/31/2023)	\$2,125,155.47
First Additional Extended Term (1/1/2024 – 12/31/2030), if exercised	\$1,004,286.72
<u>Second Additional Extended Term (1/1/2031 – 11/29/2036), if exercised</u>	<u>\$1,026,572.68</u>
Total Including All Amendments (1/1/2006 – 11/29/2036)	\$4,156,014.87

7. **Notices:** Section 29 of the Lease is hereby deleted in its entirety. Notwithstanding anything to the contrary contained in the Lease, all notices, consents, waivers or other communications (collectively, "**Notices**") which the Lease and/or this Third Amendment requires or permits any Party to give to another Party shall be in writing and shall be given by personal delivery (including delivery by messenger or private express courier service such as Federal Express), or by registered or certified United States Mail, or Express U.S. Mail, return receipt requested, postage prepaid, addressed to the Parties at the following address(es):

Notice Address of Lessor:

Albertsons Companies
 Attn: Real Estate Manager
 Surplus Facility #05-0244-15-05
 250 East Parkcenter Boulevard
 Boise, ID 83706

With a copy to:

Safeway Inc.
 Attn: Real Estate Law
 Surplus Facility #05-0244-15-05
 5918 Stoneridge Mall Road
 Pleasanton, CA 94588-3229

And, for Lessor default notices under the Lease, a copy to:

Albertsons Companies, LLC
 Attn: 74200 – Legal Department
 Surplus Facility #05-0244-15-05
 250 East Parkcenter Boulevard
 Boise, ID 83706

[City's addresses appear on the following page]

Notice Address of the City:

Mayor's Office
City and County Building
1437 Bannock Street, Room 350
Denver, CO 80202

With copies to:

City and County of Denver
Division of Real Estate
201 W. Colfax Ave, Dept. 1010
Denver, CO 80202

City and County of Denver
Assistant City Attorney
201 W. Colfax Ave., Dept 1207
Denver, CO 80202

Either Party may change its mailing address information at any time by giving Notice of such change to the other Party in the manner provided above at least ten (10) days prior to the date such change is effected. Notices sent in accordance with this Section shall be effective upon receipt or on the date of refusal to accept delivery of the Notice.

8. **Ratification:** Except as modified by this Third Amendment, the Lease is hereby ratified and affirmed and remains in full force and effect.
9. **Binding Effect:** The terms, covenants and conditions set forth in this Third Amendment shall be binding upon an inure to the benefit of the City, Lessor and their respective permitted successor and assigns. In this Third Amendment, the singular includes the plural and one gender includes all others.
10. **Counterparts:** This Third Amendment may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.
11. **Definitions:** Any capitalized terms not defined herein shall be given the meanings assigned to them in the Lease.

IN WITNESS WHEREOF, the Parties have executed, through their respective lawfully empowered representatives, this Third Amendment to Lease and Agreement as of the day and year first above written.

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Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



11. **Definitions:** Any capitalized terms not defined herein shall be given the meanings assigned to them in the Lease.

IN WITNESS WHEREOF, the Parties have executed, through their respective lawfully empowered representatives, this Third Amendment to Lease and Agreement as of the day and year first above written.

CITY:

LESSOR:

ATTEST:

SAFeway INC.,
a Delaware corporation
Taxpayer (IRS) Identification No. 94-3019135

_____, Clerk and Recorder
Ex-Officio Clerk of the City and County of Denver

By: Walter K. Bussey
Authorized Signer

APPROVED AS TO FORM:

_____, Attorney
for the City and County of Denver

FORM APPROVED: LA

By: _____
Assistant City Attorney

CITY AND COUNTY OF DENVER

By: _____
Mayor

RECOMMENDED AND APPROVED:

By: _____
Manager of Revenue

By: _____
Director, Asset Management

REGISTERED AND COUNTERSIGNED:

By: _____
Auditor
Contract Control No. CE45018(2)

