

Approved as to form:

By:  for \_\_\_\_\_  
Veronica Nebb, City Attorney

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“**Agreement**”) is entered into this \_\_\_ day of September, 2022 (the “**Effective Date**”), by and between Safeway Inc. (“**Safeway**”), a Delaware corporation (“**Safeway**”), the City of Vallejo, a California municipal corporation (“**City**”), and Vallejo-Fairview Developers, LLC, a Delaware limited liability company (“**VFD**”). Safeway, City and VFD are referred to herein collectively as the “**Parties**” and individually as a “**Party.**”

**RECITALS**

WHEREAS, on April 20, 2020, the City of Vallejo Planning Commission adopted Resolution No. PC 20-01 which approved Vesting Tentative Map #TM17-0002 and recommended approval of the remaining Project entitlements to the City Council;

WHEREAS, (i) on June 9, 2020, the City of Vallejo City Council (“**Council**”) approved the development of a vacant site at the southeast corner of Admiral Callaghan Lane and Turner Parkway in the City of Vallejo (“**City**”) (APN: 0081-490-010), generally referred to as Fairview at Northgate which includes an approximate 152,138 square foot Costco warehouse (the “**Warehouse**”) with a Costco fuel center containing 30 fueling positions (15 dispensers) (the “**Fuel Center**”), an approximate 27,500 square feet of additional retail development (the “**Non-Costco Retail**”), and 178 single family residential lots (collectively the “**Project**”), by adopting Resolution No. 20-065 which certified the Final Environmental Impact Report (the “**FEIR**”) under the California Environmental Quality Act (“**CEQA**”) and adopting Planned Development #PD17-0007, Major Use Permit #UP18-0007, Zoning Map Amendment #ZMA17-0001, and upheld the Planning Commission’s approval of Vesting Tentative Map #TM17-0002, (ii) on May 25, 2021, the Council approved a Public Infrastructure Construction and Reimbursement Agreement and a related Loan Agreement and Resolution No. 21-058 N.C. for the Project, and (iii) on June 8, 2021, the Council passed Ordinance No. 1851 N.C. for the establishment of the Costco Loan Special Fund as required by the Loan Agreement (collectively, the “**Project Approvals**”);

WHEREAS the development of the Project will also require the future approval of entitlements and permits from the City and other public agencies including, but not limited to, tentative maps, conditional use permits, building permits, design review approvals, grading permits, encroachment permits, traffic control permits, construction permits, stormwater permits, air quality permits, and all approvals necessary to implement mitigation measures, conditions of approval and requirements in the mitigation monitoring and reporting program under CEQA (including, without limitation, off-site improvements), or any subsequent review under CEQA by the City or any responsible agency, and all other entitlements, permits, or approvals that may become necessary for the Project. These future entitlements and permits relating to the Project are collectively referred to as “**Future Project Approvals.**” As used herein the term “**Project**” is inclusive of the Project Approvals, the Future Project Approvals and all future development of any

of the real property described in the FEIR, including, without limitation that real property currently planned for development by VFD, its successors and future tenants;

WHEREAS, on June 16, 2020, the City filed and the County Clerk of Solano County posted a Notice of Determination for the Project;

WHEREAS, Safeway operates three grocery stores and one gas station in the City, including store #989 (the “**RP Safeway Store**”) located in Redwood Plaza Shopping Center (the “**Center**”);

WHEREAS, on October 28, 2020, Safeway initiated a lawsuit in the Superior Court of California, County of Solano (the “**Court**”), Case No. FC5055595 (the “**Action**”), to challenge the City’s approval of the Project Approvals;

WHEREAS, on May 19, 2022, Safeway’s petition for writ of mandate in the Action was denied by the Court and Notice of Entry of Order was served on the Parties (the “**Judgment**”) and on July 15, 2022, Safeway filed an appeal of the Judgment in the Fourth District Court of Appeals, Case No. A165668 (the “**Appeal**”);

WHEREAS, the Parties have engaged in protracted negotiations to resolve all issues in dispute relating to the Project, including, without limitation, those issues set forth in the Action and the Appeal (collectively, the “**Dispute**”); and

WHEREAS, the Parties believe it would be in their respective best interests to settle the Dispute on the terms and conditions specified in this Agreement. Therefore, the Parties have entered into this Agreement in settlement, fully and forever, of all rights, duties, liabilities, claims, demands, damages, rights of action, and causes of action, whether known or unknown, contingent and otherwise, between the Parties with respect to or relating in any way to the Dispute in accordance with the terms and conditions of this Agreement.

## **AGREEMENT**

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

1. Consideration for Releases and Waivers.

- 1.1. Admiral Callaghan Lane Restriping. City agrees to restripe the northbound right turn lane on Admiral Callaghan Lane at the Rotary Way intersection to a through lane as generally shown on Exhibit A attached hereto to allow for northbound movement through the Rotary Way intersection (the “**Restriping Work**”). The Restriping Work shall be completed by the City in accordance with plans prepared and approved by the City, within 150 days after the Effective Date. All costs and expenses incurred by the City to design and complete the Restriping Work shall be paid by VFD upon written request of the City. VFD may not commence any grading of the

Project or any other Project construction until the Restriping Work is completed. City agrees that after the additional northbound lane between Rotary Way and Turner Parkway is completed by VFD as part of the Project and opened by the City for public use, the Restriping Work will be modified to accommodate that additional lane of traffic as generally shown on **Exhibit A-1** attached hereto. From and after completion of the Restriping Work, the City reserves the right, if the City deems reasonably necessary for traffic safety reasons, to modify the Restriping Work (or to install additional traffic control measures) after thirty (30) days prior written notice to Safeway, and such actions shall not constitute a breach of this Agreement.

- 1.2. **Construction Management/Access Plan.** VFD agrees, as part of the development and operation of the Project, to implement a construction management plan approved by the City (the “**CMP**”) which includes, in part, (i) phasing the construction of the Project right-of-way improvements within Admiral Callaghan Lane as identified in **Exhibit B** so that vehicular access in either the northbound or southbound directions within Admiral Callaghan Lane is not impeded, and (ii) installing the Project utility improvements in a manner that will not interrupt utility service to Safeway at Redwood Plaza. City agrees that the permits issued by the City for the construction of those right-of-way and utility improvements will require VFD compliance with the CMP.
- 1.3. **Truck Routes.** VFD agrees that all construction trucks during construction of the Project, and all delivery trucks controlled by Costco during its operation of the Warehouse and Fuel Center, are prohibited from using that section of Admiral Callaghan Lane between Redwood Parkway and Rotary Way between the hours of 9:00 a.m. to 8:00 p.m. as set forth on **Exhibit C** attached hereto.
- 1.4. **Administrative Record.** City agrees to waive the payment by Safeway of any costs incurred by City in its preparation of the Administrative Record for the Action.
- 1.5. **Safeway Legal Fees.** VFD agrees to pay to Safeway, by wire transfer in accordance with wire instructions to be provided by Safeway, all attorneys’ fees and legal costs incurred by Safeway in the Dispute which shall not exceed the amount of \$250,000 (subject to increase as set forth below in this Section 1.5) (the “**Safeway Payment**”). Provided the Dismissal was previously filed by Safeway in accordance with Section 2, then the Safeway Payment shall be paid to Safeway no later than three (3) business days after the close of First American Title Escrow No.0131-621755ala (the “**Escrow**”) for VFD’s acquisition of fee title to the real property (APN: 0081-490-010) that comprises the Project (the “**Property Closing**”). On the day of the Property Closing, VFD shall notify Safeway and City in writing of the Property Closing.

If the Property Closing does not occur within sixty (60) days after the Dismissal is filed by Safeway, then the Safeway Payment in the amount of

\$250,000 (or such lesser amount equal to the actual amount of attorney's fees then incurred by Safeway in the Dispute as reasonably documented by Safeway), shall be deposited into the Escrow with instructions signed by VFD and Safeway (the "**Escrow Instructions**") to First American Title ("**Escrow Holder**") to release the Safeway Payment to Safeway at the Property Closing so long as the Property Closing occurs on or before March 28, 2024 (the "**Outside Property Closing Date**"). The Escrow Instructions shall also provide that if the Escrow has not previously terminated and the Property Closing has not occurred by September 30, 2023, then Escrow Holder shall release \$100,000 of the Safeway Payment to Safeway which shall be nonrefundable to VFD and retained by Safeway even if Escrow is terminated before, or fails to close by, the Outside Property Closing Date. If the Escrow is terminated before, or fails to close by, the Outside Property Closing Date, then (i) the City agrees to rescind the Project Approvals within ninety (90) days thereafter and (ii) the next business day after the City rescinds the Project Approvals, Safeway shall retain the \$100,000 previously released to Safeway, Escrow Holder shall return the remainder of the Safeway Payment to VFD and VFD shall thereafter have no further obligation to pay the Safeway Payment, provided the terms of Section 9.10 shall apply with regards to any attorneys' fees and legal costs incurred by the Parties to enforce this Agreement. However, if the City fails to rescind the Project Approvals within ninety (90) days after such termination or failure to close the Escrow, but no later than June 26, 2024, then the remainder of the Safeway Payment in Escrow shall be released by Escrow Holder to Safeway. The Safeway Payment shall accrue, from the date the Dismissal is filed until the Safeway Payment is paid to Safeway, simple, non-compounded interest, at the rate of five percent (5%) per annum, and such interest shall be paid in full by VFD with the Safeway Payment after the Property Closing. Safeway agrees that neither this agreement by VFD to pay the Safeway Payment, nor any decision by VFD to not purchase the Property or develop the Project, means that Safeway was the prevailing party in the Dispute.

Notwithstanding the foregoing, in the event the City fails to complete the Restriping Work within the 150-day period required above, then the Safeway Payment shall be increased to include any attorneys' fees and legal costs reasonably incurred by Safeway, until the Restriping Work is completed by the City, (i) in briefing for the Appeal to meet the Court's briefing schedule but such additional fees shall not exceed \$75,000, and (ii) in prosecuting the Appeal after all briefing has concluded. VFD and Safeway shall jointly request a settlement conference and otherwise cooperate to cause the Court to delay any such briefing until after the Restriping Work is completed.

2. Dismissal of Action.

Within twenty (20) days after City delivers Safeway written notice that the Restriping Work is completed, Safeway agrees to file a dismissal of the Appeal with prejudice (the “**Dismissal**”). Safeway shall deliver conformed copies of the Dismissal to City and VFD within that 20-day period. Failure by Safeway to file the Dismissal within the time period set forth herein shall constitute a material breach of this Agreement by Safeway; provided, notice of the failure to file the dismissal shall be sent to Safeway with a ten (10) day period of time to cure.

3. No Future Project Opposition.

Provided VFD is not in default of this Settlement Agreement, neither Natalie Mattei, Steven Berndt, nor any other person acting on behalf of Safeway (or on behalf of any parent company, affiliate or subsidiary of Safeway (collectively, “**Safeway Related Entity**”), shall, at any time, provide any advice, support, assistance or representation of any kind to any person, union or entity, or coordinate or cooperate in any manner with any person or entity, contemplating or taking any action to, nor shall Safeway (or any Safeway Related Entity) itself, oppose, impede, challenge, object to, or file any further claim, action, appeal, or lawsuit against the Project Approvals or any Future Project Approvals. Any violation of this Section 3 by Safeway or by any Safeway Related Entity, or by any person acting on behalf of Safeway (or on behalf of any Safeway Related Entity) shall be deemed to be a breach of this Agreement; provided this Section 3 shall not apply to actions taken by employees of Safeway who are acting in his or her personal interests; provided, further, should there be a breach of this Section 3, notice shall be issued to Safeway and Safeway shall correct the noncompliance and, if promptly corrected, the breach shall be withdrawn.

This Section 3 shall not apply to any Future Project Approvals which either (i) provide for development uses not permitted by the Project Approvals (the “**Non-Permitted Uses**”), and/or (ii) propose substantial changes to the retail portion of the Project Approvals that (a) will require the City to prepare an addendum to the FEIR or a subsequent EIR in accordance with CCR Section 15162 (a)(1), and (b) will cause, as reasonably determined by Safeway, new significant environmental effects on traffic/transportation, or a substantial increase in the severity of previously identified significant effects on traffic/transportation, that impact vehicular, bicycle, or pedestrian access to and/or circulation around the Center. In the event Safeway has a concern triggered by (i) or (ii) above, then Safeway and VFD shall use good faith efforts to meet and confer prior to any approval being granted on the Future Project Approvals. This Section 3 shall also not apply to any Future Project Approvals which increase the building square footage of the Warehouse in excess of 152,138 square feet, or which increase the number of fueling positions at the Fuel Center to more than 32 (16 dispensers), or which increase the fuel throughput at the Fuel Center in excess of 36,000,000 gallons (collectively, a “**Costco Expansion**”).

Notwithstanding the foregoing paragraph, provided the Future Project Approvals listed below are not for Non-Permitted Uses and do not include a Costco Expansion and/or any physical or access changes to Admiral Callaghan Lane or its intersections adjacent to the Center<sup>1</sup>, this Section 3 shall be deemed to apply to:

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<sup>1</sup> “adjacent to the Center”, as used in this Agreement, means that length of Admiral Callaghan Lane between Rotary Way and the southernmost boundary of the Center.

- (i) any Future Project Approvals for either of the alternative site plans attached herein as **Exhibit D** or **Exhibit D-1**, or
- (ii) any increase in the number of fuel pumps at the Fuel Center to a maximum of 32 provided the fuel throughput does not exceed 36,000,000 gallons; or
- (iii) any Future Project Approvals for the relocation or reconfiguration of the 27,500 square feet of building permitted by the Project Approvals within the Non-Costco Retail, or
- (iv) so long as the incremental traffic resulting from any Future Project Approvals does not increase the then current PM peak and/or Saturday mid-day traffic trips by more than 5% at the intersection of Rotary Way and Admiral Callaghan Lane and at the I-80 on/off ramp connections to Admiral Callaghan Lane adjacent to the Center, then to any Future Project Approvals:
  - (a) for any restaurants with a drive-through within the Non-Costco Retail in excess of the restaurants with a drive-through identified in **Exhibits D or D-1**, or
  - (b) for any increase in the total building square footage of 27,500 square feet within the Non-Costco Retail, or
  - (c) for the conversion of the Fuel Center to a non-Costco restaurant with a drive-through or a non-Costco retail use.

4. Full Release and Waiver by Safeway.

Safeway, for itself and for its existing and all future Safeway Related Entities, and for all existing and future officers, directors, owners, managers, members, board members, employees, agents, attorneys, representatives and legal successors, heirs and assigns, and each of them, in their official capacity as an officer, director, owner, manager, member, employee, agent, attorney, representative or legal successor, heir or assign of Safeway (the “**Safeway Releasing Parties**”), voluntarily and knowingly waive, release and discharge forever (i) VFD, its affiliates and their respective officers, directors, partners, owners, managers, members, employees, agents, attorneys, representatives, consultants, contractors, and legal successors and assigns, including all future land purchasers, ground lessees, and tenants within the Project, and each of their collective affiliates (collectively, “**VFD Parties**”) and (ii) the City and its officials, officers, directors, employees, agents, attorneys, consultants, contractors, and representatives (collectively, “**City Parties**”) (the VFD Parties and the City Parties collectively herein the “**City/VFD Released Parties**”), from any and all rights, claims, charges, complaints, damages, liabilities, obligations, promises, controversies, actions, causes of action in law or equity, suits, rights, attorneys’ fees, demands, costs, losses, penalties, liens, debts, interest or expenses of any nature whatsoever, whether known or unknown, whether suspected or unsuspected, whether now existing or hereinafter arising, contingent and otherwise, against any of the City/VFD Released Parties, which arise out of the Dispute or the Restriping Work. A Safeway affiliate is an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Safeway. The Safeway Releasing Parties acknowledge and agree this Agreement shall operate as a complete bar of any and all litigation, charges, complaints, grievances, demands, or administrative proceedings or remedies now pending or which might at any time be filed by

Safeway Releasing Parties as to any City/VFD Released Parties regarding matters arising out of or related in any way to the Dispute or the Restriping Work. Each and all of the aforesaid claims are hereby fully and finally settled, compromised, and released. This release and the terms of this Section 4 do not apply to any of the obligations of City and/or VFD under this Agreement.

The Safeway Releasing Parties recognize, understand, and expressly agree that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future arising from or attributable to the Dispute or the Restriping Work. Therefore, Safeway Releasing Parties are waiving any and all rights to pursue claims against any City/VFD Released Parties, of any kind or nature relating to any matter, whether or not specifically raised in the Dispute or which it would be entitled to under the laws, regulations, and/or rules applicable to the Dispute or the Restriping Work. Without limiting the foregoing, Safeway acknowledges that the Restriping Work is being performed solely at the request of Safeway to settle the Dispute and is not work that the City required for the Project in the Project Approvals nor would otherwise recommend or require be performed. Safeway acknowledges that the Restriping Work may cause unforeseen or unanticipated traffic problems after the Restriping Work is completed and Safeway Releasing Parties intend to release the City/VFD Released Parties fully and unconditionally from any claims that might arise by reason of such traffic problems in accordance with this Section 4. Provided, notwithstanding anything to the contrary, the release of claims does not include claims for personal injury or property damage that arise out of, or in connection with, the performance of the Restriping Work and which injury or damage occurs during the Restriping Work.

Safeway represents and warrants to City and VFD that it (a) has all necessary power and authority to make such release, including any necessary consent or approval from any person (including, for the avoidance of doubt, the Safeway Releasing Parties), and (b) has not heretofore transferred or attempted to transfer all or any part of any such thing released in any manner whatsoever, including by way of subrogation or operation of law. Safeway further represents and warrants to City and VFD that its release and waiver under this Agreement is executed voluntarily and without duress or undue influence on the part of any other person or entity whatsoever.

**Waiver of Civil Code Section 1542:** The foregoing releases are intended to extend to all such claims, known or unknown, suspected or unsuspected, and Safeway, on behalf of itself and the Safeway Releasing Parties, expressly waives and relinquishes any rights and benefits that they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Safeway Initials: \_\_\_\_\_

Safeway acknowledges that they have specifically reviewed with their attorneys the meaning and effect of the release and waiver set forth in this Section 4, including the language from Civil Code Section 1542 quoted above, and their attorneys have fully explained the impact of these provisions, and Safeway knowingly accepts the risks associated with these provisions.

Safeway represents and warrants that they own the right to release and all of the claims released herein, that no other person or entity has or has had any interest in the claims released herein, and that they have not transferred, sold, assigned or conveyed, or otherwise disposed of any of the claims released herein. The Safeway Releasing Parties shall indemnify, defend, and hold harmless the City/VFD Released Parties, from and against any claims based upon or arising in connection with any prior or future assignment or transfer, or any purported assignment or transfer, of any claims or other matters released or assigned herein.

The Safeway Releasing Parties understand that if the facts or law with respect to which the foregoing releases are given hereafter turn out to be other than or different from the facts or law in that connection not known to be or believed by each of them to be true, each of them expressly assumes the risk of the facts or law turning out to be so different, and agrees that the foregoing releases shall be in all respects effective and not subject to termination or rescission based upon any such differences in facts or law.

5. Full Release and Waiver by City and VFD. City and VFD each, for itself and for its existing and all future affiliates, and for all existing and future officers, directors, owners, managers, members, board members, employees, agents, attorneys, representatives and legal successors, heirs and assigns, and each of them, in their official capacity as an officer, director, owner, manager, member, employee, agent, attorney, representative or legal successor, heir or assign of City or VFD (the “**City/VFD Releasing Parties**”), voluntarily and knowingly waive, release and discharge forever Safeway, its affiliates and its and their respective officers, directors, partners, owners, managers, members, employees, agents, attorneys, representatives, consultants, contractors, and legal successors and assigns (collectively, “**Safeway Released Parties**”) from any and all rights, claims, charges, complaints, damages, liabilities, obligations, promises, controversies, actions, causes of action in law or equity, suits, rights, attorneys’ fees, demands, costs, losses, penalties, liens, debts, interest or expenses of any nature whatsoever, whether known or unknown, whether suspected or unsuspected, whether now existing or hereinafter arising, contingent and otherwise, against any of the Safeway Released Parties, which arise out of the Dispute. A VFD affiliate is an entity that directly or indirectly, through one or more intermediaries,



controls, is controlled by, or is under common control with VFD. The City/VFD Releasing Parties acknowledge and agree this Agreement shall operate as a complete bar of any and all litigation, charges, complaints, grievances, demands, or administrative proceedings or remedies now pending or which might at any time be filed by City/VFD Releasing Parties as to any Safeway Released Parties regarding matters arising out of or related in any way to the Dispute. Each and all of the aforesaid claims are hereby fully and finally settled, compromised, and released. This release and the terms of this Section 5 do not apply to any of the obligations of Safeway under this Agreement.

The City/VFD Releasing Parties recognize, understand, and expressly agree that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future arising from or attributable to the Dispute. Therefore, City/VFD Releasing Parties are waiving any and all rights to pursue claims against any Safeway Released Parties, of any kind or nature relating to any matter, whether or not specifically raised in the Dispute or which it would be entitled to under the laws, regulations, and/or rules applicable to the Dispute.

The City/VFD Releasing Parties each represent and warrant to Safeway that City and VFD each, (a) has all necessary power and authority to make such release, including any necessary consent or approval from any person (including, for the avoidance of doubt, the City/VFD Releasing Parties), and (b) has not heretofore transferred or attempted to transfer all or any part of any such thing released in any manner whatsoever, including by way of subrogation or operation of law. The City/VFD Releasing Parties further represent and warrant to Safeway that the release and waiver by City/VFD Releasing Parties under this Agreement is executed voluntarily and without duress or undue influence on the part of any other person or entity whatsoever. Any violation of this Section 5 by any of the City/VFD Releasing Parties shall be deemed to be a breach of this Agreement by City or VFD as applicable.

**Waiver of Civil Code Section 1542:** The foregoing releases are intended to extend to all such claims, known or unknown, suspected or unsuspected, and each of the City/VFD Releasing Parties expressly waives and relinquishes any rights and benefits that they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY**

City Initials: \_\_\_\_\_ VFD Initials: \_\_\_\_\_

City and VFD each acknowledge that they have specifically reviewed with their attorneys the meaning and effect of the release and waiver set forth in this Section 5, including the language from Civil Code Section 1542 quoted above, and their attorneys have fully explained the impact of these provisions, and City and VFD each knowingly accepts the risks associated with these provisions.

City and VFD each represents and warrants that they own the right to release and all of the claims released herein, that no other person or entity has or has had any interest in the claims released herein, and that they have not transferred, sold, assigned or conveyed, or otherwise disposed of any of the claims released herein. The CFD/VFD Releasing Parties shall indemnify, defend, and hold harmless the Safeway Released Parties, from and against any claims based upon or arising in connection with any prior or future assignment or transfer, or any purported assignment or transfer, of any claims or other matters released or assigned herein.

The City/VFD Releasing Parties understand that if the facts or law with respect to which the foregoing releases are given hereafter turn out to be other than or different from the facts or law in that connection not known to be or believed by each of them to be true, each of them expressly assumes the risk of the facts or law turning out to be so different, and agrees that the foregoing releases shall be in all respects effective and not subject to termination or rescission based upon any such differences in facts or law.

6. Cooperation on Additional Documents.

Each of the Parties agrees to execute and deliver to each of the other Parties all additional documents, instruments, and agreements required to take such additional actions as are required to implement the terms and conditions of this Agreement.

7. Binding Effect and Third Parties.

The Parties agree that the obligations and benefits arising out of this Agreement, including, but not limited to, the releases set forth in Sections 4 and 5, and each of the terms of this Agreement, shall be binding upon and shall inure to the benefit of any successors and assigns of the Parties. This shall include Safeway, City and VFD's right to transfer its interest in this Agreement to any future successors and assigns without the permission or consent by any other Party.

8. Execution Not an Admission.

This Agreement is strictly for the purposes of compromising the Dispute. By entering into this Agreement, no Party hereto admits that the claims or contentions of the other were or are valid or meritorious. Each Party hereto has in the past denied and continues to deny the claims, assertions, allegations and contentions of the others and their ability to make such claims. Neither this Agreement, the negotiations nor discussions resulting in or connected with this Agreement, nor anything stated herein or therein shall be admissible in any court of law or equity or before any administrative body for the purpose of establishing or supporting a claim by Safeway of any wrongdoing or guilt on behalf of City or VFD, or by City or VFD of any wrongdoing or guilt on behalf of Safeway, or for any other purpose.

9. Additional Terms.

9.1 Final Integrated Agreement

This Agreement contains the entire agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations and agreements between the Parties, whether written or oral. Each of the Parties hereto acknowledges that no other Party, nor the agents nor attorneys for any Party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein, to induce the execution of this Agreement and acknowledges that this Agreement has not been executed in reliance upon any promise, representation or warranty not contained herein. Each Party has participated, cooperated or contributed to the drafting and preparation of this Agreement. This Agreement shall not be construed for or against any Party but shall be construed fairly according to its plain meaning, and shall be unconditionally supported by all Parties in all forums.

9.2 Understanding of Agreement

Each Party understands and agrees to this Agreement, the terms and conditions contained herein and, in the documents, referred to herein, and has relied upon his, her, or its own judgment, belief, knowledge, understanding, and expertise after careful consultation with his, her, or its own legal counsel concerning the legal effect of all of the terms of this Agreement.

9.3 Voluntary Settlement

Each Party enters into this Agreement knowingly and voluntarily, in the total absence of any fraud, mistake, duress, coercion, or undue influence, and after careful thought and reflection upon the settlement, this Agreement, and the documents referred to herein; and, accordingly, by signing this Agreement and the documents referred to herein, each signifies full understanding, agreement, and acceptance. Each Party to this Agreement acknowledges and represents that he/she/it has read this Agreement and understands all of its terms.

9.4. Investigation of Facts; Consultation with Independent Counsel

Each Party has investigated the facts and had the opportunity to consult with independent counsel pertaining to this Agreement and all matters pertaining thereto as deemed necessary by each.

9.5. California Law, Jury Waiver

This Agreement, and the documents referred to herein, shall be governed by and construed and interpreted in accordance with, the laws of the State of California. EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

9.6. Multiple Counterparts

This Agreement may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument, notwithstanding that all the Parties are not signatories to the original or same counterpart. The Parties shall each receive a fully executed original of the Agreement.

9.7. Waiver, Modification, and Amendment

No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified, or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

9.8. Effective Date

This Agreement shall be effective upon execution by all Parties.

9.9. Captions/Language

Section, paragraph, and other captions or headings contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend or otherwise describe the scope or intent of this Agreement or any provision hereof and shall not affect in any way the meaning or interpretation of this Agreement. In the language of this document and the documents referred to herein, the singular and plural numbers, and the masculine, feminine and neutral genders, shall each be deemed to include all others, and the word "person" shall be deemed to include corporations and every other entity, as the context may require.

#### 9.10. Attorneys' Fees

Except for the Safeway Payment by VFD to Safeway, the Parties shall each bear their own attorneys' fees, costs, expenses (including expert witness fees and expenses) incurred with respect to the subject matter of the Dispute, including this Agreement and each Party waives the recovery of all such attorneys' fees, costs, expenses from any of the other Parties; provided if any action or proceeding is brought by any Party against any or all of the other Parties under this Agreement, to interpret or enforce this Agreement, including all appeals of any such actions or proceedings, the prevailing Party shall be entitled to recover reasonable costs and expenses, as determined by the Court, including attorneys' fees, expert witness fees, and court costs, incurred for prosecution, defense, consultation, or advice in such action or proceeding.

#### 9.11. Proceedings to Enforce Agreement

The Parties agree that any dispute or controversy in any way arising out of, related to, or connected with Sections 1.1, 1.5, or 2 of this Agreement, shall be resolved through a confidential, final and binding arbitration at the office for JAMS that serves Solano County, California, before a mutually selected arbitrator with JAMS who shall issue a written award upon which judgment may be obtained ("**JAMS Arbitration**"). Those Parties involved in such arbitration shall each be responsible for their own attorneys' fees and costs. The arbitrator shall have authority to enforce this Agreement as if under California Code of Civil Procedure section 664.6. Any such arbitration shall be governed by the laws of the State of California, and the venue of such arbitration shall take place in Solano County, California. Any other dispute or controversy in any way arising out of, related to, or connected with this Agreement or the subject matter thereof may be litigated by the Parties in the Superior Court for the Solano County, California if the Parties do not all agree to arbitration in accordance with the foregoing terms of this Section 9.11 ("**Judicial Litigation**"). With regards to Section 1.1, any action that concerns the City's Restriping Work is subject to JAMS Arbitration and any action that concerns VFD's grading of the Project or other Project construction in violation of Section 1.1 is subject to Judicial Litigation.

#### 9.12 VFD Continuing Indemnification Obligation to City

Notwithstanding anything to the contrary in this Agreement or in City of Vallejo Resolution No. 20-01 PC, VFD agrees that its indemnification obligations set forth in General Condition of Approval number 50 contained within Resolution No. 20-01 PC shall include VFD's operations and obligations under this Agreement including, but not limited to, any of the costs set forth in section 9.10 above.

#### 9.13 Signatories Authority

Each person executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity and/or Parties it purports to bind and such Party has full right and authority and has obtained all consents and approvals and taken all actions necessary to enter into this Agreement, perform all of its obligations hereunder, and consummate all transactions contemplated under this Agreement.

9.14. Recitals

The recitals are incorporated herein and made part of this Agreement.

9.15 Notice

Notices shall be given by personal service, by United States certified or registered mail, postage prepaid, return receipt requested, or by same-day or overnight private courier (such as UPS or FedEx), addressed to the party to be served at the address set forth herein for such party, or as the party to be served may from time to time designate in a notice to the other party (provided that if the address is a post office box, a secondary physical address shall also be provided). Notices personally served shall be effective when delivered to (or refused by) the party upon whom such notice is served. If served by registered or certified mail, notice shall be conclusively deemed served on the date shown on the return receipt, but if delivery is refused or the notice is unclaimed, notice shall conclusively be deemed given forty-eight (48) hours after mailing. If served by private courier, notice to the addressee shall be effective when delivered to (or refused by) the party upon whom such notice is served. Copies of any notice shall be sent to the addresses, if any, designated for service of copies of notices.

**To SAFEWAY:** Safeway Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588-3229  
Attn: RE Law (Vallejo, CA # 989)

**with additional copies to:**

Albertsons Companies Inc.  
250 E Parkcenter Blvd  
Boise, ID 83706  
Attn: Michael Dingel  
Email: michael.dingel@albertsons.com

Safeway Inc.  
c/o NorCal Real Estate  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588-3229  
Attention: Natalie Mattei  
Telephone: (925) 226-5754  
Email: natalie.mattei@safeway.com

Steven A. Herum  
Herum Crabtree Suntag LLP  
5757 Pacific Avenue #222  
Stockton, CA 95207  
Telephone: (209) 472-7700

Email: sherum@herumcrabtree.com

**To VFD:** Vallejo-Fairview Developers LLC  
c/o Lewis Management Corp.  
9216 Kiefer Blvd.  
Sacramento, CA 95826  
Attention: Jeb Elmore  
Telephone: (916) 403-1713  
Email: Jeb.Elmore@lewismc.com

**with a copy to:**

Amanda Monchamp  
Monchamp Meldrum LLP  
100 Pine Street, Suite 1250  
San Francisco, CA 94111  
Telephone: (415) 704-8810  
Email: amonchamp@mllandlaw.com

**To CITY:** City of Vallejo  
City Manager's Office  
555 Santa Clara Street  
Vallejo, CA 94590  
Attention: Mike Malone, City Manager  
Telephone: (707) 648-4576  
Email: mike.malone@cityofvallejo.net

**with a copy to:**

City of Vallejo  
City Attorney's Office  
555 Santa Clara Street  
Vallejo, CA 94590  
Attention: Veronica Nebb, City Attorney  
Telephone: (707) 648-4545  
Email: veronica.nebb@cityofvallejo.net

9.16 Electronic Execution and Delivery. The Parties agree that an electronically made signature, or an original signature which is scanned, will be deemed an original signature and an electronically delivered counterpart deemed an original counterpart.

[All signatures are on the next page]





[Signature Pages – Settlement Agreement and Release]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last signed below and stated above.

**SAFEWAY INC.**

BY: \_\_\_\_\_  
NATACHA EPLEY  
Senior Counsel  
Authorized Representative

DATE: September \_\_\_\_\_, 2022

**HERUM CRABTREE SUNTAG LLP**

BY: \_\_\_\_\_  
STEVEN A. HERUM  
Attorney for SAFEWAY INC.

DATE: September \_\_\_\_\_, 2022

**VFD**

VALLEJO-FAIRVIEW DEVELOPERS, LLC  
a Delaware limited liability company

By: LEWIS MANAGEMENT CORP.,  
a Delaware corporation  
Its Manager

BY: \_\_\_\_\_  
John M. Goodman  
Executive VP/CEO

DATE: September \_\_\_\_\_, 2022

**MONCHAMP MELDRUM LLP**

BY: \_\_\_\_\_  
Amanda Monchamp  
Attorney for VFD

DATE: September \_\_\_\_\_, 2022

[Continued Signature Pages – Settlement Agreement and Release]

**CITY OF VALLEJO**

a public body, corporate and politic

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

Name: Mike Malone

Its: City Manager

DATE: September\_\_\_\_\_, 2022

**APPROVED AS TO FORM**

BY: \_\_\_\_\_

Veronica Nebb

City Attorney

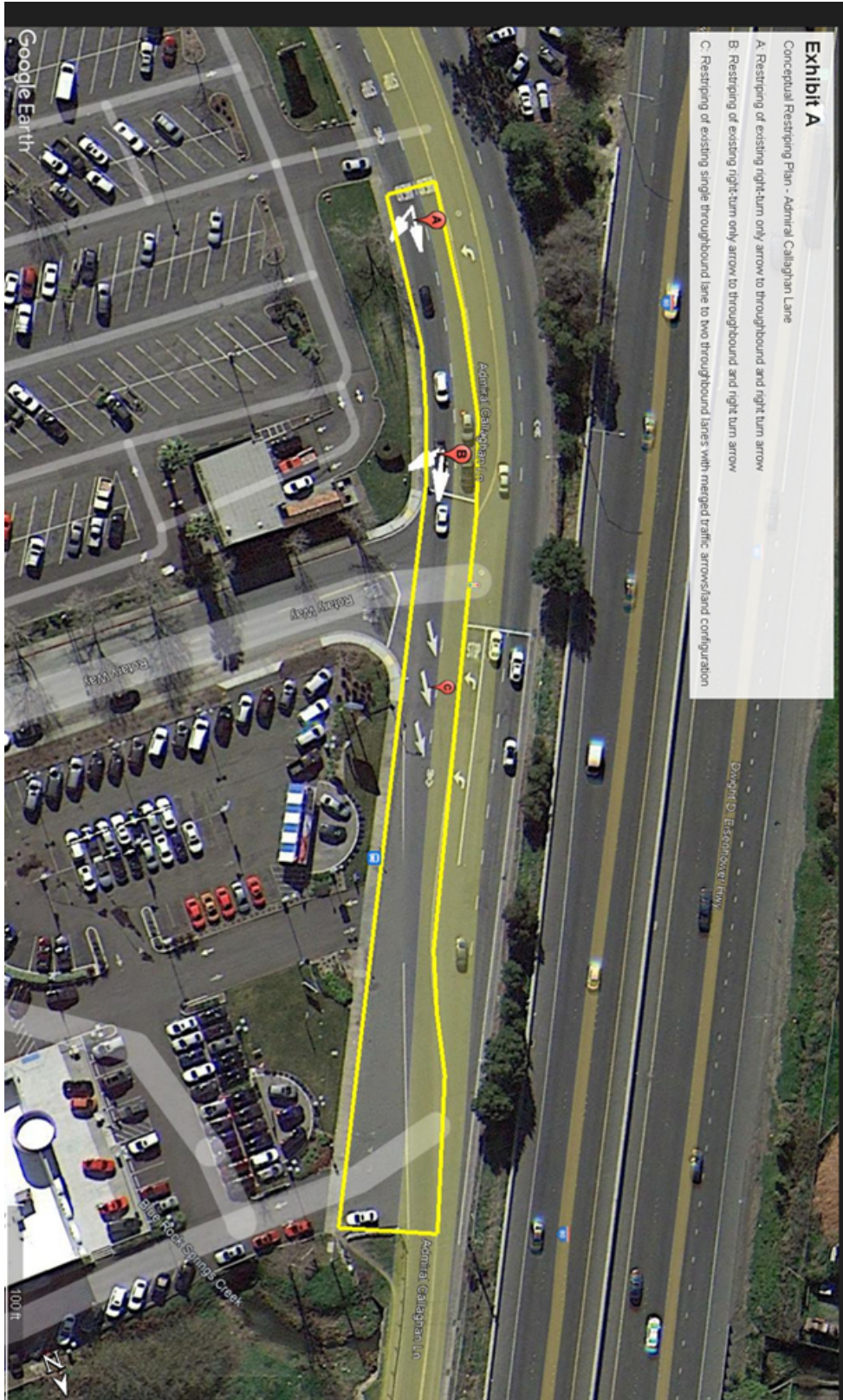
DATE: September\_\_\_\_\_, 2022

**ATTACHMENTS:**

- Exhibit A Restriping Map
- Exhibit A-1 Restriping Map After Additional Northbound Lane
- Exhibit B Construction Management Plan
- Exhibit C Restricted Truck Route Map
- Exhibit D Alternative Site Plan #1
- Exhibit D-1 Alternative Site Plan #2

WBF:aa Z:\Legal\LITIGATION\LITIGATION\Safeway Inc vs City of Vallejo (L-919)\Settlement Negotiations\SAFEWAY SETTLEMENT AGREEMENT AND RELEASE (Lewis 9-7-22 draft #2) clean.docx

EXHIBIT A  
Restriping Map



**Exhibit A**

Conceptual Restriping Plan - Admiral Callaghan Lane

- A. Restriping of existing right-turn only arrow to throughbound and right turn arrow
- B. Restriping of existing right-turn only arrow to throughbound and right turn arrow
- C. Restriping of existing single throughbound lane to two throughbound lanes with merged traffic arrows/land configuration

# EXHIBIT A-1 Restriping Map After Additional Northbound Lane

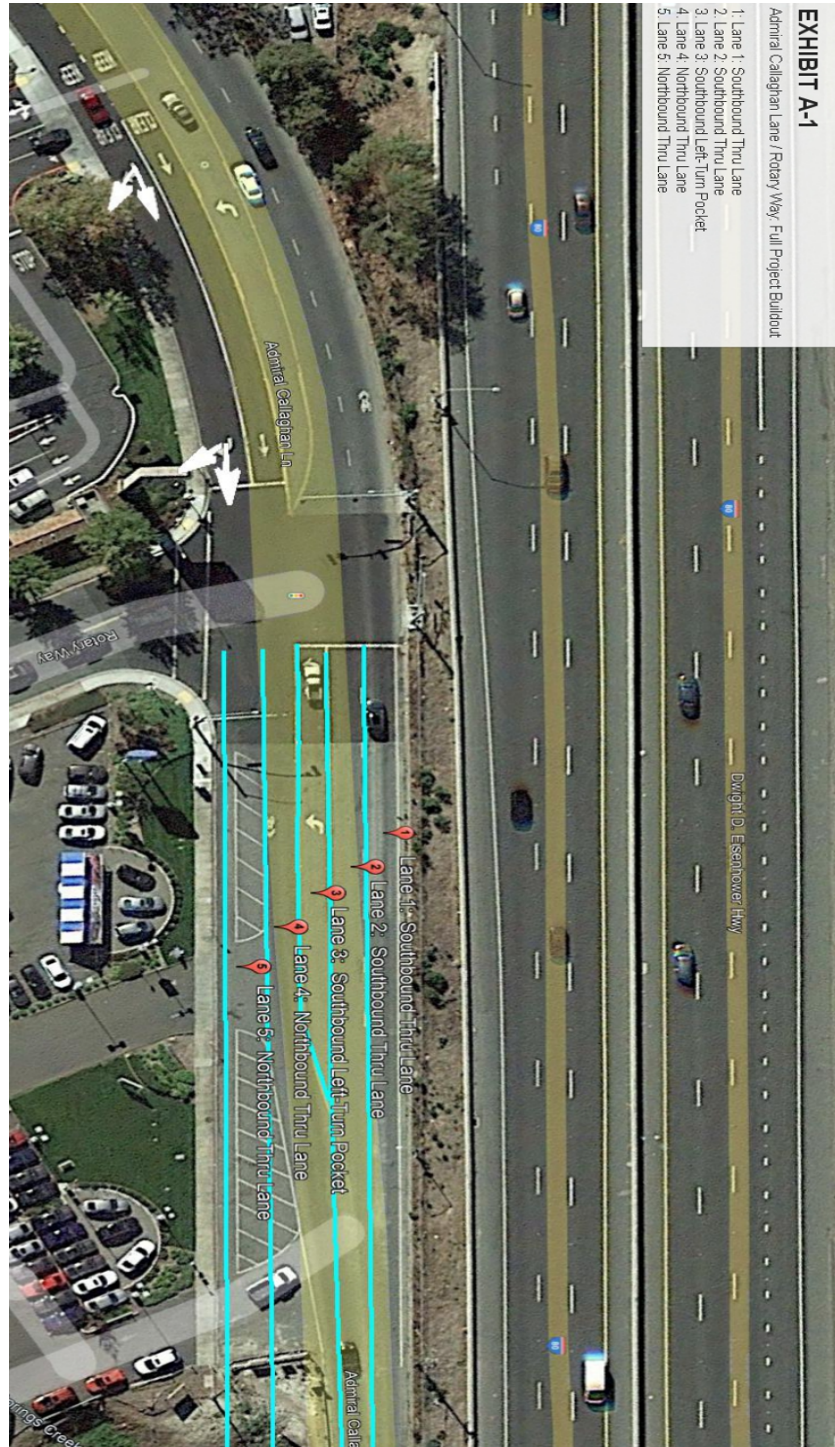


EXHIBIT B  
Construction Management/Access Plan

The following actions will be incorporated into the construction drawings and/or any traffic control plan for the Project in order to (i) minimize disruptions to, and reasonably maintain, accessibility on Admiral Callaghan Lane to Safeway's existing store and loading dock in Redwood Plaza during Project construction, and (ii) reduce construction truck use of Admiral Callaghan Lane between Redwood Parkway and Rotary Lane.

No construction trucks shall be permitted to use Admiral Callaghan Lane between Redwood Parkway and Rotary Lane as set forth on **Exhibit C** attached hereto between the hours of 9:00 a.m. and 8:00 p.m.

Except as provided below, two-way traffic on Admiral Callaghan Lane between Turner and Rotary Lane shall remain open and accessible between the hours of 9:00 a.m. and 8:00 p.m. during Project construction; provided, VFD may need to reduce two-way traffic on, and/or fully close, Admiral Callaghan Lane between Turner and Rotary Lane due to Project construction provided such reduction or closure shall not occur more than 3 successive days and no more than 3 times per month.

A traffic control plan that includes the foregoing requirements shall be submitted with the civil improvement design plans and encroachment permits for Admiral Callaghan Lane and approved by the City.

These restrictions and conditions shall be binding on VFD, its assignees, successors in interest, contractors and subcontracts and anyone conducting construction activity at the Project site.

EXHIBIT C  
Restricted Construction/Costco Delivery Truck Route Map

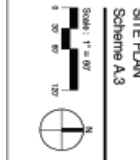




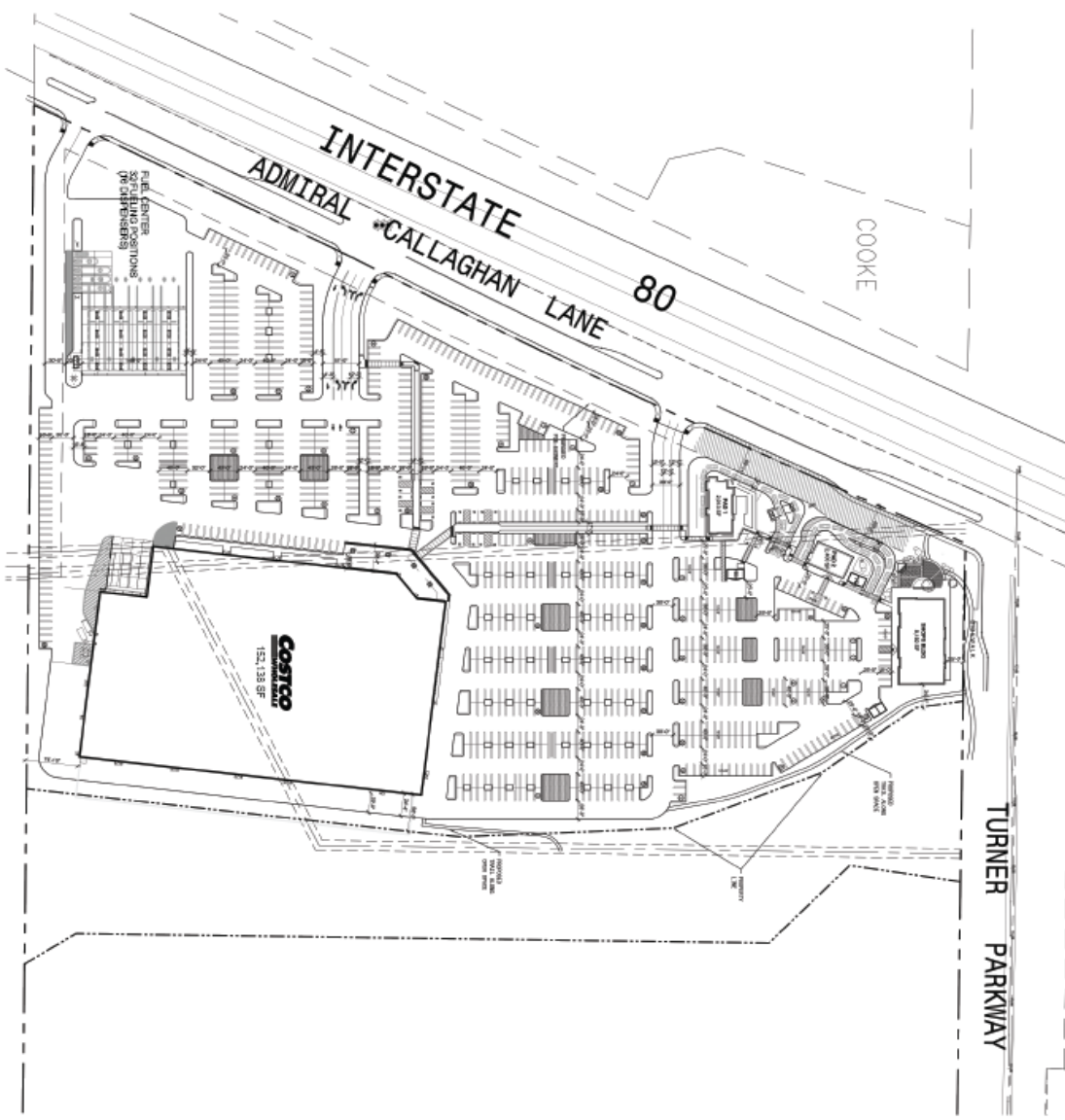


EXHIBIT D-1  
Alternative Site Plan #2

DATE: 08.24.2022  
 PROJECT # 1734001  
 INTERIOR  
 SCALE: 1" = 4'-00"  
 SHEET: A3



**COOKE PROPERTY**  
 VALLEJO, CALIFORNIA



**LOCATION MAP**

**PROJECT SUMMARY**

TOTAL SITE AREA:	± 21.88 ACRES	944,528 SF
TOTAL BUILDING AREA:		152,643 SF
COSTCO WAREHOUSE		152,138 SF
VFD (NON-COSTCO) RETAIL		1,205 SF
VFD (COSTCO)		300 SF
VFD (COSTCO)		300 SF
SHOPS BLDG. (6,100 SF)		
LAND TO BLDG. RATIO:		5.70%
BUILDING COVERAGE:		17.26%
<b>PARKING REQUIRED:</b>		
RETAIL / SHOPS (147,100 SF)	(40,330 SF)	542 STALLS
RESTAURANTS (107,100 SF)	(5,713 SF)	54 STALLS
<b>TOTAL PARKING REQUIRED:</b>		
		608 STALLS
<b>TOTAL PARKING PROVIDED:</b>		
		608 STALLS
<b>PARKING PATIO:</b>		
		5.29 / 1000

CLEVELAND  
 DENVER  
 GLENDDORA  
 IRVINE  
 ORLANDO  
 PHOENIX  
 SAN FRANCISCO



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