

EASEMENTS WITH  
COVENANTS AND RESTRICTIONS AFFECTING LAND (ECR)

THIS AGREEMENT made this 4th day of October, 1983, between SAFEWAY STORES, INCORPORATED, a Maryland corporation, herein called "Safeway," and NEPHI LUMBER, INC., a Utah corporation, herein called "Developer."

A. RECITALS

1. Parcel I Ownership. Safeway is the owner of Parcel I as shown on the plan attached hereto as Exhibit "A" hereof, and which is more particularly described as Parcel I on Exhibit "B" hereof.
2. Parcel II Ownership. Developer is the owner of Parcel II as shown on the plan attached hereto as Exhibit "A" hereof, and which is more particularly described as Parcel II on Exhibit "C" hereof.
3. Purpose. Safeway and Developer desire that Parcels I and II be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial shopping center (sometimes hereinafter referred to as the "shopping center") and desire Parcels I and II be subject to the easements and the covenants, conditions and restrictions hereinafter set forth.

B. AGREEMENT

In consideration that the following encumbrances shall be binding upon the parties hereto and shall attach to and run with Parcels I and II, and shall be for the benefit of and shall be limitations upon all future owners of Parcels I and II and that all easements herein set forth shall be appurtenant to the dominant estates, and in consideration of the promises, covenants, conditions, restrictions, easements and encumbrances contained herein, Safeway and Developer do hereby agree as follows:

C. TERMS

1. Building/Common Areas: Definition.

(a) "Building Areas" as used herein shall mean that portion of Parcel I devoted from time to time to building improvements and that portion of Parcel II shown on Exhibit "A" as "Developer Building Area" (and "Future Building Area").

(b) "Common Areas" shall be all of Parcels I and II except said Building Areas.

(c) Conversion to Common Areas: ~~Those portions of the Building Areas~~ Those portions of the Building Areas on each parcel which are not from time to time used or cannot under the terms of this agreement (including by virtue of 4(a)(1)) be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided in this agreement. An area converted to Common Area may be converted back to Building Area by the development as Building Area, if at the time of conversion back to Building Area it meets the requirements of this agreement (including the provisions of 4(a)(1)).

2. Buildings.

(a) Use: The buildings shall be for commercial purposes of the type usually found in a retail shopping center. The tenants occupying the buildings shall be primarily retail and service tenants of the type normally associated with a retail shopping center.

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(b) **Separation of uses:** Developer recognizes Safeway's customers' need for adequate parking facilities in close proximity to its Parcel I premises, and the importance of protecting such parking facilities against unreasonable undue encroachment which is likely to result from long-term parking by patrons or employees of certain types of business establishments. Developer further recognizes Safeway's interest in not having tenants occupying space in close proximity to the Parcel I premises who create or cause excessive noise, litter or odor. To safeguard Safeway's interest in a clean, quiet and odor free environment and adequate parking for its customers, Developer covenants and agrees that it shall not permit the use or operation of any portion of Parcel II, within three hundred feet (300') of any exterior building wall of any Parcel I building for a restaurant (fast food or sit-down) or entertainment or recreational activities such as, but not limited to, bowling alleys, theaters, carnivals or other places of public or private amusement.

(c) **Location:** No building shall be constructed on Parcels I or II, except within the Building Areas. The front wall of the building on Parcel II shall be constructed in the location shown on Exhibit "A". Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

(d) **Design and construction:** The buildings shall be designed so that the exterior elevation of each will be architecturally and aesthetically compatible and so that the buildings' wall footings shall not encroach from one parcel onto the other parcel. The design and construction shall be in conformity with sound architectural and engineering standards and the construction shall be first quality. All buildings shall be one story and shall not exceed thirty feet (30') in height (but may include mezzanines).

(e) **Easements:** In the event building wall footings encroach from one parcel onto the other parcel, despite efforts to avoid that occurrence, the party onto whose parcel the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

(f) **Fire protection:** Any building constructed on Parcel I will be sprinklered. Developer will provide that any building constructed on Parcel II, immediately adjacent to any Parcel I building, will be constructed, maintained and used in a manner which will preserve the sprinklered insurance rate obtained on the Parcel I building.

### 3. Common Areas Use.

(a) **Grant of Easements:** Each party, as grantor, hereby grants to the other party for the benefit of said other party, its customers, invitees and employees, a nonexclusive easement for roadways, walkways, ingress and egress, the parking of motor vehicles and use of facilities installed for the comfort and convenience of customers, invitees and employees on the Common Areas of the grantor's parcel.

(b) **Use:** Subject to existing easements of record, the Common Areas shall be used for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, for driveway purposes, and for the comfort and convenience of customers, invitees and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above.

(c) **No barriers:** No walls, fences, or barriers of any kind shall be constructed or maintained on the Common Areas, or any portion thereof, by any party which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitation, pedestrians and vehicular traffic between the various parcels; provided, however, reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic may be installed so long as access driveways to the parking areas in the Common Areas are not closed or blocked. The only exceptions to this provision shall be (1) for changes to the Building Areas and Common Areas permitted by this Agreement, and (2) for incidental

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encroachments upon the Common Areas which may occur as a result of the use of the ladders, scaffolding, storefront barricades and similar facilities resulting in temporary obstruction of the Common Areas, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work being expeditiously pursued.

(d) Limitations on uses:

(1) Customers: Customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on Parcels I or II.

(2) Employees: Employees shall not be permitted to park on the Common Areas, except in areas designated as "employee parking areas." The parties hereto may from time to time mutually designate and approve "employee parking areas", however, if they do not, each party may designate "employee parking areas" on its own parcel.

(3) General: All of the uses permitted within the Common Areas shall be used with reason and judgment so as not to interfere with the primary purpose of the Common Areas which is to provide for parking for the customers, invitees and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses. Persons using the Common Areas in accordance with this agreement shall not be charged any fee for such use.

(e) Utility and service easements: The parties shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Common Areas and buildings to be erected upon the Building Areas. Both parties will use their best effort to cause the installation of such utility and service lines prior to paving of the Common Areas.

4. Common Areas: Development, Maintenance and Taxes.

(a) Development.

(1) "Common Area" to "Building Area" ratio: Both parties agree that at all times there shall be independently maintained on each parcel or further subdivision thereof, not less two and one half (2½) square feet of developed "Common Area" for each one (1) square foot of total building floor area, including all basements and mezzanines.

(2) Development timing:

A. By owner of parcel. When any building is constructed within the Building Areas on a parcel, the Common Areas on that parcel shall be developed in accordance with Exhibit "A" at the expense of the owner of said parcel.

B. By Safeway. If Safeway constructs improvements on Parcel I prior to the development of Parcel II, Safeway may grade, pave and use any portion of the Common Areas of the Developer's parcel. Safeway shall cause all of said work to be separately bid on a competitive basis, and the costs and proposed work shall be approved in advance by the Developer in writing, provided that such approval shall not be unreasonably withheld, and Developer agrees to reimburse Safeway for such costs when any portion of Parcel II is developed or upon the sale of any portion of Parcel II, whichever first occurs.

(3) Service Drive: Developer agrees that, if on Exhibit "A" hereof a driveway is delineated on Parcel II by crosshatching and is labeled as a "Service Drive," it shall simultaneously develop the same with the development and construction on Parcel I by Safeway.

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(b) Maintenance.

(1) Standards: Following completion of the improvement of the Common Areas, the parties hereto shall maintain the Common Areas in good condition and repair. The maintenance is to include, without limiting the generality of the foregoing, the following:

A. Maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability.

B. Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition, and free of snow and ice.

C. Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines.

D. Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required.

E. Maintaining all perimeter walls in a good condition and state of repair; and

F. Maintaining all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(2) Expenses: The respective owners shall pay the maintenance expense of their parcels.

(3) By agent: Subject to the revocable mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

(c) Taxes: Each of the parties hereto agree to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Common Areas owned by it.

5. Signs. Except for directional signs for guidance upon the Common Areas, no signs shall be located on the Common Areas on Parcels I or II except signs advertising businesses conducted thereon with no more than two (2) signs on the Common Areas on Parcel I and two (2) signs on the Common Areas on Parcel II. No signs shall obstruct the ingress and egress shown on Exhibit "A".

6. Indemnification/Insurance.

(a) Indemnification: Each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from injury to person or property and occurring on its own parcel, except if caused by the act or neglect of the other party hereto.

(b) Insurance: Each party shall provide comprehensive general liability insurance affording protection to itself and the other party, naming the other party as an "additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than \$500,000 each occurrence.

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7. Eminent Domain.

(a) Owner's right to award: Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's parcel or give the public or any government any rights in Parcels I or II. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on Parcel I or Parcel II, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner in fee thereof and no claim thereon shall be made by the owners of any other portion of the Common Areas.

(b) Collateral claims: All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

(c) Tenant's claim: Nothing in this paragraph 7 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

(d) Restoration of Common Areas: The owner of the fee of each portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned as near as practicable to the condition of same immediately prior to such condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

8. Agreement:

(a) Modification - cancellation: This agreement (including Exhibit "A") may be modified or cancelled only by written consent of all record owners of Parcel I and all record owners of Parcel II, which consents shall not be unreasonably withheld.

(1) Delegation of authority. It is agreed that at least as long as either Safeway or the Developer is the initial user and/or operator of one or both the parcels, whether as owner or lessee, that the authority for modifying this agreement shall rest with them alone as to the parcels they own, use or operate.

Any purchaser, lender, lessee, assignee, grantee, sublessee or other party having any interest in the portions of Parcel I and/or II that Safeway or Developer have an interest in, shall be deemed to have appointed Safeway and Developer as their attorneys-in-fact for their respective parcels for the purpose of negotiating and entering into any modifications of this agreement, except for extending the duration hereof. Cancellation of this agreement shall not be considered a modification.

(b) Breach: In the event of breach or threatened breach of this agreement, only all record owners of Parcel I as a group, or all the record owners of Parcel II as a group, or Safeway so long as it has an interest as owner or tenant in Parcel I, or Developer so long as it has an interest in any part of Parcel II, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

(c) Remedies for default: If the owner of any parcel shall, during the term of this agreement, default in the full, faithful and punctual performance of any obligation required hereunder and if at the end of thirty (30) days after written notice from any owner of a parcel or the party to whom its authority has been delegated, stating with particularity the nature and extent of such default, the defaulting owner has failed to cure such default, and if a diligent effort is not then being made to cure such default,

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then any other owner of a parcel of land subject to this agreement or the party to whom its authority has been delegated shall, in addition to all other remedies it may have at law or in equity, have the right to perform such obligation of this agreement on behalf of such defaulting owner and be reimbursed by such defaulting owner of the cost thereof with interest at the maximum rate allowed by law. Any such claim for reimbursement, together with interest as aforesaid, shall be a secured right and a lien shall attach and take effect upon recordation of a proper claim of lien by the claimant in the office of the county recorder in which the land is located. The claim of lien shall include the following: (1) the name of the claimant; (2) a statement concerning the basis of the claim of the lien; (3) the last known name and address of the owner or reputed owner of the parcel against which the lien is claimed; (4) a description of the property against which the lien is claimed; (5) a description of the work performed or payment made which has given rise to the claim of lien hereunder and a statement itemizing the amount thereof; and (6) a statement that the lien is claimed pursuant to the provision of this agreement reciting the date, book and page of the recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the party against whom the lien is claimed, either by personal service or by mailing (first class, certified, return receipt requested) to the defaulting owner, at the address for mailing of tax statements with respect to the property against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and it may be enforced in any manner allowed by law for the foreclosure of liens. Notwithstanding the foregoing, such liens shall be subordinate to any mortgage or deed of trust given in good faith and for value now or hereafter encumbering the property subjected to the lien, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any first mortgage or deed of trust shall take free and clear from any such then existing lien, but otherwise subject to the provisions of this agreement. The failure of the owner or owners of any of the parcels subject to this agreement to insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions or agreements herein, shall not be construed as a waiver or relinquishment for the future breach of the provisions hereof.

(d) Non-merger: So long as Safeway is tenant of either parcel this agreement shall not be subject to the doctrine of merger, even though the underlying fee ownership to the parcels described herein, or any parts thereof, is vested in one party or entity.

(e) Duration: Unless otherwise cancelled and terminated, this agreement and all the easements, rights and obligations hereof shall automatically terminate and be of no further force or effect after fifty-seven (57) years from the date hereof, except that the access and/or utility easements described on Exhibit "D" attached hereto, if any, shall continue in full force and effect until terminated in writing by the parties entitled to modify this agreement in accordance with the provisions of 8(a) hereof.

9. **Rights and Obligations of Lenders.** The charges and burdens of this agreement are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust made in good faith and for value affecting Parcel I or Parcel II or any part thereof, or any improvements now or hereafter placed thereon. However, a breach of any of the easements, covenants, or restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust. The superiority of this agreement shall be LIMITED to the extent that title to any property acquired through sale under foreclosure of any mortgage or deed of trust effected by powers of sale, judicial proceedings, or otherwise, shall be subject to all the charges and burdens affecting Parcels I and II by virtue of this agreement, as noted in 8(c) hereof.

10. **Release From Liability.** Any person acquiring fee or leasehold title to Parcel I or Parcel II or any portion thereof shall be bound by this agreement only as to the parcel or portion of the parcel acquired by such person. Such person shall be bound by this agreement only during the period such person is the fee or leasehold owner of such parcel or portion of the parcel, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this agreement shall continue to be benefits and servitudes upon Parcels I and II running with the land.

11. **Rights of Successors.** The easements, restrictions, benefits, and obligations hereunder shall create mutual benefits and

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servitudes upon Parcels I and II running with the land. This agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, personal representatives, tenants, successors, and/or assigns. The singular number includes the plural and any gender includes all other genders.

12. **Paragraph headings.** The paragraph headings herein contained are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

13. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Areas to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this agreement shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Common Areas of the parcels herein affected, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the owner. Notwithstanding any other provisions herein to the contrary, the owners of the parcels affected hereby may periodically restrict ingress and egress from the Common Areas in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such a time as to have a minimum effect on the parties hereto.

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

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

NEPHI LUMBER, INC.  
(a Utah corporation)

By [Signature]  
Its President  
By [Signature]  
Its Secretary

U T A H  
COUNTY OF  
SALT LAKE  
DEVELOPER

(Developer)

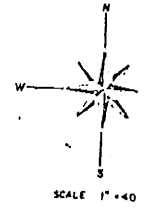
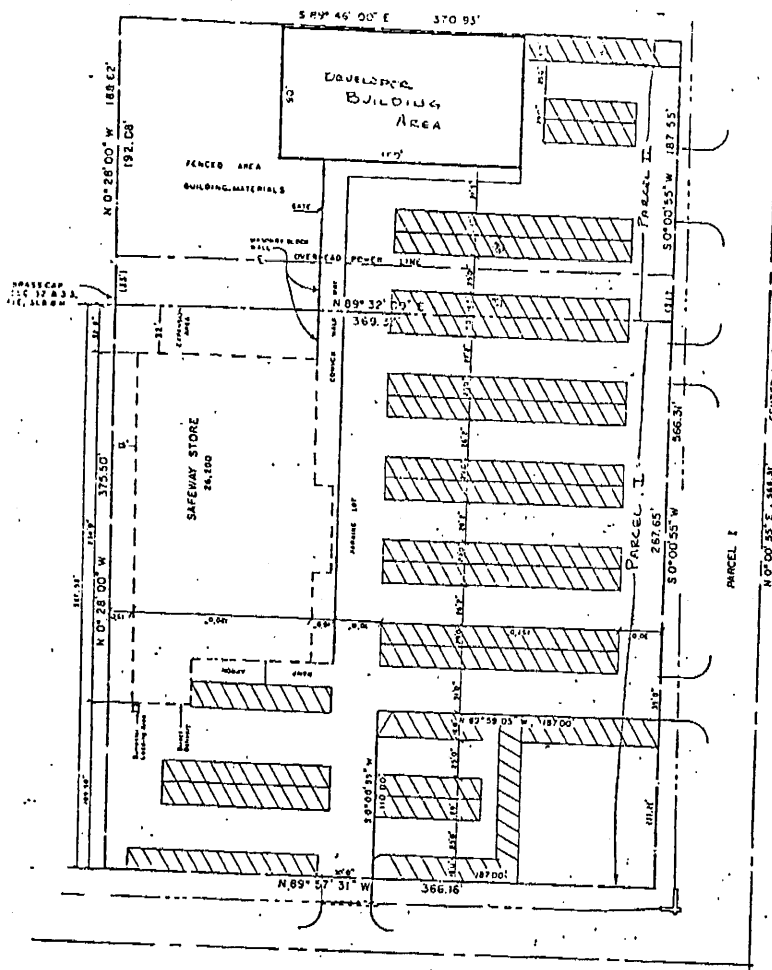
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SAFEWAY STORES, INCORPORATED.  
(a Maryland corporation)

By [Signature]  
Its Assistant Vice President  
By [Signature]  
Its Assistant Secretary

SAFEWAY STORES, INCORPORATED  
INCORPORATED  
1928  
MARYLAND

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CERTIFICATION  
 I hereby certify that this is  
 actual field survey made under  
 inspection and is true and cor-  
 rect to the best of my knowledge and belief.  
 STEPHEN L.

SURVEY FOR
NEPHI LUMBER
LOCATION
SEPTEMBER 1, 1995
LEWIS ENGINEERS 36 South Main St. Nephi, Utah, 84646 Phone 623-0887

900 NORTH STREET

ECR EXHIBIT 'A'



BEING LOCATED IN NEPHI, COUNTY OF JUAB, STATE OF UTAH. ALL OF  
LOT 1, SAFEWAY SUBDIVISION, A PART OF THE SOUTHWEST QUARTER  
OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 1 EAST, SALT LAKE  
BASE AND MERIDIAN

TOGETHER WITH

BEING LOCATED IN NEPHI, COUNTY OF JUAB, STATE OF UTAH. ALL OF  
LOT 2, SAFEWAY SUBDIVISION, A PART OF THE SOUTHWEST QUARTER  
OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 1 EAST, SALT LAKE  
BASE AND MERIDIAN

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ECR  
EXHIBIT "B"

BEING LOCATED IN NEPHI, COUNTY OF JUAB, STATE OF UTAH; ALL OF  
LOT 3, SAFEWAY SUBDIVISION, A PART OF THE SOUTHWEST QUARTER  
OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 1 EAST, SALT LAKE  
BASE AND MERIDIAN

ECR  
EXHIBIT "C"

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STATE OF UTAH,

County of Juab

} ss.

On the 20th day of October, A. D. 1983, personally appeared before me John M. Ludlow and Stephen L. Ludlow, who being by me duly sworn did say, each for himself, that he, the said John M. Ludlow is the president, and he, the said Stephen L. Ludlow is the secretary of NEPHI LUMBER, INC., a Utah Corporation and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said John M. Ludlow and Stephen L. Ludlow each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Notary Public.

My commission expires 1/11/85 My residence is Nephi, Utah

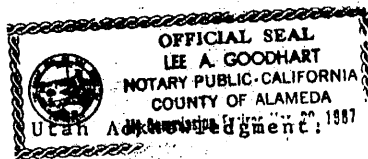
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ALAMEDA )

On the 4th day of October, A.D., 1983, personally appeared before me, RUSSELL L. JACOBUS and BRIAN E. MCLAUGHLIN, known to me or proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that they are, respectively, the Assistant Vice President and Assistant Secretary of SAFEWAY STORES, INCORPORATED, a Maryland Corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of resolution of its Board of Directors, and said RUSSELL L. JACOBUS and BRIAN E. MCLAUGHLIN acknowledged to me that said corporation executed the same.

WITNESS my hand and official seal.

(Notarial Seal)

NOTARY PUBLIC in and for the County of Alameda, State of California. My residence is Oakland, California



My commission expires: 3/20/87