

**RESOLUTION NO. 17 (2024)**

**A RESOLUTION TO APPROVE A CONDITIONAL USE REQUEST TO CONVERT A PORTION OF THE CENTENNIAL MALL LOCATED AT 1111 WEST VICTORY WAY (PARCEL NUMBER 065736317001) TO APPROXIMATELY 18,335 SQUARE FEET OF INDOOR CLIMATE CONTROLLED STORAGE. (CONDITIONAL USE)**

**WHEREAS**, The Conditional Use Application presented by Mountain Property Builders LLC as the applicant and Jason Park DBA JB Capital LLC as the owner came before the public at the Planning & Zoning Commission on May 20<sup>th</sup>, 2024, and before City Council on May 28<sup>th</sup> 2024.

**WHEREAS**, Indoor self-storage is listed as a conditional use within the C-2 (Community Commercial) Zone District standards.

**WHEREAS**, Large brick and mortar mall properties are difficult to fill with traditional retail tenants, often resulting in vacant and neglected properties.

**WHEREAS**, This Resolution will become effective only after a Development Agreement between Mountain Property Builders INC and the City of Craig is signed and recorded, and the applicant (Mountain Property Builders) acquires legal ownership of the property. The terms and conditions of approval will be outlined in the agreement.

**WHEREAS**, The City of Craig Planning and Zoning Commission has recommended to the City Council to approve the Conditional Use contingent upon an approved development agreement between the City of Craig and Mountain Property Builders INC being recorded.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CRAIG, COLORADO;**

1. The recommendation of the City Planning and Zoning Commission to approve the Conditional Use contingent upon an approved development agreement being recorded.
2. This Resolution will hereby be effective and recorded upon the recording of the development agreement between the City of Craig and Mountain Property Builders LLC dated 2024
3. This Resolution is adopted pursuant to and in compliance with Chapter 16.03.050 of the Land Use Code for the City of Craig, Colorado.

This 23<sup>rd</sup> Day of July, 2024

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Chris Nichols, Mayor

ATTEST:

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Liz White, City Clerk



Application Number: \_\_\_\_\_  
 Received By: \_\_\_\_\_  
 Date: \_\_\_\_\_

# LAND USE APPLICATION

1. This is the master land use form for the City of Craig. Please use to apply for:  
 (please circle one of the following as appropriate)

- |                             |                    |                 |
|-----------------------------|--------------------|-----------------|
| Administrative Subdivision  | Annexation         | Conditional Use |
| Major Subdivision 1 2 3     | Variance or Appeal | Waiver          |
| Planned Development Overlay | Minor Subdivision  | RV Park         |
| Sign Permit                 | Rezoning           | Site Plan       |
| Temporary Use               | Other: <u>X</u>    |                 |

2. Project Name: Centennial Mall Conversion  
 please print or type legibly

3. Contact information: (a list of additional contacts may be attached)

Owner Name: Jason Park Applicant Name: Mountain Property Builders  
 Address: 3604 Gallegos Rd #200 CO Address: 15954 Jackson Ck Pkwy B201  
 Telephone: 720-240-1865 Fax: 719-375-8426 Telephone: 719-237-5844 Fax: Monument Co 80132  
 E-mail: jbrapitalusa@gmail.com E-mail: lell.carter@MountainPropertyBuilders.com

4. Property Description:

Address or Location: 1111 W Victory Way Craig Co 81625  
 Existing Zoning: \_\_\_\_\_ Existing Use: \_\_\_\_\_  
 Proposed Zoning: \_\_\_\_\_ Proposed Use: \_\_\_\_\_

5. Purpose: (describe intent of this application in 1-2 sentences)

Change Use To Approximately 1/3 Retail, 1/3 Conditioned Storage and 1/3 Small Bay Warehouse

6. Certification: (must be signed in blue ink)

I certify that I am the lawful owner of the parcel(s) of land affected by this application and hereby consent to this action.

Owner: Jason Park Date: 3/26/2024 AND

I certify that the information and attachments I have submitted are true and correct to the best of my knowledge. In filing this application, I am acting with the knowledge and consent of the property owner(s). I understand that all materials and fees required by the City of Craig must be submitted prior to processing of this application.

Applicant: [Signature] Date: 3/25/24

# MEMO

July 17, 2024

**To:** Planning & Zoning Commission  
**From:** Marlin Eckhoff, Building Official  
**Subject:** Conditional Use Permit consideration for the Centennial Mall located at 1111 W Victory Way.

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## **BACKGROUND / DISCUSSION**

Jeff and Carolyn Carter DBA Mountain Property Builders have applied for a Conditional Use Permit to convert portions of the Centennial Mall at 1111 W Victory to the following uses:

1. 18,335 sq. ft. of conditioned mini storage with approximately 226 units of varying sizes.
2. 31,448 sq. ft. of small bay warehouse with 11 to 16 units.
3. 4,182 sq. ft will remain existing common space and restrooms.
4. 33,849 sq. ft. will remain existing retail space.

Jason Park with JB Capital is the current owner of the Centennial Mall which is up for sale. He has signed the Conditional Use Application as the owner. And has sent me confirmation that as the property owner, he gives the applicant permission to pursue a Conditional Use Permit. If approved, Mountain Property Builders will continue the process for acquiring the property.

This property is zoned Community Commercial (C-2), mini-storage uses are only allowed in a C-2 zone district if approved for a Conditional Use Permit. This allows the city to put certain conditions on the project if they feel it is necessary to do so.

I have included the following:

1. A concept layout of the proposed plan.
2. A description of the overall scope of work plan from Mr. and Mrs. Carter.
3. The criteria from our Land Use Code for approving a Conditional Use Permit.

I spoke with Shane Baker the Road & Bridge Director about any traffic concerns that may arise from larger or more frequent traffic coming from the small bay areas in the rear. He did not have any concerns and did not feel that this would create a safety issue for the adjacent streets or property owners.

I also spoke with Carl Ray the Water/Wastewater Director about any potential concerns. At this time, neither Carl or I have concerns as far as usage amounts, or things of that nature, as the proposed uses should have considerably less demand on both water and sewer infrastructure. However, if approved, we will need to consider things such as sand/oil separators and any special backflow preventer requirements for the small bay areas. This will be reviewed once construction drawings are provided, and may or may-not be necessary depending on the type of use that may go in the small bay areas.

### **REASONING**

Across the nation mall owners are having to get creative in order to fill large buildings as brick & mortar retail stores are becoming more of a thing of the past. So, I do believe it is good to keep an open mind and consider alternative uses without alienating existing tenants. Since this is our core area, I believe we need a balance of keeping enough storefront retail spaces in this area without having a bunch of run-down vacant spaces. Especially since retail stores generate sales tax, if they have businesses in them, but service industry uses do not.

A very similar idea was introduced to the P&Z Commission and City Council by a different developer back in June of 2023. It was not up for an official vote at that time, it was just to see how favorable the Commission and Council would be to this idea.

At that time, neither the Commissioners or the Council had any major issues with the use change, but there were certain items that they wanted addressed in order to approve the Conditional Use. Some of these items discussed at that time were:

1. A reasonable plan for existing tenants.
2. Require that the parking lot and other exterior improvements be made, such as painting, façade improvements, and landscaping.

Notification letters have been sent to all property owners within 150 ft and the legal notice and property posting has been done per Land Use Code requirements. As of Thursday May 23, I have received one concern against the Conditional Use request from the public.

This was an email from Jeremy Lueck and Brandi Meek, which I included in your packet.

Note: If approved, a full set of architectural and engineered construction drawings will be provided by the applicant and reviewed and approved by staff prior to any building, plumbing or mechanical permits being issued.

### **PLANNING COMMISSION RECOMMENDATION**

On May 20, 2024, the P&Z Commission reviewed the request and the following motion was made: "To recommend to Council to approve the conditional use application for 1111 W Victory Way for the purpose of indoor mini-storage and small bay commercial units, contingent on a development agreement between Mountain Property Builders and the City of Craig being approved, and a covenants review ensuring the proposed use does not violate any active covenants." I attached a copy of the meeting minutes.

The best way I new of outlining any requirements that the Planning Commission or Council would like to see in order to approve the conditional use, was to have everything listed in a development agreement. However, the applicant was wanting to get feedback from the Commission and Council prior to drafting an agreement.

We have worked with Alex Gano and the applicant on a development agreement draft which will outline the city's requirements for the project. Comments from both the council's public hearing and the P&Z meeting were used as criteria when drafting the agreement.

Some of the items that the Planning Commission and city staff recommended to include in the development agreement were:

1. Repair/resurface the parking lot.
2. Paint the exterior.
3. Provide a more detailed floorplan that will locate a majority of the retail spaces to the front of the building and identify how existing tenants will be located.
4. Upgrade the small amount of existing landscaping.

The applicant already had most of the same items listed as things that they were proposing to do.

**Accompanying this packet will be a Development Agreement mentioned above, along with a Resolution for approving the Conditional Use, if you choose to do so.**

# CRAIG PLANNING & ZONING COMMISSION MINUTES

**May 20, 2024**

The Craig Planning and Zoning Commission of the City of Craig, County of Moffat, State of Colorado, met in the City Council Chambers, 300 West 4<sup>th</sup> Street, Craig Colorado, 81625, at the hour of 6:00 p.m. There being present the following Commissioners: Randy Kloos, Mike Tucci, Tom Gilchrist, Justin Jenison, and Mason Updike. City Staff present were Building Official Marlin Eckhoff and Assistant Sierra Arellano. City Councilman Derek Duran was present.

Commission Chair Kloos called the meeting to order at 6:00 PM and began with Commission roll call. Those present were Commission members Randy Kloos, Mike Tucci, Tom Gilchrist, Justin Jenison, and Mason Updike.

Commissioner Tucci made a motion, seconded by Commissioner Jenison, to approve the minutes from April 15, 2024. Ayes: 5. Nays: 0. Motion carried.

Eckhoff presented the Commission with a Conditional Use application for the Centennial Mall located at 1111 W Victory Way from Mountain Property Builders, Jeff Carter present. The purpose of the application is to convert a portion of the mall to indoor mini-storage units and small bay commercial units. Jeff discussed with the Commission that the proposed plan is just a draft and mostly to give them an idea of what would be within the mall. There was much discussion that the retail portion of the mall should be front facing with the storage and bay units at the rear. Jeff was amenable to this change and discussed improvements that he would want to make to the Centennial Mall. Eckhoff noted to the Commission that they could recommend City Council's approval of the Conditional Use with conditions such as an approved development agreement between Mountain Property Builders and the City of Craig and covenants review.

Commission Chair Kloos opened the floor for public comment. Charlynn Wondra, of Big O Tires, spoke with Jeff regarding concerns she has with commercial truck parking and retail management to which Jeff noted that he would like to keep everyone happy and would like to keep as much retail as possible and limit any issues. Nathan Butler inquired if any retail locations would have to move locations, whether it would be on their own dime or if Jeff planned to assist them. Jeff noted that if he requested for any retail locations to move that it would be on his dime to move them and make sure they had a location that worked for their purpose. Janey Morley commended Jeff for wanting to spruce up a partially vacant building but would like to stress having retail on the front facing side of the mall to maintain the aesthetics.

Commission Chair Kloos moved to Commission discussion. Commissioner Gilchrist expressed his concern of maintaining retail space. The Commission agreed that a development agreement between Mountain Property Builders and the City of Craig would be crucial to maintain certain aspects of the mall and lay out improvements needed since a site plan would not be required. Commissioner Tucci made a motion, seconded by Commissioner Gilchrist, to recommend City Council to approve the Conditional Use application for 1111 W Victory Way for the purpose of indoor mini-storage and small bay commercial units contingent on a development agreement

between Mountain Property Builders and the City of Craig being approved, and a covenants review ensuring the proposed use will not violate any active covenants. Ayes: 5. Nays: 0. Motion carried.

No Commission Reports outside of Commissioner Gilchrist thanking citizens for their attendance of the workshop and meeting.

For Staff Reports, Eckhoff discussed with the Commission their comments regarding Craig Storage's north and east facades on Mack Ln. The consensus amongst the Commission was that rock halfway up the north side would be preferred but due to the amount of work needed, the rock can be omitted.

There being no further business, Commissioner Tucci made a motion, seconded by Commissioner Gilchrist to adjourn the meeting. Ayes: 5. Nays: 0. Motion carried.

Liz White

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**From:** jeremy lueck <jeremylueck75@gmail.com>  
**Sent:** Monday, May 20, 2024 4:02 PM  
**To:** Brandi Meek; Campandrea71@gmail.com; Chris Nichols; Derek Duran; Jesse Jackson; Luke Tucker; Marlin Eckhoff; Nathan Butler; Randy Looper  
**Subject:** Centennial Mall Conditional Use application

Dear city officials,

My name is Jeremy Lueck, I am a long time Craig citizen and small business owner. I would like to express my and my wife's concerns about the proposed changes to the zoning of the Centennial Mall property. As stated in the agenda for tonight's planning and zoning meeting they will be discussing this proposal and possible approval to put it in front of the city council for vote.

My wife and I currently own and operate 2019 Storage Company at 72 Terrace Lane which is a 49 unit facility. We decided to build a new facility due to the apparent need of the community for more self storage space. While the need was expressed to us by many in the community and the existing facilities having waiting lists we have not seen the occupancy rate we expected since opening a little more than a year ago. We currently have 24 units occupied, well below our target for our current timeline. Our experience and monthly inquiries with other facilities in town has shown us that this market is saturated and will become even more saturated with the completion of the Mack lane facility (100 plus units) that is currently under construction and the construction of a new facility in Steamboat Springs that is underway.

It is our opinion that it would be irresponsible of the council to approve a conditional use permit to be granted for a business type that is already going to be overly saturated in this community. I would encourage the council to request a feasibility study regarding the self storage needs of this community be made available to you before a final vote is cast. Our other concern is that this prominent area of town will turn into an industrial zone and have a very limited appeal to any potential retail businesses that might have interest in the mall.

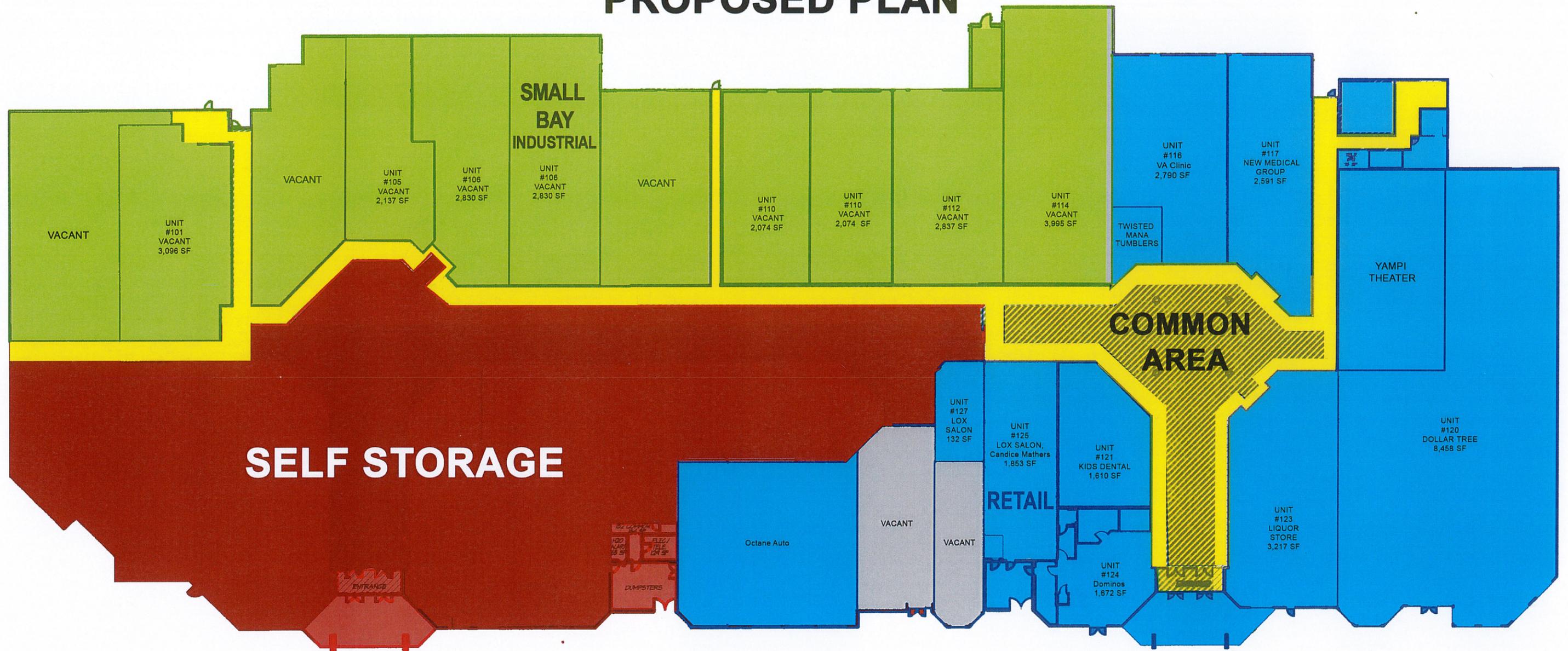
I would have sent this to the planning and zoning commissioners but I was unable to find their email addresses on the city's website.

Thank you for time and consideration.

Jeremy Lueck  
Brandi Meek

Warning! this email originated from outside of the organization

# PROPOSED PLAN



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### 16.03.050 Conditional uses.

- A. Purpose. In order to provide flexibility and help diversify uses within a zoning district, specified uses are permitted subject to the granting of a conditional use permit. Because of their unusual or special characteristics, conditional uses require review and evaluation so that they may be located properly with respect to their effects on surrounding properties. The review process prescribed in this section is intended to assure compatibility and harmonious development between conditional uses, surrounding properties and the city at large. Conditional uses may be permitted subject to such conditions and limitations as the city may prescribe to ensure that the location and operation of the conditional use will be in accordance with the conditional use criteria and the intent of this code and each zoning district. The scope and elements of any conditional use may be limited or qualified by the conditions applicable to the specific property. Where conditions cannot be devised to achieve these objectives, applications for conditional use permits shall be denied.
- B. Conditional use review process.
1. Step 1: Conditional use application. The applicant shall submit one (1) copy of the complete conditional use application package to the city and shall request that the application be reviewed by the planning commission and city council. Conditional use requests shall include:
    - a. An application fee per the city fee schedule (as adopted).
    - b. A conditional use application form.
    - c. A title commitment or proof of ownership.
    - d. A written statement and any graphics necessary to describe the precise nature of the proposed use and its operating characteristics and to illustrate how all conditional use review criteria have been satisfied.
    - e. A map showing the proposed development of the site, including topography, building locations, parking, traffic circulation, usable open space, landscaped area and utilities and drainage features.
    - f. Preliminary building plans and elevations sufficient to indicate the dimensions, general appearance and scale of all buildings.
    - g. Such additional material as the city may prescribe or the applicant may submit pertinent to the application.
    - h. A list of the names and addresses of property owners within one hundred fifty (150) feet and mineral interest owners and lessees.
  2. Step 2: Conditional use application certification of completion and report to planning commission. Within a reasonable period of time, staff shall either certify that the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. The applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the city. The original application and all documents requiring a signature shall be signed in blue ink. After a complete application is received, staff shall prepare a report to the planning commission explaining how the application is or is not consistent with the conditional use application review criteria.
  3. Step 3: Planning commission review of the conditional use application. The planning commission shall hold a meeting to review the application and determine if the application complies with the conditional use review criteria. The planning commission will then recommend to the city council approval, approval with conditions or denial.

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4. Step 4: Set conditional use public hearing date and notify public of hearing before the city council. The city shall send notice of the public hearing to the applicant and the parties for whom the applicant has provided contact information and to the referral agencies deemed appropriate by city staff. Such notice shall be sent within a reasonable length of time before the hearing. The referral information shall include the time and place of the public hearing, the nature of the hearing, the location of the subject property and the applicant's name. A public hearing notification sign shall be posted on the property by the applicant. Such posting shall be in a location and in a manner that makes it clearly visible from the adjoining street. The city shall publish notice in a newspaper of general circulation. The hearing may be held a reasonable length of time after the date of property posting and newspaper publication. If the conditional use request is accompanying another application which is scheduled for public hearing before the city council, one (1) public hearing may be held on both applications.
  5. Step 5: City council public hearing and action on the conditional use. The city council shall hold a public hearing on the conditional use application. Following the public hearing, the city council may approve, conditionally approve or deny the conditional use application based on the conditional use review criteria and the intent of this code. A conditional use permit may be revocable, may be granted for a limited time period or may be granted subject to conditions as the city council may prescribe. Conditions may include, but shall not be limited to: requiring special setbacks, open spaces, fences or walls, landscaping or screening, street dedication and improvement, regulation of vehicular access and parking, signs, illumination, hours and methods of operation, control of potential nuisances, prescription of standards for maintenance of buildings and grounds and prescription of development schedules.

C. **Conditional use review criteria. The city shall use the following criteria to evaluate the applicant's request:**

1. The conditional use will satisfy all applicable provisions of this code unless a variance to a provision of this code is being requested.
2. The conditional use will conform with or further the goals, policies and strategies set forth in the master plan.
3. The conditional use will be adequately served with public utilities, services and facilities (i.e., water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.
4. The conditional use will not substantially alter the basic character of the district in which it is in or jeopardize the development or redevelopment potential of the district.
5. The conditional use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.
6. Potential negative impacts of the conditional use on the rest of the neighborhood or of the neighborhood on the conditional use have been mitigated through setbacks, architecture, screen walls, landscaping, site arrangement or other methods. The applicant shall, at a minimum, satisfactorily address the following impacts:
  - a. Traffic;
  - b. Activity levels;
  - c. Light;
  - d. Noise;
  - e. Odor;

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- f. Building type, style and scale;
  - g. Hours of operation;
  - h. Dust; and
  - i. Erosion control.
7. The applicant has submitted evidence that all applicable local, state and federal permits have been or will be obtained.

(Ord. 962 §§1, 2, 2007)

RE: Centennial Mall, Craig Colorado

The Centennial Mall in Craig Colorado is an 87,814 square foot indoor corridor mall that sits on 302,737 square feet of land in the center of Craig Colorado. The Mall has been used primarily for retail purposes since it was constructed in 1980.

Currently the Mall is approximately 45% occupied with a variety of tenants ranging from Auto Repair to dog training and everything in-between. The Mall and surrounding parking lot have fallen into disrepair and will require several million dollars to bring the property back to its original condition.

The Development team is proposing a use change to the property to help increase occupancy back to 90% to 95% occupancy. The proposed changes would be to add Conditioned Storage and Small Bay Warehouse. The breakdown of space would be approximately as follows: 33,849 sq ft of retail space sufficient to keep the existing tenants in place, 31,448 sq ft Small Bay Warehouse and 18,335 sq ft of Conditioned Mini Storage with the remaining 41,82 sq ft used as common area and existing restrooms. There would be approximately 11-16 Small Bay warehouse spaces depending on size demand. The warehouse spaces would be accessed through a newly installed man door and roll up door and approximately 226 storage units consisting of 12-3.5x5; 45-5x5; 60-5x10; 80-10x10; 14-10x15; 12-10x20 and 5-10x30 conditioned storage spaces.

Upon approval from the Craig Planning Commission and Craig City Council a complete set of construction drawings depicting the building layout changes will be produced. These will include all Architectural, Mechanical, Electrical, Life Safety, Fire Sprinkler and Plumbing revisions required to reconfigure the building and bring the building up to current code standards. Replacement of all 32 Roof Top HVAC units will be necessary as many are original and non-functioning.

The exterior of the building will require a fresh coat of paint. The Development team is proposing to continue the same/similar color scheme as the adjacent Harbor Freight/ Big O building. Parking Lot Upgrades would include milling and replacement of all asphalt and replacement of damaged concrete.

#### Developer Qualifications:

Mountain Property Builders (MPB) was formed in 2008 in Monument Colorado and currently holds a Residential C license at the Pikes Peak Regional Building Department (PPRBD) and a Commercial B license with the City of Canon City. MPB has a strong management team ready to deploy on any project.

Mountain Property Builders currently builds 12-16 single family homes a year in addition to developing 50-60 residential lots per year. MPB's partnership currently has over 200 lots under contract with Meritage Homes a national home builder.

Commercial Projects include re-tenant of many retail/commercial spaces but not limited to a 24,000 sq ft tenant remodel in Flint Michigan, 144,000 sq ft shopping ctr remodel in Ft Walton Beach Florida.

**EASEMENTS WITH  
COVENANTS AND RESTRICTIONS AFFECTING LAND (ECR)**

THIS AGREEMENT made this 16th day of December, 1977, between SAFEWAY STORES, INCORPORATED, a Maryland corporation, herein called "Safeway," and ORIN J. FARNSWORTH and JACQUILINE K. FARNSWORTH, husband and wife, herein called "Developer"

BOOK 436 PAGE 66

**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 fully 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. Parcel III ownership. Developer is the owner of Parcel III as shown on the plan attached hereto as Exhibit "A" hereof, and which is more fully described as Parcel III on Exhibit "D" hereof. (Refer to Paragraph C. 13.)
4. Purpose. Safeway and Developer desire that Parcels I, II and III 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, II and III 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, II and III, and shall be for the benefit of and shall be limitations upon all future owners of Parcels I, II and III 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 therein, 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 those portions of Parcel II and III shown on Exhibit "A" as "Phase I and Phase II Building Area."
  - b. "Common Areas" shall be all of Parcels I, II and III except said Building Areas.
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.
  - b. Location: No building shall be constructed on Parcels I, II or III, except within the Building Areas. The front walls of the buildings on Parcels II and III shall be constructed in the location shown on Exhibit "A".

c. 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. No building shall exceed one story in height (35 feet) (plus mezzanines).

d. 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.

e. 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 in a manner which will preserve the sprinklered rate obtained on the Parcel I building.

3. Common areas use.

a. Grant of easements: Each party, as grantor, hereby grants to the other parties for the benefit of said other parties, their customers, invitees, contractors 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, contractors 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, contractors and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above.

c. Limitations on use:

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

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."

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, employees and contractors 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.

d. 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. All parties will use their best effort to cause the installation of such utility and service lines prior to paving of the Common Areas.

4. Concern of development, maintenance and taxes.

a. Development.

1. Arrangement: The arrangement of the Common Areas shall not be changed except by mutual agreement of the owners of seventy-five percent (75%) of the land area of Parcel I and seventy-five percent (75%) of the land area of Parcel II, and

seventy-five percent (75%) of the land area of Parcel III, together with Safeway's written consent so long as it has an interest either as tenant or owner of Parcel I and the consent of Developer so long as it has an interest as tenant or owner in Parcels II and III.

2. "Building Area" to "Common Area" ratio: All parties agree that at all times there shall be independently maintained on each parcel, not less than  $\frac{1}{4}$  square feet of developed "Common Area" for each one (1) square foot of total building floor area, including all basements and mezzanines.

3. Development timing: 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. Any portions of Parcel II and III not initially developed with Building or Common Areas shall be maintained in a neat and clean condition.

4. Service drive: Safeway will be allowed to develop the "Truck Easement" area shown on the attached Exhibit "A" and described on Exhibit "E" attached hereto for truck ingress and egress. Total costs of improvement (i.e. preparation and paving) of the Truck Easement area will be done at Safeway's expense at the time Safeway develops Parcel I.

Developer agrees to reimburse Safeway one-half (1/2) of said improvement costs when Parcel II is fully developed or within one (1) year from the completion of the improvements on Parcel I whichever shall first occur.

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.

(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.

\*two and 57/100 (2.57)

-3-

3. By agent: Subject to the 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.

4. 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. No signs shall be located on the Common Areas on Parcels I, II or III, 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 and two (2) signs on the Common Areas on Parcel III. No signs shall obstruct the ingress and egress shown on Exhibit "A".

6. Indemnification/insurance.

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

b. Insurance: Each party shall provide public liability insurance with limits of not less than \$300,000/\$500,000 for injury or death and property damage insurance in the amount of \$100,000.

7. Eminent domain.

a. Owner's right to award: Nothing herein shall be construed to give any party any interest in any award or payment made to any 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, II or III. 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 or Parcel III, 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.

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8. Agreement.

a. Modification - cancellation: This agreement may be modified or cancelled only by written consent of all record owners of Parcel I and the record owners of seventy-five percent (75%) of the land area of Parcels II and III, together with Safeway's written consent as long as it has an interest as either tenant or owner in Parcel I, and together with the written consent of developer so long as it has an interest as tenant or owner in Parcels II and III which consents shall not be unreasonably withheld.

b. Breach: In the event of breach or threatened breach of this agreement, only all record owners of Parcel I as a group, or the record owners of seventy-five percent (75%) of the land area of Parcel II as a group, or the record owners of seventy-five percent (75%) of the land area of Parcel III as a group, or Safeway so long as it has an interest as tenant or owner in Parcel I, or Developer so long as it has an interest as tenant or owner in any part of Parcels II and III 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 fee, 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. Non-merger: So long as Safeway is tenant of any parcel referred to herein, 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.

d. 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 "B" attached hereto 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 Parcel III 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, II and III by virtue of this agreement.

10. Release from liability. If during the existence of this agreement Safeway shall sell or transfer or otherwise terminate its interest as owner or tenant in Parcel I or in the event Developer shall sell or transfer its interest in all or a part of Parcels II and III then from and after the effective date of such sale, transfer or termination of interest, Safeway or Developer shall be released and discharged from any and all obligations, responsibilities and liabilities under this agreement; as to the part sold or transferred, except those which have already accrued as of such date.

11. Rights of successors. The easements, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes upon Parcels I, II and III running with the land. This agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, tenants, successors, and/or assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

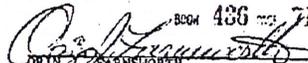
12. Marginal notes. The marginal notes herein contained are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

13. It is understood and agreed that at the time of recording of this agreement developer does not own Parcel III and all references in this agreement to Parcel III shall be of no force or effect until such time as Parcel III is incorporated into this agreement as provided herein-after.

While not so obligated, developer may purchase and incorporate into the ECR and property shown as Parcel III on the plan attached hereto as Exhibit "A" hereof and which is more fully described as Parcel III on Exhibit "D" hereof. In the event Parcel III is incorporated into the ECR as aforesaid, the parties agree to the following:

- A. Parcel III shall become a part of this ECR subject to and benefited by all the provisions of the ECR.
- B. This ECR shall be amended to include Parcel III, and shall be the first lien or charge on Parcel III except for current taxes.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

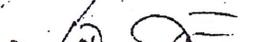
  
ORIN FARNSWORTH

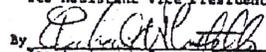
  
JACQUILINE K. FARNSWORTH

(Developer)

SAFEWAY STORES, INCORPORATED  
(a Maryland corporation)

  
(Corporate Seal)

By   
Its Assistant Vice President

By   
Its Assistant Secretary

\* (Safeway)



PARCEL I

A part of Lots 1 and 2, Block 1 of Golden Meadows Subdivision, located in the Southwest quarter of Section 36, Township 7 North, Range 91 West, of the 6th principal meridian, County of Moffat, State of Colorado, more particularly described as follows:

Commencing at the Southwest corner of said Section 36, thence North  $00^{\circ}03'00''$  West a distance of 49.66 feet, thence North  $89^{\circ}41'12''$  East a distance of 45.00 feet to the intersection of the East right-of-way line of Finley Lane and the North right-of-way line of U.S. Highway No. 40 and the True Point of Beginning;

Thence North  $00^{\circ}03'00''$  West along the East right-of-way line of Finley Lane a distance of 600.00 feet to the intersection of the East right-of-way line of Finley Lane and the South right-of-way line of 6th Street; thence East along the South right-of-way line of 6th Street a distance of 272.00 feet; thence South a distance of 205.00 feet; thence South  $45^{\circ}00'00''$  East a distance of 52.33 feet; thence East a distance of 11.00 feet; thence South a distance of 356.25 feet to the North right-of-way line of U.S. Highway No. 40; thence South  $89^{\circ}41'12''$  West along said right-of-way line a distance of 319.48 feet to the True Point of Beginning.

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EXHIBIT "B"

PARCEL II

A part of Lots 1 and 2, Block 1, of Golden Meadows Subdivision located in the Southwest quarter of Section 36, Township 7 North, Range 91 West of the 6th P.M., County of Moffat, State of Colorado, being more particularly described as follows:

BEGINNING at a point on the South line of 6th Street distant thereon 272.00 feet East of the intersection of said South line of 6th Street with the East line of Finley Lane, said point being North  $00^{\circ}03'00''$  West 649.66 feet and East 317.00 feet from the Southwest corner of said Section 36; thence South 205.00 feet; thence South  $45^{\circ}00'00''$  East 52.33 feet; thence East 11.00 feet; thence South 356.25 feet to the North ROW line of U.S. Highway No. 40; thence North  $89^{\circ}41'12''$  East along said ROW line 446.03 feet to the Southeast corner of said Block 1; thence North  $00^{\circ}18'44''$  West along the East line of said Block 1 a distance of 637.50 feet to the South ROW line of said 6th Street; thence Southwesterly along said ROW line and on a curve concave to the North having a radius of 185.84 feet an arc distance of 127.29 feet; thence continuing along said ROW line West 373.00 feet to the Point of Beginning.

BOOK 436 PAGE 74

EXHIBIT "C"

**PARCEL III**

**Block 2 of Golden Meadows Subdivision in the City of Craig, Colorado,  
according to the plat filed August 29, 1975, as Miscellaneous File  
No. 4341.**

BOOK 436 PAGE 75

**EXHIBIT "D"**

TRUCK EASEMENT

A part of Lots 1 and 2, Block 1 of Golden Meadows Subdivision, located in the Southwest quarter of Section 36, T7N, R 91 W, of the 6th P.M., County of Moffat, State of Colorado, more particularly described as follows:

Commencing at the Southwest corner of said Section 36; thence North 00°03'00" West a distance of 49.66 feet; thence North 89°41'12" East a distance of 45.00 feet; thence North 00°03'00" West a distance of 600.00 feet to the intersection of the East ROW line of Finley Lane and the South ROW line of 6th Street; thence East along the South ROW line of 6th Street a distance of 272.00 feet to the True Point of Beginning.

Thence South a distance of 65.00 feet; thence East a distance of 88.25 feet; thence North a distance of 20.00 feet; thence East a distance of 96.75 feet; thence North a distance of 45.00 feet to the South ROW line of 6th Street; thence West along said ROW line a distance of 185.00 feet to the True Point of Beginning.

BOOK 436 PAGE 76

EXHIBIT "A" to the original official record of the County of Moffat.

STATE OF COLORADO }  
COUNTY OF MOFFAT } ss.

The foregoing instrument was acknowledged before me this 22<sup>nd</sup>  
day of DECEMBER, 1977, by ORIN J. FARNEWORTH  
and JACQUELINE K. FARNEWORTH.

My notarial commission expires: 12-29-80

WITNESS my hand and official seal.



Vicki K. Wilson  
NOTARY PUBLIC in and for the County  
of MOFFAT, State of  
COLORADO

STATE OF }  
COUNTY OF } ss.

BOOK 436 PAGE 77

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_  
and \_\_\_\_\_.

My notarial commission expires: \_\_\_\_\_

WITNESS my hand and official seal.

(Notarial Seal)

NOTARY PUBLIC in and for the County  
of \_\_\_\_\_, State of \_\_\_\_\_

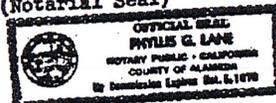
STATE OF CALIFORNIA }  
COUNTY OF ALAMEDA } ss.

The foregoing instrument was acknowledged before me this 16th day  
of December, 1977, by PATRICK S. TOTMAN  
as Assistant Vice President, and RICHARD H. COSTELLO, as  
Assistant Secretary, of SAFEWAY STORES, INCORPORATED, a corporation  
duly organized and existing under and by virtue of the laws of the  
State of Maryland.

My notarial commission expires: October 5, 1979

WITNESS my hand and official seal.

(Notarial Seal)



Phyllis G. Lane  
PHYLLIS G. LANE  
NOTARY PUBLIC in and for the State of  
California, with principal office in  
the County of Alameda.

Colorado Acknowledgment.