

Return Address:



200405180120

Skagit County Auditor

5/18/2004 Page 1 of 14 12:56PM

LAND TITLE OF SKAGIT COUNTY

111373-T

Document Title(s) (for transactions contained therein):

- 1.
2. Use Restriction, Cooperation and Common Area
- 3.
4. Management Agreement

Reference Number(s) of Documents assigned or released:
(on page of documents(s))

Grantor(s)

1. Safeway, Inc
- 2.
- 3.
- 4.

Additional Names on page of document.

Grantee(s)

1. San In Yun
- 2.
3. Wha J Yun
- 4.

Additional Names on page of document.

Legal Description (abbreviated i.e. lot, block, plat or section, township, range)

Lot 1D MV Binding Site Plan MV 1-94
18-34-4

Additional legal is on page of document.

Assessor's Property Tax Parcel/Account Number

3 8005-000-001-0403

The Auditor/Recorder will rely on information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

Record and return to:

Safeway Inc.

5918 Stoneridge Mall Road

Pleasanton, CA 94588-3229

Attn: Real Estate Law (Safeway #1472/5683)

USE RESTRICTION, COOPERATION AND COMMON AREA MANAGEMENT AGREEMENT

THIS USE RESTRICTION COOPERATION AND COMMON AREA MANAGEMENT AGREEMENT ("Agreement") is dated as of May 4, 2004 and is made and entered into by and between **SAFEWAY INC.**, a Delaware corporation ("Seller"), and **SANG IN YUN and WHA J. YUN**, husband and wife (collectively "Buyer").

RECITALS

A. Seller owns that certain real property situated in Mt. Vernon, County of Skagit, State of Washington, legally described on Exhibit A attached hereto, and shown as "Retained Property" on the site plan labeled Exhibit B attached hereto, consisting of "Lot 1" (defined later) and "Lot 1C" (defined later). The Retained Property is part of the shopping center shown on Exhibit B ("Shopping Center"), the full legal description of which is set forth in the "Declaration" (defined later).

B. Buyer and Seller are parties to that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of March 19, 2004 as the same may have been amended (as amended, "Purchase Agreement").

C. Pursuant to the terms of the Purchase Agreement, Seller has agreed to sell and Buyer has agreed to purchase premises that are part of the Shopping Center as legally described on Exhibit C attached hereto, commonly known as 315-323 College Way, Mt. Vernon, Washington, and shown as the "Property" on Exhibit B ("Burdened Property"), consisting of "Lot 1D" (defined later).

D. On the date hereof, Seller operates two (2) grocery supermarkets within a radius of ten (10) miles of the Retained Property, Store No. 1472 at 315 East College, Mt. Vernon WA 98273, the legal description of which is attached hereto as Exhibit A and made a part hereof, and Store No. 593 at 911 11th Street, Anacortes WA 98221, the legal description of which is attached hereto as Exhibit D and made a part hereof, and intends to develop a fuel center on "Lot 1C" (defined later) of the Shopping Center. The foregoing properties are together called the "Benefited Properties."

E. Buyer acknowledges that (i) Seller has made a considerable investment in the Benefited Properties, (ii) Seller has invested its business reputation in the Benefited Properties, which reputation will be adversely affected if the sales volume of Seller is significantly less than the level planned by Seller, (iii) the addition of other businesses to the Burdened Property that may violate the Restrictions will result in a reduction of Seller's sales volume and thus impair the benefit of the bargain for which Seller negotiated in entering into the Purchase Agreement, and (iv) Seller's agreement to sell the Burdened Property is predicated upon Buyer's acknowledgement of all of the foregoing, and Buyer's agreement to the terms of this Agreement.

F. Buyer and Seller have agreed in the Purchase Agreement that (i) the use of the Burdened Property will be restricted as provided in this Agreement, as part of the consideration given by Buyer for the purchase of the Burdened Property, (ii) Buyer will cooperate with Seller and its



successors and assigns in the development of "Lot 1C" (defined later), and (iii) Buyer shall cooperate with Seller in the management of the common area on their respective parcels, all as further provided in this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **USE RESTRICTION.** Buyer agrees, on behalf of itself and its successors and assigns, that for the "Restriction Period" (defined later), the Burdened Property will not be used in violation of the "Restrictions" (defined later). The "Restrictions" are the "Food Restriction" (defined later), the "Prescription Pharmacy Restriction" (defined later), the "Fuel Restriction" (defined later), and the "Restaurant Restriction" (defined later).

1.1. **Food Restriction.** No portion of the Burdened Property shall be used or occupied for a general food market, supermarket, grocery store, meat market, fish market, fruit store, vegetable store, convenience store, or any combination of the foregoing ("Food Restriction").

1.2. **Prescription Pharmacy Restriction.** No portion of the Burdened Property shall be used or occupied for the sale of merchandise which, under the laws of the State where the Burdened Property is located, is required to be dispensed by or under the supervision of a registered or licensed pharmacist ("Prescription Pharmacy Restriction").

1.3. **Fuel Restriction.** No portion of the Burdened Property shall be used or occupied for the sale of fuel products for use in vehicles ("Fuel Restriction").

1.4. **Restaurant Restriction.** No portion of the Burdened Property shall be used or occupied for a restaurant (either fast food or sit down) ("Restaurant Restriction"), except that Buyer shall have the right to have no more than two (2) fast food restaurants on the Burdened Property selling food for on-premises or off premises consumption, consisting of one fast food restaurant not to exceed one thousand eight hundred square feet in size, and one fast food restaurant not to exceed two thousand three hundred square feet in size.

1.5. **Agreement Supplements Declaration.** Notwithstanding anything to the contrary contained in this Agreement, this Agreement, including without limitation the Restrictions, is intended to be in addition to, and shall not supersede, any similar restrictions provided in the Declaration, all of which shall continue to be enforceable in accordance with their terms.

2. RESTRICTION PERIOD.

2.1. **Duration.** The Restriction Period shall begin on the date hereof and end on the date that is the first to occur of (i) the date that is twenty (20) years from the date of recording of this Agreement, and (ii) the date on which Seller and/or its successors and assigns has not operated at least one grocery supermarket and/or prescription pharmacy and/or fuel center within a radius of ten (10) miles of the Burdened Property (measured as the crow flies from any point on the perimeter of the Burdened Property) for a continuous period of at least one (1) year for any reason other than (a) a strike, lockout or other labor difficulty, fire or other casualty, condemnation, war, riot, insurrection, act of God, the requirements of any local, state or federal law, rule or regulation, or any other reason (other than financial) beyond the reasonable control of Seller (or its affiliate or successor, as applicable) or (b) temporary closure due to the restoration, reconstruction, expansion, alteration or remodeling of such store, such temporary closure in no event to exceed three hundred sixty-five (365) days.



2.2. Automatic Amendment. If the Restriction Period for any one or more of the Food Restriction, the Prescription Pharmacy Restriction and the Fuel Restriction is determined to be unreasonably long by any court of competent jurisdiction, then this Agreement shall be deemed automatically amended to the maximum period of time as the court determines to be reasonable, and if any other clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining clauses, sentences, and portions, as appropriate, of this Agreement shall remain in full force and effect.

3. **EXCEPTIONS TO FOOD RESTRICTION.** Notwithstanding the Food Restriction, Seller may devote up to, but not more than, the lesser of (a) one thousand five hundred (1,500) square feet of sales area (including aisle space adjacent thereto) on the Burdened Property, or (b) sales area (including aisle space adjacent thereto) of up to ten percent (10%) of the total square footage of each tenant's leased premises on the Burdened Property, to the sale of food for off-premises consumption.

4. **COVENANT OF COOPERATION.** On the date of this Agreement, Seller intends to tear down the bank building on Lot 1C, immediately adjacent to the Property to the west, shown on Exhibit B as Lot 1C ("Lot 1C"), and build a fuel center or other improvements. Buyer understands and acknowledges that Seller currently intends to develop Lot 1C as a fuel center. Buyer shall, at no out of pocket expense to Buyer, cooperate with Seller and its successors and assigns as owners of Lot 1C in the development and construction of improvements on Lot 1C from time to time. Such cooperation shall include, without limitation, reasonable cooperation with the granting of utility easements, and the installation and maintenance of utility facilities in such easements requested from time to time.

5. **MANAGEMENT OF COMMON AREA.**

5.1. Definitions.

5.1.1. The "Declaration" means that certain Reciprocal Easement Agreement recorded as Auditor's No. 9403310170, records of Skagit County, WA ("Official Records"), as re-recorded as Auditor's No. 9404070075 of the Official Records, that certain Declaration of Easements with Covenants and Restrictions Affecting Land recorded March 8, 1995 as Auditor's No. 9503080064 in the Official Records, that certain Amendment of Declaration recorded October 19, 1994 as Auditor's No. 9510190001 in the Official Records, that certain Second Amendment of Declaration recorded September 23, 1996 as Auditor's No. 9609230087 in the Official Records, that certain Third Amendment to Declaration of Easements with Covenants and Restrictions Affecting Land recorded March 20, 1997 as Auditor's No. 970320098 of the Official Records, and that certain Fourth Amendment to Declaration of Easements with Covenants and Restrictions Affecting Land recorded July 11, 1997 as Auditor's No. 9707110082 of the Official Records.

5.1.2. "Lot 1" means the lot described on Exhibit A and shown on Exhibit B as Lot 1.

5.1.3. "Lot 1C" is the lot described on Exhibit A and shown on Exhibit B as Lot 1C.

5.1.4. "Lot 1D" is the lot described on Exhibit C and shown on Exhibit B as Lot 1D.

5.1.5. The "Lot 1D Owner" means Buyer and its successors and assigns as the owner of Lot 1D.

5.1.6. The "Lot 1 Owner" means Seller and its successors and assigns as the owner of Lot 1.



5.1.7. "Property Manager" means a professional property manager and includes any property manager that may be an "Affiliate" (defined later) of the Lot 1 Owner.

5.1.8. "Affiliate" means any person, corporation, or other legal entity that controls, is controlled by, or is under common control with the Lot 1 Owner.

5.1.9. "Common Area" shall have the meaning given it in the Declaration.

5.2. Selection Right. On the date of this Agreement, Seller owns Lot 1 and Lot 1C as part of the Retained Property, and Buyer owns lot 1D. Lot 1, Lot 1C and Lot 1D are among the properties encumbered by the Declaration. Notwithstanding anything to the contrary contained in the Declaration, the Lot 1D Owner shall cooperate with the Lot 1 Owner in the maintenance of the Common Area on their respective properties, as provided herein. At the option of the Lot 1 Owner, the Common Area on Lot 1D and Lot 1, and possibly other parts of the Shopping Center from time to time, shall be maintained by a Property Manager chosen by the Lot 1 Owner ("Property Manager Selection Right"). The Lot 1 Owner shall exercise the Property Manager Selection Right, if at all, by written notice to the Lot 1D Owner.

5.3. Property Manager's Rights and Duties. Following the Lot 1 Owner's exercise, if any, of the Property Manager Selection Right, the Property Manager shall maintain the Common Area on Lot 1 and Lot 1D to the standards set forth in the Declaration. The Property Manager may charge for such maintenance no more often than monthly, and may collect estimated payments based on a budget to be reconciled at year end.

5.4. Payment by Lot 1D Owner. The Lot 1D Owner shall pay its pro rata share of the fees and costs of maintaining the Common Area, including management fees, based on the building area of Lot 1D as a percentage of the total building area on all land in the Shopping Center the Common Area of which is maintained by the Property Manager. The Lot 1D Owner's payments shall be due within thirty (30) days of invoice, and shall bear interest at the rate of 10% per annum for any overdue payment.

5.5. Termination and Resumption of Common Management of Common Area. The Lot 1 Owner shall have the right to terminate any contract with any Property Manager for the joint management of Lot 1 and Lot 1D, and other parts of the Shopping Center, at any time on thirty (30) days' written notice to the Lot 1D Owner, and may thereafter exercise the Property Manager Selection Right at any time on thirty (30) days' written notice to the Lot 1D Owner.

5.6. Remedies for Default. If the Lot 1D Owner shall default in the full, faithful and punctual performance of any obligation required hereunder and if upon the expiration of thirty (30) days after written notice from the Lot 1 Owner or Safeway Inc. or its Affiliates, so long as Safeway Inc. or its Affiliates have any interest in the Shopping Center, stating with particularity the nature and extent of such default, the Lot 1D Owner has failed to cure such default, and if a diligent effort is not then being made to cure such default, then the Lot 1 Owner or Safeway Inc. or its Affiliates, so long as Safeway Inc. or its Affiliates have any interest in the Shopping Center, in addition to all other remedies it may have at law or in equity, shall have the right to perform such obligation of this Declaration on behalf of the Lot 1D Owner and to be reimbursed by the Lot 1D Owner for 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 of the county in which the Shopping Center is located. The claim of lien shall include the following: (i) the name of the claimant; (ii) a statement concerning the basis of the claim of the lien; (iii) the last known name



and address of the Lot 1D Owner or reputed Lot 1D Owner; (iv) a description of the property against which the lien is claimed; (v) 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 (vi) 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 claim of lien shall be duly verified, acknowledged, and contain a certificate that a copy thereof has been served upon the Lot 1D Owner either by personal service or by mailing to the Lot 1D Owner. 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, which mortgage or deed of trust was recorded prior to the recording of 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 Declaration. The failure of the Lot 1 Owner or Safeway Inc. or its Affiliates, so long as Safeway Inc. or its Affiliates have any interest in the Shopping Center, 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.

6. **COVENANT RUNNING WITH THE LAND.** The Restrictions shall be deemed to be a restriction and covenant burdening the Burdened Property for the benefit of the Benefited Property. The Restrictions are a servitude upon the entire Burdened Property, shall run with the land and shall be binding upon any person acquiring any interest in any part of the Burdened Property.

7. **ENFORCEMENT.** The parties agree that the economic loss to Seller or its successors and assigns resulting from a violation of the Restrictions is not readily measurable, or subject to precise calculation. Each of the parties hereto agree that, in any lawsuit by Seller or its successors or assigns seeking specific performance of the terms of this Agreement by injunctive relief, the harm suffered by Seller or its successors or assigns by reason of a breach of this Agreement shall be deemed to be irreparable for which the party so harmed does not have an adequate remedy at law. Seller and its successors or assigns also shall have the right to enforce the Restrictions directly against any one or more of Buyer, and the owner, tenant, or occupant of any business on the Burdened Property in the event of any violation of the Restrictions. In no event shall Seller or its successors or assigns be required to post a bond or other security in any action seeking to enforce the provisions of this Agreement by injunctive relief or other remedy.

8. **BINDING EFFECT.** Each and all of the covenants, terms, agreements, rights and obligations contained in this Agreement shall extend to and bind and inure to the benefit of the heirs, personal representatives, successors and assigns of Seller and Buyer.

9. **SEVERABILITY.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws and court decisions. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of such provision to other persons or circumstances or other instruments referred to in this Agreement shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law.

10. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the successors and assigns of Buyer for the duration of the Restriction Period. Seller's rights and benefits under this Agreement shall automatically pass to the any successor of Seller by merger, consolidation or reorganization, and to any purchaser of all or substantially all of the assets of Seller.



11. **MODIFICATION.** Neither this Agreement nor any provision of this Agreement may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by all parties to this Agreement and then only to the extent set forth in such instrument,

12. **NOTICES.** Any notice provided for herein shall be given by registered or certified United States mail, postage prepaid, or expedited delivery service (i.e., Federal Express), addressed if to:

Buyer at:

Sang In Yun and Wha J. Yun
30390 Pacific Hwy. South, Suite 105
Federal Way, WA 98003

Seller at:

Safeway Inc. Seattle Division
1121 - 124th Avenue, NE
Bellevue, WA 98005-2101
Attn: Vice President Real Estate(#1472)

with a copy to:

Safeway Inc.
Real Estate Law Department (#1472)
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229

13. **WAIVER OF JURY TRIAL.** Each party hereto desires and intends that any disputes arising between them with respect to or in connection with this Agreement be subject to expeditious resolution in a court trial without a jury. Therefore each of Buyer and Seller hereby waive the right to a trial by jury of any cause of action, claim, counter claim or cross complaint in any action, proceeding or other hearing brought by any one or more of the parties hereto against any one or more of the other parties hereto on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship of Buyer and Seller concerning the subject matter of this Agreement or the documents related thereto or any claim of injury or damage, or the enforcement of any remedy under any statute, law, ordinance, rule or regulation now or hereafter in effect concerning such agreements.

14. **LEGAL FEES.** In the event any party hereto brings or commences legal proceedings to enforce any of the terms of this Agreement, the successful party in such action shall then be entitled to receive and shall receive from the other party, in every such action commenced, a reasonable sum as attorney's fees, court costs, investigation expenses, discovery costs and costs of appeal incurred by it in the litigation.

15. **EXHIBITS.** The following exhibits are attached hereto and incorporated herein by this reference:

Exhibit A	Legal Description of Retained Property
Exhibit B	Site Plan of Shopping Center
Exhibit C	Legal Description of Burdened Property
Exhibit D	Legal Description of Safeway Store No. #1472
Exhibit E	Legal Description of Safeway Store No. #593



200405180120

Skagit County Auditor

5/18/2004 Page

7 of

14 12:56PM

16. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

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

SELLER:

Safeway Inc.,
a Delaware corporation

By: Ann C. Elliott
Assistant Vice President

By: [Signature]
Assistant Secretary

Date: 4/29/04

Form approved by: Be

BUYER:

[Signature]
SANG IN YUN

[Signature]
WHA J. YUN

Date: 4/22/04

All signatures to be acknowledged before a Notary Public



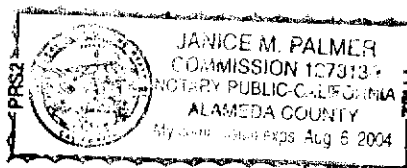
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On April 29, 2004, before me, Janice M. Palmer, Notary Public, personally appeared Ann Elliott and Jerome P. Harrison, personally known to me (or proved on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Janice M. Palmer
Signature



(Seal)

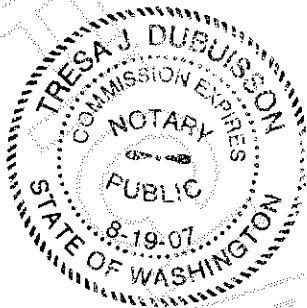
STATE OF WASHINGTON

COUNTY OF KING

SS.

On this day personally appeared before me SANG IN YUN and wife, WHA J. YUN, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official this 22nd day of April, 2004.



Tresa J. Dubuisson
Name: Tresa J. Dubuisson

NOTARY PUBLIC in and for the State of
Washington
Residing at Seattle, Washington
My appointment expires: 8-19-07



200405180120
Skagit County Auditor

Exhibit A
**Legal Description of Retained Property
And Benefited Property (Store #1472)**

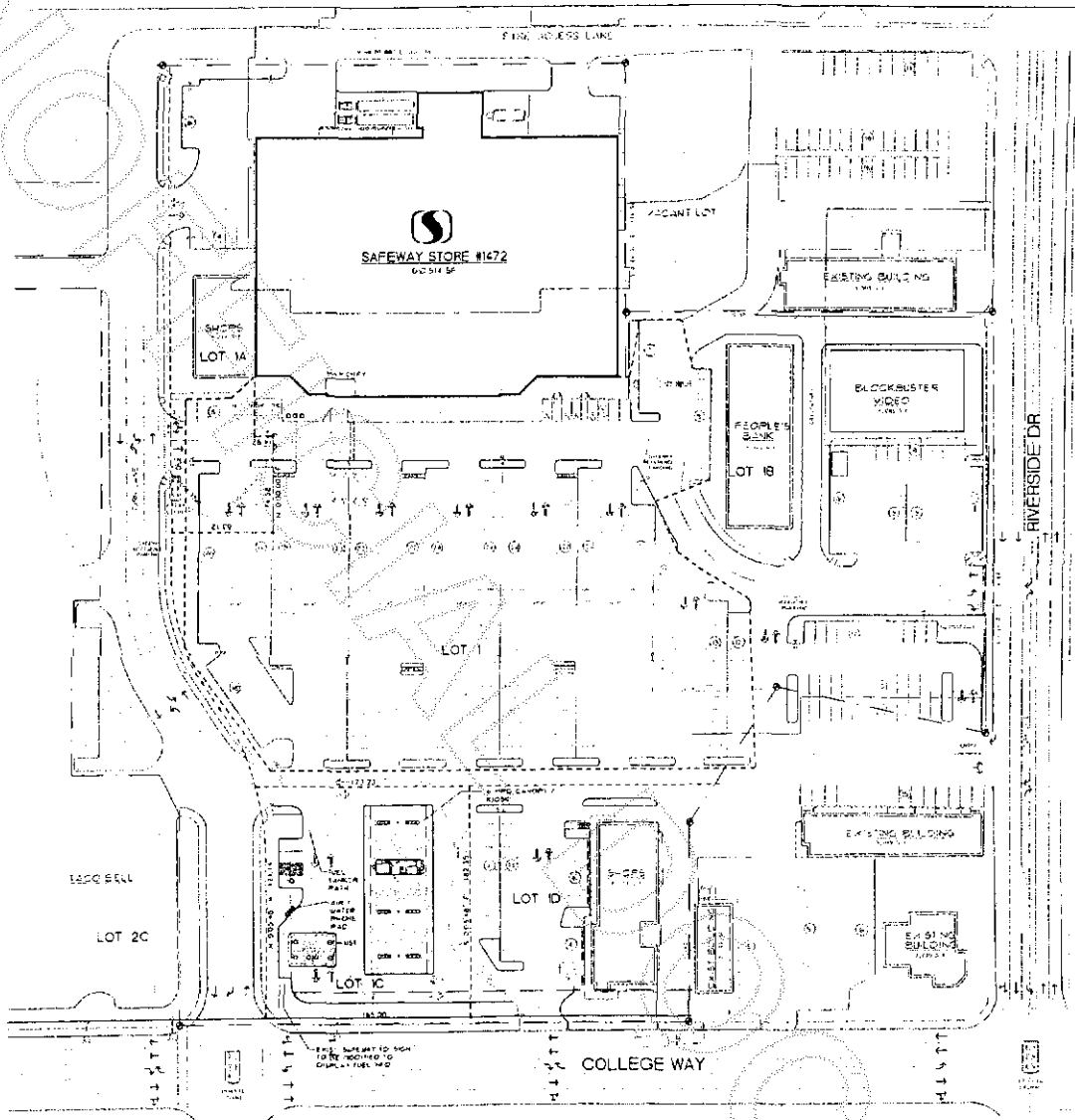
LOTS 1, 1A, 1B, 1C, 1D, 1E, 2, 2A, 2B, 2C, 3A, 3B, 3C AND LOT 4 OF CITY OF MT. VERNON BINDING SITE PLAT NUMBER MV 1-94 BSP, AS APPROVED MAY 31, 1994, UNDER AUDITOR'S FILE NO. 9405310129, RECORDS OF SKAGIT COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 34 NORTH, RANGE 4 EAST OF WILLAMETTE MERIDIAN.



200405180120

Skagit County Auditor

Exhibit B
Site Plan of Shopping Center



Mt Vernon, WA

9 of 11

04/14/04



200405180120
Skagit County Auditor

5/18/2004 Page

12 of

14 12:56PM

Exhibit C
Legal Description of Burdened Property

LOT 1D OF CITY OF MT. VERNON BINDING SITE PLAT NUMBER MV 1-94 BSP, AS APPROVED MAY 31, 1994, UNDER AUDITOR'S FILE NO. 9405310129, RECORDS OF SKAGIT COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 34 NORTH, RANGE 4 EAST OF WILLAMETTE MERIDIAN.

Exhibit D

Legal Description of Benefited Property
(Store #593)—Also see Exhibit A for Store #1472

LOTS 17 THROUGH 20, INCLUSIVE, BLOCK 39, "MAP OF THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON", AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 4, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF ANACORTES, COUNTY OF SKAGIT, STATE OF WASHINGTON.

