

Ordinance No. 121323Council Bill No. 114757

AN ORDINANCE relating to land use and zoning, amending page 18 of the Official Land Use Map, (Volume 27 of Plats, page 41, Records of King County) to rezone property located at 11332 Lake City Way Northeast, from Single Famil, 7200 (SF 7200) to Lowrise 2 Residential Commercial (L 2-RC), accepting a Property Use and Development Agreement and Release in connection therewith, and authorizing the President of the City Council to execute the Property Use and Development Agreement and Release on behalf of the City and the Clerk to record it with the King County Department of Records and Elections (Petition of David Brown Associates for MMR Corporation (succeeded by D.C.E. Inc.,) C.F. 305399, Application No. 2100337)

Walk-in
11/10/03Record with KC 12/17/03
me

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: S

Committee Action:

CF No. _____

Date Introduced: NOV 10 2003		
Date 1st Referred: NOV 10 2003	To: (committee) <i>Full Council</i>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: 11-17-03	Full Council Vote: 5-4	
Date Presented to Mayor:	Date Approved: 11/17/03	
Date Returned to City Clerk: 11/17/03	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

11-17-03 Passed 5-4

Yes: Compton, Drago, McIver, P

No: Conlin, Licata, Pagelee

This file is complete and ready for presentation to Full Council. Com

Law Dept. Review

OMP
ReviewCity Clerk
Review

Walk-on
11/10/03

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by:

Steinbrueck

Councilmember

Reend with KB 12/17/03
me

Committee Action:

11-17-03 Passed 5-4

Yes: Compton, Drago, McIver, Nicastro, Wells

No: Conlin, Licata, Pageau, Steinbrueck

This file is complete and ready for presentation to Full Council.

Committee:

(initial/date)

T.O. ☒
F.T. ☒

Law Dept. Review

OMP
Review

City Clerk
Review

Electronic
Copy Loaded

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Walk-on
Review
Submitted
Exempt from board
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Printed Bill by
No attachments
No final check

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ORIGINAL
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5

Sheet 107 SP106750

ORDINANCE 121323

AN ORDINANCE relating to land use and zoning, amending page 18 of the Official Land Use Map, (Volume 27 of Plats, page 41, Records of King County) to rezone property located at 11332 Lake City Way Northeast, from Single Family 7200 (SF 7200) to Lowrise 2 Residential Commercial (L2-RC), accepting a Property Use and Development Agreement and Release in connection therewith, and authorizing the President of the City Council to execute the Property Use and Development Agreement and Release on behalf of the City and the Clerk to record it with the King County Department of Records and Elections (Petition of David Brown Associates for MMR Corporation (succeeded by D.C.E. Inc.), C.F. 305399, Application No. 2100337)

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. This Ordinance affects the following described property (the "Property"):

The northwesterly 50 feet measured along the southerly line of Lot 5, Block 33, Replat of portions of Block 33 and 34 of Victory Heights Division No. 2, according to plat thereof recorded in Volume 27 of Plats, page 41, records of King County.

Section 2. The Official Land Use Map zone classification for the Property, as adopted by Ordinance 110381 and last amended by Ordinance 121288, and established on page 18 of the Official Land Use Map, is amended to rezone the Property from Single Family 7200 (SF 7200) to Lowrise 2 Residential Commercial (L2-RC), as shown in "Exhibit A," attached to this Ordinance.

Section 3. A Property Use and Development Agreement and Release ("Agreement"), attached to this Ordinance as "Exhibit B," that was executed by D.C.E. Inc., owner of the Property, by which said owner agrees to certain restrictions upon the Property to ameliorate the adverse impacts of uses and developments otherwise permitted in the L2-RC zone upon property in the vicinity, is hereby approved and accepted. The President of the City Council is hereby authorized to execute the Agreement on behalf of the City.

Section 4. Pursuant to SMC Section 23.76.060B(1)(b), the rezone of the Property shall expire and be of no force and effect five (5) years from the effective date of the approval of this rezone unless an application is filed for the establishment of the

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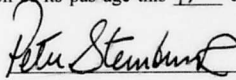


1 improvements described in Exhibit B, and the improvements are completed and a final
2 inspection obtained from the Department of Planning and Development.

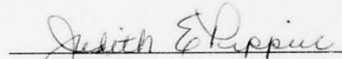
3 Section 5. The City Clerk is hereby authorized and directed to file said Property Use
4 and Development Agreement and of this Ordinance at the King County Records and
5 Elections Division, to file the original of the Property Use and Development Agreement
6 with this Ordinance at the City Clerk's Office, and to deliver copies of the same to the
7 Director of the Department of Planning and Development, and to the King County
8 Assessor's Office.

9
10 Section 6. This Ordinance shall take effect and be in force thirty (30) days from and
11 after its passage and approval by the City Council.

12 Passed by the City Council the 17th day of November, 2003, and signed by
13 me in open session in authentication of its pas age this 17th day of November,
14 2003.
15

16 
17 President of the City Council

18
19 Filed by me this 19 day of November, 2003.

20 
21 City Clerk
22

23 (SEAL)

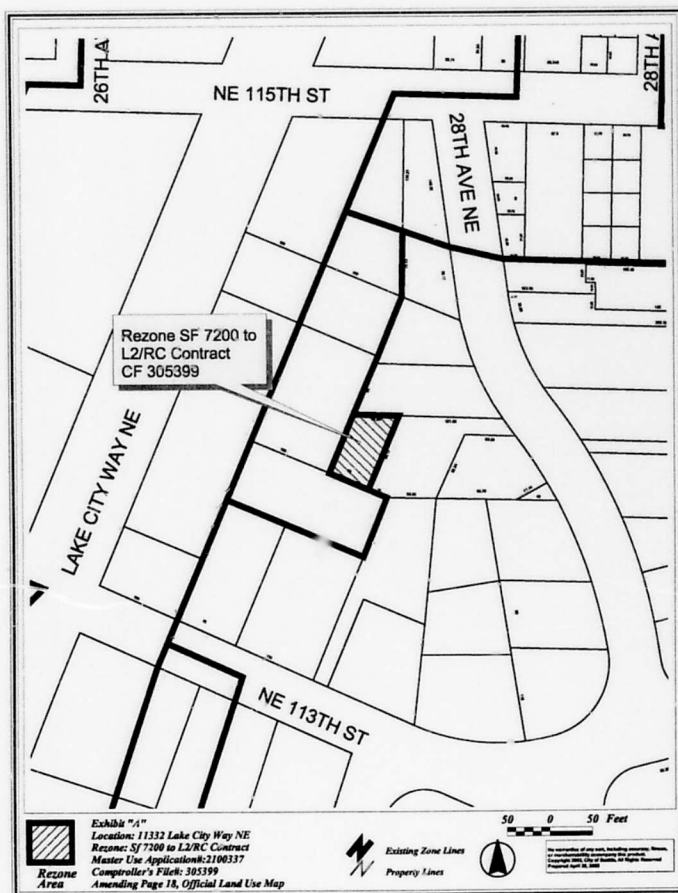
24 Exhibit A: Rezone Map

25 Exhibit B: Property Use and Development Agreement
26

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Exhibit A
Rezone Map



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ACTING
CITY
CLERK

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Ordinance 11332 Lake City Way NE v3.doc
November 10, 2003
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Page 4

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3

Exhibit B
Property Use and Development Agreement

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When Recorded, Return to:

THE CITY CLERK
City Hall, Floor 3
600 4th Avenue
Seattle, WA 98124-4025



RK
11/4/02
TITLE

**PROPERTY USE AND DEVELOPMENT AGREEMENT AND
RELEASE OF PRIOR PROPERTY USE AND DEVELOPMENT
AGREEMENT**

Grantor:	1) <u>D.C.E., Inc.</u>	2) _____
	<input type="checkbox"/> Additional on page _____	
Grantee:	1) <u>The City of Seattle</u>	2) _____
	<input type="checkbox"/> Additional on page _____	
Legal Description (abbreviated):	The northwesterly 50 feet measured along the southerly line of Lot 5, Block 33, Replat of portions of Block 33 and 34 of Victory Heights Division No. 2, according to plat thereof recorded in Volume 27 of Plats, page 41, records of King County.	
	<input type="checkbox"/> Additional on: _____	
Assessor's Tax Parcel ID #:	<u>8903000023</u>	
Reference Nos. of Documents Released or Assigned:	<u>20030801002158</u>	

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT AND RELEASE (the "Agreement") is executed this 16th day of November, 2003 in favor of the City of Seattle, a Washington municipal corporation (herein called "City"), by D.C.E., Inc., a Washington corporation, sole owner of property legally described below (herein called "Owner").

RECITALS

A. D.C.E., Inc. is the sole owner of that certain real property in the City of Seattle described as the northwesterly 50 feet measured along the southerly line of Lot 5,



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Block 33, Replat of portions of Block 33 and 34 of Victory Heights Division No. 2, according to plat thereof recorded in Volume 27 of Plats, page 41, records of King County, also commonly known as 11332 Lake City Way Northeast, and currently zoned Single Family 7200, that is the subject of this Agreement (herein called the "Property").

B. Owner's predecessor submitted to the City of Seattle an application for a rezone from Single Family 7200 (SF 7200) to Lowrise 2/Residential Commercial (L2/RC) and an Administrative Conditional Use approval to use the Property for accessory use parking for the performing arts theatre known as Rick's Nightclub.

C. Seattle Municipal Code (SMC) Section 23.34.004 allows the City to approve a contract rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts which could occur from unrestricted use and development permitted in the zone."

D. Owner has a fee simple or other beneficial interest in the Property described in paragraph A. and wants the City Council to rezone the property pursuant to SMC 23.34.004.

E. The City, in approving this Agreement, has determined, pursuant to SMC 23.34.004, that the rezone of the Property and the waivers granted thereunder would not be materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the Property is located.

F. The Owner had previously executed a Property Use and Development Agreement for this Property that was recorded under #20030801002158 and City and Owner desire that this Agreement is to supercede the prior Property Use and Development Agreement and that that prior agreement may be released.

AGREEMENT

Section 1. Zone Change Limited to Proposed Use. Pursuant to SMC 23.34.004, Owner hereby covenants, bargains and agrees, on behalf of itself and its successors and assigns, that it will comply with the following limitations and conditions in consideration of the rezone of the Property from SF 7200 to L2/RC:

- a) Use of the Property shall be limited to surface parking accessory to the commercial use on the adjacent property, legally described as follows: Lots 12, 13, and 14 in Block 33 of Victory Heights No. 2, as per plat recorded in Volume 25, page 8, records of King County, except the west 100 feet of Lot 12, together



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with easement for ingress and egress over the northeasterly 10 feet of the northwesterly 100 feet of Lot 12, Block 33, in said addition, situated in the City of Seattle, County of King, State of Washington, held in common ownership with the Property (herein called the "Site");

- b) Use of the accessory surface parking on the Property shall be limited to employees and contractors of the commercial use on the Site, and shall not include parking for customers or for other, off-site businesses;
- c) A sign shall be posted on the Property stating the parking on the Property is limited to employees and contractors of the commercial use on the Site and may not be used for customers of the commercial use on the Site or other off-site businesses;
- d) On those evenings when the commercial use on the Site is in operation, a parking attendant shall be present at the accessory surface parking lot on the Property after 6:00 p.m., or when the commercial use on the Site is open for business, whichever is later;
- e) An opaque wall aesthetically acceptable to the Department of Planning and Development ("DPD"), of brick, concrete block or other appropriate sound barrier material, shall be constructed and maintained at the maximum height permitted for fences in the zone, along the property lines between the Property and the adjacent single-family zoned property. The plans for the wall must be reviewed and approved by DPD, and the wall must be in place before parking on the Property is allowed. A permit is required to build this wall on the Property; and
- f) A landscaped buffer comparable to the landscaped buffer present when the rezone was considered by the Hearing Examiner on November 28, 2002 shall be installed between the Property and adjoining single-family zoned properties, and must be in place prior to use of the Property for parking.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof are deemed to attach to



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and run with the Property and are binding upon the Owner, its heirs, successors and assigns, and apply to after-acquired title of the Owner of the Property; provided, however, the covenants herein and the rezone shall expire and be of no force and effect five (5) years from the effective date of the approval of the rezone unless a complete application is filed for a building permit for the improvements contemplated in this Agreement, those improvements are completed and a final approval on all permits required and on the wall and landscaping discussed above are obtained from DPD during the time permit authority is active and valid.

Section 3. Release of prior Public Use and Development Agreement. The City hereby releases and cancels the Property Use and Development Agreement dated June 30, 2003, recorded under Auditor's File No. 20030801002158, and relating to the following described property situated in City of Seattle, King County, State of Washington: the northwesterly 50 feet measured along the southerly line of Lot 5, Block 33, Replat of portions of Block 33 and 34 of Victory Heights Division No. 2, according to plat thereof recorded in Volume 27 of Plats, page 41, records of King County, also commonly known as 11332 Lake City Way Northeast.

Section 4. Amendment, Exercise of Police Power, No Precedent. This Agreement may be amended or modified only by a written agreement signed by the Owner and the City, and approved by the legislative authority of the City by ordinance. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Land Use Code or exercising the City's police power, as it may deem necessary in the public interest. Owner agrees that nothing in this Agreement is intended to authorize any use or dimension not otherwise permitted in a Lowrise 2/Residential Commercial zone, except as approved in this Agreement. The conditions contained in this Agreement are based on the unique circumstances applicable to this Property, and this Agreement is not intended to establish precedent for other rezones in the surrounding area.



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Section 5. Benefit. This Agreement is made for the benefit of the City and for the benefit of the owners of the property within 300 feet of the Property and either the City or any such benefited property owner may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 6. Repeal as Additional Remedy. Owner acknowledges that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owner avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may revoke the rezone by ordinance and require the use of the Property to conform to the requirements of the previously existing SF 7200 zone.

SIGNED this 10th day of November, 2003.

OWNER
D.C.E., INC.

a Washington Corporation

By [Signature]
David Ebert
Printed Name

Its: PRESIDENT (title).

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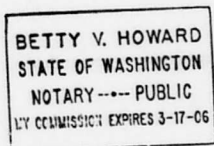
STATE OF WASHINGTON

COUNTY OF KING

ss.

On this day personally appeared before me DAVID FOERT,
to me known to be the PRESIDENT of D.C.E., Inc. the party that
executed the foregoing instrument, and acknowledged such instrument to be the free and
voluntary act and deed of such corporation, for the uses and purposes therein mentioned,
and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 10th day of
NOVEMBER, 2003.



Betty V. Howard
Printed Name
Betty V. Howard

NOTARY PUBLIC in and for the State of
Washington, residing at
Seattle

My Commission Expires
3-17-06

SIGNED this 10th day of NOVEMBER, 2003.

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CITY OF SEATTLE

A Washington Corporation

By Peter Steinbrueck
PETER STEINBRUECK
President of the City Council

STATE OF WASHINGTON }
COUNTY OF KING }

ss.

On this day personally appeared before me Peter Steinbrueck, to me known to be the President of the City Council of the City of Seattle, a municipal corporation, the party that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 17 day of December, 2003.



JUDITH E. PIPPIN
Printed Name
Judith E. Pippin
NOTARY PUBLIC in and for the State of
Washington
Seattle
My Commission Expires
April 19, 2005



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STATE OF WASHINGTON
COUNTY OF KING
CITY OF SEATTLE

} ss

I, JUDITH E. PIPPIN, CITY CLERK OF THE CITY OF SEATTLE, DO HEREBY
CERTIFY THAT THE WITHIN AND FOREGOING IS A TRUE AND CORRECT
COPY OF *Property Use and Development Agreement (PUDA)*

AS THE SAME APPEARS ON FILE AND OF RECORD IN THIS DEPARTMENT.

IN WITNESS WHEREOF, I HAVE PERSONALLY SET MY HAND AND AFFIXED
THE SEAL TO THE CITY OF SEATTLE, THIS *16th* day of *Dec.*, 2003

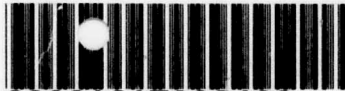
JUDITH E. PIPPIN
CITY CLERK

BY: *Margaret Carter*
DEPUTY CLERK



Return Address:

Seattle City Clerk's Office
600 4th Avenue, Room 104
Seattle, WA 98104



20031217000466

SEATTLE CITY CLERK
PAGE 001 OF 005
12/17/2003 10:35
KING COUNTY, WA

FILED
CITY OF SEATTLE
04 JAN 29 AM 11:13
CITY CLERK

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

Document Title(s) (or transaction contained therein): (all areas applicable to your document must be filled in.)

1. ORDINANCE #121323/PUDA

Re - _____ of document.

AN ORDINANCE relating to land use and zoning, amending page 18 of the Official Land Use Map, (Volume 27 of Plats, page 41, Records of King County) to rezone property located at 11332 Lake City Way Northeast, from Single Family 7200 (SF 7200) to Lowrise 2 Residential Commercial (L2-RC), accepting a Property Use and Development Agreement and Release in connection therewith, and authorizing the President of the City Council to execute the Property Use and Development Agreement and Release on behalf of the City and the Clerk to record it with the King County Department of Records and Elections (Petition of David Brown Associates for MMR Corporation (succeeded by D.C.E. Inc.), C.F. 305399, Application No. 2100337).

Grantor(s) (Last name first, then first name and initials) 1. City of Seattle ☐ Additional names on page---
-of document.

Grantee(s) (Last name first, then first name and initials) 1. N/A 2.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range) ☐ Additional reference
#s on page -----of document N/A

Assessor's Property Tax Parcel/Account Number/ N/A

☐ Assessor Tax # not yet assigned.

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ORDINANCE 121323

AN ORDINANCE relating to land use and zoning, amending page 18 of the Official Land Use Map, (Volume 27 of Plats, page 41, Records of King County) to rezone property located at 11332 Lake City Way Northeast, from Single Family 7200 (SF 7200) to Lowrise 2 Residential Commercial (L2-RC), accepting a Property Use and Development Agreement and Release in connection therewith, and authorizing the President of the City Council to execute the Property Use and Development Agreement and Release on behalf of the City and the Clerk to record it with the King County Department of Records and Elections (Petition of David Brown Associates for MMR Corporation (succeeded by D.C.E. Inc.), C.F. 305399, Application No. 2100337)

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. This Ordinance affects the following described property (the "Property"):
The northwesterly 50 feet measured along the southerly line of Lot 5, Block 33, Replat of portions of Block 33 and 34 of Victory Heights Division No. 2, according to plat thereof recorded in Volume 27 of Plats, page 41, records of King County.

Section 2. The Official Land Use Map zone classification for the Property, as adopted by Ordinance 110381 and last amended by Ordinance 121288, and established on page 18 of the Official Land Use Map, is amended to rezone the Property from Single Family 7200 (SF 7200) to Lowrise 2 Residential Commercial (L2-RC), as shown in "Exhibit A," attached to this Ordinance.

Section 3. A Property Use and Development Agreement and Release ("Agreement"), attached to this Ordinance as "Exhibit B," that was executed by D.C.E. Inc., owner of the Property, by which said owner agrees to certain restrictions upon the Property to ameliorate the adverse impacts of uses and developments otherwise permitted in the L2-RC zone upon property in the vicinity, is hereby approved and accepted. The President of the City Council is hereby authorized to execute the Agreement on behalf of the City.

Section 4. Pursuant to SMC Section 23.76.060B(1)(b), the rezoning of the Property shall expire and be of no force and effect five (5) years from the effective date of the approval of this rezoning unless an application is filed for the establishment of the

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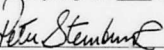


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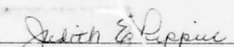
3 Section 5. The City Clerk is hereby authorized and directed to file said Property Use
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5 Elections Division, to file the original of the Property Use and Development Agreement
6 with this Ordinance at the City Clerk's Office, and to deliver copies of the same to the
7 Director of the Department of Planning and Development, and to the King County
8 Assessor's Office.

9
10 Section 6. This Ordinance shall take effect and be in force thirty (30) days from and
11 after its passage and approval by the City Council.

12 Passed by the City Council the 17th day of November, 2003, and signed by
13 me in open session in authentication of its passage this 17th day of November,
14 2003.

15
16 
17 President of the City Council

18
19 Filed by me this 19 day of November, 2003.

20
21 
22 City Clerk

23 (SEAL)

24 Exhibit A: Rezone Map

25 Exhibit B: Property Use and Development Agreement

26

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STATE OF WASHINGTON
COUNTY OF KING
CITY OF SEATTLE

1 ss

JUDITH E. PIPPIN, CITY CLERK OF THE CITY OF SEATTLE, DO HEREBY
CERTIFY THAT THE WITHIN AND FOREGOING IS A TRUE AND CORRECT
COPY OF Ordinance 121323

AS THE SAME APPEARS ON FILE, AND OF RECORD IN THIS DEPARTMENT.

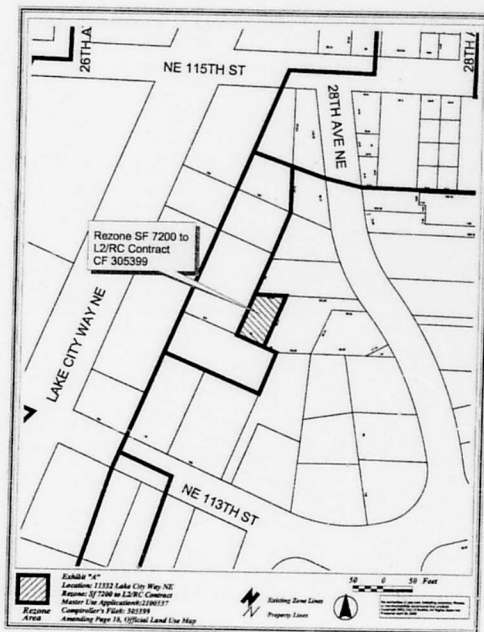
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED
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JUDITH E. PIPPIN
CITY CLERK

BY: *Margaret Carter*
DEPUTY CLERK

RAM:ram
Ordinance 11332 Lake City Way NE v3.doc
November 10, 2003
V.3
Page 3

Exhibit A
Rezone Map



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ACTING
CITY
CLERK

When Recorded, Return to:

THE CITY CLERK
City Hall, Floor 3
600 4th Avenue
Seattle, WA 98124-4025

**PROPERTY USE AND DEVELOPMENT AGREEMENT AND
RELEASE OF PRIOR PROPERTY USE AND DEVELOPMENT
AGREEMENT**

Grantor:	1) D.C.E., Inc.	2) _____
<input type="checkbox"/> Additional on page _____		
Grantee:	1) The City of Seattle	2) _____
<input type="checkbox"/> Additional on page _____		
Legal Description (abbreviated):	The northwesterly 50 feet measured along the southerly line of Lot 5, Block 33, Replat of portions of Block 33 and 34 of Victory Heights Division No. 2, according to plat thereof recorded in Volume 27 of Plats, page 41, records of King County.	
<input type="checkbox"/> Additional on: _____		
Assessor's Tax Parcel ID #:	8903000023	
Reference Nos. of Documents Released or Assigned:	20030801002158	

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT AND RELEASE (the "Agreement") is executed this 10th day of November, 2003 in favor of the City of Seattle, a Washington municipal corporation (herein called "City"), by D.C.E., Inc., a Washington corporation, sole owner of property legally described below (herein called "Owner").

RECITALS

A. D.C.E., Inc. is the sole owner of that certain real property in the City of Seattle described as the northwesterly 50 feet measured along the southerly line of Lot 5,

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B. Owner's predecessor submitted to the City of Seattle an application for a rezone from Single Family 7200 (SF 7200) to Lowrise 2/Residential Commercial (L2/RC) and an Administrative Conditional Use approval to use the Property for accessory use parking for the performing arts theatre known as Rick's Nightclub.

C. Seattle Municipal Code (SMC) Section 23.34.004 allows the City to approve a contract rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts which could occur from unrestricted use and development permitted in the zone."

D. Owner has a fee simple or other beneficial interest in the Property described in paragraph A. and wants the City Council to rezone the property pursuant to SMC 23.34.004.

E. The City, in approving this Agreement, has determined, pursuant to SMC 23.34.004, that the rezone of the Property and the waivers granted thereunder would not be materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the Property is located.

F. The Owner had previously executed a Property Use and Development Agreement for this Property that was recorded under #20030801002158 and City and Owner desire that this Agreement is to supercede the prior Property Use and Development Agreement and that that prior agreement may be released.

AGREEMENT

Section 1. Zone Change Limited to Proposed Use. Pursuant to SMC 23.34.004, Owner hereby covenants, bargains and agrees, on behalf of itself and its successors and assigns, that it will comply with the following limitations and conditions in consideration of the rezone of the Property from SF 7200 to L2/RC:

- a) Use of the Property shall be limited to surface parking accessory to the commercial use on the adjacent property, legally described as follows: Lots 12, 13, and 14 in Block 33 of Victory Heights No. 2, as per plat recorded in Volume 25, page 8, records of King County, except the west 100 feet of Lot 12, together

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with easement for ingress and egress over the northeasterly 10 feet of the northwesterly 100 feet of Lot 12, Block 33, in said addition, situated in the City of Seattle, County of King, State of Washington, held in common ownership with the Property (herein called the "Site");

- b) Use of the accessory surface parking on the Property shall be limited to employees and contractors of the commercial use on the Site, and shall not include parking for customers or for other, off-site businesses;
- c) A sign shall be posted on the Property stating the parking on the Property is limited to employees and contractors of the commercial use on the Site and may not be used for customers of the commercial use on the Site or other off-site businesses;
- d) On those evenings when the commercial use on the Site is in operation, a parking attendant shall be present at the accessory surface parking lot on the Property after 6:00 p.m., or when the commercial use on the Site is open for business, whichever is later;
- e) An opaque wall aesthetically acceptable to the Department of Planning and Development ("DPD"), of brick, concrete block or other appropriate sound barrier material, shall be constructed and maintained at the maximum height permitted for fences in the zone, along the property lines between the Property and the adjacent single-family zoned property. The plans for the wall must be reviewed and approved by DPD, and the wall must be in place before parking on the Property is allowed. A permit is required to build this wall on the Property; and
- f) A landscaped buffer comparable to the landscaped buffer present when the rezone was considered by the Hearing Examiner on November 28, 2002 shall be installed between the Property and adjoining single-family zoned properties, and must be in place prior to use of the Property for parking.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof are deemed to attach to

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and run with the Property and are binding upon the Owner, its heirs, successors and assigns, and apply to after-acquired title of the Owner of the Property; provided, however, the covenants herein and the rezone shall expire and be of no force and effect five (5) years from the effective date of the approval of the rezone unless a complete application is filed for a building permit for the improvements contemplated in this Agreement, those improvements are completed and a final approval on all permits required and on the wall and landscaping discussed above are obtained from DPD during the time permit authority is active and valid.

Section 3. Release of prior Public Use and Development Agreement. The City hereby releases and cancels the Property Use and Development Agreement dated June 30, 2003, recorded under Auditor's File No. 20030801002158, and relating to the following described property situated in City of Seattle, King County, State of Washington: the northwesterly 50 feet measured along the southerly line of Lot 5, Block 33, Replat of portions of Block 33 and 34 of Victory Heights Division No. 2, according to plat thereof recorded in Volume 27 of Plats, page 41, records of King County, also commonly known as 11332 Lake City Way Northeast.

Section 4. Amendment, Exercise of Police Power, No Precedent. This Agreement may be amended or modified only by a written agreement signed by the Owner and the City, and approved by the legislative authority of the City by ordinance. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Land Use Code or exercising the City's police power, as it may deem necessary in the public interest. Owner agrees that nothing in this Agreement is intended to authorize any use or dimension not otherwise permitted in a Lowrise 2/Residential Commercial zone, except as approved in this Agreement. The conditions contained in this Agreement are based on the unique circumstances applicable to this Property, and this Agreement is not intended to establish precedent for other rezones in the surrounding area.



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Section 5. Benefit. This Agreement is made for the benefit of the City and for the benefit of the owners of the property within 300 feet of the Property and either the City or any such benefited property owner may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 6. Repeal as Additional Remedy. Owner acknowledges that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owner avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may revoke the rezone by ordinance and require the use of the Property to conform to the requirements of the previously existing SF 7200 zone.

SIGNED this 10th day of November, 2003.

OWNER
D.C.E., INC.

a Washington Corporation

By [Signature]
David Ebert
Printed Name

Its: PRESIDENT (title).

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STATE OF WASHINGTON

COUNTY OF KING

ss.

On this day personally appeared before me DAVID FOERT
to me known to be the PRESIDENT of D.C.E., Inc. the party that
executed the foregoing instrument, and acknowledged such instrument to be the free and
voluntary act and deed of such corporation, for the uses and purposes therein mentioned,
and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 10th day of
NOVEMBER, 2003.

BETTY V. HOWARD
STATE OF WASHINGTON
NOTARY --- PUBLIC
MY COMMISSION EXPIRES 3-17-06

Betty V. Howard
Printed Name

Betty V. Howard
NOTARY PUBLIC in and for the State of
Washington, residing at
Seattle

My Commission Expires
3-17-06

SIGNED this 10th day of November, 2003.

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CITY OF SEATTLE

A Washington Corporation

By _____

President of the City Council

STATE OF WASHINGTON }

ss.

COUNTY OF KING }

On this day personally appeared before me _____, to me known to be the President of the City Council of the City of Seattle, a municipal corporation, the party that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ____ day of _____, 2003.

Printed Name

NOTARY PUBLIC in and for the State of Washington, residing at

My Commission Expires

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STATE OF WASHINGTON - KING COUNTY

--SS.

165832
City of Seattle, Clerk's Office

No. ORDINANCE TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121323 ORD TITLE ONLY

was published on

12/2/2003



Affidavit of Publication

Jerome E. Bridges

Subscribed and sworn to before me on

12/2/2003

Melinda

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinance, passed by the City Council on November 10, 2003, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 121223

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of publication in the Seattle Daily Journal of Commerce, December 2, 2003.
(12/2/166632)

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