

ORDINANCE No. 118449 118449

COUNCIL BILL No. 111573

INDEXED

The City of Seattle--Legislative

Council Bill No. 111573, AN ORDINANCE relating to economic development; authorizing restructuring of an Urban Development Action Grant loan made to the Pike Place Market Preservation and Development Authority under Ordinance 108997 and ratifying and confirming prior acts.

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____ report that we have considered the same and respectfully recommend that

BBCD to approve. 2 to 1

12/9/96 motion by Noland to hold over well

Full Council vote 6-0

Jan Drago

Committee Chair

COMPTRROLLER FILE No.

Introduced: <u>DEC - 2 1996</u>	By: <u>DRAGO</u>
Referred: <u>DEC - 2 1996</u>	To: <u>Business, Economic & Community Development</u>
Referred:	To: <u>Committee</u>
Referred:	To:
Reported: <u>DEC - 6 1996</u>	Second Reading: <u>DEC 16 1996</u>
Third Reading: <u>DEC 16 1996</u>	Signed: <u>DEC 16 1996</u>
Presented to Mayor: <u>DEC 17 1996</u>	Approved: <u>DEC 19 1996</u>
Returned to City Clerk: <u>DEC 19 1996</u>	Published: <u>title</u> <u>2 pp.</u>
Vetoed by Mayor:	Veto Published:
Passed over veto:	Veto Sustained:

INDEXED

The City of Seattle--Legislative Department

Date Reprinted
and Adopted

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____
report that we have considered the same and respectfully recommend that the same:

BECD to approve 2-0 1 absent

12/9/96 motion by Nolan to hold one week.

Full Council vote 6-0

Lee Prago

Committee Chair

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ORDINANCE 118449

1
2 AN ORDINANCE relating to economic development; authorizing restructuring of an Urban
3 Development Action Grant loan made to the Pike Place Market Preservation and Development
4 Authority under Ordinance 108997 and ratifying and confirming prior acts.

5 WHEREAS, pursuant to Ordinance 108997 passed April 21, 1980, the City of Seattle accepted an
6 Urban Development Action Grant ("UDAG") from the United States Department of Housing and
7 Urban Development ("HUD") and made a loan of \$757,850 (the "UDAG Loan") to the Pike
8 Place Market Preservation and Development Authority (the "Market PDA") for the
9 redevelopment of the Sanitary Market building; and

10 WHEREAS, the Director of Economic Development has recommended that the UDAG Loan be
11 restructured on certain terms and the Market PDA has approved such restructuring; and

12 WHEREAS, the forgiveness of accrued interest and provision for a portion of the principal to be used to
13 support low-income housing in lieu of payment to the City will assist the Market PDA to
14 maintain the affordability of housing in the Sanitary Market and other buildings in light of
15 reductions in available federal rent subsidies; NOW, THEREFORE,

16 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

17 Section 1. The Director of Economic Development ("OED Director") is hereby authorized,
18 for and on behalf of The City of Seattle, to enter into an agreement with the Pike Place Market
19 Preservation and Development Authority ("Market PDA") with financial terms substantially as set forth
20 in Exhibit A attached to this Ordinance, restructuring the UDAG Loan. The final agreement with the
21 Market PDA shall also reflect such modifications and additional terms as the OED Director shall deem
22 appropriate to effect the intent of this Ordinance, including adjustments to the specific terms of the
23 Market PDA's commitments to support of low-income housing in return for the forgiveness of interest
24 and principal on the UDAG Loan.

Section 2. The OED Director is hereby authorized, for and on behalf of the City, to
administer and enforce the UDAG Loan terms, as restructured hereunder, and to take such other actions

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1 and execute and deliver such other documents as shall be reasonably necessary or appropriate to carry
2 out the intent of this Ordinance.

3 Section 3. Any act pursuant to the authority and prior to the effective date of this ordinance
4 is hereby ratified and confirmed.

5 Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its
6 approval by the Mayor; but if not approved and returned by the Mayor within ten (10) days after
7 presentation, it shall take effect as provided by Municipal Code

8 Section 1.04.020.

9 Passed by the City Council the 16 day of December, 1996, and signed by me in
10 open session in authentication of its passage this 16 day of December, 1996.

11 Juan Drago
12 President of the City Council

13 Approved by me this 19 day of December, 1996.

14 Norman B. Rice
15 Norman B. Rice, Mayor

16 Filed by me this 19 day of December, 1996.

17 Janice E. Papp
18 City Clerk

19 (SEAL)

20 Exhibits:

- 21 A. Form of Amendment to UDAG Loan Agreement
22
23
24

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AMENDMENT NO. 6 TO UDAG LOAN AGREEMENT

This Amendment is made as of June 30, 1996, by and between THE CITY OF SEATTLE, a Washington municipal corporation ("City"), and PIKE PLACE MARKET PRESERVATION AND DEVELOPMENT AUTHORITY, a Washington public corporation ("Borrower"), amending that certain Contract, no 6147, dated May 14, 1980, as previously amended by Change Order No. 1 dated October 27, 1980, Change Order No. 2 dated January 9, 1981, Change Order No. 3 dated March 10, 1981, Change Order No. 4 dated May 8, 1981, and Change Order No. 5 dated June 25, 1981, between City and Borrower (as so amended, the "Loan Agreement") with respect to the redevelopment of the Sanitary Market building ("Building") located in the Pike Place Market, Seattle, Washington (the "Market").

NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT, ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

RECITALS

A. Pursuant to the Loan Agreement the City made a loan to Borrower from federal Urban Development Action Grant ("UDAG") funds provided by the U.S. Department of Housing and Urban Development ("HUD") in the amount of \$757,850 (the "Loan" or "UDAG Loan"). No payments have been made on the Loan to date.

B. Borrower and City anticipate reductions in federal funds available to Borrower to support low-income housing in the Market, and desire to restructure the Loan so as to enable Borrower to use some funds that otherwise would be applied to debt service to replace federal subsidies to such housing.

C. Therefore, Borrower and City are willing to agree to such modifications on the terms and conditions stated herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties agree as follows:

1. Affirmation of Recitals.

The recitals set forth above are true and correct and are incorporated herein by reference.

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2. Definition of Terms.

All initially capitalized terms not expressly defined in this Agreement shall bear the same respective definitions herein as they bear in the Loan Documents. "Loan Documents" shall mean the Loan Agreement as modified hereby and by any further modifications that may hereafter be duly executed by the parties hereto.

3. Acknowledgment of Debt.

Borrower acknowledges that as of June 30, 1996, the aggregate outstanding principal balance on the Loan was \$787,500.00, and outstanding accrued interest was \$767,323.16 and that such amounts are owing without claim, offset or defense.

4. Modified Payment Terms; Forgiveness of Interest.

(a) Instead of the payments previously specified by the Loan Documents, City shall accept payment of the principal balance stated in Section 3 above as follows: Borrower shall make a payment of TWO HUNDRED FIFTY-FIVE THOUSAND DOLLARS (\$255,000.00) on the date of execution of this Agreement. The remaining balance, with interest at the rate of two and one-half percent (2.5%) per year from and after June 30, 1996 (computed based upon a 360-day year and twelve thirty-day months), shall be paid on the terms set forth in this Section 4. Upon execution and delivery of this Agreement and receipt by the City of the \$255,000.00 payment, all interest accrued on the UDAG Loan through June 30, 1996 is forgiven.

(b) Subject to the credits allowed under subsection (c) below, the remaining principal amount of \$502,850.00 shall be paid as follows: commencing in 1997, Borrower shall make annual payments of principal and interest on June 30 of each year in the amount of FIFTY-SEVEN THOUSAND FOUR HUNDRED FIFTY-FIVE DOLLARS (\$57,455.00) until all amounts owing hereunder have been paid in full.

(c) Borrower shall be entitled to credit, dollar for dollar, against its annual obligations under subsection (b) above for deposits to the "Fund", as defined in Section 5 below, subject to the terms and conditions in this subsection and to the limits in subsection (d) below. Amounts deposited in the Fund in the calendar year preceding the year in which there is a due date of an installment under subsection (b) of this Section, shall be credited against such installment provided that:

- (1) Borrower shall have complied with its obligations regarding the Housing under this Agreement throughout such calendar year and with its reporting obligations hereunder for such calendar year; and
- (2) The balance owing hereunder shall not have been accelerated after an Event of Default.

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(d) The maximum annual amount of the credit allowed under subsection (c) in any year ("Maximum Annual Credit") shall be the sum of the per unit credits set forth in this subsection, but in no event more than THIRTY-SEVEN THOUSAND FOUR HUNDRED FIFTY-FIVE DOLLARS (\$37,455.00). The per unit credits shall be as follows:

- (1) For each unit in the Housing that is a Low-Income Unit (as defined in Section 5 below) but not a Very-Low Income Unit during the year in question, \$353.00;
- (2) For each unit in the Housing that is a Very-Low Income Unit during the year in question, \$400.00.

(e) Principal owing hereunder may be prepaid in full or in part at any time without premium or penalty. No prepayment shall reduce the annual payments due hereunder until the entire balance is paid.

(f) Borrower shall pay a late charge of two percent (2%) of the required payment if any installment is not paid in full by the fifteenth (15th) day after the installment is due, as an administrative charge for collecting and handling late payments and not as a penalty.

(g) On June 30, 2006 (the "Maturity Date"), all sums remaining owing to City under the Loan Documents, including, without limitation, principal, interest, and any late charges and fees, shall be due and payable in full.

5. Low-Income § g: Deposits to Fund: Effect of Change of Use.

(a) Establishment of Fund. Borrower shall establish, no later than December 31, 1996 or ten days following execution of this Amendment, whichever is earlier, a Low-Income Housing Reserve Fund (the "Fund"), with an initial balance of FIFTY THOUSAND DOLLARS (\$50,000.00). The Fund shall be maintained in a separate interest-bearing bank account and shall not be commingled with any other moneys, provided that the funds in this account may be invested by Borrower through the Local Government Investment Pool until needed to support Housing Costs. Earnings on the Fund shall accrue to the Fund. The Fund shall be established to support, and to maintain the affordability of, ninety-six (96) Units of Low-Income Housing, of which at least seventy-six (76) Units initially shall be Very-Low Income Housing, at the LaSalle, Stewart House, and Sanitary Market, as more specifically set forth on Exhibit A to this Agreement (the "Housing").

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(b) Definitions. For purposes of this Agreement:

“Low-Income Housing” means housing that, at all times during the period for which a determination of the status of such housing is made, (a) is occupied or reserved for occupancy by households whose annual income, as of the later of the date of this Agreement or the date of initial occupancy by such household, does not exceed 80% of Median Income, adjusted for household size, as determined by HUD, with any other adjustments published by HUD that are approved by the City for purposes of this Agreement; and (b) is rented or offered for rent at a monthly rental per unit that, when added to any other charges paid to Borrower by the tenant and a reasonable allowance to cover utilities paid by the tenant, does not exceed 30% of 80% of Median Income, adjusted as set forth above. Low-Income Housing includes Very Low-Income Housing.

A “Low-Income Unit” is one dwelling unit of Low-Income Housing.

“Median Income” shall mean median income for the area in which the Housing is located, as determined from time to time by HUD. If HUD ceases to provide such estimates no less frequently than annually, then “Median Income” shall mean such comparable figure for the Seattle area or an area including Seattle, published or reported by a federal, state, or local agency, as the City shall select in its sole discretion.

“Very Low-Income Housing” means housing that, at all times during the period for which a determination of the status of such housing is made, (a) is occupied or reserved for occupancy by a household whose annual income, as of the later of the date of this Agreement or the date of initial occupancy by such household, does not exceed 50% of Median Income, adjusted for household size, as determined by HUD, with any other adjustments published by HUD that are approved by the City for purposes of this Agreement; and (b) is rented or offered for rent at a monthly rental that, when added to any other charges paid to Borrower by the tenant and a reasonable allowance to cover utilities paid by the tenant, does not exceed 30% of 50% of Median Income, adjusted as set forth above.

A “Very Low-Income Unit” is one dwelling unit of Very Low-Income Housing.

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(c) Use of Fund and Housing Revenues. The Fund shall be used solely for reasonably necessary costs of operating and maintaining the Housing, capital project expenditures in support of the Housing, and program services for the low-income occupants of the Housing (collectively, "Housing Costs"). Housing Costs shall not include tenant rent subsidies. To the extent that costs are incurred that are partially attributable to the Housing and partially attributable to other uses (for example, costs of a roof for a mixed-use building containing Housing), Borrower shall make a reasonable allocation based on a method that shall be described in reports under Section 8 below. Amounts in the Fund shall be used in any year only to the extent that Housing Costs exceed the total revenues in such year from rents and other payments by tenants, rent subsidies, operating subsidies and other cash flow attributable to the Housing (collectively, "Housing Revenues"). Until applied to Housing Costs, all amounts in the Fund shall be held in trust for the City and shall not be subject to claims of creditors.

(d) Application of Fund or Housing Revenues to other Purposes. The intent of this Agreement is that funds otherwise payable to the City on the UDAG Loan will be added to, and will not supplant, other funds available to maintain the affordability of the Housing. Therefore, if prior to the expenditure of all amounts in the Fund in accordance with this Agreement, Borrower shall apply any Housing Revenues other than to payment of Housing Costs or to payments to the City under this Agreement, then an amount equal to the Housing Revenues so applied shall immediately be paid from the Fund to the City. If the City or any auditor shall determine that any amounts in the Housing Fund have been applied other than to pay Housing Costs (or to pay the City as stated above), then Borrower shall pay the City on demand, from sources other than the Fund and Housing Revenues, an amount equal to the amount misapplied from the Housing Fund, plus interest thereon from the date of disbursement from the Housing Fund at the rate of five percent (5%) per annum. Amounts paid to the City under this subsection shall not apply against principal or interest on the UDAG Loan.

(e) Best Efforts to Maintain Low- and Very Low-Income Housing. The City acknowledges that based on the best available projections, deposits of the Maximum Credit Amount set forth in Section 4 to the Fund, in combination with federal subsidies and tenant rents, will not be sufficient to sustain the 96 Low-Income Units without additional funding from the Borrower. The City also recognizes that federal subsidies, in the form of either contract payments or voucher certificates, are expected to be the most significant source of revenue to support the Borrower's Low-Income Housing. The City recognizes that the Borrower does not exercise control over federal actions affecting Low-Income Housing funding. Borrower shall use its best efforts to maintain 96 Low-Income Units, including 76 Very Low-Income Units, at least through 2006. Provided that Borrower shall have used such best efforts, and shall have applied all Housing Revenues and Fund assets as required by this Agreement, the failure to maintain such numbers of Units shall not be an Event of Default. However, if Borrower shall fail to maintain 96 Low-Income Units, or shall fail to maintain 76 Very Low-Income Units, and either (i) Borrower shall not have used its best efforts as set forth above or (ii) Borrower shall have applied Housing Revenues or Fund assets other than for Housing Costs, then such failure shall constitute an Event of Default.

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(f) Effect of Change of Use. If for any reason the use of the Housing as Low-Income Housing shall terminate in its entirety, any further deposits in the Fund shall not be credited against the Borrower's obligations on the UDAG Loan.

(g) Intent of Remedies. The provisions for payments from the Fund to the City and reduction in the Maximum Annual Credit in this subsection are intended not as penalties but as means to maintain the intended relationship between the amount of Low-Income and Very Low-Income Housing provided and the credits allowed against amounts owing on the UDAG Loan, and to ensure that amounts in the Fund are used for the purposes intended.

6. Events of Default; Default Rate; Offset; No Waiver of Remedies.

Notwithstanding any default rate stated in the Loan Documents, should an Event of Default occur hereunder, City shall be entitled to recover interest at the rate of twelve percent (12%) per annum compounded monthly, or the highest rate permitted by applicable law, on all amounts owing (including principal and accrued interest), whether or not this Loan shall be accelerated. An "Event of Default" shall mean the failure of Borrower to make any payment of interest, principal, or other payments when due under the terms of the Loan Documents; any event identified as an Event of Default in Section 5(e), or any breach of any other covenant or warranty in this Agreement. Notwithstanding any provisions for notice or cure periods in the Loan Documents, if any Event of Default is not fully cured (including payment of all interest, late charges and costs) fifteen (15) days after mailing of notice of such Event of Default to Borrower, then City may, at its sole option and without further notice, declare all amounts owing hereunder immediately due and payable. After any Event of Default City may, at its sole option and without notice, offset any amounts whatever that are then owing or payable by City to Borrower against all or any portion of the amounts owing by Borrower under the Loan Documents. In addition, and without limiting the foregoing, except only as otherwise expressly provided in the Loan Documents, City expressly reserves any and all rights and remedies available to it in the event Borrower defaults under any other terms, conditions and provisions of the Loan Documents. No failure to exercise, or delay by City in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement and the Loan Documents are cumulative and not exclusive of each other or of any right or remedy provided by law or in equity. No notice to or demand upon Borrower in any instance shall, in itself, entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of City to take any other or further action in any circumstance without notice or demand.

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7. Negative Covenants of the Borrower

Borrower covenants and agrees that, from the date hereof until the completion of performance of all of Borrower's obligations under the Loan Documents:

- (a) Borrower will not sell, convey, lease (except leases of individual units to residential tenants), assign, transfer or otherwise dispose of the Housing unless approved in writing by the City.
- (b) Borrower shall not voluntarily terminate, or voluntarily fail to renew, any federal subsidy contract with respect to any of the Housing, without the prior written consent of the City.

8. Affirmative Covenants of the Borrower

The Borrower agrees to comply with the following covenants from the date hereof until all obligations under the Loan Documents have been fully performed:

(a) Borrower agrees to pay punctually, without setoff or deduction for any cause whatever, the principal and interest hereunder and any other amounts that may become due and payable to the City under or pursuant to the terms of the Loan Documents.

(b) Borrower agrees at all times to maintain the Housing in good condition and repair and in compliance with applicable Codes and agreements. The Borrower also agrees to maintain during the term of the Loan hazard insurance on the Housing satisfactory to City, insuring against fire, theft, loss of income, liability, and such other hazards as may be deemed appropriate by City, in amounts and form satisfactory to City and otherwise sufficient to prevent the Borrower from becoming a coinsurer. The insurance policies shall be issued by companies satisfactory to the City with acceptable loss payee clauses in favor of the City.

(c) Borrower agrees to maintain adequate records and books of account, in which complete entries will be made reflecting all of its business and financial transactions relating to the Housing and the Fund, such entries to be made in accordance with generally accepted accounting principles, consistently applied. Borrower shall maintain records of tenant incomes and rents sufficient to demonstrate the status of each unit of the Housing under this Agreement. Borrower shall deliver to the City, in addition to any financial reports otherwise required, no later than June 30 of each year, annual statements, certified by an authorized officer of the Borrower to be true and accurate, showing in detail for the prior calendar year, the status of each unit in the Housing as a Low-Income Unit or Very Low-Income Unit (and any changes in such status), all deposits to the Fund (showing the source of each), all expenditures from the Fund and their purposes, all interest earned by the Fund, and the opening and closing balances of the Fund. Borrower's annual audited financial statements shall set forth separately the Fund (referring to the restrictions thereon), the annual cash flow into and out of the Fund, Housing Revenues and Housing Costs.

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(d) Borrower agrees, if at any time the Borrower defaults on any provision of this Agreement, to pay the City or its assigns, in addition to any other amounts that may be due from the Borrower, an amount equal to the documented direct costs and expenses of collection, enforcement, correction or waiver of the default, incurred by the City or its agents or the City's assigns in such collection, enforcement, correction, or waiver of default.

9. Severability.

The unenforceability or invalidity of any provision or provisions of this Agreement or any Loan Document as to any party or circumstance shall not render the provision or provisions unenforceable or invalid as to any other parties or circumstances, or render other provision or provisions hereof or thereof invalid or unenforceable.

10. Representations and Warranties.

(a) Borrower represents and warrants to City that Borrower is a public corporation duly organized and validly existing under the laws of the state of Washington; that this Agreement has been duly authorized, executed and delivered by Borrower; that the Loan Agreement, as amended hereby, represents the valid and binding obligation of Borrower enforceable according to its terms; that the execution, delivery and performance of this Agreement and the Loan Agreement as amended hereby does not and will not conflict with, violate or cause a default under any judgment, order, or decree to which Borrower or its property is subject, or any agreement or instrument by which Borrower is bound or to which its property is subject.

(b) Borrower further represents and warrants that, upon the execution and delivery hereof, Borrower is not in breach of or default under any provision of the Loan Agreement as amended hereby or any other loan documents affecting Borrower.

11. Time.

Time is of the essence of all of Borrower's obligations hereunder and under the Loan Documents.

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12. Entire Agreement; Modifications; Construction.

This Agreement includes the entire agreement of the parties with respect to the modification of the UDAG Loan terms. This Agreement, and the Loan Documents, may be changed or modified only by a writing signed by the party against whom enforcement of such change or modification is sought. No modification shall be binding upon a party unless signed for such party by a duly authorized person. This agreement is the product of negotiation and shall be construed in accordance with its terms, without reference to the party who drafted any provision and without reference to any other communications or understandings, written or oral. Except as expressly modified hereby, the Loan Agreement shall remain in full force and effect.

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

THE CITY OF SEATTLE, a Washington municipal corporation

By: _____
Mary Jean Ryan, Director, Office of Economic Development
By authority of Ordinance _____

PIKE PLACE MARKET PRESERVATION AND DEVELOPMENT AUTHORITY

By: _____
NAME: _____
TITLE: _____

Exhibit:

A. Schedule of Housing Units

Approved as to Form Only:
MARK H. SIDRAN, City Attorney

By: _____
Assistant City Attorney

SANMKLA3.DOC--12/3/96

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City of Seattle

Executive Department—Office of Economic Development

Mary Jean Ryan, Director
Norman B. Rice, Mayor



November 25, 1996

To: Honorable Jan Drago, Council President

VIA: Tom Tierney, Director
Office of Management and Budget

From: Mary Jean Ryan, Director
Office of Economic Development

SUBJECT: Proposed Legislation

Enclosed is proposed legislation for consideration by the Seattle City Council. The Ordinance authorizes the restructuring of an Urban Development Action Grant (UDAG) loan made to the Pike Place Market and Preservation and Development Authority (Market PDA) under ordinance 108997.

The City of Seattle made a \$757,850 UDAG loan to the Market PDA on 4/21/80 for the redevelopment of the Sanitary Market building. We are recommending that the loan be restructured on certain terms and the Market PDA has approved such restructuring. This restructuring includes the forgiveness of accrued interest and provision for a portion of the principal to be used to support low-income housing in lieu of payment to the City which will assist the Market PDA to maintain the affordability of housing in the Sanitary Market.

If you or your staff have any questions about this legislation, please contact Chuck Depew at 684-0208. Thank you for your assistance with this effort.

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AMENDMENT NO. 6 TO UDAG LOAN AGREEMENT

This Amendment is made as of June 30, 1996, by and between THE CITY OF SEATTLE, Washington municipal corporation ("City"), and PIKE PLACE MARKET PRESERVATION DEVELOPMENT AUTHORITY, a Washington public corporation ("Borrower"), amending the certain Contract, no 6147, dated May 14, 1980, as previously amended by Change Order No. 1 dated October 27, 1980, Change Order No. 2 dated January 9, 1981, Change Order No. 3 dated March 10, 1981, Change Order No. 4 dated May 8, 1981, and Change Order No. 5 dated June 25, 1981, between City and Borrower (as so amended, the "Loan Agreement") with respect to the redevelopment of the Sanitary Market building ("Building") located in the Pike Place Market, Seattle, Washington (the "Market").

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RECITALS

A. Pursuant to the Loan Agreement the City made a loan to Borrower from federal Urban Development Action Grant ("UDAG") funds provided by the U.S. Department of Housing and Urban Development ("HUD") in the amount of \$757,850 (the "Loan" or "UDAG Loan"). No payments have been made on the Loan to date.

B. Borrower and City anticipate reductions in federal funds available to Borrower to support low-income housing in the Market, and desire to restructure the Loan so as to enable Borrower to use some funds that otherwise would be applied to debt service to replace federal subsidies to such housing.

C. Therefore, Borrower and City are willing to agree to such modifications on the terms and conditions stated herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for their good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties agree as follows:

- 1. Affirmation of Recitals.

The recitals set forth above are true and correct and are incorporated herein by reference.

- 2. Definition of Terms.

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All initially capitalized terms not expressly defined in this Agreement shall bear the same respective definitions herein as they bear in the Loan Documents. "Loan Documents" shall mean the Loan Agreement as modified hereby and by any further modifications that may hereafter be duly executed by the parties hereto.

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Borrower acknowledges that as of June 30, 1996, the aggregate outstanding principal balance on the Loan was \$787,500.00, and outstanding accrued interest was \$767,323.16 and that such amounts are owing without claim, offset or defense.

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(a) Instead of the payments previously specified by the Loan Documents, City shall accept payment of the principal balance stated in Section 3 above as follows: Borrower shall make a payment of TWO HUNDRED FIFTY-FIVE THOUSAND DOLLARS (\$255,000.00) on the date of execution of this Agreement. The remaining balance, with interest at the rate of two and one-half percent (2.5%) per year from and after June 30, 1996 (computed based upon a 360-day year and twelve thirty-day months), shall be paid on the terms set forth in this Section 4. Upon execution and delivery of this Agreement and receipt by the City of the \$255,000.00 payment, all interest accrued on the UDAG Loan through June 30, 1996 is forgiven.

(b) Subject to the credits allowed under subsection (c) below, the remaining principal amount of \$502,850.00 shall be paid as follows: commencing in 1997, Borrower shall make annual payments of principal and interest on June 30 of each year in the amount of FIFTY-SEVEN THOUSAND FOUR HUNDRED FIFTY-FIVE DOLLARS (\$57,455.00) until all amounts owing hereunder have been paid in full.

(c) Borrower shall be entitled to credit, dollar for dollar, against its annual obligations under subsection (b) above for deposits to the "Fund", as defined in Section 5 below, subject to the terms and conditions in this subsection and to the limits in subsection (d) below. Amounts deposited in the Fund in the calendar year preceding the year in which there is a due date of an installment under subsection (b) of this Section, shall be credited against such installment provided that:

- (1) All deposits to be credited against obligations on the UDAG Loan shall be made from sources other than Housing Revenues, as defined in Section 5 below;
- (2) Borrower shall have complied with its obligations regarding the Housing under this Agreement throughout such calendar year and with its reporting obligations hereunder for such calendar year; and
- (3) The balance owing hereunder shall not have been accelerated after an Event of Default.

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(d) The maximum annual amount of the credit allowed under subsection (c) in any year ("Maximum Annual Credit") shall be the sum of the per unit credits set forth in this subsection, but in no event more than THIRTY-SEVEN THOUSAND FOUR HUNDRED FIFTY-FIVE DOLLARS (\$37,455.00). The per unit credits shall be as follows:

- (1) For each unit in the Housing that is a Low-Income Unit (as defined in Section 5 below) but not a Very-Low Income Unit during the year in question, \$352.75;
- (2) For each unit in the Housing that is a Very-Low Income Unit during the year in question, up to a maximum of 76 such units, \$400.00.

(e) Principal owing hereunder may be prepaid in full or in part at any time without premium or penalty. No prepayment shall reduce the annual payments due hereunder until the entire balance is paid.

(f) Borrower shall pay a late charge of two percent (2%) of the required payment if any installment is not paid in full by the fifteenth (15th) day after the installment is due, as an administrative charge for collecting and handling late payments and not as a penalty.

(g) On June 30, 2006 (the "Maturity Date"), all sums remaining owing to City under the Loan Documents, including, without limitation, principal, interest, and any late charges and fees, shall be due and payable in full.

5. Low-Income Housing: Deposits to Fund; Effect of Change of Use.

(a) Establishment of Fund. Borrower shall establish, no later than December 31, 1996 a Low-Income Housing Reserve Fund (the "Fund") with an initial balance of FIFTY THOUSAND DOLLARS (\$50,000.00). The Fund shall be maintained in a separate interest-bearing bank account and shall not be commingled with any other moneys. Earnings on the Fund shall accrue to the Fund. The Fund shall be established to support, and to maintain the affordability of, ninety-six (96) Units of Low-Income Housing, of which at least seventy-six (76) Units initially shall be Very-Low Income Housing, at the LaSalle, Stewart House, and Sanitary Market, as more specifically set forth on Exhibit A to this Agreement (the "Housing").

(b) Definitions. For purposes of this Agreement:

"Low-Income Housing" means housing that, at all times during the period for which a determination of the status of such housing is made, (a) is occupied or reserved for occupancy by households whose annual income, as of the later of the date of this Agreement or the date of initial occupancy by such household, does not exceed 80% of Median Income, adjusted for household size, as determined by HUD, with any other adjustments published by HUD that are approved by the City for purposes of this Agreement; and (b) is rented or offered for rent at a monthly rental per unit that, when added to any other charges paid to Borrower by the tenant and a reasonable allowance to cover utilities paid by the tenant, does not exceed 30% of 80% of Median Income, adjusted as set forth above. Low-Income Housing includes Very Low-Income Housing.

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A "Low-Income Unit" is one dwelling unit of Low-Income Housing.

"Median Income" shall mean median income for the area in which the Housing is located, as determined from time to time by HUD. If HUD ceases to provide such estimates no less frequently than annually, then "Median Income" shall mean such comparable figure for the Seattle area or an area including Seattle, published or reported by a federal, state, or local agency, as the City shall select in its sole discretion.

"Very Low-Income Housing" means housing that, at all times during the period for which a determination of the status of such housing is made, (a) is occupied or reserved for occupancy by a household whose annual income, as of the later of the date of this Agreement or the date of initial occupancy by such household, does not exceed 50% of Median Income, adjusted for household size, as determined by HUD, with any other adjustments published by HUD that are approved by the City for purposes of this Agreement; and (b) is rented or offered for rent at a monthly rental that, when added to any other charges paid to Borrower by the tenant and a reasonable allowance to cover utilities paid by the tenant, does not exceed 30% of 50% of Median Income, adjusted as set forth above.

A "Very Low-Income Unit" is one dwelling unit of Very Low-Income Housing.

(c) Use of Fund and Housing Revenues. The Fund shall be used solely for reasonably necessary costs of operating and maintaining the Housing, capital project expenditures in support of the Housing, and program services for the low-income occupants of the Housing (collectively, "Housing Costs"). Housing Costs shall not include tenant rent subsidies. To the extent that costs are incurred that are partially attributable to the Housing and partially attributable to other uses (for example, costs of a roof for a mixed-use building containing Housing), Borrower shall make a reasonable allocation based on a method that shall be described in reports under Section 8 below. Amounts in the Fund shall be used only to the extent that Housing Costs exceed the funds available from rents and other payments by tenants, rent subsidies, operating subsidies and other cash flow attributable to the Housing (collectively, "Housing Revenues"). Until applied to Housing Costs, all amounts in the Fund shall be held in trust for the City and shall not be subject to claims of creditors.

(d) Application of Fund or Housing Revenues to other Purposes. The intent of this Agreement is that funds otherwise payable to the City on the UDAG Loan will be added to, and will not supplant, other funds available to maintain the affordability of the Housing. Therefore, if prior to the expenditure of all amounts in the Fund in accordance with this Agreement, Borrower shall apply any Housing Revenues other than to payment of Housing Costs, then an amount equal to the Housing Revenues so applied shall immediately be paid from the Fund to the City. If the City or any auditor shall determine that any amounts in the Housing Fund have been applied other than to pay Housing Costs (or to pay the City as stated above), then Borrower shall pay the City on demand, from sources other than the Fund and Housing Revenues, an amount equal to the amount misapplied from the Housing Fund, plus interest thereon from the date of

disbursement from the Housing Fund at the rate of 5% per annum. Amounts paid to the City under this subsection shall not apply against principal or interest on the UDAG Loan.

(e) Best Efforts to Maintain Low- and Very Low-Income Housing. The City acknowledges that based on the best available projections, deposits of the Maximum Credit Amount set forth in Section 4 to the Fund, in combination with federal subsidies and tenant rents, will not be sufficient to sustain the 96 Low-Income Units without additional funding from the Borrower. The City also recognizes that federal subsidies, in the form of either contract payments or voucher certificates, are expected to be the most significant source of revenue to support the Borrower's Low-Income Housing. The City recognizes that the Borrower does not exercise control over federal actions affecting Low-Income Housing funding. Borrower shall use its best efforts to maintain 96 Low-Income Units, including 76 Very Low-Income Units, at least through 2006. Provided that Borrower shall have used such best efforts, and shall have applied all Housing Revenues and Fund assets as required by this Agreement, the failure to maintain such numbers of Units shall not be an Event of Default. However, if Borrower shall fail to maintain 96 Low-Income Units, or shall fail to maintain 76 Very Low-Income Units, and either (i) Borrower shall not have used its best efforts as set forth above or (ii) Borrower shall have applied Housing Revenues or Fund assets other than for Housing Costs, then such failure shall constitute an Event of Default.

(f) Effect of Change of Use. If for any reason the use of the Housing as Low-Income Housing shall terminate in its entirety, [or if there shall remain fewer than 10 Low-Income Units in the Housing, then all amounts remaining in the Fund shall immediately be paid to the City,] and any further deposits in the Fund shall not be credited against the Borrower's obligations on the UDAG Loan.

(g) Intent of Remedies. The provisions for payments from the Fund to the City and reduction in the Maximum Annual Credit in this subsection are intended not as penalties but as means to maintain the intended relationship between the amount of Low-Income and Very Low-Income Housing provided and the credits allowed against amounts owing on the UDAG Loan, and to ensure that amounts in the Fund are used for the purposes intended.

6. Events of Default; Default Rate; Offset; No Waiver of Remedies.

Notwithstanding any default rate stated in the Loan Documents, should an Event of Default occur hereunder, City shall be entitled to recover interest at the rate of twelve percent (12%) per annum compounded monthly, or the highest rate permitted by applicable law, on all amounts owing (including principal and accrued interest), whether or not this Loan shall be accelerated. An "Event of Default" shall mean the failure of Borrower to make any payment of interest, principal, or other payments when due under the terms of the Loan Documents; any event identified as an Event of Default in Section 5(e), or any breach of any other covenant or warranty in this Agreement. Notwithstanding any provisions for notice or cure periods in the Loan Documents, if any Event of Default is not fully cured (including payment of all interest, late charges and costs) fifteen (15) days

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after mailing of notice of such Event of Default to Borrower, then City may, at its sole option and without further notice, declare all amounts owing hereunder immediately due and payable. After any Event of Default City may, at its sole option and without notice, offset any amounts whatever that are then owing or payable by City to Borrower against all or any portion of the amounts owing by Borrower under the Loan Documents. In addition, and without limiting the foregoing, except only as otherwise expressly provided in the Loan Documents, City expressly reserves any and all rights and remedies available to it in the event Borrower defaults under any other terms, conditions and provisions of the Loan Documents. No failure to exercise, or delay by City in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement and the Loan Documents are cumulative and not exclusive of each other or of any right or remedy provided by law or in equity. No notice to or demand upon Borrower in any instance shall, in itself, entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of City to take any other or further action in any circumstance without notice or demand.

7. Negative Covenants of the Borrower

Borrower covenants and agrees that, from the date hereof until the completion of performance of all of Borrower's obligations under the Loan Documents:

- (a) Borrower will not sell, convey, lease (except leases of individual units to residential tenants), assign, transfer or otherwise dispose of the Housing unless approved in writing by the City.
- (b) Borrower shall not voluntarily terminate, or voluntarily fail to renew, any federal subsidy contract with respect to any of the Housing, without the prior written consent of the City.

8. Affirmative Covenants of the Borrower

The Borrower agrees to comply with the following covenants from the date hereof until all obligations under the Loan Documents have been fully performed:

- (a) Borrower agrees to pay punctually, without setoff or deduction for any cause whatever, the principal and interest hereunder and any other amounts that may become due and payable to the City under or pursuant to the terms of the Loan Documents.
- (b) Borrower agrees at all times to maintain the Housing in good condition and repair and in compliance with applicable Codes and agreements. The Borrower also agrees to maintain during the term of the Loan hazard insurance on the Housing satisfactory to City, insuring against fire, theft, loss of income, liability, and such other hazards as may be deemed appropriate by City, in amounts and form satisfactory to City and otherwise sufficient to prevent the Borrower from becoming a coinsurer. The insurance policies shall be issued by companies satisfactory to the City with acceptable loss payee clauses in favor of the City.

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(c) Borrower agrees to maintain adequate records and books of account, in which complete entries will be made reflecting all of its business and financial transactions relating to the Housing and the Fund, such entries to be made in accordance with generally accepted principles of good accounting practice consistently applied in the case of financial transactions. Borrower shall maintain records of tenant incomes and rents sufficient to demonstrate the status of each unit of the Housing under this Agreement. Borrower shall deliver to the City, in addition to any financial reports otherwise required, no later than June 30 of each year, annual statements, certified by an authorized officer of the Borrower to be true and accurate, showing in detail for the prior calendar year, the status of each unit in the Housing as a Low-Income Unit or Very Low-Income Unit (and any changes in such status), all deposits to the Fund (showing the source of each), all expenditures from the Fund and their purposes, all interest earned by the Fund, and the opening and closing balances of the Fund. Borrower's annual audited financial statements shall set forth separately the Fund (referring to the restrictions thereon), the annual cash flow into and out of the Fund, Housing Revenues and Housing Costs.

(d) Borrower agrees, if at any time the Borrower defaults on any provision of this Agreement, to pay the City or its assigns, in addition to any other amounts that may be due from the Borrower, an amount equal to the costs and expenses of collection, enforcement, correction or waiver of the default, incurred by the City or its agents or the City's assigns in such collection, enforcement, correction, or waiver of default.

9. Severability.

The unenforceability or invalidity of any provision or provisions of this Agreement or any Loan Document as to any party or circumstance shall not render the provision or provisions unenforceable or invalid as to any other parties or circumstances, or render other provision or provisions hereof or thereof invalid or unenforceable.

10. Representations and Warranties.

(a) Borrower represents and warrants to City that Borrower is a public corporation duly organized and validly existing under the laws of the state of Washington; that this Agreement has been duly authorized, executed and delivered by Borrower; that the Loan Agreement, as amended hereby, represents the valid and binding obligation of Borrower enforceable according to its terms; that the execution, delivery and performance of this Agreement and the Loan Agreement as amended hereby does not and will not conflict with, violate or cause a default under any judgment, order, or decree to which Borrower or its property is subject, or any agreement or instrument by which Borrower is bound or to which its property is subject.

(b) Borrower further represents and warrants that, upon the execution and delivery hereof, Borrower is not in breach of or default under any provision of the Loan Agreement as amended hereby or any other loan documents affecting Borrower.

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11. Time.

Time is of the essence of all of Borrower's obligations hereunder and under the Loan Documents.

12. Entire Agreement; Modifications; Construction.

This Agreement includes the entire agreement of the parties with respect to the modification of the UDAG Loan terms. This Agreement, and the Loan Documents, may be changed or modified only by a writing signed by the party against whom enforcement of such change or modification is sought. No modification shall be binding upon a party unless signed for such party by a duly authorized person. This agreement is the product of negotiation and shall be construed in accordance with its terms, without reference to the party who drafted any provision and without reference to any other communications or understandings, written or oral. Except as expressly modified hereby, the Loan Agreement shall remain in full force and effect.

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

THE CITY OF SEATTLE, a Washington municipal corporation

By: _____
Mary Jean Ryan, Director, Office of Economic Development
By authority of Ordinance _____

PIKE PLACE MARKET PRESERVATION AND DEVELOPMENT AUTHORITY

By: _____
NAME: _____
TITLE: _____

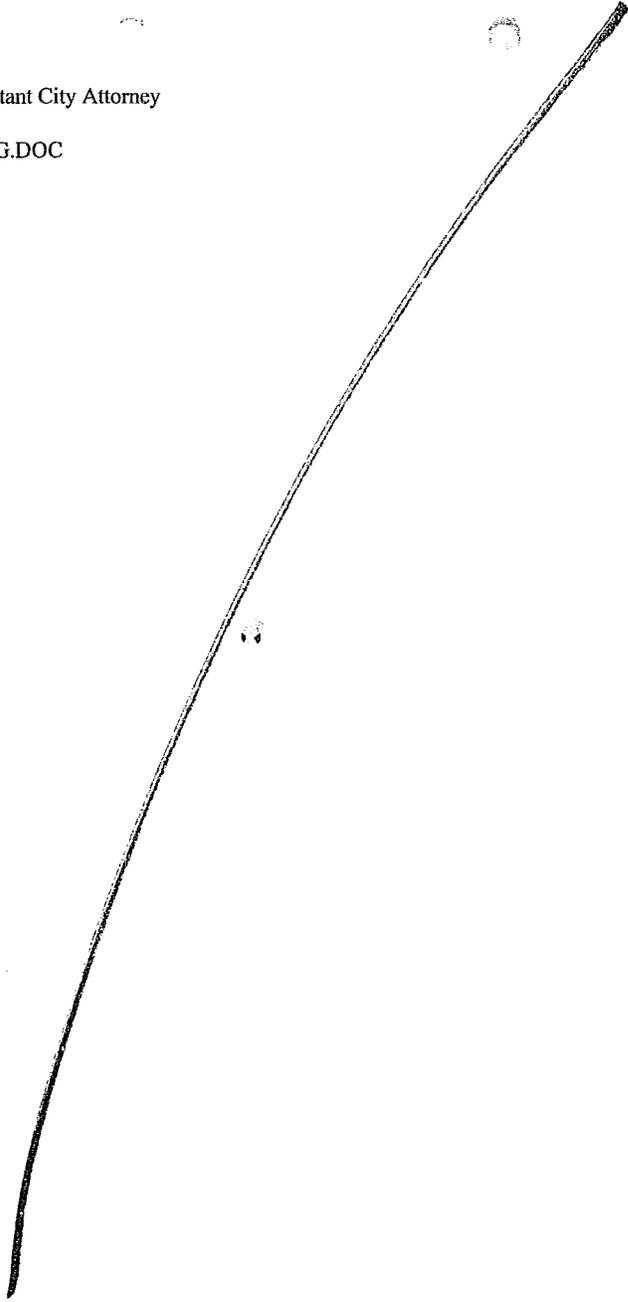
Approved as to Form Only:
MARK H. SIDRAN, City Attorney

By: _____

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Assistant City Attorney

SANMKLAG.DOC
10/25/96



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96-405



City of Seattle

Executive Department—Office of Management and Planning

Thomas M. Tierney, Director
Norman B. Rice, Mayor

November 26, 1996

The Honorable Mark Sidran
City Attorney
City of Seattle

APPROVED AS TO FORM ONLY
MARK H. SIDRAN
City Attorney

By *N. R. Tierney*
Assistant City Attorney

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING DEPARTMENT: Office of Economic Development

SUBJECT: AN ORDINANCE relating to economic development; authorizing restructuring of an Urban Development Grant loan made to the Pike Place Market Preservation and Development Authority under Ordinance 108997 and ratifying and confirming prior acts.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Leda Young at 233-7268.

Sincerely,

Norman B. Rice
Mayor

by

Leda Young for

TOM TIERNEY
Director

h:\admin\legis\law\tr\young28

Enclosure

COPY RECEIVED
96 NOV 26 AM 10:03
SEATTLE CITY ATTORNEY

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TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

San Diego

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO:

PRESIDENT'S SIGNATURE

CS 20 28

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