

Ordinance No. 123574

Council Bill No. 117130

AN ORDINANCE approving an amendment of the Property Use and Development Agreement approved by Ordinance 123320 for property located at 2622 California Ave SW.

Related Legislation File: _____

Date Introduced and Referred: 3.21.11	To: (committee): Built Environment
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: April 4, 2011	Date Presented to Mayor: April 5, 2011
Date Signed by Mayor:	Date Returned to City Clerk:
Published by Title Only _____	Date Vetoed by Mayor:
Published in Full Text _____	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by Samy V. Lewis

Committee Action:

Date	Recommendation	Vote
032311	PASS	3-0 SC-TB-SB

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

Full Council Action:

Date	Decision	Vote
March 28, 2011	Held until April 14, 2011	8-0 (excused: Baggshaw)
4/4/11	PASSED	9-0

Law Department

ORDINANCE 123574

1
2 AN ORDINANCE approving an amendment of the Property Use and Development Agreement
3 approved by Ordinance 123320 for property located at 2622 California Ave SW.

4 WHEREAS, in June, 2010 the City Council adopted Ordinance 123320, approving a
5 contract rezone for Safeway, Incorporated ("Safeway") for property located at
6 2622 California Ave SW, including approval of a Property Use and Development
7 Agreement ("PUDA"); and

8 WHEREAS, the PUDA imposed conditions that restricted the development at the site to
9 construction of a new 59,000 square foot grocery store with rooftop and at grade
10 parking, and an additional structure attached to the grocery store containing no
11 more than 40 dwelling units and 20,000 square feet of flex work office space with
12 underground parking; and

13 WHEREAS, Safeway seeks to change the uses permitted within the attached structure by
14 increasing the number of dwelling units from 40 to 79 and eliminating the flex
15 work office space; and

16 WHEREAS, Safeway seeks to amend the PUDA to allow this change; and

17 WHEREAS, Seattle Municipal Code Section 23.76.058B authorizes the Council to
18 amend PUDAs; and

19 WHEREAS, the Council finds that amendment of the PUDA is in the public interest on
20 the basis of the analysis provided by the Department of Planning and
21 Development to the Council; NOW, THEREFORE,

22 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

23 Section 1. The amendment to the PUDA approved by Ordinance 123320, attached as
24 Exhibit A to this ordinance, is approved.

25 Section 2. The City Clerk is hereby authorized and directed to file said Amended
26 Property Use and Development Agreement, attached to this ordinance as Exhibit A, at the King
27 County Records and Elections Division; to file, upon return of the recorded agreement from the
28 King County Records and Elections Division, the original of said Property Use and Development
Agreement with this Ordinance at the City Clerk's Office; and to deliver copies of the same to



1 the Director of the Department of Planning and Development and to the King County Assessor's
2 Office.

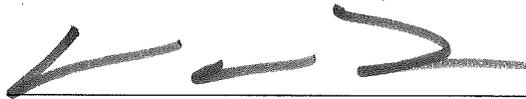
3 Section 3. This ordinance shall take effect and be in force 30 days after its approval by
4 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
5 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

6
7 Passed by the City Council the 4th day of April, 2011, and signed by me
8 in open session in authentication of its passage this 4th day of April, 2011.

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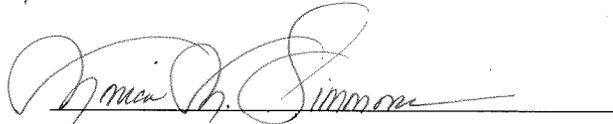
11 President _____ of the City Council

12
13 Approved by me this 6th day of April, 2011.

14
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16 Michael McGinn, Mayor

17
18 Filed by me this 6th day of April, 2011.

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21 City Clerk

22 (Seal)



Michael Jenkins
West Seattle Safeway PUDA amendment
March 8, 2011
Version #1

EXHIBIT A – AMENDED PUDA

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When Recorded, Return to:

THE SEATTLE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, Washington 98124-4728

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantors: 1) <u>Safeway, 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): <u>PARCEL A: LOT 6, BLOCK 5, PLAT OF WEST SEATTLE BY U.R. NIESZ AND ADA B. NIESZ, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 9 OF PLATS, PAGE 10, IN KING COUNTY WASHINGTON</u>
X Additional on : <u>Attachment 1</u>
Assessor's Tax Parcel ID #: <u>608710066002, 608710066507, 608710089509 and 608710090002</u>
Reference Nos. of Documents Released or Assigned: <u>20100624000122</u>

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 24th day of March, 2011, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by Gary Slabaugh, Assistant Vice President, Safeway, Inc. (the "Owner").

RECITALS

A. Safeway, Inc., is the owner of that certain real property (the "Property") in the City of Seattle zoned Neighborhood Commercial 2 with a 40 foot height limit (NC2-40) and Lowrise 3 (L3) described as:

See Attachment 1

B. On or around August 1, 2008, the Owner submitted to the City of Seattle an application for early design guidance, including a request to rezone the Property from Neighborhood Commercial 2 with a 40 foot height limit (NC2-40) and Lowrise 3, to Neighborhood Commercial 3 with a 40 foot height limit (NC3-40), as depicted in Attachment 2. The purpose of the application is to allow the Property to be used for mixed-use, commercial and multi-family residential development of greater density.



C. On June 21, 2010, the City Council approved Ordinance 123320, which included the approval of a Property Use and Development Agreement, which was subsequently recorded in the King County Recorder's Office on June 24, 2010.

D. On _____, 2011 the City Council approved an Ordinance, adopted as Council Bill 117130, which authorized the Owner to amend the Property Use and Development Agreement, as reflected in Section 1, below.

E. 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 that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone."

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to 23.34.004, the 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 Neighborhood Commercial 2 with 40 foot height limit (NC2-40) and Lowrise 3 to Neighborhood Commercial 3 with a 40 foot height limit (NC3-40):

1. Except as provided in subsection 2 of this section, future development of the Property is restricted to a structure that substantially conforms to the final approved Master Use Permit decision with related plans dated March 25, 2010 (MUP 3007044), as modified under MUP 3011952, and all conditions reflected in the Council's Findings, Conclusions and Decision under Clerk File 309869.
2. Use of the property is limited to 1) approximately 60,724 square feet for a grocery store, 2) a separate structure containing no more than 79 dwelling units, and 3) at least 199 parking spaces.

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 shall be deemed to attach to and run with the Property and shall be binding upon the Owner, its heirs, successors and assigns, and shall apply to after-acquired title of the Owner of the Property.

Section 3. Termination. The covenants herein and the rezone shall expire two (2) years from the effective date of approval, unless, within the two (2) year period, an application is filed for a Master Use Permit, which permit is subsequently issued. The rezone remains in effect unless revoked pursuant to Section 23.34.004.



Section 4. Amendment. This Agreement may be amended or modified by agreement between Owner and the City; provided, such amendment shall be approved by the legislative authority of the City by ordinance.

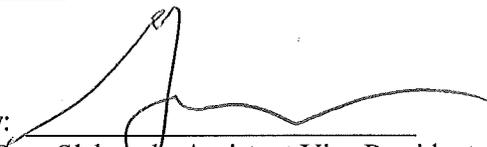
Section 5. Exercise of Police Power. Nothing in this Agreement prevents the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 6. No Precedent. 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.

Section 7. Benefited. This Agreement is made for the benefit of the City and for the benefit of the owners of property within 300 feet of the Property and either the City or any such property owners may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 8. Repeal as Additional Remedy. Owner acknowledges that compliance with the conditions of this Agreement is a condition of the rezone and that if Owner or its successor 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 NC2-40 and Lowrise 3 zones, the original zoning of the property prior to the rezone.

SIGNED this 24th day of MARCH, 2011.

By: 
Gary Slabaugh, Assistant Vice President, on
behalf of Safeway, Inc., Owner



ATTACHMENT 1 – Property Use and Development Agreement – Legal Description for 2622
California Ave SW

PARCEL A: LOT 6, BLOCK 5, PLAT OF WEST SEATTLE BY U.R. NIESZ AND
ADA B. NIESZ, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 9
OF PLATS, PAGE 10, IN KING COUNTY WASHINGTON

PARCEL B: LOTS 7-24, INCLUSIVE, BLOCK 5, AND LOT 6 AND LOTS 9
THROUGH 20, INCLUSIVE, BLOCK 6 ALL IN PLAT OF WEST SEATTLE BY U.R.
NIESZ AND ADA B. NIESZ, ACCORDING TO THE PLAT THEREOF, RECORDED IN
VOLUME 9 OF PLATS, PAGE 10, IN KING COUNTY WASHINGTON;

TOGETHER WITH THAT PORTION OF THE VACATED ALLEY LYING BETWEEN
SAID BLOCKS 5 AND 6 AND SOUTH OF THE NORTH LINE OF LOT 9, SAID BLOCK
5, AS THE SAME IS PRODUCED EAST AND NORTH OF THE SOUTH LINE OF LOT
19, BLOCK 5, AS THE SAME IS PRODUCED EAST, AS VACATED BY ORDINANCE
NO 89867;

AND TOGETHER WITH THE EAST HALF OF VACATED ALLEY ADJOINING LOT
20, SAID BLOCK 6, AS VACATED BY ORDINANCE 107509;

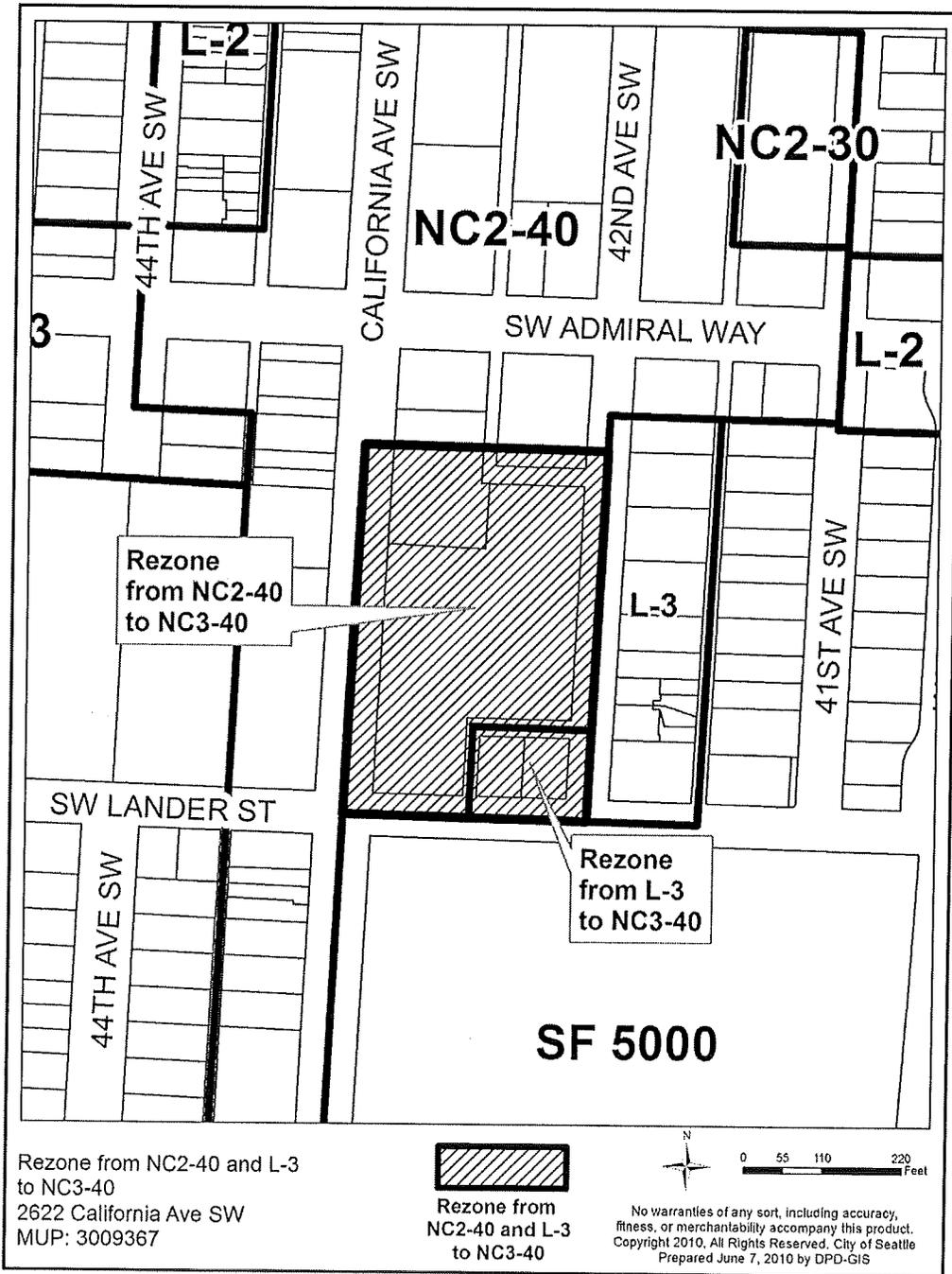
ALSO THE VACATED ALLEY IN BLOCK 6, AND BETWEEN BLOCKS 5 AND 6,
WEST SEATTLE BY U.R. NIESZ AND ADA B. NIESZ, ACCORDING TO THE PLAT
THEREOF, RECORDED IN VOLUME 9 OF PLATS, PAGE 10, IN KING COUNTY
WASHINGTON, LYING BETWEEN THE NORTH AND SOUTH LINES AND THEIR
PRODUCTION WEST OF LOT 8, SAID BLOCK 6 AND EXTENDING FROM THE
WEST LINE OF 42ND AVE SOUTHWEST TO THE EAST LINE OF SAID BLOCK 5, AS
VACATED BY ORDINANCE NO 94514 TO THE CITY OF SEATTLE

PARCEL C: THE WEST 64 FEET OF LOTS 22, 23 AND 24, BLOCK 6, WEST
SEATTLE BY U.R. NIESZ AND ADA B. NIESZ, ACCORDING TO PLAT RECORDED
IN VOLUME 9 OF PLATS, PAGE 10, IN KING COUNTY WASHINGTON

PARCEL D: THE EAST 61 FEET OF LOTS 22, 23 AND 24, BLOCK 6, WEST
SEATTLE BY U.R. NIESZ AND ADA B. NIESZ, ACCORDING TO THE PLAT
RECORDED IN VOLUME 9 OR PLATS, PAGE 10, IN KING COUNTY



ATTACHMENT 2 – REZONE MAP – Property Use and Development Agreement –
2622 California Ave SW



Michael Jenkins
Fiscal Note – C.F. 311301
2622 California Ave SW. – PUDA amendment
March 8, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Legislative	Michael Jenkins, 5-1674	NA

Legislation Title:

AN ORDINANCE approving an amendment of the Property Use and Development Agreement approved by Ordinance 123320 for property located at 2622 California Ave SW.

Summary of the Legislation:

This legislation accepts an amendment to an existing Property Use and Development Agreement (PUDA) for a site at 2622 California Ave SW, approved under Ordinance 123320. The PUDA amendment would allow the uses of a mixed use development, approved as part of a contract rezone, to be altered. The original PUDA authorized the construction of a new 59,000 square foot grocery store with rooftop and at grade parking, and an additional structure attached to the grocery store containing no more than 40 dwelling units and 20,000 square feet of flex work office space with underground parking. The amendment would allow the dwelling units in the separate structure to be increased from 40 to 79 dwelling units while eliminating the 20,000 square feet of flex work office space.

Background:

This bill approves an amendment to a PUDA originally presented to the Council as a petitioner-generated rezone, subject to the Council's rules for quasi-judicial decisions. The original petition, Department of Planning and Development recommendation, Hearing Examiner's Findings and Recommendation, record established by the Hearing Examiner and Council's Findings, Conclusions and Decision are contained in Clerk's File 309869 and under Ordinance 123320.

This legislation would approve an amendment to the PUDA approved for this rezone. If approved, the PUDA would be amended and a new version recorded on the property for the life of the uses.

- *Please check one of the following:*

X **This legislation does not have any financial implications.**



STATE OF WASHINGTON – KING COUNTY

--SS.

269892
CITY OF SEATTLE, CLERKS OFFICE

No.

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:123573&123574 TITLE

was published on

04/18/11

The amount of the fee charged for the foregoing publication is the sum of \$ 34.13, which amount has been paid in full.



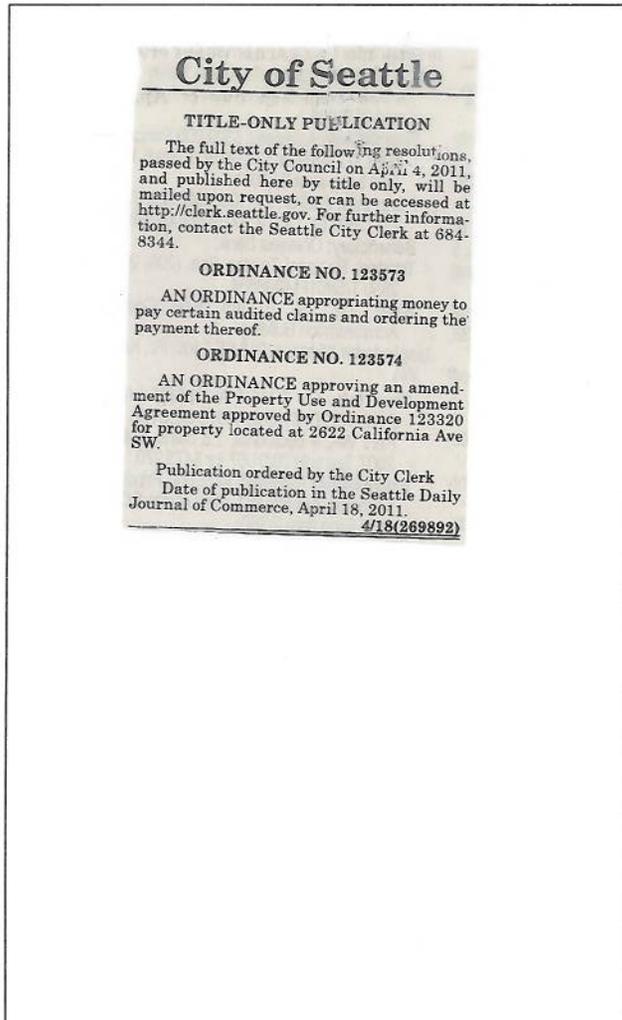
Affidavit of Publication

Subscribed and sworn to before me on

04/18/11

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County





20110419000383

SEATTLE CITY CLERK
PAGE-001 OF 007
04/19/2011 11:45
KING COUNTY, WA

Return Address:

Seattle City Clerk's Office

600 4th Avenue, Floor 3

P O Box 94728

Seattle, WA 98124 - 4728

WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

Please print or type information

Document Title(s) (or transaction contained therein):

1. Amended Property Use and Development Agreement approved by Ordinance 123574

FILED
CITY OF SEATTLE
11 JUL 13 AM 10:00
CITY CLERK

Grantor(s)

- 1. Safeway, Inc.
- Additional names on page ___ of document.

Grantee(s) (Last name first, then first name and initials)

- 1. City of Seattle
- 2.

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

Parcel A: Lot 6, Block 5, Plat of West Seattle by U.R. Niesz and Ada B. Niesz, according to the Plat thereof, recorded in Volume 9 of Plats, Page 10, in King County, Washington.

Additional legal on Attachment 1 of document

Assessor's Property Tax Parcel/Account Number

608710066002, 608710066507, 608710089509 and 608710090002

- Assessor Tax # not yet assigned.
- N/A

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

When Recorded, Return to:

THE SEATTLE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, Washington 98124-4728

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X Additional on : <u>Attachment 1</u>
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See Attachment 1

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C. On June 21, 2010, the City Council approved Ordinance 123320, which included the approval of a Property Use and Development Agreement, which was subsequently recorded in the King County Recorder's Office on June 24, 2010.

D. On _____, 2011 the City Council approved an Ordinance, adopted as Council Bill 117130, which authorized the Owner to amend the Property Use and Development Agreement, as reflected in Section 1, below.

E. 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 that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone."

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

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1. Except as provided in subsection 2 of this section, future development of the Property is restricted to a structure that substantially conforms to the final approved Master Use Permit decision with related plans dated March 25, 2010 (MUP 3007044), as modified under MUP 3011952, and all conditions reflected in the Council's Findings, Conclusions and Decision under Clerk File 309869.
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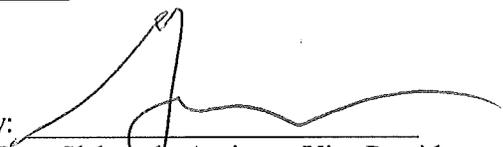
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SIGNED this 24th day of MARCH, 2011.

By: 
Gary Slabaugh, Assistant Vice President, on
behalf of Safeway, Inc., Owner



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19, BLOCK 5, AS THE SAME IS PRODUCED EAST, AS VACATED BY ORDINANCE
NO 89867;

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ATTACHMENT 2 – REZONE MAP – Property Use and Development Agreement –
2622 California Ave SW

