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PAGE-001 OF 024  
07/25/2013 16:35

**AFTER RECORDING MAIL TO:**

Name Barack Ferrazzano Kirschbaum & Nagelberg LLP  
Address 200 West Madison Street, Suite 3900  
City/State Chicago, IL 60606

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**Document Title(s):**

- 1. Property Use Development Agreement

**Grantor(s):**

- 1. SVF Admiral Safeway Seattle, LLC, a Delaware Limited Liability Company
- 2. 42nd & Lander, LLC, a Washington Limited Liability Company

[ ] Additional information on page of document

**Grantee(s):**

- 1. City of Seattle
- 2.

[ ] Additional information on page of document

**Abbreviated Legal Description:**

Parcel A, C/Sea LLA 3010683, Rec No 20100325900005; Lt 6, Blk 6, Plat of West Sea by U R Niesz; Residential Unit and Major Retail Unit, Elemend 42, Condo

**Tax Parcel Number(s):**

608710-0660-02; 230155-0010-04; 608710-0800-03

[ X ] Complete legal description is on page 9 of document

***This instrument filed for record by  
First American Title Insurance Company  
As an accommodation only, it has not  
been examined as to its execution or  
As to its effect upon the title***

**AFTER RECORDING RETURN DOCUMENT TO:**

Brett Feinberg  
Barack Ferrazzano Kirschbaum & Nagelberg LLP  
200 West Madison Street, Suite 3900  
Chicago, Illinois 60606

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

Reference Number of Related Document: N/A

Grantor(s): SVF ADMIRAL SAFEWAY SEATTLE, LLC, a Delaware limited liability company  
42<sup>nd</sup> & LANDER, LLC, a Washington limited liability company

Grantee(s): CITY OF SEATTLE

Abbreviated Legal Description: Parc. A, C/Sea LLA 3010683, Rec. No 20100325900005; Lt. 6, Blk. 6, Plat of West Sea. by U. R. Niesz; Residential Unit & Major Retail Unit, Element 42, condo

Additional Legal Description on Attachment A

Assessors Property Tax Parcel or Account No: 608710-0660-02; 230155-0010-04; 608710-0800-03

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

THIS AGREEMENT (Agreement) is made this date in favor of the CITY OF SEATTLE, a municipal corporation of the State of Washington (City) by SVF Admiral Safeway Seattle, LLC, a Delaware limited liability company (SVF) and 42<sup>nd</sup> & Lander, LLC, a Washington limited liability company (Madison). SVF and Madison are collectively referred to as Owners.

**W I T N E S S E T H:**

WHEREAS, Owners are vested in fee simple title and have a substantial beneficial interest in the properties located in King County, Washington, described on Attachment A (the respective property owned by each Owner, as set forth on

Attachment A, is sometimes referred to herein as such Owner's "Parcel"; both Owners' Parcels are sometimes collectively referred to herein as the "Property");

WHEREAS, the Owners redeveloped the Property with a new grocery store, retail shops building, and residential apartment building (the Development);

WHEREAS, in connection with the Development, Safeway Inc., a Delaware corporation and predecessor-in-interest to the Owners, filed a petition, pursuant to RCW Ch. 35.79 and Seattle Municipal Code Ch. 15.62, to vacate a 5,297 square foot, L-shaped alley located between Blocks 5 and 6, Plat of West Seattle by U.R. Niesz and Ada B. Niesz being that portion lying between the north margin of SW Lander Street and the south margin of the alley vacated by Ordinance 107509; together with the alley lying between Lots 20 and 22, Block 6 of West Seattle by U.R. Niesz and Ada B. Niesz dedicated by Ordinance 89799 (the Alley);

WHEREAS, subsequent to filing the vacation petition, (i) Safeway sold a portion of its property to Madison for development of the residential portion of the Development and (ii) Safeway sold the retail portion of the Development to SVF. This residential portion of the Development is described on Attachment A as the "Madison Parcel" and the retail portion of the Development is described on Attachment A as the "SVF Parcel".

WHEREAS, on August 2, 2010, the City Council granted preliminary approval of the Alley vacation subject to conditions and public amenity improvements listed on Attachment B (Clerk File 310161) and depicted on Attachment C; and

WHEREAS, the Owners now seek final vacation of the Alley;

NOW, THEREFORE, the Owners covenant, bargain, and agree on behalf of themselves, their successors, and their assigns to the following:

Section 1: List of Public Spaces and Amenities: The following is a list of the public spaces (Public Spaces) and amenities (Amenities) covered by this Agreement.

**1. SOUTHWEST PLAZA AREA** 1,002 SF

The pedestrian environment at the southwest corner of the Development has been enhanced by creating a publicly accessible plaza at California Avenue SW and Lander Street. This plaza is adjacent to the grocery store entrance and the existing Metro bus stop. The plaza area includes chairs, tables, and raised landscape planters. The plaza is 31 feet deep in the east-west direction and 37 feet deep in the north-south direction.

**2. MID-BLOCK PEDESTRIAN CROSSING** 2,356 SF

The Development includes a publicly accessible mid-block crossing between California Avenue SW and 42nd Avenue SW. This crossing provides an east-west

connection through the Development connecting California Avenue to 42nd Avenue. Design features including delineated sidewalk paving, concrete bollards and decorative pots. The depth of this space varies from 20' clear at the west end to 9-1/2' clear at the east end.

**3. SEASONAL DISPLAY AND SPECIAL EVENTS AREA 2,146 SF**

This area for seasonal produce displays and store-sponsored gatherings (e.g. salmon days or barbeques) is located just east of the grocery store entry at California Avenue, and adjacent to the pedestrian mid-block crossing.

**4. SIDEWALK CANOPIES AREA 18 canopies - 2,714 SF**

Canopies suspended from the buildings are located on all three streets surrounding the Development. These canopies are designed to complement the grocery store, shops building, and residential frontages, while providing protection from the elements for passing pedestrians.

**5. LANDSCAPING BEYOND GREEN FACTOR REQUIREMENTS 2,322 SF**

Approximately 30% of additional landscaping has been provided on the south side of the Development than what was required to meet the Seattle Green Factor requirements.

**6. SIDEWALK WIDENING ALONG RETAIL SHOPS AREA 903 SF**

The freestanding retail shops building on California Avenue has been set back from the property line. This additional sidewalk area will contribute to the vitality of the retail frontage on California by allowing tenants the opportunity to provide decorative pots, tables, chairs, umbrellas and even, on occasion, the outdoor display of merchandise. The area of sidewalk, above and beyond the 16 feet within the right-of-way, varies from 5 feet to 9 feet of additional depth. Owners agree that the additional sidewalk area will remain as a pedestrian amenity and will not be removed or permanently obstructed.

**7. BENCHES AND SEATWALLS (102 lf) 51 seats**

Additional publicly accessible benches and seat walls have been located along both California Avenue and Lander Street. The benches have been selected to reflect the historic character of the Admiral District.

**8. ADDITIONAL BIKE RACKS Additional 28 bikes**

Bike racks have been provided to enhance the environment for bicyclists. 68 total bike racks have been provided, which is 28 more than required by Code. 16 bike racks

are included in the residential portion of the Development and 52 bike racks are located around the Development perimeter. Each Owner shall maintain the number of covered bike racks that now exist on its Property.

**9. EXIT RAMP RIGHT TURN ONLY SIGNS**

A combination of wall-mounted and pole-mounted signage has been provided to discourage vehicles from turning left onto the mid-block crossing when exiting from the rooftop parking. Additional signs are posted to discourage cars from turning left onto California Avenue.

**10. HANDRAILS IN HIAWATHA PARK AT NORTH ENTRANCES**  
2 handrails

At the request of the Friends of Seattle's Olmsted Parks, and working in concert with the Seattle Parks Department, central handrails at both pedestrian entrances to Hiawatha Park have been installed. These entrances are located at California Avenue & Lander Street, and 42nd Avenue & Lander Street.

**11. HISTORIC LIGHT POLES** 14 poles

A series of historic light poles have been installed along all three street frontages surrounding the Development. These light poles are identical to the existing historic style prevalent in the Admiral District.

**12. OLMSTEAD PANELS** 3 panels

Three historic panels have been installed on the grocery building's masonry pilasters along Lander Street, facing Hiawatha Park. Each panel is 3 feet wide x 4 feet high. Under the direction of the Friends of Olmstead Parks and the Seattle Parks Department, additional similarly designed panels are mounted on the exterior of the community center building located in Hiawatha Park.

**13. CONTRIBUTION TO FRIENDS OF OLMSTEAD PARK** \$10,000

Safeway made a contribution of \$10,000 to the Friends of Seattle Olmstead Parks for design and construction of the panels depicting the Olmsteads' involvement in Seattle's park system, including Hiawatha Park.

Section 2: Maintenance of Public Spaces and Amenities. The Southwest Plaza Area, the Mid-Block Crossing, Seasonal Display and Special Events Area, and the Retail Shops Widened Sidewalk are Public Spaces for purposes of this Agreement. The remainder of the items listed in Section 1 are Amenities. Except for the canopies on the residential building described in item #4 of Section 1 above (which will be maintained by the Owner of the Madison Parcel), the owner of the SVF Parcel shall keep all Public

Spaces and Amenities in good repair and condition. Public Spaces shall not be developed with buildings or other structures, and shall retain some combination of plaza, landscaping, benches, artwork, lighting, signs and other open space and pedestrian amenities that are the substantial equivalent to what is depicted on Attachment C. The Public Spaces shall be open to the public to pass through or use during all hours that the grocery store or retail shops associated with the Development are open for business regardless of whether such use by the public is associated with the Development. The Public Spaces do not include: below-grade or subsurface areas; or portions of existing structures that extend over the ground surface of the public areas. The Owners reserve the right to use the Public Spaces for any purposes not inconsistent with the terms of this Agreement.

Section 3: Modification of Public Spaces and Amenities. The amount or types of Public Spaces and Amenities may be modified by an Owner with respect to its Parcel after receiving the written consent of the Director of the Department of Transportation, after notice to and input from other Owners; provided, that the quality of the Public Spaces and Amenities shall not be diminished and the modified Public Space design and Amenities shall continue to activate the Development with public uses and pedestrian activity.

Section 4: Temporary Closures of Public Spaces. The Owners shall have the right to temporarily close or obstruct the Public Spaces for: (1) construction; (2) maintenance and repair; (3) temporary use for private functions directly related to the Development; (4) the temporary maintenance of security for the Development or persons using the Development, or (5) other circumstances beyond the Owners' control.

Section 5: Use and Access Regulations: The Owners may adopt reasonable rules and regulations regarding the use of and access to the Public Spaces as are necessary to ensure the security of the users of the Public Spaces and the Development. The rules and regulations shall be consistent with the terms of this Agreement. The Director of the Department of Transportation shall approve any rules and regulations which materially modify the use of the Public Spaces before such rules and regulations become effective. A summary of the current rules and regulations may be posted in several visible locations in the Public Spaces.

Section 6. Use by Public: It is the intent of the City and Owners that the public spaces created for the project are intended to be welcoming and open for members of the public. Members of the public shall enjoy in these public spaces the same privileges as individuals that are shopping or residing at the development. The foregoing shall not preclude the Owners from enacting reasonable regulations of general applicability that are consistent with their Properties' uses as a retail, residential and/or office development. The Director of the Department of Transportation shall approve any regulation of general applicability which materially modify the use of the Public Spaces before such regulation becomes effective.

Section 7: Agreement to be Recorded. This Agreement shall be recorded in the records of King County and the covenants of this Agreement shall attach to and run with the Property and shall be binding upon the Owners and their heirs, successors, and assigns. Any person or entity acquiring title to any Owner's Parcel or portion thereof shall be bound by this Agreement only as to the Parcel or portion thereof acquired by such person or entity. The Owners, and any person or entity acquiring title from any Owner, shall be bound by this Agreement only during the period such Owner or other person or entity is the fee owner of such Parcel or portion thereof, as to obligations, liabilities or responsibilities that accrue during said period. In the event that any Parcel is subdivided by imposition of a condominium regime, the obligations, liabilities or responsibilities affecting such Parcel may be assumed by the Association formed to manage the condominium.

Section 8: Amendment Requires City Council Approval. This Agreement may be amended or modified by written agreement between the Owners and the City; provided the amended Agreement shall be approved by the City Council by ordinance. Nothing in the Agreement shall be construed as a surrender of the City's governmental powers.

Section 9: Enforcement of Agreement. This Agreement is made for the benefit of the City and the public, and the City may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 10: Insurance. Upon the effective date of the vacation ordinance, the Owners shall provide and thereafter maintain in full force and effect, commercial general liability insurance providing for a limit of not less than \$1,000,000 per occurrence for all damages arising out of bodily injuries or death. The insurance policies obtained shall be approved as to form by the City Risk Manager (which approval shall not be unreasonably withheld, conditioned or delayed), and shall name the City as an additional insured. Any Owner with a net worth of \$100,000,000 or more may self-insure such risks upon approval of the City Risk Manager (which approval shall not be unreasonably withheld, conditioned or delayed).

Section 11: Indemnity and Hold Harmless. Each Owner shall indemnify, hold harmless, and defend the City and its officers, agents and employees, from any and all claims, losses, liabilities, liens, costs, or expenses including attorney's fees, resulting from or arising out of public use of the Public Spaces or Amenities that such Owner is obligated to maintain and repair under Section 2 above, except to the extent resulting from the sole negligence or intentional acts of the City. If any claim covered by this paragraph is asserted against the City, the applicable Owner(s), upon notice thereof from the City, shall defend the same at its sole cost and expense, and shall pay any final judgment rendered upon such claim.

Section 12: Owners' Reservation of Rights. The Owners reserve the right to use the Public Spaces and Amenities for any purpose which does not interfere with the public's use of the Public Spaces as provided herein, including but not limited to the right to use the Public Spaces as described in this Agreement and the right to grant easements within the Public Spaces, provided the easements are consistent with the public's use of the Public Spaces.

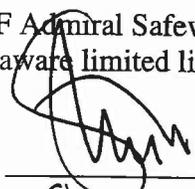
Section 13: No Dedication of Property. Notwithstanding the covenants contained in this Agreement, nothing in this Agreement shall constitute a public dedication of any portion of the Property.

Section 14: Severability. In the event any covenant or condition or any portion thereof in this Agreement is judicially determined to be invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition or restriction contained in this Agreement.

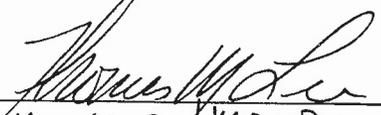
Dated this 25<sup>TH</sup> day of July, 2013.

OWNERS:

SVF Admiral Safeway Seattle, LLC, a  
Delaware limited liability company

By:   
Its: Chairman & CEO

42<sup>nd</sup> & Lander, LLC

By:   
Its: MANAGER / MEMBER

## **ATTACHMENT A**

### **Legal Description of Development Property**

#### **SVF Parcel:**

The Major Retail Unit of Element 42, a Condominium, according to the Declaration thereof, recorded under King County Recording No. 20110527001411, and any amendments thereto, said Unit is located on Survey Map and Plans filed in Volume 272 of Condominiums, Pages 59 through 53, inclusive, and any amendments thereto.

#### **Madison Parcel:**

The Residential Unit of Element 42, a Condominium, according to the Declaration thereof, recorded under King County Recording No. 20110527001411, and any amendments thereto, said Unit is located on Survey Map and Plans filed in Volume 272 of Condominiums, Pages 59 through 53, inclusive, and any amendments thereto.

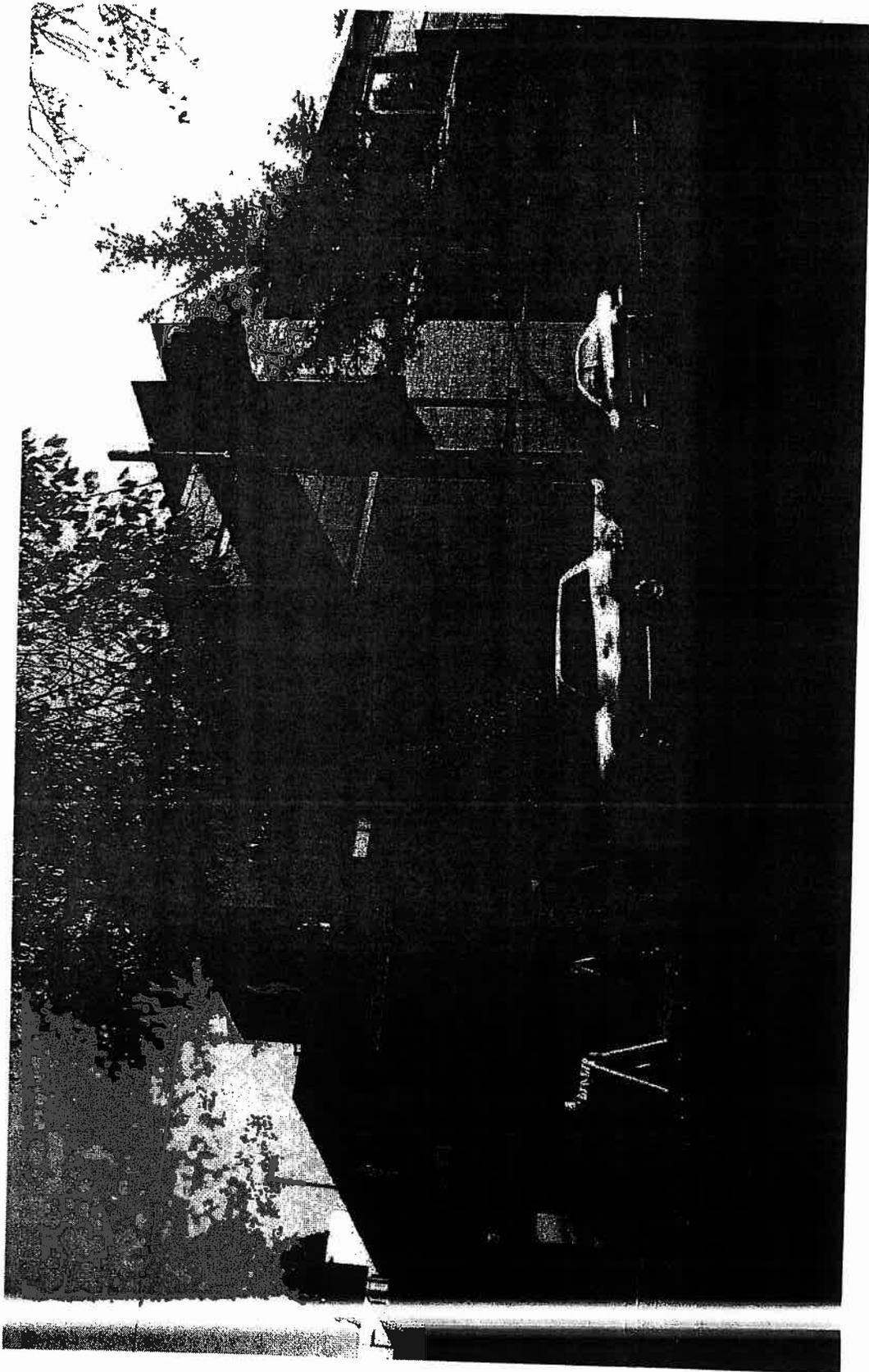
## ATTACHMENT B

### List of Public Spaces and Amenities

#### Admiral Safeway – Public Benefit Package

1.	SOUTHWEST PLAZA AREA (31 sq. ft. x 37 sq. ft.)	1,002 SF
2.	MID-BLOCK CROSSING PEDESTRIAN CONNECTION	2,356 SF
3.	SEASONAL DISPLAY AND SPECIAL EVENTS AREA	2,146 SF
4.	SIDEWALK CANOPIES AREA (18 canopies)	2,714 SF
5.	LANDSCAPING EXCEEDING GREEN FACTOR	2,322 SF
6.	SIDEWALK WIDENING ALONG RETAIL SHOPS AREA	903 SF
7.	BENCHES AND SEATWALLS (102 lf.)	51 seats
8.	ADDITIONAL BIKE RACKS (28 bike spaces over code)	(68 total)
9.	EXIT RAMP RIGHT TURN ONLY SIGNS	
10.	HANDRAILS IN HIAWATHA PARK AT NORTH ENTRANCES	2 handrails
11.	HISTORIC LIGHT POLES	14 poles
12.	OLMSTEAD PANELS (3 ft. x 4 ft.)	3 panels
13.	CONTRIBUTION TO FRIENDS OF OLMSTEAD PARK	\$10,000

**ATTACHMENT C**  
**Sketch of Public Amenities**



**FUJIFILM**

**ER-SEARS**  
**HITECTS**

1411 Fourth Ave., Suite 1306  
Seattle, WA 98101  
Tel. 206.682.6170



ADMIRAL SAFEWAY  
PUBLIC BENEFITS PHOTO DOCUMENTATION

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 <b>FUJIFILM</b>	<b>ER-SEARS</b>	1411 Fourth Ave., Suite 1306 Seattle, WA 98101 Tel. 206.682.6170	 <b>SAFeway</b>	<b>ADMIRAL SAFEWAY</b> <b>PUBLIC BENEFITS PHOTO DOCUMENTATION</b>	Page <b>2</b>
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# PUBLIC BENEFITS PACKAGE:

-  SOUTHWEST PLAZA AREA
-  MID-BLOCK CROSSING PEDESTRIAN CONNECTION AREA
-  SEASONAL DISPLAY AND SPECIAL EVENTS AREA
-  SIDEWALK CANOPIES AREA
-  LANDSCAPING BEYOND GREEN FACTOR REQUIREMENTS
-  SIDEWALK WIDENING ALONG RETAIL SHOPS AREA

- 1,002 SF
- 2,356 SF
- 2,146 SF
- 2,714 SF
- 2,322 SF
- 903 SF
- 11,443 SF**
- 5,299 SF**
- 51 seats
- 28 bikes
- 2 signs
- 2 handrails
- 14 poles
- 3 panels
- \$10,000 contribution

## TOTAL BENEFIT AREA:

### TOTAL AREA OF ALLEY TO BE VACATED:

-  BENCHES AND SEATWALLS (102 lf)
-  ADDITIONAL BIKE RACKS
-  EXIT RAMP RIGHT TURN ONLY SIGNS
-  HANDRAILS IN HIAWATHA PARK AT NORTH ENTRANCES
-  HISTORIC LIGHT POLES
-  OLMSTEAD PANELS
-  HIAWATHA PARK PLAQUES CONTRIBUTION

PHOTO NUMBER AND LOCATION  


	1411 Fourth Ave., Suite 1306 Seattle, WA 98101 Tel. 206.682.6170	 <b>SAFeway</b>	Page <b>3</b>
ADMIRAL SAFEWAY PUBLIC BENEFITS PHOTO DOCUMENTATION			

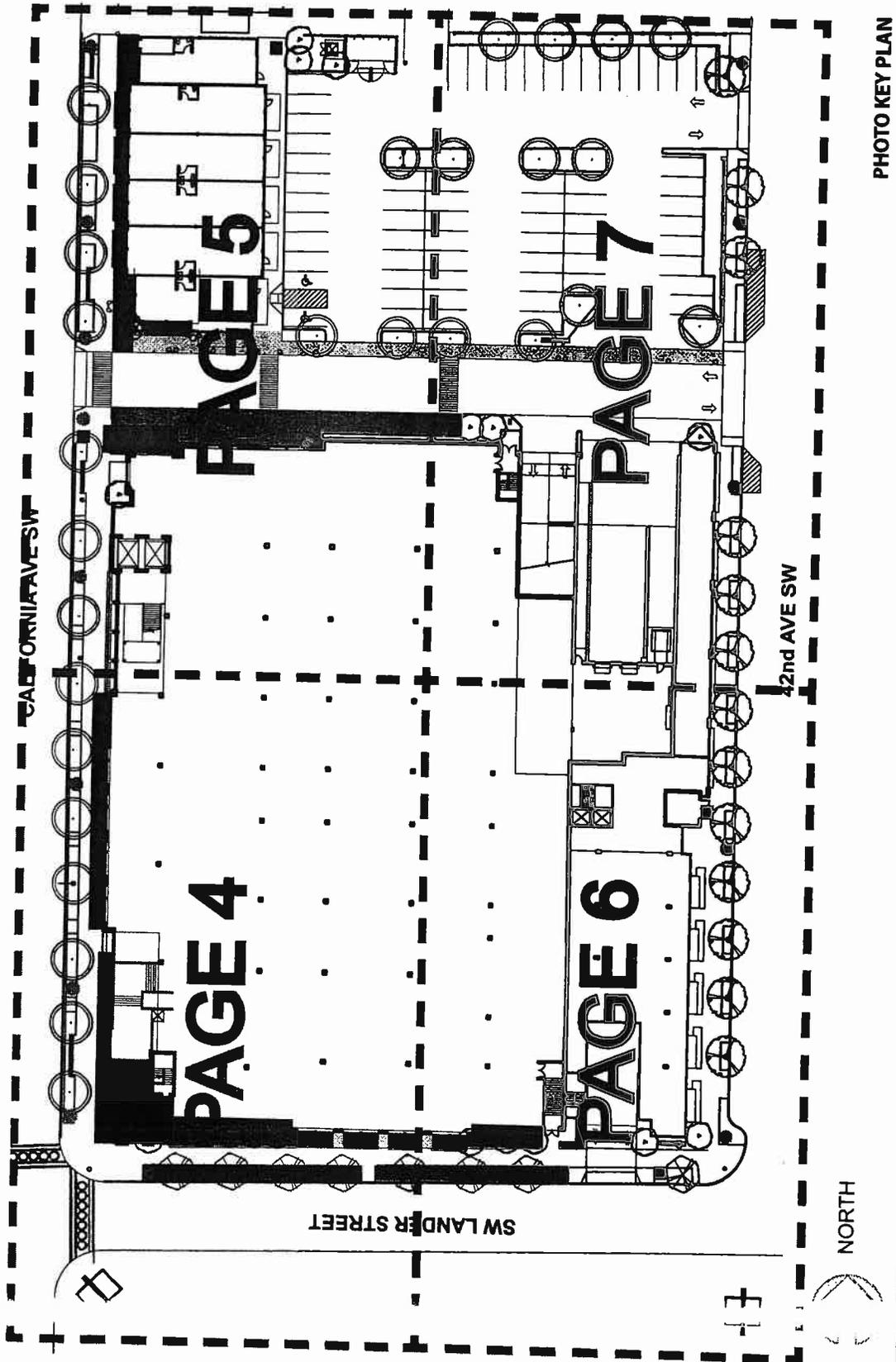
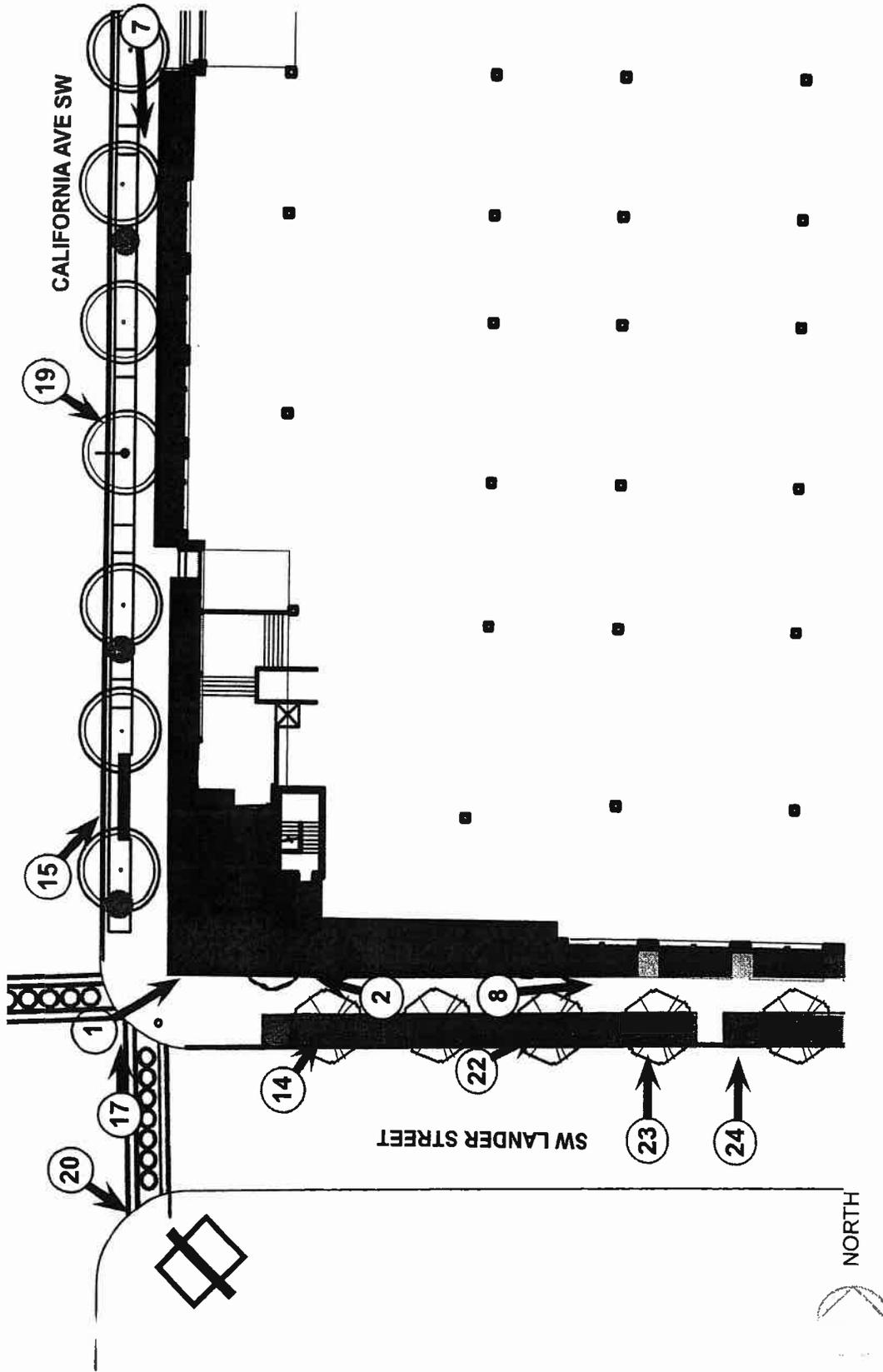


PHOTO KEY PLAN

 <b>FUJIFILM</b>	 <b>SAFEGWAY</b>	1411 Fourth Ave., Suite 1306 Seattle, WA 98101 Tel. 206.682.6170	Page <b>4</b>
		<b>ADMIRAL SAFEGWAY</b> <b>PUBLIC BENEFITS PHOTO DOCUMENTATION</b>	

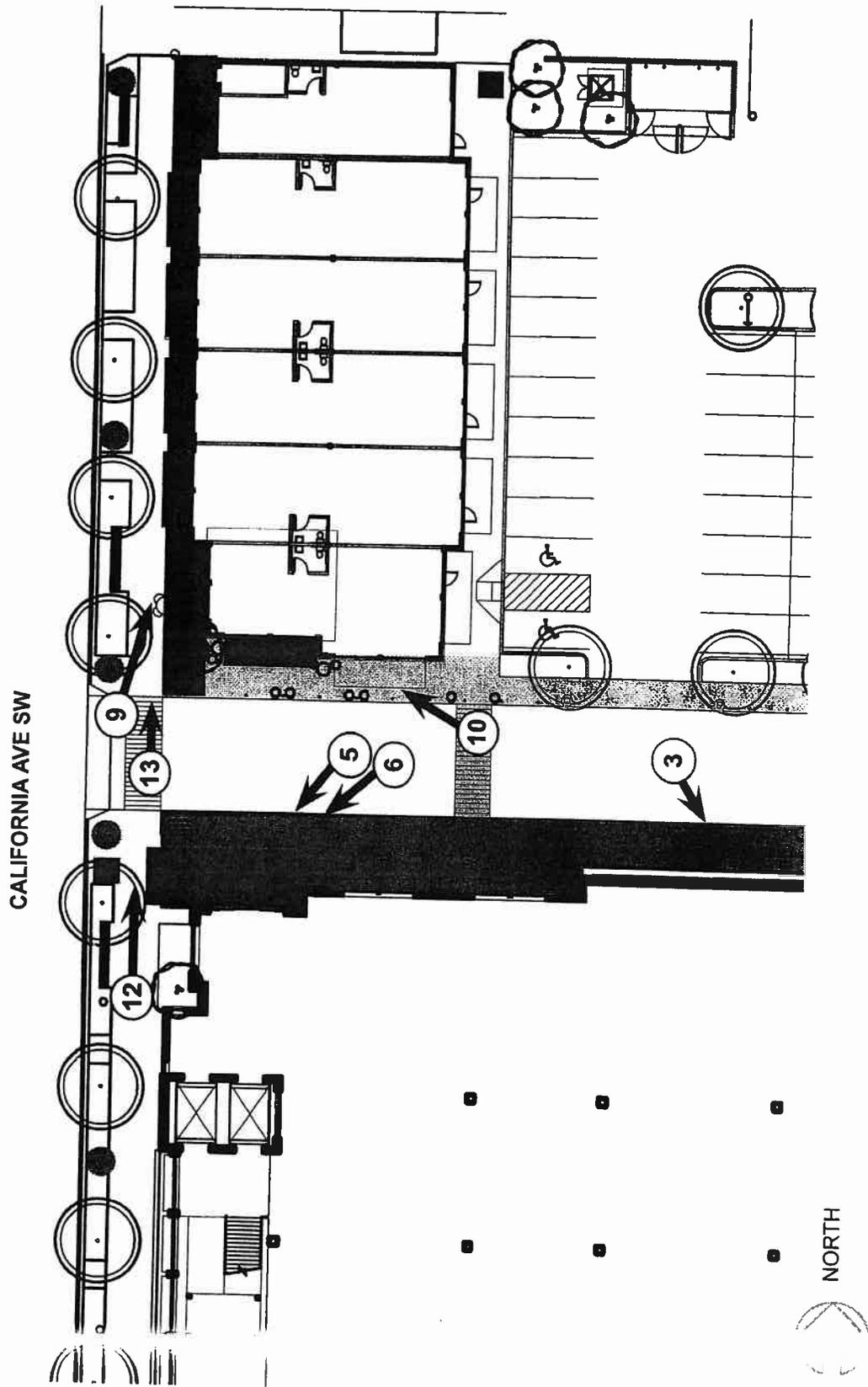


**FULLER-SEARS ARCHITECTS**  
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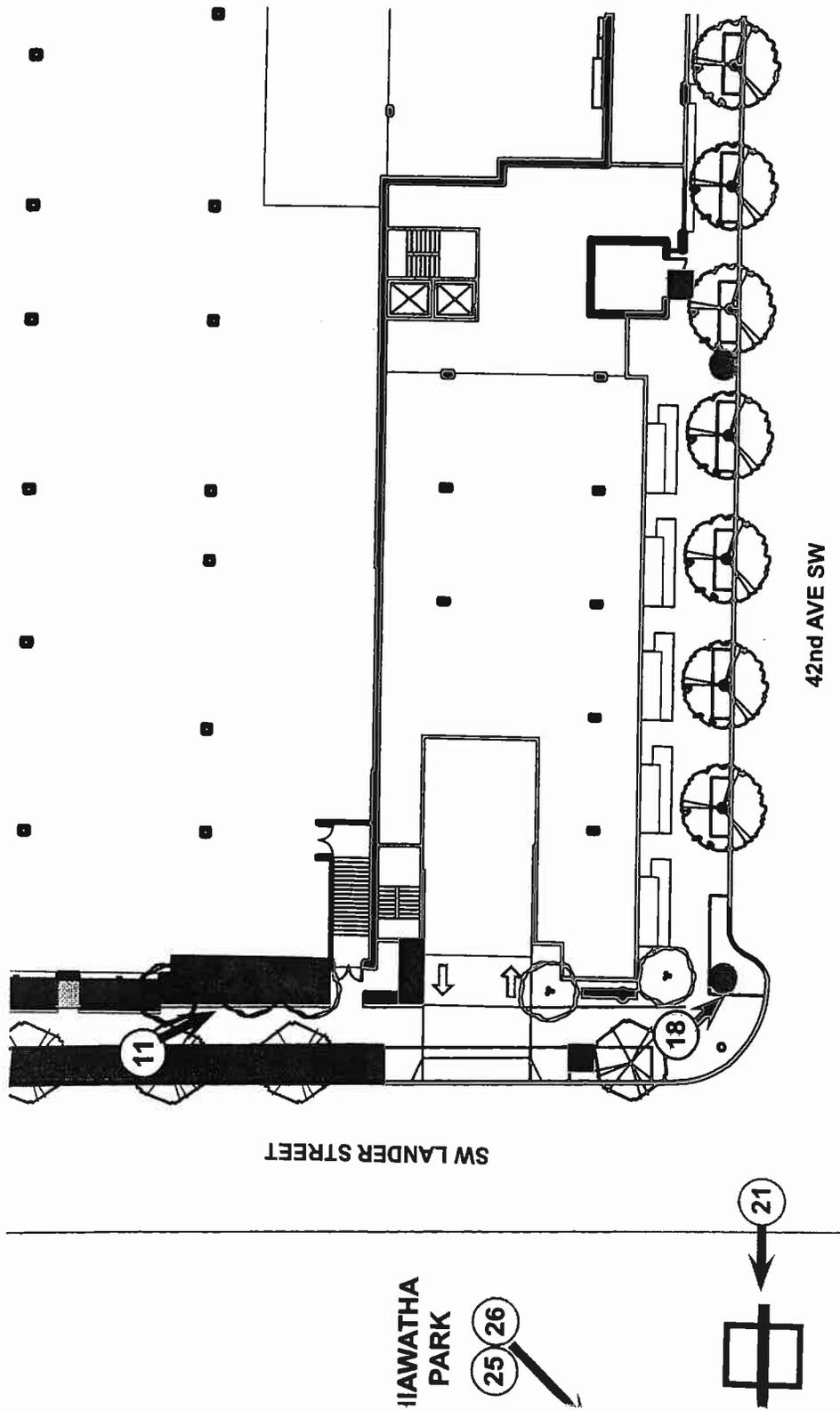


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**SAFEWAY**

**ADMIRAL SAFEWAY  
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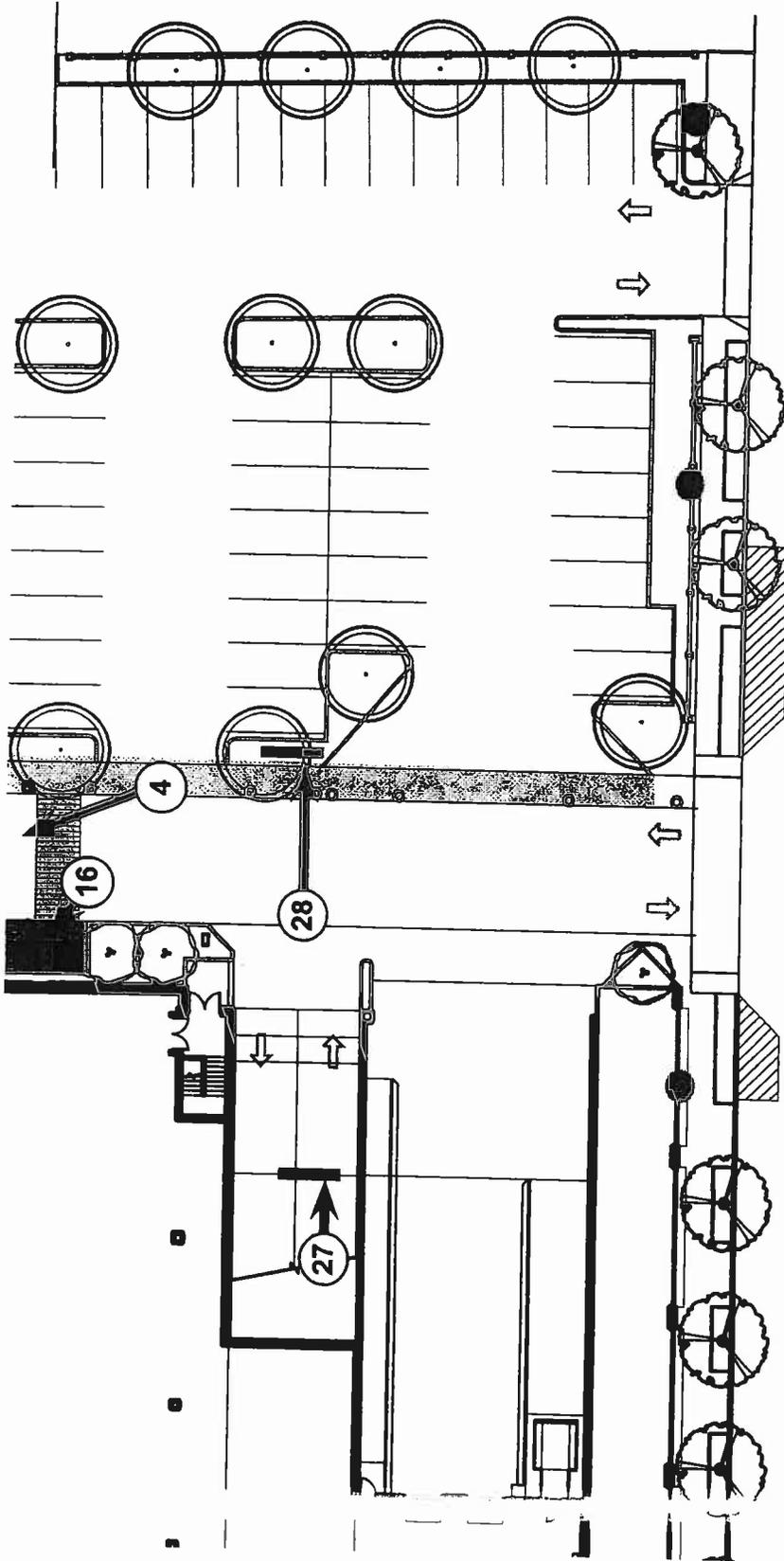
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NORTH



42nd AVE SW



NORTH

**FUJIFILM** **ER-SEARS**  
**AR** **HITECTS**

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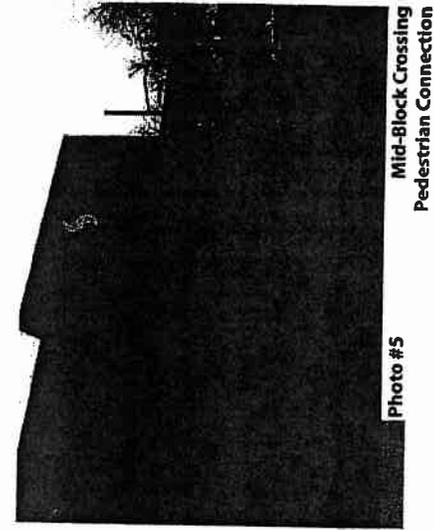


Photo #1

Southwest Plaza Area

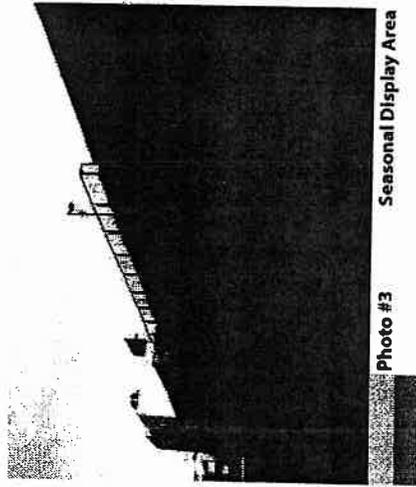


Photo #2

Southwest Plaza Area



Photo #3

Seasonal Display Area



Photo #4

Mid-Block Crossing Pedestrian Connection



Photo #5

Mid-Block Crossing Pedestrian Connection



Photo #6

Seasonal Display Area

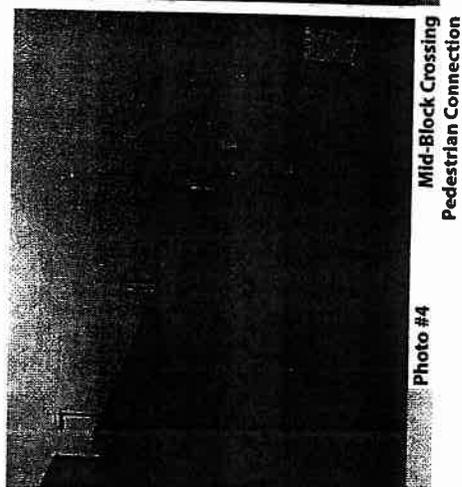


Photo #7

Mid-Block Crossing Pedestrian Connection



Photo #8

Southwest Plaza Area

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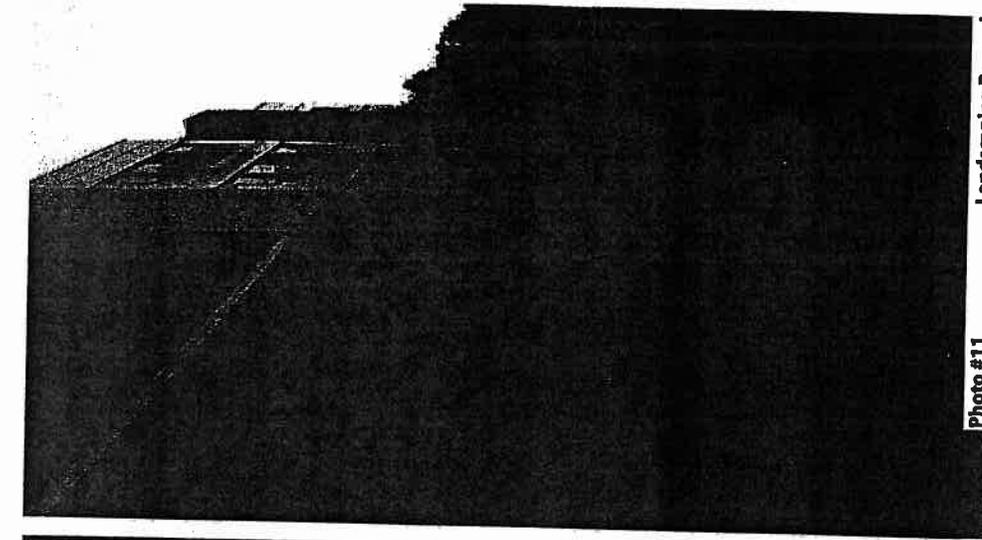


Photo #11  
Landscaping Beyond  
Green Factor Requirements



Photo #9  
Sidewalk Canopies Area



Photo #10  
Sidewalk Canopies Area



Photo #7  
Sidewalk Canopies Area

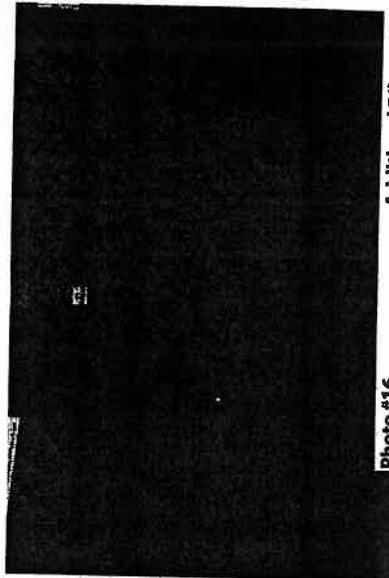


Photo #8  
Sidewalk Canopies Area  
Landscaping Beyond Green Factor Requirements



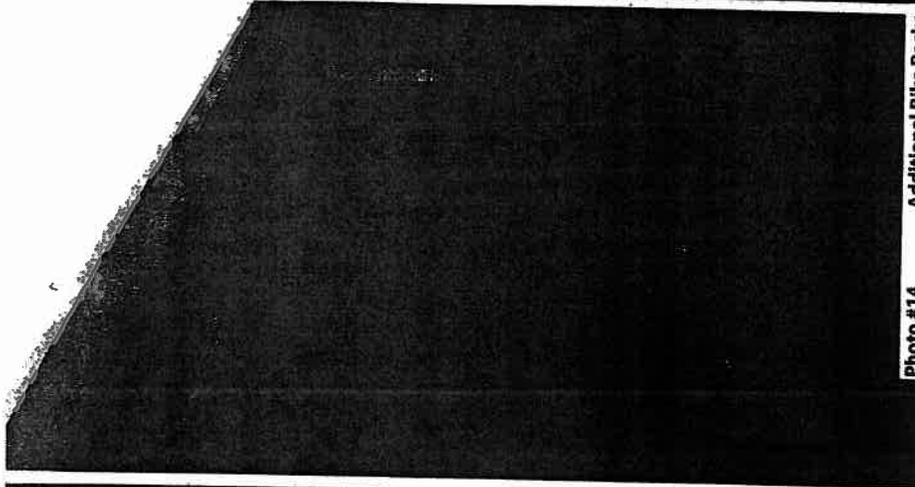
Benches and Seatwalls

Photo #15



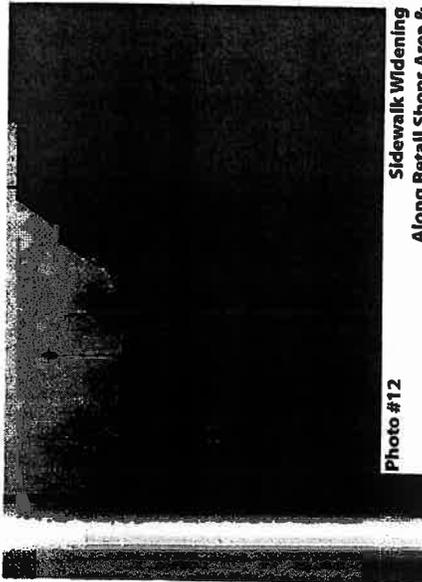
Additional Bike Racks

Photo #16



Additional Bike Racks

Photo #14



Sidewalk Widening  
Along Retail Shops Area &  
Additional Bike Racks

Photo #12



Sidewalk Widening  
Along Retail Shops Area

Photo #13



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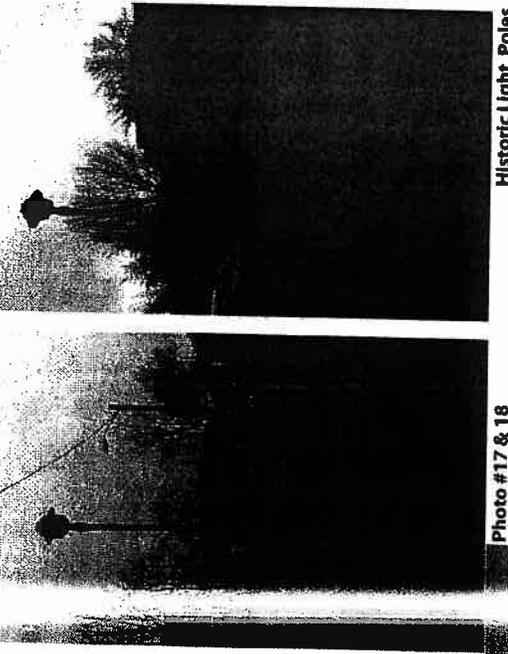


Photo #17 & 18

Historic Light Poles

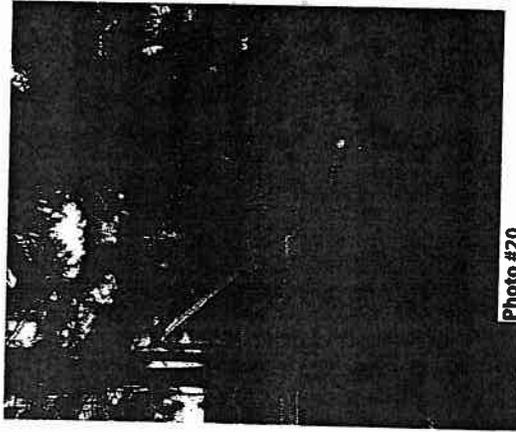
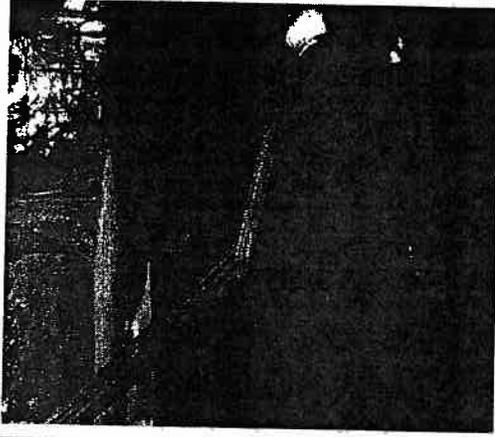


Photo #20



Handrails in Hiawatha Park at North Entrances



Photo #19

Benches and Seatwall

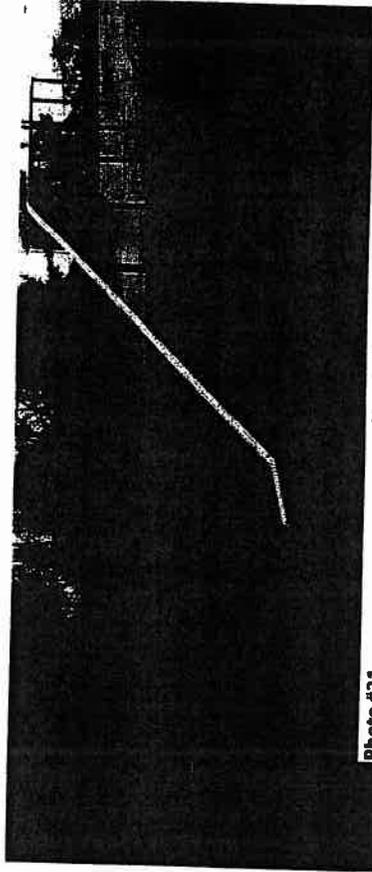


Photo #21

Handrails in Hiawatha Park at North Entrances

**FULLER-SEARS**  
**ARCHITECTS**

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Seattle, WA 98101  
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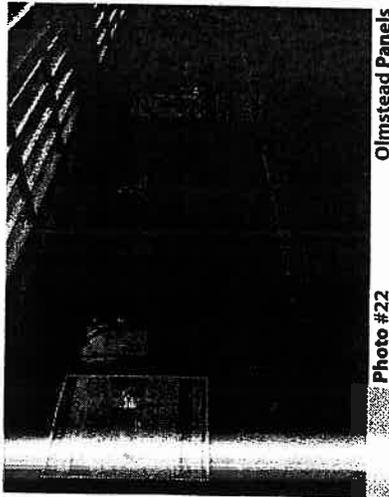


Photo #22  
Olmstead Panels

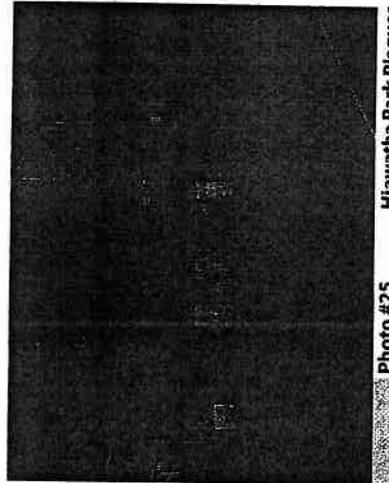


Photo #25  
Hiawatha Park Plaques  
Contribution



Photo #26  
Hiawatha Park Plaques Contribution

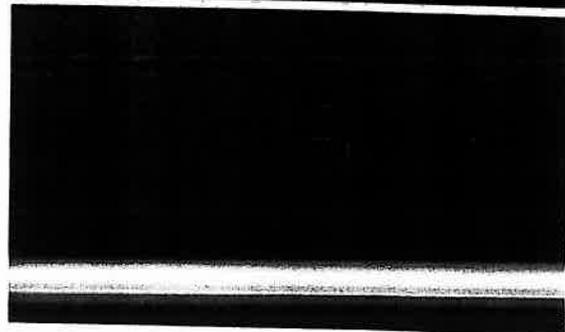


Photo #23 & #24  
Olmstead Panels



Photo #27  
Right Turn  
Only Signage

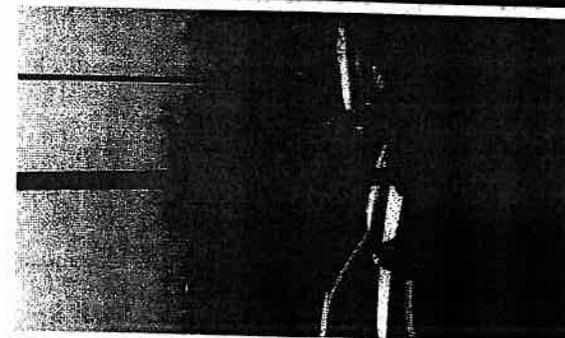


Photo #28  
Exit Ramp Right Turn Only Signage

**FULLER SEARS**  
**A CHITECTS**

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