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SCPNA ISSUES RE: PROPOSED
MEMORANDUM OF UNDERSTANDING

1. Will Sunflower be a party to the MOU? If not, how can we be assured of the enforceability of the operational constraints in the MOU (such as hours for service vehicle deliveries, maintenance of landscaping, general upkeep of store and grounds)?

See new paragraph 1(p)

- a. Assuming Sunflower is made a party, those provisions it agrees to should also be binding on subsequent tenants; if not, owners should agree to include the operational constraints in any lease with a new tenant.

New paragraph 1(p) covers this

- b. We would like to have Sunflower commit to basic levels of maintenance, cleanup, maintenance of lighting fixtures and bulbs, parking area security, and restrictions of trash collection to hours similar to restrictions for deliveries.

See new paragraph 1(m) and addition to 1(e)

- c. We would like to know Sunflower's intended hours of operations and, if reasonable, to have Sunflower commit to them.

What is it the neighbors want? To limit hours? Or just to know them? To start with, or forever? I've proposed paragraph 1(n), which is more or less straight out of the Lease with Sunflower.

2. In light of the current expectation that a preliminary development plan may not be in place by the time the MOU needs to be agreed to, we need to know what specific design commitments can be made and included in the text of the agreement. The most obvious candidates:

- a. Traffic flow considerations in the parking lot:
 - i. Plan should require service vehicle traffic to proceed only from West to East through parking lot and never use Monroe or Garfield Streets north of the curb cuts.

See addition to 1(e)

- ii. Can the curb cuts be angled SW to NE on Monroe side so as to discourage patron entry into lot from southbound Monroe St., and NW to SE on Garfield side so as to discourage exit from lot to northbound Garfield St.?

No. We discussed this with the City and they will not support this request.

- b. Specifics in paragraph 1. (d) following meetings with residents, including types of landscaping and masonry materials.

Can we do show and tell instead of adding language to the MOU? Agreeing to do so will also address the need to wrap up this MOU negotiation quickly, and the conflict that presents as such plan details are not yet available. See my additional language to 1(d).

- c. "... structures that are functional and complementary to existing Neighborhood aesthetics" in paragraph 1. (d): is there a way to make this more specific?

See my additional to 1(d).

- d. Exact location of parking lot curb cuts

1(b) already said the curb cuts would be located as shown on the PDP. This is as specific as we can be today. Until engineering plans are commissioned, it is not possible to pin these improvements down. Many factors will affect ultimate placement.

- e. Placement and shielding of trash facilities.

See addition to 1(e)

- 3. Is there a point, even if subsequent to execution of the MOU, when a preliminary development plan can be provided to the Association?

See 1(k)

- 4. Can the demolition and construction plans be made available to SCPNA in advance upon request?

See 1(k)

- 5. What protection will residents have from blocked and obstructed streets during demolition and construction?

See 1(l)

- 6. Lighting – paragraph 1. (f) –

- a. Does furnishing of foot-candle analysis and lighting products specifications to Association mean we will have any input into the products or the lighting designs? If so, this needs to be specified.

We're providing foot-candle analysis and light design to confirm that lighting won't intrude into the neighborhood, not to get input on product design. We would be happy to consider ideas you may have on products used, bearing in mind that cost of the product (both to purchase and to maintain), energy efficiency, and operational efficiency are all important factors in selecting a lighting product for a commercial project.

- b. We would like a commitment that lit display and advertising signs are directed away from residential areas.

Could you be more specific with your concern? There will be an entrance to the market on the north side of the building. Sunflower will require that a sign be proximate to the entrance, facing north, as well. Signs (if any) on Garfield or Colfax will not be facing neighbors.

- 7. We would like reasonable notice of any notice given by the tenant of its intent to renew, or not to renew the lease, and of any sale by the property owners.

We can't agree to this.

- 8. Will the owners agree in the MOU to decline to rent space between Monroe and Jackson Sts. to any specific types of businesses, such as
 - a. Liquor stores
 - b. Bars and cabarets
 - c. Fast food and drive-thru businesses
 - d. Medical marijuana
 - e. Sex shops

We will limit the uses to what is permitted by Denver municipal code.

- 9. Will owners and Sunflower agree not to allow billboards on the properties between Monroe and Jackson Sts.?

We have no intention of installing billboards (which is a term that may mean something different to different people) on the properties, but we can't put it in writing. We have not even researched whether billboards are a permitted use under the existing zoning. If they are not a permitted use, then we would be required to go through a public application process prior to installing a billboard.

- 10. We would like an agreement that owners or their affiliates will not seek future rezoning of residential property for commercial use.

We can't agree to this.

11. Will the owner or developer agree to indemnify residents for damages caused by contractors and subcontractors (so that we don't have to chase down individual subs or workers on the job – a problem we had with, for example, 1601 Colorado)?

See 1(o).

12. We would like section 3. C. on Attorneys' Fees to instead read, "If Association prevails in any legal proceeding to enforce this Memorandum it shall be entitled to recover its reasonable attorneys' fees and costs. If any other party prevails it shall be entitled to recover its attorney fees only as provided in §13-17-102, Colorado Revised Statutes." (This is the statute allowing recovering of fees if a party maintains a frivolous or groundless claim or defense.)

If I understand what you're asking, you want to be able to bring a suit with a colorable claim (that is, not frivolous) against Developer or Owner and when you *lose*, not pay our attorneys' fees. That's not the American way. The whole idea is to make each and every party think twice about bringing losing lawsuits. Reciprocal treatment is fair. Please clarify if you feel I've misinterpreted your intent.

13. We would like all provisions that govern construction activities (current paragraphs 1. (h) and (I)) to also apply to demolition activities. Also, as to demolition, we would like a commitment, or understanding of the regulatory constraints, that will assure abatement of hazardous materials.

See 1(h) and 1(i).

14. We need a plan to assure adequate pest control before and during the demolition phase. Some of us are still dealing with the pigeon fallout from the demolition of the medical building many years ago; there is also concern about rodents being 'set free' during demolition.

From years of experience demolishing buildings, if no pest problem exists with the buildings currently, no pest problem will be created by demolishing them. We are not aware of any pest problem existing with the buildings today.

15. Will Sunflower agree to allow shared parking in its lot for community events such as City Park Jazz, or special events held at Steve's Snappin' Dogs?

This is something that the neighbors should address with the store manager after the store is open. It wouldn't be appropriate to put such an obligation in this document.