

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into this _____ day of _____, ~~2011~~2012, by Evergreen-Colfax & Garfield Investors, L.L.C., an Arizona limited liability company (“**Developer**”), RFE Investment, LLC, a Colorado limited liability company (“**Owner**”), and South City Park Neighborhood Association, a Colorado non-profit corporation (“**Association**”).

RECITALS

A. Developer or its affiliate is under contract to purchase from Owner certain real property located in the City and County of Denver, Colorado, legally described in **Exhibit A** (the “**Property**”).

B. Members of the Association live in areas east, west and north of the Property (the “**Neighborhood**”), and will be affected by the redevelopment of the Property.

C. Developer intends to cause the Property to be developed as a Sunflower grocery store. A preliminary development plan (the “**PDP**”) for the project is attached hereto as **Exhibit B**. In furtherance of the project, Developer has applied to the City and County of Denver for rezoning of certain portions of the Property from U-TU-B to U-MS-2X in Case Number 2011I-00020 (the “**Rezoning**”).

D. Association has agreed to support Developer and Owner in the Rezoning on the condition that the parties agree to the understandings and commitments set forth in this Memorandum, to assure that the development plan, building design and build-out of the Property will be acceptable to the members of the Association and beneficial to the Neighborhood.

AGREEMENTS

1. Agreements of Developer and Owner. In consideration of Association’s agreement to support the Rezoning, Developer and Owner agree to the following:

(a) Development of the Property will be in substantial conformance with the PDP and this Memorandum.

(b) Only one curb cut from the Property to Monroe Street and only one curb cut from the Property to Garfield Street will be permitted, located as shown on the PDP. A “left turn only” directional sign will be installed at the Monroe Street exit, and a “right turn only” directional sign will be installed at the Garfield Street exit, to encourage traffic to return to Colfax rather than exit north from the Property into the Neighborhood.

(c) Developer and Owner will not object to measures taken by Public Works to minimize traffic in the Neighborhood such as reduced-speed and no-truck-access signs, and pinch-point strategies such as additional landscaping and cross-walk striping.

(d) The north perimeter of the Property adjoining the Neighborhood will be fully screened with a wall [redacted] in height from Monroe Street to Garfield Street. East and west sides of the Property separating parking areas from the Neighborhood will be screened with a combination of garden walls 3’-6’ high and year-around landscaping. Brick as well as other masonry materials will be considered for construction of such screen and garden walls, in order to create structures that are functional and complementary to existing Neighborhood aesthetics. harmonious with the main building to be constructed on the Property and in compliance with City requirements. Regarding landscaping materials, subject to City approval, Developer intends to give preference to native plant species known to be reliable in Denver’s climate.

(e) Commercial deliveries to the Property will be limited to between the hours of 6 am and 8 pm; provided, however, large vehicle (tractor and semi-trailer) deliveries will not be received by store employees prior to 8 am, and must circulate through the Property from west (Monroe) to east (Garfield). Trash pickup will be limited to the same hours as commercial deliveries, to the extent that hourly scheduling of trash pickup services is within the control of Developer or the tenant or occupant of the Property. Subject to City approval, trash facilities will be located in immediate proximity to loading docks and fully screened to meet City requirements.

(f) Lighting on the Property will comply with City of Denver lighting code. Light fixtures will be specified to include extended housing and sharp light cut-off features to minimize ambient light infiltration into the Neighborhood. Light levels will be set to maintain a safe environment. A foot-candle analysis showing all light levels on the Property, engineered to limit off-property light spillage, will be furnished to the Association prior to installation. Specifications for all lighting products will be furnished to the Association prior to ordering.

(g) Reflective mirrors will be installed in the L-shaped section of the alley rerouted into Garfield Street to enhance the safety of drivers navigating the alley.

(h) Construction activities (including demolition) producing noise (that is, involving use of heavy equipment) will be limited to the hours of 7 am to 7 pm Monday through Friday, and 7 am to 3 pm Saturday. Construction activities not producing noise (for example, painting, electrical work or interior building construction) have no time limitations.

(i) All contracts for construction (including demolition) with the general contractor and subcontractors will be required to contain (a) a limitation requiring all workmen and materials suppliers to enter and exit the construction site on the Property exclusively from Colfax and not through the Neighborhood to the north of the Property, and (b) a prohibition against street parking in the Neighborhood. Owner agrees to provide additional off-street parking in the vicinity for construction workers on other of Owner's properties south of Colfax or east of Jackson.

(j) Landscaping features will comply with all City requirements, including garden walls separating parking areas on the Property from the Neighborhood, landscaping at key vistas extending above garden wall height, landscape buffers between the parking area and any screen wall, and installation of lawn, street trees and irrigation between the curb and detached sidewalk in public right-of-way adjacent to the Property along Colfax, Monroe and Garfield.

(k) Developer agrees upon request to provide the Association with copies of plan submittals (including demolition and construction) made to the City.

(l) During construction, Developer will work closely with its contractors and the City to develop a traffic mitigation plan to minimize street closures and interfere as little as reasonably possible with normal traffic access to and from the Neighborhood.

(m) The Property, its improvements, lighting and landscaping (once constructed and installed) will be diligently maintained and repaired in good order, condition and appearance.

(n) Any business conducted on the Property will remain open in good faith during such hours and on such days as businesses used for similar purposes in the Denver metropolitan area are typically open for business to the public.

(o) Any construction requiring Developer's access to the property of a neighboring homeowner will be subject to a separate license agreement with the homeowner in which Developer will agree to indemnify the homeowner against damage caused by Developer's contractors or subcontractors.

(p) Breach by a tenant or occupant of the Property of the operational constraints set forth in this Memorandum continuing uncured after notice and reasonable opportunity to cure will be deemed breach by Developer.

2. Agreements of Association. In consideration of the limitations to be imposed on the Property set forth above, Association will support the Rezoning. Such support will include both a written letter of support and a statement to be read at the hearings based on that letter.

3. General Terms.

A. Exhibits. Exhibits attached to this Memorandum are made a part hereof.

B. Entire Agreement. This Memorandum constitutes the entire agreement between the parties pertaining to its subject matter.

C. Attorneys' Fees. Any party prevailing in the enforcement of this Memorandum is entitled to its reasonable attorneys' fees and court costs.

D. Designated Agents and Representatives. Association designates _____ as its agent and representative for purposes of this Memorandum, with authority to receive and respond on behalf of Association to all communications, plans, documents and other matters related to the implementation of this Memorandum.

Developer and Owner designate Russell Perkins as their agent and representative for purposes of this Memorandum, with authority to receive and respond on their behalf to all communications, plans, documents and other matters related to the implementation of this Memorandum.

E. Ongoing Communication. Developer and Association agree to continue to meet or otherwise communicate on a monthly or as-needed basis through the completion of construction on the Property.

F. Successors and Assigns. If the interests of Developer or Owner in the Property are assigned or conveyed to a third party, Association will look solely to the assignee or grantee for the ongoing compliance with this Memorandum. This Memorandum binds and benefits the successors and assigns of the parties.

G. Authority. Each person executing this Memorandum on behalf of Developer, Owner or Association represents and warrants that he or she has the necessary authority to do so.

H. Notices. All notices or other communications required or permitted by this Memorandum must be in writing and served by (1) personal delivery, (2) recognized overnight courier service, (3) electronically confirmed fax transmission with a copy by first-class U.S. mail, or (4) certified mail, return receipt requested, postage prepaid, addressed and directed to the party to receive the same as follows:

If to Association:

If to Developer or Owner:

Evergreen-Colfax & Garfield Investors, L.L.C.
2390 E. Camelback Road, Suite 410
Phoenix, Arizona 85016
Attn: Russell Perkins
Fax No.: 602-808-9100

Notices are effective and deemed given upon receipt or refusal to accept delivery. Any party may change its address from time to time by giving written notice thereof by authorized means.

I. Governing Law. This Memorandum is governed by Colorado law.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date first written above.

DEVELOPER:

EVERGREEN-COLFAX & GARFIELD INVESTORS, L.L.C., an Arizona limited liability company

By: Evergreen Development Company-2011, L.L.C., an Arizona limited liability company

Its: Manager

By: Evergreen Devco, Inc., a California corporation

Its: Manager

ASSOCIATION:

SOUTH CITY PARK NEIGHBORHOOD ASSOCIATION, a Colorado non-profit corporation

By: _____

Its: _____

By: _____

Its: _____

OWNER:

RFE INVESTMENT, LLC, a Colorado limited liability company

By: _____

Its: _____

EXHIBIT LIST

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| Exhibit A | Legal Description of the Property |
| Exhibit B | Preliminary Development Plan |