

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into this ____ day of October 2012, between the City of Seattle Mayor and City Investors LLC, a Washington limited liability company (“CI”).

I. RECITALS

- A. The City of Seattle (“City”) Comprehensive Plan, including the adopted South Lake Union Neighborhood Plan, contains goals not only to encourage growth but also to ensure that affordable housing and community services are provided.
- B. The goals underlying City policies for incentive zoning, bonus residential floor area, and bonus nonresidential floor area are to create affordable housing in growth areas and to support public programs that directly serve the needs of those growth areas.
- C. The growth and development in the South Lake Union Urban Center (“SLU”) has made the acquisition of property for affordable housing and public program sites more difficult.
- D. Securing property for the development of affordable housing and public programs in SLU is critical for the City to accomplish its stated goals of providing affordable housing and public programs in SLU.
- E. For many years, the City has worked with community partners in the SLU area to achieve public objectives, including partnering with the community on such projects as the Mercer/Valley transportation infrastructure project, South Lake Union Park, and the South Lake Union Streetcar.
- F. CI owns or controls property in SLU, including parcels totalling approximately 37,600 square feet in Block 74, D.T. Denny’s Home Addition (the “Block 74 Property”) and including parcels in the three blocks bounded by Valley Street, Fairview Avenue North, Mercer Street, and Westlake Avenue North (the “Mercer/Valley Blocks”).
- G. The Seattle City Council is currently considering Council Bill 117603 (the “South Lake Union Rezone”). The South Lake Union Rezone, if enacted, would allow development at greater heights and densities in SLU, which could be achieved through incentive zoning, including affordable housing zoning incentives.
- H. To achieve the goals of the City’s Comprehensive Plan, including the adopted South Lake Union Neighborhood Plan, the Mayor and the City’s Department of Planning and Development have worked together with CI to develop a strategy that provides suitable land for development with affordable housing and critical public programs in the early stages of City implementation of the South Lake Union Rezone, so that the benefits on that land can be provided contemporaneously with development in SLU under the South Lake Union Rezone.

I. That joint strategy will be presented to the Seattle City Council for its consideration as a development agreement between CI and the City.

J. The purpose of this MOU and the proposed development agreement would be to secure land for the City on which the City can provide affordable housing and public amenities in SLU. The proposed development agreement would also define incentive requirements for residential development above 160 feet in height on the Mercer/Valley Blocks.

K. The development made possible by implementation of this MOU and the proposed development agreement would integrate housing at a range of incomes and types, would include such uses as job training and childcare, and would provide a model for delivering community benefits in the City.

NOW THEREFORE, based on the recitals set forth above, the parties agree as follows:

II. AGREEMENTS

A. Proposed Development Agreement. The City's Mayor and Department of Planning and Development and CI will submit to the City Council, for the City Council's consideration for approval in conjunction with Council consideration of the South Lake Union Rezone, a proposed development agreement as authorized by RCW 36.70B.170 *et seq.* on the following terms:

1. Conveyance of Property. CI would convey to the City all parcels owned by CI in the block bounded by Broad St., Dexter Ave. N., Republican St., and Aurora Ave N. (the "Property"). The Property is all in Block 74 of D.T. Denny's Home Addition to Seattle and is approximately 37,600 square feet in total area.
 - a. Conveyance will be by Special Warranty Deed in a form and on terms agreeable to the parties.
 - b. The closing date will be targeted for second quarter of 2013.
2. Credit to CI for Property Value. The City would give CI credit for prepayment of affordable housing bonus payments (the "Credit Bank"). The Credit Bank may be applied to pay affordable housing bonus payments for extra nonresidential floor area and/or extra residential floor area in SLU. The total credit amount would equal the valuation of the Property conveyed to the City, to be determined as follows:
 - a. Valuation would be determined by appraisal which would take place during the 1st quarter of 2013.
 - b. City and CI would each submit an appraisal from a professional appraiser. If the parties do not agree on a valuation, a mutually agreed 3rd appraiser would determine whether the valuation should be the CI appraisal, the City appraisal, or an intermediate value.

- c. Appraisal assumptions would include:
 - i. Appraised for highest and best use.
 - ii. The South Lake Union Rezone becomes law.
 - iii. Completion of the planned vacation of portion of Broad Street and associated regrading.
 - iv. Completion of WSDOT North Portal and West Mercer Street improvements.
 - v. Property is part of an assemblage that includes the SDOT-owned property on the same block.
 - vi. Appraiser may make reasonable assumptions about the City's plans to partially vacate and reconfigure the mid-block alley in order to create better configured development parcels.
 - d. The maximum amount of the Credit Bank would be \$12 million, even if the final appraised value of the Property was greater than that amount. If the final appraised value was less than \$10M, CI may elect not to go forward with the agreement.
3. Additional Cash Payments. For residential square footage developed over 160 feet in height on the Mercer/Valley Blocks, CI would pay to City up to \$3.25 million in cash as follows:
- a. Payment would be due only to the extent CI chooses to develop over 160 feet in height on the Mercer/Valley Blocks.
 - b. Payment would be made at the time CI receives the first building permit other than for excavation and shoring for any such development, and would be made on a development-by-development basis.
 - c. Payment would be pro rated and paid on a square footage basis at the rate of \$12.90 per gross square foot of development on floors above 160 feet in height.
 - d. These payments would be in addition to, and not a replacement of, the affordable housing bonus payments for extra residential floor area otherwise required for CI's development of the Mercer/Valley Blocks.
4. Vesting and Other Conditions.

- a. CI would have the option to develop properties it owns or controls in SLU as of the effective date of the development agreement (the “Applicable Properties”) under the land use regulations in effect as of that effective date (the “Applicable Law”). Applicable Properties would include, but not be limited to, CI properties in SLU that, on the effective date of the development agreement, are subject to land use permit applications that would be considered under the South Lake Union Rezone.
- b. The Applicable Law would include those portions of Title 23 SMC that affect development capacity and affordable housing bonus payment rates, which would be the following: Chapter 23.48 Seattle Mixed; Chapter 23.58A Incentive Provisions (except as otherwise provided in the development agreement); Chapter 23.53 Requirements for Streets, Alleys, and Easements; Chapter 23.54 Quantity and Design Standards for Access, Off-Street parking, and Solid Waste Storage; Chapter 23.84A Definitions (to the extent necessary to interpret the chapters above); and Chapter 23.86 Measurements (to the extent necessary to interpret the chapters above).
- c. CI would be able to exercise its option for development of Applicable Properties as follows:
 - i. Applications with residential square footage above the base residential height, and for which CI pays at least 60% of the affordable housing bonus payment from the Credit Bank, would be considered under the Applicable Law. Notwithstanding the foregoing:
 1. For the portion of the affordable housing bonus payment not paid from the Credit Bank, those payments would be paid at the then-applicable rate.
 2. For all residential development above 160 feet in height on the Mercer/Valley Blocks, the rate for affordable housing bonus payments provided in SMC Chapter 23.58A in effect on the date of the MOU would apply (in addition to any additional cash payments as set forth above).
 - ii. Applications with nonresidential square footage over the Base FAR, and for which CI pays at least 60% of the affordable housing bonus payment from the Credit Bank, would be considered under the affordable housing bonus payment rates in effect on the effective date of the development agreement; and applications with nonresidential square footage over the Base FAR, and for which CI pays at least 75% of the affordable housing bonus payment from the Credit Bank, would be considered under the Applicable Law.

1. Notwithstanding the foregoing, for the portion of the affordable housing bonus payment not paid from the Credit Bank, those payments would be paid at the then-applicable rate.
- iii. For applications for projects that contain both residential square footage above the base residential height and that contain nonresidential square footage above Base FAR, in order to be considered under the Applicable Law, CI would need to meet requirements for such consideration for residential and nonresidential square footage as set forth above.
- iv. Except as otherwise expressly provided herein, for projects for which CI pays less than the percentages of the affordable housing bonus payments (for extra residential and/or nonresidential floor area) set forth in the preceding paragraphs from the Credit Bank, the then-effective vesting provisions would apply.
- d. Except to the extent certain agreement terms expressly provided otherwise, (see, for example, the Additional Cash Payment Term provided in Section 3 above) the development agreement would remain in effect until the earlier of 25 years from its effective date or full utilization of the credit in the Credit Bank.
- e. The parties would agree to consider amendment of the development agreement in the future to add property acquired by CI in SLU subsequent to the effective date of the development agreement.
- f. For development of properties within SLU, CI would have the discretion to pay affordable housing bonuses payments in any combination from the Credit Bank or in cash, subject to the potential different application of Applicable Law as provided above.
- g. Other typical clauses of development agreements as required by law and general practice would be included – such as the requirement that the City reserves the authority to impose new or different regulations if required by a serious threat to public health and safety.

B. MOU Implementation.

1. In order to allow implementation of the proposed actions in the MOU, including the property transfer and other terms of the proposed development agreement, City Council legislative action will be necessary to authorize, as required by RCW 36.70A 540(2)(h), affordable housing bonus payments to be made by the contribution of the Property in connection with these agreements, to enable CI to use Credit Bank credits and/or money for the Applicable Properties in payment of affordable housing bonus payments.
2. The MOU is the parties' understanding that they will work cooperatively to develop a development agreement on the terms set forth above for presentation to the City Council.

3. The parties recognize that a final development agreement requires review and approval by the City Council and that neither party is bound until a final development agreement is agreed upon and executed by both the City and CI.

DATED as of the day and year first written above.

CITY OF SEATTLE

By: _____
Mike McGinn, Mayor

**CITY INVESTORS LLC, a
Washington limited liability company**

By: _____
Name: _____
Its: _____