

MEMORANDUM OF UNDERSTANDING

This Agreement is made this 21 day of June, 2011, by and between Armory Development II, LLC ("Owner") and the City of Minneapolis, a Minnesota municipal corporation ("City").

WHEREAS, Owner is currently the lawful owner of the building commonly known as, "The Armory Building," located at 500 Sixth Street South in Minneapolis, Minnesota (the "Property");

WHEREAS, the City has identified the need for sidewalk repairs and/or replacement along the Sixth Street side of the Property (the "Sidewalk Project");

WHEREAS, the City is undertaking the Sidewalk Project pursuant to the Charter of the City of Minneapolis, ch. 8, § 13 and, as further provided by its Charter, the City will subsequently assess all related costs against the Property;

WHEREAS, a below-grade encroachment known as an "areaway" is associated with and is owned by the Property (the "Areaway");

WHEREAS, the Areaway is located in the City's right-of-way along the Sixth Street side of the Property;

WHEREAS, based on an engineering report obtained by Owner, it has been determined that the Areaway is not in direct conflict with the Sidewalk Project;

WHEREAS, the City assumes no responsibility for the accuracy or reliability of Owner's engineering report, any damages arising out of errors or omissions shall be Owner's responsibility;

WHEREAS, the Areaway roof, which serves and is integral to the Areaway, requires waterproofing in order to preserve its useful capacity;

WHEREAS, Owner is responsible for any measures taken to preserve the Areaway's useful capacity;

WHEREAS, Owner desires to coordinate its own efforts to waterproof the Areaway ("Waterproofing Work") together with the City's efforts to complete the Sidewalk Project;

WHEREAS, the City and Owner are in full agreement as to the foregoing approach and the work required to resolve the necessary repair issues associated with Sidewalk Project.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the Parties hereby agree as follows:

1. Agency. Owner warrants that it is currently the lawful owner of the Property.

2. Project Costs. Owner acknowledges that the City's scope of work includes removal and reconstruction of the Sidewalk, and related construction oversight and inspection. All costs associated with the foregoing will be assessed against the Property.

Costs associated with Owner's efforts to waterproof the Areaway will be borne by Owner and, as such, will not be assessed against the Property.

3. Project Management and Coordination. The City will facilitate and manage the Sidewalk Project which will be carried out by City and/or City's contractor pursuant to the public bidding process. Owner and/or Owner's contractor will facilitate and manage the Waterproofing Work.

All such work shall be coordinated in accordance with the schedule set out on Exhibit A, attached hereto and made part of the Memorandum of Understanding ("Schedule"). Any necessary modifications to the Schedule shall be first agreed to by the parties in writing.

4. Indemnification. Owner acknowledges and understands that the City assumes no responsibility for the previous, current, or continued existence of the Areaway, and that any and all risk related to such existence of the Areaway, or arising out of the Waterproofing Work shall be borne by Owner. Owner agrees that it shall indemnify, save, hold harmless, protect, and defend the City, its officers, agents and employees, from all claims, actions or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, including the City, resulting from any act or omission related to the terms of this Agreement.

5. Recitals. The Recitals set out above are incorporated and made a part of this Memorandum of Understanding.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

ARMORY DEVELOPMENT II, LLC

By: 

Doug Hoskin

Its: Managing Member

Date: 6-27-11

CITY OF MINNEAPOLIS

By: _____
Its: Director, Department of Public Works
Date: _____

And: _____
Its: Finance Officer or Designee
Date: _____

APPROVED AS TO FORM:

By: _____
Its: Assistant City Attorney
Date: _____

EXHIBIT A

1. June 27, 2011, Return of signed Memorandum of Understanding by Doug Hoskins, four original signed documents to Larry Matsumoto.
2. Begin bidding at City of Minneapolis Purchasing, advertised on June 30 and July 14. Bid opening on July 20, 2011.
3. City Staff approvals and council resolution on September 2, 2011.
4. Signed and executed contract on September 16, 2011
5. Contractor directed to proceed with work on September 13, 2011 (estimated date). Doug Hoskins to arrange his areaway, waterproofing contractor with the sidewalk contractor's start date.