

D R A F T

MEMORANDUM OF AGREEMENT BETWEEN THE MASSACHUSETTS DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHCD), THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER (MA SHPO), NORTH SHORE HOME CONSORTIUM, SALEM LAFAYETTE DEVELOPMENT LLC AND THE PLANNING OFFICE FOR URBAN AFFAIRS, INC. REGARDING THE ST. JOSEPH'S REDEVELOPMENT

November __, 2011

WHEREAS, DHCD proposes to award Department of Housing and Urban Development ("HUD") HOME Investment Partnership Program funds to provide financial assistance for the construction of a mixed-use development including 51 residential units, community space and retail space known as the St. Joseph's Redevelopment ("Project") located at 135 Lafayette Street, Salem, Massachusetts (the "Property"), which is being undertaken by the Planning Office for Urban Affairs, Inc. (the "Proponent") and which is owned by Salem Lafayette Development LLC (the "Owner");

WHEREAS, the North Shore HOME Consortium ("NSHC"), proposes to use HUD HOME Investment Partnership Program funds to provide financial assistance for the construction of the Project;

WHEREAS, DHCD proposes to award Section 8 Project-Based Vouchers ("PBV") under the United States Housing Act of 1937 (42 U.S.C. §§ 1437 et seq.) and regulations promulgated at 24 CFR Part 983 to the Project;

WHEREAS, as a result of the HOME Funds and PBVs, the Project is subject to HUD environmental review, including compliance with the National Environmental Policy Act ("NEPA") and related laws, including Section 106 of the National Historic Preservation Act and the regulations found at 36 CFR Part 800 ("NHPA");

WHEREAS, DHCD is acting as the "responsible entity" assuming HUD's responsibilities under the environmental and related laws specified in 24 CFR Part 58, including compliance with the NHPA;

WHEREAS, DHCD and the NSHC have agreed that DHCD has acted, is acting, and will act as "lead agency" pursuant to 36 CFR 800.2(a)(2), to fulfill both DHCD's and NSHC's respective obligations under Section 106 of the NHPA with respect to the Project in a consolidated manner;

WHEREAS, the Project is also subject to review by the SHPO pursuant to M.G.L. Chapter 9, Section 26-27C and its implementing regulations, 950 CMR 71.00; however, the Section 106 process fulfills the requirements of compliance with the state historic preservation law and regulations (see 950 CMR 71.04(2));

WHEREAS, the existing Project site is a 2.7-acre parcel that contains paved areas, landscaped areas and four buildings: a church, rectory, school and convent; none of which are being used at this time;

WHEREAS, the St. Joseph's Complex is eligible for listing in the National and State Registers of Historic Places as an historic district at the local level;

WHEREAS, the Owner applied for and was granted, by the Planning Board of the City of Salem, a Planned Unit Development Special Permit and Site Plan Review dated September 17, 2010 (the "PUD Approval") that enables the razing of the former church and convent buildings, the renovation of the former rectory and school buildings, and the construction of a new four-story building at the Property. The mixed use development would include a total of 76 dwelling units (51 in the new building, 17 in the renovated school and 8 in the renovated rectory), approximately 4,150 square feet of commercial space, and approximately 750 square foot of community space;

WHEREAS, at this time, the Project receiving federal HOME Funds and PBVs includes only the construction of the four-story building (with 51 affordable dwelling units, approximately 4,150 square feet of commercial space and approximately 750 square foot of community space);

WHEREAS, in order for the Project to be financially feasible, the plans call for the demolition of the church and convent buildings;

WHEREAS, DHCD has defined the area of potential effects on historic properties ("APE") for the Project as the campus comprising the St. Joseph's Complex, which complex meets the criteria of eligibility for listing on the State and National Registers of Historic Places as an Historic District, as well as the Point Neighborhood District surrounding the St. Joseph's Complex, all as shown in Exhibit A;

WHEREAS, DHCD, in consultation with the Massachusetts State Historic Preservation Officer ("SHPO"), has determined that the Project will have an adverse effect on the church and convent buildings, the St. Joseph Complex, and the APE (Point Neighborhood District);

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), on August 2, 2011, DHCD notified the Advisory Council on Historic Preservation ("ACHP") that the Project will have an adverse effect on historic properties;

WHEREAS, after review, evaluation, consultation and consideration, on November 8, 2011 DHCD, in accordance with Section 106, issued a Memorandum Documenting DHCD's Consideration of Means to Avoid or Minimize Adverse Effects on Historic Properties ("November 8 Determination") in which DHCD determined that "the only viable approach to resolving the Project's adverse effects on historic properties is via mitigation of those effects through a Memorandum of Agreement between DHCD and the SHPO, with concurrence from

the Applicant and other consulting parties that seek to join” (a copy of the November 8 Determination is attached hereto as Exhibit B);

WHEREAS, DHCD has consulted with the Proponent and Owner regarding the effects of the undertaking on historic properties and has invited the Proponent to sign this MOA as signatories;

WHEREAS, DHCD has consulted with the North Shore HOME Consortium, and the MA SHPO regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as signatories;

WHEREAS, DHCD has consulted with the City of Salem, the Salem Historical Commission and Historic Salem, Inc. regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as concurring parties;

WHEREAS, DHCD has consulted with the Tribal Historic Preservation Officer (“THPO”), and has invited the THPO to sign this Memorandum of Agreement (“MOA”) as a concurring party; [Add detail re: no response from THPO?]

WHEREAS, DHCD, the North Shore HOME Consortium, the SHPO, [the THPO], the ACHP, the Proponent and the Owner are the “Signatories” to this MOA;

WHEREAS, the City of Salem, the Salem Historical Commission and Historic Salem, Inc., are the “Concurring Parties” to this MOA; and

NOW, THEREFORE, DHCD, the ACHP, the SHPO, [the THPO], the Proponent and the Owner agree that the following stipulations shall be implemented in order to take into account the effect of the undertaking on historic properties, to resolve the potential adverse effect of the undertaking on historic properties, and to satisfy all responsibilities under Section 106 of the NHPA.

STIPULATIONS

DHCD shall ensure that the following stipulations of this MOA are implemented:

- I. RECORDATION: Prior to commencement of work at the Property, the Proponent agrees to ensure that the church building, the rectory, the school and the convent are documented according to the following recordation requirements:
 - a. SPECIFICATIONS: Photographic documentation should consist of 5” -x - 7”, 35 millimeter black and white photographs, printed on archival-quality photographic paper. Prints should be archival-processed and numbered on the back in pencil, but un-mounted and with no affixed labels unmounted but sleeved in archival-quality, unbuffered envelopes, the contents of each envelope identified and numbered in pencil on the envelope. The negatives should be sleeved in a stable polypropylene negative holder; the negative holder should be suitably labeled.

made available to the Historic American Buildings Survey. [Add reference to MHC attachment re: recordation.]

- b. RECOMMENDED VIEWS: At least 10 to 12 exterior views are recommended, with exterior views including context shots of each building within its setting, as well as individual views of each elevation of each building. Interior views are required for the rectory, school and convent. At least four to six interior shots are recommended, and should include representative shots of interior spaces and detail shots of any significant architectural features, such as fireplaces, stairways, doors, or moldings. [Placeholder re: existing archival quality photos of Church interior]
- II. RETENTION OF RECTORY AND SCHOOL – At this time the Proponent will retain the former school (20 Harbor Street) and rectory (129 Lafayette Street) building structures. The Proponent will use best efforts to maintain the historic fabric of both the exterior and interior of the school and rectory. At such time as the Proponent undertakes future development of the school or rectory, it shall consult with MHC and seek MHC’s feedback on design review of the proposed redevelopment. The Proponent and MHC understand that the basis for MHC’s design review may be standards that are derived from the Secretary of the Interior’s Standards for Rehabilitation, and the Proponent shall make best efforts to comply with those standards but may not be able to conform to such standards in their entirety depending upon the reuse planned for the buildings.
- III. POTENTIAL REUSE OF RECTORY – The Proponent will investigate the potential reuse of the first floor of the rectory building for a temporary construction office during future construction at the Property.
- IV. PROJECT DEVELOPMENT: The Project shall be constructed in accordance with the PUD Approval, as same may be amended, but, as described above, shall not include restoration of the school and rectory buildings at this time. The Parties to this MOA acknowledge that the Project includes numerous benefits, such as an approximately 20 million dollar investment in the City of Salem and the Point Neighborhood Community, provision of 51 units of badly needed affordable housing, contribution of \$10,000 to the City of Salem for the maintenance and upkeep of Lafayette Park, creation of approximately one hundred new construction jobs and several new permanent jobs, removal of urban blight, enhancement to the gateway to downtown Salem and the Point

- V. TREATMENT OF STOREFRONTS IN NEW BUILDING – The Proponent and Owner agree that any new retail storefronts in the four-story building are subject to entrance corridor overlay district requirements of the City of Salem Zoning Ordinance.
- VI. MEMORIALIZATION OF THE FORMER CHURCH COMPLEX– The Proponent will include a photographic exhibit in the new building’s community room so that residents and community members can view photographic evidence and narrative about the former St. Joseph’s Parish.
- VII. OUTDOOR PUBLIC MEMORIALIZATION OF FORMER CHURCH COMPLEX – The Proponent and Owner agree to add an interpretive plaque located on an exterior wall of the new four-story building so that the public can view it from the sidewalk, to memorialize the history of the St. Joseph’s Parish.
- VIII. STATUE – With respect to the statue of St. Joseph that is allegedly buried within the Project Area, the Proponent agrees to the following:
 - a. Prior to excavation for any construction work, if necessary, the Proponent will retain a third-party contractor to conduct a Ground Penetrating Radar (GPR) Survey in the southwest quadrant of the Project Area (as shown on Exhibit C, attached hereto) which is the area that has been identified as the likely location of the buried statue.
 - b. If the statue is located, either through the GPR Survey or during actual excavation, the Proponent will take the following actions:
 - i. If practical, the Proponent will attempt to re-bury the statue within the Project Area;
 - ii. If reburying the statue within the Project Area is not feasible, the Proponent will have the statue removed from the Project Area, for treatment and disposal in accordance with church law.
 - iii. Prior to reburial or removal of the statue, the Proponent will document the statue by obtaining a minimum of six (6) photographs that comply with the specifications set forth in Stipulation I(A), above.
 - c. If the statue is not located using a GPR Survey and is not encountered during actual excavation, the Proponent will have no further obligations regarding locating the statue.

IX. DISPUTE RESOLUTION:

- a. Should any Signatory object in writing to the manner in which the terms of this MOA are implemented, DHCD shall consult with the Signatory Parties to resolve the objection.
- b. If DHCD determines, as the result of an objection, that the MOA should be amended, DHCD shall consult with the other Signatories and Concurring Parties to this MOA to obtain their comments regarding the amendment and shall request comments from the ACHP under 36 CFR § 800.7(a).
- c. If DHCD, determines that the objection cannot be resolved, DHCD shall forward all documentation relevant to the dispute to the ACHP, including DHCD's proposed response to the objection. Within twenty-one days after receipt of all pertinent documentation, the ACHP will:
 - i. Advise DHCD that it concurs with DHCD's proposed response, whereupon DHCD shall respond to the objection accordingly; or
 - ii. Provide DHCD with recommendations pursuant to 36 CFR § 800.2(b)(2) which DHCD shall consider in reaching a final decision regarding the dispute. Upon consideration of any comments received from the ACHP, DHCD may proceed to carry out the terms of the MOA.
 - iii. Should the ACHP not exercise one of the above options within twenty-one (21) days after receipt of all pertinent documentation, DHCD may assume that the ACHP concurs in the proposed response to the objection.

- XI. DURATION: Unless extended by agreement of the Signatories, this MOA will be null and void if its stipulations are not carried out within five (5) years from the date of its execution. At such time, and prior to work continuing on the undertaking, DHCD shall either (a) execute a MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Prior to such time, DHCD may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation IX of this MOA. DHCD shall notify the Signatories and Concurring Parties as to the course of action it will pursue.

[The remainder of this page intentionally left blank.]

EXECUTION of this MOA by the Proponent, DHCD, MA SHPO, NSHC and its submission to the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR 800.6(b)(1)(iv), shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement with the Council for the purposes of Section 110(1) of NHPA. Execution and submission of this MOA, and implementation of its terms evidence that DHCD has afforded the Council an opportunity to comment on the Project and its effects on historic properties, and that DHCD has taken into account the effects of the Project on historic properties. EXECUTION of this MOA by the MA SHPO shall also be considered to constitute the conclusion of state review pursuant to M.G.L. Chapter 9, Section 26-27C and 950 CMR 71.00.

This MOA is effective when executed by the Signatories.

MASSACHUSETTS DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

xxxxxx

Date

[Interim] Undersecretary, Executive Office of Housing and Economic Development

MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER

Brona Simon

Date

Massachusetts State Historic Preservation Officer

Executive Director and State Archaeologist

Massachusetts Historical Commission

NORTH SHORE HOME CONSORTIUM

(acting by and through the City of Peabody)

Kevin Hurley

Date

Executive Director

SALEM LAFAYETTE DEVELOPMENT LLC

By: Planning Office for Urban Affairs, Inc.

By: _____

Name: Lisa B. Alberghini

Title: President

By: Banc of America Community Development Corporation

By: _____

Name: Eugene J. Clerkin

Title: Senior Vice President

PLANNING OFFICE FOR URBAN AFFAIRS, INC.

By: _____

Name: Lisa B. Alberghini

Title: President

CONCUR:

CITY OF SALEM – PLANNING DEPARTMENT

By: _____

Title: _____

CONCUR:
SALEM HISTORICAL COMMISSION

By: _____
Title: _____

CONCUR:
HISTORIC SALEM, INC.

By: _____
Title: _____

Exhibit A: St. Joseph's Complex – Area of Potential Effect

Exhibit B: November 8, 2011 Determination

Exhibit C: Statue Plan