

MEMORANDUM OF AGREEMENT

AMONG THE DOWNTOWN MOTOR LODGE, LLC,

THE

CITY OF TUCSON, HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT,

THE

ARIZONA STATE HISTORIC PRESERVATION OFFICER

AND THE

ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING THE DOWNTOWN MOTOR APARTMENTS

383 S STONE AVE, TUCSON, AZ

WHEREAS, the City of Tucson (City) plans to provide funds from the HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (1990) (42 U.S.C. 12701 et seq.) to the Downtown Motor Lodge, LLC (developer) for the construction of a four story, 44-unit low-income housing apartment located at 383 S Stone Avenue (project); and,

WHEREAS, the City is the Responsible Entity in accordance with HUD's Environmental Review Regulations at 24 CFR Part 58, and is responsible for ensuring compliance with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, 36 CFR Part 800; and,

WHEREAS, the City has a Programmatic Agreement (PA) which addresses its Section 106 responsibilities for its HUD-funded programs; however, due to the scope of the undertaking and the high level of public interest, the City has decided to use utilize 36 CFR Part 800.6 to resolve adverse effects, including consultation with consulting parties and the public; and

WHEREAS, the City has defined the undertaking's area of potential effect (APE) as depicted on the map attached hereto as Exhibit A; and

WHEREAS, the City has determined that the undertaking will adversely affect the property at 383 South Stone Avenue, which is a contributing element to the Armory Park Historic District, and is listed in the National Register of Historic Places, and has obtained the concurrence of the Arizona State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800; and

WHEREAS, the City has determined that the undertaking will have no adverse effect on the Barrio Libre Historic District because the project does not result in loss of historic fabric in that district, does not alter the characteristics that make it eligible for listing in the National Register, a view of the project from the district is not a visual adverse effect on the integrity of the district and the City has obtained the concurrence of the SHPO pursuant to 36 CFR Part 800; and

WHEREAS, the Downtown Motor Lodge LLC, which consists of CAH-Downtown Motor Lodge, LLC/member Compass Affordable Housing, Inc. and Tucson Housing AM, LLC/member Bethel MM, LLC has been invited to sign this MOA as invited signatories; and

WHEREAS, the City of Tucson has consulted with the Tucson Historic Preservation Foundation, the Tucson Pima County Historical Commission Plans Review Subcommittee, the Armory Park Historic Zone Advisory Board, the Armory Park Neighborhood Association, and the Barrio Historico Historic Zone Advisory Board regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as concurring parties; and

WHEREAS, as part of the consultative process, the City has engaged the to participate in the review of this undertaking as described in the attached Exhibit B; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the City has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specific documentation, and the ACHP has chosen to participation in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, Downtown Motor Lodge, LLC has developed Architectural Documentation of the existing Property in accordance with SHPO Standards; and a copy of this documentation shall be provided to the City Historic Preservation Office, with a second copy to be provided to the Armory Park Historic Zone Advisory Board; and:

WHEREAS, the work contemplated under this MOA shall be the work as shown on the drawings and specifications for the development of the Downtown Motor Apartments at 383 S. Stone Avenue in Tucson, AZ as approved and made subject to the building permits and other approvals as issued by the City of Tucson.

NOW, THEREFORE, the City, the SHPO and the ACHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The City, in coordination with the Downtown Motor Lodge LLC, shall ensure that the following measures are carried out:

I. Rehabilitation of Historic Sign and Portion of Hotel

A. Downtown Motor Lodge LLC (Developer) will save and restore the existing project sign. Developer will work with the City Historic Preservation Office to attempt to obtain “Historic Landmark Sign Designation” and will pay for the application. In addition the developer will execute a Conservation Easement on the sign in favor of the City of Tucson. The form of Conservation Easement shall be as agreed to by the City of Tucson’s Historic Preservation Officer, City Attorney, and developer.

B. Developer will retain approximately 47’ of the westernmost portion of the north building on the property and approximately 36’ of the westernmost portion of the south building on the

property as depicted in the drawing attached as Exhibit C. These spaces will be used as offices and community space.

C. Any historic preservation of these portions of the property will meet the Secretary of the Interior's Standards for Archaeology and Historic Preservation (SOI's Standards; http://www.nps.gov/history/local-law/arch_stnds_9.htm), and will be carried out by or under the direct supervision of qualified professionals who meet the Secretary of Interior's Professional Qualifications Standards.

D. Contingent upon lender approval, developer will execute a Conservation Easement in favor of the City of Tucson. The form of Conservation Easement shall be as agreed to by the City of Tucson's Historic Preservation Officer, City Attorney, and developer.

E. Developer will confer with the Armory Park Neighborhood Association, the Armory Park Historic Zone Advisory Board, and the Plans Review Subcommittee of the Tucson-Pima County Historic Preservation Commission on building colors with an emphasis on masses or strong shades and horizontal colorization.

II. Salvage

A. Developer will allow owners of historic properties in Armory Park and contractors that specialize in rehabilitation of historic properties the right to salvage building materials, ornamentation, and architectural remains from the Property prior to demolition and only from the buildings scheduled to be demolished. Liability waivers will be required. To this end, the Developer will advertise and host an open house where Armory Park historic property owners and contractors can tour the building to identify specific removable materials to attempt recovery prior to demolition. Developer will engage in reasonable efforts to provide for salvage of the bricks to be set aside for a limited period of time. All materials requested will be made available first to owners of historic properties in Armory Park and then any remaining materials will be made available to contractors that specialize in rehabilitation of historic properties. The on-site Open House will not exceed the first 40 people. Developer will not permit materials contaminated with hazardous materials such as lead or asbestos to be salvaged

III. Interpretive Exhibit/Signage

A. Developer will provide \$1,000.00 to create an exhibit/display that will interpret the historic building on the property or to create a plaque/memorial to Josias Joesler, Architect, at a location to be determined by those parties and the Developer. The interpretive exhibit/signage will need to approval by the City's Preservation Officer in consultation with the Tucson Pima County Historic Plans Review Subcommittee

IV. Neighborhood Outreach

A. Compass Affordable Housing and the City of Tucson Housing and Community Development Department will meet annually for three years with the Armory Park and Barrio Viejo Neighborhood Associations and instruct on how to apply for the City's Homeowner Rehab Program and other available City funding opportunities for their historic properties.

V. Mitigation Funds

A. Developer will commit \$8,500.00 toward a Historic Preservation Fund, to aid in the repair and maintenance of historic features of historic properties in Armory Park and Barrio Viejo. The Armory Park Neighborhood Association, by separate agreement, will be the sole fiscal and discretionary agent for the fund.

B. Developer will commit \$3,500.00 toward a fund for the repair of historic sidewalks in the Armory Park Historic District. The Armory Park Neighborhood Association will be the sole fiscal and discretionary agent for this fund.

VI. City Training

A. The City's Certifying Officer and Environmental Officer in the Housing and Community Development Department and the City's Historic Preservation Officer will attend the Advisory Council on Historic Preservation's *Section 106 Essentials* and *Advanced Section 106 Seminars* within the first year of the MOA.

X. DURATION

This MOA will expire if its terms 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, the City shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of ACHP under 36 C.F.R. § 800.7. Prior to such time, the City may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation XIII (Amendments).

XI. MONITORING AND REPORTING

Each quarter following the execution of this MOA until it expires, or until the work contemplated under this MOA is completed, or the MOA is terminated, the City shall provide all signatories to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received regarding the implementation of the MOA in the City's efforts to carry out the terms of this MOA. This report will be posted on the City of Tucson Housing and Community Development Department's webpage for the Downtown Motor Apartments project which can be found at <http://www.tucsonaz.gov/hcd/downtown-motor-hotel-section-106-process>.

XII. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the City shall consult with such party to resolve the objection. If the City determines that such objection cannot be resolved, the City will:

- A. Forward all documentation relevant to the dispute, including the City's proposed resolution, to the ACHP. The ACHP shall provide the City with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the City shall prepare a written response that takes into account any timely

advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The City will then proceed according to its final decision.

- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the City may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the City shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. The City's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

XIII. AMENDMENTS

This MOA may be amended when all signatories have consulted regarding the proposed amendment. Upon agreement to the proposed amendment by all signatories in writing, the City will develop the amended MOA and circulate it for signature. The amendment will be effective on the date a copy of the last signature, including that of the ACHP. When all signatories have consulted regarding the proposed amendment,

XIV. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation XIII, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, the City must either (a) execute an 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. The City shall notify the signatories as to the course of action it will pursue.

XV. EXECUTION

- A. This MOA may be executed by the signatories in counterpart, with the effective date being the date the ACHP executes it.
- B. Execution of this MOA by the City of Tucson, the SHPO and the ACHP, and implementation of its terms evidence that the City has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

Arizona State Historic Preservation Office

_____ Date: _____
James Garrison, State Historic Preservation Officer

SIGNATORIES:

City of Tucson
Responsible Entity

_____ Date: _____
Sally Stang, Certifying Officer for City of Tucson

SIGNATORIES:

Advisory Council on Historic Preservation (ACHP)

_____ Date: _____
John M. Fowler, Executive Director

INVITED SIGNATORIES:

DOWNTOWN MOTOR LODGE, LLC
By: CAH-Downtown Motor Lodge, LLC
Its Manager
By: Compass Affordable Housing, Inc.
Its Manager
By: Maryann Beerling, CEO

_____ Date: _____
Maryann Beerling, Chief Executive Officer

INVITED SIGNATORIES:

By: Tucson Housing AM, LLC

Its Member

By: Bethel MM, LLC

Its Manager

By Bethel Development, Inc.,

Its Member

By: Daniel N. Terlecki, President/Owner

_____ Date: _____
Daniel N. Terlecki, Owner/President

CONCURRING PARTIES:

Tucson Historic Preservation Foundation

_____ Date: _____
Demion Clinco, CEO

CONCURRING PARTIES:

Tucson Pima County Historical Commission

_____ Date: _____
Teresita Majewski, Chair

CONCURRING PARTIES:

Armory Park Historic Zone Advisory Board

_____ Date: _____
Jack McLain, Chair

CONCURRING PARTIES:

Armory Park Neighborhood Association

_____ Date: _____
John Burr, Vice-President and Development Chair

CONCURRING PARTIES:

Barrio Historico Historic Zone Advisory Board

_____ Date: _____
Jody Gibbs, Chair