

**MEMORANDUM OF AGREEMENT  
AMONG  
THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT,  
HARPETH APARTMENT ASSOCIATES, LLC AND THE TENNESSEE STATE  
HISTORIC PRESERVATION OFFICE  
REGARDING  
THE HARPETH SQUARE APARTMENTS  
CITY OF FRANKLIN, TENNESSEE**

WHEREAS, the United States Department of Housing and Urban Development (“HUD”) may provide Federal loan insurance under 24 CFR Part 221(d)(4)-Multifamily Rental Housing for Moderate Income Families Program (24CFR Part 221 C and D) to a mixed-use real estate project known as Harpeth Square (“the Undertaking”) in the City of Franklin, Tennessee; and

WHEREAS, the undertaking consists of the construction of a 119-room Hilton Curio hotel, a 597-space parking garage, an existing office building, and a 150-room rental apartment project, in the 5.4-acre city block being considered the Project Area (“Project Area”), accompanied by streetscape and landscape improvements, and the undertaking will be carried out by Harpeth Associates, LLC, which has been organized under the laws of Tennessee (Appendix A); and

WHEREAS, Harpeth Apartment Associates, LLC, (“Harpeth”), organized under the laws of Tennessee, is proposing to develop, finance, own and operate the rental apartment component of the Undertaking; and

WHEREAS, HUD has determined that the Undertaking’s Area of Potential Effects (“APE”), as defined at 36 CFR Part 800.16(d), includes the northernmost of the 16 blocks in the Franklin Historic District, City of Franklin, Tennessee, for direct effects and the APE for indirect effects to be the Project Area plus areas where alterations to a resource’s setting and feeling could occur (Appendix A); and

WHEREAS, HUD has determined that the Undertaking may have an adverse effect on the Franklin Historic District, which is listed on the National Register of Historic Places under Criteria A and C, and has consulted with the Tennessee State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. §306108); and

WHEREAS, HUD has provided notification to the ACHP in accordance with 36 CFR Part, 800.6(a)(1) and the ACHP has declined to participate; and

WHEREAS, pursuant to 36 CFR Part 800,3(f)(2), HUD has invited the City of Franklin, the Heritage Foundation of Franklin, Tennessee, the Downtown Franklin Neighborhood Association, the Downtown Franklin Association, Franklin Tomorrow, the Battle of

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Franklin Trust and the National Trust for Historic Preservation to participate as consulting parties and the National Trust for Historic Preservation has requested formal consulting party status; and

WHEREAS, Harpeth employed architects, engineers and other consultants and advisors from Franklin and middle Tennessee in the design and formation of the Undertaking and the project, to ensure informed citizen and local input; and

WHEREAS, project designs were developed and modified to avoid and minimize the project's adverse effect on historic properties in the APE and adjacent neighborhoods, including creating set backs and adjusting building height, changing building materials, redesigning building elevations and architectural details, and modifying plans to the surrounding streetscape, such as implementing street and lighting changes and clearing and opening the Harpeth River, a major City resource; and

WHEREAS, the Franklin Planning Commission, the Historic Zoning Commission and Board of Mayor and Aldermen all approved the plans for the Undertaking and project; and

WHEREAS, the staff of the City of Franklin has been involved in the detailed planning and implantation of the Undertaking for over four years, and the final approval for the Undertaking was received from the staff on July 6, 2017.

NOW, THEREFORE, HUD and the SHPO 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**

HUD shall ensure that the following measures are carried out:

### **I. INTERPRETIVE PANEL**

Within two (2) years of this MOA, Harpeth shall fund the fabrication and installation of an interpretive sign which shall detail the general history of the project block, with an emphasis on the industrial/business use of this area and subsequent occupation to disseminate information about the history of the area to the general public. In consultation with HUD, SHPO, the City of Franklin, and the Heritage Foundation of Franklin, Harpeth or their consultants shall prepare draft text, layout, design, and materials for the signage. The draft text, layout, design, materials, and proposed panel location shall be submitted to HUD, SHPO, the City of Franklin, and the Heritage Foundation of Franklin for review and comment. If no disputes are raised in accordance with Stipulation VI, Harpeth shall produce the signage panel and install the panel in the agreed-upon location.

## **II. REHABILITATION OF MASONIC LODGE**

- A) Within six (6) months of this MOA's execution, Harpeth shall provide \$50,000 to the City of Franklin to help finance the restoration and rehabilitation of the historic Masonic Lodge located at 115 2nd Ave S. Franklin, TN. 37064. The City of Franklin will oversee the expenditure of funds for this effort. The work shall meet the Secretary of the Interior's (SOI) Standards for Rehabilitation and City of Franklin guidelines for architectural work in the historic district including review of project plans and evaluation of the proposed work in relation to the City's historic district guidelines. The City of Franklin's approval shall represent adherence to the SOI standards.
- B) The owner of the Masonic Hall shall be required to sign a Protective Covenant acceptable in form and substance to SHPO which will be recorded in the Register's Office for Williamson County, Tennessee. The Protective Covenant shall run with the land for ten years and shall insure that the Secretary of Interior Standards for Rehabilitation are met as outlined in Stipulation II.A.

## **III. VIBRATION MONITORING**

- A) Harpeth Associates shall develop a current conditions report (the "Baseline Report") prepared by a qualified engineer who is familiar with historic properties (the "Professional") with regard to the real properties located at: (a) 134 2nd Ave N, (b) 144 2nd Ave N, (c) 114 East Main St. in Franklin, Tennessee (collectively the "Monitored Properties"). The Baseline Report shall identify current structural conditions of the Monitored Properties and shall specify recommended vibration limits based on baseline building conditions, soil conditions, type of construction vibration and other relevant. Harpeth Associates shall install at, or around, the Monitored Properties equipment to monitor the vibration levels at the Monitored Properties. If the vibration levels exceed the limits set by the Professional, then the Professional shall inspect the affected Monitored Properties to determine if damage has occurred at the Monitored Properties. The monitoring shall continue until a certificate of occupancy is issued on the project.
- B. If the Professional determines that the structural integrity of any of the Monitored Properties has been adversely impacted then notice shall be provided to SHPO, the owner of the affected Monitored Properties, the City of Franklin and Harpeth Associates (collectively the "Notice Parties") at which point the provisions of Section 106 and 36 CFR Part 800 shall be applicable. All communications between SHPO and Harpeth Associates on any such adverse effect shall be circulated to each of the Notice Parties.

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C. For the purpose of clarity, Harpeth Associates shall be permitted to initiate grading and site prep work prior to the completion of the Baseline Report and the installation of monitoring equipment; provided that no foundation work or vertical construction shall be permitted to begin until the Baseline Report is completed and the monitoring equipment is installed.

#### IV. PROFESSIONAL QUALIFICATIONS

All work carried out pursuant to this MOA shall be conducted by or under the direct supervision of an individual or individuals who meets, at a minimum, the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9, September 29, 1983) in the appropriate discipline.

#### V. UNANTICIPATED DISCOVERIES AND UNFORESEEN EFFECTS

A. If, during the implementation of an undertaking, a previously unidentified property that may be eligible for inclusion in the National Register is encountered, or a known historic property may be affected in an unanticipated manner, HUD shall assume its responsibilities pursuant to 36 C.F.R. Part 800.13.

B. In the event that previously unidentified archeological sites or human remains are discovered during project construction, that portion of the project shall stop immediately and the project manager shall notify HUD and the SHPO and other consulting parties signatories within 48 hours, and shall take appropriate steps to immediately secure the site.

C. If human remains are discovered, they shall be respectfully covered over and the project manager shall notify HUD and the SHPO and other consulting parties signatories. In addition, the project manager shall notify local and/or state law enforcement authorities including [medical examiner, coroner, state police, etc.] pursuant to local/state law.

D. HUD shall consult with the SHPO and other consulting parties to determine if the discovered site appears eligible for the National Register. If it does appear eligible, HUD shall submit a treatment plan for the avoidance, protection, recovery of information, or destruction without data recovery to the SHPO for review and comment. The treatment plan shall be consistent with the ACHP's handbook Treatment of Archaeological Properties and subsequent amendments and SHPO guidelines. If human remains are discovered, the treatment plan shall follow the guidance in Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects, including appropriate consultation with descendent communities. HUD shall notify all consulting parties of the unanticipated discovery and provide the proposed treatment plan for their comment. Construction work in the area of the discovery shall not continue until the plan has been accepted by the signatory parties and implemented.

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E. All human burial sites in Franklin, Tennessee are protected under Tennessee Cemetery & Burial Site Laws, Title 46, Section 46-2-105, and any undertaking that may affect a human burial site shall comply with provisions of this state law, the terms of this Agreement notwithstanding.

## **VI. DISPUTE RESOLUTION**

Should any party to this MOA object in writing to HUD regarding any action carried out or proposed with respect to the Undertaking covered by this MOA or to implementation of this MOA, HUD will consult with the objecting party to resolve the objection. If after initiating such consultation, HUD determines that the objection cannot be resolved through consultation, HUD shall:

- A. Forward all documentation relevant to the dispute, including the HUD's proposed resolution, to the ACHP. The ACHP shall provide HUD 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, HUD 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. HUD 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, HUD may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, HUD 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. HUD's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
- D. Should any member of the public raise a timely and substantive objection pertaining to the manner in which the terms of this Agreement are carried out, at any time during its implementation, HUD shall take the objection into account by consulting with the objector to resolve the objection. When HUD responds to an objection, it shall notify the consulting parties of the object and the manner in which it was resolved. HUD may request the assistance of a consulting party to resolve an objection.

## **VII. AMENDMENTS AND TERMINATION**

- A. Any signatory or invited signatory to this MOA may request that it be amended, whereupon the parties shall consult to consider such an amendment. All signatories to this MOA must agree to the proposed amendment in accordance with 36 CFR Part 800.6(c)(7). The amendment will be effective on the date a copy signed by all the signatories is filed with the ACHP.

B. 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 parties to attempt to develop an amendment per Stipulation VII.A. If within thirty (30) days (or another time period agreed to by all signatories) 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, HUD 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. HUD shall notify the signatories as to the course of action it will pursue.

C. If the terms of this MOA are satisfied prior to its expiration date, HUD shall provide written notification to the other signatories and concurring parties, and proceed to terminate this agreement in accordance with Stipulation VII.B. above.

### **VIII. ADDITIONAL AGENCIES**

In the event that there is additional federal involvement in the Undertaking that is not otherwise referenced in this MOA, that federal agency will have the option to accept the terms of this MOA, without acquiring an amendment, if the federal agency signs as an invited signatory. HUD must notify the Signatories in advance of the federal agency committing to the terms of this MOA.

### **IX. DURATION OF AGREEMENT**

This MOA shall continue in full force and effect until five (5) years after the date of the last signature. At any time in the six (6)-month period prior to such date, HUD may request the Signatories to consider an amendment of this MOA in accordance with Stipulation VII.A.

### **X. COUNTERPART EXECUTION**

The Signatories agree that for ease of execution, each Signatory may separately execute counterparts of this MOA and exchange executed pages with each other. Each counterpart of this MOA so executed and reassembled so each counterpart is executed by all Signatories shall be deemed to constitute a completed and fully executed MOA.

**EXECUTION** of this MOA by HUD and the SHPO and implementation of its terms evidence that HUD has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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**SIGNATORIES:**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By:  Date: 09/06/17

Name: Ruben J. Brooks

Position: Regional Center Director, Multifamily, SE Region

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**SIGNATORIES:**

TENNESSEE STATE HISTORIC PRESERVATION OFFICE

By: E. Patrick M. Jutzy Jr. Date: 9/6/2017

Name: E. Patrick M. Jutzy Jr.

Position: State Historic Preservation Officer



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**INVITED SIGNATORIES:**

APPLICANT/HARPETH APARTMENT ASSOCIATES, LLC

By: Harpeth Associates, LLC

A Tennessee Limited Liability Company

By: Carnton Management Associates, LLC

A Tennessee Limited Liability Company

Its: Manager

By: John L. Heller Date: Sept 6, 2017

Name: JOHN LUDWIG HELLER, JR.

Position: Manager

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**INVITED SIGNATORIES:**

CITY OF FRANKLIN

By: Eric S. Stucky Date: 9-6-2017  
Name: Eric S. Stucky  
Position: City Administrator

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**INVITED SIGNATORIES:**

Hiram Lodge No. 7

By: Bruce Barker Date: 9-6-2017

Name: BRUCE BARKER

Position: Chairman - Building TRUSTEES  
HIRAM Lodge # 7