

MEMORANDUM OF AGREEMENT
ON TIVOLI SQUARE, PARCEL 29
OF THE 14TH STREET URBAN RENEWAL AREA

WHEREAS, the District of Columbia Redevelopment Land Agency (“**RLA**”) developed a Plan for the 14th Street Urban Renewal Area, said Plan was adopted by the National Capital Planning Commission and approved by the Council of the District of Columbia;

WHEREAS, the RLA acquired the real property comprising Square 2837 in the District of Columbia, said real property is known as Parcel 29 of the 14th Street Urban Renewal Area;

WHEREAS, a previous scheme for the redevelopment of Parcel 29 has been vacated, notwithstanding that it was the subject of a Memorandum of Agreement (“**MOA**”) dated September 23, 1987 among the District of Columbia Department of Housing and Community Development (“**DHCD**”), the District of Columbia State Historic Preservation Officer (“**SHPO**”), and the Advisory Council on Historic Preservation (“**Council**”), said previous scheme and MOA is superceded by this MOA and is no longer of any force or effect; and

WHEREAS, the RLA acting through its agent, the District of Columbia Department of Housing and Community Development (“**DHCD**”), requested new proposals for the redevelopment of Parcel 29 in the 14th Street Urban Renewal Area (“**Property**”) or the benefit of the Columbia Heights neighborhood; and

WHEREAS, pursuant to the District of Columbia Redevelopment Act of 1945, as amended, the RLA held a public review of the potential proposals for the redevelopment and disposition of Parcel 29 and selected Tivoli Partners (“**Partners**”) as the Redeveloper of Parcel 29; and

WHEREAS, the RLA, and its agent DHCD, owned the Property at the time the consultation on this undertaking was initiated and determined that the redevelopment of the Property for a project known as Tivoli Square (“**Project**”) will have an adverse effect on the Tivoli Theatre building (“**Tivoli Theater**”), a property listed in the District of Columbia Inventory of Historic Sites and the National Register of Historic Places (“**NRHP**”), and that portion of the Columbia Heights neighborhood identified in the Upper Cardozo/Columbia Heights Comprehensive Survey as being eligible for listing in the NRHP; and

WHEREAS, RLA and Partners entered into an Exclusive Right Agreement for the redevelopment of the Property with the Project; and

WHEREAS, pursuant to the Redevelopment Land Agency - RLA Revitalization Corporation Transfer Congressional Review Emergency Act of 2002 (D.C. Act 14-259), hereinafter “**Transfer Act**,” ownership of the Property was transferred to the RLA Revitalization Corporation (“**RLARC**”) on January 30, 2002; and,

WHEREAS, pursuant to the Transfer Act, RLARC assumed all functions, duties, powers and obligations of the RLA; and

WHEREAS, RLARC is therefore now acting as the lead agency for the purposes of Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. Section 470f (**Act**); and

WHEREAS, Partners and RLARC will execute a Land Disposition Agreement under which part of the Property will be sold to Partners for the purposes of new residential construction and the remainder of the Property will be leased to Partners for the purposes of the rehabilitation of the Tivoli Theatre and new commercial construction (see plat attached as

Exhibit 1) in accordance with the Plans attached hereto and made a part hereof (see Exhibit 2);
and

WHEREAS, this sale and lease of the Property is an undertaking subject to Section 106
of the Act, and

WHEREAS, the undertaking will allow for the Project to go forward, and

WHEREAS, the Project will include the rehabilitation of the exterior of the Tivoli
Theatre (in accordance with the Secretary of the Interior's Standards for Rehabilitation), the
rehabilitation of portions of the interior of the Tivoli Theatre, the construction of a grocery store
at the corner of Park Road, NW and Holmead Place, NW, the construction of a commercial
building at the corner of 14th Street, NW and Monroe Street, NW, and new residential
construction along the remainder of Monroe Street, NW; and

WHEREAS, RLARC, the SHPO, the Council, Partners, Save the Tivoli, Inc. ("**STT**"),
the D.C. Preservation League ("**DCPL**"), the Committee of 100 on the Federal City
("**Committee**"), the League of Historic American Theaters, Inc. ("**LHAT**"), Advisory
Neighborhood Commission 1A ("**ANC**"), and others have participated in consultation in
accordance with Section 106 of the Act and its implementing regulations (36 C.F.R. Part 800);
and

WHEREAS, consultation meetings were held on December 5 and December 12, 2001
and January 16, January 30, February 25, 2002, and May 15, 2002; and

WHEREAS, as the result of the consultation process significant changes have been made to the treatment of the interior of the Tivoli Theatre so that certain historic public spaces within the Tivoli Theatre will be retained; and

WHEREAS, the RLARC, the SHPO, the Council, and Partners have been invited to become Signatories (“Signatories”) to this MOA and STT, DCPL, the Committee, and LHAT have been invited to become concurring Consulting Parties (“Consulting Parties”) to this MOA; and

WHEREAS, LHAT withdrew from the consultation process by email to the SHPO dated May 1, 2002; and

WHEREAS, because there is no continuing effect of the MOA dated September 23, 1987, for Parcel 29 among DHCD, the SHPO and the Council, that MOA is null and void.

NOW THEREFORE, the Signatories and the undersigned concurring Consulting Parties agree that the Project will be executed in accordance with the following Stipulations in order to take into account the adverse effect of the Project on the Tivoli Theatre and other historic resources determined to be eligible for listing in the NRHP, and they further agree that implementation of said Stipulations shall be ensured by the RLARC.

STIPULATIONS

I. Immediate Maintenance

RLARC shall preserve and maintain, to the best extent possible, the Tivoli Theatre building in a manner such that no further deterioration due to lack of maintenance or attention occurs during the period between the signing of this MOA and

the date upon which Partners takes control of the Property pursuant to the Exclusive Rights Agreement.

II. On-Going Maintenance

RLARC shall include in its lease with Partners language to be developed in consultation with the SHPO that ensures appropriate maintenance of the Tivoli Theatre building and the retained historic interior spaces and fabric within those spaces for the term of the lease.

III. Conditions for Proceeding with Tivoli Square

- A. All requirements of the District of Columbia Historic Protection Act, 6 D.C. Code Sections 1101 et seq. (2002) shall be satisfied.
- B. All zoning amendments, reclassifications, or other changes required to comply with applicable District of Columbia zoning laws and regulations shall be obtained.
- C. Prior to the solicitation of construction bids, Partners shall forward the construction documents for which bids will be sought to RLARC and the SHPO for review and comment. The SHPO shall have 30 days from receipt of the construction documents in which to provide comments to Partners and RLARC. The construction documents shall be amended as determined necessary by RLARC, the SHPO and Partners.

IV. Treatment of the Tivoli Theatre

- A. The exterior of the Tivoli Theatre will be rehabilitated in accordance with the Secretary of the Interior's Standards for Rehabilitation.
- B. The interior of the Tivoli Theatre auditorium, lobby, and vestibule, in their entirety, have been laser scanned in order to create a permanent record of the appearance of those spaces. Copies of that documentation have been given to the SHPO, and will be given to the Washingtoniana Division of the Martin Luther King, Jr. Library, the Historical Society of Washington, STT, and the ANC.
- C. The vestibule, promenade (lobby), mezzanine, and auditorium spaces will be retained as shown on the plans attached hereto and made a part hereof as Exhibit 2.
- D. At the time Partners take control of the property, Partners' preservation architect shall survey the historic interior public spaces to determine what historic fabric remains in structurally-sound condition. The results of that survey ("**Conditions Survey**") will be submitted to the Signatories (except the Council), and the concurring Consulting Parties, which shall have 30 days to review the Conditions Survey. If the Signatories do not concur with the conclusions of the Conditions Survey then comments of the Council will be requested in accordance with Stipulation X. Historic fabric in the historic interior public spaces found by the Conditions Survey

to be structurally sound will be preserved and protected to the maximum extent possible pursuant to IV. E. and F. below.

- E. The treatment of that retained historic fabric will be determined by Partners and the SHPO based on consultation among the Signatories and the concurring Consulting Parties. That consultation shall be initiated by the SHPO at Partners' request and shall be concluded within 30 days of that request. The options for the treatment of the retained historic fabric to be considered during this consultation shall include retention and protection, retention and repair, restoration, and replication.
- F. The goal of this MOA is to ensure that the funds available for the treatment of the retained historic fabric in the historic interior public spaces are used in the optimal manner so as to recapture to the maximum extent possible the original feeling of the Tivoli Theatre. During the consultation process leading up to the MOA a preliminary prioritized list of features on which the available preservation funds should be expended included:
1. Within the new theater space:
 - a. dome
 - b. pilasters, if any remain
 - c. wall finishes, if any remain
 2. Within the vestibule and promenade (lobby)
 - a. murals
 - b. two marble stairways
 3. Within the new office space

- a. dome
- b. double proscenium arch
- c. mural

These features, if restored, could help convey some sense of the original picture palace feeling of the Tivoli Theatre. Additional features and finishes in the building, such as Arts and Crafts tilework, shall be considered for retention and reuse to the extent possible. During the consultation process established by this MOA, a priority list will be determined based on the results of the Conditions Survey.

- G. Once Partners and the SHPO determine the ultimate treatment of the retained historic fabric (what will be done and how it will be done) Partners is responsible for completion of that work.
- H. Plans for construction within the historic Tivoli Theatre shall be distributed by Partners to the Signatories (except the Council) and the concurring Consulting Parties as part of ongoing consultation. Said plans shall be reviewed and approved by the RLARC and SHPO, taking into account comments made during the consultation process, to insure that said construction will have the minimum impact on the remaining historic fabric and be built in such a manner as to be reversible.
- I. Plans and specifications for the tenant build-out within the Tivoli Theatre shall be reviewed and approved by the RLARC and SHPO prior to beginning construction on such tenant build-outs to insure that said tenant

build-out will have the minimum impact on the remaining historic fabric and be built in such a manner as to be reversible.

- J. If Partners' preservation architect finds any additional significant features or finishes within the retail spaces along 14th Street, NW, or elsewhere in the Tivoli Theatre the preservation architect will notify Partners and will consult with the SHPO on the possible reuse of such features or finishes.
- K. Partners will provide RLARC and SHPO the opportunity to review changes to the project design for work within the Tivoli Theatre which may occur during construction when such changes are not consistent with the design intent of the final, approved construction documents or will substantially alter significant historic fabric. In such instances Partners will provide RLARC and SHPO with information on such changes and may request that RLARC and SHPO provide expedited review of the submitted materials if a delay in construction activities would increase the cost of the work, adversely affect project scheduling, or endanger the stability of the building or portion thereof. RLARC and SHPO shall provide expedited review (within seven days) when so requested by Partners. If any disputes arise which cannot be resolved, comments of the Council will be requested in accordance with Stipulation X.

V. New Construction on the Site

- A. The final design of the supermarket shall be consistent with design development of the plans attached as Exhibit 2.

- B. The final design of the commercial building at the corner of 14th and Monroe Streets, NW shall be consistent with design development of the plans attached as Exhibit 2.
- C. The design of the residential component of the project shall be presented to the Signatories (except the Council) and the concurring Consulting Parties as part of ongoing consultation. RLARC, the SHPO and Partners shall determine the final design of the residential new construction, taking into account comments made during the consultation process. If RLARC or the SHPO determine that the construction documents for the new construction referenced in Stipulation V.A. and B. above show significant changes to the plans not consistent with the plans attached hereto and made a part hereof as Exhibit 2, such changes shall be reviewed by the Signatories, except the Council, and the concurring Consulting Parties in accordance with the following procedure:
1. Partners shall transmit plans detailing the changes to the Signatories (except the Council) and the concurring Consulting Parties.
 2. The Signatories and the concurring Consulting Parties shall have 30 days to review said plans and transmit in writing any comments they may have on said plans to RLARC and the SHPO.
 3. Within 15 days of receiving such comments RLARC and the SHPO shall transmit in writing their comments on the changes to Partners. Partners shall consult with RLARC and the SHPO in order to address those

comments. If Partners cannot address those comments the SHPO shall forward all relevant documentation to the Council. Within thirty (30) days after receipt of the documentation the Council will provide the SHPO with recommendations which RLARC, the SHPO, and Partners shall take into account in making the final decision regarding the plans.

VI. Dissemination of Information about the Historical Significance of the Tivoli Theatre

Partners will prepare and install in the rehabilitated interior of the Tivoli Theatre a permanent exhibit outlining the building's history and its historical and architectural significance. The exhibit should include visual materials, such as photographs, reproductions of architectural drawings, and descriptive text outlining the building's history. A plan for the exhibit will be developed, in consultation with the SHPO and STT, within 18 months of the signing of this MOA. The exhibit will be installed within 6 months of the completion of the rehabilitation of the interior of the Tivoli Theatre. The location of the exhibit will be determined by Partners and the SHPO. A copy of the contents of the exhibit, on disc and in an 8.5" x 11" hard copy, will be distributed to the SHPO, STT, the Washingtoniana Division of the Martin Luther King, Jr. Library, the Historical Society of Washington.

VII. Oversight

RLARC will monitor the implementation of the stipulations of this MOA. To assist RLARC with this monitoring responsibility Partners will provide, on a quarterly basis until the issuance of the final Certificate of Occupancy for the project, a brief

written report on the status of its activity toward the completion of Tivoli Square. Partners will also send the status reports to the Signatories and the concurring Consulting Parties. Partners will provide the first status report within three months of execution of the Land Disposition Agreement for Parcel 29 between RLARC and Partners. Partners will also arrange quarterly inspections of the project, for any interested Signatories or concurring Consulting Parties, if requested, the timing of which shall coincide with the issuance of the quarterly reports.

VIII. Section 106 Compliance for Other Federal Agency Activities

- A. In the event that the RLARC or Partners receives assistance from other federal agencies for the implementation of the stipulations of this MOA or RLARC or Partners determines that additional federal licenses, permits, or approvals are required to implement the stipulations of this MOA, the respective federal agency can fulfill its Section 106 responsibilities by accepting the terms of this MOA and specifying that satisfactory fulfillment of the terms of this MOA is a condition of any license, permit, loan or grant agreement, or approval between the federal agency and RLARC or Partners to implement the stipulations of this MOA, unless otherwise specified in other stipulations of this MOA.
- B. RLARC or Partners will advise the federal agency of the existence of this MOA early in the application process for additional assistance, licenses, permits, or approvals. Likewise, RLARC will also notify the Signatories upon application for any federal assistance, permit, or approval.

- C. If the federal agency determines that it will fulfill its Section 106 responsibilities by accepting the terms of this MOA, the federal agency will notify the SHPO and the Council in writing of said acceptance at least 30 days prior to the issuance of any license, permit, or approval or the authorization for the release of funds.
- D. If the federal agency declines to accept the terms of this MOA or determines that it can comply with only certain provisions of this MOA, the federal agency may request an amendment to the MOA for its specific undertaking in accordance with Stipulation IX.

IX. Amendments

If RLARC or Partners determines that it cannot fulfill the terms of this MOA or otherwise deems it necessary to seek an amendment to this MOA, RLARC or Partners will notify the Council and the SHPO and request an amendment to this MOA as set forth in 36 C.F.R. Section 800.6(c)(7).

X. Dispute Resolution

- A. If at any time during the implementation of this MOA the Signatories to this MOA object to any plan, action, or failure to act pursuant to this MOA they may file a written objection with RLARC.
- B. Within 30 days of receipt of such an objection RLARC will commence consultation with the objecting party, and with other parties or interested persons, as RLARC deems appropriate, in order to resolve the dispute.

- C. Within 30 days of initiating such consultation RLARC will determine whether the dispute can be resolved. If RLARC determines that the dispute cannot be resolved, RLARC will forward all documentation relevant to the dispute to the Council and other Signatories to this MOA and request Council comment on the objection and/or dispute. Within 30 days after receiving such documentation the Council will either:
1. provide RLARC with recommendations, which RLARC will take into account in resolving the dispute; or
 2. notify RLARC that it will comment pursuant to 36 C.F.R. Section 800.7(c), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by RLARC in accordance with 36 C.F.R. Section 800.7(c)(4) with reference to the subject of the dispute.
- D. The responsibility of RLARC and Partners to carry out their respective actions under this MOA that are not the subject of objection or dispute will remain unchanged. However, until the objection is resolved in accordance with X.A., B., and C. above, Partners shall not proceed with work subject to the objection. Work not subject to such objections may proceed provided that said work does not adversely impact the work subject to objection and/or dispute.
- E. This stipulation does not preclude the concurring Consulting Parties or other interested persons from notifying RLARC of any objections they

may have to the manner in which this MOA is being implemented.

RLARC will determine whether any action is necessary to address any issues raised.

XI. Administrative Conditions

- A. Professional Qualifications: The restoration and rehabilitation of the Tivoli Theatre and the preparation of the exhibit to be installed in the Tivoli Theatre under the terms of this MOA will be carried out or directly supervised by a historical architect and an architectural historian respectively who meet the Secretary of the Interior's Professional Qualification Standards (62 Federal Register 33,707 et seq).
- B. The Signatories to this MOA agree to perform their respective obligations, including the execution and delivery of any documents or approvals as may be necessary or appropriate, in a timely manner consistent with the terms and stipulations of this MOA.
- C. The terms of this MOA will be binding on all Signatories and any other federal or state/city agency that will become a party to this MOA and their respective successors and assigns.
- D. This MOA may be executed in multiple original counterparts, each of which will be deemed an original, and which together will constitute one and the same MOA.

- E. If the Consulting Parties do not sign this MOA within fifteen (15) days after execution of this MOA by the Council, their inaction is deemed to be a decision not to be bound to the obligations, or avail themselves of the rights, of this MOA.

XII. Duration

This MOA shall remain in effect until the obligations specified herein have been fulfilled and the final required Certificate of Occupancy (C of O) for the Project has been issued, or for five years from the date of this MOA. RLARC will advise the Signatories and concurring Consulting Parties in writing that the obligations herein have been fulfilled and that the last C of O has been issued. If the Project is not completed within five years RLARC will initiate consultation among the Signatories and concurring Consulting Parties for the purpose of reconsidering the terms of this MOA.

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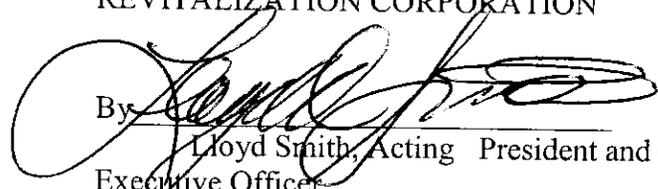
Execution of this MOA and implementation of its terms evidences that RLARC has afforded the Council an opportunity to comment on the proposed redevelopment of Parcel 29 of the 14th Street Urban Renewal Area known as Tivoli Square and its effects on historic properties and that RLARC has taken into account the effects of that undertaking on historic properties.

Signed:

Signatories:

REDEVELOPMENT LAND AGENCY
REVITALIZATION CORPORATION

RLA

By 

Lloyd Smith, Acting President and Chief Executive Officer

Dated: August 20, 2002

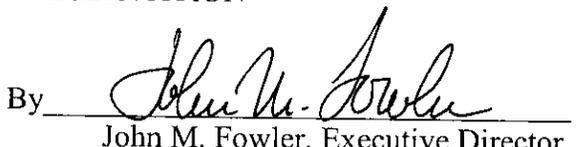
THE DISTRICT OF COLUMBIA STATE
HISTORIC PRESERVATION OFFICER

By 

Gregory McCarthy

Dated: July 29, 2002

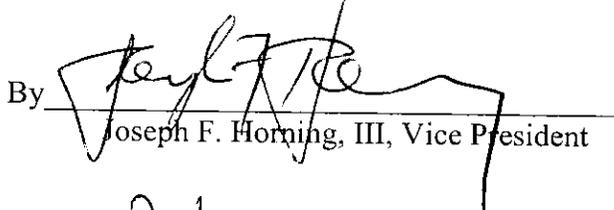
ADVISORY COUNCIL ON HISTORIC
PRESERVATION

By 

John M. Fowler, Executive Director

Dated: 8/23/02

TIVOLI PARTNERS

By 

Joseph F. Horning, III, Vice President

Dated: July 13 2002

Consulting Parties:

SAVE THE TIVOLI, INC.

By _____
Eric Graye, President

Dated: _____

DISTRICT OF COLUMBIA PRESERVATION
LEAGUE

By _____
T. David Bell, AIA, President

Dated: _____

THE COMMITTEE OF 100 ON THE FEDERAL
CITY

By _____
Ann Hughes Hargrove, Chair

Dated: _____