

**MEMORANDUM OF AGREEMENT**

**BETWEEN CITY OF WICHITA**

**AND THE KANSAS STATE HISTORIC PRESERVATION OFFICER**

**REGARDING THE OLD TOWN LODGING LLC PROJECT,**

**WICHITA, KANSAS**

**WHEREAS**, the **City of Wichita** (CITY) has determined that the Old Town Lodging LLC (Marriott Courtyard) Project (undertaking) will have an adverse effect on 820 E. 2<sup>nd</sup> Street, which is eligible for the National Register of Historic Places, and has consulted with the Kansas State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f); and

**WHEREAS**, CITY has provided a public hearing and invited comments from the Wichita-Sedgwick County Historic Preservation Alliance regarding the effects of the undertaking on 820 E. 2<sup>nd</sup> Street; and

**WHEREAS**, CITY, and SHPO have consulted with Old Town Lodging LLC and agreed to minimize the adverse impact to the building by a) attaching the porte-cochere in a manner that makes it an independent structure from the historic structure; b) installation of windows in arched openings to match the dimensions, setback and grid/muntin patterns of existing overhead doors with doors to be stored on site; c) retain proposed signage; d) EIFS façade color scheme and treatment of the reinforced concrete and brick wall on the east elevation to be agreed upon by SHPO, CITY and Old Town Lodging LLC; and

**WHEREAS**, CITY has evaluated the effect of the proposed building design to the historic structure and determined that the project cannot completely minimize the adverse effect to the historic structure; and

**WHEREAS**, in accordance with 36 CFR Section 800.6(a)(1), CITY has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with specified documentation and the Council has chosen not to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii); and

**WHEREAS**, CITY and the SHPO agree on how the adverse effects will be resolved;

**NOW, THEREFORE**, CITY 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 the historic property.

**STIPULATIONS.** CITY shall ensure that the following measures are completed:

- I. A contextual report with photographs and blueprints will be completed and submitted to SHPO by February 1, 2006. The report will include the history of the subject building from 1930 through 1975 when the Ranney-Davis Wholesale Company ceased operation at that location, including documentation of the architectural firm of record and their significance in Wichita and the surrounding region; and
- II. The City of Wichita shall submit completed Kansas Historic Resources Inventory Reconnaissance Forms and a survey report to SHPO, including a determination of eligibility, of the two historic commercial blocks bounded by Broadway on the east, Douglas on the south, Main on the west and First Street on the north by February 1, 2006; and
- III. The City of Wichita shall make every effort early in the planning stages of future federally funded projects to identify historic properties that may be affected and ways to avoid and minimize adverse impacts to them.
- IV. The City shall offer a 1-day Section 106 training for city officials, representatives of CHDOs, developers who are active in housing and development projects in Wichita, and potential consulting parties on such projects. This training session shall be led by a trainer who is nationally recognized in Cultural Resource Management and has experience in Section 106 training for a wide audience. Dollar amount not to exceed \$5,000.

**DURATION.** This agreement will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, CITY may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Amendments and Noncompliance below.

**POST-REVIEW DISCOVERIES.** If potential historic properties are discovered or unanticipated effects on historic properties found, the CITY shall notify parties to the agreement and provide written findings for consideration.

**MONITORING AND REPORTING.** Each year following the execution of this agreement until it expires or is terminated, CITY shall provide all parties to this agreement 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 in CITY's efforts to carry out the terms of this agreement. Failure to provide such summary report may be considered noncompliance with the terms of this Memorandum of Agreement (MOA) pursuant to Amendments and Noncompliance below.

**DISPUTE RESOLUTION.** Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, CITY shall consult with the objecting party(ies) to resolve the objection. If CITY determines, within 30 days, that such objection(s) cannot be resolved, CITY will:

- A. Forward all documentation relevant to the dispute to the Council in accordance with

36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise CITY on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the MOA, will be taken into account by CITY in reaching a final decision regarding the dispute.

B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, CITY may render a decision regarding the dispute. In reaching its decision, CITY will take into account all comments regarding the dispute from the parties to the MOA.

C. CITY'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. CITY will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. CITY's decision will be final.

**AMENDMENTS AND NONCOMPLIANCE.** If either signatory to this MOA determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other party to develop an amendment to this MOA pursuant to 36 CFR §§800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by both original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Termination below.

**TERMINATION.** If an MOA is not amended following the consultation set out above, it may be terminated by either signatory. Within 30 days following termination, the CITY shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the Council under 36 CFR §800.7(a) and proceed accordingly.

Execution of this Memorandum of Agreement by CITY and SHPO, the submission of documentation and filing of this Memorandum of Agreement with the Council pursuant to 36 CFR Section 800.6(b)(1)(iv) prior to CITY's approval of this undertaking, and implementation of its terms evidence that CITY has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

**SIGNATORIES:**

City of Wichita

*Carlos Mayans* Date *20 July 05*  
Carlos Mayans, Mayor

Kansas State Historic Preservation Officer

*C. Chinn* Date *7/21/05*

Jennie Chinn, State Historic Preservation Officer

Christy Davis, Deputy State Historic Preservation Officer for Jennie Chinn

Attest:

*Karen Sublett*  *7-20-05*  
Karen Sublett, City Clerk Date

Approved as to Form:

*Gary Rebenstorf* *7/20/05*  
Gary Rebenstorf Date  
Director of Law