

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA") is made this 18th day of August, 2005, by and among the U.S. General Services Administration ("GSA"), the National Capital Planning Commission ("NCPC"), the D.C. State Historic Preservation Office ("SHPO") (collectively the "Signatories"), and the American Pharmacists Association ("APhA") (collectively the "Concurring Parties") pursuant to Sections 106 and 110 of the National Historic Preservation Act related to the sale of the Transfer Parcel (as defined below) from GSA to APhA.

RECITALS

WHEREAS, the U.S. Government is owner of, and GSA has jurisdiction over, certain real property and improvements thereon known as Lots 810, 814, 815 and part of Lot 813 in Square 62 in the District of Columbia (the "Property"); and

WHEREAS, GSA has determined that disposal of the Property is appropriate; and

WHEREAS GSA intends to transfer a portion of Property consisting of a 17-foot wide strip of land located at the west edge of the Property (the "17-foot Parcel") to the custody and control of the U.S. National Park Service; and

WHEREAS, APhA owns the parcel of land and improvements thereon immediately south of and adjacent to the Property, and APhA has expressed its desire to purchase the remaining portion of the Property, exclusive of the 17-foot Parcel, as more particularly shown on the attached Exhibit A (the "Transfer Parcel") in order to construct an addition to the APhA headquarters building in Square 62; and

WHEREAS, the existing APhA headquarters building is listed in the National Register of Historic Places and the D.C. Inventory of Historic Sites; and

WHEREAS, the disposition of the Transfer Parcel and the proposed construction of the APhA addition on the Transfer Parcel constitute an undertaking as that term is defined under the National Historic Preservation Act ("NHPA") and its implementing regulations (the "Undertaking"); and

WHEREAS GSA has notified the Advisory Council on Historic Preservation ("ACHP"), pursuant to 36 CFR Part 800 Appendix A, of this Undertaking, and the ACHP declined to participate in the consultation; and

WHEREAS, the APhA property is located immediately north of the National Mall and the Lincoln Memorial, which are listed in the National Register of Historic Places; and

WHEREAS, 23rd Street located to the west of Square 62 and Constitution Avenue located to the south of Square 62 are listed as "special streets" in the Comprehensive Plan for the District of Columbia; and

WHEREAS, GSA, as the lead agency, and NCPC, as a cooperating agency, have established the Undertaking's area of potential effects ("APE"), as that term is defined under 36 CFR § 800.16(d) and as described in section 3.3.1 of the Final Environmental Assessment dated November 13, 2003; and

WHEREAS, GSA and NCPC have determined that the Undertaking will have adverse effects on potential buried archaeological resources, the APhA headquarters building and other properties listed in the National Register of Historic Places, and the view sheds of the National Mall, 23rd Street and Constitution Avenue, as more particularly described in the environmental assessment of the Undertaking prepared by GSA; and

WHEREAS, GSA and NCPC have consulted with the SHPO pursuant to Section 106 and its implementing regulations; and

WHEREAS, Advisory Neighborhood Commission 2A and other interested persons identified by GSA as the consulting parties have participated in the consultation process; and

WHEREAS, deed restrictions on the APhA property require any building constructed by APhA in Square 62 to be approved by NCPC and the U.S. Commission of Fine Arts ("CFA"); and

WHEREAS, CFA also has design review jurisdiction over Square 62 by virtue of the Shipstead-Luce Act; and

WHEREAS, the D.C. Historic Preservation Review Board ("HPRB") has jurisdiction over the property pursuant to the D.C. Historic Landmark and Historic District Protect Act; and

WHEREAS, CFA and HPRB recommended final design approval of the proposed addition on February 24, 2005; and

WHEREAS, previous transfers of property from the U.S. Government to APhA in Square 62 require APhA to use any building it constructs on Square 62 only for organizations and institutions serving American pharmacy on a nonprofit basis; and

WHEREAS, GSA and APhA desire to modify the use restriction.

NOW THEREFORE, GSA, NCPC, and SHPO agree that upon GSA's decision to proceed with the Undertaking, GSA shall ensure that the following stipulations are implemented in order to take into account the effects of the Undertaking on the historic resources, and the stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

I.
STIPULATIONS

The following stipulations will be included in a preservation covenant (attached Exhibit B) for the Transfer Parcel which will be held by the SHPO:

A. Demolition

1. APhA shall be permitted to demolish the 1959-62 addition to the APhA headquarters building designed by Eggers and Higgins (the "Annex") located on APhA property, which the HPRB has determined to be a non-contributing element to the landmark building. Because the annex is non-contributing, no mitigation measures are required for the proposed demolition.

2. In order to protect the landmark APhA building during demolition of the Annex, and during excavation and construction activities for the proposed new addition, the contractor will submit to the SHPO for approval a pre-work plan to minimize damage to and to protect external features of the APhA building.

B. Archaeology

1. In the event that previously unidentified archaeological resources are discovered during ground disturbing activities within the APE, APhA shall halt all construction work involving subsurface disturbance in the area of the resource and in the surrounding area where further subsurface remains can be reasonably be expected to occur. APhA shall immediately notify the SHPO of the discovery. APhA shall engage an archaeologist who meets the professional qualification standards as defined in Appendix A of 36 CFR Part 61 to participate in all site inspections and analyses pursuant to the following stipulations, and act as APhA's representative with regard to archaeology.

2. APhA and SHPO shall immediately inspect the work site and determine the area and nature of the affected archaeological resource. Construction work may then continue in the area outside the archaeological resources as defined by APhA and the SHPO.

3. Within three (3) working days of the original notification of discovery, APhA, in consultation with the SHPO, shall determine the National Register eligibility of the resource.

4. If the resource is determined eligible for the National Register, APhA shall prepare a plan for its avoidance, protection, recovery of information or destruction without data recovery. Such a plan shall be approved by the SHPO prior to implementation.

5. Work in the effected area shall not proceed until either:

(a) The development and implementation of appropriate data recovery or other recommended mitigation measures, or

(b) The determination is made that the located remains are not eligible for inclusion on the National Register.

6. APhA shall ensure that all materials and records resulting from data recovery are curated in accordance with 36 CFR Part 79 by an institution or organization selected in consultation with the SHPO, and that reports are responsive to contemporary professional standards, according to the *Department of the Interior's Format Standards for Final Reports of Data Recovery Programs* (42 CFR 537-79) and meet the standards as set out in *Guidelines for Archaeological Investigations in the District of Columbia*.

C. New Construction

APhA shall construct its addition consistent with the architectural drawings prepared by the architectural firm of Hartman-Cox Architects approved in concept by NCPC, the HPRB, and CFA, and as subsequently approved in final form by CFA and HPRB on February 24, 2005. The adverse effects of the proposed addition on the visual qualities of the APE and the APhA headquarters building are mitigated by setbacks, alignments, proportionality of design and compatible architectural style.

D. Landscaping

APhA shall submit a landscaping plan as part of the final approval process before NCPC, HPRB, and CFA, which final approval shall demonstrate further mitigation of the potential adverse effects of the proposed APhA addition. As part of the new construction and landscaping plan, the two surface parking lots that currently impair the setting of the landmark APhA building shall be removed. APhA shall maintain a 10-foot setback along the 23rd Street side of the Transfer Parcel to supplement the 17-foot strip buffer from the Property that is being transferred from GSA to the National Park Service. APhA shall also maintain a 10-foot setback along the 22nd Street side of the Property.

APhA may install a retaining wall thirty inches in height as a security barrier within the 17-foot strip buffer to be transferred to the National Park Service, as shown in the drawings approved in final form by CFA and HPRB on February 24, 2005.

E. Reporting

Every six months, APhA will provide to the SHPO a written report on the status of the construction pertaining to demolition of the Annex, an archaeological findings or lack thereof, and adherence to the approved architectural design and landscaping plans. APhA and SHPO agree to establish a format and schedule for the reports.

II.

AMENDMENTS OR MODIFICATIONS

This MOA shall not be modified or amended except by written agreement of the Parties hereto.

III. DISPUTE RESOLUTION

Any party to this MOA may object to any action proposed under this MOA or the manner in which the terms of this MOA are implemented. The disputing parties shall use their best efforts to resolve any such disputes informally. In the event the disputing parties are unable to resolve a dispute informally, written notice of the dispute, including all pertinent documentation, shall be provided by any or all of the disputing parties to the SHPO (where the SHPO is not one of the disputing parties) or GSA (where the SHPO is one of the disputing parties) requesting recommendations for resolution of the dispute. The SHPO or GSA, as appropriate, will provide the disputing parties with written recommendations within 30 days following receipt of notice and documentation regarding the dispute. The disputing parties shall take into account any SHPO or GSA recommendations provided in response to their request, and shall again use their best efforts to resolve the dispute informally within 15 days following receipt of the SHPO or GSA recommendations. The disputing parties shall thereafter, within 15 days following receipt of the SHPO or GSA recommendations, provide the SHPO or GSA, as appropriate, with notice that the dispute has been resolved, or that the disputing parties have been unable to resolve their dispute. In the latter case, the disputing parties shall have the opportunity to submit any additional information to the SHPO or GSA, as appropriate. The SHPO or GSA, as appropriate, shall consider all information and comments submitted by the parties, and render a final decision within 30 days thereafter that will be binding on the disputing parties. During the pendency of any dispute, the parties shall be required to carry out any and all actions pursuant to this MOA, but the disputing parties shall not be required to incur additional and/or unbudgeted costs directly attributable to the subject matter of the dispute.

IV. TERMINATION

The obligations under this MOA shall terminate automatically upon the earlier of the following events: (i) written notification from GSA to APhA that it will not sell the Property to APhA; or (ii) the issuance of a Certificate of Substantial Completion of the APhA addition by the District of Columbia Department of Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs; or (iii) ten years after the date of the MOA. The Parties may modify the duration and the terms of the MOA if the Undertaking has not been implemented within ten years after the date of this MOA. If any Party determines that the terms of the MOA cannot be or are not being carried out, the Parties shall consult to seek amendment of the MOA. If the MOA is not amended, any Party may terminate the MOA.

V. EVIDENCE OF COMPLIANCE WITH SECTION 106

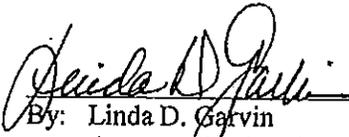
Pursuant to 36 CFR § 800.6(c), execution of this MOA is evidence that GSA and NCPC have afforded ACHP an opportunity to comment on the proposed Undertaking, and that GSA and NCPC have taken into account the effects of the Undertaking on historic resources in accordance with sections 106 and 110 of the NHPA.

VI.
MISCELLANEOUS

This MOA may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

[Signature Pages Follow]

U.S. GENERAL SERVICES ADMINISTRATION


8/17/05

By: Linda D. Garvin Date
 Assistant Regional Administrator

D.C. STATE HISTORIC PRESERVATION OFFICER

By: Lisa Burcham Date:

NATIONAL CAPITAL PLANNING COMMISSION

By: Patricia E. Gallagher, AICP Date
 Executive Director

AMERICAN PHARMACISTS ASSOCIATION

By: John A. Gans, PharmD Date
 Executive Vice President

U.S. GENERAL SERVICES ADMINISTRATION

By: [Name] Date
[Title]

D.C. STATE HISTORIC PRESERVATION OFFICER

David Maloney
By: Lisa Burcham Date: 8/17/2005
David Maloney Deputy SHPO

NATIONAL CAPITAL PLANNING COMMISSION

By: Patricia E. Gallagher, AICP Date
Executive Director

AMERICAN PHARMACISTS ASSOCIATION

John A. Gans
By: John A. Gans, PharmD Date
Executive Vice President 8/4/05

U.S. GENERAL SERVICES ADMINISTRATION

By: [Name] _____ Date _____
[Title]

D.C. STATE HISTORIC PRESERVATION OFFICER

By: Lisa Burcham _____ Date: _____

NATIONAL CAPITAL PLANNING COMMISSION

 _____ 8.18.05
By: Patricia E. Gallagher, AICP _____ Date
Executive Director

AMERICAN PHARMACISTS ASSOCIATION

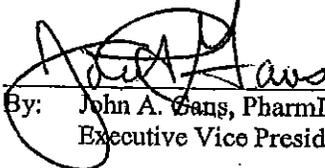
 _____ 8/4/05
By: John A. Gans, PharmD _____ Date
Executive Vice President

EXHIBIT B

HISTORIC PRESERVATION COVENANT

The U.S. General Services Administration will include the following provisions in any deed conveying the Transfer Parcel to the American Pharmacists Association.

A. Demolition

1. Grantee American Pharmacists Association ("APhA") shall be permitted to demolish the 1959-62 addition to the APhA headquarters building designed by Eggers and Higgins (the "Annex") located on APhA property, which the HPRB has determined to be a non-contributing element to the landmark building. Because the annex is non-contributing, no mitigation measures are required for the proposed demolition.

2. In order to protect the landmark APhA building during demolition of the Annex, and during excavation and construction activities for the proposed new addition, the APhA contractor will submit to the State Historic Preservation Officer for the District of Columbia ("SHPO") for approval a pre-work plan to minimize damage to and to protect external features of the APhA building.

B. Archaeology

1. In the event that previously unidentified archaeological resources are discovered during ground disturbing activities within the Area of Potential Effects ("APE"), as defined in the MOA, APhA shall halt all construction work involving subsurface disturbance in the area of the resource and in the surrounding area where further subsurface remains can be reasonably be expected to occur. APhA shall immediately notify the SHPO of the discovery. APhA shall engage an archaeologist who meets the professional qualification standards as defined in Appendix A of 36 CFR Part 61 to participate in all site inspections and analyses pursuant to the following stipulations, and act as APhA's representative with regard to archaeology.

2. APhA and SHPO shall immediately inspect the work site and determine the area and nature of the affected archaeological resource. Construction work may then continue in the area outside the archaeological resources as defined by APhA and the SHPO.

3. Within three (3) working days of the original notification of discovery, APhA, in consultation with the SHPO, shall determine the eligibility of the resource for listing on the National Register of Historic Places ("National Register").

4. If the resource is determined eligible for the National Register, APhA shall prepare a plan for its avoidance, protection, recovery of information or destruction without data recovery. Such a plan shall be approved by the SHPO prior to implementation.

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a

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AMENDMENTS OR MODIFICATIONS

This Covenant shall not be modified or amended except by written agreement of the GSA and SHPO.

III.
TERMINATION

The obligations under this Covenant shall terminate automatically upon the earlier of the following events: (i) the issuance of a Certificate of Substantial Completion of the APhA addition by the District of Columbia Department of Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs; (ii) termination of the MOA; or (iv) ten years after the date of the Covenant. GSA and SHPO may modify the duration and the terms of the Covenant if the Undertaking has not been implemented within ten years after the date of the MOA. If either GSA or SHPO determines that the terms of the Covenant cannot be or are not being carried out, GSA and SHPO shall consult to seek amendment of the Covenant.