

**DOCUMENTS DISTRIBUTED IN EXECUTIVE SESSION**

Waltham City Council  
Roll Call

Item: Motion to Authorize Mayor to sign Release and Settlement Agreement regard 554 Lexington St.

Date: 1/27/2020

Yea                  Nay                  Abstained          Absent

City Council

George A. Darcy III                  ✓                  \_\_\_\_\_                  \_\_\_\_\_

Caren Dunn                                  ✓                  \_\_\_\_\_                  \_\_\_\_\_

Sean T. Durkee                              ✓                  \_\_\_\_\_                  \_\_\_\_\_

Cathyann Harris                            ✓                  \_\_\_\_\_                  \_\_\_\_\_

Joseph P. LaCava                           ✓                  \_\_\_\_\_                  \_\_\_\_\_

Anthony LaFauci                            ✓                  \_\_\_\_\_                  \_\_\_\_\_

Randy J. LeBlanc                           ✓                  \_\_\_\_\_                  \_\_\_\_\_

Kristine A. Mackin                         ✓                  \_\_\_\_\_                  \_\_\_\_\_

John J. McLaughlin                        ✓                  \_\_\_\_\_                  \_\_\_\_\_

Kathleen B. McMenimen                 ✓                  \_\_\_\_\_                  \_\_\_\_\_

Patrick J. O'Brien                         ✓                  \_\_\_\_\_                  \_\_\_\_\_

Jonathan Paz                                 ✓                  \_\_\_\_\_                  \_\_\_\_\_

Thomas M. Stanley                         ✓                  \_\_\_\_\_                  \_\_\_\_\_

Carlos A. Vidal                              ✓                  \_\_\_\_\_                  \_\_\_\_\_

Paul J. Brasco                                ✓                  \_\_\_\_\_                  \_\_\_\_\_

President

Totals (15)                                    15                  0                  \_\_\_\_\_                  \_\_\_\_\_

## MUTUAL OMNIBUS RELEASE AND SETTLEMENT AGREEMENT

1. This Mutual Omnibus Release and Settlement Agreement (hereafter, Agreement) is made and entered into as of this 31<sup>st</sup> day of January 2020 by and between The Trustees of The Stigmatine Fathers, Inc. [hereafter, The Stigmatines] and the City of Waltham [hereafter, The City] (either The Stigmatines or The City, individually hereinafter referred to as a Party and hereafter collectively as The Parties), for the purposes of: (a) effecting final resolution, settlement and discharge of all the Parties' actual or potential claims, counterclaims or cross claims, of whatever nature, which the Parties had or might have had from the beginning of time to the present date, including but not limited to the two (2) lawsuits filed by The City in connection with The City's taking by eminent domain of The Property known and numbered as 554 Lexington Street, Waltham, MA, (said property also includes land formerly known as 75R Lincoln Street and 111R Lincoln Street) (hereafter collectively identified as, "The Property"), namely Middlesex Superior Court #1881 CV 02385 and Middlesex Superior Court 1981 CV 02632 (together, "The Lawsuits"); ], and in connection with The Parties' pre-taking negotiations and activities relative to potential sale or development of The Property and (b) resolving, settling and otherwise disposing of all actual or potential disputes, claims, debts, demands, actions, causes of action, suits, accounts, covenants, contracts, damages, interest, promises, agreements litigation and liabilities whatsoever of every name and nature, whether under federal law, state law or common law, and whether at law or in equity, including but not limited to any claims for attorney fees and costs, which either Party may now have or ever had against the other Party, from the beginning of the world to not only the date of these presents but also to possible future claims in any way relating to the, negotiation, taking and/or the use, occupancy, value or condition of The Property, and including but not limited to any question of, challenge or claim involving or relating to any legal validity, public purpose, good or bad faith in the procedure or substance in the city's - M.G.L. c. 79 Taking of the Property on or about July 2018 (Taking, as used herein), any challenge or claim under M.G.L. c. 79A or the regulations related thereto, any claim that The Stigmatines violated the covenant of good faith and fair dealing, any claim that The Stigmatines interfered with any relationship between the City and Massachusetts School Building Authority, any claim related to communications

with Massachusetts School Building Authority made by or on behalf of The Stigmatines, any claim related to communications or negotiations between the Parties or on behalf of the parties relative to possible sale or development of the property, any claim that The Stigmatines caused or are responsible for the release of hazardous materials on The Property, and any claim that the Stigmatines caused additional costs or expenses to the City's high school project.

WITNESSETH

WHEREAS, by and through an Order of Taking recorded with the Registry of Deeds on July 23, 2018, on Certificate No. 135424 in Book 807 and Page 74, (hereafter, Taking) The City took by eminent domain the Property, which, until such time, was owned by The Stigmatines; and

WHEREAS The City previously made a pro tanto payment to The Stigmatines totaling Eighteen Million and 00/100 Dollars (\$18,000,000.00) as the (with interest thereon) *pro tanto* payment/compensation for the Taking; and

WHEREAS The City filed The Lawsuits asserting certain claims against The Stigmatines, including but not limited to a request for a Declaratory Judgment stating that the Taking was valid, made in good faith, and made in full compliance with G.L. 79, a claim that The Stigmatines had intentionally interfered with The City's relationship with Massachusetts School Building Authority, a claim that The Stigmatines had violated the Covenant of Good Faith and Fair Dealing, a claim that The Stigmatines had contaminated The Property with hazardous materials, and a claim that the pro tanto award paid to The Stigmatine Fathers was proper and just compensation for The Taking; and

WHEREAS, The Stigmatines maintain that G.L. c. 79 affords to The Stigmatines the right to, within three years of the date of the taking, challenge the validity of the taking and/or challenge the damages paid by the City, and The Stigmatines had yet to exercise such rights in the context of The Lawsuits or in the context of separate litigation, and



WHEREAS, The City denies any responsibility whatsoever for damages exceeding said amount already paid to The Stigmatines; and

WHEREAS, The City maintains that The Taking was made in good faith, for a valid public purpose, and in compliance with all applicable laws and regulations; and

WHEREAS, The Stigmatines deny any responsibility whatsoever for purported interference with The City's relationship with Massachusetts School Building Authority, purported violation of the Covenant of Good Faith and Fair Dealing, purported contamination of The Property with hazardous materials; and

WHEREAS, The Stigmatines maintain that the aforementioned pro tanto award was not proper or just compensation for The Taking; and

WHEREAS, notwithstanding the foregoing, in an effort to avoid continued litigation and the inconveniences, costs, expenses, and uncertainties associated therewith, The Parties have reached this full and final Settlement Agreement and compromise in their mutual interest and so as to fully and finally resolve their differences, as described below; and

WHEREAS, the terms of this Agreement are the product of mutual negotiation and compromise, with advice by counsel of each party's choice;


NOW, THEREFORE, without further adjudication of any of the claims alleged in The Lawsuits, and without this Agreement being an admission or evidence of liability or wrongdoing by either party, and for good and valuable consideration and the mutual promises and recitations set forth herein, the receipt and sufficiency of which are hereby acknowledged, The Parties covenant and agree to fully and finally settle and Release all existing and/or potential claims which each or those claiming through them might otherwise have, including, but not limited to the above claims, and contentions as follows:

*DM*

AGREEMENT

A. The Stigmatines' Release of Any and All Claims against The City

The Trustees of the Stigmatine Fathers Inc, for all its, officers, directors, trustees, shareholders, confireres, successors and assigns, and/or all those claiming derivatively from and through said Trustees of the Stigmatine Fathers, Inc., including any tenants or occupants of any portion of the Property including but not limited to Espousal Retreat Center, Inc., and as Defendant in Middlesex Superior Court #1881 CV 02385 and 1981 CV 02632, (hereafter, The Stigmatines) do hereby, waive and disclaim any and all claims, rights or actions against, remise, release and forever discharge the CITY OF WALTHAM, a municipal corporation and political subdivision of the Commonwealth of Massachusetts with offices at 610 Main Street, Waltham, Middlesex County, Massachusetts, and all of its present and former employees, agents, officers, elected and non-elected officers and officials, Committees, Boards, or Commissions, individually and in every other legal capacity, and all of their respective heirs, successors and assigns, in addition to any architects, engineers, contractors or subcontractors of the City (collectively, "The City"), of and from all claims, debts, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, demands, interest, promises, and any and all claims, demands and liabilities whatsoever of every name and nature, whether under federal law, state law or common law, and whether at law or in equity, including but not limited to any claims for attorney fees and costs, which against The City that The Stigmatines now have or ever had, from the beginning of the world to this date and more especially on account of any rights, relief, damages to or arguably available to The Stigmatines (and/or to or for their former estate, real and personal property or fixtures located in or at the Property known as 554 Lexington Street in Waltham, MA., 75R Lincoln Street, and/or 111R Lincoln Street, including but not limited to all rights or claims to the real and personal Property thereon (hereafter Real & Personal Property)) caused, emanating, sustained or arising from and out of the City's Eminent Domain Taking of the Property pursuant to M.G.L. c. 79, and all steps, actions or stages of the processes associated therewith, said action under c. 79 and c. 79A, on and to the above Real & Personal Property formerly owned by The Stigmatines. The Stigmatines covenant and agree herein that, as between the City and The Stigmatines, the City now has and in perpetuity has full and complete ownership, control and exclusive use and possession of the Property without any inconsistent or



contrary claims of or from the Stigmatines.

Furthermore, The Stigmatines hereby acknowledge, agree and understand that they are specifically waiving any and all rights they arguably do or may have including but not limited to those under the following laws; and this Release and Waiver of all claims by The Stigmatines shall include but not be limited to fully waiving and releasing the following generally described or identified claims, rights, remedies or redress under or emanating from:

1. The Massachusetts Constitution, including but not limited to whether the city's M.G.L. c. 79 Taking of the property was for a public purpose, or relating in any way to this Taking's validity, and or whether done in bad faith, or for proper public purpose, and or any other aspects of the processes and procedures leading to or associated with such Taking;

2. Any and all claims, rights, or actions involved or in any way related to those generally arising or emanating from:

a. M.G.L. c. 79,

b. M.G.L. c. 79A,

c. any legal or equitable claim, rights, damages, reversion or redress arising from the Massachusetts or Federal Constitution, or laws of Massachusetts or the United States, and whether at law or in equity, to the above Taking by eminent domain of the above Real & Personal Property by The City and whether such Taking and all related actions by The City were for a public purpose, in good faith and/or otherwise valid or invalid, and including any such rights, claims, damages, reversion or redress involving this c. 79 Taking and its entire process, including under M.G.L. c. 79A, and whether done in good faith by The City, both before and after the said Taking, or related to such Taking in any aspect.

B. The City's Release of Any and All Claims against The Stigmatines

The City, for all its present and former employees, agents, officers, elected and non-elected officers and officials, Committees, Boards, or Commissions, individually and in every other legal capacity, and all of their respective heirs, successors and assigns, and as the Plaintiff in Middlesex Superior Court #1881 CV 02385 and 1981 CV 02632, hereby waives and disclaims

any and all claims, rights or actions against, remises, releases and forever discharges The Trustees of The Stigmatine Fathers, Inc., and all of its present and former employees, agents officers, directors, Trustees, shareholders, confreres, successors and assigns, and/or all those claiming derivatively from and through said Trustees of the Stigmatine Fathers, Inc., including any tenants or occupants of any portion of the property known as 554 Lexington Street, Waltham, MA including but not limited to Espousal Retreat Center, Inc., (collectively, "The Stigmatines"), of and from all claims, debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, promises, and any and all claims, demands and liabilities whatsoever of every name and nature, whether under the Lawsuits, federal law, state law or common law, and whether at law or in equity, including but not limited to any claims for attorney fees and costs against The Stigmatines, which The City now has or ever had, from the beginning of the world to this date and more especially on account of any rights, relief, damages to or arguably available to The City caused, emanating, sustained or arising from and out of the City's Eminent Domain Taking and all steps, actions or stages of the processes associated thereto, including all pre-taking and post-taking communications and activities of any kind by or on behalf of The Stigmatines relative to The Property, and The Taking.

Furthermore, The City hereby acknowledges, agrees and understands that, it is specifically waiving any and all rights it arguably has or may have, including but not limited to the following, and this Release and Waiver of all claims by The City shall include but not be limited to the following generally described or identified claims, rights or redress under or emanating from:

1. Any and all communications with Massachusetts School Building Authority made by or on behalf of The Stigmatines.
2. Any and all communications / real estate negotiations with the City made by or on behalf of The Stigmatines.
3. Any and all communications / real estate negotiations made by or on behalf of The Stigmatines to any developers, marketing professionals or other persons or entities.
4. The presence, if any, of hazardous materials on The Property and/or remediation/removal of same.





5. Any and all additional costs or expenses to the City's high school project caused by delay or any other reason.

Notwithstanding anything to the contrary herein this Agreement cannot alter or abrogate Open Meeting Law, Public Records Law or their regulations or policies or any other special or general law or their requirements relating to any matter involved or relating to the above.

#### C. Settlement Proceeds

In consideration of this above full and complete Mutual Reciprocal OMNIBUS Release & Total Waiver of all claims by and from The Stigmatines, The City will owe in full and final payment and settlement of all claims, the new additional sum of Twelve Million Dollars \$12,000,000; but Subtracted from said new additional sum shall be \$1,000,000 which is compensation to The City by The Stigmatines toward The City's environmental remediation obligations for contamination that existed on the Property prior to the Taking and was not uncovered until recently after Court Order allowing full access for investigation and testing. Therefore, the new money now due from The City to The Stigmatines is Eleven Million (\$11,000,000) dollars. Payment of said \$11,000,000 shall constitute and be full, complete, and final additional payment/compensation/damages/remedy - in addition to The City's previously paid \$18,000,000 M.G.L. c. 79 "pro tanto" payment to The Stigmatines - of any and all city liabilities or obligations - to fully and finally resolve all claims, of whatsoever type or nature, of the Parties' which either Party has or could have had from the beginning of time to the present date, including but not limited to any M.G.L. c. 79 and/or M.G.L. c.79A Taking/ Relocation Claims. The above said eleven million (\$11,000,000) dollar net additional payment to The Stigmatines by The City shall occur on or before March 6, 2020. If such above \$11,000,000 net payment is not so paid on or before March 6, 2020, then The City shall pay to The Stigmatines interest at the rate of 2.4% per annum on any such portion not so paid. No statutory or other interest or costs of any kind shall be due or imposed on said above payment from the City.

#### D. Stigmatines' Property Remaining on Site

The Stigmatines have agreed that The Stigmatines shall be solely responsible, at their own expense, to move or remove all its or its members'/ assignees'/tenants'/etc. personal property/statues/statue foundations/altars and other personal property or fixtures from within the buildings or the Property on or before April 15, 2020. The Stigmatines have also agreed that

they shall be solely responsible, at their own expense, and have until April 30, 2020 to remove any and all of its or its members' outside personal property, statues, or their foundations and any other personal property located on the exterior portions of the property on or before said April 30, 2020. The City shall have no responsibility or obligation to remove or deliver /redeliver nor shall it be obligated to share in the costs of such removal or delivery/redelivery of any such above personal property/statues/etc. to The Stigmatines, nor shall The City have liability in or with relocation of the above personal property within the buildings or on the exterior portions of the property except for or unless The City directly causes damage or loss thereto by The City's own direct negligent or willful acts on or before April 30, 2020. After such above April 15, 2020 and April 30, 2020 dates, The City shall have no responsibility or liability for any of the above referenced property and such personal and other referenced property shall be considered abandoned by The Stigmatines and The Stigmatines shall be considered to have waived any and all claims thereto, unless otherwise agreed in writing by the Parties. Should any property be so abandoned, The City shall bear the cost of removal and may dispose of same in any manner it sees fit, without any right in The Stigmatines to claim any portion of any proceeds obtained by The City for any such disposal.

#### E. Miscellaneous

In addition, The Parties each specifically acknowledge, agree and understand that by signing this Release it/they are waiving any and all its/their rights it/they now has, had or may have had against the other. The parties each hereby acknowledge, agree and understand that, if after the date of this Release, it/their claims, rights, injuries or damages turn out to be more severe or different than they now believe them to be, or that injuries or damages of which they are not now aware manifest themselves later, that by signing this Release it/they are accepting that risk and giving up any right to seek further money, redress or relief at law or in equity from, or otherwise to assert any claim or demand against, the other.

The Stigmatines warrant, represent and covenant that Fr. White is President and Director of the Trustees of the Stigmatine Fathers, Inc. and by signing this document has obtained full and complete authority from any and all required sources to enter into this waiver and release and related documents and execute this so that it has full permanent and binding legal affect.



After The Parties have signed this Agreement the parties to the above action(s) shall sign an Agreement for Judgment consistent with this Agreement and incorporating all the terms of this Agreement. This waiver and release will be an attachment and incorporated into said Agreement for Judgment. Said Agreement for Judgment shall state that said Agreement is without any further recourse to either party or anyone claiming under it or them and neither costs, interest, attorney fees or other damages can be awarded, assessed or incurred and each party does expressly agree to bear any and all of its/their own legal costs, interest, attorneys' fees, expert witness or other such costs or fees.

Entire Agreement. This Agreement constitutes the entirety of the understanding between and among the Parties with regard to the subject matter set forth herein and supersedes all prior and contemporaneous agreements, understandings and representations between or among the Parties, oral or written, concerning the subject matter hereof. This Agreement shall be binding and inure to the benefit of the Parties' successors, heirs and assigns. This Agreement may not be rescinded, modified or amended, in whole or in part, without a written instrument signed by all the Parties hereto.

Invalidity. If any of the provisions herein are determined to be invalid by a court or government agency of competent jurisdiction, the invalid provisions shall be severed from the Agreement and all other provisions shall remain valid and enforceable so long as the intent and spirit of this Agreement as articulated herein to fully and completely settle, resolve and eliminate any and all present and future claims is effectuated and maintained.

I/We, the undersigned, have had the opportunity to seek the benefit of consultation and advice of multiple counsel of our choosing throughout the above referenced process both before and after the above M.G.L. c. 79 Taking by the City regarding the settlement of this claim, and regarding the terms and effect of this document and have not relied on any representations apart from those contained within this written document, and fully understand and agree to the settlement and to the terms of this document and are authorized to sign the same to bind it/them to the terms of this Release.

The City warrants, represents and covenants that Mayor McCarthy is fully authorized to enter into this Agreement on behalf of The City and, by signing this document, she has obtained full

Handwritten signature or initials, possibly "DA", in black ink.

and complete authority from any and all required sources to enter into this waiver and release and related documents and execute this so that it has full permanent and binding legal affect.

Signed and sworn to as a Sealed Instrument under the pains and penalties of perjury this \_\_\_ day of January, 2020.

The Stigmatines by its/their President and Director,  
Father Robert S. White,

[Signature] CSS  
Federal ID No. 04-2807312  
Dated: 1/30/2020

[Signature] 1/30/2020  
witness signature, date

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Jan 30, 2020

On this 30<sup>th</sup> day of January, 2020, before me, the undersigned notary public, personally appeared the above named Robert S. White, President and Director of the Trustees of the Stigmatine Fathers, Inc., proven to me to be said person by personal knowledge/MA driver's license, and acknowledged the foregoing to be his true and free act and deed and he further acknowledged that he has the full legal authority to bind said Trustees of the Stigmatine Fathers, Inc. to the foregoing Mutual Omnibus Release and Settlement Agreement.

[Signature]  
Notary Public  
My commission expires 11/20/2026  
**JASON R. SCOPA**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
November 20, 2026

City of Waltham, By its Mayor Jeannette A. McCarthy

[Signature] Mayor  
Pursuant to City Council Order #  
Dated: 1/31/2020 34701

[Signature]  
Witness signature, date: 1-31-2020

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

January 31, 2020

On this 31<sup>st</sup> day of January, 2020, before me, the undersigned notary public, personally appeared the above named Jeannette A. McCarthy, Mayor of City of Waltham, Massachusetts, proven to me to be said person by personal knowledge/MA driver's license, and acknowledged the foregoing to be her true and free act and deed and she further acknowledged that she has the full legal authority to bind said City of Waltham to the foregoing Mutual Omnibus Release and Settlement Agreement.

[Signature]  
Notary Public  
My commission expires 6/24/2022

