

A2/Tempe, El Adobe Apartments/ HUD/ Construction

MEMORANDUM OF AGREEMENT JUN 13 2001
BETWEEN
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE ARIZONA STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE CONSTRUCTION OF EL ADOBE APARTMENTS,
TEMPE, ARIZONA

WHEREAS, GMAC Commercial Mortgage Corporation (GMAC) proposes to provide financing for construction of the El Adobe Apartments on 1.9 acres of private land at 1007-1115 East Eighth Street in Tempe, Maricopa County, Arizona, by the Collegiate Housing Group; and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) will insure the financing provided by GMAC, and will serve as the lead federal agency for this project; and

WHEREAS, the area of potential effect is defined as extending 150 feet south from the southern edge of the Eighth Street right-of-way at the above-listed street addresses, as depicted on a map entitled "Plan View of the Project Area and Identified Cultural Resources" in the cultural resources survey report prepared by Archaeological Research Services, Inc., on September 7, 2000; and

WHEREAS, the area of potential effect includes all or portions of the following historic properties: the prehistoric and historic archaeological site known as La Plaza (AZ U:9:165 [ASM]), which has been determined eligible for listing on the National Register of Historic Places by the Arizona State Historic Preservation Office (SHPO); the eligible historic property known as the Escalante House; and a potentially eligible unnamed north-south irrigation ditch; and

WHEREAS, the area of potential effect also includes the eligible historic property known as the Tempe Canal, but the portion of this feature within the area of potential effect has already been converted to a modern underground pipeline; and

WHEREAS, HUD has consulted with the SHPO in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 (NHPA), and its implementing guidelines as provided in 36 C.F.R. Part 800, to resolve the adverse effects of the proposed apartment construction on the historic properties; and

WHEREAS, the parties to this Memorandum of Agreement (MOA) agree to follow the Advisory Council on Historic Preservation (Council) guidance as provided in 36 C.F.R. Part 800 as of June 18, 1999; and

WHEREAS, the Native American tribes that may attach religious or cultural importance to the affected historic property (the Hopi Tribe, Pueblo of Zuni, Ak-Chin Indian Community, Tohono O'odham Nation, Gila River Indian Community, Fort McDowell Yavapai Nation, and Salt River Pima-Maricopa Indian Community) have been invited to participate in the consultation and to concur in this MOA; and

WHEREAS, HUD and SHPO have also invited GMAC as the lender, the Collegiate Housing Group as the developer, and the City of Tempe Historic Preservation Office to participate in the

consultation and to concur in this MOA; and

WHEREAS, The Collegiate Housing Group shall contract with one designated consultant specializing in cultural resources management, and meeting all state and federal standards for such firms as outlined in subsequent stipulations;

WHEREAS, The Collegiate Housing Group shall be the only party responsible for financial reimbursement to the designated consultant specializing in cultural resources management, the contract should also specify that HUD and GMAC Commercial Mortgage shall not be responsible for disputes and/or disagreements between The Collegiate Housing Group and the designated consultant;

WHEREAS, Rosie G. Holland of The U.S. Department of HUD, Phoenix, AZ Office shall be the point of contact and person responsible for all conditions in this document where HUD is listed as the responsible entity.

NOW, THEREFORE HUD and the SHPO agree that, upon acceptance of this MOA by the Council, and upon GMAC's decision to proceed with financing the El Adobe Apartments, HUD (as lead federal agency) shall ensure that the following stipulations are implemented by the designated consultants in order to take into account the effects of the El Adobe Apartments upon the historic properties of La Plaza, the Escalañte House, the Tempe Canal, and the unnamed north-south irrigation ditch that are wholly or partially present within the area of potential effect.

Stipulations

HUD shall ensure that the responsible parties carry out the following stipulations.

1. A Data Recovery Work Plan (Plan), prepared by a designated archaeological consultant and attached as an addendum to this MOA, is submitted by HUD to the SHPO, the City of Tempe Historic Preservation Office, and any tribal governments that respond to HUD's invitation to participate in the consultation, for 30 days' review. The Plan will be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37), and will take into account the Council's publication *Treatment of Archaeological Properties* (1980). Unless any signatory or concurring party objects to the Plan within 30 days after receipt of the Plan, HUD shall ensure that it is implemented prior to construction.

The Plan specifies:

- A. The property where data recovery is to be carried out;
- B. The research questions to be addressed through data recovery, with an explanation of their relevance and importance;
- C. The field procedures and laboratory analysis methods to be used, with an explanation of their relevance to the research questions;

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WHEREAS, Rosie G. Holland of The U.S. Department of HUD, Phoenix, AZ Office shall be the point of contact and person responsible for all conditions in this document where HUD is listed as the responsible entity.

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- A. The property where data recovery is to be carried out;
- B. The research questions to be addressed through data recovery, with an explanation of their relevance and importance;
- C. The field procedures and laboratory analysis methods to be used, with an explanation of their relevance to the research questions;

- D. The methods to be used in analysis, data management, and dissemination of data to the professional community, including a schedule;
 - E. The proposed disposition and curation of recovered materials and records;
 - F. A proposed schedule for the submission of progress, summary and other reports to the appropriate signatories and concurring parties;
 - G. Methods for evaluating and treating newly discovered cultural resources taking into account the provisions in 36 C.F.R. § 800.13 and A.R.S. 41-865;
 - H. The designated archaeological consultant in advance of ground-disturbing activities will acquire a signed burial agreement with the Arizona State Museum (ASM). This agreement, to be implemented upon the discovery of Human Remains, Associated Funerary Objects, and Objects of Cultural Patrimony within the subject property, will identify methods and procedures for the recovery, analysis treatment, and disposition of such remains and objects, and will further reflect concerns and/or conditions identified as a result of consultations among HUD, ASM, and interested tribal governments;
2. Proposed methods for involving the public during data recovery and for dissemination of results of the data recovery to the interested public, subject to the confidentiality guarantees provided in 36 C.F.R. 800.11(c).
 3. Failure to comment within 30 days after receipt of the Plan will be presumed to represent concurrence with the Plan.
 4. If SHPO or any other party to this agreement requests revisions to the Plan, the parties to this agreement shall be provided with 20 days from receipt to review and comment upon the revised plan.
 5. That within 180 days of completion of data recovery, a report will be prepared incorporating all appropriate data analyses and interpretations, and the report will be submitted to signatories and concurring parties who will be provided with 30 days to review and comment upon the data recovery report.
 6. That all historic preservation work carried out by designated consultants pursuant to this MOA is conducted by or under the supervision of a person, or persons, meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739).
 7. That the standing historic structure known as the Escalante House, located at 1007 East Eighth Street within the area of potential effect, will be rehabilitated by the Collegiate Housing Group according to the *Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings* (NPS 1992).

8. That any ground-disturbing activities associated with the Collegiate Housing Group's rehabilitation of the Escalante House will be monitored by an archaeologist meeting (or supervised by a person meeting) the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739), and that a report of monitoring results will be prepared by the archaeological consultant and submitted to the MOA signatories and concurring parties within 30 days of the conclusion of monitoring.
9. That effects to the Tempe Canal are limited to landscaping for a park-like environment on fill above the modernized buried portion of this feature.
10. That effects on the unnamed north-south irrigation ditch adjacent to the Escalante House are limited to its rehabilitation consistent with its historic character and usage, as specified by the City of Tempe Historic Preservation Office.
11. That all materials subject to repatriation shall be maintained in accordance with the burial agreement until any specified analyses, as determined following consultation with the appropriate Native American groups and individuals, are complete and the materials are returned.
12. If an objection is raised by a member of the public at any time during implementation of the measures stipulated in this MOA, HUD shall take the objection into account and consult as needed with the objecting party and SHPO to resolve the objection.
13. Should any signatory or concurring party to this MOA object within 30 days to any plan or report provided for review or to any aspect of this undertaking related to historic preservation issues, HUD shall consult with the objecting party to resolve the objection. If the objection cannot be resolved, HUD shall request further comments from the Council with reference only to the subject of the dispute; HUD's responsibility to carry out all actions under this MOA that are not the subject of the dispute will remain unchanged.
14. If potential historic or prehistoric archaeological materials or properties are discovered after construction begins, the person in charge of the construction shall promptly report the discovery to GMAC and HUD, and shall immediately take steps to stabilize and maintain preservation of the discovery. A professional archaeologist shall be consulted to evaluate the nature and significance of the buried remains. If the discovery appears to involve human remains as defined in ASM rules implementing A.R.S. 41-865, ASM and the designated archaeological consultant (on behalf of HUD) shall ensure that the discovery is treated in accordance with the burial agreement.

If human remains are not involved, then HUD, in consultation with the SHPO, shall determine whether the Plan previously approved according to Stipulation 1 is appropriate to the nature of the discovery. If the Plan is appropriate, it shall be implemented by the designated archaeological consultant on behalf of HUD. If the Plan is not appropriate to the discovery, HUD shall ensure that an alternate plan for

the resolution of adverse effect is developed by the designated archaeological consultant pursuant to 36 C.F.R. 800.6, and circulated to SHPO and other concurring parties, who will have 48 hours to review and comment upon the alternate plan. HUD shall consider the resulting comments, and shall be responsible for overseeing implementation of the alternate plan by the designated archaeological consultant.

15. The designated archaeological consultant, on behalf of HUD, shall ensure that all records resulting from archaeological excavation and monitoring associated with the El Adobe Apartments are curated by an institution meeting the standards set forth in 36 C.F.R. Part 79, and that all artifacts and other material resulting from the same excavation and monitoring are maintained in accordance with 36 C.F.R. Part 79 until the analyses specified in the data recovery work plan referenced in Stipulation 1 is complete, at which time the artifacts and materials may be either claimed by the property owner or donated to an appropriate institution for curation.
16. The designated archaeological consultant, on behalf of HUD, shall ensure that, notwithstanding the contents of Stipulation 14, all human remains and associated items of cultural patrimony shall be repatriated or otherwise treated in accordance with the burial plan in Stipulation 1(h), pursuant to A.R.S. 41-865.
17. This MOA may be amended by SHPO and HUD pursuant to 36 C.F.R. 800.6(c)(7). HUD shall file any amendments with the Advisory Council and provide notice to the concurring parties.
18. Either HUD or SHPO may terminate the MOA by providing 30 days' notice to the other signatory, providing that the signatories will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination pursuant to 36 C.F.R. 800.6(b). If the parties cannot agree on how to resolve adverse effects, HUD will comply with 36 C.F.R. § 800.7(a).

This agreement shall be null and void if its terms are not carried out within five (5) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Execution of this Memorandum of Agreement by the signatories and its subsequent filing with the Advisory Council on Historic Preservation is evidence that HUD has afforded the Council an opportunity to comment on the El Adobe Apartments project and its effects on the referenced historic properties, and that HUD has taken into account the effects of the undertaking on these historic properties.

SIGNATORIES U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By Sally Thomas Date 6/14/01
Title DIRECTOR, PROSIX MULTIFAMILY PROGRAM CENTER

ARIZONA STATE HISTORIC PRESERVATION OFFICE

By James W. Brown Date 6/29/01
Title ASSTANT

CONCURRING PARTIES

CITY OF TEMPE HISTORIC PRESERVATION OFFICE

By Joseph G. Nucci Date 9/08/02
Title Tempe Historic Preservation Officer

GMAC COMMERCIAL MORTGAGE CORP.

By Craig Gulley Date 12 June 01
Title ASSISTANT VP

COLLEGIATE HOUSING GROUP

By _____ Date _____
Title _____

HOPi TRIBE

By _____ Date _____

By _____ Date _____
Title _____

COLLEGIATE HOUSING GROUP

By _____ Date _____
Title _____

HOPI TRIBE

By Wayne Jayne P Date 4/27/01
Title Chairman

PUEBLO OF ZUNI

By _____ Date _____
Title _____

AK-CHIN INDIAN COMMUNITY

By _____ Date _____
Title _____

TOHONO O'ODHAM NATION

By _____ Date _____
Title _____

GILA RIVER INDIAN COMMUNITY

By _____ Date _____
Title _____

FORT MCDOWELL YAVAPAI NATION